AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Vol.42—No.163
8–23–77
PAGES
42299–42676

federal register

TUESDAY, AUGUST 23, 1977

highlights

CONTINUED INSIDE

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

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

Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/NHTSA	USDA/FNS		DOT/NHTSA	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/OHMO	CSC		DOT/OHMO	CSC
DOT/OPSO	LABOR		DOT/OPSO	LABOR
	HEW/ADAMHA			HEW/ADAMHA
	HEW/CDC			HEW/CDC
	HEW/FDA			HEW/FDA
	HEW/HRA			HEW/HRA
	HEW/HSA			HEW/HSA
	HEW/NIH			HEW/NIH
	HEW/PHS			HEW/PHS

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.

federal register

Area Code 202 Phone 523-5240

Published daily, Monday through Friday (no publication on Saturdays, Sundays, or on official Federal holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C., Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The FEDERAL REGISTER provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $5.00 per month or $50 per year, payable in advance. The charge for individual copies is 75 cents for each issue, or 75 cents for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER.

INFORMATION AND ASSISTANCE

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

FEDERAL REGISTER, Daily Issue:

Subscription orders (GPO)	202–783–3238
Subscription problems (GPO)	202–275–3050
"Dial - a - Regulation" (recorded summary of highlighted documents appearing in next day's issue).	202–523–5022
Scheduling of documents for publication.	523–5220
Copies of documents appearing in the Federal Register.	523–5240
Corrections	523–5286
Public Inspection Desk	523–5215
Finding Aids	523–5227
Public Briefings: "How To Use the Federal Register."	523–5282
Code of Federal Regulations (CFR)	523–5266
Finding Aids	523–5227

PRESIDENTIAL PAPERS:

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

PUBLIC LAWS:

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

HIGHLIGHTS—Continued

SEPARATE PARTS OF THIS ISSUE

contents

list of cfr parts affected in this issue

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

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

3 CFR

PROCLAMATIONS:

4514 42299

5 CFR

213 (6 documents) 42301, 42302

7 CFR

271 42302
301 42302
1427 42308
2851 42309

PROPOSED RULES:

657 42359

9 CFR

319 42309
325 42309

10 CFR

PROPOSED RULES:

430 42361

12 CFR

7 (2 documents) 42537

16 CFR

13 42309

17 CFR

211 42310

20 CFR

702 42548

21 CFR

20 42526
25 42526
320 42311
520 42312
807 42526
809 42530

PROPOSED RULES:

431 42361
514 42361

24 CFR

803 42554
888 42554
1914 (6 documents) 42312–42317

26 CFR

1 42318

29 CFR

PROPOSED RULES:

2610 42361

30 CFR

PROPOSED RULES:

70 42362
2170 42540
2171 42540

37 CFR

PROPOSED RULES:

201 42362

45 CFR

100b 42475
121a 42476
121m 42517

47 CFR

0 42341
89 42343
91 (2 documents) 42343
93 42343

PROPOSED RULES:

95 42362

49 CFR

210 42343

50 CFR

17 42351
21 42353
32 (12 documents) 42354–42358

CUMULATIVE LIST OF PARTS AFFECTED DURING AUGUST

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

1 CFR

Ch. I 38891

3 CFR

EXECUTIVE ORDERS:

12006 39081

MEMORANDUMS:

January 2, 1973 (Amended by Memorandum of August 1, 1977) 40169
April 26, 1973 (See Memorandum of August 1, 1977) 40169
December 13, 1973 (See Memorandum of August 1, 1977) 40169
October 29, 1974 (See Memorandum of August 1, 1977) 40169
May 20, 1975 (See Memorandum of August 1, 1977) 40169
August 5, 1975 (See Memorandum of August 1, 1977) 40169
March 25, 1976 (Superseded by Memorandum of August 1, 1977) 40169
April 14, 1976 (See Memorandum of August 1, 1977) 40169
November 5, 1976 (See Memorandum of August 1, 1977) 40169
November 19, 1976 (Supplemented by Memorandum of July 21, 1977) 41401
July 20, 1977 39083
July 21, 1977 41401
August 1, 1977 40169
August 5, 1977 40171
August 12, 1977 42185

PROCLAMATIONS:

4514 42299

4 CFR

105 38891

5 CFR

213 ..... 39085, 39657, 40173–40175, 40215, 40866, 40867, 41265–41267, 41813, 41814, 42301, 42302
713 40175

PROPOSED RULES:

890 41866

7 CFR

2 39669
27 40677
68 40868
271 42302
301 42302
318 41267
354 41267
406 39953
409 39956
650 40114
725 40881
905 40882
908 ..... 38892, 39359, 39959, 40678, 41095, 41603
910 ..... 39085, 39359, 39669, 40882, 41814
918 40883
922 41268
926 40678
927 39670
929 40679
944 40885
945 40886

7 CFR—Continued

946 39671
947 41403
948 39360
958 39360
967 39361
980 40175
1011 40888
1040 41603
1205 41404
1421 ..... 40175–40185, 41269
1425 40187
1427 ..... 40421, 42308
1443 41269
1473 41269
1479 41269
1821 ..... 39085, 41815
1822 ..... 39361, 39362, 40679
1832 41815
1980 ..... 39362, 41816
2024 40680
2851 42309
2852 41843
2858 41846

PROPOSED RULES:

220 40911
657 42359
780 39223
917 39989
919 41431
926 41130
927 41644
929 39989
931 41866
945 39395
946 38913
967 ..... 39108, 41431
981 42227
989 41867
991 42227
993 ..... 39672, 41644
1002 41582
1006 38913
1011 39108
1012 38913
1013 38913
1097 41873
1102 41873
1108 41873
1133 40216
1435 40216

8 CFR

235 41847
242 38892

PROPOSED RULES:

108 39672

9 CFR

82 39658
92 41848
112 41849
160 41850
161 41850
319 42309
325 ..... 39086, 42309

PROPOSED RULES:

1 42044
3 42044
51 40911
381 41873

10 CFR

0 38893
71 39364
Ch. II 41095
202 41269
210 39959
211 ..... 39959, 41566
212 ..... 38894, 39195, 39959, 41566
213 39087
430 39964
460 41270

PROPOSED RULES:

73 42228
205 41242
210 40915
211 ..... 39914, 39395, 39990, 40448, 40915, 41242
212 ..... 39114, 40915, 41242, 41396, 41572
430 ..... 39114, 39673, 40217, 40701, 40826, 42361
450 41645

12 CFR

7 ..... 39969, 42537
202 ..... 39368, 40424
207 41604
220 41604
221 41604
224 41604
226 40424
329 40425
343 40891
505 39368
545 39088
563 39198
563b 39088
701 39369

PROPOSED RULES:

308 41130
311 41130
564 39115

13 CFR

120 40900
123 39970
301 39970
317 38896

PROPOSED RULES:

107 39992

14 CFR

1 ..... 41101, 42187
39 ..... 38896–38900, 39373–39377, 39971, 39972, 41102–41106, 41622–41625, 42188–42192
45 41101
71 ..... 38901, 39378, 39379, 39972–39976, 40690–40693, 41107–41113, 41625–41627, 42192–42194
73 ..... 39379, 41113
75 39379
91 42187
97 ..... 39380, 41114, 41627
121 42194
135 42194
1204 41628

PROPOSED RULES:

25 41236
39 ..... 38917, 41131–41133, 41647

30 CFR

PROPOSED RULES:

70 ... 42362
2170 ... 42540
2171 ... 42540

31 CFR

51 ... 41859

32 CFR

Ch. I ... 39213
199 ... 41118
286b ... 39214
290 ... 40433
806b ... 41409

PROPOSED RULES:

114 ... 39234
143 ... 41306
286 ... 40552
865 ... 39999

33 CFR

110 ... 39386, 40693, 40694
117 ... 38903, 39386, 41118, 42199
183 ... 41634
204 ... 40196, 41281
207 ... 40908
274 ... 41118

PROPOSED RULES:

117 ... 38919, 38920, 42234
154 ... 39408
155 ... 39408
156 ... 39408
157 ... 39999

34 CFR

231 ... 40694

35 CFR

69 ... 40196

36 CFR

67 ... 40436
200 ... 40438
292 ... 39387

37 CFR

PROPOSED RULES:

2 ... 40450
4 ... 40450
201 ... 41437, 41438, 42362

38 CFR

2 ... 41409, 41410
13 ... 41410
14 ... 41410

PROPOSED RULES:

8 ... 40452
17 ... 39409, 41439

39 CFR

111 ... 38904, 41634

PROPOSED RULES:

111 ... 39411, 40219, 40922

40 CFR

52 ... 39389, 39664, 40695, 41121, 42218, 42219
55 ... 41282
60 ... 39389, 41122, 41424, 41754
61 ... 41424
86 ... 40697
136 ... 39977
180 ... 39977, 40909
204 ... 41635
416 ... 40697
610 ... 40438

40 CFR—Continued

PROPOSED RULES:

20 ... 39414
52 ... 38920, 38921, 39235, 39415, 40220
61 ... 40452
85 ... 40221
180 ... 40715, 40922
211 ... 41139
700 ... 39182
710 ... 39182

41 CFR

1–4 ... 39215, 41635
Ch. 9 ... 41128
29–1 ... 40197
29–2 ... 40201
29–3 ... 40201
29–12 ... 40205
29–26 ... 40206
29–61 ... 40206
101–41 ... 41128
101–42 ... 40847
101–43 ... 40847
101–44 ... 40850
101–45 ... 40852
101–46 ... 40858
101–47 ... 40698
105–63 ... 40858
114–25 ... 39978

PROPOSED RULES:

9–4 ... 40923
24–1 ... 42234
60–4 ... 41378

43 CFR

423 ... 41122

PUBLIC LAND ORDERS:

5622 ... 42199

PROPOSED RULES:

424 ... 41440
1880 ... 40000

45 CFR

100a ... 40207
100b ... 42475
121a ... 42476
121m ... 42517
122a ... 42005
166 ... 42016
173 ... 40209
194 ... 40207
196 ... 39218
1015 ... 41282

PROPOSED RULES:

11 ... 41140
146a ... 40221
170 ... 40926

46 CFR

2 ... 41636
10 ... 39978
35 ... 41636
151 ... 41636

PROPOSED RULES:

162 ... 40000
502 ... 40452

47 CFR

0 ... 42341
2 ... 42203
15 ... 39979
73 ... 38905, 39665, 39981, 39982, 40210, 41123–41125, 41283
76 ... 41127, 41284

47 CFR—Continued

81 ... 39666
87 ... 38906
89 ... 42203, 42343
91 ... 42203
93 ... 42343

PROPOSED RULES:

1 ... 40715
13 ... 40939
43 ... 40454
61 ... 40002
63 ... 39236
73 ... 40003, 40454, 41141, 41302–41305, 41879
81 ... 40223, 40224, 40455
83 ... 40224
89 ... 39560
90 ... 39560
91 ... 39560, 41143
93 ... 39560
95 ... 42362

49 CFR

99 ... 39220
173 ... 42206
178 ... 42206
210 ... 42343
529 ... 39983
571 ... 39983, 39984, 42208
580 ... 38906
581 ... 38909
1033 ... 39221, 39389, 39985, 41424
1036 ... 40444
1051 ... 40860
1057 ... 39666
1100 ... 40698
1104 ... 40860
1108 ... 39222
1109 ... 39390, 39985
1251 ... 39667
1254 ... 39390

PROPOSED RULES:

173 ... 40003, 41651
174 ... 40003, 41651
178 ... 40003, 41651
179 ... 40003, 41651
193 ... 42235
1047 ... 40459
1082 ... 40459
1106 ... 39243
1307 ... 41144

50 CFR

17 ... 39985, 40682–40685, 42351
20 ... 39106, 39667, 40211, 41636
21 ... 42353
26 ... 40213, 41425
32 ... 38909–38912, 39391–39394, 40214, 40445–40447, 40690, 40861–40865, 41127, 41426–41429, 41642, 41861–41865, 42210–42215, 42354–42358
33 ... 40214, 41426
216 ... 39394, 41128, 41879
371 ... 40866
601 ... 42216
602 ... 42216
611 ... 39106, 41430
680 ... 42216

PROPOSED RULES:

17 ... 38921, 39121, 40716, 40823
20 ... 41145
23 ... 40459
32 ... 40465
260 ... 41440

FEDERAL REGISTER PAGES AND DATES—AUGUST

Pages	Date	Pages	Date	Pages	Date
38891–39080	Aug. 1	40677–40845	11	41401–41602	17
38081–39193	2	40169–40419	9	41603–41812	18
39195–39358	3	40847–41094	12	41813–42183	19
39359–39656	4	40421–40675	10	42185–42297	22
39657–39952	5	41095–41264	15	42299–42676	23
39953–40167	8	41265–41399	16		

reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

FCC—FM Broadcast stations, table of assignments:
Fargo and Mayville, N.D..... 36830; 7–18–77
Federalsburg, Md..... 37210; 7–20–77
Fort Myers Beach, Fla..... 37369; 7–21–77
Ship station licensees; amendment to permit installation of pretested VHF radiotelephones..... 38180; 7–27–77
DOT/FAA—McDonnell Douglas Model DC–9, –10, –20, –30, –40, –50 Series and VC–9C (DC–9–32) airplanes; airworthiness directives.... 36811; 7–18–77

List of Public Laws

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

presidential documents

Title 3—The President

PROCLAMATION 4514

World Law Day, 1977

By the President of the United States of America

A Proclamation

The past twenty-five years have been marked by the unprecedented development of international law as nations have come to recognize that cooperation in international relations is the only alternative to chaos. This cooperation depends upon mutual respect, which in turn depends upon the development of legal norms upon which all parties can rely with confidence. These norms must be responsive to each nation's legitimate interests, must respect the feelings and beliefs of all peoples, and must foster a climate of justice and liberty in which each individual on this planet can achieve his or her full potential.

Representatives of the legal profession from every corner of the globe will gather in Manila during the week of August 21, 1977, under the auspices of the World Peace Through Law Center, to inaugurate the Eighth World Conference on World Peace Through Law. Together they will search for ways to further universal human liberty and security. Celebrations devoted to international legal protections for human rights will be held not only in Manila, but in more than one hundred countries. Accordingly, it is fitting that the United States join in this effort to focus the world's attention on the pressing need for continued vigilance in protecting fundamental rights and freedoms for all.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby designate Sunday, August 21, 1977, as World Law Day in the United States. I call upon all public and private officials and organizations, members of the legal profession, the clergy, educators, the communications media, and all men and women of good will to join with the peoples of the world on this day in reflecting on the importance of the rule of law in achieving world peace as well as justice, freedom and dignity for all.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of August, in the year of our Lord nineteen hundred seventy-seven, and of the Independence of the United States of America the two hundred and second.

Jimmy Carter

[FR Doc.77-24473 Filed 8-19-77;3:53 pm]

rules and regulations

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

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

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Environmental Protection Agency

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: The position of Legislative Specialist is excepted under Schedule C because it is confidential in nature. Also, the position of Legislative Affairs Specialist has been revoked under the automatic revocation system.

EFFECTIVE DATE: August 23, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3318(b)(6) is revoked and (b)(7) is added as set out below:

§ 213.3318 Environmental Protection Agency.

* * * * *

(b) *Office of Legislation.* * * * (6) (Revoked). (7) One Legislative Specialist.

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

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

[FR Doc.77-24413 Filed 8-22-77;8:45 am]

PART 213—EXCEPTED SERVICE

Inter-American Foundation

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: The position of Special Assistant to the President is excepted under Schedule C because it is confidential in nature.

EFFECTIVE DATE: August 23, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3320(a) is added as set out below:

§ 213.3320 Inter-American Foundation.

(a) One Special Assistant to the President.

(5 U.S.C. 3301, 3302; E.O. 19577, 3 CFR 1954–1958 Comp., p. 218.)

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

[FR Doc.77-24414 Filed 8-22-77;8:45 am]

PART 213—EXCEPTED SERVICE

State Department

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: One position of Special Assistant to the Coordinator for Human Rights and Humanitarian Affairs is excepted under Schedule C because it is confidential in nature.

EFFECTIVE DATE: August 23, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3304(a)(30) is added as set out below:

§ 213.3304 Department of State.

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

(30) Special Assistant to the Coordinator for Human Rights and Humanitarian Affairs.

(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.77-24412 Filed 8-22-77;8:45 am]

PART 213—EXCEPTED SERVICE

Agriculture Department

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This transfers the organizational coverage of three previously authorized excepted employment authorities which were for the Agricultural Marketing Service and the Animal and Plant Health Inspection Service to the newly-established Food Safety and Quality Service agency within the Department of Agriculture. These authorities except from the competitive service the position of Agricultural Commodity Graders (processed fruits and vegetables) and (poultry, dairy); and for positions of Food Inspectors and Veterinary Medical Officers for employment on an intermittent, temporary, or seasonal basis for not to exceed 1,280 hours a year. These exceptions are granted because it is impractical to competitively examine for these positions.

EFFECTIVE DATE: August 23, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3113 is amended to read as follows:

§ 213.3113 Department of Agriculture.

* * * * *

(f) *Agricultural Marketing Service.* * * *

(5) [Revoked.]

(6) [Revoked.]

* * * * *

(k) *Animal and Plant Health Inspection Service.* * * *

(3) [Revoked]

(l) *Food Safety and Quality Service.*

(1) Positions of agricultural commodity graders (processed fruits and vegetables), GS–9 and below, and of graders' aides (processed fruits and vegetables), GS–2–4; for temporary employment on a part-time or intermittent basis for not to exceed 1,280 hours a year.

(2) Temporary and intermittent positions of agricultural commodity graders (dairy) and agricultural commodity graders (poultry) at grade GS–9 and below. Employment under this authority may not exceed 1,280 hours a year.

(3) Positions of meat and poultry inspectors (veterinarians at GS–11 and below and nonveterinarians at appropriate grades below GS–11) for employment on a temporary, intermittent, or seasonal basis, not to exceed 1,280 hours a year.

(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.77-24352 Filed 8-22-77;8:45 am]

PART 213—EXCEPTED SERVICE

Executive Office of the President: Office of Management and Budget

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: One additional position of Special Assistant to the Deputy Direc-

tor is excepted under Schedule C because it is confidential in nature.

EFFECTIVE DATE: August 23, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3303(a)(2) is amended as set out below:

§ 213.3303 Executive Office of the President.

(a) *Office of Management and Budget.* * * *

(2) Two Special Assistants to the Deputy Director.

(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.77-24351 Filed 8-22-77;8:45 am]

PART 213—EXCEPTED SERVICE

Federal Energy Administration

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to indicate the following: that, due to reoragnization, the Office of Congressional Affairs has been relocated to a recently established organization, the Office of the Associate Administrator for Congressional and Intergovernmental Affairs; that all listed Schedule C positions in the Office of Congressional Affairs will be relocated to the new organization except for the position of Special Assistant to the Director, Office of Congressional Affairs, which is hereby revoked under the provisions of the automatic revocation system as described in § 213.3301 b, and; that three positions of Staff Assistant to the Special Assistant, Congressional Affairs, are excepted under Schedule C because these positions are confidential in nature.

EFFECTIVE DATE: August 23, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3388 (d) is revoked and (q) is added as set out below:

§ 213.3388 Federal Energy Administration.

* * * * *

(d) (Revoked)

* * * * *

(q) *Office of the Associate Administrator for Congressional and Intergovernmental Affairs.*

(1) One Special Assistant, Congressional Affairs.

(2) Three Staff Assistants, Congressional Affairs.

(3) Four Staff Assistants to the Special Assistant, Congressional Affairs.

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

UNITED STATES CIVIL SERVICE COMMISSION,
DONALD J. BIGLIN,
Director, Bureau of Management Services.

[FR Doc.77-24468 Filed 8-22-77;8:45 am]

Title 7—Agriculture

CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER C—FOOD STAMP PROGRAM

[Amdt. No. 123]

PART 271—PARTICIPATION OF STATE AGENCIES AND ELIGIBLE HOUSEHOLDS

Recipients of Supplemental Security Income Payments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: According to the provisions of Pub. L. 93-233, recipients of Supplemental Security Income (SSI) payments are eligible for food stamp benefits except in two States. Pub. L. 95-59 extended the provisions of Pub. L. 93-233 until September 30, 1978. This regulation promulgates that extension.

EFFECTIVE DATE: July 1, 1977.

FOR FURTHER INFORMATION CONTACT:

Alberta Frost, State Agency Operations Branch, Food Stamp Division, Food and Nutrition Service, United States Department of Agriculture, 500 12th Street SW., Washington, D.C. 20250, 202-447-8360.

SUPPLEMENTARY INFORMATION: According to the provisions of Pub. L. 93-233, SSI recipients are currently eligible for food stamp benefits in all States but California and Massachusetts. These provisions of Pub. L. 93-233 expired June 30, 1977. Pub. L. 95-59 extends the present eligibility criteria for SSI households until September 30, 1978. This regulation changes the date for the expiration of food stamp regulations concerning SSI recipients to correspond with the extension mandated in Pub. L. 95-59.

It is the policy of this Department to give at least 30 days' notice for amendments to the regulations. However, because the regulations concerning SSI participation have expired and extension of that date is mandated by Pub. L. 95-59, it would be impracticable and unnecessary to give notice of proposed rulemaking with regard to this amendment.

Accordingly, paragraph (a) in § 271.10 of the Food Stamp Program regulations is amended to read as follows:

§ 271.10 Eligibility and certification of supplemental security income recipients.

(a) Notwithstanding any other provisions of this subchapter, recipients of Supplemental Security Income (SSI) payments shall be treated according to the provisions of this section for purposes of determining eligibility for and certification in the program. The provisions of this section will expire September 30, 1978, unless earlier rescinded or modified.

* * * * *

(78 Stat. 703, as amended; (7 U.S.C. 2011-2026).)

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

(Catalog of Federal Domestic Assistance Programs No. 10.551 Food Stamps.)

Dated: August 16, 1977.

CAROL TUCKER FOREMAN,
Assistant Secretary.

[FR Doc.77-24175 Filed 8-22-77;8:45 am]

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

PART 301—DOMESTIC QUARANTINE NOTICES

Subpart—Witchweed

MISCELLANEOUS AMENDMENTS TO REGULATED AREAS

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: Based upon witchweed surveys, this document amends the supplemental regulation which lists regulated areas for purposes of the Federal Witchweed Quarantine by removing, adding, and extending to the list of suppressive regulated areas all or parts of certain counties in North Carolina and South Carolina.

EFFECTIVE DATE: August 18, 1977.

FOR FURTHER INFORMATION CONTACT:

H. I. Rainwater, Regulatory Support Staff, Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs, U.S. Department of Agriculture, Hyattsville, Md. 20782, 301-436-8247.

SUPPLEMENTARY INFORMATION: Witchweed, a parasitic plant which causes a dangerous disease of corn, sorghum, and other crops of the grass family, has been found in the United States only in parts of North Carolina and South Carolina. In these States areas have been designated as suppressive regulated areas and a witchweed eradication program is currently being undertaken.

Surveys conducted by the United States Department of Agriculture and State agencies of North Carolina and South Carolina establish that witchweed has spread or is likely to spread to certain areas beyond the outer perimeter of the previous suppressive regulated areas. Therefore, in order to prevent the spread of witchweed and because eradication of

witchweed is undertaken as an objective, suppressive regulated areas are extended in the following counties: Brunswick, Columbus, Duplin, Greene, Jones, Lenoir, Moore, Richmond, and Scotland in North Carolina, and Florence in South Carolina; and suppressive regulated areas are added in the previously nonregulated counties of Craven and Wilson in North Carolina. The surveys also establish that witchweed has been eradicated in Montgomery County, North Carolina, and parts of other counties in North Carolina. Therefore, all of Montgomery County is deleted from the list of suppressive regulated area. Also, parts of the following counties in North Carolina are deleted from the list of suppressive regulated areas: Columbus, Harnett, Johnston, Jones, Lenoir, Moore, Pender, Scotland, and Wayne.

Other changes are also made to reflect changes in ownership of certain properties and to make corrections in certain descriptions to more accurately describe the area regulated.

Accordingly, § 301.80–2a of the Witchweed Quarantine regulations (7 CFR 301.80–2a) is hereby amended as set forth below:

1. In § 301.80–2a relating to the State of North Carolina under suppressive area, the entire State is redescribed to read as follows:

§ 301.80–2a Regulated areas; suppressive and generally infested areas.

* * * * *

NORTH CAROLINA

(1) *Generally infested area. Robeson County.*—The entire county.

(2) *Suppressive area. Bladen County.*—The entire county.

Brunswick County. The Babson, N. L., farm located on the west side of State Secondary Road 1321 and 0.4 mile south of its junction with State Highway 130.

The Register, W. C., farm located on the south side of State Secondary Road 1147 and 0.3 mile east of the junction of said road and State Secondary Road 1143.

The Register, W. T., farm located on the west side of State Secondary Road 1151 and 0.4 mile south of its junction of State Secondary Road 1147.

The Smith, B. Coda, farm located on the west side of a dirt road and 0.6 mile north of its junction with State Secondary Road 1322, said junction being 0.1 mile west of the junction of State Secondary Road 1322 and State Secondary Road 1321.

Columbus County. That part of the county lying north and west of a line beginning at a point where State Highway 211 intersects the Bladen-Columbus County line, thence south along said Highway 211 to its intersection with State Secondary Road 1740, thence southwest and south along said State Secondary Road 1740 to its junction with U.S. Highways 74 and 76, thence west along said highways to its intersection with State Secondary Road 1001, thence south along said Road 1001 to its intersection with the Seaboard Coastline Railroad, thence west along said Railroad to its intersection with White Marsh Swamp, thence south along said swamp to its junction with Cypress Creek, thence southwest along said creek to its intersection with State Highway 130, thence northwest along said highway to its junction with State Secondary Road 1166, thence southwest along said road to its junction with State Secondary Road 1157, thence southwest along said road to its junction with U.S. Highway 701, thence south and west along said highway to its intersection with State Secondary Road 1314, thence west along said road to its junction with State Secondary Road 1346, thence southwest along said road to its junction with the North Carolina-South Carolina State line.

The Jacobs, Thomas, farm located 0.2 mile north of State Secondary Road 1847 and 1 mile southwest of the junction of said Road 1847 with State Secondary Road 1740.

The Long, J. M., farm located on the southwest side of State Secondary Road 1113 and 0.4 mile northwest of its junction with State Secondary Road 1108.

The McLamb, H. M., farm located on the southwest side of State Secondary Road 1113 and 0.5 mile northwest of its junction with State Secondary Road 1108.

The Owen, J. A., farm located on the southwest side of State Highway 87 and 0.3 mile southeast of the intersection of said Highway 87 with the Bladen-Columbus County line.

The Shaw, Archie, farm located 0.2 mile southeast of State Secondary Road 1864 and 0.5 mile southeast of the junction of said Road 1864 with State Secondary Road 1808.

The Shaw, Charles H., farm located 0.1 mile north of State Secondary Road 1847 and 0.9 mile northeast of the junction of said Road 1847 with State Secondary Road 1740.

The Shipman, C. S., farm located on the east side of State Secondary Road 1909 and 0.6 mile southeast of the junction of said Road 1909 with State Secondary Road 1908.

The Spivey, D. M., farm located in the northeast corner of the intersection of U.S. Highway 701 and Gum Swamp.

The Suggs, Lacy, farm located at the end of a dirt road 0.5 mile southeast of the junction of said road with State Secondary Road 1108, said junction being 0.7 mile northeast of the junction of State Secondary Road 1108 and State Secondary Road 1118.

Craven County. The Hawkins, Annie A., farm located on both sides of State Secondary Road 1263 and 1 mile east of the junction of said Road 1263 with State Secondary Road 1262.

Cumberland County. All of Cumberland County excluding the Fort Bragg Military Reservation, the area within the corporate limits of the city of Fayetteville, and the unincorporated communities of East Fayetteville and Bonnie Doone.

Duplin County. That area bounded by a line beginning at a point where State Secondary Road 1337 intersects the Duplin-Sampson County line, thence northeast along said road to its junction with State Highway 50, thence northwest along said highway to its junction with State Secondary Road 1355, thence northeast along said road to its junction with State Secondary Road 1332, thence northeast along said road to its junction with State Secondary Road 1304, thence southeast along said road to its intersection with Bear Swamp, thence east along said swamp to its junction with Goshen Swamp, thence southeast along said swamp to its intersection with State Secondary Road 1305, thence north along said road to its junction with State Secondary Road 1306, thence northwest along said road to its junction with State Highway 403, thence northeast along said highway to its junction with State Secondary Road 1368, thence south along said road to its junction with State Secondary Road 1367, thence southeast along said road to its junction with State Secondary Road 1365, thence northeast along said road to its junction with State Secondary Road 1004, thence southeast along said road to its junction with State Secondary Road 1503, thence northeast along said road to its intersection with State Secondary Road 1500, thence southeast along said road to its intersection with State Secondary Road 1505, thence south along said road to its junction with State Secondary Road 1004, thence southeast along said road to its intersection with Nahunga Creek, thence southwest along said creek to its intersection with State Secondary Road 1301, thence northwest along said road to its junction with State Secondary Road 1346, thence southwest along said road to its junction with State Secondary Road 1385, thence west along said road to its junction with State Highway 50, thence southeast along said highway to its junction with State Secondary Road 1900, thence southeast along said road to its junction with State Secondary Road 1003, thence east along said road to its junction with State Highway 11, thence south along said highway to its junction with State Secondary Road 1922, thence southwest along said road to its junction with State Secondary Road 1909, thence south along said road to its junction with State Secondary Road 1912, thence west along said road to its intersection with the Magnolia city limits, thence south, west, and north along said city limits to its intersection with State Secondary Road 1003, thence southwest along said road to its junction with State Secondary Road 1101, thence southeast along said road to its intersection with State Secondary Road 1102, thence southwest along said road to its junction with State Secondary Road 1126, thence west along said road to its intersection with State Secondary Road 1100, thence southeast along said road to its intersection with State Secondary Road 1102, thence south along said road to its junction with State Secondary Road 1129, thence southwest along said road to its intersection with State Secondary Road 1128, thence northwest along said road to its intersection with Duplin-Sampson County, thence north along said county line to the point of beginning.

The Beard, Mary Lou, farm located on both sides of State Secondary Road 1961 and 0.6 mile west of the intersection of said road and the Northeast Cape Fear River.

The Bostic, Jake, farm located on both sides of State Secondary Road 1961 and 0.5 mile west of the intersection of said road and the Northeast Cape Fear River.

The Bradshaw, Gene A., farm located on the south side of State Secondary Road 1321 and 0.8 mile west of the junction of said road with State Secondary Road 1302.

The Branch, Hall, farm located on the southeast side of State Highway 11 and 0.6 mile southwest of the junction of said highway and State Secondary Road 1004.

The Britt, Cornia, farm located on both sides of State Secondary Road 1545 and 0.5 mile east of the junction of said road and State Secondary Road 1564.

The Brock, Jack, farm located on both sides of State Secondary Road 1700 and 0.8 mile west of the intersection of said road and the Northeast Cape Fear River.

The Brown, Norman, farm located on the south side of State Secondary Road 1961 and 0.6 mile west of the intersection of said road and State Secondary Road 1962.

The Dail, Albert D., farm located on both sides of State Secondary Road 1524 and 0.1 mile north of the junction of said road and State Secondary Road 1525.

The Davis, Jimmie, farm located on the east side of State Highway 111 and the south side of State Secondary Road 1546.

The Davis, Wenzell, farm located on the south side of State Secondary Road 1560 and 0.3 mile south of the junction of said road and State Secondary Road 1537.

The Garner, S. C., farm located on the south side of State Secondary Road 1306 and 0.5 mile west of the junction of said road and State Secondary Road 1511.

The Goodson, Emma, farm located on the south side of State Secondary Road 1501 and 0.3 mile west of the junction of said road and State Secondary Road 1505.

The Grady, E. C., farm located on both sides of State Secondary Road 1700 and 0.7 mile west of the intersection of said road and the Northeast Cape Fear River.

The Grady, Robert, farm located on the east side of State Secondary Road 1560 and the south side of State Secondary Road 1537.

The Grady, S. Leland, farm located on both sides of State Secondary Road 1700 and 0.6 mile west of the intersection of said road and the Northeast Cape Fear River.

The Green, Willie, farm located on both sides of State Secondary Road 1971, and 0.6 mile southwest of the junction of said road and State Highway 50.

The Hall, Raymond, farm located on both sides of State Secondary Road 1961 and 1.2 miles west of the intersection of said road and State Secondary Road 1962.

The Harper, Milo, farm located on the northwest side of State Secondary Road 1539 and 0.6 mile northeast of the junction of said road and State Secondary Road 1540.

The Herring Estate, Jeff, farm located on the north side of State Secondary Road 1545 and 0.6 mile east of the junction of said road and State Secondary Road 1564.

The Howard, Henry, farm located on the north side of State Secondary Road 1700 and 0.8 mile west of the intersection of said road and the Northeast Cape Fear River.

The Hussey Estate, M. W., farm located on the east side of State Secondary Road 1560 and 0.2 mile south of the junction of said road and State Secondary Road 1537.

The Johnson, C. M., farm located on the southwest side of State Secondary Road 1139 and 0.6 mile northwest of the junction of said road with State Secondary Road 1133.

The Johnson, Eldora, farm located on both sides of State Secondary Road 1123 and 1.2 miles west of the junction of said road and State Secondary Road 1103.

The Jones, Billy, farm located on both sides of State Secondary Road 1700 and 0.7 mile west of the intersection of said road and the Northeast Cape Fear River.

The Jones, H. A., farm located on the south side of State Secondary Road 1700 and 0.7 mile west of the intersection of said road and the Northeast Cape Fear River.

The Kalmar, J. N., farm located on the south side of State Highway 403 and 0.5 mile west of its junction with State Secondary Road 1304.

The Kennedy, Owen, farm located on the east side of State Secondary Road 1725 and the southeast side of State Secondary Road 1702.

The Kennedy, Sidney J., farm located on the east side of State Secondary Road 1718 and 0.2 mile south of the junction of said road and State Highway 41.

The King, W. R., farm located on the east side of State Secondary Road 1302 and 0.1 mile south of the junction of said road and State Secondary Road 1308.

The Kornegay, Ethyl, farm located 0.2 mile east of State Secondary Road 1501 and 0.6 mile south of the intersection of said road and State Secondary Road 1519.

The Kornegay Estate, Issac, located on the southwest side of State Secondary Road 1305 and 0.7 mile northwest of the junction of said road and State Secondary Road 1305.

The Lewis, Merle S., farm located on the east side of State Secondary Road 1004 and both sides of State Secondary Road 1508.

The Marshburn, Freeman J., farm located on both sides of State Secondary Road 1128 and 0.7 mile southeast of the intersection of said road and State Secondary Road 1129.

The Maxwell, Myra, farm located on the southeast side of State Secondary Road 1306 and the west side of State Secondary Road 1562.

The McCullen, Larry, farm located on the northeast side of State Highway 24 and 0.2 mile northwest of the junction of said highway and State Secondary Road 1904.

The McGowan, Woodell, farm located on the south side of State Secondary Road 1961 and 1.1 miles west of the intersection of said road and State Secondary Road 1962.

The Mercer, Cathleen, farm located on the south side of State Secondary Road 1703 and 1.1 miles east of the intersection of said road and State Secondary Road 1704.

The Mercer, Herbert C., farm located on the south side of State Secondary Road 1703 and 0.7 mile west of the junction of said road and State Secondary Road 1732.

The Norris, Maggie T., farm located on the south side of State Secondary Road 1700 and 1.4 mile east of the intersection of said road and State Secondary Road 1701.

The Outlaw, Bennie F., farm located on both sides of State Secondary Road 1524 and the north side of State Secondary Road 1525.

The Outlaw, Emma, farm located on the south side of State Secondary Road 1509 and 0.5 mile southwest of the junction of said road and State Secondary Road 1510.

The Parrott, Jr., Mrs. Frank, farm located on the south side of State Secondary Road 1703 and 0.3 mile east of the intersection of said road and State Secondary Road 1704.

The Pate, Robert Lee, farm located on both sides of State Secondary Road 1357 and 0.9 mile southwest of the junction of said road and State Secondary Road 1306.

The Powell, William F., farm located on both sides of State Secondary Road 1128 and 0.2 mile southeast of the intersection of said road and State Secondary Road 1129.

The Precythe, Harold, farm located on the east side of U.S. Highway 117 and 0.1 mile south of the junction of said highway and State Secondary Road 1354.

The Rivenbark, George W., farm located on the northwest side of State Secondary Road 1131 and 0.4 mile southwest of the junction of said road and State Secondary Road 1128.

The Rouse, Jim, farm located on both sides of State Secondary Road 1537 and 0.3 mile south of the junction of said road and State Secondary Road 1306.

The Rouse, Rouke, farm located on the north side of State Secondary Road 1537 and the west side of State Secondary Road 1538.

The Shepard, J. T., farm located on both sides of State Secondary Road 1732 and 0.2 mile north of the junction of said road and State Secondary Road 1703.

The Smith, R. J., farm located on the north side of State Highway 11 and 1.2 miles east of the junction of said highway and State Highway 111.

The Smith, Sallie P., farm located on the northeast side of State Highway 111 and 0.8 mile southeast of the Duplin-Wayne County line.

The Summerlin, D. C., farm located on the north side of State Secondary Road 1513 and 0.4 mile east of the junction of said road and State Secondary Road 1565.

The Summerlin, Oliver, farm located on the south side of State Highway 403 and 0.1 mile east of the corporate limits of the town of Faison.

The Sumner, India, farm located on the southwest side of State Highway 111 and 1.2 miles south of the intersection of said highway and State Secondary Road 1700.

The Thomas, J. R., farm located on the north side of State Secondary Road 1700 and 1.4 miles east of the intersection of said road and State Secondary Road 1701.

The Turner, Lumas, farm located on the south side of State Secondary Road 1703 and 0.6 mile west of the junction of said road and State Secondary Road 1732.

The Whaley, Bennie, farm located on the southeast side of State Secondary Road 1961 and 0.3 mile northeast of the junction of said road and State Secondary Road 1800.

The Whitman, Herman E., farm located on the south side of State Secondary Road 1300 and 0.1 mile west of the junction of said road and State Secondary Road 1381.

The Whitman, Herman E., farm located on the north side of State Secondary Road 1300 and 0.8 mile east of the intersection of said road and State Secondary Road 1301.

The Williams, McArthur, farm located on the south side of State Secondary Road 1961 and 1 mile west of the intersection of said road and State Secondary Road 1962.

The Wilson, Mammie, farm located on the east side of State Highway 111 and 1.0 mile south of the intersection of said highway and State Secondary Road 1700.

Greene County. That area bounded by a line beginning at a point where State Highway 102 intersects State Highway 123 and extending south along State Highway 123 to its intersection with Contentnea Creek, thence northwest along said creek to its junction with Panther Swamp. Thence northerly along said Panther Swamp to its intersection with U.S. Highway 13-258, thence easterly along said highway to the point of beginning.

The Carmon, James E., farm located on the east side of State Secondary Road 1004 and 0.4 mile south of its junction with North Carolina Highway 102.

The Murphrey, Edward, farm located on the east side of State Secondary Road 1004 and 0.3 mile south of its junction with State Highway 102.

Harnett County. That area bounded by a line beginning at a point where the Harnett-Lee County line and State Secondary Road 1209 intersect and extending southeast along said road to its junction with State Highway 27, thence east along said highway to its junction with State Secondary Road 1117, thence south along said road to its junction with State Secondary Road 1128, thence east along said road to its junction with State Highway 210, thence northeast along said highway to its junction with State Secondary Road 2030, thence southeast along said road to its junction with State Secondary Road 2031, thence south along said road to its intersection with the Harnett-Cumberland County line, thence west along said county line to its junction with the Harnett-Moore County line, thence northwest and northeast along the Moore-Harnett County line to its junction with the Moore-Harnett Lee County line, thence northeast along the Harnett-Lee County line to the point of beginning.

The Johnson, Sr., Jonah C., farm located at the junction of State Secondary Roads 1553 and 1555. The farm lies in the northeast portion of this junction.

Hoke County. The entire county excluding Fort Bragg Military Reservation.

Johnston County. That area bounded by a line beginning at a point where State Secondary Road 1116 and State Highway 50 intersect and extending southeast along said highway to its intersection with the Johnston-Sampson County line, thence west along said county line to its intersection with State Highway 242, thence north along said highway to its intersection with State Secondary Road 1116, thence east along said road to the point of beginning.

The Barefoot, Wade H., farm located on a farm road and 0.4 mile south of its junction with State Secondary Road 1144 and 0.4 mile west of the intersection of said road with State Secondary Road 1145.

The Blackman, Dewey, farm located on the south side of State Secondary Road 1146, and 0.4 mile east of the junction of said road with State Secondary Road 1145.

The Braswell, J. G., farm located on the east side of State Secondary Road 2519 and 0.4 mile north of the junction of State Secondary Roads 2519 and 2520.

The Davis, I. H., farm located on the southwest side of State Secondary Road 1197 and 0.1 mile southeast of the junction of said road with State Secondary Road 1198.

The Edwards, Archie, farm located on the south side of State Secondary Road 2542 and 0.6 mile south of the junction of said road with State Secondary Road 1007.

The Everett, Betty, farm located on the west side of State Secondary Road 2541 and 0.5 mile south of the junction of said road with State Secondary Road 1007.

The Everett, Betty, farm located on a farm road and 0.6 mile west of its junction with State Secondary Road 2541, said junction being 1.9 miles south of the junction of State Secondary Roads 2541 and 1007.

The Everett, Jaspar, farm located on a farm road and 0.5 mile west of its junction with State Secondary Road 2541, said junction being 1.9 miles south of the junction of State Secondary Roads 2541 and 1007.

The Hudson, Price, Estate farm located on a farm road and 0.4 mile north of its junction with State Secondary Road 1008, said junction being 0.8 mile northeast of the intersection of State Secondary Road 1008 with U.S. Highway 701.

The Johnson, Annie, farm located on the west side of State Secondary Road 1138 and 0.5 mile south of its junction with State Secondary Road 1144.

The Johnson, Wade, farm located on both sides of State Secondary Road 1144 and 0.2 mile west of the junction of said road with State Secondary Road 1138.

The Martin, Emitt, farm located on the east side of State Secondary Road 2519 and 0.3 mile north of the junction of State Secondary Roads 2519 and 2520.

The Martin, John L., farm located on the west side of State Secondary Road 1201 and 0.3 mile north of the junction of said road with State Secondary Road 1200.

The McArthur, Margaret, farm located on a farm road and 1.4 miles north of its junction with State Secondary Road 1199 and 0.9 mile west of the junction of said road with State Secondary Road 1008.

The Oliver, Mrs. Beulah, farm located on the southeast side of the junction of State Secondary Road 2540 with State Secondary Road 2372.

The Summerlin, Everett L., farm located on the north side of State Secondary Road 1008, and 0.6 mile west of the junction of said road with State Secondary Road 1199.

Jones County. The Franck, Mrs. Wilber, farm located on the south side of State Secondary Road 1116 and 1.9 miles west of junction of said road with State Secondary Road 1115.

The Greene, Earl F., farm located on both sides of State Secondary Road 1127 and 0.9 mile northwest of the junction of said road and State Highway 41.

The Greene Estate, L. T., farm located on the east side of State Secondary Road 1123 and 0.5 mile south of the junction of said road and State Secondary Road 1124.

The Simpson, Eugene T., farm located on the south side of State Secondary Road 1116 and 2.5 miles west of the junction of said road and State Secondary Road 1115.

The Simpson, W. W., farm located on the south side of State Secondary Road 1116 and 2.5 miles west of the junction of said road and State Secondary Road 1115.

Lenoir County. The Barber, Clarence, farm located on both sides of State Secondary Road 1301 with 0.2 mile northeast of its junction with State Secondary Road 1302.

The Braxton, Clyde, Estate located on both sides of State Secondary Road 1802 and 0.9 mile northeast of the junction of State Secondary Road 1802 and State Highway 11.

The Brown, Nannie H., farm located in the southwest junction of State Secondary Roads 1152 and 1309.

The Carr, Lillian, farm located on the southwest side of State Secondary Road 1524 and 0.1 mile south of its junction with State Secondary Road 1526.

The Carter, Ephrom, farm located on the south side of State Secondary Road 1116 and 1.5 miles east of its junction with State Highway 11.

The Elmore, Lucy H., No. 1, farm located on the south side of State Secondary Road 1324 and 0.2 mile west of its junction with State Secondary Road 1333.

The Foss, Reginal D., farm located on the north side of State Secondary Road 1316 and 0.6 mile northwest of its junction with State Secondary Road 1318.

The Hamilton, C. W., farm located on the southeast side of State Secondary Road 1802 and 1.2 miles northeast of its junction with State Highway 11.

The Herring, Ben D., No. 1, farm located on both sides of State Secondary Road 1330 and 0.2 mile west of the junction of State Secondary Roads 1330 and 1331.

The Herring, Ben D., No. 2, farm located on the west side of State Secondary Road 1310 and 0.3 mile south of its junction with State Secondary Road 1311.

The Herring, Jack A., farm located on the east side of State Secondary Road 1310 and 0.4 mile south of its junction with State Secondary Road 1311.

The Herring, Lewis R., No. 1, farm located on the south side of State Secondary Road 1324 and 0.3 mile west of its junction with State Secondary Road 1333.

The Herring, Lewis R., No. 2, farm located on the north side of State Secondary Road 1324 at the end of farm road located 0.2 mile east of junction of State Secondary Road 1333.

The Hill, Nannie T., farm located on the southeast side of State Highway 55 at its junction with State Secondary Road 1161.

The Howard, Clarence, farm located on the south side of State Secondary Road 1105 and 0.1 mile east of its intersection with State Secondary Road 1118.

The Jarman, F. R., farm located on the southeast side of State Secondary Road 1311 and 0.7 mile southwest of its junction with State Secondary Road 1318.

The Jones, Edward S., farm located on the west side of U.S. Highway 258 and 0.3 mile north of its junction with State Secondary Road 1116.

The Joyner Farms, Inc., farm located on both sides of State Secondary Road 1324 and 0.5 mile east of its junction with State Secondary Road 1335.

The Moody, Alton, farm located on the south side of State Highway 55 and 0.6 mile northeast of its junction with State Secondary Road 1161.

The Moye, Lenton G., farm located on the west side of State Secondary Road 1335 and 0.3 mile north of its junction with State Secondary Road 1324.

The Parrott Farms, Inc., farm located on the northwest side of State Secondary Road 1157 and 0.7 mile northwest of its intersection with State Highway 55.

The Rouse, Forrest, farm located on the northeast side of State Secondary Road 1143 and 2.9 miles northwest of its intersection with State Secondary Road 1154.

The Rouse, Jim W., farm located on the northeast side of State Secondary Road 1143 and 2.8 miles northwest of its intersection with State Secondary Road 1154.

The Rouse, Leon, farm located on both sides of State Secondary Road 1307 and 0.4 mile southwest of its junction with State Secondary Road 1324.

The Singleton, Ruby S., farm located on east side of State Secondary Road 1802 and 0.6 mile south of its junction with State Secondary Road 1801.

The Sutton, Albert F., farm located on the southwest side of State Road 1324 and 0.1 mile southeast of its junction with State Secondary Road 1327.

The Sutton, C. R., farm located on the east side of State Secondary Road 1152 and 0.2 mile north of its junction with State Secondary Road 1308.

The Sutton, George Hodges, No. 1, farm located in the southwest junction of State Secondary Roads 1324 and 1307.

The Sutton, Iris, farm located on the east side of State Secondary Road 1152 and 0.6 mile south of its junction with State Secondary Road 1324.

The Sutton, John W., farm located in the southeast junction of State Secondary Roads 1330 and 1333.

The Sutton, Kirby E., farm located on the south side of State Secondary Road 1308 at the end of farm road located 0.1 mile southwest of junction of State Secondary Roads 1308 and 1307.

The Sutton, M. L., farm located on the southeast side of State Secondary Road 1311 and 0.8 mile southwest of its junction with State Secondary Road 1318.

The Sutton, Nathan, farm located on the southeast side of State Secondary Road 1311 and 0.6 mile southwest of its junction with State Secondary Road 1318.

The Sutton, Norman, farm located on the northwest side of State Secondary Road 1308 at the end of farm road located 0.3 mile southwest of junction of State Secondary Roads 1308 and 1324.

The Sutton, Prentice, farm located on the south side of State Secondary Road 1503 and 0.3 mile southeast of its intersection with State Secondary Road 1327.

The Sutton, Woodrow W., farm located on the north side of State Secondary Road 1331 and 0.5 mile west of its junction with State Secondary Road 1333.

The Taylor, Heber farm located on the north side of State Secondary Road 1161 and 0.3 mile east of its junction with State Highway 55.

The Walters, H. F., farm located on both sides of State Secondary Road 1335 and 0.4 mile north of its junction with State Secondary Road 1324.

The Waters, Thomas, Estate located on both sides of State Secondary Road 1318 and 0.3 mile north of its junction with State Secondary Road 1317.

The Whitfield, Hubert, No. 1, farm located on the northwest side of State Highway 55 and 0.1 mile northeast of its junction with State Secondary Road 1161.

The Whitfield, Hubert, No. 2, farm located on the north side of State Secondary Road 1157 and 0.9 mile west of its junction with State Highway 55.

The Whitfield, Melvin, No. 2, farm located on the south side of State Secondary Road 1300 and 0.1 mile east of the junction of State Secondary Roads 1300 and 1153.

The Wood, C. W., farm located on the northwest side of State Secondary Road 1311 and 0.7 mile southwest of its junction with State Secondary Road 1318.

Moore County. The Bryant, R. E., farm located on both sides of State Secondary Road 1815 and 0.5 mile southwest of the junction of said road with U.S. Highway 15–501.

The Hardister, George K., farm located on the north side of Highway 211 and 1 mile west of the junction of said highway and State Secondary Road 2075.

The Hardy, N. W., farm located on both sides of State Secondary Road 2007 and 0.2

mile southeast of the junction of said road with State Secondary Road 2005.

The Laton, William A., farm located on the east side of State Secondary Road 1004 and 0.3 mile north of the intersection of said road with State Secondary Road 1113.

The Marks, E. M., farm located on the south side of State Secondary Road 2019 and 2.5 miles east of the junction of said road and State Secondary Road 2018.

The McLaurin, Hattie J., farm located on the north side of N.C. Highway 211 and 0.5 mile west of the junction of said highway with State Secondary Road 2075.

The McNeill, Lena Bell, farm located on the northwest side of State Secondary Road 2077 and 0.5 mile southwest of the junction of said road with State Highway 211.

The Thomas, Claude and Ted, farm located on the west side of State Secondary Road 1128 and 0.5 mile northwest of the junction of said road with State Secondary Road 1122.

Onslow County. The Bryant, Ira, farm located on the north side of State Secondary Road 1425, 0.8 mile west of its junction with State Secondary Road 1434.

The Henderson, Bill, farm located on the east side of State Secondary Road 1528 and on the north side of State Secondary Road 1518 at the junction of said roads.

The McAllister, Henry, farm located on both sides of State Secondary Road 1316 and 1 mile southwest of said road and its junction with State Secondary Road 1308.

The Melville, John, Sr., farm located on the east side of State Secondary Road 1434 and 0.4 mile south of its junction with State Secondary Road 1428.

Pender County. That area bounded by a line beginning at a point where State Secondary Road 1104 intersects the Pender-Bladen County line, and extending northeast along said county line to its junction with Black River, thence east along said river to its junction with Colvines Creek, thence north and northwest along said creek to its intersection with State Secondary Road 1201, thence east along said road to its intersection with the Atlantic Coast Line Railroad, thence southeast along said railroad to its intersection with State Secondary Road 1125, thence northeast along said road to its intersection with Moores Creek, thence northeast and northwest along said creek to its intersection with State Secondary Road 1128, thence northeast along said road to its junction with State Secondary Road 1216, thence east along said road to its intersection with U.S. Highway 421, thence southeast along said highway to its junction with State Secondary Road 1121, thence south along said road to its intersection with State Secondary Road 1125, thence east and south along said road to its junction with State Secondary Road 1121, thence southeast along said road to its intersection with State Secondary Road 1120, thence southwest along said road to its intersection with State Highway 210, thence southwest along said highway to its junction with State Secondary Road 1103, thence southeast along said road to its junction with State Secondary Road 1104, thence southwest and northwest along said road to the point of beginning.

That area bounded by a line beginning at a point where State Secondary Road 1517, junctions with U.S. Highway 117, and extending northwest along said highway to its intersection with State Secondary Road 1412, thence east along said road to its junction with State Secondary Road 1411, thence southwest along said road to its intersection with Pike Creek, thence southeast along said creek to its junction with the Northeast Cape Fear River, thence south along said river to its intersection with State Highway 210, thence southwest along said highway to its junction with State Secondary Road 1518, thence southeast along said road to its junction with State Secondary Road 1517, thence westerly along said road to the point of beginning.

The Armstrong, Willie, farm located 0.5 mile west of State Secondary Road 1408 and 0.3 mile south of the junction of said road with State Highway 210.

The Colvin, Alex, farm located on the northwest side of State Secondary Roard 1120 and 1.4 miles southwest of the intersection of said road and U.S. Highway 421.

The Kea, Leo, farm located 0.5 mile east of State Secondary Road 1105 and 1 mile southwest of the junction of said road and State Secondary Road 1104.

The Kea, Nora, farm located 0.1 mile west of the end of State Secondary Road 1108.

The McCallister, Mary K., farm located 0.2 mile east of State Secondary Road 1105 and 1 mile southwest of the junction of said road and State Secondary Road 1104.

The Stringfield Estate, John, located on the southwest side of State Secondary Road 1517 and 1.4 miles east of the junction of said road and U.S. Highway 117.

The Williams, John H., and Heirs, farm located on the east side of State Secondary Road 1520 and 2.7 miles north of the junction of said road and State Highway 210.

Richmond County. The Autry, J. H., farm located on the north side of State Secondary Road 1803 and 0.7 mile east of Osborne.

The Beck, Lacy A., farm located on both sides of State Secondary Road 1607 and 0.4 mile southeast of the intersection of said road and State Secondary Road 1608.

The Bethea, Queen, farm located on the northeast side of State Secondary Road 1803 and 0.4 mile southeast of the intersection of said road and State Secondary Road 1825.

The Chappell, Fred, Jr., located on the northwest side of N.C. Highway 177 and 0.5 mile northeast of the junction of said road and State Secondary Road 1607.

The Clinton, Bernice, farm located on the south side of State Secondary Road 1803 and 0.8 mile east of Osborne.

The David, Ethel, farm located on both sides of State Secondary Road 1803, on the west side of the intersection of said road with State Secondary Road 1825.

The Davis, Climon, farm located on the northwest side of N.C. Highway 38 and 0.5 mile northeast of the intersection of said road and State Secondary Road 1803.

The Davis, Katherine, farm located on the northeast side of State Secondary Road 1803 and 0.4 mile northwest of the intersection of said road and N.C. Highway 88.

The Dial, Dormic, farm located on the north side of State Secondary Road 1607 and 0.8 mile west of the intersection of said road and State Secondary Road 1608.

The Dumas, Elnora, farm located on the northeast side of State Secondary Road 1803 and 0.3 mile southeast of the intersection of said road and State Secondary Road 1825.

The Dumas, Reba, farm located on the northeast side of State Secondary Road 1803 and 0.3 mile northwest of said intersection of N.C. Highway 38.

The Dunn, Thomas, farm located on the northwest side of State Secondary Road 1802 and 0.3 mile southwest of the intersection of said road and State Secondary Road 1800.

The Elizhbugar, Charity, farm located on the northeast side of State Secondary Road 1003 and 2 miles northwest of its junction with State Secondary Road 1475.

The Hailey, Annie, farm located on the north side of State Secondary Road 1475 and 1.7 miles west of its junction with U.S. Highway 1.

The Hailey, Maria, farm located on the southwest side of State Secondary Road 1440 and 0.3 mile southeast of its junction with State Secondary Road 1433.

The Hamlet Gin & Supply Co. farm, located on both sides of State Secondary Road 1803 and on the east side of the intersection of said road and State Secondary Road 1825.

The Ingram, Rome, farm located on the southwest side of State Secondary Road 1003 and 1.8 miles northwest of its junction with State Secondary Road 1475.

The Jenkins, Dewey, farm located on a dirt road 0.2 mile southwest of its junction with State Secondary Road 1803, said junction being 0.8 mile east of Osborne.

The Jones, W. R., farm located on the south side of State Secondary Road 1607 and 0.8 mile west of the intersection of said road and State Secondary Road 1608.

The Little, John, farm located on the southeast side of State Secondary Road 1442 and at the junction of said road with State Secondary Road 1476.

The McDonald, Leonard, farm located on the north side of State Secondary Road 1607 and 0.9 mile west of the intersection of said road and State Secondary Road 1608.

The McLaurin, Meta, farm located on the southwest side of State Secondary Road 1803 and 0.3 mile southeast of the intersection of said road and State Secondary Road 1825.

The McNeill, Dalton, farm located on the southwest side of State Secondary Road 1003 and 1.9 miles northwest of its junction with State Secondary Road 1475.

The Mathews, Lizzie, farm located in the southwest quadrant of the intersection of State Secondary Road 1108 and 1971.

The Parker, Henry W., farm located on the southwest side of State Secondary Road 1486 and 1.3 miles northwest of its junction with U.S. Highway 1.

The Porter, Mrs. A. W., farm located on the northeast side of State Secondary Road 1999 and 1 mile east of the intersection of said road with U.S. Highway 1.

The Quick, Douglas, farm located in the northwest quadrant of the intersection of State Secondary Roads 1802 and 1800.

The Quick, Julius, farm located on the northeast side of State Secondary Road 1992 and 0.6 mile northeast of its junction with State Secondary Road 1994.

The Rush, Eli, farm located on the northwest side of State Secondary Road 1442 and 0.7 mile northeast of its junction with State Secondary Road 1489.

The Rush, James, farm located on the southeast side of State Secondary Road 1442 and 0.7 mile northeast of its junction with State Secondary Road 1489.

The Scholl, H. H., farm located on the southwest side of State Secondary Road 1805 and 0.3 mile southeast of its junction with State Secondary Road 1804.

The Smith, J. A., farm located on the southwest side of State Secondary Road 1805 and 0.5 mile northwest of its junction with N.C. Highway 381.

The Sorenzen, Gladys, farm located on the southwest side of State Secondary Road 1803 and 0.4 mile northwest of the intersection of said road and N.C. Highway 38.

The Standback, Tommy, farm located on the east side of U.S. Highway 220 and 0.6 mile northeast of its junction with State Secondary Road 1433.

The Steen, Willard, farm located on the southwest side of State Secondary Road 1803 and 0.2 mile southeast of the intersection of said road and State Secondary Road 1825.

The Strong, Marvin, farm located on the north side of State Secondary Road 1803 and 1.3 miles southwest of the intersection of said road and State Secondary Road 1825.

The Terry, Ruth, farm located on both sides of State Secondary Road 1442 and 0.2

mile northeast of its junction with State Secondary Road 1477.

The Terry, Tom, farm located on both sides of State Secondary Road 1442 and 0.3 mile northeast of its junction with State Secondary Road 1477.

The Terry, W. C., farm located on the west side of State Secondary Road 1424 at is junction with State Secondary Road 1507 at Roberdel, N.C.

The Thomas, Walter, farm located on both sides of U.S. Highway 220 and 0.4 mile northeast of its junction with State Secondary Road 1433.

The Thompson, Roger E., farm located in the northeast corner of the junction of State Secondary Road 1442 with State Secondary Road 1477.

The Waddell, A. M., farm located on both sides of U.S. Highway 1 and on both sides of State Secondary Road 1103 and on both sides of State Secondary Road 1971 at the intersection of said highway and said roads at Diggs.

The Wallace, Talley, farm located on both sides of State Secondary Road 1800 and 1.2 miles northwest of the intersection of said road and State Secondary Road 1802.

The Waters, Will, farm located on both sides of State Secondary Road 1623 and 0.4 mile southwest of its junction with State Secondary Road 1607.

The Watkins, John Q., farm located on the southeast side of State Secondary Road 1476 and 0.3 mile northeast of its junction with State Secondary Road 1442.

The Watkins, Mosby, farm located on both sides of State Secondary Road 1476 and 0.2 mile northeast of its junction with State Secondary Road 1442.

The York, Will, farm located on the northeast side of State Secondary Road 1803 and 0.4 mile northwest of the intersection of said road and N.C. Highway 38.

Sampson County. The entire county.

Scotland County. That area bounded by a line beginning at a point where U.S. Highway 15–401 intersects the North Carolina-South Carolina State line and extending northeast along said highway to its junction with U.S. Highways 15A–401A, thence north along said highway to its junction with U.S. Highway 501, thence north along said highway to its intersection with U.S. Highway 15–401, thence southwest along said highway to its intersection with State Secondary Road 1300, thence northwest along said road to its junction with State Secondary Road 1116, thence northwest along said road to its junction with State Secondary Road 1324, thence north along said road to its junction with State Secondary Road 1345, thence northwest along said road to its intersection with State Secondary Road 1341, thence northeast along said road to its junction with State Secondary Road 1328, thence north along said road to its intersection with the southern boundary of the Sandhills Game Management Area, thence east along said boundary to its intersection with U.S. Highway 15–501, thence north along said highway to its intersection with the Scotland-Hoke County line, thence southeast along said county line to the Scotland-Robeson County line, thence south and southwest along said county line to the North Carolina-South Carolina State line, thence northwest along said State line to the point of beginning, excluding the area within the corporate limits of the city of Laurinburg and the town of East Laurinburg.

The Bunch, Archie W., farm located at the intersection of State Secondary Roads 1323 and 1001.

The Butler, Luther, farm located on the south side of State Secondary Road 1154 and 0.2 mile east of the junction of said road with State Secondary Road 1155.

The Calhoun, L. E., farm located on the south side of State Highway 79 and 0.3 mile west of its junction with State Secondary Road 1118.

The Gibson, H. P., Estate farm located on the north side of State Highway 79 and 0.4 mile west of its junction of State Secondary Road 1118.

The King, J. Lloyd, farm located on the northwest side of State Secondary Road 1128 and 0.3 mile southwest of its junction with State Secondary Road 1101.

The Morgan, J. D., farm located on the east side of State Secondary Road 1346 and 0.5 mile north of the junction of said road with State Secondary Road 1343.

The Morgan, J. D., farm located on both sides of State Secondary Road 1345 and 0.1 mile northwest of its junction with State Secondary Road 1342.

The Newton, Peter F., farm located at the intersection of State Secondary Roads 1334, 1336, and 1345.

The Odoms, Hobson, farm located on both sides of State Secondary Road 1108 and 0.4 mile west of its junction with State Secondary Road 1100.

The Steele, J. D., farm located on both sides of State Secondary Road 1351 and 0.9 mile northwest of the junction of said road with State Secondary Road 1346.

Wayne County. That area bounded by a line beginning at a point where U.S. Highway 70 and State Secondary Road 1719 intersect and extending south along said road to its junction with State Secondary Road 1731, thence south along said road to its junction with State Highway 55, thence southwest and west along said highway to its intersection with State Secondary Road 1937, thence northerly on said road to its junction with State Secondary Road 1932, thence north on said road to its intersection with State Secondary Road 1120, thence easterly along said road to its junction with State Secondary Road 1915, thence east along a line projected from a point at the junction of State Secondary Roads 1120 and 1915 to the junction of said line with a point located at the junction of Sleepy Creek and Neuse River, thence east along the Neuse River to its intersection with State Highway 111, thence north along said highway to its junction with State Secondary Road 1726, thence northeast along said road to its intersection with State Secondary Road 1727, thence southeast along said road to its junction with State Secondary Road 1728, thence northeast along said road to its junction with U.S. Highway 70, thence southeast along said highway to the point of beginning.

The Barwick, George, farm located on the east side of State Secondary Road 1931 and 0.1 mile south of its junction with State Secondary Road 1930.

The Baucom, Howard, farm located on the east side of State Secondary Road 1932 and 0.2 mile north of its junction with State Secondary Road 1927.

The Brinson, Earl, farm located on the north side of State Secondary Road 1120 and 0.1 mile west of its intersection with State Secondary Road 1932.

The Brock, Odell, farm located on the north side of State Secondary Road 1210 and 0.3 mile east of its junction with State Secondary Road 1209.

The Carraway, Ethel, farm located on the east side of State Secondary Road 1915 and 0.1 mile north of the junction of said road and State Secondary Road 1120.

The Casey, Emma E., farm located 7 miles east of Goldsboro on the north side of U.S. Highway 70 and 0.4 mile east of the junction of State Secondary Road 1721 and said highway.

The Daly, J. B., farm located on the west side of State Highway 111 and 0.6 mile south of the junction of said highway with State Secondary Road 1730.

The Dawson, L. A., farm located on the west side of State Highway 111 and 0.5 mile south of the junction of said highway and State Secondary Road 1730.

The Flowers, Willie, farm located on the north side of U.S. Highway 13 and 0.4 mile east of its junction with State Secondary Road 1207.

The Grady, Vernie C., farm located on the west side of State Secondary Road 1931 and 0.2 mile north of its intersection with State Secondary Road 1120.

The Grant, Maggie, Estate located on the west side of N.C. Highway 111 and 1.9 miles south of the junction of State Secondary Road 1730 with said highway.

The Grantham, Barfield, farm located on the west side of State Secondary Road 1931 and 0.4 mile north of its intersection with State Secondary Road 1120.

The Gray, Albert, farm located on the east side of State Secondary Road 1719 and 0.9 mile south of its intersection with U.S. Highway 70.

The Griffin, Birtie, farm located on the southeast side of State Highway 55 and 0.5 mile northeast of its intersection with State Highway 111

The Griffin, McKinley, farm located on the north side of State Secondary Road 1737 and 0.2 mile east of its junction with State Secondary Road 1731.

The Griffin, Oliver H., farm located 0.6 mile north of Dudley and 0.2 mile west of U.S. Highway 117.

The Griffin, W. A., farm located on the northeast side of State Secondary Road 1731 and 0.6 mile north of its junction with State Secondary Road 1737.

The Gurley, Clara Lee, farm located on the south side of State Secondary Road 1330 and 0.1 mile west of the junction of said road and State Secondary Road 1332.

The Haggin, Joe, No. 1, farm located on the east side of State Secondary Road 1931 and 0.7 mile north of its intersection with State Secondary Road 1120.

The Haggin, Joe, No. 2, farm located on the east side of State Secondary Road 1931 and 1.1 miles northeast of its intersection with State Secondary Road 1120.

The Hall, Marvin, farm located on both sides of State Secondary Road 1932 and 0.3 mile south of its intersection with State Secondary Road 1120.

The Ham, George E., farm located southeast of Seymour Johnson Air Base on the south side of State Secondary Road 1909 and 0.7 mile west of the junction of said road with State Secondary Road 1910.

The Herring, Harmon, farm located on the south side of State Secondary Road 1734 and 0.4 mile east of its junction with State Secondary Road 1731.

The Herring, Thel, farm located on the west side of State Secondary Road 1711 and 0.4 mile north of its junction with U.S. Highway 70A.

The Hines, J. D., farm located on both sides of State Secondary Road 1236 and 0.8 mile east of the intersection of said road with State Highway 581.

The Hollaman, R. J., farm located on the northwest corner of State Secondary Road 1125 and 0.7 mile north of the junction of said road and State Secondary Road 1122.

The Humphrey, Josephine, farm located on east side of State Secondary Road 1932 and 0.2 mile north of its intersection with State Secondary Road 1120.

The Ivey, W. H., farm located on the south side of State Secondary Road 1734 and 0.3 mile east of its junction with State Secondary Road 1731.

The Johnson, J. R., farm located on the south side of State Secondary Road 1330 and

0.1 mile west of the junction of said road and State Secondary Road 1332.

The Lofton, Burt & Davis, King, farm located on the east side of State Secondary Road 1739 and 0.3 mile south of its junction with State Highway 55.

The McClenny, G. A., farm located on the south side of State Secondary Road 1007 and 0.1 mile west of the junction of said road with State Highway 581.

The McClenny, G. A., No. 2, farm located on both sides of State Secondary Road 1332 and 0.1 mile north of junction of said road and State Secondary Road 1330.

The Newsome, Paul, farm located on the east side of State Secondary Road 1719 and 1 mile south of its intersection with U.S. Highway 70.

The Oliver, Estella J., farm located on the west side of U.S. Highway 117 and 0.8 mile north of Brogden School.

The Oliver, H. H., farm located on the south side of State Secondary Road 1219 and 0.4 mile east of its junction with State Secondary Road 1218.

The Parker, Worth W., farm located on the west side of State Secondary Road 1130 and 1 mile south of the intersection of said road with U.S. Highway 13.

The Parks, Robert, farm located on the southeast side of State Secondary Road 1932 and 0.5 mile northeast of its intersection with State Secondary Road 1120.

The Perkins, Joe D., farm located on the northwest side of State Secondary Road 1711 and 0.2 mile southwest of the intersection of said road with U.S. Highway 70 Bypass.

The Raynor, A. B., farm located on the south side of U.S. Highway 13 and 0.1 mile east of its junction with State Secondary Road 1207.

The Raynor, Early, No. 1, farm located on the south side of U.S. Highway 13 and 0.3 mile east of its junction with State Secondary Road 1207.

The Raynor, Early, No. 2, farm located on the north side of State Secondary Road 1101 and 0.7 mile east of its intersection with State Secondary Road 1105.

The Raynor, Elester, farm located on the east side of State Secondary Road 1105 and 0.8 mile south of its intersection with U.S. Highway 13.

The Rogers, Charlie, farm located on both sides of State Secondary Road 1710 and 0.9 mile southwest of the junction of said road with U.S. Highway 70A.

The Smith, Alfred, farm located on the north side of State Secondary Road 1330 and 0.9 mile west of the junction of said road and North Carolina Highway 581.

The Smith, Arnold, farm located on the southeast side of State Secondary Road 1932 and 0.5 mile northeast of its intersection with State Secondary Road 1120.

The Smith, J. B., farm located in south junction of State Secondary Roads 1731 and 1734.

The Smith, Olivia, farm located on the southeast side of State Secondary Road 1122 and both sides of State Secondary Road 1124.

The Sutton, D. M., farm located on the east side of State Secondary Road 1731 and 0.9 mile north of the Neuse River.

The Tart, John, No. 1, farm located on the south side of U.S. Highway 13 and 0.7 mile east of its intersection with State Secondary Road 1105.

The Thornton, S. E., farm located on the southeast junction of State Secondary Roads 1210 and 1209.

The Turnage, W. H., farm located on the northwest side of State Secondary Road 1932 and 0.3 mile northeast of its junction with State Secondary Road 1927.

The Weaver, Luby W., farm, located on both sides of State Secondary Road 1106 and 0.2 mile east of its junction with State Secondary Road 1101.

The Williams, Eddie, farm located on the north side of State Highway 581 and the east side of State Secondary Road 1236 at the junction of said roads.

The Wise, Ella, farm located on the south side of State Secondary Road 1208 and 1 mile west of its junction with State Secondary Road 1209.

Wilson County. The Eatmon, Ralph, farm located on both sides of State Secondary Road 1302 and 0.5 mile east of its intersection with State Secondary Road 1301.

2. In § 301.80–2a relating to the State of South Carolina under suppressive area, the description for Florence County is changed to add three properties in alphabetical order to read as follows:

SOUTH CAROLINA

(1) *Generally infested area.* None.
(2) *Suppressive area.*

* * * * *

Florence County.

* * * * *

The Georgia Pacific Paper Company farm located on the south side of a dirt road and 0.6 mile northeast of its junction with State Secondary Highway 461, said junction being 0.8 mile north of the intersection of State Secondary Highways 461 and 85.

* * * * *

The Poston, Charlton, farm located on the south side of U.S. Highway 378 and its junction with State Secondary Highway 596.

* * * * *

The Thompson, John D., farm located on the north side of State Secondary Highway 150 and 0.4 mile east of its junction with State Secondary Highway 460.

* * * * *

(Secs. 8, 9, 37 Stat. 318, as amended, sec. 106, 71 Stat. 33; (7 U.S.C. 161, 162, 150ee); 37 FR 28464, 28477; 38 FR 19141; 7 CFR 301.80–2.)

The Deputy Administrator of the Plant Protection and Quarantine Programs has determined that the witchweed has been found or there is reason to believe it is present in the civil divisions and parts of civil divisions listed above as regulated areas or that it is necessary to regulate such areas because of their proximity to witchweed infested localities. Further, the Deputy Administrator has found that facts exist as to the pest risk involved in the areas removed from the list of regulated areas which make it safe to relieve the requirements of the quarantine as provided herein. He has also determined that the areas designated as suppressive and generally infested areas are eligible for such designation under § 301.80–1, as amended.

The Deputy Administrator has also determined that each of the quarantined States, wherein only portions of the State have been designated as regulated areas, has adopted and is enforcing a quarantine or regulation which imposes restrictions on interstate movement of the regulated articles which are substantially the same as the restrictions on interstate movement of such articles imposed by the quarantine and regulations in this subpart, and that designation of less than the entire State as a regulated area will otherwise be adequate to prevent the interstate spread of witchweed. Therefore, such civil divisions and parts of civil divisions listed above are designated as witchweed regulated areas.

To the extent that this revision relieves certain restrictions presently imposed, it should be made effective promptly in order to be of maximum benefit to persons subject to the restrictions which are being relieved. To the extent that this revision imposes restrictions, that are necessary in order to prevent the spread of witchweed, they should be made effective promptly to accomplish their purpose in the public interest. Also, this action is based on surveys by the U.S. Department of Agriculture and State agencies of North Carolina and South Carolina, and it does not appear that additional information would be made available to the Department by public participation in rulemaking proceedings on this amendment.

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

NOTE.—The Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs, 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., this 18th day of August, 1977.

T. G. DARLING,
Acting Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

[FR Doc.77–24407 Filed 8–22–77;8:45 am]

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

PART 1427—COTTON

Subpart—1977 Crop Supplement to Cotton Loan Program Regulations

Correction

In FR Doc. 77–22618, appearing at page 40421 in the issue of Wednesday, August 10, 1977, make the following changes:

1. On page 40422, under the heading "Mississippi", in the column headed "City", the 14th to last entry should read, "Pontotoc".

2. On page 40422, under the heading "Missouri", in the column headed "City", the seventh entry should read, "Malden".

3. On page 40423, in the last portion of the table headed "Tennessee", in the column headed "City", the 14th entry should read, "Tahoka".

CHAPTER XXVIII—FOOD SAFETY AND QUALITY SERVICE (STANDARDS, INSPECTION, MARKETING PRACTICES) DEPARTMENT OF AGRICULTURE

PART 2851—FRESH FRUITS, VEGETABLES AND OTHER PRODUCTS (INSPECTION, CERTIFICATION, AND STANDARDS)

United States Standards for Grades of Mechanically Harvested American (Eastern Type) Grapes for Processing and Freezing [1]

AGENCY: Food safety and Quality Service, USDA.

ACTION: Final rule.

SUMMARY: This rule changes the title of the grade standards for mechanically harvested American (Eastern Type) grapes for processing and freezing to standards for grapes for processing and freezing. This change will permit all types of grapes for processing, hand-picked or mechanically harvested, to be certified under these standards.

EFFECTIVE DATE: September 1, 1977.

FOR FURTHER INFORMATION CONTACT:

Frank W. Betz, Fresh Products Branch, Fruit and Vegetable Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C., 202–447–2093.

SUPPLEMENTARY INFORMATION: On June 16, 1977 a notice of proposed rulemaking was published in the FEDERAL REGISTER (42 FR 30626) under Chapter I, Part 51 which has been changed to Chapter XXVIII, Part 2851 by a rule effective June 27, 1977 establishing a new chapter for the Food Safety and Quality Service in the Code of Federal Regulations. This proposed rule would permit all types (European, American and French hybrids) of grapes for processing, hand-picked or mechanically harvested, to be certified under the United States Standards for Grades of Mechanically Harvested American (Eastern Type) Grapes for Processing and Freezing by changing the title to United States Standards for Grades of Grapes for Processing and Freezing and revising § 2851.2150.

The United States Standards for Grades of Mechanically Harvested American (Eastern Type) Grapes for Processing and Freezing became effective May 15, 1975. In May of this year, the National Grape Cooperative Association, Inc. (NGCA) formally requested that the words "Mechanically Harvested" be deleted from the title of the standards. This would permit hand-picked as well as mechanically harvested grapes to be certified under the standards. This request was supported by Taylor Wine Co., Hammondsport, New York and Coca Cola Co., Geneva, Ohio.

Subsequent to the request from NGCA, it was suggested that the title of the standards be further changed by deleting the words "American (Eastern Type)". This change in addition to including hand-picked grapes would also permit all types (European, American and French hybrids) of grapes for processing and freezing to be certified under these standards. The Department and industry representatives agree that this amendment will make the standards more useful to industry.

Following publication of the proposal in the FEDERAL REGISTER copies were distributed to industry and other interested persons for comment. The period for comment ended on July 30, 1977 and no comments were received, therefore, the proposed amendment is hereby adopted without change and is set forth below.

It is hereby found that good cause exists for not postponing the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553), in that: (1) The 1977 harvesting season is already under way and it is in the interest of the industry that this amendment be made effective on September 1, 1977; and (2) no special preparation is required for compliance with the amendment on the part of members of the industry.

The Subpart—United States Standards for Grades of Mechanically Harvested American (Eastern Type) Grapes for Processing and Freezing is amended to read as follows:

Subpart—United States Standards for Grades of Grapes for Processing and Freezing

Section 2851.2150 General is revised to read as follows:

§ 2851.2150 General.

(a) These standards apply to all types of grapes, hand-picked or mechanically harvested, which are to be processed.

(b) The grade of a lot of grapes shall be determined on the basis of a composite sample.

(Agricultural Marketing Act of 1946, secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended; (7 U.S.C. 1622, 1624).)

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

Dated: August 16, 1977.

ROBERT ANGELOTTI,
Administrator.

[FR Doc.77-24401 Filed 8-22-77;8:45 am]

[1] Compliance with provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug and Cosmetic Act, or with applicable State laws and regulations.

Title 9—Animals and Animal Products

CHAPTER III—FOOD SAFETY AND QUALITY SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—MANDATORY MEAT INSPECTION

PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

PART 325—TRANSPORTATION

Miscellaneous Amendments; Correction

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rule, corrections.

SUMMARY: This document makes minor nonsubstantive changes in the Federal meat inspection regulations. These changes are necessary in order to correct an error and to reflect an organizational realignment in the Department of Agriculture.

EFFECTIVE DATE: August 23, 1977.

FOR FURTHER INFORMATION CONTACT:

Dr. W. J. Minor, Chief Staff Officer, Issuance Coordination Staff, Technical Services, Meat and Poultry Inspection Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202–447–6189.

SUPPLEMENTARY INFORMATION: The Federal meat inspection regulations (9 CFR Parts 319 and 325) are amended as follows:

§ 319.105 [Amended]

1. In § 319.105(a) (2) and (6), the reference to "§ 318.7(b)(4)" is changed to "§ 318.7(c)(4)."

§ 325.20 [Amended]

2. In § 325.20(d), the phrase "Animal and Plant Health Inspection Service" is amended to read "Food Safety and Quality Service." (Sec. 21, 34 Stat. 1260, as amended, (21 U.S.C. 621).)

These amendments make a minor correction and reflect an orginizational change in the Department. Therefore, it does not appear that additional relevant information would be made available by public participation in rulemaking proceedings on these amendments. Accordingly, it is found upon good cause under the administrative procedure provisions of 5 U.S.C. 553, that notice and other public procedure with respect to these amendments are impracticable and unnecessary, and good cause is found for making this amendment effective less FEDERAL REGISTER.

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

Done at Washington, D.C., on Aug. 17, 1977.

ROBERT ANGELOTTI,
Administrator, Food Safety and Quality Service.

[FR Doc.77-24402 Filed 8-22-77;8:45 am]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. 8970-o]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Central California Lettuce Producers Cooperative Et Al.

AGENCY: Federal Trade Commission.

ACTION: Order of dismissal.

SUMMARY: This order dismisses a complaint issued against a Salinas, Calif. nonprofit cooperative and 22 of its members for alleged price-fixing practices in the lettuce market, violative of antitrust law. The Commission ruled that the price-fixing practices were exempt from antitrust laws under a statute permitting producers of agricultural products to "act together in association * * * in collectively * * * marketing" their products.

DATES: Complaint issued June 10, 1974. Dismissal order issued July 25, 1977.[1]

FOR FURTHER INFORMATION CONTACT:

David I. Wilson, Federal Trade Commission, Bureau of Competition, 6th and Pennsylvania Ave. NW., Washington, D.C. 20580, 202–724–1276.

SUPPLEMENTARY INFORMATION: In the Matter of Central California Lettuce Producers Cooperative, a corporation; and Admiral Packing Co., a corporation; and Albert C. Hansen d/b/a Hansen Farms; and California Coastal Farms, Inc., a corporation; and Carl Joseph Maggio, Inc., a corporation; and D'arrigo Bros. Co. of California, a corporation; and Eckel Produce Co., a partnership; and Green Valley Produce Co-op, a corporation; and Growers Exchange, Inc., a corporation; and Harden Farms of California, a corporation; and J. R. Norton Co., a corporation; and Jack T. Baillie Co., Inc., a corporation; and Let-Us-Pack, a partnership; and Merit Packing Co., a corporation; and Merrill Farms, a corporation; and Pacific Lettuce, a corporation; and R. T. Englund Co., a partnership; and Royal Packing Co., a corporation; and Salinas Lettuce Farmers Cooperative, a corporation; and Salinas Marketing Cooperative, a corporation; and The Garin Co., a corporation; and United Brands Company, a corporation; and West Coast Farms, a partnership.

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

The order of dismissal is as follows:

FINAL ORDER

This matter having been heard by the Commission upon the appeal of respondent from the administrative law judge's initial decision, and upon briefs and oral argument in support thereof and in opposition thereto, and the Commission, for the reasons stated in the accompanying opinion, having concluded that the administrative law judge's initial decision should be set aside and that the complaint should be dismissed:

It is ordered, That the administrative law judge's initial decision be, and it hereby is, set aside.

It is further ordered, That the complaint be, and it hereby is, dismissed.

By the Commission. Chairman Pertschuk did not participate.

CAROL M. THOMAS,
Secretary.

[FR Doc.77-24340 Filed 8-22-77;8:45 am]

[1] Copies of the Complaint, Initial Decision, Opinion, and Final Order filed with the original document.

Title 17—Commodity and Securities Exchanges

[Release No. SAB–15]

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

PART 211—INTERPRETATIVE RELEASES RELATING TO ACCOUNTING MATTERS

Subpart B—Staff Accounting Bulletins

ALLOWANCE FOR FUNDS USED DURING CONSTRUCTION

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This interpretation describes the practices to be followed by Commission staff in connection with reporting of allowance for funds used during construction on financial statements of public utilities. It results from the issuance of Order No. 561 by the Federal Power Commission which amended related parts of its uniform systems of accounts for public utilities and natural gas companies. It is expected that this interpretation will clarify the presentation of the allowance for funds used during construction in statements to be filed with this Commission.

EFFECTIVE DATE: August 11, 1977.

FOR FURTHER INFORMATION CONTACT:

Lawrence J. Bloch, Office of the Chief Accountant, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, 202–755–1182.

SUPPLEMENTARY INFORMATION: The statements in the Bulletin are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval; they represent interpretations and practices followed by the Division of Corporation Finance and Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

GEORGE A. FITZSIMMONS,
Secretary.

AUGUST 11, 1977.

STAFF ACCOUNTING BULLETIN No. 15

The staff hereby revises Topic 10F of Staff Accounting Bulletin No. 1 on the subject of AFC Credits by the issuance of Staff Accounting Bulletin No. 15. The facts, question and interpretive response of Topic 10F originally published in Staff Accounting Bulletin No. 1 are deleted and replaced by Staff Accounting Bulletin No. 15.

TOPIC 10: MISCELLANEOUS DISCLOSURE

F. ALLOWANCE FOR FUNDS USED DURING CONSTRUCTION

Facts. In February 1977, the Federal Power Commission issued Order No. 561 amending its Uniform Systems of Accounts for Public Utilities and Licensees (18 CFR Chapter I, Subchapter C) and for Natural Gas Companies (18 CFR Chapter I, Subchapter F) (42 FR 9161, February 15, 1977) to provide a uniform formula for determining the maximum rates to be used in computing the "allowance for funds used during construction" (AFC credits). Concurrently the FPC amended its report forms to divide the AFC credits into two components related to the source of the funds from which the credits are derived, "borrowed funds" (long-term and short-term debt) and "other funds" (preferred and common stock). The borrowed funds component is to be presented on the statement of income as a credit in the interest charges section, and the other funds component is to be included as part of other income. The amended statement of changes in financial position excludes the other funds component of AFC credits from funds provided from operations and also from funds applied to construction and plant expenditures. The amendments to the uniform systems of accounts relating to the formula for computing the maximum rates were made effective as of January 1, 1977, and the amendments to the report forms were ordered effective for the reporting year 1977.

Prior to this amendment, AFC credits have been reported in one amount as a part of other income. The staff has generally required the amount to be cross references to a note which (1) describes the nature and basis of the item, including the interest rate and source of funds assumptions, (2) indicates as a percentage of net income the amount of the AFC credit attributable to the common stock equity portion and (3) discloses whether AFC credits related to borrowed funds are based on a before or after tax effect.

Question. In view of the changes in FPC reporting requirements how should AFC credits be presented in income statements filed under the Securities Acts?

Interpretive Response. Income statements for periods beginning on or after January 1, 1977, should present the AFC credits appropriately divided between other income and as a credit in the interest charges section.

If practicable, income statements for periods ending prior to January 1, 1977, should be reclassified to reflect the new presentation. If the pre-1977 statements are not reclassified, a note should briefly explain why registrant believes reclassification is not appropriate.

Statements covering a twelve-month period ending on an interim month end during 1977 should reflect this new presentation for the entire twelve-month period if practicable. However, if prior periods are not to be reclassified, statements for such twelve-month periods must present AFC credits recognized subsequent to January 1, 1977, in accordance with the new presentation and AFC credits recognized prior to that date as other income.

Because of the lack of comparability between the amount of the AFC credit reported as other income under the former presentation and the amount to be reported under the new presentation, amounts for periods prior to January 1, 1977, which have not been reclassified shall be reported on a separate line from amounts for periods subsequent to that date.

An explanatory note similar to the one outlined under the "Facts" above should be given. In view of the two-part reporting of AFC credits under the new presentation, however, the second item of information relating to the amount of the credit attributable to common stock equity need not be given in connection with statements for periods beginning on or after January 1, 1977 or for statements for periods ending prior to that date which have been reclassified to reflect the new presentation.

On statements covering a twelve-month period ending on an interim month-end during 1977, which reflect the new presentation for the entire period, information concerning the portion of the AFC credit attributable to common stock equity need not be given; however, statements for such periods on which AFC credits for the 1976 months have not been reclassified must give information concerning credits attributable to common stock equity for the portion of the period which was not reclassified.

On statements of changes in financial position, at least the other funds component of the AFC credits should be excluded from funds provided from operations and from funds applied to construction and plant expenditures as provided in the amended FPC forms. The total amount of AFC credits may be excluded if deemed appropriate by the registrant.

[FR Doc.77-24337 Filed 8-22-77;8:45 am]

Title 21—Food and Drugs

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

SUBCHAPTER D—DRUGS FOR HUMAN USE

[Docket No. 75N-0051]

PART 320—BIOAVAILABILITY AND BIOEQUIVALENCE REQUIREMENTS

Addition to Drug List and Clarification of Waiver Provision

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends the bioavailability regulations to add certain parenteral drug products that were inadvertently omitted from the list of drug products with known or potential bioequivalence problems, and to clarify the provision under which FDA will waive the requirement for evidence of in vivo bioavailability.

EFFECTIVE DATE: August 23, 1977.

FOR FURTHER INFORMATION CONTACT:

Marilyn L. Watson, Bureau of Drugs (HFD-30), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6490.

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs issued final regulations in the FEDERAL REGISTER of January 7, 1977 (42 FR 1638), regarding methods and procedures for in vivo testing to determine the bioavailability of drug products. Section 320.22(c) of the regulations listed specific drug products with known or potential bioequivalence problems. Certain types of parenteral drug products that were listed in the preamble of the proposed bioavailability / bioequivalence regulations that were published in the FEDERAL REGISTER of June 20, 1975 (40 FR 26164) as having known or potential bioequivalence problems were inadvertently omitted from the list in the final regulations. They were phenytoin sodium powder for injection and parenteral drug products in suspension form. The Commissioner is therefore amending § 320.22(c) to include those parenteral drug products.

Section 320.22 provides that, under certain specified circumstances, applicants for new drug applications (NDA's) or abbreviated new drug applications (ANDA's) may request the Food and Drug Administration to waive the requirement for submission of evidence of in vivo bioavailability. Paragraph (c) of that section provides that the Commissioner will waive such requirements for certain products that had been determined at the time the regulation was promulgated to be effective for at least one indication as announced in a Drug Efficacy Study Implementation (DESI) notice.

The Commissioner believes that further clarification of the status of drugs in the DESI program is needed. Many DESI notices have included a bioavailability requirement as a condition for NDA or ANDA approval. At the time of publishing the proposed bioequivalence regulations (June 20, 1975), FDA had reviewed all of the products evaluated in a DESI notice as effective for at least one indication and had determined that except for specific drug products listed in the preamble of the proposal there was no present evidence that the DESI products had a known or potential bioequivalence problem. Thus, the waiver provision of § 320.22(c) is intended to supersede any DESI notice bioavailability requirements for those products that were not listed in paragraph (c).

The Commissioner advises that the requirements for the submission of evidence demonstrating the in vivo bioavailability of a parenteral drug product will be waived if the product (1) is determined in a DESI notice to be effective for at least one indication or is identical in both active and inactive ingredient formulation to such drug product as currently approved in a new drug application, and (2) is neither a suspension nor any other form of a parenteral drug product added to § 320.22(c). A manufacturer of an identical drug product must, however, submit evidence that his product is identical in formulation to the parenteral drug product listed in a published DESI notice before the agency will grant such a waiver. A waiver will not necessarily be granted if the product is related to or similar to, but not identical to, the DESI product. The Commissioner advises that variations in formulations of parenteral drug products may affect in vivo preformance and thereby raise questions regarding their bioavailability. Clinical evidence may, therefore, be needed to determine this.

It should be understood that at the time of the review identifying certain effective drug products as having known or suspected bioequivalence problems, other drugs that were subject to the DESI review had not been determined to be effective for any indication. Some have subsequently been the subject of a DESI notice announcing such a determination. Others are likely to be the subject of future DESI notices that evaluate the drug products for the first time as effective. Because these drug products were not in the previous review for bioequivalence problems, they undergo such an evaluation when they are determined to be effective for at least one indication. For those for which there is an actual or potential bioequivalence problem, the DESI notice sets forth a bioavailability requirement as a condition for NDA, ANDA, or supplemental NDA approval. Therefore, the waiver provision of § 320.22(c) does not apply to drug products first announced as effective in DESI notices published after January 7, 1977, if the DESI notice specifies a bioavailability requirement. Section 320.22(c) is amended herein to make this clear. The Commissioner points out that in the future any drug product subject to the DESI review that is determined to be effective for at least one indication and to have an actual or potential bioequivalence problem will be added to § 320.22(c) at the next periodic update of that section. Any bioavailability/bioequivalence requirement established for such a drug product will be applicable to holders of approved NDA's as well as applicants submitting NDA's (or ANDA's) for the first time.

Because this amendment is necessary to correct an omission of data in, and clarify portions of, the final regulation, the Commissioner finds, for good cause, that notice and public procedure are not required for its promulgation. It imposes no additional burden on the regulated industry.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(p), 501, 502, 505, 701(a), 52 Stat. 1041-1042 as amended, 1049-1053 as amended, 1055 (21 U.S.C. 321(p), 351, 352, 355, 371(a))) and under authority delegated to the Commissioner (21 CFR 5.1), Subpart B of Part 320 is amended in § 320.22 by redesignating paragraph (c) as paragraph (c)(1) and adding new paragraph (c) (2) and (3) to read as follows:

§ 320.22 Criteria for waiver of evidence of in vivo bioavailability.

* * * * *

(c)(1) * * *

(2) The Food and Drug Administration shall waive the requirement for the submission of evidence demonstrating the in vivo bioavailability of a parenteral drug product that is determined to be effective for at least one indication in a Drug Efficacy Study Implementation notice or that, upon submission of evidence, is shown to be identical in both active and inactive ingredient formulation to that drug as currently approved in a new drug application, if the drug product is not one of the following:

PARENTERAL DRUGS

A drug in suspension form. Phenytoin sodium powder for injection.

(3) A waiver shall not be granted for a drug product for which an initial determination that the drug product is effective for one or more indications is published after January 7, 1977, in a Drug Efficacy Study Implementation notice stating that the drug is subject to a bioavailability requirement.

* * * * *

Effective date: This amendment shall be effective August 23, 1977.

(Secs. 201(p), 501, 502, 505, 701(a), 52 Stat. 1041–1042 as amended, 1049–1053 as amended, 1055 (21 U.S.C. 321(p), 351, 352, 355, 371 (a)).)

Dated: August 16, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.77-24284 Filed 8-22-77;8:45 am]

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Styrylpyridinium, Diethylcarbamazine Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This rule amends the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by American Cynamid Co. providing for use of a higher potency tablet for deworming dogs.

EFFECTIVE DATE: August 23, 1977.

FOR FURTHER INFORMATION CONTACT:

Henry C. Hewitt, Bureau of Veterinary Medicine (HFV-112), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: In accordance with section 512(i) of the Federal Food, Drug, and Cosmetic Act, Part 520 of the animal drug regulations is amended to reflect approval of supplemental NADA (96-031V) filed by American Cyanamid Co., P.O. Box 400, Princeton, N.J. 08540.

In accordance with the freedom of information regulations and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)) of the animal drug regulations, a summary of the safety and effectiveness data and information submitted to support approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk (HFC-20), Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except on Federal holidays.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), § 520.2160 is amended by revising paragraphs (b) and (d)(2) to read as follows:

§ 520.2160 Styrylpyridinium, diethylcarbamazine tablets.

* * * * *

(b) *Specifications.* Each tablet contains 50 milligrams of styrylpyridinium chloride and 60 milligrams of diethylcarbamazine citrate, or 125 milligrams of styrylpyridinium chloride and 150 milligrams of diethylcarbamazine citrate.

* * * * *

(d) * * *

(2) Administer orally, intact or pulverized and mixed in feed, at one tablet (50- and 60-milligram dosage) per 20 pounds of body weight per day, or one tablet (125- and 150-milligram dosage) per 50 pounds of body weight per day.

* * * * *

Effective date: August 23, 1977.

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

Dated: August 15, 1977.

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

[FR Doc.77-24285 Filed 8-22-77;8:45 am]

Title 24—Housing and Urban Development

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

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI 3211]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Suspension of Community Eligibility

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to list communities where the sale of flood insurance as authorized under the National Flood Insurance Program will be suspended because of noncompliance with the program regulations.

DATES: The last date that appears in the fourth column is the effective date of the suspension of the sale of flood insurance.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (Pub. L. 93-234) requires the purchase of flood insurance as a condition of receiving any form of Federal or federally related financial assistance for acquisition or construction purposes in a flood plain area having special hazards within any community identified by the Secretary of Housing and Urban Development.

The requirement applies to all identified special flood hazard areas within the United States, and no such financial assistance can legally be provided for acquisition or construction in these areas unless the community has entered the program and insurance is purchased. Accordingly, for communities listed under this part such restriction exists as of the effective date of suspension because insurance, which is required cannot be purchased.

Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities suspended in this notice no longer meet that statutory requirement for compliance with program regulations (24 CFR Part 1909 et seq.). Accordingly, the communities are suspended on the effective date in the list below.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 533(b) are impracticable and unnecessary.

Section 1914.6 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence new entries to the table. In each entry, a complete chronology of effective dates appears for each listed community.

The entry reads as follows:

§ 1914.6 List of eligible communities.

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	Community No.
*	*	*	*	*	*
California	Shasta	Anderson, city of	Nov. 21, 1973, emergency; Sept. 1, 1977, regular; Sept. 15, 1977, suspended.	June 14, 1974 Dec. 20, 1974	060359-A
Do.	San Mateo	San Carlos, city of	Jan. 28, 1972, emergency; Sept. 1, 1977, regular; Sept. 15, 1977, suspended.	June 28, 1974 Aug. 8, 1975	060327-A
Florida	Santa Rosa	Gulf Breeze, city of	July 10, 1970, emergency; Sept. 1, 1977, regular; Sept. 15, 1977, suspended.	June 28, 1974 Jan. 30, 1976	120275-A
Georgia	Cook	Adel, city of	Dec. 17, 1973, emergency; Sept. 1, 1977, regular; Sept. 15, 1977, suspended.	July 18, 1975	130060
Do.	Dougherty	Albany, city of	Mar. 3, 1972, emergency; Sept. 1, 1977, regular; Sept. 15, 1977, suspended.	May 17, 1974 Feb. 13, 1976	130075-A
Do.	DeKalb	Doraville, city of	Nov. 27, 1973, emergency; Sept. 1, 1977, regular; Sept. 15, 1977, suspended.	June 7, 1974 Jan. 23, 1976	130069-A
Do.	Colquitt	Moultrie, city of	Nov. 12, 1973, emergency; Sept. 1, 1977, regular; Sept. 15, 1977, suspended.	Nov. 22, 1974	130199
Iowa	Harrison	Missouri Valley, city of	May 26, 1972, emergency; Aug. 1, 1977, regular; Sept. 15, 1977, suspended.	Apr. 12, 1974 Dec. 26, 1975	190147-A
Louisiana	West Baton Rouge Parish.	Addis, village of	Apr. 30, 1973, emergency; Aug. 15, 1977, regular; Sept. 15, 1977, suspended.	Dec. 7, 1973 Feb. 20, 1976	220240-A
Massachusetts	Bristol	Rehoboth, town of	Feb. 11, 1972, emergency; Sept. 1, 1977, regular; Sept. 15, 1977, suspended.	Jan. 24, 1975	250062
Minnesota	Dakota	Burnsville, city of	Feb. 9, 1973, emergency; Sept. 1, 1977, regular; Sept. 15, 1977, suspended.	Mar. 29, 1974 Aug. 6, 1976	470102-A
Do.	Polk	Crookston, city of	Mar. 9, 1973, emergency; Sept. 1, 1977, regular; Sept. 15, 1977, suspended.	July 27, 1973 June 4, 1976	270364-B
New Jersey	Ocean	Lacey, township of	Nov. 12, 1974, emergency; Sept. 1, 1977, regular; Sept. 15, 1977, suspended.	Jan. 24, 1975	340376
New York	Suffolk	Amityville, village of	Oct. 20, 1972, emergency; Sept. 1, 1977, regular; Sept. 15, 1977, suspended.	Apr. 25, 1975	360788
Do.	Westchester	Larchmont, village of	Feb. 4, 1972, emergency; Sept. 1, 1977, regular; Sept. 15, 1977, suspended.	June 14, 1973 Nov. 23, 1973	360915
North Dakota	McHenry	Velva, city of	Mar. 28, 1975, emergency; Aug. 15, 1977, regular; Sept. 15, 1977, suspended.	Mar. 22, 1974 Mar. 19, 1976	380051-A
Pennsylvania	Delaware	Edgemont, township of	Mar. 31, 1974, emergency; Sept. 1, 1977, regular; Sept. 15, 1977, suspended.	Feb. 8, 1974 Aug. 6, 1976	420414-A
Do.	Northampton	Freemansburg, borough of	Mar. 30, 1973, emergency; Sept. 1, 1977, regular; Sept. 15, 1977, suspended.	Dec. 28, 1973 June 4, 1976	420721-A
Do.	Cameron	Gibson, township of	Mar. 8, 1974, emergency; Sept. 1, 1977, regular; Sept. 15, 1977, suspended.	July 20, 1974 July 23, 1976	421130-A
Do.	McKean	Liberty, township of	Aug. 24, 1973, emergency; Sept. 1, 1977, regular; Sept. 15, 1977, suspended.	July 26, 1974 June 4, 1976	420068-A
Do.	Westmoreland	Manor, borough of	Aug. 29, 1973, emergency; Sept. 1, 1977, regular; Sept. 15, 1977, suspended.	Apr. 12, 1974 Apr. 23, 1976	420886-A
Do.	Delaware	Marple, township of	Dec. 3, 1971, emergency; Sept. 1, 1977, regular; Sept. 15, 1977, suspended.	Feb. 1, 1974	420420
Do.	Berks	Muhlenberg, township of	Mar. 9, 1973, emergency; Sept. 1, 1977, regular; Sept. 15, 1977, suspended.	Feb. 1, 1974 Apr. 30, 1976	420144-A
Do.	Blair	Roaring Springs, borough of	Sept. 4, 1973, emergency; Sept. 1, 1977, regular; Sept. 15, 1977; suspended.	Feb. 1, 1974	420163-A
Do.	Lehigh	Salisbury, township of	Mar. 16, 1973, emergency; Sept. 1, 1977, regular; Sept. 15, 1977; suspended.	Dec. 28, 1973 May 21, 1976	420591-A
Texas	Bexar	Windcrest, city of	Jan. 21, 1974, emergency; Aug. 15, 1977, regular; Sept. 15, 1977, suspended.	May 17, 1974	480689
Vermont	Washington	Warren, town of	Sept. 1, 1972, emergency; Sept. 1, 1977, regular; Sept. 15, 1977, suspended.	June 28, 1974 Oct. 29, 1976	500121-A
West Virginia	Jackson	Ripley, city of	Feb. 11, 1974, emergency; Sept. 1, 1977, regular; Sept. 15, 1977, suspended.	May 17, 1974 May 28, 1976	540064-A
Wisconsin	Chippewa	Chippewa Falls, city of	Apr. 16, 1971, emergency; Sept. 1, 1977, regular; Sept. 15, 1977, suspended.	Sept. 1, 1977	550044

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

Issued: August 5, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-24062 Filed 8-22-77;8:45 am]

[Docket No. FI 3213]

PART 1914—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to list those communities where the sale of flood insurance is authorized under the National Flood Insurance Program.

Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurers Association servicing company for the State.

DATES: The date that appears in the fourth column of the table is the effective date of authorization for the sale of flood insurance.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (Pub. L. 93–234) requires the purchase of flood insurance as a condition of receiving any form of Federal or federally related financial assistance for acquisition or construction purposes in a flood plain area having special hazards within any community identified for at least one year by the Secretary of Housing and Urban Development. The requirement applies to all identified special flood hazard areas within the United States, and no such financial assistance can legally be provided for acquisition or construction except as authorized by Section 202(b) of the Act, as amended, unless the community has entered the program. Accordingly, for communities listed under this part no such restriction exists, although insurance, if required, must be purchased.

The addresses of the National Flood Insurers Association servicing companies, where flood insurance policies can be obtained, are published at § 1912.5 (24 CFR Part 1912).

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

Section 1914.6 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence new entries to the table. In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 1914.6 List of eligible communities.

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	Community No.
*	*	*	*	*	*
Idaho	Custer	Mackay, city of	July 5, 1977, emergency	May 2, 1975	160177
New York	Cayuga	Cayuga, village of	July 23, 1973, emergency; July 5, 1977, regular	Jan. 9, 1974	420417A
Pennsylvania	Delaware	Haverford, township of	June 16, 1972, emergency; July 5, 1977, regular	Dec. 28, 1973	420417A
Do	Berks	Lower Alsace, township of	Mar. 30, 1973, emergency; July 5, 1977, regular	Nov. 9, 1973	420140A
Do	Huntingdon	Mapleton, borough of	Apr. 19, 1973, emergency; July 5, 1977, regular	Sept. 7, 1973 Apr. 23, 1976	420487B
Do	Bucks	Quakertown, borough of	Feb. 2, 1973, emergency; July 5, 1977, regular	Dec. 7, 1973	420200A
Do	Chester	West Chester, borough of	Dec. 3, 1971, emergency; July 5, 1977, regular	June 14, 1974 June 4, 1976	420292B
South Carolina	Horry	Myrtle Beach, city of	Oct. 15, 1971, emergency; July 5, 1977, regular	Sept. 20, 1974	450100A
Texas	Erath	Stephenville, city of	Mar. 11, 1974, emergency; July 5, 1977, regular	June 28, 1974 Jan. 2, 1976	480220B
Alabama	Morgan	Trinity, town of	July 7, 1977, emergency	June 25, 1976	010309
Minnesota	Sherburne	Elk River, city of	Feb. 19, 1974, emergency; June 1, 1977, regular; June 1, 1977, suspended; July 1, 1977, reinstated.	Mar. 8, 1974 June 11, 1976	270436A
Nebraska	Douglas	Boys Town, village of	July 7, 1977, emergency	Aug. 6, 1976	310053
Oklahoma	Muskogee	Fort Gibson, town of	July 8, 1977, emergency	July 23, 1976	400123
Do	Wagoner	Okay, town of	do	Aug. 16, 1974 Feb. 6, 1976	400217A
Washington	Lincoln	Almira, town of	do	Dec. 6, 1974	530107

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

Issued: August 5, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-24063 Filed 8-22-77;8:45 am]

[Docket No. FI 3214]

PART 1914—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to list those communities where the sale of flood insurance is authorized under the National Flood Insurance Program.

Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurers Association servicing company for the State.

DATES: The date that appears in the fourth column of the table is the effective date of authorization for the sale of flood insurance.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (Pub. L. 93–234) requires the purchase of flood insurance as a condition of receiving any form of Federal or federally related financial assistance for acquisition or construction purposes in a flood plain area having special hazards within any community identified for at least one year by the Secretary of Housing and Urban Development. The requirement applies to all identified special flood hazard areas within the United States, and no such financial assistance can legally be provided for acquisition or construction except as authorized by Section 202(b) of the Act, as amended, unless the community has entered the program. Accordingly, for communities listed under this part no such restriction exists, although insurance, if required, must be purchased.

The addresses of the National Flood Insurers Association Servicing companies, where flood insurance policies can be obtained, are published at § 1912.7 (24 CFR Part 1912).

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

Section 1914.6 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence new entries to the table. In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 1914.6 List of eligible communities.

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	Community No.
*	*	*	*	*	*
Michigan	Menominee	Stephenson, city of	June 15, 1977, suspension withdrawn	May 17, 1974 May 28, 1976	260139-A
Minnesota	St. Louis	Cook, city of	do	Mar. 29, 1974	270420A
Do	Anoka	Coon Rapids, city of	do	June 1, 1973	270011A
Do	Stearns	St. Cloud, city of	do	Dec. 17, 1973 Sept. 26, 1975	270456A
New York	Broome	Conklin, town of	do	Apr. 5, 1974	360042A
Do	do	Dickinson, town of	do	Mar. 8, 1974 Dec. 19, 1975	360044A
Do	Oswego	Oswego, city of	do	May 10, 1974	360656A
Do	Broome	Port Dickinson, village of	do	Feb. 1, 1974 Nov. 28, 1975	360053A
Ohio	Greene	Bellbrook, city of	do	Nov. 2, 1973 Apr. 23, 1976	390194A
Oregon	Douglas	Roseburg, city of	do	June 7, 1974 Apr. 23, 1976	410067A
Wisconsin	Winnebago	Oshkosh, city of	do	Nov. 23, 1973	550511A
Do	Ozaukee	Unincorporated areas	do	May 16, 1977	550310
*	*	*	*	*	*
New Hampshire	Strafford	New Durham, town of	June 27, 1977, emergency	Jan. 7, 1975 Dec. 10, 1976	330227A
Ohio	Hamilton	Evendale, village of	do	Mar. 1, 1974 Aug. 27, 1976	390214A
Texas	Fort Bend	Fort Bend County Levee Improvement District No. 2.	do		[1] 481485
Do	Travis	Lakeway, village of	do		481303
Do	Fort Bend	Pecan Grove Municipal Utility District No. 1	do		[1] 481486
*	*	*	*	*	*
New York	Westchester	Buchanan, village of	June 28, 1977, emergency	Oct. 29, 1976	361534
Do	Jefferson	Philadelphia, town of	do	Dec. 10, 1976	360347A
North Carolina	Pender	Unincorporated areas	do	Oct. 29, 1976	370344
*	*	*	*	*	*
Nebraska	Cass	Greenwood, village of	June 30, 1977, emergency	Oct. 26, 1975	310347
*	*	*	*	*	*
Kentucky	Carroll	Ghent, city of	July 1, 1977, emergency	Jan. 16, 1974	210046-A
North Dakota	Burleigh	Wing, city of	do	June 27, 1975	380213
Oklahoma	Wagoner	Tullahassee, town of	do	July 16, 1976	400218
Utah	Sevier	Glenwood, town of	do	Oct. 22, 1976	490126

[1] New.

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

Issued: August 5, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-24064 Filed 8-22-77;8:45 am]

[Docket No. FI 3215]

PART 1914—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to list those communities where the sale of flood insurance is authorized under the National Flood Insurance Program.

Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurers Association servicing company for the State.

DATES: The date that appears in the fourth column of the table is the effective date of authorization for the sale of flood insurance.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (Pub. L. 93–234) requires the purchase of flood insurance as a condition of receiving any form of Federal or federally related financial assistance for acquisition or construction purposes in a flood plain area having special hazards within any community identified for at least one year by the Secretary of Housing and Urban Development. The requirement applies to all identified special flood hazard areas within the United States, and no financial assistance can legally be provided for acquisition or construction except as authorized by Section 202(b) of the Act, as amended, unless the community has entered the program. Accordingly, for communities listed under this part no such restriction exists, although insurance, if required, must be purchased.

The addresses of the National Flood Insurers Association servicing companies, where flood insurance policies can be obtained, are published at § 1912.5 (24 CFR Part 1912).

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

Section 1914.6 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence new entries to the table. In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 1914.6 List of eligible communities.

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	Community No.
*	*	*	*	*	*
Pennsylvania	Lebanon	Annville, township of	July 1, 1977, suspension withdrawn	Nov. 9, 1973 Sept. 3, 1976	420670A
Do	Northampton	Bangor, borough of	do	Feb. 1, 1974	420716A
Do	Lebanon	Cleona, borough of	do	Dec. 28, 1973	420571A
Do	Chester	Downingtown, borough of	do	Feb. 9, 1973	420275
Do	do	East Bradford, township of	do	Aug. 16, 1974 Oct. 24, 1975	420276A
Do	Luzerne	Edwardsville, borough of	do	Mar. 23, 1973	420604
Do	Wayne	Honesdale, borough of	do	Nov. 30, 1973	420864A
Do	Cambria	Johnstown, city of	do	Jan. 16, 1974	420231A
Do	Luzerne	Larksville, borough of	do	July 6, 1973	420614A
Do	Dauphin	Lower Swatara, township of	do	Jan. 9, 1974 June 4, 1976	420385A
Do	Luzerne	Luzerne, borough of	do	Nov. 23, 1973	420616
Do	Montour	Mahoning, township of	do	Sept. 13, 1974 Sept. 24, 1976	421234A
Do	Luzerne	Nanticoke, city of	do	Aug. 24, 1973 Dec. 14, 1973	420617B
Do	Lycoming	Old Lycoming, township of	do	Aug. 31, 1973 Aug. 13, 1976	420652A
Do	Clinton	Pine Creek, township of	do	Apr. 1, 1977	420332
Do	Luzerne	Plymouth, borough of	do	Mar. 30, 1973 Mar. 29, 1974	420622B
Do	Chester	Pocopson, township of	do	Apr. 15, 1977	420286
Do	Delaware	Rose Valley, borough of	do	May 25, 1973	420431C
Do	Dauphin	Royalton, borough of	do	June 15, 1973 Sept. 10, 1976	420394A
Do	Bradford	Sayre, borough of	do	May 17, 1974 June 4, 1976	420175A
Do	Centre	Spring, township of	do	June 21, 1974 June 25, 1976	420269A
Do	Dauphin	Steelton, borough of	do	Aug. 31, 1973 Dec. 26, 1975	420396A
Do	Monroe	Stroud, township of	do	Jan. 17, 1975	420693
Do	Schuylkill	St. Clair, borough of	do	Mar. 15, 1977	420786A
Do	Northumberland	West Chillisquaque, township of	do	May 10, 1974 June 4, 1976	421033A
*	*	*	*	*	*
California	Orange	Fullerton, city of	July 5, 1977, suspension withdrawn	June 28, 1974 July 2, 1976	060219A
Florida	Bay	Lynn Haven, city of	do	Sept. 26, 1974 Dec. 19, 1975	120009A
Do	do	Panama City Beach, city of	do	July 19, 1974 Mar. 26, 1976	120013A
Missouri	St. Louis	Eureka, city of	do	Jan. 9, 1974 Sept. 26, 1975	290349A
New York	Broome	Binghamton, city of	do	Apr. 12, 1974 Apr. 23, 1976	360038B
Do	Erie	Elma, town of	do	Sept. 21, 1973	360239
Do	Cattaraugus	Gowanda, village of	do	Feb. 8, 1973	360075
Do	Broome	Kirkwood, town of	do	Oct. 5, 1973	360048
Do	do	Vestal, town of	do	Apr. 5, 1974 Jan. 3, 1975	360057A
South Carolina	Horry	Myrtle Beach, city of	do	Sept. 20, 1974	450109
Texas	Erath	Stephenville, city of	do	June 28, 1974 Jan. 2, 1976	480220
Wisconsin	Eau Claire	Eau Claire, city of	do	Sept. 20, 1974 Sept. 24, 1976	550128A
*	*	*	*	*	*
Arizona	Santa Cruz	Patagonia, town of	July 13, 1977, emergency	Apr. 9, 1976	040092
North Dakota	Golden Valley	Beach, city of	do	July 11, 1975	380215
Texas	Bexar	Leon Valley, city of	June 25, 1973, emergency; June 1, 1977, regular; June 1, 1977, suspended; July 6, 1977, reinstated.	Oct. 12, 1973	480042-A

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

Issued: August 5, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-24065 Filed 8-22-77;8:45 am]

[Docket No. FI-3216]

PART 1914—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to list those communities where the sale of flood insurance is authorized under the National Flood Insurance Program.

Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurers Association servicing company for the State.

DATES: The date that appears in the fourth column of the table is the effective date of authorization for the sale of flood insurance.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator,
Office of Flood Insurance, 202–755–581 or Toll Free Line 800–424–8872,
Room 5270,
451 Seventh Street, SW.,
Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (Pub. L. 93–234) requires the purchase of flood insurance as a condition of receiving any form of Federal or federally related financial assistance for acquisition or construction purposes in a flood plain area having special hazards within any community identified for at least one year by the Secretary of Housing and Urban Development. The requirement applies to all identified special flood hazard areas within the United States, and no such financial assistance can legally be provided for acquisition or construction except as authorized by Section 202(b) of the Act, as amended, unless the community has entered the program. Accordingly, for communities

listed under this part no such restriction exists, although insurance, if required, must be purchased.

The addresses of the National Flood Insurers Association Servicing companies, where flood insurance policies can be obtained, are published at § 1912.7 (24 CFR Part 1912).

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

Section 1914.6 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence new entries to the table. In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 1914.6 List of eligible communities.

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	Community No.
*	*	*	*	*	*
Minnesota	Hennepin	Champlin, city of	Mar. 30, 1973, emergency; July 18, 1977, regular	Nov. 2, 1973	270153A
Mississippi	Lincoln	Brookhaven, city of	Jan. 17, 1974, emergency; July 18, 1977, regular	Jan. 24, 1975	280107A
New Jersey	Essex	South Orange, village of	Jan. 7, 1972, emergency; July 18, 1977, regular	Nov. 30, 1973	340194A
Pennsylvania	Berks	Earl, township of	Apr. 18, 1973, emergency; July 18, 1977, regular	May 31, 1974 June 4, 1976	420132B
Do.	Cameron	Grove, township of	Mar. 4, 1974, emergency; July 18, 1977, regular	Nov. 8, 1974 July 9, 1976	421128B
Do.	Westmoreland	Mount Pleasant, township of	Sept. 26, 1973, emergency; July 18, 1977, regular	Dec. 6, 1974 Oct. 22, 1976	420888B
Do.	Huntingdon	Mount Union, borough of	Nov. 10, 1972, emergency; July 18, 1977, regular	Aug. 24, 1973 Aug. 20, 1976	420489B
Texas	Tarrant	Bedford, city of	Jan. 19, 1973, emergency; July 18, 1977, regular	Dec. 28, 1973	480585A
*	*	*	*	*	*
Michigan	Calhoun	Tekonsha, township of	July 20, 1977, emergency		[1] 260709
Ohio	Allen	Unincorporated areas	do		390758
Pennsylvania	Monroe	Eldred, township of	do	Dec. 6, 1974	421887
Texas	Bell	Troy, city of	do	Nov. 12, 1976	480709
Do.	Hill	Whitney, city of	do	July 2, 1976	480865
*	*	*	*	*	*
Louisiana	Papides Parish	Boyce, town of	July 21, 1977, emergency	Apr. 5, 1974	220147A
Pennsylvania	Cambria	Reade, township of	do	Dec. 6, 1974	421445
Texas	Tarrant	Dalworthington Gardens, city of	do	Aug. 6, 1976	481013
Do.	Navarro	Franklin, city of	do		[1] 481487
Do.	Shelby	Joaquin, city of	do	Oct. 22, 1976	481005
*	*	*	*	*	*
Ohio	Erie	Sandusky, city of	July 5, 1977, suspension withdrawn	June 21, 1974 July 30, 1976	390156A
Mississippi	Pontotoc	Unincorporated areas	July 22, 1977, emergency	Nov. 29, 1974	280234

[1] New.

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

Issued: August 5, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-24066 Filed 8-22-77;8:45 am]

[Docket No. FI3217]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Suspension of Community Eligibility

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to list communities where the sale of flood insurance as authorized under the National Flood Insurance Program will be suspended because of noncompliance with the program regulations.

DATES: The last date that appears in the fourth column is the effective date of the suspension of the sale of flood insurance.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (Pub. L. 93–234) requires the purchase of flood insurance as a condition of receiving any form of Federal or federally related financial assistance for acquisition or construction purposes in a flood plain area having special hazards within any community identified by the Secretary of Housing and Urban Development.

The requirtment applies to all identified special flood hazard areas within the United States, and no such financial assistance can legally be provided for acquisition or construction in these areas unless the community has entered the program and insurance is purchased. Accordingly, for communities listed under this part such restriction exists as of the effective date of suspension because insurance, which is required, cannot be purchased.

Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities suspended in this notice no longer meet that statutory requirement for compliance with program regulations (24 CFR Part 1909 et seq.). Accordingly, the communities are suspended on the effective date in the list below.

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

Section 1914.6 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence new entries to the table. In each entry, a complete chronology of effective dates appears for each listed community.

The entry reads as follows:

§ 1914.6 List of eligible communities.

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	Community No.
•	•	•	•	•	•
Arizona	Mohave	Kingman, city of	Feb. 4, 1972, emergency; Aug. 15, 1977, regular; Aug. 15, 1977, suspended.	May 31, 1974 Oct. 15, 1976	040060A
Connecticut	Hartford	Bloomfield, town of	Feb. 18, 1972, emergency; Aug. 15, 1977, regular, Aug. 15, 1977, suspended.	Feb. 1, 1974	080122
Do.	do.	Farmington, town of	Nov. 26, 1971, emergency; Aug. 15, 1977, regular; Aug. 15, 1977, suspended.	June 28, 1974	090029
Florida	Pinellas	Bellair Bluffs, city of	May 1, 1973, emergency; Aug. 1, 1977, regular; Aug. 15, 1977, suspended.	do. June 11, 1976	120239A
Georgia	Dougherty	Albany, city of	Mar. 3, 1972, emergency; Aug. 15, 1977, regular; Aug. 15, 1977, suspended.	May 17, 1974 Feb. 13, 1976	130075A
Maine	Oxford	Mexico, township of	Nov. 17, 1972, emergency; Aug. 15, 1977, regular; Aug. 15, 1977, suspended.	Mar. 8, 1974	230065
Massachusetts	Bristol	Dartmouth, town of	Sept. 10, 1971, emergency; Aug. 15, 1977, regular; Aug. 15, 1977, suspended.	Feb. 28, 1975	250051
Do.	Berkshire	Williamstown, town of	Feb. 18, 1972, emergency; Aug. 15, 1977, regular; Aug. 15, 1977, suspended.	Feb. 8, 1974	250046
Michigan	Monroe	Monroe, city of	Dec. 29, 1972, emergency; Aug. 15, 1977, regular; Aug. 15, 1977, suspended.	May 3, 1974	260153A
Minnesota	Brown	Unincorporated areas	Jan. 28, 1972, emergency; Aug. 15, 1977, regular; Aug. 15, 1977, suspended.	Aug. 15, 1977	270034
•	•	•	•	•	•
New Jersey	Essex	Bloomfield, town of	May 12, 1972, emergency; Aug. 15, 1977, regular; Aug. 15, 1977, suspended.	June 15, 1973	340178
Do.	Bergen	Maywood, borough of	May 26, 1972, emergency; Aug. 15, 1977; regular; Aug. 15, 1977; suspended.	Aug. 15, 1977	340050
New York	Suffolk	Babylon, village of	Jan. 19, 1973, emergency; Aug. 1, 1977, regular; Aug. 15, 1977, suspended.	Dec. 7, 1973 June 11, 1976	360791A
Ohio	Lucas	Sylvania, city of	Feb. 18, 1972, emergency; July 5, 1977, regular; Aug. 15, 1977, suspended.	Dec. 17, 1973 Oct. 24, 1975	390364A
Pennsylvania	Berks	Douglass, township of	May 15, 1973, emergency; Aug. 15, 1977, regular; Aug. 15, 1977, suspended.	Nov. 9, 1973 Oct. 1, 1976	421911
Do.	do.	Earl, township of	Apr. 18, 1973, emergency; July 18, 1977, regular; Aug. 15, 1977, suspended.	May 31, 1974 June 4, 1976	420132A
Do.	Northampton	Hanover, township of	Jan. 19, 1973, emergency; Aug. 1, 1977, regular; Aug. 15, 1977, suspended.	Nov. 23, 1973	420722
Do.	Carbon	Jim Thorpe, borough of	Aug. 7, 1973, emergency; Aug. 15, 1977, regular; Aug. 15, 1977, suspended.	Apr. 5, 1974	420249
Do.	Lycoming	Montoursville, borough of	Feb. 9, 1973, emergency; Aug. 15, 1977, regular; Aug. 15, 1977, suspended.	June 15, 1973	420648
Do.	Huntingdon	Mount Union, borough of	Nov. 10, 1972, emergency; July 18, 1977, regular; Aug. 15, 1977, suspended.	Aug. 24, 1973 Aug. 20, 1976	420489A
Do.	Schuylkill	New Philadelphia, borough of	May 25, 1973, emergency; Aug. 15, 1977, regular; Aug. 15, 1977, suspended.	June 28, 1974 Apr. 23, 1976	420779
Do.	Delaware	Parkside, borough of	Dec. 10, 1971, emergency; July 5, 1977, regular; Aug. 15, 1977, suspended.	Mar. 30, 1973	420426A
Do.	Berks	Union, township of	July 9, 1973, emergency; Aug. 15, 1977, regular; Aug. 15, 1977, suspended.	Jan. 16, 1974	420155
Wisconsin	Waupaca	Unincorporated areas	Dec. 17, 1971, emergency; Aug. 15, 1977, regular; Aug. 15, 1977, suspended.	Aug. 15, 1977	550492

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

Issued: August 3, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-24067 Filed 8-22-77;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7501]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Minimum Vesting Standards and Certain Plans Covering Subsidiary Corporation Employees

AGENCY: Internal Revenue Service, Terasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to vesting standards and certain plans covering subsidiary corporation employees. Changes in the applicable tax law were made by the Revenue Act of 1964, the Tax Reform Act of 1969 and the Employee Retirement Income Security Act of 1974. These regulations provide necessary guidance to the public for compliance with the law and affect employees covered by qualified retirement plans.

DATE: The regulations have varying effective dates. Most of the effective date rules are dependent upon the time when a retirement plan came into existence. For plans in existence on January 1, 1974, the regulations under the Employee Retirement Income Security Act of 1974 are effective for plan years beginning after December 31, 1975. For plans not in existence on January 1, 1974, the regulations are effective for plan years beginning after September 2, 1974.

FOR FURTHER INFORMATION CONTACT:

Richard J. Wickersham 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) 202-566-3289).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On March 6, 1975, the FEDERAL REGISTER published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 406 and 407 of the Internal Revenue Code of 1954, 40 FR 10476. The amendments were proposed to conform the regulations to section 220 of the Revenue Act of 1964 (78 Stat. 58) and section 515(c) (2) and (3) of the Tax Reform Act of 1969 (83 Stat. 645, 646). A public hearing was neither requested nor held on these regulations.

On November 5, 1975, the FEDERAL REGISTER published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 411 of the Internal Revenue Code of 1954, 40 FR 51445. The amendments were proposed to conform the regulations to section 1012(a) of the Employee Retirement Income Security Act of 1974 (88 Stat. 901) (hereinafter referred to as the "Act").

STATUTORY PROVISIONS

Sections 406 and 407 of the Code allow qualified plans of domestic corporations to cover citizens of the United States who are employees of their foreign subsidiaries or their domestic subsidiaries engaged in business outside the United States if certain requirements are satisfied.

Sections 401(a)(19) and 411 of the Code prescribe minimum vesting stand-

ards which are qualification requirements for pension, stock bonus, or profit-sharing plans (and their related trusts) described in section 401(a), 403(a), 405 of the Code. These new vesting standards impose various requirements on plans. Among the principal requirements are the manner in which plans must provide vesting for employees in their plan benefits and how these plan benefits must be determined for employees.

Some regulations prescribed by the Secretary of Labor are applicable for purposes of applying the vesting rules of section 411.

EFFECTIVE DATES

Section 1.411(a)–2, relating to the effective dates of section 411, has been clarified by the addition of a new paragraph (f) to provide that the new requirements are not applicable to certain separated employees.

DIFFERENT SCHEDULES

Section 1.411(a)–3, relating to vesting in employer-derived benefits, is revised to make it clear that plans can satisfy, under certain conditions, different statutory vesting schedules for different employee groups.

FORFEITURES

Section 1.411(a)–4 provides rules relating to permissible forfeitures, suspensions, etc. of vested rights.

The rules have been changed to make it clear that a multiemployer plan does not violate the vesting rules by disregarding accrued benefits to the extent that section 414(f) of the Code permits a forfeiture.

In the case of a plan integrated with Social Security, plan benefits may decrease prior to an employee's retirement or separation because of increasing Social Security benefits. The rules have been changed to make it clear that this is not a prohibited forfeiture.

Paragraph (b)(1) provides a general rule for an exception to the nonforfeitability requirements by reason of the death of an employee. This rule has been revised to provide that benefits derived from employee contributions are not treated as being forfeitable solely because payments received under an annuity option are less than such benefits.

SERVICE FOR VESTING

Section 1.411(a)–5, relating to service which counts toward the vesting percentage, has been expanded to clarify what service can be disregarded under break in service rules in effect prior to the effective date of the Act.

DEFINITIONS AND SPECIAL RULES

Section 1.411(a)–7, relating to definitions and special rules, has been modified in several respects.

The definition of "accrued benefit" in paragraph (a)(1) has been modified to provide that the term does not include ancillary benefits not directly related to retirement benefits. Ancillary benefits would include, for example, payment of medical expenses (or insurance premiums for such expenses) and life insurance benefits payable as a lump sum.

The definition of "normal retirement benefit" in paragraph (c) has been revised to make it clear that a plan's computation of its early retirement benefit can take into account the effect of integration with social security or similar laws occurring subsequent to early retirement age.

Paragraph (d), relating to certain distributions and cash-out rules, has been modified to consolidate in one paragraph the rules on cash-outs from a defined contribution plan. In the proposed regulations these rules were scattered among several sections of the regulations.

CHANGES IN VESTING SCHEDULES

Section 1.411(a)–8, relating to changes in vesting schedules, has been revised to make it clear that a plan does not have to provide for an election of a former vesting schedule where an employee cannot be disadvantaged by a plan amendment. Guidance has also been given as to what is meant by "a change in the vesting schedule."

ACCRUED BENEFITS

Section 1.411(b)–1, relating to accrued benefit requirements, has been modified to make it clear that a plan can compute accrued benefits under more than one formula provided that the aggregate benefits satisfy one of three statutory methods. Furthermore, the final regulations provide that a plan is not precluded from satisfying these requirements by separately testing accrued benefits for different employee classifications.

Paragraph (e) (pertaining to separate accounting) has been revised to provide clarification as to the accounting rules which are required of defined contribution plans.

Paragraph (f), relating to the determination of a year of participation, has been revised to provide that these rules are inapplicable to a defined contribution plan.

ALLOCATIONS

Section 1.411(c)–1, relating to allocating benefits between employer and employee contributions, has been modified to provide that actuarial adjustments, to benefits are not required because of suspension of benefits described in section 203(a)(3)(B) of the Act and section 411(a)(3)(B) of the Code.

TERMINATIONS

Section 1.411(d)–2, relating to required vesting on plan terminations, etc., has been revised to clarify the interrelationship between certain Code requirements and certain title IV provisions of the Act.

Paragraph (e) has been clarified to provide that the rule pertaining to vesting upon early plan termination under Code section 411(d)(2) and (3), present under pre-Act law, takes precedence over other rules, including those in section 4044 of the Act. This provision indicates that the Interal Revenue Service can require forfeitures to preclude prohibited discrimination when there is an early plan termination.

SPECIAL RULES

Section 1.411(d)–3, relating to other special rules, has been revised. First, the class year plan rules of paragraph (a) have been clarified to provide that certain distribution rules, in § 1.411(a)–7(d) of the final regulations, are applicable to these plans and are to be applied in a special manner. Second, the prohibition against accrued benefit decreases rules of paragraph (b) have been revised to identify more specifically the types of amendments which are proscribed.

WITHDRAWAL AND DELETION OF SECTIONS MERELY REPRODUCING STATUTORY MATERIAL

As part of the effort to reduce the bulk of the Code of Federal Regulations, those sections of the proposed regulations which merely reproduced various provisions of the Internal Revenue Code are withdrawn.

For the same reason several such sections are deleted from the Code of Federal Regulations by this document.

DRAFTING INFORMATION

The principal author of these regulations was Richard J. Wickersham of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

Accordingly—1. The following sections of the proposed regulations are withdrawn:

(a) Section 1.406, as set forth in the appendix to the March 6, 1975, notice of proposed rulemaking and as modified in paragraph 5 of the appendix to the November 5, 1975, notice of proposed rulemaking.

(b) Section 1.407, as set forth in the appendix to the March 6, 1975, notice of proposed rulemaking and as modified in paragraph 7 of the appendix to the November 5, 1975, notice of proposed rulemaking.

(c) Sections 1.411(a), 1.411(b), 1.411(c), 1.411(d), and 1.411(e), all as set forth in paragraph 9 of the appendix to the November 5, 1975, notice of proposed rulemaking.

(d) Section 1.413, as set forth in paragraph 10 of the appendix to the November 5, 1975, notice of proposed rulemaking.

2. The amendments to 26 CFR Part 1 as proposed are hereby adopted, subject to the changes indicated below.

PARAGRAPH 1. Sections 1.401, 1.401(a) and 1.401(b) are deleted.

PAR. 2. Section 1.401(a)–19 as set forth in paragraph 2 of the appendix to the November 5, 1976, notice of proposed

rule making is amended by adding a new sentence at the end of paragraph (b)(2), by revising paragraph (b)(3) and by adding a paragraph (c) to read as set forth below.

PAR. 3. Sections 1.404(a), 1.404(b), 1.404(c), 1.404(d) and 1.404(e) are deleted.

PAR. 4. Section 1.404(a)-8 as set forth in paragraph 4 of the appendix to the November 5, 1975, notice of proposed rule making is changed by revising subparagraphs (2) and (3)(ii)(B) of paragraph (a) to read as set forth below.

PAR. 5. Section 1.406-1 as set forth in the appendix to the March 6, 1975, notice of proposed rule making is changed by revising paragraphs (b)(2), (c)(1) and (2)(i), (d) and (e)(2) to read as set forth below.

PAR. 6. Section 1.407-1, as set forth in the appendix to the March 6, 1975, notice of proposed rule making is changed by revising paragraphs (b)(2), (c)(1) and (2)(i), (d) and (e)(2) to read as set forth below.

PAR. 7. Section 1.411(a)-1, as set forth in paragraph 9 of the appendix to the November 5, 1975, notice of proposed rule making is changed by adding a new paragraph (d) at the end thereof to read as set forth below.

PAR. 8. Section 1.411(a)-2, as set forth in paragraph 9 of the appendix to the November 5, 1975, notice of proposed rule making, is changed by adding a new paragraph (f) at the end thereof to read as set forth below.

PAR. 9. Section 1.411(a)-3, as set forth in paragraph 9 of the appendix to the November 5, 1975, notice of proposed rule making, is changed by revising subparagraph (2) of paragraph (a) to read as set forth below.

PAR. 10. Section 1.411(a)-4, as set forth in paragraph 9 of the appendix to the November 5, 1975, notice of proposed rule making, is changed by revising paragraph (a), by revising subparagraphs (1) and (4) of paragraph (b), by deleting subparagraphs (5) and (6) of paragraph (b), and by adding new paragraphs (b)(5) and (6). These revised and added provisions are set forth below.

PAR. 11. Section 1.411(a)-5, as set forth in paragraph 9 of the appendix to the November 5, 1975, notice of proposed rule making is amended by revising paragraph (b)(1)(iii) and (2), the second sentence in subdivision (ii) and subdivisions (iii) and (iv) (B) and (C) of paragraph (b)(3), paragraph (b)(6), and paragraph (c) to read as set forth below.

PAR. 12. Section 1.411(a)-6, as set forth in paragraph 9 of the appendix to the November 5, 1975, notice of proposed rulemaking is changed by striking out "—(A) General rule" and deleting subdivisions (B) and (C) in paragraph (c)(1)(ii), by adding a new sentence following the first sentence in paragraph (c)(1)(iii), and by adding a new sentence following the first sentence in paragraph (c)(2). The added provisions are set forth below.

PAR. 13. Section 1.411(a)-7, as set forth in paragraph 9 of the appendix to the November 5, 1975, notice of proposed rulemaking, is changed by adding two new sentences immediately after subdivision (ii) of paragraph (a)(1), by adding two new sentences immediately after subdivision (ii)(B) of paragraph (b)(1), by adding a new subdivision (iii) to paragraph (c)(2), by revising subparagraphs (3), (4) and (5) of paragraph (c), and by revising paragraph (d). These amended and added provisions are set forth below.

PAR. 14. Section 1.411(a)-8, as set forth in paragraph 9 of the appendix to the November 5, 1975, notice of proposed rulemaking, is changed by revising so much of paragraph (a) as follows subparagraph (2), by revising subparagraphs (1) and (3) and adding a new subparagraph (6) to paragraph (b), and by adding a new paragraph (c). These revised and added provisions are set forth below.

PAR. 15. Section 1.411(a)-9, as set forth in paragraph 9 of the appendix to the November 5, 1975, notice of proposed rulemaking, is changed by adding a second sentence to paragraph (b) to read as set forth below.

PAR. 16. Section 1.411(b)-1, as set forth in paragraph 9 of the appendix to the November 5, 1975, notice of proposed rule making is changed by revising paragraphs (a)(1), (d)(3), (e) (1) and (2) and (f)(1) to read as set forth below.

PAR. 17. Section 1.411(c)-1, as set forth in paragraph 9 of the appendix to the November 5, 1975, notice of proposed rule making, is changed by revising the last sentence of subparagraph (2) of paragraph (b), by adding a new sentence at the end of subparagraph (4) of paragraph (c), by revising so much of paragraph (d) as precedes subparagraph (1), by revising paragraph (e)(2), and by adding a new paragraph (f). These revised and added provisions read as set forth below.

PAR. 18. Section 1.411(d)-2, as set forth in paragraph 9 of the appendix to the November 5, 1975, notice of proposed rule making, is changed by adding a new sentence at the end of paragraph (a)(2)(i), by revising paragraphs (a)(2)(ii) and (b), by adding a new sentence at the end of paragraph (c)(2), and by revising paragraph (e). These revised and added provisions read as set forth below:

PAR. 19. Section 1.411(d)-3, as set forth in paragraph 9 of the appendix to the November 5, 1975, notice of proposed rule making, is revised as set forth below:

PAR. 20. Section 1.413-1, as set forth in paragraph 10 of the appendix to the November 5, 1975, of the notice of proposed rule making, is revised by striking out "§ 210 of" in the last sentence of paragraph (e), as set forth below.

PAR. 21. Section 1.413-2, as set forth in paragraph 10 of the appendix to the November 5, 1975, notice of proposed rule making, is revised by striking out "§ 210 of" in the last sentence of paragraph (d), as set forth below.

PAR. 22. Section 1.801 is deleted.

PAR. 23. Section 1.805 is deleted.

(Secs. 411, 7805, Internal Revenue Code of 1954 (88 Stat. 901, 68A Stat. 917; 26 U.S.C. 411 and 7805))

JEROME KURTZ,
Commissioner of Internal Revenue.

Approved:

LAURENCE N. WOODWORTH,
Assistant Secretary of the Treasury.

§§ 1.401(a) and 1.401(b) [Deleted]

1. Sections 1.401, 1.401(a) and 1.401(b) are deleted.

2. The following new section is added immediately before § 1.401-1:

§ 1.401-0 Scope and definitions.

(a) *In general.* Sections 1.401 through 1.401-14 (inclusive) reflect the provisions of section 401 prior to amendment by the Employee Retirement Income Security Act of 1974. The sections following § 1.401-14 and preceding § 1.402(a) (hereafter referred to in this section as the "Post-ERISA Regulations") reflect the provisions of section 401 after amendment by such Act.

(b) *Definitions.* For purposes of the Post-ERISA regulations—

(1) *Qualified plan.* The term "qualified plan" means a plan which satisfies the requirements of section 401(a).

(2) *Qualified trust.* The term "qualified trust" means a trust which satisfies the requirements of section 401(a).

3. The following new section is added immediately after § 1.401(a)-19:

§ 1.401(a)-19 Nonforfeitability in case of certain withdrawals.

(a) *Application of section.* Section 401(a)(19) and this section apply to a plan to which section 411(a) applies. (See section 411(e) and § 1.411(a)-2 for applicability of section 411).

(b) *Prohibited forfeitures*—(1) *General rule.* A plan to which this section applies is not a qualified plan (and a trust forming a part of such plan is not a qualified trust) if, under such plan, any part of a participant's accrued benefit derived from employer contributions is forfeitable solely because a benefit derived from the participant's contributions under the plan is voluntarily withdrawn by him after he has become a 50 percent vested participant.

(2) *50 percent vested participant.* For purposes of subparagraph (1) of this paragraph, a participant is a 50 percent vested participant when he has a nonforfeitable right (within the meaning of section 411 and the regulations thereunder) to at least 50 percent of his accrued benefit derived from employer contributions. Whether or not a participant is 50 percent vested shall be determined by the ratio of the participant's total nonforfeitable employer-derived accrued benefit under the plan to his total employer-derived accrued benefit under the plan.

(3) *Certain forfeitures.* Paragraph (b)(1) of this section does not apply in the case of a forfeiture permitted by section 411(a)(3)(D)(iii) and § 1.411(a)-7(d)(3) (relating to forfeitures of certain

benefits accrued before September 2, 1974).

(c) *Supersession.* Section 11.401(a)–(19) of the Temporary Income Tax Regulations under the Employee Retirement Income Security Act of 1974 is superseded by this section.

§§ 1.404(a), 1.404(b), 1.404(c), 1.404(d) and 1.404(e) [Deleted]

4. Sections 1.404(a), 1.404(b), 1.404(c), 1.404(d) and 1.404(e) are deleted.

5. Section 1.404(a)–8 is amended to read as follows:

§ 1.404(a)–8 Contributions of employer under an employees' annuity plan which meets the requirements of sec- which meets the requirements of section 401(a); application of section 404(a)(2).

(a) If contributions are paid by an employer under an annuity plan for employees and the general conditions and limitations applicable to deductions for such contributions are satisfied (see § 1.404(a)–1), the contributions are deductible under section 404(a)(2) if the further conditions provided therein are satisfied. For the meaning of "annuity plan" as used here, see § 1.404(a)–3. In order that contributions by the employer may be deducted under section 404(a)(2), all of the following conditions must be satisfied:

(1) The contributions must be paid toward the purchase of retirement annuities (or for disability, severance, insurance, survivorship benefits incidental and directly related to such annuities, or medical benefits described in section 401(h) as defined in paragraph (a) of § 1.404(h)–1) under an annuity plan for the exclusive benefit of the employer's employees or their beneficiaries.

(2) The contributions must be paid in a taxable year of the employer which ends with or within a year of the plan for which it meets the applicable requirements set forth in section 401(a)(3), (4), (5), (6), (7), (8), (11), (12), (13), (14), (15), (16), and (19). In the case of a plan which covers a self-employed individual, the contributions must be paid in a taxable year of the employer which ends with or within a year of the plan for which it also meets the requirements of section 401(a)(9), (10), (17), and (18) and of section 401(d) (other than paragraph (1)). In the case of a plan which covers a shareholder-employee within the meaning of section 1379(d), the contributions must be paid in a taxable year of the employer which ends with or within a year of the plan for which it also meets the requirements of section 401(a)(17) and (18). See section 401(a) and the regulations thereunder for the requirements and the applicable effective dates of the respective paragraphs set forth in section 401(a). Any contributions of an employer which are paid in a taxable year of the employer ending with or within a year of the plan for which it meets the applicable requirements of section 401 may be carried over and deducted in a succeeding taxable year of the employer in accordance with section 404(a)(1)(D), whether or not such succeeding taxable year ends with or within a taxable year of the plan for which it meets the requirements set out in section 401 (a) and (d). See section 401(b) and the regulations thereunder for special rules allowing certain plan amendments to be given retroactive effect. See section 404(a)(6) for a special rule for determining the time when a contribution is deemed to have been made.

(3) There must be a definite written arrangement between the employer and the insurer that refunds of premiums, if any, shall be applied within the taxable year of the employer in which received or within the next succeeding taxable year toward the purchase of retirement annuities (or for disability, severance, insurance, survivorship benefits incidental and directly related to such annuities, or medical benefits described in section 401(h) as defined in paragraph (a) of § 1.401(h)–1) under the plan. For the purpose of this condition, "refunds of premiums" means payments by the insurer on account of credits such as dividends, experience rating credits, or surrender or cancellation credits. The arrangement may be in the form of contract provisions or written directions of the employer or partly in one form and partly in another. This condition will be considered satisfied where—

(i) All credits are applied regularly, as they are determined, toward the premiums next due under the contracts before any further employer contributions are so applied, and

(ii) Under the arrangement,

(A) No refund of premiums may be made during continuance of the plan unless applied as aforesaid, and

(B) If refunds of premiums may be made after discontinuance or termination, whichever is applicable, of the plan on account of surrenders or cancellations before all retirement annuities provided under the plan with respect to service before its discontinuance or termination have been purchased, such refunds will be applied in the taxable year of the employer in which received, or in the next succeeding taxable year, to purchase retirement annuities for employees by a procedure which does not contravene the conditions of section 401(a)(4). If the plan also includes medical benefits described in section 401(h) as defined in paragraph (a) of § 1.401(h)–1, any refund of premiums attributable to such benefits must, in accordance with these rules, be applied toward the purchase of medical benefits described in section 401(h).

(4) Any amounts described in subparagraph (3) of this paragraph which are attributable to contributions on behalf of a self-employed individual must be applied toward the purchase of retirement benefits. Amounts which are so applied are not contributions and thus are not taken into consideration in determining—

(i) The amount deductible with respect to contributions on his behalf, nor

(ii) In the case of an owner-employee, the maximum amount of contributions that may be made on his behalf.

(b) Where the above conditions are satisfied, the amounts deductible under section 404(a)(2) are governed by the limitations provided in section 404(a)(1). See §§ 1.404(a)–3 to 1.404(a)–7, inclusive.

6. Section 1.406–1 is added to read as follows:

§ 1.406–1 Treatment of certain employees of foreign subsidiaries as employees of the domestic corporation.

(a) *Scope*—(1) *General rule.* For purposes of applying the rules in part 1 of subchapter D of chapter 1 of subtitle A of the Code and the regulations thereunder with respect to a pension, profit-sharing, or stock bonus plan described in section 401(a), an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a), of a domestic corporation, an individual who is a citizen of the United States and who is an employee of a foreign subsidiary (as defined in section 3121(l)(8) and the regulations thereunder) of such domestic corporation shall be treated as an employee of such domestic corporation if the requirements of paragraph (b) of this section are satisfied.

(2) *Cross references.* For rules relating to nondiscrimination requirements and the determination of compensation, see paragraph (c) of this section. For rules under which termination of the status of an individual as an employee of the domestic corporation in certain instances will not be considered as separation from service for certain purposes, see paragraph (d) of this section. For rules regarding deductibility of contributions, see paragraph (e) of this section. For rules regarding treatment of such individual as an employee of the domestic corporation under related provisions, see paragraph (f) of this section.

(b) *Application of this section*—(1) *Requirements.* This section shall apply and the employee of the foreign subsidiary shall be treated as an employee of domestic corporation for the purposes set forth in paragraph (a)(1) of this section only if each of the following requirements is satisfied:

(i) The domestic corporation must have entered into an agreement under section 3121(l) to provide social security coverage which applies to the foreign subsidiary of which such individual is an employee and which has not been terminated under section 3121(l)(3) or (4).

(ii) The plan, referred to in paragraph (a)(1) of this section, must expressly provide for contributions or benefits for individuals who are citizens of the United States and who are employees of one or more of its foreign subsidiaries to which an agreement entered into by such domestic corporation under section 3121(l) applies. The plan must apply to all of the foreign subsidiaries to which such agreement applies.

(iii) Contributions under a funded plan of deferred compensation (whether or not a plan described in section 401(a), 403(a), or 405(a)) must not be provided by any other person with respect to the remuneration paid to such individual by the foreign subsidiary.

(2) *Supplementary rules.* Subparagraph (1)(ii) of this paragraph does not modify the requirements for qualification of a plan described in section 401(a), 403(a), or 405(a) and the regulations thereunder. It is not necessary that the plan provide benefits or contributions for all United States citizens who are employees of such foreign subsidiaries. If the plan is amended to cover individuals who are employees by reason of paragraph (a)(1) of this section, the plan will not qualify unless it meets the coverage requirements of section 410(b)(1) (section 401(a)(3), as in effect on September 1, 1974, for plan years to which section 410 does not apply; see § 1.410(a)-2 for the effective dates of section 410) and the nondiscrimination requirements of section 401(a)(4). In addition, the administrative rules contained in § 1.401(a)-3(e) (relating to the determination of the contributions or benefits provided by the employer under the Social Security Act) will also apply for purposes of determining whether the plan meets the requirements of section 401. For purposes of subparagraph (1)(iii) of this paragraph, contributions will not be considered as provided under a funded plan merely because the foreign subsidiary is required under the laws of the foreign jurisdiction to pay social insurance taxes or to make similar payments with respect to the wages paid to the employee.

(c) *Special rules*—(1) *Nondiscrimination requirements.* For purposes of applying sections 401(a)(4) and 410(b)(1)(B) (section 401(a)(3)(B), as in effect on September 1, 1974, for plan years to which section 410 does not apply) and the regulations thereunder (relating to nondiscrimination concerning benefits and contributions and coverage of employees) with respect to an employee of the foreign subsidiary who is treated as an employee of the domestic corporation under paragraph (a)(1) of this section—

(i) If the employee is an officer, shareholder, or (with respect to plan years to which section 410 does not apply) person whose principal duties consist in supervising the work of other employees of the foreign subsidiary of the domestic corporation, he shall be treated as having such capacity with respect to the domestic corporation; and

(ii) The determination as to whether the employee is a highly compensated employee shall be made by comparing his total compensation (determined under subparagraph (2) of this paragraph) with the compensation of all the employees of the domestic corporation (including individuals treated as employees of the domestic corporation pursuant to section 406 and this section).

(2) *Determination of compensation.* For purposes of applying section 401(a)(5) and the regulations thereunder, relating to classifications that will not be considered discriminatory, with respect to an employee of the foreign subsidiary who is treated as an employee of the domestic corporation under paragraph (a)(1) of this section—

(i) The total compensation of the employee shall be the remuneration of the employee from the foreign subsidiary (including any allowances that are paid to the employee because of his employment in a foreign country) which would constitute his total compensation if his services had been performed for the domestic corporation;

(ii) The basic or regular rate of compensation of the employee shall be determined for the employee in the same manner as it is determined under section 401 for other employees of the domestic corporation; and

(iii) The amount paid by the domestic corporation which is equivalent to the tax imposed with respect to the employee by section 3101 (relating to the tax on employees under the Federal Insurance Contributions Act) shall be treated as having been paid by the employee and shall be included in his compensation.

(d) *Termination of status as deemed employee not to be treated as separation from service for purposes of capital gain provisions and limitation of tax.* For purposes of applying the rules, relating to the treatment of certain distributions which are made after an employee's separation from service, set forth in section 72(n) as in effect on September 1, 1974 (with respect to taxable years ending after December 31, 1969, and to which section 402(e) does not apply), and in sections 402(a)(2) and (e) and 403(a)(2) (with respect to distributions or payments made after December 31, 1973, and in taxable years beginning after December 31, 1973) with respect to an employee of a foreign subsidiary who is treated as an employee of a domestic corporation under paragraph (a)(1) of this section, the employee shall not be considered as separated from the service of the domestic corporation solely by reason of the occurrence of any one or more of the following events:

(1) The termination, under the provisions of section 3121(l), of the agreement entered into by the domestic corporation under that section which covers the employment of the employee;

(2) The employee's becoming an employee of another foreign subsidiary of the domestic corporation with respect to which such agreement does not apply,

(3) The employee's ceasing to be an employee of the foreign subsidiary by reason of which employment he was treated as an employee of such domestic corporation, if he becomes an employee of another corporation controlled by such domestic corporation; or

(4) The termination of the provision of the plan described in paragraph (b)(1)(ii) of this section, for coverage of United States citizens who are employees of foreign subsidiaries covered by an agreement under section 3121(l).

For purposes of subparagraph (3) of this paragraph, a corporation is considered to be controlled by a domestic corporation if such domestic corporation owns directly or indirectly more than 50 percent of the voting stock of the corporation.

(e) *Deductibility of contributions*—(1) *In general.* For purposes of applying sections 404 and 405(c) with respect to the deduction for contributions made to or under a pension, profit-sharing, or stock bonus plan described in section 401(a), an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a), by a domestic corporation, or by another corporation which is entitled to deduct its contributions under section 404(a)(3)(B), on behalf of an employee of a foreign subsidiary treated as an employee of the domestic corporation under paragraph (a)(1) of this section—

(i) Except as provided in subdivision (ii) of this subparagraph, no deduction shall be allowed to such domestic corporation or to any other corporation which would otherwise be entitled to deduct its contributions on behalf of such employee under one of such sections;

(ii) There shall be allowed as a deduction from the gross income of the foreign subsidiary which is effectively connected with the conduct of a trade or business within the United States (within the meaning of section 882 and the regulations thereunder) an amount which is allocable and apportionable to such gross income under the rules of § 1.861-8 and which in no event may exceed the amount which (but for subdivision (i) of this subparagraph) would be deductible under section 404 or section 405(c) by the domestic corporation if the individual were an employee of the domestic corporation and if his compensation were paid by the domestic corporation; and

(iii) Any reference to compensation shall be considered to be a reference to the total compensation of such individual (determined by applying paragraph (c)(2) of this section).

(2) *Year of deduction.* Any amount deductible by the foreign subsidiary under section 406(d) and this paragraph shall be deductible for its taxable year with or within which ends the taxable year of the domestic corporation for which the contribution was made.

(3) *Special rules.* Whether contributions to a plan on behalf of an employee of the foreign subsidiary who is treated as an employee of the domestic corporation under paragraph (a)(1) of this section, or whether forfeitures with regard to such employee, will require an inclusion in the income of the domestic corporation or an adjustment in the basis of its stock in the foreign subsidiary, shall be determined in accordance with the rules of general application of subtitle A of chapter 1 of the Code (relating to income taxes). For example, an unreimbursed contribution by the domestic corporation to a plan which meets the requirements of section 401(a) will be treated, to the extent each employee's rights to the contribution are nonforfeitable, as a contribution of capital to the foreign subsidiary to the extent that such contributions are made on behalf of the employees of such subsidiary.

(f) *Treatment as an employee of the domestic corporation under related pro-*

visions. An individual who is treated as an employee of a domestic corporation under paragraph (a)(1) of this section shall also be treated as an employee of such domestic corporation, with respect to the plan having the provision described in paragraph (b)(1)(ii) of this section, for purposes of applying section 72(d) (relating to employees' annuities), section 72(f) (relating to special rules for computing employees' contributions), section 101(b) (relating to employees' death benefits), section 2039 (relating to annuities), and section 2517 (relating to certain annuities under qualified plans) and the regulations thereunder.

(g) *Nonexempt trust.* If the plan of the domestic corporation is a qualified plan described under section 401(a), the fact that a trust which forms a part of such plan is not exempt from tax under section 501(a) shall not affect the treatment of an employee of a foreign subsidiary as an employee of a domestic corporation under section 406(a) and paragraph (a)(1) of this section.

7. Section 1.407–1 is added to read as follows:

§ 1.407–1 Treatment of certain employees of domestic subsidiaries engaged in business outside the United States as employees of the domestic parent corporation.

(a) *Scope*—(1) *General rule.* For purposes of applying the rules in part 1 of subchapter D of chapter 1 of subtitle A of the Code and the regulations thereunder with respect to a pension, profit-sharing, or stock bonus plan described in section 401(a), an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a), of a domestic parent corporation (as defined in paragraph (b)(3)(ii) of this section), an individual who is a citizen of the United States and who is an employee of a domestic subsidiary (as defined in paragraph (b)(3)(i) of this section) of such domestic parent corporation shall be treated as an employee of such domestic parent corporation if the requirements of paragraph (b) of this section are satisfied.

(2) *Cross-references.* For rules relating to nondiscrimination requirements and the determination of compensation, see paragraph (c) of this section. For rules under which termination of the status of an individual as an employee of the domestic parent corporation in certain instances will not be considered as separation from service for certain purposes, see paragraph (d) of this section. For rules regarding deductibility of contributions, see paragraph (e) of this section. For rules regarding treatment of such individual as an employee of the domestic parent corporation under related provisions, see paragraph (f) of this section.

(b) *Application of this section*—(1) *Requirements.* This section shall apply and the employee of the domestic subsidiary shall be treated as an employee of the domestic parent corporation for the purposes set forth in paragraph (a)(1) of this section only if each of the following requirements is satisfied:

(i) The plan, referred to in paragraph (a)(1) of this section, must expressly provide for contributions or benefits for individuals who are citizens of the United States and who are employees of one or more of the domestic subsidiaries of the domestic parent corporation. The plan must apply to every domestic subsidiary.

(ii) Contributions under a funded plan of deferred compensation (whether or not a plan described in section 401(a), 403(a), or 405(a)) must not be provided by any other person with respect to the remuneration paid to such individual by the domestic subsidiary.

(2) *Supplementary rules.* Subparagraph (1)(i) of this paragraph does not modify the requirements for qualification of a plan described in section 401(a), 403(a), or 405(a) and the regulations thereunder. It is not necessary that the plan provide benefits or contributions for all United States citizens who are employees of such domestic subsidiaries. If the plan is amended to cover individuals who are employees by reason of paragraph (a)(1) of this section, the plan will not qualify unless it meets the coverage requirements of section 410(b)(1) (section 401(a)(3), as in effect on September 1, 1974, for plan years to which section 410 does not apply; see § 1.410(a)–2 for the effective dates of section 410) and the nondiscrimination requirements of section 410(a)(4). The administrative rules contained in § 1.401(a)–3(e) (relating to the determination of the contributions or benefits provided by the employer under the Social Security Act) will also apply for purposes of determining whether the plan meets the requirements of section 401. For purposes of subparagraph (1)(ii) of this paragraph, contributions will not be considered as provided under a funded plan merely because the domestic subsidiary employer pays the tax imposed by section 3111 (relating to tax on employers under the Federal Insurance Contributions Act) with respect to such employee or is required under the laws of a foreign jurisdiction to pay social insurance taxes or to make similar payments with respect to the wages paid to the employee.

(3) *Definitions*—(i) *Domestic subsidiary.* For purposes of this section, a corporation shall be treated as a domestic subsidiary for any taxable year only if each of the following requirements is satisfied:

(A) It is a domestic corporation 80 percent or more of the outstanding voting stock of which is owned by another domestic corporation;

(B) 95 percent of more of its gross income for the three-year period immediately preceding the close of its taxable year which ends on or before the close of the taxable year of such other domestic corporation (or for such part of such period during which it was in existence) was derived from sources without the United States, determined pursuant to sections 861 through 864 and the regulations thereunder; and

(C) 90 percent or more of its gross income for such period (or such part) was derived from the active conduct of a trade or business.

If for the period (or part thereof) referred to in (B) and (C) of this subdivision such corporation has no gross income, the provisions of (B) and (C) shall be treated as satisfied if it is reasonable to anticipate that, with respect to the first taxable year thereafter for which such corporation has gross income, such provisions will be satisfied.

(ii) *Domestic parent corporation.* The domestic parent corporation of any domestic subsidiary is the domestic corporation which owns 80 percent or more of the outstanding voting stock of such domestic subsidiary.

(c) *Special rules*—(1) *Nondiscrimination requirements.* For purposes of applying sections 401(a)(4) and 410(b)(1)(B) (section 401(a)(3)(B), as in effect on September 1, 1974, for plan years to which section 410 does not apply) and the regulations thereunder (relating to nondiscrimination concerning benefits and contributions and coverage of employees) with respect to an employee of the domestic subsidiary who is treated as an employee of the domestic parent corporation under paragraph (a)(1) of this section—

(i) If the employee is an officer, shareholder, or (with respect to plan years to which section 410 does not apply) a person whose principal duties consist in supervising the work of other employees of the domestic subsidiary of the domestic parent corporation, he shall be treated as having such capacity with respect to the domestic parent corporation; and

(ii) The determination as to whether the employee is a highly compensated employee shall be made by comparing his total compensation (determined under subparagraph (2) of this paragraph with the compensation of all the employees of the domestic parent corporation (including individuals treated as employees of the domestic parent corporation pursuant to section 407 and this section).

(2) *Determination of compensation.* For purposes of applying section 401(a)(5) and the regulations thereunder, relating to classifications that will not be considered discriminatory, with respect to an employee of the domestic subsidiary who is treated as an employee of the domestic parent corporation under paragraph (a)(1) of this section—

(i) The sum of the total compensation of the employee shall be the remuneration of the employee from the domestic subsidiary (including any allowances that are paid to the employee because of his employment in a foreign country) which would constitute his total compensation if his services had been performed for such domestic parent corporation; and

(ii) The basic or regular rate of compensation of the employee shall be determined for the employee in the same manner as it is determined under section 401 for other employees of the domestic parent corporation.

(d) *Termination of status as deemed employee not to be treated as separation from service for purposes of capital gain provisions and limitation of tax.* For purposes of applying the rules, relating to

treatment of certain distributions which are made after an employee's separation from service, set forth in section 72(n) as in effect on September 1, 1974 (with respect to taxable years ending after December 31, 1969, and to which section 402(e) does not apply), and in sections 402(a)(2) and (e) and 403(a)(2) (with respect to distributions or payments made after December 31, 1973, and in taxable years beginning after December 31, 1973) with respect to an employee of a domestic subsidiary who is treated as an employee of a domestic parent corporation under paragraph (a)(1) of this section, the employee shall not be considered as separated from the service of the domestic parent corporation solely by reason of the occurrence of any one or more of the following events:

(1) The fact that the corporation of which such individual is an employee ceases, for any taxable year, to be a domestic subsidiary within the meaning of paragraph (b)(3)(i) of this section;

(2) The employee's ceasing to be an employee of the domestic subsidiary of such domestic parent corporation, if he becomes an employee of another corporation controlled by such domestic parent corporation; or

(3) The termination of the provision of the plan described in paragraph (b)(1)(i) of this section, requiring coverage of United States citizens who are employees of domestic subsidiaries of the domestic parent corporation.

For purposes of subparagraph (2) of this paragraph, a corporation is considered to be controlled by a domestic parent corporation if the domestic parent corporation owns directly or indirectly more than 50 percent of the voting stock of the corporation.

(e) *Deductibility of contributions*—(1) *In general.* For purposes of applying sections 404 and 405(c) with respect to the deduction for contributions made to or under a pension, profit-sharing, or stock bonus plan described in section 401(a), an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a), by a domestic parent corporation, or by another corporation which is entitled to deduct its contributions under section 404(a)(3)(B), on behalf of an employee of a domestic subsidiary treated as an employee of the domestic parent corporation under paragraph (a)(1) of this section—

(i) Except as provided in subdivision (ii) of this subparagraph, no deduction shall be allowed to the domestic parent corporation which would otherwise be entitled to deduct its contributions on behalf of such employee under one of such sections;

(ii) There shall be allowed as a deduction to the domestic subsidiary of which such individual is an employee an amount equal to the amount which (but for subdivision (i) of this subparagraph) would be deductible under section 404 or section 405(c) by the domestic parent corporation if the individual were an employee of the domestic parent corporation and if his compensation were paid by the domestic corporation; and

(iii) Any reference to compensation shall be considered to be a reference to the total compensation of such individual (determined by applying paragraph (c)(2) of this section).

(2) *Year of deduction.* Any amount deductible by the domestic subsidiary under section 407(d) and this paragraph shall be deductible for its taxable year with or within which ends the taxable year of the domestic parent corporation for which the contribution was made.

(3) *Special rules.* Whether contributions to a plan on behalf of an employee of the domestic subsidiary who is treated as an employee of the domestic parent corporation under paragraph (a)(1) of this section, or whether forfeitures with regard to such employee, will require an inclusion in the income of the domestic parent corporation or an adjustment in the basis of its stock in the domestic subsidiary, shall be determined in accordance with the rules of general application of subtitle A of chapter 1 of the Code (relating to income taxes). For an example, an unreimbursed contribution by the domestic parent corporation to a plan which meets the requirements of section 401(a) will be treated, to the extent each employee's rights to the contribution are nonforfeitable, as a contribution of capital to the domestic subsidiary to the extent that such contributions are made on behalf of the employees of such subsidiary.

(f) *Treatment as an employee of the domestic parent corporation under related provisions.* An individual who is treated as an employee of a domestic parent corporation under paragraph (a)(1) of this section shall also be treated as an employee of such domestic corporation, with respect to the plan having the provision described in paragraph (b)(1)(i) of this section, for purposes of applying section 72(d) (relating to special rules for computing employees' contributions), section 72(f) (relating to special rules for computing employees' contributions), section 101(b) (relating to employees' death benefits), section 2039 (relating to annuities), and section 2517 (relating to certain annuities under qualified plans) and the regulations thereunder.

(g) *Nonexempt trust.* If the plan of the domestic parent corporation is a qualified plan described under section 401(a), the fact that a trust which forms a part of such plan is not exempt from tax under section 501(a) shall not affect the treatment of an employee of a domestic subsidiary as an employee of a domestic parent corporation under section 407(a) and paragraph (a)(1) of this section.

8. Sections 1.411(a)-1 through 1.411(a)-9 are added to read as follows:

§ 1.411(a)-1 Minimum vesting standards; general rules.

(a) *In general.* A plan is not a qualified plan (and a trust forming a part of such plan is not a qualified trust) unless—

(1) The plan provides that an employee's right to his normal retirement benefit (see § 1.411(a)-7(c)) is nonforfeitable (see § 1.411(a)-4) upon and after the attainment of normal retirement age (see § 1.411(a)-7(b)),

(2) The plan provides that an employee's rights in his accrued benefit derived from his own contributions (see § 1.411(c)-1) are nonforfeitable at all times, and

(3) The plan satisfies the requirements of—

(A) Section 411(a)(2) and § 1.411(a)-3 (relating to vesting in accrued benefit derived from employer contributions), and

(B) In the case of a defined benefit plan, section 411(b)(1) and § 1.411(b)-1 (relating to accrued benefit).

(b) *Organization of regulations relating to minimum vesting standards*—(1) *General rules.* This section prescribes general rules relating to the minimum vesting standards provided by section 411.

(2) *Effective dates.* Section 1.411(a)-2 provides rules under section 1017 of the Employee Retirement Income Security Act of 1974 relating to effective dates under section 411.

(3) *Employer contributions.* Section 1.411(a)-3 provides rules under section 411(a)(2) relating to vesting in employer-derived accrued benefits.

(4) *Certain forfeitures.* Section 1.411(a)-4 provides rules under section 411(a)(3) relating to certain permitted forfeitures, suspensions, etc. under qualified plans.

(5) *Nonforfeitable percentage.* Section 1.411(a)-5 provides rules under section 411(a)(4) relating to service included in the determination of an employee's nonforfeitable percentage under section 411(a)(2) and § 1.411(a)-3.

(6) *Years of service; break in service.* Section 1.411(a)-6 provides rules under section 411(a)(5) and (6) of the Internal Revenue Code of 1954 relating to years of service and breaks in service. Rules prescribed by the Secretary of Labor, relating to years of service and breaks in service under part 2 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 are provided under 29 CFR Part 2530 (Department of Labor regulations relating to minimum standards for employee pension benefit plans).

(7) *Definitions and special rules.* Section 1.411(a)-7 provides definitions and special rules under section 411(a)(7), (8), and (9), for purposes of section 411 and the regulations thereunder.

(8) *Changes in vesting schedule.* Section 1.411(a)-8 provides rules under section 411(a)(10) relating to changes in the vesting schedule of a plan.

(9) *Breaks in service.* Section 1.411(a)-9 provides special rules relating to breaks in service.

(10) *Accrued benefits.* See § 1.411(b)-1 for rules under section 411(b) relating to accrued benefit requirements under defined benefit plans.

(11) *Allocation of accrued benefits.* See § 1.411(c)-1 for rules under section 411(c) relating to allocation of accrued benefits between employer and employee contributions.

(12) *Discrimination, etc.* See § 1.411(d)-1 for rules relating to the coordination of section 411 with section 401(a)(4) (relating to discrimination) and other rules under section 411(d).

(c) *Application of standards to certain plans*—(1) *General rule.* Except as provided in subparagraph (2) of this paragraph, section 411 does not apply to—

(i) A governmental plan (within the meaning of section 414(d) and the regulations thereunder),

(ii) A church plan (within the meaning of section 414(e) and the regulations thereunder) which has not made the election provided by section 410(d) and the regulations thereunder,

(iii) A plan which has not provided for employer contributions at any time after September 2, 1974, and

(iv) A plan established and maintained by a society, order, or association described in section 501(c)(8) or (9), if no part of the contributions to or under such plan are made by employers of participants in such plan.

(2) *Vesting requirements.* A plan described in subparagraph (1) of this paragraph shall, for purposes of section 401(a), be treated as meeting the requirements of section 411 if such plan meets the vesting requirements resulting from the application of section 401(a)(4) and section 401(a)(7) as in effect on September 1, 1974.

(d) *Supersession.* Sections 11.411(a)-1 through 11.411(d)-3, inclusive, of the Temporary Income Tax Regulations under the Employee Retirement Income Security Act of 1974 are superseded by this section and §§ 1.411(a)-2 through 1.411(d)-3.

§ 1.411(a)-2 Effective dates.

(a) *Plan not in existence on January 1, 1974.* Under section 1017(a) of the Employee Retirement Income Security Act of 1974, in the case of a plan which was not in existence on January 1, 1974, section 411 and the regulations thereunder apply for plan years beginning after September 2, 1974. See paragraph (c) of this section for time plan is considered in existence.

(b) *Plans in existence on January 1, 1974.* Under section 1017(b) of the Employee Retirement Income Security Act of 1974, in the case of a plan which was in existence on January 1, 1974, section 411 and the regulations thereunder apply for plan years beginning after December 31, 1975. See paragraph (c) of this section for time plan is considered to be in existence.

(c) *Time of plan existence*—(1) *General rule.* For purposes of this section, a plan is considered to be in existence on a particular day if—

(i) The plan on or before that day was reduced to writing and adopted by the employer (including, in the case of a corporate employer, formal approval by the employer's board of directors and, if required, shareholders), even though no amounts had been contributed under the plan as of such day, and

(ii) The plan was not terminated on or before that day

For example, if a plan was adopted on January 2, 1974, effective as of January 1, 1974, the plan is not considered to have been in existence on January 1, 1974, because it was not both adopted and in writing on January 1, 1974.

(2) *Collectively-bargained plan.* Notwithstanding paragraph (c)(1) of this section, a plan described in section 413(a), relating to a plan maintained pursuant to a collective-bargaining agreement, is considered to be in existence on a particular day if—

(i) On or before that day there is a legally enforceable agreement to establish such a plan signed by the employer, and

(ii) The employer contributions to be made to the plan are set forth in the agreement.

(3) *Special rule.* If a plan is considered to be in existence under subparagraph (1) of this paragraph, any other plan with which such existing plan is merged or consolidated shall also be considered to be in existence on such date.

(d) *Existing plans under collective bargaining agreements.* For a special effective date rule for certain plans maintained pursuant to a collective bargaining agreement, see section 1017(c)(1) of the Employee Retirement Income Security Act of 1974 (88 Stat. 932).

(e) *Certain existing plans may elect new provisions.* The plan administrator may elect to have the provisions of the Code relating to participation, vesting, funding, and form of benefit apply to a selected plan year. See § 1.410(a)-2(d) for rules relating to such an election.

(f) *Application of rules.* The requirements of section 411 do not apply to employees who separate from service with the employer prior to the first plan year to which such requirements apply and who never return to service with the employer in a plan year to which section 411 applies.

§ 1.411(a)-3 Vesting in employer-derived benefits.

(a) *In general*—(1) *Alternative requirements.* A plan is not a qualified plan (and a trust forming a part of such plan is not a qualified trust) unless the plan satisfies the requirements of section 411(a)(2) and this section. A plan satisfies the requirements of this section if it satisfies the requirements of paragraph (b), (c), or (d) of this section.

(2) *Composite arrangements.* A plan will not be considered to satisfy the requirements of paragraph (b), (c), or (d) of this section unless it satisfies all requirements of a particular one of such paragraphs with respect to all of an employee's years of service. A plan which, for example, satisfies the requirements of paragraph (b) (but not (c) or (d)) for an employee's first 9 years of service and satisfies the requirements of paragraph (c) (but not (b)) for all of his remaining years of service, does not satisfy the requirements of this section. A plan is not precluded from satisfying the requirement of one such paragraph with respect to one group of employees and another such paragraph with respect to another group provided that the groups are not so structured as to evade the requirements of this paragraph. For example, if plan A provides that employees who commence participation before age 30 are subect to the "rule of 45" vesting schedule and employees who commence participation after age 30 are subject to the full vesting after 10 years schedule, plan A would be so structured as to evade the requirements of this paragraph.

(3) *Plan amendments.* A plan which satifies the requirements of a particular one of such paragraphs for each of an employee's years of service and which is amended so that, as amended, it satisfies the requirements of another such paragraph for all such years of service, satisfies the requirements of this section even though, as amended, it does not satisfy the requirements of the paragraph which were satisfied prior to the amendment. See § 1.411(a)-8 for rules relating to employee election where the vesting schedule is amended.

(b) *10-year vesting.* A plan satisfies the requirements of section 411(a)(2)(A) and this paragraph if an employee who has completed 10 years of service has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions.

(c) *5- to 15-year vesting.* A plan satisfies the requirements of section 411(a)(2)(B) and this paragraph if an employee who has completed at least 5 years of service has a nonforfeitable right to a percentage of his accrued benefit derived from employer contribution which percentage is not less than the nonforeitable percentage determined under the following table:

Completed years of service	*Nonforfeitable percentage*
5	25
6	30
7	35
8	40
9	45
10	50
11	60
12	70
13	80
14	90
15 or more	100

(d) *Rule of 45.* A plan satisfies the requirements of section 411(a)(2)(C) and this paragraph if an employee is entitled to the greater of the two percentages determined under paragraph (d)(1) or (2) of this section.

(1) *Age and service test.* An employee who is not separated from the service, who has completed at least 5 years of service, and with respect to whom the sum of his age and years of service equals or exceeds 45, has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions which is not less than the nonforfeitable percentage corresponding to his number of completed years of service or to the sum of his age and completed years of service (whichever percentage is the lesser) determined under the following table:

Completed years of service	Sum of age and service	Nonforfeitable percentage
5	45 or 46	50
6	47 or 48	60
7	49 or 50	70
8	51 or 52	80
9	53 or 54	90
10 or more	55 or more	100

(2) *Service test.* An employee who has completed at least 10 years of service has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions determined under the following table:

Completed years of service	Nonforfeitable percentage
10	50
11	60
12	70
13	80
14	90
15	100

(3) *Computation of age.* For purposes of subparagraph (1) of this paragraph, the age of an employee is his age on his last birthday.

(e) *Examples.* The rules provided by this section are illustrated by the following examples:

Example (1). Plan B provides that each employee's rights to his employer-derived accrued benefit are nonforfeitable as follows:

Completed years of service	Nonforfeitable percentage
2 or less	0
3	30
4	35
5	40
6	45
7	50
8	55
9	60
10	65
11	70
12	75
13	80
14	85
15	100

Plan B does not satisfy the requirements of paragraph (c) of this section (relating to 5–15-year vesting) because the nonforfeitable percentage provided by the plan after completion of 14 years of service (85 percent) is less than the percentage required by paragraph (c) of this section at that time (90 percent). The fact that the nonforfeitable percentage provided by the plan for years prior to the 13th year of service is greater than the percentage required under paragraph (c) of this section is immaterial. The plan fails to satisfy the requirements of paragraph (c) of this section even if it is demonstrated that the value of the vesting provided by the plan to the employee is at least equal to the value of the vesting rate required by that paragraph.

Example (2). Plan C provides for plan participation after the completion of 1 year of service. The plan provides that each employee's rights to his employer-derived accrued benefit are 100 percent nonforfeitable after 10 years of plan participation rather than service. The plan does not satisfy the requirements of paragraph (b) of this section because, under the plan, an employee obtains a 100 percent nonforfeitable right to his employer-derived accrued benefit only after completion of more than 10 years of service.

Example (3). Plan D provides that each employee's rights to his employer-derived accrued benefit are nonforfeitable in accordance with the following schedule:

Completed years of service	Nonforfeitable percentage
0–9	0
10	50
11	60
12	70
13	80
14	90
15	100

The plan does not satisfy the requirements of paragraph (b) of this section after the 9th year of service. It does not satisfy the requirements of paragraph (c) of this section for years prior to the 10th year of service. It does not satisfy the requirements of paragraph (d)(1) of this section for any year of service prior to the 10th year. The plan does not satisfy the requirements of this section because it does not satisfy the requirements of a particular one of the three paragraphs for each of an employee's years of service.

Example (4). Plan G provides that each employee's rights to his employer-derived accrued benefit are 100 percent nonforfeitable upon completion of 5 years of service. The plan satisfies the requirements of paragraphs (b), (c), and (d) of this section and, because it satisfies the requirements of at least one of such paragraphs for all of an employee's years of service, it satisfies the requirements of this section.

§ 1.411(a)–4 Forfeitures, suspensions, etc.

(a) *Nonforfeitability.* Certain rights in an accrued benefit must be nonforfeitable to satisfy the requirements of section 411(a). This section defines the term "nonforfeitable" for purposes of these requirements. For purposes of section 411 and the regulations thereunder, a right to an accrued benefit is considered to be nonforfeitable at a particular time if, at that time and thereafter, it is an unconditional right. Except as provided by paragraph (b) of this section, a right which, at a particular time, is conditioned under the plan upon a subsequent event, subsequent performance, or subsequent forbearance which will cause the loss of such right is a forfeitable right at that time. Certain adjustments to plan benefits such as adjustments in excess of reasonable actuarial reductions, can result in rights being forfeitable. Rights which are conditioned upon a sufficiency of plan assets in the event of a termination or partial termination are considered to be forfeitable because of such condition. However, a plan does not violate the nonforfeitability requirements merely because in the event of a termination an employee does not have any recourse toward satisfaction of his nonforfeitable benefits from other than the plan assets or the Pension Benefit Guaranty Corporation. Furthermore, nonforfeitable rights are not considered to be forfeitable by reason of the fact that they may be reduced to take into account benefits which are provided under the Social Security Act or under any other Federal or State law and which are taken into account in determining plan benefits. To the extent that rights are not required to be nonforfeitable to satisfy the minimum vesting standards, or the nondiscrimination requirements of section 401(a)(4), they may be forfeited without regard to the limitations on forfeitability required by this section. The right of an employee to repurchase his accrued benefit for example under section 411(a)(3)(D), is an example of a right which is required to satisfy such standards. Accordingly, such a right is subject to the limitations on forfeitability. Rights which are required to be prospectively nonforfeitable under the vesting standards are nonforfeitable and may not be forfeited until it is determined that such rights are, in fact, in excess of the vesting standards. Thus, employees have a right to vest in the accrued benefits if they continue in employment of employers maintaining the plan unless a forfeitable event recognized by section 411 occurs. For example, if a plan covered employees in Division A of Corporation X under a plan utilizing a 10-year-100 percent vesting schedule, the plan could not forfeit employees' rights on account of their moving to service in Division B of Corporation X prior to completion of 10 years of service even though employees are not vested at that time.

(b) *Special rules.* For purposes of paragraph (a) of this section a right is not treated as forfeitable—

(1) *Death.* (i) *General rule.* In the case of a participant's right to his employer-derived accrued benefit, merely because such accrued benefit is forfeitable by the participant to the extent it has not been paid or distributed to him prior to his death. This subparagraph shall not apply to a benefit which must be paid to a survivor in order to satisfy the requirements of section 401(a)(11).

(ii) *Employee contributions.* A participant's right in his accrued benefit derived from his own contributions must be nonforfeitable at all times. Such a right is not treated as forfeitable merely because, after commencement of annuity or pension payments in a benefit form provided under the plan, the participant dies without receiving payments equal in amount to his nonforfeitable accrued benefit derived from his contributions determined at the time of commencement.

(2) *Suspension of benefits upon reemployment of retiree.* In the case of certain suspensions of benefits under section 411(a)(3)(B), see regulations prescribed by the Secretary of Labor under 29 CFR Part 2530 (Department of Labor regulations relating to minimum standards for employee pension benefit plans).

(3) *Retroactive plan amendment.* In the case of a participant's right to his employer-derived accrued benefit, merely because such benefit is subject to reduction to the extent provided by a plan amendment described in section 412(c)(8) and the regulations thereunder, which amendment is given retrocative effect in accordance with such section.

(4) *Other forfeiture rules*—(i) *Withdrawal of mandatory contributions.* For rules allowing forfeitures on account of the withdrawal of mandatory contributions, see § 1.411(a)–7(d)(2) and (3).

(ii) *Class year plans.* For forfeiture rules pertaining to class year plans, see § 1.411(d)–3(b).

(iii) *Additional requirements.* For additional requirements relating to nonforfeitability of benefits in the event of of a withdrawal by the employee, see section 401(a)(19) and § 1.401(a)-19.

(5) *Multiemployer plan.* In the case of a multiemployer plan described in section 414(f), merely because an employee's accrued benefit which results from service with an employer before such employer was required to contribute to the plan is forfeitable on account of the cessation of contributions by the employer of the employee. This subparagraph shall not apply to an employee's accrued benefit with respect to an employer which accrued under a plan maintained by that employer prior to the adoption by that employer of the multiemployer plan.

(6) *Lost beneficiary; escheat.* In the case of a benefit which is payable, merely because the benefit is forfeitable on account of the inability to find the participant or beneficiary to whom payment is due, provided that the plan provides for reinstatement of the benefit if a claim is made by the participant or beneficiary for the forfeited benefit. In addition, a benefit which is lost by reason of escheat under applicable state law is not treated as a forfeiture.

(c) *Examples.* The rules of this section are illustrated by the following examples:

Example (1). Corporation A's plan provides that an employee is fully vested in his employer-derived accrued benefit after completion of 5 years of service. The plan also provides that, if an employee works for a competitor he forfeits his rights in the plan. Such provision could result in the forfeiture of an employee's rights which are required to be nonforfeitable under section 411 and therefore the plan would not satisfy the requirements of section 411. If the plan limited the forfeiture to employees who completed less than 10 years of service, the plan would not fail to satisfy the requirements of section 411 because the forfeitures under this provision are limited to rights which are in excess of the minimum required to be nonforfeitable under section 411(a)(2)(A).

Example (2). Plan B provides that if an employee does not apply for benefits within 5 years after the attainment of normal retirement age, the employee loses his plan benefits. Such a plan provision could result in forfeiture of an employee's rights which are required to be nonforfeitable under section 411 and, therefore, the plan would not satisfy the requirements of section 411.

§ 1.411(a)-5 Service included in determination of nonforfeitable percentage.

(a) *In general.* Under section 411(a)(4), for purposes of determining the nonforfeitable percentage of an employee's right to his employer-derived accrued benefit under section 411(a)(2) and § 1.411(a)-3, all of an employee's years of service with an employer or employers maintaining the plan shall be taken into account except that years of service described in paragraph (b) of this section may be disregarded.

(b) *Certain service.* For purposes of paragraph (a) of this section, the following years of service may be disregarded:

(1) *Service before age 22.* (i) In the case of a plan which satisfies the requirements of section 411(a)(2)(A) or (B) (relating to 10-year vesting and 5-15-year vesting, respectively), a year of service completed by an employee before he attains age 22.

(ii) In the case of a plan which does not satisfy the requirements of section 411(a)(2)(A) or (B), a year of service completed by an employee before he attains age 22 if the employee is not a participant (for purposes of section 410) in the plan at any time during such year.

(iii) For purposes of this subparagraph in the case of a plan utilizing computation periods, service during a computation period described in section 411(a)(5)(A) within which the employee attains age 22 may not be disregarded. In the case of a plan utilizing the elapsed time method described in Department of Labor regulations, service on or after the date on which the employee attains age 22 may not be disregarded.

(2) *Contributory plans.* In the case of a plan utilizing computation periods, a year of service completed by an employee under a plan which requires mandatory contributions (within the meaning of section 411(c)(2)(C) and § 1.411(c)-1(c)(4)) to be made by the employee for such year, if the employee does not participate for such year solely because of his failure to make all mandatory contributions to the plan for such year. If the employee contributes any part of the mandatory contributions for the year, such year may not be excluded by reason of this subparagraph. In the case of a plan utilizing the elapsed time method described in Department of Labor regulations, the service which may be disregarded is the period with respect to which the mandatory contribution is not made.

(3) *Plan not maintained*—(i) *In general.* An employee's years of service with an employer during any period for which the employer did not maintain the plan or a predecessor plan may be disregarded for purposes of section 411(a)(2). Paragraph (b)(3)(ii) of this section provides rules regarding the period prior to the adoption of a plan. Paragraph (b)(3)(iii) of this section provides rules regarding the period after the termination of a plan. Paragraph (b)(3)(iv) of this section provides rules regarding employers who have certain relationships with other employers maintaining the plan.

(ii) *Period prior to adoption.* The period for which a plan is not maintained by an employer includes the period before the plan was established. For purposes of this subdivision, a plan is established on the first day of the plan year in which the plan is adopted even though the plan is adopted after such first day. Except as provided in paragraph (b)(3)(iv) of this section if an employer adopts a plan which has previously been established by another employer or group of employers, the plan is not maintained by the adopting employer prior to the first day of the plan year in which the plan is adopted by the adopting employer. In the case of a transfer of assets or liabilities (including a merger or consolidation) involving two plans maintained by a single employer, the successor (or transferee) plan is treated as if it was established at the same time as the date of the establishment of the earliest component plan. In the case of a plan merger, consolidation, or transfer of plan assets or liabilities involving plans of two or more employers, the successor plan is treated as if it were established on each of the separate dates on which such component plan was established for the employees of each employer. Thus, for example, if employer A establishes a plan January 1, 1970, and employer B establishes a plan January 1, 1980, and the plans were subsequently merged, then the merged plan would be treated as if it were in existence on January 1, 1970, with respect to A's employees and as if it were in existence on January 1, 1980, with respect to B's employees.

(iii) *Period after termination or withdrawal.* The period for which a plan is not maintained by an employer includes the period after the plan is terminated. For purposes of this section, a plan is terminated at the date there is a termination of the plan within the meaning of section 411(d)(3)(A) and the regulations thereunder. Notwithstanding the preceding sentence, if contributions to or under a plan are made after termination, the plan is treated as being maintained until such contributions cease, whether or not accruals are made after such termination. If, after termination of a plan in circumstances under which the employer may be liable to the Pension Benefit Guaranty Corporation under section 4062 of the Act, employer contributions are made to or under the plan to fund benefits accrued at the time of termination, such contributions shall, for purposes of this paragraph, be deemed to be payments in satisfaction of employer liability to such Corporation rather than contributions to or under the plan. In the case of a plan maintained by more than one employer, the period for which the plan is not maintained by the withdrawing employer includes the period after the withdrawal from the plan.

(iv) *Certain employers.* For purposes of this subparagraph—

(A) *Predecessor employers.* Service with a predecessor employer who maintained the plan of the current employer is treated as service with such current employer (see section 414(a)(1) and the regulations thereunder), and certain service with a predecessor employer who did not maintain the plan of the current employer is treated as service with the current employer (see section 414(a)(2) and the regulations thereunder).

(B) *Related employers.* Service with an employer is treated as service for certain related employers for the period during which the employers are related. These related employers include members of a controlled group of corporations (within the meaning of section 1563(a), determined without regard to subsections (a)(4) and

(e)(3)(C) thereof) and trades or businesses (whether or not incorporated) which are under common control (see section 414 (b) and (c) and 29 CFR Part 2530, Department of Labor regulations relating to minimum standards for employee pension benefit plans).

(C) *Plan maintained by more than one employer.* Service with an employer who maintains a plan is treated as service for each other employer who maintains that plan for the period during which the employers are maintaining the plan (see section 413 (b)(4) and (c)(3) and 29 CFR Part 2530, Department of Labor regulations relating to minimum standards for employee pension benefit plans).

(v) *Predecessor plan*—(A) *General rule.* In the case of an employee who was covered by a predecessor plan, the time the successor of such plan is maintained for such employee includes the time the predecessor plan was maintained if, as of the later of the time the predecessor plan is terminated or the successor plan is established, the employee's years of service under the predecessor plan are not equalled or exceeded by the aggregate number of consecutive 1-year breaks in service occurring after such years of service. Years of service and breaks in in service, without regard to whether the employee has nonforfeitable rights under the predecessor plan, are determined under section 411(a) (5) and (6) except that years between the termination date of the predecessor plan and the date of establishment of the succcessor plan do not count as years of service.

(B) *Definition of predecessor plan.* For purposes of this section, if—

(*1*) An employer establishes a retirement plan (within the meaning of section 7476(d)) qualified under subchapter D of chapter 1 of the Code within the 5-year period immediately preceding or following the date another such plan terminates, and

(2) The other plan is terminated during a plan year to which this section applies.

The terminated plan is a predecessor plan with respect to such other plan.

(C) *Example.* The rules provided by this subparagraph are illustrated by the following example:

Example. (1) Employer X's qualified plan A terminated on January 1, 1977. Employer X established qualified plan B on January 1, 1981. Under paragraph (b)(3)(v)(B) of this section, plan A is a predecessor plan with respect to plan B because plan B is established within the 5-year period immediately following the date plan A terminated.

(2) Employee C was not covered by the A plan. Under the general rule in subdivision (v)(A) of this subparagraph, plan B is not maintained until January 1, 1981, with resect to Employee C.

(3) Employee D was covered by the A plan. On December 31, 1976, D had 4 years of service. D had 4 consecutive 1-year breaks in service because, during the years between the termination of plan A and the establishment of plan B, he did not have more than 500 hours of service in any applicable computation period. Because D's consecutive 1-year breaks (4) equal his years of service prior to his breaks (4), plan B is not maintained until January 1, 1981, with respect to employee D.

(4) Employee E was covered by the A plan. On December 31, 1975, E had 6 years of service. E had a 1-year break in service in 1976. E also had 4 consecutive 1-year breaks in service for the period between plan A's termination and plan B's establishment. Because E's years of service (6) are not less than his consecutive 1-year breaks (5), plan B is maintained for E as of the establishment date of plan A.

(4) *Break in service.* A year of service which is not required to be taken into account by reason of a break in service (within the meaning of section 411(a)(6) and § 1.411(a)–6)).

(5) *Service before January 1, 1971.* A year of service completed by an employee prior to January 1, 1971, unless the employee completes at least 3 years of service at any time after December 31, 1970. For purposes of determining if an employee completes 3 years of service, whether or not consecutive, the exceptions of section 411(a)(4) are not applicable. For the meaning of the term "year of service", see regulations prescribed by the Secretary of Labor under 29 CFR Part 2530, relating to minimum standards for employee pension benefit plans.

(6) *Service before effective date.* A year of service completed before the first plan year for which this section applies to the plan, if such service would have been disregarded under the plan rules relating to breaks in service (whether or not such rules are so designated in the plan) as such rules were in effect from time to time under the plan. For this purpose, plan rules which result in the loss of prior vesting or benefit accruals of an employee, or which deny an employee eligibility to participate, by reason of separation or failure to complete a required period of service within a specified period of time (*e.g.*, 300 hours in one year) will be considered break in service rules. See § 1.411(a)–9 for requirements relating to certain amendments to the break in service rules of a plan.

(ii) *Examples.* The rules of this subparagraph are illustrated by the following examples:

Example 1. The A plan in 1971 provides for immediate participation and vesting at normal retirement age. Employees accrue a unit benefit based on their compensation in each year. The plan provides that if an employee is not employed on the last day of the calendar year, he loses all accrued benefits. The requirement of employment on the last day of the year is a break in service rule because employees can lose benefits by reason of their separation. Accordingly, in the case of employees who separate and do not return by the close of the year, service which is completed prior to separation may be disregarded.

Example 2. The B plan in 1971 excludes from plan participation employees who work less than 1200 hours per year. Because years of less than 1200 hours are not taken into account under the B plan for eligibility to participate, such years are excluded under rules relating to breaks in service. Therefore, the years can be disregarded under this subparagraph.

Example 3. The C plan in 1971 provides for immediate participation and provides accruals and vesting credit for 1,200 hours or more in a given year. The plan provides that if a participant works less than 300 hours in a given year, he loses all prior vesting and benefit credits. The 300 hour rule is a break in service rule because the failure to complete 300 hours results in the loss of vesting and prior service credit. The 1,200 hour requirement is not a break in service rule because even though employees do not increase vesting or accrue benefits for service between 300 and 1,200 hours, they can not lose prior vesting or benefits for such service. Accordingly, the C plan can disregard completed years only on account of less than 300 hours of service by an employee.

(c) *Special continuity rule for certain plans.* For special rules for computing years of service in the case of a plan maintained by more than one employer, see 29 CFR Part 2530 (Department of Labor regulations relating to minimum standards for employee pension benefit plans).

§ 1.411(a)–6 Year of service; hour of service; breaks in service.

(a) *Year of service.* Under section 411(a)(5)(A), for purposes of the regulations thereunder, the term "year of service" is defined in regulations prescribed by the Secretary of Labor under section 203(b)(2)(A) of the Employee Retirement Income Security Act of 1974. For special rules applicable to seasonal industries and maritime industries, see regulations prescribed by the Secretary of Labor under subparagraphs (C) and (D) of section 203(b)(2) of the Employee Retirement Income Security Act of 1974.

(b) *Hours of service.* Under section 411(a)(5)(B), for purposes of the regulations thereunder, the term "hours of service" has the meaning provided by section 410(a)(3)(C). See regulations prescribed by the Secretary of Labor under 29 CFR Part 2530, relating to minimum standards for employee pension benefit plans.

(c) *Breaks in service.* Under section 411(a)(6), for purposes of § 1.411(a)–5(b)(4) and of this paragraph—

(1) *In general*—(i) *Year of service after 1-year break in service.* In the case of any employee who has incurred a 1-year break in service, years of service completed before such break are not required to be taken into account until the employee has completed one year of service after his return to service.

(ii) *Defined contribution plan.* In the case of a participant in a defined contribution plan or in an insured defined benefit plan (which plan satisfies the requirements of section 411 (b)(1)(F) and § 1.411(b)–1) who has incurred a 1-year break in service, years of service completed after such break are not required to be taken into account for purposes of determining the nonforfeitable percentage of the participant's right to employer-derived benefits which accrued before such break. This subdivision does not permit years of service completed before a 1-year break in service to be disregarded in determining the nonforfeitable percentage of a participant's right to employer-derived benefits which accrue after such break.

(iii) *Nonvested participants.* In the case of an employee who is a nonvested participant in employer-derived benefits at the time he incurs a 1-year break in service, years of service completed by

such participant before such break are not required to be taken into account for purposes of determining the nonforfeitable percentage of his right to employer-derived benefits if at such time the number of consecutive 1-year breaks in service included in his most recent break in service equals or exceeds the aggregate number of his years of service, whether or not consecutive, completed before such break. In the case of a plan utilizing the elapsed time method described in Department of Labor regulations, the condition in the preceding sentence shall be satisfied if the period of severance is at least one year and the consecutive period of severance equals or exceeds his prior period of service, whether or not consecutive, completed before such period of severance. In computing the aggregate number of years of service prior to such break, years of service which could have been disregarded under this subdivision by reason of any prior break in service may be disregarded.

(2) *One-year break in service defined.* The term "1-year break in service" means a calendar year, plan year, or other 12-consecutive month period designated by a plan (and not prohibited under regulations prescribed by the Secretary of Labor) during which the participant has not completed more than 500 hours of service. In the case of a plan utilizing the elapsed time method, the term "1-year break in service" means a 12-consecutive month period beginning on the severance from service date or any anniversary thereof and ending on the next succeeding anniversary of such date; provided, however, that the employee during such 12-consecutive-month period does not complete any hours of service within the meaning of 29 CFR Part 2530.200b–2(a) for the employer or employers maintaining the plan. See regulations prescribed by the Secretary of Labor under 29 CFR Part 2530, relating to minimum standards for employee pension benefit plans.

(d) *Examples.* The rules provided by this section are illustrated by the following examples:

Example (1). (i) X Corporation maintains a defined contribution plan to which section 411 applies. The plan uses the calendar year as the vesting computation period. In 1980, Employee A, who was hired at age 35, separates from the service of X Corporation after completing 4 years of service. At the time of his separation, Employee A had a nonforfeitable right to 25 percent of his employer-derived accrued benefit which was not distributed. In 1985, after incurring 5 consecutive one-year breaks in service, Employee A is re-employed by X Corporation and becomes an active participant in the plan. The plan provides that, for 1985 and all subsequent years, Employee A's previous years of service will not be taken into account for purposes of computing the nonforfeitable percentage of his employer-derived accrued benefit, solely because of his break in service.

(ii) The plan fails to satisfy section 411. Section 411(a)(6)(B) would permit the plan to disregard Employee A's prior service for purposes of computing his nonforfeitable percentage in 1985 only, but such service must be taken into account in subsequent years unless there is another break in service. Under section 411(a)(6)(C), the plan is not required to take Employee A's post-break service into account for purposes of computing his nonforfeitable right to his pre-break employer-derived accrued benefits. This provision, however, would not permit the plan to disregard pre-break service in determining his nonforfeitable right to his benefit accrued after the break. The exception provided by section 411(a)(6)(D) does not apply in the case of a participant who has any nonforfeitable right to his accrued benefit derived from employer contributions.

Example (2). (i) X Corporation maintains a qualified plan to which sections 410 and 411 (relating to minimum participation standards and minimum vesting standards, respectively) apply. The plan permits participation upon completion of a year of service and provides that 100% of an employee's employer-derived accrued benefit vests after 10 years of service. The plan uses the calendar year as the vesting computation period. The plan provides that an employee who completes at least 1,000 hours of service in a 12-month period is credited with a year of service for participation and vesting purposes. The plan also provides that an employee who does not complete more than 500 hours of service in that 12-month period incurs a one-year break in service. The plan includes the rule described in section 411(a)(6)(D) for participation and vesting purposes. Under this rule, an employee's years of service prior to a break in service may be disregarded under certain circumstances if he has no vested right to any employer-derived benefit under the plan. The plan does not contain the rule described in section 411(a)(6)(B) (relating to the requirement of one year of service after a one-year break in service).

(ii) Employee A commences employment with the X Corporation on January 1, 1977. Employee A's employment history for 1977 through 1989 is as follows:

Year ending December 31:	*Hours of service completed*
1977	1,000
1978	800
1979	1,000
1980	400
1981	1,000
1982	0
1983	400
1984	1,000
1985	0
1986	0
1987	500
1988	200
1989	1,000

Employee A's status as a participant during this period is determined as follows:

1978: Employee A was a plan participant on January 1, 1978, because he completed a year of service (1,000 hours) in 1977. He did not complete a year of service in 1978 because he completed fewer than 1,000 hours in that year. Because he completed more than 500 hours of service in 1978, however, Employee A did not incur a one-year break in service that year.

1979: Employee A completes a year of service in 1979. Because he did not incur a one-year break in service in 1978, the plan may not disregard his 1977 service for purposes of determining his years of service as of January 1, 1979.

1980: Employee A incurs a one-year break in service in 1980.

1981: Because Employee A had completed 2 years of service prior to 1981 and had incurred one 1-year break in service prior to 1981, under section 411(a)(6)(D), the plan may not disregard his pre-1980 service in 1981. Employee A completes a year of service in 1981.

1982: Employee A incurs a one-year break in service in 1982.

1983: Employee A incurs a one-year break in service in 1983. As of the end of 1983, he has completed 3 years of service and has incurred 2 consecutive one-year breaks in service.

1984: Employee A completes a year of service in 1984. Under section 411(a)(6)(D), his pre-1982 service may not be disregarded in 1984 because, as of the beginning of 1984, his pre-1984 years of service (3) exceed his consecutive one-year breaks in service (2).

1985–1988: Employee A incurs 4 consecutive one-year breaks in service during the years 1985 through 1988.

1989: Empoyee A's pre-1989 service is disregarded in 1989 and all subsequent plan years because his years of service as of January 1, 1989, equal the number of consecutive one-year breaks he has incurred as of that date. Therefore, as of the beginning of 1989, Employee A is not a plan participant. Employee A completes a year of service in 1989. (Although section 411(a)(6)(D) does not prohibit the plan provision under which Employee A's pre-1989 service is disregarded, that section does not require such a provision in a qualified plan.)

§ 1.411(a)–7 Definitions and special rules.

(a) *Accrued benefit.* For purposes of section 411 and the regulations thereunder, the term "accrued benefit" means—

(1) *Defined benefit plan.* In the case of a defined benefit plan—

(i) If the plan provides an accrued benefit in the form of an annual benefit commencing at normal retirement age, such accrued benefit, or

(ii) If the plan does not provide an accrued benefit in the form described in subdivision (i) of this subparagraph, an annual benefit commencing at normal retirement age which is the actuarial equivalent (determined under section 411(c)(3) and § 1.411(c)–5) of the accrued benefit determined under the plan. In general, the term "accrued benefits" refers only to pension or retirement benefits. Consequently, accrued benefits do not include ancillary benefits not directly related to retirement benefits such as payment of medical expenses (or insurance premiums for such expenses), disability benefits not in excess of the qualified disability benefit (see section 411(a)(9) and paragraph (c)(3) of this section), life inusrance benefits payable as a lump sum, incidental death benefits, current life insurance protection, or medical benefits described in section 401(h). For purposes of this paragraph a subsidized early retirement benefit which is provided by a plan is not taken into account, except to the extent of determining the normal retirement benefit under the plan (see section 411(a)(9) and paragraph (c) of this section). The accrued benefit includes any optional settlement at normal retirement age under actuarial assumptions no less favorable than those which would be applied if the employee were terminating his employment at normal retirement age. The accrued benefit does not include any subsidized value in a joint and survivor annuity to the extent that the annual benefit of the joint and survivor

annuity does not exceed the annual benefit of a single life annuity.

(2) *Defined contribution plan.* In the case of a defined contribution plan, the balance of the employee's account held under the plan.

(b) *Normal retirement age*—(1) *General rule.* For purposes of section 411 and the regulations thereunder, the term "normal retirement age" means the earlier of—

(i) The time specified by a plan at which a plan participant attains normal retirement age, or

(ii) The later of—

(A) The time the plan participant attains age 65, or

(B) The 10th anniversary of the date the plan participant commences participation in the plan.

If a plan, or the employer sponsoring the plan, imposes a requirement that an employee retire upon reaching a certain age, the normal retirement age may not exceed that mandatory retirement age. The preceding sentence will apply if the employer consistently enforces a mandatory retirement age rule, whether or not set forth in the plan or any related document. For purposes of subdivision (i) of this subparagraph, if an age is not specified by a plan as the normal retirement age, then the normal retirement age under the plan is the earliest age beyond which the participant's benefits under the plan are not greater solely on account of his age or service. For purposes of paragraph (b) (1) (ii) (B) of this section, participation commences on the first day of the first year in which the participant commenced his participation in the plan, except that years which may be disregarded under section 410(a) (5) (D) may be disregarded in determining when participation commenced.

(2) *Examples.* The provisions of this paragraph are illustrated by the following examples:

Example (1). Plan A defines normal retirement age as age 65. Under the plan, benefits payable to participants who retire at or after age 60 are not reduced on account of early retirement. For purposes of section 411 and the vesting regulations, normal retirement age under Plan A is age 65 (determined under subparagraph (1) (i) of this paragraph). This is true even if in operation all participants retire at age 60.

Example (2). Plan B does not specify any age as the normal retirement age. Under the plan, participants who have attained age 55 are entitled to benefits commencing upon retirement but the benefits of participants who retire before attaining age 70 are subject to reduction on account of early retirement. For purposes of section 411 and the vesting regulations the normal retirement age under plan B is the later of (i) age 65, or (ii) the 10th anniversary of the date a plan participant commences participation in the plan (assuming such date is prior to age 70).

Example (3). The facts are the same as in example (2). Employee X first became a participant in Plan B on January 1, 1980 at age 53. His participation continued until December 31, 1980, when he separated from the service with no vested benefits. After incurring 5 consecutive 1-year breaks in service, Employee X again becomes an employee and a plan participant on January 1, 1986, at age 59. For purposes of section 411, Employee X's normal retirement age under Plan B is age 69, the 10th anniversary of the date on which his year of plan participation commenced. His participation in 1980 may be disregarded under the last sentence of paragraph (b) (1) of this section.

(c) *Normal retirement benefit*—(1) *In general.* For purposes of section 411 and the regulations thereunder, the term "normal retirement benefit" means the periodic benefit under the plan commencing upon early retirement (if any) or at normal retirement age, whichever benefit is greater.

(2) *Periodic benefit.* For purposes of subparagraph (1) of this paragraph—

(i) In the case of a plan under which a benefit is payable as an annuity in the same form upon early retirement and at normal retirement age, the greater benefit is determined by comparing the amount of such annuity payments.

(ii) In the case of a plan under which an annuity benefit payable upon early retirement is not in th same form as an annuity benefit payable at normal retirement age, the greater benefit is determined by converting the annuity benefit payable upon early retirement age into the same form of annuity benefit as is payable at normal retirement age and by comparing the amount of the converted early retirement benefit payment with the amount of the normal retirement benefit payment.

(iii) In the case of a plan which is integrated with the Social Security Act or any other Federal or State law, the periodic benefit payable upon and after early retirement age is adjusted for any increases in such benefits occurring on or after early retirement age which are taken into account under the plan. See however, section 401(a) (15) and the regulations thereunder.

(3) *Benefits included.* For purposes of this paragraph, the normal retirement benefit under a plan shall be determined without regard to ancillary benefits not directly related to retirement benefits such as medical benefits or disability benefits not in excess of the qualified disability benefit; see section 411(a) (7) and paragraph (a) (1) of this section. For this purpose, a qualified disability benefit is a disability benefit which is not in excess of the amount of the benefit which would be payable to the participant if he separated from service at normal retirement age.

(4) *Early retirement benefit; social security supplement.* (i) For purposes of this paragraph, the early retirement benefit under a plan shall be determined without regard to any social security supplement.

(ii) For purposes of this subparagraph, a social security supplement is a benefit for plan participants which—

(A) Commences before the age and terminates before the age when participants are entitled to old-age insurance benefits, unreduced on account of age, under title II of the Social Security Act, as amended (see section 202 (a) and (g) of such Act), and

(B) Does not exceed such old-age insurance benefit.

(5) *Special limitation.* If a defined benefit plan bases its normal retirement benefits on employee compensation, the compensation must reflect the compensation which would have been paid for a full year of participation within the meaning of section 411(b) (3). If an employee works less than a full year of participation, the compensation used to determine benefits under the plan for such year of participation must be multiplied by the ratio of the number of hours for a complete year of participation to the number of hours worked in such year. A plan whose benefit formula is computed on a computation base which cannot decrease is not required to adjust employee compensation in the manner described in the previous sentence. Thus, for example, if a plan provided a benefit based on an employee's compensation for his highest five consecutive years or a separate benefit for each year of participation based on the employee's compensation for such year the plan would not have to so adjust compensation. However, if a plan provided a benefit based on an employee's compensation for the employee's last five years or the five highest consecutive years out of the last 10 years, the compensation, would have to be so adjusted. For special rules for applying the limitations on proration of a year of participation for benefit accrual, see regulations prescribed by the Secretary of Labor under 29 CFR Part 2530, relating to minimum standards for employee pension benefit plans.

(6) *Examples.* The provisions of this paragraph are illustrated by the following examples:

Example (1). Plan A provide for a benefit equal to 1% of high 5 years compensation for each year of service and a normal retirement age of 65. The plan also provides for a full unreduced accrued benefit without any actuarial reduction for any employee at age 55 with 30 years of service. Even though the actuarial value of the early retirement benefit could exceed the value of the benefit at the normal retirement age, the normal retirement benefit would not include the greater value of the early retirement benefit because actuarial subsidies are ignored.

Example (2). Plan B provides the following benefits: (1) at normal retirement age 65, $300/mo. for life and (2) at early retirement age 60, $400/mo. for life. The normal retirement benefit is $400/mo., the greater of the benefit payable at normal retirement age ($300) or early retirement ($400).

Example (3). Assume the same facts as example (2) except that the early retirement benefit of $400 is reduced to $300 upon attainment of age 65. If each employee's social security benefit at age 65 is not less than $100, the $100 would be considered to be a social security supplement and would therefore be ignored. Consequently, the normal retirement benefit would be $300.

Example (4). Plan C provides a benefit at normal retirement age equal to 1% per year of service, multiplied by the participant's compensation averaged over the 5 years immediately prior to retirement. An early retirement benefit is provided upon attainment of age 60 equal to the benefit accrued to date of early retirement reduced by 4 percent for each year by which the early retirement date precedes the normal retirement age of 65. Employee A was hired at age 30, participated immediately, and retired at age 65. Employee A's annual compensation was $50,000 between ages 55–60 and was reduced to $33,000 after age 60. The following table indicates the amount of annual benefit that would have been provided by the plan formula if the employee retired at or after after 60:

Age	Final average computated (1)	Percent accrued benefit (2)	Reduction (3)	Annual benefit (4)
60	$50,000	30	0.80	$12,000
61	46,800	31	.84	12,135
62	43,200	32	.88	12,165
63	39,800	33	.92	12,083
64	36,400	34	.96	11,881
65	33,000	35	1.00	11,550

NOTE.—Col. (1) times col. (2) times col. (3) equals col. (4).

The normal retirement benefit is the greater of the benefit payable at normal retirement age or the early retirement benefit. Employee A's normal retirement benefit is $12,165, the greatest annual benefit Employee A would be entitled to.

(d) *Rules relating to certain distributions and cash-outs of accrued benefits*—(1) *In general.* This paragraph sets forth vesting rules applicable to certain distributions from qualified plans and their related trusts (other than class year plans). Subparagraphs (2) and (3) set forth the exceptions to nonforfeitability on account of withdrawal of mandatory contributions provided by section 411(a)(3)(D). When a plan utilizes these exceptions with respect to a given participant's accrued benefit, such accrued benefit is not subject to the cash-out rules or vesting rules of subparagraphs (4) or (5), respectively. Section 411 prescribes certain requirements with respect to accrued benefits under a qualified plan. These requirements would generally not be satisfied if the plan disregarded service in computing accrued benefits even though amounts were distributed on account of such service. Subparagraph (4) of this paragraph sets forth rules under section 411(a)(7)(B) which allow a plan to make distributions and compute accrued benefits without regard to the accrued benefit attributable to the distribution. When a defined contribution plan utilizes this exception with respect to an accrued benefit, the plan is not required to satisfy the rules of subparagraph (5) of this paragraph. Subparagraph (5) of this paragraph sets forth a vesting requirement applicable to certain distributions from defined contribution plans. Subparagraph (6) sets forth other rules which pertain to the distribution rules of this paragraph.

(2) *Withdrawal of mandatory contribution*—(i) *General rule.* In the case of a participant's right to his employer-derived accrued benefit, a right is not treated as forfeitable merely because all or a portion of such benefit may be forfeited on account of the withdrawal by the participant of any amount attributable to his accrued benefit derived from his mandatory contributions (within the meaning of section 411(c)(2)(C) and § 1.411(c)-1) before he has become a 50 percent vested participant (within the meaning of § 1.401(a)-19(b)(2)). For purposes of determining the vested percentage, the plan may disregard service after the withdrawal. For example, assume that a plan utilizes 1000 hours for computing years of service and that for the computation period employee A had 1000 hours of service. If A was 40 percent vested at the beginning of the period but only had 800 hours at the time of the withdrawal, the plan could treat A as only 40 percent vested because service after the withdrawal can be disregarded. On the other hand, if A had 1000 hours at the time of the withdrawal, he must receive a year of service for the computation period, even though service is not taken into account until the end of such period.

(ii) *Plan repayment provision.* (A) Subdivision (i) of this subparagraph shall not apply unless, at the time the amount described in such subdivision is withdrawn by the participant, the plan provides the employee with a right to restoration of his employer-derived accrued benefit to the extent forfeited in accordance with such subdivision upon repayment to the plan of the full amount of the withdrawal.

(B) In the case of a defined benefit plan (as defined in section 414(j)) the restoration of the employee's employer-derived accrued benefit may be conditioned upon repayment of interest on the full amount of the distribution. Such interest shall be computed on the amount of the distribution from the date of such distribution to the date of repayment, compounded annually from the date of distribution, at the rate determined under section 411(c)(2)(C) in effect on the date of repayment. A plan may provide for repayment of interest which is less than the amount determined under the preceding sentence.

(C) In the case of a defined contribution plan (as defined in section 414(i)) the plan repayment provision described in this subparagraph may provide that the employee must repay the full amount of the distribution before the close of the vesting computation period within which the participant has a one-year break in service within the meaning of section 411(a)(6)(C) and § 1.411(a)-6, or in the case of a plan utilizing the elapsed time method described in Department of Labor regulations, before the end of a 12-consecutive month period beginning on the severance from service date or any anniversary thereof and ending on the next succeeding anniversary of such date during which the employee does not complete any hours of service within the meaning of 29 CFR Part 2530.200b-2(a) for the employer or employers maintaining the plan.

(D) A defined contribution plan or a defined benefit plan may require that such repayment be made by the employee not later than the earlier of (*1*) the end of the 2-year period beginning with the employee's resumption of employment covered by the plan, (2) the end of the 5-year period beginning with the date of withdrawal, or (*3*) in the case of a defined contribution plan, the time described in (C) of this subdivision.

(E) A plan using the break in service rule described in section 410(a)(5)(D) for determining employees' accrued benefits is not required to provide for repayment by an employee whose accrued benefit is disregarded by reason of that rule.

(iii) *Computation of benefit.* In the case of a defined contribution plan, the employer-derived accrued benefit required to be restored by this subparagraph shall not be less than the amount in the account balance of the employee which was forfeited, unadjusted by any subsequent gains or losses.

(iv) *Delayed forfeiture.* A defined contribution plan may, in lieu of the forfeiture and restoration described in this subparagraph, provide that the forfeiture does not occur until the expiration of the time for repayment described in subdivision (ii) of this subparagraph provided that the conditions of this subparagraph are satisfied.

(3) *Withdrawal of mandatory contributions; accruals before September 2, 1974*—(i) *General rule.* In the case of a participant's right to the portion of the employer-derived benefit which accrued prior to September 2, 1974, a right is not treated as forfeitable merely because all or part of such portion may be forfeited on account of the withdrawal by the participant of an amount attributable to his benefit derived from mandatory contributions (within the meaning of section 411(c)(2)(C) and § 1.411(c)-1(c)(4)) made by the participant before September 2, 1974, if the amount so subject to forfeiture is no more than proportional to such amounts withdrawn. This subparagraph shall not apply to any plan to which any mandatory contribution (within the meaning of section 411(c)(2)(C) and § 1.411(c)-1(c)(4)) is made after September 2, 1974.

(ii) *Defined contribution plan.* In the case of a defined contribution plan, the portion of a participant's employer-derived benefit which accrued prior to September 2, 1974, shall be determined on the basis of a separate accounting between benefits accruing before and after such date. Gains, losses, withdrawals, forfeitures, and other credits or charges must be separately allocated to such benefits. Any allocation made on a reasonable and consistent basis prior to September 1, 1977, shall satisfy the requirements of this subdivision.

(iii) *Defined benefit plan.* In the case of a defined benefit plan, the portion of a participant's employer-derived benefit which accrued prior to September 2, 1974, shall be determined in a manner consistent with the determination of an accrued benefit under section 411(b)(1)(D) (see § 1.411(b)-1(c)). Any method of determining such accrued benefit which the Commissioner finds to be reasonable shall satisfy the requirements of this subdivision.

(4) *Certain cash-outs of accrued benefits*—(i) *Involuntary cash-outs.* For

purposes of determining an employee's right to an accrued benefit derived from employer contributions under a plan, the plan may disregard service performed by the employee with respect to which—

(A) The employee receives a distribution of the present value of his entire nonforfeitable benefit at the time of the distribution,

(B) The portion of such distribution which is attributable to the present value of the employer-derived accrued benefit is not in excess of $1,750.

(C) The distribution is made due to the termination of the employee's participation in the plan, and

(D) The plan has a repayment provision which satisfies the requirements of subdivision (iv) of this subparagraph in effect at the time of the distribution.

A distribution shall be deemed to be made due to the termination of an employee's participation in the plan if it is made no later than the close of the second plan year following the plan year in which such termination occurs. For purposes of determining the entire nonforfeitable benefit, the plan may disregard service after the distribution, as illustrated in subparagraph (2)(i) of this paragraph.

(ii) *Voluntary cash-outs.* For purposes of determining an employee's accrued benefit derived from employer contributions under a plan, the plan may disregard service performed by the employee with respect to which—

(A) The employee receives a distribution of the present value of his nonforfeitable benefit attributable to such service at the time of such distribution,

(B) The employee voluntarily elects to receive such distribution,

(C) The distribution is made on termination of the employee's participation in the plan, and

(D) The plan has a repayment provision in effect at the time of the distribution which satisfies the requirements of subdivision (iv) of this subparagraph.

A distribution shall be deemed to be made on termination of participation in the plan if it is made not later than the close of the second plan year following the plan year in which such termination occurs. For purposes of determining the nonforfeitable benefit, the plan may disregard service after the distribution as illustrated in subparagraph (2)(i) of this subparagraph.

(iii) *Disregard of service.* Service of an employee permitted to be disregarded under subdivision (i) or (ii) of this subparagraph is not required to be taken into account in computing the employee's accrued benefit under the plan. In the case of a voluntary distribution described in subdivision (ii) of this subparagraph which is less than the present value of the employee's total nonforfeitable benefit immediately prior to the distribution, the accrued benefit not required to be taken into account is such total accrued benefit multiplied by a fraction, the numerator of which is the amount of the distribution and the denominator of which is the present value of his total nonforfeitable benefit immediately prior to such distribution. For example, A who is 50 percent vested in an account balance of $1,000 receives a voluntary distribution of $250. The accrued benefit which can be disregarded equals $1,000 times $250/$500, or $500. However, such service may not by reason of this paragraph be disregarded for purposes of determining an employee's years of service under sections 410(a)(3) and 411(a)(4).

(iv) *Plan repayment provision.* (A) A plan repayment provision satisfies the requirements of this subdivision if, under the provision, the accrued benefit of an employee which is disregarded by a plan under subdivision (i) or (ii) of this subparagraph is restored upon repayment to the plan by the employee of the full amount of the distribution. A plan is not required to provide for such repayment unless the employee—

(*1*) Received a distribution which is in a plan year to which section 411 applies (see § 1.411(a)-2), which distribution is less than the present value of his accrued benefit, and

(*2*) Resumes employment covered under the plan.

For purposes of (*1*) of this subdivision (iv)(A), an employee receives a distribution which is less than the present value of his accrued benefit if any portion of such benefit is forfeitable at the time of such distribution.

(B) A plan may impose the same conditions on repayments for the restoration of employer-derived accrued benefits that are allowed as conditions for restoration of employer-derived accrued benefits upon repayment of mandatory contributions under subparagraph (2)(ii)(B), (C), (D) and (E) of this paragraph.

(v) In the case of a defined contribution plan, the employer-derived accrued benefit required to be restored by this subparagraph shall not be less than the amount in the account balance of the employee, both the amount distributed and the amount forfeited, unadjusted by any subsequent gains or losses. Thus, for example, if an employee received a distribution of $250 when he was 25 percent vested in an account balance of $1,000, upon repayment of $250 the account balance may not be less than $1,000 even if, because of plan losses, the account balance, if not distributed, would have been reduced to $500.

(5) *Vesting requirement for defined contribution plans*—(i) *Application.* The requirements of this subparagraph apply to a defined contribution plan which makes distributions to employees from their accounts attributable to employer contributions at a time when—

(A) Employees are less than 100 percent vested in such accounts, and

(B) Under the plan, employees can increase their percentage of vesting in such accounts after the distributions.

(ii) *Requirements.* In order for a plan, to which this subparagraph applies, to satisfy the vesting requirements of section 411, account balances under the plan (with respect to which percentage vesting can increase) must be computed in a manner which satisfies either subdivision (iii) (A) or (B) of this subparagraph.

(iii) *Permissible methods.* A plan may provide for either of the following methods, but not both, for computing account balances with respect to which percentage vesting can increase and from which distributions are made:

(A)(*1*) A separate account is established for the employee's interest in the plan as of the time of the distribution, and

(*2*) At any relevant time the employee's vested portion of the separate account is not less than an amount ("X") determined by the formula: $X=P(AB+(R\times D))-(R\times D)$. For purposes of applying the formula: P is the vested percentage at the relevant time; AB is the account balance at the relevant time; D is the amount of the distribution; R is the ratio of the account balance at the relevant time to the account balance after distribution; and the relevant time is the time at which, under the plan, the vested percentage in the account cannot increase.

A plan is not required to provide for separate accounts provided that account balances are maintained under a method that has the same effect as under this subdivision.

(B) At any relevant time the employee's vested portion is not less than an amount ("X") determined by the formula: $X=P(AB+D)-D$. For purposes of applying the formula, the terms have the same meaning as under subdivision (iii)(A)(*2*) of this subparagraph.

(C) An application of the methods described in subdivisions (iii) (A) and (B) of this subparagraph is illustrated by the following examples:

Example (1). The X defined contribution plan uses the method described in subdivision (iii)(A) of this subparagraph for computing account balances and the break in service rule described in section 411(a)(6)(C) (service after a 1-year break does not increase the vesting percentage in account balances accrued prior to the break). The plan distributes $250 to A when A's account balance prior to the distribution equals $1,000 and he is 25 percent vested. At the time of the distribution, A has not incurred a 1-year break so that his vesting percentage can increase. Six years later, when A is 60 percent vested, he incurs a 1-year break so that his vesting percentage cannot increase. At this time his separate account balance equals $1,500. $R=\frac{\$750}{\$1,500}$ or 2. A's separate account must equal 60 percent ($1,500+(2\times\$250)$) $-(2\times\$250)$ or 60 percent ($1,500+$500) $-$500, or $1,200$-$500 equals $700.

Example (2). The Y defined contribution plan uses the method described in subdivision (iii)(B) of this subparagraph for computing account balances and the break in service rule described in section 411(a)(6)(C). The plan distributes $250 to B when B's account balance prior to the distribution equals $1,000 and he is 25 percent vested. At the time of the distribution, B has not incurred a 1-year break so that his vesting percentage can increase. Six years later, when A is 60 percent vested, he incurs a 1-year break so that his vesting percentage cannot increase. At this time his account balance equals $1,500. B's separate account must

equal 60 percent ($1,500+$250)−$250, 60% of $1,750−$250 equals $800.

(6) *Other rules*—(i) *Distributions on separation or other event.* None of the rules of this paragraph preclude distributions to employees upon separation from service or any other event recognized by the plan for commencing distributions. Such a distribution must, of course, satisfy the applicable qualification requirements pertaining to such distributions. For example, a profit-sharing plan could pay the vested portion of an account balance to an employee when he separated from service, but in order to satisfy section 411 the plan might not be able to forfeit the nonvested account balance until the employee has a 1-year break in service. Similarly, the fact that a plan cannot disregard an accrued benefit attributable to service for which an employee has received a distribution because the plan does not satisfy the cash-out requirements of subparagraph (4) of this paragraph does not mean that the employee's accrued benefit (computed by taking into account such service) cannot be offset by the accrued benefit attributable to the distribution.

(ii) *Joint and survivor requirements.* See § 1.401 (a)–11(a)(2) (relating to joint and survivor annuities) for special rules applicable to certain distributions described in this paragraph.

(iii) *Plan repayments.* (A) Under subparagraphs (2) and (4) of this paragraph, a plan may be required to restore accrued benefits in the event of repayment by an employee.

(B) For purposes of applying the limitations of section 415 (c) and (e), in the case of a defined contribution plan, the repayment by the employee and the restoration by the employer shall not be treated as annual additions.

(C) In the case of a defined contribution plan, the permissible sources for restoration of the accrued benefit are: income or gain to the plan, forfeitures, or employer contributions. Notwithstanding the provisions of § 1.401–1(b)(1)(ii), contributions may be made for such an accrued benefit by a profit-sharing plan even though there are no profits. In order for such a plan to be qualified, account balances (accrued benefits) generally must correspond to assets in the plan. Accordingly, there cannot be an unfunded account balance. However, an account balance will not be deemed to be unfunded in the case of a restoration if assets for the restored benefit are provided by the end of the plan year following the plan year in which the repayment occurs.

§ 1.411(a)–8 Changes in vesting schedule.

(a) *Requirement of prior schedule.* Under section 411(a)(10)(A), for plan years for which section 411 applies, a plan will be treated as not meeting the minimum vesting standards of section 411(a)(2) if the plan does not satisfy the requirements of this paragraph. If the vesting schedule of a plan is amended, then as of the date such amendment is adopted, the plan satisfies the requirements of this paragraph if, under the plan as amended, in the case of an employee who is a participant on—

(1) The date the amendment is adopted, or

(2) The date the amendment is effective, if later

The nonforfeitable percentage (determined as of such date) of such employee's right to his employer-derived accrued benefit is not less than his percentage computed under the plan without regard to such amendment.

(b) *Election of former schedule*—(1) *In general.* Under section 411(a)(10)(B), for plan years for which section 411 applies, if the vesting schedule of a plan is amended, the plan will not be treated as meeting the minimum vesting standards of section 411(a)(2) unless the plan as amended, provides that each participant whose nonforfeitable percentage of his accrued benefit derived from employer contributions is determined under such schedule, and who has completed at least 5 years of service with the employer, may elect, during the election period, to have the nonforfeitable percentage of his accrued benefit derived from employer contributions determined without regard to such amendment. Notwithstanding the preceding sentence, no election need be provided for any participant whose nonforfeitable percentage under the plan, as amended, at any time cannot be less than such percentage determined without regard to such amendment.

(2) *Election period.* For purposes of subparagraph (1) of this paragraph, the election period under the plan must begin no later than the date the plan amendment is adopted and end no earlier than the latest of the following dates:

(i) The date which is 60 days after the day the plan amendment is adopted,

(ii) The date which is 60 days after the day the plan amendment becomes effective, or

(iii) The date which is 60 days after the day the participant is issued written notice of the plan amendment by the employer or plan administrator.

(3) *Service requirement.* For purposes of subparagraph (1) of this paragraph, a participant shall be considered to have completed 5 years of service if such participant has completed 5 years of service, whether or not consecutive, without regard to the exceptions of section 411(a)(4) prior to the expiration of the election period described in subparagraph (2) of this paragraph. For the meaning of the term "year of service", see regulations prescribed by the Secretary of Labor under 29 CFR Part 2530, relating to minimum standards for employee pension benefit plans.

(4) *Election only by participant.* The election described in subparagraph (1) of this paragraph is available only to an individual who is a participant in the plan at the time such election is made.

(5) *Election may be irrevocable.* A plan, as amended, shall not fail to meet the minimum vesting standards of section 411(a)(2) by reason of section 411(a)(10)(B) merely because such plan provides that the election described in subparagraph (1) of this paragraph is irrevocable.

(6) *Relationship with section 411(a)(2).* The election described in subparagraph (1) of this paragraph is available for a vesting schedule which does not satisfy the requirements of section 411(a)(2) only if under such schedule all participants have a 50 percent nonforfeitable right after 10 years of service, and a 100 percent nonforfeitable right after 15 years of service, in their employer-derived accrued benefit. If the vesting schedule provides less vesting than the percentages required by the preceding sentence, the plan can be amended to provide for such vesting.

(c) *Special rules*—(1) *Amendment of vesting schedule.* For purposes of this section, an amendment of a vesting schedule is each plan amendment which directly or indirectly affects the computation of the nonforfeitable percentage of employees' rights to employer-derived accrued benefits. Consequently, such an amendment, for example, includes each change in the plan which affects either the plan's computation of years of service or of vesting percentages for years of service.

(2) *Aggregation of amendments.* All plan amendments which are: (i) amendments of a vesting schedule within the meaning of subparagraph (1) of this paragraph and (ii) adopted and effective at the same time, shall be deemed to be a single amendment for purposes of applying the rules in paragraphs (a) and (b) of this section.

§ 1.411(a)–9 Amendment of break in service rules; transitional period.

(a) *In general.* Under section 1017(f)(2) of the Employee Retirement Income Security Act of 1974, a plan is not a qualified plan (and a trust forming a part of such plan is not a qualified trust) if the rules of the plan relating to breaks in service are amended, and—

(1) Such amendment is effective after January 1, 1974, and before the effective date of section 411, and

(2) Under such amendment, the nonforfeitable percentage of any employee's right to his employer-derived accrued benefit is less than the lesser of the nonforfeitable percentage of such employee's right to such benefit—

(i) Under the break in service rules provided by section 411(a)(6) and § 1.411(a)–6(c), or

(ii) The greatest such percentage under the plan as in effect on or after January 1, 1974 (provided the break in service rules of the plan were not in violation of any law or rule of law on January 1, 1974).

(b) *Break in service rules.* For purposes of paragraph (a), the term "break in service rules" means the rules provided by a plan relating to circumstances under which a period of an employee's service or plan participation is disregarded, for purposes of determining the extent to which his rights to his accrued benefit under the plan are unconditional, if under such rules such

service is disregarded by reason of the employee's failure to complete a required period of service within a specified period of time. For this purpose, plan rules which result in the loss of prior vesting or benefit accruals of an employee, or which deny an employee eligibility to participate, by reason of separation or failure to complete a required period of service within a specified period of time (e.g. 300 hours in one year) will be considered break in service rules. For purposes of section 11(b)(3), service described under the plan's break in service rules, as in effect before the effective date of section 411, need not be counted.

9. Section 1.411(b)-1 is added to read as follows:

§ 1.411(b)-1 Accrued benefit requirements.

(a) *Accrued benefit requirements*—(1) *In general.* Under section 411(b), for plan years beginning after the applicable effective date of section 411, rules are provided for the determination of the accrued benefit to which a participant is entitled under a plan. Under a defined contribution plan, a participant's accrued benefit is the balance to the credit of the participant's account. Under a defined benefit plan, a participant's accrued benefit is his accrued benefit determined under the plan. A defined benefit plan is not a qualified plan unless the method provided by the plan for determining accrued benefits satisfies at least one of the alternative methods (described in paragraph (b) of this section) for determining accrued benefits with respect to all active participants under the plan. A defined benefit plan may provide that accrued benefits for participants are determined under more than one plan formula. In such a case, the accrued benefits under all such formulas must be aggregated in order to determine whether or not the accrued benefits under the plan for participants satisfy one of the alternative methods. A plan may satisfy different methods with respect to different classifications of employees, or separately satisfy one method with respect to the accrued benefits for each such classification, provided that such classifications are not so structured as to evade the accrued benefit requirements of section 411(b) and this section. (For example, if a plan provides that employees who commence participation at or before age 40 accrue benefits in a manner which satisfies the 133⅓ percent method of determining accrued benefits and employees who commence participation after age 40 accrue benefits in a manner which satisfies the 3 percent method of determining accrued benefits, the plan would be so structured as to evade the requirements of section 411(b).) A defined benefit plan does not satisfy the requirements of section 411(b) and this section merely because the accrued benefit is defined as the "reserve under the plan". Special rules are provided for the first two years of service by a participant, certain insured defined benefit plans, and certain reductions in accrued benefits due to increasing age or service. In addition, a special rule is provided with respect to accruals for service before the effective date of section 411.

(2) *Cross references*—

(i) *3 percent method.* For rules relating to the 3 percent method of determining accrued benefits, see paragraph (b)(1) of this section.

(ii) *133⅓ percent method.* For rules relating to the 133⅓ percent method of determining accrued benefits, see paragraph (b)(2) of this section.

(iii) *Fractional method.* For rules relating to the fractional method of determining accrued benefits, see paragraph (b)(3) of this section.

(iv) *Accruals before effective date.* For rules relating to accruals for service before the effective date of section 411, see paragraph (c) of this section.

(v) *First 2 years of service.* For special rules relating to determination of accrued benefit for first 2 continuous years of service, see paragraph (d)(1) of this section.

(vi) *Certain insured plans.* For special rules relating to determination of accrued benefit under a defined benefit plan funded exclusively by insurance contracts, see paragraph (d)(2) of this section.

(vii) *Accruals decreased by increasing age or service.* For special rules relating to prohibition of decrease in accrued benefit on account of increasing age or service, see paragraph (d)(3) of this section.

(viii) *Separate accounting.* For rules relating to requirements for separate accounting, see paragraph (e) of this section.

(ix) *Year of participation.* For definition of "year of participation", see paragraph (f) of this section.

(b) *Defined benefit plans.* A defined benefit plan satisfies the requirements of section 411(b)(1) and this paragraph for a plan year to which section 411 and this section apply if it satisfies the requirements of subparagraph (1), (2), or (3) of this paragraph for such year.

(1) *3 percent method*—(i) *General rule.* A defined benefit plan satisfies the requirements of this paragraph for a plan year if, as of the close of the plan year, the accrued benefit to which each participant is entitled, computed as if the participant separated from the service as of the close of such plan year, is not less than 3 percent of the 3 percent method benefit, multiplied by the number of years (not in excess of 33⅓) of his participation in the plan including years after his normal retirement age. For purposes of this subparagraph, the "3 percent method benefit" is the normal retirement benefit to which the participant would be entitled if he commenced participation at the earliest possible entry age for any individual who is or could be a participant under the plan and if he served continuously until the earlier of age 65 or the normal retirement age under the plan.

(ii) *Special rules*—(A) *Compensation.* In the case of a plan providing a retirement benefit based upon compensation during any period, the normal retirement benefit to which a participant would be entitled is determined as if he continued to earn annually the average rate of compensation which he earned during consecutive years of service, not in excess of 10, for which his compensation was the highest. For purposes of this subdivision (A), the number of consecutive years of service used in computing average compensation shall be the number of years of service specified under the plan (not in excess of 10) for computing normal retirement benefits.

(B) *Social security, etc.* For purposes of this subparagraph, for any plan year, social security benefits and all relevant factors used to compute benefits, *e.g.*, consumer price index, are treated as remaining constant as of the beginning of the current plan year for all subsequent plan years.

(C) *Computation in certain cases.* In the case of any plan to which the provisions of section 411(b)(1)(D) and paragraph (c) of this section are applicable, for any plan year the accrued benefit of any participant shall not be less than the accrued benefit otherwise determined under this subparagraph, reduced by the excess of the accrued benefit determined under this subparagraph as of the first day of the first plan year to which section 411 applies over the accrued benefit determined under section 411(b)(1)(D) and paragraph (c) of this section and increased by the amount determined under paragraph (c)(2)(v) of this section.

(iii) *Examples.* The application of this subparagraph is illustrated by the following examples.

Example (1). The M Corporation's defined benefit plan provides an annual retirement benefit commencing at age 65 or $4 per month for each year of participation. As a condition of participation, the plan requires that an employee have attained age 25. The normal retirement age specified under the plan is age 65. The plan provides for no limit on the number of years of credited service. A, age 40, is a participant in the M Corporation's plan.

A has completed 12 years of participation in the plan of the M Corporation as of the close of the plan year. Under subdivision (i) of this subparagraph, the normal retirement benefit commencing at age 65 to which a participant would be entitled if he commenced participation at the earliest possible entry age (25) under the plan and served continuously until normal retirement age (65) is an annual benefit of $1,920 [40×(12×$4)]. Under paragraph (b)(1)(i) of this section, the plan does not satisfy the requirements of this subparagraph unless A has accrued an annual benefit of at least $691 [0.03×($1,920×12)] as of the close of the plan year. Under the M Corporation plan, A is entitled to an accrued benefit of $576 [(12×12)×$4] as of the close of the plan year. Thus, with respect to A, the accrued benefit provided under the M Corporation plan does not satisfy the requirements of this subparagraph.

Example (2). Assume the same facts as in example (1) except that the M Corporation's plan provides that only the first 30 years of participation are taken into account. Under subdivision (i) of this subparagraph, the normal retirement benefit commencing at age 65 to which a participant

would be entitled if he commenced participation at the earliest possible entry age under the plan (25) and served continuously until normal retirement age (65) is an annual benefit of $1,440 [30×$48]. Under paragraph (b)(1)(i) of this section, the plan does not satisfy the requirements of this subparagraph unless A has accrued an annual benefit of at least $518 [0.03×($1,440×12)] as of the close of the plan year. Under the M Corporation plan, A is entitled to an accrued benefit of $576 [12×$48]. Thus, with respect to A, the accrued benefit provided under the M Corporation plan satisfies the requirements of this subparagraph.

Example (3). The N Corporation's defined benefit plan provides an annual retirement benefit commencing at age 65 of 50 percent of average compensation for the highest 3 consecutive years of compensation for an employee with 25 years of participation. A participant who separates from service before age 65 is entitled to 2 percent of average compensation for the highest 3 consecutive years of compensation for each year of participation not in excess of 25. The plan has no minimum age or service requirement for participation. The normal retirement age specified under the plan is age 65. On December 31, 1990, B, age 40, is a participant in the N Corporation's plan. B began employment with the N Corporation and became a participant in the N Corporation's plan on January 1, 1980. Under this subparagraph, the normal retirement benefit to which a partiicpant would be entitled if he commenced participation at the earliest possible entry age (0) under the plan and served continuously until normal retirement age (65) is 50 percent of average compensation for the highest 3 consecutive years of compensation per year commencing at age 65. Under this subparagraph, B must have accrued an annual benefit of at least 16.5 percent of his highest 3 consecutive years of compensation per year commencing at age 65 [0.03×50 percent of average compensation for the highest 3 consecutive years of compensation × 11] as of the close of the plan year. Under the N Corporation plan, B has accrued an annual benefit of 22 percent of average compensation for his highest 3 consecutive years of compensation per year commencing at age 65. Thus, with respect to B, the accrued benefit under the N Corporation plan satisfies the requirements of this subparagraph.

Example (4). The P Corporation's defined benefit plan provides an annual retirement benefit commencing at age 65 of 50 percent of average compensation for the 3 consecutive years of compensation from the P Corporation next preceding normal retirement age. The plan has no minimum age or service requirement for participation. The normal retirement age under the plan is age 65. On December 31, 1990, C, age 55, separates from service with the P Corporation. C began employment with the P Corporation and became a participant in the P Corporation's plan on January 1, 1980. As of December 31, 1990, C's average compensation for the 3 consecutive years preceding his separation from service is $15,000. Under this subparagraph, the normal retirement benefit to which a participant would be entitled if he commenced participation at the earliest possible entry age (0) under the plan and served continuously until normal retirement age (65) is an annual benefit of 50 percent of average compensation for the 3 consecutive years of compensation from the P corporation next preceding normal retirement age commencing at age 65. C must have accrued an annual benefit of at least $2,475 commencing at age 65 [0.03×(0.50×$15,000)×11] as of his separation from the service with the P Corporation in order for the P Corporation's plan to satisfy the requirements of this subparagraph with respect to C.

Example (5). On December 31, 1985, the R Corporation's defined benefit plan provided an annual retirement benefit commencing at age 65 of $100 for each year of participation, not to exceed 30. As a condition of participation, the plan requires that an employee have attained age 25. The normal retirement age specified under the plan is age 65. The appropriate computation period is the calendar year. On January 1, 1986, the plan is amended to provide an annual retirement benefit commencing at age 65 of $200 for each year of participation (before and after the amendment), not to exceed 30. B, age 40, is a participant in the R Corporation's plan. B has completed 15 years of participation in the plan of the R Corporation as of December 31, 1990. Under paragraph (b)(1)(i) of this section, the normal retirement benefit commencing at age 65 to which a participant would be entitled if he commenced participation at the earliest possible entry age (25) under the plan and served continuously until normal retirement age (65) is an annual benefit of $6,000 [30×200]. Under subdivision (i) of this subparagraph, the plan does not satisfy the requirements of this subparagraph unless B has accrued an annual benefit of at least $2,700 [0.03×$6,000×15] as of December 31, 1990. Under the R Corporation plan, B is entitled to an accrued benefit of $3,000 [$200×15] as of December 31, 1990. Thus, with respect to B, the accrued benefit provided under the R Corporation plan satisfies the requirements of this subparagraph.

Example (6). On December 31, 1995, the J Corporation's defined benefit plan provided an annual retirement benefit commencing at age 65 of $4,800 after 30 years of participation. The normal retirement age specified under the plan is age 65. The appropriate computation period is the calendar year. On January 1, 1996, the plan is amended to provide an annual retirement benefit commencing at age 65 of $6,000. A, age 40, is a participant in the J Corporation's plan since its adoption on January 1, 1986. Under paragraph (b)(1)(i) of this section, on December 31, 1995, the normal retirement benefit commencing at age 65 to which a participant would be entitled if he commenced participation at the earliest possible entry age (0) under the plan and served continuously until normal retirement age (65) is an annual benefit of $4,800. Under paragraph (b)(1)(i) of this section, on January 1, 1996, the normal retirement benefit commencing at age 65 to which a participant would be entitled if he commenced participation at the earliest possible entry age (0) under the plan and served continuously until normal retirement age (65) is an annual benefit of $6,000. Under subdivision (i) of this subparagraph, the plan does not satisfy the requirements of this subparagraph unless A has an accrued benefit on December 31, 1995 of at least $1,440 [$4,800 × 0.03 × 10] and an accrued benefit on January 1, 1996 of at least $1,800 [$6,000 × 0.03 × 10].

Example (7). The X Company's defined benefit plan provides an annual retirement benefit commencing at age 65 of $4 per month for each year of participation (not to exceed 30). As a condition of participation, the plan requires that an employee have attained age 25. The normal retirement age specified under the plan is age 65. D, age 68, is a participant in the X Company's plan. D has completed 20 years of participation in the X Company plan as of the close of the plan year. Under paragraph (b)(1)(i) of this section, the normal retirement benefit commencing at age 65 to which a participant would be entitled if he commenced participation at the earliest possible entry age (25) under the plan and served continuously until normal retirement age (65), is an annual benefit, commencing at age 65, of $1,440 [30 × $48]. Under paragraph (b)(1)(i) of this section, the plan does not satisfy the requirements of this subparagraph unless D has accrued an annual benefit, commencing at age 65, of $864 [0.03 × $1,440 × 20] as of the close of the plan year. Under the X Company plan, D has accured an annual benefit, commencing at age 65, of $960 [20 × $48]. Thus, with respect to D the accrued benefit provided under the X Company plan satisfies the requirements of this subparagraph.

Example (8). Assume the same facts as in example (7) except that for purposes of determining accrued benefits under the plan the X Company's plan disregards all years of participation after normal retirement age. Under paragraph (b)(1)(i) of this section, the normal retirement benefit commencing at age 65 to which a participant would be entitled if he commenced participation at the earliest possible entry age (25) under the plan and served continuously until normal retirement age (65) is an annual benefit of $1,440 [30 × $48]. Under paragrapn (b)(1)(i) of this section the plan does not satisfy the requirements of this subparagraph unless D has accrued an annual benefit, commencing at age 65, of $864 [0.03 × $1,440 20] as of the close of the plan year. Under the X Company's plan, D has accrued an annual benefit commencing at age 65, of $816 [17 × $48]. Thus, with respect to D, the accrued benefit provided under the X Company plan does not satisfy the requirements of this subparagraph.

(2) *133⅓ percent rule*—(i) *General rule.* A defined benefit plan satisfies the requirements of this subparagraph for a particular plan year if—

(A) Under the plan the accrued benefit payable at the normal retirement age (determined under the plan) is equal to the normal retirement benefit (determined under the plan), and

(B) The annual rate at which any individual who is or could be a participant can accrue the retirement benefits payable at normal retirement age under the plan for any later plan year cannot be more than 133⅓ percent of the annual rate at which he can accrue benefits for any plan year beginning on or after such particular plan year and before such later plan year.

(ii) *Special rules.* For purposes of this subparagraph—

(A) *Plan amendments.* Any amendment to the plan which is in effect for the current plan year shall be treated as if it were in effect for all other plan years.

(B) *Change in accrual rate.* Any change in an accrual rate which change does not apply to any individual who is or could be a participant in the plan year is disregardcd. Thus, for example, if for its plan year beginning January 1, 1980, a defined benefit plan provides an accrued benefit in plan year 1980 of 2 percent of a participant's average compensation for his highest 3 years of compensation for each year of service and provides that in plan year 1981 the accrued benefit will be 3 percent of such average compensation, the plan will not be treated as failing to satisfy the requirements of this subparagraph for plan year 1980 because in plan year 1980 the change in the accrual rate does not apply to any individual who is or could be a

participant in plan year 1980. However, if, for example, a defined benefit plan provided for an accrued benefit of 1 percent of a participant's average compensation for his highest 3 years of compensation for each of the first 10 years of service and 1.5 percent of such average compensation for each year of service thereafter, the plan will be treated as failing to satisfy the requirements of this subparagraph for the plan year even though no participant is actually accruing at the 1.5 percent rate because an individual who could be a participant and who had over 10 years of service would accrue at the 1.5 percent rate, which rate exceeds 133⅓ percent of the 1 percent rate.

(C) *Early retirement benefits.* The fact that certain benefits under the plan may be payable to certain participants before normal retirement age is disregarded. Thus, the requirements of subdivision (i) of this subparagraph must be satisfied without regard to any benefit payable prior to the normal retirement benefit (such as an early retirement benefit which is not the normal retirement benefit (see § 1.411(a)-7(c)).

(D) *Social security, etc.* For purposes of this paragraph, for any plan year, social security benefits and all relevant factors used to compute benefits, *e.g.*, consumer price index, are treated as remaining constant as of the beginning of the current plan year for all subsequent plan years.

(E) *Postponed retirement.* A plan shall not be treated as failing to satisfy the requirements of this subparagraph for a plan year merely because no benefits under the plan accrue to a participant who continues service with the employer after such participant has attained normal retirement age.

(F) *Computation of benefit.* A plan shall not satisfy the requirements of this subparagraph if the base for the computation of retirement benefits changes solely by reason of an increase in the number of years of participation. Thus, for example, a plan will not satisfy the requirements of this subparagraph if it provides a benefit, commencing at normal retirement age, of the sum of (*1*) 1 percent of average compensation for a participant's first 3 years of participation multiplied by his first 10 years of participation (or, if less than 10 his total years of partcipation) and (2) 1 percent of average compensation for a participant's 3 highest years of participation multiplied by each year of participation subsequent to the 10th year.

(iii) *Examples.* The application of this subparagraph is illustrated by the following examples:

Example (1). On January 1, 1980, the R Corporation's defined benefit plan provides for an annual benefit (commencing at age 65) of a percentage of a participant's average compensation for the period of 5 consecutive years of participation for which his compensation is the highest. The percentage is 2 percent for each of the first 20 years of participation and 1 percent per year thereafter. The appropriate computation period is the calendar year. The R Corporation's plan satisfies the requirements of this subparagraph because the 133⅓ percent rule does not restrict subsequent accrual rate decreases.

Example (2). On January 1, 1980, the J Corporation's defined benefit plan provides for an annual benefit (commencing at age 65) of a percentage of a participant's average compensation for the period of his final 5 consecutive years of participation. The percentage is 1 percent for each of the first 5 years of participation; 1⅓ percent for each of the next 5 years of participation; and 1⅔ percent for each year thereafter. The appropriate computation period is the calendar year. Even though no single accrual rate under the J Corporation's plan exceeds 133⅓ percent of the immediately preceding accrual rate, the J Corporation's plan does not satisfy the requirements of this subparagraph because the rate of accrual for all years of participation in excess of 10 (1⅔ percent) exceeds 133⅓ percent of the rate of accrual for any of the first 5 years of participation (1 percent).

Example (3). On January 1, 1980, the C Corporation's defined benefit plan provides for an annual benefit (commencing at age 65) of a percentage of a participant's average compensation for the period of 3 consecutive years of participation for which his compensation is the highest. The percentage is 2 percent for each of the first 5 years of participation; 1 percent for each of the next 5 years of participation; and 1½ percent for each year thereafter. The appropriate computation period is the calendar year. Even though the average rate of accrual under the C Corporation's plan is not less rapidly than ratably, the C Corporation's plan does not satisfy the requirements of this subparagraph because the rate of accrual for all years of participation in excess of 10 (1½ percent) for any employee who is actually accruing benefits or who could accrue benefits exceeds 133⅓ percent of the rate of accrual for the sixth through tenth years of participation, respectively (1 percent).

(3) *Fractional rule*—(i) *In general.* A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which any participant is entitled is not less than the fractional rule benefit multiplied by a fraction (not exceeding 1)—

(A) The numerator of which is his total number of years of participation in the plan, and

(B) The denominator of which is the total number of years he would have participated in the plan if he separated from the service at the normal retirement age under the plan.

(ii) *Special rules.* For purposes of this subparagraph—

(A) *Fractional rule benefit.* The "fractional rule benefit" is the annual benefit commencing at the normal retirement age under the plan to which a participant would be entitled if he continued to earn annually until such normal retirement age the same rate of compensation upon which his normal retirement benefit would be computed. Such rate of compensation shall be computed on the basis of compensation taken into account under the plan (but taking into account average compensation for no more than the 10 years of service immediately preceding the determination). For purposes of this subdivision (A), the normal retirement benefit shall be determined as if the participant had attained normal retirement age on the date any such determination is made.

(B) *Social security, etc.* For purposes of this subparagraph, for any plan year, social security benefits and all relevant factors used to compute benefits, *e.g.*, consumer price index, are treated as remaining constant as of the beginning of the current plan year for all subsequent plan years.

(C) *Postponed retirement.* A plan shall not be treated as failing to satisfy the requirements of this subparagraph merely because no benefits under the plan accrue to a participant who continues service with the employer after such participant has attained normal retirement age under the plan.

(D) *Computation in certain cases.* In the case of any plan to which the provisions of section 411(b)(1)(D) and paragraph (c) of this section are applicable, for any plan year the accrued benefit of any participant shall not be less than the accrued benefit otherwise determined under this subparagraph, reduced by the excess of the accrued benefit determined under this subparagraph as of the first day of the first plan year to which section 411 applies over the accrued benefit determined under section 411(b)(1)(D) and paragraph (c) of this section and increased by the amount determined under paragrah (c)(2)(v) of this section.

(iii) *Examples.* The application of this subparagraph is illustrated by the following examples:

Example (1). The R Corporation's defined benefit plan provides an annual retirement benefit commencing at age 65 of 30 percent of a participant's average compensation for his highest 3 consecutive years of participation. If a participant separates from service prior to normal retirement age, the R Corporation's plan provides a benefit equal to an amount which bears the same ratio to 30 percent of such average compensation as the participant's actual number of years of participation in the plan bears to the number of years the participant would have participated in the plan had he separated from service at age 65. The plan further provides that normal retirement age is age 65. A, age 55, is a participant in the R Corporation's plan for the current year, and A has 15 years of participation in the R Corporation's plan. As of the current year, A's average compensation for his highest 3 years of compensation is $20,000. The R Corporation's plan satisfies the requirements of this subparagraph because if A separates from the service in the current year he will be entitled to an annual benefit of $3,600 commencing at age 65 [0.3×$20,000)×15/25].

Example (2). The J Corporation's defined benefit plan provides a normal retirement benefit of 1 percent per year of a participant's average compensation from the employer. In the case of a participant who separates from service prior to normal retirement age (65), the plan provides that the annual benefit is an amount which is equal to 1 percent of such compensation multiplied by the number of years of plan participation actually completed by the participant. The plan year of the J Corporation's plan is the calendar year. B, age 55, is a participant in the J Corporation's plan for the current year. B became a participant in the J Corporation's plan on January 1, 1980. As of December 31, 1990, B's compensation history is as follows:

Year	Compensation
1980	$17,000
1981	18,000
1982	20,000
1983	20,000
1984	21,000
1985	22,000
1986	23,000
1987	25,000
1988	26,000
1989	29,000
1990	32,000

If B separates from service on December 31, 1990, he would be entitled to an annual benefit of $2,530 commencing at age 65. Because the J Corporation's plan does not limit the number of years of compensation to be taken into account in determining the normal retirement benefit, B's rate of compensation for purposes of determining his normal retirement benefit is $23,600 [$18,000+$20,000+$20,000+$21,000+$22,000+$23,000+$25,000+$26,000+$29,000+$32,000]

10

Under this subparagraph, B's accrued benefit under the J Corporation's plan as of December 31, 1990 must be not less than $2,561 per year commencing at age 65 [0.0' × ($17,000 + $18,000 + $20,000 + $20,000 + $21,000 + $22,000 + $23,000 + $25,000 + $26,000 + $29,000 + $32,000 + ($23,600 × 10)) × 11/21]. Thus, the J Corporation's plan would not satisfy the requirements of this subparagraph.

(c) *Accruals for service before effective date*—(1) *General rule.* For a plan year to which section 411 applies, a defined benefit plan does not satisfy the requirements of section 411(b)(1) and this section unless, under the plan, the accrued benefit of each participant for plan years beginning before section 411 applies is not less than the greater of—

(i) Such participant's accrued benefit (as of the day before section 411 applies) determined under the plan as in effect from time to time prior to September 2, 1974 (without regard to any amendment adopted after such date), or

(ii) One-half of the accrued benefit that would be determined with respect to the participant as of the day before section 411 applies if the participant's accrued benefit were computed for such prior plan years under a method which satisfies the requirements of section 411(b)(1)(A), (B), or (C) and paragraph (b)(1), (2), or (3) of this section. See 29 CFR Part 2530, Department of Labor regulations relating to minimum standards for employee pension benefit plans, for time participation deemed to begin.

(2) *Special rules*—(i) A plan shall not be deemed to fail to satisfy the requirements of section 411(b) and this section merely because the method for computing the accrued benefit of a participant for years of participation prior to the first plan year for which section 411 is effective with respect to the plan is not the same method for computing the accrued benefit of a participant for years of participation subsequent to such plan year.

(ii) For purposes of paragraph (c)(1)(ii) of this section, section 411(b)(1)(A) and paragraphs (b)(1) of this section shall be applied as if the participant separated from service with the employer on the day before the first day of the first plan year to which section 411 applies.

(iii) For purposes of paragraph (c)(1)(ii) of this section, section 411(b)(1)(B) and paragraph (b)(2) of this section shall be applied in the following manner:

(A) Except as provided in (c)(2)(iii)(B) of this section, section 411(b)(1)(B) and paragraph (b)(2) of this section shall be applied as if the participant separated from service with the employer on the day before the first day of the first plan year to which section 411 applies.

(B) In the case that the plan does not satisfy the requirements of section 411(b)(1)(B) and paragraph (b)(2) of this section at any time prior to the day specified in (c)(2)(iii)(A) of this section, the plan shall be deemed revised to the extent necessary to satisfy the requirements of section 411(b)(1)(B) and paragraph (b)(2) of this section for all plan years beginning before the applicable effective date of section 411 and this section. For purposes of the preceding sentence, a plan shall not be deemed revised to the extent necessary to satisfy the requirements of section 411(b)(1)(B) and paragraph (b)(2) of this section for a plan year if the benefit a participant would receive if he were employed until normal retirement age is reduced by such revision or if the revised rate of accrual with respect to such accrued benefit does not otherwise satisfy the requirements of section 411(b)(1)(B) and paragraph (b)(2) of this section.

(iv) For purposes of paragraph (c)(1)(ii) of this section, section 411(b)(1)(C) and paragraph (b)(3) of this section shall be applied as if the participant separated from service on the day before the first day of the first plan year to which section 411 applies.

(v) The excess of the accrued benefit payable at normal retirement age of any participant determined under section 411(b)(1)(A), (B), or (C) (without regard to section 411(b)(1)(D)), and paragraph (b)(1), (2), or (3) of this section (without regard to this paragraph) as of the day before the first day of the first plan year to which section 411 and this section applies over the accrued benefit determined under paragraph (c)(1) of this section shall be accrued in accordance with the provisions of the plan as in effect after the applicable effective date of section 411, as if the plan had been initially adopted on such effective date.

(d) *Special rules*—(1) *First 2 years of service.* Notwithstanding paragraphs (1), (2), and (3) of paragraph (b) of this section, under section 411(b)(1)(E) and this subparagraph, a plan shall not be treated as failing to satisfy the requirements of paragraph (b) of this section solely because the accrual of benefits under the plan does not become effective until the employee has completed 2 continuous years of service. For purposes of this subparagraph, continuous years of service are years of service (within the meaning of section 410(a)(3)(A)) which are not separated by a break in service (within the meaning of section 410(a)(5)). For years of service beginning after such 2 years of service, the accrued benefit of an employee shall not be less than that to which the employee would be entitled if section 411(b)(1)(E) and this subparagraph did not apply. Thus, for example, a plan which otherwise satisfies the requirements of paragraph (b)(2) of this section provides for a rate of accrual of 1 percent of average compensation for the highest 3 years of compensation beginning with the third year of service of a participant shall not be treated as satisfying paragraph (b)(2) of this section because as of the time the employee completes 3 continuous years of service there is no accrual during the first 2 years of service. In addition, a plan which otherwise satisfies the requirements of paragraph (b)(1) of this section and which requires that an employee must attain age 25 and complete 1 year of service prior to becoming a participant will not satisfy the requirements of paragraph (b)(1) of this section if an employee who completes 2 years of service prior to attaining age 25 does not begin accruals immediately upon commencement of participation in the plan. For rules relating to years of service, see 29 CFR part 2530, Department of Labor regulations relating to minimum standards for employee pension benefit plans.

(2) *Certain insured defined benefit plans.* Notwithstanding paragraphs (b)(1), (2), and (3) of this section, a defined benefit plan satisfies the requirements of paragraph (b) of this section if such plan is funded exclusively by the purchase of contracts from a life insurance company and such contracts satisfy the requirements of sections 412(i) (2) and (3) and the regulations thereunder. The preceding sentence is applicable only if an employee's accrued benefit as of any applicable date is not less than the cash surrender value such employee's insurance contracts would have on such applicable date if the requirements of section 412(i) (4), (5), and (6) and the regulations thereunder were satisfied.

(3) *Accrued benefit may not decrease on account of increasing age or service.* Notwithstanding paragraphs (b) (1), (2), and (3) of this section and paragraphs (d) (1) and (2) of this section, a defined benefit plan shall be treated as not satisfying the requirements of paragraph (b) and (d) of this section if the participant's accrued benefit is reduced on account of any increase in his age or years of service. The preceding sentence shall not apply to social security supplements described in § 1.411(a)-7(c)(4).

(e) *Separate accounting.* A plan satisfies the requirements of this paragraph if the requirements of paragraph (e)(1) or (2) of this paragraph are met.

(1) *Defined benefit plan.* In the case of a defined benefit plan, the requirements of this paragraph are satisfied if the plan requires separate accounting for the portion of each employee's accrued benefit derived from any voluntary employee contributions permitted

under the plan. For purposes of this subparagraph the term "voluntary employee contributions" means all employee contributions which are not mandatory contributions within the meaning of section 411(c)(2)(C) and the regulations thereunder. See § 1.411(c)-1(b)(1) for rules requiring the determination of such an accrued benefit by the use of a separate account.

(2) *Defined contribution plan.* In the case of a defined contribution plan, the requirements of this paragraph are not satisfied unless the plan requires separate accounting for each employee's accrued benefit. If a plan utilizes the break in service rule of section 411(a)(6)(C), an employee could have different percentages of vesting between pre-break and post-break accrued benefits. In such a case, the requirements of this paragraph are not satisfied unless the plan computes accrued benefits in a manner which takes into account different percentages. A plan which provides separate accounts for pre-break and post-break accrued benefits will be deemed to compute benefits in a reasonable manner.

(f) *Year of participation*—(1) *In general.* This paragraph is inapplicable to a defind contribution plan. For purposes of determining an employee's accrued benefit, a "year of participation" is a period of service determined under regulations prescribed by the Secretary of Labor in 29 CFR Part 2530, relating to minimum standards for employee pension benefit plans.

(2) *Additional rule relating to year of participation.* A trust shall not constitute a qualified trust if the plan of which such trust is a part provides for the crediting of a year of participation, or part thereof, and such credit results in the discrimination prohibited by section 401(a)(4).

(g) *Additional illustrations.* The application of this section may be illustrated by the following example:

Example. (i) The S Corporation established a defined benefit plan on January 1, 1980. The plan provides a minimum age for participation of age 25. The normal retirement age under the plan is age 65. The appropriate computation periods are the calendar year. The plan provides an annual benefit, commencing at age 65, equal to $96 per year of service for the first 25 years of service, and $48 per year of service for each additional year of service.

(ii) The plan of the S Corporation does not satisfy the requirements of section 411(b)(1)(A) and paragraph (b)(1) of this section because the accrued benefit under the plan at some point will be less than the accrued benefit required under section 411(b)(1)(A) and paragraph (b)(1) of this section (i.e., 3 percent × normal retirement benefit × years of participation).

(iii) The plan of the S Corporation does satisfy the requirements of section 411(b)(1)(B) and paragraph (b)(2) of this section because the rate of benefit accrual is equal in each of the first 25 years of service and the rate decreases thereafter.

(iv) The plan of the S Corporation does satisfy the requirements of section 411(b)(1)(C) and paragraph (b)(3) of this section because the accrued benefit under the plan will equal or exceed the normal retirement benefit multiplied by the fraction described in paragraph (b)(3)(i) of this section.

10. Section 1.411(c)-1 is amended to read as follows:

§ 1.411(c)-1 Allocation of accrued benefits between employer and employee contributions.

(a) *Accrued benefit derived from employer contributions.* For purposes of section 411 and the regulations thereunder, under section 411(c)(1), an employee's accrued benefit derived from employer contributions under a plan as of any applicable date is the excess, if any, of—

(1) The total accrued benefit under the plan provided for the employee as of such date, over

(2) The accrued benefit provided for the employee, derived from contributions made by the employee under the plan as of such date.

For computation of accrued benefit derived from employee contributions to a defined contribution plan or from voluntary employee contributions to a defined benefit plan, see paragraph (b) of this section. For computation of accrued benefit derived from mandatory employee contributions to a defined benefit plan, see paragraph (c) of this section.

(b) *Accrued benefit derived from employee contribution to defined contribution plan, etc.* For purposes of section 411 and the regulations thereunder, under section 411(c)(2)(A) the accrued benefit derived from employee contributions to a defined contribution plan is determined under paragraph (b)(1) or (2) of this section, whichever applies. Under section 411(d)(5), the accrued benefit derived from voluntary employee contributions to a defined benefit plan is determined under paragraph (b)(1) of this section.

(1) *Separate accounts maintained.* If a separate account is maintained with respect to an employee's contributions and all income, expenses, gains, and losses attributable thereto, the accrued benefit determined under this subparagraph as of any applicable date is the balance of such account as of such date.

(2) *Separate accounts not maintained.* If a separate account is not maintained with respect to an employee's contributions and the income, expenses, gains, and losses attributable thereto, the accrued benefit determined under this subparagraph is the employee's total accrued benefit determined under the plan multiplied by a fraction—

(i) The numerator of which is the total amount of the employee's contributions under the plan less withdrawals, and

(ii) The denominator of which is the sum of (A) the amount described in paragraph (b)(2)(i) of this section, and (B) the total contributions made under the plan by the employer on behalf of the employee less withdrawals.

For purposes of this subparagraph, contributions include all amounts which are contributed to the plan even if such amounts are used to provide ancillary benefits, such as incidental life insurance, health insurance, or death benefits, and withdrawals include only amounts distributed to the employee and do not reflect the cost of any death benefits under the plan.

(c) *Accrued benefit derived from mandatory employee contributions to a defined benefit plan*—(1) *General rule.* In the case of a defined benefit plan (as defined in section 414(j)) the accrued benefit derived from contributions made by an employee under the plan as of any applicable date is an annual benefit, in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, equal to the amount of the employee's accumulated contributions (determined under paragraph (c)(3) of this section) multiplied by the appropriate conversion factor (determined under paragraph (c)(2) of this section). Paragraph (e) of this section provides rules for actuarial adjustments where the benefit is to be determined in a form other than the form described in this paragraph.

(2) *Appropriate conversion factor.* For purposes of this paragraph, the term "appropriate conversion factor" means the factor necessary to convert an amount equal to the accumulated contributions to a single life annuity (without ancillary benefits) commencing at normal retirement age and shall be 10 percent for a normal retirement age of 65 years. For other normal retirement ages the appropriate conversion factor shall be the factor as determined by the Commissioner.

(3) *Accumulated contributions.* For purposes of section 411(c) and this section, the term "accumulated contributions" means the total of—

(i) All mandatory contributions made by the employee (determined under paragraph (c)(4) of this section),

(ii) Interest (if any) on such contributions, computed at the rate provided by the plan to the end of the last plan year to which section 411(a)(2) does not apply (by reason of the applicable effective date), and

(iii) Interest on the sum of the amounts determined under paragraphs (c)(3)(i) and (ii) of this section compounded annually at the rate of 5 percent per annum from the beginning of the first plan year to which section 411(a)(2) applies (by reason of the applicable effective date) to the date on which the employee would attain normal retirement age.

For example, if under section 1017 of the Employee Retirement Income Security Act of 1974, section 411(a)(2) of the Code applies for plan years beginning after December 31, 1975, and for plan years beginning before 1975, the plan provided for 3 percent interest on employee contributions, an employee's accumulated contributions would be computed by crediting interest at the rate provided by the plan (3 percent) for plan years beginning before 1976 and by crediting interest at the rate of 5 percent (or another rate prescribed under section 411(c)(2)(D)) thereafter. Section 1017 of the Employee Retirement Income Security Act of 1974 and § 1.411(a)-2 provide the effective dates for the application of section 411(a)(2).

(4) *Mandatory contributions.* For purposes of section 411(c) and this section the term "mandatory contributions" means amounts contributed to the plan by the employee which are required as a condition of his employment, as a condition of his participation in the plan, or as a condition of obtaining benefits (or additional benefits) under the plan attributable to employer contributions. For example, if the benefit derived from employer contributions depends upon a specified level of employee contributions, employee contributions up to that level would be treated as mandatory contributions. Mandatory contributions, otherwise satisfying the requirements of this subparagraph, include amounts contributed to the plan which are used to provide ancillary benefits such as incidental life insurance, health insurance, or death benefits.

(d) *Limitation on accrued benefit.* The accrued benefit derived from mandatory employee contributions under a defined benefit plan (determined under paragraph (c) of this section) shall not exceed the greater of—

(1) The accrued benefit of the employee under the plan, or

(2) The accrued benefit derived from employee contributions determined without regard to any interest under section 411(c)(2)(C) (ii) and (iii) and under paragraphs (c)(3) (ii) and (iii) of this section.

(e) *Actuarial adjustments for defined benefit plans*—(1) *Accrued benefit.* In the case of a defined benefit plan (as defined in section 414(j)) if an employee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age, such benefit (determined under section 411(c)(1) and paragraph (a) of this section) shall be the actuarial equivalent of such benefit, as determined by the Commissioner.

(2) *Accrued benefit derived from employee contributions.* In the case of a defined benefit plan (as defined in section 414(j)) if the accrued benefit derived from mandatory contributions made by an employee is to be determined with respect to a benefit other than an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, such benefit shall be the actuarial equivalent of such benefit (determined under section 411(c)(2)(B) and paragraph (c) of this section) as determined by the Commissioner.

(f) *Suspension of benefits, etc.*—(1) *Suspensions.* No adjustment to an accrued benefit is required on account of any suspension of benefits if such suspension is permitted under section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (88 Stat. 855) (Code section 411(a)(3)(B)).

(2) *Employment after retirement.* No actuarial adjustment to an accrued benefit is required on account of employment after normal retirement age. For example, if a plan with a normal retirement age of 65 provides a benefit of $400 a month payable at age 65, the same $400 benefit (with no upward adjustment) could be paid to an employee who retires at age 68.

11. Sections 1.411(d)-1 through 1.411(d)-3 are added to read as follows:

§ 1.411(d)-1 Coordination of vesting and discrimination requirements. [Reserved]

§ 1.411(d)-2 Termination or partial termination; discontinuance of contributions.

(a) *General rule*—(1) *Required nonforfeitability.* A plan is not a qualified plan (and a trust forming a part of such plan is not a qualified trust) unless the plan provides that—

(i) Upon the termination or partial termination of the plan, or

(ii) In addition, in the case of a plan to which section 412 (relating to minimum funding standards) does not apply, upon the complete discontinuance of contributions under the plan,

the rights of each affected employee to benefits accrued to the date of such termination or partial termination (or, in the case of a plan to which section 412 does not apply, discontinuance), to the extent funded, or the rights of each employee to the amounts credited to his account at such time, are nonforfeitable (within the meaning of § 1.411(a)-4.

(2) *Required allocation.* (i) A plan is not a qualified plan (and a trust forming a part of such plan is not a qualified trust) unless the plan provides for the allocation of any previously unallocated funds to the employees covered by the plan upon the termination or partial termination of the plan (or, in the case of a plan to which section 412 does not apply, upon the complete discontinuance of contributions under the plan). Such provision may be incorporated in the plan at its inception or by an amendment made prior to the termination or partial termination of the plan or the discontinuance of contributions thereunder. In the case of a defined contribution plan under which unallocated forfeitures are held in a suspense account in order to satisfy the requirements of section 415, this subdivision shall not require such plan to provide for allocations from the suspense account to the extent that such allocations would result in annual additions to participants' accounts in excess of amounts permitted under section 415 for the year for which such allocations would be made.

(ii) Any provision for the allocation of unallocated funds which is found by the Secretary of Labor or the Pension Benefit Guaranty Corporation (whichever is appropriate) to satisfy the requirements of section 4044 or section 403(d)(1) of the Employee Retirement Income Security Act of 1974 is acceptable if it specifies the method to be used and does not conflict with the provisions of section 401(a)(4) of the Internal Revenue Code of 1954 and the regulations thereunder. Any allocation of funds required by paragraph (1), (2), (3), or (4)(A) of section 4044(a) of such Act shall be deemed not to result in discrimination prohibited by section 401(a)(4) of the Code (see, however, paragraph (e) of this section). Notwithstanding the preceding sentence, in the case of a plan which establishes subclasses or categories pursuant to section 4044(b)(6) of such Act, the allocation of funds by the use of such subclasses or categories shall not be deemed not to result in discrimination prohibited by the Code. The allocation of unallocated funds may be in cash or in the form of other benefits provided under the plan. However, the allocation of the funds contributed by the employer among the employees need not necessarily benefit all the employees covered by the plan.

(iii) Paragraph (a)(2) (i) and (ii) of this section do not require the allocation of amounts to the account of any employee if such amounts are not required to be used to satisfy the liabilities with respect to employees and their beneficiaries under the plan (see section 401(a)(2)).

(b) *Partial Termination*—(1) *General rule.* Whether or not a partial termination of a qualified plan occurs (and the time of such event) shall be determined by the Commissioner with regard to all the facts and circumstances in a particular case. Such facts and circumstances include: the exclusion, by reason of a plan amendment or severance by the employer, of a group of employees who have previously been covered by the plan; and plan amendments which adversely affect the rights of employees to vest in benefits under the plan.

(2) *Special rule.* If a defined benefit plan ceases or decreases future benefit accruals under the plan, a partial termination shall be deemed to occur if, as a result of such cessation or decrease, a potential reversion to the employer, or employers, maintaining the plan (determined as of the date such cessation or decrease is adopted) is created or increased. If no such reversion is created or increased, a partial termination shall be deemed not to occur by reason of such cessation or decrease. However, the Commissioner may determine that a partial termination of such a plan occurs pursuant to subparagraph (1) of this paragraph for reasons other than such cessation or decrease.

(3) *Effect of partial termination.* If a termination of a qualified plan occurs, the provisions of section 411(d)(3) apply only to the part of the plan that is terminated.

(c) *Termination*—(1) *Application.* This paragraph applies to a plan other than a plan described in section 411(e)(1) (relating to governmental, certain church plans, etc.).

(2) *Plans subject to termination insurance.* For purposes of this section, a plan to which title IV of the Employee Retirement Income Security Act of 1974 applies is considered terminated on a particular date if, as of that date—

(i) The plan is voluntarily terminated by the plan administrator under section 4041 of the Employee Retirement Income Security Act of 1974, or

(ii) The Pension Benefit Guaranty Corporation terminates the plan under

section 4042 of the Employee Retirement Income Security Act of 1974.

For purposes of this subparagraph, the particular date of termination shall be the date of termination determined under section 4048 of such Act.

(3) *Other plans.* In the case of a plan not described in paragraph (c)(2) of this section, a plan is considered terminated on a particular date if, as of that date, the plan is voluntarily terminated by the employer, or employers, maintaining the plan.

(d) *Complete discontinuance*—(1) *General rule.* For purposes of this section, a complete discontinuance of contributions under the plan is contrasted with a suspension of contributions under the plan which is merely a temporary cessation of contributions by the employer. A complete discontinuance of contributions may occur although some amounts are contributed by the employer under the plan if such amounts are not substantial enough to reflect the intent on the part of the employer to continue to maintain the plan. The determination of whether a complete discontinuance of contributions under the plan has occurred will be made with regard to all the facts and circumstances in the particular case, and without regard to the amount of any contributions made under the plan by employees. Among the factors to be considered in determining whether a suspension constitutes a discontinuance are:

(i) Whether the employer may merely be calling an actual discontinuance of contributions a suspension of such contributions in order to avoid the requirement of full vesting as in the case of a discontinuance, or for any other reason;

(ii) Whether contributions are recurring and substantial; and

(iii) Whether there is any reasonable probability that the lack of contributions will continue indefinitely.

(2) *Time of discontinuance.* In any case in which a suspension of a profit-sharing plan maintained by a single employer is considered a discontinuance, the discontinuance becomes effective not later than the last day of the taxable year of the employer following the last taxable year of such employer for which a substantial contribution was made under the profit-sharing plan. In the case of a profit-sharing plan maintained by more than one employer, the discontinuance becomes effective not later than the last day of the plan year following the plan year within which any employer made a substantial contribution under the plan.

(e) *Contributions or benefits which remains forfeitable.* Under section 411(d)(2) and (3), section 411(a) and this section do not apply to plan benefits which may not be provided for designated employees in the event of early termination of the plan under provisions of the plan adopted pursuant to regulations prescribed by the Secretary or his delegate to preclude the discrimination prohibited by section 401(a)(4). Accordingly, in such a case, plan benefits may be required to be reallocated without regard to this section. See § 1.401–4(c).

§ 1.411(d)–3 Other special rules.

(a) *Class year plans*—(1) *General rule.* Under section 411(d)(4), the requirements of section 411(a)(2) for a class year plan shall be deemed to be satisfied if such plan provides that each employee's rights to or derived from employer contributions on his behalf for any plan year are nonforfeitable no later than the end of the 5th plan year following the plan year for which such contributions were made. However, the rights of an employee who separates from service prior to such time, and who is not reemployed in the plan year of separation, may be forfeited. For purposes of section 411 and the regulations thereunder, the term "class year plan" means a profit-sharing, stock bonus, or money purchase plan which provides that the nonforfeitable rights of employees to or derived from employer contributions are determined separately for each plan year.

(2) *Other rules*—(i) *Prohibited forfeiture on withdrawals.* In the case of a class year plan, section 401(a)(19) and the regulations thereunder shall be applied separately to each plan year.

(ii) *Distribution rules.* The rules of § 1.411(a)–7(d) apply to a class year plan. For example, under the rule in § 1.411(a)–7(d)(2)(ii)(D), a class year plan would be permitted to limit the time of repayment to a 5 year period beginning on the date of withdrawal, or under the rule in § 1.411(a)–7(d)(2)(iii), a class year plan would restore the amount of the forfeited account balance in the event of repayment. For purposes of applying subparagraphs (2) and (3) of § 1.411(a)–7(d), relating to withdrawal of mandatory contributions, a withdrawal of employee contributions shall be treated as a withdrawal of such contributions on a plan year by plan year basis in succeeding order of time. Any repayments shall be treated as being on account of plan years in succeeding order of time. For purposes of applying any rule of such paragraph (e.g., paragraph (d)(2)(ii)(C)) the term "one-year break in service" means any plan year in which under subparagraph (1) of this paragraph a class year plan may forfeit an employee's rights.

(iii) *Computation of years for withdrawals.* In applying the requirement of paragraph (a)(1) of this section that rights must be nonforfeitable no later than the end of the fifth plan year following the plan year for which contributions are made, any plan year for which there has been a withdrawal of contributions and no repayment of such contributions (determined as of the last day of the plan year) is not required to count toward the five years. For example, assume that contributions are made for A in 1981 to a calendar year plan. Under the general rule of paragraph (a)(1) of this section, the contributions must be nonforfeitable on December 31, 1986. If in 1982, A withdraws the contributions for 1981, and repays these contributions in 1984, 1982 and 1983 are not required to be counted toward the five years because at the end of each year there is a withdrawal and no repayment of such withdrawal. Accordingly, the plan must provide that A's interest in the contribution for 1981 will be vested on December 31, 1988.

(b) *Prohibition against accrued benefit decrease.* Under section 411(d)(6) a plan is not a qualified plan (and a trust forming a part of such plan is not a qualified trust) if a plan amendment decreases the accrued benefit of any plan participant, unless the plan amendment satisfies the requirements of section 412(c)(8) (relating to certain retroactive amendments) and the regulations thereunder. For purposes of determining whether or not any participant's accrued benefit is decreased, all the provisions of a plan affecting directly or indirectly the computation of accrued benefits which are amended with the same adoption and effective dates shall be treated as one plan amendment. Plan provisions indirectly affecting accrued benefits include, for example, provisions relating to years of service and breaks in service for determining benefit accrual, and to actuarial factors for determining optional or early retirement benefits.

(c) *Rules applicable to section 414(k) plan.* For special rules applicable to defined benefit plans which provide a benefit derived from employer contributions which is based partly on a participant's separate account, see section 414(k) and the regulations thereunder.

12. Sections 1.413–1 and 1.413–2 are added to read as follows:

§ 1.413–1 Special rules for collectively bargained plans.

(a) through (d) [Reserved]

(e) *Vesting.* Section 411 (other than section 411(d)(3) relating to termination or partial termination; discontinuance of contributions) and the regulations thereunder shall be applied as if all employers who have been parties to the collective-bargaining agreement constituted a single employer. The application of any rules with respect to breaks in service under section 411 shall be made under regulations prescribed by the Secretary of Labor. Thus, for example, all the hours which an employee worked for each employer in a collectively-bargained plan would be aggregated in computing the employee's hours of service under the plan. See also 29 CFR Part 2530 (Department of Labor regulations relating to minimum standards for employee pension benefit plans).

§ 1.413–2 Special rules for plans maintained by more than one employer.

(a) through (c) [Reserved]

(d) *Vesting.* Section 411 and the regulations thereunder shall be applied as if all employers who maintain the plan constituted a single employer. The application of any rules with respect to breaks in service under section 411 shall be made under regulations prescribed by the Secretary of Labor. Thus, for ex-

ample, all the hours which an employee worked for each employer maintaining the plan would be aggregated in computing the employee's hours of service under the plan. See also 29 CFR Part 2530 (Department of Labor regulations relating to minimum standards for employee pension benefit plans).

§ 1.801–8 [Amended]

12. Paragraph (g) of § 1.801–8 is amended by deleting "or (D)" the two places it appears therein and inserting in lieu thereof "(D), or (E)".

13. Section 1.805–7 is amended by revising paragraphs (3) and (4) and adding a new paragraph (5) to paragraph (b) thereof to read as follows:

§ 1.805–7 Pension plan reserves.

* * * * *

(b) *Pension plan reserves defined.* * * *

(3) Provided for employees of the life insurance company under a plan which for the taxable year meet the requirements of section 401(a) (3), (4), (5), (6), (7), (8), (11), (12), (13), (14), (15), (16), and (19) for the taxable year to which such paragraphs apply. For the purposes of this subparagraph, the term "employees" includes full-time life insurance salesmen treated as employees under section 7701(a)(20);

(4) Purchased to provide retirement annuities for the employees of an organization which (as of the time the contracts were purchased) was an organization described in section 501(c)(3) which was exempt from tax under section 501(a) or was an organization exempt from tax under section 101(6) of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue laws. The definition of pension plan reserves described in section 805(d)(1)(D) and this paragraph includes only life insurance reserves held under contracts purchased by those organizations described in section 501(c)(3) and exempt from tax under section 501(a), and does not include life insurance reserves held under contracts purchased by organizations described under any other provision of section 501(c). Accordingly, the reserves held under contracts purchased by such other exempt organizations, or by entities not subject to Federal income tax (such as a State, municipality, etc.), shall not be treated as pension plan reserves unless they qualify as such under section 805(d)(1)(A), (B), (C), or (E); or

(5) Purchased under contracts entered into with trusts which (at the time the contracts were entered into) were individual retirement accounts described in section 408(a) or under contracts entered into with individual retirement annuities described in section 408(b).

* * * * *

[FR Doc.77-24092 Filed 8-22-77;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

PART 0—COMMISSION ORGANIZATION

Editorial Amendment of Part 0 to Reflect a Reorganization of the Common Carrier Bureau

AGENCY: Federal Communications Commission.

ACTION: Amendment of rules.

SUMMARY: This amendment changes the Rules to reflect changes in organization and functions of the Common Carrier Bureau. These changes were necessary to focus and strengthen the Bureau's surveillance activities, to facilitate policy development and coordination, and to improve program management and research activities.

EFFECTIVE DATE: August 22, 1977.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mr. H. Walker Feaster, III, Office of the Executive Director, 632–7513.

SUPPLEMENTARY INFORMATION: In the Matter of Editorial Amendment of Part 0 of the Commission's Rules to reflect a reorganization of the Common Carrier Bureau.

ORDER

Adopted: August 12, 1977.

Released: August 16, 1977.

1. Changes in the organization and functions of the Common Carrier Bureau were adopted by the Commission February 4, 1976. Two new divisions were established within the Bureau. Several divisions were renamed, and functional statements were updated. These changes were necessary to focus and strengthen the Bureau's surveillance activities, to facilitate policy development and coordination, and to improve program management and research activities. Part O of the Rules and Regulations, which describes the organization of the Commission, is being amended to reflect these changes.

2. The amendments adopted herein pertain to agency organization. The prior notice, procedure and effective date provisions of Section 4 of the Administrative Procedure Act are therefore inapplicable. Authority for the amendments adopted herein is contained in Sections 4(i) and 5(b) of the Communications Act of 1934, as amended, and in Section 0.231(d) of the Commission's Rules.

3. In view of the foregoing, IT IS ORDERED, effective August 22, 1977, that Part O of the Rules and Regulations is amended as set forth below.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; 47 U.S.C. 154, 155, 303.)

FEDERAL COMMUNICATIONS COMMISSION,
R. D. LICHTWARDT,
Executive Director.

1. In Section 0.91, the introductory text, and paragraph (a), (b), (c), (d), (e) and (f) are revised to read as follows:

§ 0.91 Functions of the Bureau.

The Common Carrier Bureau develops, recommends and administers policies and programs for the regulation of the services, facilities, rates and practices of entities which furnish interstate or foreign communications services for hire—whether by wire, radio, cable or satellite facilities—and of ancillary operations related to the provision or use of such services. The Bureau also licenses all radio facilities used for such services, including those dedicated entirely to intrastate use. The Bureau performs the following specific functions:

(a) Advises and makes recommendations to the Commission, or acts for the Commission under delegated authority, in matters pertaining to the regulation and licensing of communications common carriers and ancillary operations. This includes: policy development and coordination; adjudicatory and rule making proceedings, including rate and service investigations, determinations regarding lawfulness of carrier tariffs; action on applications for service, facility and radio authorizations; review of carrier performance; economic research and analysis; administration of Commission accounting and reporting requirements; compliance and enforcement activities.

(b) Participates in all phases of international conferences concerning common carrier and related matters and in the implementation of international agreements.

(c) Collaborates with representatives of state regulatory commissions and with the National Association of Regulatory Utility Commissioners in cooperative studies of common carrier and related matters.

(d) Advises the Commission on policy and technical matters regarding the use of satellites and related facilities for both common carrier and ancillary communications services.

(e) Advises and assists the public, other government agencies and industry groups on common carrier regulation and related matters.

(f) Exercises such authority as may be assigned or referred to it by the Commission pursuant to Section 5(d) of the Communications Act of 1934, as amended.

* * * * *

2. Sections 0.92 through 0.99 are revised to read as follows:

§ 0.92 Units in the Bureau.

(a) Office of the Bureau Chief.
(b) Policy and Rules Division.
(c) Tariff Division.
(d) Facilities and Services Division.
(e) Mobile Services Division.
(f) Economics Division.
(g) Accounting and Audits Division.
(h) Hearing Division.

§ 0.93 Office of the Bureau Chief.

The Office of the Bureau Chief is composed of the Bureau Chief, the Deputy Bureau Chief, an Assistant Bureau Chief-International, an Assistant Chief-Management, a Program Evaluation Staff, an International Programs Staff and an Administrative Office. They assist the Chief of the Bureau in planning, directing, coordinating, executing, and evaluating the functions and programs of the Bureau.

§ 0.94 Policy and rules division.

Develops uniform and integrated policies for the regulation of domestic and international communication common carriers.

(a) Develops new policies to provide a framework for the orderly growth of the common carrier industry to meet future communications needs of the nation;

(b) Reviews existing policies and regulations to determine the need for modifications;

(c) Acts on petitions for rule making involving major policy questions;

(d) Prepares precedent setting rule interpretations;

(e) Participates in rule making proceedings and inquiries involving major changes to existing policies and regulations or the development of new policies.

§ 0.95 Tariff division.

Administers the tariff provisions of the Communications Act requiring that the charges, classifications, regulations, and practices of communications common carriers providing interstate and foreign services are just, reasonable and not unduly discriminatory.

(a) Examines tariffs to determine their lawfulness,

(b) Conducts formal or informal investigations of tariff matters.

(c) Establishes and enforces criteria concerning speed, quality, reliability and accuracy of communications services.

(d) Analyzes and disposes of formal and informal complaints regarding charges, adequacy and quality of service and other carrier practices.

§ 0.96 Facilities and services division.

Authorizes and regulates the facilities and services of domestic and international communications common carriers including domestic wireline and microwave, overseas cable and radio, and international and domestic satellites.

(a) Reviews proposals for new services or the modifications of existing services insofar as they impact on facilities.

(b) Examines applications for radio, cable or wireline facilities, through construction or acquisition, and for the construction, launch and operation of space satellites and associated earth stations.

(c) Coordinates frequency assignments.

(d) Issues licenses and other authorizations.

(e) Acts on requests for temporary authority and rule waivers.

(f) Develops and recommends policy, rules, standards, procedures and forms for the authorization and regulation of interstate and foreign communication services.

(g) Participates in adjudicatory hearings on contested and mutually exclusive applications.

(h) Monitors compliance and initiates appropriate enforcement action.

(i) Keeps abreast of technological development and activities in the communications field, and maintains continuing surveillance over the evolution and performance of the domestic and international telecommunication networks.

§ 0.97 Mobile services division.

Authorizes and regulates the domestic common carrier mobile radio services including the domestic public land and aeronautical mobile radio service, the rural radio telephone service and the offshore radio transmission service.

(a) Examines applications from carriers or individuals for new or modified radio facilities;

(b) Coordinates frequency assignments;

(c) Issues licenses and other authorizations;

(d) Acts on requests for temporary or developmental authority, or rule waivers;

(e) Develops and recommends policy, rules, standards, procedures and forms for the authorization and regulation of these services;

(f) Participates in adjudicatory hearings on contested or mutually exclusive applications;

(g) Monitors compliance, acts on complaints and initiates appropriate enforcement action.

§ 0.98 Economics division.

Investigates the economic implications of common carrier regulatory policies and programs and the economic consequences of industry structure and practices. Collects, analyzes and publishes carrier financial operating and other statistical data. Studies and analyzes:

(a) Cost of capital, capital structure and financial policies of carriers;

(b) Customer demand;

(c) Methods for pricing public utility services;

(d) Carrier costs and expenses;

(e) Carrier rates, rate levels, rate bases and rate structures;

(f) Jurisdictional separations and division of revenues;

(g) Carrier depreciation practices.

§ 0.99 Accounting and audits division.

Develops and administers the FCC Uniform Systems of Accounts for communications common carriers, including related Commission requirements for reporting and preservation of records. Monitors carrier compliance with Commission requirements through the review and approval of carrier accounting reports. Conducts a program of comprehensive and selective field audits and investigations of carriers' financial and operating practices, procedures and records.

Sections 0.100 and 0.101 are added to read as follows:

§ 0.100 Hearing division.

Serves as separated trial staff for the Bureau in adjudicatory and rule making proceedings, including rate investigations.

§ 0.101 Field offices.

Common Carrier Bureau field offices are located in Room 1309X, 90 Church Street, New York, New York 10007; and Room 546, 210 Twelfth Street, St. Louis, Mo. 63101.

[FR Doc.77-24324 Filed 8-22-77;8:45 am]

SPECTRUM MANAGEMENT IN THE LAND MOBILE SERVICES

Editorial Amendments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document deletes the requirement that permits the filing of applications in the Chicago Region without evidence of frequency coordination. The amendments will result in the Chicago Region operating under the same procedures as the rest of the continental United States.

EFFECTIVE DATE: September 1, 1977.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Richard Breen, Spectrum Management Division, Safety and Special Radio Services Bureau, 202-634-4970.

SUPPLEMENTARY INFORMATION:

ORDER

Adopted: August 11, 1977.

Released: August 12, 1977.

In the matter of inquiry into the practices and procedures for spectrum management in the land mobile services governed by Parts 89, 91, 93 of the Commission's Rules, Docket No. 21229.

1. In its Notice of Inquiry released May 17, 1977, in the above entitled matter, the Commission stated its intention to return to frequency coordination in the Chicago Region. We further stated that an Order would be issued deleting those portions of the rules that permit the filing of applications in the Chicago Region without evidence of frequency coordination.

2. In view of the above, and for the reasons set forth in the Notice of Inquiry in Docket No. 20909, effective September 1,

1977, the Commission will no longer accept applications that are not accompanied either by evidence of frequency coordination or by a field survey in the Chicago Land Mobile Spectrum Management District.

3. Authority for this action is contained in Sections 4 (i) and (j) and 303 (r) of the Communications Act of 1934, as amended. Because the amendments are editorial and procedural in nature, the prior notice and effective date provisions of 5 U.S.C. 553 do not apply.

4. Accordingly, *It is ordered*, effective September 1, 1977, That Parts 89, 91 and 93 of the Rules and Regulations are amended as set out below.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

FEDERAL COMMUNICATIONS COMMISSION,
R. D. LICHTWARDT,
Executive Director.

Parts 89, 91 and 93 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 89—PUBLIC SAFETY RADIO SERVICES

§ 89.81 [Amended]

1. Section 89.81(g) deleted.

PART 91—INDUSTRIAL RADIO SERVICES

§ 91.67 [Amended]

2. Section 91.67(g) deleted.

PART 93—LAND TRANSPORTATION RADIO SERVICES

§ 93.67 [Amended]

3. Section 93.67(g) deleted.

[FR Doc.77-24268 Filed 8-22-77;8:45 am]

[Docket No. 20547; RM-1773]

PART 91—INDUSTRIAL RADIO SERVICES

Modifying Type Acceptance Requirements for Transmitters in Industrial Radiolocation Service; Correction

AGENCY: Federal Communications Commission.

ACTION: Second correction.

SUMMARY: An errata to correct the appendix in the Report and Order in Docket 20547 so as to: (1) Specify the actual effective date in § 91.109(b)(2); (2) specify the field strength limitations for equipment in the frenquency bands 10,500–10,550 MHz and 23,000–24,250 MHz; and (3) show the proper position of the unit "MHz" under the column heading "Frequency or band".

EFFECTIVE DATE: July 12, 1977.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Nevarro C. Elliott, Research and Standards Division, Office of Chief Engineer, 202-632-7093.

In the Matter of amendment of Parts 89, 91, and 93 of the Commission's Rules to modify the type acceptance requirements for transmitters in the Industrial Radiolocation Service, (Docket No. 20547 RM-1773).

SECOND ERRATA

Released: August 17, 1977.

In the Report and Order, FCC 77-358, adopted May 26, 1977, and released June 9, 1977, published at 42 FR 30509, the appendix is corrected as follows:

1. Section 91.109(b)(2) is amended so as to specify the actual effective date.

§ 91.109 Acceptability of transmitters for licensing.

* * * * *

(b) * * *

(1) * * *

(2) Transmitters used at radiolocation stations prior to January 1, 1978.

* * * * *

2. Sections 91.604 (a) and (b) are amended so as to specify field strength limitations for equipment operating in the frequency bands 10,500–10,550 MHz and 23,000–24,500 MHz and to show the proper position of the unit "MHz" under the column heading "Frequency or band".

§ 91.604 Frequencies available.

(a) * * *

Frequency or band (megahertz)	Class of station(s)	Limitation(s)
*	*	*
2450-2500	do	3, 20, 21, 22
10,500-10,550	do	12, 20, 21, 23, 24
23,000-24,250	do	17, 20, 21, 23, 24
*	*	*

(b) * * *

(24) Devices designed to operate as field disturbance sensors on frequencies between 10,500 and 10,550 MHz and between 23,000 and 24,250 MHz, with a field strength equal to or less than 250,000 microvolts per meter at 30 meters, on the fundamental frequency, will not be licensed or type accepted for use under this part. Such equipment must comply with the requirements for field disturbance sensors as set forth in Subpart F of Part 15 of this Chapter.

* * * * *

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.77-24325 Filed 8-22-77;8:45 am]

Title 49—Transportation

CHAPTER II—FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket RNE-1 Notice 2]

PART 210—RAILROAD NOISE EMISSION COMPLIANCE REGULATIONS

AGENCY: Federal Railroad Administration, DOT.

ACTION: Final rule.

SUMMARY: This rule sets forth procedures to insure compliance with the noise emission standards prescribed by the Environmental Protection Agency (EPA) for locomotives and rail cars (40 CFR 201).

EFFECTIVE DATE: October 1, 1977.

FOR FURTHER INFORMATION CONTACT:

Principal Program Person: Philip J. Brannigan, Office of Safety, 202-426-8686.

Principal Attorney: Anne-Marie Hyland, Office of the Chief Counsel, 202-426-8836.

Examination of written comments: All written comments received in this proceeding are available for examination, in the public docket RNE-1, during regular business hours in Room 5101, Nassiff Building, 400 Seventh Street SW., Washington, D.C.

SUPPLEMENTARY INFORMATION: On November 8, 1976, FRA published a notice of proposed rulemaking (NPRM, 41 FR 49183) setting forth proposed procedures to assure compliance with the EPA Railroad Noise Emission Standards ("EPA standards", 40 CFR 201). As stated in the proposed rule, the EPA standards were published by the EPA on January 14, 1976 (41 FR 2184). They became effective on December 31, 1976. Both the Standards and these compliance regulations are issued pursuant to section 17 of the Noise Control Act of 1972 "(Noise Control Act)" (86 Stat. 1248, 42 U.S.C. 4916). In the development of this final rule, consultations were conducted with EPA as required by section 17(b) of the Noise Control Act.

FRA has received ten comments on the proposed rule, each of which urged significant changes. As a result of these comments, a number of changes have been made. A summary of the comments and FRA's responses follows.

DISCUSSION OF MAJOR COMMENTS

PRELIMINARY ISSUES

Time to Comment. Two commenters stated that the comment period was too short to complete detailed analysis of certain provisions and noted that they reserved the right to comment further. FRA provided the 45 day comment period which is established by Department of Transportation policy as the minimum time for comment on an NPRM. Because of the effective date of the EPA standards, FRA was unable to provide a more lengthly comment period. Two comments that were received after the close of the comment period were reviewed and have been considered fully. FRA's general rules of practice provide procedures for petitions for reconsideration as well as petitions for waiver or amendment of any rule issued by FRA (See 49 CFR 211, 41 FR 54181 (Dec. 13, 1976)). These additional procedures provide any interested party with the opportunity to express views as to the appropriateness of any FRA regulation, or the need for amendment or revision of any such regulation.

Inflationary Impact and Regulatory Analysis. Two commenters contended that FRA was required to issue an inflationary impact statement for the proposed rule under Executive Order 11821, Office of Management and Budget Circular No. A-107, and DOT Order 2050.4. The NPRM (at 41 FR 49185) stated that the inflationary impact had been considered pursuant to Executive Order 11821. It was determined that the additional impact resulting from the proposed procedures would not be so costly as to reach the $50 million threshold that determines what actions are to be considered "major proposals" requiring inflationary impact evaluation. The major complaint raised by these commenters concerned testing for compliance with the stationary locomotive noise emission standard by use of a load cell as prescribed in the EPA standards (40 CFR 201.11 and Subpart C to 40 CFR 201). The requirement that locomotives be capable of operating within the prescribed decibel limits when connected to a load cell, and the measurement instrumentation, acoustical environment, and procedures which are to be used in determining such compliance have been established by the EPA. The FRA does not have the authority to alter any of these requirements. Several of the commenters have raised issues related to their ability to comply with the measurement criteria for conducting the load cell test. It was noted that many carriers do not presently have load cell facilities, and that the location of the majority of the load cells on those carriers that do have such facilities will not permit noise measurement in accordance with the measurement criteria established by EPA. These comments have raised several difficult issues which FRA has reviewed and considered in detail. Although this agency does not have the authority to alter any provisions of the EPA standards, in developing this final rule we have attempted to define a regulation which will insure compliance with the EPA standards without placing unreasonable or costly additional burdens on railroads. If existing load cell sites will not permit testing for compliance with the requirements prescribed by the EPA without substantial and costly modification, that issue should be addressed to EPA. FRA will provide the appropriate official of that agency with copies of the relevant comments submitted in this proceeding.

One commenter also contended that a regulatory analysis was required under the policy statement of the Secretary of Transportation published April 16, 1976 (41 FR 16200). Since the issuance of this rule is specifically required by section 17 of the Noise Control Act, the comprehensive regulatory impact evaluation normally required of all proposed rulemaking actions undertaken by agencies comprising the Department of Transportation is not required by the Secretary's policies in this case.

Nevertheless, FRA feels that an approoriate application of the Secretary's policies in this case is to assess the relative costs of alternative means of achieving the results contemplated by the statute in an effort to develop an effective and reasonable implementing regulation. FRA believes that, as a result of changes made in response to the comments received in this proceeding, the final rule issued herein will ensure effective enforcement of the EPA standards without imposing on the railroad industry unreasonable costs in excess of the minimum costs necessary to comply with the statutory intent.

Environmental Impact. One commenter also contended that an environmental impact statement is required under the National Environmental Policy Act (NEPA), 42 USC 4332(2)(c). NEPA requires environmental impact statements on all proposals for "major Federal actions significantly affecting the human environment". The Administrator has determined that this rule making is not a major Federal action since the rule only prescribes additional compliance procedures to assure compliance with the substantive requirements of the EPA standards. In the issuance of those standards, the EPA has considered the environmental impacts of the overall railroad noise emission program.

EPA Standards. EPA suggested that the preamble of the final rule should clearly state that the EPA standards do not require that locomotive consists be composed entirely of locomotives manufactured either before 1980 or after 1979. EPA also suggested that the preamble should state clearly that the EPA standards do not apply to warning devices when operated for the purpose of safety. FRA believes that the wording of section 210.3(b)(3) adequately addresses this issue.

SECTION BY SECTION ANALYSIS

§ 210.3

Some question appears to have arisen as to the scope of applicability of these noise compliance rules. These rules are intended to be coextensive with the EPA standards and the Act. The scope of the EPA standards encompasses all common carriers by railroad, or partly by railroad and partly by water, within the continental United States, that are subject to the Interstate Commerce Act. Locomotives and rail cars used in industrial railroad operations that are conducted solely within an industrial complex would not be subject to these rules. The FRA does not have the authority to limit the applicability of the EPA standards, and cannot except any operations that are common carrier operations subject to the Interstate Commerce Act. Section 210.3 has been amended to reflect the statutory scope of applicability of the EPA standards.

§ 210.7

Who should be responsible for compliance? Three commenters recommended that an industrial railroad not be required to repair or remove from service noise defective equipment belonging to another railroad. The commenters operate and maintain some equipment of their own, but they do not have the capacity or capability to repair and maintain the comparatively large number of cars involved in their interchange operations. A similar problem—lack of capability or adequate capacity to perform repairs on potentially large numbers of cars—exists with many short line railroads. In holding the operator, rather than the owner, responsible for compliance with the EPA standards, it was the intent of FRA to utilize present railroad industry practices concerning the repair of defective equipment.

Currently, when defects are found under the Freight Car Safety Standards or other safety regulations, repairs usually are made by the operating railroad. The car owner is then billed for the repair of defects that are not "handling line caused". In those cases in which correction of the defect would involve extensive repairs to the rail car, alternative procedures can be used to return the equipment to its "home shop" for repairs.

This system recognizes the nature of the rail car fleet which operates on the principle of free interchange of railroad cars among carriers. In addition, it assures the efficient freight car utilization which would be impossible if defective equipment had to be returned to its owner each time even minor repairs are required. The FRA believes that the use of this system for the repair and handling of noise defective equipment is the only practical approach to the enforcement of the EPA standards. Some relief may be provided by the procedures established under § 210.9 for the movement of noise defective equipment. If a car is discovered to be defective while being operated by an industrial railroad or short line carrier that does not have the repair facilities necessary to correct the defect, the car may be moved to the next forward location where the noise can be eliminated.

Must noise defective equipment be stopped en route for inspection? One commenter suggested clarification of whether the rule would require immediate stopping for inspection whenever the railroad has notice that a passby test has shown a noise emission in excess of the EPA standards. Stopping trains en route entails an unreasonable interference with interstate commerce and also could result in safety problems that FRA believes would be more serious than the continued excessive noise emission until the train reaches the next point where it is inspected in the normal course of operations. Section 210.25(c)(3) of the final rule provides that inspections on the basis of a passby test are to be performed at the next recognized inspection point, which would include an initial terminal, terminal, interchange, 500-mile, or crew change inspection point.

§ 210.9(a)

Where must noise defective equipment be repaired? Five commenters objected to the proposed restriction allowing noise defective equipment to be moved only to the nearest location where the noise defect can be eliminated, contending that it was unduly burdensome and unclear.

They noted that the procedure for moving cars with safety defects under the Freight Car Safety Standards is less restrictive.

FRA believes that it is reasonable to allow noise defective equipment to be moved in a defective condition to the next forward facility where repairs can be made. The authority for such movement is similar to that adopted when a highly visible rear end marking device becomes inoperative (see 49 CFR 221.17 (a), 42 FR 2321, January 11 1977) and to that included in a recent notice of proposed rulemaking governing movement of a locomotive with an inoperative wheel slip/slide indicator (see 42 FR 2994, January 14, 1977). This provision assures that movement of railroad equipment will not be impeded by a requirement to set out defective cars so as to move them to a closer repair point in the opposite direction. Nevertheless, since the rule prescribes the maximum distance defective equipment may be moved, a carrier also would have the option of moving the defective equipment to a closer facility to the rear. As adopted, the authority for movement of noise defective equipment is somewhat more restrictive than the authority for movement of defective equipment under the Freight Car Safety Standards (49 CFR 215). Under those standards a defective car could be tagged and sent to its "home shop for repairs". The more restrictive limitation in this rule is needed to minimize the noise impact after a violation of the EPA standards is found. We wish to point out that, consistent with the safety rules, movement to the home shop would be allowed after correction of the noise defect. Since equipment maintained in accordance with the Freight Car Safety Standards or the Locomotive Inspection rules also should comply with the noise standards, FRA believes that very few noise defects which are not also safety defects will be found. Accordingly, this rule generally is not expected to impose a significant added burden upon even very small repair facilities.

Should noise defective equipment be inspected before movement for repairs? Two commenters objected to the proposed requirement for an equipment inspection before the noise defective equipment is moved to the repair site. They stated that the requirement could seriously disrupt railroad operations because movement could not be made until after the inspection of each piece of equipment suspected of being noise defective.

One of the commenters contended that it is illegal for FRA to require any inspection under this part on the basis of safety considerations. The commenter argued that in fact there is no connection between noise and safety defects, that Congress intended by its reference to the safety statutes in section 17 of the Noise Control Act solely to provide for the use of available machinery to enforce compliance, and that EPA did not contemplate that compliance with its standards would cause any additional maintenance burden. Both commenters contended that an inspection requirement is unnecessary. The first contended that noise often comes from conditions with no safety consequence, and if there is in fact a safety defect it would have been found and corrected under the equipment safety rules, 49 CFR 215 and 230. The second stated that its current practices would assure safety. The commenter instructs its employees to observe passing trains and report anything unusual, and it requires car inspections at each terminal and interchange.

The requirement for an inspection prescribed in this section is within the authority of FRA, based on the need to avoid exposure to possible safety problems as well as unlawful noise emissions. We disagree with the assertion that a noise violation does not imply existence of a safety problem. Certainly, there are a number of possible nonsafety-related causes for a sound level measurement above those prescribed in the EPA standards. However, the EPA standards were established after consideration of noise emission levels emitted by properly maintained equipment. Therefore, a measurement showing a noise emission in excess of the EPA standard indicates a possible safety problem may be present also. Even if equipment is maintained in accordance with the safety rules, there is no certainty that the previous inspection uncovered every problem or that a safety defect did not develop after the inspection. FRA believes that this inspection is necessary in the interests of railroad safety and the safety of the operating crew. In addition, the inspection is also intended to identify the sources of excess noise emissions for corrective action. A prompt, systematic, thorough inspection is necessary for that purpose alone.

Who should perform the inspection on noise defective equipment? Two other commenters argued that a person designated to inspect and test for noise defects is not the appropriate person to perform the inspection required under section 210.9 since the primary purpose of that inspection is to assure the safety of movement to the repair site.

The FRA agrees with -these commenters, and has eliminated the reference to a person designated to inspect for noise defects. The railroad's duty under this provision is to determine that the equipment is safe to move to the repair point. Such a determination may be made by any railroad personnel available at the location where the railroad receives notice of the noise defect. It should be noted, however, that, if such an inspection involving equipment covered by the Freight Car Safety Standards (49 CFR 215) results in the identification of a defective component as defined in those standards, further movement of that equipment will also be governed by § 215.9 of title 49 of the Code of Federal Regulations.

§ 210.15

Section 210.15 of the proposed rule required each railroad that operates equipment to which the EPA standards apply to designate persons qualified to inspect and test locomotives and rail cars for noise defects. The primary purpose for this designation was the need to identify those railroad employees who were to perform the inspection required under § 210.9 above and the load cell test required under § 210.31(g) of the NPRM. As stated earlier, on reconsideration, FRA has determined that the designation of specific railroad personnel under 210.9, to perform the inspection prior to movement of noise defective equipment, is unnecessary. In addition, as a result of the comments submitted concerning the present load cell facilities, and their inappropriate locations for conducting noise tests as specified in the EPA standards, FRA has decided to eliminate the requirement that a locomotive be subjected to a noise test each time it is subjected to a load cell test for whatever reason. Furthermore, it is the responsibility of the railroad to assure that equipment that it is operating is maintained in a manner which will assure compliance with the EPA standards. Similar noise compliance regulations issued under parallel provisions of the Act governing motor carrier operations (section 18 of the Act) do not require the designation of specialized "noise control" personnel (see 49 CFR 325). DOT has not experienced enforcement problems due to any lack of such a designation in the motor carrier area, and does not expect the experience to differ significantly in the railroad area. Therefore, the requirement for the designation of qualified railroad persons under section 210.15 of the NPRM has been eliminated from this final rule.

§ 210.17

Section 210.17 of the proposed rule required that State agencies wishing to participate in the enforcement of the EPA standards must designate qualified personnel who must be approved by FRA prior to the commencement of enforcement activities. This provision remains in the final regulation with slight modifications.

The purpose of such a provision is to encourage States to participate in the Federal railroad noise control program and thus minimize interference with the flow of interstate commerce. State and local governments may, under section 17(c)(1) of the Noise Control Act, enact and enforce their own standards identical to the Federal standards. DOT, however, encourages them to instead enforce the Federal standards by availing themselves of the provisions of § 210.17 of this regulaton. To the extent State and local governments choose to enforce the Federal standards, enforcement of noise standards on rail cars and locomotives will be limited to certain designated and qualified State or local governments officials, all of whom will follow the same rules contained in these regulations.

To further insure against unreasonable interferences with interstate commerce, § 210.25(c)(3) has been revised in this final rule to provide specifically that government inspectors enforcing the Federal standard may perform, or request the railroad to perform, inspec-

tions and/or tests prescribed in this part only at recognized inspection points or scheduled stopping points. Train movements may not, under these regulations, be required to stop at other locations en route on the basis of an excessive noise emission noted in a random passby test.

How does State participation in noise enforcement differ from the FRA State Participation Program? From several comments submitted in response to the NPRM it appears that there is some confusion between State participation in the enforcement of the EPA standards and in the FRA "State Participation Program" under section 206 of the Federal Railroad Safety Act of 1970 (84 Stat. 972, 45 U.S.C. 435) and the regulations contained in 49 CFR 212.

The Federal Railroad Safety Act provides for a program of State participation in the investigative and surveillance activities prescribed by the Administrator for the enforcement of railroad safety regulations issued under that Act. Federal grants for up to 50 percent of the State's costs for such activities are also provided. The rules established in this part are issued under the Noise Control Act and the Secretary's authority under the Safety Appliance Acts, the Interstate Commerce Act and the Department of Transportation Act as provided in section 17 of the Noise Control Act. Therefore, the rules and regulations governing the State Participation Program for railroad safety do not apply to noise enforcement activities undertaken by a State under this part. In order to avoid further confusion of the two programs, § 210.17 has been redrafted to eliminate language referring to "participation". In addition, the scope of applicability of the section has been expanded to include not only State but also local jurisdictions that wish to enforce the Federal Railroad Noise Emission Standards.

How should State (local) inspectors be identified? One commenter stated that approved State inspectors should be required to carry appropriate credentials so that access to railroad property may not be denied on the basis of the lack of State authority. This commenter suggested that the FRA issue appropriate credentials to all approved State inspectors. As a result of these comments, FRA has reviewed the entire concept of prior FRA approval of each State or local noise compliance inspector and has determined that the administrative burden and additional paper work involved in such an approval process is unnecessary to accomplish the intent of this provision. As stated above that intent was twofold—to require qualified personnel and to identify such personnel for the railroads that are to be subject to their authority. FRA believes this can be accomplished by requiring the State or local jurisdiction to designate the personnel authorized to enforce the Federal standards, to certify that they are qualified to inspect and test locomotives and rail cars, that is that they have the knowledge and ability to detect the cause of noise defects, and to provide such persons with appropriate credentials to attest to their authority. FRA will continue to require the State or local jurisdiction to notify FRA that it is going to enforce the Federal standards so that we can accurately assess what the overall enforcement effort is at any given time. Section 210.17 of this final rule has been redrafted accordingly.

Should the regulation prescribe a level of effort to assure adequate State (local) effort? One commenter stated that, if State involvement would result in decreased Federal enforcement, the regulation should provide for a specified level of effort to assure that State involvement is adequate for effective enforcement. This comment apparently results from a confusion with the procedures of the State Participation Program as discussed above. Under that Program, once a State's inspection program is fully certified, the State effort replaces the routine Federal inspection effort in that State. Therefore, FRA has prescribed a specific level of State effort necessary before a program for a particular safety standard can be certified. This procedure does not apply to State or local involvement in enforcement of the EPA standards. State noise enforcement is not intended to substitute for, nor is it expected to reduce, the FRA efforts. Therefore, a prescribed level of State or local effort is not necessary.

Should inspectors be required to be qualified to inspect and test both locomotives and rail cars? Section 210.17(a) of the NPRM required the State to designate persons qualified to inspect and test locomotives or rail cars. One commenter suggested that the final rule should make it clear that any designated State inspector is authorized to inspect and test both locomotives and rail cars. The use of the word "or" rather than the word "and" in the proposed rule was purposeful. FRA does not agree that each State or local inspector enforcing the Federal standards must be qualified to inspect and test both locomotives and rail cars. The experience and knowledge necessary to adequately inspect a locomotive is substantially different from that necessary to perform a similar function with respect to rail cars because of the basic mechanical differences in the railroad equipment. FRA believes that an efficient and effective enforcement program must recognize these differences and provide the greatest degree of flexibility. Accordingly, while an individual inspector may be authorized to inspect and test both locomotives and rail cars if he is qualified to do so, the State or local jurisdiction is not limited to individuals with such dual qualfications.

§ 210.19

Two commenters recommended that the waiver provisions be eliminated or clarified. According to one, FRA's proposed rule contains no provision that is unduly burdensome, and all of the provisions are necessary for effective enforcement of the EPA standards. Therefore, any waiver would improperly interfere with enforcement. As an alternative the commenter stated that, if the provision is retained, FRA should amend the regulation to clarify that all of the provisions of 49 CFR 211 apply, including those providing interested parties an opportunity to receive notice of, and to comment on, all waiver applications. The other commenter stated that the regulation should be clarified to state that FRA may not waive, directly or indirectly, any requirement prescribed in the EPA standards.

The suggested changes have not been adopted. First, despite FRA's endeavors to structure a reasonable rule of general applicability, the railroad industry is characterized by such diversity that differing individual circumstances may justify the waiver of some provisions of this rule. The term "waiver" as used here, and throughout FRA safety regulations, does not necessarily mean a total relaxation or exemption from compliance with the prescribed rule. The waiver procedure allows FRA to impose alternative requirements to accomplish the intended purpose of the regulation in those cases in which the general rule may not be appropriate. Second, the proposed rule makes it clear that all of the provisions of part 211 apply to waiver proceedings and that FRA may not, either directly or indirectly, waive a requirement of the EPA standards. FRA will notify the EPA whenever a petition for waiver is filed under this section and will consult with that agency prior to a final determination on such a petition.

One commenter stated that § 210.19 should specify both the period within which the Administrator must make a decision on an application for waiver and the period for which a waiver may be effective.

FRA has not adopted a time limit within which the Administrator must act upon any petition for waiver under this part because the complexity of the issues raised and the time between the filing dates and proposed effective dates will vary. However, to the extent practicable we will comply with the nine-month time limit applicable to waiver proceedings under the Federal Railroad Safety Act of 1970 (See 49 CFR 211.1, 211.41 (41 FR 54181, December 13, 1976)).

With respect to the period for which a waiver may be effective, FRA does not believe it is appropriate to specify a maximum duration for a waiver. A waiver may be temporary or permanent. Each petition is considered individually, on its own merits, and conditions that will assure the accomplishment of the intent of the general rule are tailored to the circumstances of each case.

§ 210.21

One commenter contended that the proposed penalty provision is inadequate because penalties would be provided only for knowing violations. The commenter stated that the EPA standards prohibit operation of any car or locomotive that violates the standards, and that only if money penalties are established for all violations will the railroads have the incentive to establish testing and main-

tenance programs that will eliminate excessive noise. The commenter contended that FRA has the authority under the various acts to establish the penalties.

FRA has considered the Noise Control Act, its legislative history, and the related statutes. We believe that Congress intended to set forth in section 11 all of the penalties applicable to violators of the EPA standards themselves. The criminal penalties (fines and imprisonment) may be assessed against willful or knowing violators of these regulations or the EPA standards.

Another commenter stated that the criminal penalty provision was unacceptable because it was unclear when a railroad would be liable because of a violation on equipment owned by someone else.

The EPA standards prohibit operation of noise defective equipment. In addition, as stated in the discussion of § 210.7, this rule imposes the responsibility for inspection and repair of noise defective equipment on the operating railroad rather than on the owner of the equipment because that is the only practical way to enforce the EPA standards. FRA cannot alter the criminal penalty provisions prescribed in the Noise Control Act. It should be noted, however, that the mere existence of a noise defect on operated equipment is not sufficient in itself to establish criminal liability since the penalties apply only for willful or knowing violations. The words "known or has notice" are included in § 210.7 to indicate that some evidence of willfulness or knowledge is necessary before a criminal action for enforcement of the EPA standards can be initiated under the Noise Control Act.

§ 210.25

Should railroads perform the tests? Some commenters stated that the FRA or State inspectors should conduct any noise emission tests since many railroads do not have instrumentation, trained personnel, or suitable test sites. Section 210.25 (b) of the final rule provides that the railroad carrier can be required to conduct the noise tests itself only if it has the capability to do so.

Should periodic noise inspections be required? Another commenter recommended that the section be strengthened to require the railroad to make periodic inspections of all cars and locomotives for noise violations and keep records of the results available for inspection. Since frequent, thorough inspections are required under 49 CFR Parts 215 and 230, and cars and locomotives maintained in accordance with those parts are expected to meet the EPA standards, FRA does not believe that an additional inspection requirement is warranted.

Should inspectors be empowered to conduct or request inspections or testing at random? The thrust of the other comments was that the FRA and State inspectors' authority to inspect, test, or require a railroad to test or inspect locomotives or rail cars should be limited to avoid undue burdens on interstate commerce. One commenter estimated that an average passby test of a rail car would cost a railroad approximately $1,000 in equipment time, crew time, fuel consumption, and interference with other activities. It recommended amending the proposed rule to include guidelines authorizing an inspector to require a locomotive or rail car to be submitted for inspection or testing only if there are reasonable grounds to suspect a noise defect, if the request is in writing, and if the time and place are reasonable.

In light of the comments, the rule has been redrafted to authorize an inspector to request the railroad to test, inspect or examine for noise defects only when there are reasonable grounds to believe that a noise defect is present. Such grounds could be established by a passby noise emission reading in excess of the standards for locomotives or railroad cars or by numerous public complaints about excessive noise from an identified piece of equipment or specific train operation. On the basis of such evidence, an inspector could make, or request a railroad to make, an inspection of the train at the next recognized inspection point or scheduled stopping point. If a railroad has the capability to perform the appropriate tests for noise emissions as prescribed by EPA, testing requested by an inspector must be performed as soon as practicable. If the railroad does not have the capability, the inspector may request that the railroad make the rolling stock and appropriate personnel available at a reasonable time and location for the inspector to obtain the required sound measurements. However, a railroad is not required to test or submit its rolling stock for testing if a readily identifiable noise producing condition is corrected and the correction is verified by an inspector.

Should the requests be in writing? The section also includes the added requirement that the inspector's request that the railroad make a noise inspection or test be in writing, stating his grounds for suspecting a noise defect. This requirement will provide a basis for the railroads to determine why the inspectors are requesting them to make noise inspections. The written record also will serve as evidence that a railroad has been given notice of the existence of noise defective equipment and will serve to establish the "willful" or "knowing" violation necessary to support a criminal action under the Noise Control Act.

Should the rule allow testing during movement pursuant to § 210.9? The same commenter also recomended that an inspector be precluded from testing or demanding a test when cars are moving pursuant to § 210.9 or when the cause of a noise defect has been noted and there is reasonable evidence to show that it has been eliminated. The suggested amendment to preclude testing during movement to § 210.9 has not been adopted because FRA believes it would constitute too broad an exception. While conducting a passby test to determine whether a train was operating in compliance with the EPA standards, an inspector might not be aware that the train included equipment being moved under § 210.9. Under the rule as written a railroad cited for violating the standards must be prepared to show that the noise emissions above the standards could have resulted from the movement of noise defective equipment in accordance with § 210.9. To preserve its defense in that situation, the railroad will have to retain records of the movement in accordance with § 210.9 for enough time to allow for delays between measuring violations and issuing citations.

§ 210.27(b) (1)

One commenter objected to measuring the noise emissions from a consist of locomotives manufactured both before 1980 and after 1979 against the higher noise emission standard for pre-1980 locomotives. The commenter contended that the provision has the effect of changing the substance of the standard for post-1979 locomotives. This commenter recommended that a procedure be established either to differentiate the noise emitted from different locomotives in a mixed consist, or to require the railroad to test each unit in a mixed consist when the consist violates the lower standard for post-1979 locomotives.

The changes recommended by the commenter have been rejected as infeasible. First, the rule does not prescribe a procedure to distinguish the noise emitted by different locomotives in the same consist during a passby test, because such a procedure is technically impossible given the present state of the art in noise measurement unless such locomotives are separated within the consist by at least 10 rail car lengths or 500 feet. Second, a requirement to test individually each unit in a mixed consist that violates the post-1979 standard probably would force individual retesting of each of the units whenever there is a passby test of a mixed consist. To avoid that retesting burden, a railroad would have to operate only unmixed locomotive consists. Such a severe restriction on the use of motive power would impose an undue burden on interstate commerce by railroad.

§ 210.27(b) (3)

One commenter stated that if the built dates of locomotives are not known to the inspector at the time of a passby test, the railroad should have the burden to supply them or have the lower post-1979 noise emission standards applied. FRA does not agree. In most cases, the inspector will not know the built dates of the locomotive units in a consist at the time of a passby test. He will, therefore, be required to identify the units in the locomotive consist by number when the test is made. The built dates for the specific units in a consist can then be determined by reference to carrier records. If the inspector fails to record the locomotive unit numbers, and the built dates cannot be established, the higher pre-1980 standard will apply since all locomotives, regardless of age, must operate below that noise level.

§ 210.27(c)

One commenter objected to applying the standard for movement at more than 45 miles per hour when the inspector's measuring equipment is not operating within an accuracy of 5 mph. The commenter stated that it is the inspector's duty to maintain properly calibrated measuring devices, and the enforcement regulation should not dilute the EPA standard in anticipation of his failure to do his job properly.

FRA agrees that it is the inspector's duty to maintain his equipment properly. However, if a failure does occur, prosecution for violation of the lower standard is not possible without proof that the train's speed was 45 mph or less.

§ 210.29(b) (1) (i)

One commenter stated that it is unclear whether the noise measurement device must be calibrated to actual frequencies. The section has been amended to make it clear that calibration to nominal frequencies satisfies the requirement. A sufficient degree of accuracy in noise measurements is assured as long as the calibrator frequency is accurate within a range, for example plus or minus three percent.

Another commenter stated that hourly calibrations are not necessary during a series of measurements, stating that calibration at the beginning of each series would assure accurate measurements.

FRA disagrees. The sound level meters are battery powered. Accordingly, frequent calibration during continuous use is important to assure that the inspector is aware as soon as the battery's voltage output drops close to the minimum operating voltage level of the sound level meter.

§ 210.29(c)

One commenter suggested increasing the measurement tolerance to at least 3dB(A), stating that the factors enumerated may realistically justify up to 5dB(A). The 2dB(A) measurement tolerance has been retained because it is the tolerance level generally accepted in the technical noise measurement community for field measurement purposes. (See, e.g., Society of Automotive Engineers Standard J952b, September 1971; SAE Technical Report J192, December 1970.)

In response to another commenter, paragraph (6) of the NPRM, which included an interpretation factor among those taken into account in determining the 2dB(A) tolerance, has been eliminated in this final rule. FRA agrees that the interpretation of the other factors is not properly listed as a separate item in the series and has included this consideration in the general explanation as to the purpose of the 2dB(A) tolerance.

§ 210.31(a)

One commenter opposed requiring that each locomotive manufactured after 1979 be tested for stationary noise emissions before it is placed in service initially. In response to the comment, type certification based on sample testing of each locomotive model will be required on all new locomotives built after 1979. The certification may be based on either load cell or passby testing. For reasons of clarity and rational organization of the final rule, the provisions for new locomotive certification for locomotives built after December 31, 1979 have been placed in a separate section § 210.33.

§ 210.31(g)

Six commenters addressed the proposed requirement for stationary noise testing whenever a locomotive is load cell tested for any reason. All six were opposed. They stated that the requirement would be ineffective in enforcing the noise emission standards, and compliance would be totally impractical. According to the commenters, many railroads do not have load cell facilities at all. One survey that included all of the major railroads plus a number of switching railroads showed that they have only approximately 176 load cell facilities. Furthermore, the typical locations of load cells is in or adjacent to locomotive repair shops. These locations often are unsuitable for noise testing in accordance with the EPA standards because they do not present the large open area, and the isolation from other noise sources that is required by the EPA definition of an acceptable test site. Also, some existing load cells depend upon high voltage direct current. Relocating the load cells at a distance from the shops would require the use of expensive transmission cables, and line losses of electric current during transmission from the power source to the remote load cell would reduce the efficiency of the devices for their primary purpose, i.e., testing the power output of the locomotive engines. The survey cited above showed that only seven existing load cell facilities in the country are suitable for noise testing under the site requirements prescribed in the EPA standards. One commenter that has two locomotive repair shops with load cells estimated that it would need to spend approximately $360,000 on modification of facilities and equipment before it could carry out stationary noise testing in accordance with the EPA standards at those shops. The commenters were also very concerned about the potential delays in returning recently repaired locomotives to service should a load cell noise test be required each time the locomotive is submitted to load cell testing for any purpose, because load cell noise emission tests cannot be performed during precipitation or when the measured wind velocity is over 12 mph. One commenter stated that the ability to take full advantage of its functioning motive power is critical for a small, financially weak railroad. Another concern was utilization of personnel. One commenter asserted that large numbers of new personnel would be needed, especially since the remote locations and random times for the required tests would reduce their efficiency. Finally, a commenter stated that additional problems might arise because of annoyance to the general public and employees who are not now subjected to load cell test noise. That commenter estimated that the proposed regulation would require approximately 47,000 stationary noise tests annually.

Two arguments were made about the effectiveness of the regulation in enforcing the standards. First, the commenters stated that load cell testing normally is done just after overhauls, repairs, or maintenance. That is the time a locomotive is most likely to be in compliance. To provide a more effective enforcement program, the commenters felt that required noise measurements should be taken on equipment with a higher probability of violations. Second, the commenters stated that the proposed rule would in effect exempt certain locomotives from any requirement for stationary noise testing. For example, there are many new locomotives that are equipped with a feature that permits load testing without connecting the unit to wayside load cell testing equipment. Also, locomotives owned by railroads that do not have load cell test facilities would not be subject to the requirement. A commenter that favored more frequent testing stated that the proposed rule needs to be strengthened because railroads do not conduct load cell tests regularly and there is no requirement for them to do so.

As a result of our review of the comments and further analysis, FRA believes it is not reasonable to require periodic load cell testing by the railroads. Many railroads apparently could not perform the tests without a substantial investment in facilities and equipment, and it is not sensible to require such an investment when the EPA has not identified locomotives as a major noise source. However, FRA is not at liberty to exempt locomotives entirely from load cell testing because EPA clearly did not intend the standards for stationary and moving locomotives to be alternatives. The preamble to the EPA standards states in part that—

> The EPA strongly believes that a stationary as well as a moving standard is necessary in order to account for the varying nature of locomotive noise (41 FR 2189).

An inspector could still request a railroad that has the capability to conduct a load cell test to do so if a locomotive is suspected of having a noise defect (§ 210.25(b)(1)). In addition, locomotives manufactured after December 31, 1979, must be certified for noise emission compliance before being placed in service initially. This certification may be based upon a load cell test.

§ 210.31(h)

One commenter stated that no test of a noise defective locotmotive should be required if the cause of the noise defect was readily identifiable and corrected.

The FRA recognizes that the retesting requirement for locomotives under proposed § 210.31(h) will constitute somewhat of a burden on railroads. This is true because the present location of locomotive repair facilities within or di-

rectly adjacent to congested yard areas will not ordinarily present an acceptable test site in terms of the criteria established by EPA in Subpart C of 40 CFR 201. In addition, as stated earlier, very few of the existing load cell facilities are located in areas that present acceptable test sites.

FRA believes that the source of excessive locomotive noise will often be readily identifiable as a result of recognized inspection and maintenance procedures. The retesting requirement, is not necessary in such cases in order to accomplish the intended purpose of the EPA standards. Therefore, in those situations in which the excessive noise emission is readily identifiable as related to a particular defective component, and that component can be replaced or there is an accepted repair procedure, FRA believes that retesting before returning the locomotive to service should not be required. Where no such defective component can be readily identified, retesting is necessary to assure elimination of the noise defect and will be required. Paragraph (c) of this section has been redrafted accordingly.

EMPLOYEE SAFETY AND HEALTH

One commenter criticized the EPA standards themselves, stating that they are too high to protect employees from noise related injury. The commenter also stated that there are many sources of railroad noise that might affect an employee's health that are not covered by the EPA standards. The commenters requested that FRA promulgate noise emission standards to protect employees.

The commenter's request is not within the scope of this proceeding. Further related rule making could be undertaken in the future, depending upon the nature of any evidence that particular noise emissions are a serious safety problem.

In accordance with the foregoing, Title 49 of the Code of Federal Regulations is amended by adding a new part 210 to read as set forth below. These rules shall become effective on October 1, 1977.

Issued in Washington, D.C. on August 17, 1977.

JOHN M. SULLIVAN,
Administrator.

Subpart A—General Provisions

Sec.

Subpart B—Inspection and Testing

AUTHORITY: Sec. 17, Pub. L. 92-574, 86 Stat. 1234 (42 U.S.C. 4916); § 1.49(p) of the regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(p).

Subpart A—General Provisions

§ 210.1 Scope of part.

This part prescribes minimum compliance regulations for enforcement of the Railroad Noise Emission Standards established by the Environmental Protection Agency in 40 CFR Part 201.

§ 210.3 Applicability.

(a) The provisions of this part apply to the total sound emitted by rail cars and locomotives operated by a common carrier as defined in 45 U.S.C. 22 under the conditions prescribed herein and in 40 CFR Part 201, including the sound produced by refrigeration and air conditioning units which are an integral element of such equipment, except:

(b) The provisions of this part do not apply to:

(1) Steam locomotives;

(2) Street, suburban or interurban electric railways unless operated as a part of the general railroad system of transportation;

(3) Sound emitted by a warning device, such as a horn, whistle or bell when operated for the purpose of safety;

(4) Special purpose equipment which may be located on or operated from rail cars; and

(5) As prescribed in 40 CFR 201.10, the provisions of 40 CFR 201.11 (a) and (b) do not apply to gas turbine-powered locomotives or any locomotive type which cannot be connected by any standard method to a load cell.

§ 210.5 Definitions.

(a) *Statutory definitions.* All terms used in this part and defined in the Noise Control Act of 1972 (Pub. L. 92-574, 86 Stat. 1234) have the definitions set forth in that Act.

(b) *Difinitions in standards.* All terms used in this part and defined in § 201.1 of the Railroad Noise Emission Standards, 40 CFR 201.1, have the definition set forth in that section.

(c) *Additional definitions:* As used in this part:

(1) "FRA" means the Federal Railroad Administration.

(2) "Administrator" means the Federal Railroad Administrator, the Deputy Administrator, or any official of the FRA to whom the Administrator has delegated authority to enforce the Act.

(3) "Consist of a locomotive and rail cars" means one or more locomotives coupled to a rail car or rail cars.

(4) "Noise defective" means the condition in which a locomotive, rail car or consist of a locomotive and rail cars is found to exceed the Railroad Noise Emission Standards, 40 CFR Part 201.

(5) "Standards" means the Railroad Noise Emission Standards, 40 CFR Part 201.

(6) "Inspector" means FRA regional Motive Power & Equipment Specialists, FRA Motive Power & Equipment Inspectors and State or local noise compliance inspectors designated and certified under § 210.17.

§ 210.7 Responsibility for noise defective locomotives or rail cars.

Any railroad that knows or has notice that a locomotive, rail car or a consist of a locomotive and rail cars that it is operating or testing is noise defective according to the criteria established in this part and in the Standards is responsible for compliance with this part. Subject to § 210.9, such railroad shall:

(a) Correct the noise defect; or

(b) Remove the noise defective locomotive or rail car from service.

§ 210.9 Movement of a noise defective locomotive, rail car or consist of a locomotive and rail cars.

A locomotive, rail cars or consist of a locomotive and rail cars that is noise defective may be moved no further than the nearest forward facility where the noise defective condition can be eliminated only after the locomotive, rail car or consist of a locomotive and rail cars has been inspected and been determined to be safe to move.

§ 210.17 State or local enforcement of the standards—qualified noise compliance inspectors.

(a) Any State or local jurisdiction that desires to enforce the Standards must so notify the FRA, and shall designate persons qualified to inspect and test locomotives or rail cars for defects prescribed by this part. Each person designated must be certified by the State or local jurisdiction and must carry official credentials stating his or her authority to conduct inspections and tests as prescribed in this part.

§ 210.19 Waivers.

(a) Any person may petition the Administrator for a waiver of compliance with any requirement in this part. A waiver of compliance with any requirement prescribed in the Standards, may not be granted under this provision.

(b) Each petition for a waiver under this section must be filed in the manner and contain the information required by 49 CFR Part 211.

(c) If the Administrator finds that a waiver of compliance applied for under paragraph (a) of this section is in the public interest and is consistent with railroad noise abatement and safety, he may grant a waiver subject to any conditions he deems necessary. Notice of each waiver granted, including a statement of the reasons therefor, will be published in the FEDERAL REGISTER.

§ 210.21 Penalty.

Any person who willfully or knowingly operates a locomotive or rail car in violation of the requirements of this part or of the Standards is liable to a penalty as prescribed in section 11 of the Noise Control Act of 1972 (Pub. L. 92-574, 86 Stat 1242).

Subpart B—Inspection and Testing

§ 210.23 Scope of subpart.

This subpart prescribes the compliance criteria concerning the requirements for inspection and testing of a locomotive, a rail car or a consist of a locomotive and rail cars.

§ 210.25 Noise inspection and testing.

(a) An inspector is authorized to perform a passby noise emission test as prescribed in the Standards, and in the procedures of this part, at any time, at any appropriate location, and without prior notice to the railroad for the purpose of determining whether a locomotive, rail car, or consist of a locomotive and rail cars is in compliance with the Standards.

(b)(1) An inspector is authorized to request that a locomotive, rail car or consist of a locomotive and rail cars together with appropriate railroad personnel be made available for a passby or stationary noise emission test as prescribed in the Standards, and in the precedures of this part, and to conduct such test, at a reasonable time and location, for the purpose of determining whether the locomotive, rail car or consist of a locomotive and rail cars is in compliance with the Standards.

(2) If the railroad has the capability to perform an appropriate noise emission test as prescribed in the Standards, and in the procedures of this part, an inspector is authorized to request the railroad to test the locomotives or rail cars. The railroad must perform the appropriate test as soon as practicable.

(3) The requests referred to in this paragraph must be in writing, must state the grounds upon which the inspector has reason to believe that the locomotive, rail car or consist of a locomotive and rail cars does not conform to the Standards, and must be presented to an appropriate operating official of the railroad.

(4) Testing or submission for testing is not required if the cause of the noise defect is readily apparent and the inspector verifies that it is corrected by the replacement of defective components or by instituting a normal maintenance or repair procedure.

(c)(1) An inspector is authorized to inspect or examine a locomotive, rail car or consist of a locomotive and rail cars operated by a railroad, or to request the railroad to inspect or examine the locomotive, rail car or consist of a locomotive and rail cars, whenever he has reason to believe that it does not conform to the requirements of the Standards.

(2) The request referred to in this paragraph must be in writing, must state the grounds upon which the inspector has reason to believe that the locomotive, rail car or consist of a locomotive and rail cars does not conform to the Standards, and must be presented to an appropriate operating official of the railroad.

(3) The inspection or examination referred to in this paragraph may be conducted only at recognized inspection points or scheduled stopping points.

(4) An inspector may request a railroad to conduct an inspection or examination of a rail car or consist of rail cars on the basis of an excessive noise emission level measured by a passby test. If, after such inspection or examination, no mechanical condition that would result in a noise defect can be found, and the inspector verifies that no such mechanical condition exists, the rail car or consist of rail cars may be continued in service.

(5) An inspector may request a railroad to conduct an inspection or examination of a locomotive on the basis of an excessive noise emission level measured by a passby test. If, after such inspection or examination, no mechanical condition that would result in a noise defect can be found, and the inspector verifies that no such mechanical condition exists, the locomotive may be continued in service.

§ 210.27 Operation standards.

The operation standards for the noise emission levels of a locomotive, rail car or consist of a locomotive and rail cars are prescribed in the Standards.

(a) Noise emission standards for locomotive operating under stationary conditions are contained in § 201.11 of the Standards.

(b) Noise emission standards for locomitives operating under moving conditions are contained in § 201.12 of the Standards. Measurements for compliance with the standards prescribed in § 201.12 of the Standards shall be made in compliance with the provisions of Subpart C of the Standards and the following:

(1) Consists of locomotives containing at least one locomotive unit manufactured prior to December 31, 1979, shall be evaluated for compliance in accordance with § 201.12(a) of the Standards, unless a locomotive within the consist is separated by at least 10 rail car lengths or 500 feet from other locomotives in the consist, in which case such separated locomotives may be evaluated for compliance according to their respective built dates.

(2) Consists of locomotives composed entirely of locomotive units manufactured after December 31, 1979, shall be evaluated for compliance in accordance with § 201.12(b) of the Standards.

(3) If the inspector cannot establish the built dates of all locomotives in a consist of locomotives measured under moving conditions, evaluation for compliance shall be made in accordance with § 201.12(a) of the Standards.

(c) Noise emission standards for rail cars operating under moving conditions are contained in section 201.13 of the Standards. If speed measurement equipment used by the inspector at the time of the measurement is not operating within an accuracy of 5 miles per hour, evaluation for compliance shall be made in accordance with § 201.13(2) of the Standards.

§ 210.29 Measurement criteria and procedures.

The parameters and procedures for the measurement of the noise emission levels are prescribed in the Standards.

(a) Quantities measured are defined in § 201.21 of the Standards.

(b) Requirements for measurement instrumentation are prescribed in § 201.22 of the Standards. In addition, the following calibration procedures must be utilized:

(1)(i) The sound level measurement system including the microphone must be calibrated and appropriately adjusted at one or more nominal frequencies in the range from 250 through 1000 Hz at the beginning of each series of measurements, at intervals not exceeding 1 (one) hour during continual use, and immediately following a measurement indicating a violation.

(ii) The sound level measurement system must be checked not less than once each year by its manufacturer, a representative of its manufacturer, or a person of equivalent special competence to verify that its accuracy meets the manufacturer's design criteria.

(2) An acoustical calibrator of the microphone coupler type designed for the sound level measurement system in use shall be used to calibrate the sound level measurement system in accordance with paragraph (1)(i) of this subsection. The calibration must meet or exceed the accuracy requirements specified in § 5.4.1 of the American National Standard Institute Standards, "Method for Measurement of Sound Pressure Levels," (ANSI S1.13–1971) for field method measurements.

(c) Acoustical environment, weather conditions and background noise requirements are prescribed in § 201.23 of the Standards; and in addition, measurement tolerances not to exceed 2dB(A) for a given measurement will be allowed to take into account the effects of the factors listed below and the interpretation of these effects by enforcement personnel:

(1) The common practice of reporting field sound level measurements to the nearest whole decibel; (2) Variations resulting from commercial instrument tolerances; (3) Variations resulting from the topography of the noise measurement site; (4) Variations resulting from atmospheric conditions such as wind, ambient temperature, and atmospheric pressure; and (5) Variations resulting from reflected sound from small objects allowed within the test site.

(d) Procedures for the measurement of locomotive and rail car noise are prescribed in § 201.24 of the Standards; and

(1) Accurate determination to within plus or minus 5 miles per hour of train speed (which may change during a passby) must be made as the train passes the microphone location, as defined in § 201.24 of the Standards, to determine the rail car compliance level specified in § 201.13(1) or (2) of the Standards.

(2) Locomotives and rail cars tested pursuant to the procedures prescribed

in this part and in the Standards shall be considered in noncompliance whenever the test measurement, minus the appropriate tolerance, exceeds the noise emission levels prescribed in §§ 201.11, 201.12, or 201.13 of the Standards, as appropriate.

§ 210.31 Locomotive tests.

(a) For load cell tests: (1) Each noise emission test shall begin after the engine of the locomotive has attained the normal cooling water operating temperature as prescribed by the locomotive manufacturer.

(2) Noise emission testing in idle or maximum throttle setting shall start after a 40 second stabilization period in the throttle setting selected for the test.

(3) After the stabilization period as prescribed in paragraph (2) of this subsection, the A-weighted sound level reading in decibels shall be observed for an additional 30 second period in the throttle setting selected for the test.

(4) The maximum A-weighted sound level reading in decibels that is observed during the 30 second period of time prescribed in paragraph (3) of this subsection shall be used for compliance purposes.

(b) The following data determined by any locomotive noise emission test conducted after December 31, 1976 shall be recorded in the "Remarks" section on the reverse side of Form FRA F 6180. 49: (1) Location of the test; (2) Type of test; (3) Date and location of the test; and (4) The A-weighted sound level reading in decibels obtained during the passby test, or the readings obtained at idle throttle setting and maximum throttle setting during a load cell test.

(c) Any locomotive subject to this part that is found not to be in compliance with the Standards as a result of a passby test shall be subjected to a load cell test or another passby test prior to return to service, except that no such retest shall be required if the cause of the noise defect is readily apparent and is corrected by the replacement of defective components or by a normal maintenance or repair procedure.

(d) The last entry recorded on Form FRA F 6180.49 as required by paragraph (b) of this section shall be transcribed to a new Form FRA F 6180.49 when it is posted in the locomotive cab.

§ 210.33 New locomotive certification.

(a) A railroad shall not operate a locomotive built after December 31, 1979 unless the locomotive has been certified to be in compliance with the Standards.

(b) The certification prescribed in this section shall be determined for each locomotive model, by either: (1) Load cell testing in accordance with the criteria prescribed in the Standards; or (2) Passby testing in accordance with the criteria prescribed in the Standards.

(c) If passby testing is used under paragraph (b) (2) of this section, it shall be conducted with the locomotive operating at maximum rated horsepower output.

(d) Each new locomotove certified under this section shall be identified by a permanent badge or tag attached in the cab of the locomotive near the location of the inspection Form F 6180.49. The badge or tag must state: (1) Whether a load cell or passby test was used; (2) The date and location of the test; and (3) The A-weighted sound level reading in decibels obtained during the passby test, or the readings obtained at idle throttle setting and maximum throttle setting during a load cell test.

[FR Doc.77-24317 Filed 8-22-77;8:45 am]

Title 50—Wildlife and Fisheries

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

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

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Determination That the Tan Riffle Shell is an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rulemaking.

SUMMARY: The Director, U.S. Fish and Wildlife Service issues a rule which determines the tan riffle shell (*Epioblasma walkeri*) to be an Endangered species because of the likelihood that this mussel could become extinct within the foreseeable future.

DATES: The amendments will become effective on September 26, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Keith M. Schreiner, Associate Director—Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240 (202-343-4646).

SUPPLEMENTARY INFORMATION: The Director, U.S. Fish and Wildlife Service (hereinafter the Director and the Service, respectively) hereby issues a rulemaking pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543; 87 Stat. 884; hereinafter the Act) which determines the tan riffle shell (*Epioblasma walkeri*) to be an Endangered species.

BACKGROUND

On September 26, 1975, the Service published a proposed rulemaking in the FEDERAL REGISTER (40 FR 44329) advising that sufficient evidence was on file to support a determination that the tan riffle shell was an Endangered species as provided for by the Act. That proposal summarized the factors thought to be contributing to the likelihood that this mussel could become extinct within the foreseeable future; specified the prohibitions which would be applicable if such a determination were made; and solicited comments, suggestions, objections and factual information from any interested person.

Section 4(b) (1) (A) of the Act requires that the Governor of each State, within which a resident species of wildlife is known to occur, be notified and be provided 90 days to comment before any such species is determined to be a Threatened species or an Endangered species. Letters were sent to the Governors of Virginia, Kentucky, and Tennessee on June 25, 1976, notifying them of the proposed rulemaking. Such letters were inadvertently not sent at the time of the proposed rulemaking in 1975.

SUMMARY OF COMMENTS AND RECOMMENDATIONS

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

In the September 26, 1975, FEDERAL REGISTER proposed rulemaking (40 FR 44329) and the related press release, all interested parties were invited to submit factual reports or information which might contribute to the formulation of a final rulemaking.

Comments were received from three States and one individual. In a letter dated July 19 from Governor Julian M. Carroll, the State of Kentucky did "not wish to register any opposition to the action" and considered the tan riffle shell to be restricted to the Red River, in Logan and Simpson Counties, Kentucky, in rather limited numbers. The State of Virginia, according to Earl J. Shiflet of the Office of the Governor in a letter dated July 14, 1976, did not have sufficient information available regarding the status of this mussel in Virginia to make a judgment as to whether it should be designated Endangered pursuant to the Act. However, this State did not believe that overharvesting was an immediate danger. The State of Tennessee, in a letter dated September 16, 1976, from Harvey Bray, Executive Director, Tennessee Wildlife Resources Agency, supported the listing of *Epioblasma walkeri* "based on its limited occurrence in the Clinch, Powell and Duck Rivers and its rapid rate of disappearance." They further recommended that the Department of the Interior "do all possible to implement, in cooperation with States, a realistic program aimed at water quality improvement as the prime means of effecting a recovery program for Endangered mussels and habitats; encourage designation of acceptable comprehensive classification and nomenclatural terms, and distribution and population data; and that immediate research be coordinated to determine management procedures (relating to impoundment effects, commercial and scientific mussel use, and to industrial, municipal, and agricultural practices) which will best assure perpetuation of these mussels."

The Service received a report on the status of *Epioblasma walkeri* from Dr. David H. Stansbery, Museum of Zoology, The Ohio State University, Columbus, Ohio, which resulted from contract 14-16-0008-755. This report (RF 37 12 Final No. 6, October 1976, The Ohio State University Research Foundation, 1314 Kinnear Road, Columbus, Ohio 43212) summarized the synonymy, taxonomic status,

diagnostic characteristics, former distribution (a rather general distribution in medium small to large streams in both the Cumberland and Tennessee systems), the present distribution (Middle Fork Holston River above South Holston impoundment, Red River of the Cumberland system, Clinch River and the Duck River from Wilhoite Mill downstream to Columbia) and threats. Threats include sewage effluent from Marion, Chilhowie and other communities in the middle fork Holston. The TVA Columbia Dam, if completed, would inundate the entire Duck River population of the mussel.

CONCLUSION

After a thorough review and consideration of all information available, the Director has determined that the tan riffle shell is in danger of extinction throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Act. This review amplifies and substantiates the description of those factors included in the proposed rulemaking (40 FR 44329). Those factors are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The tan riffle shell is a pearly mussel and it exemplifies a well known characteristic of its genus (*Epioblasma*): It characteristically inhabits riffle areas of medium to large streams. Species adapted to live in such riffle areas are particularly vulnerable to power dams because of the voluminous, rapid water flow, as well as to pollution because of their large oxygen requirement. About a third of the three dozen *Epioblasma* species are presumed extinct.

The tan riffle shell formerly had a rather general distribution in medium small to large streams in both the Cumberland and Tennessee River systems. It is presently found only in the lower Red River of the Cumberland system in Kentucky and Tennessee, the middle fork of the Holston River in Virginia, possibly the Stones River in Tennessee where it would be very rare, the Duck River in Tennessee from Wilhoite Mill downstream to Columbia, and the Clinch River in Virginia and Tennessee where it is very rare. It is endangered in all of these rivers by pollution, including mine acid and municipal wastes. Pollution problems include low dissolved oxygen below Adairville and untreated effluent from a meat packing plant in the Red River system; mercury and lead in the middle fork of the Holston; low dissolved oxygen at Murfreesboro in the west fork Stones River; and lead, mercury, and a history of accidental spills of fly ash and sulfuric acid in the Clinch River. It is further endangered by channelization of the upper Clinch and by the TVA dam being constructed on the Duck River at Columbia. This dam will inundate and thereby extirpate the Duck River population.

Information on the mechanism by which physical and chemical factors jeopardize *Epioblasma* and other genera of mussels appeared in the "Proceedings of a Symposium on Rare and Endangered Molluscs of the U.S.", Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111, August 10, 1971, and "Greater Adaptability of Freshwater Mussels to Natural Rather than to Artificial Displacement" by Marc J. Imlay, which appeared in the *Nautilus* (1972, 86:76–79). In general, the mussels were demonstrated to be better adapted to naturally occurring stresses than to artificial ones. For example, 25 transplanted mussels (the result of dredging) lay on their sides and were disoriented in a stream where other mussels had reoriented after natural storms had washed them downstream.

Information on water quality appeared in material supplied by the Virginia State Water Control Board, Southwestern Regional Office; Division of Water Quality, Kentucky Department for Natural Resources and Environmental Protection; Proposed Criteria for Water Quality, Volume I, October 1973, U.S. Environmental Protection Agency, Washington, D.C. 20460; and Water Resources Data for Tennessee Water Year 1975. U.S. Geological Survey TN 75 1.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* This species appears on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora because it is threatened with extinction and could enter into previously unregulated international commerce. The impact of this commerce (pearl button and Japanese cultured pearl industry) on the tan riffle shell, while significant, is relatively minor, however, compared to the impact on mussel species with thick shells.

3. *Disease or predation.* Not applicable for this species.

4. *The inadequacy of existing regulatory mechanisms.* No regulations currently exist pertaining to the protection and conservation of this species other than the prohibitions against international trade that apply to species such as *E. walkeri* which are on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. These regulations provide no protection against taking for domestic purposes.

5. *Other natural or manmade factors affecting its continued existence.* During the mid-1950s the Asian clam, *Corbicula manilensis*, was introduced into the Tennessee River system. *Corbicula* has spread throughout the Tennessee River system where it has replaced many beds of native mussels including the tan riffle shell. A square yard of bottom frequently contains hundreds of individual Asian clams. Information on *Corbicula* appeared in the "Proceedings of a Symposium on Rare and Endangered Molluscs of the U.S.", U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111, August 10, 1971.

EFFECT OF THE RULEMAKING

The effects of these determinations and this rulemaking include, but are not necessarily limited to, those discussed below. Endangered Species regulations already published in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered species. The prohibited regulations referred to above, which pertain to Endangered species, are found at § 17.21 of Title 50 and, for the convenience of the reader, are reprinted below:

§ 17.21 Prohibitions.

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

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

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

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

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

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

(ii) Dispose of a dead specimen; or

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

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

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

"(5) Nothwithstanding paragraph (c)(1) of this section, any qualified employee or agent of a State Conservation Agency which is a party to a Cooperative Agreement with the Service in accordance with section 6(c) of the Act, who is designated by his agency for such purposes, may, when acting in the course of his official duties take Endangered Species, for conservation programs in accordance with the Cooperative Agreement, provided that such taking is not reasonably

anticipated to result in: (i) the death or permanent disabling of the specimen; (ii) the removal of the specimen from the State where the taking occurred; (iii) the introduction of the specimen so taken, or of any progeny derived from such a specimen, into an area beyond the historical range of the species; or (iv) the holding of the specimen in captivity for a period of more than 45 consecutive days."

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

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

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

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

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

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

The determination set forth in this final rulemaking also makes the tan riffle shell eligible for the consideration provided by Section 7 of the Act. That Section reads as follows:

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

The Director has prepared, in consultation with an ad hoc interagency committee, guidelines for Federal agencies for the application of Section 7 of the Act. Proposed regulations were published regarding Section 7 (42 FR 4868; January 26, 1977). When this rulemaking becomes effective, all Federal agencies will be required to meet their responsibilities under Section 7 of the Act, and where appropriate, utilize the consultation procedures contained in Section 7 guides and the proposed regulations.

Regulations which appear in Part 17, Title 50 of the Code of Federal Regulations were first published in the FEDERAL REGISTER of September 26, 1975 (40 FR 44412), and provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered or Threatened species under certain circumstances.

NATIONAL ENVIRONMENTAL POLICY ACT

An environmental assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. It addresses this action as it involves the tan riffle shell. The assessment and the public comments received on this rulemaking are the basis for a decision that these determinations are not major Federal actions which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

(Endangered Species Act of 1973 (U.S.C. 1531-1543; 87 Stat. 884).)

This final rulemaking was prepared by Dr. Marc J. Imlay, Office of Endangered Species.

NOTE.—The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: May 10, 1977.

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

According, § 17.11 of Part 17 of Chapter 1 of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. By adding the tan riffle shell to the list under "Clams" as indicated below:

Species			Range		Status	When listed	Special rules
Common name	Scientific name	Population	Known distribution	Portion of range where threatened or endangered			
Riffle shell, tan...	*Epioblasma walkeri*.	NA	Virginia, Tennessee, Kentucky.	Entire.....	E	27	NA

[FR Doc.77-24431 Filed 8-22-77;8:45 am]

PART 21—MIGRATORY BIRD PERMITS

States Meeting Federal Falconry Standards

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service publishes a list of States where falconry laws have been determined by the Director to meet or exceed the minimum Federal standards. Any State may obtain a review and determination of its existing laws or regulations relating to falconry. Falconry may now be practiced in the States listed in 50 CFR 21.29.

DATE: August 23, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Danny M. Searcy, Special Agent, Division of Law Enforcement, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, telephone 202-343-9242.

SUPPLEMENTARY INFORMATION: In notices of proposed rulemaking dated July 30, 1973 (38 FR 20264), and April 4, 1974 (39 FR 12314), the Service issued proposed regulations which provided for the review and approval of State falconry laws. If a given State's laws were approved, the State would be listed in 50 CFR 21.29(k), and falconry permitted therein pursuant to a system of joint Federal-State permits. These regulations were finalized on January 15, 1976 (41 FR 2237). On December 28, 1976 (41 FR 56329), the time limit for a State to submit its laws for review and approval was extended until December 31, 1977.

Utilizing the criteria established in 50 CFR 21.29, the Director has now reviewed and approved the falconry laws of 25 States. In accordance with 41 FR 2237 and 41 FR 56329, upon publication of this Appendix in the FEDERAL REGISTER, the practice of falconry in the 25 States listed below shall be governed by 50 CFR 21.28, as amended, and § 21.29.

The primary author of this document is Mr. Ronald Swan, Office of the Solicitor, Department of the Interior.

Accordingly, the following list is hereby added to 50 CFR 21.29(k):

§ 21.29 Federal falconry standards.

* * * * * * *

(k) * * *

*Alaska
*Arizona
*Arkansas
*Florida
*Georgia
*Idaho
*Indiana
*Iowa
*Kentucky
*Massachusetts
*Minnesota
*Mississippi
*Missouri
*Nebraska
*New Mexico
*New York
*North Dakota
*Oklahoma
*Pennsylvania
*South Carolina
*South Dakota
*Utah
*Virginia
*Washington
*Wyoming

NOTE.—The Service has determined that this document does not contain a major action requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: August 16, 1977.

LYNN A. GREENWALT,
U.S. Fish and Wildlife Service.

[FR Doc.77-24300 Filed 8-22-77;8:45 am]

PART 32—HUNTING

Opening of Iroquois National Wildlife Refuge, New York, to Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special Regulation.

SUMMARY: The Director has determined that the opening to hunting of Iroquois National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: October 1, 1977, through February 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Edwin Chandler, Iroquois National Wildlife Refuge, R.F.D. 1, Basom, New York, 14013, Telephone No. 716-948-5445.

SUPPLEMENTARY INFORMATION:

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

Public hunting of woodcock and crow on the Iroquois National Wildlife Refuge, New York, is permitted during the regular State open seasons, except on areas designated by signs as closed. This open area is shown on maps available at refuge headquarters and from the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

Hunting shall be in accordance with all State and Federal regulations covering the hunting of woodcock and crow.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

AUGUST 12, 1977.

WILLIAM C. ASHE,
Regional Director,
Fish and Wildlife Service.

[FR Doc.77-24338 Filed 8-22-77;8:45 am]

PART 32—HUNTING

Opening of Iroquois National Wildlife Refuge, New York, to Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special Regulation.

SUMMARY: The Director has determined that the opening to hunting of Iroquois National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: October 1, 1977 through February 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Edwin Chandler, Iroquois National Wildlife Refuge, RFD 1, Basom, New York, 14013, Telephone No. 716-948-5445

SUPPLEMENTARY INFORMATION:

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

Public hunting of upland game birds and small game mammals, including foxes, opossoms, red squirrels, woodchucks is permitted during the respective State seasons except on areas designated by signs as closed. This open area comprising 10,383 acres is shown on maps available at refuge headquarters, and from the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts, 02158. Hunting shall be in accordance with all State Regulations subject to the following special condition:

(1) A seasonal permit is required for the nighttime hunting of racoon. Permits may be obtained by applying in person at the refuge office.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally, as are set forth in Title 50, Code of Federal Regulations, Part 32.

The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

WILLIAM C. ASHE,
Acting Regional Director,
Fish and Wildlife Service.

AUGUST 12, 1977.

[FR Doc.77-24339 Filed 8-22-77;8:45 am]

PART 32—HUNTING

Opening of Noxubee National Wildlife Refuge, Mississippi to Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to hunting of Noxubee National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: State Waterfowl Season.

FOR FURTHER INFORMATION CONTACT:

Travis H. McDaniel, Refuge Manager, Noxubee National Wildlife Refuge, Route 1, Box 84, Brooksville, Miss. 39739, telephone 601-323-5548.

SUPPLEMENTARY INFORMATION:

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuges.

Public hunting of ducks and coots on the Noxubee National Wildlife Refuge is permitted only on the area designated by the refuge manager as Green Timber Reservoir No. 1. The open area of 520 acres is delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive NE., Atlanta, Ga. 30329. Hunting shall be in accordance with all applicable State and Federal regulations governing the hunting of ducks and coots subject to the following special conditions:

1. Hunting will be permitted only on Mondays, Wednesdays, and Saturdays from one-half hour before sunrise to 12 noon during the State waterfowl hunting season.

2. The use of boats with electric motors is permitted within the hunting area.

3. The construction of blinds is not permitted.

4. Hunters will not be permitted to enter the hunting area sooner than 45 minutes before legal shooting hours.

5. No hunting may take more than 16 shootgun shells into the hunting area.

6. No shooting will be permitted from the levee or the open water area immediately adjacent to the levee.

7. All hunters are required to check in and out at the designated check station.

8. Only steel shot ammunition may be used. The possession or use of lead or other toxic shot is prohibited.

9. Permit required.

10. Each hunter under age 18 must be under the close supervision of an adult. For safety reasons, the ratio should be one adult to one juvenile but in no case should one adult have more than two juveniles under his/her supervision.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas general generally which are set forth in Title 50, Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement un-

der Executive Order 11949 and OMB Circular A-107.

Dated: August 15, 1977.

HAROLD W. BENSON,
Acting Regional Director.

[FR Doc.77-24272 Filed 8-22-77;8:45 am]

PART 32—HUNTING

Opening of Savannah National Wildlife Refuge, Georgia to Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to hunting of Savannah National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: Season to be set by State of Georgia.

FOR FURTHER INFORMATION CONTACT:

John P. Davis, Refuge Manager, Savannah National Wildlife Refuge Complex, P.O. Box 4623, Savannah, Ga. 31402, telephone 912-232-4321, ext. 415.

SUPPLEMENTARY INFORMATION:

§ 32.12 Special regulations; migratory game bird hunting; for individual wildlife refuge areas.

Hunting is permitted on the Savannah National Wildlife Refuge, Georgia only on the areas designated as being open to hunting. These areas comprising 3,500 acres are delineated on maps available at the refuge headquarters and from the office of the Regional Director, 17 Executive Park Drive NE. Atlanta, Ga. 30329. Hunting shall be in accordance with all applicable State regulations subject to the following conditions:

1. Daily bag limits are the same as State regulations for ducks, coots, and snipe. Hunters are cautioned against killing, shooting at, or molesting any species of wildlife other than those listed.

2. Hunting will be permitted only on Thursday, Friday, and Saturday, from one-half hour before sunrise to 12 o'clock noon during the season set by State regulation.

NOTE.—Snipe season opens at different dates than ducks and coots but will close on the refuge on the same date.

3. Hunting will not be permitted in or on Front, Middle, and Back Rivers, nor closer than 50 yards to the shoreline of these rivers.

4. Hunters will not be permitted to enter the hunting area sooner than one and one-half hours before sunrise.

5. Only steel shot ammunition may be used, all lead shot shells are prohibited. Guns must be unloaded and cased or dismantled while being carried to and from the hunting area.

6. Only temporary blinds constructed of native materials are permitted. Hunters must build their own blinds and furnish their own boats and decoys.

7. Dogs used to retrieve waterfowl must be under control at all times.

8. Season permits must be carried on person while hunting. Permits may be obtained from the Refuge Manager in person or by mail.

9. Hunting questionnaires must be completed and returned to the Refuge Manager, Savannah National Wildlife Refuge, within 30 days following the end of the season.

10. Each hunter under age 18 must be under the close supervision of an adult. For safety reasons, the ratio should be one adult to one juvenile but in no case should one adult have more than two juveniles under his/her supervision.

SPECIAL INFORMATION

Since Savannah Refuge is located near the coast, the hunting area is subject to tidal fluctuations of 6 to 8 feet. Hunters are urged to be familiar with tide tables, carry adequate safety equipment, and exercise extreme caution in all boating and hunting activities.

The provisions of this special regulation supplements the regulations which govern hunting of wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: August 15, 1977.

HAROLD W. BENSON,
Acting Regional Director.

[FR Doc.77-24273 Filed 8-22-77;8:45 am]

PART 32—HUNTING

Opening of Noxubee National Wildlife Refuge, Mississippi to Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to hunting of Noxubee National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: Squirrel and Rabbit—October 29-November 12, 1977. Raccoon and Opossum—January 1-31, 1978. Quail and Rabbit—January 16-February 21, 1978. Turkey—March 25-April 5, 1978 and April 7-22, 1978.

FOR FURTHER INFORMATION CONTACT:

Travis H. McDaniel, Refuge Manager, Noxubee National Wildlife Refuge, Route 1, Box 84, Brooksville, Miss. 39739, telephone 601-323-5548.

SUPPLEMENTARY INFORMATION:

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

Public hunting of upland game on the Noxubee National Wildlife Refuge, Mississippi, is permitted on the area designated by signs as open to hunting. This open area is delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive NE., Atlanta, Ga. 30329. Hunting shall be in accordance with all State and Federal regulations subject to the following special conditions:

1. Squirrels and rabbits may be hunted October 29-November 12, 1977 on all areas of the refuge (except closed areas).

2. Quail may be hunted January 16-February 21, 1978. Rabbits may be hunted as an incidental species during the quail hunt. Only shotguns permitted during this hunt.

3. Raccoons and oppossums may be hunted January 1-31, 1978 with .22 caliber rimfire weapons only.

4. Turkey (Gobblers only) may be hunted March 25-April 5, 1978 and April 7-22, 1978. Limit of two turkeys per year.

5. Sunday hunting is prohibited.

6. Dogs are permitted during the quail, raccoon and opossum hunts only.

7. Turkeys killed must be checked at refuge headquarters.

8. Permits are required for all hunts and may be obtained at refuge headquarters.

9. Each hunter under age 18 must be under the close supervision of an adult. For safety reasons, the ratio should be one adult to one juvenile but in no case should one adult have more than two juveniles under his/her supervision.

10. The use of any Citizen's Band Radio devices to aid in the pursuit or taking of any game species is prohibited.

The provisions of these special regulations supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: August 15, 1977.

HAROLD W. BENSON,
Acting Regional Director.

[FR Doc.77-24281 Filed 8-22-77;8:45 am]

PART 32—HUNTING

Opening of Piedmont National Wildlife Refuge, Georgia to Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to hunting of Piedmont National Wildlife Refuge is

compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: Squirrel and quail: November 22, 1977 through February 28, 1978 on Tuesdays, Saturdays, and National Holidays.

FOR FURTHER INFORMATION CONTACT:

Ronnie A. Shell, Refuge Manager, Piedmont National Wildlife Refuge, Round Oak, Georgia 31080, telephone (912) 986-3651.

SUPPLEMENTARY INFORMATION:

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

Hunting is permitted on the entire Piedmont National Wildlife Refuge, Georgia except on the areas designated by signs as being closed to hunting. This open area, comprising approximately 33,000 acres, is delineated on maps available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Hunting shall be in accordance with all applicable State regulations subject to the following conditions:

1. Species permitted to be taken: Bobwhite quail and gray squirrels only.

2. Open season: Quail and gray squirrels—November 22, 1977 thru February 28, 1978, on Tuesdays, Saturdays, and National Holidays. Hunters are permitted on areas open to quail and squirrel hunting from 30 minutes before sunrise until 30 minutes after sunset on the above cited hunting days.

3. No vehicular or horseback travel except on State and county roads.

4. Each hunter under age 18 must be under the close supervision of an adult. For safety reasons, the ratio should be one adult to one juvenile but in no case should one adult have more than two juveniles under his/her supervision.

5. Camping and fires are prohibited.

6. Dogs permitted for quail hunting, and one dog per party authorized for squirrel hunting.

7. Firearms limited to .22 caliber rimfire rifles and shotguns.

8. A refuge permit is required. An unlimited number of permits for the quail and squirrel hunts will be available at refuge headquarters Monday through Friday 8 a.m.-4:30 p.m. during the respective hunt period. Questionnaire on permit must be completed and returned to refuge office at close of season.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: August 15, 1977.

HAROLD W. BENSON,
Acting Regional Director.

[FR Doc.77-24277 Filed 8-22-77;8:45 am]

PART 32—HUNTING

Opening of Catahoula National Wildlife Refuge, Louisiana, to Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to big game hunting of Catahoula National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: November 10, 1977, through November 12, 1977.

FOR FURTHER INFORMATION CONTACT:

Stephen K. Joyner, Refuge Manager, Catahoula National Wildlife Refuge, P.O. Drawer LL, Jena, Louisiana 73142, telephone (318) 992-5261

SUPPLEMENTARY INFORMATION:

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

White-tailed deer hunting is permitted on the Catahoula National Wildlife Refuge, Louisiana, only on the areas designated by signs as being open to hunting. These areas comprising 3,000 acres are delineated on maps available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive NE., Atlanta, Georgia 30329. Deer hunting shall be in accordance with all applicable State regulations subject to the following conditions:

1. Bucks only—gun hunt; November 10-12, 1977.

2. Guns must be centerfire rifles.

3. Hunting hours: One-half hour before sunrise until one-half hour after sunset. Hunters may enter area 30 minutes prior to legal shooting hours and must exit 30 minutes after legal hours.

4. Permits: A refuge permit is required for all hunts.

5. Still hunting only. No dogs allowed. No permanent tree stands may be constructed. It is unlawful to drive a nail, spike, or other metal object into any tree or to hunt from any tree in which a metal object has been driven.

6. Required clothing: Every hunter must wear outer garmets consisting of at least 400 square-inches of daylight fluorescent orange colored material worn above the waistline.

7. No vehicles may be parked more than 50 yards from existing main roads. No ATV vehicles other than jeep type will be allowed. No vehicles with tires larger than 9.00x16" may be used.

8. Unmarked feral hogs may be taken by deer hunters.

9. All deer killed must be checked at a refuge checking station.

10. Each hunter under age 18 must be under the close supervision of an adult. For safety reasons, the ratio should be one adult to one juvenile but in no case should one adult have more than two juveniles under his/her supervision.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB circular A-107.

Dated: August 15, 1977.

HAROLD W. BENSON,
Acting Regional Director.

[FR Doc.77-24274 Filed 8-22-77;8:45 am]

PART 32—HUNTING

Opening of White River National Wildlife Refuge, Arkansas, to Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to hunting of White River National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: *Archery*-October 11-30; *Muzzleloading rifles*: October 28-29; *Gun*: November 14-15-16, 1977.

FOR FURTHER INFORMATION CONTACT:

Raymond R. McMaster, Refuge Manager, P.O. Box 308, DeWitt, AR 72042, telephone (501) 946-1468.

SUPPLEMENTARY INFORMATION:

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

Hunting is permitted on the White River National Wildlife Refuge, Arkansas, only on the areas designated by signs as being open to hunting. These areas comprising 90,000 acres are delineated on maps available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Hunting shall be in accordance with all applicable State regulations subject to the following conditions:

1. Species permitted to be taken: White-tailed Deer.

2. Bag Limit: One deer of either sex for archery and muzzle loader, one buck only for regular gun hunt.

3. Weapons—In accordance with State regulations.

4. Loaded guns are not permitted in vehicles or in camps. Shooting is not allowed from boats, vehicles, or roadways used by vehicles. Dogs and horses are not allowed and all vehicles must stay on regularly used roads and trails. Shooting hours are 30 minutes before sunrise to 30 minutes after sunset. Camping is permitted in designated areas. Hunters may enter the open hunting area at noon on the date preceding each hunt and must be out of the area by dark of the closing day. Fires may be built only at the campsites.

5. Deer killed during the gun hunting must be checked at one of the refuge check stations between 7:30 a.m. and 7 p.m.

6. Hunters may not return to the hunting area after they have killed a deer.

7. Permit required. No person is authorized to enter the hunting area without a permit. Submission of more than one permit application or applications containing false information is prohibited.

8. Each hunter under 18 years of age must be under the close supervision of an adult. For safety reasons, the ratio should be one adult to one juvenile but in no case should one adult have more than two juveniles under his/her supervision.

9. Each gun deer hunter is required to wear a minimum of 500 square inches of daylight fluorescent orange above the waistline.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: August 15, 1977.

HAROLD W. BENSON,
Acting Regional Director.

[FR Doc.77-24275 Filed 8-22-77;8:45 am]

PART 32—HUNTING

Opening of Wheeler National Wildlife Refuge, Alabama, to Big Game Hunting, White-Tailed Deer

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special Regulation.

SUMMARY: The Director has determined that the opening to big game hunting, white-tailed deer, of Wheeler National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: October 22, 1977 through January 21, 1978, inclusive.

FOR FURTHER INFORMATION CONTACT:

Thomas Z. Atkeson, P.O. Box 1643, Decatur, Alabama 35602, (205) 353-7243.

SUPPLEMENTARY INFORMATION:

§ 32.32 **Special regulations; big game; for individual wildlife refuge areas.**

Big game hunting for white-tailed deer is permitted on the Wheeler National Wildlife Refuge, Alabama, only on the areas designated by signs as being open to hunting. This area comprising approximately 4,500 acres and including all those parts of the Wheeler National Wildlife Refuge included within the Redstone Arsenal Reservation, is delineated on maps available at the Refuge Headquarters, Box 1643, Decatur, Alabama 35602, U.S. Fish and Wildlife Service Area Office, 200 East Pascagoula Street, Suite 490, Jackson, Mississippi 39201, and from the office of the Provost Marshal, Redstone Arsenal, Alabama. Big game hunting for white-tailed deer shall be in accordance with all applicable State and Federal regulations subject to the following conditions:

1. Only white-tailed deer may be taken.

2. Hunting shall be by daily permit only with permits obtained from the office of the Deputy Post Game Warden, Redstone Arsenal, Alabama.

3. Hunting will be limited to the periods October 22-23, October 29-30, November 5-6, November 12-13, 1977, archery only, either sex; November 19-20, November 26-27, December 3-4, December 10-11, December 17, December 26, 1977, January 2, January 7, January 14, January 21, 1978, guns only, either sex until State quota of 200 antlerless deer is reached after which hunts will be for antlered bucks only.

4. Weapons are limited to shotguns of gauges 20 to 12, loaded with single ball only and longbows with broadhead arrows.

5. Each hunter under age 18 must be under the close supervision of an adult. For safety reasons, the ratio should be one adult to one juvenile but in no case should one adult have more than two juveniles under his/her supervision.

6. Fluorescent orange caps and or vests or coats will be worn.

The provisions of this special regulation supplement the regulations which govern big game hunting for white-tailed deer on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: August 15, 1977.

HAROLD W. BENSON,
Acting Regional Director.

[FR Doc.77-24276 Filed 8-22-77;8:45 am]

PART 32—HUNTING

Opening of Pungo National Wildlife Refuge, North Carolina to Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to hunting of Pungo National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: *Archery hunt:* September 19—October 5, 1977 *Shotgun and Primitive weapons:* October 11-13, 1977; October 17-19, 1977; and October 25-26, 1977

FOR FURTHER INFORMATION CONTACT:

John C. Fields, Refuge Manager, P.O. Box 267, Plymouth, North Carolina 27962, telephone (919) 793-2143.

SUPPLEMENTARY INFORMATION:

§ 32.32 **Special regulations; big game; for individual wildlife refuge areas.**

Big game hunting is permitted on the Pungo National Wildlife Refuge, North Carolina, only on the areas designated by signs as being open to hunting. These areas comprising 7,000 acres for gun hunting and 9,000 acres for bow hunting are delineated on maps available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Big game hunting shall be in accordance with all applicable state regulations subject to the following conditions:

1. Species and bag limit: One white-tailed deer per day; three per season.

2. Seasons and sex: (a) Bow and arrow only: either sex—September 19-October 5, 1977. (b) Shotguns and primitive weapons: either sex—October 11, 12, 13, 17, 18, 19, 25 and 26, 1977.

3. Hunting hours: Sunrise to sunset. All guns must be unloaded and bows unstrung at sunset.

4. Weapons: (a) Bow and arrow as provided for in State regulations. (b) Shotguns—20 gauge or larger used with rifled slugs or shot no smaller than No. 4 buckshot. (c) Primitive weapons are muzzleloading percussion cap or flintlock rifles.

5. Permits: (a) Gun hunters must have a valid permit issued by the U.S. Department of the Interior, Fish and Wildlife Service, as a result of a public drawing of advance applications. (b) Bow hunters must have a permit issued at the refuge.

6. Required clothing: Every gun hunter must wear outer garments consisting of at least 400 square inches of day-light fluorescent orange-colored material worn above the waistline.

7. Age limits: Each hunter under age 18 must be under the close supervision of an adult. For safety reasons, the ratio should be one adult to one juvenile but in no case should one adult have more

than two juveniles under his/her supervision.

8. Closed area: Unauthorized entry into any building or designated "Closed Area" is prohibited. No hunting is permitted within 200 yards of the refuge subheadquarters.

9. Transporting weapons: Weapons must be unloaded while being transported in or on a vehicle. Nocked arrows are considered loaded weapons.

10. Prohibited: Modern rifles, pistols, crossbows, dogs, fires, camping and littering.

11. Hunters shall not disturb, damage or destroy unharvested crops.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation on an Economic Impact Statement under Executive Order 11949 and OMB A-107.

Dated: August 15, 1977.

HAROLD W. BENSON,
Acting Regional Director.

[FR Doc.77-24278 Filed 8-22-77;8:45 am]

PART 32—HUNTING

Opening of Wheeler National Wildlife Refuge, Alabama to Big Game Hunting, White-Tailed Deer

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to big game hunting, white-tailed deer, of Wheeler National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: October 24 through November 5, 1977, inclusive.

FOR FURTHER INFORMATION CONTACT:

Thomas Z. Atkeson, P.O. Box 1643, Decatur, Alabama 35602, telephone 205/353-7243.

SUPPLEMENTARY INFORMATION:

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

Big game hunting for white-tailed deer is permitted on the Wheeler National Wildlife Refuge, Alabama, only on the areas designated by signs as being open to hunting. These areas comprising approximately 9,000 acres including all refuge area on the northern side of the Tennessee River from Rockhouse Landing eastward to the Redstone Arsenal boundary and all on the southern side of the river from Bluff City eastward to the eastern end of refuge, are delineated on maps available at the refuge headquarters and from the office of the Regional Director, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Big game hunting for white-tailed deer shall be in accordance with all applicable State regulations subject to the following conditions:

1. Special permits are required and are obtainable without charge at the refuge office.

2. Only white-tailed deer, either sex, may be taken, though no spotted fawns may be shot.

3. Only longbows and broadhead arrows may be used.

4. Hunters must wear fluorescent orange caps and/or vests or coats.

5. Dog use is not allowed.

6. Each hunter under age 18 must be under the close supervision of an adult. For safety reasons, the ratio should be one adult to one juvenile but in no case should one adult have more than two juveniles under his/her supervision.

The provisions of this special regulation supplement the regulations which govern big game hunting for white-tailed deer on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: August 15, 1977.

HAROLD W. BENSON,
Acting Regional Director.

[FR Doc.77-24279 Filed 8-22-77;8:45 am]

PART 32—HUNTING

Opening of Noxubee National Wildlife, Refuge, Mississippi to Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to hunting of Noxubee National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: October 1-15, 1977; November 21-26, 1977; December 12-17; 1977; and January 9-14, 1978.

FOR FURTHER INFORMATION CONTACT:

Travis H. McDaniel, Refuge Manager, Noxubee National Wildlife Refuge, Route 1, Box 84, Brooksville, Mississippi 39739, telephone (601) 323-5548

SUPPLEMENTARY INFORMATION:

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

Public hunting of white-tailed deer on Noxubee National Wildlife Refuge, Mississippi, is permitted only on the area designated by signs and delineated on maps available at Refuge Headquarters and from the Office of the Regional Director, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Hunting shall be in accordance with all applicable State and Federal regulations governing the hunting of white-tailed deer, subject to the following special conditions:

1. Open Seasons: Archery hunt—October 1-15, 1977; Gun hunts—November 21-26, 1977 and January 9-14, 1978; Primitive weapons—December 12-17, 1977.

2. Weapons: Longbow and arrows; shotguns 20 gauge or larger and centerfire rifles, muzzleloading rifles and shotguns.

3. Sunday hunting prohibited.

4. Horses and dogs are not permitted.

5. All deer killed must be checked out at the designated refuge checking station of refuge headquarters.

6. Permits are required for all deer hunts.

7. Each hunter under age 18 must be under the close supervision of an adult. For safety reasons, the ratio should be one adult to one juvenile but in no case should one adult have more than two juveniles under his/her supervision.

8. Man-drive deer hunting prohibited.

9. The use of any Citizen's Band Radio devices to aid in the pursuit or taking of any wildlife species is prohibited.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

HAROLD W. BENSON,
Acting Regional Director.

Dated: August 15, 1977.

[FR Doc.77-24280 Filed 8-22-77;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

Soil Conservation Service

[7 CFR Part 657]

PRIME AND UNIQUE FARMLANDS

Important Farmland Inventory

AGENCY: U.S. Department of Agriculture, Soil Conservation Service.

ACTION: Proposed rule.

SUMMARY: This rule prescribes general guidelines for a national program of inventorying prime and unique farmland, as well as other farmlands of statewide or local importance. It includes specific criteria for the definition of prime farmland.

DATE: Comments must be received on or before October 7, 1977.

FOR FURTHER INFORMATION CONTACT:

R. M. Davis, Administrator, Soil Conservation Service, U.S. Department of Agriculture, P.O. Box 2890, Washington, D.C. 20013.

SUPPLEMENTARY INFORMATION: On October 15, 1975, the Soil Conservation Service (SCS) issued Land Inventory and Monitoring (LIM) Memorandum-3, to establish SCS policy regarding a national program for inventorying important farmlands. For purposes of determining applicability, "inventorying" means to identify, locate, classify, and measure. LIM Memorandum-3 was developed in response to growing concern over the continuing reduction of the Nation's supply of prime and unique farmland and initiated a standard procedure for showing the kind, extent, and location of these important farmlands.

Prime and unique farmlands are important to the Nation as the base of high quality land that can provide present and future food and fiber supplies with the least use of energy, capital, and labor and with minimal environmental impact.

Prime farmland is the only category in the important farmland inventory that is defined on the basis of national criteria. These criteria are based on soil, water, and climatic factors which are readily available in soil surveys and other related resource information. Application of these criteria assure that the lands classified as prime farmland will meet similar criteria in all parts of the Nation. This is essential to provide uniformity of interpretation and establish a basis for National policy and program action affecting those lands that have the best physical and chemical qualities for the production of food, feed, forage, fiber, and oilseed crops. The definition of prime farmland is published here to fulfill the requirements of Section 701(20), Pub. L. 95-87, and for other purposes.

Unique farmlands and farmlands of statewide importance are identified by representatives of the Governor's office, agencies of the State Government, and others in cooperation with the SCS. Farmlands of local importance are identified if it has been determined by local agencies that this information is needed.

LIM Memorandum-3 is hereby revised to indicate new procedural responsibilities in making and publishing inventories of important farmlands. These new responsibilities provide SCS State Conservationists additional opportunities and flexibility to develop inventories more rapidly. There is no change in the specific criteria for prime farmland, but both the general definition and the specific criteria have been edited to provide a more clearly understandable definition for lay people and technical specialists.

The SCS plans to issue these regulations to provide information on the important farmland inventory and to serve as a standard reference for the definition and specific criteria for prime farmland. This is necessitated by the growing number of legislative and regulatory references to the term "prime farmland" and the need to provide a uniformly accepted definition.

Concern for the continuing loss of these lands to non-agricultural uses has resulted in legislative and regulatory efforts by different levels of Government attempting to reduce these losses. SCS policy and programs support these efforts in several ways. Making and keeping current an inventory of the important farmlands is one such way. Other SCS efforts include special evaluation of the impact of major Federal actions on prime farmlands. (See 7 CFR 650.8.) As other SCS policies or programs to protect prime and unique farmlands are developed, they will be published in this part.

Interested persons are invited to submit written comments, suggestions, data, or arguments as they desire. Comments should be submitted to:

Administrator, Soil Conservation Service, U.S. Department of Agriculture, P.O. Box 2890, Washington, D.C. 20013.

Written comments received on or before October 7, 1977, will be considered before any action is taken on this proposed rule.

Comments received before the closing date will be made available for examination by interested persons.

Dated: August 16, 1977.

WILLIAM M. JOHNSON,
Deputy Administrator for Technical Services, Soil Conservation Service.

(Catalog of Federal Domestic Assistance programs numbered 10.900 (Great Plains), 10.901 (Resource Conservation and Development), 10.902 (Soil and Water Conservation), 10.904 (Watershed Protection and Flood Prevention), and 10.905 (Plant Materials).)

PART 657—PRIME AND UNIQUE FARMLANDS

Subpart A—Important Farmland Inventory

Sec.

AUTHORITY: 16 U.S.C. 590a-f, q; 7 CFR 2.62; Pub. L. 95-87; 42 U.S.C. 4321 et seq.

Subpart A—Important Farmland Inventory

§ 657.1 Purpose.

The Soil Conservation Service is concerned about any action that tends to impair the productive capacity of American agriculture. The Nation needs to know the extent and location of the best land for producing food, feed, fiber, forage, and oilseed crops. Farmlands, in addition to prime and unique farmlands, that are of statewide and local importance for producing these crops need to be identified.

§ 657.2 Policy.

It is SCS policy to make and keep current an inventory of the prime farmland and unique farmland of the Nation. This inventory is to be carried out in cooperation with other interested agencies at the national, State, and local levels of Government. The objective of the inventory is to identify the extent and location of important rural lands needed to produce food, feed, fiber, forage, and oilseed crops.

§ 657.3 Applicability.

Inventories made under this memorandum do not constitute a designation of any land area to a specific land use. Such designations are the responsibility of appropriate local and State officials.

§ 657.4 SCS Responsibilities.

(a) *State Conservationists.* Each State Conservationist is to:

(1) Provide leadership for inventories of important farmlands for the State, county, or other subdivision of the State. Each is to work with appropriate agencies of State Government and others to establish priorities for making these inventories.

(2) Identify the soil mapping units within the State that qualify as prime farmland. Each is to invite representatives of the Governor's Office, agencies of the State Government, and others to identify farmlands of statewide importance and unique farmlands that are to be inventoried within the framework of this memorandum.

(3) Prepare a statewide list of:

(i) Soil mapping units that meet the criteria for prime farmland.

(ii) Soil mapping units that are farmlands of statewide importance if the criteria used were based on soil information.

(iii) Specific high-value food and fiber crops that are grown and, when combined with other favorable factors, qualify lands to meet the criteria for unique farmlands. Copies are to be furnished to Field Offices and to the Technical Service Centers (TSC's). (See 7 CFR 600.3, 600.6.)

(4) Coordinate soil mapping units that qualify as prime farmlands with adjacent States, including the States responsible for the soil series. Since farmlands of statewide importance and unique farmlands are designated by others at the State level, the soil mapping units and areas identified need not be coordinated among States.

(5) Instruct District Conservationists to arrange local review of lands identified as prime, unique, and additional farmlands of statewide importance by Conservation Districts and representatives of local agencies. This review is to determine if additional farmland should be identified to meet local decisionmaking needs.

(6) Make and publish each important farmland inventory on a base map of national map accuracy at an intermediate scale of 1:50,000 or 1:100,000. State Conservationists who need base maps of other scales are to submit their requests with justification to the Administrator for consideration.

(b) *Technical Service Centers.* Field Representatives (see 7 CFR 600.2(f)) are to provide requested technical assistance to State Conservationists in inventorying prime and unique farmlands. This includes reviewing statewide lists of soil mapping units that meet the criteria for prime farmlands and resolving coordination problems that may occur among States for specific soil series or soil mapping units.

(c) *National Office.* The Assistant Administrator for Field Services (see 7 CFR 600.2) is to provide national leadership in preparing guidelines for inventorying prime farmlands and for national statistics and reports of prime farmlands.

§ 657.5 Identification of important farmlands.

(a) *Prime farmland*—(1) *General.* Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops, and also available for these uses (the land could be cropland, pastureland, rangeland, forest land, or other land, but not urban built-up land or water). It has the soil quality, growing season, and moisture supply needed to economically produce sustained high yields of crops when treated and managed, including water management, according to modern farming methods. In general, prime farmlands have an adequate and dependable moisture supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content, and few or no rocks. They are permeable to water and air. Prime farmlands are not excessively erodible or saturated with water for a long period of time, and they either do not flood or are protected from flooding. Examples of soils that qualify as prime farmland are Palouse silt loam, 0 to 7 percent slopes; Brookston silty clay loam, drained; and Tama silty clay loam, 0 to 5 percent slopes.

(2) *Specific criteria.* Prime farmlands meet the following criteria. Terms used in this section are defined in USDA publications: Soil Taxonomy, Agriculture Handbook 436; Soil Survey Manual, Agriculture Handbook 18; Rainfall-Erosion Losses from Cropland, Agriculture Handbook 282; and Saline and Alkali Soils, Agriculture Handbook 60.

(i) The soils have: (A) Aquic, udic, ustic, or xeric moisture regimes and sufficient available water capacity within a depth of 40 inches (1 meter), or in the root zone if the root zone is less than 40 inches deep to produce the commonly grown crops in 7 or more years out of 10; or

(B) Xeric or ustic moisture regimes in which the available water capacity is limited, but the area has developed irrigation water supply that is dependable (a dependable water supply is one in which enough water is available for irrigation in 8 out of 10 years for the crops commonly grown) and of adequate quality; or,

(C) Aridic or torric moisture regimes and the area has a developed irrigation water supply that is dependable and of adequate quality; and,

(ii) The soils have a temperature regime that is frigid, mesic, thermic, or hyperthermic (pergelic and cryic regimes are excluded). These are soils that, at a depth of 20 inches (50 cm), have a mean annual temperature higher than 32° F (0° C). In addition, the mean summer temperature at this depth in soils with an O horizon is higher than 47° F. (8° C); in soils that have no O horizon, the mean summer temperature is higher than 59° F (15° C); and,

(iii) The soils have a pH between 4.5 and 8.4 in all horizons within a depth of 40 inches (1 meter) or in the root zone if the root zone is less than 40 inches deep; and,

(iv) The soils either have no water table or have a water table that is maintained at a sufficient depth during the cropping season to allow food, feed, fiber, forage, and oilseed crops common to the area to be grown; and,

(v) The soils can be managed so that, in all horizons within a depth of 40 inches (1 meter) or in the root zone if the root zone is less than 40 inches deep, during part of each year the conductivity of the saturation extract is less than 4 mmhos/cm and the exchangeable sodium percentage (ESP) is less than 15; and,

(vi) The soils are not flooded frequently during the growing season (less often than once in 2 years); and,

(vii) The product of K (erodibility factor) x percent slope is less than 2.0, and the product of I (soil erodibility) X C (climatic factor) does not exceed 60; and,

(viii) The soils have a permeability rate of at least 0.06 inch (0.15 cm) per hour in the upper 20 inches (50 cm) and the mean annual soil temperature at a depth of 20 inches (50 cm) is less than 59° F (15° C); the permeability rate is not a limiting factor if the mean annual soil temperature is 59° F (15° C) or higher; and,

(ix) Less than 10 percent of the surface layer (upper 6 inches) in these soils consists of rock fragments coarser than 3 inches (7.6 cm).

(b) *Unique farmland*—(1) *General.* Unique farmland is land other than prime farmland that is used for the production of specific high value food and fiber crops. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality and/or high yields of a specific crop when treated and managed according to modern farming methods. Examples of such crops are citrus, treenuts, olives, cranberries, fruit, and vegetables.

(2) *Specific characteristics of unique farmland.* (i) Is used for a specific high-value food or fiber crop.

(ii) Has a moisture supply that is adequate for the specific crop. The supply is from stored moisture, precipitation, or a developed irrigation system.

(iii) Combines favorable factors of soil quality, growing season, temperature, humidity, air drainage, elevation, aspect, or other conditions, such as nearness to market, that favor the growth of a specific food or fiber crop.

(c) *Additional farmland of Statewide importance.* This is land, in addition to prime and unique farmlands, that is of statewide importance for the production of food, feed, fiber, forage, and oilseed crops. Criteria for defining and delineating this land are to be determined by the appropriate State agency or agencies. Generally, additional farmlands of state-

wide importance include those that are nearly prime farmland and that economically produce high yields of crops when treated and managed according to modern farming methods. Some may produce as high a yield as prime farmlands if conditions are favorable. In some States, additional farmlands of statewide importance may include tracts of land that have been designated for agriculture by State law.

(d) *Additional farmland of local importance.* In some local areas there is concern for certain additional farmlands for the production of food, feed, fiber, forage, and oilseed crops, even though these lands are not identified as having national or statewide importance. Where appropriate, these lands are to be identified by the local agency or agencies concerned. In places, additional farmlands of local importance may include tracts of land that have been designated for agriculture by local ordinance.

[FR Doc.77-24189 Filed 8-22-77;8:45 am]

FEDERAL ENERGY ADMINISTRATION

[10 CFR Part 430]

ENERGY CONSERVATION PROGRAM FOR APPLIANCES

Proposed Energy Efficiency Improvement Target for Home Heating Equipment, Not Including Furnaces; Further Opportunity for Comment

AGENCY: Federal Energy Administration.

ACTION: Notice of further opportunity for public comment.

SUMMARY: The Federal Energy Administration gives notice of an extension of the deadline for submission of written comments concerning the proposed energy efficiency improvement target for home heating equipment, not including furnaces, which appeared at 36648 of the July 15, FEDERAL REGISTER. The new deadline is October 25, 1977. A second, public hearing will be held concerning this proposed target, at the time of the hearing on test procedures for vented home heating equipment, which will be proposed shortly.

DATES: Comments by October 25, 1977; hearing to be held on November 2, 1977.

FOR FURTHER INFORMATION CONTACT:

James A. Smith, Office of Conservation, Room 307—Old Post Office Building, 12th & Pennsylvania Ave., N.W., Washington, D.C. 20461, (202) 566-4635.

William J. Dennison, or Laurence J. Hyman, Office of the General Counsel, Room 7148—Federal Building, 12th & Pennsylvania Ave., N.W., Washington, D.C. 20461, (202) 566-9750.

SUPPLEMENTARY INFORMATION: The Federal Energy Administration (FEA) previously proposed an energy efficiency improvement target for home heating equipment, not including furnaces, and scheduled a public hearing concerning this target, to be held on August 19, 1977 (42 FR 36648, July 15, 1977). FEA intends to publish shortly proposed test procedures for vented home heating equipment. Publication of proposed test procedures for other types of appliances has preceded the proposal of targets for those appliances. FEA believes that reference to the test procedures for vented home heating equipment would permit more effective public comment on the proposed energy efficiency improvement target for home heating equipment. Therefore, FEA has extended the period for written comment concerning the target to October 25, 1977. Comments should continue to be sent to the address specified in the July 15, 1977, FEDERAL REGISTER notice. A public hearing concerning both the proposed test procedures and the proposed target will be held on November 2, 1977. The exact time and place of this hearing, and procedures for requesting an opportunity to speak, will be announced when the test procedures for vented home heating equipment are proposed. The August 19, 1977, hearing will be held as scheduled.

Issued in Washington, D.C., August 17, 1977.

ERIC J. FYGI,
Acting General Counsel,
Federal Energy Administration.

[FR Doc.77-24269 Filed 8-22-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 431 and 514]

[Docket No. 77N-0117]

CERTIFICATION OF ANTIBIOTIC DRUGS

Revised Requirements for Submission of Requests for Batch Certification

Correction

In FR Doc. 77-20306, appearing at page 36492 in the issue of Friday, July 15, 1977, make the following changes:

1. The second line of the fourth full paragraph on page 36493 should read, "(c)(4) to require submission of the date".

2. The fourth complete word in the ninth line of the fifth full paragraph on page 36493 should read "test".

3. The eleventh to last line of the fifth full paragraph on page 36493 should be omitted.

PENSION BENEFIT GUARANTY CORPORATION

[29 CFR Part 2610]

VALUATION OF PLAN BENEFITS

Interim Regulation; Proposed Amendment

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed Amendment to the Interim Regulation.

SUMMARY: This proposed rule prescribes the rates and factors to be used for valuing plan benefits under Title IV of the Employee Retirement Income Security Act of 1974 for plans that terminated on or after March 1, 1977, but before June 1, 1977. It is necessary because the PBGC has not yet published valuation rates and factors for plans that terminated during the period covered by the proposed amendment. The proposed amendment's effect is to provide notice of the rates and factors that will be used to value benefits provided under such plans.

DATES: Comments should be submitted on or before September 22, 1977.

ADDRESSES: Comments should be sent to: Office of the General Counsel, Pension Benefit Guaranty Corporation, Suite 7200, 2020 K Street NW., Washington, D.C. 20006. Copies of written comments will be available for examination in: Office of Communications, Pension Benefit Guaranty Corporation, Suite 7100, 2020 K Street NW., Washington, D.C., between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT:

William E. Seals, Staff Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, D.C. 20006 202-254-4895

SUPPLEMENTARY INFORMATION: On November 3, 1976 the Pension Benefit Guaranty Corporation (the "PBGC") issued an interim regulation establishing the methods for valuing plan benefits under Title IV of the Employee Retirement Income Security Act of 1974 (the "Act"). (41 FR 48484 et seq.). The regulation included an appendix containing rates and factors to be used to value benefits in plans that terminated on or after September 2, 1974, but before October 1, 1975. Subsequently, the PBGC adopted additional rates and factors for valuing benefits in plans that terminated on or after October 1, 1975, but before December 1, 1976. (42 FR 2678 et seq., 42 FR 32777 et seq.). On June 8, 1977, The PBGC published for comment in the FEDERAL REGISTER additional rates and factors for valuing benefits in plans that terminate on or after December 1, 1976, but before March 1, 1977 (42 FR 29318 et seq.). The PBGC has now developed rates and factors for valuing benefits in plans that terminate on or after March 1, 1977, but before June 1, 1977, and proposes to amend the interim regulation to add these factors.

Each person submitting comments on this proposal should include his/her name and address, identify this notice and give reasons for any recommmendation. The proposal may be changed in the light of comments received.

In consideration of the foregoing, it is proposed to amend Part 2610 of Chapter XXIV of Title 29, Code of Federal Regulations, by adding a new Table VIII to Appendix B to read as follows:

VIII—THE FOLLOWING INTEREST RATES AND QUANTITIES USED TO VALUE DEFERRED ANNUITIES SHALL BE EFFECTIVE FOR PLANS THAT TERMINATE ON OR AFTER MARCH 1, 1977, BUT BEFORE JUNE 1, 1977.

I.—INTEREST RATE FOR VALUING IMMEDIATE ANNUITIES

An interest rate of 7 percent shall be used to value immediate annuities, to compute the quantity "G_T" in § 2610.6 and for valuing both portions of a cash refund annuity.

II.—INTEREST RATE FOR VALUING DEATH BENEFITS

An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity pursuant to § 2610.8.

III.—INTEREST RATES AND QUANTITIES USED FOR VALUING DEFERRED ANNUITIES

The following factors shall be used to value deferred annuities pursuant to § 2610.6:

(1) $k_1 = 1.06$
(2) $k_2 = 1.0475$
(3) $k_3 = 1.035$
(4) $n_1 = 8$
(5) $n_2 = 10$

(Secs. 4002(b)(3), 4041(b), 4044, 4062(b)(1)(A), Pub. L. 93-406, 88 Stat. 1004, 1020, 1025-27, 1029 (29 U.S.C. 1302(b)(3)), 1341(b), 1344, 1362(b)(1)(A).)

Issued at Washington, D.C., on this 10th day of August 1977.

RAY MARSHALL,
Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above, pursuant to a resolution of the Board of Directors authorizing its Chairman to issue same.

HENRY ROSE,
Secretary, Pension Benefit Guaranty Corporation.

[FR Doc.77-24220 Filed 8-22-77;8:45 am]

LIBRARY OF CONGRESS

Copyright Office

[37 CFR Part 201]

[Docket RM 77-8]

FILING OF COPIES OF CERTAIN CONTRACTS BY CABLE SYSTEMS

Proposed Rulemaking

Correction

In FR Doc. 77-23651 appearing at page 41438 in the issue for Wednesday, August 17, 1977 in the 7th line of § 201.12 (a) appearing in the first column of page 41439, the words "* * * of recordation * * * " should read "* * * by recordation * * *."

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 95]

[Docket No. 21000]

CITIZENS RADIO SERVICE

Spurious and Harmonic Emissions From Class D Transmitters; Extension of Time

AGENCY: Federal Communications Commission

ACTION: Extension of Time to file Comments and Reply Comments

SUMMARY: An extension of time to file comments has been requested in Docket No. 21000. Because of the importance of this proceeding to both manufacturers and consumers, the Chief Engineer pursuant to his delegated authority is granting the request. No objections have been received.

DATES: Comments must be received on or before October 17, 1977; and Reply Comments by November 17, 1977

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554

FOR FURTHER INFORMATION CONTACT:

Frank Rose, Research and Standards Division, Office of Chief Engineer, (202) 632-7093.

SUPPLEMENTARY INFORMATION: In the matter of amendment of the Commission's Rules to address the matter of further attenuation of the spurious and harmonic emissions from Class D transmitters operating in the Citizens Radio Service under Part 95, (Docket No. 21000).

ORDER EXTENDING TIME AND FILE COMMENTS (42 FR 27629)

Adopted: August 16, 1977.

Released: August 17, 1977.

By the Chief Engineer:

1. A request for a further extension of time to file Comments in this proceeding has been received from the Consumer Electronics Group of the Electronic Industries Association.

2. Because of the technical nature of this proceeding, which requires testing and other studies by those commenting, the importance of this proceeding to both manufacturers and licensees, and the Commission's desire to have the most definitive responses possible, an extension of time from August 29, 1977 to October 17, 1977 for filing Comments and from September 28, 1977 to November 17, 1977 for filing Reply Comments is hereby ordered pursuant to the authority granted by § 0.241(d) of the Commission's Rules.

RAYMOND E. SPENCE,
Chief Engineer.

[FR Doc.77-24323 Filed 8-22-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Mining Enforcement and Safety Administration

[30 CFR Part 70]

COAL MINE HEALTH NOISE STANDARD

Objections Filed and Hearing Requested

AGENCY: Department of the Interior, Mining Enforcement and Safety Administration.

ACTION: Notice of Objections Filed and Hearing Requested.

SUMMARY: This is a notice that objections have been filed and a hearing requested for proposed amendments to 30 CFR Part 70, which would permit the use of noise dosimeters. The Secretary of Health, Education and Welfare will issue notice at a later date that will advise interested persons of the date and place set for the public hearing.

FOR FURTHER INFORMATION CONTACT:

Joseph Lamonica, Chief, Division of Health, Coal Mine Health and Safety, MESA, Room 830, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203, 703-235-1358 or Vern Rose, Director of the Division of Criteria Documentation and Standards Development, NIOSH, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3680.

The comments and objections which have been filed may be examined at, or copies obtained from, either of the above offices.

SUPPLEMENTARY INFORMATION: On June 2, 1977, there was published in the FEDERAL REGISTER (42 FR 28151) a Notice of Proposed Rulemaking containing proposed amendments to 30 CFR Part 70. These proposed amendments will permit the use of integrating sound level meters (noise dosimeters) to meet the noise measurement requirements of Parts 70 and 71 of Title 30, CFR. The notice stated that comments, suggestions, objections and requests for a hearing were to be received on or before July 18, 1977.

Several comments, suggestions and objections were submitted to the Assistant Administrator, Coal Mine Health and Safety, MESA concerning the proposed regulations. The comments and suggestions were varied and ranged from approval to disapproval of the proposed regulations. While some comments stated that noise dosimeters would be inaccurate, others stated that their accuracy was high. The location of the dosimeter also received criticism, such as being located in a position which would be a hazard to the miner, as well as not being located in the "hearing zone" of the miner. Some commenters believed that tampering with the dosimeters could occur, resulting in false readings, since a qualified person could not always be present. Additionally, some commenters suggested that false noises and vibrations would cause inaccuracy of the dosimeter readings. One commenter stated that the tolerance of ±2 dBA can be realized only with a "non-man-worn instrument", while another questioned whether violations should be cited only when results exceed 132 percent, thus ignoring the −2 dBA tolerance. There were also comments that the cost would be too high to the mine operator and that the use of the dosimeter would not be helpful to the health of the miner. Some commenters observed that since the ANSI dosimeter standard has not yet been approved these regulations should not be finalized. Other commenters suggested changes in wording and definition.

Section 101(f) of the Federal Coal Mine Health and Safety Act of 1969

provides that after objections have been filed, the Secretary of the Interior shall publish in the FEDERAL REGISTER, a notice that objections have been filed and a hearing requested.

Notice is hereby given in accordance with section 101(f) of the Federal Coal Mine Health and Safety Act of 1969, that objections have been timely filed as well as requests for a hearing.

Pursuant to section 101(g) of the Act, the Secretary of Health, Education, and Welfare will, after publication of this notice in the FEDERAL REGISTER issue notice of, and hold, a public hearing for the purpose of receiving relevant evidence on the issues raised by the comments and objections which have been filed.

Dated: August 19, 1977.

ANTHONY RASPOLIC,
Assistant
Secretary of the Interior.

[FR Doc.77-24511 Filed 8-22-77;8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[PPQ 639]

SOIL SAMPLES

List of Approved Laboratories for Receipt of Certain Soil Samples

Correction

In FR Doc. 77-21830, appearing at page 38616 in the issue of Friday, July 29, 1977, make the following changes:

1. On page 38617, second column, 27th line, the state abbreviation at the end of the entry for Cook Associates should read, "CA".

2. On page 38618, third column, 17th to last line, between the words "County" and "Bureau" insert the word "Farm".

CIVIL AERONAUTICS BOARD

[Order 77-8-76; Dockets Nos. 31202, 31203]

KLM-ROYAL DUTCH AIRPLANES

Order Dismissing Complaints

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 17th day of August, 1977.

In the matter of westbound transatlantic 10,000 kg. specific and general commodity rates filed by KLM-Royal Dutch Airlines.

By tariff revisions filed July 22, 1977, for effectiveness August 21, 1977, KLM-Royal Dutch Airlines (KLM) proposes new specific commodity rates (SCR's) for Item 6799 (polyester foil on mill rolls, packed in crates) at 1.68 guilders per kg. from Amsterdam to New York; and reduced freight-all-kinds (FAK) container rates at 2.13 guilders per kg. from Amsterdam to New York. Both proposals would apply to consignments with a minimum weight of 10,000 kgs.[1]

Complaints against both filings have been submitted by Seaboard World Airlines, Inc. (Seaboard). In opposition to the Item 6799 SCR, Seaboard alleges that KLM's generation estimate of 200 tons per month from surface is grossly overstated, since the air rates would still be too far above the surface rate of 9.2 cents per kg. to be effective in attracting surface traffic to air, and according to U.S. Department of Commerce statistics, current surface traffic of this variety from the Netherlands to the United States amounts to only 69.2 tons per month; that the proposed rate, 16.75 cents per revenue ton-mile (RTM), is uneconomic since it falls well below the U.S. carriers' costs per RTM of 32.04 cents as well as their cost per available ton-mile (ATM) of 23.15 cents; that the KLM rate is aimed at a large Seaboard Brussels shipper, and KLM will truck the traffic 48 miles to Amsterdam; that Seaboard will lose over $1.5 million in revenue if it does not match the rate, and will suffer serious dilution if it does; and that KLM's proposal is at odds with the Board's established policy against undue reliance on SCR's over the Atlantic.

In its complaint against the 10,000 kg. FAK rate, Seaboard contends that the rate would be below cost at its yield of only 22.07 cents per RTM; that KLM's allegation of a need for reducing the minimum weight from 34 to 10 tons is fallacious since there are no westbound 34-ton rates now in effect from Amsterdam or adjacent markets; the KLM's undue reliance on pricing based on incremental costing of the bellies, designed to favor the combination carriers, will lead to the destruction of regular and frequent all-cargo service if endorsed by the Board; that the KLM rate, if approved, will quickly spread to neighboring markets such as Brussels and Paris; and that while the Board historically has taken the position that reduced high weightbreak rates must be tied to demonstrable carrier cost savings, KLM has made no statement as to the extent of cost savings which might justify its proposal, nor has it supported its claim that the rate will generate new traffic.

In support of its SCR filing, and in answer to Seaboard's complaint, KLM asserts that it was approached by shippers with a proposal to switch from surface to air transportation at the proposed rate; that the traffic is of very high density and thus quite attractive for air transport;[2] that the commodity is precisely described, is not specified elsewhere in current Amsterdam-Now York rates, and hence Seaboard's fears of diversion are unfounded; that the freight will not be trucked to Amsterdam and, in fact, Seaboard is now trucking it from Amsterdam to Brussels; that the complainant's reliance on Commerce Department data is misplaced since such figures do not include new business which will be reflected in future statistics; and that while Seaboard contends the rate would be uneconomic for it, this does not mean it would necessarily be below cost for KLM, and in fact Seaboard itself has on file similar SCR rate levels for other commodities from Brussels.

In its justification for the 10,000 kg. FAK container rates, KLM submits that the minimum weight level of 10 tons is more appropriate for the Dutch market, which does not warrant a minimum shipment size of 34 tons, and the rates will equalize the competitive position of the Dutch market versus the weaker currency countries; that the reduction in rates will divert enough traffic from surface to air to exceed any self-dilution which may occur; and that there is sufficient Amsterdam-New York capacity to absorb the expected increase in traffic.

Upon consideration of all relevant matters, the Board has concluded to dismiss the complaints.

Seaboard's complaint against the SCR for Item 6799 centers on its allegation that it will suffer massive diversion of existing traffic to the reduced rate, or alternatively serious revenue dilution if it chooses to match KLM's filing. However, the complainant has provided no information on the amount of such freight now carried or the rates at which it moves. If, as Seaboard alleges, the possibilities of generating new traffic are slight because of the large surface/air rate differential, then by the same token it appears likely that little of this traffic already moves by air and thus the diversion potential is also limited. While KLM's generation estimate may be somewhat high, and the Board believes KLM should have provided more information to support its generation forecast, Seaboard's estimates of diversion and dilution are based on equally vague and unsupported contentions. In these circumstances, where there appears to be some potential for generation of new traffic with little diversion of existing traffic, the Board prefers to give the benefit of the doubt to the proponent of the rate reduction.[3]

We will also dismiss the complaint against the proposed FAK container rate. By Order 76-12-98, December 16, 1976, the Board approved an IATA agreement which established 10,000 kg. SCR's, but stated its disappointment that the carriers had not adopted high weightbreak rates on a FAK basis. While we have some reservations about the reasonableness of the level of KLM's 10,000 kg. FAK container rate, nevertheless it should help reduce the undue reliance

[1] At the current exchange rate of $0.413 = 1 guilder, the SCR equals about 69.5 cents per kg., and the FAK rate, about 88.1 cents per kg.

[2] KLM states that the density of this traffic ranges from about 26 to 34 lbs. per cu. ft.

[3] Further, having dismissed complaints against an SCR filing by Trans World Airlines, Inc., (TWA) for similar Item No. 6113 (Plastic Film and Sheets) as well as other items from London to New York at an even lower yield than the rates proposed here, we are not prepared to take action against KLM's rate. See Order 77-4-154, April 29, 1977.

on specific commodity rates as well as promote containerization, both Board objectives of long standing. And as indicated above, the Board has permitted SCR container rates filed by TWA at considerably lower levels to become effective in the U.K.–U.S. market.

Seaboard notes that the yields from the KLM rates, at 16.75 cents per RTM for the SCR and 22.07 cents per RTM for the FAK container rate, would fall below the U.S. carriers' average unit cost per ATM of 23.15 cents. However, that cost figure, as well as Seaboard's own cost per ATM of 19.75 cents during the first quarter of 1977, reflect the average cost of transatlantic freighter operations in both directions. The proposed KLM rates would apply only in the westbound direction, where substantial excess capacity exists, such that the capacity portion of the costs attributable to freight carried under these tariffs would be considerably less than the average figure for total North Atlantic operations. The proposed rates have the potential for improving the economics of the carrier's service by generating additional revenue and utilizing otherwise unused westbound capacity, and we will therefore permit them to become effective.

Accordingly, *it is ordered* That:

The complaints of Seaboard World Airlines, Inc., in Dockets 31202 and 31203 be dismissed.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[4]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-24366 Filed 8-22-77;8:45 am]

[Docket 25908, *Et Al.*]

TRANSATLANTIC ROUTE PROCEEDING

Oral Argument

The Board has decided that, in view of the deadline set for it by the President, a new oral argument will be held in this proceeding.

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in this proceeding is assigned to be held before the Board on August 31, 1977, at 9 a.m. (local time), in Room 1027, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C. The argument will be confined to the question of the bearing on the Board's July 13, 1976, decision of the Bermuda II Agreement and any other developments since July 13, 1976.

Each party which wishes to participate in the oral argument shall so advise the Acting Chief Administrative Law Judge, in writing, on or before August 25, 1977, together with the name of the person who will represent it at the argument.

Dated at Washington, D.C., August 18, 1977.

HENRY M. SWITKAY,
Acting Chief
Administrative Law Judge.

[FR Doc.77-24415 Filed 8-22-77;8:45 am]

[Order 77-8-71; Docket No. 28898]

TRANS-PROVINCIAL AIRLINES LTD.

Statement of Tentative Findings and Conclusions and Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 16th day of August, 1977.

In the matter of application of Trans-Provincial Airlines, Ltd. for renewal of a foreign air carrier permit pursuant to section 402 of the Federal Aviation Act of 1958.

By application filed February 19, 1976,[1] Trans-Provincial Airlines, Ltd. (TPA) requests renewal of its foreign air carrier permit[2] authorizing: (a) foreign air transportation of persons, property, and mail between the terminal point Prince Rupert, British Columbia, Canada, and the terminal point Ketchikan, Alaska, and (b) the performance of charter trips pursuant to Part 212 of the Board's Economic Regulations. The carrier requests that its permit be renewed for an indefinite period. On April 22, 1977, the carrier filed a petition requesting that its application be handled by show-cause procedures.

The Air Transport Services Agreement of January 17, 1966, between the Governments of the United States and Canada, as amended May 8, 1974, provides for scheduled servies by a Canadian carrier between Prince Rupert, British Columbia and Ketchikan, Alaska. The Government of Canada has designated Trans-Provincial Airlines to serve the Prince Rupert-Ketchikan route.[3]

By Order 74-2-79 the Board found that TPA was substantially owned and effectively controlled by nationals of Canada. The information provided by the record continues to support this finding. Approximately 90 percent of the issued stock is held by Canadian citizens. With the exception of one director who is a United States citizen, all thirteen directors and officers of TPA are Canadian citizens. Accordingly, it is tentatively found from the foregoing that TPA is owned and controlled by nationals of Canada.

In Order 74-2-79 the Board found that TPA met the fitness standards of the Act. The record continues to support a finding that the carrier is fit, willing, and able to continue providing the service for which renewed authority is sought. TPA has no history of formal violations of Board regulations and has not defaulted on its transportation commitments.

Normally permits of indefinite duration are awarded to designees under bilateral agreements. At the time TPA's permit was issued in 1974, however, the carrier's accident record showed ten accidents between 1968 and 1973 which had resulted in six deaths and four injuries. The duration of the carrier's permit was, therefore, limited to two years to give the Board an opportunity to reexamine the carrier's safety fitness. Since the permit was issued, the carrier's operations have resulted in no personal injuries or deaths. While the carrier has sustained minor damage to its aircraft on seven occasions, in most instances the damage was caused by the weather while the aircraft were stationary. In view of the carrier's improved safety performance, the record now supports a finding of safety fitness. We propose, therefore, to issue the carrier a permit of indefinite duration. We will require, however, that TPA report any future accidents to the Board. This will enable the Board to keep apprised of the carrier's accident record and to periodically reevaluate the carrier's safety fitness.

Following the issuance of TPA's permit, the Governments of the United States and Canada executed a Nonscheduled Air Service Agreement which governs the operation of charter flights by all U.S. and Canadian carriers. By Order 75-2-25, TPA was issued a charter permit of indefinite duration pursuant to that Agreement.[4] To grant the carrier authority here to conduct off-route charters pursuant to Part 212 of the Board's Economic Regulations would be duplicative of the charter authority possessed by TPA under its charter permit.[5] We will, therefore, omit all ancillary charter authority from the renewed route permit.

In view of the foregoing and all the facts of record, the Board tentatively finds:

1. That TPA is substantially owned and effectively controlled by nationals of Canada;

2. That it is in the public interest to renew the foreign air carrier permit of TPA authorizing the carrier, for a period of indefinite duration, to engage in foreign air transportation with rspect to persons, property, and mail between the terminal point Prince Rupert, British Columbia, Canada, and the terminal point Ketchikan, Alaska;

---

[4] All Members concurred except Vice Chairman O'Melia who did not participate.

[1] A copy of the application has been transmitted to the President of the United States in accordance with the requirements of section 801 of the Act.

[2] Issued pursuant to Order 74-2-79, approved February 19, 1974.

[3] Diplomatic Note. No. ECT/607, date May 31, 1973.

[4] TPA is authorized by Board Order 75-2-25, effective February 6, 1975, to engage in charter foreign air transportation between any point or points in Canada and any point or points in the United States subject to conditions.

[5] By Order 74-11-154, approved by the President November 27, 1974, the Board required TPA to obtain prior approval of any on-route charter flights. The Board's intention in imposing the requirement was to make certain that any on-route charter flights would also be conducted pursuant to the carrier's charter permit issued under the Agreement.

3. That the public interest requires that the exercise of the privileges granted by said permit shall be subject to the following condition:

The holder shall file with the Board a report of each accident which occurs while performing the scheduled services tentatively authorized by this order. For each accident, the report shall indicate the date, location, type of aircraft involved, cause, and the extent of property or aircraft damage. The report shall also state whether the accident resulted in any deaths or injuries. All reports shall be filed within 20 days after the accident occurs and marked to the attention of the Director, Bureau of International Affairs. Minor incidents of aircraft damage need not be reported. In the event no accidents occur during any calendar year, the carrier shall file a report indicating that result within 30 days after the end of that calendar year.

4. That TPA is fit, willing, and able properly to perform the above-described foreign air transportation and to conform to the provisions of the Act and the rules, regulations, and requirements of the Board thereunder;

5. That except to the extent granted herein, the application of Trans-Provincial Airlines, Ltd. in Docket 28898 should be denied;

6. That an evidentiary hearing is not required in the public interest; and

7. That renewal of Trans-Provincial Airlines' foreign air carrier permit is not a "major federal action significantly affecting the quality of the human environment" within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, and will not be inconsistent with the policy objectives of the Energy Policy and Conservation Act of 1975 (EPACA).*

Accordingly, it is ordered that:

1. All interested persons be directed to show cause why the Board should not issue an order making final the tentative findings and conclusions stated herein, and why the foreign air carrier permit issued to Trans-Provincial Airlines, Ltd. by Order 74-2-79, should not, subject to the approval of the President pursuant to section 801 of the Act, be renewed for a period of indefinite duration;

2. Any interested person having objection to the issuance, without hearing, of an order making final the tentative findings and conclusions stated herein shall file a statement of objections, supported by evidence within 21 days after the adoption of this order. If an evidentiary hearing is requested, the objection should state in detail why such hearing is considered necessary and what relevant and material facts would be expected to be established through such hearing which cannot be established in written pleadings;

3. If timely and properly supported objections are filed, further consideration will be accorded the matters and issues raised by the objections before further action is taken by the Board;[7]

4. In the event no objections are filed, all further procedural steps will be deemed to have been waived, and the Board may proceed to enter an order in accordance with the tentative findings and conclusions set forth herein; and

5. Copies of this order shall be served upon Trans-Provincial Airlines, Ltd., Alaska Airlines, Western Air Lines, and the Ambassador of Canada in Washington, D.C.

This order will be published in the FEDERAL REGISTER and will be transmitted to the President.

By the Civil Aeronautics Board.[8]

PHYLLIS T. KAYLOR,
Secretary.

SPECIMEN PERMIT

PERMIT TO FOREIGN AIR CARRIER (AS AMENDED)

TRANS-PROVINCIAL AIRLINES, LTD.

Is hereby authorized, subject to the provisions hereinafter set forth, the provisions of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in foreign air transportation (except charter foreign air transportation) with respect to persons, property, and mail, as follows:

Between the terminal point Prince Rupert, British Columbia, Canada, and the terminal point Ketchikan, Alaska.

The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of Canada for Canadian international air service.

This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and Canada shall be parties.

The holder shall not commence scheduled service between any of the points authorized herein, except pursuant to an initial tariff setting forth rates, fares, and charges no lower than rates, fares, or charges that are then in effect for any U.S. air carrier engaged in the same foreign air transportation.

By accepting this permit, the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

This permit shall be subject to the condition that the holder shall keep on deposit with the Board a signed counterpart of CAB Agreement 18900, an agreement relating to liability limitations of the Warsaw Convention and the Hague Protocol approved by Board Order E-23680, May 13, 1966, and a signed counterpart of any amendment or amendments to such agreement which may be approved by the Board and to which the holder becomes a party.

The holder (1) shall not provide foreign air transportation under this permit unless there is in effect third-party liability insurance in the amount of $1,000,000 or more to meet potential liability claims which may arise in connection with its operations under this permit, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the third-party liability insurance provided, and (2) shall not provide foreign air transportation with respect to persons unless there is in effect liability insurance sufficient to cover the obligations assumed in CAB Agreement 18900, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the passenger liability insurance provided. Upon request, the Board may authorize the holder to supply the name and address of an insurance syndicate in lieu of the names and addresses of the member insurers.

The exercise of the privileges granted hereby shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This permit shall be effective on _____ _____. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention, or agreement, this permit shall terminate (1) upon the effective date of any treaty, convention, or agreement, or amendment thereto, which shall have the effect of eliminating the route hereby authorized from the routes which may be operated by airlines designated by the Government of Canada, or (2) upon the effective date of any permit granted by the Board to any other carrier designated by the Government of Canada in lieu of the holder hereof, or (3) upon the termination or expiration of the Air Transport Services Agreement of January 17, 1966, between the Government of the United States and the Government of Canada as amended by an exchange of notes signed May 8, 1974; *Provided, however,* That clause (3) of this paragraph shall not apply if, prior to the occurrence of the event specified in clause (3), the operation of the foreign air transportation herein authorized becomes the subject of any treaty, convention, or agreement to which the United States and Canada are or shall become parties.

In Witness Whereof, the Civil Aeronautics Board has caused this permit to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the _____.

Secretary.

(SEAL)

Issuance of this permit to the holder approved by the President of the United States on _____ in Order _____.

[FR Doc.77-24367 Filed 8-22-77;8:45 am]

CIVIL SERVICE COMMISSION

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of Health, Education, and Welfare to fill by noncareer executive assignment in the excepted service the position of Director, Cuban Refugee Program, Assistance Payments Administration, Social and Rehabilitation Service.

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

[FR Doc. 77-24349 Filed 8-22-77; 8:45 am]

*Since no new services are to be performed, there will be no material increase in the utilization of fuel.

[7] Since provision is made for the filing of objections to this order, petitions for reconsideration will not be entertained.

[8] All Members concurred.

TRANSPORTATION DEPARTMENT

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 Department of Transportation to fill by noncareer executive assignment in the excepted service the position of Chief Scientist, Office of Assistant Secretary for Systems Development and Technology, Office of the Secretary.

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

[FR Doc.77-24350 Filed 8-22-77;8:45 am]

DEPARTMENT OF COMMERCE

Economic Development Administration

ATLANTA UMBRELLA CO., INC.

Petition for Determination of Eligibility To Apply for Trade Adjustment Assistance

A petition by Atlanta Umbrella Co., Inc., 2846 Franklin Street, Avondale Estates, Georgia 30002, a producer of umbrellas and plastic rainwear, was accepted for filing on August 17, 1977, pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93-618) and Section 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315). Consequently, the United States Department of Commerce has initiated an investigation to determine whether increased imports into the United States of articles like or directly competitive with those produced by the firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of the petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business on September 2, 1977.

CHARLES L. SMITH,
Acting Chief, Trade Act Certification Division, Office of Planning and Program Support.

[FR Doc.77-24345 Filed 8-22-77;8:45 am]

BENSON SHOE CO.

Petition for a Determination of Eligibility To Apply for Trade Adjustment Assistance

A petition by Benson Shoe Company, 192 Broad Street, Lynn, Mass. 01901, a producer of footwear for women, was accepted for filing on August 16, 1977, pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93-618) and Section 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315). Consequently, the United States Department of Commerce has initiated an investigation to determine whether increased imports into the United States of articles like or directly competitive with those produced by the firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of the petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business on September 2, 1977.

CHARLES L. SMITH,
Acting Chief, Trade Act Certification Division, Office of Planning and Program Support.

[FR Doc.77-24346 Filed 8-22-77;8:45 am]

PARAGON WIRE & CABLE CORP.

Petition for a Determination of Eligibility To Apply for Trade Adjustment Assistance

A petition by Paragon Wire & Cable Corporation, 662 Fillmore Avenue, Buffalo, N.Y. 14212, a producer of cable components for electronic devices, was accepted for filing on August 16, 1977, pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93-618) and Section 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315). Consequently, the United States Department of Commerce has initiated an investigation to determine whether increased imports into the United States of articles like or directly competitive with those produced by the firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of the petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business on September 2, 1977.

CHARLES L. SMITH,
Acting Chief, Trade Act Certification Division, Office of Planning and Program Support.

[FR Doc.77-24347 Filed 8-22-77;8:45 am]

National Bureau of Standards

NATIONAL BUREAU OF STANDARDS' VISITING COMMITTEE

Meeting

Pursuant to the Federal Advisory Committee Act 5 U.S.C., App. I (Supp. V, 1975), notice is hereby given that the National Bureau of Standards' Visiting Committee will meet on Tuesday, September 6, 1977, from 2:00 p.m. to 2:30 p.m. in Room 5851, Department of Commerce, Washington, D.C.

The NBS Visiting Committee is composed of five members prominent in the fields of science and technology and appointed by the Secretary of Commerce.

The purpose of the meeting is to report to the Secretary on the efficiency of the Bureau's scientific work and the condition of its equipment.

The public is invited to attend, and the Chairman will entertain comments or questions at an appropriate time during the meeting. Any persons wishing to attend the meeting should inform Ms. Elaine D. Bunten, Office of the Associate Director for Programs, National Bureau of Standards, Washington, D.C. 20234, telephone (301) 921-3131.

Dated: August 19, 1977.

ERNEST AMBLER,
Acting Director.

[FR Doc.77-24430 Filed 8-22-77;8:45 am]

National Oceanic and Atmospheric Administration

GULF OF MEXICO FISHERY MANAGEMENT COUNCIL

Partially Closed Meeting

Notice is hereby given of a meeting of the Gulf of Mexico Fishery Management Council established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265).

The Gulf of Mexico Fishery Management Council has authority, effective March 1, 1977, over fisheries within the fishery conservation zone adjacent to Alabama, west coast of Florida, Louisiana, Mississippi, and Texas. The Council will, among other things, prepare and submit to the Secretary of Commerce fishery management plants with respect to the fisheries within its area of authority prepare comments on foreign fishing applications and conduct public hearings.

The meeting will be held Wednesday, Thursday and Friday, September 7, 8 and 9, 1977, in the Executive Room II of the Ramada Inn, 1011 South Akord, Dallas, Texas. The meeting will convene at 1:30 p.m. on September 7, and adjourn at about noon on September 9, 1977. The daily sessions will start at 8:30 a.m. and adjourn at 5 p.m. except as otherwise noted. The meeting may be extended or shortened depending on progress on the agenda.

PROPOSED AGENDA

SEPTEMBER 7

1. Management plans.
2. Personnel and administration categories.
3. Review of foreign fishing applications, if any.

SEPTEMBER 8

1. Closed session to discuss proposals by potential contractors in a negotiated procurement for the preparation of draft fishery management plans.

SEPTEMBER 9

1. Other fishery management business.

A closed session is planned for one day on September 8, 1977, to discuss pro-

posals by potential contractors in a negotiated procurement for the preparation of draft fishery management plans.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined, on August 18, 1977 pursuant to 5 U.S.C. 552b(c) (4), (6), and (9)(B), the agenda item covered in closed session should be exempt from the provisions of the Act relating to open meetings and public participation. (A copy of the determination is available for public inspection and copying.)

The meeting will be open to the public (except the closed session) and there will be seating for a limited number of public member available on a first-come, first-served basis.

Members of the public having an interest in specific items for discussion are also advised that agenda changes are, at times, made prior to the meeting. To receive information on changes, if any, made to the agenda, interested members of the public should contact on or about August 29, 1977:

Mr. Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609.

At the discretion of the Council, interested members of the public may be permitted to speak at times which will allow the orderly conduct of Council business. Interested members of the public who wish to submit written comments should do so by addressing the Executive Director at the above address. The public is permitted to file written statements at any time before or after the meeting. However, to receive due consideration and to facilitate inclusion of these comments in the record of the meeting, typewritten statements should be received within 10 days after the close of the Council meeting.

WINIFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

AUGUST 19, 1977.

[FR Doc.77-24433 Filed 8-22-77;8:45 am]

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL AND ITS SCIENTIFIC AND STATISTICAL COMMITTEE

Meeting Date Change

Notice is hereby given of a change in dates of the September 12–15, 1977, meeting of the Mid-Atlantic Fishery Management Council and its Scientific and Statistical Committee as published in the FEDERAL REGISTER, Vol. 42, No. 156 on Friday, August 12, 1977.

The meetings of the Council and Committee are now scheduled to be held concurrently on September 27–28, 1977. They will convene at 9 a.m. and adjourn at approximately 3 p.m. each day.

The agenda for both meetings will remain unchanged. These meetings are open to the public, and public seating will be available on a first-come, first-served basis. There will be approximately 30 seats for the meetings.

Dated: August 18, 1977.

WINFRED H. MEIBOHM,
Acting Deputy Director,
National Marine Fisheries Service.

[FR Doc.77-24318 Filed 8-22-77;8:45 am]

SOUTH ATLANTIC FISHERY MANAGEMENT COUCIL

Supplemental Notice of Public Meeting and Public Hearing

Notice was given in the FEDERAL REGISTER on July 18, 1977 (42 FR 36857) of meetings scheduled by the South Atlantic Fishery Management Council for the purpose of providing an opportunity for public input and to serve as a fact-finding mechanism relative to development of a fishery management plan for the domestic and foreign billfish fishery. An additional meeting has been scheduled as follows:

August 31, 1977, Stewart, Florida, Holiday Inn, 1209 South Federal Highway, 7:30 p.m. to 10 p.m.

Notice was also given in the FEDERAL REGISTER on July 29, 1977 (42 FR 38625) of hearings to provide an opportunity for public comment on a draft environmental impact statement for the proposed implementation of a preliminary fishery management plan for the Atlantic Foreign Pelagic Longline Fishery (billfishes and sharks). The draft environmental statement was prepared by NOAA. Hearings were scheduled concurrently with the South Atlantic Fishery Management Council meetings on a fishery management plan for billfish. A supplemental hearing will be held in Stewart, Florida on August 31, 1977 at the time and place listed above.

Dated: August 18, 1977.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

[FR Doc.77-24319 Filed 8-22-77;8:45 am]

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

Statement of Organization, Practices, and Procedures

Pursuant to Section 302(f)(6) of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), each Regional Fishery Management Council is responsible for determining its organization and prescribing its practices and procedures for carrying out its functions under the Act in accordance with such uniform standards as are prescribed by the Secretary of Commerce. Further, each Council must publish and make available to the public a statement of its organization, practices, and procedures. As required by the Act, the South Atlantic Fishery Management Council has prepared and is hereby publishing its Statement of Organization, Practices, and Procedures.

Dated: August 15, 1977.

JOSEPH W. SLAVIN,
Acting Associate Director,
National Marine Fisheries Service.

STATEMENT OF ORGANIZATION PRACTICES AND PROCEDURES

1. NAME OF COUNCIL

South Atlantic Fishery Management Council.

2. LOCATION OF OFFICES

The principal office of the South Atlantic Fishery Management Council is located in the South Park Building, 1 South Park Circle, Charleston, South Carolina, 29407.

3. LEGAL AUTHORITY

Legal authority for the Council is found in the Fishery Conservation and Management Act of 1976 (Public Law 94-265, § 302 (a)(3)). Additional authority which governs actions of the Council is found in the Federal Advisory Committee Act (Public Law 92-463).

4. PURPOSES

The purposes for the South Atlantic Fishery Management Council are as follows:

a. To prepare fishery management plans or amendments thereto with respect to each fishery within the geographic area of authority of the Council, and submit those plans or amendments to the Secretary of Commerce for approval and implementation. (§ 302(h)(1).)

b. To prepare along with any fishery management plan or amendments, proposed regulations deemed necessary and appropriate to carry out the plan or amendments and to submit these to the Secretary of Commerce. (§ 303(c).)

c. To prepare and transmit, within 45 days of receipt, comments to the Secretary of Commerce on any application for foreign fishing which is forwarded to the Council, along with suggested conditions of restrictions. The Council will consider the comments of any interested person in fulfilling this function. (§ 302(h)(2).)

d. In the event the Secretary of Commerce shall disapprove all or part of a plan or amendment to a plan submitted by the South Atlantic Fishery Management Council, the Council shall at the Secretary's request attempt to change such plan or amendment to satisfy the Secretary's objections and resubmit the plan within 45 days of receipt. (§ 304(a)(2).)

e. To ensure appropriate comment by members of the public through the conduct of public hearings. Such hearings shall permit, within reason, all interested persons; especially those in the geographical area concerned; to be heard in the development of fishery management plans and amendments to such plans and in the administration and implementation of the Fishery Conservation and Management Act of 1976. (§ 302(h)(3).)

f. To submit reports to the Secretary of Commerce, including an annual report by February 1 of each year concerning Council activities in the preceding calendar year. (§ 302(h)(4).)

g. To review assessments and specifications of optimum yield and of allowable foreign fishing continually, and to revise those assessments and specifications as appropriate. (§ 302(h)(5).)

h. To conduct the following additional activities that are necessary and appropriate.

(1) To prepare and submit to the Secretary of Commerce, annual budgets and work plans in the form of grant proposals.

(2) To accept contributed personnel, special studies or direct funds from states within the South Atlantic region or from other sources.

(3) select a Chairman and Vice-chairman from among the voting members. (§ 302 (3) (2).)

(4) To appoint and assign duties to an Executive Director and an administrative staff. (§ 302(f) (1).)

(5) To make application to the Secretary of Commerce for such administrative and technical support services as are necessary. (§ 302(f) (5).)

(6) To seek from the Secretary of State relevant information concerning foreign fishing and international fishery agreements. (§ 302(f) (5).)

(7) To establish a Scientific and Statistical Committee and other advisory panels as necessary and appropriate to the development and amendment of fishery management plans. (§ 302(g) (1) (2).)

(8) To conduct any other activities which are required by or provided for in the Fishery Conservation and Management Act of 1976 or which are necessary and appropriate to the foregoing functions. (§ 302(h) (6).)

5. COMPOSITION

The South Atlantic Fishery Management Council consists of representatives of North Carolina, South Carolina, Georgia, and Florida. There are 17 Council members, 13 of these are voting members. Of the voting members 8 are appointed by the Secretary of Commerce for 3 year terms. The other 5 voting members are the principal state officials with the marine fishery management responsibility, or their designees and the Regional Director of the National Marine Fisheries Service for the Southeast Region or his designee. The non-voting members of the Council are: the Southeast Regional Director of the U.S. Fish and Wildlife Service or his designee; the Commander, Seventh Coast Guard District, or his designee; the Executive Director of the Atlantic States Marine Fisheries Commission, or his designee; and a representative of the U.S. Department of State or his designee.

6. OFFICERS AND TERMS OF OFFICE

The Council elects annually from among the voting members, by majority vote of the voting mei..bers present and voting a Chairmand and a Vice-chairman, who serve for a one year term ending August 10, or until their successors have been duly elected. Elections are held at the first meeting of the Council after August 10th.

7. STAFF

a. Composition: The Council appoints an Executive Director and such additional staff as it deems necessary.

b. Functions: The Executive Director is the chief administrative Officer of the Council and reports to the Council through the Council Chairman. As directed by the Council, he is responsible for the day to day operations of the Council and its staff. He serves as the principal staff officer to each committee and advisory panels of the Council. Subject to Council regulations, he may assign duties and delegate authority to the Council staff.

c. Employment Practices:

(1) *Scope.* This section shall govern employment practices by the South Atlantic Fishery Management Council unless specifically modified by federal legislation or funding requirements.

(2) *Status of Employees.* The South Atlantic Fishery Management Council is a quasi-public non-profit organization funded by a grant from the United States Department of Commerce. Members of the Council and its employees are not federal employees and are not subject to federal benefits or Civil Service Regulations.

(3) *Personnel Administration.* The Executive Director shall be responsible for the day to day administration of the Council staff. He reports to the Council on personnel matters through the Personnel Committee. Staffing, salary and wage administration, hours of work, etc., are included in a more detailed statement available at the Council office.

(4) *Personnel Committee.* The Personnel Committee is a standing committee of the Council. It shall consist of at least three Council members appointed by the Chairman. One member is designated by the Chairman to act as committee chairman. The Personnel Committee is responsible to the Council for the administration of these regulations.

(5) *Standards of Conduct.*

.01 *Political Activity.* No employee of the Council shall use his or her official authority or influence derived from his or her position with the Council for the purpose of interfering with or affecting the result of an election to or a nomination for any national, state, county, or municipal elective office.

No employee of the Council shall be deprived of employment, position, work, compensation, or benefit provided for or made possible by the Act on account of any political activity or lack of such activity in support of or in opposition to any candidate or any political party in any national, state, county, or municipal election or on account of his or her political affiliation.

No Council member or employee shall pay, or offer, or promise, or solicit, or receive from any person, firm, or corporation, a contribution of money or anything of value either as a political contribution or a personal emolument in consideration of either support, or the use of influence, or the promise of support, or influence in obtaining for any person, any appointive office, place or employment under the Council.

.02 *Financial Interest.* No employee of the Council shall have a direct or indirect financial interest that conflicts with the fair and impartial conduct of his or her Council duties.

.03 *Use of Information.* No Council member or employee of the Council shall use or allow the use, for other than official purposes, of information obtained through or in connection with his or her Council employment which has not been made available to the general public.

.04 *Improper Conduct.* No Council member or employee of the Council shall engage in criminal, infamous, dishonest, notoriously immoral or disgraceful conduct prejudicial to the Council.

.05 *Use of Council Property.* No Council member or employee of the Council shall use Council property on other than official business. Such property shall be protected and preserved from improper or deleterious operation or use.

(6) *Equal Employment Opportunity.*

.01 *Policy.* It is the policy of the South Atlantic Fishery Management Council that neither race, religion, color, creed, national origin, sex, age, political affiliation, nor physical disability is to be considered in the:

Recruitment and employment of new employees of the Council.

Promotion, demotion, transfer, lay-off, termination, or selection of employees of the Council for training and development.

Establishment of rates of pay including the awarding of salary adjustments and merit salary increments.

The Council will be bound by the standards contained in Executive Order 11246, as administered by the U.S. Department of Commerce.

.02 *Appeal Procedure.* Any applicant for employment or any employee who believes that employment, promotion, training, transfer, salary adjustment or merit salary increment was denied him or that demotion, transfer, lay-off or termination was forced on him, because of his race, religion, color, creed, national origin, sex, age, political affiliation, or physical disability may appeal directly to the Council.

8. STANDING COMMITTEES OF COUNCIL MEMBERS

a. The following standing committees have been established by the South Atlantic Fishery Management Council:

(1) *Finance Committee.*

(2) *Personnel Committee.*

b. The composition of the standing committees of the Council are as follows:

(1) *Finance Committee.* The Finance Committee is composed of at least three members appointed by the Chairman. One member is designated by the Chairman to chair the committee.

(2) *Personnel Committee.* The Personnel Committee is composed of at least three members appointed by the Chairman. One member is designated by the Chairman to chair the committee.

c. The standing committees of the Council function as follows.

(1) *Finance Committee.* The Finance Committee prepares for Council approval the annual budget and grant application. It reviews on a regular basis all Council expenditures and reports to the Council.

The committee approves the award of all contracts entered into by the Council. Subject to federal regulations, the Finance Committee may recommend to the Council the transfer of funds from one budget item to another.

(2) *Personnel Committee.* The Personnel Committee is responsible for the administration of the Council's employment practices.

9. MEETINGS AND HEARINGS

a. Frequency: The Council is required by regulation to meet in plenary session at least once a quarter. In addition the Council meets at the call of the Chairman or upon request of a majority of the voting members.

Meetings of the Council may be plenary sessions, working groups, or individually. Meetings held individually are subject to the Council's public hearing procedures.

Council advisory bodies shall meet as frequently as necessary, with the approval of the Council Chairman.

All Council meetings, hearings and meetings of advisory bodies shall be held only after adequate notice has been given according to applicable law.

b. Duration: Council meetings will generally begin on the fourth Tuesday and continue through Thursday of that week. They may however vary in duration depending upon the agenda. Meetings of advisory bodies and public hearings will vary in duration. Exact duration of Council meetings will be contained in published public notices.

c. Location: Council meetings will be held throughout the 4 states composing the South Atlantic Region. In addition, hearings may be held in other states, if that geographic area is affected by Council action. In selecting meeting sites the Council will consider public access.

d. Agendas or Orders of Business: Public notice of Council meetings shall contain agendas or orders of business. The Council may by majority vote suspend an agenda or order of business and proceed to other items or discuss an item not appearing on the agenda or order of business.

e. Minutes: Detailed minutes are kept of all Council meetings. Summary minutes will be prepared for all opening portions of Council meetings. Persons or organizations desiring copies of Council minutes should contact the Council's Executive Director.

When the Council or a member meets for hearing purposes an accurate record will be maintained of the participants and their views. Such a record will be maintained as a part of the Council's official records and shall be available for public inspections.

f. General Rules of Procedure: Unless modified in this SOPP the Council will follow Roberts Rules of Order Newly Revised.

g. Hearing Procedure: The Council will follow the following procedure when conducting public hearings.

(1) *Scope of Rules.* These rules shall apply to all public hearings held by the Council pursuant to the requirements of Public Law 94-265 (16 USC 1852).

(2) *When Required.* Public hearings will be held during the development of Fishery Management Plans. The Council may in its discretion hold such hearings at any time and from time to time during the development of a Fishery Management Plan.

The Council may not submit a Fishery Management Plan to the Secretary of Commerce without first receiving public comments on the plan through a public hearing.

The Council may when it deems necessary hold public hearings with respect to the administration and implementation of the Fishery Conservation and Management Act of 1976.

(3) *Location.* Public hearings conducted pursuant to these rules shall be held in the geographic area deemed by the Council to be the most concerned with the proposed action.

The council may in its discretion hold public hearings in several locations when the proposed action is one that affects many areas of the South Atlantic Region.

(4) *Presiding Officer.* When a public hearing is conducted at a scheduled Council meeting the Chairman or his designee shall act as presiding officer.

When a public hearing is conducted with less than the full Council participating, the Council shall designate one voting member to act as presiding officer.

(5) *Powers and Duties of the Presiding Officer.* The presiding officer at the hearing shall have complete control of the proceedings including: extensions of time requirements, recognition of speakers, time allotments for presentations, the right to question speakers, direction of the discussion and management of the hearing. The presiding officer, at all times, will take care that each person participating in the hearing is given a fair opportunity to present views, data and comments.

(6) *Record of Proceedings.* A record will be maintained subject to the provisions § 9e. above. Records will be available for public inspection at the Council offices during regular office hours.

(7) *Public Notice.* Public notice of hearings shall be given in the manner prescribed by 50 CFR 601.24(c)(3) and by such other means as the Council may determine necessary to assure that interested parties are aware of the opportunity to make their views known.

(8) *Content of Notice.* Public notice shall include a summary of the subject matter of the hearing; the time and place for the hearing; and a statement that written comments may be received until 10 days following the close of the hearing. Where management plans are to be discussed the notice shall also set forth where copies may be obtained and at what cost.

h. Authority of the Chair. Unless modified in this SOPP the authority of the chair will be governed by Roberts Rules of Order Newly Revised.

10. ADVISORY PANELS

The Scientific and Statistical Committee was chartered on March 16, 1977 and the Advisory Panel was chartered on April 20, 1977. Copies of the charters are available in the Council headquarters.

11. ORGANIZATION OF MANAGEMENT PLAN DEVELOPMENT TEAM

a. Organization: Management plan development teams shall be working teams of State, Federal, and non-government specialists. A planning team will be established for each management unit which will be the subject of a planning effort. The planning teams will report to the Council through the Executive Director.

b. Practices and Procedures: Planning teams will be established by the Council. The Scientific and Statistical Committee may recommend to the Council persons who should serve on each planning team. Each team shall have a team leader or chairman. The team will meet or consult as needed with the appropriate advisory panel and the Scientific and Statistical Committee, with coordination being provided by the Executive Director. The Council will be informed of progress periodically. The team shall develop alternative management plans and shall thoroughly evaluate the effects of each in terms of objectives or criteria determined by the Council. The planning team shall conduct its planning and evaluation effort in such a way as to satisfy the Fishery Conservation and Management Act requirements. On completion of the initial planning project, the set of alternatives will be transmitted through the Executive Director to the Scientific and Statistical Committee and the appropriate panel for review and comment. Comments will be made to the Council. The Council will evaluate these comments and, if necessary, refer the plan back to the planning team for further work. The revised plans will be submitted to the Council. When the Council is satisfied, it will sponsor public hearings to solicit additional inputs from those groups or individuals who might be affected by future regulatory action. Prior to holding public hearings on these alternatives, the Council will distribute copies widely so that all interested parties have an opportunity to review and consider the alternatives, from which the Council will be making a selection. After consideration of public comments, the planning team shall make such revision of the alternatives as the Council deems necessary and shall draft proposed regulations. Upon final adoption of selected alternatives, the Council shall transmit the plan and an associated environmental assessment or draft Environmental Impact Statement to the Secretary of Commerce for promulgation of implementing regulations.

c. Balance Among Criteria.

(1) *Focused Responsibility.* The organization structure of the Council clearly relates the decision making responsibility of the Council; the advisory nature of planning teams, advisory panels, and the Scientific and Statistical Committee; and the coordination responsibilities of the Executive Director.

(2) *Administrative Simplicity.* The organization of the major units of the Council is among major functional lines, with clear lines of authority between and within individual units.

(3) *Flexibility.* There is sufficient flexibility in the structure to allow for variations within separate units to accommodate changes in priorities or conditions. For example, the Council has chosen to establish separate fishery related advisory panels rather than one large, multi-fishery advisory panel because the former can be established and terminated in accordance with planning efforts and representation can be more selective.

(4) *Independence and Relevance of Science.* The Scientific and Statistical Committee is a separate unit in the Council's organizational structure, and Committee members have been selected on the basis of scientific expertise in several disciplines. This will assure that the Council receives independent and objective scientific advice on alternative management planning teams would comprise representatives of diverse disciplines and interests, and these teams would present plan alternatives and evaluations for Council considerations. In this manner, planning teams will not make judgements as to whether a particular plan is "right" or "wrong", and evaluations should be complete and objective.

(5) *Quality of Scientific and Technical Information.* As indicated, the Council has insured the integrity and independence of science through the organizational structure chosen. Further, selection of individuals to serve on the Scientific and Statistical Committee and the planning teams will be based on expertise and skills, thus assuring that the Council will receive high quality information.

(6) *Minimum Cost.* The Council believes the Structure is the most cost-effective means to carry out its functions. Under this structure fishery planning teams and advisory panels are temporary units which will function until a plan for the specific fishery has been developed and implemented. This approach provides resources for the planning effort without creating large and permanent planning teams or advisory panels. Resources can be assigned in accordance with shifts in priorities. Specialized resources can be obtained readily when necessary rather than being permanently retained at high costs.

12. PROCUREMENT

The Council will contract for services to be provided by other government agencies, educational institutions, profit and nonprofit organizations. Detailed procurement procedures have been approved by the Council and are available for review in the Council headquarters. These procurement procedures provide for agreements and orders for procurement, or disposal, of supplies and services. It includes awards and notices of award; fixed-fee, cost, cost-plus-a-fixed-fee, negotiated, or incentive type contracts; letter contracts; and purchase orders. Topics covered are formal advertising; sole source procurements; award; contract types; contract administrations; protests, contract disputes, and appeals; and code of conduct.

[FR Doc.77-24320 Filed 8-22-77;8:45 am]

ROUGH-TOOTHED DOLPHIN

Prohibition of Take Incidental to Commercial Fishing Operations

AGENCY: National Marine Fisheries Service, Commerce.

ACTION: Notice of prohibition of take of rough-toothed dolphin incidental to commercial fishing operations.

SUMMARY: A prohibition on taking rough-toothed dolphin is being implemented due to the fact that the quota established in 1977 for rough-toothed dolphin has been exceeded.

DATES: Effective August 30, 1977, rough-toothed dolphin may not be taken incidental to fishing operations pursuant to the general permit issued to the American Tunaboat Association, Category 2; Encircling Gear, Yellowfin Tuna Purse Seining.

ADDRESSES: Observer records may be reviewed at the Southwest Regional Office, Office of the Director, 300 South Ferry Street, Terminal Island, California.

FOR FURTHER INFORMATION CONTACT:

William P. Jensen, Marine Mammal Program Manager, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C. 20235, Telephone: 202-634-7461.

SUPPLEMENTARY INFORMATION: In the permit issued to the American Tunaboat Association for 1977, a limit of five (5) rough-toothed dolphin mortalities was stipulated. That limit has been exceeded based on reports of National Marine Fisheries Service observers. In accordance with 50 CFR 216.24(d)(2)(i)(A) notice of the date when the prohibition on further taking is hereby published.

If at the time the net skiff is released from the vessel attached to the net at the start of a set no rough-toothed dolphin are observed in the herd of porpoise upon which the set is being made, the fact that rough-toothed dolphin are subsequently encircled or killed in the course of completing that set will not be cause for issuance of a notice of violation or assessment of penalty; provided that all procedures required by the applicable regulations have been followed. This policy is being implemented because there are circumstances where an unintentional and accidental taking occurs due to the difficulty of identifying different species and stocks, or due to error in attempting identification particularly when small numbers are interspersed in a larger group of animals.

The number of rough-toothed dolphin encircled or killed will be recorded and this policy will be reviewed periodically in light of its effects on the rough-toothed dolphin population.

Dated: August 17, 1977.

WINFRED H. MEIBOHM,
Acting Deputy Director,
National Marine Fisheries Service.

[FR Doc.77-24333 Filed 8-22-77;8:45 am]

DEPARTMENT OF DEFENSE

Defense Communications Agency

SCIENTIFIC ADVISORY GROUP

Closed Meeting

The DCA Scientific Advisory Group will hold a closed meeting on 16 September 1977. The 16 September meeting will be at the Defense Communications Agency, Director's Conference Room at Headquarters, Defense Communications Agency, 8th Street and South Courthouse Road, Arlington, Va.

The agenda item will be AUTOSEVOCOM II and group discussions.

Any person desiring information about the advisory group may telephone (Area Code 202-692-1765) or write Chief Scientist, Associate Director, Technology, Headquarters, Defense Communications Agency, 8th Street and South Courthouse Road, Arlington, Va. 22204.

This meeting is closed because the material to be discussed is classified requiring protection in the interest of National Defense. (Freedom of Information Act, 5 U.S.C. 552b(c)(5).)

MARGARET E. ANDERSON,
Committee Management Officer.

[FR Doc.77-24270 Filed 8-22-77;8:45 am]

Department of the Air Force

ADVISORY COMMITTEE ON AIR FORCE HISTORICAL PROGRAM

Meeting

AUGUST 8, 1977.

The Advisory Committee on the Air Force Historical Program will meet at the James Forrestal Building, Washington, D.C., on September 15-16, 1977.

The purpose of the meeting is to examine the mission, scope, progress, and productivity of the Air Force Historical Program and make recommendations thereon for the consideration of the Secretary of the Air Force.

The meeting will be open for public attendance, and will begin at 9:30 a.m. on both dates, in Room 8E-069, James Forrestal Building. Among the topics on the tentative agenda are: Air Force Historical Progress and Problems, Contract Histories, Organizational Changes, Personnel Plans, and Current Status of Historical Projects.

If additional information is desired, contact Lt. Col. Charles N. Wood, USAF, Executive Office of Air Force History, HQ USAF (AF/CHO), Washington, D.C., telephone 693-7394.

VAN L. CRAWFORD,
Deputy Director of Administration.

[FR Doc.77-24271 Filed 8-22-77;8:45 am]

Office of the Secretary

DEFENSE SYSTEMS MANAGEMENT COLLEGE

Board of Visitor's Meeting

A meeting of the Board of Visitors of the Defense Systems Management College will be held in Building 202, Fort Belvoir, VA, on Tuesday, October 4, 1977, from 8:30 a.m. until 5 p.m. The agenda will include a review of the course offerings and discussion of DSMC operations, educational policies, and plans. The meeting is open to the public; however, because of limitations on space available, allocation of seating will be made on a first-come, first-served basis. Persons desiring to attend should call the DSMC Director, Department of Administration, Operations, & Support (703-664-1314) to reserve a seat as far in advance as possible.

Dated: August 18, 1977.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Office of Assistant Secretary of Defense (Comptroller).

[FR Doc.77-24330 Filed 8-22-77;8:45 am]

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

HIGH ENERGY PHYSICS ADVISORY PANEL

Meeting

AUGUST 18, 1977.

Pursuant to the provisions of the Federal Advisory Committee Act, the High Energy Physics Advisory Panel (HEPAP) will meet September 19-20, 1977, at the Brookhaven National Laboratory, Upton, New York. The meeting will be held in the North Room of the Brookhaven Center. Discussion of organizational matters concerned with the meeting will occur from 9 a.m. to 10 a.m. on September 19, with regular agenda items scheduled from 10 a.m. through 5:45 p.m. The portion of the meeting which will be open to the public on September 20 will convene from 9 a.m. to 11:30 a.m.

The Panel's consideration will include a review of the research program and developmental activities at the Alternating Gradient Synchrotron (AGS) and the Intersecting Storage Accelerator (ISABELLE); equipment for major experiments at the Positron-Electron (PEP), the Fermi National Accelerator Laboratory (Fermilab), the Cornell Electron Storage Ring (CESR), the Zero Gradient Synchrotron (ZGS), and the ISABELLE; results of the July 1977 meeting of the US/USSR Joint Coordinating Committee on Research in the Fundamental Properties of Matter; budget status of the national program in high energy physics; and a discussion of recent new particle discoveries.

In addition to the public sessions, an executive session of the Panel is scheduled. The executive session will occur at approximately 11:30 a.m. on September 20 and continue throughout the end of the meeting at 4:30 p.m. Topics to be discussed at the executive session are possible construction and shutdown of some facilities to be included in the FY 1979 budget.

I have determined, in accordance with subsection 10(d) of Pub. L. 92-463 that this executive session will involve information, the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action, which falls within exemption 9B of 5 U.S.C. 552b(c).

Any nonexempt material that may be discussed at this session will be inextricably intertwined with the discussion of exempt material and no further separation is practical. The public interest will be served by closing such portion of the meeting as it is essential to protect such information.

The Chairman is empowered to conduct the meeting in a manner that in his judgment will facilitate the orderly conduct of business.

With respect to public participation in the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements on the topics for discussion may do so by mailing 25 copies thereof, postmarked, if possible, no later than September 8, 1977, to the Executive Secretary, High Energy Physics Advisory Panel, Dr. Ernest Coleman, Division of High Energy and Nuclear Physics, U.S. Energy Research and Development Administration, Washington, D.C. 20545. Minutes of the meeting will be kept open for 30 days for receipt of written statements for the record.

(b) Those persons submitting a written statement in accordance with paragraph (a) above may request an opportunity to make oral statements concerning the written statement, and shall set forth reasons justifying the need for such oral statements and their usefulness to the Panel. To the extent that the time available for the meeting permits, the Panel will receive oral statements during a period of not more than 30 minutes at an appropriate time, chosen by the Chairman.

(c) Requests for the opportunity to make oral statements shall be ruled on by the Chairman of the Panel, who is empowered to apportion the time available among those selected by him to make oral statements.

(d) Information as to the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted, can be obtained by a prepaid telephone call on September 15, 1977, to the office of the Executive Secretary of the Panel on (301) 353-3624 between 8:30 a.m. and 5 p.m. Eastern Time.

(e) Questions at the meeting may be asked only by members of the Advisory Panel.

(f) Seating for the public will be made available on a first-come, first-served basis.

(g) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the course of the meeting, will be permitted both before and after the open portions of the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(h) Copies of minutes of public sessions will be made available for copying, following their certification by the Chairman, in accordance with the Federal Advisory Committee Act, at the U.S. Energy Research and Development Administration's Public Document Room, 20 Massachusetts Avenue, N.W., Washington, D.C., upon payment of all charges required by law.

HARRY L. PEEBLES,
Deputy Advisory Committee,
Management Officer.

[FR Doc.77-24442 Filed 8-22-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 780-4]

AIR QUALITY CRITERIA FOR PHOTOCHEMICAL OXIDANTS AND RELATED ORGANICS

Availability of External Review Draft

On September 2, 1977 the External Review Draft of Air Quality Criteria for Photochemical Oxidants and Related Organics will be available from the Criteria and Special Studies Office, Health Effects Research Laboratory, EPA, Research Triangle Park, N.C. 27711. Telephone No. 919-549-8411 ext. 2266 or 2267.

Dated: August 17, 1977.

STEPHEN J. GAGE,
Acting Assistant Adminstrator
for Research and Development.

[FR Doc.77-24370 Filed 8-22-77;8:45 am]

[FRL 780-7; PF79]

CIBA-GEIGY CORP., ET AL.

Filing of Pesticide Petitions

The Environmental Protection Agency has received the following petitions for consideration.

PP 7F1983. Ciba-Geigy Corp., PO Box 11422, Greensboro, N.C. 27409. Proposes amending 40 CFR 180.298 by establishing a higher tolerance for residues of the insecticide methidation (0,0-dimethyl phosphorodithioate, S-ester with 4-(mercaptomethyl)-2-methyl 1-Δ-1,3,4-thiadiazolin-5-one) in or on the raw agricultural commodities alfalfa and alfalfa hay at 12.0 part per million (ppm). Proposed analytical method for determining residues is by gas chromatography employing flame photometric detection. PM12 (202-426-9425).

PP 7F1984. Ciba-Geigy Corp., Proposes amending 40 CFR 180.289 by establishing a tolerance for residues of the insecticide methidation (0,0-dimethyl phosphorodithioate, S-ester with 4-(mercaptomethyl)-2-methoxy-Δ 2-1,3-4-thiadiazolin-5-one in or on the raw agricultural commodities pome and stone fruits at 0.05 ppm. Proposed analytical method for determining residues is by using gas chromatography employing flame photometric detection and thin-layer chromotography. PM12 (202/426-9425).

Interested persons are invited to submit written comments on any petitions to the Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, EPA, Rm. 401, East Tower, 401 M St. SW., Washington, D.C. 20460. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in inspecting them. Inquiries concerning specific petitions may be directed to the designated Product Manager (PM), Registration Division (WH-567), Office of Pesticide Programs, at the above address, or by telephone at the numbers cited. Written comments should bear a notation indicating the number of the petition to which the comments pertain. Comments may be made at any time while a petition is pending before the Agency. All written comments filed will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4 p.m. Monday through Friday.

Dated: August 18, 1977.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc.77-24373 Filed 8-22-77;8:45 am]

[FRL 780-6; PF78]

E. I. DUPONT DE NEMOURS & CO., ET AL.

Filing of Pesticide Petitions

The Environmental Protection Agency has received the following petitions for consideration.

PP 7F1954. E. I. DuPont De Nemours and Co., Wilmington DE 19898. Proposes amending 40 CFR 180.303 by establishing a tolerance for residues of the insecticide Oxamyl (methyl N',N'-dimethyl-N-[(methylcarbamoyl)oxy]-1-thioxamimidate) and its metabolite, N,N-dimethyl-1-cyanoformamide in or on the raw agricultural commodities apples at 2.0 parts per million (ppm). Proposed analytical method for determining residues is a gas chromatographic procedure using a flame photometric detector. PM12 (202-426-9425).

PP 7F1988. Mobay Chemical Corp., Chemagro Agricultural Division, PO Box 4913, Kansas City MO 64120. Proposes amending 40 CFR 180.320 by establishing a tolerance for residues of the insecticide 3,5-dimethyl-4-(methylthio) phenyl methylcarbamate and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodities apples at 15 ppm; meat, fat and meat byproducts of cattle, goats, horses, sheep and swine at 0.05 ppm; milk at 0.01 ppm. Proposed analytical method for determining residues is a gas chromatographic procedure using a flame photometric detector, PM12 (202-426-9425).

PP 7F1971. Monsanto Agricultural Products, 800 N. Lindbergh Blvd., St. Louis MO 63166. Proposes amending 40 CFR 180.364 by establishing a tolerance for combined residues of the herbicide N-phosphonomethylglycine and its metabolite aminomethylphosphonic acid in or on the raw agricultural commodities cottonseed at 6 ppm; soybeans at 6 ppm, soybean forage and hay at 15 ppm, and liver and kidney of cattle, goats, hogs, horses, poultry, and sheep at 0.1 ppm. Proposed analytical method for determining residues is gas liquid chromotography using a phosphorous specific flame photometric detector. PM25 (202-426-2632).

Interested persons are invited to submit written comments on any petitions to the Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, Rm. 401, East Tower, 401 M St. SW., Washington, D.C. 20460. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in inspecting them. Inquiries concerning specific petitions may be directed to the designated Product Manager (PM), Registration Division (WH-567), Office of Pesticide Programs, at the above address, or by telephone at the numbers cited. Written comments should bear a notation indicating the number of the petition to which the comments pertain. Comments may be made at any time while a petition is pending before the Agency. All written comments filed will be available for public inspection in

the office of the Federal Register Section from 8:30 a.m. to 4 p.m. Monday through Friday.

Dated: August 18, 1977.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc.77-24372 Filed 8-22-77;8:45 am]

[FRL 780-5; PF77]

MONSANTO AGRICULTURAL PRODUCTS, ET AL.

Filing of Food Additive Petitions

The Environmental Protection has received the following petitions for consideration.

FAP 7H5168. Monsanto Agricultural Products, 800 N. Lindbergh Blvd., St. Louis MO 63166. Proposes amending 21 CFR 561 by establishing a regulation permitting the use of the herbicide N-phosphonomethylglycine and its metabolite aminomethylphosphonic acid on the commodity soybeans hulls with a tolerance limitation of 20 parts per million (ppm). PM25 (202-426-2632)

FAP 7H5169. Mobay Chemical Corp., Chemagro Agricultural Division, PO Box 4913, Kansas City MO 64120. Proposes amending 21 CFR 561 by establishing a regulation permitting the use of the insecticide 3,5-dimethyl-4-(methylthio)phenyl methylcarbamate and its cholinesterase-inhibiting metabolites on the commodity dried apple pomace with a tolerance limitation of 30 ppm resulting in animal feed when present as a result of application of the pesticide chemical to the growing commodity apples. PM12 (202-426-9425)

Interested persons are invited to submit written comments on any petitions to the Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, Rm. 401, East Tower, 401 M St. SW., Washington, D.C. 20460. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in inspecting them. Inquiries concerning specific petitions may be directed to the designated Product Manager (PM), Registration Division (WH-567), Office of Pesticide Programs, at the above address, or by telephone at the number cited. Written comments should bear a notation indicating the number of the petition to which the comments pertain. Comments may be made at any time while a petition is pending before the Agency. All written comments filed will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4 p.m. Monday through Friday.

Dated: August 18, 1977.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc.77-24371 Filed 8-22-77;8:45 am]

[FRL 780-8; OPP-33000/513, 514, and 515]

RECEIPT OF APPLICATION FOR PESTICIDE REGISTRATION

Data To Be Considered in Support of Applications

On November 19, 1973, the Environmental Protection Agency (EPA) published in the FEDERAL REGISTER (39 FR 31862), its interim policy with respect to the administration of Section 3(c)(1)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended ("Interim Policy Statement"). On January 22, 1976, EPA published in the FEDERAL REGISTER a document entitled "Registration of a Pesticide Product—Consideration of Data by the Administrator in Support of an Application" (41 FR 3339). This document described the changes in the Agency's procedures for implementing Section 3(c)(1)(D) of FIFRA, as set out in the Interim Policy Statement which were effected by the enactment of the recent amendments to FIFRA on November 28, 1975 (Pub.L. 94-140), and the new regulations governing the registration and re-registration of pesticides which became effective on August 4, 1975 (40 CFR Part 162).

Pursuant to the procedures set forth in these FEDERAL REGISTER documents, EPA hereby gives notice of the applications for pesticide registration listed below. In some cases these applications have recently been received; in other cases, applications have been amended by the submission of additional supporting data, the election of a new method of support, or the submission of new "offer to pay" statements.

In the case of all applications, the labeling furnisher by the applicant for the product will be available for inspection at the Environmental Protection Agency, Room 209, East Tower, 401 M Street SW., Washington, D.C. 20460. In the case of applications subject to the new Section 3 regulations, and applications not subject to the new Section 3 regulations which utilize either the 2(a) or 2(b) method of support specified in the Interim Policy Statement, all data citations submitted or referenced by the applicant in support of the application will be made available for inspection at the above address. This information (proposed labeling and, where applicable, data citations) will also be supplied by mail, upon request. However, such a request should be made only when circumstances make it inconvenient for the inspection to be made at the Agency offices.

Any person who (a) is or has been an applicant, (b) believes that data he developed and submitted to EPA on or after January 1, 1970, is being used to support an application described in this notice, (c) desires to assert a claim under Section 3(c)(1)(D) for such use of his data, and (d) wishes to preserve his right to have the Administrator determine the amount of reasonable compensation to which he is entitled for such use of the data or the status of such data under Section 10 must notify the Administrator and the applicant named in the notice in the FEDERAL REGISTER of his claim by certified mail. Notification to the Administrator should be addressed to the Product Control Branch, Registration Division (WH-567), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460. Every such claimant must include, at a minimum, the information listed in the Interim Policy Statement of November 19, 1973.

Specific questions concerning applications made to the Agency should be addressed to the designated Product Manager (PM), Registration Division (WH-567), Office of Pesticide Programs, at the above address, or by telephone as follows:

PM 11,12, and 13—202/755-9315
PM 21 and 22—202/426-2454
PM 24—202/755-2196
PM 31—202/426-2635
PM 33—202/755-9041
PM 15, 16, and 17—202/426-9425
PM 23—202/755-1397
PM 25—202/755-2632
PM 32—202/426-9486
PM 34—202/426-9490

The Interim Policy Statement requires that claims for compensation be filed on or before October 25, 1977. With the exception of 2(c) applications not subject to the new Section 3 regulations, and for which a sixty-day hold period for claims is provided, EPA will not delay any registration pending the assertion of claims for compensation or the determination of reasonable compensation. Inquiriers and assertions that data relied upon are subject to protection under Section 10 of FIFRA, as amended, should be made on or before September 22, 1977.

Dated: August 16, 1977.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

APPLICATIONS RECEIVED (OPP-33000/513)

EPA Reg. No. 239-2369. Chevron Chemical Co., 940 Hensley St., Richmond CA 94804. DIFOLATAN 4 FLOWABLE SEED PROTECTANT. Active Ingredients: Captafol 39%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Added use. PM21

EPA Reg. No. 239-2418. Chevron Chemical Co., 940 Hensley St., Richmond CA 94804. ORTHENE 75 S SOLUBLE POWDER. Active Ingredients: Acephate (O,S-Dimethyl acetylphosphoramidothioate) 75%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Added use. PM16

EPA Reg. No. 239-2418. Chevron Chemical Co., 940 Hensley St., Richmond CA 94804. ORTHO ORTHENE 75 S SOLUBLE POWDER. Active Ingredients: Acephate (O,S-Dimethyl acetylphosphoramidothioate) 75%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Amended registration. PM16

EPA Reg. No. 239-2418. Chevron Chemical Co., 940 Hensley St., Richmond CA 94804. ORTHENE 75 S SOLUBLE POWDER. Active Ingredients: Acephate (O,S-Dimethyl acetylphosphoramidothioate) 75%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Added use. PM16

EPA Reg. No. 239-2418. Chevron Chemical Co., 940 Hensley St., Richmond CA 94804. ORTHO ORTHENE 75 S SOLUBLE POWDER. Active Ingredients: Acephate (O,S-Dimethyl acetylphosphoramidothioate) 75%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Added use. PM16

EPA Reg. No. 241-243. American Cyanamid Co., PO Box 400, Princeton NJ 08540. PROWL HERBICIDE. Active Ingredients: [N-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine] 43.8%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Revised offer to pay statement. PM25

EPA Reg. No. 352-342. E. I. DuPont De Nemours & Co. (Inc.), Biochemicals Department, 6054 Dupont Bldg., Wilmington DE 19898. LANNATE METHOMYL INSECTICIDE, WATER SOLUBLE POWDER. Active Ingredients: S-methyl N-[methylcarbamoyl)oxy] thioacetimidate 90%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Added use. PM12

EPA Reg. No. 352-354. E. I. du Pont de Nemours & Co. (Inc.), Biochemicals Department, 6054 DuPont Bldg., Wilmington DE 19898. DUPONT "BENLATE" BENOMYL FUNGICIDE. Active Ingredients: Benomyl [Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate] 50%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Added use. PM22

EPA Reg. No. 352-370. E. I. du Pont de Nemours & Co. (Inc.), Biochemicals Department, 6054 DuPont Bldg., Wilmington DE 19898. DUPONT LANNATE L METHOMYL INSECTICIDE. Active Ingredients: S-methyl-N - [(methylcarbamoyl)oxy]thioacetimidate 24%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Added use. PM12

EPA File Symbol 359-ATI. Rhodia Inc., Agricultural Div., PO Box 125, Monmouth Junction NJ 08852. RONSTAR. Active Ingredients: Oxadiazon [2-tert-butyl-4-(2,4-dichloro-5-isopropoxyphenyl)-2-1,3,4-oxadiazolin-5-one] 24.4%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Revised offer to pay statement. PM24

EPA Reg. No. 372-46. Mallinckrodt, Inc., 3600 N. Second St., St. Louis MO 63147. BANROT BROAD SPECTRUM FUNGICIDE 40% WETTABLE POWDER. Active Ingredients: 5 - Ethoxy-3-trichloromethyl-1,2,4-thiadiazole 15%; Dimethyl 4,4'-o-Phenylenebis (3-thioallophanate) 25%. Method of Support: Application proceeds under 2(a) of interim policy. Republished: Revised labeling. PM21

EPA Reg. No. 891-155. Hercules Inc., Wilmington DE 19898. HERCULES TORAK EMULSIFIABLE CONCENTRATE INSECTICIDE AND MITICIDE. Active Ingredients: Dialifor [O,O-diethyl S-(2-chloro-1-phthalimidoethyl) phosphorodithioate] 40.5%; Related reaction products 4.5%. Method of Support: Application proceeds under 2(a) of interim policy. PM16

EPA File Symbol 1029-RGU. Aidex Corp., PO Box 7348, Omaha NE 68107. DAC-FERT EX GRANULAR CRABGRASS CONTROL AND LAWN FERTILIZER. Active Ingredients: Dimethyl ester of tetrachloroterephthalic acid 2.3%. Method of Support: Application proceeds under 2(b) of interim policy. PM23

EPA Reg. No. 1258-843. Olin Chemicals, 120 Long Ridge Rd., Stamford CT 06904. SODIUM OMADINE 40% AQUEOUS SOLUTION. Active Ingredients: Sodium 2-pyridinothiol 1-oxide 40%. Method of Support: Application proceeds under 2(a) of interim policy. PM33

EPA Reg. No. 2139-101. NOR-AM Agricluturaal Products, Inc. Chicago IL 60606 BETANAL POST-EMERGENCE HERBICIDE FOR CONTROL OF WEEDS IN BEETS. Active Ingredients: Phenmedipham 15.9%. Method of Support: Application proceeds under 2(b) of interim policy. PM25

EPA Reg. No. 2139-119. NOR-AM Agricultural Products, Inc. Chicago, IL 60606. BETANEX POST-EMERGENCE HERBICIDE FOR CONTROL OF REDROOT PIGWEED AND OTHER WEEDS IN SUGAR BEETS. Active Ingredients: Desmedipham 16.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM25

EPA Reg. No. 5736-41. DuBois Chemicals, Div. of Chemed Corp., DuBois Tower, Cincinnati OH 45202. BACTOLOOB BACTERIOSTATIC CONVEYOR CHAIN LUBRICANT. Active Ingredients: Triethanolamine and Potassium soap 34.31%; Tetrasodium Ethylenediamine Tetraacetic Acid 7.60%; Isopropyl Alcohol 7.28%; Ortho Benzyl-Para-Chloro Phenol 0.864%; Orthophenylphenol 1.156%. Method of Support: Application proceeds under 2(a) of interim policy. Republished: Revised offer to pay statement. PM32

EPA Reg. No. 6836-39. Daycon Products Co., Inc., PO Box 348, Bladensburg MD 20710. DAYCON DISINFECTANT TOILET BOWL CLEANER. Active Ingredients: Octyl decyl dimethyl ammonium chloride 1.250%; Dioctyl dimethyl ammonium chloride 0.625%; Didecyl dimethyl ammonium chloride 0.625%; Alkyl amino betaine 1.000%; Hydrogen Chloride 8.000%. Method of Support: Application proceeds under 2(b) of interim policy. PM32

EPA File Symbol 28070-G. Clarke Chemical Corp., PO Box 332, Miami FL 33147. A & S 600. Active Ingredients: Poly [oxyethylene (dimethylininio) ethylene (dimethylininio) ethylene dichloride] 60.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 28070-U. Clarke Chemical Corp., PO Box 332, Miami FL 33147. A & S 300. Active Ingredients: Poly [oxyethlene (dimethylininio) ethylene (dimethylininoi) ethylene dichloride] 30.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM 34

EPA Reg. No. 34164-G. American Refining & Mfg., Inc., PO Box 332, Miami FL 33147. SANI-BOL. Active Ingredients: Octyl decyl dimethyl ammonium chloride 1.250%; Dioctyl dimethyl ammonium chloride 0.625%; Didecyl dimethyl ammonium chloride 0.625%; Alkyl amino betaine 1.000%; Hydrogen chloride 17.500%. Method of Support: Application proceeds under 2(b) of interim policy. PM32

EPA File Symbol 38109-E. S & W Plumbing Supply, Inc., 23655 S. Dixie Highway, Miami FL 33032. LANECHLOR. Active Ingredients: Sodium Hypochlorite 9.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 39395-E. Viking Laboratories, Inc., 8725 Mississippi Blvd. NW., Coon Rapids MN 55433. P-114 ALGAECIDE. Active Ingredients: Poly[oxyethylene (dimethylliminio) ethylene (dimethylliminio) ethylene dichloride] 10.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 39479-G. Galaxy Chemical Corp., 2012 Whitfield Park Ave., Sarasota FL 33580. GALAXIDE NP 9.0. Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 4.5%; n-Alkyl (68% C12, 38% C14) dimethyl ethylbenzyl ammonium chlorides 4.5%; Tetrasodium ethylenediamine tetracetate 2.0%; Sodium Carbonate 4.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM31

EPA File Symbol 39910-E. Triple E Systems Engineering, Inc., PO Box 3039, Hialeah FL 33013. EEESE SYSTEMS BIO-I. Active Ingredients: Poly[oxyethylene (dimethylliminio) ethylene (dimethylliminio) ethylene dichloride] 12.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 39910-G. Triple E Systems Engineering, Inc., PO Box 3039, Hialeah FL 33013. EEESE SYSTEMS BIO-SHOCK. Active Ingredients: Poly[oxyethylene (dimethylliminio) ethylene (dimethylliminio) ethylene dichloride] 30.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 40230-R. AgBioChem, Inc., 3 Fleetwood Court, Orinda CA 94563. GALLTROL-A. Active Ingredients: Agrobacterium radiobacter 10.64%. Method of Support: Application proceeds under 2(a) of interim policy. PM 21

EPA File Symbol 40308-R. Quad-City Chemical Co., Inc., 2328 Eastern Ave., Davenport IA 52803. ALG-47. Active Ingredients: Poly[oxyethylene (dimethylliminio) ethylene (dimethylliminio) ethylene dichloride] 60.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 464-LGN. The Dow Chemical Co., PO Box 1706, Midland MI 48640. DICHLORPROP, BUTOXY ETHANOL ESTER. Active Ingredients: Butoxy Ethanol Ester of Dichloroprop 2-(2,4-dichlorophenoxy) propionic acid 92.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM23

EPA Reg. No. 524-311. Monsanto Co., Agriculture Products, 800 N Lindbergh Ave., St. Louis MO 63166. POLARIS. Activé Ingredients: Glyphosine 85.0%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Revised Labeling. PM25

APPLICATIONS RECEIVED (OPP-33000/514)

EPA Reg. No. 239-EULO. Chevron Chemical Co., Ortho Div., 940 Hensley St., Richmond, CA 94804. ORTHO DIPOLATAN VITAVAX 2-2 FLOWABLE SEED PROTECTANT. Active Ingredients: Captafol 20%; carboxin 20%. Method of Support: Application proceeds under 2(b) of interim policy. PM21

EPA File Symbol 1266-RTE. Malter International, PO Box 6099, New Orleans LA 70174. MALTINE CWT. Active Ingredients: Poly [oxyethylene (dimethylliminio) ethylene (dimethylliminio) ethylene dichloride] 10.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 3125-GRU. Chemagro Agricultural Div., Mobay Chemical Corp., Box 4913, Kansas City MO 64120. SENCOR 4 FLOWABLE HERBICIDE. Active Ingredients: 4-Amino-6-(1,1-dimethylethyl)-3-(methylthio)-1,2,4-triazin-5(4H)-one 41%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Added use. PM25

EPA File Symbol 3286-UA. Ferd Staffel Co., PO Box 2380, San Antonio TX 78298. BIO DUST (BACILLUS THURINGIENSIS). Active Ingredients: Bacillus thuringiensis, Berliner, Potency of 320 International Units per mg. (at least 0.5 billion variable spores per g.) 0.064%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Revised offer to pay statement. PM17

EPA Reg. No. 4816-483. Fairfield American Corp., 100 Niagara St., Middleport NY 14105. TOMATO & VEGETABLE INSECT SPRAY. Active Ingredients: Pyrethrins 0.030%; Piperonyl Butoxide, Technical 0.160%; Rotenone 0.128%; Other cube resins 0.238%; Petroleum Distillate 0.120%. Method of Support: Application proceeds under 2(a) of interim policy. PM17

EPA File Symbol 10065-I. Pisons Corp., Agricultural Chemicals Div., 2 Preston Court, Bedford MA 01730. ATRAZINE TECHNICAL. Active Ingredients: Atrazine (2-chloro-4-ethylamino-6-isopropylamino-s-triazine) 90.0%. Method of Support: Application proceeds under 2(a) of interim policy. PM25.

EPA File Symbol 12264-RG. Allstates Chemical, PO Box 7482-A, Houston TX 77008. POLY-CIDE WATER TREATMENT. Active Ingredients: Poly [oxyethylene (dimethyliminio) ethylene (dimethyliminio) ethylene dichloride] 10.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA Reg. No. 12367-3. Lico Chemicals, 929 Fifth Ave., McKeesport PA 15132. CATCH 22. Active Ingredients: Pyrethrins 0.1%; Piperonyl Butoxide Technical 0.8%; Petroleum Distillate 99.1%. Method of Support: Application proceeds under 2(c) of interim policy. Republished: Revised offer to pay statement. PM17

EPA Reg. No. 12367-4. Lico Chemicals, 929 Fifth Ave., McKeesport PA 15132. PESTABATE. Active Ingredients: Pyrethrins 0.5%; Piperonyl Butoxide Technical 4.0%; Petroleum Distillate 95.5%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Revised offer to pay statement. PM17

EPA File Symbol 36306-G. Hadco East Chemical Corp., 35 Ralph Ave., Copiague NY 11726. BOWL KLING. Active Ingredients: 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 0.75%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 0.75%. Method of Support: Application proceeds under 2(b) of interim policy. PM32

EPA File Symbol 33283-T. Branchemco, Inc., 8286 Western Way Circle, Jacksonville FL 32216. BRANCHEMCO 306. Active Ingredients: Poly [oxyethylene (dimethyliminio) ethylene (dimethyliminio) ethylene dichloride] 60.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 33283-I. Branchemco, Inc., 8286 Western Way Circle, Jacksonville FL 32216. BRANCHEMCO 309. Active Ingredients: Poly [oxyethylene (dimethyliminio) ethylene (dimethyliminio) ethylene dichloride] 30.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 39398-E. Sumitoma Chemical Co., 1330 Dillon Heights, Baltimore MD 21228. 2% CUMITHRIN TOTAL RELEASE INSECTICIDE, AEROSOL. Active Ingredients: 3-phenoxybenzyl d-cis and trans 2,2-dimethyl-3-(2-methyl-propenyl) cyclopropanecarboxylate 2%. Method of Support: Application proceeds under 2(b) of interim policy. PM177

EPA File Symbol 40840-R. Sentry Water Management Corp., 170 Beechwood Dr., Wayne NJ 07470. SENTRICIDE 100. Active Ingredients: Poly [oxyethylene (dimethyliminio) ethylenne(dimethyliminio) ethylene dichloride] 10.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 40841-R. W. S. Engineering, PO Box 349, Ottawa KS 66067. MICROBIOCIDE W-075. Active Ingredients: Poly [oxyethylene (dimethyliminio) ethylene (dimethyliminio) ethylene dichloride] 8.0% Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 40841-E. W. S. Engineering, PO Box 349, Ottawa KS 66067. MICROBIOCIDE W-60. Active Ingredients: Poly [oxyethylene (dimethyliminio) ethylene (dimethyliminio) ethylene dichloride] 60.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

EPA File Symbol 40841-G. W. S. Engineering, PO Box 349, Ottawa KS 66067. MICROBIOCIDE W-15. Active Ingredients: Poly [oxyethylene (dimethyliminio) ethylene (dimethyliminio) ethylene dichloride] 15.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM34

APPLICATIONS RECEIVED (OPP-33000/515)

EPA Reg. No. 100-437. Agricultural Div., CIBA-GEIGY Corp., PO Box 11422, Greensboro NC 27409. PRINCEP 80W HERBICIDE. Active Ingredients: Simazine: 2-chloro-4,6 - bis(ethylamino) - s - triazine 80%. Method of Support: Application proceeds under 2(a) of interim policy. Republished: Added uses. PM24

EPA Reg. No. 100-439. CIBA-GEIGY, PO Box 11422, Greensboro NC 27407. AATREX 80W. Active Ingredients: Atrazine: 2-chloro-4-ethylamino - 6 - isopropylamino-s-triazine 76%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Added use. PM25

EPA Reg. No. 100-497. CIBA-GEIGY, PO Box 11422, Greensboro NC 27407. AATREX 4L. Active Ingredients: Atrazine: 2-chloro-4-ethylamino - 6 - isopropylamino-s-triazine 40.8%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Added use. PM25

EPA Reg. No. 100-535. Agricultural Div., CIBA-GEIGY Corp., PO Box 11422, Greensboro NC 27407. AATREX 4LC. Active Ingredients: Atrazine: 2-chloro-4-ethylamino-6-isopropylamino-s-triazine 40.8%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Added use. PM25

EPA File Symbol 100-LII. Agricultural Div., CIBA-GEIGY Corp., PO Box 11422, Greensboro NC 27409. PRINCEP 1% ALGICIDE. Active Ingredients: Simazine: 2-chloro-4,6-bis(ethylamino)-s-triazine 1%. Method of Support: Application proceeds under 2 (b) of interim policy. PM24

EPA Reg. No. 100-585. Agricultural Div., CIBA-GEIGY Corp., PO Box 11422, Greensboro NC 27407. AATREX NINE-O. Active Ingredients: Atrazine: 2-chloro-4-ethylamino-6-isopropylamino-s-triazine 85.5%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Added use. PM25

EPA File Symbol 100-LON. CIBA-GEIGY, PO Box 11422, Greensboro, NC 27409. BICEP 4.5L HERBICIDE. Active Ingredients: Atrazine: 2-chloro-4-ethylamino-6-isopropylamino-s-triazine 20.8%; Atrazine related compounds 1.1%; Metolachlor: 2-chloro - *N* - (2-ethyl-6-methylphenyl)-*N*-(2 - methoxy - 1 - methylethyl) acetamide 27.5%. Method of Support: Application proceeds under 2(b) of interim policy. PM25

EPA Reg. No. 239-2211. Chevron Chemical Co., Ortho Div., 940 Hensley St., Richmond CA 94804. ORTHO DIFOLATAN 4 FLOWABLE. Active Ingredients: Capafol 39%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Added use and Revised offer to pay statement. PM21

EPA File Symbol 257-GRG. Fuld-Stalfort, Inc., Havre de Grace MD 21078. BOWL & PORCELAIN CLEANER DISINFECTANT 17. Active Ingredients: Octyl decyl dimethyl ammonium chloride 1.250%; Dioctyl dimethyl ammonium chloride 0.625%; Didecyl dimethyl ammonium chloride 0.625%; Alkyl amino betaine 1.000%; Hydrogen chloride 8.000%. Method of Support: Application proceeds under 2(b) of interim policy. PM32

EPA File Symbol 275-GG. Abbott Laboratories, Chemical Div., 14th & Sheridan Roads, D495, North Chicago IL 60064. AMICAL 50 DISPERSION. Active Ingredients: Diiodomethyl para-tolyl sulfone 37.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM22

EPR Reg. No. 400-75. Uniroyal Chemical, Div. of Uniroyal, Inc., Naugatuck, CT 06770. DYANAP. Active Ingredients: Sodium N-1-naphthylphthalamate 21.2%; Sodium Salt of dinoseb (2-sec-butyl-4,6-dinitrophenol) 10.9%. Method of Support: Application proceeds under 2(a) of interim policy. Republished: Revised offer to pay statement and Added use. PM25

EPA Reg. No. 432-502. S. B. Penick & Co., 1050 Wall St. West, Lyndhurst NJ 07071. SBP-1382 40 MP OIL BASE CONCENTRATE. Active Ingredients: (5-Benzyl-3-furyl) methyl 2, 2-dimethyl-3-(2-methylpropenyl) cyclopropanecarboxylate 40.00%, Related compounds 5.45%; Aromatic petroleum hydrocarbons 52.95%. Method of Support: Application proceeds under 2(a) of interim policy. Republished: Added data. PM17

EPA Reg. No. 432-536. S.B. Penick & Co., 1050 Wall St. West, Lyndhurst NJ 07071. YOUR BRAND SBP-1382/B19-ALLETHRIN AQUEOUS PRESSURIZED SPRAY FOR HOUSE AND GARDEN. Active Ingredients: (5-Benzyl-3-furyl) methyl 2,2-dimethyl-3-(2-methylpropenly) cyclopropanecarboxylate 0.200%; Related compounds 0.028%; d-trans Allethrin (allyl homolog of Cinerin 1) 0.150%; Related compounds 0.012%; Aromatic petroleum hydrocarbons 0.272%; Petroleum Distillate 6.500%. Method of Support: Application proceeds under 2(a) of interim policy. Republished: Added data. PM17

EPA Reg. No. 464-432. Dow Chemical, PO Box 1706, Midland MI 48640. N-SERVE 24E NITROGEN STABILIZER. Active Ingredients: Nitrapyrin [2-chloro-6-(trichloromethyl) pyridine] 21.9%; Related chlorinated pyridines 2.4%. Method of Support: Application proceeds under 2(b) of interim policy. PM24

EPA Reg. No. 464-433. Dow Chemical, PO Box 1706, Midland MI 48640. N-SERVE 24E NITROGEN STABILIZER. Active Ingredients: Nitrapyrin [2-chloro-6-(trichloromethyl) pyridine] 22.2%; Related chlorinated pyridines 2.5%.Method of Support: Application proceeds under 2(b) of interim policy. PM24

EPA File Symbol 464-LUT. Dow Chemical, PO Box 1706, Agricultural Products Dept., PO Box 1706, Midland MI 48640. LORSBAN 50-SL. Active Ingredients: Chlorpyrifos [O,O-diethyl O-(3,5,6-trichloro-2-pyidyl)-phosphorothioate] 50%. Method of Support: Application proceeds under 2(b) of interim policy. PM12

EPA File Symbol 876-EAE. Velsicol Chemical Corp., 341 East Ohio St., Chicago IL 60611. TECHNICAL BUTHIDAZOLE. Active Ingredients: 3-[5-(1,1-Dimethyl)-1,3,4-thiadiazol-2-yl-] 4-hydroxy-1-methyl-2-imidazolidinone 95.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM24

EPA Reg. No. 4581-223. Agchem Div., Pennwalt Corp., Pennwalt Technological Center, PO Box C, King of Prussia PA 19406. HERBICIDE 273. Active Ingredients: Dipotassium salt of endothall 40.3%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Added uses. PM24

EPA File Symbol 4708-EI. American Riverside, Inc., 4957 Fyler Ave., St. Louis MO 63139. U-SAN-O MP MOTHPROOPING POWDER. Active Ingredients: Methoxychlor, technical 100%. Method of Support: Application proceeds under 2(b) of intrim policy. PM13

EPA File Symbol 5813-RG. The Clorox Co., PO Box 24305, Oakland CA 94623. CLOROX TOILET BOWL CLEANER. Active Ingredients: Octyl decyl dimethyl ammonium chloride 0.250%; Dioctyl dimethyl ammonium chloride 0.125%; Didecyl dimethyl ammonium chloride 0.125%; Hydrogen chloride 8.000%. Method of Support: Application proceeds under 2(c) of interim policy. PM32

EPA File Symbol 6125-GR. Bixon Chem. Co., 50-19 97th Place, Corona NY 11368. QUAT NO. 8 DISINFECTANT-SANITIZER FUNGICIDE DEODORIZER. Active Ingredients: Didecyl dimethyl ammonium chloride 7.5%; Isopropanol 3.0%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Revised offer to pay statement. PM31

EPA File Symbol 7478-UL. Chem-Pak Co., PO Box 430757, Miami FL 33143. GARDEN AND HOME GENERAL PURPOSE INSECTICIDAL SPRAY, CONTAINS METHOXYCHLOR 50% WETTABLE POWDER. Active Ingredients: Methoxychlor, technical 50.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM13

EPA File Symbol 7478-UA. Chem-Pak Co., PO Box 430757, Miami FL 33143. GARDEN AND HOME GENERAL PURPOSE INSECTICIDAL DUST. Active Ingredients: Methoxychlor Technical 10%. Method of Support: Application proceeds under 2(b) of interim policy. PM13

[FR Doc.77-24374 Filed 8-22-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 871]

COMMON CARRIER SERVICES INFORMATION

Applications Accepted for Filing

AUGUST 15, 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 § 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.

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

21897-CD-TC-TC-77 South Georgia Telephone Company Consent to Transfer of Control from Raiford J. Parker transferor to Continental Telephone Corporation transferee. Station: KIY765, Folkston, Georgia.

21899-CD-AL-(2)-77 Victor E. Duane, Sr. and Victor E. Duane, Jr. d.b. as Central Mobile Radio Phone Service, Consent to Assignment of License from Victor E. Duane, Sr. and Victor E. Duane, Jr. d.b. as Central Mobile Radio Phone Service, assignor to Central Mobile Radio Phone Service, Inc., assignee. Stations: KQD599, Cincinnati, Ohio and KQK595, Toledo, Ohio.

21900-CD-AL-(8)-77 Victor E. Duane d.b. as Central Mobile Radio Phone Service, Consent to Assignment of License from Victor E. Duane d.b. as Central Mobile Radio Phone Service, assignee. Stations: KUC995, KUS298, KUS346, and KQA770, Columbus; KUC871, Jefferson Township; KQD597, Dayton; KQC875, Springfield; and KUC929, Cincinnati, Ohio.

21901-CD-P-77 James Parker and Steven Beeferman d.b. as Genesee and Alleghany Radiotelephone Company (New) C.P. for a new station to operate on 152.18 MHz to be located at Tobes Hill, 1 mile NE of Hornell City limits, Hornell, New York.

21902-CD-P-(2)-77 Two-Way Radio of Carolina, Inc. (KIY441), C.P. to change antenna system and relocate facilities operating on 454.175, 454.125 MHz at Loc. No. 2, to be located 400 S. Tryon Street, Charlotte, North Carolina.

21903-CD-P-77 Ram Broadcasting of Michigan, Inc. (KQD303), C.P. for additional facilities to operate on 158.70 MHz to be located at 536 South Forest Avenue, Ann Arbor, Michigan (Loc. 3).

21904-CD-P-(2)-77 South Shore Radio-Telephone, Inc. (KUD238), C.P. for additional facilities to operate on 454.100 and 454.025 MHz located at 9355 Joliet Road, LaGrange, Illinois.

21905-CD-P-77 Grants Radiotelephone Service, Inc. (KKT397), C.P. for additional facilities to operate on 152.15 MHz at Loc. No. 4; 800 Airport Road, Milan, New Mexico.

21906-CD-P-77 Grant's Radiotelephone Service, Inc. (KUD202), C.P. for additional Repeater facilities to operate on 2173.6 MHz at a new site described as Loc. No. 3 to be located 10 miles WSW of Sheep Springs, Washington Pass, New Mexico.

21907-CD-P-77 Page-A-Fone Corporation (new) C.P. for a new 2-way station to operate on 454.125 MHz to be located 1 mile east of intersection of Texas Hwys. 171 and 174 near Cleburne, Texas.

21908-CD-TC(2)-77 Anserphone of Goldsboro, Inc., Consent to Transfer of Control from Ferebee Land Patterson to Hilda S. Patterson, Executrix of Estate of Ferebee Land Patterson, Deceased, transferee. Stations: KUC942 and KRH678, Goldsboro, North Carolina.

21909-CD-P-77 Lafayette Radiotelephone Company (new) C.P. for a new 1-way station to operate on 152.24 MHz to be located at 101 Colony Road, W. Lafayette, Indiana.

21910-CD-P/ML-77 Contact, Inc. (KGA 807), C.P. for additional facilities to operate on 35.22 MHz to be located at a new site described as Loc. No. 6; 4011 Miller Road, Baltimore, Maryland.

21912-CD-P-77 Dorothy Faye Gallimore and Beverly Fulton Martin d.b. as Pampa Communications Center (KLB497) C.P. for addition Control facilities to operate on 454-300 MHz at a new site described as Loc. No. 2: Near Hobart and McCullough Streets, Pampa; and Repeater facilities to operate on 459.300 MHz at S.E. ¼ of section 60, Block A-8, Wheeler, Texas.

CORRECTION

21788-CD-P-2-77 Sully Buttes Tel. Coop., Inc. (new) Correct frequency to read 152.-600 MHz and 152.66 MHz.

RURAL RADIO

60381-CR-P/L-77 Continental Telephone Company of California (new). C.P. for a new Rural Subscriber station to operate on 157.80 MHz to be located Fish Spring Flat, 7.1 miles east of Gardnerville, Nevada.

60382-CR-P-77 The Lincoln County Telephone System, Inc. (new). C.P. for a new Central Office station to operate on 454.50 MHz: Tempiute, Nevada.

60383-CR-P-77 The Lincoln County Telephone System, Inc. (new). C.P. for a new Rural Subscriber station to operate on 459.50 MHz to be located Approximately 6.8 miles west of Tempiute Mine, Sand Springs, Nevada.

60385-CR-TC-(3)-77 South Georgia Telephone Company. Consent to Transfer of Control form Raiford J. Parker, transferor, to Continental Telephone Corporation, transferee. Stations: KXR74, Temp Fixed; WCZ27, Cumberland Island, WBO 50, Stephen C. Foster State Park, Georgia.

CORRECTION

60376-CD-P-77 Thru 60379-CD-P/ML-77; Correct each file number to read: 60376-CR-P-77, 60377-CR-P-77, 60378-CR-P/ML-77 and 60379-CR-P/ML-77. All other particulars remain as reported on PN3870, dated 8/8/77.

MAJOR AMENDMENTS

Adirondack Mobile Telephone Co., Inc. Suite 13-F, 100 Graham Road, Ithaca, New York, File No. 21383-CD-P-(4)-77, Beekman Court, Plattsburg, New York (Lat. 44°42' 38.5" Long. 73°28'10.5") and WGPM-FM Tower; Rand Hill, Plattsburg, New York (Lat. 44°46'13", Long. 73°36'47"). Application amended to change frequencies to 454.125 MHz and 454.350 MHz.

POINT TO POINT MICROWAVE RADIO SERVICE

3346-CF-P-77 Continental Telephone Company of California (KNB39), Garberville 485 Conger Street, Garberville, California. Lat. 40°06'07" N., Long. 123°47(31" W. C.P. to change name and location of receive station and replace antenna on frequency 6093.5H MHz toward Benbow PR and from passive reflector to Pratt Mtn.

3347-CF-P-77 Same (KNB40), Pratt Mtn. 6 miles NE of Garberville, California. Lat. 40°07'11" N., Long. 123°41'29" W. C.P. to change name and location of receive station and replace antenna on frequency 6345.5H MHz toward Benbow PR.

3371-CF-P-77 The Mountain States Telephone and Telegraph Company (KYJ78), 13.6 miles SW of Rawlins, Wyoming. Lat. 41°38'75" N., Long. 107°23'11" W. C.P. to add a new point of communication on frequencies 2118.8V MHz toward Min Ex Mine and 2118.8V MHz toward Lamont.

3372-CF-P-77 Same (new), Min Ex Mine 22.2 miles SW of Baiboil, Wyoming. Lat. 42°02'06" N., Long. 107°53'58" W. C.P. for a new station on frequency 2168.8V MHz toward Separation, Wyoming.

CORRECTION

3107-CF-MP-77 The Bell Telephone Company of Pennsylvania (KGP35), corrected to read change polarity from V to H on frequencies 11245 11565 MHz toward Rockview, Pa. All other particular remain as reported on PN No. 867 dated July 18, 1977.

3108-CF-MP-77 Same (WCG251), corrected to read change polarity from V to H on frequencies 10795 11115 MHz toward State College, Pa. All other particular remain as reported on PN No. 867 dated July 18, 1977.

3338-CF-P-77 Mountain Microwave (KAQ 88), Mt. Coolidge, 6.0 miles ESE of Custer, South Dakota (Lat. 43°44'42" N., Long. 103°28'51" W.). Construction permit to add 6256.5V, 6286.2H and 6345.5H MHz toward Elk Mountain, South Dakota, via power split, on azimuth 267.9°.

3351-CF-P-77 Eastern Microwave, Inc. (KZA 86), Tyrone Mtn., Hoover Road, 6 miles NW of Tyrone Pennsylvania (Lat. 40° 43'56" N., Long. 78°19'33" W.). Construction permit to replace transmitter 10775.V MHz toward Kinter Hill, Pennsylvania, on azimuth 277.7°.

3354-CF-P-77 Eastern Microwave, Inc. (KZA 85), Boone Mtn., Kersey Road, 5 miles east of Brockport, Pennsylvania (Lat. 41°14'56" N., Long. 78°38'33" W.). Construction permit to change antenna system toward Kane (5989.7V), Punxsutawny (5989.7H), and Reynoldsville (5989.7V), all in Pennsylvania.

MAJOR AMENDMENTS

3599-CF-P-76 RCA American Communications, Inc. (new), Wauconda, Illinois (Lat. 42°14'12" N., Long. 88°04'17" W.). Application amended (a) to delete Chicago (Merchandise Mart), Illinois, as point of communication (frequencies 6034.2V and 6152.8V MHz) and (b) to add 5945.2H MHz and 6063.8H MHz toward Chicago CTO, Illinois, on azimuth 137.6°. (NOTE.—See file No. 2106-CF-P-77 elsewhere in this Public Notice)

3600-CF-P-76 RCA American Communications, Inc. (new), Chicago CTO, 2 North Riverside Plaza, Illinois (Lat. 41°52'57" N., Long. 87°38'21" W.). Application amended to add frequencies 6197.2V and 6315.9V MHz toward Wauconda, Illinois, on azimuth 317.9°.

[FR Doc.77-24283 Filed 8-22-77;8:45 am]

[Report No. I-378]

COMMON CARRIER SERVICES INFORMATION

International and Satellite Radio Applications Accepted for Filing

AUGUST 15, 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, Regulations and its Policies. Final action will not be taken on any of these applications earlier than 31 days following the date of this notice. Section 309(d)(1).

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

SATELLITE COMMUNICATIONS SERVICES

510-DESE-P/L-77 Gulf Coast-Bellaire Cable Television, Bellaire, TX. Report No. I-365 dated 7-5-77 amended to request the reception of the signals from Station WTCG-TV, Ch. 17, Atlanta, Georgia and the programming of the Home Box Office, Inc. and the Christian Broadcasting Network.

592-DSE-P-77 Rocky Mountain Corp., for Public Broadcasting, Morrison, CO. For authority to construct, own and operate a domestic communications satellite receive/transmit earth station or this location. Lat. 39°38'05", Long. 105°10'56". Rec. freq: 3700-4200 MHz. Trans. freq: 5925-6425 MHz. Emission 36000F9. With a 10 meter antenna.

594-DSE-P-77 Southeastern Cable, Co., Inc., Cleveland, TE. For authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 35°09'44", Long. 84°50'51". Rec. freq: 3700-4200 MHz, Emission 36000F9. With a 5 meter antenna.

595-DSE-P/L-77 Cable Vision, Inc., Edna, TX. For authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 28°58'05", Long. 96°39'00". Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 4.5 meter antenna.

596-DSE-P/L-77 Sammons Communcations, Inc., Clinton, OK. For authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 35°31'-30", Long. 98°58"55° Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 5 meter antenna.

597-DSE-P/L-77 Clearview Cablevision Associates, Surside Beach, SC. For authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 33°35'-56", Long 79°00'12". Rec. freq: 3700-4200 MHz Emission 36000F9. With a 4.5 meter antenna.

603-DSE-P/L-77 Mid-Hudson Cablevision, Inc., Catskill, NY., For authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 42°12'36", Long. 73°53'59". Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 5 meter antenna.

604-DSE-P-77 American Television & Communications Corp., Beloit, WI. For authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 42°33'11", Long. 88°57'43". Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 5 meter antenna.

605-DSE-P/L-77 Corsicana Cable TV, Corsicana, TX. For authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 32°06'56", Long. 96°28'58". Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 5 meter antenna.

606-DSE-P/L-77 Cox Cable Communication, Inc., Aberdeen, WA. For authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 46°58' 35", Long. 123°48'23", Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 5 meter antenna.

610-DSE-P/L-77 Mid-South Cablevision, Pearl, MS. For authority to construct and operate a domestic communications satellite receive-only earth station at this location. Lat. 32°17'25" N., Long. 90°06'56" W. Rec. freq: 3700-4200 MHz Emission 36000F9. With a 6 meter antenna.

611-DSE-R-77 Fairchild Space & Electronics Co., Germantown, MD. Renewal of this fixed developmental license to: 8-20-78.

612-DSE-P/L-77 Better TV of Zanesville, Inc., Zanesville, OH. For authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 39°56'07" N., Long. 82°03'18" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 5 meter antenna.

613-DSE-P-77 Dow Jones & Co., Inc., South Brunswick, NJ. For authority to construct own and operate a domestic communications satellite transmit-only earth station at this location. Lat. 40°22'11" N., Long. 74°35'12" W. Transmit freq: 5925-6425 MHz. Emission 1800F9Y. With a 36 foot antenna.

614-DSE-P/L-77 Satellite Common Carrier Corp., Romulus, MI. For authority to construct and operate a domestic communications satellite receive-only earth station at this location. Lat. 42°14'05" N., Long. 83°21'51" W. Rec. freq: 3700-4200 MHz. No emission listed. With a 10 meter antenna.

[FR Doc.77-24282 Filed 8-22-77;8:45 am]

FEDERAL ENERGY ADMINISTRATION

CASES FILED WITH THE OFFICE OF EXCEPTIONS AND APPEALS

Week of August 5 Through August 12, 1977

Notice is hereby given that during the week of August 5 through August 12, 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.

August 17, 1977.

APPENDIX.—*List of cases received by the Office of Exceptions and Appeals, week of Aug. 5 through Aug. 12, 1977*

Date	Name and location of applicant	Case No.	Type of submission
Aug. 5, 1977	Sundance Oil Co., Denver, Colo. (If granted: The Sundance Oil Co., would be granted a stay of the requirements of the FEA's July 29, 1977, remedial order pending a final determination of an appeal of that order which Sundance states it intends to file.)	FRS-1415	Stay request.
Aug. 8, 1977	E. B. Brooks, Jr., Dallas, Tex. (If granted: E. B. Brooks, Jr., would be granted a stay of the requirement specified in the FEA's July 25, 1977, remedial order that it refund overcharges made on sales of crude oil pending a final determination of the firm's appeal of that order which it intends to file.)	FRS-0102	Do.
Do.	Cities Service Oil Co., Tulsa, Okla. (If granted: The Cities Service Oil Co. would be granted a stay of the requirements of the FEA's July 11, 1977, remedial order pending a final determination of the firm's appeal of that order.)	FRS-1404	Do.
Do.	Diamond Shamrock Corp., Amarillo, Tex. (If granted: The Diamond Shamrock Corp. would receive an extension of the exception relief granted in the FEA's Mar. 22, 1977, decision and order which would permit it to increase its prices for natural gas liquid products to reflect nonproduct cost increases in excess of $0.005/gal.)	FXE-4472	Extension of relief granted in *Diamond Shamrock Corp.*, case No. FXE-3705 (decided Mar. 22, 1977) (unreported decision).
Do.	Dyco Petroleum Corp., Tulsa, Okla. (If granted: The Dyco Petroleum Corp's. A. B. Cavanaugh No. 1 well located in Jefferson Davis Parish, La., would be classified as a stripper well property.)	FEE-4471	Price exception (sec. 212.74).
Do.	Gulf Oil Corp., Houston Tex. (If granted: The FEA's Feb. 14, 1975, remedial order as modified on July 22, 1977, would be rescinded and the Gulf Oil Corp. would not be required to refund rent charged to Anthony Weber for a service station located in Plymouth, Mich.)	FRA-1423	Appeal of FEA region III's July 22, 1977, 2d modification of remedial order issued Feb. 14, 1975.)
Do.	Hunt Petroleum Corp. (Kinder), Dallas, Tex. (If granted: The Hunt Petroleum Corp. would be permitted to increase its prices for natural gas liquid products produced at the Kinder plant to reflect nonproduct cost increases in excess of $0.005/gal.)	FEE-4473	Price exception (sec. 212.-165).
Do.	Leonard E. Belcher, Inc., Springfield, Mass. (If granted: Leonard E. Belcher, Inc., would be granted a stay of the requirements of the FEA's July 18, 1977, remedial order pending a final determination of the firm's appeal of that order which it intends to file.)	FRS-1414	Stay request.
Do.	Prater Co., Farmington, N. Mex. (If granted; Prater Co. would receive a temporary stay of the refund requirement of the remedial order issued by FEA region VI on July 25, 1977, pending a determination on its application for stay and its appeal.)	FRT-0047	Temporary stay of the requirements of the remedial order issued by FEA region VI on July 25, 1977.
Do.	Prater Co., Farmington, N. Mex. (If granted: The FEA's July 25, 1977, remedial order would be rescinded and the Prater Co. would not be required to reduce its selling prices of motor gasoline or to refund overcharges made on sales of motor gasoline during the period Nov. 1, 1973, through Aug. 31, 1975.)	FRA-1413 FRS-1413 FEE-1470	Appeal of FEA region VI's remedial order issued July 25, 1977. Stay request.
Do.	Standard Oil Co. (Indiana), Chicago, Ill. (If granted; The FEA's June 28, 1977, and July 7, 1977, assignment orders issued to Standard Oil Co. (Indiana) would be rescinded and Standard Oil wolud not be required to supply additional quantities of motor gasoline to the Stone & Cooper Fuel Co.).	FEA-1417— FEA-1422	Appeal of FEA region I's assignment orders issued June 28, and July 7, 1977.
Aug. 10, 1977	Altex Oil Corp., Denver, Colo. (If granted: Crude oil produced from Altex Oil Corp.'s UPRR-Anshutz Ranch No. 1 well located in Carbon County, Wyo., would be sold at upper tier ceiling prices.)	FEE-4477	Price exception (sec. 212.73).
Do.	E. B. Brooks, Jr., Dallas, Tex. (If granted; The FEA's July 25, 1977, remedial order would be rescinded and E.B. Brooks, Jr., would not be required to refund overcharges made on sales of crude oil.)	FRA-1416	Appeal of FEA region VI's remedial order issued July 25, 1977.
Do.	Melvin Klotzman and Jess Pendleton d.b.a. Victoria Equipment & Supply Co., Victoria, Tex. (If granted: The FEA's July 7, 1977, remedial order would be rescinded and Melvin Klotzman and Jess Pendleton d.b.a. Victoria Equipment & Supply Co. would not be required to refund overcharges made on sales of crude oil.)	FRA-1425	Appeal of FEA region VI's remedial order issued July 7, 1977.
Do.	Lyon County Cooperative Oil Co., St. Paul, Minn., (If granted; The FEA's July 25, 1977, remedial order would be rescinded and the Lyon County Cooperative Oil Co. would not be required to refund overcharges made on sales of petroleum products.)	FRA-1426	Appeal of FEA region V's remedial order issued July 25, 1977.
Do.	National Helium Corp., Liberal, Kans. (If granted: The National Helium Corp. would receive an extension of the exception relief granted in the FEA's Mar. 29, 1977, decision and order which would permit it to increase its prices for natural gas liquid products to reflect nonproduct cost increases in excess of $0.005/gal.)	FXE-4474	Extension of relief granted in *National Helium Corp.*, case No. FXE-3891 (decided Mar. 29, 1977) (unreported decision).
Do.	Ross Production Co., Shreveport, La. (If granted: Crude oil produced from Ross Production Co.'s proposed replacement well on the C. F. Routon lease located in Concordia Parish, La. would be sold at upper tier ceiling prices.)	FEE-4476	Price exception (sec. 212.73).
Do.	Signal Petroleum (Lake Washington), New Orleans, La. (If granted: Signal Petroleum would receive an extension of the relief granted in the FEA's Mar. 23, 1977, decision and order which would permit it to increase its prices to reflect nonproduct cost increases in excess of $0.005/gal for natural gas liquid products at the Lake Washington plant.)	FXE-4475	Extension of relief granted in *Signal Petroleum*, case No. FXE-3940 (decided Mar. 23, 1977) (unreported decision).
Do.	B. W. Whittington, Portland, Tex. (If granted: The FEA's July 8, 1977, decision and order would be rescinded and Whittington would be granted retroactive exception relief to permit him to sell the crude oil produced from the State Tract 180 lease at a price which exceeds the lower tier ceiling price.)	FXA-1427	Appeal of Decision and Order in *B. W. Whittington*, 6 FEA par. ——— (July 8, 1977).

Date	Name and location of applicant	Case No.	Type of submission
Aug. 10, 1977.	A&N Producing Services, Inc., Jackson, Miss. (If granted: A&N Producing Services, Inc., would receive an extension of the exception relief granted in the FEA's Apr. 14, 1977, decision and order and would be permitted to sell the crude oil produced from the USA well No. 2 lease located in Franklin County, Miss., at upper tier prices.)	FXE-4478	Extension of relief granted in *A&N Producing Services, Inc.*, 5 FEA par. 83,131 (Apr. 14, 1977).
Do.	Quincy Oil, Inc., Quincy, Mass. (If granted: The FEA's July 26, 1977, remedial order would be rescinded and Quincy Oil, Inc., would not be required to refund overcharges made on sales of petroleum products.)	FRA-1428 FRS-1428	Appeal of FEA region I's remedial order issued July 26, 1977. Stay requested.
Do.	Tenneco Oil Co., Houston, Tex. (If granted: Crude oil produced from the Tenneco Oil Co.'s Veeder-Hunt lease located in St. Mary Parish, La., would be sold at levels in excess of the lower tier ceiling price.)	FEE-4479	Price exception (sec. 212.73).
Aug. 11, 1977.	Coquina Oil Corp., Midland, Tex. (If granted: The Coquina Oil Corp.'s Shelton No. 1 well located in Hopkins County, Tex., would be classified as a stripper well property.)	FEE-4480	Price exception (sec. 212.74).
Do.	Gas Del Oro, Inc., Gas Del Oro International, Inc., and El Dorado Marketing Co. of Laredo, Houston, Tex. (If granted: The FEA's July 11, 1977, interpretation would be modified and the Suburban Propane Gas Corp.'s sales of propane to Gas Del Oro, Inc., and affiliated companies would be covered by the FEA mandatory price regulations.)	FIA-1429	Appeal of FEA's interpretation dated July 11, 1977.
Do.	Gulf Oil Corp., Tulsa, Okla. (If granted: The FEA's July 8, 1977, decision and order would be modified and the Gulf Oil Corp. would be granted additional exception relief which would permit it to sell additional volumes of crude oil produced from the Northwest Graylin D sand unit located in Logan County, Colo., at upper tier ceiling prices.)	FXA-1430	Appeal of decision and order in *Gulf Oil Corp.*, 6 FEA par. ——— (July 8, 1977).
Do.	New York Petroleum Corp., New Orleans, La. (If granted: The FEA's July 29, 1977, remedial order would be rescinded and the New York Petroleum Corp. would not be required to refund overcharges made on its sales of crude oil.)	FRA-1431 FRS-1431	Appeal of FEA region VI's remedial order dated July 29, 1977. Stay request.
Do.	Union Oil Co. of California, Los Angeles, Calif. (If granted: The Union Oil Co. of California would be permitted to increase its prices to reflect nonproduct cost increases in excess of $0.005/gal for natural gas liquid products produced at the Coalinga and Timbalier Bay plants.)	FEE-4481 FEE-4482	Price exception (sec. 212.165).
Do.	Union Oil Co. of California, Los Angeles, Calif. (If granted: The Union Oil Co. of California would receive an extension of the exception relief granted in the FEA's Mar. 4, and Mar. 30, 1977, decisions and orders which would permit it to increase its prices to reflect nonproduct cost increases in excess of $0.005/gal for natural gas liquid products produced at the following natural gas plants: Bakke, Bell, Bryans Mill, Caddo, Canrick, Como, Cotton Valley, Cow Island, Dollarhide, Gillette, Houma, Ketleman Hills, Lisbon, Mermentau, North Okarche, Putnam Oswego, Santa Maria Valley, Stearns, Van, and Worland.)	FXE-4483—FXE-4502	Extension of relief granted in *Union Oil Co. of California*, case Nos. FEE-3712 through FEE-3721 (decided Mar. 4, 1977) (unreported decision); *Union Oil Co. of California*, case Nos. FXE-3677 through FXE-3733 (decided Mar. 30, 1977) (unreported decision).
Aug. 12, 1977	Beacon Gasoline Co., Washington, D.C. (If granted: The Beacon Gasoline Co. would receive an extension of the exception relief granted in the FEA's Mar. 15, 1977, decision and order which would permit it to increase its prices for natural gas liquid products to reflect nonproduct cost increases in excess of $0.005/gal.)	FXE-4503	Extension of relief granted in *Beacon Gasoline Co.*, case No. FXE-3648 (decided Mar. 15, 1977) (unreported decision).

[FR Doc.77-24369 Filed 8-22-77;8:45 am]

FEDERAL MARITIME COMMISSION

SACRAMENTO—YOLO PORT DISTRICT AND CARGILL OF CALIFORNIA, INC.

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street NW., Room 10126; or may inspect the agreement at the Field Offices located at New York, NY., New Orleans, La., San Francisco, Calif., and Old San Juan, P.R. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before September 12, 1977. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreement Filed by:

Mr. John J. Hamlyn, Jr., Downey, Brand, Seymour & Rohwer, 555 Capital Mall, Sacramento, Calif. 95814.

Agreement No. T-21-6, between Sacramento-Yolo Port District (Port) and Cargill of California, Inc. (Cargill), modifies the basic agreement which provides for the lease to Cargill of a grain terminal facility at Sacramento, Calif. The purpose of the modification is to provide for the payment of a diverter type grain sampler which was installed in order to comply with the current applicable law. District and Cargill will each pay half of the cost of the sampler pursuant to paragraph 11 of the basic agreement. District will credit Cargill its share of the cost by reducing the monthly rental payment by $4,732.74 per month until the outstanding balance is paid.

By Order of the Federal Maritime Commission.

Dated: August 18, 1977.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-24357 Filed 8-22-77;8:45 am]

WEST COAST OF ITALY, SICILIAN AND ADRIATIC PORTS/NORTH ATLANTIC RANGE CONFERENCE (WINAC)

Agreement Filed

Notice is hereby given that the following agreements, accompanied by a statement of justification, have been filed with the Commission for approval pursuant to Section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreements and the statement of justification at the Washington office of the Federal Maritime Commission, 1100 L Street NW., Room 10126; or may inspect the agreements and the statement of justification at the Field Offices located at New York, N.Y., New Orleans, La., San Francisco, Calif., and San Juan, P.R. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before September 12, 1977. Any person desiring a hearing on the proposed agreements shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreements (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreement Filed by:

Stanley O. Sher, Esq., Billing, Sher & Jones, P. C., Suite 300, 2033 K Street NW., Washington, D.C. 20006.

Agreement No. 2846-30, among the members of WINAC modifies the basic agreement to provide that the clause outlining member's right of independent action will terminate either 450 days from July 5, 1977 or on the date the Commission approves a pooling agreement covering the trade.

By Order of the Federal Maritime Commission.

Dated: August 18, 1977.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-24355 Filed 8-22-77;8:45 am]

WEST COAST OF ITALY, SICILIAN AND ADRIATIC POINTS/NORTH ATLANTIC RANGE CONFERENCE (WINAC)

Agreement Filed

Notice is hereby given that the following agreements, accompanied by a statement of justification, have been filed with the Commission for approval pursuant to Section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreements and the statement of justification at the Washington office of the Federal Maritime Commission, 1100 L Street NW., Room 10126; or may inspect the agreements and the statement of justification at the Field Offices located at New York, N.Y., New Orleans, La., San Francisco, Calif., and San Juan, P.R. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before September 12, 1977. Any person desiring a hearing on the proposed agreements shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreements (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreement Filed by:

Stanley A. Sher, Esq., Billing, Sher & Jones, P. C., Suite 300, 2033 K Street NW., Washington, D.C. 20006.

Agreement No. 2846 D.R. 5, among the members of WINAC, amends the Conference's dual rate contract to provide for the opening of rates on the term and conditions set forth therein.

By Order of the Federal Maritime Commission.

Dated: August 18, 1977.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-24356 Filed 8-22-77;8:45 am]

FEDERAL RESERVE SYSTEM

FIRST SECURITY 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 First Security Corporation, Salt Lake City, Utah, for a determination that, upon the transfer of all the shares of First Security Savings and Loan Association, Pocatello, Idaho, by First Security Corporation to John Price, Salt Lake City, Utah, that First Security Corporation is not nor will be in fact capable of controlling First Security Savings and Loan Association or John Price, notwithstanding the fact that purchase of the shares of First Security Savings and Loan Association is being financed by a loan from First Security Corporation's banking subsidiary, First Security Bank of Utah, N.A., Salt Lake City, Utah, and that John Price is otherwise indebted to First Security Bank of Utah, N.A., Salt Lake City, Utah.

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 subject 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 September 13, 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, the 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, August 16, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-24322 Filed 8-22-77;8:45 am]

GENERAL SERVICES ADMINISTRATION

REGIONAL PUBLIC ADVISORY PANEL ON ARCHITECTURAL AND ENGINEERING SERVICES

Meeting

AUGUST 9, 1977.

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Regional Public Advisory Panel on Architectural and Engineering Services, Region 5, September 9, 1977, from 10:30 A.M. to 3:00 P.M., room 3520 A, John C. Kluczynski Federal Building, 230 South Dearborn Street, Chicago, Ill. The meeting will be devoted to the initial step of the procedures for screening and evaluating the qualifications of architect-engineers under considerating for selection furnish professional services for the proposed new Federal Building, U.S. Courthouse, Madison, Wis. The meeting will be open to the public.

WILLIAM B. MORRISON,
Acting Regional Administrator.

[FR Doc.77-24291 Filed 8-22-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

CONTINUING EDUCATION REVIEW COMMITTEE

Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following National Advisory body scheduled to assemble during the month of September 1977:

CONTINUING EDUCATION REVIEW COMMITTEE

Date and time: September 30; 9 a.m.

Place: Conference Room M, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

Type of meeting: Open meeting

Contact: Elizabeth R. Smith, Ph. D., Room 8C-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301-443-4735

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute of Mental Health relating to mental health education projects for interdisciplinary and single discipline groups other than psychiatry, psychology, psychiatric nursing, and social work and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9 a.m. to 4 p.m., on September 30, the meeting will be open for administrative announcements and discussion of review criteria in the light of new program initiatives and priorities of the Institute.

Substantive program information may be obtained from the contact person listed above. The NIMH Information Officer who will furnish upon request summaries of the meetings and rosters of the Committee members is Mr. Edwin Long, Deputy Director, Division of Scientific and Public Information, NIMH, Room 15-105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301-443-4735.

Dated: August 16, 1977.

CAROLYN T. EVANS,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc.77-24128 Filed 8-22-77;8:45 am]

Food and Drug Administration

PANEL ON REVIEW OF ANTIMICROBIAL AGENTS

Room Change

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The location for the August 27, 1977 meeting of the Panel on Review of Antimicrobial Agents, scheduled for August 26 and 27, 1977, has been changed to the Red Carpet Room at the Ramada Inn in Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT:

Armond M. Welch, Bureau of Drugs (MHD-510), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: Under 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 July 15, 1977 (42 FR 36551), meetings of FDA public 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 Panel on Review of Antimicrobial Agents scheduled for August 26 and 27, 1977, will be held in Conference Room G, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md. on August 26, and in the Red Carpet Room, Ramada Inn in Rockville, Md. on August 27, 1977. The open public hearing will begin at 9 a.m. on August 26.

Dated: August 16, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.77-24286 Filed 8-22-77;8:45 am]

PANEL ON REVIEW OF MISCELLANEOUS INTERNAL DRUG PRODUCTS

Meeting Cancellation

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The meeting of the Panel on Review of Miscellaneous Internal Drug Products scheduled for August 28 and 29, 1977, has been canceled.

FOR FURTHER INFORMATION CONTACT:

Armond M. Welch, Bureau of Drugs (HFD-510), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, (301-443-4960).

SUPPLEMENTARY INFORMATION: Under 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 July 15, 1977 (42 FR 36551), meetings of FDA public 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 Panel on Review of Miscellaneous Internal Drug Products for August 28 and 29, 1977, is canceled.

Dated: August 16, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.77-24287 Filed 8-22-77;8:45 am]

National Institutes of Health

ARTERIOSCLEROSIS AND HYPERTENSION ADVISORY COMMITTEE

Meeting Date Changed

Notice is hereby given of a change in the meeting date of the Arteriosclerosis and Hypertension Advisory Committee, National Heart, Lung and Blood Institute, which was published in the FEDERAL REGISTER on August 2, 1977, 42 FR 39142.

The Committee was to have met for two days on September 23 and 24, 1977, and will now meet for only one day. The entire meeting will be open to the public from 9 am to 6 pm on Friday, September 23 in Conference Room 7, Building 31, National Institutes of Health, Bethesda, Maryland.

Dated: August 16, 1977.

SUZANNE L. FREMEAU,
NIH Committee Managerment Officer.

[FR Doc.77-24193 Filed 8-22-77;8:45 am]

BOARD OF SCIENTIFIC COUNSELORS, NATIONAL INSTITUTE ON AGING

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Aging, October 20-21, 1977, to be held at the Gerontology Research Center, Baltimore, Maryland. The entire meeting will be open to the public for the review of the NIA Intramural Research Program. Attendance by the public will be limited to space available.

Ms. Suzanna H. Porter, Committee Management Officer, NIA, Building 31, Room 5C07, National Institutes of Health, Bethesda, Maryland 20854 (telephone: 301/496-5345) will provide a summary of the meeting and a roster of committee members. Dr. Richard C. Greulich, Scientific Director, NIA, Gerontology Research Center, Baltimore City Hospitals, Baltimore, Maryland, will furnish substantive program information.

Dated: August 16, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer, NIH.

[FR Doc.77-24199 Filed 8-22-77;8:45 am]

COMMUNICATIVE DISORDERS REVIEW COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Communicative Disorders Review Committee, National Institutes of Health, October 2, 1977, in the Adolphus Hotel, 1321 Commerce Street, Dallas, Texas 75221.

The meeting will be open to the public from 8:30 a.m. until 9:30 a.m. on October 2nd, to discuss program planning and program accomplishments. Attendance by the public will be limited to space available. In accordance with the provisions set forth in Sections 552b(c)-(4), and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on October 2nd, from 9:30 a.m. to adjournment, for the review, discussion and evaluation of individual initial pending and renewal grant applications. The portion of the meeting being closed involves the review, discussion, and evaluation of individual grant applications. The applications and the discussion could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Mr. Robert N. Hinkel, Acting Chief, Office of Scientific and Health Reports, Building 31, Room 8A03, NIH, NINCDS, Bethesda, MD 20014, (301) 496-5751, will furnish summaries of the meeting and rosters of committee members.

Dr. Ernest J. Moore, Executive Secretary, Federal Building, Room 9C14, Bethesda, MD 20014 (301) 495-5751, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.851, National Institutes of Health.)

Dated: August 12, 1977.

THOMAS E. MALONE,
Deputy Director, NIH.

[FR Doc.77-24196 Filed 8-22-77;8:45 am]

NATIONAL ADVISORY GENERAL MEDICAL SCIENCES COUNCIL

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, October 5-6, 1977, Building 31, Conference Room 6, Bethesda, Maryland.

This meeting will be open to the public on October 5, 1977, from 9 a.m. to 12 noon for opening remarks; report of the Director, NIGMS; and other business of the Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Title 5, U.S. Code 552b(c)(4) and 552b(c)(6), the meeting will be closed to the public on October 5, 1977, from 1 p.m. to 5 p.m., and on October 6 from 9 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Mr. Paul Deming, Research Reports Officer, National Institute of General Medical Sciences, National Institutes of Health, Room 9A05, Westwood Building, Bethesda, Maryland 20014, Telephone: 301, 496-7301 will provide a summary of the meeting and a roster of council members. Dr. Ruth L. Kirschstein, Executive Secretary, NAGMS Council, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20014, Telephone: 301, 496-5231 will provide substantive program information.

(Catalog of Federal Domestic Assistant Programs Nos. 13-859, 13-860, 13-861, 13-862, 13-863, National Institutes of Health.)

Dated: August 12, 1977.

THOMAS E. MALONE,
Deputy Director, NIH.

[FR Doc.77-24197 Filed 8-22-77;8:45 am]

NATIONAL ADVISORY RESEARCH RESOURCES COUNCIL

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Research Resources Council, Division of Research Resources, September 19-21, 1977, Conference Room 9, Building 31, National Institutes of Health, Bethesda, Maryland 20014.

The meeting will be open to the public from 9 a.m. to recess on September 19 for: the conduct of Council business, including the report of the Director, DRR; a presentation of the DRR Forward Plan 1979-1983; a presentation by a member of the staff of the Veterans Administration, entitled "Summary of the National Academy of Sciences Study of the Veterans Administration Research Program"; a program review of the functions of the Division's Biotechnology Resources Program; and a discussion by the Planning and Agenda Work Group of the Council. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6) under Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on September 20 from 8:30 a.m. to recess, and on September 21 from 8:30 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications, including the review and administrative handling of an application requesting support for the maintenance of a nonhuman primate blood grouping research resource. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Mr. James Augustine, Information Officer, Division of Research Resources, National Institutes of Health, Room 5B13, Building 31, Bethesda, Maryland 20014, (301) 496-5545, will provide summaries of the meeting and rosters of the Council members.

Dr. James F. O'Donnell, Deputy Director, Division of Research Resources, National Institutes of Health, Room 5B03, Building 31, Bethesda, Maryland 20014, (301) 496-6023, will furnish substantive program information and will receive any comments pertaining to this announcement.

(Catalog of Federal Domestic Assistance Program Nos 13.306; 13.333; 13.337; 13.371; 13.375; National Institutes of Health.)

Dated: August 12, 1977.

THOMAS E. MALONE,
Deputy Directory, NIH.

[FR Doc.77-24192 Filed 8-22-77;8:45 am]

NATIONAL ARTHRITIS, METABOLISM, AND DIGESTIVE DISEASES ADVISORY COUNCIL

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of The National Arthritis, Metabolism, and Digestive Diseases Advisory Council and its subcommittees on September 29-October 1, 1977, in Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 8:30 a.m. to 10:30 a.m. the first two days to discuss administrative reports. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4 and 552b(c)(6); Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meetings of the Digestive Diseases Subcommittee; the Arthritis, Bone, and Skin Diseases Subcommittee; the Diabetes, Endocrine, and Metabolic Diseases Subcommittee; and the Kidney, Urologic and Blood Diseases Subcommittee, will be closed on September 29 from 10:30 a.m. to closing, Building 31, exact room assignments to be announced later, for the review, discussion and evaluation of individual grant applications. On September 30, the full Council meeting will be closed from 10:30 a.m. to closing, and on October 1 from 8:30 a.m. to adjournment, Building 31, Conference Room 10, also for the review, discussion and evaluation of research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Messrs. James N. Fordham and Leo E. Treacy, Office of Scientific and Technical Reports, NIAMDD, National Institutes of Health, Building 31, Room 9A04, Bethesda, Maryland 20014, will provide summaries of the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.846-13.850, National Institutes of Health.)

Dated Aug. 12, 1977.

THOMAS E. MALONE,
Deputy Director, NIH.

[FR Doc.77-24195 Filed 8-22-77;8:45 am]

NATIONAL ARTHRITIS, METABOLISM, AND DIGESTIVE DISEASES ADVISORY COUNCIL

Meeting

Notice is hereby given of a meeting of the Digestive Diseases Subcommittee of the National Arthritis, Metabolism, and Digestive Diseases Advisory Council, with the Directors of Research Centers in the Digestive Diseases and Nutrition programs of the National Institute of Arthritis, Metabolism, and Digestive Diseases, from 2-7 p.m., October 31, 1977, at the O'Hara Hilton Hotel, Chicago, Illinois.

This meeting will be open to the public to discuss the Centers programs and the feasibility of conversion of the programs to Core Center grants. Attendance by the public will be limited to space available.

Dr. Sarah Kalser Liver Diseases Program Director, Digestive Diseases and Nutrition Program, NIAMDD, National Institutes of Health, Bethesda, Maryland 20014, will provide additional information.

(Catalog of Federal Domestic Assistance Program No. 13.848, National Institutes of Health.)

Dated: August 16, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer, NIH.

[FR Doc.77-24200 Filed 8-22-77;8:45 am]

NATIONAL CANCER ADVISORY BOARD SUBCOMMITTEE ON ENVIRONMENTAL CARCINOGENESIS

Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Cancer Advisory Board's Subcommittee on Environmental Carcinogenesis, September 18, 1977, National Institutes of Health, 9000 Rockville Pike, Bethesda Maryland Building 31C, Conference Room 6.

The entire meeting will be open to the public from 7:30 p.m. to adjournment, to discuss the status of environmental carcinogenesis at the National Cancer Institute. Attendance by the public will be limited to space available.

Mrs. Marjorie F. Early, Committee Management Officer, NCI, Building 31, Room 4B43, National Institutes of Health, Bethesda Maryland 20014, 301–496–5708, will furnish summaries of the meeting and rosters of committee members, upon request.

Dr. J. Dan Recer, Executive Secretary, Building 31, 4B35, National Institutes of Health, Bethesda, Maryland 20014, 301–496–2083, will furnish substantive program information.

Dated: August 11, 1977.

THOMAS E. MALONE,
Deputy Director,
National Institutes of Health.

[FR Doc.77-24191 Filed 8-22-77;8:45 am]

PULMONARY DISEASES ADVISORY COMMITTEE

Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Pulmonary Diseases Advisory Committee, National Heart, Lung, and Blood Institute, on October 20, 1977, in Conference Room 7, Building 31, at the National Institutes of Health, Bethesda, Maryland.

The entire meeting will be open to the public from 8:30 a.m. to 5 p.m. on October 20, to discuss current status of Division programs and Committee plans for the coming year. Attendance by the public will be limited to the space available.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 5A03, National Institutes of Health, Bethesda, Maryland 20014, phone 301–496–4236, will provide summaries of the meeting and rosters of the committee members.

Dr. Malvina Schweizer, Executive Secretary of the Committee, Westwood Building, Room 6A16, National Institutes of Health, Bethesda, Maryland 20014, phone 301–496–7208, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Programs No. 13-838, National Institutes of Health.)

Dated: August 11, 1977.

THOMAS E. MALONE,
Deputy Director,
National Institutes of Health.

[FR Doc.77-24198 Filed 8-22-77;8:45 am]

Office of Education

NATIONAL ADVISORY COUNCIL ON EQUALITY OF EDUCATIONAL OPPORTUNTY

Meeting; Location Change

AGENCY: National Advisory Council on Equality of Educational Opportunity.

ACTION: Amendment to notice of meeting.

SUMMARY: This notice amends the notice of meeting previously announced in the FEDERAL REGISTER to change the location of the forthcoming meeting of the Nonmajority/Minority Task Force. This document is intended to notify the general public of the change in location and of their opportunity to attend. The change is prompted by the fact that federal space in which to hold a public meeting has become available.

DATE AND PLACE OF MEETING: August 26, 1977; Los Angeles, Calif.

ADDRESS: Room 8041, U.S. Federal Building, 300 N. Los Angeles Street, Los Angeles, Calif. 90012.

FOR FURTHER INFORMATION CONTACT:

Rosemarie Maynez, Administrative Assistant, NACEEO, 1325 G Street NW., Suite 710, Washington, D.C. 20005. Phone: 202–724–0221.

Signed at Washington, D.C., on August 18, 1977.

LEO A. LORENZO,
Executive Director.

[FR Doc.77-24365 Filed 8-22-77;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

Counselor to the Secretary

[Docket No. D-77-490]

DELEGATION OF AUTHORITY

AGENCY: Department of Housing and Urban Development.

ACTION: Delegation of Authority.

SUMMARY: The Secretary is delegating to the Counselor to the Secretary certain authority with respect to completion and operation of a specific housing project in New York, New York.

EFFECTIVE DATE: August 12, 1977.

SUPPLEMENTARY INFORMATION: This delegation of authority confers those responsibilities that have been exercised by the Assistant Secretary for Housing—Federal Housing Commissioner and the Assistant Secretary for Neighborhoods, Voluntary Associations, and Consumer Protection relating solely to the East Harlem Pilot Block Project.

Accordingly, the Secretary delegates authority as follows:

Section A *Authority Delegated.* The Counselor to the Secretary, Joseph Burstein, shall exercise the power and authority of the Secretary with respect to all actions to be taken in completing the East Harlem Pilot Block Project and in operating that project designated as FHA Project Number 012–44096/97/98/99 including, but not limited to, the authority to act as contracting officer, to enter into and administer procurement contracts and make related determinations, except determinations under Section 302(c) (11), (12), and (13) of the Federal Property and Administrative Services Act (41 U.S.C. 251(c) (11), (12), and (13)), with respect to all contracts for goods and services for repair, construction, improvement, removal, demolition or alteration, maintenance, and operation of the East Harlem Pilot Block Project; broker management services in connection with that project; and contracts with public or private organizations to provide budget, debt management and related counseling services.

Section B *Additional Authority Excepted.* There is further excepted from the authority delegated under Section A the power to:

1. Establish the rate of interest on Federal loans;

2. Issue notes or other obligations for purchase by the Secretary of the Treasury;

3. Exercise the powers under section 402(a) of the Housing Act of 1950 (12 U.S.C. 1749a(a));

4. Sue and be sued, and

5. Issue rules and regulations.

Section C *Authority to Redelegate.* The Counselor to the Secretary is authorized to redelegate to employees of the Department any of the authority delegated under Section A.

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

Issued at Washington, D.C., August 12, 1977.

PATRICIA ROBERTS HARRIS,
Secretary of Housing and
Urban Development.

[FR Doc.77-24289 Filed 8-22-77;8:45 am]

[Docket No. N-77-794]

TASK FORCE ON HOUSING COSTS

Establishment

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Establishment of a Task Force on Housing Costs.

SUMMARY: The Task Force on Housing Costs shall review the factors affecting the cost of housing construction; consider actions the Federal Government, especially HUD, might take to reduce such costs; and make recommendations to the Secretary concerning such actions. The time, place and agenda for the first Task Force meeting shall be published subsequently in the FEDERAL REGISTER at least 15 days prior to the meeting.

DATES: The charter of the Task Force on Housing Costs shall become effective on the date the Secretary of Housing and Urban Development files it with the Senate Committee on Banking, Housing and Urban Affairs, and the House Committee on Banking, Finance and Urban Affairs, which are the standing committees of the Congress having legislative jurisdiction over the Department of Housing and Urban Development. The charter will be filed also with the Office of Management and Budget and with the Library of Congress.

The Task Force will continue in existence under its charter for nine months from the date the charter is filed unless the charter is amended or revoked.

ADDRESS: Committee Management Officer Douglas C. Brooks, Room 3260, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT:

Douglas C. Brooks, 202-755-5208, or Donald K. McLain, 202-755-5333.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463) it is hereby determined that the establishment of the Task Force on Housing Costs is necessary, appropriate, and in the public interest.

The Task Force shall review and comment on written materials provided by HUD staff concerning factors that affect the cost of new housing and concerning actions that might reduce such costs. The Task Force may raise and consider issues and ideas not included in these materials. The Task Force may hear testimony from members of the general public. The Task Force shall discuss the merits of all suggested actions, and shall make recommendations to the Secretary of HUD concerning actions the Federal Government, particularly HUD, might take to reduce the cost of new housing to the consumer.

The membership of the Task Force on Housing Costs is planned to consist of no more than forty (40) people. The members shall include one or more senior Departmental officials designated by the Secretary of HUD, and will include people not employed by the Federal Government who are expected to serve without compensation. The Task Force will have a balanced membership, including minorities and women, representing diverse groups and points of view, including consumer interests, organized labor, environmental interests, mortgage and construction lenders, real estate brokers and managers, developers and builders, manufacturers of housing materials and components, elected officials, architects, planners, urban and rural housing officials, the academic community, the legal profession, and HUD employees. Broad geographical representation will be achieved.

The meeting(s) of the Task Force will be open to the public.

Issued at Washington, D.C., August 16, 1977.

JAY JANIS,
Under Secretary, Department of Housing and Urban Development.

[FR Doc.77-24290 Filed 8-22-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Colorado 064425-RW]

COLORADO

Amendment To Pipeline Right-of-Way Western Slope Gas Company

AUGUST 16, 1977.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 U.S.C. 185), Western Slope Gas Co., P.O. Box 840, Denver, Colo. 80201, has applied for an amendment to right-of-way C-064425-RW within the existing boundaries of the original grant on Public Land located in NE¼SW¼ and NW¼SE¼ of Section 3, T. 8 S., R. 104 W., 6th P.M. in Garfield County, Colo.

The facility will enable applicant to enlarge an already existing site for construction of compressor building and related piping, office building, and a meter building, an automatic block and blow down system, and drain tank, and to enlarge an existing auxiliary building at the Baxter Pass Compressor Station. The facility will enable applicant to safely and efficiently operate the Baxter Pass Compressor Station and Carbonera Field gathering system in order to convey natural gas to the Grand Junction, Colo., market area. The proposed compressor building and related piping are necessary to eliminate existing deficiency in capacity caused by occasional sudden reduction in system loads which cause the transmission system to increase discharge pressure beyond the capability of the existing compressor units.

The purposes of this notice are: to inform the public that the Bureau of Land Management will be proceeding with the preparation of environmental and other analyses necessary for determining whether the application should be approved and, if so, under what terms and conditions; to allow interested parties to comment on the application, and to allow any persons asserting a claim to the lands or having bona fide objections to the proposed natural gas gathering pipeline right-of-way to file their objections in this office. Any person asserting a claim to the lands or having bona fide objections must include evidence that a copy thereof has been served on the applicant.

Any comment, claim, or objections must be filed with the Chief, Branch of Adjudication, Bureau of Land Management, Colorado State Office, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colo. 80202, as promptly as possible after publication of this notice.

THOMAS HARDIN,
Chief, Branch of Adjudication.

[FR Doc.77-24348 Filed 8-22-77;8:45 am]

[NM 31300]

NEW MEXICO

Application

AUGUST 12, 1977.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Gas Co. of New Mexico has applied for one 4-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 23 N., R. 6 W.,
Sec. 3, lot 1 and SE¼SE¼;
Sec. 6, lots 6 and 7;
Sec. 7, lot 1;
Sec. 10, NE¼NE¼;
Sec. 11, NE¼NE¼ and NW¼NW¼;
Sec. 12, NW¼NW¼;
Sec. 13, NE¼NW¼;
Sec. 17, SE¼NE¼;
Sec. 18, SE¼SW¼ and S½SE¼;
Sec. 21, SW¼NE¼ and SE¼NW¼.

This pipeline will convey natural gas across 2.73 miles of public land in Rio Arriba County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, N. Mex. 87107.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-24363 Filed 8-23-77;8:45 am]

[NM 31293]

NEW MEXICO

Application

AUGUST 11, 1977.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Ilano, Inc., has applied for one 4½-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 19 S., R 33 E.,
Sec. 7, SE¼NE¼.

This pipeline will convery natural gas across 0.11 of a mile of public land in Lea County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Man-

ager, Bureau of Land Management, P.O. Box 1397, Roswell, N. Mex. 88201.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-24364 Filed 8-22-77;8:45 am]

National Park Service

NATIONAL REGISTER OF HISTORIC PLACES

Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 12, 1977. Pursuant to § 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240. Written comments or a request for additional time to prepare comments should be submitted by September 2, 1977.

WILLIAM J. MURTAGH,
Keeper of the National Register.

ALASKA

Skagway-Yakutat Division

Yakutat, *Yakutat and Southern Railway Company, Engine No. 2.*

CONNECTICUT

Hartford County

Hartford, *South Green Historic District*, 19-60 Alden St., 8-50 Dean St., 1-214 Main St., 12-71 Morris St., 8 Stonington St., 2-139 Wethersfield Ave., 9-11, 38 Wyllys St.

IOWA

Appanoosa County

Centerville, *Vermilion Estate (Pinecrest)*, Valley Dr.

Black Hawk County

Cedar Falls, *Cedar Falls Ice House*, Franklin Ave. and 1st St.
Waterloo, *Snowden House*, 306 Washington St.

Bremer County

Waverly, *Wartburg Teachers' Seminary (Old Main)*, Wartburg College campus.

Linn County

Walker, *Burlington, Cedar Rapids, and Minnesota RR: Walker Station (Rock Island Depot)*, Between Rowley and Washington Sts.

Polk County

Des Moines, *Hoyt Sherman Place*, 1501 Woodland Ave.
Des Moines, *Municipal Building*, E. 1st And Locust Sts.

Van Buren County

Bonaparte, *Aunty Green Hotel*, 602 Washington St.
Keosauqua, *Van Buren County Courthouse*, 904 4th St. HABS.

MAINE

Cumberland County

Gorham, *Gorham Campus Historic District (University of Maine at Portland-Gorham)*, Bounded by College Ave., Campus and Loop Drs., and School St.

MASSACHUSETTS

Bristol County

Taunton, *Bristol County Courthouse Complex*, 9, 11, 15 Court St.

Middlesex County

Newton Centre, *Colby Hall*, 141 Herrick Rd.

Worcester County

Fitchburg, Fay House, The (The Fay Club), 658 Main St.
Fitchburg, *Monument Park Historic District*, Surrounding properties along Grove, Wallace, Hartwell, Fox, Main, and Elms Sts.

MICHIGAN

Antrim County

Bellaire, *Richardt, Henry, House*, 402 N. Bridge St.

Chippewa County

Sault Ste. Marie, *Federal Building*, 209 E. Portage Ave.

MISSISSIPPI

Lauderdale County

Lizelia vicinity, *Coosha (Frederickson)* Lost Horse Creek area.

MISSOURI

Jackson County

Kansas City, *Cave Spring*, 7100 Blue Ridge Extension at Raytown.

Nodaway County

Graham, *Simpson's College Museum*, 515 East Jackson St.

Shelby County

Bethel vicinity, *Hebron*, 0.8 mi. NW of Bethel.

NEW JERSEY

Burlington County

Mansfield Township, *Barzillai Newbold House (Bowne House)*, Columbus-Georgetown Rd.
Riverside, *Philadelphia Watch Case Company Building (H. K. Porter Company Building)*, Pavilion and Lafayette Aves.

Mercer County

Trenton, *Mill Hill Historic District*, Livingston, Market, Clay, Mercer, Jackson, E. Front, S. Broad Sts., and Douglas Pl. HABS.

NEW YORK

Allegany County

Angelica, *Angelica Park Circle Historic District*, Properties surrounding Park Cir. on Main and White Sts., and along Allegany County Fairgrounds.

OKLAHOMA

Kay County

Ponca City, *Pioneer Woman Statue*, Monument Cir.

Oklahoma County

Oklahoma City, *Putnam Heights Historic Preservation District*, Roughly area between Classen and Georgia Blvds., and between 35th and 38th Sts. (both sides).
Oklahoma City, *St. Joseph's Cathedral (St. Joseph's Old Cathedral)*, 225 NW. 4th St.

Payne County

Ingalls vicinity, *Irving's Castle (Washington Irving Point of Interest)*, 2.5 mi. SW of Ingalls.

PENNSYLVANIA

Delaware County

Concordville, *Handwrought (Marshall, Thomas, House)*, Concord and Station Rds.

Philadelphia County

Philadelphia, *Northern Saving Fund and Safe Deposit Company*, 600 Spring Garden St. HABS.

Westmoreland County

Latrobe, *St. Vincent Archabbey (Monastery) Gristmill (Gristmill, The)*, St. Vincent Archabbey and College.

SOUTH DAKOTA

Douglas County

Armour, *Armour Historic District*, Main St. between 3rd and 7th Sts.

WISCONSIN

Walworth County

East Troy, *Buena Vista House (Cobblestone Inn)*, 2090 Church St.

[FR Doc.77-23903 Filed 8-22-77;8:45 am]

Bureau of Reclamation

[INT PES 77-30]

ESQUATZEL COULEE WASTEWAY, COLUMBIA BASIN PROJECT, WASHINGTON

Availability of Final Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a final environmental statement for the Esquatzel Coulee Wasteway, Columbia Basin Project, Washington.

The environmental statement concerns the modification of a 5.6-mile reach of existing channel in the Esquatzel Coulee and improvement of unstable stream banks to provide for safe passage of natural runoff and irrigation return flows through the Coulee. Fish and Wildlife management units totaling about 4,000 acres will also be established as a part of this program.

Copies are available for inspection at the following locations:

Office of Assistant to the Commissioner—Ecology, Room 7620, Bureau of Reclamation, Department of the Interior, Washington, D.C. 20240, telephone 202-343-4991.
Office of Regional Director, Bureau of Reclamation, P.O. Box 043, 550 W. Fort Street, Boise, Idaho 83724, telephone 208-384-1208.
Columbia Basin Project Office, Bureau of Reclamation, P.O. Box 815, Division Ave. and C St. NW., Ephrata, Washington 98823, telephone 509-754-4611.

Single copies of the final statement may be obtained on request to the Commissioner of Reclamation or the Regional Director. Copies will also be available for inspection in libraries in the Columbia Basin Project area. Please refer to the statement number above.

Dated: August 18, 1977.

LARRY E. MEIEROTTO,
Deputy Assistant Secretary of the Interior.

[FR Doc.77-24315 Filed 8-22-77;8:45 am]

[INT DES 77-27]

PECOS RIVER BASIN WATER SALVAGE PROJECT, NEW MEXICO-TEXAS

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental impact statement for the Pecos River Basin Water Salvage Project.

The environmental statement concerns selective clearing of saltcedar from the flood plain of the Pecos River from Santa Rosa, New Mexico, to Girvin, Texas. To date, 53,950 acres have been selectively cleared (the net area cleared and maintained is 47,200 acres). Additional clearing is planned on 24,000 acres—14,000 acres scheduled for clearing and 10,000 (within McMillan Delta) deferred until provision has been made for replacement of terminal storage. Of the 14,000 acres, 10,500 acres will be the net acreage cleared.

Written comments may be submitted to the Regional Director (address below) on or before October 7, 1977.

Office of Assistant to the Commissioner—Ecology, Room 7622, Bureau of Reclamation, Department of the Interior, Washington, D.C. 20240, telephone 202-343-4991.

Division of Engineering Support, Technical Services Branch, E&R Center, Denver Federal Center, Denver, Colorado 80225, telephone 303-234-3022.

Office of the Regional Director, Bureau of Reclamation, Herring Plaza, Box H-4377, Amarillo, Texas 79101, telephone 806-376-2404.

Albuquerque Planning Office, Bureau of Reclamation, P.O. Box 252, Albuquerque, New Mexico 87103, telephone 505-766-2272.

Pecos River Projects Office, Bureau of Reclamation, P.O. Box 1356, Carlsbad, New Mexico 88220, telephone 505-887-1188.

Single copies of the draft statement may be obtained on request to the Commissioner of Reclamation, Regional Director, Albuquerque Planning Officer, or Project Manager. Please refer to the statement number above.

Dated: August 18, 1977.

LARRY E. MEIEROTTO,
Deputy Assistant Secretary of the Interior.

[FR Doc.77-24316 Filed 8-22-77;8:45 am]

DEPARTMENT OF JUSTICE

Antitrust Division

UNITED STATES v. STUDIENGESELLSCHAFT KOHLE, m.b.H., HERCULES INCORPORATED, STAUFFER CHEMICAL COMPANY, AND TEXAS ALKYLS, INC.

Proposed Consent Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (b) through (h), that a Proposed Consent Judgment and Competitive Impact Statement as set out below have been filed with the United States District Court for the District of Columbia in Civil Action No. 1255-70, *United States* v. *Studiengesellschaft Kohle, m.b.H., Hercules Incorporated, Stauffer Chemical Company, and Texas Alkyls, Inc.* Defendants Hercules Incorporated, Stauffer Chemical Company, and Texas Alkyls, Inc., have consented to the proposed judgment. Defendant Studiengesellschaft Kohle, m.b.H. is not a party to the proposed judgment, and will remain an active defendant in the lawsuit. The complaint in this action alleged that defendants violated 15 U.S.C. 1 and 2 by using patents on a process for manufacturing aluminum trialkyls to restrict the sale of the unpatented aluminum trialkyls made thereby. The proposed judgment enjoins defendants from using a patent on a process or machine to restrict the sale of unpatented products made by such process or machine, enjoins defendants from opposing a modification in a judgment which they obtained in 1963 against Ethyl Corporation and requires the defendants to license certain patents and technology relating to aluminum alkyls. The Competitive Impact Statement describes the anticipated effects of the proposed judgment on competition, and evaluates the alternative relief proposals actually considered by the United States. Public comment is invited on or before October 17, 1977. Such comments and responses thereto will be published in the FEDERAL REGISTER and filed with the Court. Comments should be directed to Richard H. Stern, Chief, Patent Section, Antitrust Division, SAFE 704, Department of Justice, Washington, D.C. 20530.

Dated: August 15, 1977.

BERNARD M. HOLLANDER,
Chief, Judgments and Judgment Enforcement Section.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff v. *Studiengesellschaft Kohle, m.b.H., Hercules Incorporated, Stauffer Chemical Company, and Texas Alkyls, Inc.*, Defendants.

Civil Action No. 1255-70.

Filed: August 15, 1977.

STIPULATION

It is stipulated by and between the plaintiff, United States of America, and three of the defendants herein, namely Hercules Incorporated, Stauffer Chemical Company, and Texas Alkyls, Inc., by their respective attorneys, that:

1. A Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party to this stipulation or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants who are parties to this stipulation and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this stipulation, this stipulation shall be of no effect whatever and the making of this stipulation shall be without prejudice to plaintiff and to the defendants who are parties to this stipulation in this or any other proceeding.

Dated: August 15, 1977.

For the Plaintiff: Hugh P. Morrison, Jr., *Deputy Assistant Attorney General;* William E. Swope, John L. Wilson, Richard H. Stern, Kurt Shaffert, Hays Gorey, Jr., Roger B. Andewelt, *Attorneys, Department of Justice.*

For the Defendants: Wolf, Block, Schorr & Solis-Cohen, Philadelphia, Pa., by Bernard M. Borish, *Attorneys for Hercules Incorporated;* Covington & Burling, Washington, D.C., by John H. Schafer, *Attorneys for Stauffer Chemical Company and Texas Alkyls, Inc.*

Stipulation approved for filing.

Dated: August 15, 1977.

AUBREY E. ROBINSON, Jr.,
United States District Judge.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff, v. *Studiengesellschaft Kohle, m.b.H., Hercules Incorporated, Stauffer Chemical Company, and Texas Alkyls, Inc.*, Defendants.

Civil Action No. 1255-70.

Filed: August 15, 1977.

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on April 24, 1970; defendants Hercules Incorporated, Stauffer Chemical Company, and Texas Alkyls, Inc., having appeared by their attorneys and having each filed its answer to the complaint; and the plaintiff and the three aforesaid defendants, by their respective attorneys, having consented to the entry of this Final Judgment;

Now, therefore, before commencement of trial and the taking of any testimony thereat, without this Final Judgment constituting any evidence against or admission by any party with respect to any issue of fact or law herein, and upon consent of the plaintiff and the three aforesaid defendants hereto, it is hereby

Ordered, adjudged, and decreed, as follows:

I

This Court has jurisdiction of the subject matter hereof and the parties hereto. The complaint states a claim upon which relief may be granted against the defendants under Sections 1 and 2 of the Sherman Act (15 U.S.C. § 1, 2, as amended).

II

As used in this Final Judgment:

(A) "Defendants" means Hercules Incorporated, Stauffer Chemical Company, and Texas Alkyls, Inc., all Delaware corporations.

(B) "Person" means any individual, corporation, partnership, firm corporation, association, or other business or legal entity.

(C) "Aluminum trialkyl" means any compound consisting of an aluminum atom linked with three carbon atoms, each one of which is a member of any alkyl radical consisting of one, two, three, four, or n carbon atoms and three, five, seven, nine, or $2n+1$ hydrogen atoms, respectively.

(D) "Aluminum alkyl" means any compound consisting of an aluminum atom linked with at least one carbon atom that is a member of an alkyl radical consisting of one, two, three, four, or n carbon atoms and three, five, seven, nine, or $2n+1$ hydrogen atoms respectively. The term includes, *inter alia*, aluminum trialkyls, alkyl aluminum dihydrides, dialkyl aluminum hydrides, alkyl aluminum dihalides, and dialkyl aluminum halides.

(E) "Delaware action" means *Ethyl Corporation* v. *Hercules Powder Co., et al.*, Civil Action No. 2142, United States District Court for the District of Delaware.

(F) "Patent" means United States patent. "Patented" means covered by the claims of an unexpired United States patent. "Unpatented" means not covered by the claims of an unexpired United States patent. "Patentee" means any person to whom a United States patent is issued and any successor in title to such person in respect of such patent.

(G) "Date of this Final Judgment" means that date on which this judgment becomes final.

(H) "Sole and exclusive license" means the transfer from the patentee to another person of the entire right under a process or machine patent for the remaining term thereof.

III

The provisions of this Final Judgment shall apply to each defendant that is named in Article II(A) hereof, to each of its officers, directors, agents, employees, subsidiaries, successors, and assigns; and to all other persons in active concert or participation with any of them that have received actual notice of this Final Judgment by personal service or otherwise.

IV

(A) (1) Subject to subparagraph (2), defendants are enjoined from preventing, restraining, or interfering with, and from attempting to prevent, restrain, or interfere with, the sale in the United States, manufacture in the United States for sale, use in the United States, or export from the United States of unpatented aluminum alkyls by any person—whether by asserting the provisons of any contract, agreement, or understanding to which the late former defendant Karl Ziegler or his successor, Studiengesellschaft Kohle, m.b.H., was a party; by prospectively asserting or enforcing any decision or judgment rendered in the Delaware action; by asserting or enforcing the agreement with Ethyl Corporation dated July 12, 1962; or otherwise.

(2) Article IV(A)(1) hereof shall not apply with respect to unpatented aluminum alkyls that are made or are to be made by any defendant outside the United States and that are not imported into the United States, nor shall it prevent a defendant from enforcing a process or machine patent claim against any person not licensed under such claim.

(B) (1) Subject to subparagraph (2), defendants are enjoined from entering into, maintaining in effect, or enforcing any agreement or understanding (in the form of a quantity limitation, field limitation, or otherwise) by the terms of which any person authorized to use a process or machine claimed in a patent is, or is to be:

(a) Prohibited or restrained from selling;

(b) Authorized to make, but not sell;

(c) Authorized to make, or sell, for some uses but not all uses—

any product made by the process or machine.

(2) Article IV(B)(1) hereof shall not prevent defendants from stating that no license is granted by implication on claims of patents not licensed expressly, or from enforcing any such patent.

(C) (1) Subject to subparagraph (2), defendants are enjoined from entering into, maintaining in effect, or enforcing any agreement or understanding by which any party to the agreement or understanding acquires an exclusive right to sell an unpatented product produced under a license to use a patented process or machine.

(2) Article IV(C)(1) hereof shall not prevent a defendant from entering into, maintaining in effect, or enforcing a sole and exclusive license.

V

If a motion is filed or proceedings are commenced by—(i) the United States, or (ii) any party to the Delaware action, or (iii) both—to vacate or modify the judgment entered in the Delaware action, or to change in any way the prospective effect of the injunction entered in the Delaware action:

(a) Defendants will not oppose the application of the United States to intervene in the Delaware action; and

(b) Defendants will not oppose (and they authorize the United States to represent to the United States District Court for the District of Delaware that defendants have advised the United States that they will not oppose) a modification of said judgment by which the sale of unpatented aluminum trialkyls is no longer enjoined.

Nothing contained in this Article V shall prevent defendants from opposing any further modification of that judgment for which the United States or any party moves.

VI

(A) For each patent or patent application that on the date of this Final Judgment a defendant owns or has any right to license, such defendant shall grant each applicant therefor, for such term as applicant requests, a license, on reasonable and nondiscriminatory rates and conditions, to practice in an unrestricted manner and all patented inventions relating to the manufacture or aluminum alkyls.

(B) Manufacture of any aluminum trialkyl under any license under this Article VI shall initially be royalty-free. At any time three years after the date of this Final Judgment, however, a defendant may, upon at least 30-days notice to plaintiff, file a motion in this Court to modify this Article VI to establish that the degree of competition in the sale of unpatented aluminum trialkyls (or such of them as the motion concerns) is such as to justify the prospective modification of the royalty-free licensing of such manufacture to licensing at a reasonable and nondiscriminatory royalty rate.

VII

(A) Subject to Article VII(B) hereof, each defendant shall grant a license, on reasonable and nondiscriminatory rates and conditions, to each applicant therefor, for such term as applicant requests, pursuant to which it will disclose and permit the practice in the United States in an unrestricted manner of any and all technology (whether in the form of know-how, trade secret, sales and technical literature, or otherwise), that—

(1) Relates to the manufacture, shipment, or storage of aluminum trialkyls; and

(2) Was practiced commercially at any time between April 24, 1970, and the date of this Final Judgment.

(B) No license under this Aritcile VII need be granted to any applicant who, on the date of this Final Judgment, is in the business of manufacturing and selling any aluminum trialkyl in the United States. No license under this Article VII relating to the manufacture of aluminum trialkyls need be granted to any applicant who, on the date of this Final Judgment, is engaged in the manufacture of any aluminum trialkyl. Any license under this Article VII may forbid the unauthorized disclosure to third persons of any trade secret so long as it has not fallen into the public domain.

VIII

(A) For the purpose of securing compliance or determining whether there has been compliance with this Final Judgment, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, each defendant shall, subject to any legally recognized privilege:

(1) Permit any duly authorized representative of the Department of Justice, on reasonable notice, to inspect and copy, during regular office hours, all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession, custody, or control of that defendant, relating to any of the subject matter contained in this Final Judgment (including all licenses under patent claims that cover any process, machine, or any aluminum alkyl, and licenses relating to aluminum trialkyl technology, whether or not containing provisions prohibited by this Final Judgment); and to interview officers, directors, agents, partners, or employees of such defendant, who may have counsel present, regarding any such matter; and

(2) Submit such written reports with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

(B) No information obtained pursuant to this Article VIII shall be disclosed by any representative of the Department of Justice to any person, other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings in which the United States is a party, for the purpose of securing compliance or determining whether there has been compliance with this Final Judgment, for law enforcement purposes, or as otherwise required by law.

(C) Before any disclosure is made (other than in a Grand Jury proceeding) under Article VIII(B) of any information or document that (i) is furnished by a defendant under Article VIII(A), (ii) is or contains a trade secret or other confidential research, development, or commercial information, as those terms are used in F.R.Civ.P. 26(c)(7), and (iii) is so designated by the defendant by prominently marking it or the document containing it with the legend "CONFIDENTIAL, NO DISCLOSURE WITHOUT 10 DAYS' NOTICE TO (name of defendant furnishing document)," such defendant shall be given at least ten (10) days' prior notice thereof.

(D) Copies of records and documents obtained pursuant to this Article VIII shall be returned to the defendant from whom obtained, upon that defendant's request, when their retention by the Department of Justice is no longer needed.

IX

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as many be necessary or appropriate in relation to the construction or modification of any of the provisions thereof, for the purpose of enforcement or compliance therewith, and for the punishment of violations thereof.

X

This Final Judgment shall terminate sixteen (16) years after the date of this Final Judgment. No license or rights granted under this Final Judgment shall terminate, however, solely because of the expiration of the 16-year term of this Final Judgment.

XI

Entry of this Final Judgment is in the public interest. There is no just reason to delay entry of this Final Judgment against the three defendants named herein, and the entry of this Final Judgment now is expressly directed.

Dated:

United States District Judge.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff, v. *Studiengesellschaft Kohle, m.b.H., Hercules Incorporated, Stauffer Chemical Company, and Texas Alkyls, Inc.*, Defendants.

Civil Action No. 1255-70.

Filed: August 15, 1977.

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (16 U.S.C. § 16 (b)), the United States of America hereby submits this Competitive Impact Statement relating to the proposed consent judgment submitted for entry in this civil antitrust action.

I. NATURE AND PURPOSE OF THE PROCEEDING

A. THE COMPLAINT

The government filed this civil action on April 24, 1970, against Dr. Karl Ziegler ("Ziegler") of Mülheim, Federal Republic of Germany, and against Hercules Incorporated ("Hercules"), Stauffer Chemical Company ("Stauffer"), and Texas Alkyls, Inc. ("Texas Alkyls"), all Delaware corporations. The complaint alleged that the defendants were violating §§ 1 and 2 of the Sherman Act by combining and conspiring to restrain interstate trade and commerce in aluminum trialkyls ("ATAs") and to monopolize the sale of ATAs. Upon the subsequent death of defendant Ziegler, Studiengesellschaft Kohle, m.b.H. ("SGK"), a German corporation, was substituted for him as a party defendant.

The prayer for relief sought:

(1) An adjudication and decree that the defendants had combined and conspired to restrain trade and commerce in ATAs and to monopolize the sale of ATAs, in violation of §§ 1 and 2 of the Sherman Act;

(2) A permanent injunction against defendants' attempting in any way to interfere with the sale of ATAs by others;

(3) a permanent injunction against defendants' attempting in any way to interfere with the use or disposition by any person of the unpatented product of a patented process—whether by color of exclusive selling license, field restriction or condition in a license, quantity limitation in a license, or otherwise;

(4) A permanent injunction against defendants' entering into or maintaining in effect any agreement pursuant to which any party thereto, or third-party beneficiary thereof, is promised or otherwise given freedom from competition in the sale of the unpatented product of a patented process, on the part of other persons licensed or to be licensed to practice such process;

(5) Compulsory licensing, on reasonable and nondiscriminatory terms, of any and all inventions relating to the manufacture, use, or sale of ATAs, claimed in any United States patent that any defendant owns or has the right to license on the date of the final judgment;

(6) Compulsory licensing, on reasonable and nondiscriminatory terms, of any and all technology relating to the manufacture, use, or sale of ATAs which, on the date of entry of a final judgment in this action, the defendant owns or has the right to license; and

(7) Such other and further relief as the nature of the case requires and the court may deem just and proper.

B. THE PRODUCTS INVOLVED

ATAs are organ metallic chemical compounds that have two principal commercial uses. The major use is as reactants with ethylene or other olefins (e.g., isobutylene) in the manufacture of straight-chain alkyl alcohols and alphaolefins that, in turn, are used in the manufacture of biodegradable detergents. The other principal use is as catalyst ingredients in the manufacture of such plastic materials as polyethylene and polypropylene, and such specialty synthetic rubber materials as polybutadiene and polyisoprene.

The members of the ATA family that are most widely used commercially are triethyl aluminum and trissobutyl aluminum. These products have long been known to chemists, and are not covered by patents. These compounds are highly pyrophoric (i.e., they spontaneously burst into flame uopn contact with air or other sources of oxygen). Special precautions must therefore be applied in their manufacture, shipment, and storage.

All commercial manufacture of ATAs in the United States is by processes that are covered by one or more patents issued to Ziegler. Moreover, many of the processes in which ATAs are consumed, such as certain processes for the manufacture of alcohols and plastics, are also covered by Ziegler patents.

C. THE PARTIES

Ziegler was, until his death in 1973, the director of a German research institute[1] in which the research leading to his patents was conducted. Under the terms of Ziegler's directorship, all patents resulting from the work performed under his direction at the institute were issued to him, and he was entitled to one-third of all royalty income.

Since Ziegler's death, SGK, as trustee, has been distributing one-third of the royalties to Ziegler's widow and the remainder to his co-inventors and the institute in accordance with Ziegler's contractual and other legal obligations.

Ziegler granted licenses under his patents on the ATA-manufacturing processes to Hercules in 1954, and to eleven other American companies in the period between 1954 and 1962. Hercules had not engaged in the commercial manufacture of organometallic materials before it obtained this license. In 1959, Hercules formed a joint venture with Stauffer, which had expertise in organometallic chemical manufacture and in the marketing of catalysts. The joint venture, Texas Alkyls, built and operates a facility that manufactures ATAs and other aluminum alkyl compounds. Stauffer acts as exclusive sales agent for Texas Alkyls.

II. THE PRACTICES AND EVENTS GIVING RISE TO THE VIOLATIONS OF THE SHERMAN ACT ALLEGED IN THE COMPLAINT

Ziegler's license to Hercules stated that Hercules would receive a non-exclusive right to use the processes to manufacture ATAs and the exclusive right to sell in the United States the ATAs thus made. The other eleven Ziegler licensees were restricted, in some instances expressly and in other instances by implication, to using the licensed processes in order to manufacture ATAs only for certain specified end-uses in their own plants, but not for sale.

Several of the Ziegler process licensees (other than Hercules) made preparations for, or gave serious consideration to, selling ATAs that they would manufacture by a Ziegler process. Two of these licensees, Ethyl Corporation ("Ethyl") and Continental Oil Co. ("Conoco") have far larger, and therefore more efficient, ATA production facilities than those of defendant Texas Alkyls.

Before Ethyl initiated its ATA sales program, it sought Ziegler and Hercules' express permission to sell ATAs. Each declined to give such permission. When Ethyl discovered, in 1959, that its potential ATA customers were receiving warnings or threats from defendants of possible patent litigation, Ethyl sued defendants Hercules, Stauffer, and Texas Alkyls in federal court in Delaware for a declaratory judgment that Ethyl's sale of the unpatented ATAs (that it made by a patented Ziegler process) infringed no patent right enforceable by Hercules.[2] In 1963, the Delaware court found for defendants Hercules, Stauffer, and Texas Alkyls, and enjoined Ethyl from selling ATAs in the United States that were made by the patented Ziegler processes without Texas Alkyls' permission. 232 F. Supp. 453. Since that time, Ethyl has been selling ATAs with Texas Alkyls' permission, paying a "royalty" to Texas Alkyls on all such sales.

From 1957 onward, Conoco repeatedly sought to establish or obtain the right to sell in the United States the unpatented ATAs that it manufactured by the patented Ziegler processes. The consistent response from representatives of the defendants was that they had the exclusive right to make such sales and that Conoco was not permitted to do so.

Moreover, defendants represented to Conoco and other Ziegler licensees that their exclusive sales right extended to all aluminum alkyls made by the Ziegler process, not just to ATAs. "Aluminum alkyls" describes a category of chemical compounds that includes, in addition to the ATAs, such groups of commercial chemical compounds as the alkyl aluminum halides and the alkyl aluminum hydrides. As a result, Conoco has never sold in the United States any of the aluminum alkyls that it makes by a Ziegler process.

None of the other Ziegler licensees have sold any aluminum alkyls in the United States, leaving the entire field to defendant Texas Alkyls and to Ethyl.

In defending the present lawsuit, the defendants have asserted that Ziegler's process patents gave him the right to specify the use that each licensee could make of the ATAs manufactured by his patented processes and to specify whether or not the licensee could sell them, even though the ATAs are unpatented products. Defendants moved for summary judgment dismissing this action on the ground that such exercise of patent rights is exempt from the Sherman Act. The Court denied defendants' summary judgment motion, holding (1) that the Ziegler process patents confer only the right to exclude others from the use of the processes and not the right to exclude them from the sale of the unpatented ATAs made by those processes, and (2) that defendants' actions must stand scrutiny, in a full trial on the merits, under the Sherman Act. 426 F. Supp. 143 (1976).

III. EXPLANATION OF THE PROPOSED JUDGMENT AND ITS ANTICIPATED EFFECT ON COMPETITION

The United States and defendants Hercules, Stauffer, and Texas Alkyls have stipulated that the proposed consent judgment, in the form negotiated by the parties, may

[1] The Max Planck Institut für Kohlenforschung (Max Planck Institute for Coal Research) is jointly sopnsored by the German coal mining industry, the German federal government and German state governments. This is one of many Max Planck Institutes engaged in research in different fields of science and technology under joint industry and government sponsorship.

[2] After this declaratory judgment suit had been pending for some years, the opposing parties agreed that they would cross-move for summary judgment on the basis of a lengthy set of stipulated facts and that, if the Delaware court ruled against Ethyl, defendants would nevertheless permit Ethyl to sell ATAs in the United States in return for payment by Ethyl to Texas Alkyls of a lump sum of $250,000 plus running "royalties" for a 15-year period. These payments to Hercules were in addition to the royalties that Ethyl was required to pay Ziegler for use of his patented process.

be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The proposed judgment provides that there has been no admission by any party with respect to any issue of fact or law. Under the provision of Section 2(e) of the Antitrust Procedures and Penalties Act, the Court must determine that the proposed judgment is in the public interest before it can be entered.

The proposed judgment would, with certain exceptions, enjoin the consenting defendants from interfering with the sale, use, manufacture for sale, or export of unpatented aluminum alkyls; from entering into, maintaining, or enforcing any agreement or understanding that restrains any person in the sale of products made by a patented process or machine that the person is licensed to use; and from entering into, maintaining, or enforcing any agreement or understanding by which a party acquires an exclusive right to sell an unpatented product made by a patented process or on a patented machine. The proposed judgment also provides that the consenting defendants will not oppose certain proceedings to modify the injunction entered in Delaware against Ethyl's sale of ATAs. It would also compel these defendants to grant licenses under all patents and patent applications that they own (or have the right to license) that related to the manufacture of aluminum alkyls, such licenses to be royalty-free for at least three years after final entry of the judgment, and to grant reasonable-royalty licenses on certain technology (know-how) relating to the manufacture, shipment, and storage of ATAs. The major provisions are discussed below.

A. PARTIES COVERED BY THE PROPOSED JUDGMENT

Inasmuch as only three of the four defendants are to be parties to the proposed consent judgment, it will be necessary to hold a trial between the government and the remaining defendant, SGK, even if this proposed consent judgment is entered.

The government proposes to consent to the entry of this judgment despite the fact that trial of the case will not be avoided thereby because it provides for substantially all of the relief against and from these three defendants that could be expected to be obtained in a judgment for the United States entered after trial.

B. ARTICLE IV—INJUNCTIVE RELIEF

Article IV(A) would enjoin the defendants to be covered by the proposed judgment from preventing, restraining, or interfering with:

(i) The sale in the United States,

(ii) Manufacture in the United States for the purpose of selling,

(iii) Use in the United States, or

(iv) Export from the United States,

of unpatented aluminum alkyls by any person. It would also enjoin any attempt to do so. This injunction applies regardless of the manner in which the prescribed activity or result is achieved or attempted; moreover, the following acts are specifically prohibited: asserting any contract, agreement, or understanding to which Ziegler or SGK was a party, or prospectively asserting or enforcing the judgment entered in the Delaware action or the agreement made with Ethyl during that action.

The injunction of Article IV(A) would apply not only to ATAs, but also to any aluminum alkyl (i.e., to any chemical compound in which an aluminum atom is linked with at least one carbon atom that is a member of any alkyl radical), unless the compound is covered by a composition of matter claim of an unexpired United States patent. Unpatented alkyl aluminum dihydrides, dialkyl aluminum hydrides, alkyl aluminum dihalides, and dialkyl aluminum halides, inter alia, are included.

Article IV(A) would not apply to unpatented aluminum alkyls that are made outside the United States by any of the defendants covered by the judgment or by any of their subsidiaries; it would apply, however, to any such material that is imported into the United States. Moreover, it would apply to aluminum alkyls manufactured outside the United States by persons other than these defendants and their subsidiaries. This exception would permit these defendants and their subsidiaries to engage in manufacture of aluminum alkyls abroad without subjecting them to a charge of contempt, should they elect not to import such foreign-made material into the United States. The exception would not authorize these defendants to exercise any restraint over such material in the event that it is imported nor to restrain the foreign manufacture of aluminum alkyls by others.

Article IV(A) also would not prevent any of the defendants covered by the proposed judgment from enforcing any process or machine patent claim against anyone not licensed under such claim. Thus, these defendants would continue to have the right to sue anyone that they have not licensed for infringement of any such patents, subject to the standard defenses of patent invalidity and unenforceability. Under Article VI, discussed infra, these three defendants would be required, however, to grant licenses to any applicant under any patent relating to the manufacture of aluminum alkyls.

Article IV(B) would enjoin each of the defendants to be covered by the proposed judgment from entering into, maintaining, enforcing any agreement or understanding that (1) authorizes use of a patented process or machine, but (2) also prohibits or restrains the sale of any product made by the machine or process. It would also enjoin these defendants from entering into, maintaining, or enforcing any agreement or understanding that authorizes the use of a patented process or machine (1) to make any product, but not to sell it, or (2) to make any product and to sell the product for some, but not all, uses.

Article IV(B) would not prevent any consenting defendant, in the event that it licenses certain patent claims, but not others, from bringing infringement suits, subject to the standard defenses of invalidity and unenforceability, with respect to unlicensed patent claims. Article IV(B) would also not prevent any of these defendants from stating to a licenseee who has a license under some, but not all, of the claims of a patent, that the licensee has no implied license under the remaining claims. These three defendants would be compelled to grant licenses to all applicants on all of their patents relating to the manufacture of aluminum alkyls under Article VI, infra, however, and any limitation of the foregoing type would be subject to the general requirements of the antitrust laws.

Article IV(C) would enjoin these defendants from entering into, maintaining, or enforcing any agreement under which a license is granted to use a patented process or machine and a party acquires the exclusive right to sell an unpatented product produced under that license.

Article IV(C) would not apply to "sole and exclusive licenses," i.e., to licenses in which the licensee acquires the entire patent right under a process or machine patent for the remaining term thereof. Inasmuch as the effect of such licenses is merely to substitute the licensee for the licensor, they have no adverse effect on competition and need not be enjoined, unless they violate the antitrust laws for some other reason not involved in this case.

Articles IV(B) and IV(C) enjoin the practices described above with regard to all products, not merely those involved in the violation charged in the complaint, and apply regardless of whether a defendant is granting or receiving rights under the agreement or understanding.

C. ARTICLE V—VACATUR OF DELAWARE INJUNCTION

Article V of the proposed judgment would apply in the event that a motion or other proceeding is brought in federal court in Delaware to vacate or modify the judgment entered by that court in *Ethyl Corporation v. Hercules Powder Co., et al.*, Civil Action No. 2142 (the "Delaware action"). That judgment enjoins Ethyl from selling unpatented ATAs without Texas Alkyls' permission. If the government or any party to the Delaware action (presumably Ethyl) files a motion to vacate or modify that Delaware judgment, these three defendants would be required to refrain from opposing a modification of the judgment by which the sale of unpatented aluminum trialkyls would no longer be enjoined by that Delaware judgment. Article V would also authorize the government to represent to the Delaware court that these three defendants have no opposition to such modification. These defendants would also be required not to oppose any application that the government may make to intervene in the Delaware action. These three defendants would, however, retain the right to oppose any further modification of the Delaware judgment.

D. ARTICLE VI—COMPULSORY PATENT LICENSE

Article VI of the proposed judgment would require each consenting defendant to grant a license to everyone that requests one under each patent and patent application that the defendant owns (or under which it has the right to grant licenses) on the date that the judgment becomes final, permitting the licensee to practice in an unrestricted manner any and all patented inventions relating to the manufacture of aluminum alkyls. These licenses would have to be granted either for the life of the patents involved or for whatever shorter period the applicant for the license requests. No unreasonable or discriminatory condition can be imposed in the license.

At no time would a defendant be permitted to charge more than a reasonable and nondiscriminatory royalty rate for any such license. Manufacture of ATAs under any such license would initially be royalty-free, but at any time more than three years after the date of final entry of the proposed judgment a consenting defendant could bring a motion in this Court for an order to change such a royalty-free license to a license at reasonable and non-discriminatory royalty rates. The government could participate in any such motion, and oppose it, if appropriate. To assure that the government will have an opportunity to do so, it must be given at least 30 days' notice before the motion is to be adjudicated. According to the proposed judgment, the defendant bringing such a motion must establish that the degree of competition in the sale of unpatented ATAs is such as to justify permitting the defendant to charge a royalty for their manufacture.

This provision has reference to the principle that misused patents are unenforceable until all effects of such misuse have been purged. Thus this provision permits a defendant to establish before the Court, at any time after three years, that the effects of the violations charged in the complaint upon competition in the sale of ATAs have been

totally purged and that the patents are therefore prospectively enforceable. A defendant could limit his proof as to the state of competition to those particular ATAs the manufacture of which he seeks to make subject to royalty.

The favorable impact of this compulsory patent license provision upon competition in the sale of ATAs and other aluminum alkyls is expected to be quite limited, due to the fact that these defendants neither own nor have the right to grant licenses under the Ziegler patents. These defendants do have certain other patents in the field, however, and these will be subject to the compulsory license provisions.

E. ARTICLE VII—COMPULSORY KNOW-HOW LICENSE

Each defendant that is to be covered by the judgment would be required to license, to everyone requesting it, certain technology relating to the manufacture, shipment, or storage of ATAs. All such technology that was practiced commercially anywhere in the world by anyone between April 24, 1970 (the date on which this lawsuit was begun), and the date of final entry of the judgment would be included. The reason for imposing the initial time limit is to avoid requiring that the defendants resurrect information about technology that has not been in use for years. The second time limit is imposed to maintain the incentive of competitive advantage to encourage these defendants to develop new technology after the date of the judgment.

All technology, whether in the form of know-how, trade secrets, sales and technical literature, or otherwise, is included. The defendants would be required to disclose all such technology to each licensee and to permit its use without restrictions in the United States in return for payment of a reasonable and nondiscriminatory royalty. Each license would be granted for such duration as the applicant requests.

Each such license would be allowed to contain a provision forbidding the licensee from breaching the confidentiality of any trade secret that has been disclosed to it, but only so long as that secret has not fallen into the public domain, i.e., so long as it is not published nor a matter of general knowledge.

No defendant would be required to grant a know-how license under Article VII to any party that is already in the business of manufacturing and selling ATAs. The only company now in that position, aside from defendants, is Ethyl. Requiring defendants to license this established producer and vendor to use its know-how would not be likely to encourage greater competition. Moreover, any company that is already a manufacturer of ATAs on the date that this judgment becomes final, but that does not sell ATAs, would be entitled to a license only for technology relating to shipment and storage of ATAs, but not to technology relating to manufacture of ATAs. The only company now in that category is Conoco. Conoco's production facilities, like Ethyl's, are considerably larger than those of the defendants. No incentive to competition is therefore anticipated from any requirement to license this existing manufacturer under manufacturing know-how. On the other hand, a license to Conoco for know-how relating to shipment and storage of ATAs may encourage this producer's entry into the sales market.

F. OTHER PROVISIONS

The proposed judgment would remain in effect, in accordance with Article X, for 16 years after its final entry, but no licenses or other rights granted under it would be terminated by the expiration of the judgment. That is, if a compulsory patent license or technology license were granted by a defendant for a longer period, that license would remain in effect for the term specified in the license, even if that term exceeds the duration of the judgment. On the other hand, defendants would not be required to grant new licenses after the judgment has expired. Also, the injunctive provisions would terminate with the judgment. The 16-year effective life of the judgment corresponds approximately to the life of the last patent relating to ATA manufacture that is known to exist.

As is customary in consent judgments such as this, the Court would retain jurisdiction under Article IX and the government would have "visitation" rights under Article VIII during the entire period that the proposed judgment is in effect. All license agreements in the possession, custody or control of any consenting defendant under any patent claim on any process or machine, regardless of the purpose for which such process or machine is to be used, or under any patent claim on any aluminum alkyl would be subject to visitation, regardless of whether such licenses contain provisions prohibited by the proposed judgment.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

All potential private plaintiffs who have been damaged by the violations charged in the complaint will retain the same right to sue for monetary damages, and for any other legal or equitable relief, to which they would have been entitled, as if the proposed judgment were not entered. This judgment may not be used as prima facie evidence in private litigation, however, pursuant to Section 5(a) of the Clayton Act, as amended, 15 U.S.C. § 16(a).

The government's trial brief, as well as all deposition transcripts and most of the documentary evidence on which the government intends to rely at trial have been filed with the Court. Most of this material is publicly available, but some of it is subject to the terms of one or more protective orders entered by the Court, and is therefore maintained under seal. Access to the material maintained under seal can only be obtained by petitio- ng the Court.

Moreover, any manufacturer facing a claim from any defendant in this action either for patent infringement or for non-payment of royalties based on manufacture of ATAs by the process covered by Ziegler's patents, or the use or sale of ATAs made by that process, could assert as a defense to the claim the doctrine of patent misuse. The applicability of that defense would, of course, be determined by the court adjudicating the claim.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED JUDGMENT

The proposed Final Judgment is subject to a stipulation by and between the United States and the defendants, which provides that the United States may withdraw its consent to the proposed Final Judgment at any time before the Court finds that entry of the judgment is in the public interest. Under the proposed judgment, the Court would retain jurisdiction of this action in order, among other things, to permit any necessary or appropriate modification of the judgment or construction of its provisions, to enforce compliance with the judgment, and to punish any judgment violation.

As provided by the Antitrust Procedures and Penalties Act, any person wishing to do so may, during the sixty-day period following the publication of the proposed judgment, submit written comments on the judgment to the United States Department of Justice, Richard H. Stern, Chief, Patent Section, Antitrust Division (SAFE 704), Washington, D.C. 20530. The Department of Justice will file with the Court and publish in the FEDERAL REGISTER such comments and the Department's response to them, and will thereafter evaluate any and all such comments and determine whether there is any reason for withdrawing its consent to the proposed judgment.

VI. DESCRIPTION AND EVALUATION OF ALTERNATIVES TO THE PROPOSED JUDGMENT ACTUALLY CONSIDERED BY THE UNITED STATES

In addition to considering provisions that are either similar in scope to those in the proposed judgment, or that would have provided relief less advantageous to the public than those contained in the proposed judgment, the government gave actual consideration to, and then rejected, the following procedures and judgment provisions.

1. Even if this proposed consent decree is entered, a trial will have to be held against the remaining defendant, SGK. The United States considered the option of refusing to enter into a consent judgment with less than all defendants. This alternative was rejected on the following grounds:

(a) The proposed consent judgment includes all of the relief against these defendants that the government could expect to obtain after trial.

(b) Entry of the proposed consent judgment offers the possibility of realizing procompetitive effects without the delay inherent in obtaining a litigated judgment subject to appeals.

(c) On the facts of this case, it was not considered to be in the interest of justice to compel defendants to continue to defend this suit despite their willingness to consent to entry of this consent judgment.

2. With respect to Article IV(A), the government originally considered the adoption of the injunctive provisions of Article IV(A)(1) without the two limitations imposed thereon by Article IV(A)(2). The defendants to be covered by this proposed judgment asserted, however, that the injunction should not be drawn so as to prevent them from exercising their normal business judgment as to whether to import into the United States any aluminum alkyls that they or their subsidiaries may manufacture abroad. It was concluded that it would be, on balance, procompetitive to relieve these defendants of this concern and thereby not to discourage them or their subsidiaries from investing in foreign aluminum alkyl production facilities, so long as these defendants are not permitted to impose restrictions on the use or re-sale of aluminum alkyls that they manufacture abroad and that are then imported into this country. The first of the two limitations in Article IV(A)(2) is precisely of this scope.

It was also recognized that Article IV(A)(1) could be interpreted as totally preventing these defendants from enforcing any of their patents relating to aluminum alkyls. In view of the compulsory patent licensing provisions of Article VI, it was agreed that Article IV(A)(1) should be limited so as not to enjoin these defendants from enforcing their process and machine patents against persons that have not been licensed to use them. The second limitation in Article IV(A)(2) preserves these defendants' right to do so. The injunction of Article IV(A)(1) would, however, apply to prevent these defendants from restricting a licensee under a process or machine patent claim from selling an unpatented aluminum alkyl manufactured under the license, or from making any use of such material that the licensee sees fit to make. Because the two limitations contained in Article IV(A)(2) are not considered to limit the pro-competitive effect

of the injunction in Article IV(A)(1), they were accepted by the government.

3. The parties originally considered adopting Article IV(C)(1) without limitation. It was subsequently realized, however, that this would prevent these defendants from granting sole and exclusive patent licenses. In such licenses the licensee is invested with all of the rights theretofore held by the licensor, and the licensor retains none of the rights under the patent. Therefore, no anticompetitive effect is anticipated to result from continuing to allow these defendants to grant such licenses.

4. With respect to Article V, the government originally proposed that these defendants be required to petition to change the judgment entered in Delaware against Ethyl. These defendants were unwilling to initiate such proceedings, themselves, but expressed their readiness to undertake not to oppose proceedings in the Delaware court that others initiated, and to agree to let the government represent such non-opposition to the Delaware court, provided that their non-opposition was limited as indicated below. Inasmuch as the objective of obtaining the appropriate modification of the Delaware judgment is equally well served regardless of who initiates the proceedings, the government agreed to the modification whereby these defendants would not themselves be required to petition the Delaware court.

Also, the original proposal considered by the government provided for the total vacatur of the Delaware judgment. The two objectives that would be served thereby are: (1) removal of any lingering anticompetitive effect of the Delaware judgment upon the sale of ATAs, and (2) elimination of the possible continuing precedential status of the Delaware decision as a putative justification of restrictions on the sale or use of unpatented products made by patented processes or made on patented machines. These defendants objected to consenting to such a total vacatur, but were willing to agree not to oppose such modification of the Delaware judgment whereby Ethyl would no longer be enjoined from selling ATAs. This more limited undertaking by these defendants appears to satisfy the first of the above-listed objectives, because, in view of the other provisions of this proposed consent judgment, the injunction is the only feature of the Delaware judgment that can have such anticompetitive effect. With respect to the other objective, the government remains free to make whatever arguments it deems appropriate concerning further modification or total vacatur of the Delaware judgment—albeit without the assurance that defendants will not oppose. In the circumstances, the government is willing to assume the burden of convincing the Delaware court of the appropriateness of any further modifications that the government may urge in a further proceeding, if any.

5. With respect to Article VII, the government originally proposed a technology license that would apply to all aluminum alkyls, rather than only to ATAs. These defendants objected on the ground that such a license would include significant aluminum alkyl technology that was developed at their expense and that was not directly related to the violations charged in the complaint. The government therefore agreed to limit the scope of Article VII(A)(1) to ATAs.

In addition, the government agreed to the inclusion of the limitations of Article VII (B). As originally proposed by the government, Article VII would have required defendants to license all their manufacturing technology to all applicants, including Ethyl Corp. and Conoco, both of which are already highly efficient manufacturers of ATAs. The government believes, on the basis of the information presently available to it, that both Ethyl and Conoco will be capable of achieving very strong competitive positions in the sale of ATAs as a result of this proposed judgment, and that requiring Texas Alkyls to share its manufacturing know-how with these established producers would probably have no substantial pro-competitive effect. Therefore, the proposed consent judgment would require no licensing of manufacturing technology to Conoco and Ethyl, but would entitle Conoco to a license for shipment and storage technology, because this producer has not sold ATAs in the United States.

6. With respect to Article VIII, the government originally proposed establishing visitation rights to all "licensing arrangements of defendants," regardless of the subject matter licensed, because it was thought to be impractical to specify the subject matter covered in a way that would assure no loopholes or omissions. Subsequently, more detailed consideration of the scope of visitation rights required to assure that compliance with the judgment could be detected and enforced led the government to agree to the scope ultimately adopted in Article VIII. This provides access, inter alia, to all license agreements in the possession, custody, or control of any of these defendants that grant rights under any patent claim covering any process or machine, regardless of the purpose for which such process or machine is to be used, and under any patent that claims any aluminum alkyl, whether or not such license contains provisions prohibited by the proposed judgment.

VII. Determination Documents

There are no materials or documents which the government considered determinative in formulating the proposal for a consent judgment. Therefore, the United States is submitting none with this competitive impact statement, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b).

Respectfully submitted,

Kurt Shaffert,
Hays Gorey, Jr.,
Roger B. Andewelt,
Attorneys, United States Department of Justice, Antitrust Division, Patent Section, Washington, D.C. 20530, 202-376-8603.

Richard H. Stern,
Chief, Patent Section, Antitrust Division, United States Department of Justice.

August 15, 1977.

[FR Doc.77-24344 Filed 8-22-77;8:45 am]

Drug Enforcement Administration

ABBOTT LABORATORIES

Manufacture of Controlled Substances, Registration

By Notice dated June 28, 1977, and published in the Federal Register on July 5, 1977; (42 FR 34386) Abbott Laboratories, 14th & Sheridan Road, Attn: Customer Service D-345, North Chicago, Illinois 60064, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of pentobarbital, a basic class controlled substance listed in schedule II.

No comments or objections having been received, and pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and 21 CFR 1301.54(e), the Deputy Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of pentobarbital is granted.

Dated: August 16, 1977.

Donald E. Miller,
Acting Deputy Administrator, Drug Enforcement Administration.

[FR Doc.77-24314 Filed 8-22-77;8:45 am]

CYCLO CHEMICAL DIVISION, DIVISION OF ALAMEDA LABORATORIES, INC.

Manufacture of Controlled Substances, Application

Section 303a(1) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 823(a)(1)) states:

The Attorney General shall register an applicant to manufacture controlled substances in schedule I or II if he determines that such registration is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on the effective date of this part. In determining the public interest, the following factors shall be considered:

(1) Maintenance of effective controls against diversion of particular controlled substances and any controlled substance in schedule I or II compounded therefrom into other than legitimate medical, scientific, research, or industrial channels, by limiting the importation and bulk manufacture of such controlled substances to a number of establishments which can produce an adequate and uninterrupted supply of these substances under adequately competitive conditions for legitimate medical, scientific, research, and industrial purposes;

Pursuant to § 1301.43 of Title 21 of the Code of Federal Regulations (CFR), Notice is hereby given that on July 15, 1977, Cyclo Chemical Division, Division of Alameda Laboratories, Inc., 1922 East 64th Street, Los Angeles, California 90001, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of diphenoxylate, a basic class of controlled substance in schedule II.

Pursuant to Section 301 of the Controlled Substances Act (21 U.S.C. 821), and in accordance with 21 CFR 1301.43 (a), notice is hereby given that the above firm has made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic class of controlled substance indicated, and any other such person, and any existing registered bulk manufacturer of diphenoxylate, may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on the application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47. Such comments, objections and requests for a hearing may be filed no later than September 26, 1977.

Comments and objections may be addressed to the DEA Federal Register Representative, Office of Chief Counsel, Drug Enforcement Administration,

Room 1203, 1405 Eye Street, NW., Washington, D.C. 20537.

Dated: August 16, 1977.

DONALD E. MILLER,
Acting Deputy Administrator,
Drug Enforcement Administration.

[FR Doc.77-24312 Filed 8-22-77;8:45 am]

COLLABORATIVE RESEARCH, INC.

Manufacture of Controlled Substances, Application

Section 303(a)(1) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 823(a)(1)) states:

The Attorney General shall register an applicant to manufacture controlled substances in schedule I or II if he determines that such registration is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on the effective date of this part. In determining the public interest, the following factors shall be considered:

(1) Maintenance of effective controls against diversion of particular controlled substances and any controlled substance in schedule I or II compounded therefrom into other than legitimate medical, scientific, research, or industrial channels, by limiting the importation and bulk manufacture of such controlled substances to a number of establishments which can produce an adequate and uninterrupted supply of these substances under adequately competitive conditions for legitimate medical, scientific, research, and industrial purposes;

Pursuant to Section 1301.43 of Title 21 of the Code of Federal Regulations (CFR), notice is hereby given that on July 18, 1977, Collaborative Research, Inc., 1365 Main Street, Waltham, Maine 02154, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of lysergic acid diethylamide, a basic class of controlled substance in schedule I.

Pursuant to Section 301 of the Controlled Substances Act (21 U.S.C. 821), and in accordance with 21 CFR 1301.43 (a), notice is hereby given that the above firm has made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic class of controlled substance indicated, and any other such person, and any existing registered bulk manufacturer of lysergic acid diethylamide, may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on the application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47. Such comments, objections and requests for a hearing may be filed no later than date.

Comments and objections may be addressed to the DEA Federal Register Representative, Office of Chief Counsel, Drug Enforcement Administration, Room 1203, 1405 Eye Street, N.W., Washington, D.C. 20537.

Dated: August 16, 1977.

DONALD E. MILLER,
Acting Deputy Administrator,
Drug Enforcement Administration.

[FR Doc.77-24313 Filed 8-22-77;8:45 am]

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

ANASTASI BROTHERS CORP.

Debarment

Notice hereby is given that for violating Executive Order 11246, as amended, all existing United States Government contracts and subcontracts and Federally-assisted construction contracts and subcontracts with Anastasi Brothers Corporation shall not be extended or modified and the Corporation shall be ineligible for further contracts and subcontracts with the United States Government and federally assisted construction contracts until the Company has satisfied the Director, Office of Federal Contract Compliance Programs that it has established and will carry out personnel and employment policies in compliance with Executive Order 11246, as amended. The home office of Anastasi Brothers Corporation is located at 300 Mt. Airy Avenue, Philadelphia, Pennsylvania, 19119.

A copy of my Decision and copies of the Recommended Decision and Order of the Administrative Law Judge and the Final Decision of the Department of Health, Education, and Welfare Reviewing Authority (Civil Rights) follow.

Dated: August 16, 1977.

WELDON J. ROUGEAU,
Director, OFCCP.

DECISION BY THE DIRECTOR OF OFCCP

In the matter of Anastasi Brothers Corporation and U.S. Department of Health, Education and Welfare, Case No. CC-11.

The Department of Health, Education, and Welfare initiated an enforcement proceeding under Executive Order 11246 against Anastasi Brothers Corporation alleging violations of the "New Haven Plan" and Executive Order 11246 by the contractor during its performance on a Government funded project at St. Raphael Hospital which is located in the New Haven, Connecticut, area.

After a hearing, Administrative Law Judge Burton S. Sternburg concluded that Anastasi Brothers Corporation was subject to Executive Order 11246, as amended, and the New Haven Plan Bid Conditions and had violated its contractual obligations and the Executive Order by failing to make adequate good faith efforts to meet its goals for minority employment on the St. Raphael project. Accordingly, the Administrative Law Judge recommended debarment of the Company.

On December 30, 1976, the Department of Health, Education, and Welfare's Reviewing Authority adopted the recommended findings, conclusions and order of the Administrative Law Judge debarring Anastasi Brothers Corporation from further federally involved contracts and subcontracts. No appeal has been filed by the contractor, and the Secretary of Health, Education, and Welfare did not, on his own motion within 30 days, decide to review the decision of the Reviewing Authority as provided by 41 CFR 82.41. Therefore, pursuant to 45 CFR 82.42, the decision of the Reviewing Authority has become the final decision of the Department of Health, Education, and Welfare in this matter.

The Department of Health, Education, and Welfare, pursuant to 41 CFR 60-1.26(b)(2)(vi) (1976) and 45 CFR 82.43, has transmitted to the Office of Federal Contract Compliance Programs the Order of the Reviewing Authority which would debar Anastasi Brothers Corporation from further Federal and federally assisted construction contracts and subcontracts.

In accordance with the powers granted to the Director, Office of Federal Contract Compliance Programs by Title 41, Code of Federal Regulations, Sections 60-1.26(b)(2)(vi) and 60-1.27 of the Secretary of Labor's regulations issued pursuant to Executive Order 11246, as amended, I hereby approve the debarment of Anastasi Brothers Corporation, whose home office is located at 300 Mt. Airy Avenue, Philadelphia, Pennsylvania, 19119, its subsidiaries and divisions, and any and all purchasers, successors, assignees, and/or transferees, from the award of any contract or subcontract funded in whole or in part with Federal funds, including Federally-assisted construction contracts and subcontracts, and from extensions or other modifications of any such existing contracts or subcontracts.

The reference to Mr. John G. Bynoe's title in finding No. 26 of Judge Sternburg's Recommended Decision and Order and in finding No. 26 in the Final Decision of the Reviewing Authority should be changed to read "Director, OCR Region I." In addition, in the first paragraph of the Order in Judge Sternburg's Recommended Decision and Order and in the first paragraph of the Order of the Reviewing Authority's Final Decision, the word "purchases" should be changed to read "purchasers."

The debarment will continue in effect until such time as Anastasi has satisfied the Director, Office of Federal Contract Compliance Programs, that it has established and will carry out employment policies and practices in compliance with the equal opportunity clause of Executive Order 11246, as amended.

This debarment shall be effective as of this date.

Copies of the Recommended Decision and Order of the Administrative Law Judge and the HEW Final Decision of the Reviewing Authority of (Civil Rights) are attached hereto and made a part hereof.

Signed at Washington, D.C., this the 16th day of August 1977.

WELDON J. ROUGEAU,
Director, OFCCP.

[Case No. CC-11]

In the Matter of Anastasi Brothers Corporation and U.S. Department of Health, Education, and Welfare; Colin Gillis, Esquire, 125 Newbury Street, Boston, Massachusetts.

For Anastasi Brothers Corporation, and Thomas J. Flygare, Esquire, Edward P. Levy, Esquire, U.S. Department of Health, Education, and Welfare, J.F.K. Federal Building, Boston, Massachusetts.

For the Department of Health, Education, and Welfare, before Burton S. Sternburg, Administrative Law Judge.

RECOMMENDED DECISION AND ORDER

STATEMENT OF THE CASE

This administrative enforcement proceeding was brought by the United States Department of Health, Education and Welfare, hereinafter called HEW, pursuant to Executive Order 11246, as amended, (non discrimination under Federal contracts)[1] and the implementing rules and regulations[2] and Order of the Secretary of Labor of October 14, 1971, establishing the "New Haven Plan" containing minority employment ranges as part of the Bid Conditions for all Federally

[1] 3 CFR 169.
[2] 41 CFR Part 60-1.

assisted construction in the New Haven Connecticut area.

In accordance with 41 CFR 60-1.26 (b), HEW notified Anastasi Brothers Corporation, hereinafter called Respondent, which was engaged in masonry work on the addition to the St. Raphael Hospital in New Haven, Connecticut of its proposal to declare Respondent ineligible for the award of Federal or Federally-assisted contract or subcontracts or extension or other modfications of existing contracts, because of Respondent's failure to comply with the Bid Conditions and Executive Order 11246 while performing the masonry work on the St. Raphael Hospital addition which was an HEW-assisted construction project. Thereafter, Respondent duly filed an Answer to the Notice of Proposed Ineligibility and requested a hearing in the matter.

Subsequently, pursuant to a Notice of Hearing dated March 11, 1976, a formal hearing on the matter was held on April 12 and 13, 1976, in Cambridge, Massachusetts. An additional hearing, pursuant to Respondent's request, was held in Washington, D.C. on May 27, 1976. Evidence was received as to whether the Respondent, while performing masonry work on the St. Raphael Hospital addition, was in compliance with Executive Order 11246 and the New Haven Plan. All parties were represented by counsel and afforded full opportunity to be heard, adduce evidence, and examine and cross-examine witnesses. Additionally, all parties were afforded the opportunity to present oral argument at the hearing and to file briefs, findings of fact, conclusions of law and a proposed order.

Both parties filed briefs and HEW filed proposed findings, conclusions of law, a recommended order, and a reply brief, all of which have been duly considered.

Upon the basis of the entire record, including my observation of the witnesses and their demeanor, the admissions of fact and genuineness of documents, I recommend the following Findings of Fact, Conclusions of Law and Order.

Findings of Fact

1. Respondent is a contractor which performs masonry work on construction projects, with a home office at 300 E. Mt. Airy Avenue, Philadelphia, Pennsylvania 19119, and a branch office at 853 Plain Street, Marshfield, Massachusetts 02050.

2. The construction of an addition to St. Raphael Hospital, 1450 Chapel Street, New Haven, Connecticut (hereinafter referred to as the "St. Raphael project") was Federally-assisted by grants administered by HEW and by loan guarantees, with interest subsidies, administered by HEW.

3. Respondent entered into a contract agreement, dated May 25, 1973, to do the masonry work on the St. Raphael project.

4. Respondent's contract for work on the St. Raphael project exceeded $10,000.

5. Respondent began work on the St. Raphael project in July, 1974, and except for minor alterations or modifications completed work on the project in December, 1975.

6. The New Haven Plan Bid Conditions were incorporated into Respondent's contract for work on the St. Raphael project.

7. The New Haven Plan Bid Conditions, which were contained in the Invitation for Bids on this project and incorporated into Respondent's contract, is a nineteen (19) page document approved by the Department of Labor on October 14, 1971.

8. The New Haven Plan Bid Conditions provided that when a contractor uses trades which are no longer participating in voluntary affirmative action plans acceptable to the Director of the Office of Federal Contract Compliance, U.S. Department of Labor (OFCC), the contractor's employment in those trades is subject to the imposed goals, timetables and specific affirmative action steps contained in Part II of the Bid Conditions.

9. On July 2, 1974, the Director of OFCC withdrew approval of the bricklayers' participation in the voluntary affirmative action provisions of the New Haven Plan Bid Conditions and bricklayers became subject to Part II of the New Haven Plan Bid Conditions.

10. Respondent's contract on the St. Raphael project was subject to the following goals for minority employment utilization in the bricklaying trade as contained in Part II of the New Haven Plan Bid Conditions: from 26.3% to 31.3% for February 18, 1974 through February 17, 1975, and from 31.3% to 36.3% for February 18, 1975 through February 17, 1976.

11. Respondent also was required by Part II of the New Haven Plan Bid Conditions to make every good faith effort to meet the goals, which had been established while it was working on the St. Raphael project.

12. The New Haven Plan Bid Conditions contain 16 specific affirmative action steps to determine whether good faith efforts have been made to meet the minority employment goals.

13. The following chart shows the total bricklayer hours, minority bricklayer hours and the percentage of total bricklayer hours performed by minorities as contained in Minority Utilization Reports submitted to Office for Civil Rights (OCR), HEW, by the Respondent:

Document No.	Reporting period ending	Total bricklayer hours	Minority bricklayer hours	Minority percentage
18	July 20, 1974...	1,410	0	0
19	Aug. 12, 1974...	1,414	8	.57
20	Sept. 9, 1974...	2,750.5	150.5	5.47
21	Oct. 7, 1974...	2,112	160	7.58
22	Nov. 4, 1974...	1,912	264	18.81
23	Dec. 2, 1974...	2,144	208	9.70
24	Dec. 27, 1974...	1,048	0	0
25	Jan. 27, 1975...	1,049	0	0
26	Feb. 24, 1975...	0	0	0
	Subtotals...	12,429.5	790.5	6.36
27	Mar. 31, 1975...	903	80	8.86
28	Apr. 26, 1975...	1,688	408	24.17
29	May 31, 1975...	1,748	480	27.46
30	June 30, 1975...	2,176	600	27.57
31	July 28, 1975...	1,499	441	29.42
32	Aug. 31, 1975...	1,172	424	36.18
33	Sept. 30, 1975...	776	296	38.14
34	Oct. 31, 1975...	704	192	27.27
35	Nov. 30, 1975...	160	40	25.00
36	Dec. 31, 1975...	324	0	0
37	Jan. 31, 1976...	0	0	0
38	Feb. 29, 1976...	0	0	0
	Subtotals...	11,150	2,961	26.56
	Totals...	23,579.5	3,751.5	15.91

14. While working on the St. Raphael project, Respondent did not meet the minority employment goals as set forth in the New Haven Plan Bid Conditions and incorporated into the Respondent's contract for the following time periods: (a) February 18, 1974 through February 17, 1975; and (b) February 18, 1975 through February 17, 1976.

15. While working on the St. Raphael project, Respondent did not carry out the specific affirmative action steps contained in the New Haven Plan Bid Conditions. Specifically:

a. Respondent did not maintain a file of the names and addresses of all minority workers referred to it along with the action taken regarding the referred workers.

b. Respondent did not notify community organizations in the New Haven area that it had employment opportunities available at the St. Raphael project.

c. Respondent did not externally disseminate an Equal Employment Opportunity policy to recruitment sources, suppliers and subcontractors or in advertising.

d. Respondent did not make specific efforts to encourage its minority bricklayers working on the St. Raphael project to recruit their minority friends and relatives.

e. Respondent did not make specific and constant written and oral recruitment efforts directed at employing minority workers.

16. Respondent is a party to a collective bargaining agreement with Local Union No. 6 of the International Brotherhood of Bricklayers (hereinafter referred to as "Bricklayers Local No. 6").

17. It is accepted practice under the rules or customs of Bricklayers Local No. 6 for a bricklayer to go directly to the work site in an effort to secure employment.

18. Respondent hired sixteen (16) nonminority bricklayers, including one apprentice bricklayer, on the St. Raphael project before it hired the first minority bricklayer, Claude Lang, on August 12, 1974.

19. John L. Brinkley, a minority journeyman bricklayer and a member of Bricklayers Local No. 6 in New Haven, went to Respondent's work site on the St. Raphael project four or five times beginning in August, 1974, and asked for work, but was not hired by Respondent until October 15, 1974.

20. Moses Battle, a minority journeyman bricklayer and a member of Bricklayers Local No. 6 in New Haven, was hired by Respondent to work at the St. Raphael project on October 30, 1974.

21. Claude Lang, John Brinkley and Moses Battle were laid off by Respondent on or about November 22, 1974.

22. Except for approximately 5 weeks when the job was closed down, Respondent maintained a workforce on the St. Raphael project containing no minority bricklayers from on or about November 22, 1974 until on or about March 17, 1975, when Claude Lang was rehired.

23. In March of 1975, following a period when the project was closed down, Respondent rehired seven nonminority bricklayers including one apprentice, before rehiring a minority bricklayer, Claude Lang, on March 17, 1975.

24. John Brinkley and Moses Battle were rehired by Respondent for work at the St. Raphael project on or about April 7, 1975, following a telegram from Respondent to Bricklayers Local No. 6 requesting referral of two minority bricklayers.

25. Minority bricklayers, who are journeymen members of Bricklayers Local No. 6, were unemployed and available for work during Respondent's term of performance on the St. Raphael project. Specifically:

a. Claude Lang was unemployed from July 15, 1974 to August 12, 1974; from November 22, 1974 to March 17, 1975; and from approximately October 24, 1975 to April 12, 1976.

b. John Brinkley was unemployed from sometime in August, 1974 until October 15, 1974; from November 22, 1974 to April 7, 1975; from approximately September 27, 1975 until approximately October 16, 1975; and from early November, 1975 through April 12, 1976.

c. Moses Battle was unemployed for about 6 weeks of the time between July 15, 1974 and October 30, 1974. He was also unemployed from November 22, 1974 to April 7, 1975.

d. Other minority bricklayers, registered with Recruitment and Training, Inc., were unemployed during the term of Respondent's performance on the St. Raphael project.

26. In a letter dated May 20, 1976 from Lawrence C. Anastasi to Mr. John G. Bynoe, Director OFCC, Respondent stated that the lay-off sequence it intended to follow as its

work on the St. Raphael project neared completion was as follows: 1–5 nonminorities; 2–3 minorities; 3–Shop Steward; 4–Deputy Foreman. Respondent did not adhere to the intended lay-off sequence because during the month of October it had only 2 minority bricklayers out of a total of seven bricklayers, and during the month of November it had only one minority out of a total of 5 bricklayers.

27. All subcontractors on the St. Raphael project, including Respondent, were requested to attend a meeting to be held at St. Raphael Hospital on June 17, 1975, to discuss compliance with the New Haven Plan Bid Conditions. Respondent failed to attend the meeting.

28. The Recruitment and Training Program, Inc. (hereinafter referred to as "RTP") is located in New Haven, Connecticut, and assists contractors in hiring minorities.

29. Throughout the term of Respondent's performance on the St. Raphael project, Respondent did not initiate any contracts with RTP or avail itself of RTP's assistance in obtaining minority bricklayers.

30. Respondent had reasonable opportunity to be aware of the existence and purpose of RTP, as a result of the following:

a. Respondent was invited but failed to attend a meeting held at St. Raphael Hospital on March 13, 1974, where representatives of the Office for Civil Rights and RTP discussed with subcontractors the minority hiring requirements of the New Haven Plan Bid Conditions and described area resources available to assist subcontractors in meeting those requirements.

b. An RTP representative made a visit to Respondent's work site during the term of Respondent's performance on the St. Raphael project.

c. RTP was specifically mentioned in a May 2, 1975 letter from John G. Bynoe to Lawrence C. Anastasi.

31. Other than a letter and telegram, both dated April 4, 1975, from Respondent to Bricklayers Local No. 6, Respondent made no specific efforts to meet the goals of the New Haven Plan while working on the St. Raphael project.

32. During its work on the St. Raphael project, Respondent did not notify OCR that Bricklayers Local No. 6 had impeded Respondent in reaching the goals of the New Haven Plan.

33. Bricklayers Local No. 6 did not impede Respondent in reaching the goals of the New Haven Plan while Respondent was working on the St. Raphael project.

34. Between July 15, 1974 and December 31, 1975, the only construction project in the New Haven Plan geogrsphical area that Respondent worked on was the St. Raphael project.

35. Respondent employed no minority bricklayers in the geographical area covered by the New Haven Plan between July 15, 1974 and December 31, 1975, except those employed by Respondent on the St. Raphael project.

36. The Department of Health, Education, and Welfare has made adequate efforts to secure Respondent's voluntary compliance with the requirements of the New Haven Plan Bid Conditions. Specifically:

a. A pre-construction meeting was held on March 13, 1974, at St. Raphael Hospital for all subcontractors working or planning to work on the St. Raphael project. This meeting was referred to in 30a, supra.

b. An on-site visit was conducted on August 21, 1974, where OCR representative spoke with Respondent's superintendent on the St. Raphael project, Mr. Tony Pace, and urged him to learn the requirements of the New Haven Plan Bid Conditions by speaking to Mr. John Clark, the project EEO Officer and a vice-president for W. J. Megin, Inc., the prime construction contractor on the St. Raphael project.

c. A letter dated March 21, 1975 was sent by Mr. John Bynoe of OCR to Mr. Lawrence Anastasi stating that Respondent had a minority utilization deficiency and requesting a meeting to discuss the matter.

d. A meeting was held at Respondent's office in Marshfield, Massachusetts on April 2, 1975, between Mr. Lawrence C. Anastasi and representatives of OCR and OFCC.

e. A letter dated May 2, 1975, was sent by Mr. Bynoe to Mr. Anastasi, stating in detail the steps Respondent could take to avoid enforcement proceedings.

f. A meeting was held at the St. Raphael project on May 15, 1975, between Respondent's representatives and representatives of OCR.

37. The prime contractor, W. J. Megin, Inc., through its EEO officer, Mr. John R. Clark, has made efforts in cooperation with OCR to secure Respondent's compliance with the requirements of the New Haven Plan Bid Conditions. Specifically:

a. At the request of OCR, Mr. Clark invited Respondent to a March 13, 1974 meeting at St. Raphael Hospital to discuss the requirements of the New Haven Plan Bid Conditions. This meeting is referred to in 30a and 36a, supra.

b. At the request of OCR, Mr. Clark wrote a letter dated July 25, 1974 to all subcontractors, including Respondent, on the St. Raphael project stating in part that subcontractors should comply with Part II of the New Haven Plan. This letter contained a copy of a letter dated July 16, 1975, from Mr. John Bynoe to W. J. Megin, Inc., regarding the transfer of some trades from Part I to Part II of the New Haven Plan.

c. Upon the suggestion of OCR, Mr. Clark wrote a letter dated August 28, 1974, to Mr. Fred Chiarianza, Respondent's Vice-President, stating the requirements of the New Haven Plan, including the minority utilization percentages.

d. Mr. Clark wrote a letter dated September 10, 1974, to all subcontractors, including Respondent, on the St. Raphael project regarding compliance with the minority hiring requirements set forth in the bid conditions.

e. Mr. Clark wrote a letter dated March 13, 1975 to Respondent stating in part that W. J. Megin, Inc. has been unable to obtain compliance from Respondent regarding submission of Manpower Utilization Reports and minority employment.

f. Mr. Clark wrote a letter dated June 4, 1975 to subcontractors, including Respondent, on the St. Raphael project asking them to attend a meeting on June 17, 1975 at the St. Raphael Hospital to discuss compliance with the New Haven Plan. Respondent did not attend this meeting. This meeting was referred to in 27, supra.

CONCLUSIONS OF LAW

1. Executive Order 11246 and the New Haven Plan Bid Conditions applied to Respondent's work on the St. Raphael project.

2. Respondent violated the provisions of its contract implementing the New Haven Plan Bid Conditions by failing to make adequate good faith efforts to meet its goals for minority employment on the St. Raphael project.

3. The New Haven Plan Bid Conditions require that Respondent's entire work force in the trade of bricklaying, including foreman, deputy foreman, shop stewards, and apprentices, be counted in calculating Respondent's minority employment percentage in the trade of bricklaying.

4. Respondent violated the provisions of Section 202 (1) and (4) of Executive Order 11246 in that it failed to take affirmative action to ensure non-discrimination in the employment of minority workers.

5. HEW exerted adequate efforts towards achieving Respondent's voluntary compliance with the Executive Order and the New Haven Plan Bid Conditions.

ORDER

Anastasi Brothers Corporation having been found in non-compliance with Executive Order 11246, and its implementing rules, regulations and order, it is recommended that the following Order be entered.

Ordered, from the effective date of this order, Anastasi Brothers Corporation, and any and all purchases, successors, assignees, and/or transferees, shall be ineligible for the award of any contract or subcontract funded in whole or in part with Federal funds from any agency of the United States, or for extensions or other modifications of such existing contracts of subcontracts, until Anastasi Brothers Corporation has satisfied the Secretary of the United States Department of Labor that it has established and will carry out personnel and employment policies in compliance with the provisions of Executive Order 11246, or susperseding Executive Orders, and rules, regulations, and orders promulgated thereunder.

Dated: August 25, 1976. Washington, D.C.

BURTON S. STERNBURG,
Administrative Law Judge.

[Case No. CC–11]

In the Matter of Anastasi Brothers Corporation and U.S. Department of Health, Education, and Welfare.

CERTIFICATE OF SERVICE

Recommended decision by Administrative Law Judge Burton S. Sternburg, was issued to the following persons on August 25, 1976.

CERTIFIED MAIL

Colin Gillis, Esquire, 125 Nebury Street, Boston, Massachusetts.

Thomas J. Flygare, Esquire, Edward P. Levy, Esquire, U.S. Department of Health, Education, and Welfare, J. F. K. Federal Building, Boston, Massachusetts.

Mable Lee, Hearing Clerk, Department of Health, Education, and Welfare, Office of Civil Rights, DHEW North Building, Room 4525, 330 Independence Avenue SW., Washington, D.C. 20201.

Paul Grossman, Attorney, Department of Health, Education, and Welfare, Office of Civil Rights, Office of General Counsel, DHEW North Building, 330 Independence Avenue, Washington, D.C. 20201.

ADMINISTRATIVE PROCEEDING IN THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Docket No. CC–11]

In the matter of: ANASTASI BROTHERS CORPORATION (hereinafter referred to as Respondent).

Final Decision of the Reviewing Authority (Civil Rights)

STATEMENT OF THE CASE

This administrative enforcement proceeding was brought by the United States Department of Health, Education, and Welfare, hereinafter called HEW, pursuant to Executive Order 11246, as amended, (non discrimination under Federal contracts) [1] and the implementing rules and regulations [2] and Order of the Secretary of Labor of October 14, 1971, establishing the "New Haven Plan" containing minority employment ranges as part of the Bid Conditions for all Federally assisted construction in the New Haven, Connecticut area.

In accordance with 41 CFR 60–1.26(b), HEW notified Anastasi Brothers Corpora-

tion, hereinafter called Respondent, which was engaged in masonry work on the addition to the St. Raphael Hospital in New Haven, Connecticut, of its proposal to declare Respondent ineligible for the award of Federal or Federally-assisted contract or subcontracts or extension or other modifications of existing contracts, because of Respondent's failure to comply with the Bid Conditions and Executive Order 11246 while performing the masonry work on the St. Raphael Hospital addition which was an HEW-assisted construction project. Thereafter, Respondent duly filed an Answer to the Notice of Proposed Ineligibility and requested a hearing in the matter.

Subsequently, pursuant to a Notice of Hearing dated March 11, 1976, a formal hearing on the matter was held on April 12 and 13, 1976, in Cambridge, Massachusetts before Administrative Law Judge Burton S. Sternburg. An additional hearing, pursuant to Respondent's request, was held in Washington, D.C. on May 27, 1976. Evidence was received as to whether the Respondent, while performing masonry work on the St. Raphael Hospital addition, was in compliance with Executive Order 11246 and the New Haven Plan. All parties were represented by counsel and afforded full opportunity to be heard, adduce evidence, and examine and cross-examine witnesses. Additionally, all parties were afforded the opportunity to present oral argument at the hearing and to file briefs, proposed findings of fact, conclusions of law and a proposed order.

Both parties filed briefs and HEW proposed findings, conclusions of law, a recommended order, and a reply brief, all of which have been duly considered.

Upon the basis of the entire record, including his observation of the witnesses and their demeanor, the admissions of fact and genuiness of documents, the Administrative Law Judge recommended and submitted to us, the Reviewing Authority, Findings of Fact, Conclusions of Law and an Order.

No exceptions have been filed to the Administrative Law Judge's Recommended Decision, timely or otherwise, thereby presenting no contested issues of fact or law for our determination. However, in accordance with our responsibilities in matters such as this, we have reviewed the record, including the pleadings and transcripts, and we agree with the Recommended Decision. Except for a few editorial changes and additional findings, our decision is substantially identical to the Recommended Decision.

FINDINGS OF FACT

1. Respondent is a contractor which performs masonry work on construction projects, with a home office at 300 E. Mt. Airy Avenue, Philadelphia, Pennsylvania 19119, and a branch office at 853 Plain Street, Marshfield, Massachusetts, 02050.

2. The construction of an addition to St. Raphael Hospital, 1450 Chapel Street, New Haven, Connecticut (hereinafter referred to as the "St. Raphael project") was Federally-assisted by grants administered by HEW and by loan guarantees, with interest subsidies, administered by HEW.

3. Respondent entered into a contract agreement, dated May 25, 1973, to do the masonry work on the St. Raphael project.

4. Respondent's contract for work on the St. Raphael project exceeded $10,000.

5. Respondent began work on the St. Raphael project in July, 1974, and except for minor alterations or modifications completed work on the projetc in December, 1975.

6. The New Haven Plan Bid Conditions were incorporated into Respondent's contract for work on the St. Raphael project.

7. The New Haven Plan Bid Conditions, which were contanied in the invitation for Bids on this project and incorporated into Respondent's contract, is a nineteen (19) page document approved by the Department of Labor on October 14, 1971.

8. The New Haven Plan Bid Conditions provided that when a contractor uses trades which are no longer participating in voluntary affirmative action plans acceptable to the Director of the Office of Federal Contratc Compliance, U.S. Department of Labor (OFCC), the contractor's employment practices in those trades is subject to the imposed goals, timetables and specific affirmative action steps contained in Part II of the Bid Conditions.

9. On July 2, 1974, the Director of OFCC withdrew approval of the bricklayers' participation in the voluntary affirmative action provisions of the New Haven Plan Bid Conditions and bricklayers became subject to Part II of the New Haven Plan Bid Conditions.

10. Respondent's contract on the St. Raphael project was subject to the following goals for minority employment utilization in the bricklaying trade as contained in Part II of the New Haven Plan Bid Conditions: from 26.3% to 31.3% for February 18, 1974 through February 17, 1975, and from 31.3% to 36.3% for February 18, 1975 through February 17, 1976.

11. Respondent also was required by Part II of the New Haven Plan Bid Conditions to make every good faith effort to meet the goals which had been established while it was working on the St. Raphael project.

12. The New Haven Plan Bid Conditions contain 16 specific affirmative action steps to determine whether good faith efforts have been made to meet the minority employment goals.

13. The following chart shows Respondent's total bricklayer hours, minority bricklayer hours and the percentage of total bricklayer hours performed by minorities on the St. Raphael project as contained in Minority Utilization Reports submitted to Office for Civil Rights (OCR), HEW, by the Respondent:

Document No.	Reporting period ending	Total bricklayer hours	Minority bricklayer hours	Minority percentage
18	July 20, 1974...	1,410	0	0
19	Aug. 12, 1974..	1,414	8	.57
20	Sept. 9, 1974...	2,750.5	150.5	5.47
21	Oct. 7, 1974....	2,112	160	7.58
22	Nov. 4, 1974...	1,912	264	13.81
23	Dec. 2, 1974...	2,144	208	9.70
24	Dec. 27, 1974..	1,048	0	0
25	Jan. 27, 1975...	1,049	0	0
26	Feb. 24, 1975..	0	0	0
	Subtotals..	12,429.5	790.5	6.36
27	Mar. 31, 1975..	903	80	8.86
28	Apr. 26, 1975..	1,688	408	24.17
29	May 31, 1975...	1,748	480	27.46
30	June 30, 1975..	2,176	600	27.57
31	July 28, 1975...	1,499	441	29.42
32	Aug. 31, 1975..	1,172	424	36.18
33	Sept. 30, 1975..	776	296	38.14
34	Oct. 31, 1975...	704	192	27.27
35	Nov. 30, 1975..	160	40	25.00
36	Dec. 31, 1975..	324	0	0
37	Jan. 31, 1976...	0	0	0
38	Feb. 29, 1976..	0	0	0
	Subtotals..	11,150	2,961	26.56
	Totals....	23,579.5	3,751.5	15.91

14. While working on the St. Raphael project, Respondent did not meet the minority employment goals as set forth in the New Haven Plan Bid Conditions and incorporated into the Respondent's contract for the following time periods: (a) February 18, 1974 through February 17, 1975; and (b) February 18, 1975 through February 17, 1976.

15. While working on the St. Raphael project, Respondent did not carry out the specific affirmative action steps contained in the New Haven Plan Bid Conditions. Specifically:

a. Respondent did not maintain a file of the names and addresses of all minority workers referred to it along with the action taken regarding the referred workers;

b. Respondent did not notify community organizations in the New Haven area that it had employment opportunities available at the St. Raphael project;

c. Respondent did not externally disseminate an Equal Employment Opportunity policy to recruitment sources, suppliers and subcontractors or in advertising;

d. Respondent did not make specific efforts to encourage its minority bricklayers working on the St. Raphael project to recruit their minority friends and relatives;

e. Respondent did not make specific and constant written and oral recruitment efforts directed at employing minority workers.

16. Respondent is a party to a collective bargaining agreement with Local Union No. 6 of the International Brotherhood of Bricklayers (hereinafter referred to as "Bricklayers Local No. 6").

17. It is accepted practice under the rules or customs of Bricklayers Local No. 6 for a bricklayer to go directly to the work site in an effort to secure employment.

18. Respondent hired sixteen (16) nonminority bricklayers including one apprentice bricklayer, on the St. Raphael project before it hired the first minority bricklayer, Claude Lang, on August 12, 1974.

19. John L. Brinkley, a minority journeyman bricklayer and a member of Bricklayers Local No. 6 in New Haven, went to Respondent's worksite on the St. Raphael project four or five times beginning in August, 1974, and asked for work, but was not hired by Respondent until October 15, 1974.

20. Moses Battle, a minority journeyman bricklayer and a member of Bricklayers Local No. 6 in New Haven, was hired by Respondent to work at the St. Raphael project on October 30, 1974.

21. Claude Lang, John Brinkley and Moses Battle were laid off by Respondent on or about November 22, 1974.

22. Except for approximately 5 weeks when the job was closed down, Respondent maintained a workforce on the St. Raphael project containing no minority bricklayers from on or about November 22, 1974 until on or about March 17, 1975, when Claude Lang was rehired.

23. In March of 1975, following a period when the project was closed down, Respondent rehired seven nonminority bricklayers including one apprentice, before rehiring a minority bricklayer, Claude Lang, on March 17, 1975.

24. John Brinkley and Moses Battle were rehired by Respondent for work at the St. Raphael project on or about April 7, 1975, following a telegram from Respondent to Bricklayers Local No. 6 requesting referral of two minority bricklayers.

25. Minority bricklayers, who are journeymen members of Bricklayers Local No. 6, were unemployed and available for work during Respondent's term of performance on the St. Raphael project. Specifically:

a. Claude Lang was unemployed from July 15, 1974 to August 12, 1974; from November 22, 1974 to March 17, 1975; and from approximately October 24, 1975 to April 12, 1976.

b. John Brinkley was unemployed from sometime in August 1974 until October 15, 1974; from November 22, 1974 to April 7, 1975; from approximately September 27, 1975 until approximately October 16, 1975; and from early November 1975 through April 12, 1976.

c. Moses Battle was unemployed for about 6 weeks of the time between July 15, 1974 and October 30, 1974. He was also unemployed from November 22, 1974 to April 7, 1975.

d. Other minority bricklayers, registered with Recruitment and Training, Inc., were unemployed during the term of Respondent's performance on the St. Raphael project.

26. In a letter dated May 20, 1976 from Lawrence C. Anastasi to Mr. John G. Bynoe, Director OFCC, Respondent stated that the lay-off sequence it intended to follow as its work on the St. Raphael project neared completion was as follows: 1—5 nonminorities; 2—3 minorities; 3—Shop Steward; 4—Deputy Foreman. Respondent did not adhere to the intended lay-off sequence because during the month of October it had only 2 minority bricklayers out of a total of seven bricklayers, and during the month of November it had only one minority out of a total of 5 bricklayers.

27. All subcontractors on the St. Ralphael project, including Respondent, were requested to attend a meeting to be held at St. Raphael Hospital on June 17, 1975, to discuss compliance with the New Haven Plan Bid Conditions. Respondent failed to attend the meeting.

28. The Recruitment and Training Program, Inc. (hereinafter referred to as "RTP") is located in New Haven, Connecticut, and assists contractors in hiring minorities.

29. Throughout the term of Respondent's performance on the St. Raphael project, Respondent did not initiate any contracts with RTP or avail itself of RTP's assistance in obtaining minority bricklayers.

30. Respondent had reasonable opportunity to be aware of the existence and purpose of RTP, as a result of the following:

a. Respondent was invited but failed to attend a meeting held at St. Raphael Hospital on March 13, 1974, where representatives of the Office for Civil Rights and RTP discussed with subcontractors the minority hiring requirements of the New Haven Plan Bid Conditions and described area resources available to assist subcontractors in meeting those requirements;

b. An RTP representative made a visit to Respondent's work site during the term of Respondent's performance on the St. Raphael project;

c. RTP was specifically mentioned in a May 2, 1975, letter from Mr. John G. Bynoe, Director, OCR, Region I, to Mr. Lawrence C. Anastasi, Respondent's Vice-President.

31. Other than a letter and telegram, both dated April 4, 1975, from Respondent to Bricklayers Local #6, Respondent made no specific efforts to meet the goals of the New Haven Plan while working on the St. Raphael project.

32. During its work on the St. Raphael project, Respondent did not notify OCR that Bricklayers Local #6 had impeded Respondent in reaching the goals of the New Haven Plan.

33. Bricklayers Local #6 did not impede Respondent in reaching the goals of the New Haven Plan while Respondent was working on the St. Raphael project.

34. Between July 15, 1974 and December 31, 1975, the only construction project in the New Haven Plan geographical area that Respondent worked on was the St. Raphael project.

35. Respondent employed no minority bricklayers in the geographical area covered by the New Haven Plan between July 15, 1974 and December 31, 1975, except those employed by Respondent on the St. Raphael project.

36. The Department of Health, Education, and Welfare has made adequate efforts to secure Respondent's voluntary compliance with the requirements of the New Haven Plan Bid Conditions. Specifically:

a. A pre-construction meeting was held on March 13, 1974, at St. Raphael Hospital for all subcontractors working or planning to work on the St. Raphael project. This meeting was referred to in 30a, supra;

b. An on-site visit was conducted on August 21, 1974, where an OCR representative spoke with Respondent's Superintendent on the St. Raphael project, Mr. Tony Pace, and urged him to learn the requirements of the New Haven Plan Bid Conditions by speaking to Mr. John Clark, the project EEO Officer and a vice-president for W. J. Megin, Inc., the prime construction contractor on the St. Raphael project;

c. A letter dated March 21, 1975 was sent by Mr. John Bynoe of OCR to Mr. Lawrence Anastasi stating that Respondent had a minority utilization deficiency and requesting a meeting to discuss the matter;

d. A meeting was held at Respondent's office in Marshfield, Massachusetts on April 2, 1975, between Mr. Lawrence C. Anastasi and representatives of OCR and OFCC;

e. A letter dated May 2, 1975, was sent by Mr. Bynoe to Mr. Anastasi, stating in detail the steps Respondent could take to avoid enforcement proceedings;

f. A meeting was held at the St. Raphael project on May 15, 1975, between Respondent's representatives and representatives of OCR.

37. The prime contractor, W. J. Megin, Inc., through its EEO officer, Mr. John R. Clark, has made efforts in cooperation with OCR to secure Respondent's compliance with the requirements of the New Haven Plan Bid Conditions. Specifically:

a. At the request of OCR, Mr. Clark invited Respondent to a March 13, 1974, meeting at St. Raphael Hospital to discuss the requirements of the New Haven Plan Bid Conditions. This meeting is referred to in 30a and 36a, supra;

b. At the request of OCR, Mr. Clark wrote a letter dated July 25, 1974 to all subcontractors, including Respondent, on the St. Raphael project stating in part that subcontractors should comply with Part II of the New Haven Plan. This letter contained a copy of a letter dated July 16, 1975, from Mr. John Bynoe to W. J. Megin, Inc., regarding the transfer of some trades from Part I to Part II of the New Haven Plan;

c. Upon the suggestion of OCR, Mr. Clark wrote a letter dated August 28, 1974, to Mr. Fred Chiarlanza, Respondent's Vice-President, stating the requirements of the New Haven Plan, including the minority utilization percentages;

d. Mr. Clark wrote a letter dated September 10, 1974, to all subcontractors, including Respondent, on the St. Raphael project regarding compliance with the minority hiring requirements set forth in the bid conditions;

e. Mr. Clark wrote a letter dated March 13, 1975, to Respondent stating in part that W. J. Megin, Inc. has been unable to obtain compliance from Respondent regarding submission of Manpower Utilization Reports and minority employment;

f. Mr. Clark wrote a letter dated June 4, 1975, to subcontractors, including Respondent, on the St. Raphael project asking them to attend a meeting on June 17, 1975, at the St. Raphael Hospital to discuss compliance with the New Haven Plan. Respondent did not attend this meeting. This meeting was referred to in 27, supra.

38. Respondent was not shown to be a participant in any authorized multi-employer affirmative action program which served to satisfy the requirements of the New Haven Plan or its Bid Conditions.

39. The so called "show cause meeting" of April 2, 1975, between Respondent's Vice-President and OCR representatives, appeared to be a preliminary, voluntary meeting designed to discuss Respondent's compliance status. This assemblage was not a proceeding but a meeting which was requested, not demanded, by OCR, and it was held in a branch office of the Respondent, not at a government installation or forum. The failure of OCR representatives to advise or insist that Respondent have its attorney present at the meeting is not a denial of the right to aid of counsel.

CONCLUSIONS OF LAW

1. Executive Order 11246 and the New Haven Plan Bid Conditions applied to Respondent's work on the St. Raphael project.

2. Respondent violated the provisions of its contract implementing the New Haven Plan Bid Conditions by failing to make every good faith effort to meet its goals for minority employment on the St. Raphael project.

3. The New Haven Plan Bid Conditions require that Respondent's entire work force in the trade of bricklaying, including foremen, deputy foremen, shop stewards, and apprentices, be counted in calculating Respondent's minority employment percentage in the trade of bricklaying.

4. Respondent violated the provisions of Section 202(1) and (4) of Executive Order 11246 in that it failed to take affirmative action to ensure non-discrimination in the employment of minority workers.

5. HEW exerted adequate efforts towards achieving Respondent's voluntary compliance with the Executive Order and the New Haven Plan Bid Conditions.

ORDER

Anastasi Brothers Corporation having been found in non-compliance with Executive Order 11246, and its implementing rules, regulations and order, it is hereby ordered, from the effective date of this order, Anastasi Brothers Corporation, and any and all purchases, successors, assignees, and/or transferees, shall be ineligible for the award of any contract or subcontract funded in whole or in part with Federal funds from any agency of the United States, or for extensions or other modifications of such existing contracts or subcontracts, until Anastasi Brothers Corporation has satisfied the Secretary of the United States Department of Labor that it has established and will carry out personnel and employment policies in compliance with the provisions of Executive Order 11246, or superceding Executive Orders, and rules, regulations, and orders promulgated thereunder.

Dated: December 30, 1976.

EDWARD A. POTTS,
Chairman.

OLIVER MORSE,
Member.

IRVING PERMAN,
Member.

LIZABETH A. MOODY,
Member.

JERRY H. SHATTUCK,
Member.

CERTIFICATE OF SERVICE

I hereby certify that I caused one copy of the attached document to be mailed this date to each of the following persons at the addresses given:

Honorable Burton Sternberg, Administrative Law Judge, Department of Labor, Suite 700, 1111 20th Street NW., Washington, D.C. 20036.

Mr. Lawrence C. Anastasi, Vice President, Anastasi Brothers Corporation, 853 Plain Street, Marshfield, Mass. 02050.

Bricklayers Union Local No. 6, 45 Water Street, New Haven, Conn. 06511, Attention: Mr. Stephen Castracane, Business Agency.

Mr. Colin W. Gillis, Esq., 126 Newbury Street, Boston, Mass. 02116.
Mr. Edward Levy, Esq., Office of the General Counsel, Office of Civil Rights, Department of Health, Education, and Welfare, Room 3265 North Building, 330 Independence Avenue SW., Washington, D.C. 20201.
Mr. Thomas J. Flygare, Assistant Regional Attorney, 2407 John F. Kennedy Federal Building, Government Center, Boston, Mass. 02203.
Honorable David Mathews, Secretary, Department of Health, Education and Welfare, Room 615-F, South Portal Building, 200 Independence Avenue SW., Washington, D.C. 20201.

Dated: December 30, 1976.

LOUISE GARNER,
MS. MABLE LEE,
Hearing Clerk for Reviewing Authority (CR) Room 530-G South Portal Building, Department of Health, Education, and Welfare, 200 Independence Avenue SW., Washington, D.C. 20201.

[FR Doc.77-24259 Filed 8-22-77;8:45]

Office of the Secretary

AMERICAN FINISH & CHEMICAL CO. ET AL.

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 2, 1977.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 2, 1977.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 8th day of August 1977.

HAROLD A. BRATT,
Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: union/workers or former workers of—	Location	Date received	Date of Petition	Petition No.	Articles produced
American Finish & Chemical Co. (workers).	Chelsea, Mass.	June 13, 1977	June 9, 1977	TA-W-2,240	Cleaners and adhesives for the shoe industry.
Baron-Abramson, Inc. (workers).	Boston, Mass.	Aug. 8, 1977	Aug. 4, 1977	TA-W-2,241	Ladies' sportswear.
Car-Del-Mar Coat Co., Inc. (ILGWU).	Brooklyn, N.Y.	Aug. 4, 1977	July 26, 1977	TA-W-2,242	Ladies' coats, suits, and rainwear.
Endsel Arthur Richards, Ltd. (workers).	New York, N.Y.	June 13, 1977	June 11, 1977	TA-W-2,243	Men's clothing.
Great Eastern Textile Printing Co., Inc. (workers).	Mahwah, N.J.	Aug. 3, 1977	Aug. 1, 1977	TA-W-2,244	Screen and roller printing on textile fabrics.
Robert Reis & Co. Ford Manufacturing Division (ILGWU).	Waterford, N.Y.	Aug. 8, 1977	Aug. 3, 1977	TA-W-2,245	Men's underwear.
Robert Reis & Co. Reis Mills (ILGWU).	Cambridge, N.Y.	do	do	TA-W-2,246	Do.
Springfield Specialty Motors (IUE).	Springfield, Mass.	do	Aug. 2, 1977	TA-W-2,247	Direct current motors.
Wentworth Manufacturing Co. (ILGWU).	Lake City, S.C.	Aug. 5, 1977	Aug. 3, 1977	TA-W-2,248	Ladies' dresses and sportswear.

[FR Doc.77-24258 Filed 8-22-77;8:45 am]

BETHLEHEM MINES CORP., ET AL.

Investigations Regarding Certifications of Eligibility To Apply For Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm

or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 2, 1977.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at theaddress shown below, not later than September 2, 1977.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 10th day of August 1977.

DOMINIC SORRENTINO,
Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: union/workers or former workers of—	Location	Date received	Date of Petition	Petition No.	Articles produced
Bethlehem Mines Corp. (United Steelworkers of America).	Cornwall, Pa.....	Aug. 8, 1977	July 15, 1977	TA-W-2,249	Iron ore pellets.
Lilli Ann Corp. (ILG WU).	San Francisco, Calif.	.....do.....	July 28, 1977	TA-W-2,250	Ladies' coats and suits.
Sheldahl, Inc. (workers)..	East Providence, R.I.	Aug. 5, 1977	Aug. 2, 1977	TA-W-2,251	Printing presses and polyethelene bag-making machines.

[FR Doc.77-24257 Filed 8-22-77;8:45 am]

[TA-W-906]

AMERICAN BRIDGE DIVISION, UNITED STATES STEEL CORP.

Revised Certification of Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 222 of the Trade Act of 1974 and in accordance with Section 223(a) of such Act, on September 6, 1976, the Department of Labor issued a certification of eligibility to apply for adjustment assistance applicable to workers and former workers fabricating structural steel at the Antioch, Calif., plant of the American Bridge Division of United States Steel Corporation.

The notice of certification was published in the FEDERAL REGISTER September 17, 1976 (41 FR 40242).

Subsequent to the publication of the original determination, the Office of Trade Adjustment Assistance received an inquiry on behalf of workers separated prior to the December 26, 1975, impact date. A review of statistical evidence obtained in the course of the original investigation revealed lay-offs associated with the adverse affects of increased imports of fabricated structural steel actually began in June 1976.

CONCLUSION

Based on a review of the entire record and in accordance with the provisions of the Act, I have determined that the following certification is hereby made as follows:

All workers engaged in employment related to the fabrication of structural steel at the Antioch, Calif., plant of the American Bridge Division of United States Steel Corporation who became totally or partially separated from employment on or after May 24, 1975; and before August 1, 1976, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974. All employees who become totally or partially separated on or after August 1, 1976, are denied certification.

Signed at Washington, D.C., this 12th day of August 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc.77-24375 Filed 8-22-77;8:45 am]

[TA-W-2035]

AMERICAN CAN CO.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2035: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on May 2, 1977, in response to a worker petition received on May 2, 1977, which was filed by the United Steelworkers of America on behalf of workers and former workers producing metal beer, soda, coffee, and peanut cans at the Hillside, N.J., plant of American Can Co., Greenwich, Conn.

The notice of investigation was published in the FEDERAL REGISTER on May 13, 1977 (42 FR 24346). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from American Can Co., 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.

Without regard to whether any of the other criteria have been met, criterion 4 has not been met.

Evidence developed in the Department's investigation reveals that the Hillside, N.J., plant of American Can Co. manufacturers three-piece beer, soda, coffee, and peanut cans. As the trend in can production is toward the two-piece drawn can, the Hillside facility has lost sales to other domestic producers and to several sister plants who manufacture two-piece cans. There are no significant imports of cans into the United States. Customers of American Can did not report switching purchases from the Hillside plant to foreign sources. Several customers surveyed have increased purchases of three-piece cans from American Can in the past two years. It is uneconomical to ship cans over long distances because most of the can is air. In addition, most cans made abroad are of the heavier and more expensive three-piece variety.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with those produced by workers at the Hillside, N.J., plant of American Can Co. did not contribute importantly to total or partial separations of workers and to the absolute decline in sales or production at such plant as required in Section 222 of the Trade Act of 1974.

Signed at Washington, D.C., this 12th day of August 1977.

JAMES F .TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc.77-24376 Filed 8-22-77;8:45 am]

[TA-W-1908]

ANN WILL GARMENT CO.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1908: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on March 24, 1977, in response to a worker petition received on March 24, 1977, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing women's dresses at Ann Will Garment Co., Kingston, Pa.

The notice of investigation was published in the FEDERAL REGISTER on April 12, 1977 (42 FR 19175). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Ann Will Garment Co., 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.

Without regard to whether any of the other criteria have been met, the investigation revealed that criterion (4) has not been met.

Ann Will Garment Co., a contractor, produces women's dresses and pant suits.

The one jobber that Ann Will Garment Co. works for experienced increased sales in 1976 compared to 1975 and in the first quarter of 1977 compared to the first quarter of 1976. This jobber, which does not import or use foreign contractors, increased contract work with other domestic firms while decreasing its level of contracts with Ann Will Garment.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with the women's dresses and pant suits produced at Ann Will Garment Co., Kingston, Pa., did not contribute importantly to the total or partial separations of the workers of that firm.

Signed at Washington, D.C., this 15th day of August 1977.

BRIAN TURNER,
Executive Assistant to the Deputy Under Secretary for International Affairs.

[FR Doc.77-24377 Filed 8-22-77;8:45 am]

[TA-W-88T]

CLAYTON SHOE CO.

Termination of Investigation

Pursuant to Section 223(d) of the Trade Act of 1974 and 29 CFR 90.17(d), a termination investigation was initiated on July 28, 1975 to determine, with respect to the certification issued on September 12, 1975, whether total or partial separations from the Corning, Ark., plant of Clayton Shoe Co. are no longer attributable to the conditions specified in such certification.

Notice of investigation regarding termination of certification of eligibility to apply for worker adjustment assistance was published in the FEDERAL REGISTER on August 10, 1976 (41 FR 33595). No public hearing was requested and none was held.

The existing certification will expire on September 12, 1977. Since workers newly separated, totally or partially, after September 12, 1977, would be ineligible to apply for adjustment assistance, termination of the certification by the Secretary of Labor within 90 days from statutory termination would serve no purpose; consequently the investigation has been terminated.

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

HAROLD A. BRATT,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc.77-24378 Filed 8-22-77;8:45 am]

[TA-W-590]

CRUCIBLE, INC.

Revised Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor issued a notice of determination on April 19, 1976, and published in the FEDERAL REGISTER on April 30, 1976 (41 FR 18186) certifying workers in the Stainless Steel Division of the Midland, Pa., plant of Crucible, Inc. and denying workers in the Alloy Division of the same plant.

At the request of the United Steelworkers of America, a review investigation was instituted. The review investigation reexamined the case history and additional information submitted by the petitioners and officials of Crucible, Inc., concerning the Midland, Pa., plant.

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 of 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 of the above criteria have been met with respect to those Alloy Division units listed in this certification.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Employment of hourly workers in general mill overhead units of the Alloy Division listed in this certification declined 13 percent from 1974 to 1975 and then increased 3 percent from 1975 to 1976. Employment in power and fuel units of the Alloy Division declined six percent from 1974 to 1975 and then increased 4 percent from 1975 to 1976. Employment in the alloy shops fell 20 percent from 1974 to 1975 and then increased 1 percent from 1975 to 1976. Employment in the internal transportation units of the Alloy Division declined 17 percent from 1974 to 1975 and declined 4 percent from 1975 to 1976. Employment in the melt shop maintenance shop declined 17 percent from 1974 to 1975 and then increased 12 percent from 1975 to 1976. Employment of hourly workers in the scrap yard and soaking pits fell 24 percent from 1974 to 1975 and then increased 8 percent from 1975 to 1976.

Employment of salaried workers in these Alloy Division units remained relatively stable in the period from 1974 through 1976. Employment of salaried workers in general mill overhead increased 1 percent from 1974 to 1975 and then remained stable from 1975 to 1976. Employment of salaried workers in power and fuel units remained constant from 1974 to 1975 and then declined 8 percent from 1975 to 1976. Salaried employment in the alloy shops and internal transportation departments remained constant from 1974 to 1975 and from 1975 to 1976. Separate employment data for salaried employees in the melt shop

maintenance shop and scrap yard and soaking pits was not available.

Labor turnover data for the Alloy Division indicates that layoffs in the alloy shops, power and fuel units, transportation and general mill overhead in 1975 equaled 107 percent, 12 percent, 121 percent, and 117 percent, respectively, of average annual employment in those units. In 1976, layoffs in the alloy shops, power and fuel units, transportation and general mill overhead equalled 28 percent, 4 percent, 148 percent and 155 percent, respectively, of average annual employment.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales by the Stainless Steel Division of the Midland Plant of Crucible, Inc., increased 22 percent from 1973 to 1974 and then decreased 38 percent from 1974 to 1975. Sales declined in each quarter of 1975 when compared to the same quarter in 1974. Production is equivalent to sales.

INCREASED IMPORTS

Imports of stainless hot and cold rolled sheet and strip decreased absolutely and relatively from 1972 to 1973 and then increased absolutely and relatively from 1973 to 1974 and from 1974 to 1975. From 1975 to 1976, imports increased by 18 percent from 66.0 thousand tons to 78.2 thousand tons. The ratio of imports to domestic shipments increased from 7.5 percent in 1974 to 15.1 percent in 1975 and then decreased to 11.1 percent in 1976.

CONTRIBUTED IMPORTANTLY

The Department's original determination for TA-W-590 certified all workers in the Stainless Steel Division of the Midland, Pa., plant of Crucible, Inc., engaged in employment related to the production of stainless steel sheet and strip.

The evidence developed during the Department's reinvestigation indicates that the production of stainless steel sheet and strip involves units in both the Stainless Steel Division and the Alloy Division of the Midland Plant. Employees in the Alloy Division units listed in this certification allocated a significant percentage of their time to the production of stainless steel sheet and strip.

The Department's first investigation revealed that customers of Crucible, Inc., had decreased purchases of stainless steel sheet and strip from the subject firm and increased purchases of stainless steel sheet and strip from foreign suppliers.

The degree of integration between the units of the Alloy Division not listed in this certification, and the Stainless Steel Division is not significant. Purchases by the Stainless Steel Division from the Alloy Division represented less than 11 percent of total Alloy Division revenues in 1974, 1975, and 1976. Additionally, while the Alloy Division produces and sells stainless steel product (stainless steel bars and billets), sales and production of that stainless steel product represents a small percentage of total Alloy Division sales and production. Employees in the Alloy Division allocated a minimal percentage of their time to the production of stainless steel bars and billets.

CONCLUSION

After careful review of the facts obtained in the reinvestigation of TA-W-590, Crucible, Inc., Midland, Pa., plant, I conclude that increases in imports of stainless steel hot and cold rolled sheet and strip like or directly competitive with the stainless steel hot and cold rolled sheet and strip produced at the Midland, Pa., plant of Crucible, Inc., contributed importantly to the total or partial separations of workers in the Alloy Division of that firm. In accordance with the provisions of the Act, I hereby issue the following revised determination:

All workers in the Alloy Division of the Midland, Pa., plant of Crucible, Inc., who became totally or partially separated from employment in the units listed below on or after February 2, 1975, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

HOURLY WORKERS

GENERAL MILL OVERHEAD

Chemical Lab
Safety Department
Plant Protection
Medical Department

POWER AND FUEL

Purchased Electric
Steam Department
Domestic Water
Fuel Oil

ALLOY SHOPS

Electrical Repair
Railroad Car Repair
Railroad Track Maintenance
Meter Repairs
Mechanical Maintenance
(Bar Finish East)

INTERNAL TRANSPORTATION

Diesel Locomotives
Trucks (Crucible)
Diesel and Mobile Cranes

PRODUCTIVE CENTER

Melt shop maintenance shop
Scrap yard and Pits

SALARIED EMPLOYEES

GENERAL MILL OVERHEAD

Chemical Lab
Labor Relations
Employment and Employee Benefits
Personnel
Plant Protection
Medical Department
Production Engineering

POWER AND FUEL

Purchased Electric
Combustion Engineering

ALLOY SHOPS

Electric Repair
Mechanical Maintenance (Bar Finish East)

INTERNAL TRANSPORTATION

Diesel Locomotives
Diesel and Mobile Cranes

PRODUCTIVE CENTER

Melt shop maintenance shop
Scrap yard and Pits

I further conclude that increased imports of stainless steel hot and cold rolled sheet and strip did not contribute importantly to the total or partial separations of workers in all other units of the Alloy Division of the Midland, Pa., plant of Crucible, Inc.

Signed at Washington, D.C., this 10th day of August 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc.24379 Filed 8-22-77;8:45 am]

[TA-W-1564]

E. T. IRVIN WORKS, U.S. STEEL CORP.

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-1564: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigations were initiated on January 10, 1977, in response to a worker petition received on January 10, 1977, which was filed by the United Steelworkers of America on behalf of workers and former workers producing carbon steel slabs, coated sheets, hot and cold rolled carbon steel strip and sheet and tin mill products at the Braddock and Dravosburg, Pa., plants of the E. T. Irvin works of the U.S. Steel Corporation.

The notice of investigation was published in the FEDERAL REGISTER on January 28, 1977 (42 FR 5456). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the U.S. Steel Corporation, 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.

Without regard to whether any of the other criteria have been met, the investigation has revealed that criterion (2) has not been met for workers engaged in employment related to the production of

carbon steel slabs and coated sheets. Furthermore, without regard as to whether any of the other criteria have been met, criterion (4) has not been met for workers engaged in employment related to the production of hot and cold rolled carbon steel strip and sheet. Furthermore, without regard as to whether any of the other criteria have been met, criterion (3) has not been met for workers engaged in employment related to the production of tin plated steel.

CARBON STEEL SLABS

Sales of carbon steel slabs increased 294.6 percent in quantity in 1976 as compared to 1975. Production data was not made available.

COATED SHEETS

Sales of coated sheets increased 49.7 percent in quantity in 1976 as compared to 1975. Production data was not made available.

TIN PLATED STEEL

Imports of tin plated steel declined each year from 516,900 tons in 1972 to 315,700 tons in 1974, increased to 407,100 tons in 1975 and declined to 309,300 tons in 1976.

The ratio of imports to domestic shipments of tin plated steel declined each year from 11.6 percent in 1972 to 5.7 percent in 1974, increased to 9.8 percent in 1975 and then declined to 6.5 percent in 1976.

HOT AND COLD ROLLED CARBON STEEL SHEET AND STRIP

The Department conducted a survey of customers of the E. T. Irvin Works of the U.S. Steel Corporation that bought hot and cold rolled carbon steel strip and sheet. The survey revealed that those customers contacted did not switch from the sheet and strip made at the E. T. Irvin Works to sheet and strip from foreign sources.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that sales of carbon steel slabs and coated sheets at the E. T. Irvin Works of the U.S. Steel Corporation have not declined as required for certification under Section 222 of the Trade Act of 1974. Furthermore, I conclude that imports of articles like or directly competitive with the tin plated steel products produced at the E. T. Irvin Works of the U.S. Steel Corporation have not increased, either absolutely or relative to domestic production, as required for certification under Section 222 of the Trade Act of 1974. Furthermore, I conclude that increased imports of articles like or directly competitive with the hot and cold rolled carbon steel sheet and strip produced at the E. T. Irvin Works of the U.S. Steel Corporation have not contributed importantly to the total or partial separations of workers engaged in employment related to the production of hot and cold rolled carbon steel strip and sheet at the plant as required for certification under Section 222 of the Trade Act of 1974.

Signed at Washington, D.C., this 15th day of August 1977.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc.77-24380 Filed 8-22-77;8:45 am]

[TA-W-1994]

E. W. FERRY SCREW PRODUCTS

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-1994: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on April 20, 1977, in response to a worker petition received on April 19, 1977, which was filed by the Independent Workers Association on behalf of workers and former workers producing metal fasteners at E. W. Ferry Screw Products, Inc., Brookpark, Ohio.

The notice of investigation was published in the FEDERAL REGISTER on May 10, 1977 (42 FR 23657). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of E. W. Ferry Screw Products, Inc., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That 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 (2) has not been met.

The Department's investigation revealed that sales of metal fasteners by E. W. Ferry Screw Products, Inc., increased in quantity and value 70.9 percent and 33.7 percent, respectively in 1976 compared to 1975. Sales increased further in both quantity and value in the first quarter of 1977 by 41.3 percent and 66.8 percent, respectively compared to the first quarter of 1976.

Production of metal fasteners at E. W. Ferry Screw Products, Inc., increased in quantity and value by 94.0 percent and 17.9 percent, respectively in 1976 compared to 1975. Production further increased in quantity and value by 24.4 percent and 89.3 percent, respectively in the first quarter of 1977 compared to the same period in 1976.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that sales or production of metal fasteners produced at E. W. Ferry Screw Products, Inc., Brookpark, Ohio, have not decreased absolutely as required for certification under Section 222 of the Trade Act of 1974.

Signed at Washington, D.C., this 12th day of August 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc.77-24381 Filed 8-22-77;8:45 am]

[TA-W-1437]

FAIRLESS WORKS, U.S. STEEL CORP.

Determinations Regarding Eligibility To Apply for Worker Adjustment Asssitance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1437: 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 15, 1976, in response to a worker petition received on December 15, 1976, which was filed by the United Steelworkers of America on behalf of workers and former workers engaged in employment related to the production of carbon steel wire rod, carbon steel wire and wire products, carbon steel bar-size light shapes, and carbon steel pipe and tubing at the Fairless Works of the U.S. Steel Corporation, in Fairless Hills, Pa.

The notice of investigation was published in the FEDERAL REGISTER on January 4, 1977 (42 FR 900). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the U.S. Steel Corporation, 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 sub-

division 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 of the above criteria have been met for workers engaged in employment related to the production of carbon steel pipe and tubing. Furthermore, the investigation has revealed that without regard as to whether any of the other criteria have been met, criterion (4) has not been met for workers engaged in employment related to the production of carbon steel wire rod and for workers engaged in employment related to the production of carbon steel wire and wire products. Furthermore, without regard as to whether any of the other criteria have been met, criterion (3) has not been met for workers engaged in employment related to the production of carbon steel bar-size light shapes.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

CARBON STEEL PIPE AND TUBING

Average employment declined 44.3 percent in the fourth quarter of 1975 as compared to the like 1974 quarter and continued to decline 35.6 percent in the first quarter of 1976 as compared to the like 1975 period before increasing 16.2 percent in the April through November 1976 period as compared to the like 1975 period.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

CARBON STEEL PIPE AND TUBING

Plant sales declined 52.5 percent in quantity in the fourth quarter of 1975 as compared to the like 1974 quarter and continued to decline 15.4 percent in the first quarter of 1976 as compared to the like 1975 period before increasing 43.2 percent in quantity in the April–November 1976 period as compared to the like 1975 period.

INCREASED IMPORTS

CARBON STEEL BAR-SIZED LIGHT SHAPES

Imports declined from 562,700 tons in 1972 to 457,400 tons in 1973, increased to 521,500 tons in 1974, declined to 167,200 tons in 1975 and continued to decline to 164,300 tons in 1976.

The ratio of imports of carbon steel bar-size light shapes to domestic shipments declined from 75.1 percent in 1972 to 44.2 percent in 1973 increased to 53.1 percent in 1974, declined to 22.7 percent in 1975 and continued to decline to 19.5 percent in 1976.

CARBON STEEL PIPE AND TUBING

Imports declined from 1,768,100 tons in 1972 to 1,574,600 tons in 1973, increased to 1,781,500 tons in 1974, declined to 1,542,500 tons in 1975 and increased to 1,820,700 tons in 1976.

The ratio of imports of carbon steel pipe and tubing to domestic shipments declined from 28.6 percent in 1972 to 20.3 percent in 1973, increased to 21.5 percent in 1974, increased to 22.8 percent in 1975 and continued to increase to 35.8 percent in 1976.

CONTRIBUTED IMPORTANTLY

The Department's investigation revealed that some customers reduced purchases of carbon steel pipe and tubing from the Fairless Works and increased purchases of imported carbon steel pipe and tubing.

The investigation further revealed that customers of carbon steel wire rod and carbon steel wire and wire products from the Fairless Works that were surveyed by the Department did not switch to imported carbon steel wire rod and imported carbon steel wire and wire products.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with the carbon steel wire rod and the carbon steel wire and wire products produced at the Fairless Works of the U.S. Steel Corporation have not contributed importantly to the total or partial separation of workers engaged in employment related to the production of either carbon steel wire rod or carbon steel wire or wire products at the plant as required for certification under Section 222 of the Trade Act of 1974.

I further conclude that imports of articles like or directly competitive with the carbon steel bar-size light shapes produced at the Fairless Works of the U.S. Steel Corporation have not increased either absolutely or relative to domestic production as required for certification under Section 222 of the Trade Act of 1974.

I further conclude that increased imports of articles like or directly competitive with the carbon steel pipe and tubing produced at the Fairless Works of the U.S. Steel Corporation have contributed importantly to the total or partial separation of workers engaged in employment related to the production of carbon steel pipe and tubing at the plant.

In accordance with the provisions of the Act, I make the following certification:

All workers engaged in employment related to the production of carbon steel pipe and tubing at the Fairless Works of the U.S. Steel Corporation in Fairless Hills, Pa., who became totally or partially separated from employment on or after November 15, 1975, and before April 4, 1976, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 12th day of August 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc.77-24382 Filed 8-22-77;8:45 am]

[TA-W-1878]

FAYLEE SPORTSWEAR, INC.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1878: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on March 23, 1977, in response to a worker petition received on March 23, 1977, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing women's dresses at Faylee Sportswear, Inc., Edwardsville, Pa.

The notice of investigation was published in the FEDERAL REGISTER on April 12, 1977 (42 FR 19176). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Faylee Sportswear, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make a naffirmative determination and issue a certification of eligibility to apply for ajustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, the investigation revealed that the fourth criterion has not been met.

Jobbers representing 100 percent of Faylee's contract work done in 1976 steadily increased their sales during the January 1974–April 1977 period while maintaining their level of contracts with the subject firm during this period. These jobbers do not use foreign contractors and do not import women's dresses.

Production at Faylee Sportswear, Inc., increased 12.9 percent in 1975 compared to 1974, and further increased 0.1 percent in 1976 compared to 1975. Production at the firm also increased 8.3 percent in the first four months of 1977 compared to the same period of 1976.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports like or directly competitive with the women's dresses produced at Faylee Sportswear, Inc., Edwardsville, Pa., did not contribute importantly to the total or partial separations of the workers at that firm.

Signed at Washington, D.C., this 15th day of August 1977.

BRIAN TURNER,
Executive Assistant to the Deputy Under Secretary for International Affairs.

[FR Doc.77-24383 Filed 8-22-77;8:45 am]

[TA-W-1919]

GULF & WESTERN INDUSTRIES, BONNEY FORGE DIVISION

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 result of TA-W-1919: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on March 29, 1977, in response to a worker petition received on March 28, 1977, which was filed on behalf of workers and former workers producing steel pipe fittings at Gulf & Western Industries, Bonney Forge Division, Roselle, N.J.

The notice of investigation was published in the FEDERAL REGISTER on April 12, 1977 (42 FR 19182). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Bonney Forge Division, 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

Employment at the Roselle, N.J., plant of the Bonney Forge Division declined 48 percent in 1976 compared to 1975 and declined 58 percent in the first two months of 1977 compared to the same period in 1976. All workers were laid off on March 4, 1977.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Production at the Roselle, N.J., plant declined 63 percent in 1976 compared to 1975 and declined 66 percent in first two months of 1977 compared to the same period in 1976. All production operations were terminated on February 25, 1977.

INCREASED IMPORTS

Imports of steel pipe fittings increased annually from 64.8 million pounds in 1973 to 185.9 million pounds in 1975. Imports declined to 113.0 million pounds in 1976. In the first quarter of 1977 imports declined to 22.7 million pounds from 36.7 million pounds in the first quarter of 1976.

Imports of steel pipe fittings increased relative to domestic production from 20.3 percent in 1973 to 47.6 percent in 1976. In the first quarter of 1977, imports as a percentage of production declined to 35.3 percent from 48.9 percent in the first quarter of 1976.

CONTRIBUTED IMPORTANTLY

Direct customers of the Bonney Forge Division did not purchase imports though they experienced reduced orders from their own customers because of imported steel pipe fittings. Companies who bought from Bonney Forge's customers were subsequently contacted and some of these companies indicated that they had switched purchases to steel pipe fittings of foreign origin.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitve with steel pipe fittings produced by Gulf & Western Industries, Bonney Forge Division, Roselle, N.J., contributed importantly to the total or partial separation of the workers of that plant. In accordance with the provisions of the Trade Act of 1974, I make the following certification:

All workers of Gulf & Western Industries, Bonney Forge Division, Roselle, N.J., who became totally or partially separated from employment on or after March 24, 1976, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 12th day of August 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc.77-24384 Filed 8-22-77;8:45 am]

[TA-W-155T]

HARRISBURG MANUFACTURING CO.

Termination of Investigation

Pursuant to Section 223(d) of the Trade Act of 1974 and 29 CFR 90.17(d), a termination investigation was initiated on July 28, 1976 to determine, with respect to the certification issued on October 29, 1975, whether total or partial separations from the Harrisburg, Ark., plant of Harrisburg Manufacturing Co. are no longer attributable to the conditions specified in such certification.

Notice of investigation regarding termination of certification of eligibility to apply for worker adjustment assistance was published in the FEDERAL REGISTER on August 10, 1976 (41 FR 33596). No public hearing was requested and none was held.

The existing certification will expire on October 29, 1977. Since workers newly separated, totally or partially, after October 29, 1977 would be ineligible to apply for adjustment assistance, termination of the certification by the Secretary of Labor within 90 days from statutory termination would serve no purpose; consequently the investigaton has been terminated.

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

HAROLD A. BRATT,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc.77-24385 Filed 8-22-77;8:45 am]

[TA-W-1728]

I. J. WEXLER COATS

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223(d) of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-1728: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on March 3, 1977, in response to a worker petition received on February 23, 1977, which was filed on behalf of workers and former workers producing ladies' coats and suits at I. J. Wexler Coats, Los Angeles, Calif.

The notice of investigation was published in the FEDERAL REGISTER on March 15, 1977 (42 FR 14185). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of I. J. Wexler Coats, 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 re-

quirements 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 appropriation 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. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that criterion (4) has not been met.

The majority of I. J. Wexler's customers consisted of small specialty shops. A survey of customers indicated that those customers who decreased purchases from I. J. Wexler in 1976 from 1975 did not purchase imported ladies' coats and suits. Customers also indicated that they decreased purchases from I. J. Wexler due to a market demand for styles which were not offered by the firm. Customers who reduced purchases from I. J. Wexler switched to other domestic suppliers.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with ladies' coats and suits produced at I. J. Wexler Coats, Los Angeles, Calif., did not contribute importantly to the total or partial separations of the workers of that firm.

Signed at Washington, D.C., this 12th day of August 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc.77-24386 Filed 8-22-77;8:45 am]

[TA-W-1785, 1787]

JEM FASHIONS, INC., AND MEL MAR FASHIONS, INC.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1785 and TA-W-1787: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on March 10, 1977, in response to worker petitions received on March 9, 1977, which were filed on behalf of workers and former workers producing women's coats at Jem Fashions, Inc., Asbury Park, N.J. (TA-W-1785) and on behalf of workers and former workers producing women's coats and sportswear at Mel Mar Fashions, Inc., Asbury Park, N.J. (TA-W-1787). The Department's investigation revealed that due to a change in company ownership, Jem Fashions went out of business in December 1976 and was reopened in January 1977 as Mel Mar Fashions, Inc. Thus, both petitions were combined into one investigation.

The notices of investigation were published in the FEDERAL REGISTER on March 25, 1977 (42 FR 16200). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Jem Fashions and of Mel Mar Fashions, their 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 of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion (4) has not been met.

Jem Fashions, Inc., was founded in 1962 as a clothing contractor, producing women's coats primarily for a clothing manufacturer in New York City. Jem Fashions was a one-plant company operating in a one-story building at 970 Monroe Avenue, Asbury Park, N.J.

Due to a change in company ownership, Jem Fashions went out of business in December 1976 and was reopened in January 1977 as Mel Mar Fashions, Inc. As a clothing contractor, Mel Mar Fashions continues to produce women's coats and is attempting to expand into the women's sportswear market. Mel Mar Fashions operates on the same premises and with the same machinery as did Jem Fashions. Former employees of Jem Fashions are now working for Mel Mar Fashions.

Unit production at the Asbury Park plant increased 28 percent in 1976 from 1975 and decreased 95 percent in the first quarter of 1977 compared to the first quarter of 1976. The production decline in the first quarter of 1977 can be directly attributed to the loss of contract work with a clothing manufacturer who had accounted for over 90 percent of Jem Fashions' production in 1975 and 1976. This clothing manufacturer had increased its contract work with Jem Fashions in 1976 from 1975 but discontinued its contract work with Mel Mar Fashions in January 1977.

The clothing manufacturer stated that it ceased business with Mel Mar Fashions because Mel Mar Fashions is regulated by a different set of union-employer regulations than was Jem Fashions. Although workers at both Jem Fashions and Mel Mar Fashions were represented by the International Ladies' Garment Workers Union, Jem Fashions, which produced women's coats, belonged to a different employers' association than Mel Mar Fashions, which produces women's coats and women's sportwear. The clothing manufacturer, however, can only award contract work to firms belonging to the employers' association to which Jem Fashions belonged. According to its union-employer association rules, therefore, the clothing manufacturer shifted contract work from Mel Mar Fashions to other domestic union shops. Mel Mar Fashions continues to perform contract work for other clothing manufacturers belonging to its new employers' association.

CONCLUSION

It is therefore concluded that imports of articles like or directly competitive with women's coats produced at Jem Fashions, Inc., and at Mel Mar Fashions, Inc., Asbury Park, N.J., did not contribute importantly to a decline in production at the Asbury Park plant.

Signed at Washington, D.C., this 15th day of August 1977.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc.77-24387 Filed 8-22-77;8:45 am]

[TA-W-124T]

JOHANSEN BROTHERS SHOE CO.

Termination of Investigation

Pursuant to Section 223(d) of the Trade Act of 1974 and 29 CFR Part 90.17 (d), a termination investigation was initiated on July 28, 1976, to determine, with respect to the certification issued on October 29, 1975, whether total or partial separations from the St. Louis, Mo., plant of Johansen Brothers Shoe Co. are no longer attributable to the conditions specified in such certification.

Notice of investigation regarding termination of certification of eligibility to apply for worker adjustment assistance was published in the FEDERAL REGISTER on August 10, 1976 (41 FR 33595). No public hearing was requested and none was held.

The existing certification will expire on October 29, 1977. Since workers newly separated, totally or partially, after October 29, 1977, would be ineligible to apply for adjustment assistance, termination of the certification by the Sec-

retary of Labor within 90 days from statutory termination would serve no purpose; consequently the investigation has been terminated.

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

HAROLD A. BRATT,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc.77-24388 Filed 8-22-77;8:45 am]

[TA-W-1479; TA-W-1512; TA-W-1532]

JONES & LAUGHLIN STEEL CORP., PITTSBURGH WORKS

Determinations 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- 1479, 1512, and 1532: Investigations regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigations were initiated on December 20, 1976 (TA-W-1479) and December 22, 1976 (TA-W-1512) in response to worker petitions which were filed by the United Steelworkers of America on behalf of workers and former workers producing cold finished carbon steel bars, hot rolled carbon steel bars and shapes, hot rolled carbon steel sheet, cold rolled carbon steel sheet, galvanized sheet and hot rolled carbon steel plate at Jones & Laughlin Steel Corp., Pittsburgh Works, Pittsburgh (TA-W-1512) and Hazelwood, Pa. (TA-W-1479); and on December 15, 1976 (TA-W-1532) on behalf of nurses employed in support of production at the Pittsburgh Works. The Pittsburgh Works encompasses all production operations by Jones & Laughlin in the Pittsburgh area; thus, findings regarding the above-indicated petitions are combined in one determination.

The notices of investigation were published in the FEDERAL REGISTER on January 7, 1977 (42 FR 1535) and January 18, 1977 (42 FR 3373). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Jones & Laughlin Steel Corp., 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 threof, 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 with respect to workers producing hot rolled plate and hot rolled sheet all of the above criteria have been met, and with respect to all other products and with respect to nurses employed in support of production operations at the Pittsburgh Works, criterion (2) has not been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

The average number of production workers at the Pittsburgh Works decreased 26.0 percent in 1975 from 1974. Employment during the period January–November 1976, while increasing compared to the same period in 1975, remained 13 percent below annual employment in 1974. The number of workers on layoff status increased more than four-fold in the fourth quarter of 1976 compared to the prior quarter.

The average number of weekly hours worked by production employees decreased 18.8 percent in 1975 from 1974 and increased 14.9 percent in the period January–November 1976 compared to the same period in 1975.

Workers are not separately identifiable by product line.

SALES OR PRODUCTION OR BOTH HAVE DECREASED ABSOLUTELY

Total shipments at the Pittsburgh Works increased 24.0 percent in the period January–November 1976 compared to the same period in 1975.

In 1976, shipments from the Pittsburgh Works included hot rolled bars and shapes, galvanized sheet, hot rolled plate, cold rolled sheet, cold finished bars, and hot rolled sheet. Shipments of products comprising 80 percent of total 1976 shipments—hot rolled bars and shapes, galvanized sheet, cold rolled sheet, and cold finished bars—each increased in January–November 1976 compared to January–November 1975.

Shipments of hot rolled plate, comprising 19 percent of total shipments, declined 19 percent in quantity in January–November 1976 compared to January–November 1975. Shipments of hot rolled sheet, comprising one percent of total shipments, declinde 93 percent in January–November 1976 compared to January–November 1975.

INCREASED IMPORTS

Imports of carbon steel plate decreased in 1973 from 1972 and then increased in 1974. Imports decreased 20 percent in 1975 from 1974 and then increased 15 percent from 1,353.0 thousand short tons in 1975 to 1,555.4 thousand short tons in 1976. The import/shipment and import/consumption ratios increased steadily from 16.4 percent and 14.5 percent, respectively, in 1973 to 27.7 percent and 21.9 percent, respectively, in 1976.

Imports of carbon hot rolled sheet declined absolutely in each year from 1972 through 1975. Imports declined 14.5 percent from 1974 to 1975 and then increased 8.4 percent from 1,509.2 thousand short tons in 1975 to 1,635.9 thousand short tons in 1976. Imports declined relative to domestic shipments and consumption from 1972 to 1973 and increased from 1973 through 1975. The ratios of imports to domestic shipments and consumption declined from 14.0 percent and 12.4 percent, respectively, in 1975 to 11.3 percent and 10.2 percent, respectively, in 1976.

Imports of hot rolled carbon steel bars decreased steadily from 804.1 thousand short tons in 1972 to 384.2 thousand short tons in 1976. The ratios of imports to domestic shipments and consumption decreased steadily from 12.8 percent and 11.5 percent, respectively, in 1972 to 7.0 percent and 6.6 percent, respectively, in 1976.

Imports of carbon steel bar-size light shapes decreased both absolutely and relative to domestic production and consumption in 1973 from 1972 and increased both absolutely and relatively in 1974 from 1973. Imports decreased 67.9 percent in 1975 from 1974, and decreased 1.7 percent in 1976 from 1975. The import/shipment and import/consumption ratios decreased steadily from 53.1 percent and 35.4 percent, respectively, in 1974 to 19.5 percent and 16.7 percent, respectively, in 1976.

Imports of galvanized steel sheet and strip decreased absolutely and relative to domestic shipments and consumption in 1973 from 1972 and increased both absolutely and relatively in 1974 from 1973. Imports decreased 42 percent in 1975 from 1974 and increased 99 percent from 739.0 thousand short tons in 1975 to 1,467.7 thousand short tons in 1976. The import/shipment and import/consumption ratios decreased from 21.0 percent and 17.6 percent, respectively, in 1974 to 19.9 percent and 16.7 percent, respectively, in 1975 and then increased to 28.3 percent and 22.2 percent, respectively, in 1976.

Imports of carbon steel cold rolled sheet declined absolutely in each year from 1972 through 1975. Imports declined 18.9 percent from 1974 to 1975 and then increased 13.7 percent from 2,067.1 thousand short tons in 1975 to 2,350.7 thousand short tons in 1976. Imports declined relative to domestic shipments and consumption from 1972 to 1973 and increased from 1973 through 1975. The ratios of imports to domestic shipments and consumption declined from 16.5 percent and 14.2 precent, respectively, in 1975 to 13.2 percent and 11.7 percent, respectively, in 1976.

Imports of cold finished carbon steel bars decreased in each year from 131.9 thousand short tons in 1972 to 65.6 thousand short tons in 1975 and then increased to 70.3 thousand short tons in

1976. The ratios of imports to domestic shipments and consumption decreased from 9.5 percent and 8.8 percent, respectively, in 1972 to 5.3 percent and 5.0 percent, respectively, in 1976.

CONTRIBUTED IMPORTANTLY

Shipments of hot rolled plate and hot rolled sheet combined comprised 20 percent of total shipments by the Pittsburgh Works during the first eleven months of 1976. Shipments of both products declined during that period compared to the same eleven month period in 1975. Customers surveyed who purchase plate and hot rolled sheet from the Pittsburgh Works reduced purchases from the Pittsburgh Works while increasing purchases of imported plate and hot rolled sheet.

Total shipments by the Pittsburgh Works increased in the first eleven months of 1976 compared to the first eleven months of 1975. Workers employed in support functions, such as the nurses who petitioned under TA-W-1532, are not influenced by fluctuations in output of individual products, but by total plant output. Thus, notwithstanding declines in output of hot rolled plate and hot rolled sheet, total plant output increased 42 percent and 70 percent in the second and third quarters, of 1976 compared to the respective quarters of 1975.

Shipments of all products other than hot rolled plate and hot rolled sheet increased in January–November 1976 compared to January–November 1975.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with hot rolled plate and hot rolled sheet produced at the Pittsburgh Works of Jones & Laughlin Steel Corp. contributed importantly to declines in production and employment at that plant. In accordance with the provisions of the Trade Act of 1974, I make the following certification:

All workers engaged in employment related to the production of hot rolled plate and hot rolled sheet at the Pittsburgh Works (Pittsburgh and Hazelwood, Pa., plants) of Jones & Laughlin Steel Corp., who became totally or partially separated from employment on or after September 1, 1976, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

I further conclude that increases of imports of articles like or directly competitive with cold finished bars, hot rolled bars and shapes, cold rolled sheet, and galvanized sheet did not contribute importantly to separations of either workers producing such products at the Pittsburgh Works or nurses employed in support functions at the Pittsburgh Works of Jones & Laughlin Steel Corp.

Signed at Washington, D.C., this 12th day of August 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc.77-24389 Filed 8-22-77;8:45 am]

[TA-W-1808]

R & P MANUFACTURING, INC.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1808: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on March 15, 1977, in response to a worker petition received on March 14, 1977, which was filed on behalf of workers and former workers producing ladies' slacks and skirts at R&P Manufacturing, Inc., South River, N.J.

The notice of investigation was published in the FEDERAL REGISTER on April 5, 1977 (42 FR 18155). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of R&P Manufacturing, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the workers firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether the other criteria have been met, criterion (4) has not been met.

Evidence developed in the Department's investigation revealed that customers representing 93 percent of R&P Manufacturing's sales of ladies skirts and slacks did not report purchasing imports of such products. These customers cited union jurisdictional complications as the reason for reducing or ceasing to place orders for ladies skirts and slacks with R&P Manufacturing.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's slacks and skirts produced by R&P Manufacturing, Inc., South River, N.J., did not contribute importantly to the decline in sales or production or separations of workers of that firm.

Signed at Washington, D.C., this 12th day of August 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc.77-24390 Filed 8-22-77;8:45 am]

[TA-W-1959]

REEVES HOFFMAN DIVISION OF DYNAMICS CORP.

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-1959: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on April 7, 1977, in response to a worker petition received on April 5, 1977, by three individual workers on behalf of workers and former workers producing electronic quartz crystals for time pieces at the McConnellsburg, Pa., plant of Reeves Hoffman Division of Dynamics Corp. of America.

The notice of investigation was published in the FEDERAL REGISTER on April 15, 1977 (42 FR 19939). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Reeves Hoffman Division of Dynamics Corp. of America, 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 revealed that all of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Average employment of production workers at the McConnellsburg plant increased 87 percent in July 1976, increased 79 percent in August 1976, in-

creased 40 percent in September 1976, and increased 31 percent in October 1976 when compared to the previous month. Average employment of production workers declined 1 percent in November 1976 when compared to October 1976, declined 4 percent in December 1976 when compared to November 1976, declined 39 percent in January 1977 when compared to December 1976, increased 2 percent in February 1977 when compared to January 1977, and increased 20 percent in March 1977 compared to February 1977. The plant closed on March 25, 1977.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Total sales (both the Carlisle and McConellsburg plants) of electronic quartz crystals for time pieces, in quantity, increased 65 percent in 1976 compared to 1975 and increased 2 percent in the first quarter of 1977 compared to the first quarter of 1976. The above comparisons do not fully reflect the sales trend of Reeves Hoffman. Sales, in both quantity and value, were on an upward trend through the second quarter of 1976. Sales, in quantity, increased in each consecutive quarter from the first quarter in 1975 through the second quarter of 1976. In the second quarter of 1976 sales, in both quantity and value, peaked and then started on a downward trend. Because of this upward trend through the second quarter of 1976 the comparison of 1976 to 1975 shows an increase. Therefore, the following comparison is shown in order to illustrate the reverse in the sales trend that occurred in mid-1976. Sales, in quantity, increased 82 percent in the last six months of 1975 when compared to the first six months in 1975. Sales, in quantity, declined 23 percent in the last six months of 1976 when compared to the first six months of 1976. Therefore, it is shown that not only did sales decrease in the last six months of 1976 when compared to the first six months but also that the reverse in the trend in mid-1976 is not of a seasonal nature.

Production, in quantity, at the McConnellsburg plant increased 175 percent in September 1976, increased 164 percent in October 1976, increased 79 percent in November 1976, and increased 198 percent in December 1976 when compared to the previous month. Production then declined 14 percent in January 1977 when compared to December 1976, declined 2 percent in February 1977 when compared to January 1977, and declined 97 percent in March 1977 when compared to February 1977. The plant closed on March 25, 1977.

INCREASED IMPORTS

Imports of quartz crystals for electronic watches increased absolutely in 1974 and 1975 when compared to the previous year and increased 345 percent in 1976 compared to 1975. The ratio of imports to domestic production increased from 16.7 percent in 1975 to 32.7 percent in 1976.

CONTRIBUTED IMPORTANTLY

Customers indicated they decreased purchases of electronic quartz crystals for time pieces from Reeves Hoffman Division of Dynamics Corp. of America and increased purchases of imports.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with electronic quartz crystals for time pieces produced at the McConnellsburg, Pa., plant of Reeves Hoffman Division of Dynamics Corp. of America 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 at the McConnellsburg, Pa., plant of Reeves Hoffman Division of Dynamics Corp. of America who became totally or partially separated from employment on or after November 1, 1976, and before June 1, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974. All workers totally or partially separated on or after June 1, 1977, are denied eligibility to apply for adjustment assistance.

Signed at Washington, D.C., this 15th day of August 1977.

BRIAN TURNER,
Executive Assistant to the Deputy Under Secretary for International Affairs.

[FR Doc.77-24391 Filed 8-22-77;8:45 am]

[TA-W-2049]

REEVES HOFFMAN DIVISION OF DYNAMICS CORP. OF AMERICA

Certification Rearding Eligibility To Apply for Worker Adjustment Asssitance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2049: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on May 10, 1977, in response to a worker petition received on May 5, 1977, on behalf of workers and former workers producing electronic quartz crystals for timepieces at the Carlisle, Pa., plant of Reeves Hoffman Division of Dynamics Corp. of America.

The notice of investigation was published in the FEDERAL REGISTER on May 27, 1977 (42 FR 27330). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Reeves Hoffman Division of Dynamics Corp. of America, 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 revealed that all of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATION

Average employment of all production workers at the Carlisle plant increased 7 percent in 1975 compared to 1974, increased 11 percent in 1976 compared to 1975, and decreased 59 percent in the first quarter of 1977 compared to the first quarter of 1976. Average employment of production workers at the Carlisle plant started declining in July 1976 and has decreased in each consecutive month until the plant stopped producing electronic quartz crystals for time pieces on May 16, 1977.

The number of employees engaged in employment not related to the production of electronic quartz crystals at the Carlisle plant has remained relatively unchanged over the period from 1974 through the first quarter of 1977. Employees not engaged in employment related to the production of electronic quartz crystals constituted approximately 13 percent of total employment in 1975 and 12 percent in 1976.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Total sales (both the Carlisle and McConnellsburg plants) of electronic quartz crystals for time pieces, increased in quantity 65 percent in 1976 compared to 1975 and increased 2 percent in the first quarter of 1977 compared to the first quarter of 1976. The above comparisons do not fully reflect the sales trend of Reeves Hoffman. Sales, in both quantity and value, were on an upward trend through the second quarter of 1976. Sales, in quantity, increased in each consecutive quarter from the first quarter in 1975 through the second quarter of 1976. In the second quarter of 1976, sales, in both quantity and value, peaked and then started on a downward trend. Because of this upward trend through the second quarter of 1976 the comparison of 1976 to 1975 shows an increase. Therefore, the following comparison is shown in order to illustrate the reverse in the

sales trend that occurred in mid-1976. Sales, in quantity, increased 82 percent in the last six months of 1975 when compared to the first six months of 1975. Sales, in quantity, declined 23 percent in the last six months of 1976 when compared to the first six months of 1976. Therefore, it is shown that not only did sales decrease in the last six months of 1976 when compared to the first six months, but also that the reverse in the trend in mid-1976 is not of a seasonal nature.

Production, in quantity, at the Carlisle plant increased 69 percent in 1976 compared to 1975 and declined 44 percent in the first quarter of 1977 when compared to the first quarter of 1976. The above comparisons do not fully reflect the production trend of Reeves Hoffman. Production, in both quantity and value, were on an upward trend through the second quarter of 1976. Production, in both quantity and value, peaked in the second quarter of 1976 and then started on a downward trend. Because of this upward trend through the second quarter of 1976 the comparison of 1976 to 1975 shows an increase. Therefore, the following comparison is shown in order to illustrate the reverse in the production trend that occurred in mid-1976. Production, quantity, declined 18 percent in the six month period from July 1976 through December 1976 when compared to the previous six month period from January 1976 through June 1976. The plant stopped producing electronic quartz crystals for time pieces on May 16, 1977.

INCREASED IMPORTS

Imports of quartz crystals for electronic watches increased absolutely in 1974 and 1975 when compared to the previous year and increased 345 percent in 1976 compared to 1975. The ratio of imports to domestic production increased from 16.7 percent in 1975 to 32.7 percent in 1976.

CONTRIBUTED IMPORTANTLY

Customers indicated they decreased purchases of electronic quartz crystals for time pieces from Reeves Hoffman Division of Dynamics Corp. of America and increased purchases of imports.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with electronic quartz crystals for time pieces produced at the Carlisle, Pa., plant of Reeves Hoffman Division of Dynamics Corp. of America contributed importantly to the total or partial separation of the workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers engaged in employment related to the production of electronic quartz crystals for time pieces at the Carlisle, Pa., plant of Reeves Hoffman Division of Dynamics Corp. of America who became totally or partially separated from employment on or after July 1, 1976, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 15th day of August 1977.

BRIAN TURNER,
Executive Assistant to the Deputy Under Secretary for International Affairs.

[FR Doc.77-24392 Filed 8-22-77;8:45 am]

[TA-W-1831]

SHARMAT, INC.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1831: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on March 21, 1977, in response to a worker petition received on March 18, 1977, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing women's dresses at Sharmat, Inc., Luzerne, Pa.

The notice of investigation was published in the FEDERAL REGISTER on April 5, 1977 (42 FR 18158). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Sharmat, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, the investigation revealed that criterion (4) has not been met.

Production of women's dresses at Sharmat, Inc., Luzerne, Pa., increased 14.6 percent in 1975 compared to 1974, before declining 3.2 percent in 1976 compared to 1975. Production then increased 4.3 percent in the first four months of 1977 compared to the same period of 1976.

Jobbers representing 100 percent of the contract work done by Sharmat in 1976 experienced increased sales during the period from 1974 through the first four months of 1977 and generally increased contract work with Sharmat during the same period. The jobbers do not use foreign contractors.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with the women's dresses produced at Sharmat, Inc., Luzerne, Pa., did not contribute importantly to the total or partial separations of the workers at that firm.

Signed at Washington, D.C., this 12th day of August 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc.77-24393 Filed 8-22-77;8:45 am]

[TA-W-1658]

SKILL KNIT FABRICS, INC.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1658: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on February 16 1977, in response to a worker petition received on February 8, 1977, which was filed by the International Ladies' Garment Workers Union on behalf of workers and former workers producing circular knit fabric at Skill Knit Fabrics.

The notice of investigation was published in the FEDERAL REGISTER on March 8, 1977 (42 FR 13093). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Skill Knit Fabrics, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibilty requirements of Section 22 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision thereof have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased

quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether the other criteria have been met, criteria (2) and (4) have not been met.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales and production at Skill Knit are equal since the company only produces for order on a commission basis. Sales and production decreased 37.1 percent in quantity and 33.2 percent in value in 1975 from 1974. In 1976, sales and production increased 23.8 percent in quantity and 34.5 percent in value compared to 1975.

Total sales and production at Skill Knit increased in 1976 compared to 1975. Production declines in the first and third quarter of 1976 compared to the immediately preceding quarters reflect the seasonal trend at Skill Knit. Skill Knit is a commission knitter whose production patterns follow those of the manufacturers Skill Knit serves. Periods of decreased production at Skill Knit reflect the slower production seasons of customers.

CONTRIBUTED IMPORTANTLY

Skill Knit's major customer, who represented over 65 percent of total sales in 1976, indicated that he does not purchase imported fabric.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that sales and production of circular knit fabric produced at Skill Knit Fabrics, Inc., did not decline and that increases of imports of articles like or directly competitive with circular knit fabric produced at Skill Knit Fabrics, Inc., did not contribute importantly to declines in production and employment at that plant.

Signed at Washington, D.C., this 12th day of August 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc.77-24394 Filed 8-22-77;8:45 am]

[TA-W-1250]

TERRACE FOOTWEAR, INC.

Revised Certification of Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 222 of the Trade Act of 1974 and in accordance with Section 223(a) of such Act, on March 11, 1977, the Department of Labor issued a certification of eligibility to apply for ajustment assistance applicable to workers and former workers producing women's casual footwear at the Norwalk, Conn., plant of Terrace Footwear, Inc.

The notice of certification was published in the FEDERAL REGISTER March 22, 1977 (42 FR 15481). A revised certification was issued April 14, 1977, to include six additional workers who were separated after the termination date because of their required presence to close out the plant. The notice of revised certification was published in the FEDERAL REGISTER (42 FR 21871) April 29, 1977.

Subsequent to the publication of the revised determination, the Office of Trade Adjustment Assistance received an inquiry on behalf of workers separated prior to the July 1, 1976, impact date. A review of statistical evidence obtained in the course of the original investigation revealed layoffs associated with the adverse affects of increased imports of women's casual footwear actually began in May 1976.

CONCLUSION

Based on a review of the entire record and in accordance with the provisions of the Act, I have determined that the following certification is hereby made as follows:

All workers at Terrace Footwear, Inc., Norwalk, Conn., who became totally or partially separated from employment on or after April 30, 1976, and on or before October 30, 1976, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974, except that the following identified employees of Terrace Footwear, Inc., shall be eligible to apply for adjustment assistance even if they become totally or partially separated after October 30, 1976.

1. Genevieve Cuneo, 17 Joemar Rd., South Norwalk, Conn.
2. Oscar Greenberg, 20 Friendly Dr., Norwalk, Conn.
3. Jeffrey Waldron, 400 North Main St., Ansonia, Conn.
4. Preston Fryr, 408A Washington Village, South Norwalk, Conn.
5. Angel Morales, 16 Pine St., South Norwalk, Conn.
6. Charles Nastro, 432 Rowayton Ave., South Norwalk, Conn.

Signed at Washington, D.C., this 12th day of August 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc.77-24395 Filed 8-22-77;8:45 am]

[TA-W-1835]

TINA DRESS CO.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1835: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on March 21, 1977, in response to a worker petition received on March 18, 1977, which was filed by the International Ladies' Garment Workers Union on behalf of workers and former workers producing women's dresses and sportswear at Tina Dress Co., Wilkes-Barre, Pa.

The notice of investigation was published in the FEDERAL REGISTER on April 5, 1977 (42 FR 18158). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Tina Dress Co., 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.

Without regard to whether the other criteria have been met, criterion (4) has not been met.

The Department's investigation has revealed that the only apparel manufacturer for which Tina Dress produced women's dresses and sportswear (which includes blouses, shirts, skirts, vests, jackets, slacks, and shorts) does not import finished products for sale to its retail customers and does not contract with firms outside the United States. This manufacturer increased contracts with other domestic contractors from 1975 to 1976.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that imports of articles like or directly competitive with women's dresses, blouses, shirts, skirts, vests, jackets, slacks, and shorts produced by Tina Dress Co. have not contributed importantly to the decline in sales or production of the firm or to the total or partial separations of workers of that firm as required for certification under Section 222 of the Trade Act of 1974.

Signed at Washington, D.C., this 15th day of August 1977.

BRIAN TURNER,
Executive Assistant to the Deputy Under Secretary for International Affairs.

[FR Doc.77-24396 Filed 8-22-77;8:45 am]

[TA-W-2031 and TA-W-2032]

TOWNSEND FASTENING SYSTEMS, DIVISION OF TEXTRON, INC.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2031 and TA-W-2032: Investigation regarding certification of eligibility to apply for adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on April 26, 1977, in response to a worker petition received on April 25, 1977, which was filed by the United Steelworkers of America on behalf of workers and former workers producing specialty fasteners and rivets at the Ellwood City, Pa., plant and the Fallston, Pa., plant of Townsend Fastening Systems, Division of Textron, Inc.

The notice of investigation was published in the FEDERAL REGISTER on May 10, 1977 (42 FR 23655). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Townsend Fastening Systems, the U.S. Department of Commerce; the U.S. International Trade Commission, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met.

(1) That a significant number or proportion of the workers in th workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion (3) has not been met.

Production of specialty fasteners comprises 85 percent of Townsend Fastening System's output.

The evidence developed in the Department's investigation reveals that there are no known identifiable imports of specialty fasteners.

Production of rivets comprises 15 percent of Townsend Fastening System's output.

Imports of rivets relative to domestic production decreased from 3.3 percent in 1974 to 2.6 percent in 1975 and 2.2 percent in 1976.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that imports of articles like or directly competitive with specialty fasteners and rivets produced by the Ellwood City, Pa., plant and the Fallston, Pa., plant of Townsend Fastening Systems, Division of Textron, Inc., have not increased either actually or relative to domestic production as required for certification under Section 222 of the Trade Act of 1974.

Signed at Washington, D.C., this 12th day of August 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc.77-24397 Filed 8-22-77;8:45 am]

[TA-W-2180]

TRUE TEMPER 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-2180: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on June 27, 1977, in response to a worker petition received on June 24, 1977, which was filed by the United Steelworkers of America on behalf of workers and former workers producing shovels and spades at the Dunkirk, N.Y., plant of True Temper Corp.

The notice of investigation was published in the FEDERAL REGISTER on July 12, 1977 (42 FR 35904). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from the United Steelworkers of America and officials of True Temper Corp.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the decreased in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any other criteria have been met, criterion (1) has not been met.

The Dunkirk, N.Y., plant of the True Temper Corp. produces shovels and spades.

Pursuant to the requirements of 29 CFR 90.2 total separations must be the equivalent to a total unemployment of five percent or 50 workers, whichever is less. Evidence developed in the Department's investigation revealed that the total separations which occurred during the period of possible coverage amounted to less than five percent of the workforce employed at the Dunkirk plant of True Temper Corp. The total number of workers experiencing separations during the period May 6, 1976, one year prior to the signature date of the petition, to the present was less than 50 workers. There is no indication that current workers are threatened with any involuntary separations.

Pursuant to the requirements of 29 CFR 90.2, "partial separation" means, that the worker's hours of work have been reduced to 80 percent of less of the worker's average weekly hours at the firm or appropriate subdivision thereof. Evidence developed in the Department's investigation revealed that the worker's average weekly hours of work increased 14 percent in the first half of 1977 compared to the same period of 1976.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that a significant number or proportion of the workers at the Dunkirk, N.Y., plant of the True Temper Corp. have not become totally or partially separated as required in Section 222 of the Trade Act of 1974.

Signed at Washington, D.C., this 12th day of August 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc.77-24398 Filed 8-22-77;8:45 am]

[TA-W-1432]

U.S. STEEL CORP., CUYAHOGA WORKS

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-1432: Investigation regarding certification of eligibility to apply for worker adustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on December 15, 1976, in response to a worker petition received on December 15, 1976, which was filed by the United Steelworkers of America on behalf of workers and former workers producing carbon steel wire and carbon steel wire rods at the Cleveland, Ohio (Cuyahoga Works) of the United States Steel Corp.

The notice of investigation was published in the FEDERAL REGISTER on January 4, 1977 (42 FR 902). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of U.S. Steel Corp., 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 without regard to whether any of the other criteria have been met, the fourth criterion has not been met.

The Cuyahoga Works of the U.S. Steel Corp. produces carbon steel wire and carbon steel wire rod.

Most customers of the Cuyahoga Works surveyed indicated that they did not purchase imported wire or wire rods in 1976. Those customers that did purchase imports increased purchases from the Cuyahoga Works in 1976 compared to 1975. The increased purchases by customers in 1976 compared to 1975 followed the increased activity in the construction industry following the slow year in 1975.

The response of customers is consistent with industry trends. U.S. domestic shipments of carbon steel wire and wire rod rose substantially from 1975 to 1976. Consequently, imports relative to domestic shipments declined from 65.1 percent in 1975 to 35.7 percent in 1976 for wire rods while the import to shipments ratio for carbon steel wire and wire products remained relatively unchanged from 1975 to 1976.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with carbon steel wire and carbon steel wire rod produced at the Cleveland, Ohio (Cuyahoga Works) of the U.S. Steel Corp. did not contribute importantly to the total or partial separations of the workers at that plant.

Signed at Washington, D.C., this 12th day of August 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc.77-24399 Filed 8-22-77;8:45 am]

[TA-W-1989]

WEBSTER ENTERPRISES, 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-1989: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on April 18, 1977, in response to a worker petition received on that date which was filed on behalf of workers formerly engaged in employment related to the production of squeeze toys at Webster Enterprises, Inc., Cleveland, Ohio.

The notice of investigation was published in the FEDERAL REGISTER on April 29, 1977 (42 FR 21872). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Webster Enterprises, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination 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 revealed that all of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Average employment of production workers at Webster Enterprises, Inc., increased 80 percent in the first three Employment of production workers decreased 80 percent in the first three quarters of 1976 compared to the like period in 1975.

All employment ceased when the plant closed in August 1976.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales at Webster Enterprises, Inc., adjusted for price changes, increased 100 percent in value from 1974 to 1975. Adjusted sales decreased 15 percent in value in the first three quarters of 1976 compared to the like period in 1975.

All sales ceased when the plant closed in August 1976.

INCREASED IMPORTS

Imports of squeeze toys increased absolutely from 1972 to 1973, then decreased from 1973 to 1974, and 1974 to 1975. Imports increased 38 percent absolutely from 1975 to 1976, and the ratio of imports to domestic production increased from 139.1 percent in 1975 to 151.7 percent in 1976. Imports increased 26 percent absolutely in the first three quarters of 1976 compared to the like period in 1975.

CONTRIBUTED IMPORTANTLY

Customers of Webster Enterprises, Inc., who were surveyed by OTAA, decreased purchases of squeeze toys from Webster in 1976 compared to 1975, and increased purchases from other domestic sources manufacturing squeeze toys offshore.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with squeeze toys produced at Webster Enterprises, Inc., Cleveland, Ohio, contributed importantly to the total or partial separation of the workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at Webster Enterprises, Inc., Cleveland, Ohio, who became totally or partially separated from employment on or after April 12, 1976, and before October 1, 1976, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974. All workers who became totally or partially separated after October 1, 1976, are denied eligibility to apply for adjustment assistance.

Signed at Washington, D.C., this 15th day of August 1977.

BRIAN TURNER,
Executive Assistant to Deputy Under Secretary for International Affairs.

[FR Doc.77-24400 Filed 8-22-77;8:45 am]

NATIONAL ADVISORY COUNCIL ON THE EDUCATION OF DISADVANTAGED CHILDREN

CLOSED MEETINGS

Annual Report

In compliance with Sections 10(d) and 13 of the Federal Advisory Committee Act, a summary report is hereby submitted on the partially closed meeting of the National Advisory Council on the Education of Disadvantaged Children held during calendar year 1976. The closed meeting, hereby referred to as the "closed executive session," which had been previously approved by the Commissioner of Education on April 6, 1976, was held on April 29, 1976 from 4–5 p.m. The meeting was held at the San Francisco Hotel, Mason & O'Farrell Streets, San Francisco, California.

The National Advisory Council on the Education of Disadvantaged Children (NACEDC) is established under section

148 of the Elementary and Secondary Act (20 U.S.C. 2411) to advise the President and the Congress on the effectiveness of compensatory education to improve the educational attainment of disadvantaged children.

The purpose of the closed executive session was for Council to discuss personnel matters and internal personnel rules and practices of the Council. Ten members were in attendance and no conclusions were reached.

Record of this meeting is found in the NACEDC's 1976 Report to the Commissioner. This report is available for public inspection at the office of the National Advisory Council on the Education of Disadvataged Children, located at 425 Thirteenth Street NW., Suite 1012, Washington, D.C., and is also available from the Commissioner of Education, U.S. Office of Education, Washington, D.C.

Signed at Washington, D.C. on August 17, 1977.

GLORIA STRICKLAND,
Acting Executive Director.

[FR Doc.77-24267 Filed 8-22-77;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on August 16, 1977 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, 202-395-4529, or from the reviewer listed.

NEW FORMS

DEPARTMENT OF COMMERCE

Domestic and International Business Administration, Evaluation of Industry Needs in Exporting, DIB-407LP, single time, manufacturer, EMC, wholesaler, retailer, Economics and General Government Divisions, C. Louis Kincannon, 395-3451.

DEPARTMENT OF THE TREASURY

Departmental and Other Office of Industrial Economics—Survey of Three Industries: Professional, Scientific and Controlling Instruments, single time, business firms, Gaylord Worden, 395-4730.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration, Driver Survey on Unreported and Low-Damage Accidents, Involving Bumpers, single time, licensed automobile drivers, Strasser, A., 395-5867.

REVISIONS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education:
- Application for Federal Assistance (nonconstruction) Vocational Education, OE 3176, annually, SEA's, LEA's, universities, nonprofit, Indian tribes, Budget Review Division, Lowry, R. L. 395-4775.
- Nomination for Graduate Fellowship, OE-1048, on occasion, graduate fellowship nominees, Caywood, D. P. 395-3443.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Production and Mortgage Credit, Development Program of Public Housing Agency, Development Cost Budget/Cost Statement, HUD-52484, HUD 52483, on occasion, public housing agencies, Housing, Veterans and Labor Division, 395-3532.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration:
- Parts Return Program, on occasion, automotive shops, dealers, fleets, and parts suppliers, Warren Topelius, 395-5872.
- Agreement, Cost and Task Description Forms for Volume 102 Highway Safety Plan, HS-212, annually, State highway safety agencies, Warren Topelius, 395-5872.

EXTENSIONS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration, End Stage Renal Disease Home Dialysis Study, single time, candidates for home dialysis, Richard Eisinger, 395-6140.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration, Contract Cost Status and Forecast Report, FAA 4450-3, quarterly, contractor's, Caywood, D. P. 395-3443.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.77-24321 Filed 8-22-77;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on August 17, 1977 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget Washington, D.C. 20503, 202-395-4529, or from the reviewer listed.

NEW FORMS

ENVIRONMENTAL PROTECTION AGENCY

Assessment of Selected Storm Water Control, on occasion, agencies directly involved in stormwater management, Ellett, C. A. 395-5867.

DEPARTMENT OF AGRICULTURE

Statistical Reporting Service, Point of Sales Survey (pretest), single time, farmers, Gaylord Worden, Strasser, A., 395-4730.

DEPARTMENT OF LABOR

Labor Management and Service Administration:
- Impact of Prohibited Transaction Provisions of ERISA Survey, LMSA-75-T, single time, U.S. employee benefit plan administrators, Housing, Veterans and Labor Division, C. Louis Kincannon, 395-3532.
- Surveys for Evaluation Study of the Impact of the ERISA on Formation of New Pension Plans, LMSA-74-7, single time, Orig./Pension Plans Established After September 1974, Housing, Veterans and Labor Division, C. Louis Kincannon, 395-3532.

REVISIONS

DEPARTMENT OF DEFENSE

Department of the Air Force, DOD Property Report, DD1342, on occasion, business firms, National Security Division, Lowry, R. L., 395-4734.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration, Statement for Determining Continuing Eligibility for SSI Payments, SSA-8203, single time, aged, blind or disabled recipients of SSI payments, Human Resources Division, 395-3532.

EXTENSIONS

DEPARTMENT OF AGRICULTURE

Statistical Reporting Service, milk price inquiry, SRSCE5206, monthly, milk buyers, Marsha Traynham, 395-4529.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration, Monthly Statistical Report on Medical Care, SRS NCSS, monthly, State Medicaid Title XIX agencies, Richard Eisinger, 395-6140.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.77-24435 Filed 8-22-77;8:45 am]

FEDERAL PROCUREMENT DATA SYSTEM

Proposed New Data Elements; Comments Requested

To implement Sec. 6(d)5 of P.L. 93-400, which makes the Office of Federal Procurement Policy (OFPP) responsible for "* * * establishing a system for collecting, developing, and disseminating

procurement data which takes into account the needs of the Congress, the executive branch, and the private sector * * *.", the OFPP is developing the design of a Federal Procurement Data System (FPDS). Generally, the procurement information to be reported by each executive agency to the FPDS is currently available in each agency's contracting office.

The purpose of this Notice for Comment is to obtain views on two new data elements proposed for inclusion in the FPDS which are not currently available in the executive agencies. These items of new information must therefore be collected from prospective Federal contractors during the solicitation phase of the procurement process. It is proposed that each bid, proposal, or quotation for contracts in excess of $10,000 contain the following two items: (1) a statement that the firm is, or is not, female owned, and (2) with respect to contracts for supplies or equipment a statement showing the percent of total contract price which represents foreign content.

Comments or suggestions submitted in response to this Notice will be thoroughly considered by the OFPP in the final development of the Federal Procurement Data System design. Questions may be addressed to Mr. Wm. W. Thybony, Assistant Administrator for Contract Placement, telephone (202) 395-4946.

Interested parties have until September 30, 1977 to submit comments.

Dated: August 17, 1977.

LESTER A. FETTIG,
Administrator.

[FR Doc.77-24434 Filed 8-22-77;8:45 am]

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

[Doc. No. 301-13]

TANNER'S COUNCIL OF AMERICA, INC.

Section 301 Committee: Notice of Complaint

On August 4, 1977, the Chairman of the Section 301 Committee received from Thomas F. Shannon, Esquire, and Lauren Oldak, Esquire, Counsel to the Tanner's Council of America, a petition alleging unfair trade practices by Japan. The complaint alleges that Japan has maintained quantitative restrictions and excessive tariffs that adversely affect U.S. exports of leather. Relief is requested under section 301 of the Trade Act of 1974 (Pub. L. 93-618; 88 Stat. 1978). The text of the complaint is as follows:

BEFORE THE OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

Complaint on Behalf of the Tanners' Council of America, Inc. Filed Pursuant to Section 301 of the Trade Act of 1974 Against the Tariff and Non-Tariff Barriers Restricting Exports of Leather to Japan.

Thomas F. Shannon, Lauren R. Oldak, 1055 Thomas Jefferson Street NW., Washington, D.C. 20007. *Counsel to the Tanners' Council of America, Inc.*

Collier, Shannon, Rill, Edwards & Scott, Washington, D.C. 20007, 202-337-6000, August 4, 1977.
1055 Thomas Jefferson Street NW.,

BEFORE THE OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

Tanners' Council of America, Inc., Complainant.

Complaint Pursuant to Section 301 of the Trade Act of 1974.

COMPLAINT

Pursuant to Section 301 of the Trade Act of 1974, 19 U.S.C. § 2411 (Supp. 1977) and Section 2006.0 et seq. of Title 15 of the Code of Federal Regulations, the Tanners' Council of America, Inc. (TCA), a nonprofit trade association that represents virtually the entire leather tanning industry in the United States, charges that Japan has maintained quantitative restrictions and excessive tariffs on imports of leather (TSUS 121.10-TSUS 121.65) into its home market, thereby frustrating the attempts of the U.S. leather industry to export its products to Japan.

Such trade barriers violate the prohibitions contained in Section 301(a)(1) of the Trade Act of 1974 which expressly authorizes Presidential action when a foreign country "maintains unjustifiable or unreasonable tariff or other import restrictions which impair the value of trade commitments made to the United States or which burden, restrict, or discriminate against United States commerce * * *." 19 U.S.C. § 2411(a)(1) (Supp. 1977).

Because these unreasonable and unjustifiable impediments to international trade have contributed to the decline of the American leather industry which has lost more than 30 percent of its production and employment in recent years, relief is clearly merited under the provisions of Section 301 of the Trade Act of 1974. Complainant requests a public hearing pursuant to Section 301(d)(2) of the Trade Act of 1974, 19 U.S.C. § 2411(d)(2) (Supp. 1977), and declares that it has not filed for other forms of relief available under the Trade Act of 1974 or any other provisions of law.

I. *Japanese Tariff and Non-Tariff Barriers Affecting Imports of Leather Have Burdened, Restrained and Discriminated Against U.S. Commerce.*

A. *Japanese Tariff and Non-Tariff Barriers.* In order to restrict access to their leather market, the Japanese government has maintained high tariffs and quantitative restrictions on imports of leather. See Exhibit I. In 1976, the duties on cattlehide, calf skin, sheep skin and goat skin leather were 20 percent, in contrast to the 5 percent duty assessed by the United States on imported cattlehide leather and the average 6 percent duty levied on all imported leather.

In addition to this excessive tariff, Japan imposes import quotas on leather, setting a total quota estimated to be $8.7 million last year. For the United States, it is estimated that the quota was limited to $2.5 million. This contrasts sharply with the estimated size of the Japanese leather market as indicated by Japanese imports of leather-making raw material of $290 million in 1976 (see Exhibit II), from which an estimated $600 million worth of leather was produced.[1]

Besides the numerical limitations of the Japanese import quota system, there are also administrative obstacles that further inhibit the ability of U.S. tanners to sell in this market.

(1) There are difficulties in determining the quota ceiling and identifying holders of the quota.

(2) Often Japanese quota holders will restrict access to them for competitive or other reasons.

(3) The import quotas have a price.

(4) The ambiguous nature of the system makes it impossible for either a willing seller or willing buyer to make plans for the utilization of the available quotas.

B. *Injury Resulting from Restrictive Trade Practices.* The consequences to the U.S. leather industry in the Japanese market are obvious. Because of the infinitesimal size of the quotas and the administrative difficulties placed in the way of their implementation, even the small quotas available to U.S. tanners have not been filled. In 1976, U.S. firms were only able to sell $1.6 million worth of leather to Japan, even though the U.S. quota was an estimated $2.5 million. It is therefore unprofitable for both the U.S. seller and Japanese buyer to expend a great deal of effort for so limited an opportunity.

However, the inability of U.S. tanners to sell their leather in Japan is clearly not due to either price or quality considerations. During March 1977, the Tanners' Council presented a leather show in Tokyo featuring leather produced by 28 American firms. Customer response to the leathers on display was favorable. Unfortunately, the restrictive Japanese trade polices and practices almost completely negated efforts of buyers and sellers to trade.

That U.S. exports of leather to Japan would be much higher if these trade barriers were removed is obvious from recent export statistics. In the past several years, the U.S. tanning industry has made a major effort to expand its exports of leather and it has been highly successful. Total exports of leather have more than doubled from $66.7 million in 1972 to more than $139 million in 1976. See Exhibit III. Exports to other Far Eastern countries including Korea, Taiwan, Hong Kong and the Philippines have almost tripled, in sharp contrast to exports to Japan which have remained almost constant during this same period. See Exhibit III. In fact, it is probable that the U.S. leather industry would have had even greater success in selling to the Japanese market, given the fact that Japanese labor costs for the production of leather are considerably higher than those in the other Far Eastern countries.

Unfortunately, the burden on the U.S. industry is not even limited to the restrictions on access to the Japanese market. As a result of these protectionist policies, the flow of leather-making raw material, leather and finished products has been completely distorted. With the umbrella of a completely protected home market, the Japanese have been able to operate in the U.S. raw material market without relevance to actual market value. Using hide purchasing methods which are comparable to the operations of non-market or controlled economies, Japan was able to absorb more than 20 percent of all U.S. hides last year. Because Japan buyers have been able to preempt supply, domestic tanning companies who must operate in an

[1] However, even this $600 million figure underestimates the size of the Japanese leather market because leather produced from Japanese hides is not taken into account because there are no statistics available on Japanese hide production.

open marketplace have been shut out of their own customary sources of supply.

In addition, the United States tanning industry has also been adversely affected by restrictive Japanese trade policy in third world markets. At leather trade shows held in March and April of this year in Korea, the Republic of China and Hong Kong, it became evident that Japanese tanners dominated the market. They were able to considerably undersell American companies in these countries, possibly because the profits earned in their protected home market where the prices of Japanese leather were significantly higher than U.S. prices for comparable leathers enabled them to charge less abroad.

Thus, not only is the American leather industry prevented from selling its products in Japan because of these insurmountable trade barriers, they are also rapidly losing the raw materials in the United States to these same Japanese competitors who profit considerably from their protected home market and place American tanners at a competitive disadvantage in other leather markets. Such restrictive trade practices clearly burden, restrict and discriminate against U.S. commerce within the meaning of Section 301(a)(1) of the Trade Act of 1974 and have contributed substantially to the injury suffered by this industry which has seen its production and employment drop by more than 30 percent in the past eight years.

II. Japanese Excessive Tariffs and Quantitative Restrictions Against Imports of U.S. Leather are Unreasonable Within the Meaning of Section 301

Section 301(a)(1) of the Trade Act of 1974 authorizes the President to take retaliatory action when a foreign country maintains "unreasonable tariff or other import restrictions" which the Senate Finance Committee Report defines as "restrictions which are not necessarily illegal but which nullify or impair benefits accruing to the United States under trade agreements or which otherwise discriminate against U.S. commerce."

In this instance, it is clear that the 20 percent ad valorem duties are unreasonable tariff restrictions in that they are meant to serve as trade barriers, not as sources of revenue, and as such contrast sharply with the average 6 percent duties levied by the United States on leather imports. In addition, the Senate Finance Committee Report specifically listed quotas and licensing systems among the practices which were to be considered discriminatory against U.S. commerce.

It was without question the intent of Congress that immediate and effective action be taken to eliminate such unreasonable trade practices. According to the Report, "[t]he Committee's intention generally has been to assure a swift and certain response to foreign import restrictions * * *," emphasizing that "these powers be exercised vigorously to insure fair and equitable conditions for U.S. commerce." The Committee warned that it did not intend the President's retaliation authority to be "a dead letter," stating:

Foreign trading partners should know that we are willing to do business with them on a fair and free basis, but if they insist on maintaining unfair advantages, swift and certain retaliation against their commerce will occur. The Committee feels that the authorities contained in this provision will serve as negotiating leverage to eliminate these barriers to, and other distortions of trade which Title I of this bill gives the President broad authority to harmonize, reduce or eliminate on a reciprocal basis. The authority in this section should not be used frivolously or without justification. *The Committee feels, however, that there must be a credible threat of retaliation whenever a foreign nation treats the commerce of the United States unfairly.* (Emphasis added.)

It is therefore clear that the President has and must exercise the authority to take retaliatory action against Japan for the trade barriers it has erected against imports of American leather. Insurmountable tariff barriers and impenetrable quantitative restrictions halt the free flow of trade and must be stricken in the interests of fair international trade.

III. The quantitative Restrictions Imposed on Imports of U.S. Leather Into Japan Are Unjustifiable Within the Meaning of Section 301

The quotas imposed on imports of U.S. leather into Japan are also an unjustifiable restriction which burdens, restricts and discriminates against U.S. commerce within the meaning of Section 301(a)(1) of the Trade Act of 1974. According to the Senate Finance Committee Report, an unjustifiable restriction is one which is "illegal under international law or inconsistent with international obligations." Although a trade practice need not be illegal to warrant retaliatory action, the quantitative restrictions maintained by Japan in the instant case directly contravene the General Agreement on Tariffs and Trade (GATT).

The first paragraph of Article XI of the GATT expressly prohibits quantitative restrictions:

No prohibitions or restrictions other than duties, taxes or other charges, *whether made effective through quotas,* import or export licenses or other measures, *shall be instituted* or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party. (Emphasis added.)

The critical necessity for abolishing all quantitative restrictions was underscored in the preparatory work for the GATT obligations and was most vehemently expressed by one of the chief U.S. negotiators:

Quantitative restrictions * * * impose rigid limits on the volume of trade. They insulate domestic prices and production against the changing requirements of the world economy. They freeze trade into established channels. They are likely to be discriminatory in purpose and effect. They give the guidance of trade to public officials; they cannot be divorced from politics. They require public allocation of imports and exports among private traders and necessitate increasing regulation of domestic business. Quantitative restrictions are among the most effective methods that have been devised for the purpose of restricting trade. They make for bilateralism, discrimination, and the regimentation of private enterprise.

Thus, the Japanese quotas on leather violate the express ban on quantitative restrictions contained in the General Agreement. Nor do the Japanese quotas fall within the scope of any of the limited exceptions to this GATT prohibition. Quotas on imports of leather were not imposed as a temporary measure to "prevent or relieve" critical shortages of "foodstuffs" or "other products essential to the exporting contracting party" and are not "necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade. * * *" Nor are they agricultural or fisheries products which need quotas to implement governmental programs involving restricted domestic production and price support systems.

But perhaps most importantly, these particular quantitative restrictions do not qualify for the balance-of-payments exception permitted by the General Agreement. Although that justification might have been persuasive in the post-World War II period, it can no longer be used to rationalize this discrimination against U.S. commerce. Clearly, the Japanese cannot now meet the criteria for this exception which permits a country to impose quotas in order to "forestall the imminent threat of, or to stop, a serious decline in its monetary reserves" or "to achieve a reasonable rate of increase in its very low reserves" on the express condition that it "progressively relax" the quantitative restrictions as balance of payments improve and "eliminate the restrictions when conditions would no longer justify their institution or maintenance. * * *"

Even the Japanese have acknowledged the dubiousness of this justification. In a communique issued by the GATT in March 1963, contracting parties were advised that the Japanese government had informed the executive secretary "that in view of the improvement in its balance-of-payments situation, Japan no longer claims balance-of-payments justification under Article XII of the GATT for the maintenance of import restrictions." In fact, three years later, bovine, sheepskin, goatskin and patent leather were included in Japan's list of articles which were subject to "quantitative import restrictions applied contrary to GATT and not covered by waivers."

With the evaporation of this rationale for the maintenance of quantitative restrictions on leather, the Japanese now insist that they cannot discontinue the quotas because most leather tanning is performed by a minority group, the Buraku-Min, which is unemployable in other vocations. However, such a justification is suspect since the Japanese leather industry has increased by a factor of 12 in the 30 years since the imposition of restrictive measures and it is inconceivable that this minority group could have grown at a comparable rate during the same period of time.

Moreover, the General Agreement on Tariffs and Trade does not authorize restrictions on international trade for the purpose of providing permanent protection to a domestic industry after balance-of-payment excuses wane. In fact, commentators on the GATT have expressed grave concern over such residual restrictions:

Although quantitative restrictions may originally be imposed for balance-of-payments reasons, they provide protection for domestic industry. When balance-of-payments considerations no longer justify retention of such restrictions, the domestic firms involved may have become so dependent upon the protection thus afforded that they no longer have the competitive vigor to survive the return of international competition. In some cases balance-of-payments-motivated restrictions may lead to the development of new domestic industries that never could be viable in international competition. An attempt to suspend those restrictions when payments imbalances finally disappear may present political and social problems of major dimensions.

Such a situation is directly contrary to the letter and spirit of the GATT; yet, it has apparently happened in the instant case. Although the Japanese may not legally restrict trade under the General Agreement because of its minority employment problem, it has proceeded to do so in derogation of the principles of free international trade and to the detriment of the employees in the U.S. leather tanning industry, many of whom are also members of minority groups and who

are frequently located in rural areas where alternative employment is unavailable.

It is therefore clear that the continued imposition of quotas on U.S. leather exports to Japan violates the ban on quantitative restrictions in Article XI of the General Agreement on Tariffs and Trade and, regardless of its legality under Article XII, constitutes a prima facie nullification and impairment of the benefits and objectives of the General Agreement as provided in Article XXIII of the GATT.

IV. Conclusion

The United States does not maintain any quantitative restrictions on leather and levies duties which average 6 percent. The open market of the U.S. stands in stark contrast to the protected market of Japan which is insurmountably surrounded by 20 percent tariffs and stringent quotas. The American leather tanning industry, one of the most efficient and productive in the world, merely asks for an equal opportunity to trade its product freely in Japan so that it can regain the employment and production that it has lost as a result of such restrictive practices. The Tanners' Council of America, Inc., therefore seeks remedial action under the provisions of Section 301 of the Trade Act of 1974.

Respectfully submitted,

THOMAS F. SHANNON,
LAUREN R. OLDAK,
Counsel for the Tanners' Council of America, Inc.

Of Counsel: Collier, Shannon, Rill, Edwards & Scott, 1055 Thomas Jefferson Street NW., Washington, D.C. 20007, 202-337-6000, August 4, 1977.

EXHIBIT I

1. Past Leather Import Quotas: 1/

	JFY 72	JFY 73	JFY 74	JFY 75
	--------(Mil. dol.)----------			
Cattle hide and calf skin leather	4.25	6.8	7.1	6.95
Global	3.25	4.3	4.6	4.65
U.S. Exclusive 2/	1.0	2.5	2.5	2.3
Sheep skin leather	0.7	0.78	0.78	0.78
Blue hide	0.65	0.65	0.65	0.65
Total	5.60	8.23	8.53	8.38

1/ Unobtainable for JFY 76
2/ Established from the 2nd half of JFY 72

2. Leather Import Restrictions and Rates of Duty:

	Restrictions	Rate of Duty (%)
Cattle hide leather, dyed, colored or embossed	I.Q.	20 or 10 preferential
Calf skin leather, dyed, colored or embossed	I.Q.	20 or 10 preferential
Sheep skin leather, dyed, colored or embossed	I.Q.	20 or 10 preferential
Pig skin leather, dyed, colored or embossed	Free	10 or 0 preferential
Composite leather made from leather or leather fibre, in slubs, sheets or rolls	Free	7.5 or 0 preferential
Goat skin leather, dyed colored or embossed	I.Q.	20 or 10 preferential

Source: Customs Bureau, Ministry of Finance, GOJ

EXHIBIT I (cont.)

3. Leather Import Statistics 1/

	U.S.		All	
	MT	$1,000	MT	$1,000
Cattle hide leather				
CY 1975	13(33)	101(45)	40(100)	222(100)
CY 1976	21(72)	205(62)	29(100)	331(100)
Calf skin leather				
CY 1975	a/(-)	1 (-)	60(100)	1,371(100)
CY 1976	1 (2)	14 (1)	48(100)	1,119(100)
Sheep skin leather				
CY 1975	0 (0)	0 (0)	52(100)	631(100)
CY 1976	a/(-)	1 (-)	19(100)	867(100)
Pig skin leather				
CY 1975	35(85)	303(50)	41(100)	609(100)
CY 1976	26(76)	246(42)	34(100)	584(100)
Composite leather				
CY 1975	0 (0)	0 (0)	3,134(100)	2,903(100)
CY 1976	0 (0)	0 (0)	3,194(100)	2,861(100)
Goat leather				
CY 1975	4 (7)	149 (8)	60(100)	1,900(100)
CY 1976	3 (3)	170 (4)	105(100)	3,853(100)

1/ Figures in ( ) are U.S. shares in percent.

a/ Not available.

SOURCE: Customs Bureau, Ministry of Finance, GOJ

JAPANESE IMPORTS OF AGRICULTURAL COMMODITIES, TOTAL, FROM U.S., AND U.S. SHARE, CY 1972-1976

	Total Imports					Imports from U.S.					U.S. Share					Su in
Bulk Commodities	1972	1973	1974	1975	1976	1972	1973	1974	1975	1976	1972	1973	1974	1975	1976	
	(Million Dollars)					(Million Dollars)					(Percent)					
Soybeans	474	765	879	942	841	434	665	789	856	770	92	87	90	91	92	
Wheat	361	656	1,025	1,117	1,053	178	440	664	586	589	49	67	65	53	56	
Corn	379	734	1,227	1,138	1,113	217	612	914	805	823	57	83	74	71	74	
Grain Sorghum	215	348	605	541	520	126	244	372	292	278	59	70	61	54	54	
Soybean Meal	7	63	29	3	42	6	51	27	1/	25	86	81	93	-	59	
Alfalfa Meal & Cubes	27	35	49	37	56	21	28	32	23	34	78	80	65	62	61	
Cotton	609	692	1,020	827	910	107	191	308	269	253	18	28	30	33	28	
Tobacco	126	135	198	289	308	82	92	120	184	214	65	68	61	64	69	
Hides & Skins	156	209	165	158	290	125	173	136	118	225	80	83	82	75	77	
Beef Tallow	45	90	94	66	90	28	58	75	27	40	62	64	77	41	45	
Subtotal	2,399	3,727	5,291	5,118	5,223	1,824	2,554	3,437	3,160	3,251	75	69	65	62	62	
Consumer Ready Items																
Lemons	38	47	57	50	52	38	47	57	50	52	100	100	100	99	100	
Grapefruit	33	36	51	60	61	33	34	48	54	56	100	94	94	89	92	
Raisins	12	14	15	20	20	7	5	11	15	17	58	36	73	78	84	
Prunes	1	1	1	1	1	1/	1	1	1	1	78	83	35	90	89	
Canned Peaches	6	11	9	6	12	2	2	1	1	4	44	18	17	18	33	
Fruit Cocktail	1	2	2	1	2	1	1	2	1	1	80	80	80	66	68	
Almonds	12	21	22	12	20	12	21	22	12	20	100	100	100	100	100	
Pulses	34	33	41	35	58	5	5	10	11	7	15	15	24	31	12	
Peanuts	24	39	36	40	57	8	8	14	12	22	33	21	39	31	40	
Beef	79	293	135	75	164	2	33	26	16	38	3	11	19	21	23	
Pork	99	233	92	308	407	30	75	11	102	139	30	32	12	33	34	
Poultry Meat	22	27	32	27	47	7	11	14	16	29	32	41	44	60	60	
Subtotal	361	757	493	335	901	145	243	217	291	386	40	32	44	46	43	
Others	2,703	4,133	5,369	5,539	5,849	116	244	309	302	387	4	6	6	5	7	
Total	5,463	8,617	11,153	11,292	11,973	1,585	3,041	3,963	3,753	4,024	29	35	36	33	34	

1/ Less than $500,000.

Source: Customs Bureau, Ministry of Finance, GOJ

2/8/77

EXHIBIT III*

U.S. FOREIGN TRADE IN LEATHER

($1,000)

	Total U.S. Leather Exports	U.S. Leather Exports to Japan	U.S. Leather Exports to Korea, Taiwan, Hong Kong, Philippines
1972	66,706	1,283	10,730
1973	82,914	2,371	12,903
1974	102,116	1,494	16,028
1975	140,497	2,127	18,478
1976	139,265	1,574	30,641

HEARINGS

I. The complainant has requested that hearings be held on this matter. Such hearings will be held at 10 a.m. on Tuesday, October 11, 1977, and if necessary will continue on October 12 at the Office of the Special Representative for Trade Negotiations, 1800 G Street NW., Washington, D.C., Room 730.

II. Requests to present oral testimony and accompanying briefs must be received on or before October 3, 1977. Interested persons are advised to refer to the regulations promulgated by the Office of the Special Representative for Trade Negotiations covering procedures to be followed in all Section 301 proceedings, 15 CFR 2006, (40 FR 39497—August 28, 1975), except that all communications to the Chairman of the Section 301 Committee should be addressed to the Office of the Special Representative for Trade Negotiations, *Room 715*, 1800 G Street NW., Washington, D.C., 20506, instead of Room 725 as specified in the regulations.

1. *Submission of Briefs and Requests to Present Oral Testimony.* Requests for oral testimony and submission of written briefs should conform to the procedures set forth in 15 CFR 2006.6 and 2006.7 (40 FR 39497—August 28, 1975).

2. *Rebuttal Briefs.* In order to assure parties the opportunity to contest information provided by other interested parties, rebuttal briefs may be filed by any party within 15 days after the close of the hearings. The requirement that written briefs be submitted in 20 copies is waived with regard to rebuttal briefs.

3. *Attendance at Hearings.* The hearings will be open to the public.

C. MICHAEL HATHAWAY,
Chairman, Section 301 Committee, Office of the Special Representative for Trade Negotiations.

[FR Doc.77-24298 Filed 8-22-77;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 9894; 812-4117]

COLONIAL OPTION INCOME FUND, INC. AND COLONIAL MANAGEMENT ASSOCIATES, INC.

Order To Permit an Offer of Exchange and for an Exemption

AUGUST 17, 1977.

Colonial Option Income Fund, Inc. ("Fund") 75 Federal Street, Boston, Massachusetts 02110, an open-end, diversified, management investment company registered under the Investment Company Act of 1940 ("Act"), and Colonial Management Associates, Inc., the investment adviser to and the principal underwriter for the Fund (collectively "Applicants"), filed an application on April 4, 1977, and an amendment thereto on July 5, 1977, for an order of the Commission (1) pursuant to Section 11(a) of the Act, to permit the Fund to offer its shares in exchange for those shares of Standard & Poor's/InterCapital Liquid Asset Fund, Inc. ("S&P") which were originally acquired with proceeds from the redemption of Fund shares and from additional S&P shares received through reinvestment of dividends and capital gains distributions, upon payment of a $5 exchange fee, and (2) pursuant to Section 6(c) of the Act, to exempt Applicants from Section 22(d) of the Act and the rules thereunder to the extent necessary to permit the sale of Fund shares through such exchange offers without the customary sales charge.

On July 21, 1977, a notice (Investment Company Act Release No. 9863) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is 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. Accordingly,

It is ordered, pursuant to section 11(a) of the Act, that the proposed exchange offers be, and hereby are, approved, effective forthwith; and

It is further ordered, pursuant to section 6(c) of the Act, that the application for exemption from section 22(d) of the Act and the rules thereunder, to the extent requested, be, and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-24335 Filed 8-22-77;8:45 am]

[Rel. No. 9895; 812-4139]

E. I. DU PONT DE NEMOURS & CO.

Filing of Application for Order of Exemption

AUGUST 17, 1977.

Notice is hereby given that E. I. du Pont de Nemours and Company ("Applicant") 1007 Market Street, Wilmington, Delaware 19898, a Delaware corporation, has filed an application on May 25, 1977, pursuant to Section 17(b) of the Investment Company Act of 1940 ("Act") for an order exempting from the provisions of Section 17(a) of the Act Applicant's proposed grant to Mitsui Fluorochemicals Company, Ltd. ("Mitsui"), a Japanese corporation, of an exclusive license, with the right to grant sublicenses, to certain patent rights and technical information. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that Mitsui, a manufacturer and seller of fluorinated hydrocarbon products since 1963, seeks to acquire an exclusive license, with the right to grant sublicenses, to use certain technology developed by Applicant relating to fluorocarbon resin pellets ("PFA polymers") for use in molding a variety of products which require high resistance to strong chemicals and extremely high temperatures.

According to the application, Applicant and Mitsui have executed an agreement (the "Agreement") providing for the grant of such a license. The application states that, under the Agreement, the transfer of Mitsui of Japanese patent rights and technical information is nonexclusive pending receipt of the exemptive order requested in the application,

and that approval of the transaction by appropriate Japanese governmental authorities was received on April 19, 1975. The application also states that, pursuant to the Agreement, Mitsui has agreed to pay Applicant a royalty of 5% of the Net Selling Price, as defined in the Agreement, of all quantities of PFA polymers used or sold by Mitsui or any Mitsui sublicensee during the ten-year period beginning as of the first day of the calendar quarter immediately succeeding the date of the first sale or use for commercial purposes of PFA polymers made by Mitsui or any sublicensee of Mitsui after January 17, 1975; that those royalties are payable by Mitsui within 60 days after the end of each calendar quarter during such ten-year period; and that, as of May 23, 1977, Mitsui has paid Applicant $17,886.79 in such royalties.

The application states that Christiana Securities Company ("Christiana"), a non-diversified, closed-end management investment company registered under the Act, owns approximately 27.7% of the outstanding common stock of Applicant, which in turn owns 50% of the outstanding common stock of Mitsui. The application further states that the remaining 50% of Mitsui's outstanding common stock is owned by Mitsui Petrochemical Industries, Ltd., a Japanese corporation. Applicant concludes that both Applicant and Mitsui are (1) presumed to be controlled by Christiana, and (2) affiliated persons of Christiana, for purposes of the Act.

Section 17(a) of the Act provides, in part, that it shall be unlawful for any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, knowingly to sell to or purchase from such registered company, or any company controlled by such company, any security or other property. Applicant states that the proposed grant to Mitsui of the exclusive rights described above may be prohibited by Section 17(a), and it therefore requests an order exempting that proposed grant from the provisions of Section 17(a).

Section 17(b) of the Act provides that the Commission, upon application, shall exempt a proposed transaction from the provisions of Section 17(a) of the Act if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

Applicant asserts that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person, and that the royalties payable on PFA polymers and the future rights to technology developed by Applicant reasonably reflect the value of the patent rights and technical information conveyed by the Agreement.

The application states that Mitsui maintains only a limited research and development organization and, therefore, must purchase technology from others. The application also states that Mitsui desires the above-described patent rights and technical information because of the lower cost advantages of domestic production and the broader product base they would bring to Mitsui. Applicant asserts that its granting of access to such technology to Mitsui would provide Applicant with an opportunity to capitalize on such technology in the Japanese market.

Finally, Applicant submits that the proposed transaction is consistent with the policies of Christiana and with the general purposes of the Act.

Notice is further given that any interested person may, not later than September 9, 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 shall 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 Applicant 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 said date 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.77-24336 Filed 8-22-77;8:45 am]

[Rel. No. 5855; File No. 18-4]

H.R. 10 PPROFIT SHARING PLAN OF PEPPER, HAMILTON & SCHEETZ

Notice of Filing of Application for an Order of Exemption

AUGUST 16, 1977.

Notice is hereby given that the law firm of Peper, Hamilton & Scheetz, ("Applicant" or the "Firm") 123 South Broad Street, Philadelphia, Pa. 19109, a Philadelphia partnership, has by application filed March 15, 1977, applied for an exemption from the registration requirements of the Securities Act of 1933 (the "Act") for any participations or interests issued in connection with Applicant's H.R. 10 Profit Sharing Plan. All interested persons are referred to these documents, which are on file with the Commission, for the facts and representations contained therein, which are summarized below.

I. INTRODUCTION

The Plan, as of September 1, 1976, covered 215 participants, of whom 49 were partners, 44 were associates, and 122 were clerical, secretarial and other staff employees of Applicant. During the period prior to August 31, 1976, no solicitation of voluntary contributions was made and no persons other than partners of the Firm ever made voluntary contributions. The Plan is of the type commonly referred to as a "Keogh" plan, which covers persons (in this case Applicant's partners) who are employees within the meaning of Section 401(c)(1) of the Internal Revenue Code of 1954, as amended ("Code"), and therefore, the exemption provided by Section 3(a)(2) of the Securities Act is inapplicable to the Plans. Section 3(a)(2) provides, however, that "the Commission, by rules and regulations or order, shall exempt from the provisions of [Section 5 of the Securities Act] any interest or participation issued in connection with a stock bonus, pension, profit-sharing, or annuity plan which covers employees some or all of whom are employees within the meaning of (S)ection 401(c)(1) of the (Code), if and to the extent that the Commission determines this to be 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 Securities Act)."

II. DESCRIPTION AND ADMINISTRATION OF THE PLAN

The Plan was originally adopted in 1968. The present plan, as amended to comply with revisions of the Code and ERISA requirements, has been in effect since September 1, 1976. Applicant has submitted the Plan, as revised, to the Internal Revenue Service for a determination that the Plan is qualified under Section 401(a) of the Code. Applicant contributes to the Plan on behalf of participants out of the net earnings of the Firm in an amount equal to 1¾% of each participant's compensation up to the maximum compensation subject to Federal Insurance Contributions Act taxes plus 8¾% of each participant's compensation in excess thereof up to $100,000 of total compensation. Under the Plan, participants may make voluntary contributions to the Plan of up to 10% of such participant's aggregate compensation for all years during which the person had been a participant subject to certain limitations. By administrative rule voluntary contributions will be accepted only during the last two weeks of the last month of each quarter.

Funds held by the Plan are invested in two collective investment funds maintained solely and separately for the investment of assets of the Plan. No funds

of any other plan or person are commingled or invested with these funds. Assets of the Plan are divided between a discretionary fund having as its objectives long term growth and low risk to the extent consistent with such long term growth and an income fund having as its objectives the long term preservation of capital, minimization of interim principal volatility and high current income return. The Plan's discretionary fund invests in equity securities of companies with a past record of consistency in growth of earnings and dividends, relatively high profit margins and ability to finance growth internally with little or no dependence on external capital sources. The portfolio of the discretionary fund will be managed by Cooke & Bieler, Inc., a registered investment adviser. The income fund will invest in agency bonds such as bonds of the Federal Home Loan Bank, bank certificates of deposit, bankers' acceptances, commercial paper, convertible debentures, industrial and finance company bonds and United States Treasury bills. The portfolio of the income fund will be managed by The Fidelity Bank.

Monies contributed by the Firm are maintained in an Employer Account; voluntary contributions by participants are maintained in an Employee Account. Each participant may direct that the partnership contributions allocated to the Employer Account be invested entirely in the income fund or partially in the discretionary fund and partially in the income fund. At the beginning of each Plan year each participant may also direct that the investment of voluntary contributions be allocated between the discretionary fund and the income fund in such proportions as he may desire.

Administration of the Plan is in the following persons: the Executive Committee of the Partnership, the Committee appointed by the Executive Committee of the Partnership, a Plan Administrator, The Fidelity Bank which acts as Trustee to the Plan, and Cooke & Bieler, Inc. which acts as adviser to the discreitonary account. The Executive Committee has the duty and authority to appoint and remove trustees, the members of the Committee and any Investment Manager. The Committee designates the investment policies, interprets the Plan and makes decisions with respect to distribution of Plan funds to the extent provided in the Plan.

The Plan is subject to the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA") and Applicant will comply with all of the ERISA reporting and disclosure requirements. A summary Plan description, written in language understandable by the average participant will be delivered to each participant. A summary annual report will be delivered to each participant and persons currently receiving benefits. Each participant and person receiving benefits will be informed that the full annual report for the Plan will be available upon request. All reports and other basic documents relating to the Plans will be made available to participants for their review. Copies thereof will be supplied to participants at no charge upon request. Each participant will be furnished, upon request, not more than once a year, with a statement of his accrued and vested benefits under the Plan. An ERISA notice briefly describing to participants their rights to information has been distributed.

Applicant states that if the partnership were a corporation, interests and participants in the H.R. 10 Profit Sharing Plan would be exempt under Section 3(a)(2) of the Securities Act. Applicant further submits that the intent of Congress in excluding from the exemption plans in which self-employed persons were participants was to prevent the sale without registration of interests in prepackaged plans offered by financial institutions to self-employed persons lacking the sophistication to protect themselves and their employees and that the provision permitting the Commission to grant exemption upon application was included in Section 3(a)(2) of the Securities Act to make available an exemption for partnership plans where the plan and the entity involved are comparable to corporate plans exempted by Section 3(a)(2).

Applicant states that the Plan covers partners and employees of a single firm and assets of the Plan will not be commingled in collective investment funds with the assets of the plans of other employers.

Applicant concludes that for the foregoing reasons, granting the requested exemptive order would be appropriate in the public interest, 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 September 15, 1977, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application, accompanied by a statement of the nature of his interest, the reasons 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 shall order a hearing thereon. Any such communication should be addressed to: George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Pepper, Hamilton & Scheetz, 123 South Broad Street, Philadelphia, Pennsylvania 19109, Attn: Allison Page, Esq. Proof of such service (by affidavit or, in the case of any attorney-at-law, by certificate) shall be filed contemporaneously with the request.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-24341 Filed 8-22-77;8:45 am]

PURITAN FUND, INC. AND FIDELITY MANAGEMENT & RESEARCH CO.

Order Exempting a Proposed Exchange of Shares Permitting Consumation of Certain Proposed Transactions

AUGUST 17, 1977.

On July 21, 1977, a notice was issued (Investment Company Act Release No. 9865) of an application filed on March 25, 1977, and an amendment thereto on June 17, 1977, by Puritan Fund, Inc. ("Puritan"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, and Fidelity Management & Research Company ("FMR") 82 Devonshire Street, Boston, Massachusetts 02109, investment adviser to Puritan, for an order of the Commission pursuant to Section 6(c) of the Act exempting from the provisions of Section 22(c), Rule 22c-1 and Section 22(d) of the Act the proposed exchange of Puritan shares at net asset value without a sale charge and at a price other than the price next determined after receipt of a purchase order for substantially all of the assets of Blanchard Investment Company, Inc., a personal holding company; and an order pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder permitting an agreement between Puritan and FMR calling for Puritan and FMR each to bear one-half of Puritan's out-of-pocket expenses related to the above proposed exchange of shares up to a maximum of $5,000, and for all of such out-of-pocket expenses in excess of $5,000 to be borne by FMR.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemptions is 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, and that the participation by Puritan in the proposed transactions is consistent with the provisions, policies and purposes of the Act and is not on a basis less advantageous than that of any other participant. Accordingly,

It is ordered, pursuant to Section 6(c) of the Act, that the application for exemption from Sections 22(c), Rule 22c-1 and 22(d) of the Act, to the extent requested, be, and hereby is, granted, effective forthwith.

It is further ordered, pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, that said application to permit the consummation of the proposed transactions between Puritan and FMR be, and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-24342 Filed 8-22-77;8:45 am]

[Rel. No. 9897; 811-1515]

TRUST FUND SPONSORED BY SCHOLARSHIP CLUB, INC.

Proposal to Terminate Registration

AUGUST 17, 1977.

Notice is hereby given that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion, that the Trust Fund Sponsored by the Scholarship Club, Inc. ("Fund") c/o Calvert Courtney, P.O. Box 998, Palmetto, Florida 33561, registered under the Act as a closed-end management investment company, has ceased to be an investment company as defined in the Act.

The Fund was organized in 1961 under the laws of the State of Florida, and commenced the sale of its scholarship plans ("Plans") in 1962. The Fund suspended sales of these Plans sometime prior to 1967. On July 17, 1967, the Fund registered under the Act, and on September 26, 1967, it filed a registration statement (File No. 2-27353) on Form S-6 under the Securities Act of 1933 to cover the sale of new scholarship plans. This registration statement was declared effective on October 6, 1969, and information in the Commission's files discloses that 1300 new Plans were sold between October 6, 1969, and May, 1975, making a total of 5,150 Plans outstanding as of that date. Due to certain problems which developed in the management and administration of the Fund the Department of Insurance of the State of Florida sometime in 1975 decided to take action to have the Fund liquidated. A proceeding entitled *State of Florida, ex rel The Department of Insurance* (Realtor) vs. *The Scholarship Club, Inc.*, (Respondent), was filed in the Circuit Court, Second Judicial Circuit for Leon County Florida, Civil Action No. 75-1701. That Court issued an order on August 26, 1975, appointing the Florida Department of Insurance as Receiver of the Fund's property and affairs for the purpose of supervising the liquidation of the Fund. On March 9, 1977, that Court issued an Order of Final Distribution causing the Fund to be liquidated and its assets distributed to participating Fund members and trustees of Fund members. The Division of Rehabilitation and Liquidation of the State of Florida Department of Insurance has advised the Commission by letters dated May 16, 1977, and August 9, 1977, that the Order of Final Distribution was implemented on March 18, 1977, and therefore the Fund ceased to exist on that date. Specifically, the staff of the Commission has been advised that the Fund has no assets or liabilities currently outstanding.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company it shall so declare by order, which may be made upon appropriate conditions if necessary for the protection of investors, and upon the taking effect of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than September 12, 1977, at 5:30 p.m., submit to the Commission in writing a request for a hearing on this matter accompanied by a statement as to the nature of his interest, the reasons 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 the Fund 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 this matter will be issued as of course following said date, 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. 77-24343 Filed 8-22-77;8:45 am]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1360]

ALABAMA

Declaration of Disaster Loan Area

The following 62 counties, and adjacent counties, in the State of Alabama constitute a disaster area as a result of drought caused by severe crop losses during the 1976 crop year and continuing into the 1977 crop year:

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

Eligible persons firms and organizations may file applications for loans for physical damage until the close of business on Oct. 14, 1977, and for economic injury until the close of business on June 15, 1978, at:

Small Business Administration, District Office, 980 South 20th Street, Birmingham, Ala. 02114.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 12, 1977.

A. VERNON WEAVER,
Administrator.

[FR Doc.77-24296 Filed 8-22-77;8:45 am]

FIRST SOUTHERN CAPITAL CORP.

[License No. 06/12-0023]

Application for Transfer of Control of Licensed Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA), pursuant to Section 107.701 of the regulations governing small business investment companies (13 CFR Section 107.701 (1977)), for transfer of control of First Southern Capital Corporation (FSCC), Suite 1216 Commerce Building, 821 Gravier Street, New Orleans, La. 70112, a Federal Licensee under the Small Business Investment Act of 1958, as amended (The Act), (15 U.S.C. 661 et seq.), and the Rules and Regulations promulgated thereunder.

FSCC was licensed on May 11, 1961, and its present capitalization is $1,028,224. It is proposed that Crabtree Investments, Inc. (CII), One American Place, Baton Rouge, La. 70825, purchase 357,904 shares of FSCC's issued and outstanding common stock from First National Bank of Commerce, New Orleans, La. These shares represent approximately 49 percent of FSCC's issued and outstanding stock, and, accordingly, CII will effectively control FSCC. There is only one class of stock authorized.

CII is a Louisiana corporation which was organized in July 1974 and is owned 100 percent by John H. Crabtree, 3551 S. Lakeshore Drive, Baton Rouge, La. 70808. It is registered with the Securities and Exchange Commission as an investment advisor, and its principal activities to date have been furnishing investment and management services to commercial banks in Louisiana.

The proposed transfer of control is subject to the approval of SBA. If such approval is given, Mr. Crabtree will become a director of FSCC. There will be no change in FSCC's charter or bylaws.

Matters involved in SBA's consideration of the application include the gen-

eral business reputation and character of management and shareholders, and the probability of successful operations of FSCC under their management in accordance with the Act and Regulations.

Notice is further given that any person may, not later than September 2, 1977, submit to SBA in writing, comments on the proposed transfer of control of this company. Any such comments should be addressed to: Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this notice will be published by FSCC in a newspaper of general circulation in New Orleans, La.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: August 12, 1977.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc.77-24297 Filed 8-22-77;8:45 am]

[Declaration of Disaster Loan Area #1359]

MASSACHUSETTS

Declaration of Disaster Loan Area

The Millville Mill Complex on Main Street in the town of Millville, Worcester County, Mass., constitutes a disaster area because of damage resulting from a fire which occurred on June 8, 1977.

Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on October 17, 1977, and for economic injury until the close of business on May 15, 1978, at:

Small Business Administration, District Office, 150 Causeway Street, Boston, Mass. 02114.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 16, 1977.

PATRICIA M. CLOHERTY,
Acting Administrator.

[FR Doc.77-24329 Filed 8-22-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA General Docket H-77-3]

ASSOCIATION OF AMERICAN RAILROADS

Power Brake Test Program

Notice is hereby given that the Association of American Railroads (AAR) has petitioned the Federal Railroad Administration (FRA) for a temporary waiver of compliance with the testing and repair requirements of 49 CFR 232.-17(a)(1) and (b). The temporary waiver is requested in order to conduct a limited study and evaluation of the safe service life and reliability of a specific type of power brake equipment.

The current provisions, which establish the intervals for the testing and repair of freight car brake equipment, require that freight cars equipped with ABD type valve components be given cleaning, oiling, testing and stenciling (COT&S) attention at periods which do not exceed 120 months. These provisions were premised on prior limited test programs which were sponsored and supervised by the AAR.

In generalized terms those earlier tests obtained evidence of valve component conditions by sampling inspections which were conducted after specific time periods. These prior tests were limited in scope and primarily involved open top hopper cars.

The test program being proposed by AAR would utilize a variety of freight car equipment which is owned by five railroads. Approximately 2,300 freight cars, which are operated in interchange service, are proposed to be employed in this test program.

The AAR indicates that Consolidated Rail Corp., Missouri Pacific Railroad, Seaboard Coast Line, Union Pacific and Denver & Rio Grande Western will furnish the equipment to be employed in this test program. A detailed list of this equipment is provided in the appendix to this notice.

The AAR notes that a test program of this size should provide a statistically valid sample of various railroad operating practices, equipment and climatic conditions. The cars selected generally range in age from seven to ten years which should produce effective test data in the near term future.

During the period of the test program the AAR proposes to have these cars given complete COT&S attention only in the event that the equipment on a given car fails to pass an In-Date-Single Car Code of tests. Each of these cars will be subjected to an In-Date-Test when placed on a shop or repair track for any reason. The AAR also proposes to subject a minimum of twenty cars to the In-Date-Test-Procedure each year and a minimum of two cars will have their valvular portions and piston cylinder removed for examination. This additional procedure would be utilized for cars which have been in service for ten years.

In the event that a car fails to pass the In-Date-Test because of a malfunction of the valve portion or the brake cylinder, the Chief Mechanical Officer of the carrier owner will be notified. If it is necessary to provide COT&S attention to the equipment, the installed equipment will be removed and to the extent possible sent to the carrier owners air brake shop. The removed equipment will be identified as part of the test program and a report will be furnished.

Interested persons are invited to participate in this proceeding by submitting written data, views or comments. FRA does not anticipate scheduling an opportunity for oral comment on this petition since the facts do not appear to warrant it. However, an opportunity to present oral comments will be provided if any interested party requests it prior to September 9, 1977.

All communications concerning this proceeding must identify the docket designation (FRA General Docket H-77-3) and should be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Washington, D.C. 20590. Communications received before September 30, 1977 will be considered by the Federal Railroad Administration before final action is taken. Comments received after that date will be considered so far as practicable. All comments received will be available for examination during regular business hours, both before and after the closing date for comments, in Room 5101, Nassif Building, 400 Seventh Street SW., Washington, D.C.

(Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431), as amended by Sec. 5(b) of the Federal Railroad Safety Authorization Act of 1975, Pub. L. 94-348, 90 Stat. 817, July 8, 1976; § 1.49(n) of the regulations of the Office of the Secretary, 49 CFR 1.49(n).)

Issued in Washington, D.C. on August 17, 1977.

DONALD W. BENNETT,
Chairman, Railroad Safety Board.

APPENDIX

CONSOLIDATED RAIL CORPORATION

Total Number of Cars—200.
Type of Car—Open Top Hopper.
Reporting Marks—PPLX in the series between 100 and 309.

SEABOARD COAST LINE RAILROAD

Total Number of Cars—1400.
Type of Car—Covered Hoppers.
Reporting Marks—SCL in the series between 421800 and 422399 and between 831700 and 832499.

UNION PACIFIC RAILROAD

Total Number of Cars—195.
Type of Cars—Open Top Hoppers.
Reporting Marks—UP in the series between 31900 and 31994 and between 32000 and 32099.

DENVER AND RIO GRANDE WESTERN RAILROAD

Total Number of Cars—205.
Type of Car—Open Top Hoppers.
Reporting Marks—DRGW in the series between 56995 and 56999, 16398 and 16500 and between 16763 and 16864.

MISSOURI PACIFIC RAILROAD

Total Number of Cars—200.
Type of Cars—Refrigerator Cars and Box Cars.
Reporting Marks—MP in the series between 786400 and 499 and between 794800 and 794999 for the refrigerator cars. MP in the series between 265000 and 265999 and between 271500 and 271674 for the box cars.

[FR Doc.77-24301 Filed 8-22-77;8:45 am]

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

GRANTING OF RELIEF

Notice is hereby given that pursuant to 18 U.S.C. Section 925(c) the following named persons have been granted relief from disabilities imposed by Federal laws with respect to acquisition, transfer, receipt, shipment, or possession of firearms incurred by reason of their convictions of crimes punishable by imprisonment for a term exceeding one year.

It has been established to my satisfaction that the circumstances regarding the convictions of each applicant's record and reputation are such that the applicants will not be likely to act in a manner dangerous to public safety, and that the granting of the relief will not be contrary to the public interest.

Agnes, James R., 550 Evergreen Lane, Munster, Indiana, convicted on March 12, 1957, in the United States District Court, Hammond, Ind.

Albright, Douglas K., 3800 Adams, Denver, Colo., convicted on July 5, 1973, in the Denver District Court, Colorado.

Argyle, Dale M., 764 South University, Blackfoot, Idaho, convicted on April 27, 1972, in the United States District Court for the District of Idaho.

Bailey, Donald A., 750 Sherburne, St. Paul, Minn., convicted on April 18, 1969, in the District Court, Hennepin County, Minn.

Barberini, Joseph, 110 Sherwood Avenue, Yonkers, N.Y., convicted on June 30, 1972, in the United States District Court, Southern District of New York.

Barbour, James R., Route 2, Fort Valley, Ga., convicted on May 16, 1960, in the Superior Court, Bibb County, Ga.

Bradford, Clifton R., 1434 East John Cove, Greenville, Miss., convicted on April 25, 1975, in the United States District Court, Memphis, Tenn.

Bradford, Pascal S., P.O. Box 145, Camden, Ind., convicted on September 27, 1952, in the Harrison Circuit Court, Harrison County, Ind.

Brisk, James B., Star Route, Keshena, Wis., convicted on September 8, 1959, in the County Court, Shawano County, Circuit Court Branch, Wisconsin; and on October 3, 1961, in the County Court, Shawano, Menominee Court, Circuit Court Branch, Shawano County Division, Wisconsin.

Casteel, Donald W., Box 393, Huntsville, Ariz., convicted on March 11, 1967, in the Madison County Circuit Court, Huntsville, Ark.

Castro, Gerald G., P.O. Box 314, Tijeras, N. Mex., convicted on May 21, 1976, in the Criminal District Court, Dallas County, Tex.

Clark Donald P., P.O. Box 983, Brazoria, Tex., convicted on February 24, 1969, in the District Court of Brazoria County, Twenty-Third Judicial District, Texas.

Clark, Milton, 35033 Concord Court, Mt. Clemens, Mich., convicted on October 26, 1964, and on May 7, 1968, in the Recorder's Court of the City of Detroit, Mich.; and on February 14, 1968, in the Circuit Court for the County of Wayne, Michigan.

Colburn, William C., 5927 West Avalon Drive, Phoenix, Ariz., convicted on April 18, 1957, in the Superior Court, San Diego County, California.

Cooney, John T., 4911 South Pine, Tacoma, Wash., convicted on May 27, 1971, in the Superior Court of the State of California in and for the County of Alameda.

Cornell, James M., 3537 Brown Road, Ferndale, Wash., convicted in 1962, in Oneida, N.Y.

Earnhardt, Clyde H., Jr., 4000 Dunwoody Drive, Charlotte, N.C., convicted on September 28, 1970, in the United States District Court for the Southern District of Texas.

Estep, Gordon J., 2552 West Avenue K, Lancaster, Calif., convicted on March 18, 1959, in the Brattleboro Municipal Court, Vermont.

Fernengel, Dennis M., 808 Columbia Road, Westlake, Ohio, convicted on March 2, 1967, in the Cuyahoga County Common Pleas Court, Cuyahoga County, Ohio.

Foltz, Richard B., 7602 West St. Clair, Indianapolis, Ind., convicted on April 26, 1973, in the United States District Court, Indiana.

Garza, Ruben T., 3602 West LaSalle, Phoenix, Ariz., convicted on January 31, 1974, in the United States District Court for the District of Arizona.

Hicks, Gene A., P.O. Box 544, Folsom, Calif., convicted on March 19, 1973, in the United States District Court for the Eastern District of California.

Humphryes, Horace E., 705 1st Avenue, Lipscomb, Ala., convicted on July 20, 1947, in the Jefferson County Circuit Court, Bessemer, Ala.; and on June 22, 1962, in the Tuscaloosa County Circuit Court, Sixth Circuit, Alabama.

Kitchens, Bud J., 7280 Stanford Avenue, La Mesa, Calif., convicted on April 24, 1968, in the Municipal Court, El Cajon Judicial District, County of San Diego, Calif.

Linder, Thomas E., Jr., 1913 B Mimosa Drive, Lynchburg, Va., convicted on December 20, 1973, in the United States District Court, Northern District, Pensacola, Fla.

Lock, Gary E., 706 North Volland, Kennewick, Wash., convicted on June 23, 1972, in the Superior Court of the State of Washington for Franklin County.

McGee, Robert, Route 4, Box 438, Fayetteville, Tenn., convicted on October 23, 1931, in the Gibbs County Circuit Court, Pulaski, Tenn.

Martin, Frank H., 287 Wheeler Street, Akron, Ohio, convicted on January 27, 1964, in the United States District Court, Cleveland, Ohio.

Martin, Thomas D., P.O. Box 30, Hanksville, Utah, convicted on or about November 21, 1963, in the District Court of Grand County, Utah.

Moskal, Stanley, 32772 Tuxedo Court, Warren, Mich., convicted on September 20, 1937, in the Macomb County Circuit Court, Mich.; and on September 26, 1940, in the Recorder's Court, Detroit, Mich.

Mueller, Brian L., 1106 North 10th Street, Sheboygan, Wis., convicted on or about December 27, 1967, in the Sheboygan County Court, Branch II, Sheboygan, Wis.

Mundinger, Henry D., 275 Aurora Street, St. Paul, Minn., convicted on November 7, 1969, on December 29, 1969, and on December 14, 1971, in the District Court, Fourth Judicial District of Hennepin County, Minnesota.

Orcutt, Scott E., 133 Kunze Drive, St. Charles, Mo., convicted on December 5, 1969, in the Court of Record at Broward County, Florida.

Penn, Joseph D., 267 West Burke Circle, McDonough, Ga., convicted on July 6, 1973, in the Superior Court, Henry County, Ga.

Powell, Curtis E., East 12009 Third Avenue, Spokane, Wash., convicted on April 4, 1969, in the Spokane County Superior Court, Spokane, Wash.

Ridgley, Thomas W., 1913 Druid Hill Avenue, Baltimore, Md., convicted on May 11, 1938, by the Justice of the Peace, Howard County, Maryland.

Schultz, Leah C., 4703 Franklin Road, Boise, Idaho, convicted on December 20, 1974, in the District Court of the Second Judicial District of the State of Idaho.

Smith, Jesse B., Route 3, Box 60-D, Zachary, Louisiana, convicted on August 28, 1968, in the Circuit Court of Franklin County, Mississippi.

Sullivan, Robert E., 514 Forest Park Drive, Pensacola, Fla., convicted on July 28, 1969, in the State of Florida, Circuit Court in and for Santa Rosa County.

Swann, Lee E., 1847 North 38th Place, Phoenix, Ariz., convicted on February 3, 1975, in the United States District Court, District of Arizona, Phoenix, Ariz.

Tewksbury, James R., 2866 B Hemlock Street, Bremerton, Wash., convicted on March 11, 1974, in the Superior Court of the State of Washington for Kitsap County.

Townsend, Charles E., 9310 Palo Alto Drive, Oklahoma City, Okla., convicted on August 25, 1972, in the United States District Court for the Western District of Oklahoma.

Trout, LaDoit S., 16237 S.E. Lincoln Street, Portland, Oreg., convicted on September 12, 1962, in the District Court of the Sixth Judicial District, Park County, Mont.

Tucker, Efren H., 1544 Minden Drive, San Diego, Calif., convicted on February 1, 1961, in the Superior Court, San Diego, Calif.

Urista, Bruno R., 1797 Livernois, Detroit, Mich., convicted on July 19, 1954, in the Wayne County Circuit Court, Michigan.

Signed at Washington, D.C., this 9th day of August 1977.

REX D. DAVIS,
Director, Bureau of Alcohol, Tobacco and Firearms.

[FR Doc.77-24292 Filed 8-22-77;8:45 am]

Office of the Secretary

SORBATES FROM JAPAN

Antidumping Proceeding

AGENCY: United States Treasury Department.

ACTION: Initiation of Antidumping Investigation.

SUMMARY: This notice is to advise the public that a petition in proper form has been received and an antidumping investigation is being initiated for the purpose of determining whether or not imports of sorbates (sorbic acid and potassium sorbate) from Japan are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act of 1921, as amended. Sales at less than fair value generally occur when the prices of merchandise sold for exportation to the United States are less than the prices in the home market.

EFFECTIVE DATE: August 23, 1977.

FOR FURTHER INFORMATION CONTACT:

Edward F. Haley, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-5492).

SUPPLEMENTARY INFORMATION: On July 18, information was received in proper form pursuant to § 153.26 and § 153.27, Customs Regulations (19 CFR 153.26 and 153.27), from counsel acting on behalf of the Monsanto Company, a domestic producer of the subject merchandise, indicating a possibility that sorbates from Japan are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.).

For purposes of this notice, the term "sorbates" means sorbic acid and potassium sorbate, which are classified under item numbers 425.8720 and 426.8420, respectively, of the Tariff Schedules of the United States, Annotated.

There is evidence on record concerning injury to, or likelihood of injury to, or prevention of establishment of an indus-

try in the United States. This evidence indicates that imports of sorbates from Japan have increased their share of the United States market in recent years as a result of possible sales at less than fair value. Furthermore, it appears that those alleged sales at less than fair value have prevented the petitioner from pricing its merchandise at a level sufficient to realize an adequate return on its investment.

Having conducted a summary investigation as required by § 153.29 of the Customs Regulations (19 CFR 153.29) and having determined that there are grounds for doing so, the United States Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

A summary of information from all sources is as follows:

The information received tends to indicate that the prices of merchandise sold for exportation to the United States are less than the prices for home consumption.

This notice is published pursuant to section 153.30 of the Customs Regulations (19 CFR 153.30).

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

AUGUST 17, 1977.

[FR Doc.77-24331 Filed 8-22-77;8:45 am]

VETERANS ADMINISTRATION

COOPERATIVE STUDIES EVALUATION COMMITTEE

Meeting

The Veterans' Administration gives notice pursuant to Pub. L. 92-463 that a meeting of the Cooperative Studies Evaluation Committee, authorized by 38 USC 4101, will be held at the Burlington Hotel, Vermont Avenue at Thomas Circle, NW., Washington, D.C. on November 7, 8, and 9, 1977. The meeting will be for the purpose of reviewing proposed cooperative studies and advising the Veterans' Administration on the relevance and feasibility of the studies, the adequacy of the protocols, the scientific validity and the propriety of technical details, including involvement of human subjects. The Committee advises the Director, Medical Research Service, through the Chief of the Cooperative Studies Program, on its findings.

The meeting will be open to the public up to the seating capacity of the room from 8 a.m. to 8:30 a.m., November 7, to discuss the general status of the program. To assure adequate accommodations, those who plan to attend should contact Dr. James A. Hagans, Coordinator of the Committee, Veterans' Administration Central Office, Washington, D.C. (202-389-3702) prior to October 28.

The meeting will be closed from 8:30 a.m. to 5 p.m., November 7 and all day November 8 and 9 for consideration of specific proposals in accordance with provisions set forth in Section 10(d) of Pub. L. 92-463 and Section 552b(c)(6) of Title 5, United States Code. During this portion of the meeting, discussion and decisions will deal with qualifications of personnel conducting the studies and the medical records of patients who are study subjects, the disclosure of which would constitute an invasion of personal privacy.

Dated: August 16, 1977.

By direction of the Administrator.

RUFUS H. WILSON,
Deputy Administrator.

[FR Doc.77-24327 Filed 8-22-77;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 463]

ASSIGNMENT OF HEARINGS

AUGUST 18, 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 32779 (Sub-No. 13), Silver Eagle Co., now being assigned November 28, 1977 (2 weeks), at Portland, Oreg., in a hearing room to be later designated.

MC 35807 (Sub-No. 68), Wells Fargo Armored Service Corp., now being assigned November 1, 1977 (3 days), at Richmond, Va., in a hearing room to be later designated.

MC 142788, Farruggio's Limousine Service, a division of Farruggio's Bristol & Philadelphia Auto Express, Inc., now being assigned December 5, 1977 (1 week), at Philadelphia, Pa., in a hearing room to be later designated.

MC 109897 (Sub-No. 2), Gray Line New York Tours Corp., now being assigned for November 9, 1977 (2 days), at Newark, N.J., in a hearing room to be later designated.

MC 67730 (Sub-No. 27), R. W. Bozel Transfer, Inc., now assigned November 16, 1977, at Washington, D.C., is canceled.

MC 130444, Nancy H. Nagle, now being assigned November 21, 1977 (3 days), at Richmond, Va., in a hearing room to be later designated.

MC 133591 (Sub-No. 33), Wayne Daniel Truck, Inc., now assigned October 18, 1977, at St. Louis, Mo., is canceled, application dismissed.

MC 112103 (Sub-No. 4), Leprechaun Lines, Inc., now being assigned November 14, 1977 (1 week), at Poughkeepsie, N.Y., in a room to be later designated.

MC-F-13154, Shaffer Trucking, Inc.—Purchase—Tempco Transportation, Inc., now September 13, 1977, at Louisville, Ky., is postponed to November 29, 1977 (4 days), at Louisville, Ky., in a hearing room to be later designated.

MC 135410 (Sub-No. 11), Courtney J. Munson, d.b.a. Munson Trucking now being assigned October 18, 1977 (2 days), for hearing in St. Louis, Mo., in a hearing room to be later designated.

MC 113678 (Sub-No. 645), Curtis, Inc., now being assigned November 15, 1977 (3 days), at Denver, Colo., in a hearing room to be later designated.

MC 39491 (Sub-No. 16), Colonial Coach Corp., now being assigned November 28, 1977 (1 week), at Trenton, N.J., in a hearing room to be later designated.

MC 139973 (Sub-No. 23), J. H. Ware Trucking, Inc., now being assigned September 19, 1977 (1 day), in Room 609, Federal Office Building, 911 Walnut Street, Kansas City, Mo.

MC 135797 (Sub-No. 66), J. B. Hunt Transport, Inc., now being assigned September 20, 1977 (1 day), in Room 609, Federal Office Building, 911 Walnut Street, Kansas City, Mo.

MC 113459 (Sub-No. 109), H. J. Jeffries Truck Line, Inc., now being assigned September 21, 1977 (1 day), in Room 609, Federal Office Building, 911 Walnut Street, Kansas City, Mo.

MC 82841 (Sub-No. 207), Hunt Transportation, Inc., now being assigned September 22, 1977 (2 days), in Room 609, Federal Office Building, 911 Walnut Street, Kansas City, Mo.

MC 140421 (Sub-No. 17), Action Motor Express, Inc., now being assigned December 5, 1977 (1 day), at New Orleans, La., in a hearing room to be later designated.

MC-FC-76543, City Delivery Service, Inc., Boise, Idaho, Transferee and Vogt Transfer & Storage Co., Ontario, Oreg., Transferor now being assigned November 14, 1977 (1 week), at Boise, Idaho, in a hearing room to be later designated.

MC 121044 (Sub-No. 4), City Delivery Service, Inc., now being assigned November 14, 1977 (1 week), at Boise, Idaho, in a hearing room to be later designated.

MC 128273 (Sub-No. 252), Midwestern Distribution, Inc., now assigned October 19, 1977, at Washington, D.C., is postponed to November 15, 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC-C-9702, *Global Van Lines, Inc.* v. *United Van Lines*, now assigned October 3, 1977, at St. Louis, Mo., is canceled.

MC 1924 (Sub-No. 14), Wallace-Colville Motor Freight, Inc., now being assigned November 28, 1977 (1 week), at Missoula, Mont., in a hearing room to be later designated.

MC 117068 (Sub-No. 76), Midwest Specialized Transportation, Inc., now being assigned November 29, 1977 (1 day), at St. Paul, Minn., in a hearing room to be later designated.

MC 133689 (Sub-No. 101), Overland Express, Inc., now being assigned November 30, 1977 (1 day), at St. Paul, Minn., in a hearing room to be later designated.

MC 114457 (Sub-No. 297), Dart Transit Co. and MC 140612, Sub-No 14), Robert F. Kazimour, now being assigned December 1, 1977 (2 days), at St. Paul, Minn., in a hearing room to be later designated.

MC 135874 (Sub-No. 74), LTL Perishables, Inc., now being assigned December 5, 1977 (1 day), at St. Paul, Minn., in a hearing room to be later designated.

MC 139495 (Sub-No. 195), National Carriers, Inc., now being assigned December 6, 1977 (1 day), at St. Paul, Minn., in a hearing room to be later designated.

MC 40978 (Sub-No. 28), Chair City Motor Express Co., now being assigned December 7, 1977 (3 days), at St. Paul, Minn., in a hearing room to be later designated.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-24359 Filed 8-22-77;8:45 am]

FOURTH SECTION APPLICATION FOR RELIEF

AUGUST 18, 1977.

An application, as summarized below, has been filed requesting relief from the requirements of Section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1100.40) and filed on or before September 7, 1977. FSA No. 43413—*Wheat from Points in Kansas on the Missouri Pacific Railroad Company.* Filed by Missouri Pacific Railroad Company, (No. 1142), for interested rail carriers. Rates on wheat, in bulk, in carloads, as described in the application, from points in Kansas on the Missouri Pacific Railroad Company, i.e., Silverdale and Arkansas City, Kansas, to Gulf Ports, viz.: Ama, Baton Rouge, Lake Charles, Myrtle Grove, New Orleans, and Port Allen, Louisiana; also Beaumont, Corpus Christi, Freeport, Galveston, Houston, Orange and Texas City, Texas.

Grounds for relief—Motor-truck competition. Tariff—Supplement 97 to Missouri Pacific Railroad Company tariff 57-F, I.C.C. No. 518. Rates are published to become effective on September 17, 1977.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-24358 Filed 8-22-77;8:45 am]

[Notice No. 213]

MOTOR CARRIER TRANSFER PROCEEDINGS

AUGUST 23, 1977.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

No. MC-FC-77250. By application filed August 15, 1977, P and S, Inc., d.b.a. and S Wrecker Service, 528 State Street, New Albany, IN 47150, seeks temporary authority to transfer the operating rights of Preston L. Ford, an individual, d.b.a. Ford-Floyd Wrecker Service, 1015 South Preston Street, Louisville, KY 40203, under section 210a(b). The transfer to P and S, Inc., d.b.a. P and S Wrecker Service, of the operating rights of Preston L. Ford, an individual, d.b.a. Ford-Floyd Wrecker Service, is presently pending.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-24360 Filed 8-22-77;8:45 am]

[Notice No. 212]

MOTOR CARRIER TRANSFER PROCEEDINGS

AUGUST 23, 1977.

Application filed for temporary authority under section section 210a(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

No. MC-FC-77249. By application filed August 16, 1977, Linus Jankord, an individual, d.b.a. Jankord Trucking, Revillo, S.D. 57259, seeks temporary authority to transfer the operating rights of Erkel Transfer, Inc., 22 N. Lexington Avenue, Le Center, MN 56057, under section 210a(b). The transfer to Linus Jankord, an individual, d.b.a. Jankord Trucking, of the operating rights of Erkel Transfer, Inc., is presently pending.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-24361 Filed 8-22-77;8:45 am]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

[Notice No. 105TA]

AUGUST 17, 1977.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provides that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 59150 (Sub-No. 102TA), filed August 1, 1977. Applicant: PLOOF TRUCK LINES, INC., 1414 Lindrose Street, P.O. Box 3277, Jacksonville, Fla. 32206. Applicant's representative: Martin Sack, Jr., 1745 Gulf Life Tower, Jacksonville, Fla. 32207. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plywood and composition board*, from the plant and warehouse facilities utilized by the Day Companies, Inc., in Randolph County, Ga., to points in the United States in and east of North Dakota, South Dakota, Nebraska, Colorado and N. Mex., for 180 days. Supporting shipper(s): Day Companies, Inc. P.O. Box 429, Guthbert, Ga. 31740. Send protests to: G. H. Fauss, Jr., District Supervisor, Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay Street, Jacksonville, Fla. 32202.

No. MC 59241 (Sub-No. 4 TA), filed August 3, 1977. Applicant: JOHN GIBBONS, INC., 650 Eddystone Avenue, Eddystone, Pa. 19013. Applicant's representative: Maxwell A. Howell, 1100 Investment Building, 1511 K Street NW., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Cleaning products*, (2) *nutritional foods*, and (3) *related articles, materials, supplies and equipment* used in the manufacture, distribution, or sale of the commodities in (1) and (2) above, except in bulk, between the plantsite of Dracket Products Company, at or near East Stroudsburg, Pa., on the one hand, and, on the other, Saylesville, R.I., for 180 days. Supporting shipper(s): Drackett Products Company, 5020 Spring Grove Avenue, Cincinnati, Ohio. 45232. Send protests to: Monica A. Blodgett Transportation Assistant, Interstate Commerce Commission, 600 Arch Street, Room 3238, Philadelphia, Pa. 19106.

No. MC 99439 (Sub-No. 4TA), filed August 1, 1977. Applicant: SUWANNEE TRANSFER, INC., 1830 East 21st Street, Jacksonville, Fla. 32206. Applicant's representative: Dan R. Schwartz, 1729 Gulf Life Tower, Jacksonville, Fla. 32207. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tractors* (except truck tractors) and *attachments, parts, and accessories* for tractors when moving at the same time and in the same equipment with tractors, from rail ramps located at or near Jacksonville and Tampa, Fla., to points in Florida. Restriction: The authority sought herein shall be restricted to traffic having a prior movement by rail. Supporting shipper(s): Ford Motor Co., Ford Tractor Operations, 2500 E. Maple Road, Troy, Mich. 48084. Send protests to: G. H. Fauss, Jr., District Supervisor, Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay Street, Jacksonville, Fla. 32202.

No. MC 100666 (Sub-No. 358TA), filed August 2, 1977. Applicant: MELTON TRUCK LINES, INC., P.O. Box 7666, 1129 Grimmett Drive, Shreveport, La. 71107. Applicant's representative: William P. Parker, Suite 280, National Foundation Life Center, 3535 N.W., 58th Street, Oklahoma City, Okla. 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, from the facilities of World Wood Corp., located at or near Cove City, North Carolina to points in Alabama, Arkansas, Kansas, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): World Wood Corp., 2000 Federal Road, Houston, Tex. 77015. Send protests to: Ray C. Armstrong, Jr., District Supervisor, 701 Loyola Avenue, 9038 Federal Bldg., New Orleans, La. 70113.

No. MC 100666 (Sub-No. 359TA), filed August 2, 1977. Applicant: MELTON TRUCK LINES, INC., P.O. Box 7666, 1129 Grimmett Drive, Shreveport, La. 71107. Applicant's representative: Dean Williamson, 3535 NW. 58th Street, 280 National Foundation Life Bldg., Oklahoma City, Okla. 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Gypsum, gypsum products, and materials and supplies* used in the installation and distribution thereof, from Marshall County, Kans., to points in Arkansas, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Georgia-Pacific Corp., 1062 Lancaster Avenue, Rosemont, Pa. 19010. Send protests to: Ray C. Armstrong, Jr., District Supervisor, Loyola Avenue, 9038 Federal Bldg., New Orleans, La. 70113.

No. MC 102616 (Sub-No. 932TA), filed August 3, 1977. Applicant: COASTAL TANK LINES, INC., 250 N. Cleveland-Massillon Road, P.O. Box 5555, Arkon, Ohio 44313. Applicant's representative: David F. McAllister, 250 N. Cleveland-Massillon Road, Akron, Ohio. 44313. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sodium phosphates*, in bulk, in tank vehicles, from Kearny, N.J., to the International Boundary Line between the United States and Canada located at Buffalo and Niagara Falls, N.Y., restricted to traffic destined to points in the Province of Ontario, for 180 days. Supporting shipper(s): Monsanto Company, 880 North Lindbergh Blvd., St. Louis, Mo. 63166. Send protests to: James Johnson District Supervisor, Interstate Commerce Commission, 731 Federal Office Building, 1240 East Ninth Street, Cleveland, Ohio 44199.

No. MC 103051 (Sub-No. 405TA), filed August 3, 1977. Applicant: FLEET TRANSPORT COMPANY, INC., 934 44th Avenue, P.O. Box 90408, Nashville, Tenn. 37209. Applicant's representative: Russell E. Stone, P.O. Box 90408, Nashville, Tenn. 37209. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sulfuric acid*, in bulk, in tank vehicles, from Bonnie and South Pierece, Fla., to points in Alabama, Georgia, Tennessee, North Carolina and South Carolina, for 180 days Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Cities Service Company, P.O. Box 50360, Atlanta, Ga. 30302. Send protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Court House, 801 Broadway, Nashville, Tenn. 37203.

No. MC 112617 (Sub-No. 370TA), filed August 2, 1977. Applicant: LIQUID TRANSPORTERS, INC., P.O. Box 21395, Lousiville, Ky. 40221. Applicant's representative: Charles R Dunford (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Whiskey and gin*, in bulk, in tank vehicles, between Bardstown, Ky., on the one hand, and, on the other, Atlanta, Ga., for 180 days. Supporting shipper(s): David Humphrey, Traffic Manager, Barton Brands, Ltd., Barton Road, Bardstown, Ky. 40004. Send protests to: Linda H. Sypher, District Supervisor, Interstate Commerce Commission, 426 Post Office Bldg., Louisville, Ky. 40202.

No. MC 115904 (Sub-No. 78TA), filed July 29, 1977. Applicant: GROVER TRUCKING CO., 1710 West Broadway, Idaho Falls, Idaho 83401. Applicant's representative: Irene Warr, 530 Judge Building, Salt Lake City, Utah 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pre-cut log home packages, knocked down, and materials and supplies* used in the erection and construction thereof, from Colorado to points in Washington, Oregon, Idaho, Montana, Wyoming, Utah, New Mexico, South Dakota, Kansas, Oklahoma, Texas, Missouri, Wisconsin, Nebraska, and Iowa, for 180 days. Applicant does not intend to tack or interline authority with other carriers. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Brallier Enterprises Inc., d.b.a. Colorado Log Homes, 1925 W. Dartmouth, Englewood, Colo. 80110. Send protests to: Barney L. Hardin, District Supervisor, Interstate Commerce Commission, 550 W. Fort Street, Box 07, Boise, Idaho 83724.

No. MC 119118 (Sub-No. 58TA), filed August 2, 1977. Applicant: McCURDY TRUCKING, INC., P.O. Box 388, R.D. No. 4, Latrobe, Pa. 15650. Applicant's representative: Lawrence C. Maston, P.O. Box 388, Latrobe, Pa. 15650. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, in containers, and materials and supplies used in the manufacture, sale and distribution of malt beverages, including empty containers, between South Volney, N.Y., and Eden, N.C., and from South Volney, N.Y., to points in the State of North Carolina, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Miller Brewing Company, 4000 West State Street, Milwaukee, Wis. 53208. Send protests to: Richard C. Gobbell, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2111 Federal Building, Pittsburgh, Pa. 15222.

No. MC 126555 (Sub-No. 50TA), filed August 1, 1977. Applicant: UNIVERSAL TRANSPORT, INC., P.O. Box 3000, Rapid City, S. Dak. 57701. Applicant's representative: Barry C. Burnette, P.O. Box 3000, Rapid City, S. Dak. 57709. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bentonite*, from points in Butte County, S. Dak., to points in Pennington County, S. Dak., for subsequent movement by rail in interstate commerce, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): American Colloid Co., P.O. Box 228, Skokie, Ill. 60076. Robert N. Garity Transportation Specialist. Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 455, Federal Bldg., Pierre, S. Dak. 57501.

No. MC 126899 (Sub-No. 115TA), filed August 3, 1977. Applicant: USHER TRANSPORT, INC., 3925 Old Benton Road, P.O. Box 3156, Paducah, Ky. 42001. Applicant's representative: George M. Catlett, Suite 708, McClure Bldg., Frankfort, Ky. 40601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporing: *Packaged coal*, from points and places in Hancoci and Daviess Counties, Ky., to points and places in Arkansas, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Iowa, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Virginia, West Virginia, and Wisconsin, restricted against the transportation of commodities in bulk for 180 days. Supporting Shipper(s): Fireplace Fuels, Inc., Lockport, Ky. 40036. Send protests to: Floyd A. Johnson, District Supervisor, Interstate Commerce Commission 100 North Main Building, Suite 2006, 100 North Main Street, Memphis, Tenn. 38103.

No. MC 126904 (Sub-No. 25TA), filed August 1, 1977. Applicant: H. C. PARRISH TRUCK SERVICE, INC., R.R. 2, P.O. Box 264, Freeburg, Ill. 62243. Applicant's representative: James W. Patterson, 1200 Western Savings Bank Bldg., Philadelphia, Pa. 19107. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages and related advertising material*, from the facilities of Carling National Breweries at Belleville, Ill., to points in Alabama, Louisiana, and Mississippi; (2) *Returned empty malt beverage containers; ship-*

ping devices; refused, rejected, and damaged shipments of malt beverages, from points in Alabama, Louisiana, and Mississippi, to the facilities of Carling National Breweries at Belleville, Ill., for 180 days. Supporting shipper(s): Gordon Director of Distribution, Carling National Breweries, Inc., 3720 Dillon Street, Baltimore, Md. 21224. Send protests to: Harold C. Jolliff District Supervisor, Interstate Commerce Commission, P.O. Box 2418, Springfield, Ill. 62705.

No. MC 128117 (Sub-No. 25TA), filed August 3, 1977. Applicant: NORTON-RAMSEY MOTOR LINES, INC., P.O. Box 896, Hickory, N.C. 28601. Applicant's representative: Francis J. Ortman, 7101 Wisconsin Avenue, Suite 605, Washington, D.C. 20014. Authority sought to operate as a *common carrier*, by motor vehicle ,over irregular routes, transporting: *Sugar*, (except in bulk), from Houma, La., to points and places in Georgia, Florida, North Carolina, South Carolina, Virginia, and West Virginia, for 180 days. Supporting shipper(s): Harry H. Gilbert, Southdown Sugars, Inc., New Orleans, La. Send protests to: Terrell Price District Supervisor, Interstate Commerce Commission, 800 Briar Creek Road, Mart Office Building, Room CC-516, Charlotte, N.C. 28205.

No. MC 143554TA, filed August 2, 1977. Applicant: H. PETERSON & W. YATES TRUCKING, LTD., P.O. Box 397, Bow Island, Alberta, Canada. Applicant's representative: Ralph Bateman, P.O. Box 397, Bow Island, Alberta, Canada. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meat meal and feather meal*, from the United States-Canada International Boundary line located at or near the ports of entry of Eastport, Idaho, and Sumas and Blaine, Wash., to Spokane, Arlington, and Tacoma, Wash., on traffic originating at Calgary, Edmonton, and Lethbridge, Alberta, Canada. Applicant intends to tack the authority here applied for to its Canadian authority. Supporting shipper(s): B. Smolkin Manager, Alberta Processing Co., P.O. Box 5025, Stn. A, Calgary, Alberta, Canada. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, 2602 First Avenue North, Billings, Mont. 59101.

No. MC 143555TA, filed August 3, 1977. Applicant: RIVERSIDE TRANSPORTATION CO., INC., 1903 Canal Drive, Wilson, N.C. 27893. Applicant's representative: Dennis A. Peacock, 1903 Canal Drive, Wilson, N.C. 27893. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, from points in West Virginia, Pennsylvania, Ohio, Tennessee, and Kentucky, to points in North Carolina, Virginia, South Carolina, Washington, D.C., Georgia, and Maryland, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): U.S.V.C. International Coal Co., 1921 Frick Bldg., Pittsburgh, Pa. 15219. Send protests to: Archie W. Andrews, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 26896, Raleigh, N.C. 27611.

No. MC 143555 (Sub-No. 1TA), filed August 3, 1977. Applicant: RIVERSIDE TRANSPORTATION CO., INC., 1903 Canal Drive, Wilson, N.C. 27893. Applicant's representative: Dennis A. Peacock, 1903 Canal Drive, Wilson, N.C. 27893. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal offal, unprocessed or rendered*, between points in North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee, Kentucky, Ohio, Indiana, Illinois, Michigan, Minnesota, West Virginia, Pennsylvania, New York, New Jersey, Maryland, Virginia, Delaware, Iowa, and Washington, D.C., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Carolina By-Products, P.O. Box 20687, Greensboro, N.C. 27420. Send protests to: Archie W. Andrews, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 26896, Raleigh, N.C. 27611.

No. MC 143556TA, filed July 29, 1977. Applicant: DAHLSTROM'S, INC., 401 Hill Road, Aberdeen, Wash. 98520. Applicant's representative: George Kargianis, 2120 Pacific Bldg., Seattle, Wash. 98104. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wood residuals*, including, but not limited to, sawdust and wood chips, from Grays Harbor County, Wash., to points in St. Helens and Columbia County, State of Oregon, under a continuing contract, or contracts, with Boise Cascade Corp., for 180 days. Supporting shipper(s): Boise Cascade Corp., P.O. Box 7747, Boise, Idaho. 83707. Send protests to: L. D. Boone, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 858 Federal Building, Seattle, Wash. 98174.

By the Commission.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc.77-24362 Filed 8-22-77;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).

CONTENTS

1

[MA-25 amending M-44; Aug. 18, 1977]

CIVIL AERONAUTICS BOARD.

Notice of addition of item to August 23, 1977 meeting agenda.

TIME AND DATE: 10 a.m., August 23, 1977.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 15a. Docket 30221, Petition for discretionary review of the Initial Decision in the *DOD-Contract Eligible Certification Case* (Memo No. 7352, OGC).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, The Secretary, 202–673–5068.

SUPPLEMENTARY INFORMATION: This proceeding involves eligibility to perform certain Department of Defense contracts beginning October 1, 1977 for the 1978 fiscal year. The initial decision was issued July 1, 1977, petitions for discretionary review were filed on July 22, 1977, and answers to the petition were filed by August 8, 1977. In order for the Board to be in a position to decide this case in time for the 1978 fiscal year, agency business requires that the Board meet on this item on less than seven days' notice. Accordingly, the following Members have voted that agency business requires the addition of this item on less than seven days' notice and that no earlier announcement of the addition was possible:

Chairman Alfred E. Kahn
Member Joseph Minetti
Member Lee R. West
Member Elizabeth E. Bailey

[S-1150-77 Filed 8-18-77; 4:33 pm]

2

[M-46; Aug. 18, 1977]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10 a.m., August 25, 1977.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 1. Dockets 22859 and 26838, Increased air freight rates proposed by Continental (Memo No. 7355, BE).

2. Docket 31167, Application of American for exemption to waive its tariff which permits only one pet container in the cabin compartment of the aircraft (Memo No. 7359, BE).

3. Docket 29123, Petition for reconsideration of Order 77-3-62, March 11, 1977, filed by Pan American (Memo No. 6849-D, BE, BIA).

4. Docket 30439, Discretionary review on Board initiative of the decision of the Director, BOE, declining to institute an enforcement proceeding in *ABC Air Freight Company* v. *Emery Air Freight Corporation* (Memo No. 7356, OGC).

5. Docket 26245, *American-Pan American, Route Exchange Agreement*, petition of Flight Engineers' International Association, AFL-CIO (Memo No. 5189-M, OGC).

6. Docket 26907, Draft final rule to eliminate Schedules T-4, T-5 and T-6 of CAB Form 244 from Part 244 of the Economic Regulations (Memo No. 7358, OGC, BAS, BOR).

7. Docket 30256, Yugoslav Airlines' Application for Renewal of its Charter Foreign Air Carrier Permit (Memo No. 4632-G, BIA, BOR, OGC).

8. Docket 29139, Proposed rule on overbooking and oversales (Memo No. 5963-G, OGC).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, The Secretary, 202–673–5068.

[S-1151-77 Filed 8-18-77; 4:33 pm]

3

[M-45; Aug. 17, 1977]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 4 p.m., August 17, 1977.

PLACE: Room 1011, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: Petition for Board review of staff denial of IAS Cargo Airlines' request for authorization under section 1108(b), to operate horse charter between London, Ireland and New York on August 18 and 19, 1977.

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, The Secretary, 202–673–5068.

SUPPLEMENTARY INFORMATION: The following Members have voted that Board business requires that the Board meet on short notice on the August 17, 1977, petition of IAS Cargo Airlines for Board business requires that the Board no earlier announcement of the meeting was possible:

Chairman Alfred E. Kahn
Member G. Joseph Minetti
Member Elizabeth E. Bailey

[S-1152-77 Filed 8-18-77; 4:33 pm]

4

COMMODITY FUTURES TRADING COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: See FEDERAL REGISTER of Monday, August 22, 1977.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., August 23, 1977.

CHANGES IN THE MEETING: Add fiscal year 1978 reauthorization.

[S-1158-77 Filed 8-19-77; 10:15 am]

5

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: Followed 9:30 a.m. open meeting, Thursday, August 18, 1977.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Closed Commission meeting.

MATTER CONSIDERED:

The Commission's Public Notice issued August 11, 1977, 42 FR 41348, stated that prior to the consideration of the 2 closed meeting Hearing agenda items on Thursday, August 18th, the Commissioners as a first order of business would vote on the matter of closing the meeting. A vote was taken on August 18, 1977, and Commissioners Wiley (Chairman), Fogarty, and White acting as a Board voted to close the meeting.

CONTACT PERSON FOR MORE INFORMATION:

Samuel M. Sharkey, FCC Public Information Officer, telephone number 202-632-7260.

Issued: August 18, 1977.

[S-1147-77 Filed 8-18-77;2:02 pm]

6

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Thursday, August 25, 1977 at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: Portions of this meeting will be open to the public and portions will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public:

I. Future meetings.

II. Correction and approval of minutes, August 11, 1977.

III. Advisory opinions: AD 1977-39; AQ 1977-29.

IV. Appropriations and budget.

V. Pending legislation—Request for comments from Senate Committee on Rules and Administration. Letter from Senator Cannon.

VI. Guidelines on independent expenditures—Commission Memordandum No. 1427.

VII. Commission procedures for responding to Congressional requests.

VIII. Liaison with other Federal agencies—Application of OMB Personnel Ceilings to the FEC. Commission Memorandum No. 1431.

IX. Report on pending litigation.

X. Agency job classifications actions.

XI. Routine Administrative matters.

Portions closed to the public (Executive Session):

Audits.
Compliance Matters.
Personnel.

PERSON TO CONTACT FOR INFORMATION:

Mr. David Fiske, Press Officer, Telephone: 202-523-4065.

[S-1149-77 Filed 8-18-77;3:36 pm]

7

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 9:30 a.m., August 23, 1977.

PLACE: 320 First Street NW., Room 630, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Robert Marshall, 202-376-3012.

MATTERS TO BE CONSIDERED:

Application for Modification of Condition—First Federal Savings and Loan Association of Little Rock, Little Rock, Arkansas, and Arkansas Savings and Loan Association, North Little Rock, Arkansas.

Application for Service Corporation Activity—First Federal Savings and Loan Association of Proviso Township, Maywood, Illinois.

Satellite Office Application—Florida Federal Savings and Loan Association, St. Petersburg, Florida.

Application for Bank Membership—Banco Regional de Aborro de Bayamon, Bayamon, Puerto Rico.

Limited Facility Application—Homestead Federal Savings and Loan Association of Dayton, Dayton, Ohio.

Branch Office Application—First Federal Savings and Loan Association of Eau Claire, Wisconsin.

Branch Office Application—Westchester Federal Savings and Loan Association, New Rochelle, New York.

Branch Office Application—Home Federal Savings and Loan Association, Deming, New Mexico.

Application for Change of Branch Office Location—Civic Federal Savings and Loan Association, San Francisco, California.

Application for Expansion of an EFTS-RSU System—San Diego Federal Savings and Loan Association, San Diego, California.

Satellite Office Application—Security First Federal Savings and Loan Association, Millvale, Pennsylvania.

Application for Withdrawal from Membership—National Savings Association, Cincinnati, Ohio.

Satellite Office Application—Biscayne Federal Savings and Loan Association, Miami, Florida.

Satellite Office Application—Clearwater Federal Savings and Loan Association, Clearwater, Florida.

Branch Office Application—University Federal Savings and Loan Association of Coral Gables, Coral Gables, Florida.

Agency Office Application—Continental Federal Savings and Loan Association, Oklahoma City, Oklahoma.

Application for Change of Branch Office Location and Retention of Existing Office as Pedestrian Facility—City Federal Savings and Loan Association, Elizabeth, New Jersey.

Branch Office Application—Home Federal Savings and Loan Association of San Diego, San Diego, California.

Branch Office Application—Western Federal Savings and Loan Association, Council Bluffs, Iowa.

Branch Office Application—First Federal Savings and Loan Association of Hardeman County, Bolivar, Tennessee.

Limited Facility Application—Commercial Federal Savings and Loan Association, Omaha, Nebraska.

Mobile Facility Application—Franklin Federal Savings and Loan Association, Columbus, Ohio.

Branch Office Application—First Federal Savings and Loan Association of Niles, Niles, Michigan.

Announcement is being made at the earliest practicable time.

[S-1154-77 Filed 8-19-77;10:49 am]

8

AUGUST 17, 1977.

FEDERAL POWER COMMISSION.

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: August 24, 1977, 10 a.m.

PLACE: 825 North Capitol Street.

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 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.

GAS AGENDA, 7670TH MEETING, AUGUST 24, 1977, REGULAR MEETING, PART I (10 A.M.)

G-1.—Docket No. RP71-11 (PGA77-4), Tennessee Natural Gas Lines, Inc.

G-2.—Docket No. RP76-115 and Docket Nos. RP73-109 and RP74-95, Northwest Pipeline Corporation.

G-3.—Docket Nos. RP73-107, RP74-90 and RP75-91, Consolidated Gas Supply Corporation.

G-4.—Docket No. RP75-102, Panhandle Eastern Pipe Line Company.

G-5.—Docket No. RP76-90 (Phase I), Kansas-Nebraska Natural Gas Company, Inc.

G-6.—Docket No. RP72-6, El Paso Natural Gas Company.

G-7.—Docket No. CP76-314, Southern Transmission Corporation.

G-8.—Docket No. RP77-114, Western Transmission Corporation.

MISCELLANEOUS AGENDA, 7670TH MEETING, AUGUST 24, 1977, REGULAR MEETING, PART I

M-1.—Docket No. RM74-16, Natural Gas Companies' Annual Report of Proved Domestic Gas Reserves: FPC Form No. 40.

POWER AGENDA, 7670TH MEETING, AUGUST 24, 1977, REGULAR MEETING, PART I

P-1.—Docket No. E-8264, Maine Public Service Company.

P-2.—Docket No. ER76-40, Nevada Power Company.

P-3.—Docket No. ER77-325, Appalachian Power Company.

P-4.—Docket No. ER77-426, Appalachian Power Company.

P-5.—Docket No. ER77-533, Louisiana Power & Light Company.

P-6.—Project No. 176, Escondido Mutual Water Company; Docket No. E-7562, Secretary of the Interior acting in his capacity as trustee for the *Rincon, La Jolla, and San Pasqual Bands of Mission Indians* v. *Escondido Mutual Water Company and City of Escondido, California;* Docket No. E-7655, Vista Irrigation District; Project No. 559, San Diego Gas & Electric Company.

P-7.—Project No. 1862, City of Tacoma, Washington; Docket No. E-6454, City of Centralia, Washington.

P-8. Project No. 1962—California, Pacific Gas and Electric Company.

P-9.—Project No. 2019—California, Pacific Gas and Electric Company.

P-10.—Project No. 2310—California, Pacific Gas and Electric Company.

GAS AGENDA, 7670TH MEETING, AUGUST 24, 1977, REGULAR MEETING, PART II

CG-1.—Docket No. RP73-91 (PGA No. 77-2b), McCulloch Interstate Gas Corporation.

CG-2.—Docket No. RP72-134 (PGA Nos. 77-8 and 77-9), Eastern Shore Natural Gas Company.

CG-3.—Docket No. RP77-57, National Fuel Gas Supply Corporation.

CG-4.—Docket No. RP77-96, Natural Gas Pipeline Company of America.

CG-5.—Docket Nos. G-2017, et al., Texas Gas Transmission Corporation.

CG-6.—Phillips Petroleum Company, FPC Gas Rate Schedule No. 600; Texas Pacific Oil Company, Inc., FPC Gas Rate Schedule No. 121.

CG-7.—Docket No. CI73-427, Texas Pacific Oil Company; Docket No. CS75-341, Tricentrol United States, Inc.; Docket No. CS71-659, Kilroy Properties Incorporated; Docket No. CS73-266, Harrington & Bibler, Inc.; Docket No. CS73-268, Bridger Petroleum Corporation; Docket No. CS75-389, Arden F. Blair.

CG-8.—Pennzoil Company, FPC Gas Rate Schedule No. 10.

CG-9.—Docket No. CP77-382, Transcontinental Gas Pipe Line Corporation.

CG-10.—Docket No. CP77-346, Natural Gas Pipeline Company of America Trunkline Gas Company and Columbia Gulf Transmission Company.

CG-11.—Docket No. CP77-264, Transcontinental Gas Pipe Line Corporation and United Gas Pipe Line Company.

CG-12.—Docket No. CP77-460, Cities Service Gas Company.

CG-13.—Docket No. CP77-375, United Gas Pipe Line Company.

CG-14.—Docket No. CP77-322, United Gas Pipe Line Company and Southern Natural Gas Company.

CG-15.—Docket No. CP77-122, Sea Robin Pipeline Company.

CG-16.—Docket No. CP77-408, El Paso Natural Gas Company; Docket No. CP77-411, Southwest Gas Corporation.

CG-17.—Docket Nos. CP77-369 and CP77-370, Transcontinental Gas Pipe Line Corporation.

CG-18.—Docket No. CP77-347, Western Gas Interstate Company.

CG-19.—Docket No. CP77-339, Columbia Gas Transmission Corporation.

CG-20.—Docket No. CP77-230, Florida Gas Transmission Company and United Gas Pipe Line Company.

CG-21.—Docket No. CP77-109, Texas Eastern Transmission Corporation.

CG-22.—Docket No. CP76-403, Texas Gas Transmission Corporation; Docket No. CP77-426, Transcontinental Gas Pipe Line Corporation.

CG-23.—Docket No. CP76-410, El Paso Natural Gas Company.

CG-24.—Docket No. CP77-249, Trunkline Gas Company.

CG-25.—Docket No. CP75-326, Transcontinental Gas Pipe Line Corporation.

CG-26.—Docket No. CI76-407, Columbia Gas Development Corporation; Docket No. CP76-132, Transcontinental Gas Pipe Line Corporation.

CG-27.—Docket No. CP77-11, Northern Natural Gas Company; Docket No. CP77-17, Trunkline Gas Company and Panhandle Eastern Pipe Line Company; Docket No. RP77-92, Trunkline Gas Company and Panhandle Eastern Pipe Line Company; Docket No. CP77-54, Northern Natural Gas Company.

CG-28.—Docket No. CP70-188, Texas Gas Transmission Corporation.

CG-29.—Docket No. CP77-427, Transcontinental Gas Pipe Line Corporation; Docket No. CP77-480, Panhandle Eastern Pipe Line Company and Trunkline Gas Company.

CG-30.—Docket No. CP76-363, Transcontinental Gas Pipe Line Corporation.

CG-31.—Docket No. CP63-177, Texas Eastern Transmission Corporation and Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

CG-32.—Docket Nos. CP67-381, CP68-166 and CP69-71, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

CG-33.—Docket No. CP73-43, Mountain Fuel Supply Company.

CG-34.—Docket No. CP74-126, El Paso Natural Gas Company; Docket No. CP74-162, Natural Gas Pipeline Company of America.

CG-35.—Docket No. CP74-213, Michigan Wisconsin Pipe Line Company.

CG-36.—Docket No. CP76-362, Texas Eastern Transmission Corporation, Transcontinental Gas Pipe Line Corporation and Northern Natural Gas Company.

CG-37.—Docket No. CP75-301, Tennessee Gas Pipeline Company, a Division of Tenneco Inc., and Michigan Wisconsin Pipe Line Company.

CG-38.—Docket No. CP76-492, National Fuel Gas Supply Corporation and National Fuel Storage Corporation.

CG-39.—Docket No. CP76-492, National Fuel Gas Supply Corporation and National Gas Storage Corporation.

CG-40.—Docket No. CP76-500, United Gas Pipeline Company.

CG-41.—Docket No. CP77-210, Michigan Wisconsin Pipe Line Company and United Gas Pipe Line Company.

MISCELLANEOUS AGENDA, 7670TH MEETING, AUGUST 24, 1977, REGULAR MEETING, PART II

CM-1.—Central Hudson Gas and Electric Corporation.

CM-2.—Northern States Power Company (Minnesota).

CM-3.—Mississippi Power & Light Company.

CM-4.—Commission Minutes.

CM-5.—(A) *Amarex, Inc.* v. *FPC*, 10th Cir. No. 77-1503 (CP76-220).

(B) *Gulf Oil Corporation* v. *FPC*, 3d Cir. No. 77-1893 (CI77-95).

(C) *Columbia Gas Transmission Corporation* v. *FPC*, D.C. Cir. No. 77-1627 (RP75-19).

(D) *Arizona Electric Power Cooperative* v. *FPC* (CP74-289).

(E) *The City of Groton, et al.* v. *FPC*, D.C. Cir. No. 77-1635 (E-7743).

(F) *Cities of Altus, et al.* v. *FPC*, D.C. Cir. No. 77-1546 (E-8242).

POWER AGENDA, 7670TH MEETING, AUGUST 24, 1977, REGULAR AGENDA, PART II

CP-1.—Docket No. ER77-328, Public Service Company of Oklahoma.

CP-2.—Docket No. ER77-223, Bangor Hydro-Electric Company.

CP-3.—Docket No. ER77-292, Kansas Power & Light Company.

CP-4.—State Director, Bureau of Land Management (I-13221), Boise, Idaho.

CP-5.—State Director, Bureau of Land Management (CA-4256), Sacramento, California.

CP-6.—Docket No. ID-1598, Willis S. White, Jr.

CP-7.—Docket No. ID-1682, Frederick Lange.

CP-8.—Docket No. ID-1811, Ernest D. Huggard.

CP-9.—Docket No. ID-1813, S. Hale Lull.

CP-10.—Docket No. DA-506-Colorado, U.S. Geological Survey, Lands Withdrawn in Power Site Classification Nos. 219 and 357.

CP-11.—Docket Nos. ER-77-427 and ER-77-473, Minnesota Power and Light Company, Superior Water, Light and Power Company.

CP-12.—Docket No. ER77-480, Montaup Electric Company.

CP-13.—Docket No. ER77-464, Public Service Company of New Mexico.

CP-14.—Docket No. E-9572, *Papago Tribal Utility Authority and Arizona Electric Power Cooperative, Inc.* v. *Arizona Public Service Company*.

CP-15.—Docket No. E-9579, Idaho Power Company.

[S-1159-77 Filed 8-19-77;2:51 p.m.]

9

INTERNATIONAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Issue of August 19, 1977.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:30 a.m., August 23, 1977.

CHANGES IN THE MEETING: Additional item added to the agenda as follows: 9. Promotion—see action jacket GC-77-48 (if necessary).

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary, 202-523-0161.

[S-1148-77 Filed 8-18-77;2:54 pm]

10

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Week of August 22, 1977.

PLACE: Commissioners' Conference Room, 1717 H St. NW., Washington, D.C.

STATUS: Open/closed.

MATTERS TO BE CONSIDERED:

WEDNESDAY, AUGUST 24

9 a.m.—Preliminary Markup/Reclama (IE/NRR) (Closed—Exemption 9).

11:30 a.m.—Discussion of Response to Applicant's Agent and Proposed Action on Minor Export (public meeting).

1:30 p.m.—Briefing on Pending ALAB Review and Disposition of Certiorari Petitions, including Indian Point, Sabrook, Diablo Canyon, and St. Lucie, 2 Proceedings (Closed—Exemption 10).

THURSDAY, AUGUST 25

9 a.m.—Recall of Officers (RES) (approx. 1 hr) (public meeting).

10:00 a.m.—Affirmation of Clearance Exemption for Cong. Moss (approx. 5 min) (public meeting).

10:30 a.m.—Preliminary Markup/Reclama (RES) (approx. 1 hr) (Closed—Exemption 9).

1:30 p.m.—Commission Budget Markup (approx. 3 hrs) (Closed—Exemption 9).

FRIDAY, AUGUST 26

9 a.m.—Commission Budget Markup (approx. 3 hrs) closed—Exemption 9).

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

WALTER MAGEE,
Office of the Secretary.

[S-1157-77 Filed 8-19-77;10:57 am]

11

PAROLE COMMISSION.

National Commissioners (the three Commissioners presently maintaining offices at Washington, D.C. Headquarters).

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: August 8, 1977, 42 FR 40074.

CHANGES IN THE MEETING: The Closed meeting scheduled for 9:30 a.m., on Wednesday, August 17, 1977, to consider referrals from regional directors of approximately 20 cases in which inmates of Federal Prisons have applied for parole or are contesting revocation of parole or mandatory release has been rescheduled for 9:30 a.m., on Tuesday, August 30, 1977.

PLACE: Room 338, Federal Home Loan Bank Board Building, 320 First Street NW., Washington, D.C. 20537.

AUTHORITY FOR THE CHANGE: Order of Commissioner George J. Reed, Acting Vice-Chairman and Presiding Officer of National Commissioners.

CONTACT PERSON FOR MORE INFORMATION:

Lee H. Chait, Analyst, 202-724-3094.

[S-1155-77 Filed 8-19-77;10:51 am]

12

TENNESSEE VALLEY AUTHORITY.

TIME AND DATE: 10:30 a.m., Thursday, August 25, 1977.

PLACE: Conference Room B-32, West Tower, 400 Commerce Avenue, Knoxville, Tennessee.

STATUS: Open.

MATTERS TO BE CONSIDERED:

A—Personnel Actions

None.

B—Consulting and Personal Service Contracts

1. Renewal of consulting contract with Lawrence K. Cecil, Champaign, Illinois—Office of Power.

C—Purchase Awards

1. Req. No. 820325—Metal siding panels and accessories including installation for Bellefonte Nuclear Plant.

2. Req. No. 820926—Sodium hypochlorite generation system for Browns Ferry, Sequoyah, Hartsville, proposed Phipps Bend, and proposed Yellow Creek Nuclear Plants.

3. Req. No. 821269—Horizontal centrifugal pumps for Hartsville and proposed Phipps Bend Nuclear Plants.

4. Req. No. 820900—Mechanical penetration assemblies for Hartsville and proposed Phipps Bend Nuclear Plants.

5. Req. No. 822512—Requirement contract for portland cement for proposed Phipps Bend Nuclear Plant.

6. Req. No. 822535—Indefinite quantity term contracts for steel reinforcing bars for proposed Phipps Bend Nuclear Plant.

7. Req. No. 107956—ACSR conductor cable for various transmission lines.

8. Req. No. 822334—Structural steel for 161- and 500-kV switchyards for Hartsville Nuclear Plant.

9. Req. No. 547118—Automatic pipe welding equipment for Watts Bar Nuclear Plant.

10. Amendment to Contracts 73C60-75210 and 75K60-84840-1 with General Electric Company, Chattanooga, Tennessee, for nuclear steam supply systems for Hartsville and the proposed Phipps Bend Nuclear Plants.

11. Amendment to Contract No. 76X72-71332 with Siskin Steel & Supply Company, Inc., Chattanooga, Tennessee, for carbon steel for any TVA nuclear project.

12. Req. No. 144930—Spare parts for nuclear steam supply systems for Sequoyah and Watts Bar Nuclear Plants.

13. Req. No. 547377—Indefinite quantity term contract for gasoline for various TVA projects and warehouses.

14. Sales Invitation No. 3644—Sale of scrap aluminum, electrical wire, and cable.

D—Project Authorizations

1. No. 3215—Construction of transmission connections for the Hartsville Nuclear Plant.

2. No. 2902.1—Amendment to project authorization for Hartsville Nuclear Plant.

3. No. 3032.1—Amendment to project authorization for proposed Phipps Bend Nuclear Plant.

4. No. 3261—Environmental studies of coal cleaning processes (in collaboration with U.S. Environmental Protection Agency).

E—Fertilizer Items

1. Letter agreement with the International Fertilizer Development Center—research and technical assistance projects.

F—Power Items

1. Lease and amendatory agreement with Cumberland Electric Membership Corporation—Pleasant View 69-kV substation.

2. Lease and amendatory agreement with Tri-State Electric Membership Corporation—Epworth Substation.

3. Lease and amendatory agreement with Electric Plant Board of the city of Murray, Kentucky.

4. Lease and amendatory agreement with city of Paris, Tennessee.

5. Lease and amendatory agreement with North Georgia Electric Membership Corporation Catoosa and Tilton Substations.

6. New power contract with city of Trenton, Tennessee.

7. New power contract with city of Jackson, Tennessee.

8. New power contract with Jersey Miniere Zinc Company.

9. Letter agreement with Champion International Corporation—relocation of section of TVA's 161-kV transmission tapline near Courtland, Alabama.

10. Bill of sale and quitclaim deed to the city of Glasgow, Kentucky—deenergized section of TVA's former Summer Shade-Oakland 69-kV Transmission Line.

G—Real Property Transactions

1. Resolution relating to sale of 10-year easement for a coal-loading terminal, affecting approximately 3.4 acres of Guntersville Reservoir Land—Tract No. XGR-720IE.

2. Filing of condemnation suits.

H—Unclassified

1. Resolution relating to settlement agreement with Skyline Structures, Division of Anderson "Safeway" Guard Rail Corporation, in connection with contract disputes.

2. Resolution relating to settlement agreement with Southwestern Engineering Company.

3. Agreement with the National Climatic Center of the National Oceanic and Atmospheric Administration for wind analyses.

4. Amendment to contract with University of Kentucky Research Foundation for aeromagnetic mapping.

5. Agreement with the United States Geological Survey for cooperative water resources investigations.

6. Agreement with the city of Rockwood, Tennessee, for redevelopment program.

Following the formal meeting, the Board will complete its quarterly review of current and anticipated conditions and costs affecting TVA's power operations and the adequacy of revenues to meet the requirements of the TVA Act and the tests and provisions of its bond resolutions. The Board will determine whether an adjustment of the rates and charges for the sale of electric power will be necessary during the quarter beginning October 1, 1977.

CONTACT PERSON FOR MORE INFORMATION:

John Van Mol, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202-343-4537.

[S-1153-77 Filed 8-19-77;9:21 am]

13

CIVIL SERVICE COMMISSION.

TIME AND DATE OF MEETING: 9 a.m., August 30, 1977.

PLACE: Commissioners' Meeting Room, Room 5H09 (fifth floor), 1900 E Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

(1) Administrative Remedies—Downgrading.

(2) Commission Policy on Paid Institutional Advertising in Educational and Career Editions of Publications.

CONTACT PERSON FOR MORE INFORMATION:

Georgia Metropulos, Office of the Executive Assistant to the Commissioners (202-632-5556).

United States Civil Service Commission,
James C. Spry,
Executive Assistant to the Commissioners.

[S-1165-77 Filed 8-22-77;11:42 am]

federal register

TUESDAY, AUGUST 23, 1977

PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

■

EDUCATION OF HANDICAPPED CHILDREN

Implementation of Part B of the Education of the Handicapped Act

Title 45—Public Welfare

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

EDUCATION OF HANDICAPPED CHILDREN

Implementation of Part B of the Education of the Handicapped Act

AGENCY: U.S. Office of Education, HEW.

ACTION: Final regulation.

SUMMARY: These regulations implement amendments to Part B of the Education of the Handicapped Act (as required by the Education for All Handicapped Children Act of 1975) by: (1) amending the existing regulations governing assistance to States for education of handicapped children, (2) adding a new part on incentive grants programs for handicapped children aged three through five, and (3) making certain conforming amendments to the general provisions for State-administered programs.

These regulations govern the provision of formula grant funds to State and local educational agencies to assist them in the education of handicapped children.

The regulations include provisions which are designed (1) to assure that all handicapped children have available to them a free appropriate public education; (2) to assure that the rights of handicapped children and their parents are protected; (3) to assist States and localities to provide for the education of handicapped children; and (4) to assess and assure the effectiveness of efforts to educate such children.

These regulations also include the final rules for counting and reporting handicapped children. (The child count rules were published in proposed form on September 8, 1976, and were incorporated into the December 30 proposed regulations for the convenience of the reader.)

EFFECTIVE DATE: October 1, 1977.

FOR FURTHER INFORMATION CONTACT:

Daniel Ringelheim, Director, Division of Assistance to States, Bureau of Education for the Handicapped, 400 Maryland Ave. SW., (room 4046 Donohoe Building), Washington, D.C. 20202, telephone: 202-472-2265;

or

Thomas B. Irvin, Policy Officer, Bureau of Education for the Handicapped, 400 Maryland Ave. SW., (room 4926 Donohoe Building), Washington, D.C. 20202, telephone: 202-245-9405.

SUPPLEMENTARY INFORMATION:

RULEMAKING HISTORY—PUBLIC PARTICIPATION

Because of the potential impact that Pub. L. 94-142 will have on the education of handicapped children throughout the Nation, and on the agencies that serve them, the Office of Education recognized the need for intensive public participation in the development of regulations, and took steps to insure maximum public involvement throughout the entire rulemaking process. A description of these steps is included in the following paragraphs:

Before the proposed rules were drafted, the Office of Education carried out a massive effort to obtain comments and suggestions for developing regulations from interested parties throughout the Nation. This involved participating in approximately 20 meetings about the law conducted on both a geographic and special interest basis. Approximately 2,200 people participated in these meetings and several hundred comments were received.

In June 1976, the Office of Education convened a national writing group of approximately 170 people to develop concept papers for use in writing the regulations. This group was composed of parents, representatives of special interest organizations (i.e., AFT, NEA, private schools), and administrators of State and local schools. These concept papers formed the basis for the proposed regulations.

During the months of July–November, the Office of Education prepared several redrafts of the concept papers and continued to seek inputs on these drafts from various interested parties.

On December 30, 1976, the proposed rules were published in the FEDERAL REGISTER. Written comments and recommendations on the proposed rules were invited for a 60-day comment period ending March 1, 1977; and public hearings were held in Washington, San Francisco, Denver, Chicago, Boston, and Atlanta. Over 1,600 written comments were received during that period, all of which were reviewed and considered by the Office of Education in preparing these final regulations.

The tapes of the hearings and copies of written comments are available for public inspection at the Bureau of Education for the Handicapped, room 4921, Donohoe Building, 400 6th Street SW., Washington, D.C. 20202.

In addition to the above public comment activities, the Office of Education continued with other public participation efforts, including:

(1) Participating in 10 regional meetings of the American Association of School Administrators and other regional meetings with the Council of the Great City Schools;

(2) Conducting a national conference on the regulations for administrators of various State agency programs for the handicapped, and participating in meetings at other national conferences; and

(3) Participating in a special series of meetings organized by the Institute for Educational Leadership and composed of representatives of the National Governors' Conference, the National Conference of State Legislatures, the National Association of State Boards of Education, and the Education Commission of the States.

ACTION TAKEN ON PUBLIC COMMENTS

PART 100B—STATE ADMINISTERED PROGRAMS

No comments were received on the proposed amendments to Part 100b, and no changes have been made.

PART 121A—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

The Office of Education conducted a careful review of the public comments received and summarized them by subpart and topic.

A very large number of comments dealt with specific statutory requirements. These comments expressed concerns about the statute and suggested changes to be made in the statutory provisions. However, because they are statutory, the Office of Education is not able to make any changes in the regulations with respect to those points. Some of the statutory provisions on which comments were received, together with concerns about them, are included below:

(1) Free appropriate public education—problems with timelines and concerns about the cost of implementing this requirement;

(2) Priorities—concerns about Federal priorities which are not consistent with State and local priorities;

(3) Individualized education programs—suggestions that the requirement be deleted from the regulation unless more funds are available for implementing it;

(4) Prior notice and other due process procedures—concerns about the amount of detail in these requirements and the time, cost and paper work involved in their implementation;

(5) State educational agency responsibility for general supervision of all special education programs in the State—concerns about lack of authority over other State agencies and the lack of funds to efficiently implement the provision;

(6) Child count—concerns about the dates on which the count must be taken.

Another large number of commenters cited specific concerns or issues with respect to the content of the proposed rules. Because of the large number of comments received, individual comments have been consolidated.

PART 121M—INCENTIVE GRANTS

Part 121m sets forth the conditions under which States may receive grants to assist in the education of handicapped children aged three through five. Congress established incentive grants in the recognition that when education begins at the earlier stages of development (1) benefits are maximized, (2) additional or more severe handicaps may be prevented, and (3) greater long-term cost effectiveness is realized.

Comment: An issue was raised concerning the possible use of incentive grant funds for children from birth through two years of age.

Response: Section 619 of the Act and the legislative history specify that the use of incentive grant funds is limited to children aged three through five years. However, the State's entitlement under section 611 of the Act may be used for children from birth through age twenty-one.

Comment: An issue was raised as to whether incentive grant funds may be

used for administrative or supervisory costs.

Response: The regulation has been amended to make it clear that administrative costs are allowable.

MINIMUM REGULATION—FUTURE RULEMAKING PLANS

The preamble to the proposed rules contained the following statement regarding minimum regulations:

The Department sees the development of regulations for implementing Pub. L. 94-142 as being an evolutionary process which will continue over a period of several years. The actual impact and consequences of the statutory provisions and problems which State and local educational agencies may have in implementing these provisions are not known at this time. Therefore, the Department feels that the most rational approach to follow is (1) to write minimum regulations at this point, and (2) to amend and revise such regulations in the future as need and experience dictate.

Because the Statute is very comprehensive and specific on many points, the Department has elected (1) to incorporate the basic wording or substance of the Statute directly into the regulations, and (2) to expand on the statutory provisions only where additional interpretation sems to be necessary.

Although some commenters felt that more extensive regulations were necessary, many persons who responded to the proposed rules felt that the Office of Education had already over-regulated and should cut back on the rules when they are published in final form. At this juncture, the Office of Education holds to the same position that it took in the proposed rules, and for the same reasons as set forth in that document.

The Office of Education believes that some working experience with this regulation is essential before determining whether there is a need to amend it. Once the regulation becomes effective (Oct. 1, 1977) and people gain experience in implementing it, there will likely be a series of questions raised in individual States which could result in the development of policies and interpretations that would be proposed for addition to these regulations.

OVERVIEW OF CHANGES IN THE PART 121a REGULATIONS

A substantial number of changes have been made in response to comments received on the proposed rules. However, few of these changes have resulted in adding major substantive requirements. Most of the changes are technical or have been made in an attempt to provide greater clarity or to add more explanatory material.

Extensive use has been made of explanatory comments in the text of the regulations. The purpose of these comments is to attempt, where appropriate, to clarify or further interpret a particular rule, or to provide direction and assistance without imposing additional requirements. For example, an extensive explanation is included under the excess cost requirement and an example is given on how to make the computation under that requirement.

ORGANIZATION OF REGULATIONS

Three parts of Title 45 of the Code of Federal Regulations are amended by this document:

(1) Part 100b—*State Administered Programs.* This includes certain conforming amendments to the regulations under section 434(b)(1)(A) of the General Education Provisions Act.

(2) Part 121a—*Assistance to States for Education of Handicapped Children.* This is divided into seven subparts: (A) General, (B) State Annual Program Plans and Local Applications, (C) Services, (D) Private Schools, (E) Procedural Safeguards, (F) State Administration, and (G) Allocation of Funds and Reports.

(3) Part 121m—*Incentive Grants.* This governs the administration of the incentive grants program for handicapped children aged three through five, authorized under section 619 of the Act.

ANALYSIS OF REGULATIONS

Appendix A of Part 121a includes an analysis of each subpart, which (1) discusses significant comments received and the action taken with respect to those comments, and (2) explains the basis for any changes made from the proposed rules published on December 30, 1976.

TOPICAL INDEX

Appendix B of Part 121a includes an index of the major topics in the regulations (e.g., free appropriate public education, priorities, and individualized education program) and the specific sections under which each term is used.

NOTE.—The Department of Health, Education, and Welfare, has determined that this document contains a major proposal requiring preparation of an Economic Impact Analysis (EIA) Statement under Executive Orders 11821 and 11949 and OMB Circular A-107, and certifies that an Economic Impact Analysis has been prepared. However, because the portion of this regulation involving major costs is virtually identical to the content of subpart D of the regulation issued on discrimination against the handicapped under section 504 of the Rehabilitation Act of 1973 (45 CFR Part 84; published May 4, 1977, at 42 FR 22675), the Department has determined that (a) this regulation involves no substantial costs not imposed by Part 84 and (b) the pertinent parts of the EIA Statement for that regulation meet the EIA requirements for this regulation. Both regulations impose the following requirements: (1) appropriate education to handicapped children; (2) identification and evaluation of handicapped children; and (3) procedural safeguards for handicapped children and their parents.

(Catalog of Federal Domestic Assistance Number 13.449, Education of Handicapped Children, Part B.)

Dated: August 12, 1977.

JOHN ELLIS,

Acting U.S. Commissioner of Education.

Approved: August 15, 1977.

HALE CHAMPION,

Acting Secretary of Health, Education, and Welfare.

Title 45 of the Code of Federal Regulations is amended as follows:

PART 100b—STATE ADMINISTERED PROGRAMS

1. In Part 100b, § 100b.17 is revised to read as follows:

§ 100b.17 General applications.

(a) The general application of a State must meet the requirements of section 434(b)(1)(A) of the General Education Provisions Act.

(b) A State does not have to resubmit its general application.

(20 U.S.C. 1232c(b)(1)(A).)

(c)(1) The following statutes require that a State must submit certain provisions to the Commissioner which are similar to provisions in the general application.

(2) Subject to paragraph (d) of this section, if the Commissioner has approved a State's general application, the State does not have to submit the provisions required under the following statutes:

(i) *Compensatory education.* Section 142(a)(2) and (3) of Title I of the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 1232c(b)(1)(A)(i) (II), (III).)

(ii) *School library resources.* Section 203(a)(5), (6) and (7) of Title II of the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 1232c(b)(1)(A)(ii) (II), (III), and (IV).)

(iii) *Supplementary educational centers and services; guidance, counseling, and testing.* Section 305(b)(9)(B), (10), and (11) of Title II of the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 1232c(b)(1)(A)(ii) (II), (III) and (IV).)

(iv) *Education of the handicapped.* Section 613(a)(7)(A), (9)(B), and (10) of Part B of the Education of the Handicapped Act, as amended.

(20 U.S.C. 1232c(b)(1)(A)(ii) (II), (III) and (IV).)

(v) *Adult education.* Section 306(a)(6) and (7) of the Adult Education Act, as amended.

(20 U.S.C. 1232c(b)(1)(A)(ii) (II), (III).)

(vi) *Strengthening instruction in academic subjects.* Section 1004(a)(2) and (3) of Title X of the National Defense Education Act of 1958, as amended.

(20 U.S.C. 1232c(b)(1)(A)(ii), (II), (III).)

(vii) *State reading improvement programs.* Section 714(a)(10) of Title VII-B of the Education Amendments of 1974.

(20 U.S.C. 1232c(b)(1)(A)(ii), (III).)

(d)(1) The general application does not change the legal substance of the provisions listed under paragraph (c)(2) of this section.

(2) If a provision listed in paragraph (c)(2) of this section is different in wording from an assurance in the general application, the provision listed in that paragraph governs any question of compliance with the assurance.

(20 U.S.C. 1232c(b)(1)(B)(i), (b)(1)(B)(iii), (b)(2).)

2. In Part 100b, § 100b.35 is revised to read as follows:

§ 100b.35 Effective date of an application, plan, or amendment.

(a) Federal funds are available only for obligations incurred under:

(1) A State plan approved by the Commissioner (in the case of the programs set forth in § 100b.10 other than those referenced in § 100b.15(a)); or

(2) A general application and an annual program plan approved by the Commissioner (in the case of the programs referenced in § 100b.15(a)).

(b) A State plan, general application, annual program plan, or amendment to any of them, is effective on the date the State submits it to the Federal Government in substantially approvable form. However, the effective date cannot be earlier than the first day of the fiscal period for which it is submitted.

(c) The Commissioner sends the State agency a notice of approval, including notice of the effective date, when the application, plan, or amendment is approved.

(d) Federal funds are not available for obligation by a State or local agency before the effective date of the State plan or annual program plan (whichever is submitted under paragraph (a) of this section). If funds are expressly made available by statute for the development of the State plan, general application, or annual program plan, the first sentence of this paragraph does not apply to obligations by the State for that purpose.

(20 U.S.C. 1221e-3(a)(1).)

3. In Part 100b, § 100b.55 is revised to read as follows:

§ 100b.55 Obligation by recipients.

(a) *Period for obligation.* Federal funds which the Federal government may obligate during a fiscal period remain available for obligation by State and local recipients through the end of that fiscal period. Federal funds made available for construction of facilities remain available for obligation by State and local recipients for that purpose for a reasonable period of time as determined by the Commissioner.

(b) *Carryovers.* In accordance with section 414(b) of the General Education Provisions Act, any Federal funds which are not obligated by State and local recipients before the end of the fiscal period under paragraph (a) of this section, remain available for obligation by those agencies for one additional fiscal year.

(c) *Determinations of obligation.* (1) An obligation for the acquisition of real or personal property, for the construction of facilities, or for the performance of work, is incurred by a recipient on the date it makes a binding written commitment.

(2) An obligation for personal services, for services performed by public utilities, for travel, or for the rental of real or personal property, is incurred by a recipient on the date it receives the services, its personnel takes the travel, or it uses the rented property.

(20 U.S.C. 1221c(a); 1225(b); 1232c(b)(1)(A)(ii)(II).)

4. Part 121a is revised to read as follows:

PART 121a—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

Subpart A—General

PURPOSE, APPLICABILITY, AND GENERAL PROVISIONS REGULATIONS

DEFINITIONS

Subpart B—State Annual Program Plans and Local Applications

ANNUAL PROGRAM PLANS—GENERAL

ANNUAL PROGRAM PLANS—CONTENTS

LOCAL EDUCATIONAL AGENCY APPLICATIONS—GENERAL

LOCAL EDUCATIONAL AGENCY APPLICATIONS—CONTENTS

APPLICATION FROM SECRETARY OF INTERIOR

PUBLIC PARTICIPATION

AUTHORITY: Part B of the Education of the Handicapped Act, Pub. L. 91-230, Title VI, as amended, 89 Stat. 776-794 (20 U.S.C. 1411-1420), unless otherwise noted.

Subpart A—General

PURPOSE, APPLICABILITY, AND GENERAL PROVISIONS REGULATIONS

§ 121a.1 Purpose.

The purpose of this part is:

(a) To insure that all handicapped children have available to them a free appropriate public education which in-

cludes special education and related services to meet their unique needs,

(b) To insure that the rights of handicapped children and their parents are protected,

(c) To assist States and localities to provide for the education of all handicapped children, and

(d) To assess and insure the effectiveness of efforts to educate those children.

(20 U.S.C. 1401 Note.)

§ 121a.2 Applicability to State, local, and private agencies.

(a) *States.* This part applies to each State which receives payments under Part B of the Education of the Handicapped Act.

(b) *Public agencies within the State.* The annual program plan is submitted by the State educational agency on behalf of the State as a whole. Therefore, the provisions of this part apply to all political subdivisions of the State that are involved in the education of handicapped children. These would include: (1) The State educational agency, (2) local educational agencies and intermediate educational units, (3) other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for the deaf or blind), and (4) State correctional facilities.

(c) *Private schools and facilities.* Each public agency in the State is responsible for insuring that the rights and protections under this part are given to children referred to or placed in private schools and facilities by that public agency.

(See §§ 121a.400–121a.403.)

(20 U.S.C. 1412(1), (6); 1413(a); 1413(a)(4)(B).)

Comment. The requirements of this part are binding on each public agency that has direct or delegated authority to provide special education and related services in a State that receives funds under Part B of the Act, regardless of whether that agency is receiving funds under Part B.

§ 121a.3 General provisions regulations.

Assistance under Part B of the Act is subject to Parts 100, 100b, 100c, and 121 of this chapter, which include definitions and requirements relating to fiscal, administrative, property management, and other matters.

(20 U.S.C. 1417(b).)

DEFINITIONS

Comment. Definitions of terms that are used throughout these regulations are included in this subpart. Other terms are defined in the specific subparts in which they are used. Below is a list of those terms and the specific sections and subparts in which they are defined:

Consent (Section 121a.500 of Subpart E)
Destruction (Section 121a.560 of Subpart E)
Direct services (Section 121a.370(b)(1) of Subpart C)
Evaluation (Section 121a.500 of Subpart E)
First priority children (Section 121a.320(a) of Subpart C)
Independent educational evaluation (Section 121a.503 of Subpart E)
Individualized education program (Section 121a.340 of Subpart C)
Participating agency (Section 121a.560 of Subpart E)
Personally identifiable (Section 121a.500 of Subpart E)
Private school handicapped children (Section 121a.450 of Subpart D)
Public expense (Section 121a.503 of Subpart E)
Second priority children (Section 121a.320(b) of Subpart C)
Special definition of "State" (Section 121a.700 of Subpart G)
Support services (Section 121a.370(b)(2) of Subpart C)

§ 121a.4 Free appropriate public education.

As used in this part, the term "free appropriate public education" means special education and related services which:

(a) Are provided at public expense, under public supervision and direction, and without charge.

(b) Meet the standards of the State educational agency, including the requirements of this part,

(c) Include preschool, elementary school, or secondary school education in the State involved, and

(d) Are provided in conformity with an individualized education program which meets the requirements under §§ 121a.340–121a.349 of Subpart C.

(20 U.S.C. 1401(18).)

§ 121a.5 Handicapped children.

(a) As used in this part, the term "handicapped children" means those children evaluated in accordance with §§ 121a.530–121a.534 as being mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped, or as having specific learning disabilities, who because of those impairments need special education and related services.

(b) The terms used in this definition are defined as follows:

(1) "Deaf" means a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.

(2) "Deaf-blind" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for deaf or blind children.

(3) "Hard of hearing" means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included under the definition of "deaf" in this section.

(4) "Mentally retarded" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

(5) "Multihandicapped" means concomitant impairments (such as mentally retarded-blind, mentally retarded-orthopedically impaired, etc.), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blind children.

(6) "Orthopedically impaired" means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g. poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractures).

(7) "Other health impaired" means limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, which adversely affects a child's educational performance.

(8) "Seriously emotionally disturbed" is defined as follows:

(i) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

(A) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(C) Inappropriate types of behavior or feelings under normal circumstances;

(D) A general pervasive mood of unhappiness or depression; or

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) The term includes children who are schizophrenic or autistic. The term does not include children who are socially maladjusted, unless it is determined that they are seriously emotionally disturbed.

(9) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain disfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, or of environmental, cultural, or economic disadvantage.

(10) "Speech impaired" means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, which

adversely affects a child's educational performance.

(11) "Visually handicapped" means a visual impairment which, even with correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children.

(20 U.S.C. 1401(1), (15).)

§ 121a.6 Include.

As used in this part, the term "include" means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

(20 U.S.C. 1417(b).)

§ 121a.7 Intermediate educational unit.

As used in this part, the term "intermediate educational unit" means any public authority, other than a local educational agency, which:

(a) Is under the general supervision of a State educational agency;

(b) Is established by State law for the purpose of providing free public education on a regional basis; and

(c) Provides special education and related services to handicapped children within that State.

(20 U.S.C. 1401(22).)

§ 121a.8 Local educational agency.

(a) As used in this part, the term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(b) For the purposes of this part, the term "local educational agency" also includes intermediate educational units.

(20 U.S.C. 1401(8).)

§ 121a.9 Native language.

As used in this part, the term "native language" has the meaning given that term by section 703(a)(2) of the Bilingual Education Act, which provides as follows:

> The term "native language", when used with reference to a person of limited English-speaking ability, means the language normally used by that person, or in the case of a child, the language normally used by the parents of the child.

(20 U.S.C. 880b-1(a)(2); 1401(21).)

Comment. Section 602(21) of the Education of the Handicapped Act states that the term "native language" has the same meaning as the definition from the Billingual Education Act. (The term is used in the prior notice and evaluation sections under § 121a.505(b)(2) and § 121a.532(a)(1) of Subpart E.) In using the term, the Act does not prevent the following means of communication:

(1) In all direct contact with a child (including evaluation of the child), communication would be in the language normally used by the child and not that of the parents, if there is a difference between the two.

(2) If a person is deaf or blind, or has no written language, the mode of communication would be that normally used by the person (such as sign language, braille, or oral communication).

§ 121a.10 Parent.

As used in this part, the term "parent" means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with § 121a.514. The term does not include the State if the child is a ward of the State.

(20 U.S.C. 1415.)

Comment. The term "parent" is defined to include persons acting in the place of a parent, such as a grandmother or stepparent with whom a child lives, as well as persons who are legally responsible for a child's welfare.

§ 121a.11 Public agency.

As used in this part, the term "public agency" includes the State educational agency, local educational agencies, intermediate educational units, and any other political subdivisions of the State which are responsible for providing education to handicapped children.

(20 U.S.C. 1412(2)(B); 1412(6); 1413(a).)

§ 121a.12 Qualified.

As used in this part, the term "qualified" means that a person has met State educational agency approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing special education or related services.

(20 U.S.C. 1417(b).)

§ 121a.13 Related services.

(a) As used in this part, the term "related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

(b) The terms used in this definition are defined as follows:

(1) "Audiology" includes:

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of pupils, parents, and teachers regarding hearing loss; and

(vi) Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) "Counseling services" means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) "Early identification" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) "Medical services" means services provided by a licensed physician to determine a child's medically related handicapping condition which results in the child's need for special education and related services.

(5) "Occupational therapy" includes:

(i) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;

(ii) Improving ability to perform tasks for independent functioning when functions are impaired or lost; and

(iii) Preventing, through early intervention, initial or further impairment or loss of function.

(6) "Parent counseling and training" means assisting parents in understanding the special needs of their child and providing parents with information about child development.

(7) "Physical therapy" means services provided by a qualified physical therapist.

(8) "Psychological services" include:

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning.

(iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and

(v) Planning and managing a program of psychological services, including psychological counseling for children and parents.

(9) "Recreation" includes:

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

(iv) Leisure education.

(10) "School health services" means services provided by a qualified school nurse or other qualified person.

(11) "Social work services in schools" include:

(i) Preparing a social or developmental history on a handicapped child;

(ii) Group and individual counseling with the child and family;

(iii) Working with those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; and

(iv) Mobilizing school and community resources to enable the child to receive maximum benefit from his or her educational program.

(12) "Speech pathology" includes:

(i) Identification of children with speech or language disorders;

(ii) Diagnosis and appraisal of specific speech or language disorders;

(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language disorders;

(iv) Provisions of speech and language services for the habilitation or prevention of communicative disorders; and

(v) Counseling and guidance of parents, children, and teachers regarding speech and language disorders.

(13) "Transportation" includes:

(i) Travel to and from school and between schools,

(ii) Travel in and around school buildings, and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a handicapped child.

(20 U.S.C. 1401(17).)

Comment. With respect to related services, the Senate Report states:

The Committee bill provides a definition of "related services," making clear that all such related services may not be required for each individual child and that such term includes early identification and assessment of handicapping conditions and the provision of services to minimize the effects of such conditions.

(Senate Report No. 94–168, p.12 (1975).)

The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music, and dance therapy), if they are required to assist a handicapped child to benefit from special education.

There are certain kinds of services which might be provided by persons from varying professional backgrounds and with a variety of operational titles, depending upon requirements in individual States. For example, counseling services might be provided by social workers, psychologists, or guidance counselors; and psychological testing might be done by qualified psychological examiners, psychometrists, or psychologists, depending upon State standards.

Each related service defined under this part may include appropriate administrative and supervisory activities that are necessary for program planning, management, and evaluation.

§ 121a.14 Special education.

(a)(1) As used in this part, the term "special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

(2) The term includes speech pathology, or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a handicapped child, and is considered "special education" rather than a "related service" under State standards.

(3) The term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a handicapped child.

(b) The terms in this definition are defined as follows:

(1) "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees which are normally charged to non-handicapped students or their parents as a part of the regular education program.

(2) "Physical education" is defined as follows:

(i) The term means the development of:

(A) Physical and motor fitness;

(B) Fundamental motor skills and patterns; and

(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

(ii) The term includes special physical education, adapted physical education, movement education, and motor development.

(20 U.S.C. 1401(16).)

(3) "Vocational education" means organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

(20 U.S.C. 1401(16).)

Comment. (1) The definition of "special education" is a particularly important one under these regulations, since a child is not handicapped unless he or she needs special education. (See the definition of "handicapped children" in section 121a.5.) The definition of "related services" (section 121a.13) also depends on this definition, since a related service must be necessary for a child to benefit from special education. Therefore, if a child does not need special education, there can be no "related services," and the child (because not "handicapped") is not covered under the Act.

(2) The above definition of vocational education is taken from the Vocational Education Act of 1963, as amended by Pub. L. 94–482. Under that Act, "vocational education" includes industrial arts and consumer and homemaking education programs.

§ 121a.15 State.

As used in this part, the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virginia Islands, and the Trust Territory of the Pacific Islands.

(20 U.S.C. 1401(6).)

Subpart B—State Annual Program Plans and Local Applications

Annual Program Plans—General

§ 121a.110 Condition of assistance.

In order to receive funds under Part B of the Act for any fiscal year, a State must submit an annual program plan to the Commissioner through its State educational agency.

(20 U.S.C. 1232c(b), 1412, 1413.)

§ 121a.111 Contents of plan.

Each annual program plan must contain the provisions required in this subpart.

(20 U.S.C. 1412, 1413, 1232c(b).)

§ 121a.112 Certification by the State educational agency and attorney general.

Each annual program plan must include:

(a) A certification by the officer of the State educational agency authorized to submit the plan that:

(1) The plan has been adopted by the State educational agency, and

(2) The plan is the basis for the operation and administration of the activities to be carried out in that State under Part B of the Act; and

(b) A certification by the State Attorney General or other authorized State legal officer that:

(1) The State educational agency has authority under State law to submit the plan and to administer or to supervise the administration of the plan, and

(2) All plan provisions are consistent with State law.

(20 U.S.C. 1413(a).)

§ 121a.113 Approval; disapproval.

(a) The Commissioner shall approve any annual program plan which meets the requirements of this part and Subpart B of Part 100b of this chapter.

(b) The Commissioner shall disapprove any annual program plan which does not meet those requirements but may not finally disapprove a plan before giving reasonable notice and an opportunity for a hearing to the State educational agency.

(c) The Commissioner shall use the procedures set forth in §§ 121a.580–121a.583 of Subpart E for a hearing under this section.

(20 U.S.C. 1413(c).)

§ 121a.114 Effective period of annual program plan.

(a) Each annual program plan is effective for a period from the date it becomes effective under § 100b.35 of this chapter through the following June 30.

(b) The Commissioner may extend the effective period of an annual program plan, on the request of a State, if the plan meets the requirements of this part and Part B of the Act.

(20 U.S.C. 1413(a), 1232c(b).)

ANNUAL PROGRAM PLANS—CONTENTS

§ 121a.120 Public participation.

(a) Each annual program plan must include procedures which insure that the requirements in §§ 121a.280–121a.284 are met.

(b) Each annual program plan must also include the following:

(1) A statement describing the methods used by the State educational agency to provide notice of the public hearings on the annual program plan. The statement must include:

(i) A copy of each news release and advertisement used to provide notice,

(ii) A list of the newspapers and other media in which the State educational agency announced or published the notice, and

(iii) The dates on which the notice was announced or published.

(2) A list of the dates and locations of the public hearings on the annual program plan.

(3) A summary of comments received by the State educational agency and a description of the modifications that the State educational agency has made in the annual program plan as a result of the comments.

(4) A statement describing the methods by which the annual program plan will be made public after its approval by the Commissioner. This statement must include the information required under paragraph (b)(1) of this section.

(20 U.S.C. 1412(7).)

§ 121a.121 Right to a free appropriate public education.

(a) Each annual program plan must include information which shows that the State has in effect a policy which insures that all handicapped children have the right to a free appropriate public education within the age ranges and timelines under § 121a.122.

(b) The information must include a copy of each State statute, court order, State Attorney General opinion, and other State document that shows the source of the policy.

(c) The information must show that the policy:

(1) Applies to all public agencies in the State;

(2) Applies to all handicapped children;

(3) Implements the priorities established under § 121a.127(a)(1) of this subpart; and

(4) Establishes timelines for implementing the policy, in accordance with § 121a.122.

(20 U.S.C. 1412(1)(2)(B), (6); 1413(a)(3).)

§ 121a.122 Timeliness and ages for free appropriate public education.

(a) *General.* Each annual program plan must include in detail the policies and procedures which the State will undertake or has undertaken in order to insure that a free appropriate public education is available for all handicapped children aged three through eighteen within the State not later than September 1, 1978, and for all handicapped children aged three through twenty-one within the State not later than September 1, 1980.

(b) *Documents relating to timelines.* Each annual program plan must include a copy of each statute, court order, attorney general decision, and other State document which demonstrates that the State has established timelines in accordance with paragraph (a) of this section.

(c) *Exception.* The requirement in paragraph (a) of this section does not apply to a State with respect to handicapped children aged three, four, five, eighteen, nineteen, twenty, or twenty-one to the extent that the requirement would be inconsistent with State law or practice, or the order of any court, respecting public education for one or more of those age groups in the State.

(d) *Documents relating to exceptions.* Each annual program plan must:

(1) Describe in detail the extent to which the exception in paragraph (c) of this section applies to the State, and

(2) Include a copy of each State law, court order, and other document which provides a basis for the exception.

(20 U.S.C. 1412(2)(B).)

§ 121a.123 Full educational opportunity goal.

Each annual program plan must include in detail the policies and procedures which the State will undertake, or has undertaken, in order to insure that the State has a goal of providing full educational opportunity to all handicapped children aged birth through twenty-one.

(20 U.S.C. 1412(2)(A).)

§ 121a.124 Full educational opportunity goal—data requirement.

Beginning with school year 1978–1979, each annual program plan must contain the following information:

(a) The estimated number of handicapped children who need special education and related services.

(b) For the current school year:

(1) The number of handicapped children aged birth through two, who are receiving special education and related services; and

(2) The number of handicapped children:

(i) Who are receiving a free appropriate public education,

(ii) Who need, but are not receiving a free appropriate public education,

(iii) Who are enrolled in public and private institutions who are receiving a free appropriate public education, and

(iv) Who are enrolled in public and private institutions and are not receiving a free appropriate public education.

(c) The estimated numbers of handicapped children who are expected to receive special education and related services during the next school year.

(d) A description of the basis used to determine the data required under this section.

(e) The data required by paragraphs (a), (b), and (c) of this section must be provided:

(1) For each disability category (except for children aged birth through two), and

(2) For each of the following age ranges: birth through two, three through five, six through seventeen, and eighteen through twenty-one.

(20 U.S.C. 1412(2)(A).)

Comment. In Part B of the Act, the term "disability" is used interchangeably with "handicapping condition". For consistency in this regulation, a child with a "disability" means a child with one of the impairments listed in the definition of "handicapped children" in § 121a.5, if the child needs special education because of the impairment. In essence, there is a continuum of impairments. When an impairment is of such a nature that the child needs special education, it is referred to as a disability, in these regulations, and the child is a "handicapped" child.

States should note that data required under this section are not to be transmitted to the Commissioner in personally identifiable form. Generally, except for such purposes as monitoring and auditing, neither the States nor the Federal Government should have to collect data under this part in personally identifiable form.

§ 121a.125 Full educational opportunity goal—timetable.

(a) *General requirement.* Each annual program plan must contain a detailed timetable for accomplishing the goal of providing full educational opportunity for all handicapped children.

(b) *Content of timetable.* (1) The timetable must indicate what percent of the total estimated number of handicapped children the State expects to have full educational opportunity in each succeeding school year.

(2) The data required under this paragraph must be provided:

(i) For each disability category (except for children aged birth through two), and

(ii) For each of the following age ranges: birth through two, three through five, six through seventeen, and eighteen through twenty-one.

(20 U.S.C. 1412(2)(A).)

§ 121a.126 Full educational opportunity goal—facilities, personnel, and services.

(a) *General requirement.* Each annual program plan must include a description of the kind and number of facilities, personnel, and services necessary throughout the State to meet the goal of providing full educational opportunity for all handicapped children. The State educational agency shall include the data required under paragraph (b) of this section and whatever additional data are necessary to meet the requirement.

(b) *Statistical description.* Each annual program plan must include the following data:

(1) The number of additional special class teachers, resource room teachers, and itinerant or consultant teachers needed for each disability category and

the number of each of these who are currently employed in the State.

(2) The number of other additional personnel needed, and the number currently employed in the State, including school psychologists, school social workers, occupational therapists, physical therapists, home-hospital teachers, speech-language pathologists, audiologists, teacher aides, vocational education teachers, work study coordinators, physical education teachers, therapeutic recreation specialists, diagnostic personnel, supervisors, and other instructional and non-instructional staff.

(3) The total number of personnel reported under paragraph (b) (1) and (2) of this section, and the salary costs of those personnel.

(4) The number and kind of facilities needed for handicapped children and the number and kind currently in use in the State, including regular classes serving handicapped children, self-contained classes on a regular school campus, resource rooms, private special education day schools, public special education day schools, private special education residential schools, public special education residential schools, hospital programs, occupational therapy facilities, physical therapy facilities, public sheltered workshops, private sheltered workshops, and other types of facilities.

(5) The total number of transportation units needed for handicapped children, the number of transportation units designed for handicapped children which are in use in the State, and the number of handicapped children who use these units to benefit from special education.

(c) *Data categories.* The data required under paragraph (b) of this section must be provided as follows:

(1) Estimates for serving all handicapped children who require special education and related services,

(2) Current year data, based on the actual numbers of handicapped children receiving special education and related services (as reported under Subpart G), and

(3) Estimates for the next school year.

(d) *Rationale.* Each annual program plan must include a description of the means used to determine the number and salary costs of personnel.

(20 U.S.C. 1412(2)(A).)

§ 121a.127 Priorities.

(a) *General requirement.* Each annual program plan must include information which shows that:

(1) The State has established priorities which meet the requirements under §§ 121a.320–121a.324 of Subpart C.

(2) The State priorities meet the timelines under § 121a.122 of this subpart, and

(3) The State has made progress in meeting those timelines.

(b) *Child data.* (1) Each annual program plan must show the number of handicapped children known by the State to be in each of the first two priority groups named in §§ 121a.321 of Subpart C:

(i) By disability category, and

(2) By the age ranges in § 121a.124(e)(2) of this subpart.

(c) *Activities and resources.* Each annual program plan must show for each of the first two priority groups:

(1) The programs, services, and activities that are being carried out in the State,

(2) The Federal, State, and local resources that have been committed during the current school year, and

(3) The programs, services, activities, and resources that are to be provided during the next school year.

(20 U.S.C. 1412(3).)

§ 121a.128 Identification, location, and evaluation of handicapped children.

(a) *General requirement.* Each annual program plan must include in detail the policies and procedures which the State will undertake or has undertaken to insure that:

(1) All children who are handicapped, regardless of the severity of their handicap, and who are in need of special education and related services are identified, located, and evaluated; and

(2) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services.

(b) *Information.* Each annual program plan must:

(1) Designate the State agency (if other than the State educational agency) responsible for coordinating the planning and implementation of the policies and procedures under paragraph (a) of this section;

(2) Name each agency that participates in the planning and implementation and describe the nature and extent of its participation;

(3) Describe the extent to which:

(i) The activities described in paragraph (a) of this section have been achieved under the current annual program plan, and

(ii) The resources named for these activities in that plan have been used;

(4) Describe each type of activity to be carried out during the next school year, including the role of the agency named under paragraph (b)(1) of this section, timelines for completing those activities, resources that will be used, and expected outcomes;

(5) Describe how the policies and procedures under paragraph (a) of this section will be monitored to insure that the State educational agency obtains:

(i) The number of handicapped children within each disability category that have been identified, located, and evaluated, and

(ii) Information adequate to evaluate the effectiveness of those policies and procedures; and

(6) Describe the method the State uses to determine which children are currently receiving special education and related services and which children are not receiving special education and related services.

(20 U.S.C. 1412(2)(C).)

Comment. The State is responsible for insuring that all handicapped children are identified, located, and evaluated, including children in all public and private agencies and institutions in the State. Collection and use of data are subject to the confidentiality requirements in §§ 121a.560–121a.576.

§ 121a.129 Confidentiality of personally identifiable information.

(a) Each annual program plan must include in detail the policies and procedures which the State will undertake or has undertaken in order to insure the protection of the confidentiality of any personally identifiable information collected, used, or maintained under this part.

(b) The Commissioner shall use the criteria in §§ 121a.560–121a.576 of Subpart E to evaluate the policies and procedures of the State under paragraph (a) of this section.

(20 U.S.C. 1412(2)(D); 1417(c).)

Comment. The confidentiality regulations were published in the FEDERAL REGISTER in final form on February 27, 1976 (41 FR 8603–8610), and met the requirements of Part B of the Act, as amended by Pub. L. 94–142. Those regulations are incorporated in § 121a.560–121a.576 of Subpart E.

§ 121a.130 Individualized education programs.

(a) Each annual program plan must include information which shows that each public agency in the State maintains records of the individualized education program for each handicapped child, and each public agency establishes, reviews, and revises each program as provided in Subpart C.

(b) Each annual program plan must include:

(1) A copy of each State statute, policy, and standard that regulates the manner in which individualized education programs are developed, implemented, reviewed, and revised, and

(2) The procedures which the State educational agency follows in monitoring and evaluating those programs.

(20 U.S.C. 1412(4).)

§ 121a.131 Procedural safeguards.

Each annual program plan must include procedural safeguards which insure that the requirements in §§ 121a.500–121a.514 of Subpart E are met.

(20 U.S.C. 1412(5)(A).)

§ 121a.132 Least restrictive environment.

(a) Each annual program plan must include procedures which insure that the requirements in §§ 121a.550–121a.556 of Subpart E are met.

(b) Each annual program plan must include the following information:

(1) The number of handicapped children in the State, within each disability category, who are participating in regular education programs, consistent with §§ 121a.550–121a.556 of Subpart E.

(2) The number of handicapped children who are in separate classes or separate school facilities, or who are otherwise removed from the regular education environment.

(20 U.S.C. 1412(5)(B).)

§ 121a.133 Protection in evaluation procedures.

Each annual program plan must include procedures which insure that the requirements in §§ 121a.530–121a.534 of Subpart E are met.

(10 U.S.C. 1412(5)(C).)

§ 121a.134 Responsibility of State educational agency for all educational programs.

(a) Each annual program plan must include information which shows that the requirements in § 121a.600 of Subpart F are met.

(b) The information under paragraph (a) of this section must include a copy of each State statute, State regulation, signed agreement between respective agency officials, and any other document that shows compliance with that paragraph.

(20 U.S.C. 1412(6).)

§ 121a.135 Monitoring procedures.

Each annual program plan must include information which shows that the requirements in § 121a.601 and § 121a.602 of Subpart F are met.

(20 U.S.C. 1412(6).)

§ 121a.136 Implementation procedures—State educational agency.

Each annual program plan must describe the procedures the State educational agency follows to inform each public agency of its responsibility for insuring effective implementation of procedural safeguards for the handicapped children served by that public agency.

(20 U.S.C. 1412(6).)

§ 121a.137 Procedures for consultation.

Each annual program plan must include an assurance that in carrying out the requirements of section 612 of the Act, procedures are established for consultation with individuals involved in or concerned with the education of handicapped children, including handicapped individuals and parents of handicapped children.

(20 U.S.C. 1412(7)(A).)

§ 121a.138 Other Federal programs.

Each annual program plan must provide that programs and procedures are established to insure that funds received by the State or any public agency in the State under any other Federal program, including section 121 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 241e–2), section 305(b)(8) of that Act (20 U.S.C. 844a(b)(8)) or Title IV–C of that Act (20 U.S.C. 1831), and section 110(a) of the Vocational Education Act of 1963, under which there is specific authority for assistance for the education of handicapped children, are used by the State, or any public agency in the State, only in a manner consistent with the goal of providing free appropriate public education for all handicapped children, except that nothing in this section limits the specific requirements of the laws governing those Federal programs.

(20 U.S.C. 1413(a)(2).)

§ 121a.139 Comprehensive system of personnel development.

Each annual program plan must include the material required under §§ 121a.380–121a.387 of Subpart C.

(20 U.S.C. 1413(a)(3).)

§ 121a.140 Private schools.

Each annual program plan must include policies and procedures which insure that the requirements of Subpart D are met.

(20 U.S.C. 1413(a)(4).)

§ 121a.141 Recovery of funds for misclassified children.

Each annual program plan must include policies and procedures which insure that the State seeks to recover any funds provided under Part B of the Act for services to a child who is determined to be erroneously classified as eligible to be counted under section 611(a) or (d) of the Act.

(20 U.S.C. 1413(a)(5).)

§ 121a.142 Control of funds and property.

Each annual program plan must provide assurance satisfactory to the Commissioner that the control of funds provided under Part B of the Act, and title to property acquired with those funds, is in a public agency for the uses and purposes provided in this part, and that a public agency administers the funds and property.

(20 U.S.C. 1413(a)(6).)

§ 121a.143 Records.

Each annual program plan must provide for keeping records and affording access to those records, as the Commissioner may find necessary to assure the correctness and verification of reports and of proper disbursement of funds provided under Part B of the Act.

(20 U.S.C. 1413(a)(7)(B).)

§ 121a.144 Hearing on application.

Each annual program plan must include procedures to insure that the State educational agency does not take any final action with respect to an application submitted by a local educational agency before giving the local educational agency reasonable notice and an opportunity for a hearing.

(20 U.S.C. 1413(a)(8).)

§ 121a.145 Prohibition of commingling.

Each annual program plan must provide assurance satisfactory to the Commissioner that funds provided under Part B of the Act are not commingled with State funds.

(20 U.S.C. 1413(a)(9).)

Comment. This assurance is satisfied by the use of a separate accounting system that includes an "audit trail" of the expenditure of the Part B funds. Separate bank accounts are not required. (See 45 CFR 100b, Subpart F (Cash Depositories).)

§ 121a.146 Annual evaluation.

Each annual program plan must include procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of handicapped children, including evaluation of individualized education programs.

(20 U.S.C. 1413(a)(11).)

§ 121a.147 State advisory panel.

Each annual program plan must provide that the requirements of §§ 121a.650–121a.653 of Subpart F are met.

(20 U.S.C. 1413(a)(12).)

§ 121a.148 Policies and procedures for use of Part B funds.

Each annual program plan must set forth policies and procedures designed to insure that funds paid to the State under Part B of the Act are spent in accordance with the provisions of Part B, with particular attention given to sections 611(b), 611(c), 611(d), 612(2), and 612(3) of the Act.

(20 U.S.C. 1413(a)(1).)

§ 121a.149 Description of use of Part B funds.

(a) *State allocation.* Each annual program plan must include the following information about the State's use of funds under § 121a.370 of Subpart C and § 121a.620 of Subpart F:

(1) A list of administrative positions, and a description of duties for each person whose salary is paid in whole or in part with those funds.

(2) For each position, the percentage of salary paid with those funds.

(3) A description of each administrative activity the State educational agency will carry out during the next school year with those funds.

(4) A description of each direct service and each support service which the State educational agency will provide during the next school year with those funds, and the activities the State advisory panel will undertake during that period with those funds.

(b) *Local educational agency allocation.* Each annual program plan must include:

(1) An estimate of the number and percent of local educational agencies in the State which will receive an allocation under this part (other than local educational agencies which submit a consolidated application),

(2) An estimate of the number of local educational agencies which will receive an allocation under a consolidated application,

(3) An estimate of the number of consolidated applications and the average number of local educational agencies per application, and

(4) A description of direct services the State educational agency will provide under § 121a.360 of Subpart C.

(20 U.S.C. 1232c(b)(1)(B)(ii).)

§ 121a.150 Nondiscrimination and employment of handicapped individuals.

(a) Each annual program plan must include an assurance that the program assisted under Part B of the Act will be operated in compliance with Title 45 of the Code of Federal Regulations Part 84 (Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance). The State educational agency may incorporate this assurance by reference if it has already been filed with the Department of Health, Education, and Welfare.

(b) The assurance under paragraph (a) of this section covers, among other things, the specific requirement on employment of handicapped individuals under section 606 of the Act, which states:

The Secretary shall assure that each recipient of assistance under this Act shall make positive efforts to employ and advance in employment qualified handicapped individuals in programs assisted under this Act.

(20 U.S.C. 1405; 29 U.S.C. 794.)

§ 121a.151 Additional information if the State educational agency provides direct services.

If a State educational agency provides free appropriate public education for handicapped children or provides them with direct services, its annual program plan must include the information required under §§ 121a.226–121a.228, 121a.231, and 121a.235.

(20 U.S.C. 1413(b).)

LOCAL EDUCATIONAL AGENCY APPLICATIONS—GENERAL

§ 121a.180 Submission of application.

In order to receive payments under Part B of the Act for any fiscal year a local educational agency must submit an application to the State educational agency.

(20 U.S.C. 1414(a).)

§ 121a.181 Responsibilities of State educational agency.

Each State educational agency shall establish the procedures and format which a local educational agency uses in preparing and submitting its application.

(20 U.S.C. 1414(a))

§ 121a.182 The excess cost requirement.

A local educational agency may only use funds under Part B of the Act for the excess costs of providing special education and related services for handicapped children.

(20 U.S.C. 1414(a)(1), (a)(2)(B)(i).)

§ 121a.183 Meeting the excess cost requirement.

(a) A local educational agency meets the excess cost requirement if it has on the average spent at least the amount determined under § 121a.184 for the education of each of its handicapped children. This amount may not include capital outlay or debt service.

(b) Each local educational agency must keep records adequate to show that it has met the excess cost requirement.

(20 U.S.C. 1402(20); 1414(a)(1).)

Comment. The excess cost requirement means that the local educational agency must spend a certain minimum amount for the education of its handicapped children before Part B funds are used. This insures that children served with Part B funds have at least the same average amount spent on them, from sources other than Part B, as do the children in the school district taken as a whole.

The minimum amount that must be spent for the education of handicapped children is computed under a statutory formula. Section 121a.184 implements this formula and gives a step-by-step method to determine the minimum amount. Excess costs are those costs of special education and related services which exceed the minimum amount. Therefore, if a local educational agency can show that it has (on the average) spent the minimum amount for the education of each of its handicapped children, it has met the excess cost requirement, and all additional costs are excess costs. Part B funds can then be used to pay for these additional costs, subject to the other requirements of Part B (priorities, etc.). In the "Comment" under section 121a.184, there is an example of how the minimum amount is computed.

§ 121a.184 Excess costs—computation of minimum amount.

The minimum average amount a local educational agency must spend under § 121a.183 for the education of each of its handicapped children is computed as follows:

(a) Add all expenditures of the local educational agency in the preceding school year, except capital outlay and debt service:

(1) For elementary school students, if the handicapped child is an elementary school student, or

(2) For secondary school students, if the handicapped child is a secondary school student.

(b) From this amount, subtract the total of the following amounts spent for elementary school students or for secondary school students, as the case may be:

(1) Amounts the agency spent in the preceding school year from funds awarded under Part B of the Act and Titles I and VII of the Elementary and Secondary Education Act of 1965, and

(2) Amounts from State and local funds which the agency spent in the preceding school year for:

(i) Programs for handicapped children,

(ii) Programs to meet the special educational needs of educationally deprived children, and

(iii) Programs of bilingual education for children with limited English-speaking ability.

(c) Divide the result under paragraph (b) of this section by the average number of students enrolled in the agency in the preceding school year:

(1) In its elementary schools, if the handicapped child is an elementary school student, or

(2) In its secondary schools, if the handicapped child is a secondary school student.

(20 U.S.C. 1414(a)(1).)

Comment. The following is an example of how a local educational agency might compute the average minimum amount it must spend for the education of each of its handicapped children, under § 121a.183. This example follows the formula in § 121a.184. Under the statute and regulations, the local educational agency must make one computation for handicapped children in its elementary schools and a separate computation for handicapped children in its secondary schools. The computation for handicapped elementary school students would be done as follows:

a. First, the local educational agency must determine its total amount of expenditures for elementary school students from all sources—local, State, and Federal (including Part B)—in the preceding school year. Only capital outlay and debt service are excluded.

Example: A local educational agency spent the following amounts last year for elementary school students (including its handicapped elementary school students):

(1) From local tax funds	$2,750,000
(2) From State funds	7,000,000
(3) From Federal funds	750,000
	10,500,000

Of this total, $500,000 was for capital outlay and debt service relating to the education of elementary school students. This must be subtracted from total expenditures:

	$10,500,000
	−500,000
Total expenditures for elementary school students (less capital outlay and debt service)	=10,000,000

b. Next, the local educational agency must subtract amounts spent for:

(1) Programs for handicapped children;

(2) Programs to meet the special educational needs of educationally deprived children; and

(3) Programs of bilingual education for children with limited English-speaking ability.

These are funds which the local educational agency actually spent, not funds received last year but carried over for the current school year.

Example: The local educational agency spent the following amounts for elementary school students last year:

(1) From funds under Title I of the Elementary and Secondary Education Act of 1965	$300,000
(2) From a special State program for educationally deprived children	200,000
(3) From a grant under Part B	200,000
(4) From State funds for the education of handicapped children	500,000

(5) From a locally-funded program for handicapped children	$250,000
(6) From a grant for a bilingual education program under Title VII of the Elementary and Secondary Education Act of 1965	150,000
Total	1,600,000

(A local educational agency would also include any other funds it spent from Federal, State, or local sources for the three basic purposes: handicapped children, educationally deprived children, and bilingual education for children with limited English-speaking ability.)

This amount is subtracted from the local educational agency's total expenditure for elementary school students computed above:

$10,000,000
−1,600,000
8,400,000

c. The local educational agency next must divide by the average number of students enrolled in the elementary schools of the agency last year (including its handicapped students).

Example: Last year, an average of 7,000 students were enrolled in the agency's elementary schools. This must be divided into the amount computed under the above paragraph:

$8,400,000 / 7,000 students = $1,200/student

This figure is in the minimum amount the local educational agency must spend (on the average) for the education of each of its handicapped students. Funds under Part B may be used only for costs over and above this minimum. In this example, if the local educational agency has 100 handicapped elementary school students, it must keep records adequate to show that it has spent at least $120,000 for the education of those students (100 students times $1,200/student), not including capital outlay and debt service.

This $120,000 may come from any funds except funds under Part B, subject to any legal requirements that govern the use of those other funds.

If the local educational agency has handicapped secondary school students, it must do the same computation for them. However, the amounts used in the computation would be those the local educational agency spent last year for the education of secondary school students, rather than for elementary school students.

§ 121a.185 Computation of excess costs—consolidated application.

The minimum average amount under § 121a.183 where two or more local educational agencies submit a consolidated application, is the average of the combined minimum average amounts determined under § 121a.184 in those agencies for elementary or secondary school students, as the case may be.

(20 U.S.C. 1414(a)(1).)

§ 121a.186 Excess costs—limitation on use of Part B funds.

(a) The excess cost requirement prevents a local educational agency from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a handicapped child, subject to paragraph (b) of this section.

(b) The excess cost requirement does not prevent a local educational agency from using Part B funds to pay for all of the costs directly attributable to the education of a handicapped child in any of the age ranges three, four, five, eighteen, nineteen, twenty, or twenty-one, if no local or State funds are available for non-handicapped children in that age range. However, the local educational agency must comply with the nonsupplanting and other requirements of this part in providing the education and services.

(20 U.S.C. 1402(20); 1414(a)(1).)

§ 121a.190 Consolidated applications.

(a) *Voluntary applications.* Local educational agencies may submit a consolidated application for payments under Part B of the Act.

(b) *Required applications.* A State educational agency may require local educational agencies to submit a consolidated application for payments under Part B of the Act if the State educational agency determines that an individual application submitted by a local educational agency will be disapproved because:

(1) The agency's entitlement is less than the $7,500 minimum required by section 611(c)(4)(A)(i) of the Act (§ 121a.360(a)(1) of Subpart C); or

(2) The agency is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of handicapped children.

(c) *Size and scope of program.* The State educational agency shall establish standards and procedures for determinations under paragraph (b)(2) of this section.

(20 U.S.C. 1414(c)(1).)

§ 121a.191 Payments under consolidated applications.

In any case in which a consolidated application is approved by the State educational agency, the payments to the participating local educational agencies must be equal to the sum of the entitlements of the separate local educational agencies.

(20 U.S.C. 1414(c)(2)(A).)

§ 121a.192 State regulation of consolidated applications.

(a) The State educational agency shall issue regulations with respect to consolidated applications submitted under this part.

(b) The State educational agency's regulations must:

(1) Be consistent with section 612(1)–(7) and section 613(a) of the Act, and

(2) Provide participating local educational agencies with joint responsibilities for implementing programs receiving payments under this part.

(20 U.S.C. 1414(c)(2)(B).)

(c) If an intermediate educational unit is required under State law to carry out this part, the joint responsibilities given to local educational agencies under paragraph (b)(2) of this section do not apply to the administration and disbursement of any payments received by the intermediate educational unit. Those administrative responsibilities must be carried out exclusively by the intermediate educational unit.

(20 U.S.C. 1414(c)(2)(C).)

§ 121a.193 State educational agency approval; disapproval.

(a) *Approval.* A State educational agency shall approve an application submitted by a local educational agency if the State educational agency determines that the application meets the requirements under §§ 121a.220–121a.240. However, the State educational agency may not approve any application until the Commissioner approves its annual program plan for the school year covered by the application.

(b) *Disapproval.* The State educational agency shall disapprove an application if the State educational agency determines that the application does not meet a requirement under §§ 121a.220–121a.240.

(20 U.S.C. 1414(b)(1).)

(c) In carrying out its functions under this section, each State educational agency shall consider any decision resulting from a hearing under §§ 121a.506–121a.513 of Subpart E which is adverse to the local educational agency involved in the decision.

(20 U.S.C. 1414(b)(3).)

§ 121a.194 Withholding.

(a) If a State educational agency, after giving reasonable notice and an opportunity for a hearing to a local educational agency, decides that the local educational agency in the administration of an application approved by the State educational agency has failed to comply with any requirement in the application, the State educational agency, after giving notice to the local educational agency, shall:

(1) Make no further payments to the local educational agency until the State educational agency is satisfied that there is no longer any failure to comply with the requirement; or

(2) Consider its decision in its review of any application made by the local educational agency under § 121a.180;

(3) Or both.

(b) Any local educational agency receiving a notice from a State educational agency under paragraph (a) of this section is subject to the public notice provision in § 121a.592.

(20 U.S.C. 1414(b)(2).)

Local Educational Agency Applications—Contents

§ 121a.220 Child identification.

Each application must include procedures which insure that all children residing within the jurisdiction of the local educational agency who are handicapped, regardless of the severity of their handicap, and who are in need of special education and related services are identified, located, and evaluated, including a practical method of determining which children are currently receiving needed

special education and related services and which children are not currently receiving needed special education and related services.

(20 U.S.C. 1414(a)(1)(A).)

Comment. The local educational agency is responsible for insuring that all handicapped children within its jurisdiction are identified, located, and evaluated, including children in all public and private agencies and institutions within that jurisdiction. Collection and use of data are subject to the confidentiality requirements in §§ 121a.560–121a.576 of Subpart E.

§ 121a.221 Confidentiality of personally identifiable information.

Each application must include policies and procedures which insure that the criteria in §§ 121a.560–121a.574 of Subpart E are met.

(20 U.S.C. 1414(a)(1)(B).)

§ 121a.222 Full educational opportunity goal; timetable.

Each application must: (a) Include a goal of providing full educational opportunity to all handicapped children, aged birth through 21, and

(b) Include a detailed timetable for accomplishing the goal.

(20 U.S.C. 1414(a)(1)(C), (D).)

§ 121a.223 Facilities, personnel, and services.

Each application must provide a description of the kind and number of facilities, personnel, and services necessary to meet the goal in § 121a.222.

(20 U.S.C. 1414(a)(1)(E).)

§ 121a.224 Personnel development.

Each application must include procedures for the implementation and use of the comprehensive system of personnel development established by the State educational agency under § 121a.140.

(20 U.S.C. 1414(a)(1)(C)(i).)

§ 121a.225 Priorities.

Each application must include priorities which meet the requirements of §§ 121a.320–121a.324.

(20 U.S.C. 1414(a)(1)(C)(ii).)

§ 121a.226 Parent involvement.

Each application must include procedures to insure that, in meeting the goal under § 121a.222, the local educational agency makes provision for participation of and consultation with parents or guardians of handicapped children.

(20 U.S.C. 1414(a)(1)(C)(iii).)

§ 121a.227 Participation in regular education programs.

(a) Each application must include procedures to insure that to the maximum extent practicable, and consistent with §§ 121a.550–121a.553 of Subpart E, the local educational agency provides special services to enable handicapped children to participate in regular educational programs.

(b) Each application must describe:

(1) The types of alternative placements that are available for handicapped children, and

(2) The number of handicapped children within each disability category who are served in each type of placement.

(20 U.S.C. 1414(a)(1)(C)(iv).)

§ 121a.228 Public control of funds.

Each application must provide assurance satisfactory to the State educational agency that control of funds provided under Part B of the Act and title to property acquired with those funds, is in a public agency for the uses and purposes under this part, and that a public agency administers the funds and property.

(20 U.S.C. 1414(a)(2)(A).)

§ 121a.229 Excess cost.

Each application must provide assurance satisfactory to the State educational agency that the local educational agency uses funds provided under Part B of the Act only for costs which exceed the amount computed under § 121a.184 and which are directly attributable to the education of handicapped children.

(20 U.S.C. 1414(a)(2)(B).)

§ 121a.230 Nonsupplanting.

(a) Each application must provide assurance satisfactory to the State educational agency that the local educational agency uses funds provided under Part B of the Act to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of handicapped children, and in no case to supplant those State and local funds.

(b) To meet the requirement in paragraph (a) of this section:

(1) The total amount or average per capita amount of State and local school funds budgeted by the local educational agency for expenditures in the current fiscal year for the education of handicapped children must be at least equal to the total amount or average per capita amount of State and local school funds actually expended for the education of handicapped children in the most recent preceding fiscal year for which the information is available. Allowance may be made for:

(i) Decreases in enrollment of handicapped children; and

(ii) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of school facilities; and

(2) The local educational agency must not use Part B funds to displace State or local funds for any particular cost.

(20 U.S.C. 1414(a)(2)(B).)

Comment. Under statutes such as Title I of the Elementary and Secondary Education Act of 1965, as amended, the requirement is to not supplant funds that "would" have been expended if the Federal funds were not available. The requirement under Part B, however, is to not supplant funds which have been "expended." This use of the past tense suggests that the funds referred to are those which the State or local agency actually spent at some time before the use of the Part B funds. Therefore, in judging compliance with this requirement, the Commissioner looks to see if Part B funds are used for any costs which were previously paid for with State or local funds.

The nonsupplanting requirement prohibits a local educational agency from supplanting State and local funds with Part B funds on either an aggregate basis or for a given expenditure. This means that if an LEA spent $100,000 for special education in FY 1977, it must budget at least $100,000 in FY 1978, unless one of the conditions in § 121a.230(b)(1) applies.

Whether a local educational agency supplants with respect to a particular cost would depend on the circumstances of the expenditure. For example, if a teacher's salary has been switched from local funding to Part B funding, this would appear to be supplanting. However, if that teacher was taking over a different position (such as a resource room teacher, for example), it would not be supplanting. Moreover, it might be important to consider whether the particular action of a local educational agency led to an increase in services for handicapped children over that which previously existed. The intent of the requirement is to insure that Part B funds are used to increase State and local efforts and are not used to take their place. Compliance would be judged with this aim in mind. The supplanting requirement is not intended to inhibit better services to handicapped children.

§ 121a.231 Comparable services.

(a) Each application must provide assurance satisfactory to the State educational agency that the local educational agency meets the requirements of this section.

(b) A local educational agency may not use funds under Part B of the Act to provide services to handicapped children unless the agency uses State and local funds to provide services to those children which, taken as a whole, are at least comparable to services provided to other handicapped children in that local educational agency.

(c) Each local educational agency shall maintain records which show that the agency meets the requirement in paragraph (b) of this section.

(20 U.S.C. 1414(a)(2)(C).)

Comment. Under the "comparability" requirement, if State and local funds are used to provide certain services, those services must be provided with State and local funds to all handicapped children in the local educational agency who need them. Part B funds may then be used to supplement existing services, or to provide additional services to meet special needs. This, of course, is subject to the other requirements of the Act, including the priorities under §§ 121a.320–121a.324.

§ 121a.232 Information—reports.

Each application must provide that the local educational agency furnishes information (which, in the case of reports relating to performance, is in accordance with specific performance criteria developed by the local educational agency and related to program objectives) as may be necessary to enable the State educational

agency to perform its duties under this part, including information relating to the educational achievement of handicapped children participating in the local educational agency's programs for handicapped children.

(20 U.S.C. 1414(a)(3)(A).)

§ 121a.233 Records.

Each application must provide that the local educational agency keeps such records, and affords access to those records, as the State educational agency may find necessary to insure the correctness and verification of the information that the local educational agency furnishes under § 121a.232.

(20 U.S.C. 1414(a)(3)(B).)

§ 121a.234 Public participation.

(a) Each application must:

(1) Provide for making the application and all documents related to the application available to parents and the general public; and

(2) Provide that all evaluations and reports required under § 121a.232 are public information.

(b) In implementing the requirement in paragraph (a)(1), the local educational agency shall use methods for public participation within its jurisdiction which are comparable to those required in § 121a.280–121a.284 of this subpart. However, the local educational agency is not required to hold public hearings.

(20 U.S.C. 1414(a)(4).)

§ 121a.235 Individualized education program.

Each application must include procedures to assure that the local educational agency complies with §§ 121a.340–121a.349 of Subpart C.

(20 U.S.C. 1414(a)(5).)

§ 121a.236 Local policies consistent with statute.

Each application must provide assurance satisfactory to the State educational agency that all policies and programs which the local educational agency establishes and administers are consistent with section 612(1)–(7) and section 613(a) of the Act.

(20 U.S.C. 1414(a)(6).)

§ 121a.237 Procedural safeguards.

Each application must provide assurance satisfactory to the State educational agency that the local educational agency has procedural safeguards which meet the requirements of §§ 121a.500–121a.514 of Subpart E.

(20 U.S.C. 1414(a)(7).)

§ 121a.238 Use of Part B funds.

Each application must describe how the local educational agency will use the funds under Part B of the Act during the next school year.

(20 U.S.C. 1414(a).)

§ 121a.239 Nondiscrimination and employment of handicapped individuals.

(a) Each application must include an assurance that the program assisted under Part B of the Act will be operated in compliance with Title 45 of the Code of Federal Regulations Part 84 (Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance). The local educational agency may incorporate this assurance by reference if it has already been filed with the Department of Health, Education, and Welfare.

(b) The assurance under paragraph (a) of this section covers, among other things, the specific requirement on employment of handicapped individuals under section 606 of the Act, which states:

> The Secretary shall assure that each recipient of assistance under this Act shall make positive efforts to employ and advance in employment qualified handicapped individuals in programs assisted under this Act.

(20 U.S.C. 1405; 29 U.S.C. 794.)

§ 121a.240 Other requirements.

Each local application must include additional procedures and information which the State educational agency may require in order to meet the State annual program plan requirements under §§ 121a.120–121a.151.

(20 U.S.C. 1414(a)(6).)

APPLICATION FROM SECRETARY OF INTERIOR

§ 121a.260 Submission of annual application; approval.

In order to receive payments under this part, the Secretary of Interior shall submit an annual application which:

(a) Meets applicable requirements of section 614(a) of the Act;

(b) Includes monitoring procedures which are consistent with § 121a.601; and

(c) Includes other material as agreed to by the Commissioner and the Secretary of Interior.

(20 U.S.C. 1411(f).)

§ 121a.261 Public participation.

In the development of the application for the Department of Interior, the Secretary of Interior shall provide for public participation consistent with §§ 121a.280–121a.284.

(20 U.S.C. 1411(f).)

§ 121a.262 Use of Part B funds.

(a) The Department of Interior may use five percent of its payments in any fiscal year, or $200,000, whichever is greater, for administrative costs in carrying out the provisions of this Part.

(b) The remainder of the payments to the Secretary of Interior in any fiscal year must be used in accordance with the priorities under §§ 121a.320–121a.324 of Subpart C.

(20 U.S.C. 1411(f).)

§ 121a.263 Applicable regulations.

The Secretary of Interior shall comply with the requirements under Subparts C, E, and F.

(20 U.S.C. 1411(f)(2).)

PUBLIC PARTICIPATION

§ 121a.280 Public hearings before adopting an annual program plan.

(a) Prior to its adoption of an annual program plan, the State educational agency shall:

(1) Make the plan available to the general public,

(2) Hold public hearings, and

(3) Provide an opportunity for comment by the general public on the plan.

(20 U.S.C. 1412(7).)

§ 121a.281 Notice.

(a) The State educational agency shall provide notice to the general public of the public hearings.

(b) The notice must be in sufficient detail to inform the public about:

(1) The purpose and scope of the annual program plan and its relation to Part B of the Education of the Handicapped Act,

(2) The availability of the annual program plan,

(3) The date, time, and location of each public hearing,

(4) The procedures for submitting written comments about the plan, and

(5) The timetable for developing the final plan and submitting it to the Commissioner for approval.

(c) The notice must be published or announced:

(1) In newspapers or other media, or both, with circulation adequate to notify the general public about the hearings, and (2) Enough in advance of the date of the hearings to afford interested parties throughout the State a reasonable opportunity to participate.

(20 U.S.C. 1412(7).)

§ 121a.282 Opportunity to participate; comment period.

(a) The State educational agency shall conduct the public hearings at times and places that afford interested parties throughout the State a reasonable opportunity to participate.

(b) The plan must be available for comment for a period of at least 30 days following the date of the notice under § 121a.281.

(20 U.S.C. 1412(7).)

§ 121a.283 Review of public comments before adopting plan.

Before adopting its annual program plan, the State educational agency shall:

(a) Review and consider all public comments, and

(b) Make any necessary modifications in the plan.

(20 U.S.C. 1412(7).)

§ 121a.284 Publication and availability of approved plan.

After the Commissioner approves an annual program plan, the State educational agency shall give notice in newspapers or other media, or both, that the plan is approved. The notice must name places throughout the State where the plan is available for access by any interested person.

(20 U.S.C. 1412(7).)

Subpart C—Services

FREE APPROPRIATE PUBLIC EDUCATION

§ 121a.300 Timelines for free appropriate public education.

(a) *General.* Each State shall insure that free appropriate public education is available to all handicapped children aged three through eighteen within the State not later than September 1, 1978, and to all handicapped children aged three through twenty-one within the State not later than September 1, 1980.

(b) *Age ranges 3–5 and 18–21.* This paragraph provides rules for applying the requirement in paragraph (a) of this section to handicapped children aged three, four, five, eighteen, nineteen, twenty, and twenty-one:

(1) If State law or a court order requires the State to provide education for handicapped children in any disability category in any of these age groups, the State must make a free appropriate public education available to all handicapped children of the same age who have that disability.

(2) If a public agency provides education to non-handicapped children in any of these age groups, it must make a free appropriate public education available to at least a proportionate number of handicapped children of the same age.

(3) If a public agency provides education to 50 percent or more of its handicapped children in any disability category in any of these age groups, it must make a free appropriate public education available to all of its handicapped children of the same age who have that disability.

(4) If a public agency provides education to a handicapped child in any of these age groups, it must make a free appropriate public education available to that child and provide that child and his or her parents all of the rights under Part B of the Act and this part.

(5) A State is not required to make a free appropriate public education available to a handicapped child in one of these age groups if:

(i) State law expressly prohibits, or does not authorize, the expenditure of public funds to provide education to non-handicapped children in that age group; or

(ii) The requirement is inconsistent with a court order which governs the provision of free public education to handicapped children in that State.

(20 U.S.C. 1412(2)(B); Sen. Rept. No. 94-168 p. 19-(1975).)

Comment. 1. The requirement to make free appropriate public education available applies to all handicapped children within the State who are in the age ranges required under section 121a.300 and who need special education and related services. This includes handicapped children already in school and children with less severe handicaps, who are not covered under the priorities under § 121a.321.

2. In order to be in compliance with § 121a.300, each State must insure that the requirement to identify, locate, and evaluate all handicapped children is fully implemented by public agencies throughout the State. This means that before September 1, 1978, every child who has been referred or is on a waiting list for evaluation (including children in school as well as those not receiving an education) must be evaluated in accordance with §§ 121a.530–121a.533 of Subpart E. If, as a result of the evaluation, it is determined that a child needs special education and related services, an individualized education program must be developed for the child by September 1, 1978, and all other applicable requirements of this part must be met.

3. The requirement to identify, locate, and evaluate handicapped children (commonly referred to as the "child find system") was enacted on August 21, 1974, under Pub. L. 93-380. While each State needed time to establish and implement its child find system, the four year period between August 21, 1974, and September 1, 1978, is considered to be sufficient to insure that the system is fully operational and effective on a State-wide basis.

Under the statute, the age range for the child find requirement (0–21) is greater than the mandated age range for providing free appropriate public education (FAPE). One reason for the broader age requirement under "child find" is to enable States to be aware of and plan for younger children who will require special education and related services. It also ties in with the full educational opportunity goal requirement, which has the same age range as child find. Moreover, while a State is not required to provide "FAPE" to handicapped children below the age ranges mandated under § 121a.300, the State may, at its discretion, extend services to those children, subject to the requirements on priorities under §§ 121a.320–121a.324.

§ 121a.301 Free appropriate public education—methods and payments.

(a) Each State may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, when it is necessary to place a handicapped child in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement.

(b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a handicapped child.

(20 U.S.C. 1401(18); 1412(2)(B).)

§ 121a.302 Residential placement.

If placement in a public or private residential program is necessary to provide special education and related services to a handicapped child, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

(20 U.S.C. 1412(2)(B); 1413(a)(4)(B).)

Comment. This requirement applies to placements which are made by public agencies for educational purposes, and includes placements in State-operated schools for the handicapped, such as a State school for the deaf or blind.

§ 121a.303 Proper functioning of hearing aids.

Each public agency shall insure that the hearing aids worn by deaf and hard of hearing children in school are functioning properly.

(20 U.S.C. 1412(2)(B).)

Comment. The report of the House of Representatives on the 1978 appropriation bill includes the following statement regarding hearing aids:

In its report on the 1976 appropriation bill the Committee expressed concern about the condition of hearing aids worn by children in public schools. A study done at the Committee's direction by the Bureau of Education for the Handicapped reveals that up to one-third of the hearing aids are malfunctioning. Obviously, the Committee expects the Office of Education will ensure that hearing impaired school children are receiving adequate professional assessment, follow-up and services.

(House Report No. 95-381, p. 67 (1977).)

§ 121a.304 Full educational opportunity goal.

(a) Each State educational agency shall insure that each public agency establishes and implements a goal of providing full educational opportunity to all handicapped children in the area served by the public agency.

(b) Subject to the priority requirements under §§ 121a.320–121a.324, a State or local educational agency may use Part B funds to provide facilities, personnel, and services necessary to meet the full educational opportunity goal.

(20 U.S.C. 1412(2)(A); 1414(a)(1)(C).)

Comment. In meeting the full educational opportunity goal, the Congress also encouraged local educational agencies to include artistic and cultural activities in programs supported under this part, subject to the priority requirements under §§ 121a.320–121a.324. This point is addressed in the following statements from the Senate Report on Pub. L. 94-142:

The use of the arts as a teaching tool for the handicapped has long been recognized as a viable, effective way not only of teaching special skills, but also of reaching youngsters who had otherwise been unteachable. The Committee envisions that programs under this bill could well include an arts component and, indeed, urges that local educational agencies include the arts in programs for the handicapped funded under this Act. Such a program could cover both appreciation of the arts by the handicapped youngsters, and the utilization of the arts as a teaching tool per se.

Museum settings have often been another effective tool in the teaching of handicapped children. For example, the Brooklyn Museum has been a leader in developing exhibits utilizing the heightened tactile sensory skill of the blind. Therefore, in light of the national policy concerning the use of museums in Federally-supported education programs enunciated in the Education Amendments of 1974, the Committee also urges local educational agencies to include museums in programs for the handicapped funded under this Act.

(Senate Report No. 94-168, p. 13 (1975).)

§ 121a.305 Program options.

Each public agency shall take steps to insure that its handicapped children have available to them the variety of educational programs and services available to non-handicapped children in the

area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

(20 U.S.C. 1412(2)(A); 1414(a)(1)(C).)

Comment. The above list of program options is not exhaustive, and could include any program or activity in which nonhandicapped students participate. Moreover, vocational education programs must be specially designed if necessary to enable a handicapped student to benefit fully from those programs; and the set-aside funds under the Vocational Education Act of 1963, as amended by Pub. L. 94-482, may be used for this purpose. Part B funds may also be used, subject to the priority requirements under §§ 121a.320-121a.324.

§ 121a.306 Nonacademic services.

(a) Each public agency shall take steps to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped children an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the public agency and assistance in making outside employment available.

(20 U.S.C. 1412(2)(A); 1414(a)(1)(C).)

§ 121a.307 Physical education.

(a) *General.* Physical education services, specially designed if necessary, must be made available to every handicapped child receiving a free appropriate public education.

(b) *Regular physical education.* Each handicapped child must be afforded the opportunity to participate in the regular physical education program available to non-handicapped children unless:

(1) The child is enrolled full time in a separate facility; or

(2) The child needs specially designed physical education, as prescribed in the child's individualized education program.

(c) *Special physical education.* If specially designed physical education is prescribed in a child's individualized education program, the public agency responsible for the education of that child shall provide the services directly, or make arrangements for it to be provided through other public or private programs.

(d) *Education in separate facilities.* The public agency responsible for the education of a handicapped child who is enrolled in a separate facility shall insure that the child receives appropriate physical education services in compliance with paragraphs (a) and (c) of this section.

(20 U.S.C. 1401(16); 1412(5)(B); 1414(a)(6).)

Comment. The Report of the House of Representatives on Pub. L. 94-142 includes the following statement regarding physical education:

> Special education as set forth in the Committee bill includes instruction in physical education, which is provided as a matter of course to all non-handicapped children enrolled in public elementary and secondary schools. The Committee is concerned that although these services are available to and required of all children in our school systems, they are often viewed as a luxury for handicapped children.
>
> * * * * *
>
> The Committee expects the Commissioner of Education to take whatever action is necessary to assure that physical education services are available to all handicapped children, and has specifically included physical education within the definition of special education to make clear that the Committee expects such services, specially designed where necessary, to be provided as an integral part of the educational program of every handicapped child.

(House Report No. 94-332, p. 9 (1975).)

PRIORITIES IN THE USE OF PART B FUNDS

§ 121a.320 Definitions of "first priority children" and "second priority children."

For the purposes of §§ 121a.321-121a.324, the term:

(a) "First priority children" means handicapped children who:

(1) Are in an age group for which the State must make available free appropriate public education under § 121a.300; and

(2) Are not receiving any education.

(b) "Second priority children" means handicapped children, within each disability, with the most severe handicaps who are receiving an inadequate education.

(20 U.S.C. 1412(3).)

Comment. After September 1, 1978, there should be no second priority children, since States must insure, as a condition of receiving Part B funds for fiscal year 1979, that all handicapped children will have available a free appropriate public education by that date.

NOTE.—The term "free appropriate public education," as defined in § 121a.4 of Subpart A, means "special education and related services which * * * are provided in conformity with an individualized education program * * *."

New "First priority children" will continue to be found by the State after September 1, 1978 through on-going efforts to identify, locate, and evaluate all handicapped children.

§ 121a.321 Priorities.

(a) Each State and local educational agency shall use funds provided under Part B of the Act in the following order of priorities:

(1) To provide free appropriate public education to first priority children, including the identification, location, and evaluation of first priority children.

(2) To provide free appropriate public education to second priority children, including the identification, location, and evaluation of second priority children.

(3) To meet the other requirements in this part.

(b) The requirements of paragraph (a) of this section do not apply to funds which the State uses for administration under § 121a.620.

(20 U.S.C. 1411 (b)(1)(B), (b)(2)(B), (c)(1)(B), (c)(2)(A)(ii).

(c) State and local educational agencies may not use funds under Part B of the Act for preservice training.

(20 U.S.C. 1413(a)(3); Senate Report No. 94-168, p. 34 (1975).)

Comment. Note that a State educational agency as well as local educational agencies must use Part B funds (except the portion used for State administration) for the priorities. A State may have to set aside a portion of its Part B allotment to be able to serve newly-identified first priority children.

After September 1, 1978, Part B funds may be used:

(1) To continue supporting child identification, location, and evaluation activities;

(2) To provide free appropriate public education to newly identified first priority children;

(3) To meet the full educational opportunities goal required under section 121a.304, including employing additional personnel and providing inservice training, in order to increase the level, intensity and quality of services provided to individual handicapped children; and

(4) To meet the other requirements of Part B.

§ 121a.322 First priority children—school year 1977-1978.

(a) In school year 1977-1978, if a major component of a first priority child's proposed educational program is not available (for example, there is no qualified teacher), the public agency responsible for the child's education shall:

(1) Provide an interim program of services for the child; and

(2) Develop an individualized education program for full implementation no later than September 1, 1978.

(b) A local educational agency may use Part B funds for training or other support services in school year 1977-1978 only if all of its first priority children have available to them at least an interim program of services.

(c) A State educational agency may use Part B funds for training or other support services in school year 1977-1978 only if all first priority children in the State have available to them at least an interim program of services.

(20 U.S.C. 1411 (b), (c).)

Comment. This provision is intended to make it clear that a State or local educational agency may not delay placing a previously unserved (first priority) child until it has, for example, implemented an inservice training program. The child must be placed. After the child is in at least an interim program, the State or local educational agency may use Part B funds for training or other support services needed to provide that child with a free appropriate public education.

§ 121a.323 Services to other children.

If a State or a local educational agency is providing free appropriate public education to all of its first priority children,

that State or agency may use funds provided under Part B of the Act:

(a) To provide free appropriate public education to handicapped children who are not receiving any education and who are in the age groups not covered under § 121a.300 in that State; or

(b) To provide free appropriate public education to second priority children; or

(c) Both.

(20 U.S.C. 1411(b)(1)(B), (b)(2)(B), (c)(2)(A)(ii).)

§ 121a.324 Application of local educational agency to use funds for the second priority.

A local educational agency may use funds provided under Part B of the Act for second priority children, if it provides assurance satisfactory to the State educational agency in its application (or an amendment to its application):

(a) That all first priority children have a free appropriate public education available to them;

(b) That the local educational agency has a system for the identification, location, and evaluation of handicapped children, as described in its application; and

(c) That whenever a first priority child is identified, located, and evaluated, the local educational agency makes available a free appropriate public education to the child.

(20 U.S.C. 1411 (b)(1)(B), (c)(1)(B); 1414(a)(1)(C)(ii).)

INDIVIDUALIZED EDUCATION PROGRAMS

§ 121a.340 Definition.

As used in this part, the term "individualized education program" means a written statement for a handicapped child that is developed and implemented in accordance with §§ 121a.341–121a.349.

(20 U.S.C. 1401(19).)

§ 121a.341 State educational agency responsibility.

(a) *Public agencies.* The State educational agency shall insure that each public agency develops and implements an individualized education program for each of its handicapped children.

(b) *Private schools and facilities.* The State educational agency shall insure that an individualized education program is developed and implemented for each handicapped child who:

(1) Is placed in or referred to a private school or facility by a public agency; or

(2) Is enrolled in a parochial or other private school and receives special education or related services from a public agency.

(20 U.S.C. 1412 (4), (6); 1413(a)(4).)

Comment. This section applies to all public agencies, including other State agencies (e.g., departments of mental health and welfare), which provide special education to a handicapped child either directly, by contract or through other arrangements. Thus, if a State welfare agency contracts with a private school or facility to provide special education to a handicapped child, that agency would be responsible for insuring that an individualized education program is developed for the child.

§ 121a.342 When individualized education programs must be in effect.

(a) On October 1, 1977, and at the beginning of each school year thereafter, each public agency shall have in effect an individualized education program for every handicapped child who is receiving special education from that agency.

(b) An individualized education program must:

(1) Be in effect before special education and related services are provided to a child; and

(2) Be implemented as soon as possible following the meetings under § 121a.343.

(20 U.S.C. 1412 (2)(B), (4), (6); 1414(a)(5); Pub. L. 94–142, Sec. 8(c) (1975).)

Comment. Under paragraph (b)(2), it is expected that a handicapped child's individualized education program (IEP) will be implemented immediately following the meetings under § 121a.343. An exception to this would be (1) when the meetings occur during the summer or a vacation period, or (2) where there are circumstances which require a short delay (e.g., working out transportation arrangements). However, there can be no undue delay in providing special education and related services to the child.

§ 121a.343 Meetings.

(a) *General.* Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising a handicapped child's individualized education program.

(b) *Handicapped children currently served.* If the public agency has determined that a handicapped child will receive special education during school year 1977–1978, a meeting must be held early enough to insure that an individualized education program is developed by October 1, 1977.

(c) *Other handicapped children.* For a handicapped child who is not included under paragraph (b) of this action, a meeting must be held within thirty calendar days of a determination that the child needs special education and related services.

(d) *Review.* Each public agency shall initiate and conduct meetings to periodically review each child's individualized education program and if appropriate revise its provisions. A meeting must be held for this purpose at least once a year.

(20 U.S.C. 1412 (2)(B), (4), (6); 1414(a)(5).)

Comment. The dates on which agencies must have individualized education programs (IEPs) in effect are specified in § 121a.342 (October 1, 1977, and the beginning of each school year thereafter). However, except for new handicapped children (i.e., those evaluated and determined to need special education after October 1, 1977), the timing of meetings to develop, review, and revise IEPs is left to the discretion of each agency.

In order to have IEPs in effect by the dates in § 121a.342, agencies could hold meetings at the end of the school year or during the summer preceding those dates. In meeting the October 1, 1977 timeline, meetings could be conducted up through the October 1 date. Thereafter, meetings may be held any time throughout the year, as long as IEPs are in effect at the beginning of each school year.

The statute requires agencies to hold a meeting at least once each year in order to review, and if appropriate revise, each child's IEP. The timing of those meetings could be on the anniversary date of the last IEP meeting on the child, but this is left to the discretion of the agency.

§ 121a.344 Participants in meetings.

(a) *General.* The public agency shall insure that each meeting includes the following participants:

(1) A representative of the public agency, other than the child's teacher, who is qualified to provide, or supervise the provision of, special education.

(2) The child's teacher.

(3) One or both of the child's parents, subject to § 121a.345.

(4) The child, where appropriate.

(5) Other individuals at the discretion of the parent or agency.

(b) *Evaluation personnel.* For a handicapped child who has been evaluated for the first time, the public agency shall insure:

(1) That a member of the evaluation team participates in the meeting; or

(2) That the representative of the public agency, the child's teacher, or some other person is present at the meeting, who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

(20 U.S.C. 1401(19); 1412 (2)(B), (4), (6); 1414(a)(5).)

Comment. 1. In deciding which teacher will participate in meetings on a child's individualized education program, the agency may wish to consider the following possibilities:

(a) For a handicapped child who is receiving special education, the "teacher" could be the child's special education teacher. If the child's handicap is a speech impairment, the "teacher" could be the speech-language pathologist.

(b) For a handicapped child who is being considered for placement in special education, the "teacher" could be the child's regular teacher, or a teacher qualified to provide education in the type of program in which the child may be placed, or both.

(c) If the child is not in school or has more than one teacher, the agency may designate which teacher will participate in the meeting.

2. Either the teacher or the agency representative should be qualified in the area of the child's suspected disability.

3. For a child whose primary handicap is a speech impairment, the evaluation personnel participating under paragraph (b)(1) of this section would normally be the speech-language pathologist.

§ 121a.345 Parent participation.

(a) Each public agency shall take steps to insure that one or both of the parents of the handicapped child are present at each meeting or are afforded the opportunity to participate, including:

(1) Notifying parents of the meeting early enough to insure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b) The notice under paragraph (a)(1) of this section must indicate the pur-

pose, time, and location of the meeting, and who will be in attendance.

(c) If neither parent can attend, the public agency shall use other methods to insure parent participation, including individual or conference telephone calls.

(d) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place such as:

(1) Detailed records of telephone calls made or attempted and the results of those calls.

(2) Copies of correspondence sent to the parents and any responses received, and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) The public agency shall take whatever action is necessary to insure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

(f) The public agency shall give the parent, on request, a copy of the individualized education program.

(20 U.S.C. 1401(19); 1412 (2)(B), (4), (6); 1414(a)(5).)

Comment. The notice in paragraph (a) could also inform parents that they may bring other people to the meeting. As indicated in paragraph (c), the procedure used to notify parents (whether oral or written or both) is left to the discretion of the agency, but the agency must keep a record of its efforts to contact parents.

§ 121a.346 Content of individualized education program.

The individualized education program for each child must include:

(a) A statement of the child's present levels of educational performance;

(b) A statement of annual goals, including short term instructional objectives;

(c) A statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs;

(d) The projected dates for initiation of services and the anticipated duration of the services; and

(e) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.

(20 U.S.C. 1401(19); 1412 (2)(B), (4), (6), 1414(a)(5); Senate Report No. 94-168, p. 11 (1975).)

§ 121a.347 Private school placements.

(a) *Developing individualized education programs.* (1) Before a public agency places a handicapped child in, or refers a child to, a private school or facility, the agency shall initiate and conduct a meeting to develop an individualized education program for the child in accordance with § 121a.343.

(2) The agency shall insure that a representative of the private school facility attends the meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private school or facility, including individual or conference telephone calls.

(3) The public agency shall also develop an individualized educational program for each handicapped child who was placed in a private school or facility by the agency before the effective date of these regulations.

(b) *Reviewing and revising individualized education programs.* (1) After a handicapped child enters a private school or facility, any meetings to review and revise the child's individualized education program may be initiated and conducted by the private school or facility at the discretion of the public agency.

(2) If the private school or facility initiates and conducts these meetings, the public agency shall insure that the parents and an agency representative:

(i) Are involved in any decision about the child's individualized education program; and

(ii) Agree to any proposed changes in the program before those changes are implemented.

(c) *Responsibility.* Even if a private school or facility implements a child's individualized education program, responsibility for compliance with this part remains with the public agency and the State educational agency.

(20 U.S.C. 1413(a)(4)(B).)

§ 121a.348 Handicapped children in parochial or other private schools.

If a handicapped child is enrolled in a parochial or other private school and receives special education or related services from a public agency, the public agency shall:

(a) Initiate and conduct meetings to develop, review, and revise an individualized education program for the child, in accordance with § 121a.343; and

(b) Insure that a representative of the parochial or other private school attends each meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private school, including individual or conference telephone calls.

(20 U.S.C. 1413(a)(4)(A).)

§ 121a.349 Individualized education program—accountability.

Each public agency must provide special education and related services to a handicapped child in accordance with an individualized education program. However, Part B of the Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives.

(20 U.S.C. 1412(2)(B); 1414(a) (5), (6); Cong. Rec. at H 7152 (daily ed., July 21, 1975).)

Comment. This section is intended to relieve concerns that the individualized education program constitutes a guarantee by the public agency and the teacher that a child will progress at a specified rate. However, this section does not relieve agencies and teachers from making good faith efforts to assist the child in achieving the objectives and goals listed in the individualized education program. Further, the section does not limit a parent's right to complain and ask for revisions of the child's program, or to invoke due process procedures, if the parent feels that these efforts are not being made.

Direct Service by the State Educational Agency

§ 121a.360 Use of local educational agency allocation for direct services.

(a) A State educational agency may not distribute funds to a local educational agency, and shall use those funds to insure the provision of a free appropriate public education to handicapped children residing in the area served by the local educational agency, if the local educational agency, in any fiscal year:

(1) Is entitled to less than $7,500 for that fiscal year (beginning with fiscal year 1979);

(2) Does not submit an application that meets the requirements of §§ 121a.220–121a.240;

(3) Is unable or unwilling to establish and maintain programs of free appropriate public education;

(4) Is unable or unwilling to be consolidated with other local educational agencies in order to establish and maintain those programs; or

(5) Has one or more handicapped children who can best be served by a regional or State center designed to meet the needs of those children.

(b) In meeting the requirements of paragraph (a) of this section, the State educational agency may provide special education and related services directly, by contract, or through other arrangements.

(c) The excess cost requirements under §§ 121a.182–121a.186 do not apply to the State educational agency.

(20 U.S.C. 1411(c)(4); 1413(b); 1414(d).)

Comment. Section 121a.360 is a combination of three provisions in the statute (Sections 611(c)(4), 613(b), and 614(d)). This section focuses mainly on the State's administration and use of local entitlements under Part B.

The State educational agency, as a recipient of Part B funds is responsible for insuring that all public agencies in the State comply with the provisions of the Act, regardless of whether they receive Part B funds. If a local educational agency elects not to apply for its Part B entitlement, the State would be required to use those funds to insure that a free appropriate public education (FAPE) is made available to children residing in the area served by that local agency. However, if the local entitlement is not sufficient for this purpose, additional State or local funds would have to be expended in order to insure that "FAPE" and the other requirements of the Act are met.

Moreover, if the local educational agency is the recipient of any other Federal funds, it would have to be in compliance with Subpart D of the regulations for section 504 of the Rehabilitation Act of 1973 (45 CFR Part 84). It should be noted that the term "FAPE" has different meanings under Part B and section 504. For example, under Part

B, "FAPE" is a statutory term which requires special education and related services to be provided in accordance with an individualized education program (IEP). However, under section 504, each recipient must provide an education which includes services that are "designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met * * *" Those regulations state that implementation of an IEP, in accordance with Part B, is one means of meeting the "FAPE" requirement.

§ 121a.361 Nature and location of services.

The State educational agency may provide special education and related services under § 121a.360(a) in the manner and at the location it considers appropriate. However, the manner in which the education and services are provided must be consistent with the requirements of this part (including the least restrictive environment provisions in §§ 121a.550–121a.556 of Subpart E).

(20 U.S.C. 1414(d).)

§ 121a.370 Use of State educational agency allocation for direct and support services.

(a) The State shall use the portion of its allocation it does not use for administration to provide support services and direct services in accordance with the priority requirements under §§ 121a.320–121a.324.

(b) For the purposes of paragraph (a) of this section:

(1) "Direct services" means services provided to a handicapped child by the State directly, by contract, or through other arrangements.

(2) "Support services" includes implementing the comprehensive system of personnel development under §§ 121a.380–121a.388, recruitment and training of hearing officers and surrogate parents, and public information and parent training activities relating to a free appropriate public education for handicapped children.

(20 U.S.C. 1411(b)(2), (c)(2).)

§ 121a.371 State matching.

Beginning with the period July 1, 1978–June 30, 1979, and for each following year, the funds that a State uses for direct and support services under § 121a.370 must be matched on a program basis by the State from funds other than Federal funds. This requirement does not apply to funds that the State uses under § 121a.360.

(20 U.S.C. 1411(c)(2)(B), (c)(4)(B).)

Comment. The requirement in § 121a.371 would be satisfied if the State can document that the amount of State funds expended for each major program area (e.g., the comprehensive system of personnel development) is at least equal to the expenditure of Federal funds in that program area.

§ 121a.372 Applicability of nonsupplanting requirement.

Beginning with funds appropriated for Fiscal Year 1979 and for each following Fiscal Year, the requirement in section 613(a)(9) of the Act, which prohibits supplanting with Federal funds, does not apply to funds that the State uses from its allocation under § 121a.706(a) of Subpart G for administration, direct services, or support services.

(20 U.S.C. 1411(c)(3).)

COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

§ 121a.380 Scope of system.

Each annual program plan must include a description of programs and procedures for the development and implementation of a comprehensive system of personnel development which includes:

(a) The inservice training of general and special educational instructional, related services, and support personnel;

(b) Procedures to insure that all personnel necessary to carry out the purposes of the Act are qualified (as defined in § 121a.12 of Subpart A) and that activities sufficient to carry out this personnel development plan are scheduled; and

(c) Effective procedures for acquiring and disseminating to teachers and administrators of programs for handicaped children significant information derived from educational research, demonstration, and similar projects, and for adopting, where appropriate, promising educational practices and materials developed through those projects.

(20 U.S.C. 1413(a)(3).)

§ 121a.381 Participation of other agencies and institutions.

(a) The State educational agency must insure that all public and private institutions of higher education, and other agencies and organizations (including representatives of handicapped, parent, and other advocacy organizations) in the State which have an interest in the preparation of personnel for the education of handicapped children, have an opportunity to participate fully in the development, review, and annual updating of the comprehensive system of personnel development.

(b) The annual program plan must describe the nature and extent of participation under paragraph (a) of this section and must describe responsibilities of the State educational agency, local educational agencies, public and private institutions of higher education, and other agencies:

(1) With respect to the comprehensive system as a whole, and

(2) With respect to the personnel development plan under § 121a.383.

(20 U.S.C. 1412(7)(A); 1413(a)(3).)

§ 121a.382 Inservice training.

(a) As used in this section, "inservice training" means any training other than that received by an individual in a full-time program which leads to a degree.

(b) Each annual program plan must provide that the State educational agency:

(1) Conducts an annual needs assessment to determine if a sufficient number of qualified personnel are available in the State; and

(2) Initiates inservice personnel development programs based on the assessed needs of State-wide significance related to the implementation of the Act.

(c) Each annual program plan must include the results of the needs assessment under paragraph (b)(1) of this section, broken out by need for new personnel and need for retrained personnel.

(d) The State educational agency may enter into contracts with institutions of higher education, local educational agencies or other agencies, institutions, or organizations (which may include parent, handicapped, or other advocacy organizations), to carry out:

(1) Experimental or innovative personnel development programs;

(2) Development or modification of instructional materials; and

(3) Dissemination of significant information derived from educational research and demonstration projects.

(e) Each annual program plan must provide that the State educational agency insures that ongoing inservice training programs are available to all personnel who are engaged in the education of handicapped children, and that these programs include:

(1) The use of incentives which insure participation by teachers (such as released time, payment for participation, options for academic credit, salary step credit, certification renewal, or updating professional skills);

(2) The involvement of local staff; and

(3) The use of innovative practices which have been found to be effective.

(f) Each annual program plan must:

(1) Describe the process used in determining the inservice training needs of personnel engaged in the education of handicapped children;

(2) Identify the areas in which training is needed (such as individualized education programs, non-discriminatory testing, least restrictive environment, procedural safeguards, and surrogate parents);

(3) Specify the groups requiring training (such as special teachers, regular teachers, administrators, psychologists, speech-language pathologists, audiologists, physical education teachers, therapeutic recreation specialists, physical therapists, occupational therapists, medical personnel, parents, volunteers, hearing officers, and surrogate parents);

(4) Describe the content and nature of training for each area under paragraph (f)(2) of this section;

(5) Describe how the training will be provided in terms of (i) geographical scope (such as Statewide, regional, or local), and (ii) staff training source (such as college and university staffs, State and local educational agency personnel, and non-agency personnel);

(6) Specify: (i) The funding sources to be used, and

(ii) The time frame for providing it; and

(7) Specify procedures for effective evaluation of the extent to which program objectives are met.

(20 U.S.C. 1413(a)(3).)

§ 121a.383 Personnel development plan.

Each annual program plan must: (a) Include a personnel development plan which provides a structure for personnel planning and focuses on preservice and inservice education needs;

(b) Describe the results of the needs assessment under § 121a.382(b)(1) with respect to identifying needed areas of training, and assigning priorities to those areas; and

(c) Identify the target populations for personnel development, including general education and special education instructional and administrative personnel, support personnel, and other personnel (such as paraprofessionals, parents, surrogate parents, and volunteers).

(20 U.S.C. 1413(a)(3).)

§ 121a.384 Dissemination.

(a) Each annual program plan must include a description of the State's procedures for acquiring, reviewing, and disseminating to general and special educational instructional and support personnel, administrators of programs for handicapped children, and other interested agencies and organizations (including parent, handicapped, and other advocacy organizations) significant information and promising practices derived from educational research, demonstration, and other projects.

(b) Dissemination includes:

(1) Making those personnel, administrators, agencies, and organizations aware of the information and practices;

(2) Training designed to enable the establishment of innovative programs and practices targeted on identified local needs; and

(3) Use of instructional materials and other media for personnel development and instructional programming.

(20 U.S.C. 1413(a)(3).)

§ 121a.385 Adoption of educational practices.

(a) Each annual program plan must provide for a statewide system designed to adopt, where appropriate, promising educational practices and materials proven effective through research and demonstration.

(b) Each annual program plan must provide for thorough reassessment of educational practices used in the State.

(c) Each annual program plan must provide for the identification of State, local, and regional resources (human and material) which will assist in meeting the State's personnel preparation needs.

(20 U.S.C. 1413(a)(3).)

§ 121a.386 Evaluation.

Each annual program plan must include:

(a) Procedures for evaluating the overall effectiveness of:

(1) The comprehensive system of personnel development in meeting the needs for personnel, and

(2) The procedures for administration of the system; and

(b) A description of the monitoring activities that will be undertaken to assure the implementation of the comprehensive system of personnel development.

(20 U.S.C. 1413(a)(3).)

§ 121a.387 Technical assistance to local educational agencies.

Each annual program plan must include a description of technical assistance that the State educational agency gives to local educational agencies in their implementation of the State's comprehensive system of personnel development.

(20 U.S.C. 1413(a)(3).)

Subpart D—Private Schools

HANDICAPPED CHILDREN IN PRIVATE SCHOOLS PLACED OR REFERRED BY PUBLIC AGENCIES

§ 121a.400 Applicability of §§ 121a.401–121a.403.

Sections 121a.401–121a.403 apply only to handicapped children who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.

(20 U.S.C. 1413(a)(4)(B).)

§ 121a.401 Responsibility of State educational agency.

Each State educational agency shall insure that a handicapped child who is placed in or referred to a private school or facility by a public agency:

(a) Is provided special education and related services:

(1) In conformance with an individualized education program which meets the requirements under §§ 121a.340–121a.349 of Subpart C;

(2) At no cost to the parents; and

(3) At a school or facility which meets the standards that apply to State and local educational agencies (including the requirements in this part); and

(b) Has all of the rights of a handicapped child who is served by a public agency.

(20 U.S.C. 1413(a)(4)(B).)

§ 121a.402 Implementation by State educational agency.

In implementing § 121a.401, the State educational agency shall:

(a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a handicapped child; and

(c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards which apply to them.

(20 U.S.C. 1413(a)(4)(B).)

§ 121a.403 Placement of children by parents.

(a) If a handicapped child has available a free appropriate public education and the parents choose to place the child in a private school or facility, the public agency is not required by this part to pay for the child's education at the private school or facility. However, the public agency shall make services available to the child as provided under §§ 121a.450–121a.460.

(b) Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures under §§ 121a.500–121a.514 of Subpart E.

(20 U.S.C. 1412(2)(B); 1415).)

HANDICAPPED CHILDREN IN PRIVATE SCHOOLS NOT PLACED OR REFERRED BY PUBLIC AGENCIES

§ 121a.450 Applicability of §§ 121a.451–121a.460.

As used in §§ 121a.451–121a.460, "private school handicapped children" means handicapped children enrolled in private schools or facilities other than handicapped children covered under §§ 121a.400–121a.403.

(20 U.S.C. 1413(a)(4)(A).)

§ 121a.451 State educational agency responsibility.

The State educational agency shall insure that:

(a) To the extent consistent with their number and location in the State, provision is made for the participation of private school handicapped children in the program assisted or carried out under this part by providing them with special education and related services; and

(b) The other requirements in §§ 121a.452–121a.460 are met.

(20 U.S.C. 1413(a)(4)(A).)

§ 121a.452 Local educational agency responsibility.

(a) Each local educational agency shall provide special education and related services designed to meet the needs of private school handicapped children residing in the jurisdiction of the agency.

(b) Each local educational agency shall provide private school handicapped children with genuine opportunities to participate in special education and related services consistent with the number of those children and their needs.

(20 U.S.C. 1413(a)(4)(A); 1414(a)(6).)

§ 121a.453 Determination of needs, number of children, and types of services.

The needs of private school handicapped children, the number of them who will participate under this part, and the types of special education and related services which the local educational agency will provide for them must be determined after consultation with persons knowledgeable of the needs of these

children, on a basis comparable to that used in providing for the participation under this part of handicapped children enrolled in public schools.

(20 U.S.C. 1413(a)(4)(A).)

§ 121a.454 Service arrangements.

Services to private school handicapped children may be provided through such arrangements as dual enrollment, educational radio and television, and the provision of mobile educational services and equipment.

(20 U.S.C. 1413(a)(4)(A).)

§ 121a.455 Differences in services to private school handicapped children.

A local educational agency may provide special education and related services to private school handicapped children which are different from the special education and related services it provides to public school children, if:

(a) The differences are necessary to meet the special needs of the private school handicapped children, and

(b) The special education and related services are comparable in quality, scope, and opportunity for participation to those provided to public school children with needs of equal importance.

(20 U.S.C. 1413(a)(4)(a); *Wheeler v. Barrera*, 417 U.S. 402 (1974).)

§ 121a.456 Personnel.

(a) Public school personnel may be made available in other than public school facilities only to the extent necessary to provide services required by the handicapped children for whose needs those services were designed, and only when those services are not normally provided by the private school.

(b) Each State or local educational agency providing services to children enrolled in private schools shall maintain continuing administrative control and direction over those services.

(c) The services provided with funds under Part B of the Act for eligible handicapped children enrolled in private schools may not include:

(1) The payment of salaries of teachers or other employees of private schools except for services performed outside their regular hours of duty and under public supervision and control; or

(2) The construction of private school facilities.

(20 U.S.C. 1413(a)(4)(A).)

§ 121a.457 Equipment.

(a) Equipment acquired with funds under Part B of the Act may be placed on private school premises for a limited period of time, but the title to and administrative control over all equipment must be retained and exercised by a public agency.

(b) In exercising administrative control, the public agency shall keep records of and account for the equipment, and shall insure that the equipment is used solely for the purposes of the program or project, and remove the equipment from the private school premises if necessary to avoid its being used for other purposes or if it is no longer needed for the purposes of the program or project.

(20 U.S.C. 1413(a)(4)(A).)

§ 121a.458 Prohibition of segregation.

Programs or projects carried out in public facilities, and involving joint participation by eligible handicapped children enrolled in private schools and handicapped children enrolled in public schools, may not include classes that are separated on the basis of school enrollment or the religious affiliations of the children.

(20 U.S.C. 1413(a)(4)(A).)

§ 121a.459 Funds and property not to benefit private school.

Funds provided under Part B of the Act and property derived from those funds may not inure to the benefit of any private school.

(20 U.S.C. 1413(a)(4)(A).)

§ 121a.460 Existing level of instruction.

Provisions for serving private school handicapped children may not include the financing of the existing level of instruction in the private schools.

(20 U.S.C. 1413(a)(4)(A).)

Subpart E—Procedural Safeguards

Due Process Procedures for Parents and Children

§ 121a.500 Definitions of "consent", "evaluation", and "personally identifiable".

As used in this part: "Consent" means that: (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and

(c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

"Evaluation" means procedures used in accordance with §§ 121a.530–121a.534 to determine whether a child is handicapped and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade, or class.

"Personally identifiable" means that information includes:

(a) The name of the child, the child's parent, or other family member;

(b) The address of the child;

(c) A personal identifier, such as the child's social security number or student number; or

(d) A list of personal characteristics or other information which would make it possible to identify the child with reasonable certainty.

(20 U.S.C. 1415, 1417(c).)

§ 121a.501 General responsibility of public agencies.

Each State educational agency shall insure that each public agency establishes and implements procedural safeguards which meet the requirements of §§ 121a.500–121a.514.

(20 U.S.C. 1415(a).)

§ 121a.502 Opportunity to examine records.

The parents of a handicapped child shall be afforded, in accordance with the procedures in §§ 121a.562–121a.569 an opportunity to inspect and review all education records with respect to:

(a) The identification, evaluation, and educational placement of the child, and

(b) The provision of a free appropriate public education to the child.

(20 U.S.C. 1415(b)(1)(A).)

§ 121a.503 Independent educational evaluation.

(a) *General.* (1) The parents of a handicapped child have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

(3) For the purposes of this part:

(i) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.

(ii) "Public expense" means that the public agency either pays for the full cost of the evaluation or insures that the evaluation is otherwise provided at no cost to the parent, consistent with § 121a.301 of Subpart C.

(b) *Parent right to evaluation at public expense.* A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. However, the public agency may initiate a hearing under § 121a.506 of this subpart to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(c) *Parent initiated evaluations.* If the parent obtains an independent educational evaluation at private expense, the results of the evaluation:

(1) Must be considered by the public agency in any decision made with respect to the provision of a free appropriate public education to the child, and

(2) May be presented as evidence at a hearing under this subpart regarding that child.

(d) *Requests for evaluations by hearing officers.* If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(e) *Agency criteria.* Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the public agency uses when it initiates an evaluation.

(20 U.S.C. 1415(b)(1)(A).)

§ 121a.504 Prior notice; parent consent.

(a) *Notice.* Written notice which meets the requirements under § 121a.505 must be given to the parents of a handicapped child a reasonable time before the public agency:

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child, or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

(b) *Consent.* (1) Parental consent must be obtained before:

(i) Conducting a preplacement evaluation; and

(ii) Initial placement of a handicapped child in a program providing special education and related services.

(2) Except for preplacement evaluation and initial placement, consent may not be required as a condition of any benefit to the parent or child.

(c) *Procedures where parent refuses consent.* (1) Where State law requires parental consent before a handicapped child is evaluated or initially provided special education and related services, State procedures govern the public agency in overriding a parent's refusal to consent.

(2)(i) Where there is no State law requiring consent before a handicapped child is evaluated or initially provided special education and related services, the public agency may use the hearing procedures in §§ 121a.506–121a.508 to determine if the child may be evaluated or initially provided special education and related services without parental consent.

(ii) If the hearing officer upholds the agency, the agency may evaluate or initially provide special education and related services to the child without the parent's consent, subject to the parent's rights under §§ 121a.510—121a.513.

(20 U.S.C. 1415(b)(1) (C), (D).)

Comment. 1. Any changes in a child's special education program, after the initial placement, are not subject to parental consent under Part B, but are subject to the prior notice requirement in paragraph (a) and the individualized education program requirements in Subpart C.

2. Paragraph (c) means that where State law requires parental consent before evaluation or before special education and related services are initially provided, and the parent refuses (or otherwise withholds) consent, State procedures, such as obtaining a court order authorizing the public agency to conduct the evaluation or provide the education and related services, must be followed.

If, however, there is no legal requirement for consent outside of these regulations, the public agency may use the due process procedures under this subpart to obtain a decision to allow the evaluation or services without parental consent. The agency must notify the parent of its actions, and the parent has appeal rights as well as rights at the hearing itself.

§ 121a.505 Content of notice.

(a) The notice under § 121a.504 must include:

(1) A full explanation of all of the procedural safeguards available to the parents under Subpart E;

(2) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;

(3) A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and

(4) A description of any other factors which are relevant to the agency's proposal or refusal.

(b) The notice must be:

(1) Written in language understandable to the general public, and

(2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(c) If the native language or other mode of communication of the parent is not a written language, the State or local educational agency shall take steps to insure:

(1) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(2) That the parent understands the content of the notice, and

(3) That there is written evidence that the requirements in paragraph (c) (1) and (2) of this section have been met.

(20 U.S.C. 1415(b)(1)(D))

§ 121a.506 Impartial due process hearing.

(a) A parent or a public educational agency may initiate a hearing on any of the matters described in § 121a.504(a)(1) and (2).

(b) The hearing must be conducted by the State educational agency or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the State educational agency.

(c) The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if:

(1) The parent requests the information; or

(2) The parent or the agency initiates a hearing under this section.

(20 U.S.C. 1416(b)(2).)

Comment: Many States have pointed to the success of using mediation as an intervening step prior to conducting a formal due process hearing. Although the process of mediation is not required by the statute or these regulations, an agency may wish to suggest mediation in disputes concerning the identification, evaluation, and educational placement of handicapped children, and the provision of a free appropriate public education to those children. Mediations have been conducted by members of State educational agencies or local educational agency personnel who were not previously involved in the particular case. In many cases, mediation leads to resolution of differences between parents and agencies without the development of an adversarial relationship and with minimal emotional stress. However, mediation may not be used to deny or delay a parent's rights under this subpart.

§ 121a.507 Impartial hearing officer.

(a) A hearing may not be conducted:

(1) By a person who is an employee of a public agency which is involved in the education or care of the child, or

(2) By any person having a personal or professional interest which would conflict with his or her objectivity in the hearing.

(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(c) Each public agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

(20 U.S.C. 1414(b)(2).)

§ 121a.508 Hearing rights.

(a) Any party to a hearing has the right to:

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;

(4) Obtain a written or electronic verbatim record of the hearing;

(5) Obtain written findings of fact and decisions. (The public agency shall transmit those findings and decisions, after deleting any personally identifiable information, to the State advisory panel established under Subpart F).

(b) Parents involved in hearings must be given the right to:

(1) Have the child who is the subject of the hearing present; and

(2) Open the hearing to the public.

(20 U.S.C. 1415(d).)

§ 121a.509 Hearing decision; appeal.

A decision made in a hearing conducted under this subpart is final, unless

a party to the hearing appeals the decision under § 121a.510 or § 121a.511.

(20 U.S.C. 1415(c).)

§ 121a.510 Administrative appeal; impartial review.

(a) If the hearing is conducted by a public agency other than the State educational agency, any party aggrieved by the findings and decision in the hearing may appeal to the State educational agency.

(b) If there is an appeal, the State educational agency shall conduct an impartial review of the hearing. The official conducting the review shall:

(1) Examine the entire hearing record;

(2) Insure that the procedures at the hearing were consistent with the requirements of due process;

(3) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in § 121a.508 apply;

(4) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

(5) Make an independent decision on completion of the review; and

(6) Give a copy of written findings and the decision to the parties.

(c) The decision made by the reviewing official is final, unless a party brings a civil action under § 121a.512.

(20 U.S.C. 1415 (c), (d); H. Rep. No. 94-664, at p. 49 (1975).)

Comment. 1. The State educational agency may conduct its review either directly or through another State agency acting on its behalf. However, the State educational agency remains responsible for the final decision on review.

2. All parties have the right to continue to be represented by counsel at the State administrative review level, whether or not the reviewing official determines that a further hearing is necessary. If the reviewing official decides to hold a hearing to receive additional evidence, the other rights in section 121a.508, relating to hearings, also apply.

§ 121a.511 Civil action.

Any party aggrevied by the findings and decision made in a hearing who does not have the right to appeal under § 121a.510 of this subpart, and any party aggrieved by the decision of a reviewing officer under § 121a.510 has the right to bring a civil action under section 615(e)(2) of the Act.

(20 U.S.C. 1415.)

§ 121a.512 Timeliness and convenience of hearings and reviews.

(a) The public agency shall insure that not later than 45 days after the receipt of a request for a hearing:

(1) A final decision is reached in the hearing; and

(2) A copy of the decision is mailed to each of the parties.

(b) The State educational agency shall insure that not later than 30 days after the receipt of a request for a review:

(1) A final decision is reached in the review; and

(2) A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place which is reasonably convenient to the parents and child involved.

(20 U.S.C. 1415.)

§ 121a.513 Child's status during proceedings.

(a) During the pendency of any administrative or judicial proceeding regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

(20 U.S.C. 1415(e)(3).)

Comment. Section 121a.513 does not permit a child's placement to be changed during a complaint proceeding, unless the parents and agency agree otherwise. While the placement may not be changed, this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others.

§ 121a.514 Surrogate parents.

(a) *General.* Each public agency shall insure that the rights of a child are protected when:

(1) No parent (as defined in § 121a.10) can be identified;

(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

(3) The child is a ward of the State under the laws of that State.

(b) *Duty of public agency.* The duty of a public agency under paragraph (a) of this section includes the assignment of an individual to act as a surrogate for the parents. This must include a method (1) for determining whether a child needs a surrogate parent, and (2) for assigning a surrogate parent to the child.

(c) *Criteria for selection of surrogates.* (1) The public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies shall insure that a person selected as a surrogate:

(i) Has no interest that conflicts with the interests of the child he or she represents; and

(ii) Has knowledge and skills, that insure adequate representation of the child.

(d) *Non-employee requirement; compensation.* (1) A person assigned as a surrogate may not be an employee of a public agency which is involved in the education or care of the child.

(2) A person who otherwise qualifies to be a surrogate parent under paragraph (c) and (d)(1) of this section, is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(e) *Responsibilities.* The surrogate parent may represent the child in all matters relating to:

(1) The identification, evaluation, and educational placement of the child, and

(2) The provision of a free appropriate public education to the child.

(20 U.S.C. 1415(b)(1)(B).)

PROTECTION IN EVALUATION PROCEDURES

§ 121a.530 General.

(a) Each State educational agency shall insure that each public agency establishes and implements procedures which meet the requirements of §§ 121a.530–121a.534.

(b) Testing and evaluation materials and procedures used for the purposes of evaluation and placement of handicapped children must be selected and administered so as not to be racially or culturally discriminatory.

(20 U.S.C. 1412(5)(C).)

§ 121a.531 Preplacement evaluation.

Before any action is taken with respect to the initial placement of a handicapped child in a special education program, a full and individual evaluation of the child's educational needs must be conducted in accordance with the requirements of § 121a.532.

(20 U.S.C. 1412(5)(C).)

§ 121a.532 Evaluation procedures.

State and local educational agencies shall insure, at a minimum, that:

(a) Tests and other evaluation materials:

(1) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;

(2) Have been validated for the specific purpose for which they are used; and

(3) Are administered by trained personnel in conformance with the instructions provided by their producer;

(b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;

(c) Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those

skills are the factors which the test purports to measure);

(d) No single procedure is used as the sole criterion for determining an appropriate educational program for a child; and

(e) The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability.

(f) The child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(20 U.S.C. 1412(5)(C).)

Comment. Children who have a speech impairment as their primary handicap may not need a complete battery of assessments (e.g., psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist would (1) evaluate each speech impaired child using procedures that are appropriate for the diagnosis and appraisal of speech and language disorders, and (2) where necessary, make referrals for additional assessments needed to make an appropriate placement decision.

§ 121a.533 Placement procedures.

(a) In interpreting evaluation data and in making placement decisions, each public agency shall:

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;

(2) Insure that information obtained from all of these sources is documented and carefully considered;

(3) Insure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(4) Insure that the placement decision is made in conformity with the least restrictive environment rules in §§ 121a.550–121a.554.

(b) If a determination is made that a child is handicapped and needs special education and related services, an individualized education program must be developed for the child in accordance with §§ 121a.340–121a.349 of Subpart C.

(20 U.S.C. 1412(5)(C); 1414(a)(5).)

Comment. Paragraph (a)(1) includes a list of examples of sources that may be used by a public agency in making placement decisions. The agency would not have to use all the sources in every instance. The point of the requirement is to insure that more than one source is used in interpreting evaluation data and in making placement decisions. For example, while all of the named sources would have to be used for a child whose suspected disability is mental retardation, they would not be necessary for certain other handicapped children, such as a child who has a severe articulation disorder as his primary handicap. For such a child, the speech-language pathologist, in complying with the multisource requirement, might use (1) a standardized test of articulation, and (2) observation of the child's articulation behavior in conversational speech.

§ 121a.534 Reevaluation.

Each State and local educational agency shall insure:

(a) That each handicapped child's individualized education program is reviewed in accordance with §§ 121a.340–121a.349 of Subpart C, and

(b) That an evaluation of the child, based on procedures which meet the requirements under § 121a.532, is conducted every three years or more frequently if conditions warrant or if the child's parent or teacher requests an evaluation.

(20 U.S.C. 1412(5)(c).)

LEAST RESTRICTIVE ENVIRONMENT

§ 121a.550 General.

(a) Each State educational agency shall insure that each public agency establishes and implements procedures which meet the requirements of §§ 121a.550–121a.556.

(b) Each public agency shall insure:

(1) That to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and

(2) That special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(20 U.S.C. 1412(5)(B); 1414(a)(1)(C)(iv).)

§ 121a.551 Continuum of alternative placements.

(a) Each public agency shall insure that a continuum of alternative placements is available to meet the needs of handicapped children for special education and related services.

(b) The continuum required under paragraph (a) of this section must:

(1) Include the alternative placements listed in the definition of special education under § 121a.13 of Subpart A (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions), and

(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

(20 U.S.C. 1412(5)(B).)

§ 121a.552 Placements.

Each public agency shall insure that:

(a) Each handicapped child's educational placement:

(1) Is determined at least annually,

(2) Is based on his or her individualized education program, and

(3) Is as close as possible to the child's home;

(b) The various alternative placements included under § 121a.551 are available to the extent necessary to implement the individualized education program for each handicapped child;

(c) Unless a handicapped child's individualized education program requires some other arrangement, the child is educated in the school which he or she would attend if not handicapped; and

(d) In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he or she needs.

(20 U.S.C. 1412(5)(B).)

Comment. Section 121a.552 includes some of the main factors which must be considered in determining the extent to which a handicapped child can be educated with children who are not handicapped. The overriding rule in this section is that placement decisions must be made on an individual basis. The section also requires each agency to have various alternative placements available in order to insure that each handicapped child receives an education which is appropriate to his or her individual needs.

The analysis of the regulations for Section 504 of the Rehabilitation Act of 1973 (45 CFR Part 84—Appendix, Paragraph 24) includes several points regarding educational placements of handicapped children which are pertinent to this section:

1. With respect to determining proper placements, the analysis states: "* * * it should be stressed that, where a handicapped child is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore regular placement would not be appropriate to his or her needs * * *."

2. With respect to placing a handicapped child in an alternate setting, the analysis states that among the factors to be considered in placing a child is the need to place the child as close to home as possible. Recipients are required to take this factor into account in making placement decisions. The parent's right to challenge the placement of their child extends not only to placement in special classes or separate schools, but also to placement in a distant school, particularly in a residential program. An equally appropriate education program may exist closer to home; and this issue may be raised by the parent under the due process provisions of this subpart.

§ 121a.553 Nonacademic settings.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 121a.306 of Subpart C, each public agency shall insure that each handicapped child participates with nonhandicapped children in those services and activities to the maximum extent appropriate to the needs of that child.

(20 U.S.C. 1412(5)(B).)

Comment. Section 121a.553 is taken from a new requirement in the final regulations for Section 504 of the Rehabilitation Act of 1973. With respect to this requirement, the analysis of the Section 504 Regulations includes the following statement: "[A new paragraph] specifies that handicapped children must also be provided nonacademic services in as integrated a setting as possible. This requirement is especially important for children whose educational needs necessitate their being solely with other handicapped children during most of each day. To the maximum extent appropriate, children in residential settings are also to be provided

opportunities for participation with other children." (45 CFR Part 84—Appendix, Paragraph 24.)

§ 121a.554 Children in public or private institutions.

Each State educational agency shall make arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures) as may be necessary to insure that § 121a.550 is effectively implemented.

(20 U.S.C. 1412(5)(B).)

Comment. Under section 612(5)(B) of the statute, the requirement to educate handicapped children with nonhandicapped children also applies to children in public and private institutions or other care facilities. Each State educational agency must insure that each applicable agency and institution in the State implements this requirement. Regardless of other reasons for institutional placement, no child in an institution who is capable of education in a regular public school setting may be denied access to an education in that setting.

§ 121a.555 Technical assistance and training activities.

Each State educational agency shall carry out activities to insure that teachers and administrators in all public agencies:

(a) Are fully informed about their responsibilities for implementing § 121a.550, and

(b) Are provided with technical assistance and training necessary to assist them in this effort.

(20 U.S.C. 1412(5)(B).)

§ 121a.556 Monitoring activities.

(a) The State educational agency shall carry out activities to insure that § 121a.550 is implemented by each public agency.

(b) If there is evidence that a public agency makes placements that are inconsistent with § 121a.550 of this subpart, the State educational agency:

(1) Shall review the public agency's justification for its actions, and

(2) Shall assist in planning and implementing any necessary corrective action.

(20 U.S.C. 1412(5)(B).)

Confidentiality of Information

§ 121a.560 Definitions.

As used in this subpart:

"Destruction" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

"Education records" means the type of records covered under the definition of "education records" in Part 99 of this title (the regulations implementing the Family Educational Rights and Privacy Act of 1974).

"Participating agency" means any agency or institution which collects, maintains, or uses personally identifiable information, or from which information is obtained, under this part.

(20 U.S.C. 1412(2)(D); 1417(c).)

§ 121a.561 Notice to parents.

(a) The State educational agency shall give notice which is adequate to fully inform parents about the requirements under § 121a.128 of Subpart B, including:

(1) A description of the extent to which the notice is given in the native languages of the various population groups in the State;

(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(3) A summary of the policies and procedures which participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all of the rights of parents and children regarding this information, including the rights under section 438 of the General Education Provisions Act and Part 99 of this title (the Family Educational Rights and Privacy Act of 1974, and implementing regulations).

(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

(20 U.S.C. 1412(2)(D); 1417(c).)

§ 121a.562 Access rights.

(a) Each participating agency shall permit parents to inspect and review any education records relating to their children which are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, or placement of the child, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section includes:

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

(20 U.S.C. 1412(2)(D); 1417(c).)

§ 121a.563 Record of access.

Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under this part (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

(20 U.S.C. 1412(2)(D); 1417(c).)

§ 121a.564 Records on more than one child.

If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(20 U.S.C. 1412(2)(D); 1417(c).)

§ 121a.565 List of types and locations of information.

Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

(20 U.S.C. 1412(2)(D); 1417(c).)

§ 121a.566 Fees.

(a) A participating education agency may charge a fee for copies of records which are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

(20 U.S.C. 1412(2)(D); 1417(c).)

§ 121a.567 Amendment of records at parent's request.

(a) A parent who believes that information in education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child, may request the participating agency which maintains the information to amend the information.

(b) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the agency decides to refuse to amend the information in accordance with the request it shall inform the parent of the refusal, and advise the parent of the right to a hearing under § 121a.568.

(20 U.S.C. 1412(2)(D); 1417(c).)

§ 121a.568 Opportunity for a hearing.

The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to insure that it is not inaccurate, misleading,

or otherwise in violation of the privacy or other rights of the child.

(20 U.S.C. 1412(2)(D); 1417(c).)

§ 121a.569 Result of hearing.

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must:

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

(20 U.S.C. 1412(2)(D); 1417(c).)

§ 121a.570 Hearing procedures.

A hearing held under § 121a.568 of this subpart must be conducted according to the procedures under § 99.22 of this title.

(20 U.S.C. 1412(2)(D); 1417(c).)

§ 121a.571 Consent.

(a) Parental consent must be obtained before personally identifiable information is:

(1) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b) of this section; or

(2) Used for any purpose other than meeting a requirement under this part.

(b) An educational agency or institution subject to Part 99 of this title may not release information from education records to participating agencies without parental consent unless authorized to do so under Part 99 of this title.

(c) The State educational agency shall include policies and procedures in its annual program plan which are used in the event that a parent refuses to provide consent under this section.

(20 U.S.C. 1412(2)(D); 1417(c).)

§ 121a.572 Safeguards.

(a) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency shall assume responsibility for insuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under § 121a.129 of Subpart B and Part 99 of this title.

(d) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

(20 U.S.C. 1412(2)(D); 1417(c).)

§ 121a.573 Destruction of information.

(a) The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

(20 U.S.C. 1412(2)(D); 1417(c).)

Comment. Under section 121a.573, the personally identifiable information on a handicapped child may be retained permanently unless the parents request that it be destroyed. Destruction of records is the best protection against improper and unauthorized disclosure. However, the records may be needed for other purposes. In informing parents about their rights under this section, the agency should remind them that the records may be needed by the child or the parents for social security benefits or other purposes. If the parents request that the information be destroyed, the agency may retain the information in pargraph (b).

§ 121a.574 Children's rights.

The State educational agency shall include policies and procedures in its annual program plan regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

(20 U.S.C. 1412(2)(D); 1417(c).)

Comment. Note that under the regulations for the Family Educational Rights and Privacy Act (45 CFR 99.4(a)), the rights of parents regarding education records are transferred to the student at age 18.

§ 121a.575 Enforcement.

The State educational agency shall describe in its annual program plan the policies and procedures, including sanctions, which the State uses to insure that its policies and procedures are followed and that the requirements of the Act and the regulations in this part are met.

(20 U.S.C. 1412(2)(D); 1417(c).)

§ 121a.576 Office of Education.

If the Office of Education or its authorized representatives collect any personally identifiable information regarding handicapped children which is not subject to 5 U.S.C. 552a (The Privacy Act of 1974), the Commissioner shall apply the requirements of 5 U.S.C. section 552a(b)(1)–(2), (4)–(11); (c); (d); (e)(1), (2), (3)(A), (B), and (D), (5)–(10); (h); (m); and (n), and the regulations implementing those provisions in Part 5b of this title.

(20 U.S.C. 1412(2)(D); 1417(c).)

Office of Education Procedures

§ 121a.580 Opportunity for a hearing.

The Commissioner gives a State educational agency reasonable notice and an opportunity for a hearing before taking any of the following actions:

(a) Disapproval of a State's annual program plan under § 121a.113 of Subpart B.

(b) Withholding payments from a State under § 121a.590 or under section 434(c) of the General Education Provisions Act.

(c) Waiving the requirement under § 121a.589 of this subpart regarding supplementing and supplanting with funds provided under Part B of the Act.

(20 U.S.C. 1232c(c); 1413(a)(9)(B); 1413(c); 1416.)

§ 121a.581 Hearing panel.

The Commissioner appoints a Hearing Panel consisting of not less than three persons to conduct any hearing under § 121a.530 of this subpart.

(20 U.S.C. 1232c(c); 1413(a)(9)(B); 1413(c); 1416.)

§ 121a.582 Hearing procedures.

(a)(1) If the Hearing Panel determines that oral testimony would not materially assist the resolution of disputed facts, the Panel shall give each party an opportunity for presenting the case:

(i) In whole or in part in writing, or

(ii) In an informal conference before the Hearing Panel.

(2) The Hearing Panel shall give each party:

(i) Notice of the issues to be considered (if this notice has not already been given); and

(ii) An opportunity to be represented by counsel.

(b) If the Hearing Panel determines that oral testimony would materially assist the resolution of disputed facts, the Panel shall give each party, in addition to the requirements under paragraph (a)(2) of this section:

(1) An opportunity to obtain a record of the proceedings;

(2) An opportunity to present witnesses on the party's behalf; and

(3) An opportunity to cross-examine witnesses either orally or with written questions.

(20 U.S.C. 1232c(c); 1413(a)(9)(B); 1413(c); 1416.)

§ 121a.583 Initial decision; final decision.

(a) The Hearing Panel shall prepare an initial written decision which includes findings of fact and the conclusions based on those facts.

(b) The Hearing Panel shall mail a copy of the initial decision to each party (or to the party's counsel) and to the Commissioner, with a notice that each

party has an opportunity to submit written comments regarding the decision to the Commissioner within a specified reasonable time.

(c) The initial decision of the Hearing Panel is the final decision of the Commissioner unless, within 25 days after the end of the time for receipt of written comments, the Commissioner informs the Panel in writing that the decision is being reviewed.

(d) Review by the Commissioner is based on the decision, the written record, if any, of the Hearing Panel's proceedings, and written comments or oral arguments by the parties.

(e) No decision under this section becomes final until it is served on the State educational agency or its attorney.

(20 U.S.C. 1232c(c); 1413(a)(9)(b); 1413(c); 1416.)

§ 121a.589 Waiver of requirement regarding supplementing and supplanting with Part B funds.

(a) Under sections 613(a)(9)(B) and 614(a)(2)(B)(ii) of the Act, State and local Educational agencies must insure that Federal funds provided under Part B of the Act are used to supplement the level of State and local funds expended for the education of handicapped children, and in no case to supplant those State and local funds. Beginning with funds appropriated for fiscal year 1979 and for each following fiscal year, the nonsupplanting requirement only applies to funds allocated to local educational agencies. (See § 121a.372.)

(b) If the State provides clear and convincing evidence that all handicapped children have available to them a free appropriate public education, the Commissioner may waive in part the requirement under sections 613(a)(9)(B) and 614(a)(2)(B)(ii) of the Act if the Commissioner concurs with the evidence provided by the State.

(c) If a State wishes to request a waiver, it must inform the Commissioner in writing. The Commissioner then provides the State with a finance and membership report form which provides the basis for the request.

(d) In its request for a waiver, the State shall include the results of a special study made by the State to obtain evidence of the availability of a free appropriate public education to all handicapped children. The special study must include statements by a representative sample of organizations which deal with handicapped children, and parents and teachers of handicapped children, relating to the following areas:

(1) The adequacy and comprehensiveness of the State's system for locating, identifying, and evaluating handicapped children, and

(2) The cost to parents, if any, for education for children enrolled in public and private day schools, and in public and private residential schools and institutions, and

(3) The adequacy of the State's due process procedures.

(e) In its request for a waiver, the State shall include finance data relating to the availability of a free appropriate public education for all handicapped children, including:

(1) The total current expenditures for regular education programs and special education programs by function and by source of funds (State, local, and Federal) for the previous school year, and

(2) The full-time equivalent membership of students enrolled in regular programs and in special programs in the previous school year.

(f) The Commissioner considers the information which the State provides under paragraph (d) and (e) of this section, along with any additional information he may request, or obtain through on-site reviews of the State's education programs and records, to determine if all children have available to them a free appropriate public education, and if so, the extent of the waiver.

(g) The State may request a hearing under §§ 121a.580–121a.583 with regard to any final action by the Commissioner under this section.

(20 U.S.C. 1411(c)(3); 1413(a)(9)(B).)

§ 121a.590 Withholding payments.

(a) The Commissioner may make the following findings only after reasonable notice and an opportunity for a hearing under §§ 121a.580–121a.583 to the State educational agency involved (and to any local educational agency affected by any failure described in paragraph (a)(2) of this section):

(1) That there has been a failure to comply substantially with the provisions of section 612 and 613 of the Act, or

(2) That in the administration of the annual program plan there is a failure to comply with any provision of this part or with any requirement in the application of a local educational agency approved by the State educational agency under the annual program plan.

(b) After making either of the findings in paragraph (a) of this section, the Commissioner:

(1) Shall, after notifying the State educational agency, withhold any further payments to the State under this part, and

(2) May, after notifying the State educational agency, withhold further payments to the State under the Federal programs referred to in § 121a.139 of Subpart B which are within his jurisdiction, to the extent that funds under those programs are available for the provision of assistance for the education of handicapped children.

(c) If the Commissioner withholds payments under paragraph (b) of this section he may determine:

(1) That withholding is limited to programs or projects under the annual program plan, or portions of it, affected by the failure, or

(2) That the State educational agency must not make further payments under Part B of the Act to specified local educational agencies affected by the failure.

(20 U.S.C. 1416(a).)

§ 121a.591 Reinstating payments.

Until the Commissioner is satisfied that there is no longer any failure to comply with the provisions of this part, as specified in § 121a.590(a):

(a) No further payments shall be made to the State under this part or under the Federal programs specified in section 613(a)(2) of the Act which are within his jurisdiction to the extent that funds under those programs are available for the provision of assistance for the education of handicapped children, or

(b) Payments by the State educational agency under this part shall be limited to local educational agencies whose actions did not cause or were not involved in the failure.

(20 U.S.C. 1416(a).)

§ 121a.592 Public notice by State and local educational agencies.

Any State educational agency and local educational agency which receives a notice under § 121a.590(a) shall by means of a public notice, take any necessary measures to inform the public within the agency's jurisdiction of the pendency of the action.

(20 U.S.C. 1416(a).)

§ 121a.593 Judicial review of Commissioner's final action on annual program plan.

If any State is dissatisfied with the Commissioner's final action with respect to its annual program plan submitted under Subpart B, the State may under section 616(b) of the Act, within sixty days after notice of the action, file a petition for review of that action with the United States Court of Appeals for the circuit in which the State is located.

(20 U.S.C. 1416(b).)

Subpart F—State Administration

State Educational Agency Responsibilities: General

§ 121a.600 Responsibility for all educational programs.

(a) The State educational agency is responsible for insuring:

(1) That the requirements of this part are carried out; and

(2) That each educational program for handicapped children administered within the State, including each program administered by any other public agency:

(i) Is under the general supervision of the persons responsible for educational programs for handicapped children in the State educational agency, and

(ii) Meets education standards of the State educational agency (including the requirements of this part).

(b) The State must comply with paragraph (a) of this section through State statute, State regulation, signed agreement between respective agency officials, or other documents.

(20 U.S.C. 1412(6).)

Comment. The requirement in § 121a.600 (a) is taken essentially verbatim from sec-

tion 612(6) of the statute and reflects the desire of the Congress for a central point of responsibility and accountability in the education of handicapped children within each State. With respect to State educational agency responsibility, the Senate Report on P.L. 94-142 includes the following statements:

This provision is included specifically to assure a single line of responsibility with regard to the education of handicapped children, and to assure that in the implementation of all provisions of this Act and in carrying out the right to education for handicapped children, the State educational agency shall be the responsible agency * * *.

Without this requirement, there is an abdication of responsibility for the education of handicapped children. Presently, in many States, responsibility is divided, depending upon the age of the handicapped child, sources of funding, and type of services delivered. While the Committee understands that different agencies may, in fact, deliver services, the responsibility must remain in a central agency overseeing the education of handicapped children, so that failure to deliver services or the violation of the rights of handicapped children is squarely the responsibility of one agency. (Senate Report No. 94-168, p. 24 (1975))

In meeting the requirements of this section, there are a number of acceptable options which may be adopted, including the following:

(1) Written agreements are developed between respective State agencies concerning State educational agency standards and monitoring. These agreements are binding on the local or regional counterparts of each State agency.

(2) The Governor's Office issues an administrative directive establishing the State educational agency responsibility.

(3) State law, regulation, or policy designates the State educational agency as responsible for establishing standards for all educational programs for the handicapped, and includes responsibility for monitoring.

(4) State law mandates that the State educational agency is responsible for all educational programs.

§ 121a.601 Monitoring and evaluation activities.

Each State educational agency shall:

(a) Undertake monitoring and evaluation activities to insure compliance of all public agencies within the State with the requirements of Subparts C, D, and E.

(b) Develop procedures (including specific timelines) for monitoring and evaluating public agencies involved in that education of handicapped children. These procedures must include:

(1) Collection of data and reports;

(2) Conduct of on-site visits;

(3) Audit of Federal fund utilization; and

(4) Comparison of a sampling of individualized education programs with the programs actually provided.

(20 U.S.C. 1412(6); 1413(a)(11).)

Comment: In carrying out the requirements of paragraph (b) of this section, State educational agencies could include additional procedures, such as involving parents or representatives of parent organizations in on-site visits and other monitoring activities.

§ 121a.602 Adoption of complaint procedures.

(a) Each State educational agency shall adopt effective procedures for reviewing, investigating, and acting on any allegations of substance, which may be made by public agencies, or private individuals, or organizations, of actions taken by any public agency that are contrary to the requirements of this part.

(b) In carrying out the requirements in paragraph (a) of this section, the State educational agency shall:

(1) Designate specific individuals within the agency who are responsible for implementing the requirements;

(2) Provide for negotiations, technical assistance activities, and other remedial action to achieve compliance; and

(3) Provide for the use of sanctions, including the withholding of Part B funds in accordance with § 121a.194

(20 U.S.C. 1412(6).)

Use of Funds

§ 121a.620 Federal funds for State administration.

A State may use five per cent of the total State allotment in any fiscal year under Part B of the Act, or $200,000, whichever is greater, for administrative costs related to carrying out sections 612 and 613 of the Act. However, this amount cannot be greater than the amount which the State may use under § 121a.704 or § 121a.705, as the case may be.

(20 U.S.C. 1411 (b), (c).)

§ 121a.621 Allowable costs.

(a) The State educational agency may use funds under § 121a.620 of this Subpart for:

(1) Administration of the annual program plan and for planning at the State level, including planning, or assisting in the planning, of programs or projects for the education of handicapped children;

(2) Approval, supervision, monitoring, and evaluation of the effectiveness of local programs and projects for the education of handicapped children;

(3) Technical assistance to local educational agencies with respect to the requirements of this part;

(4) Leadership services for the program supervision and management of special education activities for handicapped children; and

(5) Other State leadership activities and consultative services.

(b) The State educational agency shall use the remainder of its funds under § 121a.620 in accordance with § 121a.370 of Subpart C.

(20 U.S.C. 1411 (b), (c).)

State Advisory Panel

§ 121a.650 Establishment.

(a) Each State shall establish, in accordance with the provisions of this subpart, a State advisory panel on the education of handicapped children.

(b) The advisory panel must be appointed by the Governor or any other official authorized under State law to make those appointments.

(c) If a State has an existing advisory panel that can perform the functions in § 121a.652, the State may modify the existing panel so that it fulfills all of the requirements of this subpart, instead of establishing a new advisory panel.

(20 U.S.C. 1413(a)(12).)

§ 121a.651 Membership.

(a) The membership of the State advisory panel must be composed of persons involved in or concerned with the education of handicapped children. The membership must include at least one person representative of each of the following groups:

(1) Handicapped individuals.

(2) Teachers of handicapped children.

(3) Parents of handicapped children.

(4) State and local educational officials.

(5) Special education program administrators.

(b) The State may expand the advisory panel to include additional persons in the groups listed in paragraph (a) of this section and representatives of other groups not listed.

(20 U.S.C. 1413(a)(12).)

Comment. The membership of the State advisory panel, as listed in paragraphs (a)(1)-(5), is required in section 613(a)(12) of the Act. As indicated in paragraph (b), the composition of the panel and the number of members may be expanded at the discretion of the State. In adding to the membership, consideration could be given to having:

(1) An appropriate balance between professional groups and consumers (i.e., parents, advocates, and handicapped individuals);

(2) Broad representation within the consumer-advocate groups, to insure that the interests and points of view of various parents, advocates and handicapped individuals are appropriately represented;

(3) Broad representation within professional groups (e.g., (a) regular education personnel, (b) special educators, including teachers, teacher trainers, and administrators, who can properly represent various dimensions in the education of handicapped children, and (c) appropriate related services personnel); and

(4) Representatives from other State advisory panels (such as vocational education).

If a State elects to maintain a small advisory panel (e.g., 10-15 members), the panel itself could take steps to insure that it (1) consults with and receives inputs from various consumer and special interest professional groups, and (2) establishes committees for particular short-term purposes composed of representatives from those input groups.

§ 121a.652 Advisory panel functions.

The State advisory panel shall:

(a) Advise the State educational agency of unmet needs within the State in the education of handicapped children;

(b) Comment publicly on the State annual program plan and rules or regulations proposed for issuance by the

State regarding the education of handicapped children and the procedures for distribution of funds under this part; and

(c) Assist the State in developing and reporting such information and evaluations as may assist the Commissioner in the performance of his responsibilities under section 618.

(20 U.S.C. 1413(a)(12).)

§ 121a.653 Advisory panel procedures.

(a) The advisory panel shall meet as often as necessary to conduct its business.

(b) By July 1 of each year, the advisory panel shall submit an annual report of panel activities and suggestions to the State educational agency. This report must be made available to the public in a manner consistent with other public reporting requirements under this part.

(c) Official minutes must be kept on all panel meetings and shall be made available to the public on request.

(d) All advisory panel meetings and agenda items must be publicly announced prior to the meeting, and meetings must be open to the public.

(e) Interpreters and other necessary services must be provided at panel meetings for panel members or participants. The State may pay for these services from funds under § 121a.620.

(f) The advisory panel shall serve without compensation but the State must reimburse the panel for reasonable and necessary expenses for attending meetings and performing duties. The State may use funds under § 121a.620 for this purpose.

(20 U.S.C. 1413(a)(12).)

Subpart G—Allocation of Funds; Reports

Allocations

§ 121a.700 Special definition of the term State.

For the purposes of § 121a.701, § 121a.-702, and §§ 121a.704–121a.708, the term "State" does not include Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(20 U.S.C. 1411(a)(2).)

§ 121a.701 State entitlement; formula.

(a) The maximum amount of the grant to which a State is entitled under section 611 of the Act in any fiscal year is equal to the number of handicapped children aged three through 21 in the State who are receiving special education and related services, multiplied by the applicable percentage, under paragraph (b) of this section, of the average per pupil expenditure in public elementary and secondary schools in the United States.

(b) For the purposes of the formula in paragraph (a) of this section, the applicable percentage of the average per pupil expenditure in public elementary and secondary schools in the United States for each fiscal year is:

(1) 1978—5 percent,

(2) 1979—10 percent,

(3) 1980—20 percent,

(4) 1981—30 percent, and

(5) 1982, and for each fiscal year after 1982, 40 percent.

(20 U.S.C. 1411(a)(1).)

(c) For the purposes of this section, the average per pupil expenditure in public elementary and secondary schools in the United States, means the aggregate expenditures during the second fiscal year preceding the fiscal year for which the computation is made (or if satisfactory data for that year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the United States (which, for the purpose of this section, means the fifty States and the District of Columbia), plus any direct expenditures by the State for operation of those agencies (without regard to the source of funds from which either of those expenditures are made), divided by the aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year.

(20 U.S.C. 1411(a)(4).)

§ 121a.702 Limitations and exclusions.

(a) In determining the amount of a grant under § 121a.701 of this subpart, the Commissioner may not count:

(1) Handicapped children in a State to the extent that the number of those children is greater than 12 percent of the number of all children aged five through 17 in the State;

(2) Children with specific learning disabilities to the extent that the number of those children is greater than two percent of the number of all children aged five through 17 in the State; and

(3) Handicapped children who are counted under section 121 of the Elementary and Secondary Education Act of 1965.

(b) For the purposes of paragraph (a) of this section, the number of children aged five through 17 in any State shall be determined by the Commissioner on the basis of the most recent satisfactory data available to him.

(20 U.S.C. 1411(a)(5).)

§ 121a.703 Ratable reductions.

(a) *General.* If the sums appropriated for any fiscal year for making payments to States under section 611 of the Act are not sufficient to pay in full the total amounts to which all States are entitled to receive for that fiscal year, the maximum amount which all States are entitled to receive for that fiscal year shall be ratably reduced. In case additional funds become available for making payments for any fiscal year during which the preceding sentence is applicable, those reduced amounts shall be increased on the same basis they were reduced.

(20 U.S.C. 1411(g)(1).)

(b) *Reporting dates for local educational agencies and reallocations.*

(1) In any fiscal year in which the State entitlements have been ratably reduced, and in which additional funds have not been made available to pay in full the total of the amounts under paragraph (a) of this section, the State educational agency shall fix dates before which each local educational agency shall report to the State the amount of funds available to it under this part which it estimates it will expend.

(2) The amounts available under paragraph (a)(1) of this section, or any amount which would be available to any other local educational agency if it were to submit an application meeting the requirements of this part, which the State educational agency determines will not be used for the period of its availability, shall be available for allocation to those local educational agencies, in the manner provided in §121a.707, which the State educational agency determines will need and be able to use additional funds to carry out approved programs.

(20 U.S.C. 1411(g)(2).)

§ 121a.704 Hold harmless provision.

No State shall receive less than the amount it received under Part B of the Act for fiscal year 1977.

(20 U.S.C. 1411(a)(1).)

§ 121a.705 Within-State distribution: fiscal year 1978.

Of the funds received under § 121a.701 of this subpart by any State for fiscal year 1978:

(a) 50 percent may be used by the State in accordance with the provisions of § 121a.620 of Subpart F and § 121a.370 of Subpart C, and

(b) 50 percent shall be distributed to local educational agencies in the State in accordance with § 121a.707.

(20 U.S.C. 1411(b)(1).)

§ 121a.706 Within-State distribution: fiscal year 1979 and after.

Of the funds received under § 121a.701 by any State for fiscal year 1979, and for each fiscal year after fiscal year 1979:

(a) 25 percent may be used by the State in accordance with § 121a.620 of Subpart F and § 121a.370 of Subpart C, and

(b) 75 percent shall be distributed to the local educational agencies in the State in accordance with § 121a.707.

(20 U.S.C. 1411(c)(1).)

§ 121a.707 Local educational agency entitlements; formula.

From the total amount of funds available to all local educational agencies, each local educational agency is entitled to an amount which bears the same ratio to the total amount as the number of handicapped children aged three through 21 in that agency who are receiving special education and related services bears to the aggregate number of handicapped children aged three through 21 receiving special education and related services in all local educational agencies which apply to the State educational agency for funds under Part B of the Act.

(20 U.S.C. 1411(d).)

§ 121a.708 Reallocation of local educational agency funds.

If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all handicapped children residing in the area served by the local agency with State and local funds otherwise available to the local agency, the State educational agency may reallocate funds (or portions of those funds which are not required to provide special education and related services) made available to the local agency under § 121a.707, to other local educational agencies within the State which are not adequately providing special education and related services to all handicapped children residing in the areas served by the other local educational agencies.

(20 U.S.C. 1414(e).)

§ 121a.709 Payments to Secretary of Interior.

(a) The Commissioner is authorized to make payments to the Secretary of the Interior according to the need for that assistance for the education of handicapped children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior.

(b) The amount of those payments for any fiscal year shall not exceed one percent of the aggregate amounts available to all States for that fiscal year under Part B of the Act.

(20 U.S.C. 1411(f)(1).)

§ 121a.710 Entitlements to jurisdictions.

(a) The jurisdictions to which this section applies are Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(b) Each jurisdiction under paragraph (a) of this section is entitled to a grant for the purposes set forth in section 601 (c) of the Act. The amount to which those jurisdictions are so entitled for any fiscal year shall not exceed an amount equal to 1 percent of the aggregate of the amounts available to all States under this part for that fiscal year. Funds appropriated for those jurisdictions shall be allocated proportionately among them on the basis of the number of children aged three through twenty-one in each jurisdiction. However, no jurisdiction shall receive less than $150,000, and other allocations shall be ratably reduced if necessary to insure that each jurisdiction receives at least that amount.

(c) The amount expended for administration by each jurisdiction under this section shall not exceed 5 percent of the amount allotted to the jurisdiction for any fiscal year, or $35,000, whichever is greater.

(20 U.S.C. 1411(e).)

REPORTS

§ 121a.750 Annual report of children served—report requirement.

(a) The State educational agency shall report to the Commissioner no later than April 1 of each year the number of handicapped children aged three through 21 residing in the State who are receiving special education and related services.

(b) The State educational agency shall submit the report on forms provided by the Commissioner.

(20 U.S.C. 1411(a)(3).)

Comment. It is very important to understand that this report and the requirements that relate to it are solely for allocation purposes. The population of children the State may count for allocation purposes may differ from the population of children to whom the State must make available a free appropriate public education. For example, while section 611(a)(5) of the Act limits the number of children who may be counted for allocation purposes to 12 percent of the general school population aged five through seventeen, a State might find that 14 percent (or some other percentage) of its children are handicapped. In that case, the State must make free appropriate public education available to all of those handicapped children.

§ 121a.751 Annual report of children served—information required in the report.

(a) In its report, the State educational agency shall include a table which shows:

(1) The number of handicapped children receiving special education and related services on October 1 and on February 1 of that school year, and the average of the numbers for those two dates;

(2) The number of those handicapped children within each disability category, as defined in the definition of "handicapped children" in § 121a.5 of Subpart A; and

(3) The number of those handicapped children within each of the following age groups:

(i) Three through five;

(ii) Six through seventeen; and

(iii) Eighteen through twenty-one.

(b) A child must be counted as being in the age group corresponding to his or her age on the date of the count: October 1 or February 1, as the case may be.

(c) The State educational agency may not report a child under more than one disability category.

(d) If a handicapped child has more than one disability, the State educational agency shall report that child in accordance with the following procedure:

(1) A child who is both deaf and blind must be reported as "deaf-blind."

(2) A child who has more than one disability (other than a deaf-blind child) must be reported as "multihandicapped."

(20 U.S.C. 1411(a)(3); 1411(a)(5)(A)(ii); 1418(b).)

§ 121a.752 Annual report of children served—certification.

The State educational agency shall include in its report a certification signed by an authorized official of the agency that the information provided is an accurate and unduplicated count of handicapped children receiving special education and related services on the dates in question.

(20 U.S.C. 1411(a)(3); 1417(b).)

§ 121a.753 Annual report of children served—criteria for counting children.

(a) The State educational agency may include handicapped children in its report who are enrolled in a school or program which is operated or supported by a public agency, and which either:

(1) Provides them with both special education and related services; or

(2) Provides them only with special education if they do not need related services to assist them in benefitting from that special education.

(b) The State educational agency may not include handicapped children in its report who:

(1) Are not enrolled in a school or program operated or supported by a public agency;

(2) Are not provided special education that meets State standards;

(3) Are not provided with a related service that they need to assist them in benefitting from special education;

(4) Are counted by a State agency under section 121 of the Elementary and Secondary Education Act of 1965, as amended; or

(5) Are receiving special education funded solely by the Federal Government. However, the State may count children covered under § 121a. 186(b) of Subpart B.

(20 U.S.C. 1411(a)(3); 1417(b).)

Comment. 1. Under paragraph (a), the State may count handicapped children in a Head Start or other preschool program operated or supported by a public agency if those children are provided special education that meets State standards.

2. "Special education," by statutory definition, must be at no cost to parents. As of September 1, 1978, under the free appropriate public education requirement, both special education and related services must be at no cost to parents.

There may be some situations, however, where a child receives special education from a public source at no cost, but whose parents pay for the basic or regular education. This child may be counted. The Office of Education expects that there would only be limited situations where special education would be clearly separate from regular education—generally, where speech therapy is the only special education required by the child. For example, the child might be in a regular program in a parochial or other private school but receiving speech therapy in a program funded by the local educational agency. Allowing these children to be counted will provide incentives (in addition to complying with the legal requirement in section 613(a)(4)(A) of the Act regarding private schools) to public agencies to provide services to children in private schools, since funds are generated in part on the basis of the number of children provided special education and related services. Agencies should understand, however, that where a handicapped child is placed in or referred to a public or private school for educational purposes, special education includes the entire educational program provided to the child. In that case, parents may not be charged for any part of the child's education.

A State may not count Indian children on or near reservations and children on military facilities if it provides them no special

education. If a State or local educational agency is responsible for serving these children, and does provide them special education and related services, they may be counted.

§ 121a.754 Annual report of children served—other responsibilities of the State educational agency.

In addition to meeting the other requirements in this subpart, the State educational agency shall:

(a) Establish procedures to be used by local educational agencies and other educational institutions in counting the number of handicapped children receiving special education and related services;

(b) Set dates by which those agencies and institutions must report to the State educational agency to insure that the State complies with § 121a.750(a);

(c) Obtain certification from each agency and institution that an unduplicated and accurate count has been made;

(d) Aggregate the data from the count obtained from each agency and institution, and prepare the reports required under this subpart; and

(e) Insure that documentation is maintained which enables the State and the Commissioner to audit the accuracy of the count.

(20 U.S.C. 1411(a)(3); 1417(b).)

Comment. States should note that the data required in the annual report of children served are not to be transmitted to the Commissioner in personally identifiable form. States are encouraged to collect these data in non-personally identifiable form.

APPENDIX A—ANALYSIS OF FINAL REGULATION (45 CFR PART 121a) UNDER PART B OF THE EDUCATION OF THE HANDICAPPED ACT

These regulations set forth requirements to be followed by States and localities if they are to receive funds under Part B of the Education of the Handicapped Act. The regulations cover matters such as the identification, location, and evaluation of handicapped children; the provision of free appropriate public education; the establishment of a full educational opportunity goal; the count of handicapped children for allocation purposes; priorities in the use of Part B funds; the proper use of Part B funds; the development of an individualized education program; the creation of a comprehensive personnel development system; procedural safeguards (e.g. right to notice and conduct of hearings); methods to guarantee public participation; and details about State annual program plans and local educational agency applications.

RELATIONSHIP BETWEEN REGULATIONS UNDER PART B AND REGULATIONS UNDER SECTION 504

The regulations under section 504 of the Rehabilitation Act of 1973 (45 CFR Part 84; published at 42 FR 22675; May 4, 1977) deal with nondiscrimination on the basis of handicap and basically require that recipients of Federal funds provide equal opportunities to handicapped persons (for example, that they meet the needs of handicapped persons to the same extent that the needs of nonhandicapped persons are met). Subpart D of the section 504 regulations ("Preschool, Elementary, and Secondary Education") contains requirements very similar to those in Part B of the Education of the Handicapped Act.

Basically, both require that handicapped persons be provided a free appropriate public education; that handicapped students be educated with nonhandicapped students to the extent appropriate; that educational agencies identify and locate all unserved handicapped children; that evaluation procedures be adopted to insure appropriate classification and educational services; and that procedural safeguards be established.

In several respects, however, the section 504 regulations are broader in coverage than Part B. For example, the definition of "handicapped person" and "qualified handicapped person" under section 504 covers a broader population than the definition of "handicapped children" under Part B. Under the Part B definition, a handicapped child is a child who has one of the impairments listed in the Act, who because of that impairment requires special education and related services. Under section 504, a handicapped person is a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of that type of impairment, or is regarded as having that impairment (§ 84.3(j)).

The regulations for section 504 also deal with a number of subjects not covered by the Part B regulations (for example, barrier-free facilities and program accessibility; employment; postsecondary education and health, welfare and social services). On the other side, Part B contains a substantial number of administrative requirements not included under section 504 (for example, annual program plans and local applications) and requires more detailed procedures and policies in many instances (such as due process procedures).

In several instances, the section 504 regulations specifically reference where a requirement may be met by complying with a requirement under Part B. For example, § 84.33(b)(2), dealing with appropriate education, cites implementation of an individualized education program as one means of meeting the requirement. Section 84.33(d) has a September 1, 1978 outside date for providing an appropriate education to qualified handicapped persons (conforming to the timelines in Part B). Section 84.35(d) indicates that a reevaluation procedure consistent with the Part B requirements is one means of meeting the reevaluation requirements under section 504. Section 84.36, dealing with due process requirements, indicates that compliance with the procedural safeguards in Part B is one means of meeting those requirements.

It should be noted that the term "free appropriate public education" (FAPE) has different meanings under Part B and section 504. For example, under Part B, "FAPE" is a statutory term which requires special education and related services to be provided in accordance with an individualized education program. However, under section 504, each recipient must provide an education which includes "the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met * * *"

There is also a major difference between Part B and the section 504 regulations concerning the matter of exclusion of handicapped children from school. As of the effective date of the section 504 regulations (June 3, 1977), exclusion of handicapped children from school constitutes a violation of those requirements. However, under Part B, States are not required to serve all handicapped children aged 3–18 until September 1, 1978. As stated in Appendix A of the section 504 regulations:

The EHA requires a free appropriate education to be provided to handicapped children "no later than September 1, 1978," but section 504 contains no authority for delaying enforcement. To resolve this problem, a new paragraph (d) has been added to § 84.33. Section 84.33(d) requires recipients to achieve full compliance with the free appropriate public education requirements of § 84.33 as expeditiously as possible, but in no event later than September 1, 1978. The provision also makes clear that, as of the effective date of this regulation, no recipient may exclude a qualified handicapped child from its educational program. This provision against exclusion is consistent with the order of providing services set forth in section 612(3) of the EHA, which places the highest priority on providing services to handicapped children who are not receiving an education.

PART 121a—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

SUBPART A—GENERAL

Subpart A sets forth the purposes and applicability of these regulations and includes definitions of statutory terms (e.g. free appropriate public education, special education, and related services) and other definitions related to those terms.

The following comments were received regarding Subpart A.

APPLICABILITY OF REGULATIONS TO STATE, LOCAL AND PRIVATE AGENCIES (§ 121a.2)

Comment: A commenter felt that the statement regarding the applicability of the regulations was not clear, and should be revised to indicate that the requirements apply to any public agency serving handicapped children, even if the agency does not receive Part B funds.

Response: A definition of "public agency" has been added to the regulations. The definition includes all political subdivisions in the State that are responsible for educating handicapped children. Throughout the regulation, the term "public agency" has been used to make it clear where the requirements do not apply only to State and local educational agencies. In addition, an explanatory comment was added after section 121a.2 to make it clear that the requirements under Part B are binding on each public agency in the State that has direct or delegated authority for the education of handicapped children, regardless of whether that agency receives Part B funds.

DEFINITIONS (§§ 121a.4–121a.15)

Comment: Hundreds of comments were received regarding definitions in the proposed rules. Commenters requested that new definitions be added, or sought changes in existing definitions, especially definitions of various disability categories and the various types of related services. In many instances, revisions were sought to conform to the most recent definitions adopted or used by professional associations.

Response: Definitions of terms used in the regulations are taken from various statutes, Congressional reports, or materials provided by professional associations and other groups. Where appropriate, the Office of Education has attempted to incorporate changes recommended by commenters, and has made other changes to clarify the definitions. In addition, the following new terms were added:

Definitions of "deaf-blind" and "multihandicapped" were added because these are recognized categories of handicapped children in most States.

A definition of "qualified" was added in order to be able to use a consistent term in

referring to the qualifications of the various personnel.

The definition of "handicapped children" has been modified only by making certain clarifying changes. Although some commenters requested additional changes in the definitions of the various disability categories, it is felt that the definitions in this regulation must closely conform to current usage in the States and professions.

The related services definition was expanded to include "school health services." In addition, changes were made in the definitions of the individual terms included under "related services" (e.g., psychological services and recreation) to conform to recommendations of professional associations.

SUBPART B—STATE ANNUAL PROGRAM PLANS AND LOCAL APPLICATIONS

Subpart B includes the requirements relating to State annual program plans, local educational agency applications, participation by the Bureau of Indian Affairs, and public participation.

Two new sections (sections 121a.150 and 121a.239) have been added to require assurances from the State educational agencies and local educational agencies that the program under Part B will be operated in compliance with the section 504 regulations, including the requirements under section 606 of the Education of the Handicapped Act regarding employment of qualified handicapped individuals in programs assisted under the Act. (The Office for Civil Rights has been delegated authority for enforcing section 606.)

A substantial number of commenters were concerned with the following major issues in this subpart: (1) the amount of data required of State and local educational agencies; (2) the excess costs, nonsupplanting and comparability requirements; and (3) the public participation requirements. In addition, as with other subparts, many commenters objected to statutory requirements and sought interpretations of the statute and regulations.

ANNUAL PROGRAM PLANS

CONDITION OF ASSISTANCE (§ 121a.110)

Section 434(b) of the General Education Provisions Act (GEPA), as amended by Pub. L. 93-380, requires each State to submit (1) a general application containing five assurances, and (2) an annual program plan for each Office of Education program under which funds are provided to local educational agencies through, or under the supervision of, the State educational agency. Under Section 434(b), and the implementing regulations (45 CFR 100b, Subpart B), the general application and an annual program plan take the place of a State plan for Part B (45 CFR 100b.19).

The five assurances required under section 434(b) of the GEPA cover proper administration, fiscal control and accounting, reports, supplanting, and submission of the annual program plan. Where Part B contains plan requirements covering the same subject matters, submission of those plan requirements is satisfied by the State's submission of the general application. They do not have to be submitted as part of the annual plan. The Part B plan provisions which do not have to be submitted in the annual program plan are referenced in 45 CFR § 100b.17(c)(2)(iv). Note that a substantive section on the nonsupplanting requirement for local educational agencies is set out in § 121a.230.

Under 45 CFR 100b.18(c), material may be incorporated by reference in an annual program plan if the material is in a document previously approved by the Commissioner and on file in the Office of Education. This should save some paperwork, particularly in the years after the first annual program plan (for school year 1977-1978) is submitted under these regulations.

The provisions to be included in the annual program plan for Part B are set forth in §§ 121a.120-121a.151 of these regulations (which include the conditions of eligibility and the State plan requirements under sections 612 and 613 of the Act and section 434(b)(1)(B)(ii) of the GEPA (which requires each annual program plan to "set forth a statement describing the purposes for which Federal funds will be expended during the fiscal year for which the annual program plan is submitted")).

APPROVAL; DISAPPROVAL (§ 121a.113)

The following is clarification about the submission of draft annual program plans for review by the Office of Education and how this would affect the issuance of grant award documents:

A State educational agency may elect to send a copy of its proposed annual program plan to the Commissioner for technical assistance purposes at the same time that the plan is being made available for public comment. However, funds cannot be obligated by a State before the date on which its official adopted plan is received in substantially approvable form by the Federal Government. (See 45 CFR 100b.35.)

EXAMPLE: A State educational agency's proposed plan for a particular school year is received by the Bureau of Education for the Handicapped on June 1. Its official plan is received on August 1. When BEH approves the plan (e.g. September 1), the State educational agency will receive a grant award document which will show August 1, as the earliest date of obligation under that plan.

EFFECTIVE PERIOD OF ANNUAL PROGRAM PLAN (§ 121a.114)

The Office of Education is proposing to use the period July 1-June 30 for State annual program plans in those programs where appropriations become available for obligation by the Federal Government each July 1 (the so-called "advance funded" programs). The purpose of this is to meet the statutory requirement for an annual program plan covering a 12-month period and at the same time to conform as closely as possible to the regular school year. However, even if the proposed procedure is adopted, the obligational period of State and local agencies for funds from any fiscal year would not be changed. If a State submits its annual program plan and receives its grant on the earliest possible date (July 1), the funds are available for obligation at the State and local level for 27 months, subject to submission or extension of the annual program plan for the following year. (This period includes the 12-month carryover provision under the Tydings Amendment. See 45 CFR 100b.55 (Obligation by recipients).) For example, if a State received its grant for fiscal year 1978 on July 1, 1977, the funds would be available for obligation at the State and local level from July 1, 1977 through September 30, 1979. The rules which govern when an annual program plan becomes effective, and State and local authority to obligate the Federal funds are located in 45 CFR Part 100b, Subpart B.

PUBLIC PARTICIPATION (§ 121a.120)

Comment: Commenters wanted this section to be expanded to require the States to describe in detail a number of additional specific steps to be taken in complying with the public participation requirements of the Act. For example, they wanted States to develop a roster of interested persons to whom plans and other documents would routinely be sent. The commenters felt that these steps would be necessary to insure full public participation.

Response: Requirements have been added (in §§ 121a.280 et seq.) to spell out in more detail the State's duties regarding public participation in development of the annual program plan (for example, indicating in the notice of public hearings of the plan the timetable for developing the final plan and submitting it to the Commissioner). A requirement has also been added to specify that the plan must be available for comment at least 30 days following the date notice is given.

Another revised section indicates that the public participation requirements for local educational agencies are to be comparable to those required of the State, except that public hearings are not required (§ 121a.234).

FULL EDUCATIONAL OPPORTUNITY GOAL REQUIREMENTS (§§ 121a.124-121a.126)

Comment: Commenters disagreed about the amount of data which should be required under this (and other) sections. Some commenters sought to have the regulations require a substantial amount of additional data (about the population of handicapped children and their placements) on the grounds that it is needed for effective monitoring. Others sought to have the amount of data to be reported substantially reduced as unnecessary and fulfilling no useful purpose.

Response: The final regulations eliminate the data requirements in proposed section 121a.24(a) for school year 1977-1978. Since the funds for FY 1978 became available for obligation by the Federal government on July 1, 1977, the States began submitting annual program plans for school year 1977-1978 before these regulations were published. Therefore, it would be inappropriate to impose a retroactive data requirement. No substantive change has been made in the data requirement for school years 1978-1979 and thereafter. The Office of Education believes that the remaining amount of data sought is necessary and adequate to provide information on what and how children are being served. Additional information may be sought on a case by case basis from each State where necessary to monitor compliance with Part B. In addition, requirements have been added to Subpart F to increase each State's monitoring and enforcement obligations.

Comment: Commenters requested that the data requirements regarding personnel needed to meet the full educational opportunity goal include various other professional groups, such as physical therapists, or use terms currently accepted by the professions, such as "therapeutic recreation specialists" rather than "recreation therapists."

Response: These changes have been made to cover the various personnel who provide special education or related services and to use terms currently recognized by the appropriate professional associations.

LOCAL EDUCATIONAL AGENCY APPLICATIONS

PARENT INVOLVEMENT (§ 121a.226)

Comment: Commenters wanted the regulations to require the establishment of a parent advisory committee in each school district.

Response: No change has been made. Extensive public and parental participation is already required under sections 121a.226 and 121a.234.

EXCESS COST REQUIREMENTS (§§ 121a.182–121a.186)

Comment: A substantial number of commenters requested clarification and explanation of the excess cost requirement.

Response: The section on excess costs has been broken out into five sections for easier reading. Section 121a.184 specifies that a local educational agency must spend a certain minimum amount for the education of handicapped children before Part B funds may be used. A detailed example of determining the minimum amount follows revised section 121a.184.

NONSUPPLANTING AND COMPARABLE SERVICES (§§ 121a.230–121a.231)

Comment: A substantial number of commenters requested clarification of these requirements. Some commenters proposed detailed procedures and urged that the regulations require the reporting of a substantial amount of data to monitor compliance with these requirements. Some commenters felt the comparability requirement should be met by comparing expenses for regular and special education.

Response: These sections have been substantially revised to attempt to explain these requirements. Detailed procedures and reporting requirements are not adopted at this time because local educational agencies are otherwise required to maintain auditable records to document their compliance with these and other requirements.

Regarding nonsupplanting, the regulation provides that the requirement applies to total aggregate funds and particular costs. A local educational agency meets the requirement if (1) the total amount or average per capita amount of State and local school funds budgeted by the local educational agency for expenditures in the current fiscal year for the education of handicapped children is at least equal to the total amount or average per capita amount of State and local school funds actually expended for their education in the most recent preceding fiscal year for which information is available. Allowances may be made for decreases in enrollment of handicapped children and unusually large amounts of funds expended for long-term purposes (construction); and (2) Part B funds are not used to displace State or local funds for any particular cost.

The statutory requirement for comparability is implemented by prohibiting a local educational agency from using funds under Part B to provide services to handicapped children, unless the agency uses State and local funds to provide services to those children which, taken as a whole, are at least comparable to services provided to other handicapped children in that local educational agency. This should insure that handicapped children who receive services with Part B funds are treated equally with handicapped children who do not receive services with Part B funds. It would be too difficult to make an objective comparison between special and regular education. The concern of the commenters who asked for this comparison should be met by the excess cost requirement, which provides that a local educational agency must spend a minimum amount, on the average, for each of its handicapped children.

Comment: Commenters requested that the regulations make it clear that the local applications must meet the requirements imposed on the State in Subpart B.

Response: A section has been added to make it clear that each local application must include additional procedures and other information which the State educational agency may require in order to meet the State annual program plan requirements in Subpart B. The requirement for local educational agencies to be consistent with the annual program plan is set forth in section 121a.236.

APPLICATION FROM SECRETARY OF INTERIOR (§§121a.260–121a.261)

These sections have been rewritten to clarify that the annual application by the Secretary of the Interior for schools operated for Indian children must meet the applicable requirements of section 614(a), include other material as agreed to by the Commissioner and the Secretary of the Interior, and meet monitoring and public participation requirements.

PUBLIC PARTICIPATION

See the comments on Section 121a.120.

SUBPART C—SERVICES

Subpart C contains regulations governing the major service components required under Part B of the Act. These include free appropriate public education, the full educational opportunity goal, priorities in the use of Part B funds, individualized education programs, direct services by the State educational agency, and the State comprehensive system of personnel development.

FREE APPROPRIATE PUBLIC EDUCATION

FREE APPROPRIATE PUBLIC EDUCATION REQUIREMENTS (§§121a.300–121a.303)

Comment: Commenters disagreed with the interpretation of "State law or practice" in the proposed regulations. Some commenters felt the exception to the requirement to make free appropriate public education (FAPE) available to children in the age ranges three through five and 18 through 21 applies only if State law (or a court order) specifically prohibits services, or only if the State's practice is to provide services to less than a majority of the State's handicapped children. Others felt the requirement does not apply to the lower and upper age ranges unless the State is in fact serving all nonhandicapped children in those age ranges.

Response: The requirement has been redrafted to clarify the use of the exception and to insure at a minimum that handicapped children in any of these age ranges are served to the extent nonhandicapped children are served (to be consistent with nondiscrimination requirements under section 504).

Section 121a.300 ("Timeliness for free appropriate public education") breaks "practice" down by individual public agency, disability category, and age group. This revision is designed to maximize the number of handicapped children aged 3–5 and 18–21 who receive services. It should reduce the reluctance of agencies wishing to serve children in those age groups, because services to a few handicapped children will not require services to all handicapped children in all of the disabilities.

Section 121a.300 also includes an amendment designed to insure that each time a public agency elects to serve a handicapped child, the child receives the full range of rights and services, whether or not FAPE is mandated for that age range.

FREE APPROPRIATE PUBLIC EDUCATION METHODS AND PAYMENTS (§ 121a.301–121a.303)

Comment: Commenters disagreed on which agencies or parties should bear the costs of educating a handicapped child, especially room and board costs. Commenters sought clarification of when the costs must be borne by the State or local educational agency.

Response: The proposed regulation on methods and costs for FAPE (proposed § 121a.201) has been redrafted and expanded as follows:

(1) A new paragraph has been added to section 121a.301, which states: "Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a handicapped child."

(2) Section 121a.302 states that if placement in a public or private residential program is necessary to provide FAPE to a handicapped child, the program (including non-medical care and room and board) must be at no cost to the child's parents.

Both of these changes have been made to conform to the regulations implementing section 504.

Other Changes: A new section 121a.303 has been added regarding the proper functioning of hearing aids. This section is based on a special study conducted by the Office of Education ("The Condition of Hearing Aids as Worn by Children in Public Schools," GPO publication date Summer, 1977).

FULL EDUCATIONAL OPPORTUNITY GOAL (§§ 121a.304–121a.306)

The statutory terms "free appropriate public education" and "full educational opportunity goal" are distinguished in this regulation as follows:

"Free appropriate public education" (FAPE) must (1) be made available to all handicapped children within the mandated time lines and age ranges set forth in the Act, and (2) include special education and related services which are provided in accordance with an individualized education program.

"Full educational opportunity goal" is broader in scope than "FAPE." It is an all-encompassing term, which (1) covers all handicapped children aged birth through twenty-one, (2) includes a basic planning dimension (including making projections of the estimated numbers of handicapped children), (3) permits each agency to establish its own timetable for meeting the goal, and (4) calls for the provision of additional facilities, personnel, and services to further enrich a handicapped child's educational opportunity beyond that mandated under the "FAPE" requirement. The term "goal" means an end to be sought. However, while an agency may never achieve its goal in the absolute sense, it must be committed to implementing this provision, and must be in compliance with the policies and procedures in the Annual Program Plan under this provision. Further, the agency is not relieved from its obligations under the "FAPE" requirement.

The proposed rule on full educational opportunity goal has been revised as follows: Proposed paragraph (a) (Program options) is now § 121a.305 and proposed paragraph (b) (Non-academic services) is now § 121a.306. A new § 121a.304 has been added which (1) requires each State educational agency to insure that each public agency establishes and implements a goal of providing full educational opportunity to all handicapped children, and (2) authorizes State and local educational agencies to use Part B funds to provide the facilities, personnel and services necessary to meet the goal.

A comment has been added following section 121a.304 which points to Congressional interest in having artistic and cultural activities included in programs supported under this part, subject to the priorities.

Comment: Many commenters asked that additional areas be added to the program options requirement (e.g., leisure education, cultural and performing arts, and occupational education). Other commenters requested that the term "consumer and homemaking education" be substituted for "home economics" in order to be consistent with the

vocational education amendments of 1976 (Pub. L. 94-482).

Response: No substantive change was made in this requirement. The program options included are examples and the list is not exhaustive. Under the regulation implementing section 504, any program provided to nonhandicapped students must also be made available to handicapped pupils. The language conforming to the vocational education amendments was added.

Comment: Commenters requested that under the requirement on nonacademic services the term "cocurricular" be substituted for "extra curricular" and that intramural, extramural, and interscholastic athletics be included in order to insure consistent use of terminology as it applies nationally. Another commenter suggested that specific language be included regarding participation of visually handicapped persons.

Response: The suggested terms were not adopted. This section conforms to the language in the final regulations under section 504. Also, the suggested language on visually handicapped was not included. This requirement applies to all handicapped individuals, including those with visual handicaps.

PHYSICAL EDUCATION (§ 121a.307)

Comment: Some commenters felt that the section on physical education (PE) needed to be clarified, particularly the conditions under which a handicapped child would not be required to participate in the regular PE program; (e.g., the child (a) is enrolled full-time in a separate facility, (b) needs specially designed PE, or (c) the parents and agency agree that the child should not participate). The main concern dealt with the parent-agency agreement, because it appeared to provide a loophole in which a child would not be required to participate in any PE activity.

Response: The statement on parent-agency agreement was deleted. With this change, a handicapped child attending a regular school would participate in the regular PE program, unless the child needs specially designed PE as prescribed in his or her individualized education program (IEP). Parent-agency agreement is inherent in the development of a child's IEP. The decision as to whether the child should be in the regular PE program or receive specially designed PE is made in the IEP meeting in which the parent and agency personnel are represented.

It should be noted that every handicapped child would participate in some type of PE activity. Specially designed PE could involve arrangements for a child to participate in some individual sport or physcial activity (e.g., weight lifting, bowling, or an exercise or motor activity program).

Other changes: Proposed section 121a.204 (Incidental use of property) has been deleted.

PRIORITIES IN THE USE OF PART B FUNDS

As part of the provision on free appropriate public education, the law requires each State and local educational agency to establish priorities, first with respect to handicapped children not receiving an education (defined as "first priority children" in the regulations) and second with respect to handicapped children, within each disability, with the most severe handicaps who are receiving an inadequate education (defined as "second priority children"). The law further requires that, except for State administration funds, each State and local educational agency must use its full entitlement under part B "in accordance with the priorities." The regulations which implement these priority requirements are included in sections 121a.320-121a.324.

PRIORITIES (§ 121a.321)

Comment: Many commenters were concerned that first priority expenditures cannot be used for inservice training for personnel who can serve those students, and stated that such inservice training activities may be an essential component toward achieving the first priority.

Response: The proposed rules have been redrafted and expanded in order to address the above concerns. A new section was added to make it clear that an agency may use Part B funds for inservice training concurrently with placing a first priority child in school (in an interim program, if a component of the child's program is missing). However, the provision of inservice training may not be used as a pre-condition for service to the child.

The intent of Congress with respect to the education of first priority children is both long-standing (dating back to Pub. L. 93-380) and very clear, as reflected in the following statements:

(1) The Congress has a responsibility "* * * to see that all persons are assured equal opportunity. For handicapped children, this means, at the very least, that they must be educated * * * These funds must be focused in such a way that we are assured that handicapped children are provided their right to education." (Congressional Record—Senate, June 18, 1975, p. S10969)

(2) "First priority for spending under the legislation is to provide services for handicapped children who are not now being served. The flexible approach in the Conference Report with respect to the current fiscal year, fiscal year 1977 and fiscal year 1978 will allow for concentrations of moneys so that this priority can be met." (Congressional Record—House of Representatives, November 18, 1975, p H12348)

(3) "There are millions of children with handicapping conditions who are receiving no services at all. And since we must have a place to start, it is appropriate that we give priority to those who are receiving no services at all first, and then try to reach those with the most severe handicaps who have traditionally received only minimal attention second." (Congressional Record—Senate, June 18, 1975, p S10961)

Comment: Several commenters requested clarification regarding whether the requirements on the use of funds for priorities apply within or among local educational agencies (e.g., if an agency is serving all of its first priority children, could a State give that agency's entitlement to another agency which is not serving all of its first priority children?).

Response: No change has been made. The statute does not permit the State to take away a local educational agency's Part B funds solely because the local educational agency is serving all of its first priority children. For the limited circumstances where a local educational agency's funds may be reallocated, see section 121a.708.

Other changes: A new paragraph (c) has been added to section 121a.321, which provides that Part B funds cannot be used for preservice training. This addition was made to implement Congressional intent expressed in Senate Report No. 94-168, p. 34 (1975), in which it was stated that funds for preservice training are available under the training program under Part D of the Act, and that Part B funds should not be used for this purpose.

INDIVIDUALIZED EDUCATION PROGRAM

The requirements on individualized education programs (IEPs) in Subpart C have been reorganized and redrafted substantially, based largely on comments received. (These sections have been renumbered, starting with section 121a.340.) A summary of these changes is included below:

(1) A definition of IEP has been added which states that the term "IEP" means a written statement on a handicapped child that is developed and implemented in accordance with sections 121a.341-121a.349 of Subpart C.

(2) The proposed section entitled, "Scope" has been deleted and the substance combined with the section on "State educational agency responsibility."

(3) The proposed section on "Local educational agency responsibility" has been replaced by two new sections ("When IEPs must be in effect" and "Meetings").

(4) The section on "Participants in meetings" has been redrafted to adopt essentially verbatim the language in the Act and to add a new paragraph on participation of evaluation personnel.

(5) The proposed section on "Parent participation" has been amended to include specific provisions regarding notifying parents about the IEP meetings.

(6) The substance under the proposed section on "Content of IEP" has been replaced with the statutory language.

(7) The proposed section on "Private school placements" has been reorganized into two sections to conform to the two groups of private school handicapped children in Subpart D, and has been expanded to spell out in more detail the responsibilities of State and local educational agencies in administering this provision.

(8) A new section was added, entitled, "IEP—accountability."

TIMING OF IEP MEETINGS (§§ 121a.342-121a.343)

Comment: Many commenters felt that the final rules should provide more flexibility to agencies in terms of when IEP meetings are conducted.

Response: The following changes were made in the proposed rules in an attempt to clarify this provision. First, the regulations now specify the dates on which IEP's must be in effect (October 1, 1977, and the beginning of each school year thereafter). Second, except for new handicapped children (those initially evaluated after October 1, 1977), the timing of meetings to develop, review and revise IEPs is left to the discretion of each agency. (For a new handicapped child, a meeting must be held within thirty days of a determination that he or she needs special education.) The regulations are flexible on the schedule to be followed by public agencies in meeting the above dates.

PARTICIPANTS IN IEP MEETINGS (§ 121a.344)

Comment: A number of commenters recommended that personnel from specific disciplines be participants at IEP meetings (e.g., physicians, health care personnel, psychologists, and representatives from other agencies, such as Head Start). Some commenters felt that the meetings should include all direct service personnel who work with a handicapped child. Other commenters suggested cutting back on the number of people who participate.

Response: The final regulations only require the participants listed in the statute, except in the case of a child who has been evaluated for the first time. (NOTE: Participation of evaluation personnel in IEP meetings is covered under the next comment-response sequence.)

Generally, having a large group of people at an IEP meeting may be unproductive and

very costly, and could essentially defeat the purpose of insuring active, open parent involvement.

While it is necessary to insure that all direct services personnel who work with a handicapped child are informed about and involved in implementing the child's IEP, this does not mean that they should attend the IEP meetings. The mechanism for insuring the involvement of all IEP implementers is left to the discretion of each agency (e.g., the child's teacher, or principal, or supervisor could have that responsibility). However, this is a basic administrative procedure which can be handled outside of the context of the IEP meeting.

The statute does not require all IEP implementers to be involved in the meetings. In fact, the definition of IEP in section 602(19) of the Act includes only four people (e.g., a special education provider or supervisor, the teacher, the parent, and the child, where appropriate). Moreover, it was the intent of Congress that IEP meetings generally be small. This position is reflected in the following statement by Senator Randolph in the June 18, 1975 Congressional Record:

In answer to my colleague, it was the intent, and I believe, I can speak for the subcommittee and the committee in this matter, that these meetings * * * be small meetings; that is, confined to those persons who have, naturally an intense interest in a particular child, i.e., the parent or parents, and in some cases the guardian of the child. Certainly the teacher involved or even more than one teacher would be included. In addition, there should be a representative of the local educational agency who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children.

These are the persons that we thought might well be included. That is why we have called them "individualized planning conferences". We believe that they are worthwhile, and we discussed this very much as we drafted the legislation.

While very large IEP meetings might generally be inappropriate, there may be specific instances where additional participants are essential. In order to enable other persons to be included, the Office of Education retained a provision from the proposed rules which authorized the attendance of "other participants, at the discretion of the agency or parents."

Comment: Some commenters recommended that members of the evaluation team participate in IEP meetings.

Response: A new paragraph has been added which states, in effect, that an evaluation person must participate in any IEP meetings conducted for handicapped children who have been evaluated for the first time (i.e., the preplacement evaluation required under section 121a.531 of Subpart E). Since the meeting is intended to develop an education program for the child, it is essential that someone at the meeting be familiar with the child's evaluation.

Comment: Several commenters recommended that the representative of the agency be qualified in the disability area in which the IEP is written.

Response: A comment has been added following section 121a.344 which suggests (but does not require) that either the teacher or the agency representative should be qualified in the area of suspected disability. At the time of the meeting, the public agency may not yet have hired a person qualified to provide special education with respect to that suspected disability.

PARENT PARTICIPATION (§ 121a.345)

Comment: Some commenters stated that documenting efforts to involve parents would be difficult and time consuming. One commenter felt it was important to retain the general statement requiring agencies to involve parents, but recommended that the details in the parent participation section be deleted from the final regulation. Another commenter recommended that the section be dropped because it is not required in the law and is "* * * utterly paternalistic. If a local education agency is foolish enough to keep inadequate records on transactions with parents, it alone stands in jeopardy; there is no damage to parents or to handicapped children."

Response: The comments have not been adopted. The Office of Education believes that it is important to retain this section in the final regulations, for the following reasons:

First, the section provides rules that allow agencies to proceed in conducting IEP meetings in cases where parents cannot or will not attend. Without this authorization, the IEP process might come to a halt in some cases, since the law states that an IEP must be developed at a meeting with the parents.

Second, the section is designed to protect agencies by setting the conditions under which they can proceed.

Third, the section is designed to protect the rights of the parents. The Congress intended that IEP meetings be utilized as an extension of the procedural protections guaranteed under Pub. L. 93-380. However, if the regulations provided an authorization for agencies to proceed without the parents, there is a potential problem that the authorization (without documentation) might be inappropriately applied in individual cases, which could result in parents' rights not being protected.

Comment: A few commenters suggested using surrogate parents if a child's parents could not attend an IEP meeting. One commenter recommended adding a provision to enable the parents to designate a person to represent them at a meeting.

Response: The Office of Education elected not to write regulations on either of these suggestions.

First, a surrogate parent is appointed only in accordance with the procedural safeguards in Subpart E. The provision was not meant to apply in situations when parents are unwilling to participate, or when an agency makes unsuccessful efforts to communicate with a known parent. A surrogate parent is appointed only when the parents are unknown, unavailable or the child is a ward of the state. However, a surrogate parent appointed under appropriate circumstances would attend the IEP meetings and represent the child in all matters relating to the provision of a free appropriate public education to the child.

Second, with respect to parent designated representatives, the Office of Education does not feel that any change in the regulation is warranted. Parents unable to attend an IEP meeting, who are interested enough in their child's education to seek a third party representative, would have direct input in developing the child's IEP through individual or conference telephone calls or other methods authorized under paragraph (c) of section 121a.345.

Other changes. A new paragraph (f) has been added to require that parents be given a copy of the IEP on request. This should help to insure that the parents are fully informed of the program for their child, and will assist them in participating in future meetings on the IEP.

CONTENT OF IEP (§ 121a.346)

Comment: Hundreds of commenters responded to this section. Some commenters requested that additional services or other items be added. Other commenters recommended that the section be sharply cut back, because they felt that this went unnecessarily beyond the items listed in the statute. Many of the commenters wanted the specific service areas they represent added to the list of services to be provided in the IEP. Others felt that this went unnecessarily beyond the items listed in the statute.

Response: The Office of Education has elected to amend this section by adopting substantially verbatim the language from section 602(19) of the statute. The regulation retains one clarification from the proposed rules, that the individualized education program must include related services to be provided to the child, as well as special education and the extent to which the child can participate in regular education programs. However, given the controversy over this section and whether it is appropriate to add items not specifically covered in the statute, the Office of Education has decided that some experience operating under the statute would be useful before considering whether further regulations on this point would be appropriate.

IEP—ACCOUNTABILITY (§121a.349)

Comment: In the preamble to the proposed rules, a statement was made that the IEP is not a legally binding document. Many commenters recommended that this statement should be included in the body of the final regulations. Other commenters felt that the statement needed to be clarified.

Response: The Office of Education has added a new section, which states, in effect, that each public agency must provide special education and related services in accordance with a handicapped child's IEP. However, Part B does not require that the agency, the teacher, or other persons be held accountable if the child does not achieve the growth projected in the written statement.

COLLECTIVE BARGAINING

Comment: Numerous commenters recommended that the regulations deal with the fact that the required participation of teachers (and other agency staff) in the meetings to develop IEPs would require modification of collective bargaining agreements. Some commenters urged that the regulations require additional compensation for teachers to participate in these meetings, prescribe or limit any after-school-hours participation, and specify arrangements for relieving teachers from classroom duties for the meetings.

Response: No change has been made in the regulation. The requirement for teacher participation in developing IEPs is statutory. The Commissioner understands that collective bargaining agreements and individual annual contracts for teachers vary greatly among local educational agencies and may or may not deal with additional duties and compensation for after-hour activities. In some instances, especially in urbanized and highly unionized areas, collective bargaining agreements may have to be renegotiated to cover employee participation in IEPs. However, this is an area which is solely within the authority of the public agency and its employees (and their union representative, if any). It would be inappropriate and beyond the scope of the Commissioner's authority to prescribe how this requirement must be met. Where collective bargaining agreements must be modified, the public agency must negotiate the appropriate modifications to comply with the statute. The public agency is also responsible for insuring that the IEP meetings are conducted at a time reasonably convenient to parents. (In some cases this may be during school hours; in others, after hours.) The agency also must make its own arrangements for covering classrooms when teachers are absent.

DIRECT SERVICES BY THE STATE EDUCATIONAL AGENCY

The direct services provision of this subpart includes sections on (1) use of local educational agency (LEA) funds, (2) nature and location of services, (3) use of the State's (SEA's) entitlement, and (4) a State matching requirement.

The section on the use of LEA allocations (renumbered section 121a.360) has been redrafted to combine the proposed paragraphs (a) and (b) into a single paragraph. This paragraph sets out the conditions under which an SEA may use an LEA's entitlement.

A new paragraph (b) has been added to section 121a.360, which states that in meeting the requirements of this section, the SEA may provide special education and related services directly, by contract, or through other arrangements.

A new paragraph (c) has been added, which repeats the statutory provision that the excess cost requirement does not apply to State educational agencies.

Section 121a.360 (Nature and location of services) has been amended to correct an error made in the proposed rule. The proposed regulation stated that the least restrictive environment (LRE) provisions do not apply when the SEA provides direct services. The amended rule now states that the manner in which the education and services are provided must be consistent with the requirements of this part (including the LRE provisions).

The regulation on "State matching" was not substantially changed. However, a comment was added after this section to make it clear that the requirement would be satisfied if the State can document that the amount of State funds expended on each major program area (e.g., the comprehensive system of personnel development) is at least equal to the expenditure of Federal funds in that program area.

Comment: In the preamble to the proposed rules under the direct services provision, a point was made that an LEA would not be in compliance with the section 504 regulations if that agency did not make available a free appropriate public education (FAPE) to all of its handicapped children. A commenter, in responding to this statement, pointed out that the term FAPE has different meanings under section 504 and Pub. L. 94-142; and, therefore, an LEA would not have to meet the requirements of Pub. L. 94-142 in order to be in compliance with section 504.

Response. Under Part B, "FAPE" is a statutory term which requires services to be provided in accordance with an IEP. However, under the section 504 regulations, each recipient must provide an education which includes services that are "designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met * * *" Those regulations state that implementation of an IEP, in accordance with Part B, is one means of meeting the "FAPE" requirement. (NOTE.—A more detailed description of the relationship between section 504 and Pub. L. 94-142 is included in this appendix.)

Other changes: A new section 121a.372 has been added to implement section 611(c)(3) of the Act. This section provides that the nonsupplanting requirement does not apply to the State's expenditure of its allocation beginning with funds appropriated for Fiscal Year 1979 and for each following fiscal year.

COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

GENERAL

The proposed rules in this section created some controversy over the amount of detail contained in the regulations. Comments ranged from requests for more specificity to suggestions that everything be deleted except the statutory language.

The statute is very clear in requiring that a "comprehensive system of personnel development" be implemented in each State. Since this is a broad requirement, challenging each State to reach out to the expansive community of agencies involved in preparing personnel to educate the handicapped, many of which are private and not under the control of the State, it was felt that a regulation was needed that would provide sufficient information for the State and involved agencies to understand their responsibilities in achieving compliance.

SCOPE OF SYSTEM (§ 121a.380)

Comment: A commenter suggested that inservice education be available to all special, regular, and related service personnel.

Response: Paragraph (a) of section 121a.380 was changed to read "the inservice training of general and special educational instructional, related services, and support personnel."

Comment: A commenter suggested that all personnel preparation services be conducted in accredited institutions granting advanced degrees and that "no less than ten percent of the money under this Act be contracted to institutions of higher education." Another commenter recommended the earmarking of a percentage of funds for staff and program development.

Response: No change has been made in the regulations. The Office of Education believes that each State must have maximum latitude in decisions regarding the types of facilities and personnel that are used to implement the comprehensive system of personnel development.

With respect to targeting funds for training, the Office of Education feels that such a step would be inappropriate at this time.

Part B is a unique Federal statute in that it imposes requirements on States which must be implemented, regardless of the amount of Federal funds available. Given the scope and magnitude of the law, the Office of Education believes that each State should have maximum latitude in terms of how its Part B funds are used to implement the various statutory provisions, subject, of course, to the priority requirements in Subpart C.

DEFINITION OF "APPROPRIATELY AND ADEQUATELY PREPARED AND TRAINED" (PROPOSED §121a.261)

A number of comments were received on the definition of "appropriately and adequately prepared and trained" which was in § 121a.261 of the proposed rules. The definition has been deleted in the final regulations. Instead, the term "qualified" is used, as defined in § 121a.12.

Comment: A commenter suggested that nationwide certification requirements be mandated to allow for the mobility of personnel.

Response: No change has been made. The intent of the Act is to insure that all personnel necessary to carry out the purposes of the Act are qualified. The Act does not authorize the establishment of national certification standards.

Comment: A commenter suggested that early childhood be required as an area for certification.

Response: No change has been made. These personnel must be included under the State's comprehensive personnel development system.

Comment: Several commenters expressed the belief that certification should not be required for all personnel directly serving the handicapped, or that such a requirement would result in great expense for the State. Still others felt that competency based systems should be used as opposed to the requirement for certification, registration, or licensing.

Response: The statutory language "appropriately and adequately prepared and trained" has been interpreted, by use of the term "qualified," to mean certification, registration, or licensing. These are commonly accepted procedures for determining if personnel are "appropriately and adequately prepared and trained."

PARTICIPATION OF OTHER AGENCIES AND INSTITUTIONS (§ 121a.381)

The comments on the level and intensity of the "participation" required in this section ranged from the belief expressed that special meetings on components of the state plan are not required in the Act, therefore the "participation" envisioned in section 121a.381 should be eliminated, to the suggested requirement that organizations not only have an opportunity to participate, but that they "must participate." The comprehensive system of personnel development is such a specialized aspect of the Act, necessarily involving agencies not under the jurisdiction of the State that "participation" is fully warranted, though not mandated in the statute. Thus, the regulations set a requirement for the State to insure that those agencies with an interest in the preparation of personnel for the education of the handicapped have an opportunity to participate fully in the development, review, and updating of the system. This is a reasonable requirement, especially considering the critical effect the system will have on those agencies preparing the personnel. Rather than a burden on the State, the "participation" should provide the direct opportunity for the State to encourage the development of quality personnel preparation programs, a factor essential to the provision of a "free appropriate public education."

Comment: Several commenters suggested that "representatives from each group be included in the planning" as well as parents. One commenter suggested that disability categories and groups be listed in the proposed rule.

Response: The regulation has been altered to include representatives of handicapped and parent organizations. This wording should be sufficient to involve all relevant groups.

Comment: A commenter suggested the addition of a subsection (3) to section 121a.381(b) that would require the annual program plan to include a description of agency responsibilities with respect to research and evaluation of exemplary programs that could be implemented in local educational settings.

Response: Sections 121a.385 and 121a.386 have been modified to classify agency responsibilities.

INSERVICE TRAINING (§ 121a.382)

Comment: There were a number of contrasting points of view and suggestions on this section, ranging from requests to mandate greater detail in the proposed rules, to the suggestion that the section be deleted altogether. Those proposing greater detail suggested that specific knowledge and areas of learning be emphasized and that teachers be trained "by having them work one-to-one with specialists" and that "inservice training be mandated at the local level, a county being the largest unit possible, to prevent the State from using the money for ineffectual regional workshops." Also, there were suggestions that where academic credit is to be made available that this be done

only in institutions of higher education with State approved programs.

On the other extreme there were suggestions that this section "exceeds statutory requirements" and "federal rules should not say how a task is accomplished" and "(state) provides adequate training and inservice and does not need more obstacles and regulations."

Response: The statute clearly requires inservice education as a central part of the comprehensive system of personnel development and it is appropriate for the rules to detail the nature and extent of the inservice education that is required. This has been accomplished through the outlining of procedures which define inservice education, its parameters, and relationship to required needs assessments. However, the rules do not define the specific nature of the training to be accomplished. Thus, the rules have been designed to outline the foundation for an adequate program of inservice education, without stifling the creativity of State and local personnel in their efforts to plan and implement such a system.

Comment: A commenter suggested that the statement "in cooperation with institutions of higher education" be inserted in section 121a.383(b)(1).

Response: No change has been made. However, involvement of institutions of higher education is required under § 121a.381(a).

Comment: A number of commenters suggested the addition of specific disciplines and professionals to this section, constituting an itemized list of personnel to be trained or involved in the review of training needs.

Response: No change has been made. The State's plan must include all personnel who need training.

Comment: Several commenters suggested wording changes designed to clarify the text of the proposed rule on inservice training.

Response: Changes were made where necessary to bring the regulation into conformity with current usage.

Comment: There were a number of suggestions concerning the financial arrangements for conducting inservice training. Some commenters advocated the funding of parent groups to conduct inservice training. Others suggested financial support for trainees involved in their programs. One commenter urged that the rule allow for contracting with other than non-profit organizations. One suggested contracts with institutions of higher education to carry out personnel development programs. Another suggested incentives for teacher participation, including released time and college credit. One suggested that inservice be provided during contract time, not involving extra hours.

Response: No substantive changes have been made. All of the suggestions in the above comments are authorized under these regulations.

PERSONNEL DEVELOPMENT PLAN (§ 121a.383)

Comment: Several commenters asked for special attention to physical education and service delivery models which take into account problems of rural families.

Response: No change has been made. Specialized needs in physical education and the unique aspects of providing services in rural settings should be addressed as appropriate in the needs assessment and plan.

Comment: One commenter objected to including preservice training under this section.

Response: No change has been made. The term "inservice" education is used in the Act. However, since the Act clearly requires that a "comprehensive system of personnel development" be developed, such a system must include the consideration of preservice training.

NOTE.—The data required in sections 121a.124 and 121a.126 of Subpart B on the numbers of handicapped children and the kind and number of personnel needed will serve as the uniform data base within the State for the personnel development system under § 121a.383 of this subpart. The data may also be used by institutions of higher education and other nonprofit educational training agencies in submitting personnel preparation applications under Part D of the Act. Section 121f.9 of the regulations under Part D (45 CFR 121f.9) provides as follows:

§ 121f.9 *State personnel needs.*

Each application shall include (a) a statement by the State educational agency of personnel needs for education of the handicapped and a statement by the applicant of how the proposed program relates to those stated needs, and (b) a description of the ways in which the recipient's program goals and objectives relate to the purposes of Part D of the Act.

(20 U.S.C. 1431, 1432, 1434)

DISSEMINATION (§121a.384)

Comment: One commenter suggested that "teachers organizations" be specified as recipients of information.

Responses: No change has been made. Teacher organizations are included under the phrase "other interested agencies and organizations."

SUBPART D—PRIVATE SCHOOLS

The proposed rules created a certain amount of confusion among commenters in distinguishing between handicapped children placed in or referred to private schools by the State or by local educational agencies and handicapped children whose parents choose to educate them in private schools. The major difference between these two groups of children is in who bears the cost of the private school.

A free appropriate public education must be made available to each handicapped child by the public agencies of the State. Subject to the requirements on least restrictive environment, this could include placement in or referral to a private school or facility. Such a placement or referral must be at no cost to the parent.

On the other hand, even if a free appropriate public education is available, the parent may choose not to accept it. The parent may choose to send the child to a private school rather than take advantage of the free public education. If this happens, the Act does not require the State or local educational agency to bear the cost of the private school. For children placed in private schools by their parents, the State and its local educational agencies have a different duty. They must design their program so that handicapped children in those private schools can participate in special education and related services offered by the local educational agencies if the parents of those children so desire.

The regulations have been reorganized to make these distinctions clearer. The first set of sections (121a.400–121a.403) now cover children placed in or referred to private schools or facilities by a public agency in order to provide them with special education or related services. (These sections replace sections 121a.320–121a.323 of the proposed rules.)

Since the "State" includes all of its political subdivisions, the term "public agency" is used, as elsewhere in the regulations, to mean all of the political subdivisions of the State which are responsible for providing special education or related services to handicapped children.

The second set of sections (121a.450–121a.460) apply to handicapped children enrolled in private schools or facilities but who are not placed or referred there by a public agency to receive special education or related services. (These sections replace sections 121a.300–121a.306 of the proposed rules.)

The following comments were made regarding proposed Subpart D. Comments which asked for changes not authorized under the statute are not summarized. (Commenters who are concerned about the cost of room and board as a "related service" are referred to section 121a.302 and the discussion of that section in this preamble.) The comments are arranged in order of the final rules.

RESPONSIBILITY OF STATE EDUCATIONAL AGENCY (§ 121a.401)

Comment: A commenter asked that paragraph (a)(3) be deleted, which required that the special education given to a handicapped child placed by a public agency must meet the education standards of the State educational agency (SEA). The commenter stated that otherwise there would be conflicts between the SEA's standards and those of other agencies, in the day care area, for example.

Response. Paragraph (a)(3) cannot be deleted, since it is derived from a statutory requirement. However, it has been revised by using the language of the statute. This will broaden the types of standards that the SEA may apply, and therefore avoid conflict with other mandatory standards. Of course, those standards cannot override the provisions in Part B of the Act.

Comment: A commenter asked that provision be made for interstate referrals to private schools and communication among States regarding those referrals.

Response. No change has been made in the regulation. Referrals between States are to be handled under existing procedures. Unless a problem develops in this area that seriously interferes with the rights of handicapped children or their parents under Part B, the Office of Education is reluctant to regulate the mechanisms by which the States arrange to provide services.

IMPLEMENTATION BY SEA (§121a.402)

Comment: A commenter suggested that the State educational agency insure the monitoring of private schools, dissemination of standards to them, and involving them in developing State standards, rather than the State educational agency doing it directly.

Response: No change has been made. The statute places direct responsibility on the State educational agency to administer and monitor the requirements under Part B. While the State educational agency in many areas need only insure that the Part B requirements are met, monitoring must be done by the agency itself. Dissemination of standards could be done in a variety of ways. Involvement in development of State standards would have to be done directly by the State educational agency if it is the agency that develops those standards.

PLACEMENT OF CHILDREN BY PARENTS (§ 121a.403)

Comment: Commenters were concerned with the effect of this section on the rights of handicapped children in private schools and felt that the section was worded in a manner that would limit those rights.

Response: The section has been revised to make it clear that a free appropriate public education (FAPE) must be made available to

each handicapped child. This would include the development of an individualized education program and placement in the least restrictive environment. Free appropriate public education must be made available at no cost to the parents. If the parents felt that services were not adequate, they may have a due process hearing to show that more or better services must be provided to give their child FAPE. However, if the parents choose not to educate their child in the public school system, they are not required to do so. In that case, the relevant public agency has the remaining duty of offering special education and related services under sections 121a.450–121a.460, but does not have the duty of insuring that the private school meets the requirements of Part B (unless other handicapped children have been placed in or referred to that private school by the agency), or of paying for the cost of the private school. Language has been added to clarify the public agency's duties under sections 121a.450–121a.460.

Other changes: Proposed section 121a.323 (Placements in another State) has been deleted. It would have required private schools to meet the standards of both the sending and receiving States. This would have been an unreasonable burden on the receiving State to enforce.

HANDICAPPED CHILDREN IN PRIVATE SCHOOLS NOT PLACED OR REFERRED BY PUBLIC AGENCIES (§§ 121a.450–121a.460)

Comments: A number of commenters felt that clarification was needed in these sections. There was also some concern expressed regarding the State's legal authority to provide services to children enrolled in private schools.

Response: The regulations have been amended to conform more closely to those under Title I of the Elementary and Secondary Education Act of 1965 (education of educationally deprived children) (45 CFR, Section 116a.23). As under Title I, a balance is drawn between the statutory requirement to provide services, and the constitutional necessity of avoiding excessive entanglements between public agencies and church-related institutions. It is also important for the Office of Education to have a uniform policy regarding services to private school children under all Federal education programs it administers. The amendments to the proposed rules should serve all of these purposes.

SUBPART E—PROCEDURAL SAFEGUARDS

This subpart implements the procedural safeguards set forth in the Act, including due process procedures for parents and children, protection in evaluation procedures, least restrictive environment, confidentiality of information, and procedures of the Office of Education.

A substantial number of detailed comments were received on these sections. Many concerned the statute rather than the regulations or did not state what changes in the regulations were desired. Others requested revisions which did not appear to involve substantive changes. Some comments sought substantially more detailed specification of due process rights while others indicated that the statute itself was so detailed in the due process area that the regulations should not go beyond the statute.

As stated earlier in this preamble, the Office of Education's position, while incorporating a number of the suggestions in the final regulations, is still to adopt minimum regulations in this area at this time, review experience under the regulations, and then make a determination as to whether more detailed regulations are required.

DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN

DEFINITIONS (§ 121a.500)

Comment: Commenters recommended that the phrase "unless it is clearly not feasible to do so" be deleted from the definition of consent and that additions be made to make it clear that consent may be revoked and may not be made a precondition to the child's right to participate in basic educational programs. The effect of deleting the phrase would be to require that a consent is not valid unless the parent is informed in every case of the information relevant to the consent.

Response: The phrase has been deleted. The deletion of the phrase will help to assure an informed consent in every case, regardless of the parent's language or other mode of communication. A phrase has been added to make it clear that parents have the right to revoke consent. A separate section 121a.504 states that consent may not improperly be made a precondition of services. While public agencies must obtain consent for preplacement evaluations or for initial placement, a public agency may not coerce parents to consent by withholding or threatening to withhold other regular education services or extracurricular activities unless the parent consents.

Comment: Several commenters requested changes in the definition of "evaluation" to indicate that an evaluation must be conducted by qualified personnel, that the findings must be reduced to writing, and that it must take into account the child's assets as well as deficits.

Response: No change has been made. The suggestion reagarding qualified personnel is covered under section 121a.532. The Office of Education expects that evaluations will be in writing and that a child's assets will be considered. If a problem develops in this area, the Office of Education will reconsider the necessity for further regulations.

GENERAL RESPONSIBILITY OF PUBLIC AGENCIES (§ 121a.501)

Comment: Commenters suggested that parents have the right to complain and that agencies should be required to respond to them outside of the context of a hearing.

Response: No change has been made in the regulation. However, agencies should certainly seek to respond to complaints by informal discussions and negotiations. A comment section has been added which notes that mediation may be useful in some instances. In any case, negotiations may not delay a hearing if a parent has requested it.

INDEPENDENT EDUCATIONAL EVALUATION (§ 121a.503)

Comment: Commenters disagreed as to whether the parent's right to an independent evaluation should be broadened or narrowed.

Response: The section has been rewritten to require public agencies to provide parents information, upon request, of where an independent educational evaluation may be obtained. Also, "public expense" has been defined. However, the interpretation in the proposed regulations is retained. The evaluation must be at public expense if the parent disagrees with the evaluation by the public agency, unless the public agency initiates a hearing to show that its evaluation is appropriate. If upheld, the expense of the independent evaluation does not have to be borne by the agency. The independent evaluation must be considered in any hearing.

There are several competing interests which the regulation seeks to balance. The statutory right of the parent to an independent educational evaluation must be preserved. On the other hand, the public agencies should not be asked to bear the costs of unreasonably expensive independent evaluations. Also, for the independent evaluation to be useful, it must meet the same criteria as evaluations conducted by public agencies under this part.

PRIOR NOTICE; PARENT CONSENT AND CONTENT OF NOTICE (§§ 121a.504–121a.505)

Comment: Commenters sought further specificity as to the detail of information provided to parents in the notice. Other commenters felt that the requirements were too demanding. Some commenters asked that consent be required for preplacement evaluation and prior notice for reevaluation; and that consent be extended to include permission for placement. Other commenters sought to delete the consent requirement on the grounds that educational judgments should be final.

Response: The basic notice requirements in sections 121a.504 and 121a.505 were not changed. However, the following changes were made in the consent requirements:

(1) Consent was expanded to include permission for initial placement of a handicapped child in a special education program. Many commenters had requested this addition; and the Office of Education agrees that this requirement is as essential as consent for preplacement evaluation.

(2) The proposed consent rule was changed from consent for all evaluations to consent for the initial or preplacement evaluation. This change is essentially consistent with the section 504 final regulations (45 CFR Part 84, § 84.35(a)). The Office of Education agrees with commenters that there is no need to require consent for reevaluation. If a handicapped child is initially placed in accordance with section 121a.504, and if his or her individualized education program is annually reviewed in accordance with section 121a.343 of Subpart C, a requirement is not necessary. However, prior notice would have to be provided.

Comment: Commenters were especially concerned that clarification be added regarding procedures for overriding parents' refusal to consent.

Response: A subsection has been added to set out procedures for dealing with parental refusal to consent (see section 121a.504(c) and the comment following that section).

The procedures are designed not to interfere with existing State laws which may require consent. Where State law does not require consent, the parent is afforded a due process hearing under this Part. These rules should provide protection to the parent, the child, and the public agency.

IMPARTIAL DUE PROCESS HEARING (§ 121a.506)

Comment: A commenter asked that the regulations specify that the public agency must pay for the hearing.

Response: The change requested by the commenter has not been made. Since the statute requires that the public agency must afford parents an opportunity for a hearing, the agency must bear the cost of the hearing, except for paying for parents' representatives and witnesses. However, section 121a.506 has been amended to require agencies to provide parents with information about free or low-cost legal and other relevant services that are available.

IMPARTIAL HEARING OFFICER (§ 121a.507)

Comment: Commenters sought to have three-person panels, including parents, serve as the hearing officials. Some sought to allow and others sought not to allow school board officials from serving as hearing officials. Com-

menters also asked that lists of hearing officers be required, including their qualifications.

Response: A requirement has been added that each public agency keep a list of persons who serve as hearing officers and a statement of their qualifications. This should help to ensure that the requirement for impartiality is met. No other substantive change has been made. A three-person panel could be used under the existing rules, as long as the conditions of impartiality are met. However, a parent of the child in question and school board officials are disqualified under section 121a.508.

HEARING RIGHTS (§ 121a.508)

Comment: Commenters disagreed as to whether hearing rights set forth in the proposed rules should be expanded or restricted. Among the additional rights sought were the right to compel the attendance of witnesses, prohibit the introduction of evidence not disclosed prior to the hearing, allow the child to be present and the hearing to be open to the public at the parents' discretion, and to specify whether the record of the hearing must be free or at reasonable cost.

Response: The section has been revised to add rights for any party to prohibit the introduction of evidence not previously disclosed to the other party and for the child to be present and the hearing to be open to the public. The purpose of hearings under this part is to ensure that handicapped children are provided free appropriate public education. Opening up the hearing and the evidence that may be presented should serve to insure that the result of a hearing will be in the best interests of the child. No provision has been added relating to cost. However, it is expected that a copy of any decision would be provided to the parent at no cost.

HEARING DECISION; APPEAL (§ 121a.509)

Comment: A commenter sought to add a requirement that specifies that the hearing officer has the power to order any educational program for the child and that his or her power not be limited to accepting or rejecting the program by the public agency or parent.

Response: No change is necessary. The hearing officer has the function to decide what placement is appropriate, if that is the subject of the hearing.

ADMINISTRATIVE APPEAL; IMPARTIAL REVIEW (§ 121a.510)

Comment: Commenters disagreed on whether to reduce or expand the requirements in this section. Some commenters wanted short, specific timelines set out for various actions and specification of the rights that apply at the review level.

Response: The section has been revised to specify other duties and powers of the reviewing official, in addition to those already set out. For example, the official may seek additional evidence if necessary, including holding a new hearing and affording the parties an opportunity for written as well as oral argument (at the reviewing official's discretion). The reviewing official must give a copy of the written findings and decision to the parties. These duties and powers are regarded as necessary to insure that a full review will be conducted and that all parties will be informed of the result of the review. Revisions to timelines for any hearing or review are set out in section 121a.512.

CIVIL ACTION (§ 121a.511)

Comment: Commenters wanted the regulations revised to allow for direct appeal to the courts without first using administrative hearing and review procedures if those procedures would be futile, the timeliness or adequacy of the administrative proceedings are being challenged, or a class action is involved. Commenters cited language in the Congressional Record in support of this interpretation (121 Cong. Rec. S20433 daily ed., November 19, 1975).

Response: No change has been made. The legislative history cited is nongermane as it was made in reference to the Senate Bill (S. 6) which did not contain the final statutory provision on civil actions. The provision on civil action was added as a Conference substitute. The issue of exhaustion of remedies will be up to the courts to resolve.

TIMELINESS AND CONVENIENCE OF HEARINGS AND REVIEWS (§ 121a.512)

Comment: Commenters wanted clarification of the 45-day time limit for commencing and completing a hearing and review set out in the proposed regulations. They disagreed on whether the time should be shortened or lengthened.

Response: The section has been revised to set a 45 day time limit for a hearing and a 30 day limit for a State level review. In both instances, a decision must be reached and mailed to each of the parties within the time limits set. A hearing or reviewing officer may grant specific extensions, at his or her discretion, at the request of either party. The Office of Education believes reasonable outside time limits must be set to insure resolution of any dispute quickly so that the child's special education may proceed. Discretion for specific extensions is consistent with normal judicial and administrative practice.

CHILD'S STATUS DURING PROCEEDINGS (§ 121a.513)

Comment: Commenters suggested a provision be added to allow change of placement for health or safety reasons. One commenter requested that the regulations indicate that suspension not be considered a change in placement. Another commenter wanted more specificity to make it clear that where an initial placement is involved, the child be placed in the regular education program or, if the parents agree, in an interim special placement.

Response: A comment has been added to make it clear that this section would not preclude a public agency from using its regular procedures for dealing with emergencies.

SURROGATE PARENTS (§ 121a.514)

Comment: Commenters requested that the regulations clarify when surrogates may be appointed. One reason given was to insure that agencies do not attempt to appoint surrogates when parents are uncooperative or nonresponsive.

Response: The section has been revised to make it clear that the requirements for appointing surrogates apply only when no parent can be identified, the agency after reasonable efforts cannot discover the whereabouts of a parent, or the child is a ward of the State. Agencies are not allowed to appoint surrogates when parents are uncooperative or nonresponsive.

Comment: Commenters requested that the regulations further specify procedures to be used for the appointment of surrogates, including administrative proceedings with notice to interested parties and the right of interested parties to seek a review of the decision.

Response: No change has been made. State procedures for the appointment of surrogates will be followed. Disagreements about the choice of surrogates may be the subject of a due process hearing under section 121a.506.

Comment: A number of commenters suggested that the regulations provide more detail about the qualifications of the surrogates (for example, requiring training and a commitment to becoming acquainted with the child).

Response: No change has been made. The Office of Education believes these concerns are covered by section 121a.514(c)(2) which requires that the surrogate have knowledge and skills that insure adequate representation of the child.

Comment: A number of commenters were concerned about the legal liability of surrogates. Some commenters wanted the regulations to protect surrogates from any legal liability.

Response: No change has been made. The legal liability of surrogates will be determined under State law relating to such matters as breach of fiduciary duty, negligence, and conflict of interest. The Federal government has no authority to limit legal liability.

Comment: A number of commenters sought clarification regarding which agency employees could serve as surrogates. For example, one commenter wanted the regulations to indicate whether the head of a State institution could serve as the surrogate.

Response: The regulation has been reworded to make it clear that no employee of any agency involved in the education or care of the child may serve as the surrogate parent.

PROTECTION IN EVALUATION PROCEDURES

Section 612(5)(C) of the Act requires States to establish non-discriminatory testing procedures for use in the evaluation and placement of handicapped children. The requirements for public agencies to follow in carrying out this provision are set forth in sections 121a.530–121a.534 of Subpart E. (These section numbers have been changed to correspond with other number changes in Subpart E.)

The evaluation procedures in the proposed rules have been changed to conform to the corresponding requirements in the final regulations for section 504 of the Rehabilitation Act of 1973 (45 CFR Part 84, § 84.35) and in response to other comments received. (Many of the comments dealing with the language and substance of the proposed evaluation procedures are covered by the above conforming changes.) A summary of the changes in these procedures is included below:

(1) Proposed section 121a.431 ("Evaluation; change in placement") has been replaced with new section 121a.531 ("Preplacement evaluation"). This corresponds to section 84.35(a) of Part 84.

(2) Proposed section 121a.432 ("Evaluation procedures") has been divided into two sections (section 121a.532 "Evaluation procedures" and section 121a.533, "Placement procedures"). The new section on evaluation procedures (a) incorporates essentially verbatim the language of section 84.35(b) of Part 84, (b) adds two additional requirements from section 612(5)(C) of the Act which are not in Part 84 (e.g., the provision on native language, and the requirement that "No single procedure is used as the sole criterion for determining an appropriate educational program for a child"), and (c) requires that the evaluation be made by a "multidisciplinary team * * * including at least one teacher or other specialist with knowledge in the area of identified disability * * *"

(3) The new section on placement procedures incorporates essentially verbatim the language in section 84.35(c) of Part 84. In addition, the section ties the development

of an individualized education program to the placement procedures.

The following additional comments were made regarding evaluation procedures:

Comment: Several commenters felt that the regulations should require State and local educational agencies to develop procedures for the conduct of evaluations. This would make it possible to determine the adequacy of the evaluations and to insure uniformity in basic procedures.

Response: A paragraph was added to section 121a.530 (General) which requires the State educational agency to insure that each public agency establishes and implements evaluation—placement procedures.

Comment: Several commenters felt that timelines should be set for implementing the evaluation process (e.g., for initial referral to evaluation and placement).

Response: No change has been made. The Office of Education has elected to impose very few absolute timelines in the regulations for this part, because of the potential administrative and legal problems they can cause. Imposing timelines can actually delay the provision of a service (for example, if the time periods are regarded as both minimum and maximum times for implementing a procedure).

A child should be evaluated as soon as possible following referral. Any undue delay in providing the evaluation would raise the question of the State and local educational agencies' compliance with sections 121a.128 and 121a.220 (identification and evaluation of all handicapped children).

Comment: Some commenters requested clarification regarding whether a reevaluation is needed, as required by proposed section 121a.431(a)(2), if the parents and agency agree that the child should be transferred from a special education program to a full time regular class placement.

Response: This specific section has been deleted in the final regulations. However, any changes in a child's placement (including a transfer to a regular class) would not be made until after a meeting is held to review the child's individualized education program in accordance with the requirements under sections 121a.340–121a.349 of Subpart C. If the parents and agency agree that the child no longer needs special education, a reevaluation would not be necessary. Section 121a.531 requires an evaluation before initial placement only. Reevaluations are covered under section 121a.534.

LEAST RESTRICTIVE ENVIRONMENT

Section 612(5)(B) of the Act requires States to establish policies and procedures to insure that "to the maximum extent appropriate, handicapped children * * * are educated with nonhandicapped children * * *." The regulations for implementing this provision are set out in sections 121a.-550–121a.556 of Subpart E.

A new paragraph was added to section 121a.550 which requires the State to insure that all public agencies establish and implement procedures in accordance with the requirements of this subpart. In addition, a new section, entitled "Nonacademic settings" was added. This section is taken from a new requirement in the section 504 regulations (45 CFR Part 84, § 84.34).

GENERAL (§ 121a.550)

Comment: A number of commenters requested that provisions be made for special support in the regular classroom in order to accommodate handicapped children (e.g., including reducing the pupil-teacher ratio and assigning aides to the room).

Response: No change was made, since the statute already authorizes the use of supplementary aids and services as a means of enabling a handicapped child to be educated with nonhandicapped children.

CONTINUUM OF ALTERNATIVE PLACEMENTS (§ 121a.551)

Comment: Many commenters responded to this requirement. Some felt that terms other than "continuum" should be used (e.g., "range of programs" and "variety of services"). A large number of commenters felt that "continuum" carried negative connotations (e.g., statements were made that the concept undermines the ideals of Pub. L. 94–142, that it implies best-to-worst, etc.). Other commenters felt that it discriminated against residential or private schools, and suggested that efforts be made to counteract this bias.

Response: No change has been made in this section. The term "continuum," as with "least restrictive environment" (LRE), is commonly used by agencies, advocates, and parents. However, there is nothing to prohibit an agency from using terms such as those included above in administering these provisions.

As with "LRE," the term that is used is not as important as the basic provision and how that provision is implemented. The purpose of a continuum is to be able to accommodate to differences between handicapped children in terms of the degree of special assistance they need to receive a free appropriate public education. This matter was dealt with directly in the June 26, 1975 Report of the House of Representatives on HR 7217 (H. Rept. No. 94-332, p. 9):

The Committee understands the importance of providing educational services to each handicapped child according to his or her individual needs. These needs may entail instruction to be given in varying environments, i.e., hospital, home, school or institution. The Committee urges that where possible and where most beneficial to the child, special educational services be provided in a classroom situation. An optimal situation, of course, would be one in which the child is placed in a regular classroom. The Committee recognizes that this is not always the most beneficial place of instruction. No child should be denied an educational opportunity; therefore, H.R. 7217 expands special educational services to be provided in hospitals, in the home, and in institutions.

When it is clear that, because of the nature or severity of a child's handicap, the child must be educated in a setting other than the regular class, it is appropriate to implement such a placement. However, the LRE provision is also designed as a rights provision to protect against indiscriminate placement of a child in a separate facility solely because the child is handicapped and not because special education is needed in that type of setting.

Even with respect to severely handicapped children, it may be possible to meet the "regular education setting" goal by having a separate class or separate wing in a regular school building.

PLACEMENTS (§ 121a.552)

Comment: Many commenters were concerned that there may be an overzealous implementation of the LRE provision without regard to the needs of individual handicapped or nonhandicapped children.

Response: No substantive change has been made in this section, because the Office of Education feels that the section includes necessary safeguards to insure protection against the above concerns. With respect to those concerns, the overriding rule is that each child's placement must be determined annually and be based on his or her individualized education program.

With respect to concerns about the harmful effect of placing handicapped children in regular classes, the analysis of the section 504 regulations indicates: "* * * it should be stressed that, where a handicapped child is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore regular placement would not be appropriate to his or her needs * * *" (45 CFR Part 84—Appendix, paragraph 24)

Comment: A commenter requested that a new provision be added which requires State and local educational agencies to utilize community-based early childhood development programs for 3–5 year old handicapped children. The main intent of the new provision is "aimed solely at assuring maximum appropriate mainstreaming."

Response: No change was made in the section. The existing provisions are considered to be adequate to cover the intent of this request.

CONFIDENTIALITY OF INFORMATION

NOTICE TO PARENTS (§ 121a.561)

Comment: Commenters asked that the detailed content of the notice requirements be deleted as excessive.

Response: No change has been made. The Office of Education believes the provisions require that States provide necessary information to inform parents about the type of information collected about handicapped children to meet the requirements of this part.

ACCESS RIGHTS (§ 121a.562)

Comment: Commenters requested that this section be expanded to require that access to records be given in no case less than five days prior to meetings to develop individualized education programs or any hearing and to permit authorized representatives of the parent to inspect the record. A commenter felt the 45-day outside time limitation could be misinterpreted to mean an agency need not comply at all after 45 days from the date of the request.

Response: Language has been added to make it clear that an agency must comply with a request for access before any meeting regarding an individualized education program. This will help insure that interested parents are able to familiarize themselves with their child's records prior to any meeting and be able to participate more knowledgeably. The prohibition against unnecessary delay places an obligation on the agency to make the records available in a timely manner so that the Office of Education does not believe it is necessary to specify a specific time limitation. Section 121a.562 has been amended to give parents the right to have an authorized representative inspect their child's education records.

The 45-day time limitation is not subject to the misinterpretation the commenter fears. This language is from the Family Educational Rights and Privacy Act, section 438 of the General Education Provisions Act (specifically section 432(a)(1)(A)), to which these regulations are tied (by statute).

FEES (§ 121a.566)

Comment: A commenter felt the first copy of a record should be given free upon request from the parents.

Response: No change has been made. The prohibition against charging a fee if it would effectively prevent the parents from inspecting and reviewing the record is based on a requirement in the Family Educational Rights and Privacy Act, to which these regulations are limited by statute (section 612

(2)(C)). Agencies may of course adopt policies of making copies available free of charge and are encouraged to do so.

HEARING PROCEDURES (§ 121a.570)

Comment: A commenter requested clarification of who conducts a hearing.

Response: The section states that the procedures under § 99.22 (the hearing procedures in the regulations for the Family Educational Rights and Privacy Act) be used. Section 99.22(b) states the hearing may be conducted by any party, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.

CONSENT (§ 121a.571)

Comment: Commenters requested that "advanced students," "persons acting as practicum advisors," and researchers be given access to records without consent.

Response: No change has been made. The Family Educational Rights and Privacy Act specifically lists parties and conditions where records may be released without parental consent.

SAFEGUARDS (§ 121a.572)

Comment: A commenter requested a list of positions rather than a list of names of employees who may have access to personally identifiable information.

Response: The requirement has been modified to require a list of names and positions to more fully inform parents and the public of the categories of individuals given access to data as well as the specific individuals who may have access.

DESTRUCTION OF INFORMATION (§ 121a.573)

Comment: A number of commenters were concerned about the destruction requirements. The principle concern was that detailed records might be needed by the handicapped individuals to show proof of need for further services from other agencies. One recommendation was that the parent and child be notified of the existence of the records at the time of graduation and informed that they would be destroyed only upon request of the parent or child. Another commenter suggested that records be maintained, but that parents be given the option to have them destroyed.

Response: The requirement has been revised to permit the parents to request that the information be destroyed and to require the public agency to inform the parents of the destruction option and their right to have the records destroyed upon request. The notice would normally be given at the time a child graduates or otherwise leaves the agency. The purpose of the destruction option is to insure that nonessential records about a child's behavior, performance, and abilities, which may possibly by stigmatizing and are highly personal, are not kept after they are no longer needed for educational purposes. Destruction of these records is the best protection against improper or unauthorized disclosures. However, the handicapped child or his or her parents may need certain records for other purposes (such as proof of eligibility for benefits).

Comment: Commenters asked that notice be given to a child who has reached the age of majority.

Response: No change has been made. Section 121a.574 requires the State educational agency to have policies and procedures regarding children's privacy rights. Where education records are maintained by an agency covered under the Family Educational Rights and Privacy Act, these rights must include transfer of the rights of parents to the child when he or she reaches 18 or the post-secondary education level.

Other Changes: The regulations have been revised to make it clear that the records covered under this Act are the same as the type of records covered under the Family Educational Rights and Privacy Act. Consistency in coverage is necessary to avoid undue administrative burdens on public agencies covered by both laws.

OFFICE OF EDUCATION PROCEDURES

General: The requirements in these sections largely repeated the statute. Perhaps for this reason, few comments were received on the Office of Education procedures.

WAIVER OF REQUIREMENT REGARDING SUPPLEMENTING AND SUPPLANTING WITH PART B FUNDS (§ 121a.589)

Comment: A commenter requested that the special study to determine if a waiver of the requirement should be granted include a review of whether grievance procedures are operational. Other commenters disagreed on the need for this study.

Response: A requirement has been added to have the study cover the adequacy of the State's due process procedures, as this is an important part of insuring that grievances are heard and to determine if parents and other parties are satisfied with the adequacy of the State's programs for handicapped children.

WITHHOLDING PAYMENTS (§ 121a.590)

Comment: Commenters asked for definitions of "substantial compliance" and "failure to comply." Commenters also urged that the Office of Education, the Office for Civil Rights, and Departmental audit officials apply the same criteria.

Response: No change has been made. The Office of Education believes these terms will have to be defined on a case-by-case basis.

The Office of Education and the Office for Civil Rights will coordinate and cooperate in enforcing requirements under this Part and Part 84 (the regulations for section 504 of the Rehabilitation Act of 1973) where identical requirements are involved. The Office of Education will make every effort to insure that auditing officials understand and apply any criteria used by program officials.

SUBPART F—STATE ADMINISTRATION

This subpart has been expanded with requirements set out under the major headings: State Educational Agency Responsibilities, Use of Funds, and State Advisory Panel.

STATE EDUCATIONAL AGENCY RESPONSIBILITIES

Provisions on State educational agency responsibilities have been redrafted (and relocated from proposed section 121a.34) in response to comments, to better summarize general administrative and supervisory responsibilities in section 612(6) and other sections of the Act. A section on complaint procedures, which was included in previous regulations for Part B (prior section 121a.14) and inadvertently not included in the proposed regulations has been added.

Comment: Commenters requested addition of a new section on State educational agencies' responsibilities for monitoring, evaluation, and enforcement activities to insure compliance throughout the State with the requirements of this part. The commenters made specific suggestions for implementing such a section, including collection of data, conduct of on-site visits, audit of fund utilization, comparison of written individualized education programs with programs actually provided, meetings with parents and parent groups, public hearings, development of detailed criteria for evaluating program quality and effectiveness, and detailed procedures for enforcing requirements against noncomplying agencies.

Response: A new section has been added to require each State educational agency to develop procedures and specific timelines for monitoring and evaluating public agencies involved in the education of handicapped children. These are minimal requirements. Adoption of the other suggestions made by the commenters is encouraged but not required.

ALLOWABLE COSTS (§ 121a.621)

Comment: A number of commenters requested that the limitation on State administrative funds be raised and that provisions be added to allow local educational agencies to use funds for administrative costs.

Response: No change has been made on the State limit as it is a statutory limitation.

Comment: Commenters requested that the regulations require each State educational agency to use its funds for specific purposes. One recommendaiton was that ten percent of the administrative funds be used to train persons in local communities to assist and represent parents and to prepare and disseminate to parents information about their rights under these regulations. Another was that they be used to disseminate instructional material.

Response: No change has been made. The Office of Education does not believe it is appropriate to dictate to States how to use their limited administrative funds.

STATE ADVISORY PANEL

ESTABLISHMENT (§ 121a.650)

Comment: One commenter recommended that local panels be required.

Response: No change has been made. The statute only requires a State advisory panel. A State may, of course, decide to establish local panels.

MEMBERSHIP (§121a.651)

Comment: A substantial number of commenters requested additions to the list of representatives to be included on the panel, including professional groups, legal advocacy groups, and employees of State and local agencies. Some commenters recommended that handicapped individuals or their parents make up specific percentages of the panel.

Response: A provision has been added to make it clear that a State may expand the advisory panel to include additional persons in the groups listed (which are statutory) and representatives of other groups. The Office of Education does not believe it is appropriate to prescribe specific percentages, as the States should have some discretion to determine the proper mix of representatives. A comment has been added to indicate factors a State may consider in determining balanced membership of the panel.

ADVISORY FUNCTIONS AND ADVISORY PANEL PROCEDURES (§§ 121a.652—121a.653)

Comment: Commenters recommended that the regulations indicate that the panel must comment publicly on the State annual program plan as well as on any rules and regulations regarding education of handicapped children, review annual evaluations, and act as ombudspersons to hear complaints.

Response: A change has been made to require the panel to comment on the annual program plan. The annual program plan is an extremely important document and this addition makes it clear that the advisory panel must be involved in reviewing it. The other recommendations are legitimate activities but not ones the Federal government believes should be required by these regulations at this time.

Comment: Commenters requested that the regulations provide that panel members be reimbursed for reasonable and necessary expenses for attending meetings and performing duties.

Response: This change has been made. It is reasonable to require reimbursement for expenses so that persons will be able to participate without financial sacrifice.

SUBPART G—ALLOCATIONS OF FUNDS; REPORTS

ALLOCATIONS

This major section of Subpart G is entirely statutory; therefore, there are no comments of substance on which to respond.

REPORTS—ANNUAL REPORT OF CHILDREN SERVED (§§ 121a.750–121a.754)

The following comments were received regarding the annual report by the States of the number of children receiving special education and related services. This report is the basis for each State's allocation of funds under Part B, and serves as a mechanism for the Commissioner to meet some of his reporting requirements to Congress under section 618 of the Act. Some commenters recommended changes that would require amendment of the Act. These have not been summarized except where further explanation seemed to be useful.

AMOUNT OF INFORMATION REQUIRED IN THE REPORT

Comment: Commenters varied in their views on what information should be included in the report. It was suggested that additional information be collected for compliance purposes. Objections were made to the requirement for reporting information by disability category, and for reporting the 0-2 year old population. On the other hand, some commenters recommended that additional categories be added to the report, particularly for deaf-blind children and for multihandicapped children.

Response: Two categories of handicapped children have been added to the report—one for multihandicapped children and one for deaf-blind children. These terms are defined in section 121a.5 of Subpart A. No other changes have been made on the amount of information to be reported.

The additional categories should help to insure that no handicapped child is counted more than once, since the States will not have to decide in which of two or more disability categories to count a multihandicapped child. The changes conform to existing reporting requirements used by the States.

The annual report of children served is not a compliance document. It is only used to determine each State's allocation and to assist the Commissioner in meeting his reporting requirements to the Congress under section 618. Under section 611 of the Act, allocations are based on the number of handicapped children in each State receiving special education and related services. Compliance with requirements such as "least restrictive environment" will be achieved through other mechanisms, including the State's annual program plan, the local educational agency's application, and monitoring by the State educational agency and the Office of Education.

As explained in the preamble to the proposed rules published in the FEDERAL REGISTER on September 8, 1976, the report requirements are the minimum needed by the Commissioner to carry out the Act. (See 41 FR 37814.) While the Commissioner is concerned about the possible harmful effects of "labeling" children, the Act requires that the Commissioner report a substantial amount of information, to Congress by disability category. For this reason, and for the other reasons stated in the September 8, 1976, FEDERAL REGISTER, there appears to be no workable alternative to retaining the categories in the States' annual reports. The various disability categories, as well as the requirements to use them in the Commissioner's reports to the Congress, are statutory.

WHO MAY BE COUNTED

Comment: Commenters disagreed as to whether handicapped children should be counted if their special education is paid for solely from private sources or solely from Federal funds (such as children living on military bases). Some thought that only publicly-funded special education should qualify, while others argued that since all children have a right to a free appropriate public education the source of funding (other than the parent) should not matter.

Response: Section 121a.753 has been amended to provide that handicapped children (including such children in Head Start or other preschool programs) may be counted only if they (1) are enrolled in a school or program which is operated or supported by a public agency, and (2) receive special education that meets State standards.

A State may not count a child whose special education is paid for solely by the Federal government, unless the child is in one of the age groups 3–5 or 18–21, and there are no local or State funds available for nonhandicapped children in that age group.

Children funded solely by the Federal government would include Indian children whose special education is paid for solely by the Federal government, as well as children on military bases whose education is paid for solely with Federal funds. This rule is consistent with the requirement that a free appropriate public education (FAPE) be made available by the State to each handicapped child. Parents are not required to take advantage of FAPE. If they choose to educate their child outside of the public school system, even though FAPE is available, the State has discharged its responsibility. However, by the same token, the child should not be counted by the State for its allocation if the child is not being provided special education at public expense. The same reasoning applies to Indian children and other children who receive their special education from the Federal government. The rule should serve as an encouragement to States to provide services to all handicapped children, however, since any child provided special education from State or local funds may be counted.

Comment: Two other provisions in the regulations were objected to by commenters. The first of these provided that handicapped children "enrolled" in schools to receive special education could be counted as receiving special education. These commenters felt that enrollment did not guarantee actual receipt of services. The second provision stated, in essence, that a child who receives special education may be counted, but not a child who receives only "related services." This was viewed as an overly restrictive reading of the Act.

Response: No change has been made in the regulations. While no system is perfect, enrollment is a legitimate way of determining the number of handicapped children receiving special education on October 1 and on February 1, the two dates on which the Act requires the count of children served. It would not be practical to make an actual head count of children in classrooms and other facilities where services are provided.

With respect to children who only receive "related services," this is governed by statutory language. "Related services" are only those "required to assist a handicapped child to benefit from special education." (Section 602(17) of the Act.) If a child does not need special education, there can be no "related services," as that term is defined in the Act. However, section 121a.14 permits a State to define certain services as "special education," if those services are "specially designed instruction to meet the unique needs of a handicapped child." (This is taken from the definition of "special education" in section 602(16) of the Act.)

REALLOCATION OF LOCAL EDUCATIONAL AGENCY FUNDS (§ 121a.708)

Comment: Commenters requested criteria be added for when funds may be reallocated.

Response: No criteria have been added as determinations will be made on a case-by-case basis.

APPENDIX B—INDEX TO PART 121a

ADMINISTRATION

ADVISORY PANEL (STATE)

ALLOCATIONS

ANNUAL PROGRAM PLAN

APPLICABILITY OF REGULATIONS—§ 121a.2

APPLICATION BY LOCAL AGENCY

5. A new Part 121m is added to read as follows:

PART 121m—INCENTIVE GRANTS

AUTHORITY: Sec. 619 of Pub. L. 91-230, as amended, 89 Stat. 793 (20 U.S.C. 1419), unless otherwise noted.

§ 121m.1 Scope; purpose.

(a) This part applies to assistance under section 619 of the Act.

(b) The Commissioner awards a grant to each State which provides special education and related services to handicapped children ages three, four, or five.

(c) The State shall use funds provided under this part to give special education and related services to handicapped children in the age groups named in paragraph (b) of this section.

(d) The terms "special education" and "related services" have the meanings defined in § 121a.12 and § 121a.13 of this chapter.

(20 U.S.C. 1419(c).)

§ 121m.2 General provisions regulations.

Assistance under this part is subject to the requirements in Parts 100, 100b, 100c, and 121 of this chapter (including definitions and fiscal, administrative, property management, and other matters).

(20 U.S.C. 1419.)

§ 121m.3 Eligibility.

A State is eligible to receive a grant if:

(a) The Commissioner has approved its annual program plan under Part 121a of this chapter; and

(b) The State provides special education and related services to any handicapped children aged three, four, or five.

(20 U.S.C. 1419(a).)

§ 121m.4 Application.

To receive funds under this part, a State must submit an application to the Commissioner through its State educational agency.

(20 U.S.C. 1419(b).)

§ 121m.5 Application contents.

An application must include the following material:

(a) A description of the State's goals and objectives for meeting the educational needs of handicapped children ages three through five. These goals and objectives must be consistent with the State's full educational opportunity goal under § 121a.123 of this chapter.

(b) A description of the objectives to be supported by the grant in sufficient

detail to determine what will be achieved with the grant.

(c) A description of the activities to be supported by the grant. The activities must be related to the objectives under paragraph (b) of this section and must be described in sufficient detail to determine how the grant will be used.

(d) A description of the impact the proposed activities will have on handicapped children ages three through five. This description must include evidence that the proposed activities are of sufficient size, scope, and quality to warrant the amount of the expenditure. The application must indicate the number of children to be served and the number of handicapped children who will be benefitted indirectly. If children are to be benefitted indirectly, there must be a rationale that demonstrates the benefit.

(e) The number of local educational agencies or intermediate educational units, and the number and names of other agencies which will provide contractual services under the grant, the activities they will carry out, and the reasons for selecting these agencies.

(f) The dollar amounts that will be spent for each major activity described.

(g) A description of the procedures the State will use to evaluate the extent to which the activities met the objectives described under paragraph (b) of this section.

(20 U.S.C. 1419(b).)

§ 121m.6 Amount of grant.

(a) The amount of a grant is $300 multiplied by the average number of children ages three through five counted during the current school year under §§ 121a.750–121a.754 of this chapter.

(b) If appropriated funds are less than enough to pay in full the grants under this part, the amount of each grant is ratably reduced.

(20 U.S.C. 1419(a), (d).)

§ 121m.7 Allowable expenditures.

(a) The State educational agency may use funds under this part to give special education and related services to handicapped children ages three through five who are not counted under §§ 121a.750–121a.754 of this chapter if the State educational agency insures that those children have all of the rights afforded under part 121a of this chapter.

(b) The State educational agency may use up to five percent of its grant for the costs of administering the funds provided under this part.

(20 U.S.C. 1419(c).)

Comment. In carrying out the provisions of this part some activities are considered particularly appropriate for the use of these funds: (1) Providing parents with child development information; (2) assisting parents in the understanding of the special needs of their handicapped child; (3) providing parent counseling and parent training, where appropriate, to enable parents to work more effectively with their children; (4) providing essential diagnosis and assessment; (5) providing transportation essential to the delivery of services; (6) providing speech therapy, occupational therapy, or physical therapy.

§ 121m.8 Excess costs.

(a) If local or State funds are available to pay for the education of nonhandicapped children of the same age as the handicapped children served with funds under this part, funds equal to that amount must also be made available for these handicapped children.

(b) If no local or State funds are available for nonhandicapped children of the same age, funds under this part may be used to pay for all of the costs directly attributable to the education of the handicapped children.

(20 U.S.C. 1419(c).)

§ 121m.9 Administration.

(a) The State educational agency shall administer the funds provided under this part.

(b) The State educational agency may use the funds itself, or may contract with local educational agencies, intermediate educational units, or other agencies.

(20 U.S.C. 1419(a).)

§ 121m.10 Annual evaluation report.

(a) Within 90 days after the end of the grant period, the State educational agency shall submit a report to the Commissioner on the activities carried out under this part during that period.

(b) The report must contain:

(1) The results of the evaluation under § 121m.5(g), and

(2) In brief narrative form, the impact that these funds have had on the State's educational services to handicapped children ages three, four, and five.

(20 U.S.C. 1419(c).)

[FR Doc.77-24033 Filed 8-22-77;8:45 am]

federal register

TUESDAY, AUGUST 23, 1977
PART III

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

■

MEDICAL DEVICES

Establishment Registration and Premarket Notification Procedures

Title 21—Food and Drugs

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

SUBCHAPTER H—MEDICAL DEVICES

[Docket No. 76N-0355]

ESTABLISHMENT REGISTRATION AND PREMARKET NOTIFICATION PROCEDURES

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The agency is issuing final regulations setting forth procedures for the registration of establishments in which devices intended for human use are produced. These regulations also establish requirements governing the form and manner in which premarket notification submissions are to be sent to the Food and Drug Administration (FDA), at least 90 days in advance, by any person who proposes to begin commercial distribution of a device intended for human use in interstate commerce. The Medical Device Amendments of 1976 have provided the agency with the authority to promulgate such regulations to ensure the safety and effectiveness of medical devices for humans.

The agency also is establishing rules governing the availability to the public of premarket notification submissions. The existence of a submission and its contents will generally be available to the public upon request, but the regulations provide an exception allowing the existence and contents of certain submissions to be considered confidential commercial information. However, the Commissioner announces his intention to consider further revisions in the regulation when he publishes proposed regulations concerning FDA's handling of public information requests involving new drug applications and related industry submissions to FDA.

EFFECTIVE DATE: September 22, 1977.

FOR FURTHER INFORMATION CONTACT:

FOR THE ESTABLISHMENT REGISTRATION PROVISIONS

Thomas V. Kelley, Bureau of Medical Devices (HFK-124), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, MD 20910 (301-427-7190).

FOR PREMARKET NOTIFICATION PROCEDURES

Robert S. Kennedy, Bureau of Medical Devices (HFK-1), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, MD 20910 (301-427-7900).

SUPPLEMENTARY INFORMATION: The proposed regulations on which these final regulations are based were published in the FEDERAL REGISTER of September 3, 1976 (41 FR 37458). Interested persons were given until November 2, 1976 to comment.

Forty-seven comments were received on the proposal. The issues most often raised by these comments concerned the exemptions from registration, the requirements for submitting a premarket notification when a change or modification is made to a device already on the market, the FDA review of premarket notification submissions, and the confidentiality of premarket notification submissions.

In general, the final regulation has been adopted as proposed although several changes have been made in response to the comments and to clarify the language of the regulation.

ESTABLISHMENT REGISTRATION

1. Definitions of "act" and "distributor" are being added for clarity to § 807.3 of the final regulation. The Commissioner of Food and Drugs is also adding a new paragraph (h) to this section which states that the terms defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) shall have the same meaning in these registration regulations.

2. Three comments asserted that if the definition of "commercial distribution" was adopted as proposed in § 807.3 (a), multinational corporations would be required to file a premarket notification submission for an intraorganizational shipment between a foreign subsidiary and a domestic parent. The comments indicated that premarket notification in such a situation would not serve any useful purpose since the device will not go "on the market" at that point, and also indicated that a second premarket notification would be required when the device is about to be marketed by the parent company. It was therefore suggested that the words "registered domestic" should be deleted from the definition of "commercial distribution" to clarify that premarket notification is not required for such intraorganizational shipments.

The Commissioner agrees that premarket notification is not required when a device is to be shipped from a foreign subsidiary to a domestic parent establishment and there is no distribution outside the company. It is necessary, however, that FDA be notified at least 90 days before the device is distributed and held or offered for sale within the United States. Therefore, as suggested by the comments, the phrase "registered domestic" has been deleted from the definition of commercial distribution in the final regulation.

Two comments also suggested that the shipment of a device for display as a work-in-process or as an engineering prototype at a scientific exhibit should not be considered "commercial distribution" of a device. These comments noted that such shipments are useful to manufacturers and the scientific community and present no danger to the public health.

The Commissioner notes that the definition of "commercial distribution" applies only to a device that is "held or offered for sale." If a device is shipped merely for display as a work-in-process or as an engineering prototype at a scientific exhibit and is not held or offered for sale, it will not be considered to be in "commercial distribution."

3. One comment questioned whether the term "establishment" in proposed § 807.3(b) (redesignated § 807.3(c)) is synonymous with the terms "division" or "owner or operator." Another comment questioned whether a division of a company would be an "owner or operator" where such a division has more than one operating facility.

The Commissioner notes that an "establishment" within the meaning of new § 807.3(c) is a place of business at which a device is processed, whereas an "owner or operator" within the meaning of new § 807.3(f) is the person or organization directly responsible for the activities of an establishment. Therefore, the terms "establishment" and "owner or operator" are not synonymous. A division may be either an "establishment" or an "owner or operator" depending upon which definition applies.

4. One comment objected that proposed § 807.20 would require a manufacturer of a device "intended for human use" to register. This comment asserted that the phrase "intended for human use" is too broad and would include devices not within the scope of the act. The comment suggested that this phrase should be changed to "device as defined in section 201(h) of the act."

The Commissioner notes that the definition of device in section 201(h) of the act includes devices other than those intended for human use. However, the registration provisions of section 510 of the act (21 U.S.C. 360) and Part 807 apply only to devices intended for human use and not to devices intended for veterinary use. In all other respects the term "device" as used in the regulation is intended to carry the meaning conveyed in section 201(h) of the act. Therefore, the phrase "intended for human use" has been retained in the final regulation.

5. One comment objected to the fact that under proposed § 807.20(a) registration is required for any person who initiates specifications for a device that is to be manufactured for him for subsequent commercial distribution. It was argued that section 510 of the act requires the registration of any esablishment engaged in the manufacture, preparation, propagation, compounding, or processing of a device, and that the initiation of specifications is not within any of these processes.

The Commissioner believes that a person initiating specifications for a device to be manufactured for him for commercial distribution would be engaged both in the manufacture and in the propagation of a device and therefore should register with FDA. The initiation of specifications is a process that often occurs within the manufacturing establishment as part of the manufacturing process. A device may be manufactured exactly according to specifications and still be defective if the specifications are

faulty; for that reason, the regulation requires registration.

The Commissioner notes, however, that the requirement to register applies only if the person initiating specifications has the device manufactured for him for commercial distribution and the device is marketed under the name of the person initiating the specifications. The Commissioner believes that a person who has a device marketed under his name is engaged in the propagation of a device. The requirement to register does not apply when the person initiating the specifications is in a consulting capacity or transfers the rights to manufacture and to distribute the device to other persons. To reflect this position, the regulation has been changed in §§ 807.3(d)(3) and 807.20(a)(1) to provide that a person initiating specifications is required to register only if the device is to be put in commercial distribution by him.

6. One comment suggested that proposed § 807.20(a) be clarified so that only one establishment of a company would be required to register for each device and the manufacturer could determine which location would be the most appropriate one to register.

The suggestion has not been adopted. A device may be processed wholly or in part at more than one establishment. For the purposes of inspection, the Commissioner should be aware of all establishments at which a device is manufactured, prepared, propagated, compounded, or processed, and therefore all such establishments must be registered.

7. Various comments addressed the time periods allowed for establishment registration under proposed § 807.21. This section provided that an establishment register within 15 days of receiving Form FD-2891 (Initial Registration of Device Establishment) if the establishment were currently engaged in an operation requiring registration. One comment suggested that this period be changed to 30 days and another suggested that it should be 60 days. Proposed § 807.21 also provided that an establishment register within 5 days after submitting a premarket notification if it had not been previously engaged in an operation requiring registration. One comment suggested that this period be changed to 15 days; another suggested that it should be 30 days.

All these comments argued that the longer time periods are necessary so that the registration form can go through the approval process within the business organization.

The Commissioner agrees with these comments, and the time frames for registration have been changed in the final regulation. He also notes that in 1976 FDA mailed registration forms to all human medical device establishments of which it had knowledge. Many establishments completed and returned these registration forms, while other establishments did not register, awaiting these final regulations. The Food and Drug Administration does not plan another mass mailing of registration forms, but will send individual forms to establishments that request them. The requirement that establishments currently engaged in an operation requiring registration must register within 15 days after receiving Form FD-2891 has been deleted from the final regulation as unnecessary. Establishments currently engaged in an operation requiring registration that have not yet registered must register within 30 days after the effective date of this regulation.

The Commissioner has also determined that it is inappropriate to require an establishment not currently engaged in an operation requiring registration to register within 5 days after submitting a premarket modification. If the Commissioner determines that the device is not substantially equivalent to one already on the market and therefore premarket approval is required, the owner or operator may decide that it is not economically feasible to market the device. This would result in an establishment being registered that is not engaged in the medical device business. As a result, the final regulation requires the owner or operator to register within 30 days after entering into an operation requiring registration.

8. One comment suggested that Form FD-2891 (Initial Registration of Device Establishment) provide a space for designation of the person(s) to whom copies of correspondence should be sent. The comment stated that if a subcontract-manufacturer registers, there should be an official means of notifying the responsible manufacturer.

The Commissioner notes that under these regulations copies of all correspondence will be sent to the official correspondent as listed on Form FD-2891. The official correspondent is responsible for notifying the proper persons within the establishment, and, when desired by those persons, those with whom a contractual relationship exists.

9. Five comments argued that the 5-day period allowed for submission of amendments to the establishment registration under proposed § 807.26 is too short to allow for preparation within the company and for mailing time. Two of the comments suggested that the period should be 15 days; three comments suggested that 30 days should be allowed for submission of amendments.

The Commissioner agrees that 5 days may not be a sufficient time for submission of amendments to the registration form. The final regulation therefore allows 30 days for submission of an amendment after the change in registration information occurs.

10. One comment referring to proposed § 807.37 asserted that the establishment registration forms should not be made available for public inspection since the listing of device activities on them could be used to the disadvantage of the person submitting the registration forms.

Section 510(f) of the act requires the Commissioner to make available for public inspection any registration submitted pursuant to section 510. Accordingly, such information will be made available as required under the act. The Commissioner advises, however, that he does not believe that the registration forms require the submission of any trade secret information or any information that truly could be considered to be of a confidential commercial character.

11. Two comments sought clarification of the meaning of the word "requested" in proposed § 807.40 in reference to registration procedures for foreign device establishments. These comments asserted that if foreign manufacturers were not required to register it would give them an unfair competitive advantage over domestic manufacturers.

Section 510(i) of the act provides that foreign device establishments "shall be permitted" to register according to regulations to be promulgated by the Commissioner. The Commissioner therefore cannot as a matter of law require foreign device establishments to register. However, foreign device establishments will be required to list their devices with FDA in accordance with device-listing regulations that will be published in the FEDERAL REGISTER as a proposal in the near future.

Under section 801(a) of the act, the Commissioner is required to furnish the Secretary of the Treasury a list of foreign establishments registered pursuant to subsection 510(i). If a foreign manufacturer does not register under subsection 510(i) of the act or does not provide product-listing information under subsection 510(j) of the act, the device is required to be sampled by the Secretary of the Treasury for examination by FDA upon importation or an offer of importation into the United States.

12. One comment objected to the exemption in proposed § 807.65(d) for licensed practitioners who manufacture or alter devices solely for use in their practice. The comment stated that users who alter in vitro diagnostic products can create serious problems since such devices are no longer reporting results as labeled by the manufacturer.

The Commissioner advises that § 807.65(d) is intended to exempt licensed practitioners who manufacture, alter, or use devices to meet the needs of a particular patient; however, exemption from registration does not relieve such persons from their obligation to comply with other provisions of the act or regulations. The Commissioner believes that the problem of improper device use can be regulated more appropirately under the investigational device exemption authority of section 520(g) of the act (21 U.S.C. 360j(g)) and restricted device authority under section 520(e) of the act (21 U.S.C. 360j(e)). The comment is therefore rejected. The Commissioner recognizes that clinical laboratories, included in proposed § 807.65(d), generally provide a service resulting from the use of a device. He has therefore deleted reference to it in § 807.65(d), but has in-

corporated this exemption into new § 807.65(i).

13. One comment objected that proposed § 807.65(d) exempted from registration only licensed practitioners who alter devices. The comment noted that opticians are only licensed in 19 States and that no distinction should be made between licensed and unlicensed opticians where licensing is not available.

The Commissioner advises that opticians are specifically exempted in new § 807.65(i). The Commissioner intends this exemption to apply to any optician who meets the requirements to practice in the State in which he is practicing, whether or not there is a State licensing requirement.

14. One comment agreed that dental laboratories should be exempted from registration, but noted that in proposed § 807.65(i) they are exempted as persons who dispense devices to the ultimate consumer. The comment indicated that dental laboratories are forbidden by the Federal Denture Act of 1948 (18 U.S.C. 1821) to dispense devices to the ultimate consumer.

The final regulation has been rephrased to state that persons who dispense devices to the ultimate consumer or whose major responsibility is to render a service necessary to provide a consumer with a device are exempt from registration. In addition, the Commissioner is adding to the list of examples in § 807.65(i) assemblers of diagnostic X-ray systems. While such assemblers are exempt from registration, they continue to be subject to the assembler certification (reports of assembly) requirements in 21 CFR 1020.30(d).

15. One comment suggested that proposed § 807.65(i) be clarified to indicate that opticians who own and operate full-service laboratories should be exempted from establishment registration. These opticians perform functions such as processing, surfacing, edging, finishing, heat-treating, tempering, and assembling previously manufactured lenses or frames. The comment noted that these are the ordinary functions of opticians and it is therefore presumed that it was intended that opticians who perform these functions be exempted. Another comment noted that individuals and establishments that perform the same functions as full service optical laboratories are exempted by proposed §§ 807.65 (d) (licensed ophthalmologists and optometrists) and 807.65(i) (opticians). Additionally, two comments stated that the regulation should exempt all establishments engaged in the production of eyeglasses, except manufacturers of lens blanks and frames, since optometrists, opticians, and optical laboratories are not engaged in any process which involves a risk to the public health.

The Commissioner agrees with these comments, but does not believe that a change in the final regulation is necessary to reflect this position. While ophthalmologists, optometrists, and opticians are listed as examples of the types of individuals who are not required to register, the Commissioner believes that full service laboratories and similar establishments are exempted from registration. However, manufacturers of lens blanks and frames are not exempted and must register.

16. Comments suggested that proposed § 807.65 be clarified to indicate that a private labeler, who obtains a device from a manufacturer with the label already applied and who does not repackage or otherwise alter the container or label, is exempted from registration.

Paragraph (e) of this section provides an exemption for a pharmacy or similar retail establishment that purchases a device for subsequent distribution under its own name. The Commissioner intends this exemption to apply to a person who obtains a device from a manufacturer with the label already applied and who does not repackage the device or alter the container or label. The Commissioner believes that no change is necessary in the final regulation to reflect this position.

PREMARKET NOTIFICATION PROCEDURES

17. Comments asserted that FDA should not require a premarket notification submission when a person intends to reintroduce into commercial distribution a device that had once been in commercial distribution but had been subsequently discontinued. The comments stated that there is no legal or factual basis for such a requirement. One comment stated that there is nothing in the legislative history of section 510(k) of the act to substantiate the view that a discontinuance of commercial distribution before May 28, 1976, means that the device should not be considered to have been on the market prior to May 28, 1976. Another comment indicated that the House Report stated that section 510(k) of the act was "designed to insure that manufacturers do not intentionally circumvent the automatic classification of 'new' devices" (Medical Device Amendments of 1976, February 29, 1976, H.R. 94-853 at 37) and argued that this purpose would not be served by requiring a premarket notification submission for the reintroduction of a device on the market prior to May 28, 1976. An additional comment noted that no practical purpose would be served by this requirement since FDA would be notified of the reintroduction of any device under the device listing procedures of section 510(j) of the act.

The Commissioner generally agrees that it is not necessary to require a premarket notification submission for the resumption of commercial distribution of a device that was on the market and was later discontinued by the manufacturer. The owner or operator will, however, be required to report under the device listing regulations the resumption of commercial distribution of a device. The device listing regulations will be published in the FEDERAL REGISTER in the near future.

The owner or operator would not be circumventing the automatic classification of "new" devices if the device had previously been in commercial distribution and had been classified. The Commissioner cautions, however, that if the device in question has been changed or modified to the extent that a premarket notification would be required under the criteria of proposed § 807.81(a)(3), a premarket notification submission would then be required.

18. Numerous comments requested clarification or changes in proposed § 807.81(a)(3) with reference to situations requiring a premarket notification submission when a change or modification is to be made to a device already in commercial distribution. These comments stated that: (1) There is no need to require a premarket notification submission when a proposed change will increase the safety or effectiveness of the device. (2) Not every change in design, material, chemical composition, energy source, and manufacturing process is a significant change affecting the safety or effectiveness of the device and therefore a premarket notification submission should not be required for every such change. Instead, the regulation should identify what types of changes are significant enough to require a premarket notification submission. (3) The Food and Drug Administration should not require a premarket notification submission for every change in manufacturing process since too many such changes are made on a regular basis.

The Commissioner believes that FDA should be aware of and determine whether or not a change will increase the safety or effectiveness of the device. Proposed § 807.81(a)(3)(i), therefore, has been changed in the final regulation to require that a premarket notification be submitted only for changes that could significantly affect safety or effectiveness whether or not the manufacturer believes that it will increase or decrease safety or effectiveness.

The Commissioner did not intend that the owner or operator should submit a premarket notification for every change in design, material, chemical composition, energy source, or manufacturing process. This list was only intended as an example of some types of changes that often affect safety or effectiveness. The manufacturer is required to submit a premarket notification only if the change could significantly affect the safety or effectiveness of the device whether or not it is a change of one of the types given as examples. A change has been made in new § 807.81(a)(3) to indicate that premarket notification is required only if the change or modification could significantly affect the safety or effectiveness of the device or if there is a major change or modification in the intended use of the device.

Under the act, the burden is on the manufacturer to determine whether a premarket notification should be submitted for a change or modification in a device. The Commissioner believes that the manufacturer is the person best qualified to make this determination. If appropriate, FDA will notify the manu-

facturer that the premarket notification that was submitted need not have been submitted so that he may be aware that premarket notification is not required in such a situation. From such experiences, FDA may eventually draw some guidelines as to when a premarket notification submission is not required.

A question has been raised whether a premarket notification is required when a Firm B purchases the product line of a Company A, including the manufacturing facility for that product. The Commissioner believes that a premarket notification would not be required in that situation unless the devise has been changed or modified to the extent that the provisions of § 807.81(a)(3) would apply. Section 510(k) of the act would not apply to this situation because Firm B would not be proposing "to begin the introduction or delivery for introduction into interstate commerce for commercial distribution" of a device. Rather, Firm B would be marketing the device in place of Company A.

In such instances, FDA will be notified of a change in ownership by other means. Under new § 807.26, the owner or operator must report a change in individual owenrship or corporate or partnership structure within 30 days of the change. The owner or operator will also be required to report a change in ownership under the device-listing procedures to be published as proposed regulations in the FEDERAL REGISTER in the near future.

19. A comment objected that, under proposed § 807.85, the exemption from premarket notification to be granted to custom device manufacturers would not not be allowed if the device is offered through advertising by the manufacturer importer, or distributor. The comment noted that the dissemination of this information is essential to the medical community in obtaining the medical devices needed to treat all patients.

The prohibition of advertising in § 807.85 is intended to apply only to the advertising of a particular device. It does not prohibit the custom device manufacturer from advertising that he manufactures custom devices of a particular generic type. The exemption for manufacturers of custom devices is intended to apply to only those who are customizing devices to fit the needs of a particular patient so that they will not be required to file a premarket notification for each particular device. This reasoning does not apply if the manufacturer, through advertising, is generally offering a particular device for sale. If the device is widely offered through advertising, it could not be considered a custom device.

20. The Commissioner is adding to new § 807.85 exemptions from premarket notification for a distributor who places a device in commercial distribution for the first time under his own name and for a repackager who places his own name on a device, neither of whom otherwise changes the labeling or affects the device. The exemption applies if the device was in commercial distribution before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976, and is being classified. If a premarket notification was submitted by another person, another premarket notification would be a duplication and would not be necessary.

21. One comment suggested that FDA exempt from the premarket notification requirements a device that has been changed by the manufacturer if (1) the device has the intended purpose of only performing in vitro diagnostic tests; (2) the change is intended to improve the device; and (3) the change does not require a change in labeling.

The Commission disagrees with the suggestion. A change can be made to an in vitro diagnostic product which does not require a change in labeling but that is significant enough to affect the safety and effectiveness of the device. Premarket notification must be required for such a change.

22. The Commissioner has also added to new § 807.87(a) a requirement that a premarket notification submission contain the classification name of the device, if known. This name is the one used by the classification panels in the classification process under section 513 of the act. Use of the classification name will be discussed further in the preamble to the proposed device-listing regulations, which will be published in the FEDERAL REGISTER in the near future. The Food and Drug Administration will furnish a list of classification names with the device-listing forms or upon request.

The Commissioner has added to new § 807.87(b) a requirement that a premarket notification submission contain the establishment registration number, if any, of the owner or operator submitting the premarket notification. This is to be used to identify registered manufacturers. The Food and Drug Administration will provide any person who does not supply an establishment registration number in the premarket notification with appropriate instructions on establishment registration.

The Commissioner has also added to new § 807.87(e) a requirement that a premarket notification include photographs or engineering drawings where applicable. Photographs or drawings should be submitted when they will aid in understanding the operation of the device.

23. One comment noted that proposed § 807.87(c) (redesignated § 807.87(d)) required that a premarket notification submission contain a statement of the action taken to comply with the premarket approval requirements of section 515 of the act, even though under proposed § 807.81(b) a premarket notification submission is not required when a premarket approval application has been submitted for the device.

The Commissioner agrees with this comment. If a premarket approval application has been submitted, a premarket notification submission would not be required since FDA would already be advised of the intent to market. Accordingly, the requirement has been deleted from the final regulation.

24. One comment objected that under proposed § 807.87 too much information is required to be included in a premarket notification submission. The comment asserted that section 510(k) of the act was intended to require notification only and not "mini-premarket approval."

The requirements of section 510(k) of the act are intended not only to notify FDA that a device is about to be marketed but primarily to enable FDA to determine whether the device is substantially equivalent to one already in commercial distribution. The information required by § 807.87 is necessary to carry out this purpose and is not intended to be a "mini-premarket approval application."

25. Several comments asserted that FDA has no authority for the requirement in proposed § 807.87(d) (redesignated § 807.87(e)) that representative advertisements be included in the premarket notification submission; the comments stated that under section 510(j)(1)(B) of the act, FDA may only require the submission of advertisements for restricted devices. One comment noted that advertisements may not yet be available 90 days before the marketing date.

The limiting procedures of section 510(j)(1)(B) of the act apply only to the listing of devices and therefore do not limit the authority of the Commissioner to require the submission of advertising with premarket notifications under section 510(k) of the act. Section 510(k) provides that premarket notification shall be submitted in such form and manner as the Commissioner shall by regulations prescribe. The Commissioner is of the opinion that this is authority for requiring the submission of representative advertisements. The submission of advertisements is necessary to show the uses for which a device is being promoted so as to determine whether the device is substantially equivalent to a device already in commercial distribution.

26. Several comments addressed proposed § 807.87(e) (redesignated § 807.87(f)) which requires the inclusion of a statement in the premarket notification submission indicating how a device is or is not substantially equivalent to a device already in commercial distribution and data to support that statement. One comment suggested that data to support the statement should be required only if necessary since, in many cases, it will be obvious if a device is substantially equivalent. Three comments suggested that FDA define more clearly the type of data needed to support a statement that a device is substantially equivalent. Also, one comment stated that it is not appropriate to require that supporting data be included in a premarket notification submission since section 510(k) of the act is a notification provision and not a premarket approval provision.

It has been pointed out above that submission of certain information is necessary to carry out the purpose of section 510(k) of the act. From the information submitted pursuant to section 510(k) of the act, the Commissioner must

be able to determine whether the device is substantially equivalent to one already in commercial distribution. The type of data needed to support a claim that one device is substantially equivalent to another will vary widely depending on the type of device. The Commissioner cannot make a more specific statement as to the type of information required. The information that is necessary must be determined on an individual basis. The manufacturer is best qualified to determine the type of information that should be submitted to demonstrate that his device is substantially equivalent to another device that was on the market on May 28, 1976 or is equivalent to a device that has been classified into class I or II.

The amount of data needed to support a claim of substantial equivalence also will vary widely. In some instances, the data needed to support claims of substantial equivalence will be minimal. The Commissioner therefore rejects the comments suggesting that supporting data only be required if necessary.

27. One comment objected that under proposed § 807.87(g) (redesignated § 807.87(h)), the owner or operator would have to wait an additional 90 days to market the device after submitting a new or amended premarket notification submission, when the Commissioner determines that the original submission was insufficient. The comment asserted that section 510(k) of the act does not provide for the approval or disapproval of a premarket notification submission and also does not contain any provisions that would allow the agency to keep a device off the market more than 90 days after the original filing of the premarket notification submission. One comment suggested that if the additional information requested for a premarket notification submission is submitted within 45 days of the original intended market date, the owner or operator should be allowed to market the device on the original date.

Several comments objected to the basic concept under proposed § 807.87(g) (now § 807.87(h)) that allows the Commissioner to request additional information from the owner or operator when there is insufficient information in the original premarket notification submission to determine whether the device is substantially equivalent to one already in commercial distribution. (Proposed § 807.87(g) also required that the requested information be submitted at least 90 days before the owner or operator intended to market the device.) Five comments noted that the preamble to the proposed regulation stated that the Commissioner would notify the owner or operator within 30 days if the information contained in the premarket notification submission was insufficient, but that no such statement was included in the regulation. Another comment stated that the regulation should require that FDA specify in its notification to the owner or operator exactly what information is lacking in the premarket notification submission.

As noted above, section 510(k) of the act is more than a notification provision. The Commissioner must determine whether the device about to be marketed is substantially equivalent to one already in commercial distribution. To this end, section 510(k) of the act provides that the notification shall be made in such form and manner as the Commissioner shall prescribe. The Commissioner therefore has the authority to reject a notification which does not meet the prescribed form or one which does not contain adequate information.

In most cases, the Commissioner will make any necessary request for additional information within 30 days after the original submission. However, in certain cases, the Commissioner may have to request additional information after the initial 30-day period. The Commissioner must retain this option to ensure that he obtains the information that is necessary to make a proper decision on a premarket notification. Therefore, the Commissioner rejects the comment that suggested that the regulation should require the Commissioner to request any necessary additional information within 30 days after the initial submission.

After the Commissioner requests additional information and the information is submitted, the amended premarket notification will receive expedited review and FDA will generally respond to it in far less than 90 days. However, in certain cases, the additional information may be substantial and a 90-day period may be needed to review this information. The Commissioner therefore rejects any suggestion that FDA should allow the device to be marketed less than 90 days after the submission of the additional information.

If possible the Commissioner will notify the person submitting the premarket notification of the specific information required to complete the submission. However, in some cases, this may not be possible. The Commissioner believes that the manufacturer is best qualified to show whether his product is substantially equivalent to one already on the market. The Commissioner therefore rejects the suggestion that the regulation require the Commissioner to specify exactly what information is lacking in a premarket notification submission. However, the Commissioner will provide this information to the applicant, where appropriate.

The Commissioner is adding a requirement to new § 807.87(h) stating that, if the additional information is not submitted within 30 days after it is requested, the Commissioner will consider the premarket notification submission to be withdrawn. In such cases, the device cannot be marketed unless (1) a new premarket notification is submitted and the device is declared substantially equivalent, or (2) the device is classified in class I or II pursuant to a petition filed under section 513(f)(2) of the act, or (3) the device is the subject of an approved premarket approval application under section 515 of the act.

28. The Commissioner has revised § 807.95(a) to clarify that in all cases the existence of a premarket notification submission is to be available for public disclosure upon request when a device is marketed or the manufacturer or distributor discloses his intent to market the device. This is true whether any period for confidentiality that FDA granted the notification has expired and whether the premarket notification was submitted before or after the effective date of these regulations.

The proposal did not address the possibility that the person submitting a premarket notification submission might disclose his intent to market the device, not did the proposal indicate whether FDA would respond to public information requests about whether there had been a submission for an already marketed or advertised product. The agency has no grounds for withholding information that would reveal the intent to market a device when the person submitting the premarket notification submission has revealed these marketing plans, or when marketing has already occurred. There may be instances in which a manufacturer seeks to discover whether a competitor has violated the act, by determining whether there is a premarket notification submission for a device. However, the fact that a manufacturer has not submitted such a notification is not confidential commercial information that is exempt from disclosure, however useful or interesting it might be. Handling of public information requests for premarket notification submissions is facilitated when those requests are accompanied by evidence that there has been public disclosure of the intent to market a device, or that marketing is begun, or when FDA has obtained such evidence from other sources.

The Commissioner also has clarified in § 807.95(c) the duration of confidentiality for premarket notification submissions in the three situations where submissions may be granted confidential treatment for more than 90 days. Of course, none of these provisions for continued confidentiality apply once the device is marketed or the person who submitted the premarket notification has revealed the intent to market the device.

First, if the Commissioner requests additional information regarding the device under § 807.87(h), the existence of the submissions will not be disclosed until 90 days after the agency's receipt of a complete premarket notification submission.

Second, if the Commissioner determines that the device is a class III device, it cannot be marketed without premarket approval or reclassification. When the Commissioner makes this determination, the existence of the submission will not be disclosed unless a petition for reclassification is submitted under section 513(f) of the act and its existence can be disclosed under proposed § 860.5(d). Proposed § 860.5(d) is a provision of the agency's classification regulations to be published in the FEDERAL REGISTER in the near future, and is consistent with the requirements in section 513(f)(2) of the act that FDA

provide opportunity for public participation in reclassification of new devices and in section 520(c) of the act that FDA not rely on trade secrets or other confidential commercial information as the basis for reclassifying a class III device. Future FDA regulations will address the confidentiality of intent to market a device when an application for premarket approval of a device is submitted under section 515 of the act. The Commissioner believes that it will be very unlikely that the intent to market a device that is the subject of such an application would in fact be confidential, because the sponsor would almost invariably have had to reveal its marketing plans to some persons outside the company and because of the statutory requirement for advisory committee review.

Third, if the person requests, and FDA agrees, that the intent to market a device be held in confidence for more than 90 days because the person has reason to believe that the actual marketing of the device may be delayed, the Commissioner will not disclose the existence of the submission until FDA receives the required notification that the device has been put on the market or that the intent to market the device has been disclosed.

Once FDA can disclose the fact that a premarket notification submission exists, the contents of the submission (other than information protected under § 807.95(d)) will be available for public disclosure.

29. Several comments asserted that the intent to market a device should be kept confidential without the owner or operator having to request confidentiality as required by proposed § 807.95(a). The Commissioner believes that it is appropriate to require the person submitting the premarket notification submission to request that it be kept confidential. The intent to market a device will in many cases be known to persons outside the company, and the Commissioner believes that information concerning a premarket notification submission, including its existence, should be available for public disclosure, upon request, unless the person submitting it shows that the intent to market the device is confidential commercial information.

The Commissioner has revised § 807.95 to require a person submitting a certification of confidentiality to include a statement that the person understands that the submission to the government of false information is prohibited by 18 U.S.C. 1001 and 21 U.S.C. 331(q). This change underlies the importance of submitting truthful requests for confidential treatment of premarket notification submissions and thus discourages indiscriminate claims of confidentiality. The Commissioner also is requiring the person submitting the request for confidentiality to agree to notify FDA immediately if the person discloses the intent to market the device to anyone, except employees of or paid consultants to the establishment, or individuals in an advertising or law firm pursuant to commercial arrangements with appropriate safeguards for confidentiality.

30. Another comment stated that the intent to market a device should be kept confidential until the owner or operator notifies FDA of the actual marketing of the device.

The regulations have retained the provision that the existence of the premarket notification submission, and thus the contents other than trade secrets, will be kept confidential for 90 days when the person submitting it demonstrates to the agency's satisfaction that the intent to market the device is confidential. The agency believes this approach is more workable in most cases than that suggested by the comment. However, under § 807.95(b)(1)(iii) the Commissioner will keep the intent to market a device confidential until actual marketing of the device begins when this is expected to occur more than 90 days after the premarket notification if the person submitting it convinces FDA that the notification should be kept confidential until actual marketing begins and agrees to comply with certain specified conditions, including a requirement to notify the Commissioner when the device is marketed or when the person reveals the intent to market the device.

31. Other comments opposed the conditions placed on persons seeking to protect the confidentiality of a premarket notification submission. Several comments objected to the fact that proposed § 807.95 required the owner or operator to certify that he has not released the information to individuals outside the company who are not paid consultants. These comments pointed out that the owner or operator may have to release the information to investigators and scientists who are not paid. The comments also stated that the intent to market a device should be kept confidential by FDA if the intent to market is made known to individuals not in the employ of the owner or operator but who are in a confidential relationship with him and if the manufacturer has taken reasonable steps to protect the confidentiality of the information. One comment stated that the intent to market a device may necessarily be released on a confidential basis to advertising personnel and others who do not fall within the category of employees of the establishment under proposed § 807.95(a)(1) but should nevertheless be kept confidential.

The Commissioner agrees that a discussion with individuals in an advertising firm or a law firm should not be regarded as a breach of confidentiality of the intent to market a device and has revised the regulation accordingly.

32. One comment stated that material dealing with comparative literature and data to support a claim of substantial equivalence should be exempt from disclosure because it could be relevant in the event there is litigation involving patent infringement.

Under § 807.95(d), data and information submitted pursuant to the premarket notification regulations that are trade secret information shall be held as confidential. The Commissioner cannot, however, make a broad statement that all material dealing with comparative literature and data to support substantial equivalence will be considered confidential. The possibility that such information could be relevant in litigation involving patent infringement does not provide FDA with grounds for withholding the information under any exemption to the Freedom of Information Act. Although evidence that a competitor infringed a patent may be commercially useful information, it is not confidential commercial information that is entitled to confidentiality. The Commissioner notes, however, that a determination of substantial equivalence under the Federal Food, Drug, and Cosmetic Act relates to the fact that the product can lawfully be marketed without premarket approval or reclassification. This determination is not intended to have any bearing whatever on the resolution of patent infringement suits.

33. The Commissioner cautions that FDA may in the future propose revisions in the policy set forth in § 807.95. FDA currently is reviewing the procedures by which it handles requests for disclosure of information concerning the existence of a variety of submissions that are made to it, including new drug applications, new animal drug applications, and device premarket approval applications. The agency may revise its current procedures so as to acknowledge in all cases the existence of these pending submissions. Because the proper method of handling requests for data and information on device premarket notification submissions involves many of the same issues that are involved in requests for information on new drug applications and similar applications, § 807.95 may eventually be revised in future regulations in light of the agency's decisions on how all such related submissions should be handled.

The Commissioner has had to decide how to handle public information requests for premarket notification submissions received before the effective date of these regulations. Freedom of information requests have been received for such premarket notification submissions review by FDA. There is no question about the agency's handling of these requests where FDA knows, either from the public information requests or from other sources, that the device has been put on the market or the intent to do so has been disclosed: The existence of the notification and its contents, other than any bona fide trade secrets, are disclosable. More difficult questions arise in situations in which FDA simply does not know whether a device that was the subject of a submission has been put on the market or the intent to do so has been disclosed. Therefore, as discussed below, FDA is requiring, by October 25, 1977, submission of justification for continued confidential treatment for most premarket approval notifications re-

ceived before the effective date of the regulation.

The following describes how FDA is dealing with requests concerning premarket notification submissions received before September 22, 1977, the effective date of the regulations:

a. The existence of the premarket notification submission and its contents, other than bona fide trade secrets, shall be available for public disclosure if the device has been marketed or if the intent to market the device has been disclosed.

b. During the 90 days after the submission of a premarket notification submission, FDA will treat the existence of the submission and its contents as confidential unless the agency has information that the device has been marketed or the intent to market the device has been disclosed.

c. If the submission indicated that marketing was not expected for more than 90 days, and requested confidential treatment until marketing began, and included an agreement to notify FDA when marketing began, FDA will treat the existence of the submission and its contents as confidential unless the agency has information that the device has been marketed or the intent to do so has been disclosed. If much time has elapsed since the expiration of the 90-day notification period, FDA will make reasonable efforts to determine whether a device which was the subject of a submission has been put on the market or the intent to market the device has been disclosed.

d. Any premarket notification submission received before the effective date of the regulations shall be available for public disclosure 90 days after its receipt by FDA except to the extent that the person who submitted the submission demonstrates by October 21, 1977, that the existence of the submission and its contents are still entitled to confidentiality. Where the FDA receives a public information request for a submission more than 90 days after the submission's receipt, but before October 21, 1977, FDA will make reasonable efforts to determine whether the device has been put on the market or the intent to market the device has been disclosed. A person who seeks to demonstrate that the existence of a submission is still confidential should submit the necessary documentation to the Food and Drug Administration, Bureau of Medical Devices (HFK-20), 8757 Georgia Ave., Silver Spring, Md. 20910. This documentation should indicate whether the device has not been marketed or the intent to do has not been disclosed except to employees of or paid consultants to the establishment, or to individuals in an advertising or law firm pursuant to commercial arrangements with appropriate safeguards for secrecy.

e. Where a public information request is made concerning a premarket notification submission and there is no submission or there is a submission whose existence is confidential under b, c, or d above, FDA will respond to the request by indicating that no submission described in the request has been received that is disclosable, and that FDA cannot indicate whether a submission has been received.

f. To determine whether the intent to market a device has been disclosed, FDA is applying the rules in § 807.95.

Therefore, under the Federal Food, Drug and Cosmetic Act (secs. 301(p), 501, 502, 510, 701(a), 52 Stat. 1049–1051 as amended, 1055, 86 Stat. 562, 90 Stat. 576–580 (21 U.S.C. 331(p), 351, 352, 360, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner is amending Chapter I of Title 21 of the Code of Federal Regulations as follows:

PART 20—PUBLIC INFORMATION

1. By amending § 20.100 by redesignating paragraph (c)(28) as paragraph (c)(29). As revised, paragraph (c) (28) and (29) reads as follows:

§ 20.100 Applicability; cross reference to other regulations.

* * * * *

(c) * * *

(28) Device premarket notification submissions, in § 807.95 of this chapter.

(29) Electronic product information, in §§ 1002.4 and 1002.42 of this chapter.

2. By revising § 20.116 to read as follows:

§ 20.116 Drug and device listing information.

Information submitted to the Food and Drug Administration pursuant to section 510 (a)–(j) of the act shall be subject only to the special disclosure provisions established in §§ 207.37 and 807.37 of this chapter.

PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

3. By amending § 25.1 in paragraph (d), by revising paragraph (d) (4) and (5) and adding new paragraph (d)(6), to read as follows:

§ 25.1 Applicability.

* * * * *

(d) * * *

(4) Issuance or amendment of food standards;

(5) Investigational new drug applications and investigational new animal drug applications, unless the agency notifies the applicant that one is required; and

(6) Device premarket notifications submissions.

* * * * *

PART 807—ESTABLISHMENT REGISTRATION FOR MANUFACTURERS OF DEVICES

4. By adding new Part 807 to read as follows:

Subpart A—General Provisions

Sec.
807.3 Definitions.

Subpart B—Procedures for Domestic Device Establishments

807.20 Who must register.
807.21 Times for establishment registration.
807.22 How and where to register establishments.
807.25 Information required or requested for establishment registration.
807.26 Amendments to establishment registration.
807.35 Notification of registrant.
807.37 Inspection of establishment registrations.
807.39 Misbranding by reference to establishment registration or to registration number.

Subpart C—Registration Procedures for Foreign Device Establishments

807.40 Establishment registration for foreign manufacturers of devices.

Subpart D—Exemptions

Sec.
807.65 Exemption for device establishments.

Subpart E—Premarket Notification Procedures

807.81 When a premarket notification submission is required.
807.85 Exemption from premarket notification.
807.87 Information required in a premarket notification submission.
807.90 Format of a premarket notification submission.
807.95 Confidentiality of information.
807.97 Misbranding by reference to premarket notification.

AUTHORITY: Secs. 301(p), 501, 502, 510, 701(a), 52 Stat. 1049–1051 as amended, 1055, 76 Stat. 794 as amended, 86 Stat. 562 as amended, 90 Stat. 576–580 (21 U.S.C. 331(p), 351, 352, 360, 371(a)).

Subpart A—General Provisions

§ 807.3 Definitions.

(a) "Act" means the Federal Food, Drug, and Cosmetic Act.

(b) "Commercial distribution" means any distribution of a device intended for human use which is held or offered for sale but does not include the following:

(1) Internal or interplant transfer of a device between establishments within the same parent, subsidiary, and/or affiliate company;

(2) Any distribution of a device intended for human use which has in effect an approved exemption for investigational use pursuant to section 520(g) of the act and Part 812 of this chapter; or

(3) Any distribution of a device, before the effective date of Part 812 of this chapter, that was not introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, and that is classified into class III under section 513(f) of the act: *Provided*, That the device is intended solely for investigational use, and under section 501(f)(2)(A) of the act the device is not required to have an approved premarket approval application as provided in section 515 of the act.

(c) "Establishment" means a place of business under one management at one general physical location at which a device is manufactured, assembled, or otherwise processed.

(d) "Manufacture, preparation, propagation, compounding, assembly, or processing" of a device means the making by chemical, physical, biological, or other procedures of any article that meets the definition of device in section 201(h) of the act. These terms include the following activities:

(1) Repackaging or otherwise changing the container, wrapper, or labeling of any device package in furtherance of the distribution of the device from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer;

(2) Initial distribution of imported devices; or

(3) Initiation of specifications for devices that are manufactured by a second party for subsequent commercial distribution by the person initiating specifications.

(e) "Official correspondent" means the person designated by the owner or oper-

ator of an establishment as responsible for the following:

(1) The annual registration of the establishment;

(2) Contact with the Food and Drug Administration for device listing;

(3) Maintenance and submission of a current list of officers and directors to the Food and Drug Administration upon the request of the Commissioner; and

(4) The receipt of pertinent correspondence from the Food and Drug Administration directed to and involving the owner or operator and/or any of the firm's establishments.

(f) "Owner or operator" means the corporation, subsidiary, affiliated company, partnership, or proprietor directly responsible for the activities of the registering establishment.

(g) "Distributor" means any person who furthers the marketing of a device from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer or user but who does not repackage or otherwise change the container, wrapper, or labeling of the device or device package.

(h) Any term defined in section 201 of the act shall have that meaning.

Subpart B—Procedures for Domestic Device Establishments

§ 807.20 Who must register.

(a) Any owner or operator of an establishment not exempt under section 510 (g) of the act or Subpart D of this part who is engaged in the manufacture, preparation, propagation, compounding, assembly, or processing of a device intended for human use is required to register. The term device includes all in vitro diagnostic products and in vitro diagnostic biological products not subject to licensing under section 351 of the Public Health Service Act. Such owner or operator is required to register his name, places of business, and all such establishments whether or not the output of such establishments enter interstate commerce. The registration requirements shall pertain to any person who:

(1) Initiates or develops specifications for a device that is to be manufactured by a second party for commercial distribution by the person initiating specifications;

(2) Manufactures for commercial distribution a device either for himself or for another person;

(3) Repackages or relabels a device;

(4) Initially distributes a device imported into the United States; or

(5) Manufactures components or accessories which are ready to be used for any intended health-related purpose and are packaged or labeled for commercial distribution for such health-related purpose, e.g., blood filters, hemodialysis tubing, or devices which of necessity must be further processed by a licensed practitioner or other qualified person to meet the needs of a particular patient, e.g., a manufacturer of ophthalmic lens blanks.

(b) No registration fee is required. Registration does not constitute an admission of agreement or determination that a product is a "device" within the meaning of section 201(h) of the act.

§ 807.21 Times for establishment registration.

The owner or operator of an establishment entering into, or currently engaged in, an operation defined in § 807.3 (c) and not currently registered shall register the establishment by September 22, 1977. The owner or operator of an establishment who has not previously entered into an operation defined in § 807.3 (c) shall register within 30 days after entering into such an operation. Owners or operators of all establishments shall update their registration information annually between November 15 and December 31.

§ 807.22 How and where to register establishments.

The first registration of a device establishment shall be on Form FD–2891 (Initial Registration of Device Establishment). Forms are obtainable on request from the Department of Health, Education, and Welfare, Food and Drug Administration, Bureau of Medical Devices (HFK–124), 8757 Georgia Ave., Silver Spring, MD 20910, or from the Food and Drug Administration district offices. Subsequent annual registration shall be accomplished on Form FD–2891 (a) (Registration of Device Establishment) which will be furnished by the Food and Drug Administration before November 15 of each year to establishments whose registration for that year was validated pursuant to § 807.35(a). The completed form shall be mailed to the above address before December 31 of that year.

§ 807.25 Information required or requested for establishment registration.

(a) Form FD–2891 and Form FD–2891 (a) are the approved forms for initially providing the information required by the act and for providing annual registration, respectively. The required information includes the name and street address of the device establishment, including post office ZIP Code, all trade names used by the establishment, and the business trading name of the owner or operator of such establishment.

(b) The owner or operator shall identify the device activities of the establishment such as manufacturing, repackaging, or distributing of imported devices and identify any other FDA registries in which the establishment is registered.

(c) Each owner or operator is required to maintain a listing of all officers, directors, and partners for each establishment he registers and to furnish this information to the Food and Drug Administration upon request.

(d) Each owner or operator shall provide the name of an official correspondent who will serve as a point of contact between the Food and Drug Administration and the establishment for matters relating to the registration of device establishments and the listing of device products. All future correspondence relating to registration, including requests for the names of partners, officers, and directors, will be directed to this official correspondent. In the event no person is designated by the owner or operator, the owner or operator of the establishment will be the official correspondent.

(e) The designation of an official correspondent does not in any manner affect the liability of the owner or operator of the establishment or any other individual under section 301(p) or any other provision of the act.

§ 807.26 Amendments to establishment registration.

Changes in individual ownership, corporate or partnership structure, or location of an operation defined in § 807.3(c) shall be submitted on Form FD–2891(a). This information shall be submitted within 30 days of such changes. Changes in the names of officers and/or directors of the corporation(s) shall be filed with the establishment's official correspondent and shall be provided to the Food and Drug Administration upon receipt of a written request for this information.

§ 807.35 Notification of registrant.

(a) The Commissioner will provide to the official correspondent, at the address listed on the form, a validated copy of Form FD–2891 or Form FD–2891(a) (whichever is applicable) as evidence of registration. A permanent registration number will be assigned to each device establishment registered in accordance with these regulations.

(b) Owners and operators of device establishments who also manufacture or process blood or drug products at the same establishment shall also register with the Bureau of Biologics and Bureau of Drugs, as appropriate. Blood products shall be listed with the Bureau of Biologics, Food and Drug Administration, pursuant to Part 607 of this chapter; drug products shall be listed with the Bureau of Drugs, Food and Drug Administration, pursuant to Part 207 of this chapter.

(c) Although establishment registration is required to engage in the device activities described in § 807.20, validation of registration in itself does not establish that the holder of the registration is legally qualified to deal in such devices and does not represent a determination by the Food and Drug Administration as to the status of any device.

§ 807.37 Inspection of establishment registrations.

A copy of the Form FD–2891 and FD–2891(a), filed by the registrant, will be available for inspection pursuant to § 510(f) of the act, at the Department of Health, Education, and Welfare, Food and Drug Administration, Bureau of Medical Devices (HFK–124), 8757 Georgia Ave., Silver Spring, MD 20910. In addition, there will be available for inspection at each of the Food and Drug Administration district offices the same information for firms within the geographical area of such district office.

Upon request and receipt of a self-addressed stamped envelope, verification of registration number or location of a registered establishment will be provided.

§ 807.39 Misbranding by reference to establishment registration or to registration number.

Registration of a device establishment or assignment of a registration number does not in any way denote approval of the establishment or its products. Any representation that creates an impression of official approval because of registration or possession of a registration number is misleading and constitutes misbranding.

Subpart C—Registration Procedures for Foreign Device Establishments

§ 807.40 Establishment registration for foreign manufacturers of devices.

Foreign device establishments that export devices into the United States are requested to register in accordance with the procedures of Subpart B of this part, unless exempt under Subpart D of this part.

Subpart D—Exemptions

§ 807.65 Exemptions for device establishments.

The following classes of persons are exempt from registration in accordance with § 807.20 under the provisions of section 510(g) (1), (2), and (3) of the act, or because the Commissioner has found, under section 510(g) (4) of the act, that such registration is not necessary for the protection of the public health:

(a) A manufacturer of raw materials or components to be used in the manufacture or assembly of a device who would otherwise not be required to register under the provisions of this part.

(b) A manufacturer of devices to be used solely for veterinary purposes.

(c) A manufacturer of general purpose articles such as chemical reagents or laboratory equipment whose uses are generally known by persons trained in their use and which are not labeled or promoted for medical uses.

(d) Licensed practitioners, including physicians, dentists, and optometrists, who manufacture or otherwise alter devices solely for use in their practice.

(e) Pharmacies, surgical supply outlets, or other similar retail establishments dispensing or selling devices in the regular course of business at the retail level. This exemption also applies to a pharmacy or other similar retail establishment that purchases a device for subsequent distribution under its own name, e.g., a properly labeled health aid such as an elastic bandage or crutch, indicating "distributed by" or "manufactured for" followed by the name of the pharmacy.

(f) Persons who manufacture, prepare, propagate, compound, or process devices solely for use in research, teaching, or analysis and do not introduce such devices into commercial distribution.

(g) Persons who handle devices but make no revisions to such devices or their immediate containers, such as wholesalers or warehousers.

(h) Carriers by reason of their receipt, carriage, holding or delivery of devices in the usual course of business as carriers.

(i) Persons who dispense devices to the ultimate consumer or whose major responsibility is to render a service necessary to provide the consumer (i.e., patient, physician, layman, etc.) with a device or the benefits to be derived from the use of a device; for example, a hearing aid dispenser, optician, clinical laboratory, assembler of diagnostic X-ray systems, and personnel from a hospital, clinic, dental laboratory, orthotic or prosthetic retail facility, whose primary responsibility to the ultimate consumer is to dispense or provide a service through the use of a previously manufactured device.

Subpart E—Premarket Notification Procedures

§ 807.81 When a premarket notification submission is required.

Except as provided in paragraph (b) of this section, each person who is required to register his establishment pursuant to § 807.20 must submit a premarket notification submission to the Food and Drug Administration at least 90 days before he proposes to begin the introduction or delivery for introduction into interstate commerce for commercial distribution of a device intended for human use which meets any of the following criteria:

(1) The device is being introduced into commercial distribution for the first time; that is the device is not of the same type as, or is not substantially equivalent to, (i) a device in commercial distribution before May 28, 1976, or (ii) a device introduced for commercial distribution after May 28, 1976, that has subsequently been reclassified into class I or II.

(2) The device is being introduced into commercial distribution for the first time by a person required to register, whether or not the device meets the criteria in paragraph (a) (1) of this section.

(3) The device is one that the person currently has in commercial distribution or is reintroducing into commercial distribution, but that is about to be significantly changed or modified in design, components, method of manufacture, or intended use. The following constitute significant changes or modifications that require a premarket notification:

(i) A change or modification in the device that could significantly affect the safety or effectiveness of the device, e.g., a significant change or modification in design, material, chemical composition, energy source, or manufacturing process.

(ii) A major change or modification in the intended use of the device.

(b) A premarket notification under this subpart is not required for a device for which a premarket approval application under section 515 of the act, or for which a petition to reclassify under section 513(f)(2) of the act, is pending before the Food and Drug Administration.

(c) In addition to complying with the requirements of this part, owners or operators of device establishments that manufacture radiation-emitting electronic products, as defined in § 1000.3 of this chapter, shall comply with the reporting requirements of Part 1002 of this chapter.

§ 807.85 Exemption from premarket notification.

(a) A device is exempt from the premarket notification requirements of this subpart if the device intended for introduction into commercial distribution is not generally available in finished form for purchase and is not offered through labeling or advertising by the manufacturer, importer, or distributor thereof for commercial distribution, and the device meets one of the following conditions:

(1) It is intended for use by a patient named in the order of the physician or dentist (or other specially qualified person); or

(2) It is intended solely for use by a physician or dentist (or other specially qualified person) and is not generally available to, or generally used by, other physicians or dentists (or other specially qualified persons).

(b) A distributor who places a device into commercial distribution for the first time under his own name and a repackager who places his own name on a device and does not change any other labeling or otherwise affect the device shall be exempted from the premarket notification requirements of this subpart if:

(1) The device was in commercial distribution before May 28, 1976; or

(2) A premarket notification submission was filed by another person.

§ 807.87 Information required in a premarket notification submission.

Each premarket notification submission shall contain the following information:

(a) The device name, including both the trade or proprietary name and the common or usual name or classification name of the device.

(b) The establishment registration number, if applicable, of the owner or operator submitting the premarket notification submission.

(c) The class in which the device has been put under section 513 of the act and, if known, its appropriate panel; or, if the owner or operator determines that the device has not been classified under such section, a statement of that determination and the basis for the person's determination that the device is not so classified.

(d) Action taken by the person required to register to comply with the requirements of the act under section 514 for performance standards.

(e) Proposed labels, labeling, and advertisements sufficient to describe the

device, its intended use, and the directions for its use. Where applicable, photographs or engineering drawings should be supplied.

(f) A statement indicating the device is similar to and/or different from other products of comparable type in commercial distribution, accompanied by data to support the statement. This information may include an identification of similar products, materials, design and considerations, energy expected to be used or delivered by the device, and a description of the operational principles of the device.

(g) Where a person required to register intends to introduce into commercial distribution a device that has undergone a significant change or modification that could significantly affect the safety or effectiveness of the device, or the device is to be marketed for a new or different indication for use, the premarket notification submission must include appropriate supporting data to show that the manufacturer has considered what consequences and effects the change or modification or new use might have on the safety and effectiveness of the device.

(h) Any additional information regarding the device requested by the Commissioner that is necessary for the Commissioner to make a finding as to whether or not the device is substantially equivalent to a device in commercial distribution. A request for additional information will advise the owner or operator that there is insufficient information contained in the original premarket notification submission for the Commissioner to make this determination and that the owner or operator may either submit the requested data or a new premarket notification containing the requested information at least 90 days before the owner or operator intends to market the device, or submit a premarket approval application in accordance with section 515 of the act. If the additional information is not submitted within 30 days following the date of the request, the Commissioner will consider the premarket notification to be withdrawn.

§ 807.90 Format of a premarket notification submission.

Each premarket notification submission pursuant to this part shall be submitted in accordance with this section. Each submission shall:

(a) Be addressed to the Food and Drug Administration, Bureau of Medical Devices (HFK-20), 8757 Georgia Ave., Silver Spring, Md. 20910. All inquiries regarding a premarket notification submission should be in writing and sent to the above address.

(b) Be bound into a volume or volumes, where necessary.

(c) Be submitted in duplicate on standard size paper, including the original and two copies of the cover letter.

(d) Be submitted separately for each product the manufacturer intends to market.

(e) Designated "510(k) Notification" in the cover letter.

§ 807.95 Confidentiality of information.

(a) The Food and Drug Administration will disclose publicly whether there exists a premarket notification submission under this part:

(1) Where the device is on the market, i.e., introduced or delivered for introduction into interstate commerce for commercial distribution;

(2) Where the person submitting the premarket notification submission has disclosed, through advertising or any other manner, his intent to market the device to scientists, market analysts, exporters, or other individuals who are not employees of, or paid consultants to, the establishment and who are not in an advertising or law firm pursuant to commercial arrangements with appropriate safeguards for secrecy; or

(3) Where the device is not on the market and the intent to market the device has not been so disclosed, except where the submission is subject to an exception under paragraph (b) or (c) of this section.

(b) The Food and Drug Administration will not disclose publicly the existence of a premarket notification submission for a device that is not on the market and where the intent to market the device has not been disclosed for 90 days from the date of receipt of the submission, if:

(1) The person submitting the premarket notification submission requests in the submission that the Food and Drug Administration hold as confidential commercial information the intent to market the device and submits a written certification to the Commissioner:

(i) That the person considers his intent to market the device to be confidential commercial information;

(ii) That neither the person nor, to the best of his knowledge, anyone else, has disclosed through advertising or any other manner, his intent to market the device to scientists, market analysts, exporters, or other individuals, except employees of, or paid consultants to, the establishment or individuals in an advertising or law firm pursuant to commercial arrangements with appropriate safeguards for secrecy;

(iii) That the person will immediately notify the Food and Drug Administration if he discloses the intent to market the device to anyone, except employees of, or paid consultants to, the establishment or individuals in an advertising or law firm pursuant to commercial arrangements with appropriate safeguards for secrecy;

(iv) That the person has taken precautions to protect the confidentiality of the intent to market the device; and

(v) That the person understands that the submission to the government of false information is prohibited by 18 U.S.C. 1001 and 21 U.S.C. 331(q); and

(2) The Commissioner agrees that the intent to market the device is confidential commercial information.

(c) Where the Commissioner determines that the person has complied with the procedures described in paragraph (b) of this section with respect to a device that is not on the market and where the intent to market the device has not been disclosed, and the Commissioner agrees that the intent to market the device is confidential commercial information, the Commissioner will not disclose the existence of the submission for 90 days from the date of its receipt by the agency. In addition, the Commissioner will continue not to disclose the existence of such a submission for the device for an additional time when any of the following occurs:

(1) The Commissioner requests in writing additional information regarding the device pursuant to § 807.87(g), in which case the Commissioner will not disclose the existence of the submission until 90 days after the Food and Drug Administration's receipt of a complete premarket notification submission;

(2) The Commissioner determines that the device intended to be introduced is a class III device and cannot be marketed without premarket approval or reclassification, in which case the Commissioner will not disclose the existence of the submission unless a petition for reclassification is submitted under section 513(f)(2) of the act and its existence can be disclosed under § 860.5(d) of this chapter; or

(3) The person has requested in the premarket notification submission that the Commissioner protect the confidentiality of the intent to market a device for more than 90 days from the date of receipt of the premarket notification submission by the Food and Drug Administration, and the Commissioner determines that the person has reason to believe that the actual introduction of the device to the market may take longer than 90 days, and the person agrees in a written certification to provide the Commissioner with written notification immediately if the device is put on the market or the intent to market is disclosed. In this case the Commissioner will not disclose the existence of the submission until the Food and Drug Administration's receipt of notification by the person that the device has been put on the market or that the intent to market the device has been disclosed.

(d) Data or information submitted with, or incorporated by reference in, a premarket notification submission (other than safety and effectiveness data that have not been disclosed to the public) shall be available for disclosure by the Food and Drug Administration when the intent to market the device is no longer confidential in accordance with this section, unless exempt from public disclosure in accordance with Part 20 of this chapter. Upon final classification, data and information relating to safety and effectiveness of a device classified in class I (general controls) or class II (performance standards) shall be available for public disclosure. Data and information relating to safety and effectiveness of a device classified in class III

(premarket approval) that have not been released to the public shall be retained as confidential unless such data and information become available for release to the public under § 860.5(d) or other provisions of this chapter.

§ 807.97 Misbranding by reference to premarket notification.

Submission of a premarket notification in accordance with this subpart, and a subsequent determination by the Commissioner that the device intended for introduction into commercial distribution is substantially equivalent to a device in commercial distribution before May 28, 1976, or is substantially equivalent to a device introduced into commercial distribution after May 28, 1976, that has subsequently been reclassified into class I or II, does not in any way denote official approval of the device. Any representation that creates an impression of official approval of a device because of complying with the premarket notification regulations is misleading and constitutes misbranding.

PART 809—IN VITRO DIAGNOSTIC PRODUCTS FOR HUMAN USE

§ 809.20 [Amended]

2. In Part 809, § 809.20 *General requirements for manufacturers and producers of in vitro diagnostic products* is amended by deleting paragraph (a) and designating it "reserved."

Effective date: This regulation shall be effective September 22, 1977.

(Secs. 301(p), 501, 502, 510, 701(a), 52 Stat. 1049–1051 as amended, 1055, 76 Stat. 794 as amended, 86 Stat. 562 as amended, 90 Stat. 576–580 (21 U.S.C. 331(p), 351, 352, 360, 371(a)).)

Dated: August 12, 1977.

DONALD KENNEDY,
Commissioner of Food and Drugs.

[FR Doc.77-24147 Filed 8-22-77;8:45 am]

federal register

TUESDAY, AUGUST 23, 1977

PART IV

GENERAL SERVICES ADMINISTRATION

Office of the Federal Register

■

NATIONAL FIRE CODES

Proposed Revision of Fire Safety Standards

GENERAL SERVICES ADMINISTRATION

Office of the Federal Register

NATIONAL FIRE CODES

Proposed Revision of Standards

AGENCY: Office of the Federal Register, GSA.

ACTION: Notice and invitation for comment.

SUMMARY: The Office of the Federal Register is publishing these proposed changes to the fire safety standards developed by the National Fire Protection Association to inform the general public and invite comments from interested persons. The standards are frequently used as the basis for Federal Regulations concerning fire safety and are published in the public interest.

DATES: Comments due on or before November 7, 1977. Annual Meeting: May 15–18, 1978.

ADDRESS: Assistant Vice President of Standards, 470 Atlantic Avenue, Boston, Massachusetts 02210.

FOR FURTHER INFORMATION CONTACT:

Martha Girard, 202–523–5240.

SUPPLEMENTARY INFORMATION: Standards developed by the technical committees of the National Fire Protection Association (NFPA) have been used by various Federal agencies as the basis for Federal regulations. Often, this has been accomplished through incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. The NFPA standards are known collectively as the National Fire Codes.

Revisions of existing standards and adoption of new standards are reported by the technical committees at the NFPA's Fall meeting in November or at the Annual Meeting in May of each year. The NFPA invites public comment on its technical committee reports.

Action at the NFPA Annual Meeting in May, 1978 is being proposed on the NFPA standards listed below:

NFPA 1978 annual meeting technical committee reports

NFPA No.:	Title	Type of action
10	Installation, maintenance and use of portable fire extinguishers.	O–P
11	Foam extinguishing systems.	O–P
13E	Fire department operations in properties protected by sprinkler and standpipe systems.	O–P
14	Installation of standpipe and hose systems.	O–P
20	Installation of centrifugal fire pumps.	O–P
56A	Use of inhalation anesthetics.	O–C
72E	Automatic fire detectors	O–P
74	Installation, maintenance and use of household fire warning equipment.	O–P
85B	Prevention of furnace explosions in natural gas-fire multiple burner boiler-furnaces.	O–P
85D	Prevention of furance explosions in fuel oil-fired multiple burner boiler-furnaces.	O–P
85E	Prevention of furnace explosions in pulverized coal-fired multiple burner boiler-furnaces.	O–P
85F (formerly NFPA 60).	Installation and operation of pulverized fuel systems.	O–C
85O	Prevention of furnace implosions in multiple burner, boiler-furnaces.	N–O
253	Radiant panel fire test for floor covering.	N–O
254	Chamber method of fire test for floor covering.	N–O
302	Motor craft (pleasure and commercial).	O–C
505	Powered industrial trucks including type designations and areas of use.	O–P
512	Truck fire protection	O–P
513	Motor freight terminals	O–P
604	Salvaging operations	W
1141	Fire prevention and protection measures in planned building groups.	N–O
1221 (formerly NFPA 73).	Installation, maintenance and use of public fire service communications.	O–P

TYPES OF ACTION

Proposed action on official documents:
- O–P—Partial Amendments
- O–C—Complete Revision
- O–T—Tentative Revision

Proposed action on new documents:
- N–T—Tentative Adoption
- N–O—Official Adoption

Proposed action on tentative documents:
- T–P—Partial Amendments
- T–C—Complete Revision
- T–O—Official Adoption

Other proposed action:
- R—Reconfirmation
- W—Withdrawal

Single copies of the 1978 Annual Technical Committee Reports are available at no charge from the National Fire Protection Association, Publications Department, 470 Atlantic Avenue, Boston, Mass. 02210. The Reports will be mailed during the week of August 29, 1977.

Interested persons may participate in these revisions by submitting written data, views, or arguments to the Assistant Vice President-Standards, NFPA, 470 Atlantic Avenue, Boston, Mass. 02210. Commenters should use the forms provided for comments in the Technical Committee Reports. Each person submitting a comment should include his name and address, identify the notice, and give reasons for any recommendations. Comments received on or before November 7, 1977 will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the technical Committee Documentation by March 20, 1978, prior to the Annual Meeting. A copy of the Technical Committee Documentation will be sent automatically to each commenter. Action on the Technical Committee Reports (adoption or rejection) will be taken at the Annual Meeting, May 15 through 18, 1978, at the Disneyland Hotel, Anaheim, California, by NFPA members who are members of record 30 (thirty) days prior to that meeting.

Copies of the Technical Committee Reports and Technical Committee Documentation, when published, will also be available for review at the Office of the Federal Register, 1100 L Street NW., Washington, D.C.

FRED J. EMERY,
Director, Office of the Federal Register.

[FR Doc.77-24266 Filed 8-22-77;8:45 am]

federal register

TUESDAY, AUGUST 23, 1977

PART V

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

■

ACCRUAL OF BOND DISCOUNT AND ACQUISITION OF NATIONAL BANK STOCK BY EMPLOYEE BENEFIT TRUST

Interpretive Rulings Rescinded

Title 12—Banks and Banking

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

PART 7—INTERPRETIVE RULINGS

Acquisition of National Bank Stock by Bank's Employee Benefit Trust

AGENCY: Comptroller of the Currency.

ACTION: Rescission of rule.

SUMMARY: The Comptroller's interpretive ruling (12 CFR 7.7595) concerning the acquisition of national bank stock by an employee profit sharing or pension trust of the same bank is being rescinded because it no longer accurately states the conditions under which such stock may be purchased.

EFFECTIVE DATE: August 23, 1977.

FOR FURTHER INFORMATION CONTACT:

Dean E. Miller, Deputy Comptroller for Trust Operations, Comptroller of the Currency, Washington, D.C. 20219 (202–447–1731).

SUPPLEMENTARY INFORMATION: The Comptroller has determined that 12 CFR 7.7595, an interpretive ruling concerning the acquisition of national bank stock by the bank's own employee profit sharing or pension trust, no longer accurately describes the conditions under which such stock may be purchased. Further, the requirement that national banks report such acquisitions has proven to be of minimal assistance in viewing the condition of the respective trust departments and is therefore being discontinued. The legality of such acquisitions has been and will continue to be the subject of review by the Comptroller's examining personnel.

DRAFTING INFORMATION

The principal drafters of this document were Dean E. Miller, Deputy Comptroller for Trust Operations and Richard H. Neiman, Staff Attorney.

RESCISSION OF RULING

§ 7.7595 [Rescinded]

Accordingly, 12 CFR Part 7 is amended by rescinding § 7.7595.

Dated: August 12, 1977.

JOHN G. HEIMANN,
Comptroller of the Currency.

[FR Doc.77-24311 Filed 8-22-77;8:45 am]

PART 7—INTERPRETIVE RULINGS

Reporting of Bond Discount

AGENCY: Comptroller of the Currency.

ACTION: Rescission of rule.

SUMMARY: This amendment rescinds 12 CFR 7.7550, an interpretive ruling permitting banks the option to accrue bond discount. The ruling is being rescinded because it has been superseded by the "Instructions for the Preparation of Consolidated Reports of Condition and Reports of Income by National Banking Associations", revised March, 1976, which eliminates the option as to banks with resources in excess of $25 million.

EFFECTIVE DATE: August 23, 1977.

FOR FURTHER INFORMATION CONTACT:

Gary M. Eiserman, Senior Accountant, Securities Disclosure Division, Office of the Comptroller of the Currency, Washington, D.C. 20219, 202–447–1954.

SUPPLEMENTARY INFORMATION: The Comptroller is rescinding 12 CFR 7.7550, an interpretive ruling permitting banks the option to report bond discount either on the accrual or cash basis of accounting. The ruling has been superseded by the "Instructions for the Preparation of Consolidated Reports of Condition and Reports of Income by National Banking Associations" which was revised in March, 1976. The "Instructions" eliminate, as to banks with resources exceeding $25 million, the option contained in 12 CFR 7.7550 and require that such discount be accrued. However, the "Instructions" retain the option as to banks with resources of less than $25 million and permit them to report bond discount either on the accrual or cash basis of accounting.

DRAFTING INFORMATION

The principal drafters of this document were Gary M. Eiserman, Senior Accountant and Richard H. Neiman, Staff Attorney.

RESCISSION OF RULING

§ 7.7550 [Rescinded]

In consideration of the foregoing, 12 CFR Part 7 is amended by rescinding § 7.7550.

Dated: August 11, 1977.

JOHN G. HEIMANN,
Comptroller of the Currency.

[FR Doc. 77-24310 Filed 8-22-77;8:45 am]

federal register

TUESDAY, AUGUST 23, 1977

PART VI

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

■

STATE AND FEDERAL CONFLICT OF INTEREST PROVISIONS

Proposed Rules

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[30 CFR Parts 2170 and 2171]

STATE AND FEDERAL CONFLICT OF INTEREST PROVISIONS

Proposed Rules

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The proposed regulations in Part 2170 establish the conflict of interest provisions applicable to employees of the State regulatory authority performing any function or duty under the Surface Mining Control and Reclamation Act of 1977 in order for the State to be eligible for reimbursements or grants under the Act. The proposed regulations in Part 2171 establish the conflict of interest provisions which Federal employees performing any function or duty under the Act must meet in order to be in compliance with the Act. These regulations are intended to provide the methods by which conflict of interest situations involving employees performing under the Act can be identified and remedied.

DATES: Comments must be received before September 23, 1977.

ADDRESS: Comments should be addressed to: Director, Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

Gene Fredriksen or Gabe Paone, Office of Audit and Investigation, U.S. Department of the Interior, Washington, D.C. 20240, AC 202 343-5916.

SUPPLEMENTARY INFORMATION: Section 201(f) and 517(g) of the Act make it a crime for employees performing any function or duty under the Act to knowingly have a direct or indirect financial interest in any coal mining operation. The Act further directs the Secretary to publish regulations which establish methods for monitoring and enforcing the prohibition, including provisions for the filing and review of financial interest statements.

The Secretary proposes these regulations recognizing the clear Congressional intent that affected employees maintain the highest standards of honesty, integrity and impartiality to avoid even the appearance of conflict of interest.

The concept that affected employees would simply certify that they did not have a direct or indirect financial interest in any coal mining operations was discarded as legally insufficient to sustain criminal prosecutions. Instead, covered employees are required to submit a detailed statement of employment and financial interests to appropriate officials for review. Based on the criteria in these regulations, the reviewing official will determine whether a conflict of interest exists and what the proper remedial action should be.

The direct or indirect financial interests of an employee's spouse, minor child, or other relatives who are full-time members of the employee's home are considered to be the financial interests of the employee. Disclosure of these interests will bring to the review's attention any direct or indirect financial interests in coal mining operations which the employee may be deriving from interests of other close family members and relatives. Disclosure will also preclude employees from transferring prohibited financial interests to close family members or relatives in order to avoid the provisions in the Act.

In keeping with the legislative intent and at the suggestion of several States, the proposed regulations place as much responsibility as possible upon the individual States. States are responsible for resolving employee conflict of interest situations, for initiating action to impose the penalties of the Act within their existing laws, regulations and personnel programs in order to meet the requirements of the Act. Care has been taken to specifically separate the responsibilities of the Federal Government from those of the individual States and to guard against the imposition of excessive Federal requirements upon the States.

The same high standards applicable to covered employees of the State agencies apply to covered employees of the Federal Government under the separate regulations in Part 2171. With regard to covered employees of other Federal agencies, it is proposed that each agency have as much latitude as possible in resolving conflict of interest situations and in enforcing the conflict of interest requirements within these regulations. Other Federal agencies implementation must be consistent with the regulations developed for employees of the Department of the Interior.

DRAFTING INFORMATION

These regulations were prepared by: Gene Fredriksen and Gabe Paone under the general supervision of Paul Reeves, Office of Surface Mining Task Force, Department of the Interior.

Interested persons may submit written comments on the proposed regulations to the Director, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Washington, D.C. 20240, no later than September 23, 1977.

NOTE.—The Department of the Interior has determined that this document does not contain a major proposal requiring the preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: August 17, 1977.

ROBERT HERBST,
Acting Secretary of the Interior.

It is proposed to Amend Title 30 by adding Chapter VII, Office of Surface Mining Reclamation and Enforcement. It is proposed to add Parts 2170 and 2171, Conflict of Interest, to Title 30, Chapter VII, to read as follows:

PART 2170—CONFLICT OF INTEREST PROVISIONS FOR STATE EMPLOYEES

Sec.

AUTHORITY: Public Law 95-87, Section 517(g).

§ 2170.1 Purpose.

This part sets forth the minimum conflict of interest policies and procedures that States must establish and use in order to be eligible for reimbursement of costs of enforcing and administering the initial regulatory program under Section 502, or for grants for developing, administering and enforcing a state regulatory program under Section 705, or to assume primary regulatory authority under Section 503 of the Act (Pub. L. 95-87). Compliance with the policies and procedures in this part will satisfy the requirements of Section 517(g) of the Act. Section 517(g) prohibits certain employees of the State Regulatory Authority from having any direct or indirect financial interest in any underground or surface coal mining operation. The regulations in this part are applicable to employees of the State Regulatory Authority as defined in § 2170.5.

§ 2170.2 Objectives.

The objectives of this part are:

(a) To ensure that the States adopt a standard program for implementing the conflict of interest provisions in Section 517(g) of the Act.

(b) To establish methods which will ensure, as required by Section 517(g) of the Act, that each employee of the State Regulatory Authority who performs any function or duty under the Act does not have a direct or indirect financial interest in any underground or surface coal mining operation.

(c) To establish the methods by which the monitoring, enforcing and reporting responsibilities of the Secretary of the Interior as stated in Section 517 (g) will be accomplished.

§ 2170.3 Authority.

(a) The Secretary of the Interior is authorized by Public Law 95-87 to:

(1) Establish the methods by which he and State officials will monitor and enforce the provisions contained in subsection 517(g) of the Act;

(2) Establish appropriate provisions for employees of the State Regulatory Authority who perform any function or duty under the Act to file a statement and supplements thereto concern any financial interest which may be affected by subsection 517(g), and

(3) Report annually to the Congress, actions taken and not taken during the

preceding calendar year under subsection 517(g) of the Act.

(b) The Governor of the State, the Head of the State Regulatory Authority, or such other State official designated by State law, is authorized to expand the provisions in this part in order to meet the particular needs within the State.

(c) The Office of Audit and Investigation, U.S. Department of the Interior is authorized to conduct on behalf of the Secretary periodic audits related to the provisions contained in Section 517(g) of the Act and related to the provisions in this Part. These audits will be conducted on a cyclical basis or upon request of the Secretary or the Director.

§ 2170.4 Responsibility.

(a) The Head of each State Regulatory Authority shall:

(1) Provide advice, assistance, and guidance to all State employees required to file statements pursuant to § 2170.11 of this part;

(2) Promptly review the statement of employment and financial interests and supplements, if any, filed by each employee, to determine if the employee has correctly identified those listed employment and financial interests which constitute a direct or indirect financial interest in an underground or surface coal mining operation;

(3) Resolve conflict of interest situations by ordering or initiating remedial action or by reporting the violations to the Director who is responsible for initiating action to impose the penalties of the Act;

(4) Certify on each statement that review has been made, that conflicts of interest or prohibited holdings have been resolved, and that no conflicts of interest exist;

(5) Submit to the Director such statistics and information he or she may request to enable prepartion of the required annual report to Congress;

(6) Submit to the Director the initial listing and the subsequent annual listings of positions as required by § 2170.11 (b), (c) and (d) of this part;

(7) Furnish a blank statement by December 15 of each year, to each State employee required to file a statement, and

(8) Inform annually each State employee required to file a statement with the Head of the State Regulatory Authority, or such other official designated by State law or regulation, of the name, address, and telephone number of the person whom they may contact for advice and counseling.

(b) The Director, Office of Surface Mining Reclamation and Enforcement, shall:

(1) Provide advice, assistance, and counseling to the Heads of all State Regulatory Authorities concerning conflict of interest matters;

(2) Promptly review the statement of employment and financial interests and supplements, if any, filed by each Head of the State Regulatory Authority. The Director will review the statement to determine if the Head of the State Regulatory Authority has correctly identified those listed employment and financial interests which constitute a direct or indirect financial interest in an underground or surface coal mining operation;

(3) Recommend to the State Attorney General, or such other State official designated by State law or the Governor of the State, the remedial action to be ordered or initiated, recommend to the Secretary that action be taken to impose the penalties of the Act, or recommend to the Secretary that other appropriate action be taken with respect to reimbursements, grants, or state programs;

(4) Certify on each statement filed by the Head of the State Regulatory Authority that the State has completed the review of the statement, that conflicts of interest have been resolved, and that no conflicts of interest exist;

(5) Monitor the conflict of interest program by using reports requested from Heads of State Regulatory Authorities and by using periodic audits performed by the Office of Audit and Investigation, U.S. Department of the Interior.

(6) Prepare for the Secretary of the Interior a consolidated report to the Congress as part of the annual report submitted under Section 706 of the Act, on the actions taken and not taken during the preceding calendar year under Section 517(g);

(7) Designate if so desired other qualified Office of Surface Mining Reclamation and Enforcement employees as Assistant Conflict of Interest Counselors to assist with the operational duties associated with filing and reviewing the statements from the Heads of each State Regulatory Authority;

(8) Furnish a blank statement by December 15 of each year, to the Head of each State Regulatory Authority, and

(9) Inform annually, the Head of each State Regulatory Authority of the requirement to file his or her statement with the Director and supply the name, address, and telephone number of the person whom they may contact for advice and counseling.

(c) State Regulatory Authority employees shall:

(1) Maintain especially high standards of impartiality by avoiding employment situations with or investments in business entities involved with coal mining operations;

(2) File a fully completed statement of employment and financial interests 120 days after these regulations become effective or upon entrance to duty, and annually thereafter on February 1 of each year;

(3) Comply with directives issued by persons responsible for approving each statement and comply with directives issued by those persons responsible for ordering remedial action.

§ 2170.5 Definitions.

Act. Means the Surface Mining Control and Reclamation Act of 1977, Public Law 95–87.

Coal Mining Operation. Means the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite or lignite or of reclaiming the areas upon which such activities occur.

Conflict. Means a situation where an employee's public duty is or will be affected by his or her direct or indirect financial interest, such as when the employee owns or has an interest in a company, land or other entity engaged in underground or surface coal mining operations which is or will be affected by operations or decisions he or she makes or in which he or she is involved.

Direct or Indirect Financial Interest. Means ownership or part ownership by an employee in his or her own name, or in the name of another person where the employee still reaps benefits of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and, means any other situation where the employee may benefit from his or another person's holding in or salary from coal mining operations. Direct or indirect financial interests include employment pensions, creditor, real property and other financial relationships of the employee and his or her spouse, minor child, and other relatives, including in-laws, who live in the employee's home.

Director. Means the Director of the Office of Surface Mining Reclamation and Enforcement within the U.S. Department of the Interior.

Employee. Means any person employed by the State Regulatory Authority who performs any function or duty under the Act. State officials may through State law or regulations expand this definition to meet their program needs.

Office. Means the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

Secretary. Means the Secretary of the U.S. Department of the Interior.

State Regulatory Authority. Means that office in each State which has primary responsibility at the State level for administering this Act. Until an office is established under the provisions of Section 503 or Section 504 of the Act, this term shall refer to those existing State offices having primary jurisdiction for regulating, enforcing, and inspecting any surface coal mining and reclamation operations within the State during the interim period between the effective date of the Act and the establishment of the State Regulatory Authority under Section 503 or Section 504.

§ 2170.6 Penalties.

(a) Criminal penalties are imposed by Section 517(g) of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95–87. Section 517(g) prohibits each employee of the State Regulatory Authority who performs any function or duty under the Act from having a direct or indirect financial interest in any underground or surface coal mining operation. The Act provides that whoever knowingly violates the provisions of subsection 517(g) shall, upon conviction, be

punished by a fine of not more than $2,500, or by imprisonment of not more than one year, or by both.

(b) Regulatory penalties are imposed by this part. The provisions in Section 517(g) of the Act make compliance with the conflict of interest requirements a condition of employment for employees of the State Regulatory Authority who perform any functions or duties under the Act. Accordingly, an employee who fails to file the required statement will be considered in violation of the intended employment provisions of Section 517(g) and will be subject to removal from his or her position.

§ 2170.11 Who shall file.

(a) The Act applies to each State Regulatory Authority employee performing any function or duty under the Act. Each employee shall file a statement of employment and financial interests, including a certification that he or she is aware that he or she has no direct or indirect financial interest in any underground or surface coal mining operation and that he or she is in compliance with these requirements except as disclosed on the statement. Employees who occupy a position which has been determined by the Head of the State Regulatory Authority not to involve performance of any function or duty under the Act or who are no longer employed by the State Regulatory Authority at the time a filing is due, are not required to file a statement.

(b) The Head of each State Regulatory Authority shall prepare a list of those positions within the State Regulatory Authority that do not involve performance of any functions or duties under the Act. Only those employees who occupy a listed position will be exempted from the filing requirements of Section 517(g) of the Act.

(c) The Head of each State Regulatory Authority shall prepare and submit to the Director, an initial listing of positions that do not involve performance of any functions or duties under the Act within 60 days of the effective date of these regulations.

(d) The Head of each State Regulatory Authority shall annually review and update this listing. For monitoring and reporting reasons, the listing must be submitted to the Director and must contain a written justification for inclusion of the positions listed. Proposed revisions or a certification that revision is not required shall be submitted to the Director by no later than September 30 of each year. The Secretary, the Director, or the Head of the State Regulatory Authority may revise the listing by the addition or deletion of positions at any time they determine such revisions are required to carry out the purpose of the law or the regulations of this part. Additions to and deletions from the listing of positions are effective upon notification to the incumbents of the positions added or deleted.

§ 2170.13 When to file.

(a) Employees performing functions or duties under the Act shall file:

(1) Within 120 days of the effective date of these regulations, and

(2) Annually on February 1 of each year.

(b) New employees hired, appointed, or transferred to perform functions or duties under the Act will be required to file:

(1) At the time of entrance to duty, and

(2) Annually on February 1 of each year.

(c) Employees are not required to file an annual statement on February 1 if they filed their initial statement within two months prior to February 1. For example, an employee entering duty on December 1, 1978 would file a statement on that date. Because December 1 is within two months of February 1 the employee would not be required to file his next annual statement until February 1, 1980.

§ 2170.15 Where to file.

(a) The Head of the State Regulatory Authority shall file his statement with the Director. All other employees, as provided in § 2170.11, shall file their statement with the Head of the State Regulatory Authority or such other official as may be designated by State law or regulation.

§ 2170.17 What to report.

(a) Each employee shall report all information required on the statement of employment and financial interests of the employee, his or her spouse, minor children, or other relatives who are full-time residents of the employee's home. The report shall be on OSM Form 2170–1 as provided by the Office. The statement consists of three major parts, (1) A listing of all direct and indirect employment, security, real property and creditor financial interests held during the course of the preceding year, (2) certification that none of the listed financial interests represent a direct or indirect financial interest in an underground or surface coal mining operation except as specifically identified and described by the employee as part of the certificate, and (3) a certification by the reviewer that the form was reviewed and that no conflicts of interest exist.

(b) Listing of all financial interests. The statement will set forth the following information regarding any financial interest:

(1) *Employment.* Any continuing financial interests in business entities and nonprofit organizations through a pension or retirement plan, shared income, salary or other income arrangement as a result of prior or current employment. The employee, his or her spouse or other resident relative is not required to report a retirement plan from which he or she will receive a guaranteed income. A guaranteed income is one which is unlikely to be changed as a result of actions taken by the State Regulatory Authority.

(2) *Securities.* Any financial interest in business entities and nonprofit organizations through ownership of stock, stock options, bonds, securities or other arrangements including trusts. An employee is not required to report holdings in widely diversified mutual funds, investment clubs or regulated investment companies not specializing in underground and surface coal mining operations.

(3) *Real Property.* Ownership, lease, royalty or other interests or rights in lands or minerals. Employees are not required to report lands developed and occupied for a personal residence.

(4) *Creditors.* Debts owed to business entities and nonprofit organizations. Employees are not required to report debts owed to financial institutions (banks, savings and loan, credit unions, and the like) which are chartered to provide commercial or personal credit. Also, excluded are charge accounts and similar short term debts for current and ordinary household and living expenses.

(c) Employee certification, and, if applicable, a listing of exceptions.

(1) The statement will provide for a signed certification by the employee that to the best of his or her knowledge, (i) none of the listed financial interests represent an interest in an underground or surface coal mining operation except as specifically identified and described by the employee as part of the certificate, and (ii) the information shown on the statement is true, correct, and complete.

(2) (i) The following examples of financial interests would be prohibited financial interests because they represent an interest in an underground or surface coal mining operation and would be shown as exceptions on the employee certification:

(A) Companies which operate coal mines regardless of the nature of their major business, (i.e. public utilities, steel companies, etc.),

(B) Spouse's employment with a company engaged in coal mining operations, such as described in the preceding example,

(C) Outside employment such as part time or consultant work done for a coal mining operations company,

(D) Payments received for easements to or from coal mine operation sites,

(E) Retirement benefits which are not or will not be guaranteed,

(F) Ownership or use of lands associated with active coal mining operations.

(ii) These examples are not all-inclusive and are presented to give guidance to employees required to file a statement. An employee is expected to (A) Have complete knowledge of his or her personal involvement in business enterprises such as a sole proprietorship and partnership, his or her outside employment and the outside employment of the spouse and other covered relatives, and (B) be aware of the information contained in the annual financial statements or other corporate or business reports routinely circulated to investors or routinely made available to the public.

(3) The exceptions shown in the certification must provide enough information for the Head of the State Regulatory Authority to determine the existence of

a direct or indirect financial interest. Accordingly, the exceptions should: (i) List the prohibited financial interests;

(ii) Show the number of shares or the estimated value of the prohibited financial interests;

(iii) Explain in some detail those other prohibited financial interest situations such as spouse's employment with mining operations, inherited mineral rights attached to land currently being mined, etc., and

(iv) Include any information which the employee believes should be considered in determining whether or not a conflict exists which must be corrected.

(4) Employees are cautioned to give serious consideration to their direct and indirect financial interests before signing the statement of certification. Signing the certification without listing known prohibited financial interests may be cause for imposing the penalties prescribed in § 2170.6(a).

§ 2170.19 Resolving conflicts of interest.

(a) Actions to be taken by the Head of the State Regulatory Authority:

(1) Remedial action to effect resolution. If an employee has a prohibited direct or indirect financial interest, the Head of the State Regulatory Authority shall promptly advise the employee that remedial action which will resolve the conflict of interest is required within 90 days.

(2) Remedial action may include: (i) Reassignment of the employee to another job where no such conflict would exist;

(ii) Divestiture of the financial interest which creates the conflict; or

(iii) Other appropriate action which either eliminates the direct or indirect financal interest or eliminates the situation which creates the conflict.

(3) Reports of non-compliance. If 90 days after an employee is notified to take remedial action that employee is not in compliance with the requirements of the Act and these regulations, the Head of the State Regulatory Authority shall report the facts of the situation to the Director who shall determine whether action to impose the penalties prescribed by the Act should be initiated. The report to the Director shall include the original or a certified true copy of the employee's statement and any other information pertinent to the Director's determination, including a statement of actions being taken at the time the report is made.

(b) Actions to be taken by the Director:

(1) Remedial action to effect resolution. Violations of the regulations in this part by the Head of a State Regulatory Authority, will be cause for remedial action by the Governor of the State or other appropriate State official based on recommendations from the Director on behalf of the Secretary. The Governor or other appropriate State official shall promptly advise the Head of the State Regulatory Authority that remedial action which will resolve the conflict of interest is required within 90 days.

(2) Remedial action should be consistent with the procedures prescribed for other State employees by § 2170.19(a)(2).

(3) Reports of non-compliance. (i) If 90 days after the Head of a State Regulatory Authority is notified to take remedial action the Governor or other appropriate State official notifies the Director that the Head of the State Regulatory Authority is not in compliance with the Act and these regulations, the Director shall report the facts of the situation to the Secretary who shall determine whether action to impose the penalties prescribed by the Act, or to impose the eligibility restrictions prescribed by § 2170.1 should be initiated.

(ii) Within 30 days of receipt of a non-compliance report from the Head of a Regulatory Authority under § 2170.19(a)(2), the Director shall notify the Head of the State Regulatory Authority and the employee involved of additional action to be taken. Actions which the Director may take include but are not limited to the granting of additional time for resolution or the initiation of action to impose the penalties prescribed by the Act.

§ 2170.21 Appeals procedures.

Employees have the right to appeal an order for remedial action under § 2170.19, and shall have 30 days to exercise this right before disciplinary action is initiated.

(a) Employees other than the Head of the State Regulatory Authority, may file their appeal, in writing, through established procedures within their particular State.

(b) The Head of the State Regulatory Authority may file his appeal, in writing, with the Director who will refer it to the Appeals Board within the Department of the Interior.

PART 2171—CONFLICT OF INTEREST PROVISION FOR FEDERAL EMPLOYEES

Sec.

AUTHORITY: Pub. Law 95-87, Section 201(f).

§ 2171.1 Purpose.

This part sets forth the minimum conflict of interest policies and procedures to be followed by Federal employees to satisfy the requirements of section 201(f) of the Act. The requirements of this part are in addition to Executive Order 11222 of May 8, 1965, and other applicable regulations related to conflict of interest. Section 201(f) prohibits certain Federal employees from having any direct or indirect financial interest in underground or surface coal mining operations. The regulations of this part are applicable to Federal employees as defined in § 2171.3.

§ 2171.2 Objectives.

The objectives of this part are: (a) To ensure that affected Federal agencies adopt a standard program for implementing the conflict of interest provisions in section 201(f) of the Act.

(b) To establish methods which will ensure, as required by section 201(f) of the Act, that each Federal employee who performs any function or duty under the Act does not have a direct or indirect financial interest in an underground or surface coal mining operation.

(c) To establish the methods by which the monitoring enforcing and reporting responsibilities of the Director and the Secretary of the Interior under Section 201(f) will be accomplished.

§ 2171.3 Definitions.

Act, means the Surface Mining Control and Reclamation Act of 1977, Public Law 95-87.

Coal mining operation, means the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite or lignite or of reclaiming the areas upon which such activities occur.

Conflict, means a situation where an employee's public duty is or will be affected by his or her direct or indirect financial interest, such as when the employee owns or has an interest in a company, land, or other entity, engaged in underground or surface coal mining operations which is or will be affected by operations or decisions he or she makes or in which he or she is involved.

Direct or indirect financial interest, means ownership or part ownership by an employee in his or her own name or in the name of another person where the employee still reaps benefits, of lands, stocks, bonds, debentures, warrants, partnership shares or other holdings and means any other situation where the employee may benefit from his or another person's holding in or salary from coal mining operations. Direct or indirect financial interests includes employment, pensions, creditor, real property and other financial relationships of the employee and his or her spouse, minor child and other relatives, including in-laws who live in the employee's home.

Director, means the Director or Acting Director of the Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

Employee, means any person employed by the Office of Surface Mining Reclamation and Enforcement within the Department of the Interior and any other person employed by the Federal government who performs duties under the Act without regard to the duration or nature of his or her appointment.

Office, means the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

Other Federal agency, means any executive Federal agency or office or part thereof not a part of the Department of the Interior, and includes, but is not

limited to, the following agencies: The Department of Agriculture, the Department of Justice, the Corps of Engineers, the Environmental Protection Agency, the Council on Environmental Quality and the Energy Research and Development Administration.

Secretary, means the Secretary of the United States Department of the Interior.

§ 2171.4 Authority.

(a) The Director is authorized by Public Law 95–87 to:

(1) Establish the methods by which the provisions in Section 201(f) of the Act will be monitored and enforced.

(2) Establish appropriate provisions for all employees who perform any function or duty under the Act to file a statement and supplements thereto concerning their financial interests which may be affected by Section 201(f) and

(3) Report annually to the Congress on actions taken and not taken during the preceding calendar year under subsection 201(f) of the Act.

(b) Other Federal agencies with employees who perform functions or duties under the Act may adopt conflict of interest regulations pursuant to the Act which are consistent with the requirements in this Part. If any such agency does not adopt regulations pursuant to this part, that agency shall enter into a memorandum of understanding with the Director, to have the employees of that agency who perform functions or duties under the Act file their statements with the Director. The Director will review statements filed with him, applying the regulations of the Department of the Interior. Where the Director determines that remedial action is necessary, he will refer the case to the employing agency with a recommendation as to the action to be taken.

(c) The Office of Audit and Investigation within the U.S. Department of the Interior is authorized to conduct or arrange for the conduct of periodic audits related to the provisions contained in Section 201(f) of the Act and related to the provisions in this Part. These audits will be conducted on a cyclical basis or upon request of the Secretary of the Interior or Director.

§ 2171.5 Responsibility.

(a) The Director, the Head of each other Federal Agency, and the Head of each other bureau or office within the Department of the Interior, have the following common responsibilities concerning employees within their organizations performing any functions or duties under the Act, and shall:

(1) Provide advice, assistance and counseling to employees concerning conflict of interest matters related to the Act;

(2) Promptly review the statement of employment and financial interests and supplements, if any, filed by each employee to determine if the employee has correctly identified those listed employment and financial interest in an underground or surface coal mining operation;

(3) Certify on each statement filed by an employee that the review of the statement is completed, that conflicts of interest if any, have been resolved, and that no conflicts of interest exist;

(4) Resolve conflict of interest situations by promptly notifying and ordering the employee to take remedial action within 90 days, or by initiating action to impose the penalties of the Act;

(5) Furnish a blank statement by December 15 of each year to each employee required to file a statement within his or her employing organization;

(6) Inform annually each employee requiredd to file a statement within his or her employing organization of the name, address, and telephone number of the person whom the, may contact for advice and counseling.

(b) In addition to the common responsibilities in § 2171.5(a) the Director shall:

(1) Monitor the conflict of interest program by using reports requested from the Heads of other Federal agencies, from the Heads of other bureaus and offices within the Department of the Interior, and by using periodic audits performed by the U.S. Department of the Interior, Office of Audit and Investigation.

(2) Prepare for the Secretary a consolidated report to the Congress as part of the annual report submitted under Section 706 of the Act, on the actions taken and not take nunder Section 201(f) during the preceding calendar year;

(3) Refer recommendations to officials of other Federal Agencies concerning those cases requiring remedial action for employees of the other Federal Agency who filed with the Director because that other Federal Agency did not choose to adopt its own conflict of interest regulations pursuant to the Act;

(4) Report to the Solicitor, U.S. Department of the Interior, through the Office of Audit and Investigation, U.S. Department of the Interior, cases of knowing violations of the provisions in Section 201(f). The Solicitor will transfer such reports to the U.S. Department of Justice;

(5) Designate, if so desired, other qualified Office employees as assistant conflict of interest counselors to assist with the operational duties associated with filing and reviewing financial statements;

(6) Furnish an adequate supply of blank statements to the Heads of those other Federal agencies which decide to have their employees file with the Director, and

(7) Submit to the Department of the Interior Ethics Counselor such statistics and information he may request in accordance with 43 CFR 20.735–17 as adopted.

(c) In addition to the common responsibilities in § 2171.5(a), the Head of each other Federal Agency with employees performing any functions or duties under the Act shall:

(1) Decide whether to adopt independent procedures for the filing and review of statements or to enter into a memorandum of understanding with the Director that the Department of the Interior will provide and review the statements and recommend any necessary remedial action to the Head of the employing agency;

(2) Submit to the Director such statistics and information the Director may request to enable preparation of the required annual report to the Congress, and to ensure uniform application of the provision in Section 201(f) of the Act, and

(3) Report to the Director cases of knowing violations of the provisions in Section 201(f). The Director will transmit the report to the Office of Audit and Investigation and to the Solicitor in the Department of the Interior. The Solicitor will transfer such reports to the U.S. Department of Justice;

(d) In addition to the common responsibilities in § 2171.5(a), the Heads of other Interior Department bureau or offices with employees performing any functions or duties under the Act shall:

(1) Submit to the Director such statistics and information the Director may request to enable preparation of the required annual report to Congress, and to ensure uniform application of provisions in Section 201(f) of the Act;

(2) Submit to the Department of the Interior Ethics Counselor such statistics and information he may request in accordance with 43 CFR 20.735–17 as adopted, and

(3) Report to the Director cases of knowing violations of the provisions in Section 201(f).

(e) Employees shall:

(1) Maintain especially high standards of impartiality by avoiding employment situations with or investments in business entities involved with coal mining operations;

(2) File a fully completed statement of employment and financial interests 120 days after these regulations become effective or upon entrance to duty, and annually thereafter on February 1 of each year, and

(3) Comply with directives issued by persons responsible for approving each statement and comply with directives issued by those persons responsible for ordering remedial action.

§ 2171.6 Penalties.

(a) Criminal penalties are imposed by Section 201(f) of the Surface Mining Control and Reclamation Act, Public Law 95–87, which prohibits each employee of the Office or any other Federal employee who performs any function or duty under the Act from having a direct or indirect financial interest in underground or surface coal mining operations. The Act provides that whoever knowingly violates the provisions of subsection 201(f) shall, upon conviction, be punished by a fine of not more than $2,500, or by imprisonment for not more than one year, or both.

(b) Regulatory penalties are imposed by this part. The provisions in Section 201(f) of the Act make compliance with the conflict of interest requirements a condition of employment for all Office employees and for other employees of the Federal government who perform any functions or duties under the Act. Accordingly, an employee who fails to file the required statement will be considered in violation of the intended employment provisions of Section 201(f) and will be subject to removal from his or her position.

§ 2171.11 Who shall file.

(a) Every employee in the Office is required to file a statement of employment and financial interests.

(b) Any other Federal employee who performs any function or duty under the Act is required to file a statement of employment and financial interests. The Head of each other Federal agency and the Heads of other Interior bureaus and offices, shall prepare and submit a report within 60 days of the effective date of these regulations, either listing the Federal positions identified as performing functions or duties under the Act, or listing the organizational unit within the organization showing the total number of employees within the unit who must file a statement. Revision to the listing or certification that revision is not required shall be submitted to the Director by no later than September 30 of each year. The Secretary, the Director, or the Heads of the other affected Federal organizations may revise the list by the addition or deletion of positions at any time such revisions are required to carry out the purpose of the law or regulations of this Part. Additions to or deletions from the list of positions are effective upon notification to the incumbents.

§ 2171.13 When to file.

(a) Employees currently performing functions or duties under the Act will be required to file:

(1) Within 120 days of the effective date of these regulations, and

(2) Annually on February 1 of each year.

(b) New employees hired, appointed, or transferred to perform functions or duties under the Act will be required to file:

(1) At the time of entrance on duty, and

(2) Annually on February 1 of each year.

(c) Employees are not required to file an annual statement if they have filed an initial statement within two months prior to February 1. For example, an employee entering duty on December 1, 1978 would file a statement on that date. Because December 1 is within two months of February 1 the employee would not be required to file his next annual statement until February 1, 1980.

§ 2171.15 Where to file.

(a) Each Office employee shall file his or her statement of employment and financial interests with the Director.

(b) Each Department of the Interior employee, who is not an Office employee but does perform any function or duty under the Act, shall file a statement of employment and financial interests with their appropriate Ethics Counselor as identified in 43 CFR 20.735–22(c).

(c) Each employee of an other Federal agency who performs a function or duty under the Act shall file a statement of employment and financial interests with the official designated by the Head of the other Federal agency.

§ 2171.17 What to report.

(a) Each employee shall report all information required on the statement of employment and financial interest of the employee, his or her spouse, minor children, or other relatives who are full-time residents of the employee's home. The report shall be on a form provided by the Office. The statement consists of three major parts, (1) a listing of all direct and indirect employment, security, real property and creditor financial interests held during the course of the preceding year, (2) an employee signed certification that none of the listed financial interests represent a direct or indirect financial interest in an underground or surface coal mining operation except as specifically identified and described by the employee as part of the certificate, and (3) a certification by the reviewer that the form was reviewed and that no conflicts of interest exist.

(b) Listing of all financial interests. The statement will set forth the following information regarding any financial interest:

(1) *Employment.* Any continuing financial interests in business entities and nonprofit organizations through a pension or retirement plan, shared income, salary or other income arrangement as a result of prior or current employment. The employee, his or her spouse or other resident relative is not required to report a retirement plan from which he or she will receive a guaranteed income. A guaranteed income is one which is unlikely to be changed as a result of actions taken by the Federal government under the Act.

(2) *Securities.* Any financial interest in business entities and nonprofit organizations through ownership of stock, stock options, bonds, securities or other arrangements including trusts. An employee is not required to report holdings in widely diversified mutual funds, investment clubs or regulated investment companies not specializing in underground and surface coal mining operations.

(3) *Real Property.* Ownership, lease, royalty or other interests or rights in lands or minerals. Employees are not required to report lands developed and occupied for a personal residence.

(4) *Creditors.* Debts owed to business entities and non-profit organizations. Employees are not required to report debts owed to financial institutions (banks, savings and loan, credit unions, and the like) which are chartered to provide commercial or personal credit. Also excluded are charge accounts and similar short term debts for current and ordinary household and living expenses.

(c) Employee certification, and, if applicable, a listing of exceptions.

(1) The statement will provide for a signed certification by the employee that to the best of his or her knowledge, (i) none of the listed financial interests represent an interest in an underground or surface coal mining operation except as specifically identified and described by the employee as part of the certificate, and (ii) the information shown on the statement is true, correct, and complete.

(2) (i) The following examples of financial interests would be prohibited financial interests because they represent an interest in an underground or surface coal mining operation and would be shown as exceptions on the employee certification:

(A) Companies which operate coal mines regardless of the nature of their major business, (i.e. public utilities, steel companies etc.)

(B) Spouse's employment with a company engaged in coal mining operations, such as described in the preceding example,

(C) Outside employment such as part time or consultant work done for a coal mining operations company,

(D) Payments received for easements to or from coal mine operation sites,

(E) Retirement benefits which are not or will not be guaranteed, and

(F) Ownership or use of lands associated with active coal mining operations.

(ii) These examples are not all-inclusive and are presented to give guidance to employees required to file a statement. An employee is expected to (A) have complete knowledge of his or her personal involvement in business enterprise such as a sole proprietorship and partnership, his or her outside employment and the outside employment of the spouse and other covered relatives, and (B) be aware of the information contained in the annual financial statements or other corporate or business reports routinuely circulated to investors or routinely made available to the public.

(3) The exceptions shown in the certification must provide enough information for the Director, the Head of an other Federal agency, or the Head of another Interior Department bureau or office to determine the existence of a direct or indirect financial interest. Accordingly, the exceptions should:

(i) List the prohibited financial interests;

(ii) Show the number of shares or the estimated value of the prohibited financial interests;

(iii) Explain in some detail those other prohibited financial interest situations such as spouse's employment with mining operations, inherited mineral rights attached to land currently being mined, etc., and

(iv) Include any information which the employee believes should be considered in determining whether or not a conflict exists which must be corrected.

(4) Employees are cautioned to give serious consideration to their direct and indirect financial interests before signing the statement or certification. Signing the certification without listing known prohibited financial interests may be cause for imposing the penalties prescribed in § 2171.6(a).

§ 2171.19 Resolving conflicts of interest.

Actions to be taken by the Director, the Heads of other Federal agencies, and the Heads of other affected Interior Department bureau and offices include:

(a) Remedial action to effect resolution. If an employee has a prohibited direct or indirect financial interests, the Head of the organizational entity (Department, bureau, office etc.) where the employee works shall promptly advise the employee that remedial action which will resolve the conflict of interest is required within 90 days.

(b) Remedial action may include: (1) Reassignment of the employee to another job where no conflict of interest would exist, (2) Divestiture of the financial interests which creates the conflict, or (3) Other appropriate action which either eliminates the direct or indirect financial interest or eliminates the situation which creates the conflict.

(c) Reports of non-compliance. If 90 days after an employee is notified to take remedial action that employee is not in compliance with the requirements of the Act and these regulations, the official, other than the Director, who ordered the remedial action shall report the facts of the situation to the Director who shall determine whether action to impose the penalties prescribed by the Act should be initiated. The reports to the Director shall include the original or a certified true copy of the employee's statement and any other information pertinent to the Director's determination, including a statement of actions being taken at the time the report is made. Within 30 days of receipt of a non-compliance report, the Director shall notify the Head of the employing organization and the employee involved of additional action to be taken. Actions which the Director may take include but are not limited to the granting of additional time for resolution or the initiation of action to impose the penalties prescribed by the Act.

§ 2171.21 Appeals procedures.

Employees have the right to appeal an order for remedial action under § 2171.19, and shall have 30 days to exercise this right before disciplinary action is initiated.

(a) Office employees and other Department of the Interior employees may file their appeal, in writing, in accordance with the provisions in 43 CFR 20.735–25(b).

(b) Employees of other Federal agencies may file their appeal, in writing, in accordance with the established procedures of their employing agency.

[FR Doc.77-24326 Filed 8-22-77;8:45 am]

federal register

TUESDAY, AUGUST 23, 1977

PART VII

DEPARTMENT OF LABOR

Employment Standards Administration

■

LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT AND RELATED STATUTES

Referral of Claims Under Longshoremen's Act for Formal Hearings and Approval of Fees for Legal Services Rendered Claimants

Title 20—Employees' Benefits

CHAPTER VI—EMPLOYMENT STANDARDS ADMINISTRATION, DEPARTMENT OF LABOR

SUBCHAPTER A—LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT AND RELATED STATUTES

PART 702—ADMINISTRATION AND PROCEDURES

Referral of Claims Under Longshoremen's Act for Formal Hearings and Approval of Fees for Legal Services Rendered Claimants

AGENCY: Department of Labor.

ACTION: Final rules.

SUMMARY: The rules prescribe guidelines for preparation and submission for approval of applications for fees for legal services rendered to claimants in claims arising under the Longshoremen's and Harbor Workers' Compensation Act and its extensions. The rules also prescribe new procedures for referring such claimants to administrative law judges for formal hearings and for adjudicating claims after referral. In response to a demonstrated need, the rules are intended to promote uniformity in fee application and approval and to diminish the time between referral of a claim for formal hearing and the filing of a decision disposing of the claim.

DATES: Effective date: September 22, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. George M. Lilly, Counsel for Longshore Programs, Office of the Solicitor, Suite N-2716, New DOL Building, 200 Constitution Avenue NW., Washington, D.C. 20210, Tel.: 202-523-7651.

SUPPLEMENTARY INFORMATION: The Secretary of Labor is authorized by statute (33 U.S.C. 939(a)) to make rules and regulations to administer the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901-950) and its extensions, the District of Columbia Workmen's Compensation Act (66 D.C. Code 501-502), the Defense Base Act (42 U.S.C. 1651-1654), the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1343), and the Nonappropriated Fund Instrumentalities Act (5 U.S.C. 8171-8173). On March 15, 1977, pusuant to this authority, the Department of Labor published proposed rules (42 FR 14284-85) to revise the present guidelines (20 CFR 702.-132) for securing approval (see 33 U.S.C. 928) of fees for legal services rendered to claimants with respect to claims arising under the Longshoremen's and Harbor Workers' Compensation Act and its extensions and to revise the present procedures (20 CFR 702.316, 702.317, 702.-331, 702.335, 702.336, 702.337, 702.341, 702.343, 702.347) for referring such claims to the Office of Administrative Law Judges, Department of Labor, for formal hearings and for adjudicating claims after referral. At the same time, the Department invited comment on the proposed rulemaking, and twenty-five letters containing or enclosing comments have been received. The comments have been studied thoroughly. As a result, the Department has decided to revise the present regulations, but also to incorporate many of the suggestions implied or expressed in the comments. Nevertheless, many suggestions have not been followed, in many cases because they are beyond the scope of the rules to be revised, and some doubts raised by the comments and shared by the Department have not been resolved by the final rules published here, primarily because it is the opinion of the drafters that they will be resolved more effectively in practice than they could be by the adoption of additional formal rules.

Discussion of Major Comments and Changes

§ 702.32: Fees for services

Several commenting parties suggested that the proposed rule lacks sufficient detail to promote uniformity in general and compliance at all levels in particular with rulings of several United States courts of appeals as to fee applications submitted for services performed before those courts.[1] The drafters agree, and the final rule is more specific and consistent with the courts' guidelines.

Several other suggestions for additional uniformity have, however, been rejected. The suggestion that an upper limit on fees is necessary for actuarial purposes has been rejected because the statutory requirement that fees be "reasonable" (see 33 U.S.C. 928) cannot be satisfied in all cases consistently with such a regulatory limitation. Likewise, the suggestions that a standard fee application form be adopted and that uniform times for filing the application and for responding to it be specified have been rejected because additional forms are to be avoided if at all possible, and a uniform time for fee applications is necessary to accelerate adjudication on the merits and might interfere with the performance of useful but unexpected services—for example, seeking reconsideration.

Several commenting parties suggested that consideration of the amount of benefits involved when the fee is to be assessed against the employer is unfair, because the employer's attorney is not paid according to the benefits involved. In fact, a reasonable hourly rate remains the touchstone of fee approval. Moreover, the employer's attorney or any attorney billing at a "normal" rate is customarily compensated without regard to wins or losses and before all appeals are exhausted. In fact another commenting party suggested adoption of some system of conditional payment of claimant's attorney's fee at each level where he or she is successful; such a scheme is, however, beyond the scope of the Department's rulemaking authority (see 33 U.S.C. 928(a)), and the suggestion must be rejected.

One commenter's suggestion that the rule's final sentence, regarding fee-setting contracts, be revised to eliminate the confusing reference to "a contingent basis" has been adopted, since fee approval is contingent upon success, and, to some extent, the amount approved is contingent upon the amount of benefits awarded.

Finally, the suggestion that the rules expressly require that fee applications and responses be served on the other parties has been adopted. It was initially omitted only because it seems required by professional ethics in any event.[2]

§ 702.316: Conclusion of conference: no agreement on all matters with respect to the claim

Most commenting parties objected to the proposed rule, particularly in conjunction with §§ 702.317, 702.331, and 702.336, and the common theme of the objections is that the proposed rules in combination merely translate, and even magnify, delay at the formal hearing into delay before the deputy commissioner. The purpose of the proposed rules is to ensure that the case is ripe for formal adjudication by the time the hearing is held, but the drafters agree that delay before the deputy commissioner is a problem which may be aggravated by even the final rules; however, the problem is an administrative one which cannot be solved by rulemaking: Many specific objections have nevertheless persuaded the drafters to revise the final rules substantially.

Several commenters questioned whether the deputy commissioner's memorandum of conference was to be included among the items transmitted to the Office of the Chief Administrative Law Judge, and § 702.317(c) has been revised to make it more clear (see § 702.-331) that the memorandum is not to be included.

One commenting party suggested that the memorandum of conference should state the positions of the parties as well as the deputy commissioner's findings and reasoning in support of his or her recommendations. Although the final rule is more specific as to the contents of the memorandum, it does not require a statement of the parties' positions because, in the view of the drafters, litigative formalization of the parties' positions should await their preparation of pre-hearing statement forms (see § 702.-317 and comments concerning it).

---

[1] *See Ayers Steamship Co. v. Bryant*, 544 F.2d 812 (5th Cir. 1977); *Todd Shipyards Corp. v. Director, Office of Workers' Compensation Programs*, 545 F.2d 1176 (9th Cir. 1976); *Atlantic & Gulf Stevedores, Inc. v. Director, Office of Workers' Compensation Programs*, 542 F.2d 602 (3d Cir. 1976). Additionally, the Ninth Circuit case forbids award of a fee against an employer for services rendered by a non-attorney unless he or she is assisting an attorney, and by adoption of this rule and Department acquiesces in all circuits at all levels.

[2] See, e.g., ABA Code of Professional Responsibility, Canon No. 7, Disciplinary Rule 7-110(B).

Another commenter read this section effectively to forbid submission of current medical reports at the formal hearing. This result was never intended. However, for the sake of clarity, in the final rule the last sentence of the proposed rule has been eliminated, and the first sentence now specifies merely that the deputy commissioner shall evaluate the evidence "available to him or her" before preparing the memorandum of conference.

Several commenting parties complained that the informal conferences and related procedures are often used merely for delay and suggested express adoption of an accelerated referral procedure for a claimant who is seriously disabled and receiving no benefits. One commenter suggested that the deputy commissioner be required to issue the memorandum of conference within fourteen days of the conference in all cases. For the present, such suggestions have been rejected because the drafters believe that accelerated handling of special cases can be accomplished individually within the framework of the final rules.

At the other end of the spectrum, a few commenting parties urged adoption of formal evidentiary and discovery procedures and restoration of some enforcement powers before the deputy commissioner in order to encourage intelligent settlements and avoid dilatory hearing requests. This suggestion has been rejected for several reasons, of which the most forceful is that it is inconsistent with the 1972 amendments to the Longshoremen's Act (see 33 U.S.C. 919(d)); furthermore, the drafters believe that requiring preparation of the pre-hearing statement form (see § 702.317) before referral will accomplish the same purpose as well.

One commenter suggested that the rule expressly provide that referral on the merits should not be delayed pending administrative response to the deputy commissioner's recommendation regarding relief from the special fund (see 33 U.S.C. 908(f), 944). This suggestion has been rejected for the present because the problem it addresses appears to be atypical and capable of resolution on an individual basis.

Other changes are in style only.

§ 702.317: PREPARATION AND TRANSFER OF THE CASE FOR HEARING

Voluminous and diffuse comments regarding this section were received, and they do not lend themselves to easy summarization. The following three paragraphs are intended to answer most of them, and the remainder of this discussion addresses particular comments and changes.

The drafters do not intend the final rules to encourage the parties to adopt a litigative posture before it becomes clear that the case will be transferred for formal hearing. Experience has shown that in most areas claimants are rarely represented by attorneys at informal conferences but usually are so represented at hearings. Thus under the final rule it is contemplated, although of course not mandated, that attorneys will become involved once it becomes necessary to fill out pre-hearing statement forms. Furthermore, discovery in the modern sense, as contemplated by the Federal Rules of Civil Procedure, does not exist under the Longshoremen's and Harbor Workers' Compensation Act: 33 U.S.C. 924 authorizes depositions and interrogatories only for the purpose of taking testimony (see discussion of § 702.341), and the parties are expected to discover the facts informally in proceedings before the deputy commissioner. When necessary, however, compelled production of evidence pursuant to 33 U.S.C. 927(a) is expected to commence at approximately the same time the parties are furnished pre-hearing statement forms. Thus at least twenty-one days, which may be enlarged by the deputy commissioner "for good cause" (see § 702.317(b)), plus at least thirty days, according to the final rules (see § 702.335, § 702.337(b)), are available for the limited pre-hearing discovery authorized by the statute. "Post-hearing" procedures, however, are not allowed except by the device of extending the time for official termination of the hearing in "exceptional cases" in the discretion of the Chief Administrative Law Judge or the administrative law judge assigned to the case (see § 702.347(b)).

Secondly, the deputy commissioner's transmittal of evidence (see § 702.317(c), § 702.331) is simply for the convenience of the parties and is not intended to accomplish the evidence's admission: evidence transmitted because one party intends to submit it must still be offered and may still be objected to by another party at the hearing. Furthermore, neither the transmitted evidence nor the pre-hearing statement form is intended to prohibit submission of new evidence at the hearing. And as the final rules make clear, pre-transferal re-evaluation by the deputy commissioner is required only when an issue arises that has never been brought to his or her attention or when important evidence has been unreasonably withheld; moreover, although the final rules require that the deputy commissioner's re-evaluation be reflected in a new *memorandum* of conference (see § 702.317(d)), whether an additional conference should be held is a matter for the deputy commissioner's judgment (*cf.* § 702.316). Thus, any delay incident to re-evaluation should ordinarily be minimal. Simply, the parties are expected to raise all known issues and reveal all known facts material to those issues. However, once the case has been transferred for a formal hearing, remand by the administrative law judge is contemplated only when a new issue arises from new evidence so important that it is likely to resolve the entire case informally[3] (see § 702.336(a)). That a claim for permanent partial disability has, since transferal, ripened into a claim for permanent total disability by reason of the claimant's discharge by the employer, to use one commenter's example, does not ensure remand: although it presents a new issue arising from new evidence, the evidence is presumably not likely to resolve the entire case by persuading the employer to pay benefits for permanent total disability on the deputy commissioner's recommendation. Whenever doubtful, the point may of course be argued before the administrative law judge.

It follows from the discussion above that a party's failure to fill out a pre-hearing statement form does not preclude his or her submission of evidence at the hearing (for procedure, see 20 CFR 702.319) and does not render remand permissible unless his or her position at the hearing raises an issue not included in the pre-hearing statement form or forms that are prepared and transmitted. Thus, any party can prevent remand by including all potential issues in his or her pre-hearing statement form, regardless of what the other parties do and regardless of what evidence is disclosed on the forms. On the other hand, if no party prepares a pre-hearing statement form, all issues and evidence will be new to the administrative law judge, since under the new rules the deputy commissioner no longer prepares "a separate memorandum" of facts and issues in dispute (see 20 CFR 702.317), and remand will be permissible if the evidence proffered is likely to resolve the entire case informally. In sum, the new rules are intended to encourage informal resolution of claims and discourage tactical surprise at formal hearings, but under no circumstances do they bar anyone, including an intervenor, from submitting evidence at the hearing.

Several commenting parties asked the reason for limiting the evidence transmitted to medical evidence and transmitting all of it without regard to its continued materiality, and the final language of § 702.317(c) and § 702.331(a) provides instead that all available evidence (already submitted to the deputy commissioner: see 20 CFR 702.319), which the parties intend to submit (indicated on the pre-hearing statement form) shall be transmitted.

A few commenters questioned the evidentiary status, propriety, and other aspects of the deputy commissioner's statement explaining the absence of a party's pre-hearing statement form (see § 702.317(e)). The statement is intended merely as an indication to the administrative law judge that the form's absence is not a clerical mistake, and the statement's preparation will therefore not be burdensome. Furthermore, the statement itself will not be prejudicial, but a party's failure to prepare (or even to prepare fully) a pre-hearing statement form, regardless of the deputy commissioner's statement, will presumably be relevant if, for example, the same party moves for remand, continuance, or other time-consuming relief. Addi-

[3] Under the proposed rule, the case could be remanded for likely resolution of a particular issue, but objection to that feature was very strong, and it has been changed in the final rule. The policy the drafters seek to effectuate is that a serious effort should be made to resolve all issues informally.

tionally, at some point dilatory tactics and failure to comply with the rules give rise to the sanctions contained in 33 U.S.C. 926 (costs of proceedings) and 33 U.S.C. 927(b) (contempt).

Several parties questioned whether the deputy commissioners' memorandum of conference was to be transmitted, and the final rule specifies that it shall not be (cf. 20 CFR 702.317).

§ 702.331: FORMAL HEARINGS; PROCEDURE INITIATING

The language describing the evidence to be transmitted has been changed; see discussion of § 702.317.

§ 702.335: FORMAL HEARINGS; NOTICE

Commenting parties were unanimous in urging that ten days is inadequate notice, and the final rule guarantees thirty days, a rough average of the suggestions. One commenter suggested, however, that the ten-day period be retained as to cases where the claimant is seriously disabled and receiving no benefits (cf. discussion of § 702.316), but since, as a practical matter, the guaranteed notice period will seldom affect the time between informal conference and formal hearing, and so many commenters wanted a guaranteed period for discovery (see discussion of § 702.316), the suggestion has not been adopted. In practice, a statement on a party's pre-hearing statement form explaining the need for a speedy hearing should do more towards accelerating the process than any special provision in the rules. Similarly, several commenting parties questioned when discovery was intended to take place, and this question is answered in the discussion of § 702.317.

A couple of commenters asked why parties are not consulted, at least on the West Coast where the Office of Administrative Law Judges is decentralized, before the Chief Administrative Law Judge sets a hearing date. In fact, sometimes they are consulted, generally by means of a calendar call, and the extent to which they are depends on particularized administrative factors that cannot be controlled by rulemaking. However, since the new rules (see § 702.337(b)) are more restrictive than the current rules (see 20 CFR 702.337) regarding the granting of continuances, the drafters contemplate that a greater effort will be made to accommodate the parties. Again, inclusion of a range of convenient hearing dates on the pre-hearing statement form should prove helpful in practice.

One commenting party questioned why the requirement that the notice of hearing specify the time and place of the hearing had been deleted; it was deleted because it seems implicit in the concept of "notice" of "scheduling," but the final rule restores it explicitly.

§ 702.336: FORMAL HEARINGS; NEW ISSUES

Most commenting parties objected to the proposed remand provisions, and, as explained in the discussion of § 702.317, they have been modified. The final rule provides for remand only when a new issue arises from new evidence likely to resolve the entire case. Additionally, the provision that the administrative law judge may consult with the deputy commissioner regarding the advisability of remand has been deleted, and argument on the point, if needed, is therefore left to the parties. Several commenters found any remand without the consent of all parties objectionable, but it is difficult to imagine circumstances such that an administrative law judge could be persuaded that the new evidence will resolve the entire case notwithstanding that one party vigorously opposes remand.

Several commenting parties suggested that granting settlement-approval authority to the administrative law judges was preferable to providing for remand when informal resolution was likely, but the suggestion has not been adopted. In view of the drafters, approval of a settlement is properly an administrative rather than judicial function, since to satisfy the statutory condition that a settlement be "for the best interests of an injured employee" (33 U.S.C. 908(i)) requires resort to administrative experience in the local area and informal investigation of factors outside the record (see also 20 CFR 702.241(d)).

The typographical error according to which the proposed § 702.336(a) would replace the entire present 20 CFR 702.336 has been corrected.

§ 702.337: FORMAL HEARINGS; CHANGE OF TIME OR PLACE FOR HEARINGS; POSTPONEMENTS

Most commenting parties suggested that the "extreme hardship" standard for continuances in combination with the ten-day guaranteed notice period was unreasonably strict, and both have been changed (see discussion of § 702.335). As several commenters suggested, the final rule now expressly provides that a previously scheduled judicial proceeding is an adequate reason for granting a continuance. However, the final rule also changes the time when a request for a continuance must be received by the Chief Administrative Law Judge from five until ten days before the scheduled date.

A couple of commenting parties questioned whether the requirement that the hearing be held near the claimant's residence was fair to employers and witnesses in areas of the country where many employees travel more than seventy-five miles to work. Since, however, such unfairness in any particular case can be "shown" as "good cause" for holding the hearing elsewhere and can often be mitigated for witnesses by means of depositions, the proposed rule has not been changed in this regard. Another commenter questioned whether the seventy-five-mile rule might be detrimental to the claimant in practice by further complicating, and thereby prolonging, the Office of Administrative Law Judges' scheduling. The drafters agree that the rule may occasionally produce this result, but in such a case, when time appears more important than distance, the claimant is free to waive the privilege, for example, by a statement on his or her pre-hearing statement form (cf. discussion of § 702.335).

§ 702.341: FORMAL HEARINGS; DEPOSITIONS; INTERROGATORIES

A few commenters objected to deposition or interrogation of a party unrepresented by counsel, and although the final rule meets the objection, a few cautionary words are in order. This rule is derived from 33 U.S.C. 924, the language of which has been in force since the original enactment of the Longshoremen's Act in 1927. The statutory provision does not authorize discovery in the modern sense, but merely the taking of testimony of a witness. Thus deposition or interrogation of a witness is only permissible as a substitute for live testimony should it be unavailable when the hearing is held, and deposition or interrogation of a party will only rarely be appropriate.

In the same vein, several commenting parties urged precise definition of where a case is "pending." This language also survives from the original Longshoremen's Act, according to which it was clear that a case was pending where the deputy commissioner sat, and there is nothing in the present Act in derogation of this construction. Thus, unless it has been transferred to a different district pursuant to 33 U.S.C. 919(g) and 20 CFR 702.104, a case is "pending" where the claim was filed, which, according to 33 U.S.C. 913(a) and 20 CFR 702.212, is "in the compensation district in which the injury or death occurred."

Finally, many commenters objected to continued adoption of the "rules of practice" of the Federal district court of the district where the case is pending, and urged adoption of the Federal Rules of Civil Procedure. Again the objectionable phrase is lifted from 33 U.S.C. 924, and survives from a time when there were no Federal Rules of Civil Procedure,[4] discovery as we now know it did not exist, and the "rules of practice" were essentially state rules followed pursuant to the Conformity Act.[5] Although it is highly doubtful that the statutory language can be read to have contemplated the revolution in federal practice effected by the Federal Rules,[6] it would surely exalt form over substance to require compliance with archaic district rules; accordingly the drafters have, subject to the limitation discussed above that depositions and interrogatories may only be used for testimony, adopted the Federal Rules.

§ 702.343: FORMAL HEARINGS; ORAL ARGUMENT AND WRITTEN ALLEGATIONS

All commenting parties but one objected to the proposed rule's elimination of post-hearing briefing at the request of a party. Most suggested that any delay caused by such briefing could be eliminated less restrictively by adoption of a short time limit for the brief's submis-

[4] See Fed. R. Civ. P. 86(a).
[5] Ch. 255, § 5, 17 Stat. 196, 197 (1972).
[6] See generally *Wayma* v. *Southard*, 23 U.S. 1 (1825).

sion, combined with a more restrictive standard for enlargement. The drafters agree, and the final rule restores the privilege of filing a post-hearing brief to any party. However, the privilege is conditioned upon specification on the record of the novel or difficult issue or issues that cannot be adequately addressed in oral summation, and all briefs filed are limited to the specified issue or issues. Furthermore, the fifteen-day period for submission of the briefs commences at the conclusion of the hearing and not upon receipt of the transcript. However, the standard for enlargement no longer mentions receipt of the transcript, and in a proper case—if, for example, the administrative law judge intends to wait for the transcript so that a short enlargement beyond its receipt will not delay his or her decision—the administrative law judge may grant such an enlargement if he or she is persuaded that the brief will be "helpful."

§ 702.347: FORMAL HEARINGS; TERMINATION

The comments received concerning this section are addressed in the discussion of § 702.343, and the only changes made in the final rule are in style.

OTHER COMMENTS

Two commenters urged that approval of a settlement by the deputy commissioner be mandatory when the claimant is represented by counsel, but the suggestion is plainly inconsistent with any reasonable construction of 33 U.S.C. 908(i).

One commenter suggested that the Department's goal should be for the administrative law judge to issue the decision at the conclusion of the hearing, and, under the final rules, this will sometimes be possible. Another commenter suggested that the rules require the administrative law judge to issue his or her decision within a specified number of days after the hearing. This is already provided for in 33 U.S.C. 919(c), and although the provision has never been effective in light of case law holding its terms directory rather than mandatory (see also 20 CFR 702.347), under the new § 702.347, it is anticipated that cases ordinarily will be decided within twenty days of the hearing.

One commenting party suggested that the impact of the economic disparity between the claimant and the employer should be lessened by providing that the employer pay, even to an unsuccessful claimant, all expenses incurred by the claimant in attending or being represented at depositions requested by the employer. The suggestion has been rejected because in the view of the drafters it goes beyond anything provided for by statutory terms.

Finally, one commenter suggested that benefits under the Longshoremen's Act are unjustly disproportionate to benefits provided by state compensation law and that the federal benefits should be lowered accordingly. Whatever merit this suggestion may have, however, it cannot be adopted by rulemaking.

This document was prepared under the supervision of Laurie M. Streeter, Association Solicitor for Employee Benefits, in cooperation with the Chief Administrative Law Judge.

Accordingly, 20 CFR Part 702 is amended as follows:

1. Section 702.132 is revised to read as follows:

§ 702.132 Fees for services.

An attorney seeking a fee for services performed on behalf of a claimant with respect to claims filed under the Act shall make application therefor to the deputy commissioner, administrative law judge, Board, or court, as the case may be, before whom the services were performed (See 33 U.S.C. 928(c)). The application shall be filed and served upon the other parties within the time limits specified by such deputy commissioner, administrative law judge, Board, or court. The application shall be supported by a complete statement of the extent and character of the necessary work done, described with particularity as to the professional status (e.g., attorney, paralegal, law clerk, or other person assisting an attorney) of each person performing such work, the normal billing rate for each such person, and the hours devoted by each such persons to each category of work. Any fee approved shall be reasonably commensurate with the necessary work done and shall take into account the quality of the representation, the complexity of the legal issues involved, and the amount of benefits awarded, and when the fee is to be assessed against the claimant, shall also take into account the financial circumstances of the claimant. No contract pertaining to the amount of a fee shall be recognized.

2. Section 702.316 is revised to read as follows:

§ 702.316 Conclusion of conference; no agreement on all matters with respect to the claim.

When it becomes apparent during the course of the informal conference that agreement on all issues cannot be reached, the deputy commissioner shall bring the conference to a close, shall evaluate all evidence available to him or her, and after such evaluation shall prepare a memorandum of conference setting forth all outstanding issues, such facts or allegations as appear material and his or her recommendations and rationale for resolution of such issues. Copies of this memorandum shall then be sent by certified mail to each of the parties or their representatives, who shall then have 14 days within which to signify in writing to the deputy commissioner whether they agree or disagree with his or her recommendations. If they agree, the deputy commissioner shall proceed as in § 702.315(a). If they disagree (Caution: See § 702.134), then the deputy commissioner may schedule such further conference or conferences as, in his or her opinion, may bring about agreement; if he or she is satisfied that any further conference would be unproductive, or if any party has requested a hearing, the deputy commissioner shall prepare the case for transfer to the Office of the Chief Administrative Law Judge (See § 702.317, §§ 702.331–.351).

3. Section 702.317 is revised to read as follows:

§ 702.317 Preparation and transfer of the case for hearing.

A case is prepared for transfer in the following manner:

(a) The deputy commissioner shall furnish each of the parties or their representatives with a copy of a pre-hearing statement form.

(b) Each party shall, within 21 days after receipt of such form, complete it and return it to the deputy commissioner and serve copies on all other parties. Extensions of time for good cause may be granted by the deputy commissioner.

(c) Upon receipt of the completed forms, the deputy commissioner, after checking them for completeness and after any further conferences that, in his or her opinion, are warranted, shall transmit them to the Office of the Chief Administrative Law Judge by letter of transmittal together with all available evidence which the parties intend to submit at the hearing (exclusive of X-rays, slides and other materials not suitable for mailing which may be offered into evidence at the time of hearing); the materials transmitted shall not include any recommendations expressed or memoranda prepared by the deputy commissioner pursuant to § 702.316.

(d) If the completed pre-hearing statement forms raise new or additional issues not previously considered by the deputy commissioner or indicate that material evidence will be submitted that could reasonably have been made available to the deputy commissioner before he or she prepared the last memorandum of conference, the deputy commissioner shall transfer the case to the Office of the Chief Administrative Law Judge only after having considered such issues or evaluated such evidence or both and having issued an additional memorandum of conference in conformance with § 702.316.

(e) If a party fails to complete or return his or her pre-hearing statement form within the time allowed, the deputy commissioner may, at his or her discretion, transmit the case without that party's form. However, such transmittal shall include a statement from the deputy commissioner setting forth the circumstances causing the failure to include the form, and such party's failure to submit a pre-hearing statement form may, subject to rebuttal at the formal hearing, be considered by the administrative law judge, to the extent intransigence is relevant, in subsequent rulings on motions which may be made in the course of the formal hearing.

4. Section 702.331 is revised to read as follows:

§ 702.331 Formal hearings; procedure initiating.

Formal hearings are initiated by transmitting to the Office of the Chief Administrative Law Judge the pre-hearing statement forms, the available evidence which the parties intend to submit at the formal hearing, and the letter of transmittal from the deputy commissioner as provided in § 702.316 and § 702.317.

5. Section 702.335 is revised to read as follows:

§ 702.335 Formal hearings; notice.

On a form prescribed for this purpose the Office of the Chief Administrative Law Judge shall notify the parties (See § 702.333) of the place and time of the formal hearing not less than 30 days in advance thereof.

6. Section 702.336(a) is revised to read as follows:

§ 702.336 Formal hearings; new issues.

(a) If, during the course of the formal hearing, the evidence presented warrants consideration of an issue or issues not previously considered, the hearing may be expanded to include the new issue. If in the opinion of the administrative law judge the new issue requires additional time for preparation, the parties shall be given a reasonable time within which to prepare for it. If the new issue arises from evidence that has not been considered by the deputy commissioner, and such evidence is likely to resolve the case without the need for a formal hearing, the administrative law judge may remand the case to the deputy commissioner for his or her evaluation and recommendation pursuant to § 702.316.

* * * * *

7. Section 702.337 is revised to read as follows:

§ 702.337 Formal hearings; change of time or place for hearings; postponements.

(a) Except for good cause shown, hearings shall be held at convenient locations not more than 75 miles from the claimant's residence.

(b) Once a formal hearing has been scheduled, continuances shall not be granted except in cases of extreme hardship or where attendance of a party or his or her representative is mandated at a previously scheduled judicial proceeding. Unless the ground for the request arises thereafter, requests for continuances must be received by the Chief Administrative Law Judge at least 10 days before the scheduled hearing date, must be served upon the other parties and must specify the extreme hardship or previously scheduled judicial proceeding claimed.

(c) The Chief Administrative Law Judge or the administrative law judge assigned to the case may change the time and place of the hearing, or temporarily adjourn a hearing, on his own motion or for good cause shown by a party. The parties shall be given not less than 10 days' notice of the new time and place of the hearing, unless they agree to such change without notice.

8. Section 702.341 is revised to read as follows:

§ 702.341 Formal hearings; depositions; interrogatories.

The testimony of any witness, including any party represented by counsel, may be taken by deposition or interrogatory according to the Federal Rules of Civil Procedure as supplemented by local rules of practice for the federal district court for the judicial district in which the case is pending. However, such depositions or interrogatories must be completed within reasonable times to be fixed by the Chief Administrative Law Judge or the administrative law judge assigned to the case.

9. Section 702.343 is revised to read as follows:

§ 702.343 Formal hearings; oral argument and written allegations.

Any party upon request shall be allowed a reasonable time for presentation of oral argument and shall be permitted to file a pre-hearing brief or other written statement of fact or law. A copy of any such pre-hearing brief or other written statement shall be filed with the Chief Administrative Law Judge or the administrative law judge assigned to the case before or during the proceeding at which evidence is submitted to the administrative law judge and shall be served upon each other party. Post-hearing briefs will not be permitted except at the request of the administrative law judge or upon averment on the record of a party that the case presents a specific novel or difficult legal or factual issue (or issues) that cannot be adequately addressed in oral summation. When permitted, any such brief shall be limited to the issue or issues specified by the administrative law judge or by the party in his or her averment and shall be due from any party desiring to address such issue or issues within 15 days of the conclusion of the proceeding at which evidence is submitted to the administrative law judge. Enlargement of the time for filing such briefs shall be granted only if the administrative law judge is persuaded that the brief will be helpful to him or her and that the enlargement granted will not delay decision of the case.

10. Section 702.347 is revised to read as follows:

§ 702.347 Formal hearings; termination.

(a) Formal hearings are normally terminated upon the conclusion of the proceeding at which evidence is submitted to the administrative law judge.

(b) In exceptional cases the Chief Administrative Law Judge or the administrative law judge assigned to the case may, in his or her discretion, extend the time for official termination of the hearing.

(33 U.S.C. 939)

Dated: August 19, 1977.

RAY MARSHALL,
Secretary of Labor.

[FR Doc.77-24404 Filed 8-22-77;8:45 am]

federal register

TUESDAY, AUGUST 23, 1977

PART VIII

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

■

FAIR MARKET RENTS FOR SECTION 8 AND SECTION 23 EXISTING HOUSING

Amendment of Schedule B

Title 24—Housing and Urban Development

CHAPTER VIII—LOW INCOME PUBLIC HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-77-311]

PART 803—SECTION 23 HOUSING ASSISTANCE PAYMENTS PROGRAM

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

Amendment of Schedule B—Section 8 Existing Housing and Section 23 Existing Housing

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: HUD is amending for certain market areas the Schedule that sets forth the Fair Market Rents for the Section 23 and Section 8 Housing Assistance Payments Programs for Existing Housing. Fair Market Rents for these market areas have been recalculated in response to comments received from HUD field offices and the general public on the schedule published for comment on May 4.

EFFECTIVE DATE: August 23, 1977.

FOR FURTHER INFORMATION CONTACT:

Bernard Horn, Acting Director, Office of Economic and Market Analysis, PD&R, HUD, Washington, D.C. 20410, 202-755-5816.

SUPPLEMENTARY INFORMATION: HUD gave notice on May 4, 1977, at 42 FR 22704 that it was proposing to amend Title 24 of the Code of Federal Regulations by revising Part 803, Schedule B and Part 888, Schedule B. The comment period closed May 18, 1977.

By the deadline, the Department had received 189 comments from the general public and HUD field offices in response to the May 4 publication. Most of the comments requested increases in the schedules.

To avoid delay in providing needed rent increases while the comments were being considered, HUD published the proposed schedule for effect on July 1 at 42 FR 33921-34066 without change. In the preamble to the July 1 publication, however, HUD announced that additional amendments to the schedule would be made once all comments received were analyzed. All comments have been carefully considered and the data submitted has been verified with our field offices. Additional amendments are now being published for effect.

NOTE.—A Finding of Inapplicability regarding the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours at the office of the Rules Docket Clerk, Office of the Secretary, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. It is hereby certified that the economic and inflationary impacts of this regulation have been carefully evaluated in accordance with Executive Order 11821.

Accordingly, Title 24, Part 888, Schedule B and Part 803, Schedule B are revised for the specified market areas as set forth below.

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

Issued at Washington, D.C., August 12, 1977.

LAWRENCE B. SIMONS,
Assistant Secretary for Housing—Federal Housing Commissioner.

SCHEDULE B—FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

NOTE.—The Fair Market Rents for five and six bedroom units are calculated as follows: (1) Five bedrooms—150 percent of two bedroom Fair Market Rent; (2) Six bedrooms—175 percent of two bedroom Fair Market Rent.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 1		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BANGOR, MAINE INSURING OFFICE						
SMSA: PORTLAND, ME						
SMSA PART;CUMBERLAND	NON-ELEVATOR;	155	181	211	249	285
STATE:ME	ELEVATOR;	170	200	233	274	314
SMSA PART;YORK	NON-ELEVATOR;	155	181	211	249	285
STATE:ME	ELEVATOR;	170	200	233	274	314

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 1		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BOSTON, MASSACHUSETTS AREA OFFICE						
SMSA: LAWRENCE-HAVERHILL, MA-NH						
SMSA PART;ESSEX	NON-ELEVATOR;	180	206	246	299	339
STATE:MA	ELEVATOR;	198	227	271	329	373

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 1		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BURLINGTON,VERMONT INSURING OFFICE						
NON SMSA						
COUNTY:ADDISON	NON-ELEVATOR:	158	181	215	260	280
STATE:VT	ELEVATOR:	179	199	237	280	300
COUNTY:BENNINGTON	NON-ELEVATOR:	158	181	215	260	280
STATE:VT	ELEVATOR:	179	199	237	280	300
COUNTY:CALEDONIA	NON-ELEVATOR:	145	172	203	245	267
STATE:VT	ELEVATOR:	165	188	223	265	285
COUNTY:CHITTENDEN	NON-ELEVATOR:	158	181	220	275	295
STATE:VT	ELEVATOR:	179	199	242	295	315
COUNTY:FRANKLIN	NON-ELEVATOR:	145	172	203	245	267
STATE:VT	ELEVATOR:	165	188	223	265	285
COUNTY:GRAND ISLE	NON-ELEVATOR:	145	172	203	245	267
STATE:VT	ELEVATOR:	165	188	223	265	285
COUNTY:ORANGE	NON-ELEVATOR:	145	172	203	245	267
STATE:VT	ELEVATOR:	165	188	223	265	285
COUNTY:ORLEANS	NON-ELEVATOR:	145	172	203	245	267
STATE:VT	ELEVATOR:	165	188	223	265	285
COUNTY:RUTLAND	NON-ELEVATOR:	158	181	215	260	280
STATE:VT	ELEVATOR:	179	199	237	280	300
COUNTY:WASHINGTON	NON-ELEVATOR:	145	172	203	245	267
STATE:VT	ELEVATOR:	165	188	223	265	285
COUNTY:WINDHAM	NON-ELEVATOR:	158	181	215	260	280
STATE:VT	ELEVATOR:	179	199	237	280	300
COUNTY:WINDSOR	NON-ELEVATOR:	158	181	215	260	280
STATE:VT	ELEVATOR:	179	199	237	280	300

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 1		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
HARTFORD-CONNECTICUT AREA OFFICE						
SMSA: STAMFORD, CT						
SMSA PART:FAIRFIELD	NON-ELEVATOR:	210	269	311	368	395
STATE:CT	ELEVATOR:	220	275	325	368	395

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 1		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
MANCHESTER-NEW HAMPSHIRE AREA OFFICE						
SMSA: LAWRENCE-HAVERHILL, MA-NH						
SMSA PART:ROCKINGHAM	NON-ELEVATOR:	180	206	246	299	339
STATE:NH	ELEVATOR:	198	227	271	329	373
SMSA: MANCHESTER, NH						
SMSA PART:HILLSBOROUGH	NON-ELEVATOR:	166	206	246	299	339
STATE:NH	ELEVATOR:	183	227	271	329	373
SMSA PART:MERRIMACK	NON-ELEVATOR:	166	206	246	299	339
STATE:NH	ELEVATOR:	183	227	271	329	373
SMSA PART:ROCKINGHAM	NON-ELEVATOR:	166	206	246	299	339
STATE:NH	ELEVATOR:	183	227	271	329	373
SMSA: NASHUA, NH						
SMSA PART:HILLSBOROUGH	NON-ELEVATOR:	166	206	246	299	339
STATE:NH	ELEVATOR:	183	227	271	329	373

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 2		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ALBANY,NEW YORK INSURING OFFICE						
NON SMSA						
COUNTY:ESSEX	NON-ELEVATOR:	125	144	170	169	208
STATE:NY	ELEVATOR:	138	158	187	208	229
COUNTY:GREENE	NON-ELEVATOR:	133	155	181	202	221
STATE:NY	ELEVATOR:	146	171	199	222	243
COUNTY:WASHINGTON	NON-ELEVATOR:	125	144	170	189	208
STATE:NY	ELEVATOR:	138	158	187	208	230

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 2		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BUFFALO,NEW YORK AREA OFFICE						
NON SMSA						
COUNTY:CHAUTAUQUA	NON-ELEVATOR:	132	165	195	220	243
STATE:NY	ELEVATOR:	145	182	215	242	267
COUNTY:GENESEE	NON-ELEVATOR:	141	162	193	213	235
STATE:NY	ELEVATOR:	155	178	211	235	258
COUNTY:SCHUYLER	NON-ELEVATOR:	133	151	181	200	220
STATE:NY	ELEVATOR:	146	166	198	220	242
COUNTY:STEUBEN	NON-ELEVATOR:	133	151	181	200	220
STATE:NY	ELEVATOR:	146	166	198	220	242

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 3		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BALTIMORE,MARYLAND AREA OFFICE						
SMSA: BALTIMORE, MD						
COUNTY:ANNE ARUNDEL	NON-ELEVATOR:	180	210	245	290	335
STATE:MD	ELEVATOR:	198	231	270	319	368
COUNTY:BALTIMORE	NON-ELEVATOR:	180	210	245	290	335
STATE:MD	ELEVATOR:	198	231	270	319	368
COUNTY:CARROLL	NON-ELEVATOR:	180	210	245	290	335
STATE:MD	ELEVATOR:	198	231	270	319	368
COUNTY:HARFORD	NON-ELEVATOR:	180	210	245	290	335
STATE:MD	ELEVATOR:	198	231	270	319	368
COUNTY:HOWARD	NON-ELEVATOR:	180	210	245	290	335
STATE:MD	ELEVATOR:	198	231	270	319	368
:-COLUMBIA(U)	NON-ELEVATOR:	186	233	286	327	368
STATE:MD	ELEVATOR:	209	256	314	360	404
INDEP. CITY:BALTIMORE	NON-ELEVATOR:	180	210	245	290	335
STATE:MD	ELEVATOR:	198	231	270	319	368
SMSA: WASHINGTON, DC-MD-VA						
COUNTY:CHARLES	NON-ELEVATOR:	187	224	262	299	337
STATE:MD	ELEVATOR:	205	247	288	329	370
NON SMSA						
COUNTY:CALVERT	NON-ELEVATOR:	129	148	177	197	217
STATE:MD	ELEVATOR:	142	162	195	216	239
COUNTY:FREDERICK	NON-ELEVATOR:	163	187	217	260	310
STATE:MD	ELEVATOR:	179	206	239	308	341
COUNTY:GARRETT	NON-ELEVATOR:	85	108	129	158	173
STATE:MD	ELEVATOR:	95	118	142	174	190

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO): JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 3		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BALTIMORE,MARYLAND AREA OFFICE						
NON SMSA						
COUNTY:WASHINGTON	NON-ELEVATOR:	136	155	185	239	265
STATE:MD	ELEVATOR:	150	171	209	263	292

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 3		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
CHARLESTON,WEST VIRGINIA INSURING OFFICE						
NON SMSA						
COUNTY:MCDOWELL	NON-ELEVATOR:	100	125	150	175	200
STATE:WV	ELEVATOR:	110	138	165	193	220
COUNTY:MERCER	NON-ELEVATOR:	100	125	150	175	200
STATE:WV	ELEVATOR:	110	138	165	193	220
COUNTY:MONROE	NON-ELEVATOR:	100	125	150	175	200
STATE:WV	ELEVATOR:	110	138	165	193	220
COUNTY:RALEIGH	NON-ELEVATOR:	100	125	150	175	200
STATE:WV	ELEVATOR:	110	138	165	193	220
COUNTY:SUMMERS	NON-ELEVATOR:	100	125	150	175	200
STATE:WV	ELEVATOR:	110	138	165	193	220
COUNTY:WYOMING	NON-ELEVATOR:	100	125	150	175	200
STATE:WV	ELEVATOR:	110	138	165	193	220

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 3		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
PHILADELPHIA-PENNSYLVANIA AREA OFFICE						
SMSA: NORTHEAST, PA						
COUNTY:LACKAWANNA	NON-ELEVATOR:	132	152	181	202	220
STATE:PA	ELEVATOR:	146	167	198	221	241
COUNTY:LUZERNE	NON-ELEVATOR:	132	152	181	202	220
STATE:PA	ELEVATOR:	146	167	198	221	241
COUNTY:MONROE	NON-ELEVATOR:	132	152	181	202	220
STATE:PA	ELEVATOR:	146	167	198	221	241
SMSA: READING, PA						
COUNTY:BERKS	NON-ELEVATOR:	143	164	194	226	246
STATE:PA	ELEVATOR:	157	180	213	249	271

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 3		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
RICHMOND,VIRGINIA AREA OFFICE						
SMSA: JOHNSON CITY-KINGSPORT-BRISTOL, TN-VA						
COUNTY:SCOTT	NON-ELEVATOR:	113	131	157	173	191
STATE:VA	ELEVATOR:	125	143	172	191	210
COUNTY:WASHINGTON	NON-ELEVATOR:	113	131	157	173	191
STATE:VA	ELEVATOR:	125	143	172	191	210
INDEP. CITY:BRISTOL	NON-ELEVATOR:	113	131	157	173	191
STATE:VA	ELEVATOR:	125	143	172	191	210
SMSA: LYNCHBURG, VA						
COUNTY:AMHERST	NON-ELEVATOR:	127	146	174	192	211
STATE:VA	ELEVATOR:	139	159	190	212	233
COUNTY:APPOMATTOX	NON-ELEVATOR:	127	146	174	192	211
STATE:VA	ELEVATOR:	139	159	190	212	233
COUNTY:CAMPBELL	NON-ELEVATOR:	127	146	174	192	211
STATE:VA	ELEVATOR:	139	159	190	212	233
INDEP. CITY:LYNCHBURG	NON-ELEVATOR:	127	146	174	192	211
STATE:VA	ELEVATOR:	139	159	190	212	233
SMSA: NEWPORT NEWS-HAMPTON, VA						
COUNTY:GLOUCESTER	NON-ELEVATOR:	150	172	197	240	300
STATE:VA	ELEVATOR:	165	180	217	264	330
COUNTY:JAMES CITY	NON-ELEVATOR:	150	172	197	240	300
STATE:VA	ELEVATOR:	165	180	217	264	330
COUNTY:YORK	NON-ELEVATOR:	150	172	197	240	300
STATE:VA	ELEVATOR:	165	180	217	264	330
INDEP. CITY:HAMPTON	NON-ELEVATOR:	150	172	197	240	300
STATE:VA	ELEVATOR:	165	180	217	264	330

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 3		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
RICHMOND VIRGINIA AREA OFFICE						
SMSA: NEWPORT NEWS-HAMPTON, VA						
INDEP. CITY:NEWPORT NEWS	NON-ELEVATOR:	150	172	197	240	300
STATE:VA	ELEVATOR:	165	180	217	264	330
INDEP. CITY:POQUOSON	NON-ELEVATOR:	150	172	197	240	300
STATE:VA	ELEVATOR:	165	180	217	264	330
INDEP. CITY:WILLIAMSBURG	NON-ELEVATOR:	150	172	197	240	300
STATE:VA	ELEVATOR:	165	180	217	264	330
SMSA: NORFOLK-VIRGINIA BEACH-PORTSMOUTH, VA-NC						
INDEP. CITY:CHESAPEAKE	NON-ELEVATOR:	143	163	192	214	235
STATE:VA	ELEVATOR:	157	178	212	235	257
INDEP. CITY:NORFOLK	NON-ELEVATOR:	143	163	192	214	235
STATE:VA	ELEVATOR:	157	178	212	235	257
INDEP. CITY:PORTSMOUTH	NON-ELEVATOR:	143	163	192	214	235
STATE:VA	ELEVATOR:	157	178	212	235	257
INDEP. CITY:SUFFOLK	NON-ELEVATOR:	143	163	192	214	235
STATE:VA	ELEVATOR:	157	178	212	235	257
INDEP. CITY:VIRGINIA BEA	NON-ELEVATOR:	143	163	192	214	235
STATE:VA	ELEVATOR:	157	178	212	235	257
SMSA: PETERSBURG-COLONIAL HEIGHTS-HOPEWELL, VA						
COUNTY:DINWIDDIE	NON-ELEVATOR:	136	156	186	215	235
STATE:VA	ELEVATOR:	149	171	204	237	259
COUNTY:PRINCEGEORGE	NON-ELEVATOR:	136	156	186	215	235
STATE:VA	ELEVATOR:	149	171	204	237	259
INDEP. CITY:COLONIAL HEI	NON-ELEVATOR:	136	156	186	215	235
STATE:VA	ELEVATOR:	149	171	204	237	259

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 3		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
RICHMOND,VIRGINIA AREA OFFICE						
SMSA: PETERSBURG-COLONIAL HEIGHTS-HOPEWELL, VA						
INDEP. CITY:HOPEWELL	NON-ELEVATOR:	136	156	186	215	235
STATE:VA	ELEVATOR:	149	171	204	237	259
INDEP. CITY:PETERSBURG	NON-ELEVATOR:	136	156	186	215	235
STATE:VA	ELEVATOR:	149	171	204	237	259
SMSA: RICHMOND, VA						
COUNTY:CHARLES CITY	NON-ELEVATOR:	158	184	226	263	288
STATE:VA	ELEVATOR:	169	202	251	288	317
COUNTY:CHESTERFIELD	NON-ELEVATOR:	158	184	226	263	288
STATE:VA	ELEVATOR:	169	202	251	288	317
COUNTY:GOUCHLAND	NON-ELEVATOR:	158	184	226	263	288
STATE:VA	ELEVATOR:	169	202	251	288	317
COUNTY:HANOVER	NON-ELEVATOR:	158	184	226	263	288
STATE:VA	ELEVATOR:	169	202	251	288	317
COUNTY:HENRICO	NON-ELEVATOR:	158	184	226	263	288
STATE:VA	ELEVATOR:	169	202	251	288	317
COUNTY:NEW KENT	NON-ELEVATOR:	158	184	226	263	288
STATE:VA	ELEVATOR:	169	202	251	288	317
COUNTY:POWHATAN	NON-ELEVATOR:	158	184	226	263	288
STATE:VA	ELEVATOR:	169	202	251	288	317
INDEP. CITY:RICHMOND	NON-ELEVATOR:	158	184	226	263	288
STATE:VA	ELEVATOR:	169	202	251	288	317
SMSA: ROANOKE, VA						
COUNTY:BOTETOURT	NON-ELEVATOR:	117	133	159	184	200
STATE:VA	ELEVATOR:	127	146	174	201	221

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 3		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
RICHMOND,VIRGINIA AREA OFFICE						
SMSA: ROANOKE, VA						
COUNTY:CRAIG	NON-ELEVATOR:	117	133	159	184	200
STATE:VA	ELEVATOR:	127	146	174	201	221
COUNTY:ROANOKE	NON-ELEVATOR:	117	133	159	184	200
STATE:VA	ELEVATOR:	127	146	174	201	221
INDEP. CITY:ROANOKE	NON-ELEVATOR:	117	133	159	184	200
STATE:VA	ELEVATOR:	127	146	174	201	221
INDEP. CITY:SALEM	NON-ELEVATOR:	117	133	159	184	200
STATE:VA	ELEVATOR:	127	146	174	201	221
NON SMSA						
COUNTY:ACCOMACK	NON-ELEVATOR:	120	137	163	182	199
STATE:VA	ELEVATOR:	132	150	181	200	220
COUNTY:ALBEMARLE	NON-ELEVATOR:	150	170	200	230	260
STATE:VA	ELEVATOR:	165	187	220	253	286
COUNTY:ALLEGHANY	NON-ELEVATOR:	117	133	159	184	200
STATE:VA	ELEVATOR:	127	146	174	201	221
COUNTY:AMELIA	NON-ELEVATOR:	136	156	186	215	235
STATE:VA	ELEVATOR:	149	171	204	237	259
COUNTY:AUGUSTA	NON-ELEVATOR:	102	117	136	153	170
STATE:VA	ELEVATOR:	111	126	152	170	186
COUNTY:BATH	NON-ELEVATOR:	102	117	136	153	170
STATE:VA	ELEVATOR:	111	126	152	170	186
COUNTY:BEDFORD	NON-ELEVATOR:	127	146	174	192	211
STATE:VA	ELEVATOR:	139	159	190	212	233

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX-BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 3		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
RICHMOND,VIRGINIA AREA OFFICE						
NON SMSA						
COUNTY:BLAND	NON-ELEVATOR:	85	97	114	127	140
STATE:VA	ELEVATOR:	93	106	126	140	156
COUNTY:BRUNSWICK	NON-ELEVATOR:	136	156	186	215	235
STATE:VA	ELEVATOR:	149	171	204	237	259
COUNTY:BUCHANAN	NON-ELEVATOR:	85	97	114	127	140
STATE:VA	ELEVATOR:	93	106	126	140	156
COUNTY:BUCKINGHAM	NON-ELEVATOR:	136	156	186	215	235
STATE:VA	ELEVATOR:	149	171	204	237	259
COUNTY:CAROLINE	NON-ELEVATOR:	136	156	186	215	235
STATE:VA	ELEVATOR:	149	171	204	237	259
COUNTY:CARROLL	NON-ELEVATOR:	94	108	127	142	157
STATE:VA	ELEVATOR:	104	118	140	157	172
COUNTY:CHARLOTTE	NON-ELEVATOR:	127	146	174	192	211
STATE:VA	ELEVATOR:	139	159	190	212	233
COUNTY:CLARKE	NON-ELEVATOR:	102	117	136	153	170
STATE:VA	ELEVATOR:	111	128	152	170	186
COUNTY:CULPEPER	NON-ELEVATOR:	117	133	159	175	192
STATE:VA	ELEVATOR:	127	146	174	194	212
COUNTY:CUMBERLAND	NON-ELEVATOR:	136	156	186	215	235
STATE:VA	ELEVATOR:	149	171	204	237	259
COUNTY:DICKENSON	NON-ELEVATOR:	85	97	114	127	140
STATE:VA	ELEVATOR:	93	106	126	140	156
COUNTY:ESSEX	NON-ELEVATOR:	136	156	186	215	235
STATE:VA	ELEVATOR:	149	171	204	237	259

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 3		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
RICHMOND,VIRGINIA AREA OFFICE						
NON SMSA						
COUNTY:FAUQUIER	NON-ELEVATOR:	117	133	159	175	192
STATE:VA	ELEVATOR:	127	146	174	194	212
COUNTY:FLOYD	NON-ELEVATOR:	117	133	159	184	200
STATE:VA	ELEVATOR:	127	146	174	201	221
COUNTY:FLUVANNA	NON-ELEVATOR:	136	156	186	215	235
STATE:VA	ELEVATOR:	149	171	204	237	259
COUNTY:FRANKLIN	NON-ELEVATOR:	92	105	125	138	152
STATE:VA	ELEVATOR:	101	115	137	152	169
COUNTY:FREDERICK	NON-ELEVATOR:	102	117	138	153	170
STATE:VA	ELEVATOR:	111	128	152	170	186
COUNTY:GILES	NON-ELEVATOR:	117	133	159	184	200
STATE:VA	ELEVATOR:	127	146	174	201	221
COUNTY:GRAYSON	NON-ELEVATOR:	94	108	127	142	157
STATE:VA	ELEVATOR:	104	118	140	157	172
COUNTY:GREENE	NON-ELEVATOR:	136	156	186	215	235
STATE:VA	ELEVATOR:	149	171	204	237	259
COUNTY:GRELENSVILLE	NON-ELEVATOR:	136	156	186	215	235
STATE:VA	ELEVATOR:	149	171	204	237	259
COUNTY:HALIFAX	NON-ELEVATOR:	127	146	174	192	211
STATE:VA	ELEVATOR:	139	159	190	212	233
COUNTY:HENRY	NON-ELEVATOR:	117	133	159	184	200
STATE:VA	ELEVATOR:	127	146	174	201	221
COUNTY:HIGHLAND	NON-ELEVATOR:	102	117	138	153	170
STATE:VA	ELEVATOR:	111	128	152	170	186

NOTE. FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CU), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 3		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
RICHMOND,VIRGINIA AREA OFFICE						
NON SMSA						
COUNTY:ISLE OF WIGHT	NON-ELEVATOR:	92	105	125	138	152
STATE:VA	ELEVATOR:	101	115	137	152	169
COUNTY:KING + QUEEN	NON-ELEVATOR:	136	156	186	215	235
STATE:VA	ELEVATOR:	149	171	204	237	259
COUNTY:KING GEORGE	NON-ELEVATOR:	117	133	159	175	192
STATE:VA	ELEVATOR:	127	146	174	194	212
COUNTY:KING WILLIAM	NON-ELEVATOR:	136	156	186	215	235
STATE:VA	ELEVATOR:	149	171	204	237	259
COUNTY:LANCASTER	NON-ELEVATOR:	136	156	186	215	235
STATE:VA	ELEVATOR:	149	171	204	237	259
COUNTY:LEE	NON-ELEVATOR:	85	97	114	127	140
STATE:VA	ELEVATOR:	93	106	126	140	156
COUNTY:LOUISA	NON-ELEVATOR:	136	156	186	215	235
STATE:VA	ELEVATOR:	149	171	204	237	259
COUNTY:LUNENBURG	NON-ELEVATOR:	136	156	186	215	235
STATE:VA	ELEVATOR:	149	171	204	237	259
COUNTY:MADISON	NON-ELEVATOR:	136	156	186	215	235
STATE:VA	ELEVATOR:	149	171	204	237	259
COUNTY:MATHEWS	NON-ELEVATOR:	92	105	125	138	152
STATE:VA	ELEVATOR:	101	115	137	152	169
COUNTY:MECKLENBURG	NON-ELEVATOR:	136	156	186	215	235
STATE:VA	ELEVATOR:	149	171	204	237	259
COUNTY:MIDDLESEX	NON-ELEVATOR:	92	105	125	138	152
STATE:VA	ELEVATOR:	101	115	137	152	169

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 3

		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
KILLMNONDEVIEGINIA AREA OFFICE NON SMSA						
COUNTY:MONTGOMERY	NON-ELEVATOR:	117	133	159	184	200
STATE:VA	ELEVATOR:	127	146	174	201	221
COUNTY:NELSON	NON-ELEVATOR:	127	146	174	192	211
STATE:VA	ELEVATOR:	139	159	190	212	233
COUNTY:NORTHAMPTON	NON-ELEVATOR:	120	137	163	182	199
STATE:VA	ELEVATOR:	132	150	181	200	220
COUNTY:NORTHUMBERLD	NON-ELEVATOR:	136	156	186	215	235
STATE:VA	ELEVATOR:	149	171	204	237	259
COUNTY:NOTTOWAY	NON-ELEVATOR:	136	156	186	215	235
STATE:VA	ELEVATOR:	149	171	204	237	259
COUNTY:ORANGE	NON-ELEVATOR:	136	156	186	215	235
STATE:VA	ELEVATOR:	149	171	204	237	259
COUNTY:PAGE	NON-ELEVATOR:	102	117	136	153	170
STATE:VA	ELEVATOR:	111	128	152	170	186
COUNTY:PATRICK	NON-ELEVATOR:	117	133	159	184	200
STATE:VA	ELEVATOR:	127	146	174	201	221
COUNTY:PITTSYLVANIA	NON-ELEVATOR:	127	146	174	192	211
STATE:VA	ELEVATOR:	139	159	190	212	233
COUNTY:PRINCEEDWARD	NON-ELEVATOR:	136	156	186	215	235
STATE:VA	ELEVATOR:	149	171	204	237	259
COUNTY:PULASKI	NON-ELEVATOR:	117	133	159	184	200
STATE:VA	ELEVATOR:	127	146	174	201	221
COUNTY:RAPPAHANNOCK	NON-ELEVATOR:	117	133	159	175	192
STATE:VA	ELEVATOR:	127	146	174	199	212

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 3		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
RICHMOND,VIRGINIA AREA OFFICE						
NON SMSA						
COUNTY:RICHMOND	NON-ELEVATOR:	134	170	201	231	255
STATE:VA	ELEVATOR:	148	187	221	254	281
COUNTY:ROCKBRIDGE	NON-ELEVATOR:	102	117	138	153	170
STATE:VA	ELEVATOR:	111	128	152	170	186
COUNTY:ROCKINGHAM	NON-ELEVATOR:	102	117	138	153	170
STATE:VA	ELEVATOR:	111	128	152	170	186
COUNTY:RUSSELL	NON-ELEVATOR:	85	97	114	127	140
STATE:VA	ELEVATOR:	93	106	126	140	156
COUNTY:SHENANDOAH	NON-ELEVATOR:	102	117	138	153	170
STATE:VA	ELEVATOR:	111	128	152	170	186
COUNTY:SMYTH	NON-ELEVATOR:	85	97	114	127	140
STATE:VA	ELEVATOR:	93	106	126	140	156
COUNTY:SOUTHAMPTON	NON-ELEVATOR:	92	105	125	138	152
STATE:VA	ELEVATOR:	101	115	137	152	169
COUNTY:SPOTSLYVANIA	NON-ELEVATOR:	117	133	159	175	192
STATE:VA	ELEVATOR:	127	146	174	194	212
COUNTY:STAFFORD	NON-ELEVATOR:	117	133	159	175	192
STATE:VA	ELEVATOR:	127	146	174	194	212
COUNTY:SURRY	NON-ELEVATOR:	92	105	125	138	152
STATE:VA	ELEVATOR:	101	115	137	152	169
COUNTY:SUSSEX	NON-ELEVATOR:	136	156	186	215	235
STATE:VA	ELEVATOR:	149	171	204	237	259
COUNTY:TAZEWELL	NON-ELEVATOR:	85	97	114	127	140
STATE:VA	ELEVATOR:	93	106	126	140	156

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO): JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 3		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
RICHMOND-PETERSBURG VIRGINIA AREA OFFICE						
NON SMSA						
COUNTY:HARNEN	NON-ELEVATOR:	102	117	136	153	170
STATE:VA	ELEVATOR:	111	128	152	170	186
COUNTY:WESTMORELAND	NON-ELEVATOR:	136	156	186	215	235
STATE:VA	ELEVATOR:	149	171	204	237	259
COUNTY:WISE	NON-ELEVATOR:	85	97	114	127	140
STATE:VA	ELEVATOR:	93	106	126	140	156
COUNTY:WYTHE	NON-ELEVATOR:	117	133	159	184	200
STATE:VA	ELEVATOR:	127	146	174	201	221
INDEP. CITY:BEDFORD	NON-ELEVATOR:	127	146	174	192	211
STATE:VA	ELEVATOR:	139	159	190	212	233
INDEP. CITY:BUENA VISTA	NON-ELEVATOR:	102	117	136	153	170
STATE:VA	ELEVATOR:	111	128	152	170	186
INDEP. CITY:CHARLOTTESVI	NON-ELEVATOR:	150	170	200	230	260
STATE:VA	ELEVATOR:	165	187	220	253	286
INDEP. CITY:CLIFTON FORG	NON-ELEVATOR:	117	133	159	184	200
STATE:VA	ELEVATOR:	127	146	174	201	221
INDEP. CITY:COVINGTON	NON-ELEVATOR:	117	133	159	184	200
STATE:VA	ELEVATOR:	127	146	174	201	221
INDEP. CITY:DANVILLE	NON-ELEVATOR:	127	146	174	192	211
STATE:VA	ELEVATOR:	139	159	190	212	233
INDEP. CITY:EMPORIA	NON-ELEVATOR:	136	156	186	215	235
STATE:VA	ELEVATOR:	149	171	204	237	259
INDEP. CITY:FRANKLIN	NON-ELEVATOR:	117	133	159	184	200
STATE:VA	ELEVATOR:	127	146	174	201	221

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 4-BR FMR; 6-BR = 175 PERCENT OF 4-BR FMR

PREPARED BY HUD - EMAD (CO). JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B" FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 3		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
RICHMOND,VIRGINIA AREA OFFICE						
NON SMSA						
INDEP. CITY:FREDERICKSBUR	NON-ELEVATOR:	117	133	159	175	192
STATE:VA	ELEVATOR:	127	146	174	194	212
INDEP. CITY:GALAX	NON-ELEVATOR:	94	108	127	142	157
STATE:VA	ELEVATOR:	104	116	140	157	172
INDEP. CITY:HARRISONBURG	NON-ELEVATOR:	102	117	138	153	170
STATE:VA	ELEVATOR:	111	128	152	170	186
INDEP. CITY:LEXINGTON	NON-ELEVATOR:	102	117	138	153	170
STATE:VA	ELEVATOR:	111	128	152	170	186
INDEP. CITY:MARTINSVILLE	NON-ELEVATOR:	117	133	159	184	200
STATE:VA	ELEVATOR:	127	146	174	201	221
INDEP. CITY:NORTON	NON-ELEVATOR:	85	97	114	127	140
STATE:VA	ELEVATOR:	93	106	126	140	156
INDEP. CITY:RADFORD	NON-ELEVATOR:	117	133	159	184	200
STATE:VA	ELEVATOR:	127	146	174	201	221
INDEP. CITY:SOUTH BOSTON	NON-ELEVATOR:	127	146	174	192	211
STATE:VA	ELEVATOR:	139	159	190	212	233
INDEP. CITY:STAUNTON	NON-ELEVATOR:	102	117	138	153	170
STATE:VA	ELEVATOR:	111	128	152	170	186
INDEP. CITY:WAYNESBORO	NON-ELEVATOR:	102	117	138	153	170
STATE:VA	ELEVATOR:	111	128	152	170	186
INDEP. CITY:WINCHESTER	NON-ELEVATOR:	102	117	138	153	170
STATE:VA	ELEVATOR:	111	128	152	170	186

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CU). JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 3		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
WASHINGTON, D.C. AREA OFFICE						
SMSA: WASHINGTON, DC-MD-VA						
COUNTY:MONTGOMERY	NON-ELEVATOR:	187	224	262	299	337
STATE:MD	ELEVATOR:	205	247	288	329	370
COUNTY:PRINCE GEORG	NON-ELEVATOR:	187	224	262	299	337
STATE:MD	ELEVATOR:	205	247	288	329	370
COUNTY:WASHINGTON	NON-ELEVATOR:	187	224	262	299	337
STATE:DC	ELEVATOR:	205	247	288	329	370
COUNTY:ARLINGTON	NON-ELEVATOR:	187	224	262	299	337
STATE:VA	ELEVATOR:	205	247	288	329	370
COUNTY:FAIRFAX	NON-ELEVATOR:	187	224	262	299	337
STATE:VA	ELEVATOR:	205	247	288	329	370
COUNTY:LOUDOUN	NON-ELEVATOR:	187	224	262	299	337
STATE:VA	ELEVATOR:	205	247	288	329	370
COUNTY:PRINCEWILLIA	NON-ELEVATOR:	187	224	262	299	337
STATE:VA	ELEVATOR:	205	247	288	329	370
INDEP. CITY:ALEXANDRIA	NON-ELEVATOR:	187	224	262	299	337
STATE:VA	ELEVATOR:	205	247	288	329	370
INDEP. CITY:FAIRFAX	NON-ELEVATOR:	187	224	262	299	337
STATE:VA	ELEVATOR:	205	247	288	329	370
INDEP. CITY:FALLS CHURCH	NON-ELEVATOR:	187	224	262	299	337
STATE:VA	ELEVATOR:	205	247	288	329	370
INDEP. CITY:MANASSAS	NON-ELEVATOR:	187	224	262	299	337
STATE:VA	ELEVATOR:	205	247	288	329	370
INDEP. CITY:MANASSAS PAR	NON-ELEVATOR:	187	224	262	299	337
STATE:VA	ELEVATOR:	205	247	288	329	370

NOTE, FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS;
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CU), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 4		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ATLANTA,GEORGIA AREA OFFICE						
SMSA: MACON, GA						
COUNTY:BIBB	NON-ELEVATOR:	123	140	166	192	211
STATE:GA	ELEVATOR:	135	153	184	211	231
COUNTY:HOUSTON	NON-ELEVATOR:	123	140	166	192	211
STATE:GA	ELEVATOR:	135	153	184	211	231
COUNTY:JONES	NON-ELEVATOR:	123	140	166	192	211
STATE:GA	ELEVATOR:	135	153	184	211	231
COUNTY:TWIGGS	NON-ELEVATOR:	123	140	166	192	211
STATE:GA	ELEVATOR:	135	153	184	211	231
SMSA: SAVANNAH, GA						
COUNTY:BRYAN	NON-ELEVATOR:	153	163	170	185	190
STATE:GA	ELEVATOR:	168	179	187	204	209
COUNTY:CHATHAM	NON-ELEVATOR:	153	163	170	185	190
STATE:GA	ELEVATOR:	168	179	187	204	209
COUNTY:EFFINGHAM	NON-ELEVATOR:	153	163	170	185	190
STATE:GA	ELEVATOR:	168	179	187	204	209
NON SMSA						
COUNTY:APPLING	NON-ELEVATOR:	91	108	129	146	173
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:ATKINSON	NON-ELEVATOR:	91	111	135	154	187
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:BACON	NON-ELEVATOR:	91	105	126	146	177
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:BAKER	NON-ELEVATOR:	89	105	127	141	168
STATE:GA	ELEVATOR:	0	0	0	0	0

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 4

		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ATLANTA,GEORGIA AREA OFFICE						
NON SMSA						
COUNTY:BALDWIN	NON-ELEVATOR:	99	113	139	159	193
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:BANKS	NON-ELEVATOR:	101	116	140	156	186
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:BARROW	NON-ELEVATOR:	101	116	140	156	182
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:BARTOW	NON-ELEVATOR:	93	115	137	154	183
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:BEN HILL	NON-ELEVATOR:	90	109	135	150	184
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:BERRIEN	NON-ELEVATOR:	91	110	135	150	183
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:BLECKLEY	NON-ELEVATOR:	98	118	144	163	196
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:BRANTLEY	NON-ELEVATOR:	98	112	133	149	179
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:BROOKS	NON-ELEVATOR:	97	117	142	157	192
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:BULLOCH	NON-ELEVATOR:	123	148	178	204	241
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:BURKE	NON-ELEVATOR:	102	117	141	157	188
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:CALHOUN	NON-ELEVATOR:	89	108	133	148	183
STATE:GA	ELEVATOR:	0	0	0	0	0

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 4		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ATLANTA,GEORGIA AREA OFFICE						
NON SMSA						
COUNTY:CAMDEN	NON-ELEVATOR:	98	112	133	149	180
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:CANDLER	NON-ELEVATOR:	95	115	136	155	184
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:CARROLL	NON-ELEVATOR:	112	137	172	205	240
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:CHARLTON	NON-ELEVATOR:	98	113	139	155	187
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:CHATTOOGA	NON-ELEVATOR:	100	124	150	166	202
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:CLARKE	NON-ELEVATOR:	135	160	193	213	250
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:CLAY	NON-ELEVATOR:	97	122	150	168	209
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:CLINCH	NON-ELEVATOR:	93	112	135	150	180
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:COFFEE	NON-ELEVATOR:	117	140	166	190	223
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:COLQUITT	NON-ELEVATOR:	94	118	142	159	189
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:COOK	NON-ELEVATOR:	107	126	150	166	194
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:COWETA	NON-ELEVATOR:	114	139	171	198	228
STATE:GA	ELEVATOR:	0	0	0	0	0

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 4		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ATLANTA-GEORGIA AREA OFFICE						
NON SMSA						
COUNTY:CHAMBERS	NON-ELEVATOR:	127	153	187	213	256
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:CRISP	NON-ELEVATOR:	119	141	174	201	227
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:DAWSON	NON-ELEVATOR:	123	146	178	198	235
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:DECATUR	NON-ELEVATOR:	109	132	162	180	220
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:DODGE	NON-ELEVATOR:	99	116	142	160	189
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:DOOLY	NON-ELEVATOR:	89	103	122	143	170
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:EARLY	NON-ELEVATOR:	102	125	150	167	199
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:ECHOLS	NON-ELEVATOR:	93	112	135	150	178
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:ELBERT	NON-ELEVATOR:	108	127	155	171	201
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:EMANUEL	NON-ELEVATOR:	102	120	148	164	194
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:EVANS	NON-ELEVATOR:	113	134	160	183	214
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:FANNIN	NON-ELEVATOR:	114	134	163	181	210
STATE:GA	ELEVATOR:	0	0	0	0	0

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 4		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ATLANTA,GEORGIA AREA OFFICE						
NON SMSA						
COUNTY:FLOYD	NON-ELEVATOR:	106	130	158	175	213
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:FRANKLIN	NON-ELEVATOR:	101	116	140	156	183
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:GILMER	NON-ELEVATOR:	90	106	129	143	170
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:GLASCOCK	NON-ELEVATOR:	112	134	164	181	214
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:GLYNN	NON-ELEVATOR:	129	147	176	195	212
STATE:GA	ELEVATOR:	140	161	193	214	235
COUNTY:GORDON	NON-ELEVATOR:	110	136	164	182	219
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:GRADY	NON-ELEVATOR:	88	108	133	148	189
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:GREENE	NON-ELEVATOR:	101	116	140	156	182
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:HABERSHAM	NON-ELEVATOR:	83	96	119	133	160
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:HALL	NON-ELEVATOR:	109	131	159	175	209
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:HANCOCK	NON-ELEVATOR:	89	102	122	142	165
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:HARALSON	NON-ELEVATOR:	99	119	147	177	209
STATE:GA	ELEVATOR:	0	0	0	0	0

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO). JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 4		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ATLANTA AREA OFFICE						
COUNTY:HARRIS	NON-ELEVATOR:	100	116	136	158	193
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:HART	NON-ELEVATOR:	101	116	140	156	183
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:HEARD	NON-ELEVATOR:	100	114	136	159	184
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:IRWIN	NON-ELEVATOR:	93	111	134	148	177
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:JACKSON	NON-ELEVATOR:	101	116	140	156	185
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:JASPER	NON-ELEVATOR:	89	102	122	143	168
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:JEFF DAVIS	NON-ELEVATOR:	91	105	124	145	170
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:JEFFERSON	NON-ELEVATOR:	102	117	141	157	187
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:JENKINS	NON-ELEVATOR:	102	117	141	157	188
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:JOHNSON	NON-ELEVATOR:	89	104	129	145	168
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:LAMAR	NON-ELEVATOR:	97	119	146	162	200
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:LANIER	NON-ELEVATOR:	89	102	122	136	161
STATE:GA	ELEVATOR:	0	0	0	0	0

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 4		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ATLANTA,GEORGIA AREA OFFICE						
NON SMSA						
COUNTY:LAURENS	NON-ELEVATOR:	90	109	133	150	182
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:LIBERTY	NON-ELEVATOR:	150	177	210	291	277
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:LINCOLN	NON-ELEVATOR:	102	119	145	159	189
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:LONG	NON-ELEVATOR:	91	105	129	145	170
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:LOWNDES	NON-ELEVATOR:	114	133	162	177	210
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:LUMPKIN	NON-ELEVATOR:	83	140	170	189	225
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:MCDUFFIE	NON-ELEVATOR:	102	117	141	157	183
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:MCINTOSH	NON-ELEVATOR:	98	112	133	149	178
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:MACON	NON-ELEVATOR:	89	107	132	148	181
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:MADISON	NON-ELEVATOR:	109	128	156	172	202
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:MARION	NON-ELEVATOR:	100	114	136	153	178
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:MERIWETHER	NON-ELEVATOR:	100	114	136	159	182
STATE:GA	ELEVATOR:	0	0	0	0	0

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO). JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 4

		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ATLANTA, GEORGIA AREA OFFICE						
NON SMSA						
COUNTY:MILLER	NON-ELEVATOR:	89	106	133	147	184
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:MITCHELL	NON-ELEVATOR:	103	130	160	178	223
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:MONROE	NON-ELEVATOR:	103	127	155	175	215
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:MONTGOMERY	NON-ELEVATOR:	91	109	133	152	185
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:MORGAN	NON-ELEVATOR:	101	116	140	156	189
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:MURRAY	NON-ELEVATOR:	100	119	143	159	186
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:OCONEE	NON-ELEVATOR:	131	156	190	210	245
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:OGLETHORPE	NON-ELEVATOR:	101	116	140	156	184
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:PEACH	NON-ELEVATOR:	97	116	141	159	191
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:PICKENS	NON-ELEVATOR:	104	126	156	173	210
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:PIERCE	NON-ELEVATOR:	96	116	133	149	175
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:PIKE	NON-ELEVATOR:	96	110	131	152	176
STATE:GA	ELEVATOR:	0	0	0	0	0

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING[INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM]

REGION 4		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ATLANTA,GEORGIA AREA OFFICE						
NON SMSA						
COUNTY:POLK	NON-ELEVATOR:	94	114	139	155	190
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:PULASKI	NON-ELEVATOR:	89	109	126	142	170
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:PUTNAM	NON-ELEVATOR:	89	102	124	142	167
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:QUITMAN	NON-ELEVATOR:	109	136	166	188	236
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:RABUN	NON-ELEVATOR:	83	96	118	132	159
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:RANDOLPH	NON-ELEVATOR:	109	121	149	166	207
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:SCHLEY	NON-ELEVATOR:	127	149	180	202	238
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:SCREVEN	NON-ELEVATOR:	91	105	125	145	173
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:SEMINOLE	NON-ELEVATOR:	89	102	123	136	166
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:SPALDING	NON-ELEVATOR:	109	122	149	167	193
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:STEPHENS	NON-ELEVATOR:	101	116	140	156	184
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:STEWART	NON-ELEVATOR:	100	117	136	154	181
STATE:GA	ELEVATOR:	0	0	0	0	0

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 4		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ATLANTA,GEORGIA AREA OFFICE						
NON SMSA						
COUNTY:TALBOT	NON-ELEVATOR:	100	114	136	153	179
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:TALIAFERRO	NON-ELEVATOR:	102	117	141	157	184
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:TATTNALL	NON-ELEVATOR:	91	105	126	145	170
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:TAYLOR	NON-ELEVATOR:	103	117	139	157	188
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:TELFAIR	NON-ELEVATOR:	95	115	140	159	192
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:TERRELL	NON-ELEVATOR:	91	108	132	145	177
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:THOMAS	NON-ELEVATOR:	98	112	135	149	175
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:TIFT	NON-ELEVATOR:	100	129	156	176	219
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:TOOMBS	NON-ELEVATOR:	96	118	144	163	199
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:TOWNS	NON-ELEVATOR:	85	102	126	141	169
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:TREUTLEN	NON-ELEVATOR:	89	104	127	143	173
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:TROUP	NON-ELEVATOR:	103	127	156	198	225
STATE:GA	ELEVATOR:	0	0	0	0	0

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 4		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ATLANTA,GEORGIA AREA OFFICE						
NON SMSA						
COUNTY:TURNER	NON-ELEVATOR:	89	105	126	141	172
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:UNION	NON-ELEVATOR:	83	96	118	132	159
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:UPSON	NON-ELEVATOR:	96	112	147	160	174
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:WAKE	NON-ELEVATOR:	98	112	133	149	176
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:WARREN	NON-ELEVATOR:	102	117	141	157	184
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:WASHINGTON	NON-ELEVATOR:	89	102	123	142	170
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:WAYNE	NON-ELEVATOR:	91	110	129	145	172
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:WEBSTER	NON-ELEVATOR:	100	117	136	154	181
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:WHEELER	NON-ELEVATOR:	89	108	133	151	185
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:WHITE	NON-ELEVATOR:	79	95	118	132	159
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:WHITFIELD	NON-ELEVATOR:	115	142	171	189	228
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:WILCOX	NON-ELEVATOR:	90	109	135	153	186
STATE:GA	ELEVATOR:	0	0	0	0	0

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 160 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 4		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ATLANTA,GEORGIA AREA OFFICE						
NON SMSA						
COUNTY:WILKES	NON-ELEVATOR:	102	117	141	157	185
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:WILKINSON	NON-ELEVATOR:	89	106	131	149	181
STATE:GA	ELEVATOR:	0	0	0	0	0
COUNTY:WORTH	NON-ELEVATOR:	89	102	123	136	164
STATE:GA	ELEVATOR:	0	0	0	0	0

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CU), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 4		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BIRMINGHAM-ALABAMA AREA OFFICE						
SMSA: BIRMINGHAM, AL						
COUNTY:JEFFERSON	NON-ELEVATOR:	139	157	185	213	241
STATE:AL	ELEVATOR:	153	173	204	234	265
COUNTY:ST CLAIR	NON-ELEVATOR:	139	157	185	213	241
STATE:AL	ELEVATOR:	153	173	204	234	265
COUNTY:SHELBY	NON-ELEVATOR:	139	157	185	213	241
STATE:AL	ELEVATOR:	153	173	204	234	265
COUNTY:WALKER	NON-ELEVATOR:	139	157	185	213	241
STATE:AL	ELEVATOR:	153	173	204	234	265
NON SMSA						
COUNTY:DALE	NON-ELEVATOR:	113	128	150	173	195
STATE:AL	ELEVATOR:	124	141	165	190	215
COUNTY:MORGAN	NON-ELEVATOR:	120	136	160	184	208
STATE:AL	ELEVATOR:	132	150	176	202	229
COUNTY:TALLADEGA	NON-ELEVATOR:	0	100	123	150	0
STATE:AL	ELEVATOR:	0	0	0	0	0

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED AT HUD - ERAU (CO): JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 4		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
FORT LAUDERDALE-FLORIDA I SUING OFFICE						
SMSA: WEST PALM BEACH-BOCA RATON, FL						
COUNTY:PALM BEACH	NON-ELEVATOR:	167	178	227	266	292
STATE:FL	ELEVATOR:	183	195	250	293	320

NOTE, FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS;
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED AT HUD - ERAU (CO): JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE 8- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 4		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
COLUMBIA,SOUTH CAROLINA AREA OFFICE						
NON SMSA						
COUNTY:SUMTER	NON-ELEVATOR:	106	127	139	169	187
STATE:SC	ELEVATOR:	125	150	165	0	0
COUNTY:YORK	NON-ELEVATOR:	112	132	155	216	241
STATE:SC	ELEVATOR:	106	122	155	0	0

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 4		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
GREENSBORO-NORTH CAROLINA AREA OFFICE						
SMSA: ASHEVILLE, NC						
COUNTY:BUNCOMBE	NON-ELEVATOR:	110	128	151	170	187
STATE:NC	ELEVATOR:	121	139	166	188	206
COUNTY:MADISON	NON-ELEVATOR:	110	128	151	170	187
STATE:NC	ELEVATOR:	121	139	166	188	206
SMSA: BURLINGTON, NC						
COUNTY:ALAMANCE	NON-ELEVATOR:	126	145	172	193	211
STATE:NC	ELEVATOR:	138	158	189	211	233
SMSA: NORFOLK-VIRGINIA BEACH-PORTSMOUTH, VA-NC						
COUNTY:CURRITUCK	NON-ELEVATOR:	143	163	192	214	235
STATE:NC	ELEVATOR:	157	178	212	235	257
SMSA: RALEIGH-DURHAM, NC						
COUNTY:DURHAM	NON-ELEVATOR:	141	162	194	250	285
STATE:NC	ELEVATOR:	156	178	213	275	314
COUNTY:ORANGE	NON-ELEVATOR:	141	162	194	250	285
STATE:NC	ELEVATOR:	156	178	213	275	314
COUNTY:WAKE	NON-ELEVATOR:	141	162	194	250	285
STATE:NC	ELEVATOR:	156	178	213	275	314
SMSA: WILMINGTON, NC						
COUNTY:BRUNSWICK	NON-ELEVATOR:	115	131	156	176	193
STATE:NC	ELEVATOR:	129	145	171	193	212
COUNTY:NEW HANOVER	NON-ELEVATOR:	115	131	156	176	193
STATE:NC	ELEVATOR:	129	145	171	193	212
NON SMSA						
COUNTY:ALLEGHANY	NON-ELEVATOR:	106	123	146	163	178
STATE:NC	ELEVATOR:	116	135	160	178	197

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 4		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
GREENSBORO,NORTH CAROLINA AREA OFFICE						
NON SMSA						
COUNTY:ANSON	NON-ELEVATOR:	106	123	146	162	179
STATE:NC	ELEVATOR:	117	133	160	179	196
COUNTY:ASHE	NON-ELEVATOR:	106	123	146	163	178
STATE:NC	ELEVATOR:	116	135	160	178	197
COUNTY:AVERY	NON-ELEVATOR:	106	123	146	163	178
STATE:NC	ELEVATOR:	116	135	160	178	197
COUNTY:CAMDEN	NON-ELEVATOR:	115	131	156	176	192
STATE:NC	ELEVATOR:	125	144	172	192	212
COUNTY:CHEROKEE	NON-ELEVATOR:	92	107	126	142	156
STATE:NC	ELEVATOR:	101	116	140	157	172
COUNTY:CHOWAN	NON-ELEVATOR:	115	131	156	176	192
STATE:NC	ELEVATOR:	125	144	172	192	212
COUNTY:DAVIE	NON-ELEVATOR:	126	146	172	193	211
STATE:NC	ELEVATOR:	138	158	189	211	233
COUNTY:EDGECOMBE	NON-ELEVATOR:	107	122	146	163	180
STATE:NC	ELEVATOR:	118	134	160	179	199
COUNTY:GATES	NON-ELEVATOR:	115	131	156	176	192
STATE:NC	ELEVATOR:	125	144	172	192	212
COUNTY:HENDERSON	NON-ELEVATOR:	97	111	132	148	162
STATE:NC	ELEVATOR:	105	123	145	162	179
COUNTY:JOHNSTON	NON-ELEVATOR:	118	135	163	189	206
STATE:NC	ELEVATOR:	129	149	178	207	226
COUNTY:MCDOWELL	NON-ELEVATOR:	97	111	132	148	162
STATE:NC	ELEVATOR:	105	123	145	162	179

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B" FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 4		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
GREENSBORO-NORTH CAROLINA AREA OFFICE						
NON SMSA						
COUNTY:MITCHELL	NON-ELEVATOR:	106	123	146	163	178
STATE:NC	ELEVATOR:	116	135	160	178	197
COUNTY:NASH	NON-ELEVATOR:	107	122	146	163	180
STATE:NC	ELEVATOR:	118	134	160	179	199
COUNTY:PASQUOTANK	NON-ELEVATOR:	115	131	156	176	192
STATE:NC	ELEVATOR:	125	144	172	192	212
COUNTY:PERQUIMANS	NON-ELEVATOR:	115	131	156	176	192
STATE:NC	ELEVATOR:	125	144	172	192	212
COUNTY:POLK	NON-ELEVATOR:	97	111	132	148	162
STATE:NC	ELEVATOR:	105	123	145	162	179
COUNTY:RICHMOND	NON-ELEVATOR:	106	123	146	162	179
STATE:NC	ELEVATOR:	117	133	160	179	196
COUNTY:SURRY	NON-ELEVATOR:	126	145	172	193	211
STATE:NC	ELEVATOR:	138	158	189	211	233
COUNTY:TRANSYLVANIA	NON-ELEVATOR:	97	111	132	148	162
STATE:NC	ELEVATOR:	105	123	145	162	179
COUNTY:WARREN	NON-ELEVATOR:	118	135	163	189	206
STATE:NC	ELEVATOR:	129	149	178	207	226
COUNTY:WILKES	NON-ELEVATOR:	106	123	146	163	178
STATE:NC	ELEVATOR:	116	135	160	178	197
COUNTY:YANCEY	NON-ELEVATOR:	106	123	146	163	178
STATE:NC	ELEVATOR:	116	135	160	178	197

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CU), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B" FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 4		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
JACKSON,MISSISSIPPI AREA OFFICE						
SMSA: BILOXI-GULFPORT, MS						
COUNTY:HANCOCK	NON-ELEVATOR:	125	150	180	230	270
STATE:MS	ELEVATOR:	138	165	198	253	297
COUNTY:HARRISON	NON-ELEVATOR:	125	150	180	230	270
STATE:MS	ELEVATOR:	138	165	198	253	297
COUNTY:STONE	NON-ELEVATOR:	125	150	180	230	270
STATE:MS	ELEVATOR:	138	165	198	253	297
SMSA: PASCAGOULA-MOSS POINT, MS						
COUNTY:JACKSON	NON-ELEVATOR:	125	150	180	230	270
STATE:MS	ELEVATOR:	138	165	198	253	297
NON SMSA						
COUNTY:ALCORN	NON-ELEVATOR:	120	150	170	200	240
STATE:MS	ELEVATOR:	132	165	187	220	264
COUNTY:LEE	NON-ELEVATOR:	120	150	170	200	240
STATE:MS	ELEVATOR:	132	165	187	220	264
COUNTY:MONROE	NON-ELEVATOR:	120	150	170	200	240
STATE:MS	ELEVATOR:	132	165	187	220	264
COUNTY:PEARL RIVER	NON-ELEVATOR:	125	150	180	230	270
STATE:MS	ELEVATOR:	138	165	198	253	297
COUNTY:UNION	NON-ELEVATOR:	120	150	170	200	240
STATE:MS	ELEVATOR:	132	165	187	220	264

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
LOUISVILLE, KENTUCKY AREA OFFICE						
SMSA: BRENSBURG, KY						
COUNTY:DAVIESS	NON-ELEVATOR:	130	159	186	203	220
STATE:KY	ELEVATOR:	149	175	207	223	242
NON SMSA						
COUNTY:ADAIR	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:ALLEN	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:ANDERSON	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	138	165	191	222	242
COUNTY:BALLARD	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:BARREN	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:BATH	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	138	165	191	222	242
COUNTY:BELL	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:BRACKEN	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	138	165	191	222	242
COUNTY:BREATHITT	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:BRECKINRIDGE	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	138	165	191	222	242

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CU), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 4		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
LOUISVILLE, KENTUCKY AREA OFFICE						
NON SMSA						
COUNTY:BUTLER	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:CALDWELL	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:CALLOWAY	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:CARLISLE	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:CARROLL	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	138	165	191	222	242
COUNTY:CARTER	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:CASEY	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:CLAY	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:CLINTON	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:CRITTENDON	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:CUMBERLAND	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:EDMONSON	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CU), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 4		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
LOUISVILLE, KENTUCKY AREA OFFICE						
NON SMSA						
COUNTY:ELLIOTT	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:ESTILL	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	138	165	191	222	242
COUNTY:FLEMING	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	138	165	191	222	242
COUNTY:FLOYD	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:FULTON	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:GALLATIN	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	138	165	191	222	242
COUNTY:GARRARD	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:GRANT	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	138	165	191	222	242
COUNTY:GRAVES	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:GRAYSON	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	138	165	191	222	242
COUNTY:GREEN	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:HANCOCK	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO): JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 4		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
LOUISVILLE, KENTUCKY AREA OFFICE						
NON SMSA						
COUNTY:HARDIN	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	138	165	191	222	242
COUNTY:HARLAN	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:HARRISON	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	138	165	191	222	242
COUNTY:HART	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	138	165	191	222	242
COUNTY:HENRY	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	138	165	191	222	242
COUNTY:HICKMAN	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:HOPKINS	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:JACKSON	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:JOHNSON	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:KNOTT	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:KNOX	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:LARUE	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	138	165	191	222	242

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 4		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
LOUISVILLE,KENTUCKY AREA OFFICE						
NON SMSA						
COUNTY:LAUREL	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:LAWRENCE	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:LEE	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:LESLIE	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:LETCHER	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:LEWIS	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	138	165	191	222	242
COUNTY:LINCOLN	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:LIVINGSTON	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:LOGAN	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:LYON	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:MCCRACKEN	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:MCCREARY	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 4

		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
LOUISVILLE,KENTUCKY AREA OFFICE						
NON SMSA						
COUNTY:MCLEAN	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:MAGUFFIN	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:MARION	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	138	165	191	222	242
COUNTY:MARSHALL	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:MARTIN	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:MASON	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	138	165	191	222	242
COUNTY:MEADE	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	138	165	191	222	242
COUNTY:MENIFEE	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:MERCER	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	138	165	191	222	242
COUNTY:METCALFE	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:MONROE	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:MONTGOMERY	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	138	165	191	222	242

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 4		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
LOUISVILLE, KENTUCKY AREA OFFICE						
NON SMSA						
COUNTY:MORGAN	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:MUHLENBERG	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:NELSON	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	138	165	191	222	242
COUNTY:NICHOLAS	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR.	138	165	191	222	242
COUNTY:OHIO	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:OWEN	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	138	165	191	222	242
COUNTY:OWSLEY	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:PENDLETON	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	138	165	191	222	242
COUNTY:PERRY	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:PIKE	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:POWELL	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	138	165	191	222	242
COUNTY:PULASKI	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CU). JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 4

		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
LOUISVILLE,KENTUCKY AREA OFFICE						
NON SMSA						
COUNTY:HUBENTSON	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	138	165	191	222	242
COUNTY:HOCKCASTLE	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:HURAN	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:HUSSELL	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:SHELBY	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	138	165	191	222	242
COUNTY:SIMPSON	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:SPENCER	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	138	165	191	222	242
COUNTY:TAYLOR	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220
COUNTY:TODD	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	138	165	191	222	242
COUNTY:TRIGG	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	138	165	191	222	242
COUNTY:TRIMBLE	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	138	165	191	222	242
COUNTY:UNION	NON-ELEVATOR:	125	150	174	202	220
STATE:KY	ELEVATOR:	125	150	174	202	220

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED AT HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 4		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
LOUISVILLE,KENTUCKY AREA OFFICE						
NON SMSA						
COUNTY:WARREN	NON-ELEVATOR:	125	150	174	202	220
STATEWIDE	ELEVATOR:	125	150	174	202	220
COUNTY:WASHINGTON	NON-ELEVATOR:	125	150	174	202	220
STATEWIDE	ELEVATOR:	138	165	191	222	242
COUNTY:WAYNE	NON-ELEVATOR:	125	150	174	202	220
STATEWIDE	ELEVATOR:	125	150	174	202	220
COUNTY:WEBSTER	NON-ELEVATOR:	125	150	174	202	220
STATEWIDE	ELEVATOR:	125	150	174	202	220
COUNTY:WHITLEY	NON-ELEVATOR:	125	150	174	202	220
STATEWIDE	ELEVATOR:	125	150	174	202	220
COUNTY:WOLFE	NON-ELEVATOR:	125	150	174	202	220
STATEWIDE	ELEVATOR:	125	150	174	202	220

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 4-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - ERAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 4		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
KNOXVILLE,TENNESSEE AREA OFFICE						
SMSA: JOHNSON CITY-KINGSPORT-BRISTOL, TN-VA						
COUNTY:CARTER	NON-ELEVATOR:	113	131	157	173	191
STATE:TN	ELEVATOR:	125	143	172	191	210
COUNTY:HAWKINS	NON-ELEVATOR:	113	131	157	173	191
STATE:TN	ELEVATOR:	125	143	172	191	210
COUNTY:SULLIVAN	NON-ELEVATOR:	113	131	157	173	191
STATE:TN	ELEVATOR:	125	143	172	191	210
COUNTY:UNICOI	NON-ELEVATOR:	113	131	157	173	191
STATE:TN	ELEVATOR:	125	143	172	191	210
COUNTY:WASHINGTON	NON-ELEVATOR:	113	131	157	173	191
STATE:TN	ELEVATOR:	125	143	172	191	210
SMSA: KNOXVILLE, TN						
COUNTY:ANDERSON	NON-ELEVATOR:	130	154	186	248	265
STATE:TN	ELEVATOR:	143	169	207	273	292
COUNTY:BLOUNT	NON-ELEVATOR:	130	154	186	248	265
STATE:TN	ELEVATOR:	143	169	207	273	292
COUNTY:KNOX	NON-ELEVATOR:	130	154	186	248	265
STATE:TN	ELEVATOR:	143	169	207	273	292
COUNTY:UNION	NON-ELEVATOR:	130	154	186	248	265
STATE:TN	ELEVATOR:	143	169	207	273	292

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE 8- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 4		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
MEMPHIS,TENNESSEE INSURING OFFICE						
NON SMSA						
COUNTY:MCNAIRY	NON-ELEVATOR:	0	138	153	211	218
STATE:TN	ELEVATOR:	0	0	0	0	0

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED AT HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE 8- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 4		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
NASHVILLE,TENNESSEE INSURING OFFICE						
SMSA: NASHVILLE-DAVIDSON, TN						
COUNTY:CHEATHAM	NON-ELEVATOR:	150	169	209	235	258
STATE:TN	ELEVATOR:	162	186	222	258	282
COUNTY:DAVIDSON	NON-ELEVATOR:	150	169	209	235	258
STATE:TN	ELEVATOR:	162	186	222	258	282
COUNTY:DICKSON	NON-ELEVATOR:	150	169	209	235	258
STATE:TN	ELEVATOR:	162	186	222	258	282
COUNTY:ROBERTSON	NON-ELEVATOR:	150	169	209	235	258
STATE:TN	ELEVATOR:	162	186	222	258	282
COUNTY:RUTHERFORD	NON-ELEVATOR:	150	169	209	235	258
STATE:TN	ELEVATOR:	162	186	222	258	282
COUNTY:SUMNER	NON-ELEVATOR:	150	169	209	235	258
STATE:TN	ELEVATOR:	162	186	222	258	282
COUNTY:WILLIAMSON	NON-ELEVATOR:	150	169	209	235	258
STATE:TN	ELEVATOR:	162	186	222	258	282
COUNTY:WILSON	NON-ELEVATOR:	150	169	209	235	258
STATE:TN	ELEVATOR:	162	186	222	258	282

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED AT HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 4		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
TAMPA-FLORIDA INSURING OFFICE						
SMSA: DAYTONA BEACH, FL						
COUNTY:VOLUSIA	NON-ELEVATOR:	138	150	179	211	232
STATE:FL	ELEVATOR:	151	165	195	232	254
SMSA: TAMPA-ST PETERSBURG, FL						
COUNTY:HILLSBOROUGH	NON-ELEVATOR:	146	165	188	245	267
STATE:FL	ELEVATOR:	161	182	207	267	293
COUNTY:PASCO	NON-ELEVATOR:	146	165	188	245	267
STATE:FL	ELEVATOR:	161	182	207	267	293
COUNTY:PINELLAS	NON-ELEVATOR:	146	165	188	245	267
STATE:FL	ELEVATOR:	161	182	207	267	293

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 5		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
CHICAGO, ILLINOIS AREA OFFICE						
SMSA: CHICAGO, IL						
COUNTY: COOK	NON-ELEVATOR:	210	239	281	325	367
STATE: IL	ELEVATOR:	232	263	310	356	404
COUNTY: DU PAGE	NON-ELEVATOR:	210	239	281	325	367
STATE: IL	ELEVATOR:	232	263	310	356	404
COUNTY: KANE	NON-ELEVATOR:	210	239	281	325	367
STATE: IL	ELEVATOR:	232	263	310	356	404
COUNTY: LAKE	NON-ELEVATOR:	210	239	281	325	367
STATE: IL	ELEVATOR:	232	263	310	356	404
COUNTY: MCHENRY	NON-ELEVATOR:	210	239	281	325	367
STATE: IL	ELEVATOR:	232	263	310	356	404
COUNTY: WILL	NON-ELEVATOR:	210	239	281	325	367
STATE: IL	ELEVATOR:	232	263	310	356	404

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 5		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
CLEVELAND,OHIO INSURING OFFICE						
SMSA: CANTON, OH						
COUNTY:CARROLL	NON-ELEVATOR:	145	167	199	232	253
STATE:OH	ELEVATOR:	158	182	216	254	277
COUNTY:STARK	NON-ELEVATOR:	145	167	199	232	253
STATE:OH	ELEVATOR:	158	182	216	254	277
SMSA: CLEVELAND, OH						
COUNTY:CUYAHOGA	NON-ELEVATOR:	152	176	210	245	278
STATE:OH	ELEVATOR:	169	194	231	269	305
COUNTY:GEAUGA	NON-ELEVATOR:	152	176	210	245	278
STATE:OH	ELEVATOR:	169	194	231	269	305
COUNTY:LAKE	NON-ELEVATOR:	152	176	210	245	278
STATE:OH	ELEVATOR:	169	194	231	269	305
COUNTY:MEDINA	NON-ELEVATOR:	152	176	210	245	278
STATE:OH	ELEVATOR:	169	194	231	269	305
SMSA: LIMA, OH						
COUNTY:PUTNAM	NON-ELEVATOR:	113	129	155	179	198
STATE:OH	ELEVATOR:	124	141	169	198	215
SMSA: TOLEDO, OH-MI						
COUNTY:FULTON	NON-ELEVATOR:	151	174	206	239	261
STATE:OH	ELEVATOR:	167	191	226	262	287
COUNTY:LUCAS	NON-ELEVATOR:	151	174	206	239	261
STATE:OH	ELEVATOR:	167	191	226	262	287
COUNTY:OTTAWA	NON-ELEVATOR:	151	174	206	239	261
STATE:OH	ELEVATOR:	167	191	226	262	287
COUNTY:WOOD	NON-ELEVATOR:	151	174	206	239	261
STATE:OH	ELEVATOR:	167	191	226	262	287

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 5		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
COLUMBUS,OHIO AREA OFFICE						
SMSA: COLUMBUS, OH						
COUNTY:DELAWARE	NON-ELEVATOR:	133	152	181	211	231
STATE:OH	ELEVATOR:	146	167	199	232	253
COUNTY:FAIRFIELD	NON-ELEVATOR:	133	152	181	211	231
STATE:OH	ELEVATOR:	146	167	199	232	253
COUNTY:FRANKLIN	NON-ELEVATOR:	133	152	181	211	231
STATE:OH	ELEVATOR:	146	167	199	232	253
COUNTY:MADISON	NON-ELEVATOR:	133	152	181	211	231
STATE:OH	ELEVATOR:	146	167	199	232	253
COUNTY:PICKAWAY	NON-ELEVATOR:	133	152	181	211	231
STATE:OH	ELEVATOR:	146	167	199	232	253
SMSA: LIMA, OH						
COUNTY:ALLEN	NON-ELEVATOR:	113	129	155	179	196
STATE:OH	ELEVATOR:	124	141	169	198	215
COUNTY:AUGLAIZE	NON-ELEVATOR:	113	129	155	179	196
STATE:OH	ELEVATOR:	124	141	169	198	215
COUNTY:VAN WERT	NON-ELEVATOR:	113	129	155	179	196
STATE:OH	ELEVATOR:	124	141	169	198	215
SMSA: SPRINGFIELD, OH						
COUNTY:CHAMPAIGN	NON-ELEVATOR:	121	138	165	192	210
STATE:OH	ELEVATOR:	133	152	182	212	231
COUNTY:CLARK	NON-ELEVATOR:	121	138	165	192	210
STATE:OH	ELEVATOR:	133	152	182	212	231
NON SMSA						
COUNTY:ATHENS	NON-ELEVATOR:	123	141	169	188	206
STATE:OH	ELEVATOR:	135	154	184	206	226

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 5

COUNTY/METRO AREA/STATE OFFICE		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
COUNTY:CUSHOCTON	NON-ELEVATOR:	105	119	143	159	174
STATE:OH	ELEVATOR:	115	132	158	174	192
COUNTY:KNOX	NON-ELEVATOR:	121	137	165	190	209
STATE:OH	ELEVATOR:	132	151	181	210	228
COUNTY:LICKING	NON-ELEVATOR:	110	125	150	167	183
STATE:OH	ELEVATOR:	122	138	166	184	201
COUNTY:SCIOTO	NON-ELEVATOR:	106	121	145	162	177
STATE:OH	ELEVATOR:	117	134	161	177	196

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO); JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 5		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
DETROIT, MICHIGAN AREA OFFICE						
SMSA: DETROIT, MI						
COUNTY: LAPEER	NON-ELEVATOR:	175	199	235	273	308
STATE: MI	ELEVATOR:	193	219	259	300	339
COUNTY: LIVINGSTON	NON-ELEVATOR:	175	199	235	273	308
STATE: MI	ELEVATOR:	193	219	259	300	339
COUNTY: MACOMB	NON-ELEVATOR:	175	199	235	273	308
STATE: MI	ELEVATOR:	193	219	259	300	339
COUNTY: OAKLAND	NON-ELEVATOR:	175	199	235	273	308
STATE: MI	ELEVATOR:	193	219	259	300	339
COUNTY: ST CLAIR	NON-ELEVATOR:	175	199	235	273	308
STATE: MI	ELEVATOR:	193	219	259	300	339
COUNTY: WAYNE	NON-ELEVATOR:	175	199	235	273	308
STATE: MI	ELEVATOR:	193	219	259	300	339
SMSA: FLINT, MI						
COUNTY: GENESEE	NON-ELEVATOR:	158	182	219	252	276
STATE: MI	ELEVATOR:	174	200	241	277	304
COUNTY: SHIAWASSEE	NON-ELEVATOR:	158	182	219	252	276
STATE: MI	ELEVATOR:	174	200	241	277	304
SMSA: TOLEDO, OH-MI						
COUNTY: MONROE	NON-ELEVATOR:	151	174	206	239	261
STATE: MI	ELEVATOR:	167	191	226	262	287
NON SMSA						
COUNTY: LENAWEE	NON-ELEVATOR:	128	148	178	196	216
STATE: MI	ELEVATOR:	141	163	196	216	238
COUNTY: MIDLAND	NON-ELEVATOR:	142	163	194	216	235
STATE: MI	ELEVATOR:	156	179	213	238	259

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 5		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
GRAND RAPIDS, ICHIGAN INSURING OFFICE						
SMSA: BATTLE CREEK, MI						
COUNTY:BARRY	NON-ELEVATOR:	141	165	190	215	238
STATE:MI	ELEVATOR:	156	181	209	237	262
COUNTY:CALHOUN	NON-ELEVATOR:	141	165	190	215	238
STATE:MI	ELEVATOR:	156	181	209	237	262
SMSA: LANSING-EAST LANSING , MI						
COUNTY:CLINTON	NON-ELEVATOR:	157	179	215	270	301
STATE:MI	ELEVATOR:	173	197	236	280	310
COUNTY:EATON	NON-ELEVATOR:	157	179	215	270	301
STATE:MI	ELEVATOR:	173	197	236	280	310
COUNTY:INGHAM	NON-ELEVATOR:	157	179	215	270	301
STATE:MI	ELEVATOR:	173	197	236	280	310
COUNTY:IONIA	NON-ELEVATOR:	157	179	215	270	301
STATE:MI	ELEVATOR:	173	197	236	280	310
NON SMSA						
COUNTY:ALGER	NON-ELEVATOR:	110	135	163	169	185
STATE:MI	ELEVATOR:	120	139	166	185	204
COUNTY:ALLEGAN	NON-ELEVATOR:	110	158	174	179	193
STATE:MI	ELEVATOR:	120	139	166	194	212
COUNTY:ANTRIM	NON-ELEVATOR:	110	149	162	187	193
STATE:MI	ELEVATOR:	120	139	166	194	212
COUNTY:BENZIE	NON-ELEVATOR:	110	126	169	177	193
STATE:MI	ELEVATOR:	120	139	166	194	212
COUNTY:BERRIEN	NON-ELEVATOR:	125	169	189	193	212
STATE:MI	ELEVATOR:	138	159	190	213	234

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 5		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
GRAND RAPIDS,MICHIGAN INSURING OFFICE						
NON SMSA						
COUNTY:BRANCH	NON-ELEVATOR:	122	142	175	195	207
STATE:MI	ELEVATOR:	135	155	186	207	228
COUNTY:CASS	NON-ELEVATOR:	125	158	184	200	212
STATE:MI	ELEVATOR:	138	159	190	213	234
COUNTY:CHARLEVOIX	NON-ELEVATOR:	110	153	155	179	208
STATE:MI	ELEVATOR:	120	139	166	194	212
COUNTY:CLARE	NON-ELEVATOR:	123	149	171	191	208
STATE:MI	ELEVATOR:	136	156	186	208	229
COUNTY:DELTA	NON-ELEVATOR:	110	152	167	180	185
STATE:MI	ELEVATOR:	120	139	166	185	204
COUNTY:DICKINSON	NON-ELEVATOR:	110	152	167	180	185
STATE:MI	ELEVATOR:	120	139	166	185	204
COUNTY:EMMET	NON-ELEVATOR:	110	154	162	185	202
STATE:MI	ELEVATOR:	120	139	166	194	212
COUNTY:GOGEBIC	NON-ELEVATOR:	100	135	138	155	169
STATE:MI	ELEVATOR:	110	126	152	169	186
COUNTY:GRD TRAVERSE	NON-ELEVATOR:	139	159	179	207	255
STATE:MI	ELEVATOR:	134	151	182	204	225
COUNTY:GRATIOT	NON-ELEVATOR:	110	138	164	175	177
STATE:MI	ELEVATOR:	108	123	147	163	181
COUNTY:HILLSDALE	NON-ELEVATOR:	122	149	170	189	207
STATE:MI	ELEVATOR:	135	155	186	207	228
COUNTY:HOUGHTON	NON-ELEVATOR:	110	133	152	171	187
STATE:MI	ELEVATOR:	120	139	166	185	204

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 5		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
GRAND RAPIDS,MICHIGAN INSURING OFFICE						
NON SMSA						
COUNTY:ISABELLA	NON-ELEVATOR:	123	151	177	203	208
STATE:MI	ELEVATOR:	136	166	188	208	229
COUNTY:KALKASKA	NON-ELEVATOR:	110	150	174	193	208
STATE:MI	ELEVATOR:	120	139	160	194	212
COUNTY:LEELANAU	NON-ELEVATOR:	110	158	176	200	210
STATE:MI	ELEVATOR:	120	139	160	194	212
COUNTY:MARQUETTE	NON-ELEVATOR:	121	167	176	185	209
STATE:MI	ELEVATOR:	134	151	182	209	225
COUNTY:MASON	NON-ELEVATOR:	110	143	154	177	195
STATE:MI	ELEVATOR:	120	139	160	194	212
COUNTY:MECOSTA	NON-ELEVATOR:	110	153	169	188	193
STATE:MI	ELEVATOR:	120	139	160	194	212
COUNTY:MENOMINEE	NON-ELEVATOR:	110	144	152	169	185
STATE:MI	ELEVATOR:	120	139	160	185	209
COUNTY:MISSAUKEE	NON-ELEVATOR:	110	138	156	177	200
STATE:MI	ELEVATOR:	120	139	160	194	212
COUNTY:MONTCALM	NON-ELEVATOR:	110	148	163	178	193
STATE:MI	ELEVATOR:	120	139	160	194	212
COUNTY:ONTONAGON	NON-ELEVATOR:	100	127	150	158	169
STATE:MI	ELEVATOR:	110	126	152	169	186
COUNTY:OTSEGO	NON-ELEVATOR:	123	169	182	191	208
STATE:MI	ELEVATOR:	136	156	188	208	229
COUNTY:ST JOSEPH	NON-ELEVATOR:	125	171	181	203	212
STATE:MI	ELEVATOR:	138	159	190	213	234

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CU), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 5		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
GRAND RAPIDS,MICHIGAN INSURING OFFICE						
NON SMSA						
COUNTY:MEAFORD	NON-ELEVATOR:	110	158	163	190	193
STATE:MI	ELEVATOR:	120	139	166	194	212

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO): JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 5		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
INDIANAPOLIS,INDIANA AREA OFFICE						
SMSA: BLOOMINGTON, IN						
COUNTY:MONROE	NON-ELEVATOR:	135	168	200	230	245
STATE:IN	ELEVATOR:	149	185	220	253	270
SMSA: FORT WAYNE, IN						
COUNTY:ADAMS	NON-ELEVATOR:	155	175	195	230	250
STATE:IN	ELEVATOR:	175	193	215	253	275
COUNTY:ALLEN	NON-ELEVATOR:	155	175	195	230	250
STATE:IN	ELEVATOR:	175	193	215	253	275
COUNTY:DE KALB	NON-ELEVATOR:	155	175	195	230	250
STATE:IN	ELEVATOR:	175	193	215	253	275
COUNTY:WELLS	NON-ELEVATOR:	155	175	195	230	250
STATE:IN	ELEVATOR:	175	193	215	253	275
SMSA: GARY-HAMMOND-EAST CHICAGO, IN						
COUNTY:LAKE	NON-ELEVATOR:	137	155	179	234	255
STATE:IN	ELEVATOR:	148	171	195	258	280
COUNTY:PORTER	NON-ELEVATOR:	137	155	179	234	255
STATE:IN	ELEVATOR:	148	171	195	258	280
SMSA: LAFAYETTE-WEST LAFAYETTE, IN						
COUNTY:TIPPECANOE	NON-ELEVATOR:	136	168	200	230	245
STATE:IN	ELEVATOR:	150	185	220	253	270
NON SMSA						
COUNTY:KNOX	NON-ELEVATOR:	0	150	180	190	0
STATE:IN	ELEVATOR:	0	165	198	209	0

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 5		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
MILWAUKEE, WISCONSIN AREA OFFICE						
SMSA: MINNEAPOLIS-ST PAUL, MN-WI						
COUNTY:ST CROIX	NON-ELEVATOR:	170	202	249	283	322
STATE:WI	ELEVATOR:	188	224	269	311	353

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 5		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
MINNEAPOLIS-ST.PAUL,MINNESOTA AREA OFFICE						
SMSA: FARGO-MOORHEAD, ND-MN						
COUNTY:CLAY	NON-ELEVATOR:	136	159	190	222	299
STATE:MN	ELEVATOR:	152	174	209	243	269
SMSA: GRAND FORKS, N.D.-MN						
COUNTY:POLK	NON-ELEVATOR:	136	159	190	222	299
STATE:MN	ELEVATOR:	152	174	209	243	269
SMSA: MINNEAPOLIS-ST PAUL, MN-WI						
COUNTY:ANOKA	NON-ELEVATOR:	170	202	299	283	322
STATE:MN	ELEVATOR:	186	224	269	311	353
COUNTY:CARVER	NON-ELEVATOR:	170	202	299	283	322
STATE:MN	ELEVATOR:	186	224	269	311	353
COUNTY:CHISAGO	NON-ELEVATOR:	170	202	299	283	322
STATE:MN	ELEVATOR:	186	224	269	311	353
COUNTY:DAKOTA	NON-ELEVATOR:	170	202	299	283	322
STATE:MN	ELEVATOR:	186	224	269	311	353
COUNTY:HENNEPIN	NON-ELEVATOR:	170	202	299	283	322
STATE:MN	ELEVATOR:	186	224	269	311	353
COUNTY:RAMSEY	NON-ELEVATOR:	170	202	299	283	322
STATE:MN	ELEVATOR:	186	224	269	311	353
COUNTY:SCOTT	NON-ELEVATOR:	170	202	299	283	322
STATE:MN	ELEVATOR:	186	224	269	311	353
COUNTY:WASHINGTON	NON-ELEVATOR:	170	202	299	283	322
STATE:MN	ELEVATOR:	186	224	269	311	353
COUNTY:WRIGHT	NON-ELEVATOR:	170	202	299	283	322
STATE:MN	ELEVATOR:	186	224	269	311	353

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 5		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
MINNEAPOLIS-ST.PAUL, MINNESOTA AREA OFFICE						
SMSA: ROCHESTER, MN						
COUNTY: OLMSTED	NON-ELEVATOR:	151	174	207	233	255
STATE: MN	ELEVATOR:	166	190	227	254	280
SMSA: ST. CLOUD, MN						
COUNTY: BENTON	NON-ELEVATOR:	155	178	215	244	267
STATE: MN	ELEVATOR:	171	197	235	267	294
COUNTY: SHERBURNE	NON-ELEVATOR:	155	178	215	244	267
STATE: MN	ELEVATOR:	171	197	235	267	294
COUNTY: STEARNS	NON-ELEVATOR:	155	178	215	244	267
STATE: MN	ELEVATOR:	171	197	235	267	294
NON SMSA						
COUNTY: AITKIN	NON-ELEVATOR:	111	129	156	172	189
STATE: MN	ELEVATOR:	123	141	171	189	207
COUNTY: BECKER	NON-ELEVATOR:	130	148	177	195	214
STATE: MN	ELEVATOR:	143	163	194	214	235
COUNTY: BELTRAMI	NON-ELEVATOR:	111	129	156	172	189
STATE: MN	ELEVATOR:	123	141	171	189	207
COUNTY: BIG STONE	NON-ELEVATOR:	111	129	156	172	189
STATE: MN	ELEVATOR:	123	141	171	189	207
COUNTY: BLUE EARTH	NON-ELEVATOR:	155	178	215	244	267
STATE: MN	ELEVATOR:	171	197	235	267	294
COUNTY: CASS	NON-ELEVATOR:	111	129	156	172	189
STATE: MN	ELEVATOR:	123	141	171	189	207
COUNTY: CHIPPEWA	NON-ELEVATOR:	111	129	156	172	189
STATE: MN	ELEVATOR:	123	141	171	189	207

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 5		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
MINNEAPOLIS-ST.PAUL,MINNESOTA AREA OFFICE						
NON SMSA						
COUNTY:CLEARWATER	NON-ELEVATOR:	130	146	177	195	219
STATE:MN	ELEVATOR:	143	163	194	214	235
COUNTY:COTTONWOOD	NON-ELEVATOR:	111	129	156	172	189
STATE:MN	ELEVATOR:	123	141	171	189	207
COUNTY:DOUGLAS	NON-ELEVATOR:	111	129	156	172	189
STATE:MN	ELEVATOR:	123	141	171	189	207
COUNTY:GOODHUE	NON-ELEVATOR:	126	147	176	195	219
STATE:MN	ELEVATOR:	141	162	193	214	239
COUNTY:GRANT	NON-ELEVATOR:	111	129	156	172	189
STATE:MN	ELEVATOR:	123	141	171	189	207
COUNTY:HOUSTON	NON-ELEVATOR:	121	137	166	184	202
STATE:MN	ELEVATOR:	133	151	182	201	221
COUNTY:HUBBARD	NON-ELEVATOR:	111	129	156	172	189
STATE:MN	ELEVATOR:	123	141	171	189	207
COUNTY:ISANTI	NON-ELEVATOR:	126	147	176	195	219
STATE:MN	ELEVATOR:	141	162	193	214	239
COUNTY:KANABEC	NON-ELEVATOR:	126	147	176	195	219
STATE:MN	ELEVATOR:	141	162	193	214	239
COUNTY:KITTSON	NON-ELEVATOR:	130	146	177	195	219
STATE:MN	ELEVATOR:	143	163	194	214	235
COUNTY:LAC QUI PARL	NON-ELEVATOR:	111	129	156	172	189
STATE:MN	ELEVATOR:	123	141	171	189	207
COUNTY:LAKE OF WOOD	NON-ELEVATOR:	111	129	156	172	189
STATE:MN	ELEVATOR:	123	141	171	189	207

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 5		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
MINNEAPOLIS-ST.PAUL,MINNESOTA AREA OFFICE						
NON SMSA						
COUNTY:HAHNOMEN	NON-ELEVATOR:	130	148	177	195	219
STATE:MN	ELEVATOR:	143	163	194	214	235
COUNTY:MARSHALL	NON-ELEVATOR:	130	148	177	195	219
STATE:MN	ELEVATOR:	143	163	194	214	235
COUNTY:MILLE LACS	NON-ELEVATOR:	128	147	176	195	219
STATE:MN	ELEVATOR:	141	162	193	214	234
COUNTY:NORMAN	NON-ELEVATOR:	130	148	177	195	219
STATE:MN	ELEVATOR:	143	163	194	214	235
COUNTY:OTTER TAIL	NON-ELEVATOR:	130	148	177	195	219
STATE:MN	ELEVATOR:	143	163	194	214	235
COUNTY:PENNINGTON	NON-ELEVATOR:	130	148	177	195	219
STATE:MN	ELEVATOR:	143	163	194	214	235
COUNTY:PINE	NON-ELEVATOR:	128	147	176	195	219
STATE:MN	ELEVATOR:	141	162	193	214	234
COUNTY:POPE	NON-ELEVATOR:	111	129	156	172	189
STATE:MN	ELEVATOR:	123	141	171	189	207
COUNTY:RED LAKE	NON-ELEVATOR:	130	148	177	195	219
STATE:MN	ELEVATOR:	143	163	194	214	235
COUNTY:REDWOOD	NON-ELEVATOR:	111	129	156	172	189
STATE:MN	ELEVATOR:	123	141	171	189	207
COUNTY:RENVILLE	NON-ELEVATOR:	111	129	156	172	189
STATE:MN	ELEVATOR:	123	141	171	189	207
COUNTY:RICE	NON-ELEVATOR:	128	147	176	195	219
STATE:MN	ELEVATOR:	141	162	193	214	234

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 5		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
MINNEAPOLIS-ST.PAUL,MINNESOTA AREA OFFICE						
NON SMSA						
COUNTY:ROSEAU	NON-ELEVATOR:	130	148	177	195	214
STATE:MN	ELEVATOR:	143	163	194	214	235
COUNTY:STEVENS	NON-ELEVATOR:	111	129	156	172	189
STATE:MN	ELEVATOR:	123	141	171	189	207
COUNTY:SWIFT	NON-ELEVATOR:	111	129	156	172	189
STATE:MN	ELEVATOR:	123	141	171	189	207
COUNTY:TODD	NON-ELEVATOR:	111	129	156	172	189
STATE:MN	ELEVATOR:	123	141	171	189	207
COUNTY:TRAVERSE	NON-ELEVATOR:	111	129	156	172	189
STATE:MN	ELEVATOR:	123	141	171	189	207
COUNTY:WADENA	NON-ELEVATOR:	111	129	156	172	189
STATE:MN	ELEVATOR:	123	141	171	189	207
COUNTY:WILKIN	NON-ELEVATOR:	130	148	177	195	214
STATE:MN	ELEVATOR:	143	163	194	214	235
COUNTY:WINONA	NON-ELEVATOR:	121	137	166	184	202
STATE:MN	ELEVATOR:	133	151	182	201	221
COUNTY:YELLOW MEDIC	NON-ELEVATOR:	111	129	156	172	189
STATE:MN	ELEVATOR:	123	141	171	189	207

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ALBUQUERQUE, NEW MEXICO INSURING OFFICE						
SMSA: ALBUQUERQUE, NM						
COUNTY: BERNALILLO	NON-ELEVATOR:	129	147	176	203	221
STATE: NM	ELEVATOR:	142	163	193	221	243
COUNTY: SANDOVAL	NON-ELEVATOR:	129	147	176	203	221
STATE: NM	ELEVATOR:	142	163	193	221	243
NON SMSA						
COUNTY: CATRON	NON-ELEVATOR:	101	119	137	152	166
STATE: NM	ELEVATOR:	110	126	150	166	182
COUNTY: CHAVES	NON-ELEVATOR:	120	138	169	180	197
STATE: NM	ELEVATOR:	133	153	180	198	217
COUNTY: COLFAX	NON-ELEVATOR:	119	137	169	180	198
STATE: NM	ELEVATOR:	132	152	179	198	217
COUNTY: CURRY	NON-ELEVATOR:	113	127	152	167	182
STATE: NM	ELEVATOR:	124	140	167	184	200
COUNTY: DE BACA	NON-ELEVATOR:	96	109	130	152	165
STATE: NM	ELEVATOR:	105	120	144	166	182
COUNTY: DONA ANA	NON-ELEVATOR:	120	138	169	180	197
STATE: NM	ELEVATOR:	133	153	180	198	217
COUNTY: EDDY	NON-ELEVATOR:	120	138	169	180	197
STATE: NM	ELEVATOR:	133	153	180	198	217
COUNTY: GRANT	NON-ELEVATOR:	109	123	148	164	179
STATE: NM	ELEVATOR:	120	137	164	180	197
COUNTY: GUADALUPE	NON-ELEVATOR:	96	109	130	152	165
STATE: NM	ELEVATOR:	105	120	144	166	182

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ALBUQUERQUE, NEW MEXICO INSURING OFFICE						
NON SMSA						
COUNTY:HARDING	NON-ELEVATOR:	96	109	130	152	165
STATE:NM	ELEVATOR:	105	120	144	166	182
COUNTY:HIDALGO	NON-ELEVATOR:	101	114	137	152	166
STATE:NM	ELEVATOR:	110	126	150	166	182
COUNTY:LEA	NON-ELEVATOR:	120	138	164	180	197
STATE:NM	ELEVATOR:	133	153	180	198	217
COUNTY:LINCOLN	NON-ELEVATOR:	101	114	137	152	166
STATE:NM	ELEVATOR:	110	126	150	166	182
COUNTY:LOS ALAMOS	NON-ELEVATOR:	119	137	164	180	198
STATE:NM	ELEVATOR:	132	152	179	198	217
COUNTY:LUNA	NON-ELEVATOR:	119	137	164	180	198
STATE:NM	ELEVATOR:	132	152	179	198	217
COUNTY:MCKINLEY	NON-ELEVATOR:	119	137	164	180	198
STATE:NM	ELEVATOR:	132	152	179	198	217
COUNTY:MORA	NON-ELEVATOR:	119	137	164	180	198
STATE:NM	ELEVATOR:	132	152	179	198	217
COUNTY:OTERO	NON-ELEVATOR:	120	138	164	180	197
STATE:NM	ELEVATOR:	133	153	180	198	217
COUNTY:GUAY	NON-ELEVATOR:	96	109	130	152	165
STATE:NM	ELEVATOR:	105	120	144	166	182
COUNTY:RIO ARRIBA	NON-ELEVATOR:	119	137	164	180	198
STATE:NM	ELEVATOR:	132	152	179	198	217
COUNTY:ROOSEVELT	NON-ELEVATOR:	96	109	130	152	165
STATE:NM	ELEVATOR:	105	120	144	166	182

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B" FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION A		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ALBUQUERQUE,NEW MEXICO INSURING OFFICE						
NON SMSA						
COUNTY:SAN JUAN	NON-ELEVATOR:	120	138	164	180	197
STATE:NM	ELEVATOR:	133	153	180	198	217
COUNTY:SAN MIGUEL	NON-ELEVATOR:	119	137	164	180	198
STATE:NM	ELEVATOR:	132	152	179	198	217
COUNTY:SANTE FE	NON-ELEVATOR:	119	137	164	180	198
STATE:NM	ELEVATOR:	132	152	179	198	217
COUNTY:SIERRA	NON-ELEVATOR:	101	114	137	152	166
STATE:NM	ELEVATOR:	110	126	150	166	182
COUNTY:SOCORRO	NON-ELEVATOR:	101	114	137	152	166
STATE:NM	ELEVATOR:	110	126	150	166	182
COUNTY:TAOS	NON-ELEVATOR:	119	137	164	180	198
STATE:NM	ELEVATOR:	132	152	179	198	217
COUNTY:TORRANCE	NON-ELEVATOR:	119	137	164	180	198
STATE:NM	ELEVATOR:	132	152	179	198	217
COUNTY:UNION	NON-ELEVATOR:	96	109	130	152	165
STATE:NM	ELEVATOR:	105	120	144	166	182
COUNTY:VALENCIA	NON-ELEVATOR:	119	137	164	180	198
STATE:NM	ELEVATOR:	132	152	179	198	217

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION &		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
DALLAS-FT.WORTH REGIONAL OFFICE						
SMSA: DALLAS-FORT WORTH, TX						
COUNTY:COLLIN	NON-ELEVATOR:	147	169	200	233	263
STATE:TX	ELEVATOR:	162	186	220	255	289
COUNTY:DALLAS	NON-ELEVATOR:	147	169	200	233	263
STATE:TX	ELEVATOR:	162	186	220	255	289
COUNTY:DENTON	NON-ELEVATOR:	147	169	200	233	263
STATE:TX	ELEVATOR:	162	186	220	255	289
COUNTY:ELLIS	NON-ELEVATOR:	147	169	200	233	263
STATE:TX	ELEVATOR:	162	186	220	255	289
COUNTY:KAUFMAN	NON-ELEVATOR:	147	169	200	233	263
STATE:TX	ELEVATOR:	162	186	220	255	289
COUNTY:ROCKWALL	NON-ELEVATOR:	147	169	200	233	263
STATE:TX	ELEVATOR:	162	186	220	255	289
SMSA: KILLEEN-TEMPLE, TX						
COUNTY:BELL	NON-ELEVATOR:	110	126	150	167	184
STATE:TX	ELEVATOR:	122	138	166	185	202
COUNTY:LAMPASAS	NON-ELEVATOR:	110	126	150	167	184
STATE:TX	ELEVATOR:	122	138	166	185	202
SMSA: LONGVIEW, TX						
COUNTY:GREGG	NON-ELEVATOR:	115	131	156	183	201
STATE:TX	ELEVATOR:	126	144	173	201	221
SMSA: SHERMAN-DENISON, TX						
COUNTY:GRAYSON	NON-ELEVATOR:	117	133	157	174	189
STATE:TX	ELEVATOR:	129	145	174	190	209
SMSA: TYLER, TX						
COUNTY:SMITH	NON-ELEVATOR:	108	123	145	160	175
STATE:TX	ELEVATOR:	119	135	160	176	192

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CU), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
DALLAS,TEXAS AREA OFFICE						
SMSA: MACO, TA						
COUNTY:MCLENNAN	NON-ELEVATOR:	110	126	150	167	184
STATE:TA	ELEVATOR:	122	138	166	185	202
NON SMSA						
COUNTY:ANDERSON	NON-ELEVATOR:	101	114	135	148	162
STATE:TA	ELEVATOR:	109	124	148	163	177
COUNTY:CAMP	NON-ELEVATOR:	78	89	106	118	130
STATE:TA	ELEVATOR:	86	98	117	130	143
COUNTY:CHEROKEE	NON-ELEVATOR:	89	103	123	136	149
STATE:TA	ELEVATOR:	98	113	135	149	164
COUNTY:COOKE	NON-ELEVATOR:	107	120	143	157	173
STATE:TA	ELEVATOR:	117	133	157	174	189
COUNTY:DELTA	NON-ELEVATOR:	96	110	129	143	155
STATE:TA	ELEVATOR:	106	120	143	157	172
COUNTY:FALLS	NON-ELEVATOR:	110	126	150	167	184
STATE:TA	ELEVATOR:	122	138	166	185	202
COUNTY:FANNIN	NON-ELEVATOR:	95	106	129	144	157
STATE:TA	ELEVATOR:	105	119	142	157	174
COUNTY:FRANKLIN	NON-ELEVATOR:	89	103	123	136	149
STATE:TA	ELEVATOR:	98	113	135	149	164
COUNTY:FREESTONE	NON-ELEVATOR:	110	126	150	167	184
STATE:TA	ELEVATOR:	122	138	166	185	202
COUNTY:HENDERSON	NON-ELEVATOR:	89	103	123	136	149
STATE:TA	ELEVATOR:	98	113	135	149	164

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
DALLAS/FT WORTH AREA OFFICE						
COUNTY:HILL	NON-ELEVATOR:	110	126	150	167	184
STATE:TX	ELEVATOR:	122	138	166	185	202
COUNTY:HOPKINS	NON-ELEVATOR:	107	120	143	157	173
STATE:TX	ELEVATOR:	117	133	157	174	189
COUNTY:HUNT	NON-ELEVATOR:	107	120	143	157	173
STATE:TX	ELEVATOR:	117	133	157	174	189
COUNTY:LAMAR	NON-ELEVATOR:	96	110	129	143	155
STATE:TX	ELEVATOR:	106	120	143	157	172
COUNTY:LIMESTONE	NON-ELEVATOR:	110	126	150	167	184
STATE:TX	ELEVATOR:	122	138	166	185	202
COUNTY:MILAM	NON-ELEVATOR:	103	117	139	155	169
STATE:TX	ELEVATOR:	112	129	153	169	187
COUNTY:NAVARRO	NON-ELEVATOR:	95	108	129	144	157
STATE:TX	ELEVATOR:	105	119	142	157	174
COUNTY:RAINS	NON-ELEVATOR:	95	108	129	144	157
STATE:TX	ELEVATOR:	105	119	142	157	174
COUNTY:RED RIVER	NON-ELEVATOR:	78	89	106	118	130
STATE:TX	ELEVATOR:	86	98	117	130	143
COUNTY:RUSK	NON-ELEVATOR:	101	114	135	148	162
STATE:TX	ELEVATOR:	109	124	148	163	178
COUNTY:TITUS	NON-ELEVATOR:	78	89	106	118	130
STATE:TX	ELEVATOR:	86	98	117	130	143
COUNTY:UPSHUR	NON-ELEVATOR:	89	103	123	136	149
STATE:TX	ELEVATOR:	98	113	135	149	164

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
DALLAS,TEXAS AREA OFFICE						
NON SMSA						
COUNTY:VAN ZANDT	NON-ELEVATOR:	95	108	129	144	157
STATE:TX	ELEVATOR:	105	119	142	157	174
COUNTY:WOOD	NON-ELEVATOR:	89	103	123	136	149
STATE:TX	ELEVATOR:	98	113	135	149	164

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO). JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
FORT WORTH, TEXAS INSURING OFFICE						
SMSA: ABILENE, TX						
COUNTY:CALLAHAN	NON-ELEVATOR:	110	125	148	163	177
STATE:TX	ELEVATOR:	122	137	163	178	196
COUNTY:JONES	NON-ELEVATOR:	110	125	148	163	177
STATE:TX	ELEVATOR:	122	137	163	178	196
COUNTY:TAYLOR	NON-ELEVATOR:	110	125	148	163	177
STATE:TX	ELEVATOR:	122	137	163	178	196
SMSA: DALLAS-FORT WORTH , TX						
COUNTY:HOOD	NON-ELEVATOR:	147	169	200	233	263
STATE:TX	ELEVATOR:	162	186	220	255	289
COUNTY:JOHNSON	NON-ELEVATOR:	147	169	200	233	263
STATE:TX	ELEVATOR:	162	186	220	255	289
COUNTY:PARKER	NON-ELEVATOR:	147	169	200	233	263
STATE:TX	ELEVATOR:	162	186	220	255	289
COUNTY:TARRANT	NON-ELEVATOR:	147	169	200	233	263
STATE:TX	ELEVATOR:	162	186	220	255	289
COUNTY:WISE	NON-ELEVATOR:	147	169	200	233	263
STATE:TX	ELEVATOR:	162	186	220	255	289
SMSA: SAN ANGELO, TX						
COUNTY:TOM GREEN	NON-ELEVATOR:	115	132	155	172	187
STATE:TX	ELEVATOR:	127	144	172	187	205
SMSA: WICHITA FALLS, TX						
COUNTY:CLAY	NON-ELEVATOR:	108	124	148	172	187
STATE:TX	ELEVATOR:	119	136	163	188	206
COUNTY:WICHITA	NON-ELEVATOR:	108	124	148	172	187
STATE:TX	ELEVATOR:	119	136	163	188	206

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
FORT WORTH-TEXAS INSURING OFFICE						
NON SMSA						
COUNTY:ARCHER	NON-ELEVATOR:	108	124	148	172	187
STATE:TX	ELEVATOR:	119	136	163	188	206
COUNTY:BAYLOR	NON-ELEVATOR:	108	124	148	172	187
STATE:TX	ELEVATOR:	119	136	163	188	206
COUNTY:BOSQUE	NON-ELEVATOR:	110	126	150	167	184
STATE:TX	ELEVATOR:	122	138	166	185	202
COUNTY:BROWN	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:COKE	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:COLEMAN	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:COMANCHE	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:CONCHO	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:CROCKETT	NON-ELEVATOR:	105	119	142	165	179
STATE:TX	ELEVATOR:	114	132	156	180	198
COUNTY:EASTLAND	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:ERATH	NON-ELEVATOR:	107	120	143	157	173
STATE:TX	ELEVATOR:	117	133	157	174	189
COUNTY:FOARD	NON-ELEVATOR:	108	124	148	172	187
STATE:TX	ELEVATOR:	119	136	163	188	206

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR .

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 8		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
FORT WORTH AREA INSURING OFFICE						
NON SMSA						
COUNTY:HAMILTON	NON-ELEVATOR:	110	126	150	167	184
STATE:TX	ELEVATOR:	122	138	166	185	202
COUNTY:HARDEMAN	NON-ELEVATOR:	108	124	146	172	187
STATE:TX	ELEVATOR:	119	136	163	188	206
COUNTY:HASKELL	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:IRION	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:JACK	NON-ELEVATOR:	108	124	146	172	187
STATE:TX	ELEVATOR:	119	136	163	188	206
COUNTY:KIMBLE	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:KNOX	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:LAMPASAS	NON-ELEVATOR:	110	126	150	167	184
STATE:TX	ELEVATOR:	122	138	166	185	202
COUNTY:MCCULLOCH	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:MASON	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:MENARD	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:MILLS	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B" FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
FORT WORTH,TEXAS INSURING OFFICE						
NON SMSA						
COUNTY:MONTAGUE	NON-ELEVATOR:	107	120	143	157	173
STATE:TX	ELEVATOR:	117	133	157	174	189
COUNTY:PALO PINTO	NON-ELEVATOR:	117	133	157	174	189
STATE:TX	ELEVATOR:	129	145	174	190	209
COUNTY:REAGAN	NON-ELEVATOR:	105	119	142	165	179
STATE:TX	ELEVATOR:	119	132	156	180	198
COUNTY:RUNNELS	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:SAN SABA	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:SCHLEICHER	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:SHACKLEFORD	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:SOMERVELL	NON-ELEVATOR:	95	108	129	149	157
STATE:TX	ELEVATOR:	105	119	142	157	174
COUNTY:STEPHENS	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:STERLING	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:SUTTON	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:THROCKMORTON	NON-ELEVATOR:	108	124	148	172	187
STATE:TX	ELEVATOR:	119	136	163	188	206

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
FORT WORTH,TEXAS INSURING OFFICE						
NON SMSA						
COUNTY:MILLARGER	NON-ELEVATOR:	108	129	196	172	187
STATE:TX	ELEVATOR:	119	136	163	188	206
COUNTY:YOUNG	NON-ELEVATOR:	108	129	196	172	187
STATE:TX	ELEVATOR:	119	136	163	188	206

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
HOUSTON,TEXAS INSURING OFFICE						
SMSA: BEAUMONT-PORT ARTHUR-ORANGE, TX						
COUNTY:MARION	NON-ELEVATOR:	145	153	165	191	215
STATE:TX	ELEVATOR:	160	168	182	210	237
COUNTY:JEFFERSON	NON-ELEVATOR:	145	153	165	191	215
STATE:TX	ELEVATOR:	160	168	182	210	237
COUNTY:ORANGE	NON-ELEVATOR:	145	153	165	191	215
STATE:TX	ELEVATOR:	160	168	182	210	237
SMSA: BRYAN-COLLEGE STATION, TX						
COUNTY:BRAZOS	NON-ELEVATOR:	145	153	165	191	215
STATE:TX	ELEVATOR:	160	168	182	210	237
SMSA: GALVESTON-TEXAS CITY, TX						
COUNTY:GALVESTON	NON-ELEVATOR:	145	153	180	210	240
STATE:TX	ELEVATOR:	160	168	198	231	264
NON SMSA						
COUNTY:ANGELINA	NON-ELEVATOR:	135	140	160	185	215
STATE:TX	ELEVATOR:	149	154	176	204	237
COUNTY:AUSTIN	NON-ELEVATOR:	135	140	160	185	215
STATE:TX	ELEVATOR:	149	154	176	204	237
COUNTY:BURLESON	NON-ELEVATOR:	135	140	160	185	215
STATE:TX	ELEVATOR:	149	154	176	204	237
COUNTY:CHAMBERS	NON-ELEVATOR:	135	140	160	185	215
STATE:TX	ELEVATOR:	149	154	176	204	237
COUNTY:COLORADO	NON-ELEVATOR:	135	140	160	185	215
STATE:TX	ELEVATOR:	149	154	176	204	237
COUNTY:GRIMES	NON-ELEVATOR:	135	140	160	185	215
STATE:TX	ELEVATOR:	149	154	176	204	237

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
HOUSTON-TEXAS INSURING OFFICE						
NON SMSA						
COUNTY:HOUSTON	NON-ELEVATOR:	135	140	160	185	215
STATE:TX	ELEVATOR:	149	154	176	204	237
COUNTY:JASPER	NON-ELEVATOR:	135	140	160	185	215
STATE:TX	ELEVATOR:	149	154	176	204	237
COUNTY:LEON	NON-ELEVATOR:	135	140	160	185	215
STATE:TX	ELEVATOR:	149	154	176	204	237
COUNTY:MADISON	NON-ELEVATOR:	135	140	160	185	215
STATE:TX	ELEVATOR:	149	154	176	204	237
COUNTY:NATAGORDA	NON-ELEVATOR:	135	140	160	185	215
STATE:TX	ELEVATOR:	149	154	176	204	237
COUNTY:NACOGDOCHES	NON-ELEVATOR:	135	140	160	185	215
STATE:TX	ELEVATOR:	149	154	176	204	237
COUNTY:NEWTON	NON-ELEVATOR:	135	140	160	185	215
STATE:TX	ELEVATOR:	149	154	176	204	237
COUNTY:POLK	NON-ELEVATOR:	135	140	160	185	215
STATE:TX	ELEVATOR:	149	154	176	204	237
COUNTY:ROBERTSON	NON-ELEVATOR:	135	140	160	185	215
STATE:TX	ELEVATOR:	149	154	176	204	237
COUNTY:SABINE	NON-ELEVATOR:	135	140	160	185	215
STATE:TX	ELEVATOR:	149	154	176	204	237
COUNTY:SAN AUGUSTIN	NON-ELEVATOR:	135	140	160	185	215
STATE:TX	ELEVATOR:	149	154	176	204	237
COUNTY:SAN JACINTO	NON-ELEVATOR:	135	140	160	185	215
STATE:TX	ELEVATOR:	149	154	176	204	237

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CU), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
HOUSTON,TEXAS INSURING OFFICE						
NON SMSA						
COUNTY:SHELBY	NON-ELEVATOR:	135	140	160	185	215
STATE:TX	ELEVATOR:	149	154	176	204	237
COUNTY:TRINITY	NON-ELEVATOR:	135	140	160	185	215
STATE:TX	ELEVATOR:	149	154	176	204	237
COUNTY:TYLER	NON-ELEVATOR:	135	140	160	185	215
STATE:TX	ELEVATOR:	149	154	176	204	237
COUNTY:WALKER	NON-ELEVATOR:	135	140	160	185	215
STATE:TX	ELEVATOR:	149	154	176	204	237
COUNTY:WASHINGTON	NON-ELEVATOR:	135	140	160	185	215
STATE:TX	ELEVATOR:	149	154	176	204	237
COUNTY:WHARTON	NON-ELEVATOR:	135	140	160	185	215
STATE:TX	ELEVATOR:	149	154	176	204	237

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE 8- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
LITTLE ROCK, ARKANSAS AREA OFFICE						
SMSA: FAYETTEVILLE-SPRINGDALE, AR						
COUNTY:BENTON	NON-ELEVATOR:	115	130	154	170	188
STATE:AR	ELEVATOR:	126	142	166	188	206
COUNTY:WASHINGTON	NON-ELEVATOR:	115	130	154	170	188
STATE:AR	ELEVATOR:	126	142	166	188	206
SMSA: FORT SMITH, AR-OK						
COUNTY:CRAWFORD	NON-ELEVATOR:	101	113	133	155	169
STATE:AR	ELEVATOR:	109	123	147	169	187
COUNTY:SEBASTIAN	NON-ELEVATOR:	101	113	133	155	169
STATE:AR	ELEVATOR:	109	123	147	169	187
SMSA: LITTLE ROCK-NORTH LITTLE ROCK, AR						
COUNTY:PULASKI	NON-ELEVATOR:	114	130	155	179	197
STATE:AR	ELEVATOR:	125	143	172	198	216
COUNTY:SALINE	NON-ELEVATOR:	114	130	155	179	197
STATE:AR	ELEVATOR:	125	143	172	198	216
SMSA: PINE BLUFF, AR						
COUNTY:JEFFERSON	NON-ELEVATOR:	109	116	138	159	166
STATE:AR	ELEVATOR:	114	126	152	169	187
SMSA: TEXARKANA, TX-AR						
COUNTY:LITTLE RIVER	NON-ELEVATOR:	108	122	144	168	183
STATE:AR	ELEVATOR:	119	134	158	185	201
COUNTY:MILLER	NON-ELEVATOR:	108	122	144	168	183
STATE:AR	ELEVATOR:	119	134	158	185	201
COUNTY:BOWIE	NON-ELEVATOR:	108	122	144	168	183
STATE:TX	ELEVATOR:	119	134	158	185	201

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO): JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
LITTLE ROCK,ARKANSAS AREA OFFICE						
NON SMSA						
COUNTY:ARKANSAS	NON-ELEVATOR:	93	106	126	140	154
STATE:AR	ELEVATOR:	103	117	139	155	169
COUNTY:ASHLEY	NON-ELEVATOR:	84	96	114	126	140
STATE:AR	ELEVATOR:	93	106	125	140	154
COUNTY:BAKER	NON-ELEVATOR:	106	122	144	168	183
STATE:AR	ELEVATOR:	119	134	158	185	201
COUNTY:BOONE	NON-ELEVATOR:	110	128	150	176	193
STATE:AR	ELEVATOR:	122	139	167	193	213
COUNTY:BRADLEY	NON-ELEVATOR:	84	96	114	126	140
STATE:AR	ELEVATOR:	93	106	125	140	154
COUNTY:CALHOUN	NON-ELEVATOR:	83	95	114	126	139
STATE:AR	ELEVATOR:	92	105	125	139	153
COUNTY:CARROLL	NON-ELEVATOR:	97	113	133	155	169
STATE:AR	ELEVATOR:	107	123	147	169	187
COUNTY:CHICOT	NON-ELEVATOR:	93	106	126	140	154
STATE:AR	ELEVATOR:	102	117	137	155	169
COUNTY:CLARK	NON-ELEVATOR:	81	93	112	124	136
STATE:AR	ELEVATOR:	89	103	123	136	149
COUNTY:CLAY	NON-ELEVATOR:	92	105	126	139	153
STATE:AR	ELEVATOR:	102	116	138	153	167
COUNTY:CLEBURNE	NON-ELEVATOR:	88	101	121	134	148
STATE:AR	ELEVATOR:	97	112	133	148	162
COUNTY:CLEVELAND	NON-ELEVATOR:	93	106	126	140	154
STATE:AR	ELEVATOR:	103	117	139	155	169

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
LITTLE ROCK,ARKANSAS AREA OFFICE						
NON SMSA						
COUNTY:COLUMBIA	NON-ELEVATOR:	83	95	119	126	139
STATE:AR	ELEVATOR:	92	105	125	139	153
COUNTY:CONWAY	NON-ELEVATOR:	81	93	112	129	136
STATE:AR	ELEVATOR:	89	103	123	136	149
COUNTY:CRAIGHEAD	NON-ELEVATOR:	103	116	137	154	168
STATE:AR	ELEVATOR:	113	128	150	169	186
COUNTY:CROSS	NON-ELEVATOR:	92	105	125	139	153
STATE:AR	ELEVATOR:	102	116	138	153	167
COUNTY:DALLAS	NON-ELEVATOR:	83	95	119	126	139
STATE:AR	ELEVATOR:	92	105	125	139	153
COUNTY:DESHA	NON-ELEVATOR:	83	95	113	127	142
STATE:AR	ELEVATOR:	91	106	125	142	155
COUNTY:DREW	NON-ELEVATOR:	93	106	125	138	155
STATE:AR	ELEVATOR:	102	117	137	155	169
COUNTY:FAULKNER	NON-ELEVATOR:	97	113	133	155	169
STATE:AR	ELEVATOR:	107	123	147	169	187
COUNTY:FRANKLIN	NON-ELEVATOR:	82	94	113	129	143
STATE:AR	ELEVATOR:	91	104	124	143	156
COUNTY:FULTON	NON-ELEVATOR:	88	101	121	134	148
STATE:AR	ELEVATOR:	97	112	133	148	162
COUNTY:GARLAND	NON-ELEVATOR:	104	117	138	155	169
STATE:AR	ELEVATOR:	114	129	154	170	186
COUNTY:GRANT	NON-ELEVATOR:	93	106	126	140	154
STATE:AR	ELEVATOR:	103	117	139	155	169

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
LITTLE ROCK,ARKANSAS AREA OFFICE						
NON SMSA						
COUNTY:GREENE	NON-ELEVATOR:	93	106	125	140	154
STATE:AR	ELEVATOR:	102	117	138	154	168
COUNTY:HEMPSTEAD	NON-ELEVATOR:	85	97	115	128	141
STATE:AR	ELEVATOR:	94	107	127	142	155
COUNTY:HOTSPRING	NON-ELEVATOR:	90	102	120	129	141
STATE:AR	ELEVATOR:	99	112	132	142	155
COUNTY:HOWARD	NON-ELEVATOR:	78	89	106	118	130
STATE:AR	ELEVATOR:	86	98	117	130	143
COUNTY:INDEPENDENCE	NON-ELEVATOR:	88	101	121	134	148
STATE:AR	ELEVATOR:	97	112	133	148	162
COUNTY:IZARD	NON-ELEVATOR:	88	101	121	134	148
STATE:AR	ELEVATOR:	97	112	133	148	162
COUNTY:JACKSON	NON-ELEVATOR:	101	115	137	152	167
STATE:AR	ELEVATOR:	112	127	151	168	184
COUNTY:JOHNSON	NON-ELEVATOR:	81	93	112	124	136
STATE:AR	ELEVATOR:	89	103	123	136	149
COUNTY:LAFAYETTE	NON-ELEVATOR:	78	89	106	118	130
STATE:AR	ELEVATOR:	86	98	117	130	143
COUNTY:LAWRENCE	NON-ELEVATOR:	92	105	125	139	153
STATE:AR	ELEVATOR:	102	116	138	153	167
COUNTY:LEE	NON-ELEVATOR:	92	105	125	139	153
STATE:AR	ELEVATOR:	102	116	138	153	167
COUNTY:LINCOLN	NON-ELEVATOR:	93	106	126	140	154
STATE:AR	ELEVATOR:	103	117	139	155	169

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
LITTLE ROCK,ARKANSAS AREA OFFICE						
NON SMSA						
COUNTY:LOGAN	NON-ELEVATOR:	82	94	115	129	143
STATE:AR	ELEVATOR:	91	104	124	143	156
COUNTY:LONOKE	NON-ELEVATOR:	93	106	126	140	154
STATE:AR	ELEVATOR:	103	117	139	155	169
COUNTY:MADISON	NON-ELEVATOR:	95	108	129	144	157
STATE:AR	ELEVATOR:	105	119	142	157	174
COUNTY:MARION	NON-ELEVATOR:	97	113	133	155	169
STATE:AR	ELEVATOR:	107	123	147	169	187
COUNTY:MISSISSIPPI	NON-ELEVATOR:	103	116	137	154	168
STATE:AR	ELEVATOR:	113	128	150	169	186
COUNTY:MONROE	NON-ELEVATOR:	93	106	126	140	154
STATE:AR	ELEVATOR:	103	117	139	155	169
COUNTY:MONTGOMERY	NON-ELEVATOR:	81	93	112	124	136
STATE:AR	ELEVATOR:	89	103	123	136	149
COUNTY:NEVADA	NON-ELEVATOR:	78	89	106	118	130
STATE:AR	ELEVATOR:	86	98	117	130	143
COUNTY:NEWTON	NON-ELEVATOR:	97	113	133	155	169
STATE:AR	ELEVATOR:	107	123	147	169	187
COUNTY:OUACHITA	NON-ELEVATOR:	83	95	114	126	139
STATE:AR	ELEVATOR:	92	105	125	139	153
COUNTY:PERRY	NON-ELEVATOR:	81	93	112	124	136
STATE:AR	ELEVATOR:	89	103	123	136	149
COUNTY:PHILLIPS	NON-ELEVATOR:	92	105	125	139	153
STATE:AR	ELEVATOR:	102	116	138	153	167

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CU), JULY 27, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
LITTLE ROCK,ARKANSAS AREA OFFICE						
NON SMSA						
COUNTY:PIKE	NON-ELEVATOR:	81	93	112	129	136
STATE:AR	ELEVATOR:	89	103	123	136	149
COUNTY:POINSETT	NON-ELEVATOR:	103	116	137	159	168
STATE:AR	ELEVATOR:	113	128	150	169	186
COUNTY:POLK	NON-ELEVATOR:	89	102	122	140	155
STATE:AR	ELEVATOR:	98	112	134	155	169
COUNTY:POPE	NON-ELEVATOR:	97	113	133	155	169
STATE:AR	ELEVATOR:	107	123	147	169	187
COUNTY:PRAIRIE	NON-ELEVATOR:	93	106	126	140	154
STATE:AR	ELEVATOR:	103	117	139	155	169
COUNTY:RANDOLPH	NON-ELEVATOR:	92	105	125	139	153
STATE:AR	ELEVATOR:	102	116	138	153	167
COUNTY:ST FRANCIS	NON-ELEVATOR:	103	116	137	159	168
STATE:AR	ELEVATOR:	113	128	150	169	186
COUNTY:SCOTT	NON-ELEVATOR:	82	94	113	129	143
STATE:AR	ELEVATOR:	91	104	124	143	156
COUNTY:SEARCY	NON-ELEVATOR:	97	113	133	155	169
STATE:AR	ELEVATOR:	107	123	147	169	187
COUNTY:SEVIER	NON-ELEVATOR:	78	89	106	118	130
STATE:AR	ELEVATOR:	86	98	117	130	143
COUNTY:SHARP	NON-ELEVATOR:	88	101	121	134	148
STATE:AR	ELEVATOR:	97	112	133	148	162
COUNTY:STONE	NON-ELEVATOR:	88	101	121	134	148
STATE:AR	ELEVATOR:	97	112	133	148	162

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
LITTLE ROCK,ARKANSAS AREA OFFICE						
NON SMSA						
COUNTY:UNION	NON-ELEVATOR:	83	95	114	126	139
STATE:AR	ELEVATOR:	92	105	125	139	153
COUNTY:VAN BUREN	NON-ELEVATOR:	88	101	121	134	148
STATE:AR	ELEVATOR:	97	112	133	148	162
COUNTY:WHITE	NON-ELEVATOR:	101	115	137	152	167
STATE:AR	ELEVATOR:	112	127	151	168	184
COUNTY:WOODRUFF	NON-ELEVATOR:	101	115	137	152	167
STATE:AR	ELEVATOR:	112	127	151	168	184
COUNTY:YELL	NON-ELEVATOR:	82	94	113	129	143
STATE:AR	ELEVATOR:	91	104	124	143	156

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING[INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM]

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
LUBBOCK,TEXAS INSURING OFFICE						
SMSA: AMARILLO, TX						
COUNTY:POTTER	NON-ELEVATOR:	110	125	148	163	177
STATE:TX	ELEVATOR:	122	137	163	178	196
COUNTY:RANDALL	NON-ELEVATOR:	110	125	148	163	177
STATE:TX	ELEVATOR:	122	137	163	178	196
SMSA: EL PASO, TX						
COUNTY:EL PASO	NON-ELEVATOR:	127	145	174	200	220
STATE:TX	ELEVATOR:	140	159	190	221	241
SMSA: LUBBOCK, TX						
COUNTY:LUBBOCK	NON-ELEVATOR:	122	138	169	180	199
STATE:TX	ELEVATOR:	133	153	180	199	217
SMSA: MIDLAND, TX						
COUNTY:MIDLAND	NON-ELEVATOR:	117	133	157	174	189
STATE:TX	ELEVATOR:	129	145	174	190	209
SMSA: ODESSA, TX						
COUNTY:ECTOR	NON-ELEVATOR:	117	133	157	174	189
STATE:TX	ELEVATOR:	129	145	174	190	209
NON SMSA						
COUNTY:ANDREWS	NON-ELEVATOR:	105	119	142	165	179
STATE:TX	ELEVATOR:	119	132	156	180	196
COUNTY:ARMSTRONG	NON-ELEVATOR:	99	107	126	148	163
STATE:TX	ELEVATOR:	109	118	140	164	178
COUNTY:BAILEY	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:BORDEN	NON-ELEVATOR:	105	119	142	165	179
STATE:TX	ELEVATOR:	119	132	156	180	196

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
LUBBUCK,TEXAS INSURING OFFICE						
NON SMSA						
COUNTY:BREWSTER	NON-ELEVATOR:	105	119	142	165	179
STATE:TX	ELEVATOR:	119	132	156	180	198
COUNTY:BRISCOE	NON-ELEVATOR:	94	107	126	148	163
STATE:TX	ELEVATOR:	109	118	140	164	178
COUNTY:CARSON	NON-ELEVATOR:	94	107	126	148	163
STATE:TX	ELEVATOR:	109	118	140	164	178
COUNTY:CASTRO	NON-ELEVATOR:	94	107	126	148	163
STATE:TX	ELEVATOR:	109	118	140	164	178
COUNTY:CHILDRESS	NON-ELEVATOR:	108	124	146	172	187
STATE:TX	ELEVATOR:	119	136	163	188	206
COUNTY:COCHRAN	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:COLLINGSWORT	NON-ELEVATOR:	94	107	126	148	163
STATE:TX	ELEVATOR:	109	118	140	164	178
COUNTY:CUTTLE	NON-ELEVATOR:	108	124	146	172	187
STATE:TX	ELEVATOR:	119	136	163	188	206
COUNTY:CRANE	NON-ELEVATOR:	105	119	142	165	179
STATE:TX	ELEVATOR:	119	132	156	180	198
COUNTY:CROSBY	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:CULBERSON	NON-ELEVATOR:	97	113	133	148	163
STATE:TX	ELEVATOR:	107	123	147	164	179
COUNTY:DALLAM	NON-ELEVATOR:	94	107	126	148	163
STATE:TX	ELEVATOR:	109	118	140	164	178

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION &		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
LUBBOCK,TEXAS INSURING OFFICE						
NON SMSA						
COUNTY:DAWSON	NON-ELEVATOR:	105	119	142	165	179
STATE:TX	ELEVATOR:	119	132	156	180	198
COUNTY:DEAF SMITH	NON-ELEVATOR:	110	125	148	163	177
STATE:TX	ELEVATOR:	122	137	163	178	196
COUNTY:DICKENS	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:DONLEY	NON-ELEVATOR:	94	107	128	148	163
STATE:TX	ELEVATOR:	104	118	140	164	178
COUNTY:FISHER	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:FLOYD	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:GAINES	NON-ELEVATOR:	105	119	142	165	179
STATE:TX	ELEVATOR:	119	132	156	180	198
COUNTY:GARZA	NON-ELEVATOR:	96	114	135	156	172
STATE:TX	ELEVATOR:	106	124	149	173	188
COUNTY:GLASSCOCK	NON-ELEVATOR:	105	119	142	165	179
STATE:TX	ELEVATOR:	119	132	156	180	198
COUNTY:GRAY	NON-ELEVATOR:	107	120	143	157	173
STATE:TX	ELEVATOR:	117	133	157	174	189
COUNTY:HALE	NON-ELEVATOR:	107	120	143	157	173
STATE:TX	ELEVATOR:	117	133	157	174	189
COUNTY:HALL	NON-ELEVATOR:	94	107	128	148	163
STATE:TX	ELEVATOR:	104	118	140	164	178

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
LUBBOCK, TEXAS INSURING OFFICE						
NON SMSA						
COUNTY:HANSFORD	NON-ELEVATOR:	94	107	128	148	163
STATE:TX	ELEVATOR:	104	118	140	164	178
COUNTY:HARTLEY	NON-ELEVATOR:	94	107	128	148	163
STATE:TX	ELEVATOR:	104	118	140	164	178
COUNTY:HEMPHILL	NON-ELEVATOR:	94	107	128	148	163
STATE:TX	ELEVATOR:	104	118	140	164	178
COUNTY:HOCKLEY	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:HOWARD	NON-ELEVATOR:	117	133	157	174	189
STATE:TX	ELEVATOR:	129	145	174	190	209
COUNTY:HUDSPETH	NON-ELEVATOR:	97	113	133	148	163
STATE:TX	ELEVATOR:	107	123	147	164	179
COUNTY:HUTCHINSON	NON-ELEVATOR:	94	107	128	148	163
STATE:TX	ELEVATOR:	104	118	140	164	178
COUNTY:JEFF DAVIS	NON-ELEVATOR:	97	113	133	148	163
STATE:TX	ELEVATOR:	107	123	147	164	179
COUNTY:KENT	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:KING	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:LAMB	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:LIPSCOMB	NON-ELEVATOR:	94	107	128	148	163
STATE:TX	ELEVATOR:	104	118	140	164	178

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
LUBBOCK,TEXAS INSURING OFFICE						
NON SMSA						
COUNTY:LOVING	NON-ELEVATOR:	105	119	142	165	179
STATE:TX	ELEVATOR:	119	132	156	180	198
COUNTY:LYNN	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:MARTIN	NON-ELEVATOR:	105	119	142	165	179
STATE:TX	ELEVATOR:	119	132	156	180	198
COUNTY:MITCHELL	NON-ELEVATOR:	92	105	125	145	159
STATE:TX	ELEVATOR:	102	116	138	160	175
COUNTY:MOORE	NON-ELEVATOR:	99	107	128	148	163
STATE:TX	ELEVATOR:	109	118	140	164	178
COUNTY:MOTLEY	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:NOLAN	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:OCHILTREE	NON-ELEVATOR:	99	107	128	148	163
STATE:TX	ELEVATOR:	109	118	140	164	178
COUNTY:OLDHAM	NON-ELEVATOR:	99	107	128	148	163
STATE:TX	ELEVATOR:	109	118	140	164	178
COUNTY:PARMER	NON-ELEVATOR:	99	107	128	148	163
STATE:TX	ELEVATOR:	109	118	140	164	178
COUNTY:PECOS	NON-ELEVATOR:	105	119	142	165	179
STATE:TX	ELEVATOR:	119	132	156	180	198
COUNTY:PRESIDIO	NON-ELEVATOR:	97	113	133	148	163
STATE:TX	ELEVATOR:	107	123	147	164	179

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
LUBBOCK, TEXAS INSURING OFFICE						
NON SMSA						
COUNTY:REEVES	NON-ELEVATOR:	105	119	142	165	179
STATE:TX	ELEVATOR:	114	132	156	180	198
COUNTY:ROBERTS	NON-ELEVATOR:	94	107	126	148	163
STATE:TX	ELEVATOR:	104	118	140	164	178
COUNTY:SCURRY	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:SHERMAN	NON-ELEVATOR:	94	107	126	148	163
STATE:TX	ELEVATOR:	104	118	140	164	178
COUNTY:STONEWALL	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:SWISHER	NON-ELEVATOR:	94	107	126	148	163
STATE:TX	ELEVATOR:	104	118	140	164	178
COUNTY:TERRELL	NON-ELEVATOR:	105	119	142	165	179
STATE:TX	ELEVATOR:	114	132	156	180	198
COUNTY:TERRY	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188
COUNTY:UPTON	NON-ELEVATOR:	105	119	142	165	179
STATE:TX	ELEVATOR:	114	132	156	180	198
COUNTY:WARD	NON-ELEVATOR:	105	119	142	165	179
STATE:TX	ELEVATOR:	114	132	156	180	198
COUNTY:WHEELER	NON-ELEVATOR:	94	107	126	148	163
STATE:TX	ELEVATOR:	104	118	140	164	178
COUNTY:WINKLER	NON-ELEVATOR:	105	119	142	165	179
STATE:TX	ELEVATOR:	114	132	156	180	198

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B" FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
LUBBUCK,TEXAS INSURING OFFICE						
NON SMSA						
COUNTY:YOAKUM	NON-ELEVATOR:	98	114	135	156	172
STATE:TX	ELEVATOR:	108	124	149	173	188

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
NEW ORLEANS-LOUISIANA AREA OFFICE						
SMSA: BATON ROUGE, LA						
PARISH:ASCENSION ,	NON-ELEVATOR:	140	160	192	223	243
STATE:LA	ELEVATOR:	159	176	210	249	267
PARISH:E BATON ROUG	NON-ELEVATOR:	140	160	192	223	243
STATE:LA	ELEVATOR:	159	176	210	249	267
PARISH:LIVINGSTON	NON-ELEVATOR:	140	160	192	223	243
STATE:LA	ELEVATOR:	159	176	210	249	267
PARISH:W BATON ROUG	NON-ELEVATOR:	140	160	192	223	243
STATE:LA	ELEVATOR:	159	176	210	249	267
SMSA: LAFAYETTE, LA						
PARISH:LAFAYETTE	NON-ELEVATOR:	129	142	169	196	223
STATE:LA	ELEVATOR:	136	156	186	216	245
SMSA: LAKE CHARLES, LA						
PARISH:CALCASIEU	NON-ELEVATOR:	129	142	169	196	223
STATE:LA	ELEVATOR:	136	156	186	216	245
SMSA: NEW ORLEANS, LA						
PARISH:JEFFERSON	NON-ELEVATOR:	129	142	169	196	223
STATE:LA	ELEVATOR:	136	156	186	215	245
PARISH:ORLEANS	NON-ELEVATOR:	129	142	169	196	223
STATE:LA	ELEVATOR:	136	156	186	215	245
PARISH:ST BERNARD	NON-ELEVATOR:	129	142	169	196	223
STATE:LA	ELEVATOR:	136	156	186	215	245
PARISH:ST TAMMANY	NON-ELEVATOR:	129	142	169	196	223
STATE:LA	ELEVATOR:	136	156	186	215	245
NON SMSA						
PARISH:ACADIA	NON-ELEVATOR:	96	112	133	149	166
STATE:LA	ELEVATOR:	107	124	147	164	182

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
NEW ORLEANS,LOUISIANA AREA OFFICE						
NON SMSA						
PARISH:ALLEN	NON-ELEVATOR:	107	124	147	169	182
STATE:LA	ELEVATOR:	116	135	160	178	198
PARISH:ASSUMPTION	NON-ELEVATOR:	98	112	133	149	166
STATE:LA	ELEVATOR:	107	124	147	169	182
PARISH:BEAUREGARD	NON-ELEVATOR:	107	124	147	169	182
STATE:LA	ELEVATOR:	116	135	160	178	198
PARISH:CAMERON	NON-ELEVATOR:	107	124	147	169	182
STATE:LA	ELEVATOR:	116	135	160	178	198
PARISH:E FELICIANA	NON-ELEVATOR:	89	102	122	136	150
STATE:LA	ELEVATOR:	98	112	133	149	166
PARISH:EVANGELINE	NON-ELEVATOR:	98	112	133	149	166
STATE:LA	ELEVATOR:	107	124	147	169	182
PARISH:IBERIA	NON-ELEVATOR:	107	124	147	169	182
STATE:LA	ELEVATOR:	116	135	160	178	198
PARISH:IBERVILLE	NON-ELEVATOR:	98	112	133	149	166
STATE:LA	ELEVATOR:	107	124	147	169	182
PARISH:JEFFERSON DA	NON-ELEVATOR:	107	124	147	169	182
STATE:LA	ELEVATOR:	116	135	160	178	198
PARISH:LAFOURCHE	NON-ELEVATOR:	107	124	147	169	182
STATE:LA	ELEVATOR:	116	135	160	178	198
PARISH:PLAQUEMINES	NON-ELEVATOR:	98	112	133	149	166
STATE:LA	ELEVATOR:	107	124	147	169	182
PARISH:POINTE COUPE	NON-ELEVATOR:	89	102	122	136	150
STATE:LA	ELEVATOR:	98	112	133	149	166

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
NEW ORLEANS,LOUISIANA AREA OFFICE						
NON SMSA						
PARISH:ST CHARLES	NON-ELEVATOR:	107	124	147	169	182
STATE:LA	ELEVATOR:	116	135	160	178	196
PARISH:ST HELENA	NON-ELEVATOR:	89	102	122	136	150
STATE:LA	ELEVATOR:	98	112	133	149	166
PARISH:ST JAMES	NON-ELEVATOR:	98	112	133	149	166
STATE:LA	ELEVATOR:	107	124	147	169	182
PARISH:ST JOHN THE	NON-ELEVATOR:	107	124	147	169	182
STATE:LA	ELEVATOR:	116	135	160	178	196
PARISH:ST LANDRY	NON-ELEVATOR:	107	124	147	169	182
STATE:LA	ELEVATOR:	116	135	160	178	196
PARISH:ST MARTIN	NON-ELEVATOR:	98	112	133	149	166
STATE:LA	ELEVATOR:	107	124	147	169	182
PARISH:ST MARY	NON-ELEVATOR:	98	112	133	149	166
STATE:LA	ELEVATOR:	107	124	147	169	182
PARISH:TANGIPAHOA	NON-ELEVATOR:	98	112	133	149	166
STATE:LA	ELEVATOR:	107	124	147	169	182
PARISH:TERREBONNE	NON-ELEVATOR:	107	124	147	169	182
STATE:LA	ELEVATOR:	116	135	160	178	196
PARISH:VERMILION	NON-ELEVATOR:	98	112	133	149	166
STATE:LA	ELEVATOR:	107	124	147	169	182
PARISH:WASHINGTON	NON-ELEVATOR:	98	112	133	149	166
STATE:LA	ELEVATOR:	107	124	147	169	182
PARISH:W FELICIANA	NON-ELEVATOR:	89	102	122	136	150
STATE:LA	ELEVATOR:	98	112	133	149	166

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE 8- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
OKLAHOMA CITY,OKLAHOMA AREA OFFICE						
SMSA: LAWTON, OK						
COUNTY:COMANCHE	NON-ELEVATOR:	130	146	176	203	221
STATE:OK	ELEVATOR:	144	162	193	223	243
SMSA: OKLAHOMA CITY, OK						
COUNTY:CANADIAN	NON-ELEVATOR:	124	142	169	196	214
STATE:OK	ELEVATOR:	136	156	186	215	236
COUNTY:CLEVELAND	NON-ELEVATOR:	124	142	169	196	214
STATE:OK	ELEVATOR:	136	156	186	215	236
COUNTY:MCCLAIN	NON-ELEVATOR:	124	142	169	196	214
STATE:OK	ELEVATOR:	136	156	186	215	236
COUNTY:OKLAHOMA	NON-ELEVATOR:	124	142	169	196	214
STATE:OK	ELEVATOR:	136	156	186	215	236
COUNTY:POTTAWATOMIE	NON-ELEVATOR:	124	142	169	196	214
STATE:OK	ELEVATOR:	136	156	186	215	236
NON SMSA						
COUNTY:CUSTER	NON-ELEVATOR:	102	117	141	164	179
STATE:OK	ELEVATOR:	113	129	154	180	197
COUNTY:GRADY	NON-ELEVATOR:	102	117	141	164	179
STATE:OK	ELEVATOR:	113	129	154	180	197
COUNTY:JOHNSTON	NON-ELEVATOR:	90	107	126	148	160
STATE:OK	ELEVATOR:	99	117	139	163	176
COUNTY:KINGFISHER	NON-ELEVATOR:	90	107	126	148	160
STATE:OK	ELEVATOR:	99	117	139	163	176
COUNTY:LOVE	NON-ELEVATOR:	90	107	126	148	160
STATE:OK	ELEVATOR:	99	117	139	163	176

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
OKLAHOMA CITY-OKLAHOMA AREA OFFICE						
NON SMSA						
COUNTY:MARSHALL	NON-ELEVATOR:	90	107	126	148	160
STATE:OK	ELEVATOR:	99	117	139	163	176
COUNTY:STEPHENS	NON-ELEVATOR:	102	117	141	164	179
STATE:OK	ELEVATOR:	113	129	154	180	197
COUNTY:TEXAS	NON-ELEVATOR:	105	128	151	177	192
STATE:OK	ELEVATOR:	116	140	166	194	211

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
SAN ANTONIO,TEXAS AREA OFFICE						
SMSA: AUSTIN, TX						
COUNTY:HAYS	NON-ELEVATOR:	155	177	212	295	267
STATE:TX	ELEVATOR:	170	194	231	268	295
COUNTY:TRAVIS	NON-ELEVATOR:	155	177	212	295	267
STATE:TX	ELEVATOR:	170	194	231	268	295
SMSA: BROWNSVILLE-HARLINGEN-SAN BENITO, TX						
COUNTY:CAMERON	NON-ELEVATOR:	129	149	176	205	226
STATE:TX	ELEVATOR:	141	162	196	226	248
SMSA: CORPUS CHRISTI, TX						
COUNTY:NUECES	NON-ELEVATOR:	137	157	188	216	239
STATE:TX	ELEVATOR:	152	173	207	240	264
COUNTY:SAN PATRICIO	NON-ELEVATOR:	137	157	188	216	239
STATE:TX	ELEVATOR:	152	173	207	240	264
SMSA: LAREDO, TX						
COUNTY:WEBB	NON-ELEVATOR:	137	157	186	215	237
STATE:TX	ELEVATOR:	149	172	205	237	260
SMSA: MC ALLEN-PHARR-EDINBURG, TX						
COUNTY:HIDALGO	NON-ELEVATOR:	129	149	176	205	226
STATE:TX	ELEVATOR:	141	162	196	226	248
SMSA: SAN ANTONIO, TX						
COUNTY:BEXAR	NON-ELEVATOR:	137	157	188	216	239
STATE:TX	ELEVATOR:	152	173	207	240	264
COUNTY:COMAL	NON-ELEVATOR:	137	157	188	216	239
STATE:TX	ELEVATOR:	152	173	207	240	264
COUNTY:GUADALUPE	NON-ELEVATOR:	137	157	188	216	239
STATE:TX	ELEVATOR:	152	173	207	240	264

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION &		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
SAN ANTONIO,TEXAS AREA OFFICE						
NON SMSA						
COUNTY:ARANSAS	NON-ELEVATOR:	120	137	164	180	199
STATE:TX	ELEVATOR:	132	150	179	199	218
COUNTY:ATASCOSA	NON-ELEVATOR:	96	110	130	145	160
STATE:TX	ELEVATOR:	106	120	144	160	176
COUNTY:BANDERA	NON-ELEVATOR:	109	125	149	173	189
STATE:TX	ELEVATOR:	120	137	164	190	208
COUNTY:BASTROP	NON-ELEVATOR:	104	118	140	156	170
STATE:TX	ELEVATOR:	113	130	154	170	187
COUNTY:BEE	NON-ELEVATOR:	120	137	164	180	199
STATE:TX	ELEVATOR:	132	150	179	199	218
COUNTY:BLANCO	NON-ELEVATOR:	103	117	139	155	169
STATE:TX	ELEVATOR:	112	129	153	169	187
COUNTY:BROOKS	NON-ELEVATOR:	120	137	164	180	199
STATE:TX	ELEVATOR:	132	150	179	199	218
COUNTY:BURNET	NON-ELEVATOR:	103	117	139	155	169
STATE:TX	ELEVATOR:	112	129	153	169	187
COUNTY:CALDWELL	NON-ELEVATOR:	135	149	177	205	224
STATE:TX	ELEVATOR:	146	165	194	224	247
COUNTY:CALHOUN	NON-ELEVATOR:	96	110	130	145	160
STATE:TX	ELEVATOR:	106	120	144	160	176
COUNTY:DE WITT	NON-ELEVATOR:	96	110	130	145	160
STATE:TX	ELEVATOR:	106	120	144	160	176
COUNTY:DIMMIT	NON-ELEVATOR:	120	137	164	180	199
STATE:TX	ELEVATOR:	132	150	179	199	218

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
SAN ANTONIO,TEXAS AREA OFFICE						
NON SMSA						
COUNTY:UVALDE	NON-ELEVATOR:	120	137	169	180	199
STATE:TX	ELEVATOR:	132	150	179	199	218
COUNTY:EDWARDS	NON-ELEVATOR:	96	110	130	145	160
STATE:TX	ELEVATOR:	106	120	144	160	176
COUNTY:FAYETTE	NON-ELEVATOR:	102	116	138	160	175
STATE:TX	ELEVATOR:	110	126	152	176	192
COUNTY:FRIO	NON-ELEVATOR:	96	110	130	145	160
STATE:TX	ELEVATOR:	106	120	144	160	176
COUNTY:GILLESPIE	NON-ELEVATOR:	96	110	130	145	160
STATE:TX	ELEVATOR:	106	120	144	160	176
COUNTY:GOLIAD	NON-ELEVATOR:	96	110	130	145	160
STATE:TX	ELEVATOR:	106	120	144	160	176
COUNTY:GONZALES	NON-ELEVATOR:	96	110	130	145	160
STATE:TX	ELEVATOR:	106	120	144	160	176
COUNTY:JACKSON	NON-ELEVATOR:	96	110	130	145	160
STATE:TX	ELEVATOR:	106	120	144	160	176
COUNTY:JIM HOGG	NON-ELEVATOR:	120	137	169	180	199
STATE:TX	ELEVATOR:	132	150	179	199	218
COUNTY:JIM WELLS	NON-ELEVATOR:	120	137	169	180	199
STATE:TX	ELEVATOR:	132	150	179	199	218
COUNTY:KARNES	NON-ELEVATOR:	96	110	130	145	160
STATE:TX	ELEVATOR:	106	120	144	160	176
COUNTY:KENDALL	NON-ELEVATOR:	96	110	130	145	160
STATE:TX	ELEVATOR:	106	120	144	160	176

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO). JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION &		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
SAN ANTONIO,TEXAS AREA OFFICE						
NON SMSA						
COUNTY:KENEDY	NON-ELEVATOR:	120	137	164	180	199
STATE:TX	ELEVATOR:	132	150	179	199	218
COUNTY:KERR	NON-ELEVATOR:	96	110	130	145	160
STATE:TX	ELEVATOR:	106	120	144	160	176
COUNTY:KINNEY	NON-ELEVATOR:	96	110	130	145	160
STATE:TX	ELEVATOR:	106	120	144	160	176
COUNTY:KLEBERG	NON-ELEVATOR:	120	137	164	180	199
STATE:TX	ELEVATOR:	132	150	179	199	218
COUNTY:LA SALLE	NON-ELEVATOR:	120	137	164	180	199
STATE:TX	ELEVATOR:	132	150	179	199	218
COUNTY:LAVACA	NON-ELEVATOR:	96	110	130	145	160
STATE:TX	ELEVATOR:	106	120	144	160	176
COUNTY:LEE	NON-ELEVATOR:	103	117	139	155	169
STATE:TX	ELEVATOR:	112	129	153	169	187
COUNTY:LIVE OAK	NON-ELEVATOR:	120	137	164	180	199
STATE:TX	ELEVATOR:	132	150	179	199	218
COUNTY:LLANO	NON-ELEVATOR:	103	117	139	155	169
STATE:TX	ELEVATOR:	112	129	153	169	187
COUNTY:MCMULLEN	NON-ELEVATOR:	120	137	164	180	199
STATE:TX	ELEVATOR:	132	150	179	199	218
COUNTY:MAVERICK	NON-ELEVATOR:	117	133	158	175	193
STATE:TX	ELEVATOR:	129	145	174	194	212
COUNTY:MEDINA	NON-ELEVATOR:	96	110	130	145	160
STATE:TX	ELEVATOR:	106	120	144	160	176

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION &		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
SAN ANTONIO,TEXAS AREA OFFICE						
NON SMSA						
COUNTY:REAL	NON-ELEVATOR:	96	110	130	145	160
STATE:TX	ELEVATOR:	106	120	144	160	176
COUNTY:REFUGIO	NON-ELEVATOR:	120	137	164	180	199
STATE:TX	ELEVATOR:	132	150	179	199	218
COUNTY:STARR	NON-ELEVATOR:	120	137	164	180	199
STATE:TX	ELEVATOR:	132	150	179	199	218
COUNTY:UVALDE	NON-ELEVATOR:	96	110	130	145	160
STATE:TX	ELEVATOR:	106	120	144	160	176
COUNTY:VAL VERDE	NON-ELEVATOR:	117	133	158	175	193
STATE:TX	ELEVATOR:	129	145	174	194	212
COUNTY:VICTORIA	NON-ELEVATOR:	120	137	164	180	199
STATE:TX	ELEVATOR:	132	150	179	199	218
COUNTY:WILLACY	NON-ELEVATOR:	120	137	164	180	199
STATE:TX	ELEVATOR:	132	150	179	199	218
COUNTY:WILLIAMSON	NON-ELEVATOR:	103	117	139	155	170
STATE:TX	ELEVATOR:	113	128	153	170	187
COUNTY:WILSON	NON-ELEVATOR:	96	110	130	145	160
STATE:TX	ELEVATOR:	106	120	144	160	176
COUNTY:ZAPATA	NON-ELEVATOR:	120	137	164	180	199
STATE:TX	ELEVATOR:	132	150	179	199	218
COUNTY:ZAVALA	NON-ELEVATOR:	96	109	130	145	160
STATE:TX	ELEVATOR:	105	120	144	160	176

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO). JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 8		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
SHREVEPORT,LOUISIANA INSURING OFFICE						
SMSA: ALEXANDRIA,LA						
PARISH:GRANT	NON-ELEVATOR:	115	131	158	183	201
STATE:LA	ELEVATOR:	126	144	173	201	221
PARISH:RAPIDES	NON-ELEVATOR:	115	131	158	183	201
STATE:LA	ELEVATOR:	126	144	173	201	221
SMSA: LONGVIEW, TX						
COUNTY:HARRISON	NON-ELEVATOR:	115	131	158	183	201
STATE:TX	ELEVATOR:	126	144	173	201	221
SMSA: MONROE, LA						
PARISH:OUACHITA	NON-ELEVATOR:	115	131	158	183	201
STATE:LA	ELEVATOR:	126	144	173	201	221
SMSA: SHREVEPORT, LA						
PARISH:BOSSIER	NON-ELEVATOR:	115	131	158	183	201
STATE:LA	ELEVATOR:	126	144	173	201	221
PARISH:CADDO	NON-ELEVATOR:	115	131	158	183	201
STATE:LA	ELEVATOR:	126	144	173	201	221
PARISH:WEBSTER	NON-ELEVATOR:	115	131	158	183	201
STATE:LA	ELEVATOR:	126	144	173	201	221
NON SMSA						
PARISH:AVOYELLES	NON-ELEVATOR:	93	107	128	149	165
STATE:LA	ELEVATOR:	102	126	140	163	182
PARISH:BIENVILLE	NON-ELEVATOR:	93	107	128	149	165
STATE:LA	ELEVATOR:	102	126	140	163	182
PARISH:CALDWELL	NON-ELEVATOR:	93	107	128	149	165
STATE:LA	ELEVATOR:	102	126	140	163	182

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION &		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
SHREVEPORT, LOUISIANA INSURING OFFICE						
NON SMSA						
PARISH:CATAHOULA	NON-ELEVATOR:	93	107	128	149	165
STATE:LA	ELEVATOR:	102	126	140	163	182
PARISH:CLAIBORNE	NON-ELEVATOR:	93	107	128	149	165
STATE:LA	ELEVATOR:	102	126	140	163	182
PARISH:CONCORDIA	NON-ELEVATOR:	93	107	128	149	165
STATE:LA	ELEVATOR:	102	126	140	163	182
PARISH:DE SOTO	NON-ELEVATOR:	93	107	128	149	165
STATE:LA	ELEVATOR:	102	126	140	163	182
PARISH:EAST CARROLL	NON-ELEVATOR:	93	107	128	149	165
STATE:LA	ELEVATOR:	102	126	140	163	182
PARISH:FRANKLIN	NON-ELEVATOR:	93	107	128	149	165
STATE:LA	ELEVATOR:	102	126	140	163	182
PARISH:JACKSON	NON-ELEVATOR:	93	107	128	149	165
STATE:LA	ELEVATOR:	102	126	140	163	182
PARISH:LA SALLE	NON-ELEVATOR:	93	107	128	149	165
STATE:LA	ELEVATOR:	102	126	140	163	182
PARISH:LINCOLN	NON-ELEVATOR:	93	107	128	149	165
STATE:LA	ELEVATOR:	102	126	140	163	182
PARISH:MADISON	NON-ELEVATOR:	93	107	128	149	165
STATE:LA	ELEVATOR:	102	126	140	163	182
PARISH:MOREHOUSE	NON-ELEVATOR:	93	107	128	149	165
STATE:LA	ELEVATOR:	102	126	140	163	182
PARISH:NATCHITOCHES	NON-ELEVATOR:	106	122	145	167	189
STATE:LA	ELEVATOR:	117	134	159	184	203

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
SHREVEPORT*LOUISIANA INSURING OFFICE						
NON SMSA						
PARISH:RED RIVER	NON-ELEVATOR:	93	107	126	149	165
STATE:LA	ELEVATOR:	102	126	140	163	182
PARISH:RICHLAND	NON-ELEVATOR:	93	107	126	149	165
STATE:LA	ELEVATOR:	102	126	140	163	182
PARISH:SABINE	NON-ELEVATOR:	93	107	126	149	165
STATE:LA	ELEVATOR:	102	126	140	163	182
PARISH:TENSAS	NON-ELEVATOR:	93	107	126	149	165
STATE:LA	ELEVATOR:	102	126	140	163	182
PARISH:UNION	NON-ELEVATOR:	93	107	126	149	165
STATE:LA	ELEVATOR:	102	126	140	163	182
PARISH:VERNON	NON-ELEVATOR:	106	122	145	167	184
STATE:LA	ELEVATOR:	116	134	160	185	202
PARISH:WEST CARROLL	NON-ELEVATOR:	93	107	126	149	165
STATE:LA	ELEVATOR:	102	126	140	163	182
PARISH:WINN	NON-ELEVATOR:	93	107	126	149	165
STATE:LA	ELEVATOR:	102	126	140	163	182
COUNTY:CASS	NON-ELEVATOR:	93	107	126	149	165
STATE:TA	ELEVATOR:	102	126	140	163	182
COUNTY:MARION	NON-ELEVATOR:	93	107	126	149	165
STATE:TA	ELEVATOR:	102	126	140	163	182
COUNTY:MORRIS	NON-ELEVATOR:	93	107	126	149	165
STATE:TA	ELEVATOR:	102	126	140	163	182
COUNTY:PANOLA	NON-ELEVATOR:	93	107	126	149	165
STATE:TA	ELEVATOR:	102	126	140	163	182

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO): JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION A		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
TULSA:OKLAHOMA INSURING OFFICE						
SMSA: FORT SMITH, AR-OK						
COUNTY:LE FLORE	NON-ELEVATOR:	101	113	133	155	169
STATE:OK	ELEVATOR:	109	123	147	169	187
COUNTY:SEQUOYAH	NON-ELEVATOR:	101	113	133	155	169
STATE:OK	ELEVATOR:	109	123	147	169	187
SMSA: TULSA, OK						
COUNTY:CREEK	NON-ELEVATOR:	130	146	176	203	221
STATE:OK	ELEVATOR:	144	162	193	223	243
COUNTY:MAYES	NON-ELEVATOR:	130	146	176	203	221
STATE:OK	ELEVATOR:	144	162	193	223	243
COUNTY:OSAGE	NON-ELEVATOR:	130	146	176	203	221
STATE:OK	ELEVATOR:	144	162	193	223	243
COUNTY:ROGERS	NON-ELEVATOR:	130	146	176	203	221
STATE:OK	ELEVATOR:	144	162	193	223	243
COUNTY:TULSA	NON-ELEVATOR:	130	146	176	203	221
STATE:OK	ELEVATOR:	144	162	193	223	243
COUNTY:WAGONER	NON-ELEVATOR:	130	146	176	203	221
STATE:OK	ELEVATOR:	144	162	193	223	243
NON SMSA						
COUNTY:ATOKA	NON-ELEVATOR:	90	107	126	148	160
STATE:OK	ELEVATOR:	99	117	139	163	176
COUNTY:COAL	NON-ELEVATOR:	90	107	126	148	160
STATE:OK	ELEVATOR:	99	117	139	163	176
COUNTY:PITTSBURG	NON-ELEVATOR:	102	117	141	164	179
STATE:OK	ELEVATOR:	113	129	154	180	197

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS;
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 6		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
TULSA-OKLAHOMA INSURING OFFICE						
NON SMSA						
COUNTY:PUSHMATAHA	NON-ELEVATOR:	90	107	126	148	160
STATE:OK	ELEVATOR:	99	117	139	163	176

NOTE. FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (LO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 7		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
DES MOINES,IOWA INSURING OFFICE						
SMSA: CEDAR RAPIDS, IA						
COUNTY:LINN	NON-ELEVATOR:	137	174	231	272	316
STATE:IA	ELEVATOR:	151	191	245	299	348
SMSA: DUBUQUE, IA						
COUNTY:DUBUQUE	NON-ELEVATOR:	121	156	198	225	256
STATE:IA	ELEVATOR:	133	172	216	246	282
SMSA: SIOUX CITY, IA-NE						
COUNTY:WOODBURY	NON-ELEVATOR:	129	160	190	230	260
STATE:IA	ELEVATOR:	142	176	209	253	286
SMSA: WATERLOO-CEDAR FALLS, IA						
COUNTY:BLACK HAWK	NON-ELEVATOR:	129	152	216	255	307
STATE:IA	ELEVATOR:	136	167	230	281	338
NON SMSA						
COUNTY:CERRO GORDO	NON-ELEVATOR:	120	145	180	212	233
STATE:IA	ELEVATOR:	132	160	198	233	256
COUNTY:LEE	NON-ELEVATOR:	117	152	182	209	230
STATE:IA	ELEVATOR:	129	167	200	230	253

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 7		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
OMAHA-NEBRASKA AREA OFFICE						
SMSA: SIOUX CITY, IA-NE						
COUNTY:DAKOTA	NON-ELEVATOR:	129	160	190	230	260
STATE:NE	ELEVATOR:	142	176	209	253	286
NON SMSA						
COUNTY:GAGE	NON-ELEVATOR:	126	150	187	209	228
STATE:NE	ELEVATOR:	139	165	206	230	251
COUNTY:HALL	NON-ELEVATOR:	112	149	179	252	277
STATE:NE	ELEVATOR:	123	164	197	277	305
COUNTY:RED WILLOW	NON-ELEVATOR:	111	123	160	200	220
STATE:NE	ELEVATOR:	122	135	176	220	242

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 8		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
DENVER-COLORADO INSURING OFFICE						
SMSA: GREELEY, CO						
COUNTY:WELD	NON-ELEVATOR:	141	160	180	225	247
STATE:CO	ELEVATOR:	153	176	196	247	272

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 8		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
FARGO-NORTH DAKOTA INSURING OFFICE						
SMSA: FARGO-MOORHEAD, ND-MN						
COUNTY:CASS	NON-ELEVATOR:	138	159	190	222	244
STATE:ND	ELEVATOR:	152	174	209	243	269
SMSA: GRAND FORKS, N.D.-MN						
COUNTY:GRAND FORKS	NON-ELEVATOR:	138	159	190	222	244
STATE:ND	ELEVATOR:	152	174	209	243	269
NON SMSA						
COUNTY:BURLEIGH	NON-ELEVATOR:	138	159	190	222	244
STATE:ND	ELEVATOR:	152	174	209	243	269
COUNTY:WARD	NON-ELEVATOR:	138	159	190	222	244
STATE:ND	ELEVATOR:	152	174	209	243	269

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 8		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
HELENA, MONTANA INSURING OFFICE						
SMSA: BILLINGS, MT						
COUNTY:YELLOWSTONE	NON-ELEVATOR:	148	169	202	232	253
STATE:MT	ELEVATOR:	163	186	222	255	278
NON SMSA						
COUNTY:LEWIS & CLARK	NON-ELEVATOR:	106	166	233	274	301
STATE:MT	ELEVATOR:	117	183	256	301	331

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 9

		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
LOS ANGELES, CALIFORNIA AREA OFFICE						
SMSA: BAKERSFIELD, CA						
COUNTY:KERN	NON-ELEVATOR:	131	167	193	222	241
STATE:CA	ELEVATOR:	144	184	211	245	265
SMSA: LOS ANGELES-LONG BEACH, CA						
COUNTY:LOS ANGELES	NON-ELEVATOR:	166	188	224	257	292
STATE:CA	ELEVATOR:	183	207	246	283	321
SMSA: SANTA BARBARA-SANTA MARIA-LOMPOC, CA						
COUNTY:SANTA BARBAR	NON-ELEVATOR:	168	191	227	261	286
STATE:CA	ELEVATOR:	185	210	249	286	312
NON SMSA						
COUNTY:SAN LUIS OBI	NON-ELEVATOR:	138	173	210	240	272
STATE:CA	ELEVATOR:	152	191	232	264	298

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 9

		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
PHOENIX, ARIZONA INSURING OFFICE						
SMSA: PHOENIX, AZ						
COUNTY:MARICOPA	NON-ELEVATOR:	167	191	227	270	294
STATE:AZ	ELEVATOR:	184	210	248	297	323
SMSA: TUCSON, AZ						
COUNTY:PIMA	NON-ELEVATOR:	150	173	210	240	272
STATE:AZ	ELEVATOR:	165	190	230	264	299

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 9		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
RENO, NEVADA INSURING OFFICE						
SMSA: RENO, NV						
COUNTY: WASHOE	NON-ELEVATOR:	161	191	239	285	315
STATE: NV	ELEVATOR:	177	210	263	314	347
NON SMSA						
COUNTY: CHURCHILL	NON-ELEVATOR:	161	191	239	285	315
STATE: NV	ELEVATOR:	177	210	263	314	347
COUNTY: DOUGLAS	NON-ELEVATOR:	161	191	239	285	315
STATE: NV	ELEVATOR:	177	210	263	314	347
COUNTY: ELKO	NON-ELEVATOR:	161	191	239	285	315
STATE: NV	ELEVATOR:	177	210	263	314	347
COUNTY: ESMERALDA	NON-ELEVATOR:	161	191	239	285	315
STATE: NV	ELEVATOR:	177	210	263	314	347
COUNTY: EUREKA	NON-ELEVATOR:	161	191	239	285	315
STATE: NV	ELEVATOR:	177	210	263	314	347
COUNTY: HUMBOLDT	NON-ELEVATOR:	161	191	239	285	315
STATE: NV	ELEVATOR:	177	210	263	314	347
COUNTY: LANDER	NON-ELEVATOR:	161	191	239	285	315
STATE: NV	ELEVATOR:	177	210	263	314	347
COUNTY: LINCOLN	NON-ELEVATOR:	161	191	239	285	315
STATE: NV	ELEVATOR:	177	210	263	314	347
COUNTY: LYON	NON-ELEVATOR:	161	191	239	285	315
STATE: NV	ELEVATOR:	177	210	263	314	347
COUNTY: MINERAL	NON-ELEVATOR:	161	191	239	285	315
STATE: NV	ELEVATOR:	177	210	263	314	347

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED AT HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 9		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
RENO:NEVADA INSURING OFFICE						
NON SMSA						
COUNTY:NYE	NON-ELEVATOR:	161	191	239	285	315
STATE:NV	ELEVATOR:	177	210	263	314	347
COUNTY:ORMSLET	NON-ELEVATOR:	161	191	239	285	315
STATE:NV	ELEVATOR:	177	210	263	314	347
COUNTY:PERSHING	NON-ELEVATOR:	161	191	239	285	315
STATE:NV	ELEVATOR:	177	210	263	314	347
COUNTY:STOREY	NON-ELEVATOR:	161	191	239	285	315
STATE:NV	ELEVATOR:	177	210	263	314	347
COUNTY:WHITE PINE	NON-ELEVATOR:	161	191	239	285	315
STATE:NV	ELEVATOR:	177	210	263	314	347
INDEP. CITY:CARSON CITY	NON-ELEVATOR:	161	191	239	285	315
STATE:NV	ELEVATOR:	177	210	263	314	347

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 9		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
SACRAMENTO, CALIFORNIA INSURING OFFICE						
SMSA: SACRAMENTO, CA						
COUNTY:PLACER	NON-ELEVATOR:	155	176	211	275	300
STATE:CA	ELEVATOR:	171	195	231	303	330
COUNTY:SACRAMENTO	NON-ELEVATOR:	155	176	211	275	300
STATE:CA	ELEVATOR:	171	195	231	303	330
COUNTY:YOLO	NON-ELEVATOR:	155	176	211	275	300
STATE:CA	ELEVATOR:	171	195	231	303	330
SMSA: STOCKTON, CA						
COUNTY:SAN JOAQUIN	NON-ELEVATOR:	145	160	195	265	290
STATE:CA	ELEVATOR:	160	176	215	292	319
NON SMSA						
COUNTY:ALPINE	NON-ELEVATOR:	145	160	195	265	290
STATE:CA	ELEVATOR:	160	176	215	292	319
COUNTY:AMADOR	NON-ELEVATOR:	145	160	195	265	290
STATE:CA	ELEVATOR:	160	176	215	292	319
COUNTY:BUTTE	NON-ELEVATOR:	151	171	210	250	275
STATE:CA	ELEVATOR:	166	188	231	275	303
COUNTY:CALAVERAS	NON-ELEVATOR:	145	160	195	265	290
STATE:CA	ELEVATOR:	160	176	215	292	319
COUNTY:COLUSA	NON-ELEVATOR:	151	171	210	250	275
STATE:CA	ELEVATOR:	166	188	231	275	303
COUNTY:EL DORADO	NON-ELEVATOR:	151	171	210	250	275
STATE:CA	ELEVATOR:	166	188	231	275	303
COUNTY:GLENN	NON-ELEVATOR:	151	171	210	250	275
STATE:CA	ELEVATOR:	166	188	231	275	303

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B" FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 9

		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
SACRAMENTO,CALIFORNIA INSURING OFFICE						
NON SMSA						
COUNTY:LASSEN STATE:CA	NON-ELEVATOR:	151	171	210	250	275
	ELEVATOR:	166	188	231	275	303
COUNTY:MODOC STATE:CA	NON-ELEVATOR:	151	171	210	250	275
	ELEVATOR:	166	188	231	275	303
COUNTY:NEVADA STATE:CA	NON-ELEVATOR:	151	171	210	250	275
	ELEVATOR:	166	188	231	275	303
COUNTY:PLUMAS STATE:CA	NON-ELEVATOR:	151	171	210	250	275
	ELEVATOR:	166	188	231	275	303
COUNTY:SHASTA STATE:CA	NON-ELEVATOR:	151	171	210	250	275
	ELEVATOR:	166	188	231	275	303
COUNTY:SIERRA STATE:CA	NON-ELEVATOR:	151	171	210	250	275
	ELEVATOR:	166	188	231	275	303
COUNTY:SISKIYOU STATE:CA	NON-ELEVATOR:	151	171	210	250	275
	ELEVATOR:	166	188	231	275	303
COUNTY:SUTTER STATE:CA	NON-ELEVATOR:	151	171	210	250	275
	ELEVATOR:	166	188	231	275	303
COUNTY:TEHAMA STATE:CA	NON-ELEVATOR:	151	171	210	250	275
	ELEVATOR:	166	188	231	275	303
COUNTY:TRINITY STATE:CA	NON-ELEVATOR:	151	171	210	250	275
	ELEVATOR:	166	188	231	275	303
COUNTY:TUOLUMNE STATE:CA	NON-ELEVATOR:	145	160	195	265	290
	ELEVATOR:	160	176	215	292	319
COUNTY:YUBA STATE:CA	NON-ELEVATOR:	151	171	210	250	275
	ELEVATOR:	166	188	231	275	303

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 160 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO); JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION ▼		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
SAN DIEGO,CALIFORNIA INSURING OFFICE						
SMSA: SAN DIEGO, CA						
COUNTY:SAN DIEGO	NON-ELEVATOR:	165	188	222	256	290
STATE:CA	ELEVATOR:	182	207	244	282	319
NON SMSA						
COUNTY:IMPERIAL	NON-ELEVATOR:	119	136	163	179	197
STATE:CA	ELEVATOR:	131	151	178	197	216

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 9		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
SAN FRANCISCO,CALIFORNIA AREA OFFICE						
SMSA: FRESNO, CA						
COUNTY:FRESNO	NON-ELEVATOR:	151	171	200	263	291
STATE:CA	ELEVATOR:	166	188	220	289	320
SMSA: MODESTO, CA						
COUNTY:STANISLAUS	NON-ELEVATOR:	155	167	200	263	291
STATE:CA	ELEVATOR:	171	184	220	289	320
SMSA: SALINAS-SEASIDE-MONTEREY, CA						
COUNTY:MONTEREY	NON-ELEVATOR:	183	206	250	300	360
STATE:CA	ELEVATOR:	201	227	275	330	396
SMSA: SAN FRANCISCO-OAKLAND, CA						
COUNTY:ALAMEDA	NON-ELEVATOR:	189	216	260	325	390
STATE:CA	ELEVATOR:	208	238	286	358	429
COUNTY:CONTRA COSTA	NON-ELEVATOR:	189	216	260	325	390
STATE:CA	ELEVATOR:	208	238	286	358	429
COUNTY:MARIN	NON-ELEVATOR:	189	216	260	325	390
STATE:CA	ELEVATOR:	208	238	286	358	429
COUNTY:SAN FRANCISC	NON-ELEVATOR:	189	216	260	325	390
STATE:CA	ELEVATOR:	208	238	286	358	429
COUNTY:SAN MATEO	NON-ELEVATOR:	189	216	260	325	390
STATE:CA	ELEVATOR:	208	238	286	358	429
SMSA: SAN JOSE, CA						
COUNTY:SANTA CLARA	NON-ELEVATOR:	191	218	260	325	390
STATE:CA	ELEVATOR:	210	240	286	358	429
SMSA: SANTA CRUZ, CA						
COUNTY:SANTA CRUZ	NON-ELEVATOR:	169	190	250	300	360
STATE:CA	ELEVATOR:	186	209	275	330	396

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 9		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
SAN FRANCISCO,CALIFORNIA AREA OFFICE						
SMSA: SANTA ROSA, CA						
COUNTY:SONOMA	NON-ELEVATOR:	175	198	250	300	360
STATE:CA	ELEVATOR:	193	218	275	330	396
SMSA: VALLEJO-FAIRFIELD-NAPA, CA						
COUNTY:NAPA	NON-ELEVATOR:	151	172	200	263	291
STATE:CA	ELEVATOR:	166	189	220	289	320
COUNTY:SOLANO	NON-ELEVATOR:	151	172	200	263	291
STATE:CA	ELEVATOR:	166	189	220	289	320
NON SMSA						
COUNTY:DEL NORTE	NON-ELEVATOR:	120	137	205	250	275
STATE:CA	ELEVATOR:	132	151	226	275	303
COUNTY:HUMBOLDT	NON-ELEVATOR:	151	171	205	250	275
STATE:CA	ELEVATOR:	166	188	226	275	303
COUNTY:KINGS	NON-ELEVATOR:	121	139	200	250	291
STATE:CA	ELEVATOR:	133	153	220	275	320
COUNTY:LAKE	NON-ELEVATOR:	151	172	205	250	275
STATE:CA	ELEVATOR:	166	189	226	275	303
COUNTY:MADERA	NON-ELEVATOR:	123	140	200	250	291
STATE:CA	ELEVATOR:	135	154	220	275	320
COUNTY:MARIPOSA	NON-ELEVATOR:	129	146	200	250	291
STATE:CA	ELEVATOR:	142	161	220	275	320
COUNTY:MENDOCINO	NON-ELEVATOR:	140	159	205	250	275
STATE:CA	ELEVATOR:	154	175	226	275	303
COUNTY:MERCED	NON-ELEVATOR:	131	148	200	250	291
STATE:CA	ELEVATOR:	144	163	220	275	320

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO): JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 9

		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
SAN FRANCISCO,CALIFORNIA AREA OFFICE						
NON SMSA						
COUNTY:SAN BENITO	NON-ELEVATOR:	140	159	200	263	291
STATE:CA	ELEVATOR:	154	175	220	289	320
COUNTY:TULARE	NON-ELEVATOR:	139	152	200	263	291
STATE:CA	ELEVATOR:	147	167	220	289	320

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 9

		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
SANTA ANA,CALIFORNIA INSURING OFFICE						
SMSA: ANAHEIM-SANTA ANA-GARDEN GROVE, CA						
COUNTY:ORANGE	NON-ELEVATOR:	193	218	258	307	348
STATE:CA	ELEVATOR:	212	240	284	337	382
NON SMSA						
COUNTY:INYO	NON-ELEVATOR:	119	136	163	179	197
STATE:CA	ELEVATOR:	131	151	178	197	216
COUNTY:MONO	NON-ELEVATOR:	119	136	163	179	197
STATE:CA	ELEVATOR:	131	151	178	197	216

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAD (CO), JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 10		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ANCHORAGE-ALASKA INSURING OFFICE						
SMSA: ANCHORAGE, AK						
DISTRICT:ANCHORAGE	NON-ELEVATOR:	281	339	412	481	503
STATE:AK	ELEVATOR:	309	367	454	507	553

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO): JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 10		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
SEATTLE-EVERETT INSURING OFFICE						
SMSA: SEATTLE-EVERETT, WA						
COUNTY:KING	NON-ELEVATOR:	163	186	219	278	309
STATE:WA	ELEVATOR:	179	205	241	306	339
COUNTY:SNOHOMISH	NON-ELEVATOR:	163	186	219	278	309
STATE:WA	ELEVATOR:	179	205	241	306	339
SMSA: TACOMA: WA						
COUNTY:PIERCE	NON-ELEVATOR:	149	176	215	278	309
STATE:WA	ELEVATOR:	169	193	237	306	339
NON SMSA						
COUNTY:KITSAP	NON-ELEVATOR:	149	176	219	278	309
STATE:WA	ELEVATOR:	169	194	235	306	339

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO): JULY 07, 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 & 23 HOUSING ASSISTANCE PAYMENTS PROGRAMS

SCHEDULE OF FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

REGION 10		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
SPOKANE-WASHINGTON INSURING OFFICE						
SMSA: RICHLAND-KENNEWICK, WA						
COUNTY:BENTON	NON-ELEVATOR:	151	179	217	288	329
STATE:WA	ELEVATOR:	166	297	239	317	356
COUNTY:FRANKLIN	NON-ELEVATOR:	151	179	217	288	329
STATE:WA	ELEVATOR:	166	297	239	317	356

NOTE: FAIR MARKET RENTS (FMR) MAY BE CALCULATED FOR FIVE AND SIX BEDROOM UNITS AS FOLLOWS:
5-BR = 150 PERCENT OF 2-BR FMR; 6-BR = 175 PERCENT OF 2-BR FMR

PREPARED BY HUD - EMAU (CO): JULY 07, 1977

[FR Doc.77-23939 Filed 8-22-77;8:45 am]

GRK3
FUNFUN 27K1 AL72=0 07/08/77 1115U131
END E<S.

dial·a·reg

For an advance "look" at the FEDERAL REGISTER, try our new information service. A recording will give you selections from our highlights listing of documents to be published in the next day's issue of the FEDERAL REGISTER.

AREA CODE 202

523·5022