

case (decided and served September 26, 1979; published in the *Federal Register* on October 1, 1979 at 44 FR 56343).

The oversight regards the effective and expiration dates of the Directed Service Order. This decision amends the original order to provide that the initial 60-day directed service period does not begin to run until directed service operations are actually commenced.

49 U.S.C. § 11125—and its predecessor (49 U.S.C. § 1(16)(b)(A))—indicate that the 60-day time limitation applies only to the period during which directed service operations are actually being conducted.

Accordingly, we are changing the following portions of the initial Directed Service Order:

Page 56343, second column—After the word "Dates", the following should appear:

KCT is authorized to enter upon RI properties for the purpose of directing service at midnight (central time [CT]) on this decision's service date, and directed operations shall commence no later than 9 days thereafter, unless otherwise authorized by this Commission. This decision and order shall be effective at 12:01 a.m. (CT) on the date upon which directed-service operations are actually commenced, and computation of the initial 60-day directed-service period shall begin at that time. Unless otherwise extended by the Commission, this order shall expire at midnight (CT) on the 60th day after the commencement of directed-service operations.

Page 56351 (ordering paragraph #23)—This paragraph should be changed to read as follows:

23. *Effective Date*—The DRC is authorized to enter upon RI properties for the purpose of directing service at midnight (CT) on the date this decision is served, and directed-service operations shall commence no later than 9 days thereafter, unless otherwise authorized by us. This decision and order shall be effective at 12:01 a.m. (CT) on the date upon which directed-service operations are actually commenced, and computation of the 60-day directed service period shall begin at this time.

Page 56351 (ordering paragraph #24)—This paragraph should be changed to read as follows:

24. *Expiration Date*—Unless modified or extended by the Commission, this decision and order shall expire at midnight (CT) on the 60th day after commencement of directed-service operations.

By the Commission, Chairman O'Neal, Vice Chairman Stafford, Commissioners Gresham,

Clapp, Christian, Trantum, Gaskins, and Alexis.

Agatha L. Mergenovich,
Secretary.

Commissioner Gresham, concurring:
In light of the delay in institution of the directed service, this action appears reasonable. However, as indicated in my three prior dissents, I continue to object to the way this proceeding was undertaken and to the way in which this agency is dispensing public funds for directed service.

[FR Doc. 79-31506 Filed 10-11-79; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-3 (Sub-No. 18)]

**Missouri Pacific Railroad Co.
Abandonment at Thedford Near
Lindale in Smith County, Tex.; Findings**

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a Certificate and Decision decided August 24, 1979, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in AB-36 (Sub-No. 2), *Oregon Short Line R. Co.—Abandonment Goshen*, 380 I.C.C. 91(1979), the present and future public convenience and necessity permit the abandonment by the Missouri Pacific Railroad Company of that portion of its rail lines extending from railroad milepost 30.1 at Thedford, TX, to railroad milepost 32.8 near Lindale, TX, a distance of approximately 2.7 miles in Smith County, TX. A certificate of public convenience and necessity permitting abandonment was issued to the Missouri Pacific Railroad Company. Since the proceeding is now unopposed, the requirements of § 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the *Federal Register* be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (§ 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served on or before October 29, 1979. The offer, as filed, shall contain information required pursuant to § 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment

shall become effective 45 days from the date of this publication.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 79-31505 Filed 10-11-79; 8:45 am]

BILLING CODE 7035-01-M

[No. MC 108461 (Sub-129)F]¹

Sundance Freight Lines, Inc. (Phoenix, Ariz.) and System 99 (Oakland, Calif.); Decision

Decided: August 24, 1979.

On August 6, 1979, Sundance Freight Lines, Inc. and System 99 filed a joint petition for substitution of the latter as applicant in the proceedings.

It is ordered, That System 99 is substituted as applicant in the proceedings instead of Sundance Freight Lines, Inc.

Notice of this order will be published in the *Federal Register*.

By the Commission, Alan M. Fitzwater,
Director, Office of Proceedings.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 79-31503 Filed 10-11-79; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Scoping Meeting: Notice of Intent

AGENCY: U.S. Army Corps of Engineers Savannah District.

ACTION: Notice of Intent to hold a "Scoping Meeting" on Wednesday, 17 October 1979 at 10 a.m.

SUMMARY: The Savannah District U.S. Army Corps of Engineers will hold a scoping meeting for the Brunswick Harbor Improvement Project. The meeting will be held at the Savannah District Office. The purpose of the meeting will be to discuss environmental issues, tentatively select a plan for harbor improvement, and subsequent development of an Environmental Impact Statement. For details regarding this meeting you may contact Mr. Tom Yourk at commercial number 912/233-8822 X371 or FTS 248-8371.

Tilford C. Creel,
Colonel, Corps of Engineers, District Engineers.

[FR Doc. 79-31771 Filed 10-11-79; 9:57 am]

BILLING CODE 3710-HP-M

¹Includes Nos. MC 108461 (Sub-130TA, 131TA, and 134F).

Sunshine Act Meetings

Federal Register

Vol. 44, No. 199

Friday, October 12, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

BOARD FOR INTERNATIONAL BROADCASTING.

TIME AND DATE: 9 a.m., October 19, 1979.

PLACE: Board for International Broadcasting Conference Room, Suite 430, 1030 15th Street, N.W., Washington, D.C. 20005.

STATUS: Closed, pursuant to 5 U.S.C. 552b(c)(1) 1 CFR 460.4 (c) and (h) of the Board's rules (42 FR 9388, Feb. 16, 1977).

MATTERS TO BE CONSIDERED: Matters concerning the broad foreign policy objectives of the United States Government.

CONTACT PERSON FOR ADDITIONAL

INFORMATION: Arthur D. Levin, Budget and Administrative Officer, Board for International Broadcasting, 1030 15th Street, N.W., Washington, D.C. 20005, 202-254-8040.

[S-1998-79 Filed 10-10-79; 12:58 pm]

BILLING CODE 6155-01-M

2

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 9:30 a.m., October 16, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of Items adopted by notation.

2. Docket 36622, Ozark's 60-day notice of its intention to suspend the last certificated nonstop and/or single-plane service in seven markets. (BDA)

3. Docket 36560, Delta's 60-day notice of its intention to suspend the last certificated

nonstop and/or single-plane service in 26 markets. (BDA)

4. Docket 30699, *Oakland Service Case (Economic Phase)*, Opinion and Order. (Memo No. 7922-F, OGC)

5. Dockets 28331, 32935, and 32060; applications of Hughes Airwest, Republic and Piedmont for removing certain restrictions under the Realignment Program. (Memo No. 9195, BDA)

6. Dockets 35466 and 36621; Establish further procedures and consolidating National's application for authority in Albuquerque and seven beyond markets with the pending *Albuquerque Show-Cause Investigation*. (BDA, OGC, BL)

7. Dockets 36117, 36216, 36240, 36245, 36248, 36252, and 36255; *Denver-Omaha-Des Moines Show-Cause Proceeding*; Applications of Hughes Airwest, Trans World, Western, Eastern, Frontier, Republic, Braniff, for Denver-Omaha/Des Moines Authority. (Memo No. 8964-A, BDA)

8. Docket 36243, Petition of Sky West Aviation, Inc., for temporary and final subsidy rates pursuant to section 406 for service to Cedar City, Utah, and Page, Arizona. (BDA, OGC, OC)

9. Agreement CAB 27337, *et al.*, Agreements for intercarrier division of joint fares. (Memo No. 9081, 9081-A, BDA, OGC, BIA, BCP)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

[S-2002-79 Filed 10-10-79; 3:33 pm]

BILLING CODE 6320-01-M

3

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 2 p.m., October 15, 1979.

PLACE: 2033 K Street, NW., Washington, D.C., 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance matters.

CONTACT PERSON FOR MORE

INFORMATION: Jane Stuckey, 254-6314.

[S-1991-79 Filed 10-10-79; 11:26 am]

BILLING CODE 6351-01-M

4

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., October 16, 1979.

PLACE: 2033 K Street, NW., Washington, D.C., 5th floor conference room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Application of the AMEX Commodities Exchange, Inc., for designation as a contract market in 20 Year Treasury Bonds.

Application of the Commodity Exchange, Inc., for designation as a contract market in GNMA certificates.

CONTACT PERSON FOR MORE

INFORMATION: Jane Stuckey, 254-6314.

[S-1992-79 Filed 10-10-79; 11:26 am]

BILLING CODE 6351-01-M

5

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11:30 a.m., October 16, 1979.

PLACE: 2033 K Street NW., Washington, D.C., 5th floor hearing room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Request for Commission review of staff denial of petition for confidential treatment. Enforcement matters/administrative proceedings.

CONTACT PERSON FOR MORE

INFORMATION: Jane Stuckey, 254-6314.

[S-1993-79 Filed 10-10-79; 11:26 am]

BILLING CODE 6351-01-M

6

FEDERAL COMMUNICATIONS COMMISSION.

PREVIOUSLY ANNOUNCED TIME AND DATE

OF MEETING: 9:30 a.m., Wednesday, October 10, 1979.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission Meeting.

CHANGES IN THE MEETING: The following items have been deleted:

Agenda, Item No., and Subject

General—3—*Minority Ownership Report to the Commission*. On February 14, 1978, the FCC through its Minority Ownership Task Force Issued a contract to CCG, Inc., a research corporation in Cambridge, Mass. to conduct an in depth study of financial institutions' broadcast loan policies and their effect on minorities seeking to acquire broadcast properties. In addition, the FCC contract requested detailed information on the methods used by rating services and whether these services accurately reflect minority audience listening patterns. The Minority Ownership Task Force will present a summary of CCG, Inc.'s study and submit CCG's report and recommendations to the Commission for their consideration of future FCC activities in light of the findings of the study.

Television—2—Application tendered by the Denton Channel Two Foundation for authority to construct a new television broadcast station at Denton, Texas. Request for waiver of Commission Cut-off Rule and acceptance of late-filed application. Bureau recommends granting waiver request and accepting late-filed application.

Cable Television—2—Title: "Application for Review" filed 8/28/78 by Cypress Valley Cablevision, Inc., operator of a CATV system serving Marshall, Texas. Summary: On July 28, 1978 the Cable Television Bureau denied the request of Cypress to add Station KLTU (ABC, Channel 7) Tyler, Texas because the carriage was inconsistent with Section 76.63 of the rules. Cypress now seeks review of that decision on the ground that the requested carriage will not cause undue economic harm to local broadcast stations as explained in *cablecom of Kirksville, Inc.* 71 FCC 2d 587 (1979). The question before the Commission is whether to grant or deny the request for review.

This item was approved on October 2, 1979 by Notation Action Circulation and was inadvertently listed.

Additional information concerning this item may be obtained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 632-7260.

Issued: October 9, 1979.

[S-1995-79 Filed 10-10-79; 12:58 pm]

BILLING CODE 6712-01-M

7

FEDERAL COMMUNICATIONS COMMISSION.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m., Wednesday, October 10, 1979.

PLACE: Room 856, 1919 M Street N.W., Washington, D.C.

STATUS: Closed Commission Meeting following the Open Meeting scheduled to commence at 9:30 a.m.

CHANGES IN THE MEETING: Additional item to be considered:

Agenda, Item No., and Subject

General—3—Administrative and Personnel Matters.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 632-7260.

Issued: October 9, 1979.

[S-1996-79 Filed 10-10-79; 12:58 pm]

BILLING CODE 6712-01-M

8

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 44, FR Page 57295, October 4, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., October 11, 1979.

PLACE: 1700 G Street, NW., Sixth Floor, Washington, D.C.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE

INFORMATION: Franklin O. Bolling, (202-377-6677).

CHANGES IN THE MEETING: The following items have been added to the agenda for the open meeting.

Policy on Membership Dues and Subscriptions for FHL Banks.

Truth-in-Lending Enforcement Guidelines.

No. 278, October 10, 1979.

[S-2000-79 Filed 10-10-79; 3:33 pm]

BILLING CODE 6720-01-M

9

FEDERAL MARITIME COMMISSION.

TIME AND DATE: October 11, 1979, 10 a.m.

PLACE: Room 12126, 1100 L Street, NW., Washington, D.C. 20573.

STATUS: Closed.

MATTER TO BE CONSIDERED: 1. Docket No. 79-83: Investigation of Unfiled Agreements in the North Atlantic Trades—Grand Jury Proceedings Regarding North Atlantic Trades.

CONTACT PERSON FOR MORE

INFORMATION: Francis C. Hurney, Secretary (202) 523-5725.

[S-1999-79 Filed 10-10-79; 3:33 am]

BILLING CODE 6730-01-M

10

INTERSTATE COMMERCE COMMISSION.

TIME AND DATE: 9:30 a.m., Friday, October 5, 1979.

PLACE: Hearing Room "A", Interstate Commerce Commission Building, 12th Street and Constitution Avenue NW., Washington, D.C. 20423.

STATUS: Open Special Conference on Short Notice.

MATTER TO BE DISCUSSED: Status of the Milwaukee Road.

CONTACT PERSON FOR MORE

INFORMATION: Douglas Baldwin, Director, Office of Communications, Telephone: (202) 275-7252.

The Commission's professional staff will be available to brief news media representatives on conference issues at the conclusion of the meeting.

[S-1994-79 Filed 10-10-79; 11:26 am]

BILLING CODE 7035-01-M

11

NATIONAL CONSUMER COOPERATIVE BANK.

Meeting of the Board of Directors.

TIME AND DATE: 9 a.m., Tuesday, October 16, 1979.

PLACE: Board Room (adjoining Room 4002), 4th Floor, National Credit Union Administration, 2025 M Street NW., Washington, D.C.

AGENDA:

1. Approval of Summary Minutes of Meeting of September 25, 1979.
2. Approval of Agenda.
3. Consideration of Proposed Amendments to Bylaws.
4. Consideration of Proposed Revisions to Personnel Policy Statement.
5. Discussion of Implementation Schedule Options.
6. Presentation of Status Report on the Office of Self-Help Development and Technical Assistance by Ms. Jackie Cheeks.
7. Creation of Self-Help Committee.
8. Discussion of Credit and Lending Policies.
9. Creation of Credit and Lending Committee.
10. Discussion of Capitalization Policies.
11. Discussion of Appeals Policy.
12. Discussion and Approval of Revisions to Fiscal 1980 Operating Budget.
13. Adoption of Corporate Seal.
14. Oral Briefing by the Acting President on Administrative and Legislative Issues.

STATUS: Open to Public Observation.

CONTACT PERSON FOR MORE

INFORMATION: Pruett Pemberton at (202) 376-0890.

John Comerford,

Acting President, National Consumer Cooperative Bank.

[S-1989-79 Filed 10-10-79; 9:58 am]

BILLING CODE 4810-25-M

12

NATIONAL SCIENCE BOARD.

DATE AND TIME: October 18, 1979, 1 p.m., Open Session. October 19, 1979, 9 a.m., Closed Session.

PLACE: National Science Foundation, Rm 540 1800 G Street NW., Washington, D.C.

STATUS: Changes to previously published announcement:

MATTERS TO BE CONSIDERED AT THE

OPEN SESSION: Delete item 10: Review of NSF Act of 1950, as Amended.

MATTERS TO BE CONSIDERED AT THE

CLOSED SESSION: Delete "and Alan T. Waterman Award Committee" from Item C.

CONTACT PERSON FOR MORE

INFORMATION: Miss Vernice Anderson,
Executive Secretary, (202) 632-5840.

[S-1990-79 Filed 10-10-79; 9:58 am]

BILLING CODE 7555-01-M

13

SECURITIES AND EXCHANGE COMMISSION.

**"FEDERAL REGISTER" CITATION OF
PREVIOUS ANNOUNCEMENT:** [44 FR 58037
October 9, 1979].

STATUS: Closed meeting.

PLACE: Room 825, 500 North Capitol
Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED:
Wednesday, October 3, 1979.

CHANGES IN THE MEETING: Additional
item.

The following additional item will be
considered at a closed meeting
scheduled for Thursday, October 11,
1979, at 2:30 p.m.

Regulatory matter bearing
enforcement implications.

Chairman Williams and
Commissioners Loomis, Evans, Pollack,
and Karmel determined that
Commission business required the
above change and that no earlier notice
thereof was possible.

At times changes in commission
priorities require alterations in the
scheduling of meeting items. For further
information and to ascertain what, if
any, matters have been added, deleted
or postponed, please contact: George
Yearsich (202) 272-2178.

October 10, 1979.

[S-1992-79 Filed 10-10-79; 12:58 pm]

BILLING CODE 8010-01-M

14

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the
provisions of the Government in the
Sunshine Act, Pub. L. 94-409, that the
Securities and Exchange Commission
will hold the following meetings during
the week of October 15, 1979, in Room
825, 500 North Capitol Street,
Washington, D.C.

An open meeting will be held on
Tuesday, October 16, 1979, at 10 a.m. A
closed meeting will be held on Tuesday,
October 16, 1979, immediately following
the 10 a.m. open meeting.

The Commissioners, their legal
assistants, the Secretary of the
Commission, and recording secretaries
will attend the closed meeting. Certain
staff members who are responsible for
the calendared matters may be present.

The General Counsel of the
Commission, or his designee, has
certified that, in his opinion, the items to

be considered at the closed meeting may
be considered pursuant to one or more
of the exemptions set forth in 5 U.S.C.
552b(c) (4), (8), (9)(A) and (10) and 17
CFR 200.402(a) (8), (9)(i), and (10).

Chairman Williams and
Commissioners Loomis, Evans, Pollack,
and Karmel determined to hold the
aforesaid meeting in closed session.

The subject matter of open meeting
scheduled for Tuesday, October 16, 1979,
at 10:00 a.m., will be:

1. Consideration of whether to comment to
the Federal Reserve Board on its proposed
amendments to Section 4(g) of Regulation T
and to issuance of a no-action letter in
connection therewith. For further information,
please contact Nelson S. Kibler at (202) 272-
2893.

2. Consideration of whether to adopt
Securities Exchange Act Rule 15Bc7-1 to give
the Municipal Securities Rulemaking Board
limited access to information contained in
copies of reports of compliance examinations
of municipal securities brokers and dealers.
For further information, please contact
Marcia L. MacHarg, at (202) 272-2413.

3. Consideration of whether to institute
rulemaking proceedings to amend the Annual
Report by Mutual and Subsidiary Service
Companies on Form U-13-60 ("Annual
Report") and Rule 94 [17 CFR 250.94],
promulgated pursuant to the Public Utility
Holding Company Act of 1935, to make the
Annual Report consistent with the System of
Accounts and to (1) simplify the preparation
of the Annual Report, (2) more clearly
disclose financial, accounting, and
operational information needed by federal
and state authorities which regulate the
affiliated public utility companies served by
the service companies, and (3) facilitate the
conduct of audit and account inspection
programs. For further information, please
contact Robert P. Wason at (202) 272-523-
5159.

The subject matter of the closed
meeting scheduled for Tuesday, October
16, 1979, immediately following the 10:00
a.m. open meeting, will be:

Formal Orders of investigation.
Other litigation matter.
Consideration of amicus participation.
Regulatory matter regarding financial
institution.
Subpoena enforcement action.
Settlement of administrative proceeding of
an enforcement nature.
Settlement of injunctive action and access
to investigative files by Federal, State, or
Self-Regulatory Authorities.
Settlement of injunctive action and
Institution and Settlement of administrative
proceeding of an enforcement action.
Report of investigation.
Chapter X proceeding.
Institution of administrative proceeding of
an enforcement nature.
Opinion.

At times changes in Commission
priorities require alternations in the
scheduling of meeting items. For further

information and to ascertain what, if
any, matters have been added, deleted
or postponed, please contact: John
Ketels at (202) 272-2091.

October 10, 1979.

[S-2001-79 Filed 10-10-79; 3:33 pm]

BILLING CODE 8010-01-M

Test Report Federal Project

Friday
October 12, 1979

Part II

Department of Agriculture

Food and Nutrition Service

Food Stamp Program; Demonstration
Project Procedures

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 282

[Amdt. No. 153]

Demonstration, Research, and Evaluation Projects; Food Stamp Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Emergency final rules and notice of intent.

SUMMARY: This rulemaking establishes procedures for conducting a demonstration project authorized under Subsection 17(b)(1) of the Food Stamp Act of 1977, involving the payment of dollar amounts, equal in value to food stamp allotments, rather than coupons to each eligible household in which every member is either 65 years of age or over or has been determined eligible to receive Supplemental Security Income (SSI) benefits under Title XVI of the Social Security Act. The project is, hereafter, referred to as the SSI/Elderly Cash-Out project. The project will test program changes designed to increase the participation of and improve program service to eligible aged, blind and otherwise handicapped households.

The Notice of Intent announces the Department of Agriculture's intention to conduct the project and solicits applications from State welfare agencies wishing to participate in the project.

DATES: State agencies desiring participation in the project shall pre-apply, as detailed in the Notice of Intent, by November 15, 1979. Full proposals shall be due no later than December 17, 1979.

EFFECTIVE DATE: October 15, 1979.

FOR FURTHER INFORMATION CONTACT: Claire Lipsman, Director, Program Development Division, U.S. Department of Agriculture, Room 658, 500 12th Street, S.W., Washington, D.C. 20250, Telephone, (202) 447-8325.

SUPPLEMENTAL INFORMATION: Subsection 17(b)(1) of the Food Stamp Act of 1977, authorizes the Department of Agriculture to conduct various demonstration projects to test program changes that might improve the delivery of food stamp benefits to eligible households and increase the efficiency of the Food Stamp Program. The provision contains a specific authority for a project whereby persons 65 years of age or over or eligible for SSI payments are paid Food Stamp Program benefits in cash rather than food stamps.

This project responds to the concern of Congress, the Department, State and local program administrators, and community groups over the low participation of the aged, blind, and handicapped in the Food Stamp Program. The House Committee on Agriculture Report on the Food Stamp Act of 1977, House Report No. 95-464, 95th Congress, 1st Session (p. 97-101) notes that the current level of participation for these households is between 40 and 50 percent of the total number estimated eligible to participate in the Program. The Committee Report also indicates that this low level of participation is believed to be the result of restrictive participation "barriers" which include, but are not limited to: application procedures which are not tailored to the needs of elderly and disabled persons, the lack of transportation, and the "humiliation" or "welfare stigma" many of the subject households experience when applying for and using food stamps. Operation of the SSI/Elderly Cash-Out project will test whether providing cash benefits rather than food stamps will resolve these problems and thus facilitate the participation of the target population.

In addition to examining the effect that providing an alternate form of assistance will have on participation, the project will also test whether participation will be improved if aged and handicapped households are processed for the Program at other than a welfare or food stamp office. To accomplish this, the operation at some demonstration sites will include the early implementation of a joint processing procedure, as discussed below, for the demonstration population.

Pursuant to Subsections 11(i)(2) and 11(j) of the 1977 Food Stamp Act, persons receiving or applying for Social Security or Supplemental Security Income (SSI) benefits are allowed, under certain circumstances, to file for food stamp benefits through the Social Security Office, with actual determinations on certifications and benefit levels made by the welfare or food stamp office. Regulatory procedures for accomplishing this joint processing are currently being developed by the Department, in conjunction with the Department of Health, Education and Welfare (DHEW). These procedures will include the outstationing of State agency personnel at the Social Security Office.

During the course of this project, eligible SSI and aged households will apply for participation and be certified in accordance with all standard program rules, except where otherwise

specifically provided. Households certified eligible to participate shall receive on a monthly basis a State or local agency issued check equal in value to the coupon allotment they would otherwise receive.

A thorough evaluation will be made of the effect of the cash-out procedure on the involved households. Participation growth rates and costs incurred as a result of administering the test procedure will be principal factors in assessing the feasibility of implementing food stamp cash benefits for the aged, blind and handicapped nationwide.

The project is scheduled to begin on or about April 1, 1980, and will operate for one year. The project will be conducted at eight demonstration project sites. Selected sites will reflect a rural/urban distribution and may be selected on a State-wide or local project area basis or, as in the case of a rural site, consist of several contiguous rural counties in a State to accommodate a target population large enough for analysis purposes. States which provide or are expected to provide cash-out service pursuant to Pub. L. 93-233 (42 U.S.C. 1382(e)), as amended, during the period of operation of this demonstration are not eligible as project sites. A listing of the sites selected for project operation will be subsequently published in the *Federal Register*.

Accordingly, 7 CFR Part 282 is amended as follows: a new § 282.12 is added to read:

§ 282.12 SSI/Elderly Cash-Out Demonstration Project.

(a) *Purpose.* These regulations establish the procedures under which the demonstration project, hereafter referred to as the SSI/Elderly Cash-Out project, will operate. Under this project, eligible households all of whose members are either age 65 or older or have been determined eligible to receive Supplemental Security Income (SSI) benefits under Title XVI of the Social Security Act shall be provided a check equal to the value of the food stamp allotment they would otherwise receive. The purpose of the SSI/Elderly Cash-Out Project is to test the feasibility of providing cash in lieu of food coupons to elderly and handicapped persons as a means of improving the program participation of and service to these households.

(b) *Statutory requirements to be waived.* Subsection 17(b)(1) of the Food Stamp Act of 1977 authorizes the Secretary to waive any requirement of the Act to the degree necessary to conduct the demonstration project as long as the project does not lower or further restrict the income or resource

standards or benefit levels of project participants. Under the SSI/Elderly Cash-Out project, the definition of a food stamp allotment (Subsection 3(a)) shall be waived. The limitations specified in Section 16 on Federal cost-sharing of administrative expenses is also waived. Other requirements may be waived as the Secretary deems necessary consistent with the limitations on the waiver authority provided in Subsection 17(b)(1). Any such waiver will be published in the Federal Register.

(c) *Regulatory requirements.* All current Food Stamp Program regulations (7 CFR Part 270 et seq.), except as specifically provided and except where inconsistent with any rules governing this project, shall govern the operation of this project.

(d) *Definitions.* For the purposes of this demonstration project:

(1) "Allotment" means the value of the cash payment, in the form of a check, a household is certified eligible to receive during each month;

(2) "Household" means (i) Individuals living alone who are 65 years of age or older or have been determined eligible to receive Supplemental Security Income benefits under Title XVI of the Social Security Act;

(ii) Individuals living together all of whom are 65 years of age or older or have been determined eligible to receive Supplemental Security Income benefits under Title XVI of the Social Security Act.

(e) *Areas of operation.* The SSI/Elderly Cash-Out project will be conducted in eight project sites. The selection of States and localities will be made by the Department based on the applications submitted by State welfare agencies wishing to participate in the project.

(f) *Household participation.* (1) All certified eligible households, as defined in § 282.12(d)(2), residing in the demonstration project sites shall receive a check representing the value of their benefit entitlement.

(2) The State agency shall provide those SSI and elderly households currently participating in the Program with a notice in accordance with established program procedures, prior to project inauguration, informing them that during the course of the project they will receive their food stamp benefits in the form of a check instead of coupons.

(3) Nonelderly households with SSI eligibility pending at the time of initial application for food stamp benefits shall be provided coupons instead of cash until such time as the food stamp office adjusts their allotment to reflect the initial receipt of SSI benefits. Nonelderly

households participating in the SSI Program which terminate SSI participation during the course of the project shall receive any subsequent food stamp benefits in coupons.

(g) *Certification of households.* Households applying for program benefits under the demonstration project shall be processed and certified by the State agency in accordance with all appropriate Food Stamp Program provisions. The project shall involve two methods of processing households for program participation.

(1) At some demonstration sites, SSI and elderly households will be processed for participation in the Program through the Social Security Office. Procedures shall be developed, pursuant to guidelines addressing Subsection 11(i)(2) and 11(j) of the 1977 Food Stamp Act, to process such households by means of outstationing State agency staff in Social Security Offices. Non-SSI elderly households at these sites will have the option of applying for participation at the Social Security Office or the Welfare Office.

(2) The other demonstration sites will process elderly and SSI households at the welfare or food stamp office for the duration of the one year demonstration period.

(h) *Delivery of benefits.* Project participants shall be provided with program benefits by the State or local agency in the form of a check in accordance with the benefit delivery standards and, where appropriate, expedited service standards afforded all other food stamp program participants. The time frame for processing emergency applications filed through the Social Security Office shall begin when the application reaches the food stamp worker (outstationed) or office.

(i) *Certification periods.* (1) The State agency may certify SSI and elderly households for project participation for the duration of the project, if appropriate, based on household circumstances. Certification periods may be extended beyond the duration of the project if household circumstances permit. However, such households shall be informed that program benefits will be received in the form of stamps rather than a check subsequent to project termination.

(2) In the month prior to the last month of project operation, the State agency shall notify SSI and elderly project participants of the termination of the project, and if appropriate, shall provide a notice of the expiration of their certification period.

(j) *Issuance of benefits.* The State agency shall identify each household

certified as eligible to receive a food stamp check.

(1) Checks shall be prepared and issued based on the benefit entitlement of each project participant. Check mailings shall be conducted in accordance with procedures established for the mail issuance of allotments, or procedures used by the State agency for the delivery of public assistance checks.

(2) *Replacement issuances.* If mail delivery of checks is used, the State agency shall provide project participants whose checks are lost or stolen in the mail with an opportunity to receive a replacement check. Check replacements shall be conducted in accordance with regulatory procedures governing coupons lost in the mail. Controls shall be applied to safeguard against repeated replacements in individual cases and corrective action taken after two consecutive reports of nondelivery.

(k) *Funding.* Funding shall be provided through the State agency Food Stamp Program Letter of Credit for both administrative and program costs.

(1) *Program costs.* For each State agency participating in the demonstration project, FNS will provide funds through the State agency's established Letter of Credit to be used for the purpose of issuing food stamp benefits to eligible project participants. State agency drawdowns and accounting for such funds shall be subject to the requirements in Part 277.

(2) *Administrative costs.* FNS will pay an amount equal to 100 percent of approved administrative costs, over and above such costs as are usual and customary to Food Stamp Program operations. These costs will include, but not be limited to, increased outreach, training, and ADP costs. Budgets must be submitted and approved by FNS, and records available to substantiate that such costs are a direct result of the demonstration project in order for such additional costs to be eligible for 100 percent funding.

(1) *Records and reports.* (1) The State agency shall maintain all records related to project operation for a period of three years from the date of submission of the final project expenditure report, or longer if required in writing by FNS. Such records shall be available to FNS or its designee upon request.

(2) In addition to all other program reporting requirements, the State agency shall submit to FNS:

(1) A separate monthly FNS 256 Form (Monthly Report of Participation and Coupon Issuance) to report:

(i) The total number of households and persons participating in the project who are aged only;

(ii) The total number of households and persons who are SSI aged only;

(iii) The total number of households and persons who are SSI blind and disabled only;

(iv) The total value of initial check issuances; and

(v) The average monthly benefit for each category of households described above.

(2) A separate FNS 259 Form (Food Stamp Mail Issuance Report) to report, on a quarterly basis, monthly totals on the number and value of replacement issuances, if checks are issued by mail;

(3) Reports on the status of project operations as established in the grant agreement governing project operations; and

(4) A separate SF 269 Food Stamp Form (Financial Status Report) on a quarterly basis, reporting total project expenditures for both administrative costs and program benefits.

(m) *Monitoring and evaluation.* FNS will establish procedures for monitoring State agency compliance with the requirements of § 282.12. The evaluation of the project will be conducted by an independent contractor. The State agency shall, upon reasonable notification, provide the evaluation contractor with access to all information pertaining to project operations.

Appendix—Notice of Intent

The Secretary of Agriculture announces his intention to conduct a demonstration project involving the cash payment (in the form of a check) of the value of the food stamp allotment to eligible households in which all members are either 65 years of age or older, or have been determined eligible to receive Supplemental Security Income (SSI) benefits under Title XVI of the Social Security Act. This demonstration project, called the SSI/Elderly Cash-Out project, is authorized under Subsection 17(b)(1) of the Food Stamp Act of 1977 (Pub. L. 95-113). Households eligible to participate in the project shall apply at their local welfare office and be certified for food stamp assistance under standard program procedures and rules, and shall be issued their benefit entitlement in the form of a check rather than coupons. In addition, at some demonstration sites, SSI households will be processed for participation under the project through the Social Security Office. Under the latter procedure, SSI households desiring food stamp program assistance shall apply at the Social Security Office. Certification and benefit level determinations, however, shall be performed by the food stamp certification office. Non-SSI elderly households at these sites, shall have the option of applying through the Social Security or Welfare Office.

The SSI/Elderly Cash-Out project will be conducted in eight demonstration project sites, and will be operational for a period of one year. Project operations are scheduled to begin on or about April 1, 1980. The Department will evaluate the effectiveness of

the cash-out procedure in improving program service to an the participation of the target population, and will examine the costs of the administrative procedures used. A contractor may be used for such an evaluation. An examination will also be made of the attitudes of the project population toward the Program as a result of receiving cash rather than coupons; the socio-economic and demographic characteristics of the involved caseload; and the impact of cash benefits on the nutritional intake of project participants. The evaluation shall make use of participation data, program and administrative cost data, client questionnaires and casefile reviews. The results of the evaluation will be forwarded to Congress for their consideration.

This Notice further solicits applications from State Welfare agencies wishing to take part in the project. Operational proposals may be made on a statewide basis or for a selected project area. Such proposals shall describe in detail how the State welfare agency intends to fulfill the requirements of the project which are discussed in detail below.

A. Basic Operational Requirements. 1.

Households in which all members are either 65 years of age or older, or have been determined eligible to receive SSI benefits, which apply for food stamp benefits and are subsequently determined eligible for program project participation shall be provided with a monthly check representing the value of their food stamp allotment.

2. State agencies shall conduct outreach efforts, as developed by FNS, to ensure that potential participants are informed of the project and encouraged to participate.

3. Elderly and SSI households shall be certified in accordance with current Food Stamp Program procedures. SSI households at some sites will be processed for the Program through the Social Security Office. At these sites procedures will also be developed by means of outstationing State agency staff, to allow non-SSI elderly households to apply at the Social Security Office.

4. Eligible households will receive program benefits in the form of a State or local agency issued check in accordance with the standards for benefit delivery established for current program operations, including expedited service requirements, as appropriate.

5. In those States issuing checks by mail, checks reported as lost or stolen from the mails shall be replaced in accordance with the procedures established for coupons issued through the mail.

B. *State Agency Responsibilities.* The State agency shall be responsible for:

1. Implementing an outreach program to publicize the SSI/Elderly Cash-Out project. (Required techniques to be used shall be developed by FNS.);

2. Certifying elderly and SSI households for participation under current program procedures;

3. Notifying all current food stamp SSI and elderly households, prior to project inauguration, in accordance with established program rules for such procedures, or such operational guidelines as may be established

for this project, that during the demonstration project, they will receive their program benefits in the form of a check rather than coupons;

4. Maintaining a separate or readily accessible file of records which identify all households certified to receive food stamp cash benefits. Such records shall contain, at a minimum, the case number, name, address, household size and benefit entitlement for each household and shall be updated, as appropriate, to reflect changes in household eligibility and benefit entitlement. The State agency shall also maintain records on any households participating in the project who, for any reason, become nonparticipants. The reason for such nonparticipation shall be documented, if available. All such records will be available to FNS or its agent, upon reasonable notification;

5. Ensuring the preparation and issuance of checks based on each eligible household's benefit entitlement;

6. Ensuring that expedited issuance, in the form of a check, is provided to households who qualify for this service in accordance with procedures established for such issuance;

7. Withdrawing an amount to cover benefit checks from the Food Stamp Program Letter of Credit (LOC). Drawdowns shall be governed by the LOC requirements established in 7 CFR Part 277. Procedures will be established to minimize the time lapse between the drawing of Federal funds and their expenditure;

8. Minimizing the possibility of check loss by issuing checks in accordance with the procedures established for the mail issuance of coupons, or in accordance with State agency procedures for the delivery of public assistance checks;

9. In those States where checks are issued through the mail, providing participants, whose checks are lost or stolen from the mail, an opportunity to obtain a replacement check. Replacement procedures shall be conducted in accordance with the program standards established for coupons issued by mail. Safeguards shall be established to avoid repeated instances of replacement in individual cases and corrective action undertaken after two consecutive reports of nondelivery;

10. Planning and performing all functions necessary to ensure that only certified households receive program benefits;

11. Establishing procedures to avoid the duplicate issuance of food stamp checks;

12. Training caseworkers and other staff concerning all aspects of the project;

13. Notifying project participants of the termination of the project and their certifications if appropriate, according to current program rules, in the month prior to the last month of project operations;

14. Cooperating with all evaluation activities connected with the demonstration project under the sponsorship of the Department;

15. Taking such action as is necessary to identify and report separately in the Quality Control error rate computations, those errors attributable solely to the demonstration project requirements, i.e., intake through Social Security Offices and payment by check rather than coupons.

16. Preparing and submitting to FNS the following reports on the financial status of project operations:

(a) Quarterly Status Report: A separate SF 269 Food Stamp Form (Financial Status Report) shall be used to report expenditures for both administrative costs and program costs. Administrative costs shall only include those costs incurred in addition to normal Food Stamp Program costs and shall include, but not be limited to, additional outreach, training and ADP costs. This report is due 30 days following the end of the Federal fiscal year quarter being reported;

(b) Final Report: A final SF 269 Food Stamp Form (Financial Status Report) shall be submitted 120 days following the end of the project period. This final report will also be the final quarterly report;

17. Preparing and submitting to FNS reports on project participation and benefit issuances for each project area participating in the demonstration project as follows:

(a) A separate FNS 256 Form (Monthly Report of Participation and Coupon Issuance) to report, on a monthly basis, the total number of households and persons participating for aged only, SSI aged, and SSI blind and disabled, the total value of monthly benefits issued, and the average monthly benefit for each group of households indicated above;

(b) For each project area participating in the demonstration project, if checks are issued by mail, a separate FNS 259 Form (Food Stamp Mail Issuance Report) to report, on a quarterly basis, monthly totals on the number and value of replacement issuances;

18. Maintaining all records pertaining to the project for a period of three years from the date of submission of the final project expenditure report, or longer if required in writing by FNS. All records shall be available to FNS or its representatives upon request;

19. Obtaining documented approval for the project from all appropriate State and local officials;

20. Obtaining documentation of cooperative agreements from other agencies or organizations necessary to the operation of the project. Sponsors shall provide written concurrence by the Social Security Administration Regional Office with the participation of the Social Security District Office in processing SSI and elderly households for the Program;

21. Developing and executing the demonstration project;

22. Assuming legal and financial responsibility for the accuracy of the list of households certified for project participation; and

23. Safeguarding and maintaining the integrity of demonstration project funds used under the State agency's Letter of Credit.

C. *Federal Responsibilities.* 1. FNS will develop required outreach techniques to be used in publicizing the demonstration project.

2. FNS will provide funding through the State agency's established Food Stamp Program Letter of Credit based on the budget estimate submitted by the State agency.

3. FNS shall be responsible for evaluating the demonstration project; this may be accomplished through use of a contractor.

4. FNS will provide whatever training and technical assistance is necessary during the project, including financial management assistance for project funds.

5. FNS will monitor project operations.

6. FNS will prepare reports consolidating data from all demonstration project sites.

D. *Federal Financial Participation.* FNS shall pay 100 percent of those approved administrative costs associated with the demonstration project which are identified as over and above such costs as are usual or customary to normal Food Stamp Program operations. FNS shall also provide 100 percent of program benefits to certified eligible participants.

(a) To be eligible for 100 percent funding as specified above administrative costs must be specifically identifiable with the project. For example, outreach costs may be eligible for 100 percent funding only if records are maintained which identify such costs as directly attributable to demonstration project operations.

(b) Funding shall be provided through the State agency Program Letter of Credit for both administrative and program costs.

(c) FNS shall assume the cost for any data compilations which are separate and in addition to those recordkeeping requirements necessary for project operation and which are performed by the State agency at the request of the evaluation contractor.

E. *Applications.* 1. *Preliminary application.* State welfare agencies wishing to take part in the demonstration project shall make initial application by submitting a Letter of Intent. The Letter of Intent shall be submitted to the Deputy Administrator, Family Nutrition Programs, Food and Nutrition Service, 500 12th Street, S.W., Washington, D.C. 20250. Such letters shall be due by November 15, 1979. The letters shall contain the following information:

(a) A description of the Food Stamp project area or areas in which the demonstration project shall be carried out. This description shall include an estimate of the number of elderly and SSI households potentially eligible to participate in the Food Stamp Program; the current participation rate of the target population in the Food Stamp Program (or an estimate if exact numbers are not available) and any other information useful for understanding the nature of the food stamp project areas in which the demonstration project would be conducted, including, with respect to operating boundaries, the location of the food stamp project area(s) in relation to that of the Social Security Office in a potential demonstration site;

(b) A brief indication of past and current outreach techniques used in the project area or areas in which the demonstration project would operate;

(c) An expression of preference regarding a cooperative effort in conducting the test procedure through the Social Security Office as distinct from welfare or food stamp offices.

2. *Full application.* To complete the application process, State agencies shall submit the Application for Federal Assistance—Short Form, prescribed by the Office of Management and Budget (OMB)

Circular A-102. Applications can be obtained from and shall be submitted in one original and two copies to the Deputy Administrator for Family Nutrition Programs. Applications must be received at the address noted above no later than December 17, 1979. All applications shall be submitted in accordance with all appropriate requirements as established under OMB Circular A-95 and must be signed by the representative of the State agency with the authority to commit the agency to the project.

In addition to the specific information on how the State agency will meet the basic requirements for project operations detailed in Section A and B above, the application narrative shall contain the following:

(a) A detailed description of the work plan with the task statements, milestones, and the methodology to be used in completing the tasks. (The work plan must be designed to facilitate implementation of the project not later than April 1, 1980. Any subsequent revisions or modifications of the plan must be approved by FNS);

(b) A proposed budget for both project program and administrative costs.

(1) A budget for administrative costs to be funded at 100 percent Federal Financial Participation (FFP) including each category used on the SF-269 (Food Stamp) form, if applicable;

(2) A budget for program costs with the projected caseload and other information used to arrive at this figure. Revisions to this proposed budget may be submitted to FNS as necessary or appropriate to provide for timely reimbursement. However, final revisions to program budget outlays must be submitted no later than 120 days after project termination to be accepted by FNS for approval;

(c) A description of the number and qualifications of key staff, including a project director, which will be used in accomplishing the purpose of the project, plus the percent of time to be allotted by the staff;

(d) A full description of any plan to use a contractor or subcontractor to carry out any part of the project, including, the scope of work, tasks, estimated costs for each task, and estimated personnel required;

(e) Documentation to substantiate arrangements made with other public or private agencies or organizations whose support and cooperation could be necessary to project operations.

F. *Selection of Sites.* 1. *Federal procedures.*

(a) All State agencies applying as demonstration project sponsors will be reviewed by a panel consisting of FNS and other Departmental representatives, and representatives of other agencies, as appropriate. Final approval of joint processing sites shall be subject to joint FNS/SSA agreement. (b) Applications will be ranked based on the criteria established in (2) below.

2. *Criteria for selection.* (a) Conceptual development and clarity of procedures and operation design; (b) Consistency of work plan in relation to the provisions for the project as contained within the regulations and this Notice; (c) The adequacy of the work plan; (d) The capability of the applicants to conduct the project based on:

- (1) A description of the qualifications of staff;
- (2) Availability of necessary facilities, staff, and other resources;
- (3) Availability of documentation establishing a cooperative effort between the potential sponsor and any necessary supporting agencies or organizations;
- (4) Administrative and supervisory capacity;
- (e) The current participation level of the target population within the project area; and
- (f) Geographical dispersion, including consideration of:

- (1) An area with population sufficiently large to produce an adequate eligible target population for evaluation purposes (for example, it would be desirable to have a minimum of 200 food stamp participants in the project and at least 400 persons in the target population estimated to be eligible for food stamps but not currently participating).

- (2) A mix of geographical and administrative structures throughout the seven FNS administrative regions.

3. *Selection.* USDA will notify all applicants of those Sites selected for demonstration project operations.

(91 Stat. 950, as amended (7 U.S.C. 2011-2027).)

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.

The demonstration project departs significantly from normal program procedures only insofar as it provides for benefits to be received in the form of cash rather than coupons. Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impractical and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the *Federal Register*.

Further, this final rule has not been designated as "significant" and is being published in accordance with the emergency procedure in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by Bob Greenstein, Administrator for Food and Nutrition Services, that the emergency nature of this final rule warrants publication without opportunity for public comment at this time.

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

Note.—Approval of the Office of Management and Budget has been requested for the reporting and/or recordkeeping requirements contained herein in accordance with the Federal Reports Act of 1942.

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

Dated: October 4, 1979.

Carol Tucker Foreman,
Assistant Secretary of Agriculture.

[FR Doc. 79-31258 Filed 10-11-79; 8:45 am]

BILLING CODE 3410-30-M

Estimate Report

Friday
October 12, 1979

Part III

Department of Labor

Employment Standards Administration

Minimum Wages for Federal and
Federally Assisted Construction

DEPARTMENT OF LABOR

Employment Standards
Administration, Wage and Hour
DivisionMinimum Wages for Federal and
Federally Assisted Construction;
General Wage Determination
Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register**

without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedes
Decisions to General Wage
Determination Decisions

Modifications and Supersedes Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedes decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's order No. 224-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedes decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the

Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage & Hour Division, Office of Government Contract Wage Standards, Division of Construction Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

New General Wage Determination Decisions

Arkansas.....	AR79-4091
Maryland.....	MD79-3034
	MD79-3035
New Jersey.....	NJ79-3033
	NJ79-3041
New York.....	NY79-3032

Modifications to General Wage
Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Arizona:	
AZ79-5100.....	Feb. 9, 1979
AZ79-5104.....	Mar. 9, 1979
Colorado:	
CO79-5116.....	May 18, 1979
CO79-5118; CO79-5119.....	June 15, 1979
Delaware—DE78-3080.....	Nov. 3, 1978
Florida:	
FL79-1064.....	Apr. 13, 1979
FL79-1094.....	June 8, 1979
Mississippi—MS79-1119.....	Aug. 17, 1979
Nevada—NV79-5107.....	Mar. 9, 1979
New Jersey:	
NJ78-3047.....	June 16, 1978
NJ79-3013.....	June 22, 1979
North Carolina—NC78-1061.....	July 7, 1978
North Dakota:	
ND78-5125.....	Sept. 22, 1978
ND79-5128.....	Aug. 3, 1979

Cancellation of General Wage
Determination Decisions.

The general wage decisions listed below are cancelled. Agencies with construction projects pending to which one of the cancelled decisions would have been applicable should utilize the project determination procedure by submitting form SF-308. See Regulations Part 1 (29 CFR), Section 1.5. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.7(b)(2), the incorporation of one of the cancelled decisions in contract specifications, the opening of bids for which is within ten (10) days of this notice, need not be affected.

IN77-2027—Parke County, Indiana—
Residential Construction.

IN77-2028—Vermillion County, Indiana—
Residential Construction.

Signed at Washington, D.C. this 5th Day of
October 1979.

Dorothy P. Come,

Assistant Administrator, Wage and Hour
Division.

BILLING CODE 4510-27-M

NEW DECISION

STATE: MARYLAND
 COUNTY: SOMERSET, WICOMICO, AND WORCESTER
 DECISION NO.: MD79-3034
 DATE: DATE OF PUBLICATION
 DESCRIPTION OF WORK: Building Construction Projects (does not include single family homes and apartments up to and including 4 stories)

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
\$ 9.80		.20		
7.70				
8.18				
8.95	.60	33+.60		48
5.75				
5.90				
4.11				
5.10				
6.50				
6.94				
9.00				
6.26				
6.00				
5.84				
11.33				
9.00				
7.41				
5.12				
5.00				
6.00				
5.08				
5.30				
7.20				
5.30				
5.35				
5.80				
6.00				
5.75				

BRICKLAYERS
 CARPENTERS
 CEMENT MASONS
 ELECTRICIANS
 GLAZIERS
 IRONWORKERS
 LABORERS:
 Laborers
 Mason Tenders
 PAINTERS
 PLASTERERS
 PLUMBERS & PIPEFITTERS
 ROOFERS
 SHEET METAL WORKERS
 SPRINKLER FITTERS
 SOFT FLOOR LAYERS
 TERRAZZO & TILE SETTERS
 TERRAZZO & TILE FINISHERS
 TRUCK DRIVERS
 POWER EQUIPMENT OPERATORS:
 Asphalt Spreader
 Backhoe
 Bulldozer
 Crane
 Front End Loader
 Grader
 Paver
 Scraper
 Roller
 "Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a) (ii))."

NEW DECISION

STATE: Arkansas
 COUNTY: Pulaski
 DECISION NO. AR79-4091
 DATE: Date of Publication
 DESCRIPTION OF WORK: Residential Projects consisting of single family homes and apartments up to and including 4 stories.

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
\$5.05				
8.00				
6.00				
6.19				
7.27				
6.71				
6.88				
3.96				
4.69				
6.95				
7.75				
6.05				
5.02				
6.00				
8.25				
4.02				
4.00				
5.98				
5.00				
6.50				
4.40				
5.14				
5.97				

Air Conditioning Mechanic
 Bricklayers
 Carpenters
 Cement Masons
 Electricians
 Glaziers
 Ironworkers
 LABORERS:
 Laborers, Common
 Mason Tenders
 Painters, brush
 Plumbers and Pipefitters
 Roofers
 Sheet Metal Workers
 Sheet Rock Hangers and Finishers
 Tile Setters
 Truck Drivers
 POWER EQUIPMENT OPERATORS:
 Asphalt Raker
 Backhoe
 Blade Grader
 Bulldozer
 Fork Lift
 Roller
 Tractor
 WELDERS -- receive rate prescribed for craft performing operation to which welding is incidental.
 "Unlisted classifications needed for work not included within the scope of the classification listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a) (ii))."

NEW DECISION

STATE: MARYLAND

COUNTIES: CAROLINE,
DORCHESTER, KENT, QUEEN
ANNES AND TALBOTDECISION NO.: MD79-3035
DESCRIPTION OF WORK: Building Construction Projects (Does not
include single family homes and apartments up to and including
4 stories)

Date: DATE OF PUBLICATION

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
BRICKLAYERS	9.80			
CARPENTERS	6.45			
CEMENT MASONS	6.00			
ELECTRICIANS	8.17			
GLAZIERS	5.75			
IRONWORKERS	7.00			
LABORERS:				
Laborers	4.20			
Mason Tenders	5.10			
Plasterers Tenders	4.87			
LATHERS	8.33			
PAINTERS	4.41			
PLASTERERS	9.00			
PLUMBERS & PIPEFITTERS	5.50			
ROOFERS	6.00			
SHEET METAL WORKERS	6.00			
SOFT FLOOR LAYERS	7.00			
TILE SETTERS	6.35			
TRUCK DRIVERS	3.55			
POWER EQUIPMENT OPERATORS:				
Backhoe	5.88			
Bulldozer	5.63			
Gradall	5.75			
Grader	5.00			
Paver	5.50			
Roller	4.39			
"Unlisted classifications needed for work not in- cluded within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a) (ii))."				

NEW DECISION

STATE: NEW JERSEY

COUNTY: GLOUCESTER

DECISION NO.: NJ79-3033

DESCRIPTION OF WORK: Residential Construction Projects consisting
of single family homes and apartments up to and including 4
stories

DATE: DATE OF PUBLICATION

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
AIR CONDITIONING AND HEATING				
MECHANIC	\$ 8.00			
BRICKLAYERS	10.50			
CARPENTERS	7.11			
CEMENT MASONS	6.50			
DRYWALL FINISHERS	8.75			
ELECTRICIANS	6.09			
INSULATION MECHANICS	5.84			
LABORERS	4.33			
PAINTERS	5.50			
PLUMBERS & PIPEFITTERS	6.50			
SHEET ROCK HANGERS	9.34			
SOFT FLOOR LAYERS	7.48			
TILE SETTERS	6.30			
TRUCK DRIVERS	5.25			
POWER EQUIPMENT OPERATORS:				
Backhoe	6.86			
Bulldozer	6.43			
Front End Loaders	6.50			
"Unlisted classifications needed for work not in- cluded within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a) (ii))."				

NEW DECISION

STATE: NEW JERSEY COUNTY: OCEAN
 DECISION NO.: NJ79-3041 DATE: DATE OF PUBLICATION
 DESCRIPTION OF WORK: Residential Construction Projects Consisting of single family homes and apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS	\$ 8.00				
CARPENTERS	6.52				
CEMENT MASONS	7.34				
ELECTRICIANS	5.24				
INSULATION MECHANICS	6.69				
LABORERS:					
Laborers	4.66				
Mason Tenders	4.71				
PLUMBERS & PIPEFITTERS	10.00				
ROOFERS	9.38				
SHEET METAL WORKERS	6.28				
SHEET ROCK HANGERS	5.25				
SHEET ROCK TAPERS	5.25				
SOFT FLOOR LAYERS	6.00				
TILE SETTERS	5.00				
TRUCK DRIVERS	5.00				
POWER EQUIPMENT OPERATORS:					
Backhoe	6.31				
Bulldozer	6.00				
Crane	6.25				
Front End Loader	5.80	.48		.12	
Pan	6.00	.48		.12	
"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a) (ii))."					

NEW DECISION

STATE: NEW YORK COUNTY: CHEMUNG
 DECISION NO.: NY79-3032 DATE: DATE OF PUBLICATION
 DESCRIPTION OF WORK: Building Construction (does not include single family homes and apartments up to and including 4 stories), Heavy, and Highway Construction Projects.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	\$12.78	.90	.43		.06
BOILERMAKERS	12.80	1.10	1.55		.03
BRICKLAYERS, CEMENT MASONS, MARBLE SETTERS, PLASTERERS, STONE MASONS, TERRAZZO WORKERS AND TILE SETTERS:					
All commercial work	9.39	.60	.50		
\$1,000,000 and under					
All commercial work over \$1,000,000	10.45	.60	.50		
CARPENTERS:					
All the area west of a straight line from the intersection of Southport Twp. line and Clark Hollow Road to Route 17E to Winter Street, Big Flats, then in a straight line north to the Schuyler County line:					
Carpenters	9.51	.40	1.00		.02
Millwrights and piledriver	9.76	.40	1.00		.02
Heavy and Highway	9.54	.40	1.13	a	.025
Remainder of County:					
Work over \$1,000,000:					
Carpenters	10.52	.35	.50		.04
Millwrights and Pile-drivers					
Work \$1,000,000 and under:	10.77	.35	.50		.04
Carpenters					
Millwrights and Pile-drivers	9.25	.35	.50		.04
Heavy and Highway	9.50	.35	.50		.04
CEMENT MASONS, (HEAVY & HIGHWAY)	10.78	.45	.60	a	.045
ELECTRICIANS	10.60	.60	.50		.05
ELEVATOR CONSTRUCTORS	12.70	1.00	3* .75	b	.025
ELEVATOR CONSTRUCTORS' HELPERS	9.96	.745	.56	c+d	
ELEVATOR CONSTRUCTORS' HELPERS PROBATIONARY	6.97	.745	.56	c+d	.025
	4.98				

DECISION NO. NY79-3032	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GLAZIERS	8.96	.35	.50		.03
IRONWORKERS:					
Structural, Reinforcing, Ornamental, Machinery					
Mover, Rigger, Rodmen, Fence Erector, and Stone Derricks	10.98	.85	1.05		.05
LABORERS, (BUILDING):					
LABORERS	7.97	.45	.30		
LATHERS	10.28	.40	.25	e	.01
LEAD BURNERS	10.75	.40	.25		.01
PAINTERS:					
Brush	8.01	.35	.30		
Paper & Vinyl Hangers	8.36	.35	.30		
Power Grinder with Respirator, Swing Scaffold, Swing Chair					
Boatswain Chair & Toothpick Staging over 25', Structural Scaffold over 39', Spray, Bridges	8.51	.35	.30		
Epoxy - Brush or Roll Spray Epoxy, Bridges - Main Road and Highway	8.26	.35	.30		
Steamcleaning, Sandblasting Acid or Hi pressure water Steeple Jack over 100' & Structural Steel	8.86	.35	.30		
PLUMBERS AND STEAMFITTERS	8.56	.35	.30		
ROOFERS	9.26	.35	.30		
SHEET METAL WORKERS	8.71	.35	.30		
SPRINKLER FITTERS	9.01	.35	.30		
TRUCK DRIVERS, BUILDING	10.40	.60	.85		.10
	10.19	.84	1.00		.07
	9.89	38+.60	.80		.08
	13.29	.75	1.05		
	7.50	f	.30	g	
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

DECISION NO. NY79-3032

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day
E-Thanksgiving Day and F-Christmas Day

FOOTNOTES:

- a. Holidays: Independence Day and Labor Day
- b. Employee shall work 4 hours and receive 8 hours pay on Christmas Eve.
- c. Holidays: A through F.
- d. Employer contributes 8% basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as vacation pay credit.
- e. Holidays: A through F; Washington's Birthday, Good Friday, X-mas Eve, providing employee has worked 30 full days during the 90 calendar days prior to the holidays, and the regular schedule work day immediately preceding and following the holidays.
- f. Employer contributes \$3.40 per day to Health and Welfare.
- g. Holidays: A through F.

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii))."

DECISION NO. NY79-3032		Fringe Benefits Payments			Education and/or Appr. Tr.
Basic Hourly Rates	H & W	Pensions	Vacation		
LABORERS: HEAVY AND HIGHWAY CONSTRUCTION					
9.19	.55	.50	a		
9.39	.55	.50	a		
9.59	.55	.50	a		
9.79	.55	.50	a		

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE:

a. Paid Holidays: A through F, provided the employee has worked the day before and after the holiday.

LABORERS: HEAVY AND HIGHWAY CONSTRUCTION:**CLASS A**

Laborers, drill helpers, flagmen, outboard and hand boats.

CLASS B

Bull float, chain saw, concrete aggregate, bin concrete bootman, gin buggy, hand or machine vibrator, jackhammer, mason tender, mortar mixer, pavement breaker, handlers of all steel mesh, small generators for laborers' tools, installation of bridge drainage pipe, pipelayers, vibrator type rollers, tamper, drill doctor, tail or screw op. on asphalt paver, water pump op. (1½" and single diaphragm), nozzle (asphalt, gunnite, seeding and sandblasting), laborers on chain link fence erection, rock splitter and power unit pusher type concrete saw and all other gas, electric, oil and air tool operators, wrecking laborer.

CLASS C

All rock or drill machine operators (except quarry master and similar type), acetylene torch op., asphalt raker, powderman.

CLASS D

Blasters, form setter, stone or granite curb setters.

DECISION NO. NY79-3032	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION					
Electrical Overhead and Underground Distribution Work:					
Lineman and Technicians	10.50	1.00	38+.75	a	3½
Cable Splicers	13.70	1.00	38+.75	a	3½
Groundman Digging Machine Operator and Groundman Dynamiteman	9.45	1.00	38+.75	a	3½
Groundman Mobile Equipment Operator, Mechanic 1st Class, groundman Truck Driver (tractor trailer units)	8.40	1.00	38+.75	a	3½
Groundman Truck Driver, Driver-Mechanic, Groundman	7.825	1.00	38+.75	a	3½
All Overhead Transmission Line Work and Lighting For Athletic Fields:					
Lineman and Technicians	11.85	1.00	38+.75	a	3½
Groundman Digging Machine Operator, Groundman Dynamiteman	10.665	1.00	38+.75	a	3½
Groundman Mobile Equipment Operator, Mechanic 1st Class, Groundman Truck Driver (tractor Trailer unit)	9.48	1.00	38+.75	a	3½
Groundman Truck Driver, Driver-Mechanic, Groundman (experienced)	8.8875	1.00	38+.75	a	3½
All Pipe Type Cable Installation:					
Lineman and Groundman Equipment Operator	12.45	1.00	38+.75	a	3½
Cable Splicer	13.695	1.00	38+.75	a	3½
Groundman Truck Driver					
Groundman (experienced) Sub-station, Switching Structures (when not part of the line), Traffic	9.3375	1.00	38+.75	a	3½

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POWER EQUIPMENT OPERATORS
BUILDING CONSTRUCTION
GROUP I:

	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
I-A	1.05	1.15	a	.15
I-B	1.05	1.15	a	.15
I-C	1.05	1.15	a	.15
I-D	1.05	1.15	a	.15
I-E	1.05	1.15	a	.15
I-F	1.05	1.15	a	.15
I-G	1.05	1.15	a	.15
I-H	1.05	1.15	a	.15
GROUP II	1.05	1.15	a	.15
GROUP III	1.05	1.15	a	.15
GROUP IV	1.05	1.15	a	.15
GROUP V	1.05	1.15	a	.15
GROUP VI	1.05	1.15	a	.15

FOOTNOTES:

- a. PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day regardless of the day of the week in which the holiday may fall.

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LINE CONSTRUCTION (CONT'D):

Signals, Street Lighting and Electrical, Telephone or CATV Commercial Work: Linemen and Technicians Cable Splicers Groundman Digging Machine Operator, Mechanic 1st Class, Groundman Truck Driver (tractor trailer unit) Groundman Truck Driver, Driver-Mechanic, Groundman dynamiteman, groundman digging machine operator Telephone and other Communication Systems, both overhead and underground: Linemen and Installer Repairmen Splicers Groundman Digging Machine Operator Groundman Groundman Truck Driver Groundman Dynamiteman

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
12.45	1.00	38+.75	a	3½
13.695	1.00	38+.75	a	3½
9.96	1.00	38+.75	a	3½
9.3375	1.00	38+.75	a	3½
11.205	1.00	38+.75	a	3½
8.34	1.00	38+.75	a	3½
8.89	1.00	38+.75	a	3½
7.73	1.00	38+.75	a	3½
5.72	1.00	38+.75	a	3½
6.82	1.00	38+.75	a	3½
6.60	1.00	38+.75	a	3½

Paid Holidays: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; F-Thanksgiving Day; P-Christmas Day.

FOOTNOTES

- a. Paid Holidays: A through F, Washington Birthday, Good Friday, and Election Day for President of the United States and Governor of New York State, provided the employee works the day before and after the holiday.

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appl. Tr.
POWER EQUIPMENT OPERATORS:					
HEAVY & HIGHWAY CONSTRUCTION					
GROUP I	11.58	1.05	.85	a	.15
GROUP II	11.19	1.05	.85	a	.15
GROUP III	10.11	1.05	.85	a	.15
GROUP IV	9.15	1.05	.85	a	.15

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Paid Holidays: A through F, Providing the employee works the day before and the day after the holiday.

POWER EQUIPMENT OPERATORS: HEAVY AND HIGHWAY CONSTRUCTION:

GROUP I - Automated concrete spreader (CMI), automatic fine grade, backhoe (except tractor mounted, rubber tired), belt placer (CMI type), blacktop plant (automated), Cableway, caisson auger, central mix concrete plant (automated), Cherry picker (over 5 tons capacity), concrete pump (8" or over), crane, cranes & derricks (steel erection), dragline, dredge, dual drum paver, excavator (all purpose-hydraulically operated, (gradall or similar), fork lift (factory rated 15 ft. and over), front end loader 4 c.y. and over), head tower (sauearman or equal) hoist (2 or 3 drum), mine hoist, mucking machine or mole, over head crane (gantry or straddle type), piledriver, power grader, quarry master (or equivalent), scraper, shovel, sideboom, slip form paver, tractor drawn belt type loader, truck crane, tunnel shovel.

GROUP II - Backhoe (tractor mounted, rubber tired), bituminous spreader and mixer, blacktop plant (non-automated), blast or rotary drill truck or tractor mounted), boring machine, cage-hoist, central mix plant (non-automated and all concrete batching plants), cherry picker (5 tons capacity and under), compressors (4 or less) exceeding 2000 C.F.M. combined capacity concrete paver (over 16S), concrete pump (under 8"), crusher, diesel

DECISION NO. NY79-3032

POWER EQUIPMENT OPERATORS - BUILDING CONSTRUCTION:

GROUP I - Cranes (cable and hydraulic climbing and tower)

I-A 121 ft. and under
I-B 121 ft. and 151 ft.
I-C 151 ft. and 201 ft.
I-D 201 ft. and 251 ft.
I-E 251 ft. and 301 ft.
I-F 301 ft. and 351 ft.
I-G 351 ft. and 401 ft.
I-H 401 ft. and 451 ft.

GROUP II - Air tugger, derrick, big generator plant, cableway, backhoe, clamshell, dragline, shovel and similar machines over 3/8 cubic yards capacity (factory rating), bridge crane (all types), caisson auger and similar type machine, forklift (with factory rating of 15 ft. or more of lift), hoist (on steel erection), mucking machines, ross carrier (and similar types), three drum hoist (when all three drums are in use)

GROUP III - A frame, backfilling machine, hoist (1 or 2 drums), barber green and similar type machine, maintenance engineer (mechanic), mechanical slurry machines (all kinds), belt crete and similar type machine, bituminous spreading machines, post hole digger, bulldozer, carry all type scraper, core drill, pumps, (regardless of motive power) no more than (4) in number not to exceed 20 inches in total capacity), fine grade and finish rollers, side boom tractor, stone crusher, compressors: 4 not to exceed 2000 cfm, concrete mixer, concrete placer, concrete pumps, tounadozer and similar types, crane hoe shovel 3/8 yds. capacity or less (factory rating), tounapull and similar types, dinky locomotives (all types), tower mobile and similar types, elevating grader, elevator trenching machines, fine grade machines (all kinds), welder, front end loader, forklift, with factory rating of less than 15 feet of lift, well drill, well point system, high pressure boiler.

GROUP IV - Any combination (not to exceed 3 pieces of equipment), welding, machine or mechanical conveyor (over 12 ft. in length), fireman, belt crete generator, mechanical heater, roller (fill & grade), pumps (regardless of motive power) no more than (3) in number, not to exceed twelve inches total capacity, rubber tired tractor, compressor 3 or less, not to exceed 1200 CFM combined capacity, longitudinal float.

GROUP V - Truck Crane

GROUP VI - Master Mechanic

DECISION NO. NY79-3032

POWER EQUIPMENT OPERATORS: HEAVY AND HIGHWAY CONSTRUCTION CONT'D:

GROUP II (CONT'D) - power unit, drill rigs (tractor mounted), front end loader (under 4 c.v.), hi-pressure - boiler (15 lbs. and over), hoist (one drum) Kolman plant loader and similar type loaders locomotive maintenance/engineer/grease man/welder, mixer (for stabilized base self-propelled), monorail machine, plant engineer, pump crete, ready mix concrete plant, refrigeration equipment (for soil stabilization), road widener, roller (all above sub-grade), tractor with dozer and/or pusher, trencher, tugger-hoist, winch, winch cat.

GROUP III - A-frame truck, compressors (4 not to exceed 2000 C.F.M. combined capacity or 3 or less with more than 1200 C.F.M. but not to exceed 2000 C.F.M.), compressors (any size but subject to other welding machines (4 of any type of combination), concrete pavement spreaders and finishers, conveyor, drill-core, drill-well, electric pumps used in conjunction with well point system, farm tractor with accessories, fine grade machine, fork lift (under 15 ft.), gunite machine, hammers (hydraulic-self-propelled), post hole digger and post driver, power sweeper, roller (grade and fill), submersible electric pump (when used in lieu of well point system), tractor with towed accessories, vibratory compactor, vibro tamp, well point.

GROUP IV - Aggregate plant, boiler (used in conjunction with production), cement and bin operator, compressors (3 or less not to exceed 1200 C.F.M. combined capacity), compressor (any size, but subject to other provisions for compressors) dust collectors, generator pumps, welding machines (3 or less of any type or combination), concrete paver or mixer (16S and under), concrete saw (self-propelled), fireman, form tamper, hydraulic pump (jacking system), lighting plants, mulching machine, oiler parapet-(concrete or pavement grinder), power broom (towed), power heat-erman, revinious widener, shell winder, steam cleaner, tractor.

DECISION NO. NY79-3032

TRUCK DRIVERS: HEAVY AND HIGHWAY CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
CLASS 1	9.13	1.01	.75	a	
CLASS 2	9.18	1.01	.75	a	
CLASS 3	9.23	1.01	.75	a	
CLASS 4	9.38	1.01	.75	a	
CLASS 5	9.53	1.01	.75	a	

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE:

a. Paid Holidays: A through F, provided the employee has worked the working day before and after the holiday.

TRUCK DRIVERS: HEAVY AND HIGHWAY CONSTRUCTION:

CLASS 1 - pickups, panel trucks, flatboy material trucks (straight jobs), single axle dump trucks, dumpster, material checkers and receivers, greasers, truck tiremen, mechanic helpers and parts chaser.

CLASS 2 - Tandems, batch trucks, mechanics and dispatcher.

CLASS 3 - Semi-trailers, low-boy trucks, asphalt distributors trucks, agitator, mixer trucks and dumpcrete type vehicles, truck mechanic.

CLASS 4 - Specialized earth moving equipment - euclid type or similar off-highway equipment, where not self loaded, and straddle (cross) carrier.

CLASS 5 - Off-highway tandem back-dump, twin engine equipment and double hitched equipment where not self loaded.

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(ii))."

MODIFICATIONS P. 2

DECISION NO. A279-5100 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
Phoenix Area (Cont'd)	\$17.55	.96	34+.88			3/48
Zone C						
Globe-Miami Area:						
Zone A:	14.49	.60	118			18
Electricians	14.74	.60	118			18
Cable Splicers						
Zone B:	15.23	.60	118			18
Electricians	15.48	.60	118			18
Cable Splicers						
Zone C:	15.86	.60	118			18
Electricians	16.11	.60	118			18
Cable Splicers						
Zone D:	16.61	.60	118			18
Electricians	16.86	.60	118			18
Cable Splicers						
Laborers:						
Central and Southern						
Areas: (See Attached)						
Northern Area:						
(See Attached):						
Tunnel and Shaft						
Work: (See Attached)						
Painters:						
Tucson and Yuma Areas:						
Zone A:	9.96	.77	.45			.06
Brush	10.46	.77	.45			.06
Spray & Sandblasters	10.09	.77	.45			.06
Paperhangers						
Swing Stage, under						
40 ft.:						
Brush	10.26	.77	.45			.06
Spray	10.76	.77	.45			.06
Swing Stage, over						
40 ft.:						
Brush	10.71	.77	.45			.06
Spray	11.21	.77	.45			.06
Structural Steel and						
Tanks:						
Brush	10.96	.77	.45			.06
Spray & Sandblaster	11.46	.77	.45			.06
Zone B:						
Brush	10.71	.77	.45			.06
Spray & Sandblaster	11.21	.77	.45			.06

MODIFICATIONS P. 1

DECISION #A279-5100 - Mod. #7

(44 FR 8482 - February 9, 1979)

Statewide, Arizona

Change:

	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
Carpenters:						
Central and Southern						
Areas:						
Carpenters; Drywall	11.435	\$1.075	\$1.085			.05
Applicators; Saw						
Filers; Shinglers	11.74	1.075	1.085			.05
Floorlayers (finish);	11.88	1.075	1.085			.05
Piledriversmen						
Millwrights						
Northern Area:						
Carpenters; Drywall	13.56	1.075	1.085			.05
Applicators; Saw						
Filers; Shinglers	13.865	1.075	1.085			.05
Floorlayers (finish);	14.005	1.075	1.085			.05
Piledriversmen						
Millwrights						
Cement Masons:						
Apache, Coconino, Gila,						
Mohave, Navajo,						
Yavapai, Yuma and the						
Northern portions of						
Graham, Greenlee,						
Maricopa and Pinal						
Counties:						
Central and Southern						
Areas:						
Cement Masons	11.21	.95	1.30			.05
Concrete troweling						
machine; Sawing						
and scoring ma-						
chine; Curb and						
gutter machine	11.38	.95	1.30			.05
Northern Area:						
Cement Masons	13.085	.95	1.30			.05
Concrete troweling						
machine; Sawing						
and scoring ma-						
chine; Curb and						
gutter machine	13.255	.95	1.30			.05
Electricians:						
Phoenix Area:						
Zone A	14.55	.96	34+.88			3/48
Zone B	16.55	.96	34+.88			3/48

MODIFICATIONS P. 4

DECISION NO. AZ79-5100 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
Structural Steel and Tanks:	\$12.96	.77	.45			.06
Brush						
Spray and Sand-blasters	13.46	.77	.45			.06
Plasterers' Tenders	10.30	.92	1.10			.10
Power Equipment Operators: (Except Piledriving and Steel Erection):						
Central and Southern Areas: (See Attached Northern Area: (See Attached))						
Sheet Metal Workers: Zone Bases: from the Administration Bldg. or City Hall in Douglas and Tucson:						
Zone A	11.42	38+1.14	1.92			.02
Zone B	12.37	38+1.14	1.92			.02
Zone C	13.92	38+1.14	1.92			.02
Sprinkler Fitters: Truck Drivers:	13.76	.75	1.05			.08
Central and Southern Areas: (See Attached Northern Area: (See Attached))						

MODIFICATIONS P. 3

DECISION NO. AZ79-5100 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
Paperhangers Swing Stage, under 40 ft.:	\$10.84	.77	.45			.06
Brush						
Spray	11.01	.77	.45			.06
Swing Stage, over 40 ft.:	11.51	.77	.45			.06
Brush						
Spray	11.46	.77	.45			.06
Structural Steel and Tanks:	11.96	.77	.45			.06
Brush						
Spray and Sandblaster	11.71	.77	.45			.06
Zone C:	12.21	.77	.45			.06
Brush						
Spray and Sandblaster	11.46	.77	.45			.06
Paperhangers	11.96	.77	.45			.06
Swing Stage, under 40 ft.:	11.59	.77	.45			.06
Brush						
Spray	11.76	.77	.45			.06
Swing Stage, over 40 ft.:	12.26	.77	.45			.06
Brush						
Spray	12.12	.77	.45			.06
Structural Steel and Tanks:	12.71	.77	.45			.06
Brush						
Spray and Sand-blasters	12.46	.77	.45			.06
Zone D:	12.96	.77	.45			.06
Brush						
Spray	11.96	.77	.45			.06
Paperhangers	12.46	.77	.45			.06
Swing Stage, under 40 ft.:	12.09	.77	.45			.06
Brush						
Spray	12.26	.77	.45			.06
Swing Stage, over 40 ft.:	12.76	.77	.45			.06
Brush						
Spray	12.71	.77	.45			.06
Brush	13.21	.77	.45			.06
Spray						

MODIFICATIONS P. 5

DECISION NO. AZ79-5100 (Cont'd)

	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
			H & W	Pensions	Vacation		
Laborers:							
Group 1	\$9.06	C&S AREA					
Group 2	9.20	\$10.935	.92	\$1.10			.10
Group 3	9.35	11.075	.92	1.10			.10
Group 4	9.47	11.225	.92	1.10			.10
Group 5	9.65	11.345	.92	1.10			.10
Group 6	10.055	11.525	.92	1.10			.10
Group 7	10.745	11.93	.92	1.10			.10
Tunnel and Shaft Work:		12.62	.92	1.10			.10
Group 1	9.325	11.20	.92	1.10			.10
Group 2	9.50	11.375	.92	1.10			.10
Group 3	9.64	11.515	.92	1.10			.10
Group 4	10.03	11.905	.92	1.10			.10
Group 5	10.225	12.10	.92	1.10			.10
Group 5-A	10.495	12.37	.92	1.10			.10
Power Equipment Operators: (Except Piledriving and Steel Erection):							
Group 1	9.66	11.535	1.10	1.10			.08
Group 2	10.06	11.935	1.10	1.10			.08
Group 3	10.55	12.425	1.10	1.10			.08
Group 4	11.13	13.005	1.10	1.10			.08
Group 5	11.70	13.575	1.10	1.10			.08
Group 5-A	12.03	13.905	1.10	1.10			.08
Group 6	12.39	14.265	1.10	1.10			.08
Group 7	13.04	14.915	1.10	1.10			.08
Truck Drivers:							
Group 1	9.23	11.105	.92	1.10			.08
Group 2	9.37	11.245	.92	1.10			.08
Group 3	9.61	11.485	.92	1.10			.08
Group 4	9.99	11.865	.92	1.10			.08
Group 5	10.16	12.035	.92	1.10			.08
Group 5-A	10.36	12.235	.92	1.10			.08
Group 6	10.51	12.385	.92	1.10			.08
Group 7	10.95	12.825	.92	1.10			.08
Group 8	11.505	13.38	.92	1.10			.08
Group 8-A	12.21	14.085	.92	1.10			.08
Group 8-B	9.84	11.715	.92	1.10			.08
Group 8-C	11.88	13.755	.92	1.10			.08

MODIFICATIONS P. 6

DECISION NO. AZ79-5100 (Cont'd)

	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
			H & W	Pensions	Vacation		
Omit:							
Asbestos Workers Bricklayers: (Tucson Area):	\$11.94		.50	\$1.20			.02
Bricklayers: Stone-masons:							
Zone A: 0-15 miles from Tucson City limits	11.22		1.00	.90			.06
Zone B: Over 15 miles to 30 miles from Tucson City limits							
Zone C: Over 30 miles to 40 miles from Tucson City limits	11.59		1.00	.90			.06
Zone D: Over 40 miles from Tucson City limits	11.96		1.00	.90			.06
Manhole Builders: Zone A: 0-15 miles from Tucson City limits	12.72		1.00	.90			.06
Zone B: Over 15 miles to 30 miles from Tucson City limits	11.47		1.00	.90			.06
Zone C: Over 30 miles to 40 miles from Tucson City limits	11.84		1.00	.90			.06
Zone D: Over 40 miles from Tucson City limits	12.21		1.00	.90			.06
Cement Masons: Cochise, Pima, Santa Cruz and the Southern portions of Graham, Greenlee, Maricopa, and Pinal Counties; Central and Southern Areas:	12.97		1.00	.90			.06
Cement Masons	10.22		.85	.85			.05

MODIFICATIONS P. 7

DECISION NO. AZ79-5100 (Cont'd)

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
Concrete troweling machine; sawing and scoring machine; Curb and gutter machine	.85	.85		.05
Drywall: From Court House in Phoenix, Mesa, including Luke and Williams Air Force Bases:				
Tapers:				
Zone A: 0-40 miles	10.21	.50		.07
Zone B: 41-60 miles	11.21	.50		.07
Zone C: 61 miles and over	12.46	.50		.07
Texture Spraymen:				
Zone A: 0-40 miles	9.81	.50		.07
Zone B: 41-60 miles	10.81	.50		.07
Zone C: 61 miles and over	12.06	.50		.07
Electricians: (Gallup Area - Apache County north of Hwy. #66):				
Electricians	14.10	3¢+.70		1/2¢
Cable Splicers	14.69	3¢+.70		1/2¢
Soft Floor Layers: (Phoenix Area):				
Zone A: 0-40 miles from Court House in Phoenix and Flagstaff including Luke and Williams Air Force Bases	9.21	.12		.12
Zone B: 41-60 miles from Court House in Phoenix and Flagstaff	10.21	.12		.12
Zone C: 61 miles and over from Court House in Phoenix and Flagstaff	10.71	.12		.12
(Tucson Area)	9.25	.38		

MODIFICATIONS P. 8

DECISION NO. AZ79-5100 (Cont'd)

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
Add: Asbestos Workers: Zone 1: Area lying within 15 miles radius from the City Hall in Phoenix or Tucson	.82	\$1.30		.03
Zone 2: Area lying beyond the limits of Zone 1 and within 30 miles radius from the City Hall in Phoenix or Tucson	.82	1.30		.03
Zone 3: Area lying beyond the limits of Zone 2 and within 40 miles radius from the City Hall in Phoenix or Tucson	.82	1.30		.03
Zone 4: Area lying beyond the limits of Zone 3 and within 50 miles radius from the City Hall in Phoenix or Tucson	.82	1.30		.03
Zone 5: Area lying beyond the limits of Zone 4	.82	1.30		.03
Bricklayers: Cochise, Graham County (Southern part), Greenlee County (Southern part), Pima, Pinal County (southern part), Santa Cruz Counties:				
Zone A: 0-15 road miles from Tucson	15.54	1.30		.03
City limits: Bricklayers; Stonemasons Manhole Builders	17.69	1.30		.03
	11.96	1.00	.95	.06
	12.21	1.00	.95	.06

MODIFICATIONS P. 12

DECISION NO. AZ79-5104 (Cont'd)

Change:
Asbestos Workers:

Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
	H & W	Pensions	Vacation		
Change:					
Asbestos Workers:					
Zone 1	\$14.19	.82	\$1.30		.03
Zone 2	14.89	.82	1.30		.03
Zone 3	15.09	.82	1.30		.03
Zone 4	15.54	.82	1.30		.03
Zone 5	17.69	.82	1.30		.03
Boilermakers	14.36	1.175	1.00	1.00	.03
Bricklayers; Stonemasons:					
Zone A	11.96	1.00	.95		.06
Zone B	12.33	1.00	.95		.06
Zone C	12.71	1.00	.95		.06
Zone D	13.46	1.00	.95		
Carpenters:					
Carpenters; Drywall	11.435	1.075	1.085		.05
Applicator					
Piledrivermen; Floor	11.74	1.075	1.085		.05
Layers (finish)	11.88	1.075	1.085		.05
Millwrights	11.44	.92	1.10		
Cement Masons					
Electricians:					
Zone A	10.63	.60	3%		1/2%
Zone B	11.17	.60	3%		1/2%
Zone C	11.71	.60	3%		1/2%
Zone D	12.25	.60	3%		
Laborers:					
Group 1	9.06	.92	1.10		.10
Group 2	9.20	.92	1.10		.10
Group 3	9.35	.92	1.10		.10
Group 4	9.47	.92	1.10		.10
Group 5	9.65	.92	1.10		.10
Group 6	10.055	.92	1.10		.10
Group 7	10.745	.92	1.10		.10
Lathers:					
South of a line					
crossing the State					
drawn through Ajo,					
Randolph and					
Springerville:					
Zone A	12.53	.50			
Zone B	13.03	.50			
Zone C	13.28	.50			
Zone D	14.03	.50			

Omit:
Painters:
Zone A: 0-30 miles
from Tucson Post
Office:
Brush
Structural Steel,
brush
Zone B: 31-40 miles
from Tucson Post
Office:
Brush
Structural Steel,
brush

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
Plasterers' Tenders	\$10.30	.92	\$1.10		
Power Equipment Operators: (Except Piledriving and Steel Erection):					
Group 1	9.66	1.10	1.10		.08
Group 2	10.06	1.10	1.10		.08
Group 3	10.55	1.10	1.10		.08
Group 4	11.13	1.10	1.10		.08
Group 5	11.70	1.10	1.10		.08
Group 5-A	12.03	1.10	1.10		.08
Group 6	12.39	1.10	1.10		.08
Group 7	13.04	1.10	1.10		.08
Group 7	10.87	.69	.12		.12
Soft Floor Layers					
Truck Drivers:					
Group 1	9.23	.92	1.10		.08
Group 2	9.37	.92	1.10		.08
Group 3	9.61	.92	1.10		.08
Group 4	9.99	.92	1.10		.08
Group 5	10.16	.92	1.10		.08
Group 5-A	10.36	.92	1.10		.08
Group 6	10.51	.92	1.10		.08
Group 7	10.95	.92	1.10		.08
Group 8	11.505	.92	1.10		.08
Group 8-A	12.21	.92	1.10		.08
Group 8-B	9.84	.92	1.10		.08
Group 8-C	11.88	.92	1.10		.08
Omit:					
Painters:					
Zone A: 0-30 miles from Tucson Post Office:					
Brush	9.71	.67	.40		.06
Structural Steel, brush	10.71	.67	.40		.06
Zone B: 31-40 miles from Tucson Post Office:					
Brush	10.46	.67	.40		.06
Structural Steel, brush	11.46	.67	.40		.06

MODIFICATIONS P. 14

DECISION NO. A279-5104 (Cont'd)

Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
	H & W	Pensions	Vacation		
Zone C: 41-50 miles from Tucson Post Office: Brush Structural Steel, brush Zone D: 51 miles and over from Tucson Post Office: Brush Structural Steel, brush Sheet Metal Workers: Zone A: 0-22 miles from Tucson Zone B: 22-45 miles from Tucson Zone C: Over 45 miles from Tucson Add: Painters: Zone A: 0-30 paved road miles from Stone and Congress in Tucson: Brush Structural Steel, brush	\$11.21 12.21 11.71 12.71 10.30 11.25 12.80	.67 .67 .67 .67 38+1.14 38+1.14 38+1.14	.40 .40 .40 .40 1.91 1.91 1.91		.06 .06 .06 .06 .04 .04 .04
	9.96 10.46	.77 .77	.45 .45		.06 .06

MODIFICATIONS P. 13

DECISION NO. A279-5104 (Cont'd)

Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
	H & W	Pensions	Vacation		
Zone B: 31-40 paved road miles from Stone and Congress in Tucson: Brush Structural Steel, brush Zone C: 41-50 paved road miles from Stone and Congress in Tucson: Brush Structural Steel, brush Zone D: 51 paved road miles and over from Stone and Congress in Tucson: Brush Structural Steel, brush Sheet Metal Workers: Zone A: 0-22 radius miles from Tucson City Hall or Douglas City Hall Zone B: 22-45 radius miles from Tucson City Hall or Douglas City Hall Zone C: Beyond 45 radius miles from Tucson City Hall or Douglas City Hall; also San Manuel and vicinity	\$10.71 11.21 11.46 11.96 11.96 12.46 11.42 12.37 13.92	.77 .77 .77 .77 .77 .77 38+1.14 38+1.14 38+1.14	.45 .45 .45 .45 .45 .45 1.92 1.92 1.92		.06 .06 .06 .06 .06 .06 .02 .02 .02

DECISION #CO79-5116-Mod. #3 (44 FR 29237 - May 18, 1979) Statewide, Colorado	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
Change: <u>Electricians:</u> Delta, Dolores, Garfield, Gunnison, Hinsdale, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt, San Juan, and San Miguel Counties: Electricians Cable Splicers	\$12.85 13.10	.72 .72	38+.25 38+.25			1½% 1½%
DECISION #CO79-5118-Mod. #3 (44 FR 34724 - June 15, 1979) El Paso County, Colorado Change: <u>Roofers</u>	10.65	.59	.40			
DECISION #CO79-5119-Mod. #3 (44 FR 34728 - June 15, 1979) Delta, Garfield, Gunnison Mesa, Montrose and Pitkin Counties, Colorado Change: <u>Electricians:</u> Electricians Cable Splicers	12.85 13.10	.72 .72	38+.25 38+.25			1½% 1½%

DECISION NO. DE78-3080 - MOD. #7 (42 FR 51567 - November 3, 1978) State of Delaware	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
Change: CARPENTERS-BUILDING AND HEAVY CONSTRUCTION: New Castle and Kent Counties	\$10.80	1.29	1.40		.02
CARPENTERS - HIGHWAY CONSTRUCTION: New Castle and Kent Counties	9.20	1.29	1.40		.02
CEMENT MASONS: Building Construction Heavy and Highway Construction	10.05	1.28	.82		
LABORERS-BUILDING CONSTRUCTION: Kent and Sussex Counties: Group 1	8.80	.90	.80		
Group 2	9.05	.90	.80		
Group 3	9.30	.90	.80		
Group 4	9.40	.90	.80		
Group 5	10.05	.90	.80		
LABORERS-HEAVY CONSTRUCTION: Kent and Sussex Counties: Common laborers, land- scapers, planters, seeders, aborists, asphalt tamers, rakers, concrete pitman, puddlers, rubber magazine tenders, railroad track- men, signal men	5.55 5.70	.90 .90	.80 .80		
Pipelayers Wagon drill, diamond point drill, gunite nozzlemen, form setters, blasters, caissons & coffer dams (open-air, below 8')		.90	.80		

MODIFICATIONS P. 17

DECISION NO. DE78-3080 -
(CONT'D)

PAINTERS:

Base Rate
Structural steel and
suspended scaffolding
(swing, chair, and window
belts)
Machine taping
Bridges (if surface to be
painted is 50' or more
above ground or water)
and/or cabled scaffolding
Tank (if exposed to the
weather and is used for
storage or processing
purposes with a capacity
of 5,000 gallons or more
using exterior dimensions
and/or interior work on
all tanks), sandblasting,
and spray
Height pay - Work 75' or
more from surface an
additional 55¢ shall be
paid above the applicable
rate

PLUMBERS AND STEAMFITTERS:

New Castle and Kent
(north of the southern
boundary of Dover City)
Counties:
Plumbers
SOFT FLOOR LAYERS:
New Castle and Kent
Counties

Decision # FL79-1064 Mod #3
(44 FR-22308- April 13, 1979,
Orange County, Florida

Change:

Bricklayers:
Bricklayers
Stonemasons
Marble masons
Plasterers
Cement masons

Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
	H & W	Pensions	Vacation		
10.27	1.00	.55			.01
10.49 10.77	1.00 1.00	.55 .55			.01 .01
12.60	1.00	.55			.01
10.82	1.00	.55			.01
13.64	1.25	1.10	1.00		.10
10.30	1.29	1.40			.02
9.70 9.70 9.70 9.70 9.70	.50 .50 .50 .50 .50	.40 .40 .40 .40 .40			.04 .04 .04 .04 .04

MODIFICATIONS P. 18

Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
	H & W	Pensions	Vacation		
Decision # FL79-1094 Mod. #1 (44 FR-33328 June 8, 1979) Dade County, Florida Change: Bricklayers Cement Masons	10.90 10.90	.70 .70	.62 .62		.07 .07
Decision #MS79-1119 Mod #2 (44 FR 48367-August 17, 1979) Hancock, Harrison, Jackson, and Pearl River Counties, Mississippi. Change: Laborers: Asphalt rakers, Mason ten- ders, Mortar mixers, pipelayers, pipe wrappers, post hole digger, plas- teters tenders	5.95 6.10	.20 .20	.20 .20		.05 .05
DECISION #NV79-5107-Mod. #4 (44 FR 13225 - March 9, 1979) Nevada Test Site in- cluding Tonopah Test Range in Clark, Lincoln and Nye Counties, Nevada Change: Bricklayers Cement Masons: Cement Masons Floor Finishing Machine Electricians: Groundman Truck Drivers: H & W should read \$0.57	\$13.87 12.40 12.75 11.90	.90 1.00 1.00 .98	.60 1.00 1.00 38+1.80		.06 .08 .08 .05

MODIFICATIONS P. 19

DECISION NO. NJ78-3047 - MOD. #8 (43 FR 26235 - June 16, 1978) Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean, and Salem Counties, New Jersey	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
Change: ELECTRICIANS & CABLE SPLICERS: Zone 2 Zone 3 Zone 4 IRONWORKERS-STRUCTURAL, ORNAMENTAL AND REINFORCING: Zone 2 Zone 2 LINE CONSTRUCTION: Zone 2 Linemen, Cable Splicers, Truck Drivers, Equipment Operators & Technicians Groundmen & Winch Operators Zone 3 Linemen Groundmen & Winch Operators Zone 4 Linemen Line Digger Truck Drivers Groundmen PAINTERS: Zone 5 General Painting Spray, special material, and blasting Repainting work except bridges, tanks, towers, all other open structural steel, and power plants	14.64 13.63 13.23 11.53 14.64 11.71 13.23 10.78 13.23 8.76 9.91 9.75 11.30 8.75	7% 7% 7% 1.24 7%			

MODIFICATIONS P. 20

DECISION NO. NJ78-3047 (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
PLUMBERS & PIPEFITTERS: ZONE 1 ROOFERS: Zone 4: Composition, Water- proofing, slate, and Asphalt Shingle	12.35 12.62	.52 1.33	.52 .80	1.00	.10	
Change: AREA COVERED BY PLUMBERS AND PIPEFITTERS ZONES: Zone 3: Burlington (remainder of county), Mercer (exclud- ing Hopewell and Hopewell Twp.), Monmouth, and Ocean (remainder of county) Counties						
DECISION NO. NJ79-3013 - MOD. #1 (44 FR 36661 - June 22, 1979) Atlantic County, New Jersey						
Change: ELECTRICIANS: All other residential construction: That portion south west of a line following the White Horse Pile (US Hwy. #30) in a south- easterly direction from Camden County to the Mays Landing DaCosta Road, continuing south along that river to the Great Egg Harbor River near Weymouth along that river to the Harding Highway to the Mays land- ing Tuckahoe Road south on that road to the north limits of county IRONWORKERS PLUMBERS & PIPEFITTERS SHEET METAL WORKERS	13.23 12.53 12.35 13.14	7% 1.24 .52 1.14	3%+1.10 2.86 .52 .96	1.00	.04 .10 .04	

MODIFICATIONS P. 21

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #NC78-1061-MOD. # 2 (43 FR-29463-July 7, 1978) Statewide, North Carolina Omit: Power Equipment Operators: Asphalt finisher	5.25				
DECISION #ND78-5125 -Mod. #3 (43 FR 43222-September 22, 1978) Statewide, North Dakota Change: Truck Drivers: Single Axle Tandem Agitator Dumpcrete; Off Road Heavy End Dumps, 20 yards and under; Tandem Semi, Lowboy Euclid, over 20 yards	7.36 7.46 7.73 8.41	.65 .65 .65 .65	.35 .35 .35 .35		
DECISION #ND79-5128-Mod. #1 (44 FR 45856 - August 3, 1979) Burleigh, Cass, Grand Forks, Morton, Richland, Steele, Walsh and Ward Counties, North Dakota Change Truck Drivers: Site Preparation, Excavation, and In- cidental Paving: Single Axle Tandem Agitator Dumpcrete; Off Road Heavy End Dumps, 20 yards and under; Tandem Semi, Lowboy Euclid, over 20 yards	\$7.36 7.46 7.73 8.41	.65 .65 .65 .65	.35 .35 .35 .35		

(FR Doc. 79-31382 Filed 10-11-79; 8:45 am)

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United States Forest Service Federal Register

Friday
October 12, 1979

Part IV

Department of the Interior

Fish and Wildlife Service

Endangered Species Scientific Authority

American Alligator; Changes to Special
Rule; Final 1979 Export Findings

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 17

Changes to the Special Rule Concerning the American Alligator

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The special rule concerning the American alligator, *Alligator mississippiensis*, found at § 17.42(a) is revised to allow the limited commercial export and import of lawfully taken American alligator hides and manufactured products from those hides in accordance with the Convention on International Trade in Endangered Species of Wild Fauna and Flora (hereinafter referred to as the Convention or by the acronym CITES). The sale of meat and other parts, except hides, from lawfully taken American alligators is allowed only in the State where the taking occurs, if these activities are authorized by State law and conducted in accordance with State laws and regulations. Foreign buyers, tanners, and fabricators who want to engage in their respective activities with hides of lawfully taken American alligators are required to obtain a buyer, tanner, or fabricator permit issued under the special rule. Foreign applicants for such permits are subject to more stringent applicant requirements than domestic applicants. Additional special conditions, including recordkeeping and reporting requirements, have been added to buyer, tanner, or fabricator permits. American alligators classified under § 17.11 as "in captivity wherever found" have been included within the coverage of the special rule. Permits to engage in any of the activities otherwise prohibited by the special rule are no longer available under § 17.52 for such alligators. Instead, a permit issued under authority of the special rule is available. Finally, the exception provided for taking American alligators in self-defense has been deleted in favor of the more liberal defense found in the Endangered Species Act of 1973, as amended (hereinafter referred to as the Act).

DATES: This rule is effective October 12, 1979.

FOR FURTHER INFORMATION CONTACT: Marshall L. Stinnett, Special Agent in Charge, Regulations and Penalties, Division of Law Enforcement, P.O. Box 19183, Washington, D.C. 20036, (202) 343-9242, or Mr. Harold J. O'Connor,

Acting Associate Director-Federal Assistance, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (202) 343-4646.

SUPPLEMENTARY INFORMATION:**Background**

On October 2, 1978 (43 FR 45513), the U.S. Fish and Wildlife Service published proposed amendments to the special rule concerning the American alligator. Briefly, the Service proposed to amend the special rule (1) to simplify application procedures for those persons seeking buyer's, tanner's, or fabricator's permits, (2) to allow the sale of meat from lawfully taken alligators in the State where the taking occurs, and (3) to limit the applicability to American alligators of general permits pertaining to threatened wildlife issued under § 17.32. The Service would have allowed the import and export of American alligators only if those activities were consistent with the CITES.

Subsequently, on July 18, 1979 (44 FR 41894), the Service proposed to revise the special rule in response to changes affecting the domestic and international protection afforded the American alligator. Domestically, the number of parishes in Louisiana in which the American alligator could be lawfully taken from the wild was increased to twelve. See 44 FR 37131 (June 25, 1979); correction made 44 FR 42911 (July 20, 1979). Internationally, the American alligator's status under the CITES was changed to allow the resumption of international trade. See 44 FR 25480, (May 1, 1979).

The Service proposed a worldwide "closed system" wherein only permittees may engage in commercial activity with hides of lawfully taken American alligators until an engraved label provided by the Service is affixed by the fabricator to manufactured products made from those hides. Once marked, buyers and sellers would not be required to obtain a Federal permit to buy, sell, or transfer such marked products in interstate or foreign commerce. However, the export and import of lawfully taken American alligator hides and manufactured products from those hides would have to be conducted in accordance with the Convention.

Authorization to conduct a controlled harvest of American alligators in the State of Louisiana in those twelve parishes in which the American alligator is listed under § 17.11 as threatened—similarity of appearance and to sell the meat or other parts, except hides, from those lawfully taken American alligators only within the State of Louisiana

subject to the laws and regulations of that State was promulgated on September 6, 1979 (44 FR 51980). The details of other aspects of the proposal may be obtained by consulting the Federal Register of July 18, 1979 (44 FR 41894).

Summary and Analysis of Comments

Both proposals (October 2, 1978, 43 FR 45513; and July 18, 1979, 44 FR 41894) and related Department of the Interior news releases (September 28, 1978, and July 20, 1979) invited comments. The Service also requested comments during a reopened comment period from May 10, 1979, through June 5, 1979 (May 9, 1979, 44 FR 27190), and received comments at public hearings held on May 25, 1979, at Morgan City, Louisiana, and on May 29, 1979, at Tallahassee, Florida.

The Service received a number of comments. Among these were included comments from the following elected officials, governmental agencies, or organizations: Governor Edwin Edwards (State of Louisiana), Congressman David C. Treen (Third District, Louisiana), Louisiana Wild Life and Fisheries Commission (Donald F. Wille and J. Burton Angelle), Louisiana Wild Life and Fisheries Commission—Rockefeller Wildlife Refuge (Ted Joanen), Little Pecan Wildlife Management Area (Robert A. Koll), Jefferson Davis Parish Police Jury, Terrebonne Parish Police Jury, Florida Game and Fresh Water Fish Commission (Col. Robert Brantly), South Carolina Wildlife and Marine Resources Department (James A. Timmerman, Jr.), International Association of Fish and Wildlife Agencies (Jack H. Berryman), Southeastern Association of Fish and Wildlife Agencies—Alligator Committee (J. Burton Angelle), Food and Agriculture Organization of the United Nations—Project on Assistance to the Crocodile Skin Industry (R. Whitaker), Environmental Defense Fund (Michael J. Bean), Defenders of Wildlife (John W. Grandy, IV), Florida Audubon Society (Dr. Archie Carr, III), National Wildlife Federation (Thomas L. Kimball), Southeastern Alligator Association (J. Don Ashley), Southwest Florida Regional Alligator Association (George R. Campbell), Columbia Impex Corporation (Armand S. Bennett), Westchester Animal Protection League (Stephan Zebreck), Sympathetic People for Animal Rights on Earth, Inc. (Laura Bellow), Fouke Company (George G. Heinz), J. M. Burguières, Co., Ltd., (Samuel T. Burguières), Ascantia, Inc. (Michael H. Ellis), Williams, Inc. (Hugh C. Brown), and Deseret Ranches of Florida, Inc. (Harvey A. Dahl).

At Morgan City, Louisiana, approximately 200 persons attended the public hearing and 19 people made statements. In addition, a number of written comments and resolutions were presented for inclusion in the minutes of the public hearing. The following institutions and governmental representatives made statements: Mr. Richard Yancey (Assistant Secretary, Louisiana Department of Wild Life and Fisheries), State Senator Jesse Knowles, Doyle Berry (Chairman, Louisiana Wild Life and Fisheries Commission), Don Wille (Vice Chairman, Louisiana Wild Life and Fisheries Commission), Charles A. Riggs (Commissioner, Louisiana Wild Life and Fisheries Commission), St. Mary's Parish Police Jury, Terrebonne Parish Policy Jury, Tangipahoa Parish Police Jury, Livingston Parish Policy Jury, Williams Inc., Continental Land and Fur Co., Ascantia Corp., Tenneco LaTerre, Allen Parish Police Jury, St. Landry Parish Policy Jury, Vermillion Corp., St. John the Baptist Parish Police Jury, Louisiana Land Exploration Corp.

At Tallahassee, Florida, 15 persons attended the public hearing and four made statements: Allan Egbert and Tommy Hines (Florida Game and Fresh Water Fish Commission), J. Don Ashley (Southeastern Alligator Association), Mr. Charles Lee (Florida Audubon Society).

The Service has carefully considered all of these comments and statements. Those received on the controlled harvest of American alligators in Louisiana and the sale of meat or other parts, except hides, were summarized and discussed on September 6, 1979 (44 FR 51980), and will not be repeated. Aspects of the latest proposal (July 18, 1979, 44 FR 41894) on which relevant comments and statements have been received during open comment periods or at public hearings since October 2, 1978, are addressed separately below.

1. *American alligators in captivity.* Several commenters expressed dissatisfaction with the Service's proposed handling of American alligators classified under § 17.11 as "in captivity wherever found." The Service proposed to: (1) allow the taking of American alligators in captivity which meet the definition of "bred in captivity" without the prior grant of a Federal permit, subject to enumerated requirements, (2) eliminate the availability of permits issued under § 17.52 (Permits—similarity of appearance), and (3) require a permit issued under § 17.32 (Permits—general) to either take captive American alligators which have not been bred in captivity or to engage in any other

prohibited activity, except taking, with any American alligators in captivity.

Although these changes would have provided more flexibility in the administration of American alligator farm programs, such provisions might adversely affect Louisiana's State-sponsored alligator farm program and any subsequent State-sponsored programs. The definition of "bred in captivity" also contained provision for augmenting the captive population from the wild, without designating who will determine when the guidelines for such augmentation have been met. Initially, a substantial number of American alligators within a farming/propagation program would not be bred in captivity and the contemplated use of these alligators would not fall within the purposes for which a permit may be issued under § 17.32.

As a result the Service has deleted the definition "bred in captivity" and removed authorization to take American alligators bred in captivity without the prior grant of a Federal permit. The Service will continue to require a permit to engage in otherwise prohibited activities, including taking, with any American alligators in captivity. Permits for these alligators are available only under the special rule, § 17.42(a). These permits may authorize commercial activity with all captive alligators and will not restrict the use of a portion of the captive population to purposes for which a permit may be issued under § 17.32.

One commenter took exception to the classification of a population of American alligators as "in captivity wherever found." Although the current classification is not a topic of this rulemaking, permits to engage in otherwise prohibited activities with captive American alligators would be subject to stricter control under § 17.42(a) than previously, when permits were available under § 17.52. The Service recognizes that captivity must occur lawfully, and in addition, will only issue permits when American alligators have been born in captivity, or lawfully placed in captivity.

2. *Sale of American alligator meat and other parts, except hides.* Numerous commenters suggested or supported authorization to sell the meat and other parts of American alligators taken lawfully, including from captivity to prevent the wasting of a valuable resource. For this reason the Service has included provisions to allow such sale whenever American alligators are taken lawfully, subject to the same restrictions imposed by the special rule on the sale of meat and other parts from American alligators taken lawfully during

Louisiana's controlled harvest. See 44 FR 51980 (September 6, 1979). The sale of these items is allowed only in the State where the taking occurs, if authorized by State law and conducted in accordance with State laws and regulations.

Also, States which may subsequently be given authority to conduct a controlled harvest now can be assured of having the opportunity to allow the sale of meat and other parts within the State. Although the Service has not required any particular form of State regulation, the Service remains opposed to unregulated sale. Licensing and recordkeeping requirements imposed by the State of Louisiana, for example, have facilitated effective enforcement with respect to the sale of meat and other parts within Louisiana. The Service will continue to review the measures adopted by States to control the sale of meat and other parts and, if necessary, will require the imposition of certain regulatory controls.

3. *Export.* A number of comments addressed, either directly or indirectly, the proposed export findings of the U.S. Endangered Species Scientific Authority (hereinafter referred to as the ESSA) for the export of lawfully taken American alligator hides (May 31, 1979, 44 FR 31584; and August 13, 1979, 44 FR 47386), which would allow export only to licensed buyers, tanners, or fabricators located in countries which have ratified the CITES and which have not taken reservations for any crocodilians. No such status restriction was proposed by the Service. In its place a highly regulated "closed system" has been adopted by the Service, which does not exclude a buyer, tanner, or fabricator who uses crocodilians listed on Appendix I of the Convention, but does impose additional recordkeeping and reporting requirements on such a permittee. The "closed system" is discussed at greater length below.

One commenter suggested a three to six month moratorium on the exportation of American alligator hides during which domestic tanners and fabricators can "gear up" to meet foreign competition. Since three parishes in Louisiana were classified as threatened—similarity of appearance on September 26, 1975 (40 FR 44412), only a domestic market has existed. American alligators were not eligible to be commercially traded in foreign commerce until the alligator's status under the CITES was changed from Appendix I to Appendix II on June 28, 1979 (44 FR 25480, May 1, 1979). This transfer was proposed on February 14, 1979 (44 FR 9689). Ample notice of the

possibility of foreign competition has been given to domestic tanners and fabricators.

4. *Permits.* The worldwide "closed system" proposed by the Service and the effect of this international commercialization of lawfully taken American alligator hides and products from these hides generated the greatest number of comments.

One commenter felt the proposal would be likely to stimulate an increased worldwide demand for American alligator hides, which may outstrip the legally available supply. The same commenter went on to ask whether law enforcement measures are adequate to protect the wild resource (i.e., American alligator) and whether the proposed "closed system" regulatory scheme, with its onsite inspection program, is enforceable. The Service has made every effort through tagging, labeling, marking, recordkeeping, reporting, and inspection requirements to insure that trade in American alligators will be restricted to permittees operating in strict compliance with the special rule. The fact that the American alligator is exclusively a U.S. species, that its numbers appear to be on the increase, and that at least some geographic populations are neither biologically threatened or endangered indicate the Service's approach is a sound one. Only lawfully taken American alligator hides should enter the system, and only products from those hides should leave it.

Several general factors recently summarized by the ESSA on May 31, 1979 (44 FR 31586), also indicate that the export of lawfully taken American alligator hides will not be detrimental to the survival of the species: (1) the excessive harvest of the American alligator which occurred in past years has given way to sound management of the species, (2) domestic trade has come under increased Federal control, and (3) the species has responded well to increased protection.

Several commenters found the proposal overzealous and restrictive because of the institution of extensive recordkeeping requirements, the inclusion of fabricators within the "closed system," and the imposition of more stringent application criteria on foreign applicants. The Service disagrees. Recordkeeping and reporting requirements are an integral part of enforcement and monitoring. Reports are to be used to assess compliance with the regulations, to determine the effectiveness of the regulations, and to monitor the impact of the special rule on the American alligator and other affected species of the Order Crocodilia.

The Service will periodically review implementation of these regulations, including the reports from permittees, and will impose, if necessary, additional conditions on permits issued pursuant to these regulations to insure that trade in American alligators and other species of the Order Crocodilia is effectively controlled in accordance with existing law. The Service hopes the availability of lawfully taken American alligators will result in less exploitation of other endangered crocodilians, particularly when a reliable long-term supply of American alligators is foreseeable.

To determine the impact the introduction of American alligators will have on international trade in endangered crocodilians, the Service is requiring a report on the applicant's dealings during the preceding five years with those crocodilians listed on Appendix I of the CITES to the extent such records are available, as one of the application requirements for a buyer, tanner, or fabricator permit.

One commenter felt the imposition of recordkeeping and reporting requirements would impede international trade in American alligators because such information could be considered a trade secret. Indeed, the most significant impact will be on buyers, tanners, or fabricators located outside of the United States who are engaged in high volume trade in crocodilians. Because of their high volume trade in other crocodilians they have a greater opportunity to commingle American alligator hides and products with those of other crocodilians. However, any trade secrets submitted by an applicant or permittee are protected by existing Federal law. See 18 USC 1905 and 5 USC 552.

Fabricators are an integral part of the "closed system" and must continue to hold a valid Federal permit to fabricate tanned American alligator hides. If fabricators are excluded from the permit system several weaknesses develop: (1) the United States would not have jurisdiction over the activities of foreign fabricators, (2) there would be no way to document the relationship of American alligator hides processed to finished American alligator products, and (3) no authority would exist to require a fabricator to mark products.

More stringent application requirements are imposed on foreign applicants as part of the expansion of the domestic "closed system" worldwide. To insure jurisdiction over foreign permit holders they are required to appoint an agent for the service of process and to identify any property held in the United States. Before a buyer, tanner, or fabricator permit is

issued to a foreign applicant the Director will consider the opinions and views of the ESSA. Foreign permittees will be subject to permit revocation and other applicable sanctions of the Act for violation of permit conditions.

Several commenters found the recordkeeping requirements insufficient. The Service agrees and has adopted *species-specific* recordkeeping for transactions with other species of the Order Crocodilia. Permittees, however, are only required to report on transactions with American alligators and other species of the Order Crocodilia listed on Appendix I of the CITES. This should reduce the reporting burden on permittees, yet provide the Service with information on the permittee's activities most subject to scrutiny. If additional records must be reviewed they can be inspected at the permittee's premises under § 13.47.

The Service has not adopted suggestions to impose a special condition on buyer, tanner, or fabricator permits which either would require buyers, tanners, or fabricators to be located in countries which have ratified the CITES and not taken reservations for any crocodilians, or would limit, and perhaps cease, a permittee's use of Appendix I crocodilians. The Service has adopted a special condition requiring permittees to abide by any State, Federal, or foreign laws concerning any hide, part, or product of any species of the Order Crocodilia. Voluntary submission by an applicant to the permit conditions and the jurisdiction of the United States is sufficient. Any additional restrictions on the lawful use of crocodilians would operate in the nature of a penalty for actions which are otherwise lawful.

Description of the Final Rule

The primary purpose of this rule, as described above, is to expand worldwide the domestic "closed system" of trade in lawfully taken American alligator hides and products from those hides created by the special rule, with adjustments to take into account changed circumstances.

The Service has accomplished this by: (1) indicating which American alligators are covered by the special rule and the conditions under which they are available, (2) authorizing the export and import of qualified hides and products in accordance with the CITES, and (3) allowing foreign buyers, tanners, and fabricators entry into the highly regulated "closed system."

The final rule contains the provisions enumerated below.

1. American alligators listed under § 17.11 as "in captivity wherever found"

are included in the definition "American alligator" and are now covered by the special rule. Permits to engage in otherwise prohibited activities with captive American alligators are no longer available under § 17.52 (Permits—similarity of appearance). Permits are only available under the special rule, § 17.42(a)(3)(iv), as provided by section 4(d) of the Act (16 U.S.C. 1533(d)), and may be issued to take any American alligator in captivity, subject to the enumerated conditions, which have been bred in captivity or lawfully placed in captivity. In addition, the permit issued under the special rule may authorize the permittee to engage in other prohibited activities without being restricted to the purposes for which a permit may be issued under § 17.32.

2. The meat and other parts, except hides, of lawfully taken American alligators may be sold only in the State where the taking occurs if such sale is authorized by State law and conducted in accordance with State laws and regulations. This presently includes the possibility for such sale from American alligators taken: (a) from the wild during Louisiana's controlled harvest, (b) as nuisance alligators within Florida and Louisiana, and (c) from captivity.

3. American alligators listed under § 17.11 as threatened—similarity of appearance may be taken from the wild in accordance with the laws and regulations of the State in which the taking occurs, subject to two conditions. See § 17.42(a)(2)(i)(D). Incorporation of the listing eliminates the need to amend the special rule whenever it is affected by a reclassification of the American alligator.

4. Export and import of the hides and manufactured products of lawfully taken American alligators are not prohibited if conducted in accordance with CITES, as long as the hides bear the tag attached by the State where the taking occurred or the manufactured products have the mark attached which was provided by the Service and affixed by the fabricator, at the time of export or import. When the Service's mark is affixed to manufactured products, only CITES documentation is necessary. Tagged hides, however, still have to move within the "closed system."

5. Permits are available under § 17.32 (Permits—general) in relation to American alligators for the purposes for which permits may be issued under that section, which are: scientific purposes,

or the enhancement of propagation or survival; economic hardship; zoological exhibition; educational purposes; or special purposes consistent with the purposes of the Act.

6. Buyer, tanner, or fabricator permits (hereinafter referred to as BTF permits) issued under the special rule, § 17.42(a)(3)(iii), are available to foreign applicants, but additional application requirements have been imposed on them. Through application requirements, issuance criteria, and special conditions BTF permits establish the "closed system" to address the potential for commingling lawfully taken American alligator hides with illegally taken hides or with hides of other species of the Order Crocodilia and the potential for commingling the products of each. A number of provisions have been added to accomplish this objective:

a. Hides can be sold or otherwise transferred only to BTF permittees. Hides must be tagged, and all tags accounted for when removed for fabrication.

b. BTF permittees can only sell or otherwise transfer American alligator hides to other BTF permittees, except for fabricated products upon which a label provided by the Service is affixed.

c. Recordkeeping is required for all transactions in any crocodilians in accordance with § 13.46.

d. Annual reporting is required for transactions in American alligators and Appendix I crocodilians.

e. Applicants for BTF permits must include a report on the applicant's dealings during the preceding five years with species of the Order Crocodilia which at any time have been listed on Appendix I of the CITES, to the extent such records are available.

f. As a general condition of the permit under § 13.47, BTF permittees are subject to reasonable inspections.

g. Detailed organizational information is required of business organizations.

h. BTF permittees must not violate any State, Federal, or foreign laws concerning any hide, part, or product of any species of the Order Crocodilia.

7. The self-defense exception formerly found in paragraph (a)(1)(i)(A) has been deleted. The Act, as amended (16 USC 1540), liberalized the circumstances under which the defense can be raised. The Service plans to propose revised self-defense regulations applicable to all endangered and threatened wildlife in the near future.

Effective Date of This Rule

The Service has found good cause, as required by 5 U.S.C. 553(d)(3) and 43 CFR 14.5(b)(5), for making this rulemaking effective immediately. The State of Louisiana began a controlled harvest of the American alligator on September 7, 1979. This rulemaking is necessary to allow restricted trade in lawfully taken American alligators which will not be detrimental to the conservation of the species.

National Environmental Policy Act

An environmental assessment has been prepared in conjunction with this rulemaking. It is on file in the Service's Division of Law Enforcement, 1375 K Street, NW., Washington, D.C., and may be examined during regular business hours. This assessment forms the basis for the decision that this is not a major Federal action 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. The primary author of this rulemaking is Mr. John T. Webb, Paralegal Specialist, Division of Law Enforcement, (202) 343-9242.

Regulations Promulgation

Accordingly, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations is hereby amended as set forth below:

PART 13—GENERAL PERMIT PROCEDURES

§ 13.12 [Amended]

1. Amend § 13.12(b) by inserting two (2) additional types of permits, "American alligator—buyer, tanner, or fabricator 17.429(a)" and "American alligator—American alligators in captivity 17.42(a)" after "General for wildlife 17.32" and before "General for plants 17.72."

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

2. Amend § 17.11(i) by replacing the entries for "Alligator, Am." under "Reptiles," with the following entries:

§ 17.11 Endangered and threatened wildlife.

* * * * *

Species		Range		Status	When listed	Special rules
Common name	Scientific name	Population	Known distribution			
Alligator, American.....	<i>Alligator mississippiensis</i>	Wherever found in the wild, except in those areas where it is listed as Threatened, as set forth below.	Southeastern United States.	Entire.....	E	11 NA
Alligator, American.....	<i>Alligator mississippiensis</i>	In the wild in FL and in certain areas of GA, LA (except in those parishes listed as T(S/A)), SC and TX, as set forth in Sec. 17.42(a)(1).	U.S. (FL and certain areas of GA, LA (except in those parishes listed as T(S/A)), SC and TX.	Entire.....	T	20 17.42(a)
Alligator, American.....	<i>Alligator mississippiensis</i>	In the wild in Cameron, Vermilion, Calcasieu, Iberia, St. Mary, St. Charles, Terrebonne, Lafourche, St. Bernard, Jefferson, St. Tammany, and Plaquemines Parishes in LA.	U.S. (Cameron, Vermilion, Calcasieu, Iberia, St. Mary, St. Charles, Terrebonne, Lafourche, St. Bernard, Jefferson, St. Tammany, and Plaquemines Parishes in LA).	NA.....	T(S/A)	11 17.42(a)
Alligator, American.....	<i>Alligator mississippiensis</i>	In captivity wherever found.....	Worldwide.....	NA.....	T(S/A)	11 17.42(a)

3. Revise § 17.42(a) to read as follows:

§ 17.42 Special rules—reptiles.

(a) *American alligator (Alligator mississippiensis)*. (1) *Definitions*. For the purposes of this paragraph (a): "American alligator" shall mean any member of the species *Alligator mississippiensis*, and any part, offspring, dead body, part of a dead body, or product of such species occurring in captivity wherever found or in the wild wherever listed under § 17.11 of this subchapter as threatened—similarity of appearance, and in the wild in Florida and in certain coastal areas of Georgia, Louisiana, South Carolina, and Texas, contained within the following boundaries:

From Winyah Bay near Georgetown, South Carolina, west on U.S. Highway 17 to Georgetown; thence west and south on U.S. Alternate Highway 17 to junction with U.S. Interstate Highway 95 near Walterboro, South Carolina; thence south on U.S. Interstate Highway 95 (including incomplete portions) to junction with U.S. Highway 82; thence southwest on U.S. Highway 82 to junction with U.S. Highway 84 at Waycross, Georgia; thence west on U.S. Highway 84 to the Alabama-Georgia border; thence south along this border to the Florida border and following the Florida border west and south to its termination at the Gulf of Mexico. From the Mississippi-Louisiana border at the Gulf of Mexico north along this border to its junction with U.S. Interstate Highway 12; thence west on U.S. Interstate Highway 12 (including incomplete portions) to Baton Rouge, Louisiana; thence north and west along corporate limits of Baton Rouge to U.S. Highway 190; thence west on U.S. Highway 190 to junction with Louisiana State Highway 12 at Ragley, Louisiana; thence west on Louisiana State Highway 12 to the

Beauregard-Calcasieu Parish border; thence north and west along this border to the Texas-Louisiana State border; thence south on this border to Texas State Highway 12; thence west on Texas State Highway 12 to Vidor, Texas; thence west on U.S. Highway 90 to the Houston, Texas, corporate limits; thence north, west and south along Houston corporate limits to junction on the west with U.S. Highway 59; thence south and west on U.S. Highway 59 to Victoria, Texas; thence south on U.S. Highway 77 to corporate limits of Corpus Christi, Texas; thence southeast along the southern Corpus Christi corporate limits to Laguna Madre; thence south along the west shore of Laguna Madre to the Nueces-Kleberg County line; thence east along the Nueces-Kleberg County line to the Gulf of Mexico.

"Buyer" shall mean a person engaged in the business of buying hides of American alligators for the purpose of resale.

"Captivity" shall mean held in a controlled environment that is intensively manipulated by man for the purpose of producing American alligators, and that has boundaries designed to prevent them from entering or leaving the controlled environment. General characteristics of captivity may include but are not limited to artificial housing, waste removal, health care, protection from predators, and artificially supplied food.

"Fabricator" shall mean a person engaged in the business of manufacturing products from American alligator leather.

"Tanner" shall mean a person engaged in the business of processing green, untanned hides of American alligators into leather.

(2) *Prohibitions*. Except as provided by permits available under paragraph (a)(3), the following prohibitions apply to the American alligator.

(i) *Taking*. Except as provided in this paragraph (a)(2)(i) no person may take American alligators.

(A) Any employee or agent of the Service, any other Federal land management agency, or a State conservation agency, who is designated by the agency for such purposes, may, when acting in the course of official duties, take American alligators without a permit if such action is necessary to:

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

(2) Dispose of a dead specimen;

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

(4) Remove a specimen which constitutes a demonstrable but non-immediate threat to human safety. The taking must be done in a humane manner, and 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.

(B) Any taking pursuant to paragraph (a)(2)(i)(A) 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.

(C) Any employee or agent of the Service or of a State conservation agency which is operating under a cooperative agreement which covers American alligators with the Service, in accordance with section 6(c) of the Act

(See 50 CFR Part 81 for rules implementing a cooperative agreement), may, when acting in the course of official duties, take American alligators to carry out scientific research or conservation programs.

(D) Any person may take American alligators in the wild wherever listed under § 17.11 of this subchapter as threatened—similarity of appearance in accordance with the laws and regulations of the State in which the taking occurs, provided the following requirements are met:

(1) The hides of such alligators are only sold, offered for sale, or otherwise transferred to persons holding a valid Federal permit to buy hides, issued under paragraph (a)(3); and

(2) The meat and other parts, except hides, are sold only in the State in which the taking occurs, and only in accordance with the laws and regulations of that State.

(E) When American alligators are taken by Federal or State officials in accordance with paragraphs (a)(2)(i)(A) or (a)(2)(i)(C) the hides, meat, and other parts may be sold by their respective agencies, provided the following requirements are met:

(1) The hides are only sold, offered for sale, or otherwise transferred to persons holding a valid Federal permit to buy hides, issued under paragraph (a)(3);

(2) The hides have been tagged by the State of origin with a noncorrodible numbered tag inserted no more than 6 inches from the tip of the tail;

(3) The tag number, length of belly skin, and date and place of the specimen's taking are recorded by the State;

(4) A tag or label is affixed to the outside of any package use to ship the hides, identifying its contents as American alligator hides, indicating their quantity and State tag numbers, and providing the name and address of the consignor and consignee; and

(5) The meat and other parts, except hides, are sold only in the State where the taking occurs, and only in accordance with the laws and regulations of that State.

(ii) *Unlawfully taken alligators.* No person may possess, sell, deliver, carry, transport, or ship, by any means whatsoever, American alligators taken unlawfully.

(iii) *Import or export.* No person may import or export any American alligator, except that hides and manufactured products of lawfully taken American alligators may be imported or exported in accordance with the Convention on International Trade in Endangered Species of Wild Fauna and Flora (see 50 CFR Part 23 for rules implementing the

Convention), provided that such hides bear the noncorrodible numbered tag attached by the State where the taking occurred and such manufactured products have the mark attached which was provided by the Service and affixed by the fabricator, as required by paragraph (a)(3), at the time of import or export.

(iv) *Commercial transactions.* No person may deliver, receive, carry, transport, ship, or sell, or offer to sell in interstate or foreign commerce, by any means whatsoever, and in the course of a commercial activity, any American alligator, except that manufactured products of American alligators which have been marked in accordance with paragraph (a)(3)(iii)(C)(10) by a fabricator holding a valid Federal permit may be transported, shipped, delivered, carried, or received in interstate or foreign commerce in the course of a commercial activity, and may be sold or offered for sale in interstate or foreign commerce.

(3) *Permits—(i) General.* Permits are available under § 17.32 (Permits—general) of this subchapter for all of the prohibited activities referred to in paragraph (a)(2). All the terms and provisions of § 17.32 shall apply to such permits.

(ii) *Similarity of appearance.* Permits are not available under § 17.52 (Permits—similarity of appearance) of this subchapter for any of the prohibited activities referred to in paragraph (a)(2).

(iii) *Buyer, tanner, or fabricator.* Upon receipt of a complete application, the Director may issue a permit in accordance with the issuance criteria of this paragraph (a)(3)(iii) for a buyer, tanner, or fabricator, authorizing the permittee to engage in any of the prohibited activities referred to in paragraph (a)(2).

(A) *Application requirements.* Applications for permits under this paragraph (a)(3)(iii) must be submitted to the Director by the person who wishes to engage in the activities of a buyer, tanner, or fabricator. Each application must be submitted on an official application form (Form 3-200) provided by the Service, and must include, as an attachment, all of the following information:

(1) The category or categories (buyer/and/or tanner and/or fabricator) for which the permit is desired;

(2) A description of the applicant's business organization and other business organizations associated with such organization, including: a description of the physical plant; the method of operation of the business; experience, if any, over the previous five years; the names and addresses of all

shareholders, partners, directors, officers, or other parties in interest in the business organization;

(3) A description, including samples, of the applicant's present or proposed system of inventory control and bookkeeping capable of insuring accurate accounting for all American alligator hides and State tags, and all hides of any other species of the Order Crocodilia dealt with by the applicant;

(4) A statement detailing any criminal or civil violations of any State, Federal, or foreign law by the applicant within the previous five years for taking or trafficking in wildlife, and if the applicant is a business organization, by any shareholder, partner, director, officer, principal, employee, agent, or other party in interest in the business organization or any other business organization associated with such business organization;

(5) A report in English of the applicant's dealings during the preceding five years with those species of the Order Crocodilia which at any time have been listed on Appendix I to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, to the extent records of such dealings are available;

(6) Foreign applicants must disclose the nature and location of all property in the United States in which the applicant has an interest; and

(7) Foreign applicants must provide the name and address of an agent located in the United States who is authorized to receive service of process for the applicant and upon whom process can be served.

(B) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (a)(3)(iii)(A), the Director will decide whether or not a buyer, tanner, or fabricator permit should be issued. In making this decision, the Director shall consider, in addition to the general criteria in § 13.21(b) of this subchapter, the applicant's reliability and apparent ability and willingness to maintain and disclose accurate inventory and bookkeeping records of all American alligator hides and State tags, and all hides of any other species of the Order Crocodilia dealt with by the applicant. In addition, the Director may consider the opinions and views of scientists, law enforcement officials, or other persons or organizations having expertise concerning trade in any species of the Order Crocodilia.

(C) *Special conditions.* In addition to the general conditions set forth in Part 13 of this subchapter, permits issued under paragraph (a)(3)(iii) are subject to the following special conditions:

(1) Permittees may not buy, tan, or fabricate any American alligator hide except one which was taken, sold, offered for sale, delivered, carried, transported, or shipped in accordance with paragraph (a)(2)(i);

(2) Permittees may only sell, offer for sale, deliver, carry, transport, or ship American alligator hides to holders of valid Federal permits which authorize the buying, tanning, or fabricating of American alligator hides;

(3) Permittees may not violate any State, Federal, or foreign laws concerning any hide, part, or product of any species of the Order Crocodilia;

(4) Permittees must maintain complete and accurate inventory control and bookkeeping records in accordance with the provisions of § 13.46 of this subchapter, including the numbers of all State tags, and any permits or other documents required by the Convention on International Trade in Endangered Species of Wild Fauna and Flora or other State, Federal, or foreign law, concerning all transactions in American alligators and any other species of the Order Crocodilia;

(5) Permittees must file a written report in English with the Director on March 31 of each year concerning all transactions with American alligators and other species of the Order Crocodilia listed on Appendix I to the Convention on International Trade in Endangered Species of Wild Fauna and Flora during the preceding calendar year ending December 31 (such report shall include the number of hides, parts, and products by species; the supplier's name and address; and the country where taken from the wild, if known);

(6) Permittees may not transport or ship any American alligator hide, part or product unless a tag or label is affixed to the outside of any package used to transport or ship the hides, parts, or products, identifying its contents as American alligator and indicating the quantity, State tag numbers (if any), and the names and addresses of the consignor and consignee;

(7) A buyer and/or tanner must leave all State tags on the hides;

(8) A fabricator must remove, record, and return to the issuer all tags on the hides;

(9) Fabricators shall maintain complete and accurate records showing the relationship of American alligator hides processed to finished American alligator products; and

(10) Fabricators must affix, a mark provided by the Service to each product made of American alligator hides, and shall not affix such mark to products of any other species of the Order Crocodilia.

(D) *Duration of permits.* The duration of permits issued under this paragraph (a)(3)(iii) shall be designated on the face of the permit.

(iv) *American alligators in captivity.* Upon receipt of a complete application, the Director may issue a permit authorizing the permittee to engage in any of the prohibited activities referred to in paragraph (a)(2) with live American alligators which have been born in captivity or which have been lawfully placed in captivity.

(A) *Application requirements.* Applications for permits under this paragraph (a)(3)(iv) must be submitted to the Director by the person who wishes to engage in the prohibited activity in accordance with the application requirements of § 17.32(a) of this subchapter. In addition, the application must include, as an attachment, documentary evidence or other appropriate information where available, and sworn affidavits to show that the American alligators for which a permit is sought have been held in captivity and that they were either born in captivity or lawfully placed in captivity.

(B) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (a)(3)(iv)(A), the Director will decide whether or not a permit should be issued. In making this decision, the Director shall consider, in addition to the general criteria in § 13.21(b) of this subchapter, whether the information submitted by the applicant appears reliable, and the applicant's reliability and apparent ability and willingness to maintain and disclose accurate inventory and bookkeeping records of all American alligators, and any other species of the Order Crocodilia dealt with by the applicant. In addition, the Director may consider the opinions and views of scientists, law enforcement officials, or other persons or organizations having expertise concerning trade in any species of the Order Crocodilia.

(C) *Special conditions.* All permits issued under this paragraph (a)(3)(iv) shall be subject to the general conditions set forth in Part 13 of this subchapter. In addition, any permit which authorizes the taking of American alligators is subject to the following special conditions:

(1) The hides are tagged by the State where held in captivity with a noncorrodible numbered tag inserted no more than 6 inches from the tip of the tail;

(2) The tag number, length of belly skin, and date and place of the specimen's taking are recorded by the State;

(3) The hides of such alligators are only sold, offered for sale, or otherwise transferred to persons holding a valid Federal permit to buy hides, issued under paragraph (a)(3);

(4) A tag or label is affixed to the outside of any package used to ship the hides, identifying its contents as American alligator hides, indicating their quantity and tag numbers, and providing the name and address of the consignor and consignee;

(5) The meat and other parts, except hides, may be sold only in the State where taking occurs, and only in accordance with the laws and regulations of that State;

(6) Complete and accurate inventory control, bookkeeping, and other appropriate records must be maintained in accordance with the provisions of § 13.46 of this subchapter, including the numbers of all State tags, concerning any taking or transaction in American alligators; and

(7) The permittee must file a written report with the Director on March 31 of each year concerning all activities conducted pursuant to the permit for the preceding calendar year ending December 31.

(D) *Duration of permits.* The duration of permits issued under this paragraph (a)(3)(iv) shall be designated on the face of the permit.

(16 U.S.C. 1531-1543.)

Note.—The Department has determined that this rule is not a significant rule and does not require preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Dated: October 5, 1979.

Lynn A. Greenwalt,
Director, U.S. Fish and Wildlife Service.

[FR Doc. 79-31495 Filed 10-11-79; 8:45 am]

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ENDANGERED SPECIES SCIENTIFIC AUTHORITY

50 CFR PART 810

Final 1979 Export Findings on the American Alligator

AGENCY: Endangered Species Scientific Authority.

ACTION: Final rule.

SUMMARY: The Endangered Species Scientific Authority (ESSA) finds that commercial export of American alligator hides legally harvested during or before 1979 will not be detrimental to the survival of the alligator or other crocodilian species. These findings are meant to satisfy ESSA's responsibilities under Article IV, paragraph 2 of the

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Federal export permits can be issued for hides only if the ESSA has made such findings of "no detriment".

EFFECTIVE DATE: October 12, 1979.

ADDRESS: Submit comments to Executive Secretary, U.S. Endangered Species Scientific Authority, 18th and C Streets N.W., Washington, D.C. 20240. Comments will be available for inspection at Room 536, 1717 H Street, N.W., Washington, D.C., 7:45 a.m. to 5:30 p.m., Mondays through Fridays except federal holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Peter C. Escherich, Staff Zoologist, Endangered Species Scientific Authority, 18th and C Streets, N.W., Washington, D.C. 20240, 202/653-5948.

SUPPLEMENTARY INFORMATION:

Background.

ESSA Proposals

On May 31, 1979 (44 FR 31584), and on August 13, 1979 (44 FR 47386), the ESSA published proposed findings under the CITES on the commercial export of American alligators taken during or before the 1979 harvest season. ESSA proposed to find that the export of certain American alligator hides would not be detrimental to the survival of the alligator or to the survival of other species of crocodilians, subject to the following conditions: (1) Foreign buyers, tanners, and fabricators must obtain licenses similar to those currently in force within the United States (50 CFR 17.42(a)). Licensees must provide access to their records and may sell to other buyers, tanners, or fabricators only if they hold Federal permits. Fabricators must permanently mark all products to indicate that they are American alligator. (2) Exports must only be allowed to buyers, tanners, or fabricators holding valid Federal licenses who are located in countries which have ratified CITES and which have not taken reservations for any crocodilians. (3) Prior to export, all hides must be indelibly marked over their entire reverse surface with identifying symbols.

July 18 Fish and Wildlife Service Proposal

On July 18, 1979, the Fish and Wildlife Service (Service) proposed to amend 50 CFR Part 17 concerning American alligators (44 FR 41894). This proposal reflected changes in domestic and international protection of the American alligator, including proposed export findings by the ESSA.

Buyer, tanner or fabricator permits.

The July 18 Service notice proposes, in part, to establish a permit system for foreign buyers, tanners and fabricators which is similar to that in force domestically. The July 18 Service notice contains the following description of the buyer, tanner, and fabricator permit system proposed:

These permits provide a highly regulated framework, whereby the activities of permit holders are closely monitored. A new special condition imposed on these permits states explicitly what formerly has been the practice. The Service has created a "closed system" wherein permittees may only engage in business with other permittees until a manufactured product is marked. While not foolproof, a number of controls are placed on permittees so that only lawfully taken American alligators enter the system, and only products from those alligators leave it. Hides tagged by the State where the taking occurred may only be sold or transferred to persons holding valid Federal permits to buy hides. No untagged hides may be lawfully sold or transferred. Once so tagged these hides retain the tags through the tanning process. Finally, products from those hides are marked by the fabricator with a label provided by the Service. Fabricators will be required to accurately document the relationship between the hides received and the finished products created from them.

Additionally, permittees must maintain complete and accurate records of dealings in the hides of reptiles of the Order Crocodilia. This would include those species most likely to be commingled with American alligators: other alligators, crocodiles, caimans, and gavials.

This system would be implemented without requiring the tanner to apply a mark on the underside of the hide in indelible ink as previously proposed (October 2, 1978, 43 FR 45513). Instead the Service will rely on the engraved label which the fabricator will attach. These labels are difficult to duplicate and are unusable if any attempt is made to remove them from lawful products and place them on unlawful ones. The indelible mark on the underside of the skin presented a number of problems. That mark is easy to duplicate, not readily seen on products which are lined with other leather, and may be shaved off in the process of fabricating finished goods.

Applications will be accepted from foreign buyers, tanners, or fabricators who wish to engage in these activities. Expanding the domestic "closed system" worldwide has several advantages. As a condition of the permit, § 13.47 allows the Service to conduct reasonable inspections of the permittee's business premises for any evidence of the commingling of illegally taken American alligator hides with legal ones. So long as the permit holder abides by the conditions of the permit, access to a reliable source of legal American alligator hides is possible. However, if the conditions of the permit are violated, the permittee is subject to the sanctions of the Act, including permit revocation. To insure jurisdiction over foreign permit holders, they would be required to

appoint an agent for the service of process and to identify any property held in the United States. Appointment of an agent will enable the Service to impose civil penalties under the Act and to revoke a permit, when it is necessary, thereby removing the permittee from lawful trade in American alligators.

Export and import of the hides and manufactured products of lawfully taken American alligators would not be prohibited if conducted in accordance with CITES, as long as the hides bear the tag attached by the State where the taking occurred or the manufactured products have the mark attached which was provided by the Service and affixed by the fabricator, at the time of export or import. When the Service's mark is affixed to manufactured products, only CITES documentation would be necessary. Tagged hides, however, would still have to move within the "closed system."

In respect to the ESSA proposal of May 31, the Service did not propose, as had ESSA, the requirement that hides be indelibly marked prior to export, and that export be restricted to CITES Party countries without reservations for crocodilians.

In lieu of adopting the ESSA proposal, the Service suggested the following:

A rebuttable presumption that "no detriment" exists could be applied to the activities of buyers, tanners, or fabricators in CITES Party countries without reservations for crocodilians. In those countries, trade in crocodilians would be restricted by CITES. However, this presumption could be rebutted by evidence which indicated that buyers, tanners, or fabricators were taking actions which would preclude the continuation of a "no detriment" finding. For buyers, tanners, and fabricators in non-party countries or in party countries with reservations for crocodilians, ESSA could review individual buyers, tanners, and fabricator applications submitted to the Management Authority, together with any permit conditions proposed by the Management Authority, or could in consultation with the Management Authority make a general finding with any appropriate general conditions applicable to all buyers, tanners, or fabricators. Any appropriate general conditions necessary to satisfy an ESSA no detriment finding would be fulfilled by the Management Authority through specific conditions incorporated into the permit. A review of the permittee's compliance with these conditions could be conducted at any appropriate interval. ESSA could reopen its "no detriment" finding at any time evidence is available to indicate that reconsideration of its current finding should be undertaken. Export permits issued under Article IV of CITES would no longer be available for export to a permittee when a "no detriment" finding cannot be sustained for that permittee and the permit to buy, tan, or fabricate may be revoked.

Summary and Analysis of Comments on ESSA Proposals

Summary of General Comments

Individuals and organizations commenting on the ESSA proposals can be divided into the six categories below based upon generally shared perspectives. To expand our information base, we are considering not only comments submitted directly to the ESSA either at our July 10 hearing or separately, but also statements on our proposals given on July 16 before the House Subcommittee on Fisheries and Wildlife Conservation and the Environment. Because several useful comments were received shortly after the close of the comment period on July 30, we are considering all comments received by August 3.

IUCN. The International Union for the Conservation of Nature and Natural Resources (IUCN) commented supporting all aspects of the ESSA proposal. The IUCN stressed that tagging, hide marking, and, especially, limiting exports of alligator hides to CITES Parties without crocodilian reservations are essential to avoid adverse impact on other more endangered crocodilian species.

The Management Authority. The Director of the U.S. Fish and Wildlife Service supports the ESSA's authority to consider the effect of alligator exports on other crocodilian species when making findings on "detriment" under Article IV 2(a). Although the Service comment does not discuss the substance of the proposed ESSA findings and conditions, the Service states that the ESSA proposal "ranges beyond its appropriate purview," was made without sufficient prior consultation, proposes conditions on export that are too detailed and unnecessary, and encroaches "on the agreed responsibilities and prerogatives of the Management Authority."

State Wildlife Agencies. The States of Florida and Louisiana submitted very detailed information and comments on the ESSA proposals. Comments were also provided by Texas, Georgia, South Carolina, Alaska, Maryland, New York, Kentucky, and Wisconsin. In addition, detailed comment was made by the International Association of Fish and Wildlife Agencies (IAFWA), whose comments are supported by the Wildlife Society and the Wildlife Management Institute.

Detailed information from Florida and Louisiana on biology and management of the alligator forms the informational backbone of our findings under CITES Article II 2(a). This information was

summarized in our proposed findings and will not be repeated here.

Florida and Louisiana also made detailed comments on the ESSA's proposed conditions under CITES Article II 2(b). In general, these state agencies are not opposed to the licensing of foreign buyers and tanners, but are opposed to the other conditions proposed by the ESSA. Neither state believes that potential subsidization of firms using endangered crocodilians is an appropriate basis for not allowing exports to countries that are not CITES Parties or Parties that have reserved for crocodilian species. Neither state believes that commingling of hides is a problem. Louisiana and Florida state that the ESSA has no authority to consider the effect of alligator exports on other crocodilians. Both states assert that their alligator management programs will be crippled unless export is allowed. Both states seek approval for export of hides taken before June 28, 1979. Florida and Louisiana also state that the ESSA has taken actions that should be the responsibility of the MA. The basic authority of the ESSA and the relationship of the ESSA and the MA is the primary focus of testimony by the IAFWA. The IAFWA states that the ESSA proposal exceeds its legitimate role and authority. It is said that the ESSA must limit its review to the effect of exports on alligators themselves. The IAFWA believes that the proposed ESSA condition concerning CITES Parties lacks a rational basis. In one comment the IAFWA states that the ESSA has taken on matters "properly left to those agencies and governmental bodies authorized and competent to devise regulations." In another comment, however, the IAFWA states that ESSA's export findings appear to be rulemakings.

The state agencies of Texas, Georgia and Alaska generally support the comments of Florida and Louisiana, but in much less detail; similar views are expressed by professors of wildlife management at the University of Florida and at Louisiana State University. The Maryland Wildlife Administration generally supports the views of the IAFWA.

A comment from the South Carolina Wildlife and Marine Resources Department expresses interest in the ESSA proposal, without taking a position. The Kentucky Commission of Fish and Wildlife Resources states "we commend your findings that export of certain alligator hides would not be detrimental to the survival of the species." The Wisconsin Department of

Natural Resources generally supports the ESSA proposal.

The New York State Department of Environmental Conservation acknowledges "the positive and negative impacts of allowing export of legally taken alligator hides." New York "would like to be assured that export will be restricted to countries which have ratified the CITES without reservation for any crocodilians, and that re-export from cooperating to non-cooperating countries will be prevented." The comment also states that New York is considering repealing its Mason Act, which prohibits alligator trade within that state.

Organizations with an interest in the sale of raw hides. Comments were received on behalf of four organizations that have an interest in the sale of raw alligator hides: the Southeastern Alligator Association (SEAA); Miami Corporation, Louisiana; the Vermilion Corporation, Louisiana, and the Estate of J. G. Gray, Louisiana.

These organizations unanimously support alligator exports. The Estate of J. G. Gray generally supports export of hides "taken under controlled hunting conditions." The Vermilion Corporation takes a similar position. The Miami Corporation believes that ESSA findings should not hinder international trade of hides, while protecting alligators, and urges the ESSA to consider carefully the comments of the SEAA. The SEAA submitted several detailed comments and testimony. The SEAA believes that the ESSA should consider only the effect that exports may have on alligators, and leave all else to the MA. The SEAA states that the status of the American alligator is "secure." The SEAA supports the licensing of foreign buyers and tanners, but not fabricators. The SEAA also believes that tags should remain on hides until sold to a fabricator, an annual report should be required of buyers and tanners, and inspection at reasonable hours should be agreed to. The SEAA objects to other conditions proposed by the ESSA, and questions the ESSA's concern for commingling of alligator and crocodile hides, as well as possible subsidization of firms using endangered crocodilian species.

Organizations that tan hides or manufacture products from alligators. Comments were received from eight organizations that have an interest in tanning hides or manufacturing products from hides.

The Fouke Company, South Carolina, states that it holds substantial quantities of hides taken before June 28, 1979. Fouke has "reservations" concerning export of raw alligator hides, and believes that the U.S. market has not

had a "fair test" because of state restrictions, now lessening, and because of delays in obtaining federal permits. Fouke supports requiring tanning before export.

Steven Newman of Steven Newman Tannery Inc., New Jersey, testified that tanning or fabrication of alligator hides before export will facilitate enforcement. He stated that there is intrinsic U.S. demand for alligator hide, but state laws and consumer misinformation hold down the domestic hide price. Mr. Newman stated that his firm can process high quality finished hides and that he is currently tanning hides for Gordon-Choisy. He believes that tanning and manufacture of alligator products in the U.S. is economically best for the national economy. Disbrok Trading Company, New Jersey, similarly states that U.S. tanners and hide finishers should be given "first priority in purchase of these [alligator] skins." Columbia Impex Corporation, New York, a reptile product dealer, states that exports should be banned, then re-opened after the domestic market is saturated.

Gordon-Choisy of France, represented by Robert Nathan Associates, and King International Associates, a New Jersey company associated with Gordon-Choisy, submitted several comments. A description is given of French governmental procedures for crocodilian trade. It is suggested that the U.S. Fish and Wildlife Service should station agents overseas to inspect tanners and manufacturing operations. The comments support a tagging requirement, but oppose marking of hides. Limiting exports to CITES Parties without crocodilian reservations is said to be contrary to the spirit of the CITES. Restrictions by the ESSA are said to be harmful to alligator conservation, because the U.S. market is said to be not as strong as that of Europe.

Economic Consulting Services Inc. submitted a detailed comment on behalf of the International Leather Goods, Plastics and Novelty Worker's Union, AFL-CIO (ILG) which represents workers in handbag factories throughout the United States. The ILG is opposed to the export of alligator hides unless the hides can be sold freely in the U.S. and are exported only to CITES Parties, on the grounds that the domestic handbag industry would be damaged. ILG states that most handbag manufacturers are in the metropolitan New York area, with a labor force of 65 percent women and three-fourths "black or of Hispanic origin." ILG states that import of reptile leather handbags increased 20 fold between 1972 and 1978. However, ILG

states that domestic manufacturers are "devoting increased attention" to reptile leather handbags, and in New York ILG estimates at least 35 firms employing more than 700 people depend mainly on the production and sale of reptile leather products.

Two New York City exotic leather product designers or manufacturers, Hagen Company and Judith Leiber, Inc., state that quotas should be placed on alligator exports to ensure a sufficient supply of hides domestically.

Conservation Organizations. Comments were submitted by four individual scientists associated with international efforts to conserve crocodilian species and by nine private organizations concerned wholly or in part with crocodilian conservation.

The Chairman of the IUCN/Service Commission Crocodile Specialist Group, Dr. Howard Campbell supports the ESSA proposal to approve export, but emphasizes that exports should be limited to CITES Parties without reservations for crocodilian species. James Powell, a former member of the same group, with field experience studying several crocodilian species, states that alligator hide export should be disallowed because it may be detrimental to other crocodilian species even if the proposed ESSA conditions were adopted. Tony Pooley, of the St. Lucia Crocodile Center, South Africa, who co-authored a survey of African crocodiles published by IUCN in 1972, and is in the process of updating that survey, discusses the rapidly declining status of crocodiles in Africa and concludes:

Thus I find it extremely difficult to believe that either *C. cataphractus* or *O. tetraspis* populations in any one country have grown to the extent that it is possible to allow exploitation. I also find it hard to believe the statement by Grawitz [of Gordon-Choisy] that any one country has sufficient proofs of control and management. What is very clear is that due to the overall decline in populations of *C. niloticus*, more attention is being paid to the other species as a source of hides.

Wayne King, Director of the Florida State Museum, states that "the highest price ever paid for American alligator hides (i.e.—\$21.00 per foot) was paid by a U.S. company in 1977." Dr. King states that the U.S. market will be saturated until the metropolitan states (e.g. New York) allow the sale of alligator hides. He also states that high quality tanning and manufacturing is possible in the U.S. Dr. King believes that alligator hides should be exported only to CITES Parties without reservations for any crocodilian species. TRAFFIC (USA) provided detailed information on

crocodilian trade and "strongly" supports the ESSA proposals.

The New York Zoological Society "agrees with and fully supports" the ESSA proposal. The Environmental Defense Fund also supports the ESSA proposal, and gives a legal analysis in support of the ESSA's authority to consider the impacts of alligator exports on other crocodilian species and to allow export permits to be issued only on certain conditions. The Natural Resources Defense Council provided a legal analysis primarily on the authority of the ESSA. NRDC concludes that the ESSA is responsible for determining under what conditions export of an Appendix II species is to be allowed, and that in the case of an "irreconcilable conflict" with the MA, the ESSA's position has the "force of law." NRDC states that any alteration of this relationship would violate international law. NRDC also believes that the ESSA may consider the impact of trade in alligator hides on trade in other species of crocodilians listed on Appendices II or I.

The National Audubon Society also primarily addressed the authorities of the ESSA, stating that the ESSA:

Was established to effectively deal with U.S. responsibilities to the treaty. ESSA is composed of representatives of various federal agencies and clearly was designed to give the body the essential broad perspective in dealing with management decisions with international implications. ESSA functions well in this capacity and should continue to do so.

In addition, National Audubon supports the ESSA proposal to limit alligator export to CITES Parties without reservations for crocodilian species, as well as the other ESSA proposals.

Florida Audubon Society (FAS) strongly supports limiting alligator exports to CITES Parties without reservations, supports licensing foreign "merchants," and supports tanning and marking of all hides prior to export, except for hides taken before June 28, 1979. FAS believes that pre-June 28 hides should be exportable. FAS states that profit from alligator harvest is not a factor in the preservation of Florida wetlands. FAS also states that the ESSA proposals are within ESSA's authority, and the "ESSA is clearly the chief instrument whereby the responsibilities of the U.S. Government to the CITES treaty are carried out."

The Defenders of Wildlife and the Fund for Animals testified that the ESSA proposals are not adequate to meet the requirements of the CITES. The Fund for Animals focuses primarily on what it considers to be inadequate enforcement of the CITES; Defenders of

Wildlife believes that re-export of alligator hides from Parties to non-Parties must be prevented.

R. Howard Hunt, Department of Herpetology, Atlanta Zoological Park, is opposed to any export of alligator hides, but "applauds" the efforts of Louisiana and Florida in bringing back the alligator from "the brink of extinction." George Campbell, Chairman, S.W. Florida Regional Alligator Association, is opposed to any alligator exports, does not believe that the alligator has made a "comeback," and believes that export would threaten other crocodilian species.

Primary Issues Raised in Comments

Should the ESSA make findings on "detriment" with respect to the effect of alligator exports on other Appendix I and Appendix II crocodilian species as well as on alligators themselves?

Fundamental authority. Most comments, including that of the Management Authority, support or accept the authority of the ESSA to make findings on detriment with respect to the effect that alligator exports may have on other Appendix I or Appendix II crocodilian species, as well as the effect on alligators themselves. However, this authority was challenged by the states of Louisiana, Florida and Texas, the International Association of Fish and Wildlife Agencies, joined by the Wildlife Management Institute and the Wildlife Society, the Southeastern Alligator Association, the Miami Corporation, and Professor Robert Chabreck at Louisiana State University. These comments challenge the ESSA's authority to consider effects on species other than the species that is the subject of an application, and challenge whether Appendix I species can be the subject of protection under CITES Article II 2(b) listings.

We have consulted on this matter with the legal offices of the Interior and State Departments. In general, we believe that the CITES does authorize the ESSA, through the FWS, to place conditions or restrictions on the export of species included in Appendix II under CITES Article II 2(b) in order to bring trade in certain other Appendix I or Appendix II species under effective control. In our opinion such conditions or restrictions are properly imposed through ESSA findings on "detriment" under CITES Article IV 2(a) and may be established with respect to the potentially detrimental effect that exporting specimens of the species in hand may have upon certain other species whether or not the latter are located in the country of export.

We recognize that this interpretation of CITES Article II 2(b) and Article IV 2(a) may not be apparent from a literal reading of these provisions. Article II 2 states:

2. Appendix II shall include:

- (a) all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival; and
- (b) other species which must be subject to regulation in order that trade in specimens of certain species referred to in sub-paragraph (a) of this paragraph may be brought under effective control.

Article IV 2 states:

2. The export of any specimen of a species included in appendix II shall require the prior grant and presentation of an export permit. An export permit shall only be granted when the following conditions have been met:

- (a) a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species;
- (b) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora; and
- (c) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

Application to Appendix I species. A literal reading of Article II 2(b) may suggest that species are to be listed under that provision in order to control trade in other Appendix II species only; i.e., those referred to in sub-paragraph (a). However, the CITES Parties have in practice placed Appendix I and Appendix II species within the scope of protection conferred by Article II 2(b) listing. Furthermore, this practice is compelling in light of the purposes and policies of the CITES.

The practice of listing species in Appendix II in order to control trade in Appendix I species was followed at both the First and Second Meeting of the Conference of the CITES Parties.

At the First Meeting in Berne, Switzerland, November, 1976, the issue arose with respect with respect to a proposal to list the African elephant on the CITES appendices. The Asian elephant was already included in Appendix I. Canada proposed to list the African elephant species in Appendix I and Switzerland proposed to list the species in Appendix II. Canada gave the following justification for its proposal (Proc. First Meeting Conf. Parties, p. 220):

- (a) hunting of this species had either been prohibited or is very strictly regulated in the

majority of African States in which the species occurs;

- (b) the majority of elephant tusk carvings that are sold throughout the world are produced in the Far East (Hong Kong, Singapore, etc.). Once carved, it is, for practical purposes, impossible to distinguish between small carvings made from African elephant ivory (*Loxodonta africana*) and Indian elephant ivory (*Elephas maximus*). Thus controls over any illegal trade in Indian elephant ivory are nonexistent.

The United States supported the Swiss proposal, stating as the basis for its position:

As pointed out in the Canadian proposal justification, most of the African elephant ivory (both legal and illegal) is transported to Asia for processing and manufacture. This increases the already acute problem of distinguishing African elephant ivory from that of the already Endangered Asian elephant. At the present time, this similarity-of-appearance problem is the only clearly justifiable reason for including the African elephant on either of the first two Appendices. Article II, paragraph 1, [sic] (b) clearly provides that this type of listing should be on Appendix II, not Appendix I. Thus the U.S. should strongly support the Swiss proposal as one of the more important amendments offered, but oppose the Canadian proposal as biologically unsound (U.S. Position Paper, p. 30).

The CITES Secretariat also supported the Swiss proposal and the Canadians acceded to the Swiss proposal, which was adopted.

The Berne criteria for addition to Appendix II ratified this practice by establishing the following policy:

Genera should be listed [in Appendix II] if some of their species are threatened [i.e., are included in or would qualify biologically for Appendix II] and identification of individual species within the genus is difficult. The same should apply to listing any smaller taxa within larger ones (Conf. 1.1, 5.11, 1976).

At the Second Meeting in San Jose, Costa Rica, March, 1979, several taxa were acknowledged to be included in Appendix II, in part, to protect Appendix I species or populations. For example, the United States proposed to the Parties that the puma, *Felis concolor*, in the U.S. and Canada:

Except for the two endangered subspecies, should be annotated to indicate that [it] is included to effectively control trade in other species (particularly other populations or subspecies of *Felis concolor*) (Secretariat notification 24 November 1978).

Although the Parties did not accept formal annotation of the appendices the Parties agreed that these U.S. and Canada puma populations were included on Appendix II pursuant to Article II, paragraph 2(b) of the CITES (Plen. 2.16, p. 3). The listings of all Cetacea and Falconiformes in Appendix

II, except those in Appendix I, were based partly on the effect that trade in one species may have on another, and were clearly intended to protect *all* other affected species of the Orders, whether on Appendix I or II.

In addition to established practice of the Parties, listing species in Appendix II to protect those in Appendix I is compelling in light of the purposes and policies of the CITES and the purpose of Article II 2(b) in particular. The paramount purpose of the CITES is to prevent extinction caused by international trade. Hence any trade in Appendix I specimens is to be subject to particularly strict regulation. Trade in Appendix II specimens is to be strictly regulated, but not so strictly as Appendix I. The purpose of Article II 2(b) of CITES is to prevent trade in certain species from endangering others. Appendix I species are more likely to be harmed by trade in other species than are Appendix II species, because of the more vulnerable status of the former. Article II 2(b) expressly provides for listing species on Appendix II in order to control trade in other Appendix II species. Article II 2(b) must be interpreted as applying also to Appendix I specimens, or the purpose of that provision will fail.

Findings on "detriment" with respect to control species. Article IV 2 of the CITES does not distinguish on its face between those species included in Appendix II because of some measure of threat to their own survival (Article II 2(a)) and those species included in order to protect other species (Article II 2(b)). Article IV 2 simply says that "an export permit shall only be granted when . . . a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species." However, it is not rational to base approval of export of a species solely on its own biological status when it was listed to protect other species, and it is compellingly rational to evaluate the potential effect of export on the species meant to be protected. The ESSA interprets Article IV 2 so that permit findings on detriment are made with reference to the species meant to be protected—whether it is the traded species itself (Article II 2(a)), other species that may be affected (Article II 2(b)), or both, as for the American alligator.

This critically important interpretation has been considered for over a year. The ESSA formally recommended the policy to the Fish and Wildlife Service on August 31, 1978. After extensive discussion in several public and interagency meetings, the Fish and

Wildlife Service adopted the interpretation as a U.S. position for the second meeting of the conference of the CITES Parties, held at San Jose, Costa Rica in March, 1979. The interpretation was accepted by the parties and the need to state the purpose of listing was embodied in one of the conference documents (Com. 2.12).

In the case of the American alligator, the Fish and Wildlife Service has made its position very clear. In its notice of final determinations of U.S. proposals to amend the appendices, the Fish and Wildlife Service stated:

"the Service has determined to support the proposal to transfer the alligator from Appendix I to Appendix II, and to seek agreement by the Parties that it be included in Appendix II both because it may become threatened with extinction unless trade is regulated and because trade in it must be regulated in order to effectively control trade in other listed species [44 FR 9693, February 14, 1979]."

Following the March 1979 meeting in Costa Rica, the Fish and Wildlife Service published a notice of decisions by party nations on proposals to amend the CITES appendices (44 FR 25480, May 1, 1979). This notice indicated that the American alligator would be transferred to Appendix II effective June 28, 1979, for the purpose of controlling trade in other crocodilian species as well as to protect American alligators.

On this point, the Service notice states:

The United States obtained agreement from the parties that official recognition of the basis for listing was important. It serves as guidance to Scientific Authorities in making their findings on whether or not trade is detrimental to the survival of the species. If a species is listed for purposes of control, such findings would be made in terms of the effect that trade in the control species would have on other species included because of threat.

Roles of the ESSA and MA. Aside from basic questions of federal authority to consider the effect of alligator exports on other crocodilian species, several comments address the roles of the ESSA and the MA.

As stated previously, a letter from the Director of the U.S. Fish and Wildlife Service states that the ESSA proposal "ranges beyond its appropriate purview," was made without sufficient prior consultation, proposes conditions that are too detailed and unnecessary, and encroaches "on the agreed responsibilities and prerogatives of the Management Authority." The IAFWA states that the ESSA "has taken on matters properly left to those agencies and governmental bodies authorized and competent to devise regulations," by implication the MA. The state of

Louisiana states that "ESSA should leave management decisions to the Management Authority and stick to their charge of determining if certain actions are detrimental to the survival of a species." The state of Florida comments that

the ESSA has infringed upon the Management Authority's area of responsibility in rulemaking to provide for control and permitting procedures for commercial export of wildlife. We think this usurpation of authority contravenes both the text of the Convention and the Memorandum of Agreement between the ESSA and Fish and Wildlife Service.

The state of Texas comments that "Article VI [of the CITES] specifically states the marking requirement is the prerogative of the management authority, not the ESSA." The Southeastern Alligator Association believes that it should be "clearly understood that at some point final authority on the matter rested with the M/A when considering the provisions for issuance of export permits."

Four comments state that the ESSA proposals are within the scope of our authority as opposed to the MA. The Florida Audubon Society and the National Audubon Society generally state that the ESSA is the lead agency on matters concerning export. The Environmental Defense Fund cites cases in support of ESSA's authority to issue rules concerning its activities and to affix conditions on its findings. The Natural Resources Defense Council gives a detailed analysis of authorities under the CITES, in support of ESSA's authority.

As previously discussed, two determinations are required under CITES Article IV before export permits can be issued for non-living specimens: the ESSA must determine that export will not be detrimental to survival of the species and the MA must be satisfied that the specimen was legally obtained. These provisions establish the fundamental authorities and duties of both the ESSA and MA concerning the issuance of export permits.

The ESSA is charged with judging whether export will not be detrimental to survival. Both the ESSA and the MA have concluded that ESSA findings on "detriment" are to be made with respect to the species meant to be protected: the traded species itself for listings under Article II 2(a) or other species for listings under Article II 2(b). Thus, judgments on detriment concerning impact of trade on other species, for listings under Article II 2(b), are fundamentally the ESSA's, just as are judgments on detriment concerning effect on the traded species itself if the

listing is under Article II 2(a). Unless the ESSA finds "no detriment" based upon review of the appropriate species, permits cannot be issued by the MA. Furthermore, the U.S. Supreme Court has decided that:

"* * * the power to disapprove necessarily includes the lesser power to condition on approval." *Southern Pacific Company v. Olympian Dredging Company*, 260 U.S. 205 (1922).

Thus, the ESSA is authorized to affix any conditions to findings on detriment which the ESSA considers necessary to make a finding in favor of export. The MA is not obligated to fulfill these conditions, but cannot issue export permits if the conditions are not fulfilled.

The ESSA/MA Memorandum of Understanding incorporates these principles. Although several comments suggest that the "general advice" and associated conditions referred to in the MOU must not be specific, this is not what the MOU states. Paragraph 1 of the MOU states procedures whereby the ESSA would review individual permit applications. Paragraph 2 states:

2. Notwithstanding paragraph 1, the ESSA may in certain circumstances make findings on detriment to the survival of a given species applicable to an entire class of export permits. Such general advice will normally be given when:

- (a) Information upon which the determination must be based is of such a nature that it is unlikely to be developed in the course of material submitted with any particular application;
- (b) The scale of exploitation of the species in question is significant;
- (c) It would be administratively convenient to have the advice formulated on the basis of a class of permits rather than on a permit-by-permit basis [emphasis added].

The plain meaning of paragraph 2 is that "general advice" refers to advice "applicable to an entire class of export permits." This interpretation is reflected in the practice of the ESSA before and after the MOU was adopted. The ESSA has made findings for each affected state, including conditions that require pelts to have been taken in the State during the harvest season and that limit the number of pelts exported to a specific number. "General advice" does not and was never intended in our opinion to refer to advice that is not specific, as has been suggested.

The MOU does commit the ESSA to limiting its conditions to those that are "essential to a positive finding" and we have agreed to "leave to the MA the particular means by which the conditions are fulfilled." Such a provision recognizes that the ESSA

should not make findings on detriment conditional unless the ESSA genuinely believes such conditions are necessary, and should leave the details of implementing its conditions to the MA, which is responsible for enforcement and the mechanics of permit administration under the CITES.

The ESSA will conform to this obligation: although conditions on our findings may be specific, we will not finalize any conditions that we do not believe to be necessary for a positive finding, and we will leave implementation of any conditions to the MA. Furthermore, the MA may refrain from issuing permits if it does not believe that our conditions can be fulfilled. However, the ESSA is not limited to considerations that are "biological" or "general" in findings on detriment. We are obligated by the CITES to make a comprehensive judgment on detriment before export permits may be issued. Although we will coordinate and rely upon the expertise of the MA to the extent possible, we must consider all information that is relevant to a judgment on detriment and must affix any conditions that we believe are necessary for a positive finding if we make such a finding at all. We will consult with the MA on any such conditions and will seek to finalize conditions which leave the MA with the most discretion we feel possible in fulfilling the purpose of the conditions. If we make an error in judgment on whether export is not detrimental, however, then we are responsible for that error, whether or not a dispositive factor in our error was considered to be "management" or "science." We do not believe that our proposal encroaches upon the prerogatives of the MA, and we are satisfied that the final findings published here are within the scope of our authority.

Will exports not be detrimental to the survival of the American alligator?

With the exception of George Campbell, Chairman, S.W. Florida Regional Alligator Association, no comments suggest that export of alligator hides legally taken in 1979 or previously may be detrimental to the survival of the American alligator itself. Although Mr. Campbell states that the alligator has not made a "comeback," there is a substantial body of information to the contrary summarized in our May 31 proposal. That proposal also documents the intensive management and conservative harvest practices currently applied in Florida and Louisiana. No comment objects to our August 13, 1979, proposal to approve export of alligator hides legally taken

before June 28, 1979 (44 FR 47386), and several comments strongly support this proposal.

Can alligator hides be exported without detriment to the survival of other crocodilian species?

Comments from James Powell, former IUCN Crocodile Specialist Group Member; George Campbell, S.W. Florida Regional Alligator Association, R. H. Hunt, Atlanta Zoological Park, and the Fund for Animals state that alligator export must be prohibited in order to protect endangered crocodilian species. These statements are generally based upon perceived difficulties in enforcement of the CITES. The majority of comments support or are not opposed to alligator hide export, provided that the export is subject to some degree of regulation.

We recognized that the degree of enforcement of the CITES varies among the Parties and may not be so effective as is ultimately desirable. Such limitations in enforcement raise genuine and grave questions concerning the effectiveness of trade regulation under the CITES, including the effectiveness of any conditions affixed to ESSA approval of export. Nevertheless, we believe that it is important to proceed in a manner that will tend to reinforce the CITES system rather than to disregard it. Consequently, for the present we will presume that CITES restrictions imposed by the United States, including any condition affixed by the ESSA to its findings on detriment, will be enforced. If experience shows this presumption erroneous, then we will reconsider. We therefore concur with most commentators that alligator hides can be exported without detriment to the survival of other crocodilian species, provided that export is regulated.

What conditions, if any, should be required for a finding that alligator exports will not be detrimental to the survival of other crocodilian species?

The ESSA proposed three conditions in our May 31 notice that would be intended to assure that alligator exports will not be detrimental to the survival of other species of Appendix I or II crocodilians.

Licensing of foreign buyers, tanners and fabricators. In our May 31 notice, the ESSA proposed that foreign buyers, tanners, and fabricators must be subject to U.S. licensing requirements similar to those currently in force within the United States. This proposal was intended to and does in fact complement a proposal made by the Fish and Wildlife Service on July 18, 1979 (44 FR 41894), under the Endangered Species Act of 1973. The Service now refers to such documents as "permits" rather

than "licenses", but we are both referring to the same documentation regardless of the term applied.

The ESSA proposal to require licensing of foreign buyers and tanners is supported or not opposed by the comments.

ESSA's proposal to require licensing of foreign fabricators is opposed by Louisiana, Florida, and the Southeastern Alligator Association (SEAA). Louisiana believes that the requirement is "impractical." Florida "sees no point" in the requirement, stating that they "understand that the Fish and Wildlife Service will shortly require that all alligator skins be marked on the reverse surface at the end of the tanning process." The SEAA states that licensing of fabricators is of "questionable benefit" in the United States, has not "worked very practically," and "the system itself has not been very expedient for these manufacturers to obtain the permit." Licensing of fabricators is supported by the IUCN, New York Zoological Society, Florida Audubon Society, Environmental Defense Fund, Defenders of Wildlife, TRAFFIC (USA), National Audubon Society, and the Fund for Animals.

The rationale for licensing fabricators is essentially the same as for buyers and tanners: to determine what species of crocodilians these firms are using and through the license to ensure that alligator hide exports to licensees do not contribute to detrimental taking of other crocodilian species by the licensees. We recognize that licensing may impose some administrative burden on the industry. Nevertheless, fabricators represent major commercial operations that may be dealing in Appendix I species and may be supported in these activities by commerce in alligator hides. The ESSA probably would not have proposed such an administratively detailed condition if the Fish and Wildlife Service had not informed us that it would be proposing to license buyers, tanners, and fabricators. In the Service's proposal, the ESSA is invited to review such license applications or to establish "appropriate general conditions" applicable to all licensees (44 FR 41890). We are prepared to work through the licensing system as suggested by the Service, and we will defer to the Service on the question of their ability to administer the licensing of foreign fabricators.

Marking of the reverse surface of hides. In our May 31 notice, the ESSA proposed that prior to export all hides must be indelibly marked over their entire surface with identifying symbols.

This proposed condition is opposed by the states of Florida, Louisiana, Georgia, Texas, Alaska, the Southeastern Alligator Association and King International Associates and Gordon-Choisy. The proposed condition is supported by the IUCN, Wayne King, Director, Florida State Museum, New York Zoological Society, Florida Audubon Society, Environmental Defense Fund, Defenders of Wildlife, TRAFFIC (USA), National Audubon Society, and the Fund for Animals.

Such a marking requirement could facilitate identification of legally exported alligator hides and products, at the time of export and in subsequent commerce. Hide marking could be particularly useful when small pieces are involved, as in watchbands. Unlike licensing and recordkeeping, the presence or absence of marks could be verified immediately by port inspectors.

There are several difficulties with such a marking requirement that have been raised in comments. Hides must be partially tanned before marking. Only a few processors in the United States apparently are capable of such marking at this time. Whether the quality of product meets international standards is debated in the comments. In addition, the inner surface of hides apparently is typically shaved by fabricators to make certain products, and for most products the inner surface would be lined. Furthermore, tagging systems now used by the states of Louisiana and Florida for alligator hides are apparently reliable and no allegations to the contrary have been substantiated; hide marking may add little to the effectiveness of a licensing system coupled with tagging.

Restriction to CITES Parties. In our May 31 notice, the ESSA proposed that exports must be allowed only to licensed buyers, tanners, or fabricators located in countries which have ratified CITES and which have not taken reservations for any species of crocodilians.

This ESSA proposal is opposed by the states of Louisiana, Florida, Texas, Georgia and Alaska, the International Association of Fish and Wildlife Agencies, the Southeastern Alligator Association, and the firms of King International Associates and Gordon-Choisy. The proposal is supported by the IUCN, the state of New York, the International Leather Goods Union (AFL-CIO), Wayne King, Director, Florida State Museum, Howard Campbell, Chairman, IUCN-Survival Service Commission Crocodile Specialist Group, New York Zoological Society, National Audubon Society, Florida Audubon Society,

Environmental Defense Fund, TRAFFIC (USA), and the Defenders of Wildlife.

Other than issues of authority discussed elsewhere, opponents of this condition state that the volume of alligator exports is too small a proportion of the world trade to stimulate or contribute to the use of endangered crocodilian species in these countries. These comments also state that tagging requirements and record keeping by licensees should ensure against commingling of alligator hides with those of other crocodilians.

Although the majority of the 52 CITES Parties have not reserved for any crocodilians, the major crocodilian processing or trading countries either have taken reservations for endangered Appendix I crocodilians (France, Federal Republic of Germany, Switzerland) or are not Parties (Italy, Spain, Japan).

It is true that the 10,000 estimated potential alligator hide exports this year is only one-half of one percent of the total 2,000,000 hides estimated to be traded annually. However, these figures do not accurately convey the potential impact of alligator exports. First, alligator hides are more valuable than many other traded hides (e.g., caiman). Second, certain individual firms might buy a proportion of these 10,000 hides that is several-fold greater than one-half of one percent of their business. Third, the number of alligator hides harvested and potentially exported is likely to increase substantially over the next several years and represents a stable, well-managed and therefore attractive supply. Finally, it should be noted that even a very small contribution to the profits of a business may have a significant effect upon its success.

One very significant question raised by several comments is that access to the use of alligator hides may decrease the use of endangered crocodilians by firms in non-Parties or those with reservations. The accuracy of this theory depends upon whether and to what extent the demand for these crocodilian products is satisfied and to what extent alligator hides may serve as a substitute. The state of Florida has offered an alternative to the ESSA's proposed condition which addresses this factor:

*** we propose export be allowed but on a provisional basis. Nonsignatory nations or those which have taken reservations would have the option to begin substituting alligators for other species. This alternative would also provide an opportunity for an objective and thorough evaluation of the impact of reintroducing alligators in world trade. Some buyers would opt for a more accessible and steady supply of skins than

continue to depend on skins from endangered species which, by definition, are in limited supply. Alligators should be less expensive eventually and buyers would at least have the opportunity to mute current criticisms by dealing in a species whose status was secure.

Final Service Regulations

The Service is publishing final American alligator regulations elsewhere in this issue of the **Federal Register**. These regulations incorporate provisions which give the ESSA assurance that export of alligators legally taken in 1979 or before will not be detrimental to the survival of the alligator or other crocodilian species. In this regard the regulations require foreign as well as domestic individuals and firms to have federal permits in order to buy, tan or fabricate American alligator hides. Permittees may sell hides only to other such permittees. Fabricated alligator products must be marked with an "alligator" seal to be used only for alligator products. Permittees must keep complete and accurate inventory control and bookkeeping records concerning all transactions in species of the Order Crocodilia. Permittees must report annually on any transactions in Appendix I crocodilian species and must report in their initial permit applications on all transactions in Appendix I crocodilian species during the previous 5 years, to the extent this can be determined. In addition, permittees may not violate any state, federal, or foreign laws concerning any hide, part or product of any species of the Order Crocodilia. All buyer, tanner, fabricator permit applications will be transmitted to the ESSA for review and comment.

Final ESSA Findings on the Commercial Export of American Alligator Hides Taken in 1979 or Before

In light of comments on our proposal of May 31 and in light of the final alligator regulations promulgated by the Service elsewhere in this issue of the **Federal Register**, the ESSA finds that export of American alligator hides taken legally in Florida and Louisiana during or before 1979 will not be detrimental to the survival of the American alligator in either state and will not be detrimental to the survival of other species of crocodilians.

The finding that exports of alligator hides taken in 1979 or before will not be detrimental to the survival of the alligator is overwhelmingly supported by the evidence considered and the majority of comments received.

The ESSA is not requiring as conditions on our finding with respect to other crocodilian species that alligator

hides be marked on the inside surface before export or that exports be restricted to CITES Parties without reservations for any crocodilian species. Our reservations concerning the need for marking are stated in the analysis of comments on that proposed condition.

The ESSA remains concerned over the possible effect that alligator exports may have on other crocodilian species. Nevertheless, the nature of such an effect is uncertain. Commingling may occur between the hides of other crocodilian species and alligator hides but the permit system established by the Service is designed to minimize this problem. The possibility remains that access to alligator hides may subsidize firms that use other crocodilian species to their detriment. However, as stated by several comments, it is possible that access to alligators would reduce the demand for a supply of endangered crocodilian species. The recordkeeping and reporting requirements established by the Service for crocodilian species should enhance substantially our ability to assess this problem. In addition, the Service regulations prohibit permittees from violating any state, federal or foreign law concerning any hide, part or product of any crocodilian species. Thus the Service regulations extend to foreign permittees the same responsibility for upholding the laws of other nations that is currently required of persons subject to the jurisdiction of the United States by the Lacey Act, 18 U.S.C. 43. Coupled with the recordkeeping and reporting requirement of the Service regulations, this requirement satisfies the ESSA that export of alligators taken in 1979 or before will not be detrimental to the survival of other crocodilian species. The ESSA will review all available information including any new information obtained from permittees, before establishing findings for the 1980 harvest.

Promulgation of ESSA Findings

Accordingly, Part 810, Chapter VIII, Title 50 of the Code of Federal Regulations is amended to add an Annex B to read as follows:

Annex B—American Alligator

States for which the ESSA has found that export of the indicated season's harvest will not be detrimental to the survival of the American alligator and will not be detrimental to the survival of other crocodilian species.

1979 and Previous Harvest: Florida, Louisiana.

For further information see 44 FR 31583, May 31, 1979.

Publication of these final findings has been approved by the Members of the Endangered Species Scientific Authority.

Dated: August 31, 1979.

William Y. Brown,
Executive Secretary.

[FR Doc. 79-31496 Filed 10-11-79; 8:45 am]

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Part V

Department of the Interior

Office of the Secretary

Requirement for Equal Opportunity
During Construction and Operation of the
Alaska Natural Gas Transportation
System

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 34

Requirement for Equal Opportunity During Construction and Operation of the Alaska Natural Gas Transportation System

AGENCY: Department of the Interior.

ACTION: Proposed Rulemaking.

SUMMARY: This proposed rulemaking will institute procedures to carry out the requirements of section 17 of the Alaska Natural Gas Transportation Act and Condition 11 of the President's *Decision*. Section 17 and Condition 11 require Federal officers and agencies to take affirmative action to ensure that no person will be excluded on the grounds of race, creed, color, national origin or sex from participating in any activity connected with the construction and operation of the Alaska Natural Gas Transportation System.

DATES: Comments should be submitted by December 12, 1979. In addition, seven public meetings will be held on this proposed rulemaking to allow the public to address the proposed rulemaking and all other relevant issues raised at the meetings.

ADDRESSEE: Comments should be addressed to: Office for Equal Opportunity, Department of the Interior, 1800 C Street, NW., Washington, D.C. 20240.

Comments will be available for public inspection in Room 1324 of the above address during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday. Comments must be received on or before December 12, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Edward E. Shelton, Director, Office for Equal Opportunity, Department of the Interior, 202-343-5693.

Public meetings on these proposed rules will be held at seven locations. The meetings will cover the issues addressed in the proposed rules and all other relevant issues raised at the meetings.

The seven public meetings will be held at the following locations on the dates indicated, beginning at 9 a.m.

1. November 5, 1979, RM 286, 219 South Dearborn Street, Chicago, Illinois.
2. November 6, 1979, RM 13216 (13th Floor), Federal Building, 450 Golden Gate Avenue, San Francisco, California 94102.
3. November 7, 1979, RM 2866, 915 Second Avenue, Seattle, Washington.

4. November 13, 1979: Federal Building, Conference RM C-114, 701 C Street, Anchorage, Alaska 99513.

5. November 14, 1979: Noel Wein Public Library, 1215 Cowles Street, Fairbanks, Alaska.

6. November 15, 1979: North Slope Meeting Hall, Barrow, Alaska.

7. November 27, 1979: Auditorium at C Street Entrance, Department of the Interior, 1800 C Street, NW., Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION: Under section 17 of the Alaska Natural Gas Transportation Act of 1976 (ANGTA) (15 U.S.C. 719), Federal officers and agencies are required to take affirmative action to assure that no person will be excluded, on the grounds of race, creed, color, national origin, or sex, from participation in any activity connected with the construction and operation of the Alaska Natural Gas Transportation System (ANGTS). Federal officers are authorized to implement and enforce section 17 through the promulgation of rules, as may be necessary. Condition 11 of the President's *Decision and Report to Congress on the Alaska Natural Gas Transportation System* (Decision), approved and adopted 91 Stat. 1268 (1977), which supplements the requirements of ANGTA, directs the companies that are authorized to construct and operate the system to develop plans to ensure that discrimination on the basis of certain prohibited grounds does not occur. The plans developed must be approved by the Federal Inspector, who is the officer designated by section 7 of ANGTA, and Reorganization Plan No. 1 of 1979, to monitor and enforce compliance with terms and conditions of all Federal authorizations issued to the companies.

The scope of section 17 is broad. The language is almost identical to the language of section 403 of the Trans-Alaskan Pipeline Act (30 U.S.C. 185), which was passed in 1973 to facilitate the building of the Alaskan oil pipeline. The legislative history of section 403 suggests that Congress intended to insure that minorities and minority business enterprises received an opportunity, to the maximum extent possible, to participate in the construction, operation, and maintenance of the oil pipeline. From the remarks of Representative Yvonne Braithwaite Burke, the sponsor of section 403, it appears that the policies of Executive Order 11246 which prohibits discrimination by Federal contractors, and its implementing regulations, as well as the policies of the regulation prohibiting discrimination in Federal procurement programs and encouraging the use of minority business enterprises in those programs, were

intended to apply to activities relating to the construction of the oil pipeline. In addition, the legislative history shows that great flexibility was intended to be authorized in the range of enforcement mechanisms and sanctions that were to be employed to insure compliance with requirements under section 403. Representative Burke's remarks indicated that the enforcement provisions of Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000d and 2000e), and Executive Orders 11246 and 11625 were to be available under section 403. Since the language of section 17 ANGTA is identical, in the most relevant aspects, to the language of section 403 of the Trans-Alaska Pipeline Act, it is reasonable to assume that Congress intended the scope of section 17 to be as broad as the scope of section 403.

There are seven different Federal agencies that must grant authorization before action can go forward to construct the system: the Department of Interior, the Federal Energy Regulatory Commission, the Corps of Engineers, the Environmental Protection Agency, the Department of Transportation, the Department of Agriculture, and the Department of Energy (the authorizing agencies). In order to coordinate the efforts of all agencies charged with the responsibility to insure that improper discrimination does not occur in the construction and operation of the system, and to avoid conflicting or unduly burdensome regulation, the agencies have worked together in formulating and drafting a uniform set of requirements to implement section 17 and the President's *Decision*. Because of the Department of Interior's experience in formulating and implementing similar requirements under the Trans-Alaska Pipeline Act, it has been chosen to act as the lead agency in this effort. By acting in concert, the agencies have recognized the unique nature of this project, and the requirements of section 9 ANGTA that all Federal agencies act expeditiously to complete the steps necessary to grant the authorizations required to advance the project. These affirmative action requirements are an integral part of the certificates, rights-of-way, permits, leases and other authorizations which must be issued under ANGTA; and so it is important that these requirements be completed as expeditiously as possible, not only to prevent delay, but also to insure that every effort is made to increase the participation of minorities and women in the construction of the system from the earliest possible time. One set of requirements has been developed to

apply to the construction of the three U.S. segments of the system, despite the fact that three different companies are responsible for constructing and operating the three distinct U.S. segments. It was thought that uniformity of action, requirements, and application of the requirements to all portions of the system would make the implementation of these requirements much easier, and would avoid confusion and delay that might otherwise result. The agencies invite interested parties to comment upon this course of action that has been chosen.

These affirmative action requirements have been patterned, in large measure, upon those promulgated by the Department of Interior in regulations under the Trans-Alaska Pipeline Act, 43 CFR Part 27 (TAPS regulations). In addition, the regulations under Title VI of the Civil Rights Act of 1964 and Executive Order 11246 have also been the source of many of the requirements included here, as they were in the TAPS regulations. Certain changes from those regulations have been made to accommodate the special circumstances of the gas pipeline. Other changes have been made to reflect the experience gained during the implementation of the TAPS regulations. The primary differences between these requirements and the regulations for the oil pipeline are the expansion of requirements intended to increase the use of minority and female businesses in the procurement process, the addition of a procedure for early review of affirmative actions plans, and the incorporation of the responsibilities and authority of the Federal Inspector, an official unique to this project.

The Federal Inspector's role, under ANGTA, is to act as coordinator, monitor, and enforcer of the various legal requirements and obligations with which the companies must comply. The Office of the Federal Inspector will be abolished one year after the date of the initial operation of ANGTS, at which time the enforcement functions of the Office will revert to the respective agencies that granted authorization pursuant to ANGTA. During the construction phase of the project, the Federal Inspector will have an office, or officers, along the route of the pipeline in order to closely monitor the construction activities. The Reorganization Plan No. 1 of 1979, which transfers the monitoring and compliance functions of the various Federal agencies to the Federal Inspector, provides the Federal Inspector with the authority not to enforce any regulation or agency requirement which the

Inspector determines is contrary to the purpose of ANGTA, i.e. the expeditious construction of the pipeline. These requirements recognize the role of the Federal Inspector by providing for flexibility in their implementation, and by leaving to the Inspector's discretion the manner which the requirements should be enforced.

In addition, the requirements differ from the TAPS regulations so as to encourage increased participation by minority and female businesses during the earliest stages of the planning and construction process. To that end the requirements for the portion of the affirmative action plan relating to procurement have been expanded. Also a procedure has been included to allow the Federal Inspector to review the adequacy of the affirmative action plans prior to the issuance of final authorizations for the project, and, in some instances, prior to the award of certain contracts.

Substantive Provisions

In substance, these requirements impose upon the applicants for, and recipients of, Federal certificates, permits, rights-of-way, leases, and other authorizations specific responsibilities to insure that no person is excluded on the basis of race, color, creed, national origin or sex, from participating in, and receiving the benefits of, the activities conducted under such authorizations. The broad nondiscrimination prohibition applies to every person participating in the project (section 34.2). In addition, specific practices, which have been used in the past to discriminate, have been expressly prohibited (section 34.4). Interested parties are invited to scrutinize the list of specific prohibitions to suggest additional practices that should be added, or possible refinements of those enumerated.

Specific requirements have been placed upon the project sponsors, the recipients of the Federal authorizations, and their contractors and subcontractors. The requirements vary depending upon the dollar amount of the contract, with more extensive obligations placed upon the project sponsors and major contractors. All contractors or subcontractors with contracts of \$10,000 or more are required to provide assurances, prior to the execution of any contract, that they do not maintain segregated facilities and that they will abide by these requirements (section 34.5). In addition, each contract for goods and services valued at \$10,000 or more must include an Equal Opportunity Clause. The Equal Opportunity Clause (section 34.6) is patterned after the clause required for

all federal contractors pursuant to Executive Order 11246. An obligation to maintain certain records and to take certain affirmative steps arises as a consequence of including the clause in the contracts. A written affirmative action plan is not required as part of the Equal Opportunity Clause. This clause will be automatically incorporated into the terms of all Federal authorizations granted under ANGTA.

All contractors and subcontractors with contracts valued at \$50,000 or more must develop a written affirmative action plan. The content of the plan is described in section 34.8. The required content of the plan varies, depending upon the dollar amount or value of the contract. For contracts between \$50,000 and \$150,000, the affirmative action plan must address employment practices and the manner in which services, financial aid, and other benefits will be provided. For contracts of \$150,000 or more, the affirmative action plan must include a program to increase the use of minority and female businesses in the company's procurement process. The concepts used to develop the requirements for the procurement affirmative action plan are drawn from the regulations under Executive Order 11246 (41 CFR Part 60-2) even though that Executive Order does not address procurement practices.

The main elements of the procurement affirmative action plan are these: (1) A self-analysis of procurement policies to identify deficiencies and ways of correcting the deficiencies to afford minority and female businesses a greater opportunity to participate. This is analogous to the utilization analysis required in affirmative action plans of Federal contractors, and used in voluntary programs over the years. (2) Goal and timetable setting based on a knowledge of procurement opportunities and the availability of minority and female businesses. A variety of governmental and private agencies are available to assist in identifying minority and female businesses, and these requirements encourage consultation with such agencies in the development of affirmative action programs. The Federal government agencies that can provide assistance include the Small Business Administration, the Minority Business Development Agency, the Economic Development Administration, the Office of Minority Enterprise Program Development of the Department of Commerce, and the Department of Energy's Office of Small and Disadvantaged Business Utilization. These agencies can also assist minority firms to develop the capability to

participate in the project. (3) A description of specific steps that will be taken to increase minority and female business participation, to the maximum extent practical is also required. This requirement covers a number of actions designed to increase participation, from the naming of a liaison officer with program responsibilities, to procedures for verifying the ownership and control of minority and female businesses. Such actions involve rather standard considerations for implementing an affirmative action program. The procurement affirmative action plan required must also address the extent to which the project sponsors will provide assistance to minority and female businesses.

All affirmative action plans, regardless of the dollar value of the contract, are required to provide a mechanism for considering grievances or complaints. In addition, supporting data for all plans must be compiled and maintained by the companies.

The standards for the goals to be established for employment practices are those applied to Federal contractors under Executive Order 11246, and found at 41 CFR Part 60-2, Subparts B and C. A similar reference to familiar standards by which to judge the adequacy of the goals established has not been made for the procurement practice goals.

Comments are also requested to address the appropriateness of incorporating by reference the affirmative action plan requirements for employment that appear in the OFCCP's regulations at 41 CFR Part 60-2, within § 34.8(c)(2) of these requirements. Both the EEOC and OFCCP have suggested that the more recently issued regulations applicable to construction projects, and found at 41 CFR Part 60-4, may be more appropriate. The principal advantage of the Part 60-4 regulations is that they include specific hiring goals for women and minorities by SMSA and economic region for each construction craft. In addition, specific affirmative action steps are required of all contractors and subcontractors with contracts of \$10,000 or more. On the other hand, use of Part 60-2 requirement, would result in the development of goals by the project sponsors, their contractors and subcontractors based on their own analysis of labor market conditions, with these goals open to change through negotiation with the government. Also under Part 60-2, the contract threshold for specific affirmative action requirements as contained in affirmative action plans is \$50,000. The authorizing agencies believe a single affirmative action model should be adopted and

that the Part 60-2 model allows for greater flexibility in the setting of more realistic goals. In addition, the Part 60-2 regulations require the preparation of written affirmative action plans; the Part 60-4 regulations do not. Finally, the Part 60-2 approach was used successfully during construction of the Trans-Alaska oil pipeline, as well on other projects. These draft rules, therefore, adopt the Part 60-2 model.

Interested parties are invited to comment upon the standards that have been established, or that should be established, to guide the companies in establishing goals and timetables to increase the participation of minority and female workers and businesses.

These requirements also provide for an early review of the affirmative action plans of contractors and subcontractors with contracts of \$500,000 or more (§ 34.8(c)(6)). The project sponsors, their contractors and all subcontractors with contracts of \$500,000 or more that have been awarded at the time these requirements are issued, will be required to submit their affirmative action plans for the Federal Inspector's approval within 60 days after these requirements are issued. For contracts awarded after these requirements are issued, the Federal Inspector has discretion to review the affirmative action plans of the contractors and subcontractors, with contracts of \$500,000 or more, prior to the award of the contract. These early review requirements should afford ample opportunity for coordinating activities between the Federal Inspector's office, the sponsors, and the large contractors and subcontractors. It is believed that through such early review a number of things can be accomplished: project-wide goals and timetables can be set, centralized reporting systems can be established, and enforcement policies and procedures can be defined. The review of the affirmative action plans of the project sponsors and the largest contractors and subcontractors should be completed prior to the award of most of the necessary Federal authorizations.

Finally, these requirements acknowledge that the Federal Inspector has discretion and flexibility in the enforcement of these requirements and can employ any sanction or method of enforcement that is authorized by law. Pursuant to section 11 of ANGTA, the Federal Inspector may issue compliance orders directing compliance with any law, rule, regulation or order that the Inspector finds was violated. In addition, the Federal Inspector may request the Attorney General to commence civil actions for the

imposition of injunctions and penalties, not to exceed \$25,000 per day. Other avenues of enforcement are also open to the Federal Inspector. In addition to the enforcement procedures and sanctions of ANGTA, the Inspector also has available the enforcement provisions of other statutes. The Federal Inspector may refer matters to the EEOC for investigation and enforcement under title VII of the Civil Rights Act of 1964. No attempt has been made here to limit or direct the exercise of the Federal Inspector's discretion in the choice of enforcement mechanisms or sanctions available to be used. Comments are invited as to whether these requirements should include provisions to give some guidance to the Federal Inspector as to the choice of enforcement mechanisms or sanctions that would be appropriate in particular circumstances.

These regulations have been developed consistent with the review and consultation requirements of Executive Order 12067, with both the Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance Programs (OFCCP) providing comments on this and earlier drafts.

Prior to the issuance of these regulations for public comment, several informal public conferences and meetings were held to consider matters that would be affected by these regulations. The first of these meetings was on May 21, 1979, in Washington, D.C. at the Federal Energy Regulatory Commission with public comment received through June 18, 1979. During the week of September 2, 1979, Commissioner Matthew Holden, Jr. of the FERC held four additional meetings in Anchorage, Fairbanks, and Barrow, Alaska. The discussions which took place at the Alaska meetings are not reflected in these proposed requirements, but will be fully considered along with additional comments to be received during the public comment period.

Interested parties are encouraged to consider and comment upon all aspects of these proposed requirements, and not just the specific areas in which comment has been invited.

The author of these proposed rules is Edward E. Shelton, Director, Office for Equal Opportunity.

It is hereby determined that the publication of this document is not a major Federal Action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Authority: Under the authority of section 17, Pub. L. 94-586, 15 U.S.C. 719 (1976) it is proposed to amend Subtitle A of Title 43 of the Code of Federal Regulations by adding a new Part 34 as follows:

Dated: October 5, 1979.

Leo Krulitz,

Acting Secretary of the Interior.

PART 34—REQUIREMENTS FOR EQUAL OPPORTUNITY DURING CONSTRUCTION AND OPERATION OF THE ALASKA NATURAL GAS TRANSPORTATION SYSTEM

Sec.

34.1 Statement of purpose.

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34.11 Enforcement provisions.

Authority: Section 17, Pub. L. 94-586, 15 U.S.C. 719 (1976).

§ 34.1 Statement of purpose.

The purpose of these regulations is to implement both section 17 of the ANGTA and Condition 11 of the President's *Decision*.

§ 34.2 Applicability.

These regulations apply to all activities including but not limited to, contracting for goods and services, employment, and any other benefits that flow from activities conducted under permits, rights-of-way, public land orders, and other Federal authorizations granted or issued pursuant to ANGTA, by recipients of those authorizations, their agents, contractors, and subcontractors, including labor unions or other persons.

§ 34.3 Definitions.

(a) As used in this part, the term, "ANGTA" or "Act" means the Alaska Natural Gas Transportation Act of 1976, Pub. L. No. 94-586, 15 U.S.C. 719.

(b) "ANGTS" means the Alaska Natural Gas Transportation System as designated and described in the President's *Decision and Reports to Congress on the Alaska Natural Gas Transportation System*, September 1977, pursuant to section 7(a) of ANGTA, S.J. Res. 82, 91 Stat. 1268 (1977).

(c) The term "affirmative action plan" means a statement of those actions appropriate to overcome the effects of

past or present practices, policies or other barriers to equal opportunity in employment, procurement, and the provision of services, financial aid or other benefits, and includes goals for achieving equal opportunity and a description of specific result-oriented procedures to which the recipient, contractor or subcontractor commits itself to apply a good faith effort in order to achieve the goals.

(d) The term "applicant" means a person who has applied for and is seeking Federal authorization related to activities conducted under ANGTA, but has not received or been denied the authorization sought.

(e) The term "contract" means any agreement or arrangement (in which the parties do not stand in the relationship of employer and employee) between a recipient or an applicant and any person for the furnishing of supplies or services, or for the use of real or personal property including lease arrangements. The term contract also includes any agreement or arrangement, whether oral or written, express or implied, between two persons and which is related in any way to the activities conducted under any certificate, permit, right-of-way, lease, or other Federal authorization granted or issued pursuant to ANGTA, or in any way connected with ANGTS.

(f) The term "contractor" means a person who is a party to a contract with a recipient or an applicant.

(g) The term "discrimination" means an action or a failure to act which has the effect or would tend to have the effect of excluding a person from participation in, denying a person benefits of, or subjecting a person to unequal treatment on the basis of race, creed, color, national origin or sex.

(h) The term "Federal Inspector" means the official appointed by the President pursuant to section 7(a)(5) of ANGTA to coordinate governmental actions with respect to ANGTS, including the monitoring and enforcement of the terms and conditions attached to government authorizations issued under ANGTA. The term also includes authorized representatives of the Federal Inspector.

(i) The term "female business enterprise" (FBE) means a sole proprietorship, partnership, unincorporated association, joint venture or corporation that is owned and controlled by women. To qualify as an enterprise owned and controlled by women, 51% of the beneficial ownership interests and 51% of the voting interests must be held and actually voted by women. Further, the enterprise must in fact be controlled and managed by women.

(j) "Minority" includes:—(1) Black, all persons having origins in any of the Black African racial groups not of Hispanic origin;

(2) Hispanic, all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin regardless of race;

(3) Asian and Pacific Islander, all persons having origins in any of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands including persons having origin, for example, in China, India, Japan, Korea, the Philippine Islands and Samoa; and

(4) American Indian or Alaskan Native, all persons having origins in any of the original people of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

(k) The term "minority business enterprise" (MBE) means a sole proprietorship, partnership, unincorporated association, joint venture or corporation that is owned and controlled by minority persons. To qualify as an enterprise owned and controlled by minority persons, 51% of the voting interests must be held and actually voted by minority persons. Further, the enterprise must in fact be controlled and managed by minority persons.

(l) The term "person" includes recipients, contractors, subcontractors, governmental agencies, corporations, associations, firms, partnerships, joint stock companies, labor unions, employment agencies, and individuals.

(m) The term "President's *Decision*" means the President's *Decision and Report to Congress on the Alaska Natural Gas Transportation System*, September 1977, pursuant to section 7(a) of ANGTA, approved and adopted S.J. Res. 82, 91 Stat. 1268 (1977).

(n) The term "procurement" means the acquisition (and directly related matters) of personal property, and nonpersonal services (including construction) by such means as purchasing, renting, leasing, (including real property) contracting, or bartering, but not by condemnation or donation.

(o) The term "procurement practice" means any course of conduct or activity taken to effect procurement.

(p) The term "recipient" means any corporation, association, joint stock company, partnership, firm, agency or individual who receives a certificate, permit, right-of-way, lease, or other Federal authorization granted or issued under ANGTA, whether directly or through another recipient including any successor, assignee or transferee thereof.

(q) The term "subcontract" means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of employer and employee) in any way related to the performance of any one or more contracts as defined above.

§ 34.4 Discrimination Prohibited.

(a) *General.* No person shall be excluded on the grounds of race, creed, color, national origin, or sex, from receiving any benefit from or participating in any activity conducted under any certificates, permits, rights-of-way, leases, and other Federal authorizations to which this part applies.

(b) *Specific actions in which discrimination is prohibited.* No person shall directly or through contractual or other arrangements, discriminate in any activity to which this part applies, including the following:

(1)(i) Employment practices of employers, including advertising; hiring or firing; up-grading, promotion, or demotion; transfer, layoff, or termination; rates of pay, and other forms of compensation, or benefits;

(ii) Employment practices of labor unions including, acceptance of applications for membership, enrolling or expelling members, classification of members, referrals for employment, training and apprenticeship programs, and the provision of other benefits of membership;

(iii) Employment practices of employment agencies including, acceptance of applications for employment services, referrals for employment, classification of individuals for employment, and the provision of other benefits and services;

(2) Procurement practices, including manner of procurement; qualification for contracting or placement on procurement source lists; the composition of sources solicited; the use of pre-bid conferences; solicitation for proposals or bids; the designation of quantities, delivery schedules or other specifications; selection procedures; or performance standards.

(3) The provision of services, financial aid and other benefits provided in whole or in part, under any Federal authorization to which this part applies, more specifically including actions that result in the:

(i) denial to an individual or establishment of any service, financial aid, or other benefits;

(ii) provision of any service, financial aid, or other benefit to an individual or establishment which is different, or is provided in a different manner, from that provided to others;

(iii) subjection of an individual to segregation or separate treatment in any matter related to the receipt of any service, financial aid, or other benefits;

(iv) restriction of an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit;

(v) treatment of an individual that is different from others in the determination of any admission, enrollment, eligibility, membership requirements or other conditions which individuals must meet in order to be provided any service, financial aid, or other benefit;

(vi) denial to an individual of an opportunity to participate in any activity, or the provision to an individual of an opportunity to participate in any activity that is different from that afforded others;

(vii) denial to an individual of the opportunity to participate as a member of any planning or advisory body that participates in the provision of any service, financial aid, or other benefit;

(viii) use of criteria or methods of administration which have the effect of subjecting individuals or establishments to discrimination in the determination of the types of services, financial aid or other benefits, or the facilities that will be provided; or the class of individuals or establishments to which, or the situation in which, such services, financial aids, other benefits, or facilities will be provided; or the class of individuals or establishments to be provided an opportunity to participate in any activity; and

(ix) selection of a site or location for facilities for the provision of services, financial aid, or other benefits, with the purpose or effect of substantially impairing the objectives of section 17, the President's Decision, and implementing rules, regulations, and orders.

(c) *Scope of prohibited discrimination.* The enumeration of specific forms of prohibited discrimination in paragraph (b) of this section does not limit the general prohibition in paragraph (a) of this section.

§ 34.5 Assurances.

Every application for a certificate, permit, right-of-way, lease, public land order, or other Federal authorization to which this part applies, filed after the effective date of these regulations, and every contract covered hereunder to provide goods, services, or facilities in the amount of \$10,000 or more to a recipient contractor or subcontractor to which this part applies, must contain an assurance that the recipient, contractor,

or subcontractor does not and will not maintain any segregated facilities, and that all requirements imposed by or pursuant to section 17, the President's Decision and implementing rules, regulations, and orders shall be met, and that it will require a similar assurance in every subcontract of \$10,000 or more.

§ 34.6 Equal Opportunity Clause.

Each certificate, permit, right-of-way, lease, or other Federal authorization to which this part applies, shall include the following Equal Opportunity Clause:

(a) The recipient, contractor, or subcontractor hereby agrees that it will not discriminate directly or indirectly against any individual or establishment in offering or providing procurements, employment, services, financial aid, other benefits, or other activities to which these regulations apply. The recipient, contractor, or subcontractor will take affirmative action to utilize business enterprises owned and controlled by minorities or women in its procurement practices; to assure that applicants for employment are employed, and that employees are treated during employment without discrimination on the basis of race, creed, color, national origin, or sex; and to assure that individuals and establishments are offered and provided services, financial aid, and other benefits without discrimination on the basis of race, creed, color, national origin, or sex. The recipient, contractor, or subcontractor agrees to post in conspicuous places available to contractors, subcontractors, employees, and other interested individuals, notices which set forth these equal opportunity terms; and to notify interested individuals, such as bidders, contractors, purchasers, and labor unions or representatives of workers with whom it has collective bargaining agreements, of its obligations under section 17, and of the President's Decision and implementing rules, regulations and orders thereunder;

(b) The recipient, contractor, or subcontractor will comply with all rules, regulations, and orders which implement section 17 and Condition 11 of the President's Decision;

(c) The recipient, contractor, or subcontractor will furnish all information and reports required by or pursuant to rules, regulations, and orders implementing section 17 and Condition 11 of the President's Decision, and will permit access to its facilities, books, records, and accounts by the Federal Inspector for purposes of ascertaining compliance with such rules, regulations, and orders;

(d) In the event of a recipient's, contractor's, or subcontractor's noncompliance with these equal opportunity terms, compliance may be effected through procedures authorized by ANGTA and set forth in implementing rules, regulations, and orders, or by any other means authorized by law;

(e) The recipient, contractor, or subcontractor will include the provisions of paragraphs (a) to (e) in all agreements to assign authorization, all contracts over \$10,000, and all contracts of indefinite quantity, unless there is reason to believe that the amount to be ordered in any year under the contract will not exceed \$10,000. The recipient, contractor, or subcontractor will take such action with respect to any contract or purchase order that the Federal Inspector may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however, That in the event the recipient, contractor, or subcontractor becomes involved in or is threatened with litigation with a subcontractor or vendor, the contractor may request the United States to enter into such litigation to protect the interests of the United States.*

§ 34.7 Incorporation by Operation of Law.

(a) The Equal Opportunity Clause shall be deemed incorporated into every Federal authorization, agreement to assign an authorization, contract and subcontract where § 34.6 of these regulations requires the inclusion of such a clause whether or not the clause is physically incorporated in such Federal authorization, agreement to assign authorization, contract or subcontract, and whether or not the agreement or contract is written.

(b) The affirmative action plans prepared pursuant to this part shall be deemed incorporated into the Federal authorizations, contracts, and subcontracts to which these regulations apply.

§ 34.8 Affirmative Action Plans.

(a) Within sixty (60) days of the effective date of this part, applicants for or recipients of Federal authorizations and each contractor and subcontractor with contracts of \$500,000 or more shall submit to the Federal Inspector for approval, in accordance with paragraph (c)(6) of this section, an affirmative action plan for each of their establishments, with the exception of those establishments which the Federal Inspector determines are not associated with any activities conducted pursuant to the Federal authorizations to which this part applies.

(b) In addition, recipients and each of their contractors and subcontractors shall require each contractor with a contract in the amount of \$50,000 or more to develop before the commencement of the contract and to keep on file a written affirmative action plan for each of their establishments, with the exception of those establishments which the Federal Inspector determines are not associated with any activities conducted pursuant to the Federal authorizations to which this part applies.

(c) An acceptable affirmative action plan must include an analysis of all areas of operation of the recipient, contractor, or subcontractor in which it could be deficient in offering services, opportunities, or benefits to minority groups and women, all areas of employment in which it could be deficient in the utilization of minority groups and women, and all areas of procurement in which it could be deficient in the utilization of MBE's and FBE's; and, further, the plan must include specific goals and specific timetables to which the recipient, contractor, or subcontractor will direct its best efforts to correct all deficiencies, and to materially increase the participation of minorities and women in all aspects of its operation. Such plans shall be updated annually.

The affirmative action plan shall include the following:

(1) *Services, financial aid, and other benefits*—The recipient, contractor or subcontractor is required to specifically address and analyze all areas of its operation which offer and provide services, financial aid, and other benefits at each of its establishments to which this section applies. The analysis should include:

(i) An identification of services, financial aid, and other benefits that the recipient, contractor or subcontractor provides or may provide;

(ii) A description of the population eligible to be served or to participate, by race, color, national origin, and sex;

(iii) An identification of specific actions that will be taken to assure that no discrimination occurs in providing services, financial aid, and other benefits;

(iv) If relevant, the location of all existing or proposed facilities connected with the services, financial aid, or other benefits, as well as related information adequate for determining whether the location has or could have the effect of denying access to any individual on the basis of prohibited discrimination;

(v) Where relocation of facilities is involved, the steps that will be taken to guard against adverse socioeconomic

effects on individuals on the basis of race, color, creed, national origin, or sex.

(vi) Information on all areas of the recipient's, contractor's, or subcontractor's operations that require change to assure that specific actions set forth at 34.4(b)(3) do not occur in the provision of any of its services, financial aid, or benefits;

(vii) A monitoring system to assure that no discrimination occurs.

(2) *Employment practices.* The affirmative action plan shall address all aspects of employment in construction and non-construction operations and shall contain all analyses and commitments, including goals and timetables, which are required in regulations promulgated pursuant to Executive Order 11246, specifically at 41 CFR Part 60-2, Subparts B and C.

(3) *Procurement Practices.* Recipients and each contractor and subcontractor with a contract of \$150,000 or more shall also include in the affirmative action plan a program in which the recipient, contractor, or subcontractor agrees to take specific affirmative action as set forth below to utilize MBE's and FBE's as contractors and suppliers. The plan shall identify specific actions which the recipient, contractor, or subcontractor will take to afford MBE's and FBE's the maximum practicable opportunity to participate in the construction and operation of the ANGTS. The plan shall contain:

(i) An in-depth utilization analysis of all areas of procurement procedures to determine if these procedures offer maximum opportunity for the utilization of MBE's and FBE's. All deficiencies must be identified along with steps that are being taken to correct them. The analyses shall include the following information for the preceding year, or such lesser time as the Federal Inspector determines is necessary to identify deficiencies in contracting with MBE's and FBE's:

(A) A listing of each procurement action by number and type, including the dollar amount of each action, the name of the company receiving the contract, and whether it was an MBE or FBE;

(B) An identification of all MBE's and FBE's which were considered for each contract, and an indication of which of these companies received the contracts;

(C) Separate statements of the total dollar value of procurements from MBE's and from FBE's and the percentage of each as a portion of the total dollar value of all procurements for the period; and

(D) An identification of negotiated procurements which involved no competitive bidding.

(ii) A description of all procurement opportunities to be offered for the succeeding year, or for such longer period of time for which projections are available. The plan shall identify the types of services and supplies for which procurements are to be let, with as much specificity as possible, indicating the dollar amounts of procurements contemplated.

(iii) The establishment of specific dollar goals separately for MBE's and for FBE's and timetables for achieving these goals for each specific type of contracting identified. Goals for MBE's should assure utilization of the various minority groups on an equitable basis. The following factors should be considered during the goal setting process:

(A) The availability and capability of existing MBE's and FBE's in each specific area;

(B) The extent to which new firms can be organized and the capability of existing firms expanded by efforts of the recipient, contractors or subcontractors, as well as by the efforts of other organizations and institutions;

(C) Anticipated procurement expansion;

(D) The extent to which changes in the procurement system can be made to utilize contract breakouts and other methods to increase opportunities for MBE's and FBE's.

(iv) A description of all actions that will be taken to provide the maximum practicable opportunity for MBE's and FBE's to participate in the construction and operation of ANGTS including the following:

(A) The appointment of a liaison officer who will administer the MBE and FBE program, the identification of that officer, and a description of that officer's duties and authority;

(B) Identification of steps that will be taken to insure timely and full consideration of MBE's and FBE's in all procurement decisions, and the identification of how those procedures will be implemented. This shall include procedures relevant to (1) the arrangement of solicitations, (2) time for preparation of bids, (3) quantity requirements, (4) determination of specifications, (5) determination of delivery schedules, (6) the determination of the manner of procurements, (7) defining the firms to compete for various procurements, and (8) breaking out contracts into smaller procurements;

(C) An identification of procurement arrangements that will be adopted to increase the use of MBE's and FBE's, including an analysis of the circumstances in which and the extent to which the following types of

procurement practices can be used: (1) non-competitive contracting, (2) contracting based upon competition between a limited number of enterprises, and (3) negotiated procurements;

(D) Specific procedures for identifying capable MBE's and FBE's and for the dissemination of information on business opportunities and procurement practices to minority and women's business organizations and associations, in sufficient detail, and affording sufficient time, to offer full opportunities for participation by MBE's and FBE's;

(E) An identification of financial assistance, such as investment in Minority Enterprise Small Business Investment Companies (MESBIC) and direct investment in MBE's and FBE's, that the recipient, contractor or subcontractor determines feasible and financially appropriate to offer MBE's and FBE's;

(F) The efforts that will be made to cooperate with MBE and FBE technical and other assistance programs of Federal and State agencies, including the Small Business Administration, the Minority Business Development Agency, the Economic Development Administration, the Office of Minority Enterprise Program Development, and the Department of Energy's Office of Small and Disadvantaged Business Utilization. These efforts shall be commensurate with the dollar amount of the procurement opportunities that the recipient, contractor, or subcontractor has as a result of participation in the construction of ANGTS;

(G) The identification and elimination of non-essential technical requirements and procedures, including non-essential bonding and insurance requirements;

(H) Holding regularly scheduled meetings with procurement officials of the recipient, contractor, or subcontractor to explain minority business enterprise policies and procedures;

(I) Identification of specific procedures for certifying and verifying ownership and control of companies identified as MBE's and FBE's. The plan shall include the requirement that firms submit affidavits as to their status as MBE's and FBE's as defined in § 34.3.

(v) As an integral part of the affirmative action plan, develop and maintain separate source listings of MBE's and FBE's. Such lists or files should contain whenever possible the following information on each company:

(A) A description of each business, including the type of organization,

(B) The product or service offered,

(C) Information on ownership and control,

(D) All relevant data and affidavits which establish that the enterprise is owned, controlled, and managed by minorities or women.

(4) *Complaint system.* (i) The affirmative action plan must include a grievance mechanism for resolving disputes arising from the implementation of the plan.

(ii) A copy of all complaints, related records, and specific resolutions must be maintained.

(5) *Data to support affirmative action program and access to programs.* (i) Data supporting the analyses and programs required by these regulations shall be compiled and maintained as part of the affirmative action plan.

(ii) Copies of the affirmative action plan and supporting data shall be made available to the Federal Inspector upon his request as may be appropriate for the fulfillment of the Inspector's responsibilities under these regulations.

(6) *Review of affirmative action plan.*

(i) Every applicant for a Federal authorization to which this part applies and each of its contractors and subcontractors with contracts of \$500,000 or more that are in effect on the date these regulations are promulgated shall submit the affirmative action plans required by this section to the Federal Inspector for approval within 60 days of the promulgation of these regulations.

(ii) All contractors and subcontractors with contracts of \$500,000 or more that are executed after the date these regulations are promulgated shall file their affirmative action plans with the Federal Inspector before the commencement of the contract.

(iii) Applicants and their contractors and subcontractors with contracts of \$500,000 or more shall include with their affirmative action plans the following information:

(A) A brief description of pending applications to any Federal agency for Federal financial assistance or the award of a government contract, as well as any Federal assistance being received or any government contracts or subcontracts being performed;

(B) Whether any Federal, State or local government agency has found the applicant, contractor, or subcontractor in noncompliance or has found reasonable cause to believe the applicant, contractor, or subcontractor is in violation of, or in noncompliance with, any civil rights requirements;

(C) A description of the methods by which the applicant, contractor, or subcontractor will insure that its contractors and subcontractors comply with the provisions of the affirmative action plans during the term of the contracts;

(d) The Federal Inspector shall consider conducting an on-site review before the award of any Federal authorizations, agreements to assign Federal authorizations, contracts or subcontracts under which substantial employment or procurement opportunities will be offered;

(e) The Federal Inspector will determine whether the affirmative action plans are adequate. If deficiencies are found to exist in a plan, the recipient, contractor, or subcontractor shall correct the deficiencies in consultation with the Federal Inspector. If deficiencies are not corrected to the satisfaction of the Federal Inspector, the Inspector may enforce compliance with this section through measures authorized by ANGTA or any other provision of law.

§ 34.9 Compliance reporting.

(a) *Records, reports, and access to books.* Each recipient, contractor, and subcontractor to which these regulations apply shall submit to the Federal Inspector reports in the form and manner that the Federal Inspector determines to be necessary to insure compliance with the rules, regulations, and orders implementing section 17 and the President's Decision.

(b) *Access to sources of information.* Each person to whom this part applies shall permit access by the Federal Inspector during normal business hours to books, records, accounts, and other sources of information, and to facilities, as the Federal Inspector determines to be necessary to insure compliance with the rules, regulations, and orders implementing section 17 and the President's Decision.

(c) *Failure to submit reports.* Failure to file timely, complete, and accurate reports, or failure to permit access to sources of information as required constitutes noncompliance with the Equal Opportunity Clause and with these regulations; and, therefore, constitutes grounds for action by the Federal Inspector, recipient, contractor, or subcontractor to enforce compliance or levy sanctions authorized by ANGTA, by the implementing rules, regulations, and orders, by contractual agreement or by any other means authorized by law.

(d) *Information to beneficiaries and participants.* Each recipient or other entity required to develop an affirmative action plan pursuant to these regulations shall make the plan available to employees, participants, and beneficiaries.

§ 34.10 Compliance reviews.

(a) *Periodic compliance procedures.*

(1) The Federal Inspector will review at least annually the practices of recipients, contractors, and subcontractors, who offer significant opportunities for employment or procurement, to determine whether they are complying with their affirmative action plans and the rules, regulations, and orders implementing section 17 and the President's Decision. The review will consist of a comprehensive analysis of all aspects of the recipient's, contractor's or subcontractor's operations and practices and the conditions resulting therefrom. The review will include an on-site visit if the Federal Inspector determines that such a review is necessary.

(2) The Federal Inspector will continually monitor and verify the status of MBE's and FBE's through procedures as the Inspector may determine appropriate.

(b) *Complaints.* (1) Complaints alleging discrimination or noncompliance with affirmative action plans shall be filed with the Federal Inspector.

(2) A complaint must be filed within 180 days from the date of the alleged discrimination, unless the time for filing is extended by the Federal Inspector for good cause shown.

(3) The complaint should include the name, address, and telephone number of the complainant; the name and address of the person alleged to have discriminated; a description of the alleged discriminatory acts; and any other pertinent information which will assist the investigation and resolution of the complaint. The complaint should be signed by the complainant or his or her authorized representative.

(c) *Investigations.* The Federal Inspector will make a prompt investigation whenever information indicates a possible failure to comply with the rules, regulations, and orders implementing section 17 and the President's Decision. The investigation should include, where appropriate, a review of the pertinent practices and policies of the person, the circumstances under which the possible noncompliance occurred, and other factors relevant to determine whether the person has failed to comply with section 17, the President's Decision, and implementing rules, regulations, and orders.

(d) *Resolution of complaints and investigations.* (1) If an investigation pursuant to paragraphs (a) through (c) of this section indicates probable noncompliance with the rules,

regulations, and orders implementing section 17 and the President's Decision, the Federal Inspector will attempt to resolve the matter by informal methods of conference, conciliation, and persuasion.

(2) Resolution shall be effected through a written agreement between the Federal Inspector, the complainant, if any, and the person who has failed to comply. The agreement shall contain commitments to promptly eliminate all discriminatory conditions and shall identify the precise remedial actions to be taken; dates for completion of remedial actions; and a provision that breach of the agreement may result in further enforcement actions by the Federal Inspector. The Federal Inspector will then certify compliance, on condition that the commitments are kept. Such certification does not preclude future determination by the Federal Inspector that the full facts were not known at the time the agreement was executed, or that commitments are not sufficient to correct deficiencies.

(e) If the Federal Inspector's investigation does not warrant enforcement action, the Federal Inspector shall so inform the complainant, if any, and the person who was investigated.

(f) *Acts of intimidation or retaliation prohibited.* No person shall intimidate, threaten, coerce, or retaliate against any individual for the purpose of interfering with any right or privilege secured by section 17, the President's Decision, and implementing rules, regulations, and orders, because that individual has made a complaint, testified, assisted in, benefited from, or participated in any manner in an investigation, compliance review, proceeding, or hearing conducted pursuant to these regulations. The identity of complainants may be kept confidential except to the extent necessary to carry out the purpose of this part, including investigatory actions, hearings, or judicial proceedings arising thereunder.

§ 34.11 Enforcement provisions.

The Federal Inspector may enforce the provisions of section 17, the President's Decision, and implementing rules, regulations, and orders in any manner authorized by law.

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