federal register

WEDNESDAY, JUNE 30, 1971
WASHINGTON, D.C.

Volume 36 ■ Number 126
Pages 12269–12463

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(Revised as of January 1, 1971)

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[*A Cumulative checklist of CFR issuances for 1971 appears in the first issue of the Federal Register each month under Title 1*]

Order from Superintendent of Documents,
United States Government Printing Office,
Washington, D.C. 20402

FEDERAL REGISTER

Area Code 202 Phone 962-8626

Published daily, Tuesday through Saturday (no publication on Sundays, Mondays, or on the day after an official Federal holiday), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., Ch. 15), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended (44 U.S.C. 1510). The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

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Chapter X—Consumer and Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture

[Milk Order 40]

PART 1040—MILK IN SOUTHERN MICHIGAN MARKETING AREA

Order Suspending Certain Provision

This suspension order is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Southern Michigan marketing area.

Notice of proposed rulemaking was published in the FEDERAL REGISTER (36 F.R. 11455) concerning a proposed suspension of a certain provision of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon.

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, data, views, and arguments filed thereon, and other available information, it is hereby found and determined that for the months of July through December 1971 the following provision of the order does not tend to effectuate the declared policy of the Act:

In § 1040.12, which defines "fluid milk product", the provision "yogurt."

STATEMENT OF CONSIDERATION

This suspension order will continue the present suspension which results in milk used to produce yogurt being classified and priced as Class III milk rather than as Class I milk. The current suspension expires June 30, 1971.

Handlers who distribute a major portion of the producer milk under the Southern Michigan order requested that the present suspension be continued for several months. This request was expressly supported by certain cooperative associations. There is no indication of any opposition to this suspension action.

The marketing conditions which supported the previous suspension warrant this extension for an additional 6 months. Southern Michigan handlers compete for yogurt sales with handlers in neighboring Federal order markets who pay a minimum price for milk in such use that is substantially less than the Southern Michigan Class I price. Without this suspension, Southern Michigan handlers will be unable to compete on a reasonable basis for yogurt sales.

A hearing on this issue for the Southern Michigan market has been delayed pending the Department's recommendations on proposals to adopt a uniform plan of milk classification for seven Midwest Federal order markets, including several in which Michigan handlers are distributing yogurt. A recommended decision on such a uniform classification plan was issued June 4, 1971. Southern Michigan handlers contemplate a hearing on the appropriate classification of yogurt following the proceedings on the seven markets.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area in that without this action Southern Michigan handlers will be unable to compete on a reasonable basis for yogurt sales with handlers in neighboring markets who pay a minimum price for milk in such use that is substantially less than the Southern Michigan Class I price;

(b) This suspension order does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) This suspension is a continuation of a previous suspension of the same provision. Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning the continuation of such suspension.

Therefore, good cause exists for making this order effective July 1, 1971.

It is therefore ordered, That the aforesaid provision of the order is hereby suspended for the months of July through December 1971.

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

Effective date: July 1, 1971.

Signed at Washington, D.C., on June 24, 1971.

RICHARD E. LYNG,
Assistant Secretary.

[FR Doc.71-9203 Filed 6-29-71;8:47 am]

[Milk Order 94]

PART 1094—MILK IN NEW ORLEANS, LA., MARKETING AREA

Order Terminating Certain Provisions

This termination order is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the New Orleans, La., marketing area.

Notice of proposed rulemaking was published in the FEDERAL REGISTER (36 F.R. 10980) concerning a proposed termination of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon.

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, data, views, and arguments filed thereon, and other available information, it is hereby found and determined that the following provisions of the order no longer tend to effectuate the declared policy of the Act:

1. Section 1094.19 in its entirety.
2. In § 1094.22(k)(2), the words "through 1094.74."
3. In § 1094.30(a)(1), the words "and for each month of the base operating period, the total quantities of base milk and excess milk."
4. In § 1094.30(b), the words "and base and excess milk" appearing at the end of the first sentence of said subparagraph.
5. In § 1094.31(a)(2), the words "and for the base operating period the total pounds of base and excess milk."
6. In § 1094.31(b)(2)(i), the words "with separate totals for base and excess milk for the base operating period."
7. In § 1094.72(b), the words "in the months of August through January."
8. Sections 1094.73 and 1094.74 in their entirety.
9. In § 1094.75, the words "base price and excess price" immediately following the words "uniform price."
10. In § 1094.76(a), the words "and the uniform price for base milk."
11. In § 1094.77, paragraph (b) in its entirety.
12. In § 1094.77(c), the words "through 1094.74."
13. In § 1094.80(a)(2), the words "or to §§ 1094.73 and 1094.74 as the case may be."
14. In § 1094.80(b)(2), subdivision (ii) in its entirety.
15. In § 1094.80(c)(2), subdivision (ii) in its entirety.
16. Sections 1094.90, 1094.91, 1094.92, 1094.93, and 1094.94 in their entirety.

The termination of the specified provisions will eliminate from the order the base-excess plan currently used during the months of February through July as a means of distributing to producers returns for their milk.

Statement of consideration. A cooperative association which represents the majority of the producers supplying the New Orleans market requested the termination of the base-excess plan for the order contending that the plan no longer tends to effectuate the declared policy of the Act. Producers have overresponded to the plan in that production, particularly in the base-forming months, greatly exceeds the market's requirements for Class I milk. Elimination of the base-excess plan in the attendant

"race for base" in the fall months will bring supplies more nearly in line with the market's requirements.

Therefore, good cause exists for making this order effective on September 1, 1971, the date on which the base-forming period otherwise would commence.

It is therefore ordered, That the aforesaid provisions of the order are hereby terminated.

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

Effective date: September 1, 1971.

Signed at Washington, D.C., on June 24, 1971.

RICHARD E. LYNG,
Assistant Secretary.

[FR Doc.71-9204 Filed 6-29-71;8:47 am]

[Milk Order 124]

PART 1124—MILK IN THE OREGON-WASHINGTON MARKETING AREA

Order Terminating Certain Provision

This termination order is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Oregon-Washington marketing area.

It is hereby found and determined that the provision in § 1124.51(a) of the order which reads "For the first 18 months from the effective date of this section," no longer tends to effectuate the declared policy of the Act.

STATEMENT OF CONSIDERATION

This termination order removes the June 30, 1971, terminal date for the Class I price now provided in the order.

The effect of this termination order will be to continue the current Class I price until a decision based on evidence adduced at a public hearing held in Tualatin, Oreg., on March 30, 1971, through April 1, 1971, is issued. One of the issues at the hearing was the Class I price. The recommended decision resulting from the hearing is expected to be issued at an early date.

It is hereby found and determined that notice of proposed rule making, public procedure therein, and 30 days' notice of the effective date hereof are impractical, unnecessary, and contrary to the public interest in that:

(a) This termination is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area in that it is the only practical means of continuing the current Class I price in the Oregon-Washington order until a decision is issued based on evidence adduced at a public hearing held in Tualatin, Oreg., on March 30, 1971, through April 1, 1971.

(b) This termination order does not require of persons affected substantial or extensive preparation prior to the effective date.

Therefore, good cause exists for making this order effective upon publication in the FEDERAL REGISTER.

It is therefore ordered, That the aforesaid provision of the order is hereby terminated.

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

Effective date: Upon publication in the FEDERAL REGISTER (6-30-71).

Signed at Washington, D.C., on June 24, 1971.

RICHARD E. LYNG,
Assistant Secretary.

[FR Doc.71-9202 Filed 6-29-71;8:47 am]

[Milk Order 125; Docket No. AO-226-A23]

PART 1125—MILK IN PUGET SOUND, WASH., MARKETING AREA

Order Amending Order

Findings and determinations. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of the said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Puget Sound marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than July 1, 1971. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The recommended decision of the Deputy Administrator, Regulatory Programs, was issued May 6, 1971, and the decision of the Assistant Secretary containing all amendment provisions of this order was issued June 14, 1971. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective July 1, 1971, and that it would be contrary to the public interest to delay the effective date of this amendment for 30 days after its publication in the FEDERAL REGISTER. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559.)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended;

(3) The issuance of the order, exclusive of the Class I base plan of payment to producers, is approved or favored by at least two-thirds of the producers who participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area; and

(4) The issuance of the Class I base plan of payment to producers, which is included in this order, is approved or favored by at least two-thirds of the producers who participated in a separate referendum in which each individual producer had one vote and who during the determined representative period were engaged in the production of milk for sale in the marketing area.

ORDER RELATIVE TO HANDLING

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Puget Sound marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

1. In § 1125.71, the heading and paragraphs (b), (c), and (g) are revised to read as follows:

§ 1125.71 Computation of weighted average price and uniform price for producer milk.

* * * * *

(b) Add or subtract the aggregate of the location adjustments computed pursuant to § 1125.81(a),

(c) Add the aggregate of the values on nonpool milk computed pursuant to § 1125.81(c).

* * * * *

(g) Subtract not less than 4 cents but less than 5 cents from the price computed pursuant to paragraph (f) of this section. The result shall be known as the uniform price for producer milk and the weighted average price for all milk.

1a. In § 1125.72, paragraph (a) is revised as follows:

§ 1125.72 Computation of uniform prices for base milk and excess milk.

* * * * *

(a) * * *

(1) The amount computed by multiplying the hundredweight of milk specified in § 1125.71(f)(2) by the weighted average price for all milk;

(2) The amount obtained by multiplying by the Class III price the total hundredweight of milk delivered by all producers described in § 1125.121 (c) and (d) for whom no base milk has been computed; and

(3) The amount computed by multiplying the hundredweight of excess milk by the Class III price for 3.5 percent milk, rounded to the nearest one-tenth cent: *Provided,* That if such result is greater than an amount computed by multiplying the hundredweight of base milk by the Class I price (for 3.5 percent milk) plus 4 cents, such amount in excess thereof shall be subtracted from the result obtained prior to this proviso;

* * * * *

1b. In § 1125.72(c), in both instances, change the reference "(a)(2)" to read "(a)(3)".

2. In § 1125.80, paragraph (a) is revised as follows:

§ 1125.80 Time and method of payment to producers and to cooperative associations.

(a) * * *

(1) At not less than the uniform price for base milk for the quantity of base milk received, adjusted by the butterfat differential computed pursuant to § 1125.82 and by any location adjustment applicable under § 1125.81;

(2) At not less than the Class III price adjusted by the butterfat differential computed pursuant to § 1125.82 for the quantity of milk received from producers described in § 1125.121 (c) and (d) for whom no base milk has been computed; and

(3) At not less than the uniform price for excess milk for the quantity of excess milk received, adjusted by the butterfat differential computed pursuant to § 1125.82 and by any location adjustment applicable under § 1125.81: *Provided,* If by such date such handler has not received full payment for such month pursuant to § 1125.85, he shall not be deemed to be in violation of this paragraph if he reduces uniformly for all producers his payments per hundredweight pursuant to this paragraph by a total amount not in excess of the reduction in payment from the market administrator; however, the handler shall make such balance of payment uniformly to those producers to whom it is due on or before the date for making payments pursuant to this paragraph next following that on which such balance of payments is received from the market administrator.

* * * * *

CLASS I BASE PLAN PROVISIONS

§ 1125.110 Production history base and Class I base.

For purposes of determination and assignment of Class I base of each producer:

(a) "Production history base" means a quantity of milk in pounds per day as computed pursuant to § 1125.120 (b) or (c).

(b) "Class I base" means a quantity of milk in pounds per day as computed pursuant to § 1125.121 for which a producer may receive the base milk price.

(c) "Average daily producer milk deliveries" of a producer in any specified period used for computing production history bases means the total pounds of producer milk delivered by the producer divided by the number of days in the period rounded to the nearest whole pound: *Provided,* That if a producer is prevented from delivering milk during the production history period because of storm conditions, the number of days of nondelivery due to such cause not to exceed 4 days in any year may be deducted from the total number of calendar days in the period.

§ 1125.111 Base milk and excess milk.

(a) "Base milk" means:

(1) Milk received from a producer which is not in excess of his Class I base multiplied by the number of days in the month except that if milk is received from a producer for only part of a month, base milk shall be milk received from such producer which is not in excess of his Class I base multiplied by the number of days of production of producer milk delivered during the month; and

(2) Milk received from a producer to whom no Class I base has been issued, in the amount determined pursuant to § 1125.121 (c) or (d).

(b) "Excess milk" means milk in excess of base milk received during any designated period from a producer who during such period is delivering base milk.

§ 1125.120 Computation of production history base for each producer.

A "production history base" as defined in paragraph (b) or (c) of this section shall be determined by the market administrator for each producer eligible for such base on the effective date of this provision and on February 1 of each year thereafter. The computation of production history base shall be subject to adjustments described in paragraph (c)(1) of this section due to acquisition or disposition by transfer of Class I base or other modifications of Class I base due to hardship or loss of Class I base because of underdelivery of base. For purposes of computation of his production history base, a producer shall be considered as having been on the market during any specified period if: As a producer he delivered milk of his production during the designated period without interruption sufficient to cause forfeiture of base pursuant to § 1125.123(a); during such period (after the effective date of this provision) did not dispose of all his Class I base by transfer; and during no year of his production history period were his average daily producer milk deliveries subject to negative adjustments pursuant to paragraph (c)(1) of this section resulting in a zero quantity. If such adjustment results in a zero quantity of average daily deliveries, the producer shall have a 1-year production history period and a corresponding production history base, not subject, however, to the 20 percent reduction provided in paragraph (c)(3) of this section.

(a) "Production history period" means the period to be used for the computation of production history base for a producer. Production history periods for this purpose are as follows:

(1) The production history period for a producer who has been on the market during the 3 years (January–December) preceding the determination of his production history base shall be the 4 months of each such year during which the average daily receipts of total producer milk in the market were lowest for the year. The period described in this subparagraph shall be known as a 3-year production history period.

(2) The production history period for a producer who has been on the market for a lesser period than specified in subparagraph (1) of this paragraph but beginning on a date not later than September 1 of one of the three preceding years (January–December) shall be:

(i) In the first year, the months specified in subparagraph (1) of this paragraph if the producer were on the market during the first full month so specified, otherwise the months of September through December, of such year; and

(ii) In any other years preceding the determination of his production history base, the 4 months of each year specified in subparagraph (1) of this paragraph;

(iii) Periods described in this subparagraph shall be known as 1-year, 2-year or 3-year production history periods depending on whether deliveries began in the first, second, or third year, respectively, preceding determination of production history base;

(3) The production history period for a producer who has been on the market during a period beginning after September 1, 1970, and who delivered producer milk in each of the 7 months preceding the effective date of this provision shall be the first 4 full months of delivery on the market. Such period shall be known as a 1-year production history period. For any such producer, the milk deliveries of the same 4 months shall be used in subsequent updating of produc-

tion history bases to represent the milk deliveries of such producer in 1970. When a producer has acquired the herd and farm of a member of his immediate family (either before or after the effective date of this provision) and has continued to operate that farm and herd as a continuous operation, the deliveries made by the previous producer during the base earning period shall be assumed to have been delivered by the current producer for use in computing a production history base.

(b) The production history base for each producer on the effective date of this provision shall be determined by the market administrator as follows:

(1) If the production history period of any producer includes in any year months other than those specified pursuant to paragraph (a)(1) of this section, the average daily producer milk deliveries of such producer in the months used in his production history period shall be adjusted as follows: Multiply the producer's average daily producer milk deliveries by the ratio of average daily total producer milk in the market in the 4 months of the year specified in paragraph (a)(1) of this section to the average daily total producer milk in the market in the months used for such producer; except that for a producer described pursuant to paragraph (a)(3) of this section, the 4-month period specified in paragraph (a)(1) of this section shall be the applicable months in 1970.

(2) For a producer who was issued a Class I base pursuant to the provisions which became effective on September 1, 1967, and thus had a "production history base" which he had earned pursuant to the provisions then effective, and who has continued on the market as a producer since the issuance of such base, the production history base pursuant to this subparagraph shall be the larger of (i) the "production history base" assigned pursuant to the provisions effective September 1, 1967, reduced by the amount specified in the provision made effective September 1, 1967, in § 1125.123(f) with respect to reduction of production history base in proportion to transfer of Class I base, or (ii) such producer's production history base determined pursuant to subparagraph (3) of this paragraph. This provision shall apply also to the production history base of a Class I base effective September 1, 1967, if now held by a producer who received it from the original holder by intrafamily transfer, or through a succession of intrafamily transfers.

(3) For a producer with a 3-year production history period, the production history base shall be the sum of his average daily producer milk deliveries each year in the specified months for production history (subject to adjustment of deliveries in any year pursuant to subparagraph (1) of this paragraph if applicable) divided by 3.

(4) For a producer with a 1-year or 2-year production history period, the production history base shall be the sum of his average daily producer milk deliveries in each year in the specified months for production history (subject to adjustment of deliveries in any year pursuant to subparagraph (1) of this paragraph, if applicable) divided by the number of years in the production history period and multiplied by 60 percent for a 1-year production history period or by 80 percent for a 2-year production history period.

(5) A production history base shall be assigned to producers on the effective date of this provision who qualify for such base pursuant to paragraphs (d), (e), and (f) of this section.

(c) The production history base for each producer who has not disposed of his entire base by transfer, or who after disposing of his entire base by transfer has met the delivery requirements described in § 1125.121(d), shall be determined by the market administrator on February 1 of each year as follows:

(1) In updating a production history base as described in this paragraph, adjustments to a producer's previously assigned production history base and/or average daily producer milk deliveries in prior years shall be made as follows:

(i) If a producer's average daily producer milk deliveries in the combined period of the four production history months of the preceding year is less than the average of such producer's Class I base effective on the first day of each such month, the amount of such difference shall represent a reduction in Class I base. Such reduction shall not apply, however, in the updating of bases on February 1, 1972.

(ii) The prior production history base assigned to such producer shall be adjusted in proportion to the net change in Class I base due to acquiring or disposing of Class I base by transfer, adjustment of Class I base for hardship, or because of underdelivery of Class I base. The adjustment factor shall be determined by dividing the Class I base last held by the producer in the preceding January (after any adjustment pursuant to subdivision (i) of this subparagraph), by the amount of Class I base issued on the preceding February 1 or effective date of this provision.

(iii) The average daily producer milk deliveries for which a producer will receive credit in his production history in the current year and in years prior to any net disposal of Class I base by transfer or reduction due to underdelivery shall be adjusted in proportion to the net change in Class I base. The adjustment factor shall be the Class I base issued on the previous February 1 (or effective date of this provision) less the net amount of Class I base disposed of by transfer since such date and the amount of reduction of Class I base pursuant to subdivision (i) of this subparagraph, divided by the amount of Class I base issued on the preceding February 1 (or effective date of this provision).

(iv) If the combined effect of such adjustments is a reduction greater than the respective production history base or average daily producer milk deliveries subject to such adjustments, then the resulting amount after adjustment shall be zero and any year for which a zero amount is determined shall not be regarded as a production history period.

(2) For a producer with a 3-year production history period, the production history base shall be one-third of the sum of the amounts pursuant to subdivisions (i), (ii), and (iii) of this subparagraph, or the amount pursuant to subdivision (iv) of this subparagraph, whichever is larger:

(i) His average daily producer milk deliveries in the specified months for production history in the first year (adjusted pursuant to paragraph (b)(1) of this section, if applicable) reduced by any adjustments pursuant to subparagraph (1)(iii) of this paragraph;

(ii) His average daily producer milk deliveries in the specified months for production history in the second year of his production history period, reduced by any adjustments pursuant to subparagraph (1)(iii) of this paragraph;

(iii) His average daily producer milk deliveries in the specified months for production history in the most recent year of his production history period reduced by any adjustments pursuant to subdivision (1)(iii) of this subparagraph which are applicable to a net disposal of Class I base by transfer;

(iv) The production history base assigned to such producer on the preceding February 1 (or effective date of this provision) subject to any adjustments pursuant to subparagraph (1) of this paragraph.

(3) For a producer with a 1- or 2-year production history period who did not acquire Class I base by transfer from another producer, the production history base shall be the sum of his average daily producer milk deliveries for each year (calculated in the same manner and subject to the same type of reductions as described in subparagraph (2)(i) of this paragraph) divided by the number of years in his production history period and multiplied by 60 percent if the producer has a 1-year production history period or by 80 percent if he has a 2-year production history period. The resulting quantity shall be subject to a further reduction of 20 percent in the case of any producer who began deliveries after the effective date of this provision or who is a producer described in § 1125.121(d).

(4) For a producer who has acquired a Class I base by transfer from another producer prior to assignment of a production history base computed from deliveries of his own milk production, the production history base to be assigned on the February 1 following a 1-year production history period of such producer shall be the larger of the amounts computed pursuant to subdivision (i) or (ii) of this subparagraph, and on the February 1 following a 2-year production history period shall be the amount computed pursuant to subdivision (iii) of this subparagraph.

(i) The production history base asso-

ciated with the Class I base acquired, adjusted pursuant to subparagraph (1) of this paragraph.

(ii) One-third of his average daily producer milk deliveries in the specified production history months of the preceding year (adjusted pursuant to paragraph (b)(1) of this section, if applicable).

(iii) The production history base last assigned on a February 1 adjusted pursuant to subparagraph (1) of this paragraph plus one-third of the excess of the producer's average daily producer milk deliveries in the four production history months of the preceding year over such adjusted production history base.

(5) For a producer who has been assigned a production history base calculated only from deliveries of his own milk production during a one-year production history period and who since such assignment has acquired Class I base by transfer from another producer, the production history base of such producer on February 1 following such acquisition of Class I base shall be the production history base last assigned to such producer on the effective date of this provision or on the latest preceding February 1 adjusted pursuant to subparagraph (1) of this paragraph plus one-third of the excess of the producer's average daily producer milk deliveries in the four production history months of the preceding year over such adjusted production history base.

(d) For each producer not subject to § 1125.121(d) who became a producer for this market after January 1, 1968, because the plant to which he regularly delivered milk became a fully regulated plant pursuant to this order, a production history base shall be determined, if possible, pursuant to paragraph (b) or (c) of this section based on his deliveries of milk as if the nonpool plant to which he delivered were a pool plant during the 3 preceding years.

(e) A producer not described pursuant to paragraph (d) of this section who delivered milk to a nonpool plant or who delivered manufacturing grade milk to a pool plant prior to becoming a producer, and who is not subject to the provisions of § 1125.121(d), shall have a production history base effective on the first day of the third month after the month in which he began deliveries of producer milk to a pool plant if a production history base can be computed pursuant to paragraph (b) or (c) of this section based on deliveries of milk from the same farm on which he is now a producer as if the plant(s) to which he delivered had been a pool plant(s) during the 3 preceding years.

(f) For a producer who held producer-handler status during any part of the production history periods specified in paragraph (a) of this section, a production history base shall be calculated as prescribed in paragraph (b) or (c) of this section as though the milk of his own production received at his producer-handler plant had been received at a pool plant.

(g) With respect to computation of production history bases pursuant to this section the following rules shall apply:

(1) If a producer operated more than one farm at the same time during any specified production period, a separate computation shall be made with respect to producer milk delivered from each such farm for such period, except that only one computation shall be made with respect to milk production resources and facilities of a producer-handler specified in § 1125.14(b)(1).

(2) Only one production history base shall be allotted with respect to milk produced by one or more persons where the land, buildings, and equipment are jointly used, owned, or operated.

§ 1125.121 Computation of Class I base or base milk for each producer.

On the effective date of this provision and on February 1 of each subsequent year the market administrator shall assign a Class I base to each producer who has a production history base. Class I bases shall be assigned to producers described in paragraphs (d), (e), and (f) of § 1125.120 when they are issued production history bases. Class I bases shall be computed as follows:

(a) Compute a "Class I base percentage" as follows:

(1) Determine the sum of Class I dispositions during the preceding calendar year from the following:

(i) Class I producer milk pursuant to § 1125.46(c),

(ii) The Class I disposition of plants during the period when they were nonpool plants, if such plants were pool plants in the preceding December, and

(iii) The Class I disposition of his own production of a person who was a producer-handler during a portion of the year and who held producer status in the preceding December.

Multiply the sum by 1.20 and divide the result by the number of days in such year: *Provided*, That on the effective date of this provision, comparable Class I disposition for the year 1970 will be determined, including that of former nonpool plants and producer-handlers which in the second month preceding the effective date were, respectively, pool plants and producers.

(2) Divide the quantity computed paragraph by a quantity which is the total of production history bases computed pursuant to § 1125.120. The result shall be converted to a percentage by multiplying by 100 and rounding to the third decimal place. Such percentage shall be known as the "Class I base percentage."

(b) The Class I base of each producer with a production history base shall be determined by multiplying his production history base by the "Class I base percentage."

(c) A producer, other than a producer pursuant to paragraph (d) of this section, who has no production history base shall be assigned base milk each month effective on the first day of the third month after the month in which he began deliveries of producer milk. Such base milk for each month prior to the first February 1 on which he is eligible for a Class I base shall be computed as follows:

(1) Multiply the quantity of producer milk delivered by the producer during the month by the ratio of average daily total producer milk in the market in the last 4 months described in § 1125.120(a)(1) used in the computation of production history base for assignment on the effective date hereof or on the February 1 preceding this computation to the average daily total producer milk in the market in the month of the year preceding this calculation which corresponds to the current month for which Class I base assignment is being computed.

(2) Multiply the quantity resulting from the computation pursuant to subparagraph (1) of this paragraph by 40 percent and by the Class I base percentage, and if such producer began production after the effective date of this provision, or is a producer described in paragraph (d) of this section, subtract from the resulting quantity 20 percent of such quantity, rounding in either event to the nearest whole number.

(d) A producer who, after having forfeited or disposed of all of his Class I base, either continues as a producer on the market or discontinues deliveries to the market and returns to the market as a producer, shall be assigned base milk computed in the manner specified in paragraph (c)(1) and (2) of this section, such assignment to be effective on the later of the following dates: the first day of the third month after the month in which he recommences deliveries of producer milk on the market, or the first day of the seventh month after the month in which a producer who forfeits his base ceases deliveries or a producer disposes of his Class I base. The production history period of such producer shall begin on the later of the following dates: the date on which he first received payment for base milk or the first day of the first month eligible for use in a production history period pursuant to § 1125.120(a). In the application of this provision, use of the same production facilities by another person (or the same person under a different name) to produce milk after the above described forfeiture or transfer of base shall be considered as a continuation of the operation by the previous operator if the new operator is a member of the immediate family of the previous operator. It shall be applied also to any production facility to which a Class I base has not been assigned, wherever located, operated by a person in which the producer who forfeited or transferred his base has a financial interest if such facility commences production on or after the effective date of the transfer or forfeiture, or such producer acquired his financial interest in

such person later than 3 months prior to the effective date of the base transfer or forfeiture.

§ 1125.122 Transfer of bases.

Production history and Class I base may be transferred pursuant to the following rules and conditions:

(a) A transfer of base means the transfer of both the production history base and the Class I base associated with it at the time of transfer. The percentage of Class I base transferred shall be applied to the total production history base held at the time of transfer to determine the corresponding amount of production history transferred.

(b) The market administrator must be notified in writing by the holder of the Class I base prior to the first day of the month of transfer of the name of the person to whom the Class I base is to be transferred, the effective date of the transfer and the amount of base to be transferred if less than the entire Class I base held by the transferor.

(c) It must be established to the satisfaction of the market administrator that the conveyance of such base is bona fide and not for the purpose of evading any provision of this order, and comes within the remaining provisions of this section.

(d) A transfer may be made only to a producer (a person who is currently a producer on the market or who will become a producer under the terms of the order by the last day of the month of transfer).

(e) A transfer of Class I base may be made in amounts of not less than 150 pounds or the entire base, whichever is smaller. The amount of base credited to the transferee shall be two-thirds of the Class I base disposed of by the transferor producer.

(f) A transfer of a portion of a Class I base shall be a partial transfer and shall be effective only on the first day of a month. A transfer where the transferee producer will combine the Class I base received with Class I base already held shall be considered a partial transfer.

(g) A transfer of a complete Class I base of a producer to a person who does not hold a Class I base will be effective on the date of transfer of herd and farm, or on the first day of the month if no herd and farm is transferred, provided in either case that a base transfer request was made to the market administrator on or before the first day of the month of transfer.

(h) An intrafamily transfer (including transfers to an estate and from an estate to a member of the immediate family) will not be subject to a one-third lapse of base, provided that the transfer implements a continuous operation on the same farm with the same herd. All restrictions on transferring base applicable to the transferor producer shall also apply to the transferee.

(i) A producer who receives a base pursuant to § 1125.120 (d) or (e) may not transfer such base, other than pursuant to paragraph (h) of this section, for 1 year from the date of receipt or such later date as provided in paragraph (k) of this section.

(j) A producer-handler who becomes a producer and receives a base may not transfer that base for a period of 3 years from the date of receipt, except to a member of the immediate family pursuant to paragraph (h) of this section.

(k) A base which has been computed from a less than 3-year production history period may not be transferred, except as an intrafamily transfer pursuant to paragraph (h) of this section.

(l) If a base is held by a corporation, a change in ownership of the stock which transfers control to a new person or persons will require a transfer of bases and compliance with all base rules therein.

§ 1125.123 Miscellaneous base rules.

The following base rules shall be observed in the determination of bases:

(a) A person who discontinues delivery of producer milk for a period of 60 consecutive days after a Class I base is issued to him shall forfeit his production history, together with any Class I base and production history base held pursuant to the provisions of this order, except that a person entering the military service may retain them until 1 year after being released from active military service.

(b) As soon as production history bases and Class I bases are computed by the market administrator, notice of the amount of each producer's production history base and Class I base shall be given by the market administrator to the producer, to the handler receiving such producer's milk, and to the cooperative association of which the producer is a member. Each handler, following receipt of such notice, shall promptly post in a conspicuous place in his plant a list or lists showing the Class I base of each producer whose milk is received at such plant.

(c) As a condition for designation as a producer-handler pursuant to § 1125.14, any person (including any member of the immediate family of such a person, any affiliate of such a person, or any business of which such a person is a part) who has held Class I base any time during the 12-month period prior to such designation shall forfeit the maximum amount of Class I and production history base held at any time during such 12-month period.

§ 1125.124 Hardship provisions.

Requests of producers for relief from hardship or inequity arising under the provisions of §§ 1125.120 through 1125.123 will be subject to the following:

(a) After bases are first issued under this plan and after bases are issued on each succeeding February 1, a producer may request review of the following circumstances because of alleged hardship or inequity:

(1) He was not issued a Class I base;

(2) His production history base is not appropriate because of unusual conditions during the base-earning period such as loss of buildings, herds, or other facilities by fire, flood or storms, official quarantine, disease, pesticide residue, condemnation of milk, or military service of the producer or his son;

(3) Loss or potential loss of Class I base pursuant to § 1125.123(a);

(4) Loss or potential loss of Class I base because of underdeliveries pursuant to § 1125.120(c)(1);

(5) Inability to transfer base due to the provisions of § 1125.122 (i), (j), or (k);

(b) The producer shall file with the market administrator a request in writing for review of hardship or inequity not later than 45 days after notice pursuant to § 1125.123(b) with respect to requests pursuant to paragraph (a) (1) or (2) of this section, or not later than 45 days after the occurrence with respect to requests pursuant to paragraph (a) (3), (4), or (5) of this section, setting forth:

(1) Conditions that caused the alleged hardship or inequity;

(2) The extent of the relief or adjustment requested;

(3) The basis upon which the amount of adjustment requested was determined; and

(4) Reasons why the relief or adjustment should be granted.

(c) One or more Producer Base Committees shall be established and function as follows:

(1) Each Producer Base Committee shall consist of five producers appointed by the market administrator.

(2) Each committee shall review the requests for relief from hardship or inequity referred to it by the market administrator at a meeting in which the market administrator or his representative serves as recording secretary and at which the applicant may appear in person if he so requests.

(3) Recommendations with respect to each such request shall be endorsed at the meeting by at least three committee members and shall:

(i) With respect to requests pursuant to paragraph (a) (1), (3), (4), or (5) of this section, grant or adjust production history bases and average daily producer milk deliveries for prior years where it appears appropriate, delay forfeiture of Class I base, restore forfeited base or reduced average daily producer milk deliveries where appropriate, and permit transfer of base not otherwise possible under the order provisions.

(ii) With respect to requests pursuant to paragraph (a)(2) of this section, either reject the request or provide adjustment in the form of additional production history base and average daily producer milk deliveries for prior years where it appears appropriate and the effective date thereof of such adjustment. In considering such requests the loss of milk production due to the following shall not be considered a basis for hardship adjustment:

(a) Loss of milk due to mechanical failure of farm tank or other farm equipment; and

(b) Inability to obtain adequate labor to maintain milk production, except that hardship adjustment may be granted in the case of a producer or the son of a producer who entered into military service directly from employment in milk production;

(4) Recommendation of the Producer Base Committee shall:

(i) If to deny the request, be final upon notification to the producer, subject only to appeal by the producer to the Director, Dairy Division within 45 days after such notification; or

(ii) If to grant the request in whole or in part, be transmitted to the Director, Dairy Division, and shall become final unless vetoed by such Director within 15 days after transmitted.

(5) Committee members shall be reimbursed by the market administrator from the funds collected under § 1125.88 for their services at $20 per day or portion thereof, plus necessary travel and subsistence expenses incurred in the performance of their duties as committee members.

(d) The market administrator shall maintain files of all requests for alleviation of hardship and the disposition of such requests. These files shall be open to the inspection of any interested person during the regular office hours of the market administrator.

COMPUTATION OF UNIFORM PRICE FOR PRODUCER MILK

The following provisions are necessary to effectuate the continued operation of the order in the event producers voting individually in a separate referendum fail to approve the Class I base plan or if the statutory authority for such a plan is terminated while it is in effect after its incorporation in the order. In such event, the preceding order provisions shall be modified as specified below.

1. In § 1125.22, paragraphs (j) (1) (iii) and (k) (2) are revised to read as follows:

§ 1125.22 Duties.

* * * * *

(j) * * *

(1) * * *

(iii) Uniform price for producer milk.

* * * * *

(k) * * *

(2) On or before the 13th day of each month the uniform price for producer milk computed pursuant to § 1125.71 and the butterfat differential computed pursuant to § 1125.82, each applicable to milk received during the preceding month.

* * * * *

2. In § 1125.35, paragraph (a) (2) is revised by deleting the words "the pounds of base and excess milk."

3. In § 1125.71, the subheading is changed to read: "Computation of weighted average price and uniform price for producer milk." The second sentence of paragraph (g) is revised to read as follows: "The result shall be known as the uniform price for producer milk and the weighted average price for all milk."

4. Section 1125.72 is revoked.

5. In § 1125.80, paragraph (a) is revised to read as follows:

§ 1125.80 Time and method of payment to producers and to cooperative associations.

(a) On or before the 19th day after the end of each month each handler shall make payment to each producer for the milk received from such producer during such month at not less than the uniform price for producer milk adjusted by the butterfat differential computed to § 1125.82 and by any location adjustment applicable under § 1125.81: *Provided,* If by such date such handler has not received full payment for such month pursuant to § 1125.85, he should not be deemed to be in violation of this paragraph if he reduces uniformly for all producers his payments per hundredweight pursuant to this paragraph by a total amount not in excess of the reduction in payment from the market administrator; however, the handler shall make such balance of payments uniformly to those producers to whom it is due on or before the date for making payments pursuant to this paragraph next following that on which such balance of payments is received from the market administrator.

* * * * *

6. In § 1125.81, paragraph (a) is revised to read as follows:

§ 1125.81 Location adjustments to producers and on nonpool milk.

(a) In making payments to producers pursuant to § 1125.80(a), subject to the application of § 1125.12(c), deductions may be made per hundredweight of milk received from producers at the respective plant locations at the same rate per hundredweight as is specified for Class I milk in the table set forth in § 1125.53.

* * * * *

7. In § 1125.82, the words "for base milk and for excess milk" are deleted.

8. The centerhead "Class I Base Plan Provisions" following § 1125.101, and §§ 1125.110, 1125.111, 1125.120, 1125.121, 1125.122, 1125.123, and 1125.124 are revoked.

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

Effective date: July 1, 1971.

Signed at Washington, D.C., on June 25, 1971.

RICHARD E. LYNG,
Assistant Secretary.

[FR Doc. 71-9205 Filed 6-29-71;8:47 am]

[Milk Order 136; Docket No. AO-309-A17]

PART 1136—MILK IN GREAT BASIN MARKETING AREA

Order Amending Order

Findings and determinations. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of the said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Great Basin marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

ORDER RELATIVE TO HANDLING

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Great Basin marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended,

and as hereby further amended, as follows:

1. Section 1136.11 is revised as follows:

§ 1136.11 Pool plant.

"Pool plant" means:

(a) A fluid milk plant, except a producer-handler plant, from which not less than 50 percent in any month of September through February, not less than 45 percent in any month of March and April, and not less than 40 percent in any month of May through August of the fluid milk products, except filled milk, approved by a duly constituted health authority for fluid consumption that are physically received at such plant (excluding milk received at such plant from other order plants or dairy farms which is classified in Class III under this order and which is subject to the pricing and pooling provisions of another order issued pursuant to the Act) or diverted therefrom as producer milk to a nonpool plant pursuant to § 1136.13 is disposed of on routes, and not less than 15 percent of such route disposition is on routes in the marketing area.

(1) For the purpose of determining the qualification pursuant to this paragraph of a fluid milk plant pursuant to § 1136.10 (a) operated by a cooperative association, producer milk which such cooperative association causes to be delivered to the pool plant of another handler or diverted therefrom shall be included with receipts of producer milk at such cooperative's plant and the quantity of such milk assigned to Class I pursuant to § 1136.22(h) shall be included as a Class I route disposition from such cooperative's plant;

(i) If such a cooperative association operates more than one fluid milk plant as defined in § 1136.10(a), such producer milk and class I milk shall be included in the computation for whichever plant the cooperative association requests in writing to the market administrator; and

(ii) If no such written request is made, such producer milk and class I milk shall be prorated among the plants; and

(2) If a handler operates more than one fluid milk plant, the combined receipts and fluid milk products disposition, except filled milk, of any such plants may be used as the basis for qualifying the respective plants pursuant to the preceding computations specified in this paragraph if a handler in writing so requests the market administrator.

* * * * *

2. Section 1136.13(c) is revised as follows:

§ 1136.13 Producer milk.

* * * * *

(c) Diverted from a pool plant to a nonpool plant that is not another order plant, a producer-handler plant or an exempt distributing plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the location of the plant to which diverted;

(2) Not less than 6 days' production of the producer whose milk is diverted is physically received at a pool plant;

(3) A cooperative association may divert for its account only the milk of member producers: *Provided,* That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received at all pool plants from member producers in any month of March through August, and that exceeds 20 percent of such receipts in any month of September through February, shall not be producer milk;

(4) The operator of a pool plant other than a cooperative association may divert for his account only the milk of producers who are not members of a cooperative association: *Provided,* That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received at such plant from producers who are not members of a cooperative association in any month of March through August, and that exceeds 20 percent of such receipts in any month of September through February, shall not be producer milk;

(5) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to subparagraphs (3) and (4) of this paragraph. If the handler fails to make such designation, no milk diverted by him shall be producer milk;

(6) Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of milk by their members if each association has filed such a request in writing with the market administrator on or before the 1st day of the month the agreement is effective. This request shall specify the basis for assigning overdiverted milk to the producer members of each cooperative association according to a method approved by the market administrator; or

* * * * *

3. Section 1136.41(c)(5) is revised as follows:

§ 1136.41 Classes of utilization.

* * * * *

(c) * * *

(5) In shrinkage of skim milk and butterfat, respectively, at each pool plant, or a handler pursuant to § 1136.9(c), assigned pursuant to § 1136.45(b)(1), but not to exceed the following:

(i) Two percent of producer milk; plus

(ii) One and one-half percent of milk received in bulk from other pool plants; plus

(iii) One and one-half percent of milk received from a handler pursuant to § 1136.9(c) (except that if the handler operating the pool plant files notice with the market administrator that he is purchasing such milk on the basis of farm weights, the applicable percentage shall be 2 percent); plus

(iv) One and one-half percent of receipts of fluid milk products in bulk from an other order plant, exclusive of the quantity for which class III utilization was requested by the operator of such plant and the handler; plus

(v) One and one-half percent of receipts of fluid milk products in bulk from unregulated supply plants, exclusive of the quantity for which class III utilizations was requested by the handler; less

(vi) One and one-half percent of milk transferred or diverted in bulk to other plants (except when the exception specified in subdivision (iii) of this subparagraph applies, the applicable percentage shall be 2 percent);

* * * * *

4. Section 1136.50 is revised as follows:

§ 1136.50 Class prices.

Subject to the provisions of §§ 1136.52 and 1136.53, the class prices per hundredweight for the month shall be as follows:

(a) *Class I milk price.* The class I milk price shall be the basic formula price for the preceding month plus $1.70 and plus 20 cents.

(b) *Class II milk price.* The class II milk price shall be the class III price for the month plus 15 cents.

(c) *Class III milk price.* The class III milk price shall be the basic formula price for the month.

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

Effective date: August 1, 1971.

Signed at Washington, D.C., on June 24, 1971.

RICHARD E. LYNG,
Assistant Secretary.

[FR Doc.71-9206 Filed 6-29-71;8:47 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 71-CE-17-AD; Amdt. 39-1237]

PART 39—AIRWORTHINESS DIRECTIVES

Beech Models 33, 35, 55, 56, 58, and 95 Series Airplanes; Correction

In F.R. Doc. 71-8100 appearing on page 11185 in the issue of Thursday, June 10, 1971, line 6 of paragraph (2) should be corrected to read: "502 thru TC-1020); 95-C55, 95-C55A".

Issued in Kansas City, Mo., on June 18, 1971.

CHESTER W. WELLS,
Acting Director, Central Region.

[FR Doc.71-9192 Filed 6-29-71;8:46 am]

[Docket No. 70-CE-18-AD; Amdt. 39-1237]

PART 39—AIRWORTHINESS DIRECTIVES

Beech Model 99 Series Airplanes

Amendment 39-1108, published in the FEDERAL REGISTER on November 14, 1970

(35 F.R. 17534, 17535), AD 70-23-6, applicable to Beech Models 99 and 99A airplanes is an Airworthiness Directive which requires repetitive inspections of specific wing components to detect fatigue cracks and establishes a life limit on these components.

After issuing Amendment 39-1108, the agency determined that clarification was needed to insure that all Model 99 series airplanes were affected by this AD, that an edge crack at the inboard screw hole of the wing attach fitting was not critical and that operators could report information regarding cracks to the agency through normal M&D and MRR procedures. In addition, the repetitive inspection interval required after a crack is found is being increased to 300 hours to provide relief for those operators with 75- to 100-hour inspection cycles. Accordingly, it is necessary to amend the applicability statement and Paragraphs A(1), A(2), and D of AD 70-23-6 to effect these changes.

Since this amendment is in the interest of safety, provides a clarification relieves a reinspection cycle and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and the amendment may be made effective in less than thirty (30) days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 F.R. 13697), § 39.13 of Part 39 of the Federal Aviation Regulations, Amendment 39-1108 (35 F.R. 17534, 17535), AD 70-23-6 is amended as follows:

(1) The applicability statement is amended so that it now reads: "BEECH. Applies to all Model 99 Series (Serial No. U-1 and up) Airplanes with 2,000 or more hours' time in service.".

(2) In paragraph A(1), after the existing sentence, add the following sentence: "Skin cracks located at the most inboard screw hole (corner screw) of the attached fitting are not critical and are excluded from this inspection requirement.".

(3) In the last line of the existing sentence in paragraph A(2) delete the phrase "not more than 250-hour intervals" and substitute the phrase "not more than 300-hour intervals.".

(4) In paragraph D, before the parenthetic sentence add the following parenthetic sentence: "(Reports may be submitted by letter or through M&D or MRR procedures.)".

This amendment becomes effective July 1, 1971.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423; sec. 6(c) of the Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Kansas City, Mo., on June 18, 1971.

CHESTER W. WELLS,
Acting Director, Central Region.

[FR Doc.71-9191 Filed 6-29-71;8:46 am]

[Airworthiness Docket No. 71-WE-13-AD; Amdt. 39-1239]

PART 39—AIRWORTHINESS DIRECTIVES

International Inflatables Company Regulator, Model No. 68240

An International Inflatables Co. Regulator, P/N 68240, failed in flight. The regulator was installed on an inflation bottle for the tail cone slide of a DC-9 aircraft. Separation of the bottle and regulator caused extensive damage to the aircraft skin. The bottle left the aircraft through the fiberglass tail cone. Various aircraft, including the Models DC-8, DC-9, B-707, B-727, BAC 1-11, and L-188, incorporate P/N 68240.

Corrosion in the area of the bottle threads caused the separation. Examination has indicated similar corrosion of a significant number of spare regulators.

Since this condition is likely to exist or develop in other products of the same design, an airworthiness directive (AD) is being issued to require an inspection and eventual replacement of all regulators installed in aircraft.

Since a situation exists that requires immediate adoption of the regulation, it is felt that notification and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days. In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 F.R. 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive.

INTERNATIONAL INFLATABLES CO. Applies to aircraft incorporating International Inflatables Co. Regulator, P/N 68240. Compliance required as indicated.

To prevent unwanted bottle and regulator separation of P/N 68240, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, unless already accomplished within the last 30 days, and thereafter at intervals not to exceed 60 days from the last inspection, inspect the International Inflatables Co. Regulator, P/N 68240, if installed in an aircraft, in accordance with International Inflatables Co. Service Bulletin No. 33-102, Volume 1, No. 101, dated June 11, 1971, or later FAA-approved revisions, or an equivalent inspection procedure approved by the Chief, Aircraft Engineering Division, FAA Western Region. If there is any evidence of corrosion, replace the regulator prior to further flight with a previously inspected (per this AD) and corrosion-free regulator. Do not return any regulator exhibiting evidence of corrosion to service.

(b) After the effective date of this AD, and prior to the installation of an International Inflatables Co. Regulator, P/N 68240 on an aircraft, inspect that regulator per (a) above.

NOTE: An improved regulator is under development. If and when approved by FAA, this AD will be amended to require installation within a prescribed time period.

This amendment becomes effective July 2, 1971.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423; sec. 6(c) of the Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Los Angeles, Calif., on June 22, 1971.

ARVIN O. BASNIGHT,
Director, FAA Western Region.

[FR Doc.71-9189 Filed 6-29-71;8:46 am]

[Airspace Docket No. 71-CE-67]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone and Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to amend the Cleveland, Ohio, control zone and transition area.

The Brecksville, Ohio, radio beacon is to be decommissioned. Since the Cleveland control zone and transition area designations in part refer to this radio beacon such reference should be deleted from the designations with the decommissioning. Action is taken herein to effect these changes.

Since these amendments do not change the amount of designated controlled airspace at Cleveland, Ohio, and are editorial in nature only, no additional burden will be imposed on any person. Therefore, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended effective immediately as hereinafter set forth:

(1) In § 71.171 (36 F.R. 2055), the following transition area is amended to read:

CLEVELAND, OHIO

In the text, delete, "to 2 miles west of the Brecksville RBN;" and substitute therefor, "to the Runway 28 OM:".

(2) In § 71.181 (36 F.R. 2140), the following transition area is amended to read:

CLEVELAND, OHIO

In the text, delete, "to the intersection of a 126° bearing from the Brecksville, Ohio, RBN and the arc of a 12.5-mile-radius circle" and substitute therefor, "to the intersection of a line bearing 126° from latitude 41°24'35" N., longitude 81°41'25" W., and the arc of a 12.5-mile-radius circle".

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Kansas City, Mo., on June 2, 1971.

JOHN A. HARGRAVE,
Acting Director, Central Region.

[FR Doc.71-9193 Filed 6-29-71;8:46 am]

[Docket No. 10171; Amdts. Nos. 121-74; 135-27]

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

Pilot in Command Operating Experience

The purpose of this amendment to Part 121 of the Federal Aviation Regulations is to permit a check pilot designated as pilot in command to occupy an observer's seat while a transitioning pilot qualifying for service as pilot in command occupies a pilot station, if after at least two takeoffs and landings the check pilot is satisfied that the qualifying pilot is competent to perform the duties of a pilot in command. The amendment is also applicable to air taxi operations using large aircraft, as provided in § 135.2.

This amendment is based on a notice of proposed rule making, Notice 70-36, published in the FEDERAL REGISTER on September 15, 1970 (35 F.R. 14463). Four commentators responded to the notice and their views, as well as the response of the FAA thereto, are discussed below.

As stated in the notice, this amendment is based on a petition for rule making submitted by United Air Lines, Inc. (United), requesting an amendment to § 121.434 to give check pilots greater discretion in the selection of the seat to be occupied by them during their supervision of air carrier pilots acquiring initial operatng experence. As a result of the FAA examination of the petition and relevant safety considerations, the agency developed the proposals which make up the substance of this amendment.

Those commentators opposed to the notice recommended that check pilot discretion should extend beyond the transition situation to encompass initially qualifying pilots in command and second in command pilots upgrading to pilot in command. These commentators disagreed with the FAA rationale limiting check pilot discretion to the transitioning situation, namely that in the initial and upgrading situations a pilot will not have been exposed to the operating environment of a pilot in command of a Part 121 operation. It was their opinion that inasmuch as pilots in the initial and upgrade situation will have received their necessary ratings and pilot-in-command training before the operating experience phase, they will have sufficient knowledge of, and the ability to perform, the responsibilities of the position and that the check pilot, with his expertise, will be able to determine whether the qualifying pilot should be allowed to occupy a pilot station.

We consider this argument to be only partially valid, for until a pilot has experienced the environment of a pilot in command in line operations for the length of time prescribed by § 121.434, we question whether he has sufficient training to adequately assume the responsibilities of a pilot in command in Part 121 operations. It was for this reason that the proposals in the notice extended only to pilots in command of one airplane within a group transitioning to another airplane of the same group.

In further support of broad check pilot discretion in determining when a pilot is capable of occupying a pilot station, several commentators argued that the check pilot is in the best position to determine when a pilot (whether in the initial, upgrade, or transition situation) is ready to assume control of the airplane as pilot in command. The FAA recognizes the expertise of check pilots to determine the ability of pilots to assume the responsibilities of the positions for which they are training. However, the agency does not believe that the check pilot function should be performed without required standards. In this case, the requirements of current § 121.434, with the change made by this amendment, are considered necessary to insure the safe conduct of the operating experience phase of pilot flight training.

One commentator objected to the notice on the grounds that it confused the regulations by changing the clear language of § 121.543, requiring that each flight crewmember on the flight deck remain at his station, to include an exception covering the situation where a check pilot occupies an observer's seat while the pilot in command trainee he is checking is obtaining his transition flight training from a pilot seat. We agree that an amendment to § 121.543 is unnecessary inasmuch as the amendment to § 121.434 adopted herein clearly specifies when a check pilot serving as pilot in command is authorized to occupy an observer's seat and while occupying that seat he is considered to be at his station as required by current § 121.543. Accordingly, the proposal to amend § 121.543 is not adopted.

It should be noted that several comments received made recommendations that were beyond the scope of the notice and cannot, therefore, be considered as a part of this action. However, the FAA will examine these recommendations and if it appears that they will enhance the effectiveness of training without derogating from safety, the agency will undertake the necessary rule making to implement them.

Section 121.431 is amended to incorporate in Subpart O the airplane groups and terms and definitions prescribed in Subpart N in order to maintain consistency between the Subparts. This change is editorial only.

Finally, as proposed in the Notice, § 121.434(b)(3) is amended to permit operating experience to be obtained during ferry flights or proving flights in the case of airplanes new to the certificate holder and prior to their being placed in service. This amendment is made to assist certificate holders in the qualification of the initial pilot in command of such aircraft.

In consideration of the foregoing, Part 121 of the Federal Aviation Regulations is amended, effective July 30, 1971, as follows:

1. By amending § 121.431 to read as follows:

§ 121.431 Applicability.

(a) This subpart prescribes crewmember qualifications for all certificate holders except where otherwise specified.

(b) For the purpose of this subpart, the airplane groups and terms and definitions prescribed in § 121.400 of this part apply.

2. By amending § 121.434(b)(3) and adding a flush paragraph at the end of § 121.434(c)(1) to read as follows:

§ 121.434 Operating experience.

* * * * *

(b) * * *

(3) The experience must be acquired in flight during operations under this part. However, in the case of an aircraft not previously used by the certificate holder in operations under this part, operating experience acquired in the aircraft during proving flights or ferry flights may be used to meet this requirement.

* * * * *

(c) * * *

(1) * * *

During the time that a qualifying pilot in command is acquiring the operating experience in this subparagraph a check pilot who is also serving as the pilot in command must occupy a pilot station. However, in the case of a transitioning pilot in command the check pilot serving as pilot in command may occupy the observer's seat, if the transitioning pilot has made at least two takeoffs and landings in the type airplane used, and has satisfactorily demonstrated to the check pilot that he is qualified to perform the duties of a pilot in command of that type of airplane.

* * * * *

(Secs. 313(a), 601, 604, 607, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1424, 1427; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on June 21, 1971.

J. H. SHAFFER,
Administrator.

[FR Doc. 71-9190 Filed 6-29-71;8:46 am]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

SUBCHAPTER E—RULES, REGULATIONS, STATEMENTS OF GENERAL POLICY OR INTERPRETATIONS UNDER THE FAIR PACKAGING AND LABELING ACT

PART 502—REGULATIONS UNDER SECTION 5(C) OF THE FAIR PACKAGING AND LABELING ACT

On May 19, 1970 (35 F.R. 7705), and on November 24, 1970 (35 F.R. 18001),

notices of proposed rule making pursuant to section 5(c) of the Fair Packaging and Labeling Act were published in the FEDERAL REGISTER. These proposals would regulate the use of "cents-off", "introductory offer", and "economy size" representations imprinted on packaged or labeled consumer commodities. The proposals were based upon both past and current observations in the consumer commodity market which disclosed that the use of such representations have resulted in widespread confusion and deception of the purchasing public necessitating regulations of general application to prevent deception of consumers and to facilitate value comparisons if these representations are to be used in the future. After publication, all interested persons were afforded the opportunity to submit their written data, views, and arguments on each proposal.

The Commission has now considered all matters of fact, law, policy and discretion, including the data, views, and arguments presented by interested persons in response to the published proposals and has determined that the adoption of the rules and statements of basis and purpose set forth herein are in the public interest and are fully justified by the information available to it.

A. *"Cents-off" representations.* The consumer believes a "cents-off" representation means that the commodity so labeled is being offered for sale at a reduction of the represented amount from the ordinary and customary price at which the commodity is regularly sold to the public by the retailer.

Hearings before the Committee on Commerce in the U.S. Senate, 89th Congress, first session, and before the Committee on Interstate and Foreign Commerce, House of Representatives, 89th Congress, second session, reveal that there was sufficient evidence of consumer deception and confusion in the use of these representations to warrant inclusion in the initial bills on the Fair Packaging and Labeling Act of an outright prohibition of the use of "cents-off" and "economy size" representations on packages and labels of consumer commodities. After introduction and hearings on the initial bills, testimony of the various representatives of Federal Agencies expressed the view that if the use of these representations was properly regulated, the consumer could reap the benefits of nondeceptive retail price reductions made for promotional purposes. As a consequence, the House of Representatives Bill (H.R. 15440) and the Senate Bill (S. 985) were reported out of Committee with the present provisions that responsible agencies could regulate these representations. Senator Hart in summing up the provision as finally reported out by the Conference Committee said, "Cents-off claims and economy designations can now be regulated. To the consumer, this means that economy size should be more economical for the housewife, not just the manufacturer; that cents-off should relate to an established price and that a manufacturer should not be allowed to use a cents-off designation to hide an actual rise in the price of the product if computed on a per ounce basis."

In January 1965 and March 1966 the Commission's staff completed investigations involving packaging and pricing concepts utilizing "cents-off" claims. Additional observations and reports of "cents-off" utilization have been collected by the Commission's staff since those periods. Misrepresentations occur either when the commodity so labeled does not have an established ordinary and customary retail price or when the commodity is sold so frequently or in such great volume with the "cents-off" representation that the "cents-off" price becomes the ordinary and customary price of the commodity. It was also revealed that some manufacturers have made all of their sales on a "cents-off" basis for periods of time in excess of a year and that others have repeated the "cents-off" offer so frequently that most of their output has been sold at the reduced price.

In response to the invitation contained in the proposal, sixty-two (62) comments were received from Federal and State officials, private citizens and industry representatives. Decisions respecting the various sections of the published proposed rule after consideration of all comments are as follows:

(1) Proposed § 502.1 is revised to encompass the scope of all regulations which may be written under the authority of section 5(c) of the Act. Note that introductory offers, previously referred to in proposed § 502.1(b), are no longer included under the regulations concerning "cents-off" representations. Regulations governing use of introductory offers are issued as a separate § 502.101 under "Retail Sale Price Representations".

(2) Proposed § 502.2 is revised to include the definition of terms common to all regulations to be included under Part 502. The phrase "a reasonably substantial period of time" as used to define the term "ordinary and customary price" has been further defined as "a 30-day period".

(3) Section 502.3 of the regulations is new and contains the broad prohibitions appropriate to Part 502.

(4) Section 502.100 contains the regulations specifically addressing the use of "cents-off" representations. Paragraph (a) defines the term "cents-off" representation.

(5) Proposed § 502.3 now appears as paragraph (b) of § 502.100. The requirement that the amount of the "cents-off" be substantial (i.e., at least 8 percent) has been deleted. Since the precise amount of the "cents-off" reduction must appear on the package in each case, the consumer will have adequate information upon which to make a value comparison. An optional method of informing the consumer of the ordinary and customary retail price of the "cents-off" marked commodity has been provided to ease the administrative burden at the retail level. The packager or labeler must still imprint the three-price format on the package but when he sells the product at retail he may either complete the three pricing blanks or he may display the pricing information on a sign, placard or shelf-marker contiguous to the retail display of the commodity. Either the completed three-price format or the display card will insure that the consumer is fully informed on all pricing details.

The sections designed to control frequency, duration and volume have been revised to increase flexibility of employment of the promotion but still retain sufficient limits to preclude any misrepresentation to the consumer. Volume limitation is expanded to 50 percent and this amount can be sold in one promotional effort not to exceed a 6-month period in any 1 year or it may be sold in two periods or three periods within the year but the total time of all promotional distribution may not exceed the 6-month limitation. In addition, at least thirty (30) days must elapse between successive promotions. This period insures the establishment of an ordinary and customary price and equates to the definition of reasonably substantial period of time as used in context with ordinary and customary price. An explanation of the 12-month period to be used and a description of proper volume computation has been included.

(6) Proposed § 502.3(b) now appears as § 502.100(c) and is revised in language to include the optional pricing concepts using the three-price format or the display card.

(7) Proposed § 502.3(c) is deleted.

(8) Proposed § 502.4 now appears as § 502.100(d) and is revised to require maintenance of invoices for 1 year beyond the prior 12-month period of "cents-off" employment.

B. *Introductory offers.* The consumer believes that an "introductory offer" representation on a package or label of a consumer commodity means there is a newly developed product being introduced into the market or a consumer commodity being newly introduced into a given trade area. When combined with a "cents-off" representation, the consumer believes that the commodity so labeled is being offered for sale at a reduction of the represented amount from the ordinary and customary price for which the commodity will be regularly sold to the public by the retailer for a reasonably substantial period of time immediately following the period of introductory offer.

In the past the Commission has discussed in advisory opinions the use of the word "new" as it relates to a consumer product. The word "new" may be properly used only when the product so described is either entirely new or has been changed in a functionally significant and substantial respect. A product may not be called "new" when only the package has been altered or some other change is made which is functionally insignificant or insubstantial. In addition, the Commission has stated that any claim that a product was "new" for a period of time longer than 6 months would be questioned unless exceptional

circumstances to warrant a period longer than 6 months were shown to exist. Since the consumer equates "introductory offers" with new products or products new to their trade area and the confusion and deception of "cents-off" representations are present in conjunction with employment of introductory offers, the Commission proposed regulation to prevent deception and facilitate value comparisons when using "cents-off" with introductory offers.

Decisions respecting § 502.1(b) of the published proposed rule after consideration of all comments are as follows:

(1) Section 502.1(b) now appears as § 502.101 to conform with the reorganization of Part 502 contained herein.

(2) The initial part of the regulation invokes the previously announced principles involving the use of the word "new" when introductory offers are used in conjunction with consumer commodities.

(3) The final portion of the regulation permits the use of the term "cents-off" in conjunction with introductory offers under specific conditions which provide for authenticity of price representations made to the consumer.

C. *Economy size representations.* The Commission finds that the consumer believes that terms such as "economy size", "economy pack", "budget pack", "bargain size", "value size", and the like, when placed upon a package or label of a consumer commodity, represent that a retail sale price advantage is being accorded to the purchaser thereof by reason of the size of that package or the quantity of its contents.

Historically, House of Representatives and Senate Committee hearings on the Fair Packaging and Labeling Act followed the path as enumerated herein under "cents-off" representations, clearly eliciting evidence of past practices wherein use of "economy size" representations were both deceptive and confusing to the consumer. Congress initially proposed prohibition of "economy size" designations but ultimately chose regulation of this area by permitting regulation to avoid deception rather than an outright ban.

In May of 1970 the Commission's staff completed a nationwide survey of "economy size" representations used on packaged and labeled consumer commodities. The staff found the following:

(a) In many instances when an economy claim was made, the price at which the commodity was offered to the consumer did not provide the consumer with a savings when compared to other packages of the same commodity.

(b) There were some instances discovered where the price of the economy marked packages were, in fact, higher than other regularly marked packages of the same product.

(c) Instances were found where the only package of a product offered to the consumer was that bearing an economy claim.

(d) Situations were observed where several sizes of the same packaged product bore economy claims.

There were twenty-five (25) comments from consumers, industry, and government sources submitted in response to the invitation published with the proposed regulation. After consideration of all comments, decisions concerning the various sections of the previously published proposed rule are as follows:

(1) Proposed § 502.6 now appears as § 502.102. The definition of "economy size" has been limited to those terms which clearly contain value representations. Terms which are used purely to denote size characterizations have been excluded and will be regulated when necessary under section 5(c)(1) of the Act.

(2) Proposed § 502.6 has been omitted. The price used for purposes of economy size claims is explained in § 502.102(b)(3). To the specific request of the Commission that comments address what should constitute a substantial reduction for the purposes of this paragraph, a great diversity of views were received. The opinions covered the expense of suggestion that no specific definition be used because of the great variance of commodities involved, through the suggestion that substantial reduction be at least 25 percent. The Commission has concluded that at the outset of this rule there should be a minimum established which will both guide the manufacturer in his labeling and provide the consumer with basic reliability that an economy claim is at least a reduction of the regular price in recognizable percentage. Thus, the Commission has amended this section by adding the words "i.e., at least 5 percent" following the words "substantially reduced".

(3) Subsection (c) of proposed § 502.7 has been deleted.

(4) Proposed § 502.8 now appears as § 502.102(d) and is revised to require maintenance of invoices for 1 year.

Therefore, based on consideration of the comments received, the Commission has concluded that the proposed regulations, with some modifications in language as previously explained, should be adopted.

Accordingly, pursuant to the provisions of the Fair Packaging and Labeling Act (Sections 5, 6, 80 Stat. 1299, 1300; 15 U.S.C. 1454, 1455); Subchapter E is amended by adding thereto the following new Part 502:

SCOPE

Sec.
502.1 Scope of the regulations in this part.

DEFINITIONS

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AUTHORITY: The provisions of this Part 502 issued under sections 5, 6, 80 Stat. 1299, 1300; 15 U.S.C. 1454, 1455.

SCOPE

§ 502.1 Scope of the regulations in this part.

The regulations in this part establish requirements for labeling of consumer commodities with respect to use of package size characterizations, retail sale price representations, and common name and ingredient listing. Additionally, the regulations in this part establish criteria to prevent nonfunctional-slack-fill of packages containing consumer commodities.

DEFINITIONS

§ 502.2 Terms defined.

As used in this part, unless the context otherwise specifically requires:

(a) The terms "Act", "regulation" or "regulations", "consumer commodity", "package", "label", "person", "commerce", "principal display panel", and "random package" have the same meaning as those terms are defined under Part 500 of this chapter.

(b) The term "packager" and "labeler" means any person engaged in the packaging or labeling of any consumer commodity for distribution in commerce or any person, other than a common carrier for hire, a contract carrier for hire, or a freight forwarder for hire, engaged in the distribution in commerce of any packaged or labeled consumer commodity; except persons engaged in business as wholesale or retail distributors of consumer commodities are not included unless such persons (1) are engaged in the packaging or labeling of such commodities, or (2) prescribe or specify by any means the manner in which such commodities are packaged or labeled.

(c) The terms "ordinary and customary" and "regular" when used with the term "price" means the price at which a consumer commodity has been openly and actively sold in the most recent and regular course of business in a particular market or trade area for a reasonably substantial period of time, i.e., a 30-day period. For consumer commodities which fluctuate in price, the ordinary and customary price shall be the lowest price at which any substantial sales were made during the aforesaid 30-day period.

GENERAL REQUIREMENTS

§ 502.3 Prohibited acts.

(a) No person engaged in the packaging or labeling of any consumer commodity for distribution in commerce, and no person (other than a common carrier for hire, a contract carrier for hire, or a freight forwarder for hire) engaged in the distribution in commerce of any packaged or labeled consumer commodity, shall distribute or cause to be distributed in commerce any such commodity if such commodity is contained in a package, or if there is affixed

to that commodity a label, which does not conform to the provisions of the Act and of the regulations in this part.

(b) Persons engaged in business as wholesale or retail distributors of consumer commodities shall be subject to the Act and the regulations in this part to the extent that such persons are engaged in the packaging or labeling of consumer commodities, or prescribe or specify by any means the manner in which such consumer commodities are packaged or labeled.

CHARACTERIZATION OF PACKAGE SIZE

§§ 502.4–502.99 [Reserved]

RETAIL SALE PRICE REPRESENTATIONS

§ 502.100 "Cents-off" representations.

(a) The term "cents-off" representation means any printed matter consisting of the word "cents-off" or words of similar import, placed upon any package containing a consumer commodity or placed upon any label affixed to such commodity, stating or representing by implication that the commodity is being offered for sale at a price lower than the ordinary and customary retail sale price.

(b) Except as set forth in § 502.101, the package or label of a consumer commodity shall not have imprinted thereon by a packager or labeler a "cents-off" representation unless:

(1) The commodity has been sold by the packager or labeler at an ordinary and customary price in the most recent and regular course of business in the trade area in which the "cents-off" promotion is made, either to the trade in the event such commodity is not sold at retail by the packager or labeler, or to the public in the event such commodity is sold at retail by the packager or labeler.

(2) The packager or labeler sells the commodity so labeled (either to the trade in the event such commodity is not sold at retail by the packager or labeler, or to the public in the event such commodity is sold at retail by the packager or labeler) at a reduction from his ordinary and customary price, which reduction is at least equal to the amount of the "cents-off" representation imprinted on the commodity package or label.

(3) The packager or labeler imprints on the package or label in the usual pricing spot and in a clear and convenient format the following:

Regular price _____
_____ Cents-Off
You pay _____

The packager or labeler who does not sell the commodity at retail must fill in the blank next to "cents-off" with the amount of the represented price reduction. The packager or labeler who sells the commodity at retail must fill in all three blanks, except, in lieu of completing the three blanks, he may display the identical information on a sign, placard, or shelf-marker placed in a conspicuous and prominent position contiguous to the retail display of the commodity.

(4) Any "cents-off" representation, used in addition to that prescribed in subparagraph (3) of this paragraph, is limited to the phrase "_____ cents-off the regular retail price".

(5) The packager or labeler:

(i) Does not initiate more than three "cents-off" promotions of any single size commodity in the same trade area within a 12-month period;

(ii) Allows at least 30 days to lapse between "cents-off" promotions of any particular size packaged or labeled commodity in a specific trade area; and

(iii) Does not sell any single size commodity so labeled in a trade area for a duration in excess of 6 months within any 12-month period.

(6) Sales by the packager or labeler of any single size commodity so labeled in a trade area do not exceed in volume fifty percent (50%) of the total volume of sales of such size commodity in the same trade area during any 12-month period. The 12-month period used by the packager or labeler may be the calendar, fiscal, or market year provided the identical period is applied in this subparagraph and subparagraph (5) of this paragraph. Volume limits may be calculated on the basis of projections for the current year but shall not exceed 50 percent of the sales for the preceding year in the event actual sales are less than the projection for the current year.

(c) A packager or labeler will not make a "cents-off" promotion available in any circumstances where he knows or should have reason to know that it will be used as an instrumentality for deception or for frustration of value comparison, e.g., where the retailer charges a price which does not fully pass on to consumers the represented price reduction; where the retailer fails to fill in the blanks in the prescribed pricing spot clearly and correctly; or where the retailer fails to conspicuously and clearly display the pricing information in lieu of filling in the blanks on the pricing spot. Nothing in this rule, however, should be construed to authorize or condone the illegal setting or policing of retail prices by a packager or labeler.

(d) A packager or labeler who sponsors a "cents-off" promotion shall prepare and maintain invoices or other records showing compliance with this section. The invoices or other records required by this section shall be open to inspection by duly authorized representatives of this Commission and shall be retained for a period of 1 year subsequent to the end of the year (calendar, fiscal, or market) in which the "cents-off" promotion occurs.

§ 502.101 Introductory offers.

(a) The term "introductory offer" means any printed matter consisting of the words "introductory offer" or words of similar import, placed upon a package containing any new commodity or upon any label affixed to such new commodity, stating or representing by implication that such new commodity is offered for retail sale at a price lower than the anticipated ordinary and customary retail sale price.

(b) The package or label of a consumer commodity may not have imprinted thereon by a packager or labeler an introductory offer unless:

(1) The product contained in the package is new, has been changed in a functionally significant and substantial respect, or is being introduced into a trade area for the first time.

(2) The packager or labeler clearly and conspicuously qualifies each offer on a package or label with the phrase "Introductory Offer."

(3) The packager or labeler does not sell any commodity so labeled in a trade area for a duration in excess of 6 months.

(4) At the time of making the introductory offer promotion, the packagers or labeler intends in good faith to offer the commodity, alone, at the anticipated ordinary and customary price for a reasonably substantial period of time following the duration of the introductory offer promotion.

(c) The package or label of a consumer commodity shall not have imprinted thereon by a packager or labeler an introductory offer in the form of a "cents-off" representation unless, in addition to the requirements in paragraph (b) of this section:

(1) The packager or labeler clearly and conspicuously and in immediate conjunction with the phrase "Introductory Offer" imprints the phrase "_____ cents-off the after introductory offer price".

(2) The packager or labeler sells the commodity so labeled (either to the trade in the event such commodity is not sold at retail by the packager or labeler, or to the public in the event such commodity is sold at retail by the packager or labeler) at a reduction from his anticipated ordinary customary price, which reduction is at least equal to the amount of the reduction from the after introductory offer price representation on the commodity package or label.

(d) A packager or labeler will not make an introductory offer with a "cents-off" representation available in any circumstance where he knows or should have reason to know that it will be used as an instrumentality for deception or for frustration of value comparison, e.g., where the retailer charges a price which does not fully pass on to consumers the represented price reduction. Nothing in this rule, however, should be construed to authorize or condone the illegal setting or policing of retail prices by a packager or labeler.

(e) A packager or labeler who sponsors an introductory offer shall prepare and maintain invoices or other records showing compliance with this section. The invoices or other records required by this section shall be open to inspection open to inspection by duly authorized representatives of this Commission and shall be retained for a period of 1 year subsequent to the period of the introductory offer.

§ 502.102 "Economy size."

(a) The term "economy size" means any printed matter consisting of the

words "economy size," "economy pack," "budget pack," "bargain size," "value size," or words of similar import placed upon any package containing any consumer commodity or placed upon any label affixed to such commodity, stating or representing directly or by implication that a retail sale price advantage is accorded the purchaser thereof by reason of the size of that package or the quantity of its contents.

(b) The package or label of a consumer commodity may not have imprinted thereon an "economy size" representation unless:

(1) The packager or labeler at the same time offers the same brand of that commodity in at least one other packaged size or labeled form.

(2) The packager or labeler offers only one packaged or labeled form of that brand of commodity labeled with an "economy size" representation.

(3) The packager or labeler sells the commodity labeled with an "economy size" representation (either to the trade in the event such commodity is not sold at retail by the packager or labeler, or to the public in the event such commodity is sold at retail by the packager or labeler), at a price per unit of weight, volume, measure, or count which is substantially reduced (i.e., at least 5 percent) from the actual price of all other packaged or labeled units of the same brand of that commodity offered simultaneously.

(c) A packager or labeler will not make an "economy size" package available in any circumstances where he knows that it will be used as an instrumentality for deception, e.g., where the retailer charges a price which does not pass on to the consumer the substantial reduction in cost per unit initially granted by the packager or labeler. Nothing in this rule, however, should be construed to authorize or condone the illegal setting or policing of retail prices by a packager or labeler.

(d) A packager or labeler who sponsors an "economy size" package shall prepare and maintain invoices or other records showing compliance with paragraph (b) of this section. The invoices or other records required by this Section shall be open to inspection by duly authorized representatives of this Commission and shall be retained for one year.

§§ 502.103–502.199 [Reserved]

COMMON NAME AND INGREDIENT LISTING

§§ 502.200–502.299 [Reserved]

NONFUNCTIONAL-SLACK-FILL

§§ 502.300–502.399 [Reserved]

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Secretary, Federal Trade Commission, Washington, D.C. 20580, written objections thereto, specifying with particularity the provisions of the order deemed objectionable, stating the grounds therefor, and requesting a public hearing upon such objections. Objections will be deemed sufficient to warrant the holding of a public hearing only: (1) If they establish that the objector will be adversely affected by the order; (2) if they specify with particularity the provisions of the order to which objection is taken; and (3) if they are supported by reasonable grounds which if valid and factually supported may be adequate to justify the relief sought. Anyone who files objections which are not deemed by the Commission sufficient to warrant the holding of a public hearing will be promptly notified of that determination.

As soon as practicable after the time for filing objections has expired, the Commission will publish a notice in the FEDERAL REGISTER specifying those parts of the order which have been stayed by the filing of objections or, if no objections sufficient to warrant the holding of a public hearing have been filed, stating the fact. This order shall become effective on December 31, 1971, except as to any provisions that may be stayed by the filing of valid objections.

By direction of the Commission dated June 21, 1971.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.71-9209 Filed 6-29-71;8:48 am]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER A—GENERAL

PART 1—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT AND THE FAIR PACKAGING AND LABELING ACT

"Cents-Off" and "Economy Size" Package Promotions

In the matter of establishing new enforcement regulations (21 CFR 1.1d, 1.1e) to control "cents-off," "economy size," and other savings representations:

A notice of proposed rulemaking in the above-identified matter was published in the FEDERAL REGISTER of May 21, 1970 (35 F.R. 7811), and provided for the filing of comments within 60 days. The comment time was extended to September 1, 1970, by a notice published July 18, 1970 (35 F.R. 11591).

In response, 54 comments were received. On the basis of these comments and other relevant information, the Commissioner of Food and Drugs concludes that:

1. Contentions that the Fair Packaging and Labeling Act grants authority to establish "cents-off" regulations only on a commodity-by-commodity basis are without merit. It was clearly the intent of Congress to control savings representation abuses regardless of their form or the particular consumer commodity they appear upon at any given time. The history of abuses and complaints encompasses the greater spectrum of consumer commodities subject to the Fair Packaging and Labeling Act; therefore, the need for control has been clearly established and the best interest of both the consumer and the regulated industry will be served by a single issuance to control such savings representations.

2. The Fair Packaging and Labeling Act does not provide the authority to abolish "cents-off" promotions, and the proposed regulation would have no such effect. For those involved in savings promotions, § 1.1d will provide options that will not hamper commerce and yet will provide the consumer with information required to make rational purchases.

3. Regarding whether the Fair Packaging and Labeling Act authorizes regulating "cents-off" and related promotions in the labeling of consumer commodities: While the Fair Packaging and Labeling Act specifically provides for regulations applicable to the label and package, the foods, drugs, and cosmetics involved also are subject to the label and labeling requirements of the Federal Food, Drug, and Cosmetic Act. Application of the proposed "cents-off" regulation both to labels and labeling is necessary to make label and labeling claims consistent, to prevent misleading representations in labeling that could not be used on the label, and to ensure adequate consumer protection in situations where savings representations might be abused by labeling; for example, contiguous displays, placards, etc.

4. Regarding the authority to regulate price-marking activities at the retail level: The Fair Packaging and Labeling Act specifically provides that its prohibitions apply to retail distributors to the extent that such persons are engaged in labeling consumer commodities or in prescribing or specifying the manner in which such commodities are packaged or labeled. Such control is imperative since the retailer provides the last responsible link in the chain of commerce to ensure that the consumer is in fact receiving the savings being offered.

5. Proposed § 1.1d(a) should be changed as set forth below to amplify the meaning of the phrase "other savings representations" as it relates to the label or labeling of consumer commodities; however, due to the variety of savings representations that may be utilized in the marketplace, the applicability of a specific promotion to these proposed regulations may of necessity be adjudged on a case-by-case basis as the need arises.

6. Proposed § 1.1d(a) should be changed as set forth below to clarify the time that records are required to be maintained for all successive promotions occurring within a 12-month period.

7. Regarding the proposed requirements and format for displaying savings representations on the label or labeling of consumer commodities: Proposed § 1.1d(b) should be changed as set

forth below to recognize those price marking practices currently in use at the retail level and to provide an alternative method of displaying such savings representations in a contiguous manner while still affording full consumer protection.

8. Regarding clarifying the term "average" when related to the ordinary and customary retail selling price of a consumer commodity: Due to the importance of establishing the relationship of the ordinary and customary retail selling price to any savings offered to the consumer and in the interest of uniformity with the Federal Trade Commission, it is preferable to eliminate the averaging concept and to use instead the price which the commodity has been openly and actively sold for a reasonable period of time; that is, at least 30 days. For commodities that fluctuate in price, the price will be the lowest one at which any substantial sales were made during said period. Proposed § 1.1d(b) should be changed accordingly and the length of time in which the ordinary and customary retail price is determined increased from 20 to 30 days.

9. The phrase "geographical area" should be changed to "geographic trade area" in § 1.1d (c), (d), and (e) to be more readily accepted and recognized in the business community.

10. Proposed § 1.1d(c) should be changed as set forth below to provide greater flexibility as to the volume of a consumer commodity that may be made available in price reduction promotions.

11. Proposed § 1.1d(e) should be changed as set forth below to provide for greater flexibility as to the duration and frequency of price reduction promotions.

12. Regarding "introductory offers" promotions: Proposed § 1.1d(e) should be changed as set forth below to define better an acceptable duration for such promotions, to provide for the maintenance of records, and to provide the same time period for establishment of the ordinary and customary retail price as is required for other promotions.

13. Proposed § 1.1d(f) should be changed as set forth below to define better the scope and coverage of the coupon-type promotions and to provide for the full disclosure of all material conditions important to the consumer in the use of such representations.

14. The portion of the proposed regulations dealing with economy representation based on the size of the container or its quantity of contents should not be withdrawn as suggested; however, proposed § 1.1e(a) should be changed as set forth below to amplify the scope of such promotions, to include examples, and to modify the manner in which such promotions may be displayed on the label or labeling.

15. The phrase "significant degree," which is used to describe the reduction in price per unit of weight, measure, or count on the "economy type" containers, should be clarified. In responding to the question of what constitutes a reasonable reduction in the price per unit for such promotions, the Federal Trade Commission in its proposed regulation of November 24, 1970 (35 F.R. 18001), dealing with such representations, requested comments to assist in arriving at a suitable solution. After considering the comments, the FTC concludes that such reductions should be at least 5 percent. The Commissioner of Food and Drugs accepts 5 percent as a reasonable minimum for the consumer to expect in such price-reduction promotions.

Accordingly, pursuant to provisions of the Fair Packaging and Labeling Act (secs. 5, 6, 80 Stat. 1298–1300; 15 U.S.C. 1454–55) and the Federal Food, Drug, and Cosmetic Act (secs. 403 (a), (f), 502 (a), (c), 602 (a), (c), 701, 52 Stat. 1047, 1050, 1054, 1055, as amended; 21 U.S.C. 343 (a), (f), 352 (a), (c), 362 (a), (c), 371), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), Part 1 is amended by adding thereto two new sections, as follows:

§ 1.1d "Cents-off," coupon, or other savings representations.

Any food, drug, cosmetic, or device that bears on the label or labeling a representation that the consumer commodity is being offered for retail at a reduction in retail price is subject to the following conditions:

(a) A "cents-off" coupon, or other savings representation that states or implies a reduction in the ordinary and customary retail price may be used by a manufacturer, packer, distributor, or retailer, hereinafter known as the sponsor, initiating such promotion only if (1) an ordinary and customary retail selling price of such consumer commodity has been established, (2) the sponsor's selling price and the selling price at all subsequent levels of commerce such as wholesalers and jobbers has been reduced by at least the savings differential represented on the package or labeling, and (3) the sponsor and all subsequent levels or commerce keep and maintain invoices or other records for each promotion and for all successive promotions which occur within a 12-month period for at least 1 year beyond the termination date of the last of such promotions set by the sponsor in order to show that the invoice cost to the retailer has been reduced in an amount sufficient to enable the retailer to pass the savings on to the purchaser.

(b) (1) A price reduction representation shall be presented on the package to show the ordinary and customary retail price and the savings to the consumer as follows:

Regular Price _____
_____ Cents Off
You Pay _____

The sponsor of the promotion shall fill in the "_____ Cents Off" blank. The remaining blanks are to be filled in at the retail level to reflect actual pricing at that level. Alternatively, the retailer may display such price reduction information on a sign, placard, or shelf marker placed in conspicuous and prominent position contiguous to the retail display of the consumer commodity.

(2) For the purposes of this section, the terms "ordinary and customary" and "regular" when used with the term "price" means the price at which a consumer commodity has been openly and actively sold in the most recent and regular course of business in a particular market or a trade area for a reasonably substantial period of time; that is, at least 30 days. For consumer commodities that fluctuate in price, the ordinary and customary price shall be the lowest price at which any substantial sales were made during said 30 days.

(c) Shipments of consumer commodities bearing "cents-off," coupon, or other savings representations to a given geographic trade area made by the sponsor initiating such promotion shall be in no greater volume than 50 percent of the total units of that identical consumer commodity distributed in the same geographic trade area during any period of 12 consecutive months.

(d) The "cents-off," coupon, or other savings promotion may not be employed by a sponsor on consumer commodities for distribution to a specific geographic trade area until after 1 month has elapsed since their last distribution of the same consumer commodity bearing a savings representation to the same geographic trade area. No more than three such promotions for the same consumer commodity may occur within a 12-month period, and the total period of time for such promotions of any given size consumer commodity shall not exceed 6 months within that 12-month period.

(e) A newly developed consumer commodity, one which has been changed in a functionally significant respect, or one which is newly introduced into a given geographic trade area may be the subject of an introductory-offer type promotion. Such offers are not considered subject to the provisions of paragraphs (a) through (d) of this section, provided labeled representations (1) are qualified by a phrase such as "introductory offer," (2) include the suggested postintroduction retail price, and (3) do not exceed a period of 6 months duration. Any subsequent price reduction promotion of the consumer commodity is subject to the provisions of paragraphs (a) through (d) of this section and shall be preceded by the 30-day period required for a determination of the ordinary and customary selling price in that retail establishment. At the time of making the introductory offer promotion, the sponsor must intend in good faith to offer the commodity alone, immediately following the introductory offer promotion, for a reasonably substantial period of time, that is, at least 30 days, at the anticipated postintroductory price. The sponsor and all subsequent levels of commerce shall maintain invoices and records for at least 1 year beyond the termination date of such introductory offers.

(f) A representation on the label or labeling that the consumer commodity is being offered for retail sale at a reduced price by virtue of a redeemable coupon shall not be used unless the coupon is redeemable at retail unconditionally or upon the purchase or subsequent purchase of either that product or other consumer commodities involved in the promotion. Coupon offers which bear expiration dates or which are contingent upon the purchase of other consumer commodities involved in the promotion shall bear a prominent and conspicuous statement fully disclosing all material conditions included in the coupon offer. Such statement shall be in conjunction with the representation wherever it appear on the label or labeling of the consumer commodity.

§ 1.1e Package size savings.

Any food, drug, cosmetic, or device that bears on the label or labeling a representation that the consumer commodity is being offered at a lower price per unit of weight, measure, or count because of economy resulting from the size of the container or quantity of its contents is subject to the following conditions:

(a) The container may bear a representation of economy by virtue of its size (for example, "economy size," "economy pack," "big value," "thrifty pack," "bargain size," "budget pack," etc.) only if an ordinary and customary retail selling price has been established for both regular or other size containers, and the economy size containers and the price per unit of weight, measure, or count in the economy size container is lower to a significant degree, at least 5 percent, than the ordinary and customary price per unit of weight, measure, or count of the least expensive per unit of weight, measure, or count of the other retail size(s) for the identical consumer commodity. Only one packaged or labeled form of that brand of commodity may bear such an economy representation, and it shall be conspicuously presented and in no way misleading. For the purposes of this section, the price per unit of weight, measure, or count shall be based upon the ordinary and customary retail selling price which shall be the arithmetical mean of the prices at which the consumer commodity in the containers was sold in that particular retail outlet for the 30-day period immediately preceding the price marking.

(b) The sponsor of the economy size promotion, and all subsequent levels of commerce such as wholesalers and jobbers, shall maintain for at least 1 year invoices or other records showing that the wholesale price per unit of weight, measure, or count in the economy size package is such that the retailers can sell the economy size container at a significantly lower price per unit.

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of FEDERAL REGISTER publication file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-62, 5600 Fishers Lane, Rockville, Md. 20852, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective December 31, 1971, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be announced by publication in the FEDERAL REGISTER.

(Secs. 5, 6, 80 Stat. 1298-1300; 15 U.S.C. 1454-55; secs. 403 (a), (f), 502 (a), (c), 602 (a), (c), 701, 52 Stat. 1047, 1050, 1054, 1055, as amended; 21 U.S.C. 343 (a), (f), 352 (a), (c), 362 (a), (c), 371)

Dated: June 24, 1971.

CHARLES C. EDWARDS,
Commissioner of Food and Drugs.

[FR Doc.71-9261 Filed 6-29-71;8:50 am]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 7105]

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

Definition of Pooled Income Fund

Correction

In F.R. Doc. 71-4589 appearing at page 6477 in the issue of Tuesday, April 6, 1971, the figure ".07265" in Table G(2) under § 1.642(c)-6(d)(3) representing the 6 percent yearly rate of return for age 24 should read ".07261".

Title 29—LABOR

Chapter XVII—Occupational Safety and Health Administration, Department of Labor

PART 1905—RULES OF PRACTICE FOR VARIANCES, LIMITATIONS, VARIATIONS, TOLERANCES, AND EXEMPTIONS UNDER THE WILLIAMS-STEIGER OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

Implementation of Williams-Steiger Occupational Safety and Health Act of 1970

Pursuant to sections 6, 8, and 16 of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1598, and 1606; 29 U.S.C. 655, 657, 665), Chapter XVII of Title 29, Code of Federal Regulations, is hereby amended by adding thereto a new part designated Part 1905. The new Part 1905 contains the rules of practice for administrative proceedings for granting variances from occupational safety and health standards under certain provisions of section 6 of the Act, and rules of practice for providing limitations, variations, tolerances, and exemptions under section 16 of the Act.

The rules of practice shall be effective upon publication in the FEDERAL REGISTER (6-30-71). However, interested persons are encouraged to petition for any amendments to the rules which they may consider appropriate.

The new Part 1905 reads as follows:

Subpart A—General

Sec.
1905.1 Purpose and scope.
1905.2 Definitions.
1905.3 Petitions for amendments to this part.
1905.4 Amendments to this part.
1905.5 Effect of variances.
1905.6 Public notice of a granted variance, limitation, variation, tolerance, or exemption.
1905.7 Form of documents; subscription; copies.

Subpart B—Applications for Variances, Limitations, Variations, Tolerances, Exemptions and Other Relief

1905.10 Variances and other relief under section 6(b)(6)(A).
1905.11 Variances and other relief under section 6(d).
1905.12 Limitations, variations, tolerances, or exemptions under section 16.
1905.13 Modification, revocation, and renewal of rules or orders.
1905.14 Action on applications.
1905.15 Requests for hearings on applications.
1905.16 Consolidation of proceedings.

Subpart C—Hearings

1905.20 Notice of hearing.
1905.21 Manner of service.
1905.22 Hearing examiners; powers and duties.
1905.23 Prehearing conferences.
1905.24 Consent findings and rules or orders.
1905.25 Discovery.
1905.26 Hearings.
1905.27 Decisions of hearing examiners.
1905.28 Exceptions.
1905.29 Transmission of record.
1905.30 Decisions of the Assistant Secretary.

Subpart D—Summary Decisions

1905.40 Motion for summary decision.
1905.41 Summary decision.

Subpart E—Effect of Initial Decisions

1905.50 Effect of appeal of a hearing examiner's decision.
1905.51 Finality for purposes of judicial review.

AUTHORITY: The provisions of this Part 1905 issued under secs. 6, 8, 16, 84 Stat. 1593, 1598, 1606; 29 U.S.C. 655, 657, 665.

Subpart A—General

§ 1905.1 Purpose and scope.

(a) This part contains rules of practice for administrative proceedings (1) to grant variances and other relief under sections 6(b)(6)(A) and 6(d) of the Williams-Steiger Occupational Safety

and Health Act of 1970, and (2) to provide limitations, variations, tolerances, and exemptions under section 16 of the Act.

(b) These rules shall be construed to secure a prompt and just conclusion of proceedings subject thereto.

(c) The rules of practice in this part do not apply to the granting of variances under section 6(b)(6)(C). Whenever appropriate, the procedure for granting such a variance shall be published in the FEDERAL REGISTER.

§ 1905.2 Definitions.

As used in this part, unless the context clearly requires otherwise—

(a) "Act" means the Williams-Steiger Occupational Safety and Health Act of 1970.

(b) "Secretary" means the Secretary of Labor.

(c) "Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health.

(d) "Person" means an individual, partnership, association, corporation, business trust, legal representative, an organized group of individuals, or an agency, authority, or instrumentality of the United States or of a State.

(e) "Party" means a person admitted to participate in a hearing conducted in accordance with Subpart C of this part. An applicant for relief and any affected employee shall be entitled to be named parties. The Department of Labor, represented by the Office of the Solicitor, shall be deemed to be a party without the necessity of being named.

(f) "Affected employee" means an employee who would be affected by the grant or denial of a variance, limitation, variation, tolerance, or exemption, or any one of his authorized representatives, such as his collective bargaining agent.

§ 1905.3 Petitions for amendments to this part.

Any person may at any time petition the Assistant Secretary in writing to revise, amend, or revoke any provisions of this part. The petition should set forth either the terms or the substance of the rule desired, with a concise statement of the reasons therefor and the effects thereof.

§ 1905.4 Amendmens to this part.

The Assistant Secretary may at any time revise, amend, or revoke any provisions of this part, on his own motion or upon the written petition of any person.

§ 1905.5 Effect of variances.

All variances granted pursuant to this part shall have only future effect. In his discretion, the Assistant Secretary may decline to entertain an application for a variance on a subject or issue concerning which a citation has been issued to the employer involved and a proceeding on the citation or a related issue concerning a proposed penalty or period of abatement is pending before the Occupational Safety and Health Review Commission until the completion of such proceeding.

§ 1905.6 Public notice of a granted variance, limitation, variation, tolerance, or exemption.

Every final action granting a variance, limitation, variation, tolerance, or exemption under this part shall be published in the FEDERAL REGISTER. Every such final action shall specify the alternative to the standard involved which the particular variance permits.

§ 1905.7 Form of documents; subscription; copies.

(a) No particular form is prescribed for applications and other papers which may be filed in proceedings under this part. However, any applications and other papers shall be clearly legible. An original and six copies of any application or other papers shall be filed. The original shall be typewritten. Clear carbon copies, or printed or processed copies are acceptable copies.

(b) Each application or other paper which is filed in proceedings under this part shall be subscribed by the person filing the same or by his attorney or other authorized representative.

Subpart B—Applications for Variances, Limitations, Variations, Tolerances, Exemptions and Other Relief

§ 1905.10 Variances and other relief under section 6(b)(6)(A).

(a) *Application for variance.* Any employer, or class of employers, desiring a variance from a standard, or portion thereof, authorized by section 6(b)(6)(A) of the Act may file a written application containing the information specified in paragraph (b) of this section with the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210.

(b) *Contents.* An application filed pursuant to paragraph (a) of this section shall include:

(1) The name and address of the applicant;

(2) The address of the place or places of employment involved;

(3) A specification of the standard or portion thereof from which the applicant seeks a variance;

(4) A representation by the applicant, supported by representations from qualified persons having first-hand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof by its effective date and a detailed statement of the reasons therefor;

(5) A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the standard;

(6) A statement of when the applicant expects to be able to comply with the standard and of what steps he has taken and will take, with specific dates where appropriate, to come into compliance with the standard;

(7) A statement of the facts the applicant would show to establish that (i) the applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date; (ii) he is taking all available steps to safeguard his employees against the hazards covered by the standard; and (iii) he has an effective program for coming into compliance with the standard as quickly as practicable;

(8) Any request for a hearing, as provided in this part;

(9) A statement that the applicant has informed his affected employees of the application by giving a copy thereof to their authorized representative, posting a statement, giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted, and by other appropriate means; and

(10) A description of how affected employees have been informed of the application and of their right to petition the Assistant Secretary for a hearing.

(c) *Interim order.*—(1) *Application.* An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The Assistant Secretary may rule ex parte upon the application.

(2) *Notice of denial of application.* If an application filed pursuant to subparagraph (1) of this paragraph is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by, a brief statement of the grounds therefor.

(3) *Notice of the grant of an interim order.* If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties and the terms of the order shall be published in the FEDERAL REGISTER. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

§ 1905.11 Variances and other relief under section 6(d).

(a) *Application for variance.* Any employer, or class of employers, desiring a variance authorized by section 6(d) of the Act may file a written application containing the information specified in paragraph (b) of this section, with the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210.

(b) *Contents.* An application filed pursuant to paragraph (a) of this section shall include:

(1) The name and address of the applicant;

(2) The address of the place or places of employment involved;

(3) A description of the conditions, practices, means, methods, operations, or processes used or proposed to be used by the applicant;

(4) A statement showing how the conditions, practices, means, methods, operations, or processes used or proposed to be used would provide employment and places of employment to employees which are as safe and healthful as those required by the standard from which a variance is sought;

(5) A certification that the applicant has informed his employees of the application by (i) giving a copy thereof to their authorized representative; (ii) posting a statement giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted (or in lieu of such summary, the posting of the application itself); and (iii) by other appropriate means;

(6) Any request for a hearing, as provided in this part; and

(7) A description of how employees have been informed of the application and of their right to petition the Assistant Secretary for a hearing.

(c) *Interim order.*—(1) *Application.* An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The Assistant Secretary may rule ex parte upon the application.

(2) *Notice of denial of application.* If an application filed pursuant to subparagraph (1) of this paragraph is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by; a brief statement of the grounds therefor.

(3) *Notice of the grant of an interim order.* If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties, and the terms of the order shall be published in the FEDERAL REGISTER. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

§ 1905.12 Limitations, variations, tolerances, or exemptions.

(a) *Application.* Any person, or class of persons, desiring a limitation, variation, tolerance, or exemption authorized by section 16 of the Act may file an application containing the information specified in paragraph (b) of this section, with the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210.

(b) *Contents.* An application filed pursuant to paragraph (a) of this section shall include:

(1) The name and address of the applicant;

(2) The address of the place or places of employment involved;

(3) A specification of the provision of the Act to or from which the applicant seeks a limitation, variation, tolerance, or exemption.

(4) A representation showing that the limitation, variation, tolerance, or exemption sought is necessary and proper to avoid serious impairment of the national defense;

(5) Any request for a hearing, as provided in this part; and

(6) A description of how employees have been informed of the application and of their right to petition the Assistant Secretary for a hearing.

(c) *Interim order*—(1) *Application.* An application may also be made for an interim order to be effective until a decision is rendered on the application for the limitation, variation, tolerance, or exemption filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The Assistant Secretary may rule ex parte upon the application.

(2) *Notice of denial of application.* If an application filed pursuant to subparagraph (1) of this paragraph is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied, by a brief statement of the grounds therefor.

(3) *Notice of the grant of an interim order.* If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties, and the terms of the order shall be published in the FEDERAL REGISTER. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

§ 1905.13 Modification, revocation, and renewal of rules or orders.

(a) *Modification or revocation.* (1) An affected employer or an affected employee may apply in writing to the Assistant Secretary of Labor for Occupational Safety and Health for a modification or revocation of a rule or order issued under section 6(b)(6)(A), 6(d), or 16 of the Act. The application shall contain:

(i) The name and address of the applicant;

(ii) A description of the relief which is sought;

(iii) A statement setting forth with particularity the grounds for relief;

(iv) If the applicant is an employer, a certification that the applicant has informed his affected employees of the application by:

(*a*) Giving a copy thereof to their authorized representative;

(*b*) Posting at the place or places where notices to employees are normally posted, a statement giving a summary of the application and specifying where a copy of the full application may be examined (or, in lieu of the summary, posting the application itself); and

(*c*) Other appropriate means.

(v) If the applicant is an affected employee, a certification that a copy of the application has been furnished to the employer; and

(vi) Any request for a hearing, as provided in this part.

(2) The Assistant Secretary may on his own motion proceed to modify or revoke a rule or order issued under section 6(b)(6)(A), 6(d), or 16 of the Act. In such event, the Assistant Secretary shall cause to be published in the FEDERAL REGISTER a notice of his intention, affording interested persons an opportunity to submit written data, views, or arguments regarding the proposal and informing the affected employer and employees of their right to request a hearing, and shall take such other action as may be appropriate to give actual notice to affected employees. Any request for a hearing shall include a short and plain statement of:

(i) How the proposed modification or revocation would affect the requesting party; and

(ii) What the requesting party would seek to show on the subjects or issues involved.

(b) *Renewal.* Any final rule or order issued under section 6(b)(6)(A) or 16 of the Act may be renewed or extended as permitted by the applicable section and in the manner prescribed for its issuance.

§ 1905.14 Action on applications.

(a) *Defective applications.* (1) If an application filed pursuant to § 1905.10(a), § 1905.11(a), § 1905.12(a), or § 1905.13 does not conform to the applicable section, the Assistant Secretary may deny the application.

(2) Prompt notice of the denial of an application shall be given to the applicant.

(3) A notice of denial shall include, or be accompanied by, a brief statement of the grounds for the denial.

(4) A denial of an application pursuant to this paragraph shall be without prejudice to the filing of another application.

(b) *Adequate applications.* (1) If an application has not been denied pursuant to paragraph (a) of this section, the Assistant Secretary shall cause to be published in the FEDERAL REGISTER a notice of the filing of the application.

(2) A notice of the filing of an application shall include: (i) the terms, or an accurate summary, of the application; (ii) a reference to the section of the Act under which the application has been filed; (iii) an invitation to interested persons to submit within a stated period of time written data, views, or arguments regarding the application; and (iv) information to affected employers and employees of any right to

request a hearing on the application.

§ 1905.15 Requests for hearings on applications.

(a) *Request for hearing.* Within the time allowed by a notice of the filing of an application, any affected employer or employee may file with the Assistant Secretary, in quadruplicate, a request for a hearing on the application.

(b) *Contents of a request for a hearing.* A request for a hearing filed pursuant to paragraph (a) of this section shall include:

(1) A concise statement of facts showing how the employer or employee would be affected by the relief applied for;

(2) A specification of any statement or representation in the application which is denied, and a concise summary of the evidence that would be adduced in support of each denial; and

(3) Any views or arguments on any issue of fact or law presented.

§ 1905.16 Consolidation of proceedings.

The Assistant Secretary on his own motion or that of any party may consolidate or contemporaneously consider two or more proceedings which involve the same or closely related issues.

Subpart C—Hearings

§ 1905.20 Notice of hearing.

(a) *Service.* Upon request for a hearing as provided in this part, or upon his own initiative, the Assistant Secretary shall serve, or cause to be served, a reasonable notice of hearing.

(b) *Contents.* A notice of hearing served under paragraph (a) of this section shall include:

(1) The time, place, and nature of the hearing;

(2) The legal authority under which the hearing is to be held;

(3) A specification of issues of fact and law; and

(4) A designation of a hearing examiner appointed under 5 U.S.C. 3105 to preside over the hearing.

(c) *Referral to hearing examiner.* A copy of a notice of hearing served pursuant to paragraph (a) of this section shall be referred to the hearing examiner designated therein, together with the original application and any written request for a hearing thereon filed pursuant to this part.

§ 1905.21 Manner of service.

Service of any document upon any party may be made by personal delivery of, or by mailing, a copy of the document to the last known address of the party. The person serving the document shall certify to the manner and the date of the service.

§ 1905.22 Hearing examiners; powers and duties.

(a) *Powers.* A hearing examiner designated to preside over a hearing shall have all powers necessary or appropriate to conduct a fair, full, and impartial hearing, including the following:

(1) To administer oaths and affirmations;

(2) To rule upon offers of proof and receive relevant evidence;

(3) To provide for discovery and to determine its scope;

(4) To regulate the course of the hearing and the conduct of the parties and their counsel therein;

(5) To consider and rule upon procedural requests;

(6) To hold conferences for the settlement or simplification of the issues by consent of the parties;

(7) To make, or to cause to be made, an inspection of the employment or place of employment involved.

(8) To make decisions in accordance with the Act, this part, and the Administrative Procedure Act (5 U.S.C. Ch. 5); and

(9) To take any other appropriate action authorized by the Act, this part, or the Administrative Procedure Act.

(b) *Private consultation.* Except to the extent required for the disposition of ex parte matters, a hearing examiner may not consult a person or a party on any fact at issue, unless upon notice and opportunity for all parties to participate.

(c) *Disqualification.* (1) When a hearing examiner deems himself disqualified to preside over a particular hearing, he shall withdraw therefrom by notice on the record directed to the Chief Hearing Examiner.

(2) Any party who deems a hearing examiner for any reason to be disqualified to preside, or to continue to preside, over a particular hearing, may file with the Chief Hearing Examiner of the Department of Labor a motion to disqualify and remove the hearing examiner, such motion to be supported by affidavits setting forth the alleged grounds for disqualification. The Chief Hearing Examiner shall rule upon the motion.

(d) *Contumacious conduct; failure or refusal to appear or obey the rulings of a presiding hearing examiner.* (1) Contumacious conduct at any hearing before the hearing examiner shall be ground for exclusion from the hearing.

(2) If a witness or a party refuses to answer a question after being directed to do so, or refuses to obey an order to provide or permit discovery, the hearing examiner may make such orders with regard to the refusal as are just and appropriate, including an order denying the application of an applicant or regulating the contents of the record of the hearing.

(e) *Referral to Federal Rules of Civil Procedure.* On any procedural question not regulated by this part, the Act, or the Administrative Procedure Act, a hearing examiner shall be guided to the extent practicable by any pertinent provisions of the Federal Rules of Civil Procedure.

§ 1905.23 Prehearing conferences.

(a) *Convening a conference.* Upon his own motion or the motion of a party, the hearing examiner may direct the parties or their counsel to meet with him for a conference to consider:

(1) Simplification of the issues;

(2) Necessity or desirability of amendments to documents for purposes of clarification, simplification, or limitation;

(3) Stipulations, admissions of fact, and of contents and authenticity of documents;

(4) Limitation of the number of parties and of expert witnesses; and

(5) Such other matters as may tend to expedite the disposition of the proceeding, and to assure a just conclusion thereof.

(b) *Record of conference.* The hearing examiner shall make an order which recites the action taken at the conference, the amendments allowed to any documents which have been filed, and the agreements made between the parties as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements; and such order when entered controls the subsequent course of the hearing, unless modified at the hearing, to prevent manifest injustice.

§ 1905.24 Consent findings and rules or orders.

(a) *General.* At any time before the reception of evidence in any hearing, or during any hearing a reasonable opportunity may be afforded to permit negotiation by the parties of an agreement containing consent findings and a rule or order disposing of the whole or any part of the proceeding. The allowance of such opportunity and the duration thereof shall be in the discretion of the presiding hearing examiner, after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement which will result in a just disposition of the issues involved.

(b) *Contents.* Any agreement containing consent findings and rule or order disposing of a proceeding shall also provide:

(1) That the rule or order shall have the same force and effect as if made after a full hearing;

(2) That the entire record on which any rule or order may be based shall consist solely of the application and the agreement;

(3) A waiver of any further procedural steps before the hearing examiner and the Assistant Secretary; and

(4) A waiver of any right to challenge or contest the validity of the findings and of the rule or order made in accordance with the agreement.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their counsel may:

(1) Submit the proposed agreement to the presiding hearing examiner for his consideration; or

(2) Inform the presiding hearing examiner that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and rule or order is submitted within the time allowed therefor, the presiding hearing examiner may accept such agreement by issuing his decision based upon the agreed findings.

§ 1905.25 Discovery.

(a) *Depositions.* (1) For reasons of unavailability or for other good cause shown, the testimony of any witness may be taken by deposition. Depositions may be taken orally or upon written interrogatories before any person designated by the presiding hearing examiner and having power to administer oaths.

(2) *Application.* Any party desiring to take the deposition of a witness may make application in writing to the presiding hearing examiner, setting forth: (i) the reasons why such deposition should be taken; (ii) the time when, the place where, and the name and post office address of the person before whom the deposition is to be taken; (iii) the name and address of each witness; and (iv) the subject matter concerning which each witness is expected to testify.

(3) *Notice.* Such notice as the presiding hearing examiner may order shall be given by the party taking the deposition to every other party.

(4) *Taking and receiving in evidence.* Each witness testifying upon deposition shall be sworn, and the parties not calling him shall have the right to cross-examine him. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, read to the witness, subscribed by him, and certified by the officer before whom the deposition is taken. Thereafter, the officer shall seal the deposition, with two copies thereof, in an envelope and mail the same by registered mail to the presiding hearing examiner. Subject to such objections to the questions and answers as were noted at the time of taking the deposition and would be valid were the witness personally present and testifying, such deposition may be read and offered in evidence by the party taking it as against any party who was present, represented at the taking of the deposition, or who had due notice thereof. No part of a deposition shall be admitted in evidence unless there is a showing that the reasons for the taking of the deposition in the first instance exist at the time of hearing.

(b) *Other discovery.* Whenever appropriate to a just disposition of any issue in a hearing, the presiding hearing examiner may allow discovery by any other appropriate procedure, such as by written interrogatories upon a party, production of documents by a party, or by entry for inspection of the employment or place of employment involved.

§ 1905.26 Hearings.

(a) *Order of proceeding.* Except as may be ordered otherwise by the presiding hearing examiner, the party applicant for relief shall proceed first at a hearing.

(b) *Burden of proof.* The party applicant shall have the burden of proof.

(c) *Evidence*—(1) *Admissibility.* A party shall be entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence may be received, but a presiding hearing examiner shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(2) *Testimony of witnesses.* The testimony of a witness shall be upon oath or affirmation administered by the presiding hearing examiner.

(3) *Objections.* If a party objects to the admission or rejection of any evidence, or to the limitation of the scope of any examination or cross-examination, or to the failure to limit such scope, he shall state briefly the grounds for such objection. Rulings on all objections shall appear in the record. Only objections made before the presiding hearing examiner may be relied upon subsequently in a proceeding.

(4) *Exceptions.* Formal exception to an adverse ruling is not required.

(d) *Official notice.* Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice or concerning which the Department of Labor by reason of its functions is presumed to be expert: *Provided,* That the parties shall be given adequate notice, at the hearing or by reference in the presiding hearing examiner's decision, of the matters so noticed, and shall be given adequate opportunity to show the contrary.

(e) *Transcript.* Hearings shall be stenographically reported. Copies of the transcript may be obtained by the parties upon written application filed with the reporter, and upon the payment of fees at the rate provided in the agreement with the reporter.

§ 1905.27 Decisions of hearing examiners.

(a) *Proposed findings of fact, conclusions, and rules or orders.* Within 10 days after receipt of notice that the transcript of the testimony has been filed or such additional time as the presiding hearing examiner may allow, each party may file with the hearing examiner proposed findings of fact, conclusions of law, and rule or order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all other parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the hearing examiner.* Within a reasonable time after the time allowed for the filing of proposed findings of fact, conclusions of law, and rule or order, the presiding hearing examiner shall make and serve upon each party his decision, which shall become final upon the 20th day after service thereof, unless exceptions are filed thereto, as provided in § 1905.28. The decision of the hearing examiner shall include (1) a statement of findings and conclusions, with reasons and bases therefor, upon each material issue of fact, law, or discretion presented on the record, and (2) the appropriate rule, order, relief, or denial thereof. The decision of the hearing examiner shall be based upon a consideration of the whole record and shall state all facts officially noticed and relied upon. It shall be made on the basis of a preponderance of reliable and probative evidence.

§ 1905.28 Exceptions.

Within 20 days after service of a decision of a presiding hearing examiner, any party may file with the hearing examiner written exceptions thereto with supporting reasons. Such exceptions shall refer to the specific findings of fact, conclusions of law, or terms of the rule or order excepted to, the specific pages of transcript relevant to the suggestions, and shall suggest corrected findings of fact, conclusions of law, or terms of the rule or order. Upon receipt of any exceptions, the hearing examiner shall fix a time for filing any objections to the exceptions and any supporting reasons.

§ 1905.29 Transmission of record.

If exceptions are filed, the hearing examiner shall transmit the record of the proceeding to the Assistant Secretary for review. The record shall include: the application, any request for hearing thereon, motions and requests filed in written form, rulings thereon, the transcript of the testimony taken at the hearing, together with the exhibits admitted in evidence, any documents or papers filed in connection with prehearing conferences, such proposed findings of fact, conclusions of law, rules or orders, and supporting reasons, as may have been filed, the hearing examiner's decision, and such exceptions, statements of objections, and briefs in support thereof, as may have been filed in the proceeding.

§ 1905.30 Decision of the Assistant Secretary.

If exceptions to a decision of a hearing examiner are taken pursuant to § 1905.28, the Assistant Secretary shall upon consideration thereof, together with the record references and authorities cited in support thereof, and any objections to exceptions and supporting reasons, make his decision. The decision may affirm, modify, or set aside, in whole or part, the findings, conclusions, and the rule or order contained in the decision of the presiding hearing examiner, and shall include a statement of reasons or bases for the actions taken on each exception presented.

Subpart D—Summary Decisions

§ 1905.40 Motion for summary decision.

(a) Any party may, at least 20 days before the date fixed for any hearing under Subpart C of this part, move with or without supporting affidavits for a summary decision in his favor on all or any part of the proceeding. Any other party may, within 10 days after service of the motion, serve opposing affidavits or countermove for summary decision. The presiding hearing examiner may, in his discretion, set the matter for argument and call for the submission of briefs.

(b) The filing of any documents under paragraph (a) of this section shall be with the hearing examiner, and copies of any such documents shall be served in accordance with § 1905.21.

(c) The hearing examiner may grant such motion if the pleadings, affidavits, material obtained by discovery or otherwise obtained, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision. The hearing examiner may deny such motion whenever the moving party denies access to information by means of discovery to a party opposing the motion.

(d) Affidavits shall set forth such facts as would be admissible in evidence in a proceeding subject to 5 U.S.C. 556 and 557 and shall show affirmatively that the affiant is competent to testify to the matters stated therein. When a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of his pleading; his response must set forth specific facts showing that there is a genuine issue of fact for the hearing.

(e) Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the hearing examiner may deny the motion for summary decision or may order a continuance to permit affidavits to be obtained or discovery to be had or may make such other order as is just.

(f) The denial of all or any part of a motion for summary decision by the hearing examiner shall not be subject to interlocutory appeal to the Assistant Secretary unless the hearing examiner certifies in writing (1) that the ruling involves an important question of law or policy as to which there is substantial ground for difference of opinion, and (2) that an immediate appeal from the ruling may materially advance the ultimate termination of the proceeding. The allowance of such an interlocutory appeal shall not stay the proceeding before the hearing examiner unless the Assistant Secretary shall so order.

§ 1905.41 Summary decision.

(a) *No genuine issue of material fact.* (1) Where no genuine issue of a material fact is found to have been raised, the hearing examiner may issue an initial decision to become final 20 days after service thereof, unless, within such period of time any party has filed written exceptions to the decision. If any timely exception is filed, the hearing examiner shall fix a time for filing any objections to the exception and any supporting reasons. Thereafter, the Assistant Secretary, after consideration of the exceptions and any supporting briefs filed therewith and of any objections to the exceptions and any supporting reasons, may issue a final decision.

(2) An initial decision and a final decision made under this paragraph shall include a statement of—

(i) findings and conclusions, and the reasons or bases therefor, on all issues presented; and

(ii) the terms and conditions of the rule or order made.

(3) A copy of an initial decision and a final decision under this paragraph shall be served on each party.

(b) *Hearings on issues of fact.* Where a genuine material question of fact is raised, the hearing examiner shall, and in any other case he may, set the case for an evidentiary hearing in accordance with Subpart C of this part.

Subpart E—Effect of Initial Decisions

§ 1905.50 Effect of appeal of a hearing examiner's decision.

A hearing examiner's decision under this part shall not be operative pending a decision on appeal by the Assistant Secretary.

§ 1905.51 Finality for purposes of judicial review.

Only a decision by the Assistant Secretary shall be deemed final agency action for purposes of judicial review. A decision by a hearing examiner which becomes final for lack of appeal is not deemed final agency action for purposes of 5 U.S.C. 704.

Signed at Washington, D.C., this 22d day of June 1971.

J. D. HODGSON,
Secretary of Labor.

[FR Doc.71-9179 Filed 6-29-71;8:45 am]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 39—Post Office Department

DELETION OF PROCUREMENT REGULATIONS

The Board of Governors of the U.S. Postal Service, acting under the authority of section 15(a) of the Postal Reorganization Act (Public Law 91-375), by Resolution No. 71-9 (36 F.R. 785) has fixed July 1, 1971, as the date of commencement of operations of the U.S. Postal Service. Effective on that date procurement regulations relating to the Postal Service codified under Chapter 39 of Title 41, Code of Federal Regulations, are being superseded by interim regulations issued pursuant to the Postal Reorganization Act.

This issue of the FEDERAL REGISTER contains a notice setting forth the new interim regulations dealing with the procurement of property and services for the Postal Service. The interim regulations will be replaced by a comprehensive manual of procurement regulations in the near future. In addition, this issue contains codified regulations relating to transportation of the mails and the procurement of mail transportation and related services. The described documents are effective July 1, 1971.

Accordingly, effective July 1, 1971, Chapter 39 of Title 41 is revoked.

(39 U.S.C. 401, 410, 2003(c) as enacted by Public Law 91-375; sec. 5(a) of Public Law 91-375)

DAVID A. NELSON,
General Counsel.

[FR Doc.71-8931 Filed 6-23-71;8:45 am]

Chapter 101—Federal Property Management Regulations

SUBCHAPTER E—SUPPLY AND PROCUREMENT

PART 101-34—EMERGENCY PREPAREDNESS PLANNING

Revision of GSA Supply Support Emergency Plans

The policies and procedures governing GSA supply support activity during periods of national defense emergencies are revised to eliminate the requirement for agencies to report the names of supply liaison contacts to GSA, advise agencies of a new policy concerning cancellation of agency requisitions at the time of a nuclear attack upon the United States, clarify instructions for the requisitioning of prepositioned relocation site items, add the definition of "immediate postattack," and incorporate other minor technical changes.

The table of contents for Part 101-34 is amended by revising the captions for §§ 101-34.003, 101-34.101, and Subpart 101-34.2, and adding new § 101-34.200 to read as follows:

Sec.
101-34.003 GSA Handbook, Emergency Supply Support Operations.
101-34.101 Requisitioning instructions.

Subpart 101-34.2—Postattack Defense Emergency Plans

101-34.200 General.

Sections 101-34.002(a) and 101-34.003 are revised and § 101-34.002(f) is added to read as follows:

§ 101-34.002 Definitions.

* * * * *

(a) *Defense Readiness Conditions (DEFCONS).* DEFCONS are levels of military readiness which indicate the degree of preparedness required for national defense emergency conditions short of attack warning. Actions by Federal departments and agencies having emergency nonmilitary defense responsibilities are geared to DEFCONS to provide gradual strengthening of the U.S. defense and retaliatory capabilities. DEFCONS progress from 5 through 1. DEFCONS 5 and 4 require continuance of normal preparedness, and most civil agencies will not be notified of them for nonmilitary defense purposes. DEFCONS 3, 2, and 1 represent stepped-up readiness actions from moderate to maximum

preparations to insure performance of emergency functions.

* * * * *

(f) *Immediate postattack.* That period immediately following an attack upon the United States and extending until such time as communications are at least partially restored, damage has been assessed, and agencies are in a position to evaluate their surviving resources and capabilities to carry out emergency functions.

§ 101–34.003 GSA Handbook, Emergency Supply Support Operations.

Detailed instructions and guidelines on implementing GSA emergency preparedness plans are provided in the GSA Handbook, Emergency Supply Support Operations (FPMR 101–34.003), which is issued by the Commissioner, Federal Supply Service. Since the handbook identifies actions to be taken to obtain supplies, equipment, and services from or through GSA in the postattack period, agencies should obtain copies for prepositioning at their relocation sites.

Sections 101–34.101, 101–34.102, 101–34.103, 101–34.104, and 101–34.105 are revised to read as follows:

Subpart 101–34.1—Preattack Defense Emergency Plans

§ 101–34.101 Requisitioning instructions.

(a) Normal FEDSTRIP/MILSTRIP requisitioning procedures shall be followed during the preattack period. When emergency conditions require such procedures to be altered, GSA will issue appropriate guidance.

(b) All agency requisitions in process at the time of a nuclear attack upon the United States shall be canceled except for those items for shipment to an agency relocation site. After an assessment of bomb damage, agencies shall resubmit requisitions based on an evaluation of current requirements and in accordance with the appropriate priority as explained in paragraph 4, chapter 1 of the GSA Handbook, Emergency Supply Support Operations.

§ 101–34.102 Prepositioned stocks.

(a) *Requirements determination.* The Office of Emergency Preparedness encourages agencies to preposition stocks of essential supplies at relocation sites as a part of their relocation program. Such action will insure availability of operating supplies in case of a surprise attack or rapid progression from DEFCON 3 to an attack warning and allow time for GSA to evaluate surviving resources and adapt to postattack operations. Prior to the preattack period, agencies with relocation programs should determine the minimum requirements for the administrative type supplies and equipment needed for the first 30 days' operations at relocation sites and should prepare requisitions in accordance with the instructions contained in the following paragraph.

(b) *Submission of requisitions for GSA stock items to be prepositioned.* (1) Requisitions for minimum operating requirements of GSA stock items for prepositioning at relocation sites should be submitted to the appropriate GSA regional office prior to the preattack period.

(2) Although it is preferable to request shipment before DEFCON 3, it may be advisable to submit a requisition for immediate shipment of items with no shelf life or with an extended (at least 2 years) shelf life and a separate requisition covering items with less than a 2-year shelf life for shipment upon the declaration of DEFCON 3. A requisition for items to be delivered in the future should contain Document Identifier Code AØ5 or AØE (as applicable) and an appropriate explanation of the exception data in the "Remarks" field to preclude premature processing by GSA. GSA will hold the requisition for automatic release upon declaration of DEFCON 3 without further instruction from the requisitioning activity. If DEFCON 3 is bypassed, shipment will be made (time permitting) during DEFCON 2 or 1, or at such other time as the requisitioning activity requests GSA to make shipment.

(3) In the absence of instructions from the requisitioning activity, a requisition held for shipment upon declaration of a designated DEFCON will be returned if such DEFCON is not declared within 1 year from the date of the requisition. Should the 1-year period encompass the major part of the fiscal year following the one in which the requisition is submitted and the appropriate DEFCON is declared, GSA will honor the requisition on the assumption that sufficient funds will be allocated by agencies on a year-to-year basis to provide for payment of merchandise requisitioned under this program.

(4) A change to a requisition being held by GSA should be made by submitting a new requisition to the appropriate GSA regional office with an instruction to replace the requisition on file with the newly submitted one.

(c) *Disposition of unused stocks.* If prepositioned stocks requisitioned from GSA are not used through relocation site operations, they should be entered into the agency's normal supply distribution program. Such items that cannot be used in this manner may be considered for return to GSA under the credit return program (Subpart 101–27.5 of this chapter).

(d) *Representative supply items.* The GSA Handbook, Emergency Supply Support Operations, provides a listing of administrative type supply items which represent the general type of items required for relocation site operations.

§ 101–34.103 Logistics Control Centers.

Upon declaration of DEFCON 3 (or in some cases DEFCON 4), GSA will activate Logistics Control Centers (LCC's) at the Central Office and in each region to provide 24-hour continuous service to requisitioning activities. For the benefit of activities which have a requirement to contract GSA on defense supply matters subsequent to declaraton of DEFCON 3, the telephone numbers of the LCC's are included in the GSA Handbook, Emergency Supply Support Operations. The LCC's will provide information on the GSA emergency plans for supply support, monitor high priority requirements to include assistance for specialized procurements and expedited deliveries, determine availability of critically needed items, and offer advice and guidance as necessary.

§ 101–34.104 Agency supply requirements.

To enable GSA to develop plans for providing supply support to agencies under emergency defense conditions, agencies should identify the supply items for which substantial increases are anticipated and mail a consolidated list of these items to the General Services Administration (FX), Washington, D.C. 20406, upon declaration of DEFCON 3. The listing should reflect the Federal stock numbers of the items purchased from or through sources established by GSA and the expected volume and percentage of increases over normal requirements. With this data GSA can, as applicable, alert suppliers of anticipated increases, arrange for increased quantities under present contracts, provide for increased GSA inventories, or develop data on additional sources of supply.

§ 101–34.105 Agency supply liaison.

(a) GSA provides 24-hour supply support service to process emergency or other urgent requirements which arise after normal duty hours. GSA regional offices publish in regional bulletins or notices the names and telephone numbers of persons to contact when such service is desired. If advance information is not available regarding this service, or if any additional information is required, the GSA supply service officer (at the applicable GSA regional office) should be contacted. A map showing GSA regional offices and telephone numbers is printed on the inside back cover of the GSA Handbook, Emergency Supply Support Operations.

(b) At the time of activation of GSA LCC's, the LCC duty officers will establish liaison contact with those agency supply officials on record with GSA to coordinate the functions enumerated in § 101–34.103.

Subpart 101–34.2 is redesignated and § 101–34.200 is added to read as follows:

Subpart 101–34.2—Postattack Defense Emergency Plans

§ 101–34.200 General.

GSA plans and procedures for emergency operations following an attack upon the United States are included in the Code of Emergency Federal Regulations (CEFR). Selected portions of those plans are included in the GSA Handbook, Emergency Supply Support Operations.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Effective date. This regulation is effective June 30, 1971.

Dated: June 22, 1971.

ROBERT L. KUNZIG,
Administrator of General Services.

[FR Doc.71-9181 Filed 6-29-71;8:45 am]

SUBCHAPTER H—UTILIZATION AND DISPOSAL

PART 101-45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

Identical Bids

Section 101-45.318 is added to provide that when an invitation for bids for the sale of personal property results in submission of identical bids consideration shall be given to whether adequate price competition was obtained. This amendment is intended to insure that Federal agencies resolicit the sale if the circumstances do not permit a reasonable determination that the price competition was adequate. This amendment is in response to a decision of the Comptroller General (B-169843(1)), dated December 7, 1970.

The table of contents for Part 101-45 is amended by adding new § 101-45.318 as follows:

Sec.

101-45.318 Identical bids.

Section 101-45.318 is added as follows:

Subpart 101-45.3—Sale of Personal Property

§ 101-45.318 Identical bids.

In addition to complying with the requirements of §§ 101-45.316 and 101-45.317, when an invitation for bids for the sale of personal property results in the submission of identical bids, consideration shall be given to whether adequate price competition was obtained. Whether there is adequate price competition for a given sale is a matter of judgment to be based on the circumstances of the sale. If the circumstances do not permit a reasonable determination that the price competition was adequate, the sale should be resolicited.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Effective date. This amendment is effective June 30, 1971.

Dated: June 22, 1971.

ROBERT L. KUNZIG,
Administrator of General Services.

[FR Doc.71-9180 Filed 6-29-71;8:45 am]

Title 49—TRANSPORTATION

Chapter I—Hazardous Materials Regulations Board, Department of Transportation

[Docket No. OPS-5; Amdt. 192-4]

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

Requirements for Corrosion Control

This amendment establishes a new Subpart I to Part 192 in Title 49, Code of Federal Regulations, containing the minimum Federal safety standards for the transportation of gas and for pipeline facilities used in this transportation.

On April 30, 1970, the Department issued a notice of proposed rule making, Notice 70-8, containing requirements for corrosion control (35 F.R. 2127, May 6, 1970). Interested persons were invited to participate in the making of the proposed rules by submitting written comments before June 29, 1970.

On June 6, 1970, an amended notice of proposed rule making was published in the FEDERAL REGISTER (Notice 70-10, 35 F.R. 8833) to make certain changes in the proposed rules relating to cast iron and ductile iron pipe. After a request for a public hearing on the requirements of these two notices, a public hearing (see Notice 70-12, 35 F.R. 10596, June 30, 1970) was held on July 20, 1970, and comment was received on the proposed applicability of the requirements to existing pipelines and to cast iron or ductile iron pipe. The information and views presented in the comments and at the hearing have been fully considered, and are reflected in this final rule. Some sections contained in the notice have been consolidated, eliminated, or reorganized and most sections have been renumbered. The deviation table below indicates the corresponding section number in the notice for each section of the final rule.

DERIVATION TABLE

New section	*Proposed section*
192.451	192.451.
192.453	192.481(b).
192.455	192.453, 192.455, 192.457.
192.457	192.467, 192.469, 192.473.
192.459	192.481(a).
192.461	192.455.
192.463	192.457.
192.465	192.475.
192.467	192.463, 192.465, 192.479.
192.469	192.459, 192.477.
192.471	192.461, 192.477.
192.473	192.491
192.475	192.487
192.477	192.487
192.479	192.489.
192.481	192.489.
192.483	192.481, 192.483, 192.485.
192.485	192.483.
192.487	192.485 (a) and (b).
192.489	192.485(c).
192.491	192.493.

Subpart I differs in many respects from the notice upon which it was based. Some changes were made for consistency in terminology and format. Others involve the moving of requirements from one section to another for better organization. Other changes are substantive in nature and are based both on the comments received on the notice and on the recommendations of the Technical Pipeline Safety Standards Committee. Each of these changes is within the general scope of the notice on which it was based.

A number of recommendations included in the comments were beyond the scope of the proposed regulations, and could therefore not be included in the final rule. However, these recommendations will be considered for inclusion in future rule-making actions.

Some of the comments were directed to the overall effect of Subpart I, and these general subjects are discussed below. All other significant changes and comments are discussed in a section-by-section analysis.

Effective date. Section 3(c) of the Natural Gas Pipeline Safety Act requires that standards and amendments thereto prescribed under the Act "shall become effective 30 days after the date of issuance * * * unless the Secretary, for good cause recited, determines an earlier or later effective date is required as a result of the period reasonably necessary for compliance". The notice invited comment on the adequacy of specific proposed effective dates, both as to whether earlier dates would be in the interest of increased safety and whether later dates are indicated by factors of cost or feasibility.

Besides the numerous comments received on proposed effective dates, the question was discussed with the Technical Pipeline Safety Standards Committee. Accordingly, this regulation will become effective 30 days after the date of issue. However, certain specific provisions will not become applicable at once. The primary reason for allowing additional time for these provisions is that the corrosion regulations are new requirements that were not contained in the interim minimum Federal regulations, and it is desirable to allow appropriate leadtime to all affected parties to receive copies of the new regulation and to thoroughly review its requirements, and to make the necessary preparations and arrangements for compliance. This additional leadtime is contained in provisions relating to cathodic protection of new pipelines (§ 192.455(a)(2)); cathodic protection of existing pipelines (§ 192.457 (a) and (b)); interference currents (§ 192.473); internal corrosion control (§ 192.475); atmospheric corrosion control of existing aboveground pipelines (§ 192.479); and corrosion control records (§ 192.491).

Retroactive effect on existing pipelines. Some comments related to the effect of this regulation on existing pipelines, and suggested the insertion of dates in particular sections to make clear that these sections are not intended to apply to installations, repairs or replacements made before the effective date. (See § 192.455(e) (installation of aluminum); § 192.461 (protective coating); § 192.467 (electrical isolation); and § 192.483 (repaired or replaced pipe).) As stated in the preamble when Part 192 was issued, there is no basis for such concern. The Natural Gas Pipeline Safety Act (section 3(b)) makes clear that only standards applying to the extension, operation, replacement, or maintenance, and subsequent inspection and subsequent testing are applicable to pipeline facilities in existence on the date the standards are adopted.

However, provisions applicable to existing lines need not be limited to cases in which a facility is hazardous to life

or property, as asserted in some comments, but are permissible as part of the regular operation and maintenance requirements for existing lines. The determination of areas of active corrosion on existing pipelines by electrical survey, by study of corrosion and leak history records and by leak detection survey, as well as the application of cathodic protection to such areas, or repaired or replaced areas, and subsequent inspection and testing to determine the adequacy and efficacy of corrosion control, are examples of operation, replacement, maintenance, and subsequent testing and inspection specifically permitted under the Act.

Where a particular section applies only to existing pipelines, that is made clear by use of the phrase "pipelines installed before August 1, 1971". (See §§ 192.457, 192.479(b).)

Distinction between high and low stress pipe; distinction between bare and coated pipe. To be consistent with the previously issued subparts of Part 192, the terms "transmission line" and "distribution line" have been substituted for the phrases "pipelines, mains and service lines operating at 20 percent or more of SMYS", and "pipelines, mains, or service lines operating at less than 20 percent of SMYS", which were used in the notice. Some of the comments maintained that the distinction between high- and low-stress pipe, and between bare and coated pipe, was unjustifiable as a basis for differing corrosion control requirements. However, the problems of cathodically protecting existing distribution lines are different from those of existing transmission lines. Special problems make compliance in the case of the distribution lines more difficult, so more time must be allowed for meeting these requirements. In many cases it is more practical to cathodically protect an existing coated transmission line in its entirety than to survey it for "hot spots" and cathodically protect only those areas where active corrosion is found. Consequently, it is required that effectively coated existing transmission lines be cathodically protected within 3 years of the effective date, but 5 years is allowed for existing bare transmission lines, all distribution lines and all station piping.

Distinction based on type of metal. Special provisions deal with specific metals having unique characteristics, such as copper (§ 192.455(c)(1)), aluminum (§ 192.455(e)), and cast iron and ductile iron (§ 192.489). However, the phrase "steel or aluminum pipeline", as used in the notice, has been eliminated, since there was no intention to exclude other types of metallic pipe such as wrought iron.

Section 192.451. This section, stating the scope of the subpart, has been rewritten. The word "pipeline" has now been substituted for the words "gas pipeline facilities" and "pipelines, mains, service lines, and related facilities" which were used in proposed § 192.451, as well as in many other sections of the notice. As defined in § 192.3, "pipeline" means all parts of those physical facilities through which gas moves in transportation, including pipes, valves, and other appurtenances attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies. The second sentence of the proposed scope section in the notice was deleted as unnecessary.

Various suggestions were made that the scope section state that these requirements are for the protection of pipelines from "harmful" corrosion, or corrosion "detrimental to safety", or that it state that it prescribes minimum requirements for the protection of pipelines from corrosion, "consistent with public safety", in order to make clear that not every degree or type of existing corrosion imposes an obligation on the operator to take protective steps. These proposals were deemed unnecessary, since their purpose is accomplished by the definition of "active corrosion" in § 192.457(c) as "continuing corrosion which, unless controlled, could result in a condition that is detrimental to public safety". Moreover, under §§ 192.485, 192.487, and 192.489, remedial action is required only where corrosion is of the degree or extent described in those sections. In addition, cathodic protection of most existing lines is now required only in "areas in which active corrosion is found" (§§ 192.457(b) and 192.465(e)) thus eliminating any implication that an operator must cathodically protect the pipeline in all areas of existing corrosion, even where the operator has not been able to detect it.

Section 192.453. This section, based on proposed § 192.481(b), which applied only to cathodic protection systems, now applies to all procedures to implement the requirements of this subpart, "including those for the design, installation, operation, and maintenance of cathodic protection systems".

Recommendations that some standards be included to assure the competence of the "person qualified by experience and training in pipeline corrosion control methods", or that such a person be qualified under the terms of the accreditation program of the National Association of Corrosion Engineers, were deemed inappropriate at this time. The word "corrosion specialist", suggested as a substitute for the word "person", was thought to be redundant in view of the additional language, "qualified by experience and training in pipeline corrosion control methods". A person so qualified, but not officially designated as a corrosion specialist, should not be precluded from acting under this section.

Section 192.445. Paragraph (a) of § 192.455 requires, with certain exceptions, protection against external corrosion for all newly constructed pipelines, by means of a combination of external protective coating and cathodic protection.

The proposed regulation would have required new buried pipelines to be "cathodically protected not later than 1 year after completion of construction". Since time must be allowed for the environment to reach a stable level due to changes in soil settling and in oxygen and water content of backfill, before final measurements can be taken to determine adequacy of protection, it is now provided that a properly designed cathodic protection system must be "installed and placed in operation within 1 year". An additional year will then be available under § 192.465 for any adjustments necessary because of changes in the soil following construction.

No differentiation has been made in § 192.455(a) between new transmission and new distribution lines. Except as provided in paragraphs (b) and (c), all new pipelines must be coated and cathodically protected.

New pipe that replaces pipe removed from an existing buried or submerged pipeline because of external corrosion, is covered by § 192.483 (a) and (b), but it should be noted that such new replacement pipe also must be coated and cathodically protected.

Paragraph (b) provides an exception to the requirements of paragraph (a). Many comments recommended that an exception to the coating and cathodic protection requirements, similar to that proposed for new copper pipelines (where the operator can demonstrate by test, investigation or experience in the area of application that a corrosive situation does not exist), should be extended to all new pipelines. This has been done in paragraph (b) of § 192.455, but with additional safeguards. Certain minimum tests for soil resistivity and corrosion accelerating bacteria will be required. These tests are a prerequisite in every instance of an installation made without complying with the requirements of paragraph (a). In addition, within 6 months after such an installation, the operator must conduct tests, including pipe-to-soil potential measurements and soil resistivity measurements at potential profile peak locations, and the pipeline must be cathodically protected in those areas in which the tests indicate a corrosive condition exists.

Paragraph (c) provides an additional exception to the requirements for coating and cathodic protection, for new temporary pipelines, where the operating period of service is not to exceed 5 years beyond installation.

Paragraph (d) provides that even where protection of a new buried pipeline against external corrosion control is not required under one of these exceptions set out in paragraphs (b) or (c), if the pipeline is coated, it must then also be cathodically protected. This is necessary because first leaks can develop sooner on a coated pipeline than they would on the same line left bare, since harmful discharge of current would be concentrated at the breaks in the coating (holidays).

Paragraph (e) of § 192.455 has been modified to incorporate suggested language in regard to installation of aluminum, which is the same as that used in

the 1969 edition of NACE Standard RP-01-69. Comments criticized the term "highly alkaline environment" used in the notice as too vague, and suggested that the use of aluminum should be prohibited in "an environment with a natural pH in excess of 8.0", unless tests indicate its suitability in the particular environment involved.

Finally, it should be noted that no exception to the requirements of § 192.455 is provided for new cast iron or ductile iron. Because of the unique physical characteristics of its corrosion process (graphitization), and because of the normal allowance of extra wall thickness, it was argued in some of the comments and at the hearing on July 20, 1970, that it should not be required that newly installed cast iron or ductile iron be coated and cathodically protected, but that a loose polyethylene wrap should be considered an appropriate coating adequate for proper corrosion control. But moisture and ground water which can enter the loose polyethylene wrap may form a breeding ground for bacteriological corrosion. Moreover, in the event there is a break in the polyethylene wrap and corrosion started, there is no way to apply cathodic protection to prevent further corrosion. The current would be intercepted by the insulating qualities of the polyethylene sheet, and cathodic protection would only reach the metal under the break. The other areas under the wrap that may be corroding from water and access to oxygen would not be cathodically protected. Therefore, new cast iron and ductile iron have not been treated differently from steel and a coating bonded to the pipe and cathodic protection are required.

Section 192.457. Whereas § 192.455, which deals with new pipelines, makes no distinction for corrosion control purposes, between new transmission lines and new distribution lines, generally requiring both to be coated and cathodically protected in the entirety, § 192.457, which applies to existing pipelines, has different requirements for coated transmission lines than for distribution lines.

Several comments pointed out that coated pipe with deteriorated coating that is no longer effective should be treated as bare pipe for corrosion control purposes. Accordingly, the proposed requirement that coated pipelines operating at 20 percent or more of SMYS must be cathodically protected in the entirety within 3 years, now applies only to existing buried or submerged transmission lines that have an effective external coating (§ 192.457(a)). The effectiveness of the coating is to be established by tests to determine the current requirements of the pipeline for cathodic protection. Coating is deemed ineffective if the cathodic protection current requirements are substantially the same as if the pipeline were bare.

Paragraph (b) of § 192.457 provides that except for cast iron or ductil bare transmition lines (including those with ineffective coating), bare or coated station piping, and bare or coated distribution lines, all must be cathodically protected within 5 years in areas in which active corrosion is found. "Active corrosion" is defined in paragraph (c).

The proposed regulation would have required cathodic protection of existing distribution lines and bare transmission lines within 5 years, "in areas in which corrosion exists". The operator was to determine these areas by electrical survey or other means. There appeared to be some concern in the comments that the proposal contained an absolute requirement that every area of existing corrosion be found and protected against within 5 years. This was apparently felt to be impossible for some distribution lines, since determination of areas of corrosion by electrical survey is often impractical in the case of distribution lines (such as those under paved city streets and sidewalks). This has now been changed to require cathodic protection "in areas in which active corrosion is found", and that areas of active corrosion be determined by electrical survey, or "where electrical survey is impractical, by the study of corrosion and leak history records, by leak detection survey, or by other means". This modified language should make clear that the operator is not obligated to take action concerning active corrosion which cannot be found by the required methods. The operator must conduct electrical surveys in areas where they are practical. In other areas, he must make diligent efforts, utilizing leak surveys, all available records such as corrosion and leak history records, or other appropriate methods, to discover active corrosion. Leak surveys could be made by such commonly used means of leak detection as flame ionization, infrared detectors and combustible gas detectors. If these efforts do not indicate the presence of active corrosion, the operator may assume that none exists, until such time as an actual indication of its existence arises. Moreover, it should be noted that an operator may apply for a waiver if it is shown that justification exists for not meeting the 5-year time period in cathodically protecting "hot spots" found by the methods set out in § 192.457(b).

In summary, § 192.457 now provides that existing, effectively coated transmission lines must be cathodically protected in the entirety within 3 years, while all other existing lines (including bare transmission lines, bare or coated buried station piping operating at above or below 20 percent of SMYS, and bare or coated distribution lines) must be cathodically protected within 5 years in areas in which active corrosion is found. On new construction, § 197.455 provides that all new pipe (both transmission and distribution) must be coated and cathodically protected within 1 year of installation unless the operator can demonstrate that a corrosive environment does not exist.

Section 192.459. The requirement that whenever any buried piping is exposed for any reason it must be examined for evidence of external corrosion has been modified. Comments suggested that it be made clear that this requirement would not necessitate tearing off good coating to examine the pipe. As the section is rewritten, it requires only that "Whenever an operator has knowledge" that any portion of buried pipeline is exposed, the pipe must be examined for evidence of external corrosion "if the pipe is bare or if the coating is deteriorated".

Section 192.461. This section, dealing with protective coating, has been slightly reworded.

Subparagraph (a)(2) requires a protective external coating to have sufficient adhesion to the metal surface to "effectively resist" (rather than "prevent") underfilm migration of moisture, in response to comments asserting that the coating could not absolutely prevent underfilm migration of water.

Paragraph (c) relating to inspection of coating prior to lowering the pipe and backfilling, now requires repair only of "any damage detrimental to effective corrosion control", since the comments indicated that minor damage often does not require repair.

Paragraph (e) is a new paragraph requiring that precautions be taken to minimize damage to coating during installation by boring or driving. This paragraph, although proposed in Notice 70-3, Subpart H (Customer's Meters, Service Regulators, and Service Lines) as proposed § 192.429(b), was omitted in the final rule for that subpart, since it was considered to be more properly a part of the corrosion subpart.

Section 192.463. Paragraph (a) of this section refers to the criteria for cathodic protection contained in a new Appendix D, rather than to paragraph 6.3 of the 1969 edition of NACE Standard RP-01-69. However, it should be noted that the criteria in the appendix are substantially the same as those in the NACE Standard. In addition, it is now provided that "If none of these criteria is applicable, the cathodic protection system must provide a level of cathodic protection at least equal to that provided by compliance with one or more of these criteria." It was felt that the possibility of an exception should be provided, but that where the criteria are applicable, they should be followed.

In accordance with several suggested comments, paragraph (d) of proposed section 192.457 was deleted as unnecessary, and paragraph (f) of that proposed section has been reworded to eliminate the requirement that the cathodic protection "assure proper performance of the protective coating system", and instead now requires that the amount of cathodic protection must be controlled "so as not to damage the protective coating or the pipe".

Section 192.465. The section on monitoring differs from the proposal in several ways. It applies to monitoring of both new and existing lines. In paragraph (a), offshore pipelines, where monitoring is impractical, have been excepted. The phrase "at intervals not exceeding 12 months" has been changed to "at least once each calendar year, with intervals not exceeding 15 months". The

purpose of the change was to allow seasonal considerations in scheduling annual inspections, and it was felt that 3 months' leeway would provide sufficient flexibility for this purpose.

Instead of requiring that each interference bond be electrically checked for proper performance at intervals not exceeding 2 months, it is now provided in § 192.465(c) that each interference bond "whose failure would jeopardize structure protection", must be electrically checked for proper performance at intervals not exceeding 2 months. Each other interference bond must be checked at least annually, but with intervals not exceeding 15 months.

Section 192.467. This section, entitled "External corrosion control: Electrical isolation", is based on the proposed sections which dealt with electrical insulation on new construction and existing pipelines, and with clearance between pipe and underground structures on new construction.

Paragraph (a) still requires that each buried pipeline must be electrically isolated from other underground metallic structures, but in accordance with suggestions received, it permits an exception if the pipeline and the other structures are electrically interconnected and cathodically protected as a single unit.

Paragraph (b) of § 192.467, requires that an insulating device be installed where electrical isolation of a portion of a pipeline is necessary to facilitate corrosion control. It was felt that this performance-type language is sufficient to cover such specific situations as the necessary insulation of ferrous valves and fittings installed in underground copper service lines.

Paragraph (c) of § 192.467, providing for electrical isolation of the pipeline from metallic casings that are a part of the underground system, now permits other measures to minimize corrosion of the pipeline inside the casing, where isolation is impractical. The additional language was added in response to comments suggesting that this requirement should not apply to a service going through a casing in a cement or masonry wall, where the casing is above ground. Other measures that may be taken include placing a noncorrosive casing filler made of high dielectric material in the annular space between the pipe and casing.

Paragraph (f) concerning protection against damage due to fault currents and lightning now refers to "areas where fault currents or unusual risk of lightning may be anticipated".

Proposed § 192.463(e) has been eliminated as unnecessary, since the specific situations described in that paragraph are covered by the more performance-oriented type of language of § 192.467 (a) and (b).

Section 192.473. This section now requires that after July 31, 1973, each operator whose pipeline system is subjected to stray currents must have a continuing program to minimize the detrimental effects of such currents. Comments indicated that the 12-month leadtime originally proposed was insufficient for the acquisition of manpower and equipment for such a program.

Sections 192.475 and 192.477. These sections are essentially the same as proposed. However, paragraph (c) of § 192.475, providing that gas containing more than 0.1 grain of hydrogen sulfide per 100 standard cubic feet may not be stored in pipe-type or bottle-type holders, is newly added. It was originally proposed as part of Notice 70-7, Subpart D (Design of Piping System Components and Facilities), as proposed § 192.168(b), but was not included in Subpart D, since it was considered to be more appropriately within the corrosion subpart.

In response to comments, § 192.477 makes clear that coupons are required only "if corrosive gas is being transported". However, it should be noted that § 192.475(b) applies also in cases where corrosive gas is not being transported, but internal corrosion is caused by other factors.

Sections 192.479 and 192.481. The sections on atmospheric corrosion control have been completely rewritten. The proposal would have required all new and existing steel, cast iron and ductile iron aboveground pipelines to be coated or jacketed within 1 year for the prevention of atmospheric corrosion. This requirement would have applied to aluminum and copper pipe only when exposed to an atmospheric environment corrosive to those metals.

The comments objected to the 1 year time limitation as insufficient, and also suggested that coating only be required where atmospheric corrosion was actually taking place. While § 192.479(a), applying to newly installed aboveground pipelines, still requires that such pipelines be cleaned and coated with a material suitable for the prevention of atmospheric corrosion, it now also allows for an exception to this requirement if the operator can demonstrate by tests, investigation or experience in the area of application that a corrosive atmosphere does not exist.

Paragraph (b), applying to existing aboveground pipelines, now requires that they be cleaned and coated within 3 years, but only in areas where atmospheric corrosion has taken place on the pipeline.

Section 192.481 requires that at intervals not exceeding 3 years, aboveground pipelines must be reevaluated and necessary action taken to maintain protection against atmospheric corrosion.

Section 192.483. This section on general remedial measures requires that all new replacement pipe installed because of external corrosion (including cast iron or ductile iron) must be coated and cathodically protected, as is required for new pipelines in § 192.455(a). The exception to these requirements allowed for new pipelines in § 192.455(b) (where the operator can demonstrate that a corrosive environment does not exist), would not apply to replacement pipe, where replacement is necessitated by external corrosion, since it would normally be impossible to make such a demonstration. However, it should be noted that if copper pipe is used to replace corroded steel, cast iron or ductile iron, the provisions of § 192.455(c)(2) might permit the use of uncoated copper replacement without cathodic protection, in the highly unlikely event that the operator could demonstrate by test that the environment (which had been corrosive to the other metals) was not corrosive to copper.

Except for repaired cast iron or ductile iron, a segment of buried pipe that is repaired because of external corrosion must be cathodically protected. Repaired cast iron and ductile iron are excepted from the cathodic protection requirement because the density of cathodic protection current, as normally provided by galvanic anodes, is not sufficient to reach the cast iron beneath the graphitized surface so as to prevent further graphitization. Current of such low density from such low electromotive force collects on the graphitized area and continues through adjacent cast iron and back to the galvanic anode source without providing protection.

It should be noted that at this time, the regulations are not requiring that repaired pipe be coated in every case, since it is not always practical to do so, especially where the repair is in a very small area, or on a bare pipeline. However, where the repaired segment is part of an effectively coated pipeline, the repaired area would also have to be coated.

The proposed regulation provided that generally corroded pipe would not need to be replaced or repaired if the operating pressure were reduced so as to be commensurate with the specified limits on operating pressure based on the actual remaining wall thickness. That option is retained in § 192.485(a) covering general corrosion on transmission lines. However, § 192.487(a) dealing with general corrosion on distribution lines does not provide the option of reducing operating pressure instead of replacing the pipe. Since such lines are already operating at low pressure, the reduction of pressure would be meaningless. In this connection, it should be noted that the minimum percentage of remaining wall thickness required in such cases is not contingent on internal pressure (hoop stress) but on external loads.

Sections 192.485 and 192.487. The proposed regulations dealing with remedial measures for isolated corrosion pitting were the subject of considerable comment. Based on the information available at this time, the Department has developed the following regulations which are considered adequate to protect the public:

§ 192.485 Remedial measures: transmission lines. * * *

(b) *Localized corrosion pitting.* Each segment of transmission line pipe with localized corrosion pitting must be replaced or repaired, or the operating pressure must be reduced based on the actual remaining wall

thickness in the pits, if either of the following exists:

(1) The diameter of the pits as measured at the surface of the pipe is greater than three times the nominal wall thickness of the pipe.

(2) The remaining wall thickness at the bottom of the pits is less than 30 percent of the nominal wall thickness.

§ 192.487 Remedial measures: distribution lines other than cast iron or ductile iron lines. * * *

(b) *Localized corrosion pitting.* Except for cast iron or ductile iron pipe, each segment of distribution line pipe with localized corrosion pitting must be replaced or repaired if either of the following exists:

(1) The diameter of the pits, as measured at the surface of the pipe, is greater than five times the nominal wall thickness of the pipe.

(2) The remaining wall thickness at the bottom of the pits is less than 20 percent of the nominal wall thickness.

However, we are aware that the completion of research now going on is anticipated in the near future, on the subject of the effect of pitting on the integrity of pipe, requiring repair or replacement for the protection of the public. Accordingly, the Department intends to delay the issuance of these regulations on localized corrosion pitting, in order to hold a public hearing on July 20, 1971, to explore the problem further. (See p. 12309 of this issue.) This will give interested persons an opportunity to present new material or to demonstrate that the criteria set out above are inappropriate.

In issuing this rule, the Department has included general criteria on corrosion pitting in §§ 192.485(b) and 192.487(b) as interim regulations. These interim regulations give the operator discretion to determine the severity of pitting that requires remedial action.

Unless the hearing discloses information indicating other criteria are more appropriate, the regulations set forth above in this preamble will be substituted for the interim provisions within 60 to 90 days from the effective date of this regulation.

Section 192.491. The comments on this provision urged that construction drawings and records should not both be required, and that records or drawings should not be required as to all neighboring structures. In response to these comments, § 192.491(a) now requires that "records or maps" be maintained to show the location of cathodically protected piping, cathodic protection facilities "other than unrecorded galvanic anodes installed prior to August 1, 1971", and neighboring structures that are "bonded to" the cathodic protection system.

In response to other comments urging that the retention of all records of tests, surveys, and inspections is unnecessary and unduly burdensome, paragraph (b) now provides for retention only of records, tests, and inspections in sufficient detail to demonstrate the adequacy of corrosion control measures, or, in the case of unprotected pipelines, that a corrosive condition does not exist.

Appendix D. An appendix has been added, setting out criteria for cathodic protection required by § 192.463(a), and methods of determining such measurements as voltage, voltage shifts, and polarization voltage shifts. These criteria and methods of measurement are based on the 1969 issue of the National Association of Corrosion Engineers' Standard RP-01-69, Recommended Practice—Control of External Corrosion on Underground or Submerged Metallic Piping Systems.

Report of Technical Pipeline Safety Standards Committee. Section 4 of the Natural Gas Pipeline Safety Act requires that all proposed standards and amendments to such standards be submitted to the Committee and that the Committee be afforded a reasonable opportunity to prepare a report on the "technical feasibility, reasonableness, and practicality of each such proposal". This amendment to Part 192 has been submitted to the Technical Committee and that Committee has submitted a favorable report. The Committee's report and the minority views of the Committee member who disagreed with the majority report are set forth below.

JUNE 21, 1971.

Memorandum to: The Secretary of Transportation, Attention: Joseph C. Caldwell, Acting Director Office of Pipeline Safety.
From: Secretary, Technical Pipeline Safety Standards Committee.
Subject: Office of Pipeline Safety Proposed Requirements For Corrosion Control (Part 192, Subpart I).

The following letter and attachments represent an official report by the Technical Pipeline Safety Standards Committee concerning the Committee action related to "Requirements for Corrosion Control (Part 192, Subpart I)" which the Office of Pipeline Safety proposes to adopt as a part of Minimum Federal Safety Standards: Transportation of Natural and Other Gas by Pipeline.

The Committee reviewed proposals of the Office of Pipeline Safety at a meeting held on April 13-14, 1971, and through an informal ballot procedure recommended modification to the OPS proposed regulations. The Office of Pipeline Safety considered the recommendations of the Technical Committee and prepared a revised draft regulation which reflected recommendations of the Committee. The revised draft regulation accompanied by a "Discussion of Technical Committee Recommendations" prepared by OPS was distributed to the membership of the Committee on May 4, 1971, by the undersigned together with a formal letter-ballot.

The results of the letter-ballot as finally tabulated reveal that 13 members of the Committee approved the proposed regulation as being technically feasible, reasonable and practicable. One member disapproved the proposed regulation.

Attached, as Item A, are the minority views expressed by the dissenting Committee member.

Also attached, as Item B, is a summary of views expressed by Committee members who voted in favor of the proposed regulation but disagreed with minor specifics.

LOUIS W. MENDONSA.

EXPLANATION OF THE DISAPPROVAL BY FREDERIC A. LANG OF THE PROPOSED MAJORITY REPORT ON THE PROPOSED PART 192 SUBPART I "REQUIREMENTS FOR CORROSION CONTROL."

As a member of the Technical Pipeline Safety Standards Committee, I disapprove of the proposed majority report because it is less than adequate for providing safety to the public living beside gas pipelines, distribution lines, and mains.

Design and operation of pipelines as regulated by Federal Pipeline Safety Standards Part 192 already issued except for this Subpart I, does not contemplate any weakening of the pipe wall by corrosion, therefore, the "Requirements of Corrosion Control" as proposed, should guarantee, within practical limits, that corrosion does not occur. Unfortunately, the regulations as drafted are less than adequate to prevent a dangerous degree of corrosion.

My comments on the need for better corrosion control appear in the transcript of the Committee meetings held April 13 and 14, 1971, to discuss the proposed regulation. In summary, my recommendations are that cathodic protection be used on all piping at all times to prevent corrosion and that scientifically designed sampling be used to determine whether corrosion has occurred. When corrosion has occurred the piping should be replaced or downrated in accordance with the remaining wall thickness available to contain the pressurized gas.

FREDERIC A. LANG.

This regulation is issued under the authority of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. § 1671 et. seq.), Part 1 of the Regulations of the Office of the Secretary of Transportation (49 CFR Part 1), and the delegation of authority to the Director, Office of Pipeline Safety, dated November 6, 1968 (33 F.R. 16468).

In consideration of the foregoing, a new Subpart I is added to Part 192 of Title 49 of the Code of Federal Regulations, effective August 1, 1971, to read as set forth below.

Issued in Washington, D.C., on June 25, 1971.

JOSEPH C. CALDWELL,
Acting Director,
Office of Pipeline Safety.

Subpart I—Requirements for Corrosion Control

Sec.
192.451 Scope.
192.453 General.
192.455 External corrosion control: buried or submerged pipelines installed after July 31, 1971.
192.457 External corrosion control: buried or submerged pipelines installed before August 1, 1971.
192.459 External corrosion control: examination of buried pipeline when exposed.
192.461 External corrosion control: protective coating.
192.463 External corrosion control: cathodic protection.
192.465 External corrosion control: monitoring.
192.467 External corrosion control: electrical isolation.
192.469 External corrosion control: test stations.
192.471 External corrosion control: Test leads.

Sec.
192.473 External corrosion control: interference currents.
192.475 Internal corrosion control: general.
192.477 Internal corrosion control: monitoring.
192.479 Atmospheric corrosion control: general.
192.481 Atmospheric corrosion control: monitoring.
192.483 Remedial measures: general.
192.485 Remedial measures: transmission lines.
192.487 Remedial measures: distribution lines other than cast iron or ductile iron lines.
192.489 Remedial measures: cast iron and ductile iron pipelines.
192.491 Corrosion control records.

Appendix D—Criteria for cathodic protection and determination of measurements.

AUTHORITY: The Provisions of this Subpart I issued under Natural Gas Pipeline Act of 1968 (49 U.S.C. sec. 1671 et seq., Part I regulations of Office of the Secretary of Transportation, 49 CFR Part I, and delegation of authority to Director, Office of Pipeline Safety, 33 F.R. 16468.

Subpart I—Requirements for Corrosion Control

§ 192.451 Scope.

This subpart prescribes minimum requirements for the protection of metallic pipelines from external, internal, and atmospheric corrosion.

§ 192.453 General.

Each operator shall establish procedures to implement the requirements of this subpart. These procedures, including those for the design, installation, operation and maintenance of cathodic protection systems, must be carried out by, or under the direction of, a person qualified by experience and training in pipeline corrosion control methods.

§ 192.455 External corrosion control: buried or submerged pipelines installed after July 31, 1971.

(a) Except as provided in paragraphs (b) and (c) of this section, each buried or submerged pipeline installed after July 31, 1971 must be protected against external corrosion, including the following:

(1) It must have an external protective coating meeting the requirements of § 192.46.

(2) It must have a cathodic protection system designed to protect the pipeline in its entirety in accordance with this subpart, installed and placed in operation within one year after completion of construction.

(b) An operator need not comply with paragraph (a) of this section, if the operator can demonstrate by tests, investigation, or experience in the area of application, including, as a minimum, soil resistivity measurements and tests for corrosion accelerating bacteria, that a corrosive environment does not exist. However, within 6 months after an installation made pursuant to the preceding sentence, the operator shall conduct tests, including pipe-to-soil potential measurements with respect to either a continuous reference electrode or an electrode using close spacing, not to exceed 20 feet, and soil resistivity measurements at potential profile peak locations, to adequately evaluate the potential profile along the entire pipeline. If the tests made indicate that a corrosive condition exists, the pipeline must be cathodically protected in accordance with paragraph (a) (2) of this section.

(c) An operator need not comply with paragraph (a) of this section, if the operator can demonstrate by tests, investigation, or experience that—

(1) For a copper pipeline, a corrosive environment does not exist; or

(2) For a temporary pipeline with an operating period of service not to exceed 5 years beyond installation, corrosion during the 5-year period of service of the pipeline will not be detrimental to public safety.

(d) Notwithstanding the provisions of paragraph (b) or (c) of this section, if a pipeline is externally coated, it must be cathodically protected in accordance with paragraph (a) (2) of this section.

(e) Aluminum may not be installed in a buried or submerged pipeline if that aluminum is exposed to an environment with a natural pH in excess of 8, unless tests or experience indicate its suitability in the particular environment involved.

§ 192.457 External corrosion control: buried or submerged pipelines installed before August 1, 1971.

(a) Except for buried piping at compressor, regulator, and measuring stations, each buried or submerged transmission line installed before August 1, 1971, that has an effective external coating must, not later than August 1, 1974, be cathodically protected along the entire area that is effectively coated, in accordance with this subpart. For the purposes of this subpart, a pipeline does not have an effective external coating if its cathodic protection current requirements are substantially the same as if it were bare. The operator shall make tests to determine the cathodic protection current requirements.

(b) Except for cast iron or ductile iron, each of the following buried or submerged pipelines installed before August 1, 1971, must, not later than August 1, 1976, be cathodically protected in accordance with this subpart in areas in which active corrosion is found:

(1) Bare or ineffectively coated transmission lines.

(2) Bare or coated pipes at compressor, regulator, and measuring stations.

(3) Bare or coated distribution lines. The operator shall determine the areas of active corrosion by electrical survey, or where electrical survey is impractical, by the study of corrosion and leak history records, by leak detection survey, or by other means.

(c) For the purpose of this subpart, active corrosion means continuing corrosion which, unless controlled, could result in a condition that is detrimental to public safety.

§ 192.459 External corrosion control: examination of buried pipeline when exposed.

Whenever an operator has knowledge that any portion of a buried pipeline is exposed, the exposed portion must be examined for evidence of external corrosion if the pipe is bare, or if the coating is deteriorated. If external corrosion is found, remedial action must be taken to the extent required by § 192.483 and the applicable paragraphs of §§ 192.485, 192.487, or 192.489.

§ 192.461 External corrosion control: protective coating.

(a) Each external protective coating, whether conductive or insulating, applied for the purpose of external corrosion control must—

(1) Be applied on a properly prepared surface;

(2) Have sufficient adhesion to the metal surface to effectively resist underfilm migration of moisture;

(3) Be sufficiently ductile to resist cracking;

(4) Have sufficient strength to resist damage due to handling and soil stress; and

(5) Have properties compatible with any supplemental cathodic protection.

(b) Each external protective coating which is an electrically insulating type must also have low moisture absorption and high electrical resistance.

(c) Each external protective coating must be inspected just prior to lowering the pipe into the ditch and backfilling, and any damage detrimental to effective corrosion control must be repaired.

(d) Each external protective coating must be protected from damage resulting from adverse ditch conditions or damage from supporting blocks.

(e) If coated pipe is installed by boring, driving, or other similar method, precautions must be taken to minimize damage to the coating during installation.

§ 192.463 External corrosion control: cathodic protection.

(a) Each cathodic protection system required by this subpart must provide a level of cathodic protection that complies with one or more of the applicable criteria contained in Appendix D of this subpart. If none of these criteria is applicable, the cathodic protection system must provide a level of cathodic protection at least equal to that provided by compliance with one or more of these criteria.

(b) If amphoteric metals are included in a buried or submerged pipeline containing a metal of different anodic potential—

(1) The amphoteric metals must be electrically isolated from the remainder of the pipeline and cathodically protected; or

(2) The entire buried or submerged pipeline must be cathodically protected at a cathodic potential that meets the requirements of Appendix D of this part for amphoteric metals.

(c) The amount of cathodic protection must be controlled so as not to damage the protective coating or the pipe.

§ 192.465 External corrosion control: monitoring.

(a) Except where impractical on offshore pipelines, each pipeline that is under cathodic protection must be tested at least once each calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection meets the requirements of § 192.463. However, if tests at those intervals are impractical for separately protected service lines or short sections of protected mains, not in excess of 100 feet, these service lines and mains may be surveyed on a sampling basis. At least 10 percent of these protected structures, distributed over the entire system, must be surveyed each calendar year, with a different 10 percent checked each subsequent year, so that the entire system is tested in each 10-year period.

(b) At intervals not exceeding 2 months, each cathodic protection rectifier or other impressed current power source must be inspected to ensure that it is operating.

(c) At intervals not exceeding 2 months, each reverse current switch, each diode, and each interference bond whose failure would jeopardize structure protection, must be electrically checked for proper performance. Each other interference bond must be checked at least once each calendar year, but with intervals not exceeding 15 months.

(d) Each operator shall take prompt remedial action to correct any deficiencies indicated by the monitoring.

(e) After the initial evaluation required by paragraphs (b) and (c) of § 192.455 and paragraph (b) of § 192.457, each operator shall, at intervals not exceeding 3 years, reevaluate its unprotected pipelines and cathodically protect them in accordance with this subpart in areas in which active corrosion is found. The operator shall determine the areas of active corrosion by electrical survey, or where electrical survey is impractical, by the study of corrosion and leak history records, by leak detection survey, or by other means.

§ 192.467 External corrosion control: electrical isolation.

(a) Each buried or submerged pipeline must be electrically isolated from other underground metallic structures, unless the pipeline and the other structures are electrically interconnected and cathodically protected as a single unit.

(b) An insulating device must be installed where electrical isolation of a portion of a pipeline is necessary to facilitate the application of corrosion control.

(c) Except for unprotected copper inserted in ferrous pipe, each pipeline must be electrically isolated from metallic casings that are a part of the underground system. However, if isolation is not achieved because it is impractical, other measures must be taken to minimize corrosion of the pipeline inside the casing.

(d) Inspection and electrical tests must be made to assure that electrical isolation is adequate.

(e) An insulating device may not be installed in an area where a combustible atmosphere is anticipated unless precautions are taken to prevent arcing.

(f) Where a pipeline is located in close proximity to electrical transmission tower footings, ground cables or counterpoise, or in other areas where fault currents or unusual risk of lightning may be anticipated, it must be provided with protection against damage due to fault currents or lightning, and protective measures must also be taken at insulating devices.

§ 192.469 External corrosion control: test stations.

Except where impractical on offshore and wet marsh area pipelines, each pipeline under cathodic protection required by this subpart must have sufficient test stations or other contact points for electrical measurement to determine the adequacy of cathodic protection.

§ 192.471 External corrosion control: test leads.

(a) Each test lead wire must be connected to the pipeline so as to remain mechanically secure and electrically conductive.

(b) Each test lead wire must be attached to the pipeline so as to minimize stress concentration on the pipe.

(c) Each bared test lead wire and bared metallic area at point of connection to the pipeline must be coated with an electrical insulating material compatible with the pipe coating and the insulation on the wire.

§ 192.473 External corrosion control: interference currents.

(a) After July 31, 1973, each operator whose pipeline system is subjected to stray currents shall have in effect a continuing program to minimize the detrimental effects of such currents.

(b) Each impressed current type cathodic protection system or galvanic anode system must be designed and installed so as to minimize any adverse effects on existing adjacent underground metallic structures.

§ 192.475 Internal corrosion control: general.

(a) After July 31, 1972, corrosive gas may not be transported by pipeline, unless the corrosive effect of the gas on the pipeline has been investigated and steps have been taken to minimize internal corrosion.

(b) Whenever any pipe is removed from a pipeline for any reason, the internal surface must be inspected for evidence of corrosion. If internal corrosion is found—

(1) The adjacent pipe must be investigated to determine the extent of internal corrosion;

(2) Replacement must be made to the extent required by the applicable paragraphs of § 192.485, § 192.487, or § 192.489; and

(2) Steps must be taken to minimize the internal corrosion.

(c) Gas containing more than 0.1 grain of hydrogen sulfide per 100 standard cubic feet may not be stored in pipe-type or bottle-type holders.

§ 192.477 Internal corrosion control: monitoring.

If corrosive gas is being transported, coupons or other suitable means must be used to determine the effectiveness of the steps taken to minimize internal corrosion. After July 31, 1972, each coupon or other means of monitoring internal corrosion must be checked at intervals not exceeding 6 months.

§ 192.479 Atmospheric corrosion control: general.

(a) *Pipelines installed after July 31, 1971.* Each aboveground pipeline or portion of a pipeline installed after July 31, 1971 that is exposed to the atmosphere must be cleaned and either coated or jacketed with a material suitable for the prevention of atmospheric corrosion. An operator need not comply with this paragraph, if the operator can demonstrate by test, investigation, or experience in the area of application, that a corrosive atmosphere does not exist.

(b) *Pipelines installed before August 1, 1971.* Not later than August 1, 1974, each operator having an aboveground pipeline or portion of a pipeline installed before August 1, 1971 that is exposed to the atmosphere, shall—

(1) Determine the areas of atmospheric corrosion on the pipeline;

(2) If atmospheric corrosion is found, take remedial measures to the extent required by the applicable paragraphs of §§ 192.485, 192.487, or 192.489; and

(3) Clean and either coat or jacket the areas of atmospheric corrosion on the pipeline with a material suitable for the prevention of atmospheric corrosion.

§ 192.481 Atmospheric corrosion control: monitoring.

After meeting the requirements of paragraphs (a) and (b) of § 192.479, each operator shall, at intervals not exceeding 3 years, reevaluate its aboveground pipelines or portions of pipelines that are exposed to the atmosphere and take remedial action wherever necessary to maintain protection against atmospheric corrosion.

§ 192.483 Remedial measures: general.

(a) Each segment of metallic pipe that replaces pipe removed from a buried or submerged pipeline because of external corrosion must have a properly prepared surface and must be provided with an external protective coating that meets the requirements of § 192.461.

(b) Each segment of metallic pipe that replaces pipe removed from a buried or submerged pipeline because of external corrosion must be cathodically protected in accordance with this subpart.

(c) Except for cast iron or ductile iron pipe, each segment of buried or submerged pipe that is required to be repaired because of external corrosion must

be cathodically protected in accordance with this subpart.

§ 192.485 Remedial measures: transmission lines.

(a) *General corrosion.* Each segment of transmission line pipe with general corrosion and with a remaining wall thickness less than that required for the maximum allowable operating pressure of the pipeline, must be replaced or the operating pressure reduced commensurate with the actual remaining wall thickness. However, if the area of general corrosion is small, the corroded pipe may be repaired. Corrosion pitting so closely grouped as to affect the overall strength of the pipe is considered general corrosion for the purpose of this paragraph.

(b) *Localized corrosion pitting.* Each segment of transmission line pipe with localized corrosion pitting to a degree where leakage might result must be replaced or repaired, or the operating pressure must be reduced commensurate with the strength of the pipe, based on the actual remaining wall thickness in the pits.

§ 192.487 Remedial measures: distribution lines other than cast iron or ductile iron lines.

(a) *General corrosion.* Except for cast iron or ductile iron pipe, each segment of generally corroded distribution line pipe with a remaining wall thickness less than that required for the maximum allowable operating pressure of the pipeline, or a remaining wall thickness less than 30 percent of the nominal wall thickness, must be replaced. However, if the area of general corrosion is small, the corroded pipe may be repaired. Corrosion pitting so closely grouped as to affect the overall strength of the pipe is considered general corrosion for the purpose of this paragraph.

(b) *Localized corrosion pitting.* Except for cast iron or ductile iron pipe, each segment of distribution line pipe with localized corrosion pitting to a degree where leakage might result must be replaced or repaired.

§ 192.489 Remedial measures: cast iron and ductile iron pipelines.

(a) *General graphitization.* Each segment of cast iron or ductile iron pipe on which general graphitization is found to a degree where a fracture or any leakage might result, must be replaced.

(b) *Localized graphitization.* Each segment of cast iron or ductile iron pipe on which localized graphitization is found to a degree where any leakage might result, must be replaced or repaired, or sealed by internal sealing methods adequate to prevent or arrest any leakage.

§ 192.491 Corrosion control records.

(a) After July 31, 1972, each operator shall maintain records or maps to show the location of cathodically protected piping, cathodic protection facilities, other than unrecorded galvanic anodes installed before August 1, 1971, and neighboring structures bonded to the cathodic protection system.

(b) Each of the following records must be retained for as long as the pipeline remains in service:

(1) Each record or map required by paragraph (a) of this section.

(2) Records of each test, survey, or inspection required by this subpart, in sufficient detail to demonstrate the adequacy of corrosion control measures or that a corrosive condition does not exist.

APPENDIX D—CRITERIA FOR CATHODIC PROTECTION AND DETERMINATION OF MEASUREMENTS

I. *Criteria for cathodic protection*—A. *Steel, cast iron, and ductile iron structures.* (1) A negative (cathodic) voltage of at least 0.85 volt, with reference to a saturated copper-copper sulfate half cell. Determination of this voltage must be made with the protective current applied, and in accordance with sections II and IV of this appendix.

(2) A negative (cathodic) voltage shift of at least 300 millivolts. Determination of this voltage shift must be made with the protective current applied, and in accordance with sections II and IV of this appendix. This criterion of voltage shift applies to structures not in contact with metals of different anodic potentials.

(3) A minimum negative (cathodic) polarization voltage shift of 100 millivolts. This polarization voltage shift must be determined in accordance with sections III and IV of this appendix.

(4) A voltage at least as negative (cathodic) as that originally established at the beginning of the Tafel segment of the E-log-I curve. This voltage must be measured in accordance with section IV of this appendix.

(5) A net protective current from the electrolyte into the structure surface as measured by an earth current technique applied at predetermined current discharge (anodic) points of the structure.

B. *Aluminum structures.* (1) Except as provided in subparagraphs (3) and (4) of this paragraph, a minimum negative (cathodic) voltage shift of 150 millivolts, produced by the application of protective current. The voltage shift must be determined in accordance with sections II and IV of this appendix.

(2) Except as provided in subparagraphs (3) and (4) of this paragraph, a minimum negative (cathodic) polarization voltage shift of 100 millivolts. This polarization voltage shift must be determined in accordance with sections III and IV of this appendix.

(3) Notwithstanding the alternative minimum criteria in subparagraphs (1) and (2) of this paragraph, aluminum, if cathodically protected at voltages in excess of 1.20 volts as measured with reference to a copper-copper sulfate half cell, in accordance with section IV of this appendix, and compensated for the voltage (IR) drops other than those across the structure-electrolyte boundary, may suffer corrosion resulting from the build-up of alkali on the metal surface. A voltage in excess of 1.20 volts may not be used unless previous test results indicate no appreciable corrosion will occur in the particular environment.

(4) Since aluminum may suffer from corrosion under high pH conditions, and since application of cathodic protection tends to increase the pH at the metal surface, careful investigation or testing must be made before applying cathodic protection to stop pitting attack on aluminum structures in environments with a natural pH in excess of 8.

C. *Copper structures.* A minimum negative (cathodic) polarization voltage shift of 100 millivolts. This polarization voltage shift must be determined in accordance with sections III and IV of this appendix.

D. *Metals of different anodic potentials.* A negative (cathodic) voltage, measured in accordance with section IV of this appendix, equal to that required for the most anodic metal in the system must be maintained. If amphoteric structures are involved that could be damaged by high alkalinity covered by subparagraphs (3) and (4) of paragraph B of this section, they must be electrically isolated with insulating flanges, or the equivalent.

II. *Interpretation of voltage measurement.* Voltage (IR) drops other than those across the structure-electrolyte boundary must be considered for valid interpretation of the voltage measurement in paragraph A(1) and (2) and paragraph B(1) of section I of this appendix.

III. *Determination of polarization voltage shift.* The polarization voltage shift must be determined by interrupting the protective current and measuring the polarization decay. When the current is initially interrupted, an immediate voltage shift occurs. The voltage reading after the immediate shift must be used as the base reading from which to measure polarization decay in paragraphs A(3), B(2), and C of section I of this appendix.

IV. *Reference half cells.* A. Except as provided in paragraphs B and C of this section, negative (cathodic) voltage must be measured between the structure surface and a saturated copper-copper sulfate half cell contacting the electrolyte.

B. Other standard reference half cells may be substituted for the saturated copper-copper sulfate half cell. Two commonly used reference half cells are listed below along with their voltage equivalent to −0.85 volt as referred to a saturated copper-copper sulfate half cell:

(1) Saturated KCl calomel half cell: −0.78 volt.

(2) Silver-silver chloride half cell used in sea water: −0.80 volt.

C. In addition to the standard reference half cells, an alternate metallic material or structure may be used in place of the saturated copper-copper sulfate half cell if its potential stability is assured and if its voltage equivalent referred to a saturated copper-copper sulfate half cell is established.

[FR Doc.71-9221 Filed 6-29-71; 8:48 am]

Chapter X—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[S.O. No. 1051; Amdt. 2]

PART 1033—CAR SERVICE

Distribution of Privately Owned Coal Cars

At a Session of the Interstate Commerce Commission, held in Washington, D.C., on the 24th day of June 1971.

Upon further consideration of Service Order No. 1051 (35 F.R. 16088, 36 F.R. 64) and good cause appearing therefor:

It is ordered, That: § 1033.1051 *Service Order No. 1051* be, and it is hereby, amended by substituting the following

paragraph (f) for paragraph (f) thereof:

§ 1033.1051 Service Order No. 1051.

* * * * *

(f) *Expiration date.* This order shall expire at 11:59 p.m., December 31, 1971, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., June 30, 1971.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17 (2). Interprets or applies secs. 1 (10–17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10–17), 15(4), and 17(2))

It is further ordered, That a copy of this amendment and direction shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-9232 Filed 6-29-71;8:49 am]

[Service Order No. 1075]

PART 1033—CAR SERVICE

Distribution of Refrigerator Cars

At a Session of the Interstate Commerce Commission, Railroad Service Board held in Washington, D.C., on the 24th day of June 1971.

It appearing, that an acute shortage of mechanical refrigerator cars exists in the areas served by the Southern Pacific Transportation Co. and the Union Pacific Railroad Co., and that shippers served by the Southern Pacific Transportation Co. and the Union Pacific Railroad Co. are being deprived of such cars required for loading perishable products, creating a great economic loss; that present regulations and practices with respect to the use, supply, control, movement, distribution, exchange, interchange, and return of such mechanical refrigerator cars owned by the Pacific Fruit Express Co., a wholly owned subsidiary of the Southern Pacific Transportation Co. and the Union Pacific Railroad Co. are ineffective. It is the opinion of the Commission that an emergency exists requiring immediate action to promote car service in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than 30 days' notice.

It is ordered, That:

§ 1033.1075 Service Order No. 1075.

(a) *Distribution of refrigerator cars.* Each common carrier by railroad subject to the Interstate Commerce Act shall observe, enforce, and obey the following rules, regulations, and practices with respect to its car service.

(1) Withdraw from distribution and return to owners empty, except as otherwise provided in subparagraphs (2) and (3) of this paragraph, all mechanical refrigerator cars owned by the Pacific Fruit Express Co. which are listed in the Official Railway Equipment Register, ICC R.E.R. 379, issued by E. J. McFarland, or successive issues thereof, in the registrations of the companies named herein as having mechanical designations RP, RPL, and RPM and which bear the identification marks shown:

Pacific Fruit Express Co., Identification marks—PFE.
Southern Pacific Transportation Co., Identification marks—SPFE.
Union Pacific Railroad Co., Identification marks—UPFE.

(2) Pacific Fruit Express Co. refrigerator cars, described in subparagraph (1) of this paragraph, available empty at a station other than a junction with the Southern Pacific Transportation Co. or Union Pacific Railroad Co., may be loaded with freight requiring protection from heat or cold and subject to the provisions of Perishable Protective Tariff 18, ICC No. 37, issued by J. D. Sutherland, supplements thereto or reissues thereof, if destined to any station on or routed via the Southern Pacific Transportation Co. or the Union Pacific Railroad Co.

(3) Pacific Fruit Express Co. refrigerator cars described in subparagraph (1) of this paragraph available empty at a junction with the Southern Pacific Transportation Co. or with the Union Pacific Railroad Co. must be delivered at that junction to either the Southern Pacific Transportation Co. or the Union Pacific Railroad Co., as directed by the Pacific Fruit Express Co., and regardless of identification marks of the individual cars, either empty or loaded with freight requiring protection from heat or cold, and subject to the provisions of Perishable Protective Tariff 18, ICC No. 37, issued by J. D. Sutherland, supplements thereto or reissues thereof.

(4) Pacific Fruit Express Co. refrigerator cars described in subparagraph (1) of this paragraph available empty at stations on the Southern Pacific Transportation Co. or the Union Pacific Railroad Co. shall be loaded only with freight requiring protection from heat or cold and subject to the provisions of Perishable Protective Tariff 18, ICC No. 37, issued by J. D. Sutherland, supplements thereto or reissues thereof. Exception: Cars with defective mechanical refrigeration units which the Pacific Fruit Express Co. certifies cannot be repaired and placed in operating condition within 30 days. The certification provided herein shall be made to R. D. Pfahler, Director, Bureau of Operations, Interstate Commerce Commission, Washington, D.C.

(5) Pacific Fruit Express Co. refrigerator cars, described in subparagraph (1) of this paragraph, must not be backhauled empty, or held empty more than 24 hours awaiting placement for loading for the purpose of obtaining a load as authorized in subparagraphs (2) and (3) of this paragraph.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(c) *Effective date.* This order shall become effective at 11:59 p.m., June 28, 1971.

(d) *Expiration date.* This order shall expire at 11:59 p.m., July 31, 1971, unless otherwise modified, changed, or suspended by order of this Commission.

(Secs. 1, 12, 15, 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, 17(2). Interprets or applies secs. 1 (10–17), 15(4), 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10–17), 15(4), 17(2))

It is further ordered, That copies of this order and direction shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-9233 Filed 6-29-71;8:49 am]

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 213—EXCEPTED SERVICE

Inter-American Social Development Institute

Section 213.3320 is amended to show that one position of Chauffeur to the Executive Director is excepted under Schedule C.

Effective on publication in the FEDERAL REGISTER (6-30-71), paragraph (e) is added to § 213.3320 as set out below.

§ 213.3320 Inter-American Social Development Institute.

* * * * *

(e) One Chauffeur to the Executive Director.

(5 U.S.C. secs. 3301, 3302, E.O. 10577; 3 CFR 1954–58, p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY, *Executive Assistant to the Commissioners.*

[FR Doc.71-9197 Filed 6-29-71;8:46 am]

PART 213—EXCEPTED SERVICE

Executive Office of the President

Section 213.3103 is amended to show that in the Council on Environmental Quality the Schedule A exception of professional and technical positions in grades GS-13 through 15 will be continued without time limitation. It is also amended to show that the temporary Schedule A exception of professional and technical positions in grades GS-11 and 12 will expire by its own terms on June 30, 1971.

Effective on publication in the FEDERAL REGISTER (6-30-71), subparagraph (1) of paragraph (c) of § 213.3103 is amended as set out below.

§ 213.3103 Executive Office of the President.

* * * * *

(c) *Council on Environmental Quality.* (1) Professional and technical positions in grades GS-13 through 15 on the staff of the Council.

* * * * *

(5 U.S.C. §§ 3301, 3302, E.O. 10577; 3 CFR 1954-58 Comp., p. 218)

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

[FR Doc.71-9352 Filed 6-29-71;8:50 am]

PART 213—EXCEPTED SERVICE

Department of Agriculture

Section 213.3113 is amended to remove the June 30, 1971, limitation on the authority to make new Schedule A appointment to certain temporary positions whose principal duties involve the distribution of foods to needy families at Federal Commodity Distribution Centers. The authority may be used only to replace employees on the rolls as of June 30, 1971, or their successors.

§ 213.3113 Department of Agriculture.

* * * * *

(j) *Food and Nutrition Service.* (1) Temporary positions in grade GS-4 and below, and the wage system equivalents, whose principal duties involve the distribution of food to needy families at Federal Commodity Distribution Centers. After June 30, 1971, appointments under this authority may be made only to replace employees on the rolls as of that date, or their successors.

(5 U.S.C. §§ 3301, 3302, E.O. 10577; 3 CFR 1954-58 Comp., p. 218)

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

[FR Doc.71-9350 Filed 6-29-71;8:50 am]

PART 213—EXCEPTED SERVICE

Civil Aeronautics Board

Section 213.3340 is amended to show that the position of Special Assistant to the Chairman is excepted under Schedule C.

Effective on publication in the FEDERAL REGISTER (6-30-71), paragraph (d) is added to § 213.3340 as set out below.

§ 213.3340 Civil Aeronautics Board.

* * * * *

(d) One Special Assistant to the Chairmen.

(5 U.S.C. §§ 3301, 3302, E.O. 10577; 3 CFR 1954-58 Comp., p. 218)

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

[FR Doc.71-9351 Filed 6-29-71;8:50 am]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 948]

IRISH POTATOES GROWN IN COLORADO

Proposed Limitation of Shipments

Consideration is being given to the issuance of the limitation of shipments regulation, hereinafter set forth, which was recommended by the Area Committee for Area No. 3, Colorado, established pursuant to Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR Part 948). This marketing order program regulates the handling of Irish potatoes grown in the State of Colorado and is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

The recommendations of the committee reflect its appraisal of the composition of the 1971 crop in Area No. 3 and of the marketing prospects for this season. Harvesting is expected to begin on or about July 15 so the regulation should become effective on that date.

The grade, size, and quality requirements provided herein are necessary to prevent potatoes of lesser maturities, or those that are of undesirable sizes, or below grade from being distributed in fresh market channels. They will also provide consumers with good quality potatoes consistent with the overall quality of the crop, and maximize returns to producers for the preferred quality and sizes.

All persons who desire to submit written data, views, or arguments in connection with these proposals may file the same, in quadruplicate, with the Hearing Clerk, Room 112-A, U.S. Department of Agriculture, Washington, D.C. 20250, not later than 10 days after the publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)). The proposed rules are as follows:

§ 948.365 Limitation of shipments.

During the period July 15, 1971, through June 30, 1972, no person shall handle any lot of potatoes grown in Area No. 3 unless such potatoes meet the requirements of paragraphs (a) and (b) of this section, or unless such potatoes are handled in accordance with paragraphs (c) through (g) of this section.

(a) *Grade and size requirements.*—(1) *Round varieties.* U.S. No. 1, or better grade, 2 inches minimum diameter; or U.S. No. 2, or better grade up to but not including U.S. No. 1 grade and not less than 1⅞ inches minimum diameter.

(2) *Long varieties.* U.S. No. 1, or better grade, 2 inches minimum diameter or 4 ounces minimum weight; or U.S. No. 2, or better grade up to but not including U.S. No. 1 grade and not less than 1⅞ inches minimum diameter or 4 ounces minimum weight.

(3) *All varieties.* Size B, if U.S. No. 1, or better grade.

(b) *Maturity (skinning) requirements.* All varieties. For U.S. No. 2 grade, not more than "moderately skinned," and for all other grades, not more than "slightly skinned."

(c) *Special purpose shipments.* (1) The grade, size, and maturity requirements of paragraphs (a) and (b) of this section and the inspection and assessment requirements of this part shall not be applicable to shipments of potatoes for:

(i) Livestock feed;

(ii) Charity;

(iii) Canning, freezing, and "other processing" as hereinafter defined.

(2) The maturity requirements set forth in paragraph (b) of this section shall not be applicable to shipments of potatoes for prepeeling.

(3) The quality and maturity requirements of paragraphs (a) and (b) of this section shall not be applicable to shipments of certified seed potatoes (§ 948.6) but such shipments shall be subject to assessment.

(d) *Safeguards.* Each handler making shipments of potatoes pursuant to paragraph (c) of this section shall,

(1) Prior to shipment, apply for and obtain a Certificate of Privilege from the committee,

(2) Furnish the committee such reports and documents as requested, including certification by the buyer or receiver on the use of such potatoes, and

(3) Bill each shipment directly to the applicable buyer or receiver.

(e) *Inspection.* (1) No handler shall handle any potatoes for which inspection is required unless an appropriate inspection certificate has been issued with respect thereto and the certificate is valid at the time of shipment. For purposes of operation under this part it is hereby determined pursuant to paragraph (d) of § 948.40, that each inspection certificate shall be valid for a period not to exceed 5 days following the date of inspection as shown on the inspection certificate.

(2) No handler may transport or cause the transportation by motor vehicle of any shipment of potatoes for which an inspection certificate is required unless each shipment is accompanied by, and made available for examination at any time upon request, a copy of the inspection certificate applicable thereto.

(f) *Minimum quantity.* For purposes of regulation under this part, each person may handle up to but not exceed 1,000 pounds of potatoes without regard to the requirements of paragraphs (a) and (b) of this section, but this exception shall not apply to any shipment of over 1,000 pounds of potatoes.

(g) *Definitions.* The terms "U.S. No. 1," "U.S. No. 2," "Size B," "moderately skinned," and "slightly skinned," shall have the same meaning as when used in the U.S. Standards for Grades of Potatoes (§§ 51.1540–51.1566 of this title, as amended, 35 F.R. 18257 which are to become effective Sept. 1, 1971) including the tolerances set forth therein. The term "prepeeling" means potatoes which are clean, sound, fresh tubers prepared commercially in a prepeeling plant by washing, removal of the outer skin or peel, trimming, and sorting preparatory to sale in one or more of the styles of peeled potatoes described in § 52.2422 (U.S. Standards for Grades of Peeled Potatoes, §§ 52.2421–52.2433 of this title). The term "other processing" has the same meaning as the term appearing in the act and includes, but is not restricted to, potatoes for dehydration, chips, shoestrings, starch, and flour. It includes only that preparation of potatoes for market which involves the application of heat or cold to such an extent that the natural form or stability of the commodity undergoes a substantial change. The act of peeling, cooling, slicing, or dicing, or the application of material to prevent oxidation does not constitute "other processing."

(h) *Applicability to imports.* Pursuant to section 608e-1 of the act and § 980.1 *Import regulations* of this title, round white varieties of Irish potatoes, except certified seed potatoes, imported into the United States during the period August 1, 1971, through June 4, 1972, shall meet the minimum grade, size, quality, and maturity requirements specified in paragraphs (a) and (b) of this section.

Dated: June 24, 1971.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[FR Doc.71-9201 Filed 6-29-71;8:47 am]

[7 CFR Parts 1030, 1032, 1046, 1049, 1050, 1062, 1099]

[Docket No. AO-361-A3 etc.]

MILK IN THE CHICAGO REGIONAL AND CERTAIN OTHER MARKETING AREAS

Notice of Extension of Time for Filing Exceptions to the Recommended Decision on Proposed Amendments to Tentative Marketing Agreements and to Orders

7 CFR part	Marketing area	Docket No.
1030	Chicago Regional	AO-361-A3.
1032	Southern Illinois	AO-313-A20.
1046	Louisville-Lexington-Evansville.	AO-123-A37.
1049	Indiana	AO-319-A16.
1050	Central Illinois	AO-355-A9.
1062	St. Louis-Ozarks	AO-10-A42.
1099	Paducah, Ky	AO-183-A24.

Notice is hereby given that the time for filing exceptions to the recommended decision with respect to the proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Chicago Regional, Southern Illinois, Louisville-Lexington-Evansville, Indiana, Central Illinois, St. Louis-Ozarks and Paducah, Ky., marketing areas, which was issued June 4, 1971 (36 F.R. 11352), is hereby extended to July 31, 1971.

The above notice of extension of time for filing exceptions is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Signed at Washington, D.C., on June 24, 1971.

CLAYTON YEUTTER,
Administrator,
Consumer and Marketing Service.

[FR Doc.71-9207 Filed 6-29-71;8:47 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Housing Administration

[24 CFR Part 201]

[Docket No. R-71-123]

PROPERTY IMPROVEMENT AND MOBILE HOME LOANS

Financing of Mobile Homes

The Department of Housing and Urban Development is considering amending Part 201 of Title 24 of the Code of Federal Regulations, Subpart B, "Mobile Home Loans". This amendment, issued in accordance with section 2(a) of the National Housing Act, 12 U.S.C. 1701, would permit mobile home loans to be made to borrowers who purchase sites under real estate contracts and would increase the allowable transportation and setup costs for mobile homes consisting of two or more modules.

Interested persons are invited to participate in the making of the proposed regulation by submitting data, views, or statements with regard to it. Communications should identify the proposed rule by the above docket number and title and should be filed in triplicate with the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Washington, D.C. 20410. All relevant material received on or before August 2, 1971, will be considered. Copies of comments submitted will be available during business hours at the above address, both before and after closing date, for examination by interested persons.

The proposed rule is issued pursuant to 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Part 201 is proposed to be amended as follows:

1. Section 201.501(l) is amended to read:

§ 201.501 Definitions.

* * * * *

(l) "Owner" means a borrower who has at least a one-half interest in the real property upon which the mobile home is placed, which interest is a fee simple title and such title may be subject to a mortgage, deed of trust or other lien securing a debt or where the borrower is a purchaser under a mutually binding recorded contract for the purchase of the real property, is rightfully in possession, and the purchase price is payable in equal installments.

* * * * *

2. Section 201.530(b) (5) and (6) are amended to read:

§ 201.530 Maximum loan amount.

* * * * *

(b) *Permissible charges and fees.* * * *

(5) Costs of transportation or freight as shown on the invoice, not to exceed $400 for a mobile home or where the mobile home consists of two or more modules $600.

(6) Itemized setup charges by the dealer for installing the mobile home on site, not to exceed $200 or where a mobile home consists of two or more modules $400.

Issued at Washington, D.C., June 25, 1971.

EUGENE A. GULLEDGE,
Federal Housing Commissioner.

[FR Doc.71-9218 Filed 6-29-71;8:48 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 71-CE-52]

CONTROL ZONE AND TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the control zone and transition area at Muskegon, Mich.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, MO 64106. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendments. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposals contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, MO 64106.

Since designation of controlled airspace at Muskegon, Mich., a new RNAV approach has been developed for the Muskegon County Airport. In addition, the criteria for the designation of control zones and transition areas have change. Accordingly, it is necessary to alter the Muskegon, Mich., control zone and transition area to adequately protect aircraft executing the new approach procedure and to comply with the new control zone and transition area criteria.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

(1) In § 71.171 (36 F.R. 2055), the following control zone is amended to read:

MUSKEGON, MICH.

Within a 5-mile radius of Muskegon County Airport (43°10'16" N., 86°14'09" W.); within 1.5 miles each side of the Muskegon

VORTAC 272° radial, extending from the 5-mile-radius zone to 1 mile west of the VOR TAC; and within 1.5 miles each side of the ILS back course extending from the 5-mile-radius zone to 10.5 miles northwest of the Muskegon County Airport ILS OM.

(2) In § 71.181 (36 F.R. 2140), the following transition area is amended to read:

MUSKEGON, MICH.

That airspace extending upward from 700 feet above the surface within a 10-mile radius of the Muskegon County Airport (43°10'16" N., 86°14'09" W.); within a 7-mile radius of the Grand Haven Memorial Airpark (43°02'00" N., 86°12'00" W.), Grand Haven, Mich.; within 4.5 miles southwest and 9.5 miles northeast of the Muskegon County Airport ILS localizer southeast course, extending from the 10-mile-radius area to 18.5 miles southeast of the OM; within 4 miles each side of the Muskegon VORTAC 092° radial, extending from the VORTAC to 11.5 miles east of the VORTAC; and within 4½ miles each side of the Muskegon County Airport runway 14 centerline extended to the northwest, extending from the 10-mile-radius area to 17 miles northwest of the Muskegon County Airport ILS OM; and that airspace extending upward from 1,200 feet above the surface within an 18-mile radius of the Muskegon County Airport; within 5 miles each side of a line extending from 43°09'30" N., 86°55'30" W., to 43°18'24" N., 86°24'30" W.; and the airspace southwest of Muskegon bounded on the northeast by the 18-mile-radius area, on the southeast by the Grand Rapids, Mich., transition area on the southwest by V-30, and on the northwest by V-216.

(2) In § 71.181 (36 F.R. 2140), the following transition area is amended to read:

These amendments are proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Kansas City, Mo., on June 2, 1971.

JOHN A. HARGRAVE,
Acting Director, Central Region.

[FR Doc.71-9195 Filed 6-29-71;8:46 am]

[14 CFR Part 71]

[Airspace Docket No. 71-CE-69]

CONTROL ZONE AND TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the control zone and transition area at Garden City, Kans.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, MO 64106. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendments. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Divisions Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposals contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, MO 64106.

The Kansas City Air Route Traffic Control Center needs additional controlled airspace in the vicinity of Garden City, Kans., in order to more effectively control aircraft arriving and departing Garden City Municipal Airport. In addition, the criteria for the designation of control zones and transition areas have changed. Accordingly, it is necessary to alter the Garden City, Kans., control zone and transition area to provide this additional airspace and to comply with the new control zone and transition area criteria.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

(1) In § 71.171 F.R. 2055, the following control zone is amended to read:

GARDEN CITY, KANS.

Within a 5-mile radius of the Garden City Municipal Airport (latitude 37°55'49" N., longitude 100°43'40" W.), and within 2 miles each side of the 144° bearing from the Garden City RBN, extending from the 5-mile-radius zone to 2 miles southeast of the RBN; and within 2½ miles each side of the 004° radial of the Garden City VORTAC extending from the 5-mile-radius zone to 8 miles north of the VORTAC; and within 2½ miles each side of the 171° radial of the Garden City VORTAC extending from the 5-mile-radius zone to 5 miles south of the VORTAC.

(2) In § 71.181 (36 F.R. 2140), the following transition area is amended to read:

GARDEN CITY, KANS.

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Garden City Municipal Airport (latitude 37°55'49" N., longitude 100°43'40" W.), within 3 miles each side of the 144° and 324° bearings from Garden City RBN, extending from the 7-mile radius to 8 miles northwest of the RBN; and 4½ miles east and 9½ miles west of the 004° radial of the Garden City VORTAC extending from the 7-mile radius to 18½ miles north of the VORTAC; and that airspace extending upward from 1,200 feet above the surface within a 15-mile radius of the Garden City VORTAC; within 4½ miles west and 9½ miles east of the 171° radial of the Garden City VORTAC extending from the 15-mile radius to 18½ miles south of the VORTAC; and the area southwest of Garden City bounded on the north by the south edge of V10, on the east by the west edge of V17W, and on the southwest by the northeast edge of V210; and the area northeast of the Garden City VORTAC bounded on the northwest by the southeast edge of V255, on the south by the north edge of V10, and on the east by 100° W. longitude, excluding that portion of which overlies the Dodge City, Kans., and Liberal, Kans., 1,200-foot-floor transition areas.

These amendment are proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Kansas City, Mo., on June 11, 1971.

CHESTER W. WELLS,
Acting Director, Central Region.

[FR Doc.71-9196 Filed 6-29-71;8:46 am]

Office of Pipeline Safety

[49 CFR Part 192]

[Notice 71-3; Docket No. OPS-5]

MINIMUM FEDERAL SAFETY STANDARDS FOR GAS PIPELINES

Corrosion Pitting; Notice of Public Hearing

On April 30, 1970, the Department issued a notice of proposed rule making, Notice 70-8, containing proposed requirements for corrosion control (35 F.R. 7127, May 6, 1970). Interested persons were invited to participate in the making of the proposed rules by submitting written comments before June 29, 1970.

On June 6, 1970, an amended notice of proposed rule making was published in the FEDERAL REGISTER (notice 70-10, 35 F.R. 8833) to make certain changes in the proposed rules relating to cast iron and ductile iron pipe. After a request for a public hearing on the requirements of these two notices, a public hearing (see notice 70-12, 35 F.R. 10596, June 30, 1970) was held on July 20, 1970, and comment was received on the proposed applicability of the proposed requirements to existing pipelines and to cast iron or ductile iron pipe. The information and views presented in the comments and at the hearing have been considered, and are reflected in the regulations which have been issued. (See p. 12297 of this issue.)

In issuing the rule, the Department has included general criteria on corrosion pitting in §§ 192.485(b) and 192.487 (b) as interim regulations only. These interim regulations give the operator discretion, for the time being, to determine the severity of pitting that requires remedial action.

The proposed sections dealing with this matter were the subject of considerable comment. Based on the information available at this time, the Department has developed the following regulations which will provide more definitive standards for the evaluation of corrosion pitting:

§ 192.485 Remedial measures: Transmission lines.

* * * * *

(b) *Localized corrosion pitting.* Each segment of transmission line pipe with localized corrosion pitting must be replaced or repaired, or the operating pressure must be reduced based on the actual remaining wall thickness in the pits, if either of the following exists:

(1) The diameter of the pits as measured at the surface of the pipe is greater than three times the nominal wall thickness of the pipe.

(2) The remaining wall thickness at the bottom of the pits is less than 30 percent of the nominal wall thickness.

* * * * *

§ 192.487 Remedial measures: Distribution lines other than cast iron or ductile iron lines.

* * * * *

(b) *Localized corrosion pitting.* Except for cast iron or ductile iron pipe, each segment of distribution line pipe with localized corrosion pitting must be replaced or repaired if either of the following exists:

(1) The diameter of the pits, as measured at the surface of the pipe, is greater than five times the nominal wall thickness of the pipe.

(2) The remaining wall thickness at the bottom of the pits is less than 20 percent of the nominal wall thickness. Because we are aware that the completion of research on the subject is anticipated in the near future, the Department intends to delay the issuance of these regulations on localized corrosion pitting, in order to hold a public hearing to explore the problem further. The hearing will be held at 10 a.m. on Tuesday, July 20, 1971 in the Department of Transportation Building (Nassif Building), Room 2230, 400 Seventh Street SW., Washington, D.C. This will give interested persons an opportunity to present new material or to demonstrate that the criteria set out above are inappropriate. Unless the hearing discloses information indicating other criteria are more appropriate, the regulations set forth above will be substituted for the interim provisions within 60 to 90 days from the effective date of the regulation.

The hearing will be an informal one. It will not be a judicial or evidentiary type of hearing. There will be no cross-examination of persons presenting statements. A staff member of the Office of Pipeline Safety will make an opening statement outlining the problem. Interested persons will then have an opportunity to present their initial oral statements. After all initial statements have been completed, those persons who wish to make rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures for the conduct of the hearing will be announced at the hearing.

Interested persons are invited to attend the hearing and present oral or written statements on the matters set for hearing. These statements will be made a part of the record of the hearing, the transcript of which will be a matter of public record. Any person who wishes to make oral statements at the hearing should notify the Director, Office of Pipeline Safety, before July 16, 1971, stating the amount of time required for his initial statement.

All communications concerning this hearing should be addressed to the Director, Office of Pipeline Safety, Department of Transportation, 400 Sixth Street SW., Washington, DC 20590.

This notice is issued under the authority of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. sec. 1671 et seq.), Part 1 of the Regulations of the Office of the Secretary of Transportation (49 CFR Part 1), and the delegation of authority to the Director, Office of Pipeline Safety, dated November 6, 1968 (33 F.R. 16468).

Issued in Washington, D.C., on June 25, 1971.

JOSEPH C. CALDWELL,
Acting Director,
Office of Pipeline Safety.

[FR Doc.71-9220 Filed 6-29-71;8:48 am]

CIVIL AERONAUTICS BOARD

[14 CFR Parts 244, 296, 297, 399]

[Docket No. 23543; PSDR-31, EDR-204]

PROCESSING OF APPLICATIONS BY RAILROAD CARRIERS AS AIR FREIGHT FORWARDERS OR INTERNATIONAL AIR FREIGHT FORWARDERS

Notice of Proposed Rule Making

JUNE 24, 1971.

Notice is hereby given that the Civil Aeronautics Board has under consideration proposed amendments to Parts 399, 296, 297, and 244 of the Board's regulations (14 CFR Parts 399, 296, 297 and 244) concerning the filing and processing of applications of railroad carriers for authorization as air freight forwarders or international air freight forwarders and applications of railroad carriers for approval of control of an air freight forwarder or international air freight forwarder. The principal features of the proposed amendments are further described in the explanatory statement, and the proposed amendments are set forth in the proposed rule. This regulation is proposed under the authority of sections 204(a), 101(3), 407, and 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324, 72 Stat. 737; 49 U.S.C. 1301; 72 Stat. 766; 49 U.S.C. 1377, 72 Stat. 771; 49 U.S.C. 1386. It interprets or applies sections 102 and 408, 72 Stat. 740; 49 U.S.C. 1302, 72 Stat. 767, as amended by 74 Stat. 901; 49 U.S.C. 1378.

Interested persons may participate in the proposed rule making through submission of twelve (12) copies of written data, views, or arguments pertaining thereto, addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. All relevant matter or communications received on or before July 30, 1971, will be considered by the Board before taking final action on the proposals. Copies of communications will be available for examination by interested persons in the Docket Section, Room 712 Universal Building, 1825 Connecticut Avenue NW., Washington, DC, upon receipt thereof.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

EXPLANATORY STATEMENT

In Order 70-10-100 dated October 21, 1970, the Board determined to authorize, through subsidiaries, two railroad carriers [1] to engage in domestic and international air freight forwarding on an experimental basis. The Board also found that the monitored entry policy for long-haul motor carriers of general commodities, as enunciated in the Motor Carrier-Air Freight Forwarder Investigation,[2] is equally applicable to and should be extended to railroad carriers which seek forwarder authority. In addition, the Board indicated that it would institute rule making procedures to modify the regulations which grew out of the Board's decision on remand in the Motor Carrier case to make them applicable to railroad carriers in addition to long-haul motor carriers. To this end the regulations proposed herein simply broaden the existing regulations for processing applications of long-haul motor carriers for entry into the forwarding field to encompass railroad carriers. Specifically, the existing regulations for long-haul motor carriers have been changed by adding a definition of "railroad carrier" (e.g. § 399.20(b)) and incorporating the term "railroad carrier" into the appropriate sections of the regulations.

Thus, these regulations provide that, as in the case of long-haul motor carriers, air freight forwarding authority may be granted to railroad carriers on an individual application basis, with or without hearing, upon a showing that (1) the applicant is capable of performing the proposed air transportation and of conforming to the Act and the regulations thereunder; (2) the applicant will conscientiously promote air cargo and will benefit air transportation; and (3) the applicant's operations, alone or together with those of other similar carriers granted air forwarding authority, will not result in creating a monopoly or monopolies and thereby restrain competition, or jeopardize another air carrier and will not otherwise be inconsistent with the public interest (Parts 399,

[1] Southern Pacific Transportation Co. and the Atchison, Topeka, and Santa Fe Railroad Co. While Southern Pacific formed a subsidiary to inaugurate air forwarding service, the Santa Fe acquired an established air freight forwarder, Express Air Freight, Inc.

[2] Order 69-4-100, Apr. 21, 1969.

296, and 297). The regulations further provide for approval of applications of railroad carriers for control of air freight forwarders or international air freight forwarders, with or without hearing, based upon similar criteria (Part 399).

Furthermore, rail carriers which are granted air forwarder authority will be required to file with the Board's Bureau of Accounts and Statistics, (1) the financial and statistical reports required of all domestic and international air freight forwarders by Part 244 of the Board's regulations, and (2) the additional schedules and reports required to be filed by air freight forwarders which are also long-haul motor carriers pursuant to §§ 244.19a through 244.19d.[3] The schedule forms are attached hereto as an appendix.[3a]

Finally, we intend to have the additional reporting requirements for rail carrier/air freight forwarders expire on April 29, 1974, which is coterminous with the expiration date of the operating authorizations issued to the three long-haul motor carriers in the Motor Carrier Investigation, supra,[4] or for the duration of any proceeding in which a renewal of the authorization is sought.

It is proposed to amend Parts 399, 296, 297, and 244 of the Board's regulations (14 CFR Parts 399, 296, 297, and 244), as follows:

Part 399. 1. Amend the Table of Contents by revising the title to § 399.20 of Subpart B, as follows:

Sec.
399.20 Processing of applications of long-haul motor carriers and railroad carriers for authority as air freight forwarders or international air freight forwarders.

2. Amend paragraphs (a) through (e) of § 399.20 to read as follows:

§ 399.20 Processing of applications of long-haul motor carriers and railroad carriers for authority as air freight forwarders or international air freight forwarders.

(a) *General.* This policy statement prescribes the procedures and general standards which the Board will use in processing applications of long-haul motor carriers of general commodities and railroad carriers for authorization as air freight forwarders or international air freight forwarders. It will also apply to such motor carriers' and railroad carriers' applications for Board approval of the acquisition of control of such forwarders.

(b) *Definitions.* As used in this section:

"Long-haul motor carrier" means a motor carrier holding operating rights issued by the Interstate Commerce Commission to haul general commodities between any pair of points which are over 500 miles apart, or an affiliate[5] of such a carrier.

"Railroad carrier" means a common carrier by railroad subject to Part I of the Interstate Commerce Act, or an affiliate[6] of such a carrier.

(c) *Applications for forwarding authority.* Where a long-haul motor carrier or railroad carrier applies for authority as an air freight forwarder or an international air freight forwarder and submits a proposal to conscientiously promote air cargo in conformity with Part 296 or 297, of this chapter, the following will be the Board's policy in ordinary circumstances:

(1) The Board will process the application without hearing.

(2) The Board will not deem the size, geographical extent, or general commodity rights of the long-haul motor carriers or the size or geographical extent of the railroad carrier's surface transport authorization and operations, of themselves, as factors indicating that the applicant's operations as an air freight forwarder or international air freight forwarder will result in creating a monopoly or monopolies, and thereby restrain competition or jeopardize any air carrier, or will otherwise be inconsistent with the public interest.

(d) *Applications for acquisition of control.* Where a long-haul motor carrier or railroad carrier applies for Board approval to acquire control of an air freight forwarder or an international air freight forwarder and submits a proposal to conscientiously promote air cargo, the Board's policy in ordinary circumstances will be as follows:

(1) The Board will exempt the acquisition from the requirements of section 408(a) of the Act, pursuant to the proviso in section 408(a)(5) to the extent and for such periods as it finds may be in the public interest; or, in the alternative the Board will process the application for approval without a hearing, pursuant to the third proviso in section 408(b) if it determines (i) that the transaction which is the subject of the application does not affect the control of an air carrier directly engaged in the operation of aircraft in air transportation, does not result in creating a monopoly and does not tend to restrain competition, and (ii) that no person disclosing a substantial interest then currently is requesting a hearing.

(2) The Board will not deem the size, geographical extent, or general commodity rights of the long-haul motor carrier's or the size or geographical extent of the railroad carrier's surface transport authorization and operations, of themselves, as factors indicating that the carrier's control of the air freight forwarder or international air freight forwarder will result in creating a monopoly or monopolies, and thereby restrain competition or jeopardize another air carrier not a party to the consolidation, merger, purchase, lease, operating contract, or acquisition of control, or will otherwise be inconsistent with the public interest.

(e) *Exceptions.* (1) If the Board finds that the long-haul motor carrier or railroad carrier has not made a prima facie showing, in accordance with the standards set forth in § 296.83 of this chapter, that it will conscientiously promote air cargo, the Board may—

(i) Deny the application without hearing; or

(ii) Order a hearing.

(2) If the Board finds that the long-haul motor carrier or railroad carrier has not made a prima facie showing that its operations (either alone or together with other similar carriers granted air forwarding authority) will not result in creating a monopoly or monopolies and thereby restrain competition or jeopardize another air carrier, or will not otherwise be inconsistent with the public interest, the Board may—

(i) Deny an application without hearing; or

(ii) Order a hearing.

(3) The Board may also order a hearing if any person demonstrates that he will present evidence which may contradict the prima facie showing of a long-haul motor carrier or railroad carrier described in this paragraph.

* * * * *

Part 296. 3. Amend the Table of Contents by revising the title to Subpart I to read as follows:

Subpart I—Authorization of Long-Haul Motor Carriers of General Commodities and Railroad Carriers as Air Freight Forwarders

4. Amend § 296.1 by adding new paragraph (d-1) and revising paragraph (e) as follows:

§ 296.1 Definitions.

For the purposes of this part:

* * * * *

(d-1) "Railroad carrier" means a common carrier by railroad subject to Part I of the Interstate Commerce Act, or an affiliate of such a carrier.

(e) An "affiliate" of a long-haul motor carrier, railroad carrier, or air freight

[3] These additional reports include (1) an "Originating Air Station Data" schedule to reflect the source and distribution of tons enplaned and deplaned at the originating air station, and data on the miles of surface movement of the air freight before and after its air transportation; (2) a "Supplemental Operating Statistics" schedule to provide the number and weight of those intermodal air freight shipments handled by both the air freight forwarder and the surface carrier which is its parent or affiliate or which operates as a separate division within the same corporate structure; (3) an "Analysis of Traffic by Weight Breaks" schedule to indicate, by specified weight breaks, the number and weight of shipments handled in air freight forwarding operations and the revenue received therefor, and (4) an annual report setting forth the location of each freight forwarding station and each surface transport terminal at which air freight forwarding services are offered.

[3a] Filed as part of the original document.

[4] It should be emphasized, however, that the Board's rule making action here is not intended to affect the duration of the reporting requirements imposed on the railroad carriers/air freight forwarders in the Southern-Pacific-Santa Fe Air Freight Forwarder Case, Dockets 18776 and 19164, Order 70-10-100, Oct. 21, 1970.

[5] For the definition of "affiliate" see § 296.1 (e), § 297.1(f), or § 244.1.

[6] Ibid.

forwarder means a person who controls such carrier or is contolled by such carrier or by another person who controls or is controlled by such carrier. A person who beneficially owns, directly or indirectly, 10 percent or more of the outstanding issued capital stock of a carrier, in the absence of a proper showing to the Board that he does not control the carrier despite his stock ownership, shall be deemed to control the carrier for purposes of this part.

5. Amend the title to Subpart I as follows:

Subpart I—Authorization of Long-Haul Motor Carriers of General Commodities and Railroad Carriers as Air Freight Forwarders

6. Amend §§ 296.80, 296.81, 296.82, 296.83, 296.85, and 298.89 to read as follows:

§ 296.80 Applicability of subpart.

This subpart sets forth the special rules applicable to the processing of applications of long-haul motor carriers, as defined in § 296.1(d) and railroad carriers as defined in § 296.1(d-1) for authorization to operate in their own names as air freight forwarders. The regulation does not govern requests of motor and railroad carriers for Board approval of control relationships created when they apply through subsidiaries or other affiliates for authorization as air freight forwarders. Action on such applications for approval of control shall be governed by section 408 of the Act and by § 399.20 of the Board's policy statements in this chapter.

§ 296.81 Applicability of other subparts.

Unless otherwise provided in this subpart, the provisions of Subparts A through C and E through H of this part shall be applicable to the processing of applications of long-haul motor carriers or railroad carriers for authority to operate as air freight forwarders, and to the conduct of such operations.

§ 296.82 Applicability of policy statement.

The provisions of § 399.20 of the Board's policy statements in this chapter (14 CFR Part 399) shall be applicable to the processing of applications of long-haul motor carriers or railroad carriers for authority under this subpart.

§ 296.83 Application for operating authorization.

In addition to the requirements set forth in § 296.42, a long-haul motor carrier or railroad carrier applicant must show:

(a) A plan to conscientiously promote air cargo. This showing shall include, inter alia:

(1) A statement as to whether the long-haul motor carrier or railroad carrier plans to solicit existing surface customers for air cargo and, if so, the extent of such plans;

(2) A traffic estimate showing what traffic is newly generated or presently shipped by surface means;

(3) An estimate of what portion of the long-haul motor carrier's or railroad carrier's existing surface traffic is subject to diversion to air;

(4) An estimate of beyond-terminal-area traffic moving by surface transportation over the routes of the long-haul motor carrier or railroad carrier or via interline agreements; and

(5) A statement of the proposed air cargo sales force and facilities.

(b) A statement of the long-haul motor carrier's authority or railroad carrier's certificate for construction of interstate rail lines from the Interstate Commerce Commission or other regulatory agency, including a description of the surface transportation authorized and offered at the stations at which air forwarding operations are proposed.

(c) A statement of any other advantages which would result from approval of the application.

§ 296.85 Objections.

Within thirty (30) days after publication of notice of application in the FEDERAL REGISTER, any interested person may file an objection thereto. The objection must set forth an adequate factual showing of—

(a) The party's interest in the matter;

(b) His reasons for believing that the long-haul motor carrier or railroad carrier or affiliates of the long-haul motor carrier or railroad carrier will not promote air cargo; and

(c) Any other reasons why the application does not meet the licensing criteria of § 296.86.

If a hearing is requested, the objection must set forth the economic data and other facts which the party will offer to prove.

§ 296.89 Revocation or suspension.

The Board may institute proceedings to revoke the authorization of one or more long-haul carriers or railroad carriers or a group of motor or railroad carriers if it has cause to believe that the continued operations of such carrier or carriers are contrary to the above-stated licensing criteria (§ 296.86). Pending completion of revocation proceedings, the Board may without hearing suspend or limit the authorization of such motor or railroad carriers in accordance with procedures specified by § 296.48.

Part 297. 7. Amend the Table of Contents by revising the title to Subpart F to read as follows:

Subpart F—Authorization of Long-Haul Motor Carriers of General Commodities and Railroad Carriers as International Air Freight Forwarders

8. Amend § 297.1 by adding new paragraph (e-1) and revising paragraph (f), as follows:

§ 297.1 Definitions.

For the purposes of this part:

* * * * *

(e-1) "Railroad carrier" means a common carrier by railroad subject to Part I of the Interstate Commerce Act, or an affiliate of such a carrier.

(f) An "affiliate" of a long-haul motor carrier or railroad carrier or an air freight forwarder means a person who controls such carrier or is controlled by such carrier or by another person who controls or is controlled by such carrier. A person who beneficially owns, directly or indirectly, 10 percent or more of the outstanding issued capital stock of a carrier, in the absence of a proper showing to the Board that he does not control the carrier despite his stock ownership, shall be deemed to control the carrier for purposes of this part.

9. Amend the title to Subpart F to read as follows:

Subpart F—Authorization of Long-Haul Motor Carriers of General Commodities and Railroad Carriers as International Air Freight Forwarders

10. Amend §§ 297.60, 297.61, 297.62, 297.63, 297.65, and 297.69 to read as follows:

§ 297.60 Applicability of subpart.

This subpart sets forth the special rules applicable to the processing of applications of long-haul motor carriers, as defined in § 297.1(e) and railroad carriers as defined in § 297.1(e-1), for authorization to operate in their own names as international air freight forwarders. The regulation does not govern requests of motor and railroad carriers for Board approval of control relationships created when they apply through subsidiaries or other affiliates for authorization as international air freight forwarders. Action on such applications for approval of control shall be governed by section 408 of the Act and by § 399.20 of the Board's policy statements in this chapter.

§ 297.61 Applicability of other subparts.

Unless otherwise provided in this subpart, the provisions of Subparts A through E of this part shall be applicable to the processing of applications of long-haul motor carriers or railroad carriers for authority to operate as international air freight forwarders, and to the conduct of such operations.

§ 297.62 Applicability of policy statement.

The provisions of § 399.20 of the Board's policy statements in this chapter (14 CFR Part 399) shall be applicable to the processing of applications of long-haul motor carriers and railroad carriers for authority under this subpart.

§ 297.63 Application for operating authorization.

In addition to the requirements set forth in § 297.32, a long-haul motor carrier or railroad carrier applicant must show:

(a) A plan to conscientiously promote air cargo. This showing shall include, inter alia:

(1) A statement as to whether the long-haul motor carrier or railroad carrier plans to solicit existing surface customers for air cargo and, if so, the extent of such plans;

(2) A traffic estimate showing what traffic is newly generated or presently shipped by surface means;

(3) An estimate of what portion of the long-haul motor carrier's or railroad carrier's existing surface traffic is subject to diversion to air;

(4) An estimate of beyond-terminal-area traffic moving by surface transportation over the routes of the long-haul motor carrier or railroad carrier or via interline agreements; and

(5) A statement of the proposed air cargo sales force and facilities.

(b) A statement of the long-haul motor carrier's authority or railroad carrier's certificate for construction of interstate rail lines from the Interstate Commerce Commission or other regulatory agency, including a description of the surface transportation authorized and offered at the stations at which air forwarding operations are proposed.

(c) A statement of any other advantages which would result from approval of the application.

§ 297.65 Objections.

Within thirty (30) days after publication of notice of application in the FEDERAL REGISTER, any interested person may file an objection thereto. The objection must set forth an adequate factual showing of

(a) The party's interest in the matter;

(b) His reasons for believing that the long-haul motor carrier or railroad carrier, or their affiliates will not promote air cargo; and

(c) Any other reasons why the application does not meet the licensing criteria of § 297.66.

If a hearing is requested, the objection must set forth the economic data and other facts which the party will offer to prove.

§ 297.69 Revocation or suspension.

The Board may institute proceedings to revoke the authorization of one or more long-haul motor carriers or railroad carriers or a group of motor or railroad carriers if it has cause to believe that the continued operations of such carrier or carriers are contrary to the above-stated licensing criteria (§ 297.66). Pending completion of revocation proceedings, the Board may without hearing suspend or limit the authorization of such motor or railroad carrier or motor or railroad carriers in accordance with procedures specified by § 297.43.

Part 244. 11. Amend the Table of Contents by revising the title to § 244.19b of Subpart B, as follows:

Sec.
244.19b Supplemental operating statistics—long-haul motor carriers and railroad carriers/air freight forwarders (Schedule T-5).

12. Amend § 244.1 by revising the definition of "affiliate" and adding a new definition of "Railroad carrier," as follows:

§ 244.1 Definitions.

For the purposes of this part:

* * * * *

An "affiliate" of a long-haul motor carrier, railroad carrier, or an air freight forwarder means a person who controls such carrier or is controlled by such carrier or by another person who controls or is controlled by such carrier. A person who beneficially owns, directly or indirectly, 10 percent or more of the outstanding issued capital stock of a carrier, in the absence of a proper showing to the Board that he does not control the carrier despite his stock ownership, shall be deemed to control the carrier for purposes of this part.

* * * * *

"Railroad carrier" means a common carrier by railroad subject to Part I of the Interstate Commerce Act, or an affiliate of such a carrier.

* * * * *

13. Amend paragraphs (b) (4) and (5) of § 244.10 to read as follows:

§ 244.10 General.

* * * * *

(b) * * *

(4) Schedule T-4, Originating Air Station Data; T-5, Supplemental Operating Statistics—Long-Haul Motor Carriers or Railroad Carriers/Air Freight Forwarders; T-6, Analysis of Traffic by Weight Breaks; all to be filed quarterly by (i) long-haul motor carriers of general commodities and railroad carriers which are authorized to operate as air freight forwarders or international air freight forwarders, and (ii) air freight forwarders or international air freight forwarders which are affiliates of long-haul motor carriers or railroad carriers. Schedule T-6 shall also be filed by long-haul motor carriers and railroad carriers affiliated with air freight forwarders or international air freight forwarders or operating as a separate division within the forwarder's corporate structure.[7]

(5) A location report (as provided in § 244.19d, infra) to be filed annually by (i) long-haul motor carriers of general commodities and railroad carriers holding authorization to operate as air freight forwarders or international air freight forwarders, and (ii) air freight forwarders or international air freight forwarders which are affiliates of long-haul motor carriers[8] or railroad carriers.

* * * * *

14. Amend paragraph (a) of § 244.19a, § 244.19b, paragraph (a) of § 244.19c, and § 244.19d to read as follows:

§ 244.19a Originating air station data (Schedule T-4).

(a) The schedule of originating air station data shall be filed by (1) long-haul motor carriers of general commodities and railroad carriers which are authorized to operate as air freight forwarders or international air freight forwarders, and (2) air freight forwarders or international air freight forwarders which are affiliates of long-haul motor carriers or railroad carriers. It is designated as Schedule T-4 of CAB Form 244 and shall be prepared for each calendar quarterly period and filed with the Board as provided in § 244.10.

* * * * *

§ 244.19b Supplemental operating statistics—long-haul motor carriers and railroad carriers/air freight forwarders (Schedule T-5).

(a) The schedule of supplemental operating staistics shall be filed by (1) long-haul motor carriers of general commodities and railroad carriers which are authorized to operate as air freight forwarders or international air freight forwarders, and (2) air freight forwarders or international air freight forwarders which are affiliates of long-haul motor carriers or railroad carriers. It is designated as Schedule T-5 of CAB Form 244, and shall be prepared for each calendar quarterly period and filed with the Board as provided in § 244.10.

(b) Schedule T-5 shall cover where applicable both domestic and overseas/foreign air operations. With respect to combination surface/air operations of the forwarder, the schedule shall reflect the number and weight of (1) shipments which the reporting forwarder received from or delivered to an affiliated long-haul motor carrier or railroad carrier prior or subsequent to transporting them in its air freight forwarding operations, and (2) shipments which the reporting carrier accepted for air freight forwarding, but substituted other than air means for their transportation. With respect to other air operations by the forwarder, the schedule shall reflect the number and weight of all shipments tendered by the reporting carrier to direct air carriers in a capacity other than as a freight forwarder (shipper's agent or agent for direct air carrier). All the aforesaid categories shall be itemized and subdivided as shown by Schedule T-5 and the instructions thereon.

§ 244.19c Analysis of traffic by weight breaks (Schedule T-6).

(a) The schedule of analysis of traffic by weight breaks shall be filed by (1) long-haul motor carriers of general commodities and railroad carriers which are authorized to operate as air freight forwarders or international air freight forwarders, (2) air freight forwarders or international air freight forwarders which are affiliates of long-haul motor carriers or railroad carriers, and (3) long-haul motor carriers or railroad carriers affiliated with air freight forwarders or operating as a separate division within the forwarder's corporate structure. It is designated as Schedule T-6 of CAB Form 244, and shall be prepared for each calendar quarterly period and filed with the Board as provided in § 244.10. In addition, each long-haul motor carrier and railroad carrier shall report applicable data (insofar as they are available) relative to its long-haul

[7] Schedules T-4, T-5, and T-6 and the location report referred to in subparagraph (5) above shall be required for a temporary period coterminous with the term of the operating authorizations issued in the Motor Carrier-Air Freight Forwarder Investigation (Docket 16857, Order 69-4-100) and for the duration of any proceeding in which a renewal of the authorization is sought.

[8] Ibid.

motor carrier or railroad carrier operations for the corresponding quarter of each of the preceding 5 years.

* * * * *

§ 244.19d Report of location of air freight forwarding stations and surface transport terminals.

Each long-haul motor carrier or railroad carrier holding authorization to operate as an air freight forwarder or international air freight forwarder and each air freight forwarder or international air freight forwarder which is an affiliate of a long-haul motor carrier or railroad carrier shall file with the Board's Bureau of Accounts and Statistics, Washington, D.C. 20428, within 45 days after the close of each calendar year, a report showing as of December 31 of such year the location of each specialized air freight forwarding station and of each surface transport terminal at which air freight forwarding services are offered. The statement shall indicate, for each station or terminal, the number of drivers, salesmen and other personnel who are assigned to promote air freight exclusively. For identification purposes, this report should be referred to as "location report."

[FR Doc.71-9243 Filed 6-29-71;8:52 am]

[14 CFR Parts 249, 371]

[Docket No. 23442; EDR-202A, SPDR-23A]

UNIFORM REPORTING OF CONSUMER COMPLAINT STATISTICS AND RETENTION OF DATA

Supplemental Notice of Proposed Rule Making

JUNE 25, 1971.

The Board, by circulation of notice of proposed rule making EDR-202 and SPDR-23, and publication at 36 F.R. 10803, gave notice that it had under consideration the enactment of a new Part 371, and the amendment of Part 249, to establish uniform reporting of statistics with regard to consumer complaints received by air carriers, and to provide for the retention of data used in the preparation of the reports. Interested persons were invited to participate in the proceeding by submission of twelve (12) copies of written data, views, or arguments pertaining thereto to the Docket Section of the Board on or before July 6, 1971.

Subsequent to the issuance of the proposed rule, the Air Transport Association of America, on behalf of certain of its certificated air carrier members, requested an extension of sixty (60) days, or until September 3, 1971, for the time for filing comments on the proposed rule on the grounds that more time is needed to study the rule making, to consider the competitive and financial ramifications, and to prepare and file comments with the Board.

The undersigned finds that good cause has been shown for additional time for filing comments to the extent hereinafter granted. Accordingly, pursuant to the authority delegated in § 385.20(d) of the Board's organization regulations, the undersigned hereby extends the time for submitting comments to September 3, 1971.

(Sec. 204(a), Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324)

By the Civil Aeronautics Board.

[SEAL] ARTHUR H. SIMMS,
Associate General Counsel,
Rules and Rates.

[FR Doc.71-9242 Filed 6-29-71;8:52 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 15]

[Docket No. 19268; FCC 71-658]

COMPARABLE TELEVISION TUNING REGULATION

Notice of Proposed Rule Making

1. The Commission has before it a request that it authorize use of a 70-position nonmemory UHF detent tuning system (described in para. 2 below) for purposes of compliance with the comparable tuning rules (47 CFR 15.68).[1] Because such a system would not "provide approximately the same degree of tuning accuracy with approximately the same expenditure of time and effort" (47 CFR 15.68(b)), as compared to VHF tuning systems currently in use, it would not comply with the comparable tuning requirement. However, since other considerations were involved, namely the question of whether such a system would be as good as, or preferable to, other systems whose use is authorized, the Commission's staff, on March 15, 1971, issued a public notice requesting comment on the request (36 F.R. 5305). Information and comment has been furnished by organizations and firms connected with the television receiver and tuner manufacturing industries and the UHF television broadcast industry. The comments, which predominantly favor authorization of a 70-position system, are discussed in paragraphs 11 and 12, infra. Those who furnished comment are listed below:

Television Receiver Manufacturing Industry:
Electronic Industries Association (EIA).
Electronic Industries Association of Japan (EIA-Japan).
Admiral Corp.
Magnavox Consumer Electronics Co.
Motorola, Inc.
Philco-Ford Corp.
Zenith Radio Corp.

Television Tuner Manufacturers:
F. W. Sickles Division, General Instrument Corp.
Oak Electro/netics Corp.
Sarkes Tarzian, Inc.

UHF Television Broadcasting Industry:
All-Channel Television Society (ACTS).
Community Television of Southern California.
Kaiser Broadcasting.
WFLD-TV.
WNOK-TV.

2. On the basis of information furnished by Sarkes Tarzian, it is understood that the 70-position system has the following characteristics significant for purposes of comparable tuning:

(a) 70 detent positions, one for each UHF channel.

(b) Numerical display of the precise UHF channel selected at each position.

(c) Maximum variation from correct frequency of ±3 MHz (½ channel).[2]

(d) The detent and readout mechanisms require almost no space within the receiver. Consequently, the tuning system can be used in all receivers, regardless of size.

(e) Added cost is said to be less than one third of the cost of any UHF memory tuning system now available.

3. The rules currently authorize use of a 6-position UHF memory tuning system having the following characteristics significant for comparable tuning:

(a) Six detent positions.

(b) The viewer must preset the tuner to receive television stations available in his community. Display of the channel number is by a tab furnished by the manufacturer and affixed by the viewer.

(c) The maximum variation from correct frequency at any one of the six detent positions is ±600 kHz (figure furnished by Sarkes Tarzian).

(d) The size of the six-position system may preclude its use in smaller receivers.

(e) Added cost of the detent mechanism is said to be more than three times the cost of the detent mechanism used with the 70-position system.

4. Information made available to the Commission further indicates that, for

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[1] The request was submitted by Sarkes Tarzian, Inc., a tuner manufacturer. We are advised that other tuner manufacturers, including the F. W. Sickles Division of the General Instrument Corp. and Oak Electro/Netics Corp., are capable of producing similar tuning systems.

[2] The term "maximum variation from correct frequency," as here used, is the sum of the alignment error for the worst-aligned channel (all channels cannot be perfectly aligned) and maximum reset error (resulting from the inability of the detent mechanism to return the tuner oscillator to exactly the same position each time a channel is tuned). The figure of ±3 MHz and other figures used herein are best thought of as the manufacturer's normal reasonable expectation rather than as a precise sum applicable to all tuning systems produced. They are useful as reflecting the norm and are believed valid for comparative purposes. It should be noted that the figures refer to maximum rather than typical tuning error. It would be reasonable to expect more accurate results on most channels on most occasions. On the other hand, both alignment and reset error normally increase as the receiver ages and is used.

nonmemory VHF tuning systems currently in use, the maximum variation from correct frequency is ±550 kHz. With a memory VHF tuning system, we understand that maximum error is ±50 kHz.[3] On the basis of these figures, it seems reasonable to conclude that UHF memory tuning systems are fully comparable in tuning accuracy to VHF nonmemory tuning systems; that the UHF memory system is not fully comparable in accuracy to VHF memory systems; and that the 70-position system is not fully comparable in tuning accuracy to the UHF memory system, to nonmemory VHF systems, to to VHF memory systems. The UHF memory system falls short of comparability in other respects, i.e., the limited number of detent positions and the need for the viewer to preset the detent mechanism and attach channel number tabs.

5. The differences in tuning accuracy noted above are significant for both black and white and color reception. Accuracy within ±50 kHz, for example, should produce a viewable color picture. A maximum variation from correct frequency of ±550 or 600 kHz does not, in our judgment, assure reception of a black and white picture which most viewers would consider acceptable; for color reception, it does not assure reception of a color picture, and may not assure accuracy within the range of commonly utilized automatic fine tuning systems (AFT or AFC). Accuracy within ±3 MHz provides assurance only that the viewer will receive a black and white picture of indeterminant quality at the proper channel setting. In other words, it is to be expected that the normal viewer would find fine tuning to be necessary or desirable, at least part of the time, with all systems other than the VHF memory tuning system. This may be the case with a nonmemory VHF or a UHF memory system used in a receiver which is AFC-equipped. It will be the case with the 70-position system used in an AFC-equipped receiver. We are advised that AFC with a range of ±MHz has not been developed, that development of a wide-band system which could distinguish between adjacent channels would involve a number of technical difficulties, and that, if developed, it would be costly.

6. From the foregoing, it appears that currently available UHF tuning systems are not fully comparable to currently utilized VHF tuning systems. However, we think that the tuning systems described accurately reflect the current capabilities of UHF tuner manufacturers, given reasonable limitations on the size and cost of tuning apparatus. The UHF tuner manufacturer faces problems (e.g., larger number of channels, higher frequencies, greater frequency range) not faced in the manufacture of VHF tuners. The requirement of comparability is, in turn, naturally limited by the state of the art. In addition, we seek progress toward full comparability without imposing inordinant burdens on receiver and tuner manufacturers or the purchaser of a receiver, and without degrading VHF tuning. Reasonable progress toward comparable tuning is being made, in our judgment, and must be accepted as meeting the requirements of the comparable tuning rules. At this stage of development, therefore, the fact that the proposed 70-position UHF tuning system does not provide full comparability is not a basis for denial of the request that its use be authorized. The question before us is instead whether, as compared with other UHF tuning systems whose use is authorized, the 70-position system would advance or retard the development of UHF television broadcasting.

7. Comparison of the 70-position tuning system with the 6-position memory system authorized by the rules indicates the following:

(a) The six-position system is appreciably better in tuning accuracy (±600 kHz maximum variation from correct frequency as opposed to ±3 MHz for the 70-position system). It will be necessary to fine tune the 70-position system more frequently and more extensively for black and white or color reception, or to tune within the range of AFC. Considerable fine tuning will nevertheless be required on the six-position system. The 70-position system has been demonstrated to the Commission and to others, and there is general agreement among those who have seen it that fine tuning for black and white reception is relatively simple,[4] probably requiring no more than a few seconds for most viewers. In addition, in our judgment, fine tuning f·r color reception would also be relatively simple on a receiver equipped with AFC such as that commonly in use.

(b) The six-position system is also better by reason of the fact that all detent positions can be tuned in a single rotation of the tuning knob. The 70-position system with digital readout for each channel requires seven full rotations to tune through the UHF band. (But see paragraph 10, infra.) This could deter viewing of some stations, most likely those in the upper portion of the UHF band.

(c) The 70-position system is appreciably better in channel capacity (70 channels as opposed to six). This is significant in a number of respects. First, in some locations, more than six UHF television signals are available to the viewer. On the six-position system, some of the available stations could not then be assigned a detent position. Secondly, the user of a six-position system must pre-set each of the six positions to receive an available television signal and must attach channel identification tabs. It is certain that some viewers (and possibly many) may not do so. If the viewer moves to a new community, the process must be repeated, and there is no assurance that he will have retained channel identification tabs for stations in the new community. If a new station is authorized to operate in a community, viewers using the six-position system will have to preset one of the detent positions to receive its signal.

(d) The 70-position system requires almost no space within the receiver over and above the space required for the tuner. It is therefore well-suited for use in a small receiver, where space is at a premium. It may be that the six-position system is too large for use in small receivers. If so, the 70-position system or some other small system would ultimately have to be authorized for small receivers. If the six-position system can be used in smaller receivers, its use nevertheless presents serious design problems for the receiver manufacturer. Solution of such problems is time-consuming and expensive. Authorizing use of the 70-position system would minimize these problems and would presumably encourage the earlier provision of more nearly comparable tuning in smaller receivers.

(e) The cost of the detent and readout mechanism of the 70-position system is less than one-third of the cost of the comparable mechanism of the six-position system. The cost of the six-position system adds appreciably to the cost of the receiver, particularly to that of an otherwise inexpensive receiver. The comparable tuning requirement will not apply to 100 percent of receiver models until July 1, 1974. In the interim, the cost of the six-position system could well discourage the production and sale of inexpensive receivers equipped to provide more nearly comparable tuning.

(f) The effect of Commission action permitting or rejecting use of a 70-position system on research and developmental efforts is necessarily speculative. However, the following would appear to be a reasonable expectation:

We consider it unlikely that a 70-position mechanical UHF detent tuning system can be developed to the point where it would be comparable in tuning accuracy to VHF tuning systems currently in use, except in combination with wide-band AFC. The technical problems associated with development of wide-band AFC suitable for use with a 70-position system are not insuperable. Technical developments may also result in lower cost for wide-band AFC. It is possible, in addition, that improved capability and lower cost of varactor tuning systems will ultimately result in a 70-position system with much improved tuning accuracy. Authorization of the 70-position system should stimulate research in these areas. Nevertheless, a fully comparable 70-position system is not viewed as a near-term expectation.

A limited-position memory system, on the other hand, can never be developed to full comparability, since the limited number of positions in itself constitutes

[3] Sarkes Tarzian and General Instrument state that maximum alignment error is ±500 kHz. Sarkes Tarzian states that maximum reset error is ±50 kHz.

[4] See the responses of Magnavox and ACTS to the public notice of Mar. 15, 1971.

a disparity. It should, on the other hand, be possible to reduce reset error appreciably. Moreover, such a system is suitable for use with currently available automatic fine tuning systems, and such a combination would produce full comparability in tuning accuracy. If the Commission does not authorize use of the 70-position system, this should be an added stimulus to research designed to improve the capability of limited-position systems and to reduce their size and cost.

8. On the basis of this comparison, we are unable to say that authorization of the 70-position system would retard the development of UHF television broadcasting. We are likewise unable to say with certainty that the 70-position system would advance UHF television broadcasting. It would appear, however, that authorization of such a system may produce some near-term beneficial results and we conclude, on balance, that this approach to comparable tuning should not be rejected without a trial. Subject to the comments submitted, therefore, we are proposing to authorize use of the 70-position system on a temporary basis, pending the development of a more nearly comparable system. We stress the temporary nature of this authorization and caution the receiver and tuner manufacturing industries to continue research and development efforts along varied lines (including electronic tuning). Neither the 70-position nor the six-position system, in their current stages of development, is considered satisfactory for the long term. Barring the development of other less costly solutions, we foresee a requirement that all (or all color) receivers be AFC equipped. However, we wish at the same time to assure the receiver manufacturing industry that, as advances are made in UHF tuning system design and performance, and as the comparable tuning regulations are tightened, the industry will be afforded an adequate period for redesign of equipment and amortization of design costs.

9. Use of the 70-position system would be subject to the following conditions:

(a) Maximum variation from correct frequency shall not exceed ±3 MHz.

(b) Numerical readout shall be provided for each of the 70 UHF channel numbers or, if all (VHF and UHF) channel numbers are at all times visible on the face of the receiver, numerical readout shall be provided for at least every other channel. See paragraph 10, infra.

(c) Any receiver utilizing such a 70-position UHF detent tuning system for color tuning shall be AFC-equipped. (The reference is to AFC which is in common use today rather than to a not-yet-developed wide-band system. Without AFC, we think that UHF color tuning would be difficult, especially by comparison with VHF memoray color tuning. With AFC, we think UHF color tuning should be relatively simple.)

10. The 70-position system which we have discussed to this point utilizes a readout mechanism in which the first of the two digits in any UHF channel number is moved forward or backward once (e.g., from 1 to 2, as in the first digits of 19 and 20) for each complete rotation of the tuning knob, and the precise channel number is displayed in a window on the face of the receiver. Seven complete rotations of the knob are required to tune through the 70-channel UHF television band. This method solves the problem of squeezing 70 two-digit numbers of reasonable size around the edge of a tuning knob of appropriate size for use on a small receiver. Another way to solve that problem is to utilize two concentric circles, one displaying the even, and one the odd, channel numbers. With this on-the-knob display, there is flexibility as to the number of rotations of the tuning knob required to tune through the UHF television band. The Commission has been advised informally that a UHF tuning system utilizing an on-the-knob display would cost about one-fourth as much as the 70-position window display system heretofore discussed. Although the concentric circle arrangement involves a considerable crowding and profusion of numbers, we have been unable to say that it is not reasonably comparable (considering the problem of legibly presenting 70 numbers in a restricted space) to an on-the-knob VHF display. In our judgment, however, a concentric circle display would be less legible and generally less satisfactory than the display of alternate UHF channel numbers in a single circle, with marks to indicate the missing numbers. We accordingly propose amendment of the rules to provide for on-the-knob display of alternate channels. This method would be considered acceptable only in combination with an on-the-knob VHF display typically utilized in small inexpensive receivers.

11. Comments submitted in response to the March 15 Public Notice predominantly favor use of the 70-position system. However, they contain a number of suggestions as to the specifications for such a system and as to conditions under which it should be used. These are discussed below:

(a) A number of the comments suggest that ±3 MHz tuning accuracy requirement be relaxed, to allow for alternate sourcing of 70-position systems. However, since it appears that a number of tuner manufacturers are capable of producing a 70-position system with maximum variation from correct frequency of ±3 MHz, alternate sources of such equipment appear to be available without relaxing the accuracy requirement. Moreover, we regard ±3 MHz as an outside limit and consider it reasonable to expect improvement in this figure to follow from design changes and manufacturing experience.

(b) A number of the comments also suggest that specifications as to factors other than tuning accuracy and digital read-out (e.g., fine tuning ratio, fine tuning range) be prescribed. However, since the specifications as to such matters have little or no bearing on the cost or size of the system and are adjustable according to the manufacturer's concept of consumer needs and preferences, we believe they are best left to the judgment of receiver and tuner manufacturers.

(c) ACTS urges the Commission to authorize use of the 70-position system, but on condition that its use be limited to a 3-year period. Since our proposal is based on the premise that the 70-position system is not demonstrably inferior to the six-position system and since there is no time limit on use of the six-position system, it would not appear reasonable or consistent to impose a time limit on use of the 70-position system. A 3-year limitation, moreover, would appear to preclude any appreciable use of the 70-position system, as receiver manufacturers require a substantial period for redesign of receiver models to accommodate a new tuning system and a period of 3 years to amortize design costs. While we would again stress the need for improvement of available UHF tuning systems, we do not at this time consider it desirable to set a limit in years on the use of any particular system. However, if we do not see reasonable progress in the development of UHF tuning, we will reexamine this position.

(d) Kaiser Broadcasting considers that authorization of the 70-position system "would be generally in the best interests of the public and UHF broadcasters provided that any set with remote control also has * * * AFC." We have partially accepted this suggestion by proposing that AFC be required for color reception. In addition, it should be clear, under existing rules, that remote fine tuning would have to be provided if the 70-position system were used with remote controls. With remote fine tuning, UHF remote tuning should be as easy or easier than it is at the receiver. Without remote fine tuning, AFC would not provide comparable tuning, since no assurance is provided that the tuner would be positioned within the range of AFC. There is, moreover, a legitimate question as to whether AFC is desirable for black and white reception.

(e) It is also suggested that use of the 70-position system be authorized only in black and white receivers lacking VHF memory. Because VHF memory is inexpensive and most beneficial, we think that manufacturers will increasingly incorporate it as a feature in their receivers. Authorizing use of a small, inexpensive UHF tuning system only with a VHF system lacking memory, however, would tend to limit the use of VHF memory. Because we seek comparability by upgrading UHF tuning rather than by downgrading VHF tuning, we have rejected this suggestion.

12. Three UHF broadcasters strongly oppose use of the 70-position system, on the ground that it fails to provide full comparability with VHF tuning systems. If fully comparable UHF tuning systems were available, this would also be the Commission's position. However, as it appears that fully comparable systems are not now available (see paragraph 6, supra), the position of these broadcasters must be rejected.

13. The proposed amendment is set forth below. Authority for the amendment is contained in sections 4(i), 303 (r) and (s), and 330 of the Communications Act of 1934, 47 U.S.C. 154(i), 303 (r) and (s), and 330.

14. Comments submitted in response to the Public Notice of March 15, 1971, will be entered in this docket and, with comment in response to this notice, will be available for inspection in the Commission's Broadcast and Dockets Reference Room. Because a prior opportunity has been afforded for comment and because near-term use of the 70-position tuning system would require prompt commencement of the receiver redesign process, we are affording a relatively brief period for comment on this proposal and we do not anticipate granting any extensions of time for the filing of comments.

15. Pursuant to applicable procedures set forth in § 1.415 of the rules and regulations, 47 CFR 1.415, interested persons may file comments in this proceeding on or before July 12, 1971, and reply comments on or before July 19, 1971. All relevant and timely comments and reply comments will be considered by the Commission prior to final action in this proceeding. In reaching its decision, the Commission may take into account other relevant information before it in addition to the specific comments invited by this notice. In accordance with the provisions of § 1.419 of the rules and regulations, 47 CFR 1.419, an original and 14 copies of all comments, reply comments and other materials shall be furnished the Commission.

Adopted: June 24, 1971.

Released: June 25, 1971.

FEDERAL COMMUNICATIONS COMMISSION,[5]
[SEAL] BEN F. WAPLE,
Secretary.

In Part 15 of Chapter I of Title 47 of the Code of Federal Regulations, a note is added at the end of § 15.68, to read as follows:

§ 15.68 All-channel television broadcast reception: receivers manufactured on or after July 1, 1971.

* * * * *

NOTE: A 70-position UHF detent tuning system meeting the following requirements is acceptable on a temporary basis, pending development of a more nearly comparable system: (1) Maximum variation from correct frequency shall not exceed ±3 MHz; (2) numerical readout shall be provided for each of the 70 UHF channel numbers or, if all (VHF and UHF) channel numbers are at all times visible on the face of the receiver, numerical readout shall be provided for at least every other UHF channel, with marks to indicate those channels not displayed numerically; and (3) any receiver utilizing such a 70-position UHF detent tuning system for color reception shall be AFC-equipped.

[5] Commissioners Robert E. Lee, Johnson, and Houser absent.

[FR Doc.71-9249 Filed 6-29-71;8:53 am]

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1048]

[Ex Parte No. MC-37 (Sub-No. 9C)]

BALTIMORE, MD., COMMERCIAL ZONE

Proposed Redefinition

JUNE 25, 1971.

Petitioner: The Howard Research and Development Corp. Petitioner's representative: William L. Marbury and Donald P. McPherson, III, 900 First National Bank Building, Baltimore, Md. 21202; George A. Shehan, The Rouse Co., American City Building, Columbia, Md. 21043.

By petition filed June 17, 1971, petitioner requests the Commission to institute a proceeding for the purpose of specifically redefining the limits of the zone adjacent to and commercially a part of Baltimore, Md., which are now prescribed by the specific definition promulgated in Commercial Zones and Terminal Areas (Baltimore, Md. Commercial Zone), 111 M.C.C. 240, 49 CFR 1048.21.

The instant petition requests a redefinition of the Baltimore commercial zone so as to add the area as follows in part (e) of the present description.

(e) All points in that area southwest of the line described in paragraph (b) of this section, bounded by a line as follows: Beginning at the point where the line described in paragraph (b) of this section crosses the Baltimore-Washington Expressway and extending in a southwesterly direction along the Baltimore-Washington Expressway to its intersection with Maryland Highway 176, thence westerly along Maryland Highway 176 to its intersection with the Howard-Anne Arundel County line; thence southwesterly along said county line to its intersection with Maryland Highway 32, thence northwesterly along Maryland Highway 32 to its intersection with the Little Patuxent River, thence northerly along the Little Patuxent River to the intersection of its north fork and its east fork located approximately 1 mile north of the intersection of Maryland Highway 32 and Berger Road, thence easterly along the east fork of the Little Patuxent River to its intersection with Broken Land Parkway, thence southerly along Broken Land Parkway to its intersection with Snowden River Parkway, thence easterly along Snowden River Parkway to its intersection with relocated Maryland Highway 175, thence southeasterly along relocated Maryland Highway 175 to its intersection with Oakland Mills Road, thence northerly along Oakland Mills Road to its intersection with Lark Brown Road, thence northeasterly along Lark Brown Road to its intersection with Maryland Highway 175, thence southerly along Maryland Highway 175 to its intersection with Interstate Highway 95, thence northeasterly along Interstate Highway 95 to its intersection with the line described in paragraph (b) of this section;

No oral hearing is contemplated at this time, but anyone wishing to make representations in favor of, or against, the above-proposed specific redefinition of the limits of the Baltimore, Md., commercial zone, may do so by the submission of written data, views, or arguments. An original and 15 copies of such data, views, or arguments shall be filed with the Commission on or before August 16, 1971. Written material or suggestions submitted will be available for public inspection at the offices of the Interstate Commerce Commission, 12th and Constitution, Washington, DC, during regular business hours.

Notice to the general public of the matter herein under consideration will be given by depositing a copy of this notice in the Office of the Secretary of the Commission for public inspection and by filing a copy thereof with the Director, Office of the Federal Register.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-9234 Filed 6-29-71;8:49 am]

Notices

DEPARTMENT OF THE TREASURY

Bureau of Customs

BICYCLES FROM WEST GERMANY

Withholding of Appraisement Notice

Information was received on April 16, 1970, that bicycles from West Germany were being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). This information was the subject of an "Antidumping Proceeding Notice" which was published in the FEDERAL REGISTER of July 7, 1970, on page 10917. The "Antidumping Proceeding Notice" indicated that there was evidence on record concerning injury to or likelihood of injury to or prevention of establishment of an industry in the United States.

Pursuant to section 201(b) of the Act (19 U.S.C. 160(b)), notice is hereby given that there are reasonable grounds to believe or suspect that the purchase price (section 203 of the Act; 19 U.S.C. 162) or the exporter's sales price (section 204 of the Act; 19 U.S.C. 163), as applicable, of bicycles from West Germany is less, or likely to be less, than the foreign market value (section 205 of the Act; 19 U.S.C. 164).

Statement of reasons. The information currently before the Bureau tends to indicate that the basis for comparison for fair value purposes will probably be between purchase price or exporter's sales price, as appropriate, and home market price of such or similar merchandise.

Purchase price will probably be calculated on the basis of an f.o.b. price for exportation to the United States with appropriate deductions for inland freight and insurance, storage and handling, and accessories used exclusively on export models.

Exporter's sales price will probably be calculated on the basis of a c.i.f. duty-paid price with deductions for selling expenses, duty, Customs brokerage, insurance, ocean freight, inland freight, storage, and handling.

Home market price will probably be based on a delivered price with deductions for inland freight and home market discounts, and adjustments for accessories used exclusively on home market models, production cost differential, commissions paid in the home market and packing cost differential.

Using the above criteria, there are reasonable grounds to believe or suspect that purchase price or exporter's sales price, as applicable, will be lower than home market price in all cases.

Customs officers are being directed to withhold appraisement of bicycles from West Germany in accordance with § 153.48, Customs Regulations (19 CFR 153.48).

In accordance with §§ 153.32(b) and 153.37, Customs Regulations (19 CFR 153.32(b), 153.37), interested parties may present written views or arguments, or request in writing that the Secretary of the Treasury afford an opportunity to present oral views.

Any requests that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to the Commissioner of Customs, 2100 K Street NW., Washington, DC 20226, in time to be received by his office not later than 10 calendar days from the date of publication of this notice in the FEDERAL REGISTER.

Any written views or arguments should likewise be addressed to the Commissioner of Customs in time to be received by his office not later than 30 days from the date of publication of this notice in the FEDERAL REGISTER.

This notice, which is published pursuant to section 153.34(b), Customs Regulations, shall become effective upon publication in the FEDERAL REGISTER (6-30-71). It shall cease to be effective at the expiration of 6 months from the date of this publication, unless previously revoked.

[SEAL] MYLES J. AMBROSE,
Commissioner of Customs.

Approved: June 25, 1971.

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[FR Doc.71-9262 Filed 6-29-71;8:53 am]

Office of the Secretary

HIGH VOLTAGE PORCELAIN INSULATORS FROM JAPAN

Notice of Discontinuance of Antidumping Investigation

JUNE 25, 1971.

On May 18, 1971, there was published in the FEDERAL REGISTER a "Notice of Intent to Discontinue Antidumping Investigation" of high voltage porcelain insulators manufactured by NGK Insulators, Ltd., Nagoya, Japan.

The statement of reasons for intending to discontinue this investigation was published in the above-mentioned notice, and interested parties were afforded until June 18, 1971, to make written submissions or requests for an opportunity to present oral views in connection with the intended action.

An initial request for an opportunity to present oral views in connection with the intended action was received but subsequently withdrawn. No written submissions have been received. For the reasons stated in the Notice of Intent to Discontinue Antidumping Investigation, I hereby discontinue the antidumping investigation of high voltage porcelain insulators manufactured by NGK Insulatos, Ltd., Nagoya, Japan.

This "Notice of Discontinuance of Antidumping Investigation" is published pursuant to § 153.15(b) of the Customs regulations (19 CFR 153.15(b)).

[SEAL] EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[FR Doc.71-9263 Filed 6-29-71;8:53 am]

DEPARTMENT OF DEFENSE

Department of the Army

OFFICE OF CIVIL DEFENSE

Delegation of Authority

References: (a) Delegations of Authority published at 29 F.R. 11852-11853, August 19, 1964; (b) Further Redelegation of Authorities published at 29 F.R. 12653, September 5, 1964, as amended at 29 F.R. 14756, October 29, 1964.

1. The following amendment to reference (a) is hereby approved:

SEC. 4. *Regional Directors* is hereby revised to add new paragraphs as follows:

(e) Procurement of materials, supplies, equipment and services, including the making of necessary findings and determinations with respect thereto for the following OCD programs for the States: (1) Radiological Defense Maintenance and Calibration (RADEF Maintenance); (2) Community Shelter Planning Officer, State (CSPOS); (3) Civil Defense Education (CDE); (4) Shelter Survey by State Personnel (Survey-State); (5) CSP Emergency Public Information Program (CSP-EPI); (6) National Communications System (Radio) Agreements (NACOM II); and on a case-by-case basis as authorized by the Director of Civil Defense, for (7) Civil Defense University Extension Program (CDUEP), and (8) Professional Advisory Service Program (PAS);

(f) Perform contract administration functions with respect to the Civil Defense University Extension Program (CDUEP) and the Professional Advisory Service Program (PAS);

(g) Entering into and executing of agreements for the loan of engineering stockpile equipment or the loan of civil defense exhibits to State and local governments;

(h) Procurement of supplies and services other than personal for civil defense purposes not in excess of $2,500 per order from governmental or nongovernmental sources. Established Government sources shall be utilized to the maximum extent possible in the procurement of supplies and services;

(i) Issuance of U.S. Government Bills of Lading not to exceed $2,500 per order;

(j) Arranging for and acquiring through General Services Administration, of space and facilities for regional and field offices not to exceed $10,000 per order;

(k) Approving of invitational travel to persons serving without compensation whose consultative, advisory, or other highly specialized technical services are required in a capacity that is directly related to, or in connection with, assigned civil defense activities.

2. Reference (b) is hereby superseded.

This amendment to the Delegations of Authority shall be effective July 1, 1971.

JOHN E. DAVIS,
Director of Civil Defense.

[FR Doc.71-9216 Filed 6-29-71;8:48 am]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

CABEZA PRIETA GAME RANGE

Notice of Public Hearing Regarding Wilderness Proposal

On page 11118 of the FEDERAL REGISTER of June 9, 1971, there was published a notice of public hearing to be held on August 11, 12, 13, and 14, 1971, on a proposal leading to a recommendation to be made to the President of the United States by the Secretary of the Interior regarding the desirability of including the proposed Cabeza Prieta Wilderness within the National Wilderness Preservation System. In consideration of public requests to hold the hearing at a more convenient time, the announced hearing dates are hereby rescinded and the hearing will now be held beginning at 9 a.m., m.s.t., on September 15, 1971, at the City Council Chambers, Tucson, Ariz., and continued at 9 a.m., m.s.t., on September 16 at the Del Webb's TowneHouse, Phoenix, Ariz., at 10 a.m., m.s.t., on September 17 at the Ajo High School Auditorium, Ajo, Ariz., and further continued at 9 a.m., m.s.t., on September 18 at the Yuma City-County Library, Yuma, Ariz.

A brochure containing a map and information about the Cabeza Prieta Wilderness proposal may be obtained from the Refuge Manager, Cabeza Prieta Game Range, Post Office Box 1032, Yuma, AZ 85364, or the Regional Director, Bureau of Sport Fisheries and Wildlife, Federal Building, 500 Gold Avenue SW., Albuquerque, NM 87103.

Individuals or organizations may express their oral or written views by appearing at this hearing, or they may submit written comments for inclusion in the official record of the hearing to the Regional Director at the above address by October 18, 1971.

SPENCER H. SMITH,
Acting Director,
Bureau of Sport Fisheries and Wildlife.

JUNE 24, 1971.

[FR Doc.71-9188 Filed 6-29-71;8:46 am]

Office of the Secretary

OIL SHALE LANDS IN STATES OF COLORADO, UTAH, AND WYOMING

Applications for Permits To Conduct Informational Core Drilling

1. For a period of 2 years from the date of the publication, applications may be filed for Special Land-Use Permits to conduct informational core drilling in order to allow the evaluation of the environmental characteristics, hydrology, and the oil shale resources of specific sites on oil shale lands situated in the States of Colorado, Utah, and Wyoming. Any interested party may obtain a permit to conduct informational core drilling by filing an application for a Special Land-Use Permit in the Bureau of Land Management Land Office, or any successor Office (hereinafter referred to as the "Land Office"), having jurisdiction over the lands sought for core drilling. Except as otherwise provided herein, applications shall be filed in accordance with the provisions of 43 CFR 2920. No specific form of application is required. The application must be accompanied by a Notice of Intent to Drill, U.S. Geological Survey Form 9-331-A, and a description of the proposed exploration program, including a description of the lands and the number and location of core holes to be drilled. Upon the filing of an application, the proposed exploration program included therewith shall be made available to the public for inspection. If the lands have been surveyed under the public land rectangular system, each application shall describe the lands by legal subdivision, section, township, and range. If the lands have not been so surveyed, each application shall describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to a monument or to a prominent topographic feature. When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, each application for lands shown on such protracted surveys, filed on or after such effective date, shall describe the lands according to the legal subdivision, section, township, and range shown on the approved protracted surveys.

2. Applicants for permits shall be required, upon issuance of a permit, to afford other parties a period of at least 120 days in which to participate in the proposed drilling program. A participant shall be required to pay a pro rata share of the cost of the program described in the application, including any subsequent modifications of the program by the Regional Mining Supervisor, U.S. Geological Survey (hereinafter referred to as "the Mining Supervisor"). The applicant must publish a notice once every 30 days for three consecutive 30-day periods in at least two mining or oil and gas trade journals and two newspapers of general circulation in the area where the lands covered by the permit application are situated. The notice must contain an invitation to the public, open for a period of 120 days from the date of the first publication, to participate in the proposed informational drilling program.

3. Prior to publication, the notice referred to in paragraph 2, and the news sources in which it is to be published, must be approved by the Land Office and the proposed exploration program must be approved by the Mining Supervisor. Upon the grant of the approvals referred to in this section, a special Land-Use Permit to conduct informational core drilling will be issued to the applicant.

4. Copies of all notices of invitations to participate under a core drilling permit must be filed with the Land Office upon each publication and, thereafter, will be posted in that Office. The names of parties electing to participate under a permit, if any, shall be furnished to the Land Office at the close of the period provided for election to participate.

5. Detailed requirements and stipulations pertaining to operations and environmental protection shall be made known to an applicant prior to approval of an application and shall be incorporated in any permit that may be issued by the Department. For general information concerning such requirements and stipulations, interested parties are referred to the "Program Statement for the Proposed Prototype Oil Shale Leasing Program," published by the U.S. Department of the Interior, Washington, D.C., June 1971.

6. If a Special Land-Use Permit is issued, the permittee shall be required to file with the Mining Supervisor, prior to the commencement of operations on the lands covered by the permit, a detailed drilling plan which must include location of holes, drilling method, size of hole, size of core, length and size of casing, safety precautions, abandonment procedures, and a schedule of the projected time period during which the work is to be performed, including starting and completion dates. Operations under the permit shall not be commenced until the Mining Supervisor has approved the detailed drilling plan.

7. A permittee shall be required, among other things, to: (1) Commence drilling operations within 1 year from the date of approval of a detailed drilling plan for the permit; (2) conduct his operation in such a manner as not to interfere with or endanger operations on any existing or future mineral lease, nor interfere with or endanger other land uses; (3) conduct his operations in such a manner as to preserve and protect the environment, including land, water and air, and to protect and conserve other natural resources; (4) comply with all applicable Federal, State, and local regulations or requirements pertaining to these operations, including the regulations in 43 CFR Part 23 and 30 CFR 231; (5) post a $5,000 bond with the Department for each Special Land-Use Permit issued to cover damages that may be caused to the environment or resources, either onsite or offsite, by construction, maintenance, and use of roads

or trails, or by other activities conducted under the permit; and (6) post a $5,000 bond with the Department for each informational core hole to be drilled, to assure compliance with regulations for drilling and abandonment operations (30 CFR 231 and 43 CFR Part 23).

8. All data obtained by a permittee shall be shared with the Department of the Interior, at no cost to the Federal Government. Resource data, but not environmental data, which is made available to the Department by the permittee, shall be treated as confidential proprietary information for not more than 5 years or until the permit lands are leased for oil shale, whichever is sooner.

9. Neither the permittee nor any participant under a Special Land-Use Permit shall acquire any right to a lease or to preferential treatment, nor shall equities of any kind be deemed to accrue, as a result of informational core drilling conducted under such a permit. Permittees and participants shall be required to stipulate that data acquired from such informational core drilling shall not be relied upon to support an application for patent or lease, nor be submitted as evidence in any administrative contest or court proceeding concerning the validity of mining claims or the validity of sodium preference right lease applications on oil shale lands.

Date: June 25, 1971.

W. T. PECORA,
Acting Secretary of the Interior.

[FR Doc.71-9219 Filed 6-29-71;8:48 am]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

ARIZONA

Designation of Area for Emergency Loans

For the purpose of making emergency loans pursuant to section 321 of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961) and section 232 of the Disaster Relief Act of 1970 (Public Law 91-606), it has been determined that in the following county in the State of Arizona natural disasters have caused a general need for agricultural credit:

ARIZONA

Yuma.

Emergency loans will not be made in the above-named county under this designation after June 30, 1972, except subsequent loans to qualified borrowers who receive initial loans under this designation on or before that date.

Done at Washington, D.C., this 24th day of June 1971.

CLIFFORD M. HARDIN,
Secretary of Agriculture.

[FR Doc.71-9208 Filed 6-29-71;8:47 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

PPG INDUSTRIES, INC.

Notice of Filing of Petition for Food Additives

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348 (b)(5)), notice is given that a petition (FAP 1M2640) has been filed by PPG Industries, Inc., Drawer A, Delaware, Ohio 43015, proposing the issuance of a food additive regulation (21 CFR Part 121) to provide for the safe use in contact with food of an electron-beam cured coating prepared with spermaceti wax, acrylic acid, butyl acrylate, ethyl acrylate, hydroxyethyl acrylate, methacrylic acid, methyl methacrylate, and trimethylolpropane triacrylate.

Dated: June 24, 1971.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.71-9226 Filed 6-29-71;8:48 am]

Office of the Secretary

PUBLIC HEALTH SERVICE

Statement of Organization, Functions and Delegations of Authority

As of May 17, 1971, the organizational elements of the Environmental Health Service that remained within HEW after the creation of the Independent Environmental Protection Agency on December 2, 1970, were transferred—

To the Food and Drug Administration:

The Bureau of Radiological Health.

To the Health Services and Mental Health Administration:

The National Institute for Occupational Safety and Health.

The Bureau of Community Environmental Management.

The changes in organization that are indicated below show how the latter two units are being incorporated into HSMHA.

Part 3 (Health Services and Mental Health Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health, Education, and Welfare (33 F.R. 15953, October 30, 1968), as amended, and former Part 3 (33 F.R. 19050, December 20, 1968) are further amended as follows:

Under former Part 3, which was entitled Consumer Protection and Environmental Health Service, delete paragraph (g) Bureau of Community Environmental Management and succeeding paragraphs (g-1) through (g-3), and delete paragraph (h) Bureau of Occupational Safety and Health and succeeding paragraphs (h-1) through (h-3).

Part 3, which now is the part assigned to the Health Services and Mental Health Administration, is hereby amended with regard to section 3-B, Organization, as follows:

Following the paragraph entitled "St. Elizabeths Hospital—Division of Clinical and Community Services (3J71)" under the center head National Institute of Mental Health (3J00), insert a new center head and succeeding paragraphs reading:

NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH (3K00)

Plans, directs, and coordinates the national program effort to develop and establish recommended occupational safety and health standards and to conduct research, training, and related activities to assure safe and healthful working conditions for every working man and woman:

(1) Administers research in the field of occupational safety and health, including the psychological factors involved; (2) develops innovative methods and approaches for dealing with occupational safety and health problems; (3) provides medical criteria which will ensure, insofar as practicable, that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience, with emphasis on ways to discover latent disease, establishing casual relationship between diseases and work conditions; (4) serves as a principal focus for training programs to increase the number and competence of personnel engaged in the practice of occupational safety and health; (5) develops and coordinates the appropriate reporting procedures which assist in accurately describing the nature of the national occupational safety and health problems; and (6) consults with the U.S. Department of Labor, other Federal agencies, State and local government agencies, industry and employee organizations, and other appropriate individuals, institutes, and organizations with regard to promotion of occupational safety and health.

Office of the Director (3K01). (1) Plans, directs, coordinates, and evaluates the operations of the institute; (2) maintains liaison with, and provides advice and assistance to, the U.S. Department of Labor, the U.S. Department of the Interior, other Federal agencies, State and local government agencies, international health organizations, and outside groups; (3) provides coordination with the Federal Health Programs Service's occupational health activities for Federal employees; and (4) provides policy guidance and coordination to occupational safety and health activities in the Regional Offices.

Office of Public Information (3K17). (1) Assists and advises the Institute Director and the Divisions on public information policies and activities; (2)

provides information materials for response to public inquiries; (3) coordinates printing, publication, and clearance procedures for the Institute; and (4) assists in developing displays, exhibits, and illustrations.

Office of Extramural Activities (3K18). (1) Advises the Institute Director on matters relating to the development and progress of Institute-supported external research; (2) in cooperation with the offices and operating divisions of the Institute, stimulates research, training, and demonstration grants in relevant priority areas; and (3) administers the management aspects of the Institute's grants programs by receiving, reviewing, analyzing, and evaluating all grant applications.

Office of Administrative Management (3K19). (1) Provides management information, advice, and guidance to the Institute Director; (2) coordinates all management activities in the conduct of finance, personnel, and procurement functions; (3) relates administrative management activities to programs; and (4) develops necessary policies, procedures, and operations, and provides such special reports and studies as may be required in the management area.

Office of Planning and Resource Management (3K21). (1) Plans and coordinates the strategy and philosophy of operation of the Institute regarding mission and objectives; (2) conducts or participates in special studies for program planning and evaluation; (3) conducts the necessary control functions to assure operational compliance toward program objectives within the Institute; and (4) provides management systems consultation and analyses.

Office of Research and Standards Development (3K23). (1) Reviews existing scientific criteria for health and safety standards and assesses through priority systems the needs for additional research program areas for criteria development; and (2) coordinates and maintains an overview of research activities in the operating divisions of the Institute with the ultimate aim toward finalization of criteria and standards.

Office of Manpower Development (3K25). (1) Provides policy guidance and evaluates the Institute's manpower development and training activities; (2) advises the Institute Director on national health manpower needs related to occupational safety and health, and relates to other Federal agencies regarding occupational safety and health manpower needs; and (3) conducts equal employment opportunity activities of the Institute as part of the total HSMHA-EEO program.

Office of Health Surveillance and Biometrics (3K27). (1) Operates as the principal statistical and data research unit in the Institute; (2) monitors new as well as existing occupational hazards, and maintains surveillance on the incidence of occupational illness and disease; (3) in coordination with the U.S. Department of Labor, establishes a priority list for the conduct of research and the development of standards; (4) develops and conducts record studies of work population groups to determine the national trends and problem areas related to job health and safety, and provides health policy guidance in epidemiology; and (5) coordinates the Institute's electronic data processing requirements, to ensure that adequate computer facilities and services are available.

Division of Laboratories and Criteria Development (3K43). (1) Develops criteria for standards for the control of chemical, biological, and physical hazards to the health and safety of the working population, and initiates standard methodology and instrumentation for the detection, evaluation, and control of such hazards; (2) evaluates the toxicity, health, and safety hazards of industrial substances, processes, and other agents, as well as current research requirements and regulations; (3) conducts methodology studies for evaluating the varying capacity of workers to withstand physical and psychological responses; (4) provides for equipment development, analytical service, and calibration needs of other operating divisions within the Institute, and maintains an analytical and calibrations service for the U.S. Department of Labor; and (5) evaluates and certifies the performance of safety and health equipment.

Division of Field Studies and Clinical Investigators (3K47). (1) Conducts nationwide studies, surveys, and comprehensive analyses to determine the health status of the working population, including the incidence and prevalence of disease and injury; and (2) initiates studies to determine chronic and long-term effects of work-related exposures to toxic and hazardous substances.

Division of Technical Services (3K53). (1) Provides demonstrations, technical assistance, and consultation to public and private agencies responsible for the control of occupational diseases and accidental work injuries; (2) through the Regional Offices and its central staff serves as the focal point for the review of State plans and grants with the U.S. Department of Labor and makes the initial responses to requests for hazards evaluations; (3) in cooperation with the Office of Extramural Activities, stimulates, programs, and monitors demonstration grants for new and innovative methods of recognizing, evaluating, and controlling occupational hazards; (4) prepares manuals of good practice for safe work procedures; and (5) operates the technical information inquiry service of the institute.

Division of Occupational Health Programs (3K57). (1) Promotes occupational health programs at the State and local governmental levels as well as in industry and agriculture; (2) provides technical guidance in the development of occupational health programs; and (3) correlates the practice of occupational medicine in industry with the total delivery of health services.

Division of Training (3K63). (1) Develops and plans short-term training activities for Federal, State, and local governments, industry, and other appropriate organizations in the field of occupational safety and health; and (2) conducts such short-term training.

Appalachian Laboratory for Occupational Respiratory Diseases (3K67): (1) Conducts studies of the incidences and prevalence of occupational respiratory diseases in specific work groups with particular emphasis on coal workers' pneumoconiosis; and (2) provides medical and engineering research and service to fulfill the Institute's responsibilities under the Federal Coal Mine Health and Safety Act of 1969.

Also, following the paragraph entitled "Field Organization" under the center head Federal Health Programs Service (3U00), insert a new center head and succeeding paragraphs reading:

BUREAU OF COMMUNITY ENVIRONMENTAL MANAGEMENT (3W00)

(1) Formulates and establishes criteria and recommends standards for sustaining man's health and well-being in the living environment of the community; (2) conducts and participates in studies and demonstrations to establish data for formulating criteria and standards; (3) conducts or participates in research, investigations, and demonstrations to control environmental hazards to health; (4) collects epidemiological information and maintains an information resource of statistical data on environmental hazards to health; (5) plans, conducts, and supports a program to control injuries caused by environmental situations, human behavior, and community environments; and (6) assists in the development of manpower and training needs for community environmental management.

Office of the Director (3W81). (1) Plans, directs, coordinates, and evaluates the operations of the Bureau; (2) maintains liaison with, and provides advice and assistance to, the U.S. Department of Housing and Urban Development, the U.S. Department of the Interior, other Federal agencies, State and local government agencies, international health organizations, and outside groups; and (3) provides technical guidance and coordination to community environmental management activities in the Regional Offices.

Office of Public Information (3W17). (1) Assists and advises the Bureau Director and the Divisions on public information policies and activities; (2) provides information materials for response to public inquiries; (3) coordinates printing, publication, and clearance procedures for the Bureau; and (4) assists in development of displays, exhibits, and illustrations.

Office of Administrative Management (3W19). (1) Provides management information, advice, and guidance to the Bureau Director; (2) coordinates all management activities in the conduct of finance, personnel, and procurement functions; (3) relates administrative management activities to programs;

and (4) develops necessary policies, procedures, and operations.

Office of Research and Development (3W21). (1) Develops and coordinates the research and development policy of the Bureau; (2) assists the Divisions and advises the Director in identification of research and development needs and on funding priorities and program relevancy; (3) coordinates stimulation, programing, reviewing, evaluating, and reporting of research and development projects, and of training and fellowship grants; (4) manages grants activities, the research and development advisory committee, and consultant panels; (5) serves as liaison office with the HSMHA Office of Grants Management, and briefs study sections and the Advisory Council; (6) maintains contact with investigators, universities, and research facilities to determine research and training capabilities and to stimulate appropriate grant applications or contract proposals; and (7) maintains the intragovernmental, private foundation, and international research and development contacts.

Office of Program Planning and Evaluation (3W31). (1) Coordinates development of Bureau strategy, including long- and short-range objectives and philosophy of operations; (2) conducts and coordinates planning and program development activities; (3) evaluates program effectiveness and recommends necessary planning strategy to overcome deficiencies; (4) coordinates legislative planning; and (5) conducts and participates in special studies and program analyses.

Division of Environmental Improvement (3W41). (1) Provides technical assistance to public, nonprofit, and other public service organizations and agencies on community environmental management, housing and environmental planning, community sanitation, recreation sanitation, and disease vector control; (2) conducts and participates in research investigations and demonstrations to control environmental hazards to health; (3) conducts and participates in studies and demonstrations to establish data for formulating criteria and standards; (4) establishes criteria and recommends standards for health-related codes, ordinances, and community environmental planning; (5) provides technical review of the pertinent portions of comprehensive health plans and project applications under the Partnership for Health Amendments, Public Law 89-749; (6) provides technical assistance to and evaluates urban rat control projects funded under section 314(e) of the PHS Act; and (7) identifies the need for and assists in the development of informational material, demonstration tools, visual aids, training courses, field training, and demonstrations in environmental management techniques.

Division of Planning and Standards (3W51). (1) Establishes criteria and recommends standards for the safety aspects of health-related codes, ordinances, and community environmental planning; (2) conducts and supports research and development and conducts control programs to reduce injuries caused by environmental situations, human behavior, and community environments; (3) establishes a national resource for statistical data on accidental injuries and conducts epidemiological studies and surveys; (4) establishes priorities and determines utilization of resources; (5) identifies the need for and assists States, local communities, and others in the development of informational material, demonstration tools, visual aids, training courses, field training, and demonstrations in injury control; (6) provides technical advice and assistance in administering the provisions of the Lead-Based Paint Poisoning Prevention Act of 1971, Public Law 91-695; and (7) maintains liaison with national, State, and local agencies and organizations, industry, and others concerned with the control of injuries.

Division of Area Ecologic Centers (3W61). Plans, develops, and operates a series of ecologic centers committed to providing research, development, and technical assistance on the health aspects of human ecology to the population served by the individual centers.

Dated: June 22, 1971.

ELLIOT L. RICHARDSON,
Secretary.

[FR Doc. 71-9248 Filed 6-29-71;8:52 am]

ATOMIC ENERGY COMMISSION

[Dockets Nos. 50-342, 50-343]

CONSOLIDATED EDISON CO. OF NEW YORK, INC.

Notice of Receipt of Application for Construction Permits and Facility Licenses; Time for Submission of Views on Antitrust Matters

The Consolidated Edison Co. of New York, Inc., 4 Irving Place, New York, NY 10003, pursuant to the Atomic Energy Act of 1954, as amended, has filed an application, dated June 3, 1969, for authorization to construct and operate a two-unit nuclear power station at its 130-acre site on the east side of the Hudson River in the town of Cortlandt, Westchester County, N.Y. The site is contiguous to the company's Indian Point site at Buchanan.

The proposed nuclear power station will consist of two identical boiling water nuclear reactors, designated by the applicant as Verplanck Nuclear Facility Units No. 1 and No. 2, each of which will have a net electrical output of approximately 1,115 megawatts derived from a thermal capacity of approximately 3,293 megawatts.

Any person who wishes to have his views on the antitrust aspects of the application presented to the Attorney General for consideration shall submit such views to the Commission within sixty (60) days after June 30, 1971.

A copy of the application and the amendments thereto are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Hendrik Hudson High School Library, Albany Post Road, Montrose, NY.

Dated at Bethesda, Md., this 16th day of June 1971.

For the Atomic Energy Commission.

PETER A. MORRIS,
Director,
Division of Reactor Licensing.

[FR Doc.71-8697 Filed 6-29-71;8:45 am]

AMCHITKA ISLAND

Trespassing on Commission Property

Notice is hereby given that the Atomic Energy Commission, pursuant to section 229 of the Atomic Energy Act of 1954, as amended, as implemented by 10 CFR Part 160 published in the FEDERAL REGISTER on August 16, 1963 (28 F.R. 8400), prohibits the unauthorized entry, as provided in 10 CFR 160.3, and the unauthorized introduction of weapons or dangerous materials, as provided in 10 CFR 160.4, into or upon the Amchitka test area, said area consisting of the whole of Amchitka Island, located in the Rat Island group of the western Aleutian Islands (at latitude 51.5° N., longitude 179° E.), approximately 1,340 miles west-southwest of Anchorage, Alaska, and 2,500 miles west-northwest of Seattle, Wash.

Notices stating the pertinent prohibitions of 10 CFR 160.3 and 160.4 and penalties of 10 CFR 160.5 will be posted at all entrances of said tract and at intervals along its perimeter as provided in 10 CFR 160.6.

Dated at Germantown, Md., this 24th day of June, 1971.

R. E. HOLLINGSWORTH,
General Manager.

[FR Doc.71-9223 Filed 6-29-71;8:48 am]

CANNIKIN

Notice of Availability of the General Manager's Final Environmental Statement

Notice is hereby given that a document entitled "Final Environmental Statement—CANNIKIN," issued pursuant to the Atomic Energy Commission's implementation of section 102(2)(C) of the National Environmental Policy Act of 1969 is being placed in the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20545, and in the Commission's Nevada Operations Office, Post Office Box 14100, Las Vegas, NV 89114; the San Francisco Operations Office, 2111 Bancroft Way, Berkeley, CA 94704; the Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439; and the Alaska Information Office, Royal Inn, Suite 606, 720 West 5th

Street, Anchorage, AL 99501. CANNIKIN is an underground nuclear test of less than 5 megatons to be fired underground on Amchitka Island, Alaska, in the autumn of 1971. Included with the Statement are the comments received from Federal and State agencies on the draft statement of which notice of availability was published in the FEDERAL REGISTER, Volume 35, No. 120, dated June 20, 1970 and the AEC's response to these comments.

The Environmental Statement, including the comments and AEC's responses, will be furnished upon request addressed to the Assistant General Manager for Operations, U.S. Atomic Energy Commission, Washington, D.C. 20545.

Dated at Washington, D.C., this 23d day of June 1971.

For the Atomic Energy Commission.

W. B. McCOOL,
Secretary of the Commission.

[FR Doc.71-9184 Filed 6-29-71;8:45 am]

[Dockets Nos. 50-369, 50-370]

DUKE POWER CO.

Notice of Hearing on Application for Construction Permits

Pursuant to the Atomic Energy Act of 1954, as amended (the Act), and the regulations in Title 10, Code of Federal Regulations, Part 50, "Licensing of Production and Utilization Facilities," and Part 2, "Rules of Practice," notice is hereby given that a hearing will be held, at a time and place to be set in the future by an Atomic Safety and Licensing Board (Board), to consider the application filed under the Act by the Duke Power Co. (the applicant), for construction permits for two pressurized water nuclear reactors designated as the William B. McGuire Nuclear Station, Units 1 and 2 (the facilities), each of which is designed for initial operation at approximately 3,411 thermal megawatts with a net electrical output of approximately 1,180 megawatts. The proposed facilities are to be located at a site on the shore of Lake Norman, approximately 17 miles north-northwest of Charlotte, N.C., and is immediately east of Duke Power Co.'s Cowan Ford Hydroelectric Station. The hearing will be held in the vicinity of the site of the proposed facilities.

The Board will be designated by the Atomic Energy Commission (Commission). Notice as to its membership will be published in the FEDERAL REGISTER.

The date and place of a prehearing conference will be set by the Board. The date and place of the hearing will be set at or after the prehearing conference. In setting these dates due regard shall be had for the convenience and necessity of the parties or their representatives, as well as of the Board members. Notices as to the dates and places of the prehearing conference and the hearing will be published in the FEDERAL REGISTER.

Upon receipt of a report by the Advisory Committee on Reactor Safeguards and upon completion of a favorable Safety Evaluation of the application by the AEC regulatory staff, the Director of Regulation will consider making affirmative findings on Items Nos. 1-3 and a negative finding on Item 4 specified below as the basis for the issuance of construction permits to the applicant.

1. Whether in accordance with the provision of 10 CFR 50.35(a).

(a) The applicant has described the proposed design of the facilities including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components incorporated therein for the protection of the health and safety of the public;

(b) Such further technical or design information as may be required to complete the safety analysis and which can reasonably be left for later consideration, will be supplied in the final safety analysis report;

(c) Safety features or components, if any, which require research and development have been described by the applicant and the applicant has identified, and there will be conducted, a research and development program reasonably designed to resolve any safety questions associated with such features or components; and

(d) On the basis of the foregoing, there is reasonable assurance that (i) such safety questions will be satisfactorily resolved at or before the latest date stated in the application for completion of construction of the proposed facilities, and (ii) taking into consideration the site criteria contained in 10 CFR Part 100, the proposed facilities can be constructed and operated at the proposed location without undue risk to the health and safety of the public.

2. Whether the applicant is technically qualified to design and construct the proposed facilities;

3. Whether the applicant is financially qualified to design and construct the proposed facilities; and

4. Whether the issuance of permits for construction of the facilities will be inimical to the common defense and security or to the health and safety of the public.

In the event that this proceeding is not a contested proceeding, as defined by 10 CFR 2.4 of the Commission's rules of practice, the Board will, without conducting a de novo evaluation of the application, consider the issues of whether the application and the record of the proceeding contain sufficient information, and the review by the Commission's regulatory staff has been adequate, to support the findings proposed to be made and the construction permits proposed to be issued by the Director of Regulation.

In the event that this proceeding becomes a contested proceeding, the Board will consider and initially decide, as the issues in this proceeding, Item Nos. 1 through 4 above as the basis for determining whether construction permits should be issued to the applicant.

In addition, any party may, in accordance with paragraph 11 of appendix D of 10 CFR Part 50, raise as an issue in the proceeding whether the issuance of the permits would be likely to result in a significant, adverse effect on the environment. If such a result were indicated, in accordance with the declaration of national policy expressed in the National Environmental Policy Act of 1969, the Board will give consideration to the need for the imposition of requirements for the preservation of environmental values consistent with other essential considerations of national policy, including the need to meet on a timely basis requirements for electrical power in the affected region. These additional issues do not include (i) radiological effects (since such effects are within the four numbered items set forth above) or (ii) matters of water quality covered by section 21(b) of the Federal Water Pollution Control Act. If any party raises any such issue, the Board will make findings of fact on, and resolve, the matters in controversy among the parties with regard to those issues. With respect to those aspects of environmental quality for which environmental quality standards and requirements have been established by authorized Federal, State, and regional agencies, proof that the applicant is equipped to observe and agrees to observe such standards and requirements will be considered a satisfactory showing that there will not be a significant, adverse effect on the environment. Certification by the appropriate agency that there is reasonable assurance that the applicant for the permits or licenses will observe such standards and requirements will be considered dispositive for this purpose.

As they become available, the application, the proposed construction permits, the applicant's summary of the application, the report of the Commission's Advisory Committee on Reactor Safeguards (ACRS), and the Safety Evaluation by the Commission's regulatory staff, the applicant's Environmental Report, the Commission's Detailed Statement on Environmental Considerations, and the transcripts of the prehearing conference and of the hearing, will be placed in the Commission's Public Document Room, 1717 H Street NW., Washington, DC, where they will be available for inspection by members of the public. Copies of those documents will also be made available at the Public Library of Charlotte and Mecklenburg Counties, 310 North Tryon Street, Charlotte, NC, for inspection by members or the public between the hours of 9 a.m. and 9 p.m. on weekdays, 9 a.m. and 6 p.m. on Saturdays, and 2 p.m. and 6 p.m. on Sundays. Copies of the proposed construction permits, the ACRS report, the regulatory staff's Safety Evaluation and the Commission's Detailed Statement on Environmental Considerations may be obtained, when available, by request to the Director of the Division of Reactor Licensing, U.S. Atomic Energy Commission, Washington, D.C. 20545.

Any person who wishes to make an oral or written statement in this proceeding setting forth his position on the issues specified, but who does not wish to file a petition for leave to intervene, may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.715 of the Commission's rules of practice. Limited appearances will be permitted at the time of the hearing in the discretion of the Board, within such limits and on such conditions as may be fixed by the Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, not later than thirty (30) days from the date of publication of this notice in the FEDERAL REGISTER. Any person whose interest may be affected by the proceeding, who does not wish to make a limited appearance and who wishes to participate as a party in the proceeding must file a petition for leave to intervene. Petitions for leave to intervene, pursuant to the provisions of 10 CFR 2.714 of the Commission's rules of practice, must be received in the Office of the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Branch, or the Commission's Public Document Room, 1717 H Street NW., Washington, DC, not later than thirty (30) days from the date of publication of this notice in the FEDERAL REGISTER. The petition shall set forth the interest of the petitioner in the proceeding, how that interest may be affected by Commission action, and the contentions of the petitioner in reasonably specific detail. A petition which sets forth contentions relating only to matters outside the Commission's jurisdiction will be denied. A petition for leave to intervene which is not timely will be denied unless, in accordance with 10 CFR 2.714, the petitioner shows good cause for failure to file it on time.

A person permitted to intervene becomes a party to the proceeding, and has all the rights of the applicant and the regulatory staff to participate fully in the conduct of the hearing. For example, he may examine and cross-examine witnesses. A person permitted to make a limited appearance does not become a party, but may state his position and raise questions which he would like to have answered to the extent that the questions are within the scope of the hearing as specified in the issues set out above. A member of the public does not have the right to participate unless he has been granted the right to intervene as a party or the right of limited appearance.

An answer to this notice, pursuant to the provisions of 10 CFR 2.705 of the Commission's rules of practice, must be filed by the applicant not later than twenty (20) days from the date of publication of this notice in the FEDERAL REGISTER. Papers required to be filed in this proceeding may be filed by mail or telegram addressed to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545. Attention: Chief, Public Proceedings Branch, or may be filed by delivery to the Commission's Public Document Room, 1717 H Street NW., Washington, DC.

Pending further order of the Board, parties are required to file, pursuant to the provisions of 10 CFR 2.708 of the Commission's rules of practice, an original and 20 conformed copies of each such paper with the Commission.

With respect to this proceeding, the Commission has delegated to the Atomic Safety and Licensing Appeal Board the authority and the review function which would otherwise be exercised and performed by the Commission. The Commission has established the Appeal Board pursuant to 10 CFR 2.785 of the Commission's rules of practice, and has made the delegation pursuant to paragraph (a) (1) of this section. The Appeal Board is composed of the Chairman and Vice-Chairman of the Atomic Safety and Licensing Board Panel, with a third member to be designated by the Commission.

A "Notice of Receipt of Application for Construction Permit and Operating License; Time for Submission of Views on Antitrust Matter" was published in the FEDERAL REGISTER on March 11, 18, 25, and April 1, 1971. The notice afforded an opportunity for any person wishing to have his views on the antitrust aspects of the application presented to the Attorney General for consideration to submit such views to the Commission within 60 days after March 11, 1971.

Dated at Washington, D.C., this 25th day of June 1971.

UNITED STATES ATOMIC ENERGY COMMISSION,
W. B. MCCOOL,
Secretary of the Commission.

[FR Doc.71-9265 Filed 6-29-71;8:53 am]

CIVIL AERONAUTICS BOARD

[Docket No. 23428, etc.; Order 71-6-120]

EASTERN AIR LINES, INC.

Order Dismissing Complaints

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 24th day of June 1971.

By tariff revisions[1] marked to become effective July 1, 1971, Eastern Air Lines, Inc. (Eastern) proposes to add provisions for conditional reservations for transportation in the rear compartment of combination aircraft between points within Continental United States, to Canada, Puerto Rico, and the Virgin Islands.[2] The rule, which is marked to expire March 31, 1972, is essentially as follows:

When a passenger seeks a reservation on a flight he will be informed if conditional reservation space is available, and if he wishes he may purchase a conditional reservation ticket at the applicable fare and standby for the flight. If he cannot be accommodated on that flight,[3] Eastern will tender the passenger compensation in the amount of the value of the remaining flight coupon(s) to the first point of stopover or interline connecting point, or, if there is no such point, to the passenger's destination. Eastern will also provide transportation at no extra charge on the next available seat.

The purpose of the rule is to ameliorate the no-show problem. Eastern asserts that its passenger surveys indicate that the major causes of no-shows—personal problems or changes in travel plans—are factors over which the airline industry can exercise very little control, and as such must be considered an inherent part of the reservation service. The carrier further asserts that despite repeated efforts to reduce no-shows to a manageable level, they still account for a sizeable level of activity which produces a significant lessening of available capacity and a loss of revenues.[4] In support of its proposal, Eastern contends that all passengers will benefit since it will reduce further upward pressure on fare level by enabling the carrier to obtain better utilization of its seats. It will also enable more passengers to fly on the peak holiday travel day of their choice by making seats available on flights booked "full," but not in fact full due to the high incidence of multiple bookings and no-shows at such times.

Based on 1970 experience, Eastern believes that seats made available for conditional reservation sales could be allowed to reach a level of 5.3 percent of aircraft capacity. This would result in potential revenue gain of $16.4 million with an associated level of compensation to unaccommodated passengers of $400,000.

The Aviation Consumer Action Project (ACAP), Allegheny Airlines, Inc., American Airlines, Inc., Delta Air Lines, Inc., National Airlines, Inc., and Northeast Airlines, Inc., have filed complaints against Eastern's proposal and request its suspension and investigation.[5] The

[1] Revisions to Airline Tariff Publishers, Inc., Agent, Tariff CAB No. 142 and Eastern Air Lines, Inc., Tariff CAB No. 58.

[2] Conditional reservations would not be accepted for travel on the Air Shuttle nor available to youth and military standby passengers, group-fare passengers, Visit U.S.A.-fare passengers, and passengers traveling in connection with international transportation.

[3] If the carrier is unable to accommodate the passenger in the rear compartment he will be accommodated in the forward compartment (subject to space availability) at no additional cost.

[4] Eastern claims that during 1970 its reserved seat boardings on peak demand flights amounted to 87 percent of bookings held at departure time.

[5] Braniff Airways, Inc., submitted a letter to the Board indicating that it wishes to associate itself with the allegations contained in other complaints about the conditional reservation rule. Northwest Airlines, Inc., has filed an answer in support of the complaints. Northwest's filing is in essence a late-filed complaint, and it will not be considered. The proper time for filing complaints is on or before the complaint date specified in the rules.

complainants allege, inter alia, that the proposal (1) violates section 403(b) of the Act by granting free transportation on a subsequent flight when Eastern is unable to accommodate a passenger on a flight for which he holds a conditional reservation (2) discriminates against other standby passengers and (3) will encourage passengers to eschew seeking available confirmed reservations on later flights, for the chance of receiving free transportation. Several complainants argue that the proposal is at odds with the denied boarding compensation rule (Part 250 of the Board's Economic Regulations), since Eastern's proposal could entail free transportation within 2 hours after the flight on which a conditional reservation was held. The denied boarding compensation rule, on the other hand, provides that the passenger is not eligible for compensation if accommodated on a flight which arrives at the passenger's destination no later than 2 hours after the flight on which a confirmed reservation was held but boarding was denied.

In answer to the complaints Eastern asserts that persons provided reduced-rate transportation pursuant to tariffs need not be named in section 403(b) of the Act, and that a tariff rule such as that proposed is therefore not unlawful. The carrier contends that it has no intention of setting the level on conditional reservation passengers so high in comparison to historic no-show experience that conditional reservation passengers won't be accommodated on the original flight, and that there will always be a substantial cushion between no-show experience and the booking level of conditional reservations.

Upon consideration of all relevant matters, the Board finds that the complaints do not set forth sufficient facts to warrant investigation of the proposal and the requests therefor, and consequently the requests for suspension will be denied, and the complaints dismissed.

For a number of years, the no-show passenger has been a vexing problem for which no adequate solution has yet been devised. Eastern has proposed a novel method of dealing with the problem which in our judgment has sufficient promise as to warrant the experimentation for the 9-month trial period proposed by Eastern. If successful, Eastern's proposal should tend on the one hand to reduce the number of denied boardings to holders of confirmed reservations, while on the other hand reduce the number of empty seats operated on peak flights related to passenger no-shows. While the complainants have raised a number of practical problems with the proposal, we believe that the workability of the proposal can only be ascertained through actual experimentation. Nor are we prepared to state at this juncture that Eastern's proposal is violative of the Act or inconsistent with the Board's regulations. As Eastern notes, section 403(b) does not prohibit the furnishing of free transportation to persons other than those named therein. Accordingly, the legality of the proposal must be tested under the standards of reasonableness and freedom from discrimination of section 404, and we are not persuaded that the proposal violates these standards. Nor is the plan inconsistent with Part 250, since the latter regulation deals solely with persons holding confirmed reservations.

While we are permitting experimentation as worthwhile and in the overall public interest, there are as indicated above certain practical problems and unknowns which may, at the least, cause some confusion. For example, there is the matter of boarding priorities, on which the tariff is silent. However, Eastern has indicated that as a matter of company policy it will board conditional reservation passengers ahead of all standby traffic. Likewise, the tariff contains no provisions as to the manner in which interline bookings will be handled. We believe it would insure better understanding of its rights by the traveling public if these matters were clearly set forth in the tariff.

The no-show problem is essentially an industry problem, and it would be most desirable in our opinion that it be dealt with on a uniform basis. For this reason, and in light of the procedural unknowns mentioned above, we believe that industry-wide discussions would be useful and indeed several carriers have so indicated in their complaints. Accordingly, the Board will entertain applications for such discussions should Eastern and other carriers elect to pursue such a course.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, and 1002 thereof,

It is ordered, That:

1. The complaints of the Aviation Consumer Action Project in Docket 23428, Allegheny Airlines, Inc., in Docket 23454, American Airlines, Inc., in Docket 23461, Delta Air Lines, Inc., in Docket 23462, National Airlines, Inc., in Docket 23466, and Northeast Airlines, Inc., in Docket 23458 are hereby dismissed; and

2. Copies of this order be served upon the Aviation Consumer Action Project, Allegheny Airlines, Inc., American Airlines, Inc., Delta Air Lines, Inc., National Airlines, Inc., and Northeast Airlines, Inc.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK, *Secretary.*

[FR Doc.71-9244 Filed 6-29-71;8:52 am]

CIVIL SERVICE COMMISSION

DEPARTMENT OF COMMERCE

Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of Commerce to fill by noncareer executive assignment in the excepted service the position of Deputy Assistant Director for Government Program, Office of Minority Business Enterprise, Government Programs Division.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY, *Executive Assistant to the Commissioners.*

[FR Doc.71-9198 Filed 6-29-71;8:47 am]

DEPARTMENT OF THE INTERIOR

Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of the Interior to fill by noncareer executive assignment in the excepted service the position of Special Assistant to the Secretary, Office of the Secretary, Secretary's Immediate Office.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY, *Executive Assistant to the Commissioners.*

[FR Doc.71-9199 Filed 6-29-71;8:47 am]

FEDERAL COMMUNICATIONS COMMISSION

[Dockets Nos. 19157-19159; FCC 71R-200]

PETTIT BROADCASTING CO. ET AL.

Memorandum Opinion and Order Enlarging Issues

In regards applications of Claud M. Pettit and Margaret E. Pettit, doing business as Pettit Broadcasting Co., Brush, Colo., Docket No. 19157, File No. BP-18125; A. V. Bamford, Colorado Springs, Colo., Docket No. 19158, File No. BP-18467; Enid C. Pepperd and Dona B. West, doing business as Brocade Broadcasting Co., Boulder, Colo., Docket No. 19159, File No. BP-18470; for construction permits.

1. This proceeding involves the mutually exclusive applications of Claud M. Pettit and Margaret E. Pettit, doing business as Pettit Broadcasting Co.; A. V. Bamford (Bamford); and Enid C. Pepperd and Dona B. West, doing business as Brocade Broadcasting Co. for construction permits for new standard broadcast stations at Brush, Colorado Springs, and Boulder, Colo., respectively. By order, FCC 71-189, 27 FCC 2d 985, released March 9, 1971, the Commission designated the proceeding for hearing, specifying, inter alia, a limited financial issue with respect to the application of Bamford. Presently before the Review Board is a petition to enlarge issues, filed

March 25, 1971, by the Broadcast Bureau,[1] which seeks addition of misrepresentation and Rule 1.65 issues with respect to Bamford, as well as expansion of the existing financial issue.[2]

2. In support of its petition, the Bureau states that on February 25, 1969, Bamford filed his Colorado Springs application. Therein, the Bureau alleges, Bamford proposed to raise the approximately $159,000 he would require to effectuate his proposal from personal resources, and submitted a supporting balance sheet dated January 3, 1969, which showed a net worth of $234,825.36. On January 30, 1970, the Bureau continues, an application for a new FM facility at Corpus Christi, Tex., was filed, with Bamford listed as 50 percent partner and committed to supply up to $50,000; in a supporting balance sheet, dated October 1, 1969, Bamford listed an increased net worth of approximately $240,000. Thus, at the time of the filing of the Corpus Christi application, petitioner avers, Bamford had undertaken a total commitment to the two applications of $209,000 to be derived from a listed net worth of $240,000. However, the Bureau alleges that stock prices listed on Bamford's October 1, 1969, balance sheet do not comport with market quotations on that date which were, in fact, $4,000 lower. Further, the Bureau points out, both the Colorado Springs and the Corpus Christi balance sheets list the book value of KEPO Broadcasting Co., Inc., licensee of Stations KBER and KBER-FM, San Antonio, as $103,-898.79. However, the Bureau alleges, the latest balance sheet (March 1968) in the KBER license file shows a book value for the corporation of $76,980, or approximately $27,000 less than that stated on Bamford's balance sheets. Furthermore, the Bureau alleges that Station KBER operated at a loss in 1969. Also, the Bureau notes that, by amendment to the Corpus Christi application, filed January 4, 1971 (and granted January 26, 1971, FCC 71M-130), Bamford became individual party applicant and his financial commitment was accordingly increased to $86,400. Thus, the Bureau submits, Bamford's full obligation to the two proposals now totals over $245,000 whereas even his inflated October 1, 1969, balance sheet shows a lesser net worth. The Bureau points out that, although Bamford amended his Colorado Springs application on July 22, 1970, and January 27, 1971, to change transmitter sites, he has not amended his financial proposal. Nor, the Bureau alleges, did Bamford indicate in the Corpus Christi application that he had a $159,000 obligation to the subject Colorado Springs application. The Bureau further alleges that Bamford has not amended his Colorado Springs proposal to report his original financial commitment to the Corpus Christi proposal or to report his subsequent assumption of the entire financial burden in that proceeding. Based upon these allegations, it is the Bureau's position that: (1) The Commission was misled in passing upon Bamford's financial qualifications in both the Corpus Christi and Colorado Springs applications because of Bamford's failure to fully disclose his other financial commitments; (2) Bamford filed a balance sheet in the Corpus Christi proceeding containing material inaccuracies; and (3) Bamford has failed to amend his Colorado Springs application so as to reflect substantial and significant changes regarding his Corpus Christi application pursuant to Rule 1.65.

3. In opposition, Bamford, asserts that the Bureau's petition is speculative and ignores the following pertinent facts: (1) That on January 30, 1970, Bamford filed an amendment to the subject Colorado Springs application to reflect the filing of the Corpus Christi application; (2) that the Corpus Christi application disclosed the Colorado Springs application; and (3) that a Rule 1.65 notification was submitted to the Commission on January 27, 1971, reporting that the Corpus Christi applications had been amended to make Bamford sole party applicant. Thus, Bamford declares that full and complete disclosure concerning both applications has been made. Beyond this, Bamford points out that the Bureau's allegations are not supported by an affidavit. In any case, Bamford alleges, the Commission was not misled in designating the subject application for hearing. That is, Bamford asserts, his financial obligations to his Corpus Christi proposal will only come into being when and if that application is granted; furthermore, Bamford claims, a full financial issue has already been designated in the instant proceeding which would encompass inquiry into any other financial obligation Bamford may have. Regarding his balance sheets, Bamford asserts that his San Antonio AM-FM broadcast station grossed nearly $300,000 last year and is "conservatively valued" at between $600,000 and $750,000. A supporting profit and loss statement is submitted. Regarding the reported value of his stock, Bamford alleges that his October 1, 1969, balance sheet was merely an "up-date" of his January 31, 1969, balance sheet; that the prices were not rechecked and Bamford did not know they had changed; and that the fact that the number and identity of the shares were reported indicates that there was no attempt to conceal anything. Bamford further asserts that he did not amend his cost plan when he changed transmitter sites because no significant cost changes occurred; in fact, Bamford states, the second site change returned the station to its original site, for which cost information had already been furnished. Bamford states that his one major asset, ownership of Stations KBER and KBER-FM, is not liquid in nature, and concedes that he has been unable thus far to furnish the Commission with definite liquidity from which to effectuate his Corpus Christi and Colorado Springs proposals. However, Bamford concludes, full financial issues have been designated in those proceedings to account for these problems, and no concealment or Rule 1.65 issue is warranted.

4. In reply, the Bureau explains that the thrust of its petition was that neither application's financial plan revealed the financial commitment to the other application. Regarding Bamford's claim that the subject application was amended on January 27, 1971, to indicate that Bamford had become sole applicant in Corpus Christi, the Bureau submits that the only amendment filed under that date related to a change in transmitter site which in fact caused Bamford's total commitment to exceed his net worth. The Bureau rejects Bamford's argument that his FM obligation did not have to be reported in this proceeding because of the contingency of a grant and argues that where an applicant relies on identical assets in prosecuting separate applications, the proposals must be considered together in assessing the applicant's financial fitness, citing Sawnee Broadcasting Co., 3 FCC 2d 461, 7 RR 2d 405 (1966); Nelson Broadcasting Co., 64R-505, 4 RR 2d 87. The Bureau also challenges Bamford's disclaimers regarding knowledge of the value of his stock, and contends that the severity of the decline in the stock market between May and July 1969 was notorious. To buttress its point, the Bureau cites statistics showing that the Dow Jones averages for industrials were 133 points lower on September 30, 1969, than on January 31, 1969, and the average for 65 stocks was off 65 points. By January 30, 1970, the day Bamford filed his Corpus Christi application, the averages were still lower, the Bureau submits, and, furthermore, the total value of Bamford's stock had declined to $8,176.50, or to 40 percent below the stated value on the October 1, 1969, balance sheet. Bamford's change in transmitter sites also "raises more questions than it resolves", the Bureau argues, because Bamford has returned to a site originally alleged to have become unavailable and thus new lease terms possibly affecting Bamford's financial qualifications must be in effect. The Bureau concludes that Bamford has in effect conceded his present inability to finance his proposals and was probably aware of this at the time the Corpus Christi application was filed, thus raising questions of abuse of Commission processes.[3]

5. The Review Board agrees with the Broadcast Bureau that a substantial question of misrepresentation has been

[1] Related pleadings before the Board are: (a) Erratum, filed Mar. 31, 1971, by the Bureau; (b) opposition, filed Apr. 9, 1971, by Bamford; and (c) reply, filed May 17, 1971, by the Bureau.

[2] The issue now encompasses a determination of whether Bamford has available sufficient additional funds to construct and operate its proposed station for 1 year without reliance on revenues.

[3] The Bureau, however, does not specifically request an abuse of process issue and, in any event, such a request presented in a reply pleading could not properly be considered by the Board.

raised and that an appropriate issue is warranted. Although Bamford attaches to his pleading a balance sheet for KEPO Brodcasting Co., Inc., dated December 31, 1970, which shows a net worth substantially comporting with the value for KEPO listed on the balance sheets in both proceedings, no adequate explanation has been offered for the failure to accurately report the reduced value of Bamford's stock on the Corpus Christi balance sheet. Bamford's claim that the October 1, 1969, statement was a mere "up-date" of the January 31, 1969, balance sheet is belied by the description "current value" which accompanies the questioned stock listings. An equally serious and unrebutted allegation is that in neither proceeding before the Commission in which Bamford is an applicant has he provided a full and accurate picture of his financial obligations. Bamford's argument in mitigation that his Corpus Christi obligations only assume relevance in the event of a grant is, as the Bureau points out, without substance. Therefore, an issue is required. We are also of the view that the circumstances herein raise a serious question as to whether the information furnished in the subject application is substantially accurate and complete in all significant respects, as required by Rule 1.65. Although our perusal of the public docket discloses that on February 9, 1971, Bamford notified the Commission that he was now an individual party applicant in the Corpus Christi proceeding, we do not believe that this changes the situation with respect to the nondisclosures concerning Bamford's initial and subsequent financial commitments to that application. Bamford's contention that the already designated financial issue in this case obviates the need for an issue only ignores the fact that an applicant's obligations under Rule 1.65 are independent of the existence or nonexistence of a particular hearing issue. These grounds considered, an appropriate issue will be added. *Cf.* Radio Stations KNNA and KRKT, 11 FCC 2d 364, 12 RR 2d 91 (1968). Finally, although the Bureau's allegations that Bamford does not show sufficient net worth from which to finance both of his proposed stations, coupled with Bamford's concession that he now has no concrete plan for their financial effectuation, clearly raise substantial questions as to his ability to finance the instant proposal, we believe that no expansion of the existing financial issue is required. The Commission, in the Corpus Christi proceeding, designated a full financial inquiry; and, in this proceeding, the Commission noted that Bamford only showed $18,000 in liquid assets and thus specified an inquiry as to how he will obtain sufficient additional funds to construct and operate his proposed facility. It appears, therefore, that the questions relating to Bamford's needs with which the Bureau is concerned may be fully examined at hearing and that no issue in line with Nelson Broadcasting Co., supra, is necessary.[4]

6. *Accordingly, it is ordered,* That the petition to enlarge issues, filed March 25, 1971, by the Boardcast Bureau is, granted to the extent indicated below and is denied in all other respects; and

7. *It is further ordered,* That the issues in this proceeding are enlarged to include the following issues:

(a) To determine whether A. V. Bamford in applications and related material filed with the Commission has made false and misleading statements and/or was lacking in candor.

(b) To determine whether A. V. Bamford failed to report substantial and significant changes within 30 days as required by Rule 1.65.

(c) To determine the effect of the evidence adduced pursuant to the issues herein upon the requisite and/or comparative qualifications of A. V. Bamford to be a Commission licensee.

8. *It is further ordered,* That the burden of proceeding with the introduction of evidence under the issues herein added shall be upon the Broadcast Bureau and the burden of proof thereon shall be upon A. V. Bamford.

Adopted: June 21, 1971.

Released: June 23, 1971.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.71-9250 Filed 6-29-71;8:53 am]

[Docket No. 19267; FCC 71-651]

WESTERN UNION TELEGRAPH CO.

Memorandum Opinion and Order Designating Application for Hearing on Stated Issues

In regard application of the Western Union Telegraph Co., consolidation of 22 public telegraph offices into single Public Message Center, New York, N.Y., Docket No. 19267, File No. TD-17972.

1. The Commission has before it for consideration (1) an application (TD-17972) filed on March 22, 1971, by the Western Union Telegraph Co. (hereafter "Western Union") for authority to discontinue its Class 1[1] and associated 21 branch offices in New York City and to establish substitute facilities therefor; (2) numerous protests thereto including a petition to deny; and (3) responses of Western Union. The offices in question, serving the area of Manhattan south of 24th Street, and their addresses, are listed below:

Class 1	166 West Broadway.
AX	2 Broadway.
BM	423 Broadway.
BW	11 Broadway.
BY	17 Barclay Street.
CH	85 John Street.
CS	70 Pine Street.
DN	5 DeBrosses Street.
EQ	89 Cedar Street.
FW	90 West Street.
FX	44 Beaver Street.
GT	89A Worth Street.
JB	1 West Third Street.
JT	209 Varick Street.
MP	71 Broadway.
NF	25 West 14 Street.
NH	371 Grand Street.
NJ	34 Eighth Street.
NW	40 Wall Street.
SQ	36A Third Avenue.
UJ	75A New Street.
VU	130 Nassau.

The Class 1 office at 166 West Broadway and UJ branch office at 75A New Street are open 24 hours per day, 7 days a week; the others observe normal business hours of 9 a.m. to 5 p.m., or in some instances to 6 p.m. or later, Monday through Friday.

2. In lieu of these offices, Western Union proposes to establish a single public message center (hereafter "PMC") to be located near the load center of the affected area. The exact location has not been finally determined, but the company contemplates establishing the consolidated office at or near the corner of Broadway and Maiden Lane. Briefly, the company contends that the establishment of a single office and the centralization of operating forces will overcome many of the service, staffing, and facility problems now existing at the smaller and diverse offices, and would result in greatly improved service to the public. It would be equipped to provide all presently available services as well as any future offerings which may be initiated. The proposal envisions use of computer-switching for traffic destined to lower Manhattan, which will ultimately enable all major cities to switch traffic directly to the consolidated office, bypassing the reperforator system and present manual terminal switching operation at the New York City relay center.

3. Western Union contends that with the decline over the years in public use of the 22 public offices proposed for discontinuance, there no longer exists a need for the multiple office locations in the area covered by the application.[2] The current traffic volumes appear to vary widely between offices, ranging during the month of February 1971 from a low

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[4] The absence of an affidavit accompanying the Bureau's petition is not fatal since the merits of its position relate to matters already of record such as Bamford's balance sheets. See RKO General, Inc. (WNAC-TV), FCC 71R-180, —— FCC 2d —— RR 2d ——, released June 7, 1971; Nelson Broadcasting Co., supra.

[1] Located in lobby of Western Union headquarters building at 166 West Broadway and designated as the main office for the city, although its functions are essentially those of a branch office.

[2] The company provides no figures showing decline in traffic volume at these specific offices, but cites an aggregate decline at all New York City branch offices between January 1940 and January 1971 of 81.5 percent, from 2,134,000 to 396,000 messages. This is attributed to changes in patrons' requirements, methods of filing messages and changing communication usage patterns.

of four messages per day at VU office to a high of 1,421 at CS office. Eight of the offices handled fewer than 40 messages per day during the 6-month period ending February 28, 1971. The distances between the branch offices and the prospective location of the proposed consolidated office range from about one-tenth mile to more than 2 miles, with the median about one-half mile. The company states that over 80 percent of the present counter acceptances and messenger pickups are within four-tenths mile of the proposed PMC.

4. The company has indicated that it plans further similar modifications in the New York City area.

5. A number of protests have been received from individual members of the public and business and civic organizations directed against the application in toto or the proposed discontinuance of particular offices. The Public Service Commission of New York has evidenced interest in the matter and has requested certain information concerning the proposal. Western Union International (hereafter "WUI") has expressed concern as to the prospective effects of the proposed closures upon international record carrier services, and wishes to be considered as a party of interest in the matter.[3] Additionally, the Communications Workers of America (hereafter "CWA") has requested that a public hearing on the proposal be held in lower Manhattan, in order that the Commission may have the benefit of the maximum possible number of comments from the business firms located in the area.

6. It is evident from data contained in the application that traffic volumes at certain of the 22 offices have declined to the point where continued existence of these particular offices may no longer be in the public interest. However, substantial traffic volumes are being handled at many of the other offices. The revenues from the group currently total about $186,000 per month with direct operating expense of approximately $67,000. No estimate is provided as to saving to the company, if any, which would result from the consolidation.

7. We are unable to determine from the facts contained in the application and related pleadings whether Western Union's overall proposal to serve the area of Manhattan south of 24th Street with a single public office would serve the public convenience and necessity. We will, therefore, set the application for hearing pursuant to the provisions of section 214 of the Communications Act of 1934, as amended, 47 U.S.C. section 214, such hearing to be held in Washington, D.C., and, to the extent necessary to permit participation of interested user groups, in New York City at a time and place to be designated in a subsequent order. As the company has indicated that its future planning contemplates the establishment of five or six additional public message centers to serve the New York metropolitan area, with concomitant discontinuance of existing public branch offices, consideration should be given by the parties to these plans as well as the instant application.

8. While we anticipate consideration of all of the company's plans for PMC service in New York City, we intend, nevertheless, to grant or deny the subject application on the basis of the record made herein. We also believe that in view of the overall policy questions presented by Western Union's plans for New York City, the matter can be most effectively resolved without separation of the trial staff of the Bureau, and that the public interest would be served by issuance of a Recommended Decision by the Chief, Common Carrier Bureau.

9. To assist in the resolution of the issues we will designate WUI and CWA as parties hereto. All protestants of record will be served with copies of this memorandum opinion and order and they, as well as other interested parties, may file petitions to intervene. Members of the public may appear and give testimony in this proceeding without giving any formal notice of an intent to do so. Finally, we specifically invite the participation of the New York State Public Service Commission and the city of New York as parties hereto.

10. We are not persuaded that the public interest requires consideration at this time of the very broad issues raised by WUI. We will, however, provide an issue herein inquiring into the effect of the instant application, and any similar applications for New York City on international telegraph service.

11. *Accordingly, it is ordered,* Pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. section 214, that the above-described application is set for hearing on the issues designated below:

(1) To determine the character, quality, scope, and adequacy of telegraph service, facilities, and personnel now provided through applicant's facilities sought to be discontinued in the above-described application;

(2) To determine the character, quality, scope, and adequacy of telegraph service, facilities, and personnel which would be provided if the application was granted;

(3) To determine, through a comparison of the character, quality, scope, and adequacy of the proposed service, facilities and personnel with those now being provided, the extent to which and respects in which the proposed change will result in reduction, impairment, extension, or improvement in service;

(4) To determine the nature and extent of the requirements of local telegraph users for telegraph service, and the ability of the proposed public message center to meet such requirements;

(5) To determine the extent of any savings and reduction in revenue requirements which will accrue to the applicant from the consolidation of its facilities as proposed in the application and the weight to be given this factor;

(6) To determine the extent to which the proposed consolidation may result in either a diminution or increase in the use of telegraph service;

(7) To determine how a grant of the application would affect the availability of money order service;

(8) To determine Western Union's plans and expectations with respect to future applications similar to the above-captioned one, and whether, in principle, such plans would, if implemented, serve the public convenience and necessity;

(9) To determine the effect (a) of Western Union's overall plans with respect for PMC services in New York City, and (b) in particular the effect of a grant of the foregoing application on the provision of international telegraph service;

(10) To determine whether grant of the foregoing application, in light of the evidence adduced pursuant to the foregoing issues will adversely affect the present or future public convenience and necessity.

It is further ordered, That the hearings in this proceeding shall be held in Washington, D.C., except that to the extent necessary to permit the participation of local users or user groups, such hearings shall be held in New York City;

It is further ordered, That the petition to deny filed by WUI is granted to the extent indicated herein, and in all other respects, is denied;

It is further ordered, That interested parties, apart from private citizens, wishing to avail themselves of the opportunity to be heard at the hearing may do so by filing with the Commission, no later than July 8, 1971, a written notice stating an intention to appear on the date set for the hearing and present evidence on the issues specified in this memorandum opinion and order;

It is further ordered, That interested parties may file with the Commission, no later than 30 days following the close of the record herein, comments, recommendations, or other such pleadings as well as reply pleadings;

It is further ordered, That Western Union International and Communications Workers of America are named parties hereto;

It is further ordered, That a copy of this memorandum opinion and order be served on all protestants of record;

It is further ordered, That the Hearing Examiner shall take appropriate measures to provide opportunity for all local witnesses to be heard in the hearings to be held in New York City and to this end shall arrange for due and adequate public notice of the time, place, and date of the hearings to be provided to the public;

It is further ordered, That the presiding examiner shall, upon close of the

[3] In its petition to deny WUI urges the Commission to deny the application or in the alternative to conduct a wide ranging hearing into Western Union's overall plans for public message service in New York City and other gateway cities.

record, certify the same to the Commission and that the Chief, Common Carrier Bureau, shall issue a recommended decision herein.

Adopted: June 16, 1971.

Released: June 23, 1971.

FEDERAL COMMUNICATIONS COMMISSION,[4]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.71-9251 Filed 6-29-71;8:53 am]

FEDERAL MARITIME COMMISSION

SAN FRANCISCO PORT COMMISSION AND CALIFORNIA STEVEDORE AND BALLAST CO.

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Mr. Edward L. David, Deputy Port Director (Maritime Operations), Port of San Francisco, San Francisco, Calif. 94111.

Agreement No. T-2537, between the San Francisco Port Commission (Port) and California Stevedore and Ballast Co. (CS & B), is a cooperative working arrangement covering the operation of an off-dock consolidation freight station and a rail freight distribution service at Pier 30, San Francisco. The facility when in full operation, will provide consolidation for breakbulk or containerized cargo, stuffing of containers, and distribution of rail freight. The parties will cooperate in the solicitation and advertising of services. CS & B will be entitled to a credit of $3.90 per ton of cargo handled, to be applied against rental due from CS & B for other premises occupied on the San Francisco waterfront. Surplus revenues will be divided quarterly, 50 percent to Port and 50 percent to CS & B. If the operation becomes self-supporting or shows a profit, the Port's share of the profit will then be deducted from the $3.90 per ton charge in whatever manner the parties find convenient.

Dated: June 25, 1971.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-9245 Filed 6-29-71;8:52 am]

[Docket No. 71-43; Special Permission No. 5363]

SEATRAIN LINES INC.

General Increases in Rates in U.S. Atlantic/Puerto Rico Trade; Second Supplemental Order

By the original order in this proceeding served April 22, 1971, the Commission placed under investigation a general rate increase of the subject carrier, and suspended to and including August 24, 1971, Supplement No. 57 to Tariff FMC-F No. 1. The Commission's order prohibits changes in tariff matter held in effect by reason of suspension, during the period of suspension, unless otherwise ordered by the Commission.

By Special Permission Application No. 212 authority is sought to depart from the terms of Rule 20(c) of Tariff Circular No. 3 and the terms of the original order in this proceeding to permit the filing, upon not less than 30 days' notice of consecutively numbered revised pages 90-A, 90-B, 90-C, and 90-D, in order to extend certain expiration dates to July 31, 1972, continuing in effect tariff matter resulting in a reduction in rates and charges.

A full investigation of the matters involved in the application having been made, which application is hereby referred to and made a part hereof:

It is ordered, That:

1. Authority to depart from Rule 20(c) of Tariff Circular No. 3 and the terms of the order in Docket No. 71-43 to extend project rate provisions in consecutively numbered Revised Pages 90-A, 90-B, 90-C, and 90-D as set forth in its Special Permission Application No. 212, said changes to become effective on not less than 30 days' notice, is hereby granted.

2. The authority granted hereby does not prejudice the right of this Commission to suspend and/or investigate any publications submitted pursuant thereto, either upon receipt of protest or upon the Commission's own motion under section 3 of the Intercoastal Shipping Act, 1933.

3. Publications issued and filed under this authority shall bear the following notation: "Issued under authority of Second Supplemental Order in Docket No. 71-43 and Federal Maritime Commission Special Permission No. 5363."

4. This special permission does not modify any outstanding formal orders of the Commission except insofar as it allows the aforementioned changes, nor waive, except as herein authorized, any of the requirements of its rules relative to the construction and filing of Tariff publications.

By the Commission.

[SEAL] FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-9246 Filed 6-29-71;8:52 am]

[Docket No. 71-30; Special Permission No. 5360]

TRANSAMERICAN TRAILER TRANSPORT, INC.

General Increases in Rates in U.S. Atlantic/Puerto Rico Trade; Third Supplemental Order

By the original order in this proceeding served March 31, 1971, the Commission placed under investigation a general rate increase of the subject carrier, and suspended to and including August 24, 1971, Supplement No. 8 to Tariff FMC-F No. 1. The Commission's order prohibits changes in tariff matter held in effect by reason of suspension, during the period of suspension, unless otherwise ordered by the Commission.

By Special Permission Application No. 54 authority is sought to depart from the terms of Rule 20(c) of Tariff Circular No. 3 and the terms of the original order in this proceeding to permit the filing, upon lot less than 30 days' notice, 10th Revised Page 73B and Third Revised Page 73C which will change tariff matter continued in effect by reason of suspension in this proceeding.

A full investigation of the matters involved in the application having been made, which application is hereby referred to and made a part hereof:

It is ordered, That:

1. Authority to depart from Rule 20(c) of Tariff Circular No. 3 and the terms of the order in Docket No. 71-30 to make the changes in rates and provisions as set forth in exhibits of 10th Revised Page 73B and Third Revised Page 73C in Special Permission Application No. 54, said changes to become effective on not less than 30 days' notice, is hereby granted.

2. The authority granted hereby does not prejudice the right of this Commission to suspend and/or investigate any publications submitted pursuant thereto, either upon receipt of protest or upon the Commission's own motion under section 3 of the Intercoastal Shipping Act, 1933.

3. Publications issued and filed under this authority shall bear the following notation: "Issued under authority of Third Supplemental Order in Docket No. 71-30 and Federal Maritime Commission Special Permission No. 5360."

4. This special permission does not modify any outstanding formal orders of the Commission except insofar as it allows the aforementioned changes, nor

[4] Commissioners Robert E. Lee and Houser absent.

waive, except as herein authorized, any of the requirements of its rules relative to the construction and filing of Tariff publications.

By the Commission.

[SEAL] FRANCIS C. HURNEY, *Secretary.*

[FR Doc.71-9247 Filed 6-29-71;8:52 am]

FEDERAL POWER COMMISSION

[Docket No. RI71-1121]

TEXACO, INC., ET AL.

Order Providing for Hearing on and Suspension of Proposed Change in Rate, and Allowing Rate Change To Become Effective Subject to Refund

JUNE 21, 1971.

Respondent has filed a proposed change in rate and charge for the jurisdictional sale of natural gas, as set forth in Appendix A hereof.

The proposed changed rate and charge may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon a hearing regarding the lawfulness of the proposed change, and that the supplement herein be suspended and its use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR Ch. I), and the Commission's rules of practice and procedure, a public hearing shall be held concerning the lawfulness of the proposed change.

(B) Pending hearing and decision thereon, the rate supplement herein is suspended and its use deferred until date shown in the "Date Suspended Until" column. This supplement shall become effective, subject to refund, as of the expiration of the suspension period without any further action by the respondent or by the Commission. Respondent shall comply with the refunding procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder.

(C) Unless otherwise ordered by the Commission, neither the suspended supplement, nor the rate schedule sought to be altered, shall be changed until disposition of this proceeding or expiration of the suspension period, whichever is earlier.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf*		Rate in effect subject to refund in dockets Nos.
									Rate in effect	Proposed increased rate	
RI71-1121	Texaco, Inc., et al	188	18	Cimarron Transmission Co. (Enville Field, Love County, Oklahoma Other Area).	$56,403	4-30-71		7-2-71	[1] 17.6799	[1] 18.7493	

*Unless otherwise stated, the pressure base is 14.65 p.s.i.a.
[1] Base rate subject to upward and downward adjustment.

The producer's proposed increased rate and charge exceeds the applicable area price level for increased rates as set forth in the Commission's Statement of General Policy No. 61-1, as amended (18 CFR, Ch. I, Part 2, § 2.56).

[FR Doc.71-9105 Filed 6-29-71;8:45 am]

[Docket No. RI71-1120]

UNION TEXAS PETROLEUM

Order Providing for Hearing on and Suspension of Proposed Change in Rate, and Allowing Rate Change To Become Effective Subject to Refund

JUNE 18, 1971.

Respondent has filed a proposed change in rate and charge for the jurisdictional sale of natural gas, as set forth in Appendix A hereof.

The proposed changed rate and charge may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon a hearing regarding the lawfulness of the proposed change, and that the supplement herein be suspended and its use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR Ch. I), and the Commission's rules of practice and procedure, a public hearing shall be held concerning the lawfulness of the proposed change.

(B) Pending hearing and decision thereon, the rate supplement herein is suspended and its use deferred until date shown in the "Date Suspended Until" column. This supplement shall become effective, subject to refund, as of the expiration of the suspension period without any further action by the respondent or by the Commission. Respondent shall comply with the refunding procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder.

(C) Unless otherwise ordered by the Commission, neither the suspended supplement, nor the rate schedule sought to be altered, shall be changed until disposition of this proceeding or expiration of the suspension period, whichever is earlier.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf*		Rate in effect subject to refund in dockets Nos.
									Rate in effect	Proposed increased rate	
RI71-1120	Union Texas Petroleum, a division of Allied Chemical Corp.	90	4	Lone Star Gas Co. (North Durant Field, Bryan County, Okla., Other Area).	$530	5-18-71		7-19-71	[1] 15.155	[1] 16.17	

*Unless otherwise stated, the pressure base is 14.65 p.s.i.a.

[1] Buyer deducts 0.5 cent from rate shown for dehydration and 2 cents for recovery of pipeline investment.

The producer's proposed increased rate and charge exceeds the applicable area price level for increased rates as set forth in the Commission's Statement of General Policy No. 61-1, as amended (18 CFR, Ch. I, Part 2, § 2.56).

[FR Doc.71-9104 Filed 6-29-71;8:45 am]

[Docket No. CI71-882]

WENERT TRICH ET AL.

Notice of Application

JUNE 25, 1971.

Take notice that on June 10, 1971, Wenert Trich et al. (applicants), Post Office Box 1408, Longview, TX 75603, filed in Docket No. CI71-882 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Texas Eastern Transmission Corp. from the Woodlawn Field, Harrison County, Tex., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that they commenced the subject sale March 5, 1971, within the contemplation of § 2.68 of the Commission's General Policy and Interpretations (18 CFR 2.68) and that by letter of May 6, 1971, the Commission extended authorization for the sale on an emergency basis through July 2, 1971. Applicants propose to continue said sale within the contemplation of § 2.70 of the Commission's General Policy and Interpretations (18 CFR 2.70) for 1 year from July 2, 1971, or from the date of certificate authorization at the total rate of 35 cents per Mcf at 14.65 p.s.i.a.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before July 9, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.71-9264 Filed 6-29-71;8:53 am]

FEDERAL RESERVE SYSTEM

BANK HOLDING COMPANIES

Acquisition of Control Over Banks

Order pursuant to section 5(b) of the Bank Holding Company Act.

By virtue of amendments to the Bank Hold Company Act (the Act) enacted on December 31, 1970, the acquisition by any company of control over a bank is unlawful, except when done pursuant to prior approval of the Board.

There have come to the Board's attention several instances in which a company, apparently without knowledge of the changes in the law, has consummated an acquisition of an interest in a bank in violation of the provisions of the Act. Despite the fact that such violations of the law were apparently not willful, it would not be consistent with the provisions of the Act to permit continuation of control of a bank by such a company without a determination by the Board that the standards set forth in section 3 of the Act are met.

A requirement that such an interest be divested may in some situations cause irreparable injury to the company, the bank, and the communities involved. The Board finds that the imposition of such a requirement would not be in the public interest, unless necessary to effectuate the purposes of the Act.

For the foregoing reasons, and in order to enable the Board to Administer and carry out the purposes of the Act without undue hardship to persons affected thereby: *It is hereby ordered,* pursuant to section 5(b) of the Act, that:

1. Any company which, between December 31, 1970, and the date of this order, acquired an interest in a bank requiring prior approval of the Board by virtue of the Bank Holding Company Act Amendments of 1970, without knowledge of that requirement and without having obtained such approval, may apply to the Board for a determination that such acquisition is in the public interest.

2. Any such application should be filed in the form appropriate for requesting prior approval of the transaction involved under section 3 of the Act, and will be determined by the Board in the light of the criteria established by the Act with respect to an application for such prior approval.

3. With regard to any provision of the Act which requires a bank holding company to take any action within a specified period of time after the date on which it becomes a bank holding company, such period shall commence on the date of the transaction by which it became a bank holding company, and not on the date of the Board's later approval of such transaction.

4. Any application involving the circumstances set forth therein shall be filed with the appropriate Federal Reserve Bank by August 31, 1971, unless such time shall be extended for good cause.

5. In the event that such an application is denied by the Board, the company involved shall take all appropriate action to forthwith divest the interest unlawfully held.

By order of the Board of Governors, June 22, 1971.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[FR Doc.71-9224 Filed 6-29-71;8:52 am]

CHARTER NEW YORK CORP.

Notice of Application for Approval of Acquisition of Shares of Bank

Notice is hereby given that application has been made, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)), by Charter New York Corp., which is a bank holding company located in New York, N.Y., for prior approval by the Board of Governors of the acquisition by applicant of 100 percent (excluding directors' qualifying shares) of the voting shares of successor by merger to the Nanuet National Bank, Nanuet, N.Y.

Section 3(c) of the Act provides that the Board shall not approve:

(1) Any acquisition or merger or consolidation under section 3 which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(2) Any other proposed acquisition or merger or consolidation under section 3 whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Section 3(c) further provides that, in every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

Not later than thirty (30) days after the publication of this notice in the

FEDERAL REGISTER, comments and views regarding the proposed acquisition may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of New York.

By order of the Board of Governors, June 23, 1971.

[SEAL] KENNETH A. KENYON, *Deputy Secretary.*

[FR Doc.71-9225 Filed 6-29-71;8:52 am]

INTERAGENCY TEXTILE ADMINISTRATIVE COMMITTEE

CERTAIN COTTON TEXTILES AND COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN PAKISTAN

Entry or Withdrawal from Warehouse for Consumption

JUNE 22, 1971.

On May 6, 1970, the Government of the United States, in furtherance of the objectives of, and under the terms of, the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, concluded a new comprehensive bilateral cotton textile agreement with the Government of Pakistan, concerning exports of cotton textiles from Pakistan to the United States over a 4-year period beginning on July 1, 1970. Under this agreement the Government of Pakistan has undertaken to limit its exports to the United States of all cotton textiles and cotton textile products to an aggregate limit of 89,250,000 square yards equivalent for the second agreement year beginning July 1, 1971. The agreement also provides that within the aggregate limit, the Government of Pakistan has undertaken to limit its exports to the United States of all cotton textiles and cotton textile products in Group I (Categories 1-27) to 78,750,000 square yards equivalent and in Group II (Categories 28-64) to 10,500,000 square yards equivalent for the second agreement year. Among the other provisions of the agreement are those applying specific export limitations to Categories 9/10, 15/16, 18/19, 22/23, parts of 26, part of 31, and 41/42.

Accordingly, there is published below a letter of June 18, 1971, from the Chairman of the President's Cabinet Textile Advisory Committee to the Commissioner of Customs, directing that for the 12-month period beginning July 1, 1971, and extending through June 30, 1972, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textiles and cotton textile products in the indicated categories produced or manufactured in Pakistan and exported to the United States on or after July 1, 1971, be limited to the designated levels. At this time, no directions with respect to the aggregate limit and group limits are being given to the Commissioner of Customs. Notice is hereby given, however, that at a future date it may be necessary to give such directions in order to assist the Government of Pakistan in the implementation of these limits. This letter and the actions pursuant thereto are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

STANLEY NEHMER,
Chairman, Interagency Textile Administrative Committee, and Deputy Assistant Secretary for Resources.

THE SECRETARY OF COMMERCE

PRESIDENT'S CABINET TEXTILE ADVISORY COMMITTEE

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20226.

JUNE 18, 1971.

DEAR MR. COMMISSIONER: Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to the bilateral cotton textile agreement of May 6, 1970, between the Governments of the United States and Pakistan, and in accordance with the procedures outlined in Executive Order 11052 of September 28, 1962, as amended by Executive Order 11214 of April 7, 1965, you are directed, effective July 1, 1971 and for the 12-month period extending through June 30, 1972, to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textiles and cotton textile products in Categories 9/10, 15/16, 18/19, 22/23, parts of 26, part of 31, and 41/42, produced or manufactured in Pakistan, in excess of the following designated levels of restraint:

Category		12-month levels of restraint
9/10	square yards	37,800,000
15/16	do	3,150,000
18/19 and part of 26 (print cloth)[1]	do	16,800,000
22/23	do	4,200,000
Part of 26 (bark cloth)[2]	do	6,300,000
Part of 26 (duck)[3]	do	8,925,000
Part of 31 (only T.S.U.S.A. No. 366.2740)	pieces	5,056,800
41/42	dozen	431,550

[1] In Category 26, only T.S.U.S.A. Nos.:

320.--34	322.--34	327.--34
321.--34	326.--34	328.--34

[2] Only T.S.U.S.A. Nos.:

320.--88	328.--88	324.--92
321.--88	329.--88	325.--92
322.--88	330.--88	326.--92
323.--88	331.--88	327.--92
324.--88	320.--92	328.--92
325.--88	321.--92	329.--92
326.--88	322.--92	330.--92
327.--88	323.--92	331.--92

[3] Only T.S.U.S.A. Nos.:

320.--01 through 04, 06, 08
321.--01 through 04, 06, 08
322.--01 through 04, 06, 08
326.--01 through 04, 06, 08
327.--01 through 04, 06, 08
328.--01 through 04, 06, 08

In carrying out this directive, entries of cotton textiles and cotton textile products in Categories 9/10, 15/16, 18/19, and part of 26 (print cloth),[1] 22/23, part of 26 (bark cloth),[2] part of 26 (duck),[3] part of 31 (only T.S.U.S.A. No. 366.2740), and 41/42, produced or manufactured in Pakistan and exported to the United States prior to July 1, 1971, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the period July 1, 1970, through June 30, 1971. In the event that the levels of restraint established for such goods during that period have been exhausted by previous entries, such goods shall be subject to the directives set forth in this letter.

The levels of restraint set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of May 6, 1970, between the Governments of the United States and Pakistan which provide in part that within the aggregate and applicable group limits of the agreement, limits on certain categories may be exceeded by not more than 5 percent; for the limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements. Any appropriate adjustments pursuant to the provisions of the bilateral agreement referred to above, will be made to you by letter from the Chairman of the Interagency Textile Administrative Committee.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 17, 1968 (33 F.R. 582), and amendments thereto on March 15, 1968 (33 F.R. 4600).

In carrying out the above directive, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Pakistan and with respect to imports of cotton textiles and cotton textile products from Pakistan have been determined by the President's Cabinet Textile Advisory Committee to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the notice provisions of 5 U.S.C. 553 (Supp. V. 1965-69). This letter will be published in the FEDERAL REGISTER.

Sincerely yours,

MAURICE H. STANS,
Secretary of Commerce, and Chairman, President's Cabinet Textile Advisory Committee.

[FR Doc.71-9217 Filed 6-29-71;8:48 am]

SECURITIES AND EXCHANGE COMMISSION

[812-2900]

BCC INDUSTRIES, INC.

Notice of Filing of Application for Order

JUNE 23, 1971.

Notice is hereby given that BCC Industries, Inc. (BCC), 535 Boylston Street,

Boston, MA 02116, formerly known as Boston Capital Corp., registered as a closed-end, nondiversified management investment company under the Investment Company Act of 1940 (the "Act") has filed an application pursuant to section 17(d) of the Act and Rule 17d-1 thereunder for an order granting said application pursuant to Rule 17d-1 with respect to the proposed participation by BCC and General Research Corp. (General Research), a California corporation, in a public offering of shares of General Research. All interested persons are referred to the application, which is on file with the Commission, for a statement of the representations therein, which are summarized below.

BCC owns 205,200 shares (approximately 21 percent) of the outstanding voting shares of common stock of General Research. As a result thereof General Research is an affiliated person as defined in section 2(a)(3) of the Act of a registered investment company (BCC).

General Research and BCC (the latter as a selling stockholder) propose to offer and sell to the public through various underwriters a total of approximately 300,000 shares of General Research common stock. Of such amount, 53,300 shares, and 205,200 shares and 41,500 shares are to be offered and sold by General Research, BCC, and other selling stockholders, respectively.

The application indicates that BCC determined the portion of its holdings of General Research stock to be included in the proposed offering pursuant to an unrestricted opportunity to offer to sell such shares.

The application states that BCC and General Research are paying underwriting discounts at the same rate; that General Research and BCC will pay all expenses of registration, allocated on the basis of the shares to be sold by each; General Research, in addition, will pay the expenses attributable to the shares being sold by the other selling shareholders; and that BCC will pay its own counsel fees and stock transfer taxes, if any.

Rule 17d-1, adopted under section 17(d) of the Act, provides, as here pertinent, that no affiliated person of any registered investment company shall, acting as principal, participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which such registered company, or a company controlled by a registered company, is a participant, unless an application regarding such joint enterprise or arrangement has been filed with the Commission and has been granted by order, and that in passing upon such application the Commission will consider whether the participation of the registered or controlled company in the joint enterprise or arrangement is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

BCC represents that its participation in the offering is not on a basis less advantageous to it than to General Research. BCC also states that it had a contractual right, similar to that now being exercised by the other selling shareholders, to require General Research to pay expenses of one public offering of its holdings of General Research stock. BCC exercised this right in a prior public offering of General Research stock. Therefore, unlike the other selling stockholders, BCC must pay its allocable share of the expenses of registration in the public offering of General Research stock now proposed.

Notice is further given that any interested person may, not later than July 14, 1971, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon applicant at the address set forth above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] THEODORE L. HUMES, *Associate Secretary.*

[FR Doc. 71-9227 Filed 6-29-71;8:48 am]

[811-1930]

FIRST CHICAGO INVESTMENT FUND

Notice of Filing of Application for Order Declaring That Company Has Ceased To Be an Investment Company

JUNE 23, 1971.

Notice is hereby given that First Chicago Investment Fund (Applicant), 1 First National Plaza, Chicago, IL 60670, an open-end, diversified, management investment company registered under the Investment Company Act of 1940 (Act), has filed an application pursuant to section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of representations contained therein, summarized below.

On September 4, 1969, Applicant filed a Notification of Registration on Form N-8A pursuant to section 8(a) of the Act. On January 6, 1970, Applicant filed a registration statement on Form N-8B-1 pursuant to section 8(b) of the Act and a registration statement on Form S-5 pursuant to the Securities Act of 1933 (1933 Act). Applicant's 1933 Act Registration never became effective.

On April 5, 1971, the Supreme Court of the United States announced its decision in certain litigation and held that the operation of a commingled account, as contemplated by Applicant, would be illegal under certain provisions of the Federal banking laws. By resolution adopted on May 25, 1971, Applicant's Board terminated Applicant.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission upon application finds that a registered investment company has ceased to be an investment company, it shall so declare by order and upon taking effect of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than July 9, 1971, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request shall be served personally or by mail (airmal if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the requests. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] THEODORE L. HUMES, *Associate Secretary.*

[FR Doc.71-9228 Filed 6-29-71;8:48 am]

[812-2968]

NEWTON FUND, INC.

Notice of Filing of an Application for an Order Exempting Proposed Exchange of Shares

JUNE 24, 1971.

Notice is hereby given that Newton Fund, Inc. (Applicant), 330 East Mason Street, Milwaukee WI, a Maryland corporation registered under the Investment Company Act of 1940 (Act), as an open-end, diversified, management investment company, has filed an application pursuant to section 6(c) of the Act requesting an order of the Commission exempting from the provisions of sections 22(c) and 22(d) of the Act and Rule 22c-1 thereunder a proposed transaction in which Applicant's redeemable securities will be issued at a price other than the current public offering price described in the prospectus in exchange for substantially all the assets of Mueller Investment Co., Inc. (Corporation), a personal holding company as defined in the Internal Revenue Code. All interested persons are referred to the application on file with the Commission for a statement of the representations therein which are summarized below.

Applicant states that as of May 14, 1971, it had approximately 6,340 shareholders owning approximately 1,302,007 shares of its capital stock, and its net assets were $20,429,673. Applicant offers its shares to the public on a continuous basis at net asset value plus varying sales charges described in the prospectus.

The Corporation, a Wisconsin corporation, has engaged in the business of investing and reinvesting its funds since September 3, 1968. It has eight stockholders and is exempt, Applicant states, from registration under the Act by reason of section 3(c)(1).

Pursuant to an agreement dated May 28, 1971, between Applicant, the Corporation, and the stockholders of the Corporation, substantially all of the securities and cash (Assets) owned by the Corporation on the closing date defined in the agreement will be transferred to Applicant. The securities held on May 14, 1971, by the Corporation consisted entirely of $150,000 of commercial paper due June 6, 1971, of Chrysler Financial Corp. Applicant states it is permitted to invest in these securities. In exchange for the Corporation's Assets, Applicant will deliver to the Corporation the largest number of its voting shares as are equal to the number of times the net asset value per share of Applicant in effect at the close of business on the day preceding the closing day can be evenly divided into the then value of the Corporation's Assets. No fractional shares shall be issued and no cash or other settlement shall be paid in lieu thereof.

The value of the Corporation's Assets will be determined in substantially the same manner as net asset value is determined for the purposes of issuing and redeeming shares of Applicant. However, from this value shall be deducted the aggregate of the following to the extent it is greater than zero: Ten percent of the amount by which the net unrealized appreciation of the securities exceeds the amount arrived at by multiplying (i) the sum of such net unrealized appreciation of the securities, the net unrealized appreciation of the securities held by Applicant (such sum to be reduced by the amount of any capital loss carryovers of Applicant) by (ii) the fraction whose numerator is the value of the Corporation's Assets to be transferred to Applicant and whose denominator is such value plus the total net assets of Applicant. The value of the Corporation's Assets and the net asset value of Applicant's shares will be determined by the Heritage Bank of Milwaukee.

The obligations of Applicant and the Corporation and the stockholders of the Corporation under the agreement are subject to certain conditions, including (a) the taking of all action by the corporation's directors and stockholders necessary for it to carry out the agreement and to dissolve the Corporation and (b) the obtaining of any necessary orders of the Commission under the Act. The Corporation's stockholders have consented to the transfer of the Corporation's assets and have agreed to acquire the shares of Applicant for investment and not for distribution to the public.

The market value of the Portfolio Securities of the Corporation at May 14, 1971 was approximately $150,000 plus accrued interest. In addition, there was approximately $2,500 in cash which would have been transferred to Applicant. A portion or all of the $2,500 in cash held by the Corporation may be invested prior to the closing. Applicant states that the aggregate market value of the securities which Applicant will receive as well as the ratio of securities to cash, if any, to be transferred to Applicant may vary by reason of, among other things, market fluctuations and the use of the cash for liquidation expenses.

As of May 14, 1971, the Portfolio Securities had a market value which was substantially equal to cost. On the same date, Applicant had realized and undistributed gains and unrealized appreciation (less its capital loss carryover) aggregating approximately $1,043,667. If the transaction had been closed on May 14, 1971, under the agreement, the above described adjustment would have been zero, and the Corporation would have received approximately 0.75 percent of the total shares of Applicant that would have been outstanding on that date, including the shares that would have been issued to the Corporation under the agreement.

Applicant states that assuming the closing under the agreement were to be held on the date of this application, Applicant would hold the Portfolio Securities until maturity and invest the proceeds in accordance with its investment policy and objectives.

Applicant states that the terms of the proposed transaction are fair and equitable and an exemption is necessary and appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Under the terms of the agreement, no sales charge or other premium is being added to the net asset value of Applicant other than a possible deduction from the value of the Corporation's Assets based on 10 percent of certain net unrealized appreciation, if any, as described above. For this reason, Applicant may be considered as selling its stock for a price other than the public offering price stated in the prospectus currently in effect, which lists a sales load of 3 percent for sales from $100,000 to $250,000. Further, under the terms of the agreement, valuation of the Corporation's Assets and Applicants shares will be made as of the close of business the day prior to the exchange of assets and shares which may be construed to be contrary to the provisions of Rule 22c-1.

Applicant states that the terms of the entire transaction, including the adjustment described above, were arrived at through arm's length bargaining between the officers of Applicant and the Corporation. There is no affiliation or relationship of any kind between the officers and directors of Applicant and the officers, directors and stockholders of the Corporation.

Applicants further state that the adjustment formula in the agreement, described above, yields an adjustment of zero using May 14, 1971 figures and it is expected that such adjustment also be zero at the time of closing. No Federal income tax liability to Applicant's stockholders would result from the maturity or sale of the Portfolio Securities based on May 14, 1971 values except for tax on the interest on such securities which is not material in amount as it relates to the Fund.

Section 22(c) of the Act and Rule 22c-1 thereunder inter alia prohibit registered investment companies from issuing their redeemable securities except at a price based on the current net asset value of such security which is next computed after receipt of an order to purchase the security. Section 22(d) of the Act provides that registered investment companies may sell their shares only at the current public offering price described in the prospectus.

Section 6(c) permits the Commission, upon application, to exempt any transaction from any provision or provisions of the Act or of any rule or regulation thereunder if it finds that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than July 16, 1971, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues

of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in case of attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is order, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] THEODORE L. HUMES,
Associate Secretary.

[FR Doc.71-9229 Filed 6-29-71;8:49 am]

[24FW-1441, 24FW-1456]

SUN-MASTR CORP., INC.

Order Permanently Suspending Regulation A Exemption

JUNE 23, 1971.

The Sun-Mastr Corp., Inc., 603 South Kansas Avenue, Olathe, KS, a Kansas corporation, filed with the Commission on December 31, 1968, a notification and offering circular for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933 pursuant to section 3(b) thereof and Regulation A thereunder, with respect to a public offering of 60,000 shares of its no par value common stock at $5 per share. The offering of those shares was completed on March 20, 1969. On August 1, 1969, the issuer filed with the Commission a further notification and offering circular relating to a proposed offer of rescission to the purchasers of those shares.

On December 17, 1970, the Commission issued an order, pursuant to Rule 261 of Regulation A, temporarily suspending the exemption. The order alleged that the terms and conditions of Regulation A had not been complied with, in that both offering circulars contained untrue and misleading statements of material facts. As to the earlier circular, it was alleged that the balance sheet and statement of earnings for the period ended October 31, 1968, overstated in a material amount total net sales, trade accounts receivable, and net earnings. The order also alleged that the subsequent circular failed to disclose the existence of contingent civil liability under the provisions of section 12(2) of the Securities Act, or to disclose, by appropriate amendment, the filing of a civil suit against the issuer in the U.S. District Court for the Western District of Missouri, in which it was alleged that issuer had violated the Securities Act and the Securities Exchange Act of 1934. The order further alleged that the offering of the 60,000 shares was made in violation of section 17 of the Securities Act and that the proposed offer of rescission would be made in violation of that section.

Following requests for a hearing filed by the issuer and the underwriter, hearings were held to determine whether to vacate the temporary suspension order or to enter an order permanently suspending the exemption. At the conclusion of the hearings, the issuer and underwriter, solely for the purpose of these proceedings and any other administrative proceeding pursuant to the Securities Act, the Securities Exchange Act, or the Investment Advisers Act of 1940, and without admitting or denying the allegations in the temporary suspension order, waived posthearing procedures and consented to entry of an order based on such allegations permanently suspending the issuer's Regulation A exemption.

In view of the foregoing, it is appropriate to enter a permanent suspension order.

Accordingly, it is ordered, Pursuant to Rule 261 of Regulation A under the Securities Act of 1933, that the exemption from registration with respect to the above-described offerings of securities by The Sun-Mastr Corp., Inc., be, and it hereby is, permanently suspended.

For the Commission, by the Office of Opinions and Review, pursuant to delegated authority.

THEODORE L. HUMES,
Associate Secretary.

[FR Doc.71-9230 Filed 6-29-71;8:49 am]

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 4.4-2, Oklahoma City Disaster No. 790]

MANAGER, DISASTER BRANCH OFFICE, SHAWNEE, OKLA.

Rescission of Delegation of Authority

Notice is hereby given that Delegation of Authority No. 4.4-2, Disaster No. 790, 36 F.R. 9482, is hereby rescinded in its entirety.

Effective: April 30, 1971.

E. BRUCE CAFKY,
District Director, Oklahoma City.

[FR Doc.71-9183 Filed 6-29-71;8:45 am]

VERMONT INVESTMENT CAPITAL, INC.

Notice of Application for License as Small Business Investment Company

Notice is hereby given that Vermont Investment Capital, Inc., Route 14, South Royalton, Vt. 05068, has filed an application with the Small Business Administration (SBA) for a license to operate as a small business investment company in the State of Vermont, pursuant to section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1968)) under the provisions of the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 et seq.).

The proposed officers, directors and stockholders are as follows:

Name	Titles	Percentage of stock ownership
		Percent
Phillip Kratky, Route 14, South Royalton, Vt. 05068.	President, director.	33⅓
Harold Jacobs, Pleasant St., South Royalton, Vt. 05068.	Vice president, director.	33⅓
Neil Hawkes Pettengill, South Windsor St., South Royalton, Vt. 05068.	Treasurer-clerk, director.	33⅓

The company proposes to commence operations with a capitalization of $153,000.

Matters involved in SBA's consideration of the application include the general business reputation and character of the management, and the probability of successful operations of the new company under their management including adequate profitability and financial soundness, in accordance with the Act and regulations.

Notice is further given that any interested person may, not later than 10 days from the date of publication of this notice, submit to SBA in writing, relevant comments on the proposed company. Any communication should be addressed to: Associate Administrator for Operations and Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in the South Royalton, Vt., area.

Dated: June 18, 1971.

For SBA (pursuant to delegated authority).

A. H. SINGER,
Associate Administrator for Operations and Investment.

[FR Doc.71-9182 Filed 6-29-71;8:45 am]

INTERSTATE COMMERCE COMMISSION

SLUTSKY'S MOTOR EXPRESS, INC.

Notice of Filing of Petition

JUNE 25, 1971.

No. MC-20490 (Notice of Filing of Petition for Modification of Certificate), filed June 15, 1971.

Petitioner: Slutsky's Motor Express, Inc., Perth Amboy, N.J. Petitioner's representative: Herman B. J. Weckstein, 60 Park Place, Newark, NJ 07102.

Petitioner holds certificate No. MC-20490, authorizing the transportation of general commodities, except those of unusual value, high explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between New York, N.Y., on the one hand, and, on the other, points in Bergen, Essex, Hudson, Middlesex, Morris, Passaic, Somerset, and Union Counties, N.J., within 35 miles of the city hall, New York, N.Y. By the instant petitioner requests individual consideration, pursuant to the procedure described in the Sixth Supplemental Report in *Commercial Zones and Terminal Areas*, 54 M.C.C. 21, at page 58, of its terminal area at New York, N.Y., to permit terminal area service from and to all points in the New Jersey within 5 miles of New York, N.Y., including those points within the 5-mile radius not within the "exempt" zone as defined in *New York, N.Y., Commercial Zone*, 112 M.C.C. 203. In effect, the relief sought would constitute a modification of petitioner's certificate, and the petition therefore will be treated as a petition for the modification of petitioner's certificate No. MC-20490. No oral hearing is contemplated in this procedure, and any interested person desiring to participate may file an original and seven copies of written representations, views, or arguments in support of or against the petition on or before August 5, 1971. A copy of each such statement must be served on petitioner's representative. Written material or suggestions submitted will be available for public inspection at the offices of the Interstate Commerce Commission, 12th and Constitution, Washington, DC, during regular business hours.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary*.

[FR Doc.71-9236 Filed 6-29-71;8:49 am]

[Notice 16]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

JUNE 25, 1971.

The following letter-notices of proposals to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules—Motor Carriers of Passengers, 1969 (49 CFR 1042.2(c)(9)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.2(c)(9)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.2(c)(9)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PASSENGERS

No. MC-1515 (Deviation No. 585) (Cancels Deviation No. 462), GREYHOUND LINES, INC. (Eastern Division), 1400 West Third Street, Cleveland, OH 44113, filed June 16, 1971. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, over a deviation route as follows: From junction U.S. Highway 40 and Interstate Highway 70 at Pocahontas, Ill., over Interstate Highway 70 to junction Illinois Highway 49, thence over Illinois Highway 49 to Casey, Ill., with the following access roads: (1) From Vandalia, Ill., over U.S. Highway 51 to junction Interstate Highway 70; (2) from Effingham, Ill., over U.S. Highway 40 and access road to junction Interstate Highway 70; and (3) from Effingham, Ill., over U.S. Highway 45 to junction Interstate Highway 70, and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property over pertinent service routes as follows: (1) From Effingham, Ill., over U.S. Highway 40 to Vandalia, Ill., thence over Illinois Highway 140 (portions formerly U.S. Highway 40 and Illinois Highway 11) to junction unnumbered highway, thence over unnumbered highway via Greenville, Ill., to junction U.S. Highway 40; (2) from junction Illinois Highway 140 (formerly shown as old U.S. Highway 40) and U.S. Highway 40 (formerly shown as relocated U.S. Highway 40) near Mulberry Grove, Ill., over U.S. Highway 40 to junction unnumbered highway (formerly shown as old U.S. Highway 40) near Greenville, Ill.; and (3) from Manhattan, Ind., over U.S. Highway 40 to junction Alternate U.S. Highway 40 west of Livingston, Ill., thence over Alternate U.S. Highway 40 via Marshall, Ill., to junction U.S. Highway 40, thence over U.S. Highway 40 to junction Alternate U.S. Highway 40 approximately 2 miles east of Martinsville, Ill., thence over Alternate U.S. Highway 40 via Martinsville, and Casey, Ill., to junction U.S. Highway 40 west of Casey, Ill., thence over U.S. Highway 40 to junction Alternate U.S. Highway 40 (formerly U.S. Highway 40), thence over Alternate U.S. Highway 40 to junction U.S. Highway 40 at or near Mulberry Grove, Ill., and return over the same routes.

No. MC 1515 (Deviation No. 586), GREYHOUND LINES, INC. (Eastern Division), 1400 West Third Street, Cleveland, OH 44113, filed June 16, 1971. Carrier proposes to operates as a *common carrier*, by motor vehicle, of *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, over a deviation route as follows: From Van Buren, Ohio, over Interstate Highway 75 to Dayton, Ohio, with the following access roads: (1) From Findlay, Ohio, over Ohio Highway 12 to junction Interstate Highway 75; (2) from Bluffton, Ohio, over unnumbered highway to junction Interstate Highway 75; (3) from Beaverdam, Ohio, over U.S. Highway 30N to junction Interstate Highway 75; (4) from Lima, Ohio, over Ohio Highway 81 to junction Interstate Highway 75; (5) from Lima, Ohio, over U.S. Highway 30S to junction Interstate Highway 75; (6) from Wapakoneta, Ohio, over Ohio Highway 67 to junction Interstate Highway 75; (7) from Wapakoneta, Ohio, over Ohio Highway 198 to junction Interstate Highway 75; (8) from Sidney, Ohio, over Ohio Highway 29 to junction Interstate Highway 75; (9) from Sidney, Ohio, over Ohio Highway 47 to junction Interstate Highway 75; (10) from Piqua, Ohio, over unnumbered highway to junction Interstate Highway 75; (11) from Piqua, Ohio, over U.S. Highway 36 to junction Interstate Highway 75; (12) from Troy, Ohio, over Ohio Highway 41 to junction Interstate Highway 75; (13) from Troy, Ohio, over unnumbered highway to junction Interstate Highway 75; and

(14) From Vandalia, Ohio, over U.S. Highway 40 to junction Interstate Highway 75, and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over pertinent service routes as follows: From Van Buren, Ohio, over unnumbered highway (formerly U.S. Highway 25) to Bluffton, Ohio, thence over access road to junction Interstate Highway 75, thence over Interstate Highway 75 to junction U.S. Highway 30N, thence over U.S. Highway 30N to Beaverdam, Ohio, thence over Napoleon Road to junction access road south of Beaverdam, thence over access road to Old North Road (formerly U.S. Highway 25), thence over Old North Road to junction Ohio Highway 81, thence over Ohio Highway 81 (formerly U.S. Highway 25) to Lima, Ohio, thence over unnumbered highway (formerly U.S. Highway 25) to junction Ohio Highway 67, thence over Ohio Highway 67 to Wapakoneta, Ohio, thence over unnumbered highway (formerly U.S. Highway 25) to junction Ohio Highway 219, thence over Ohio Highway 219 to Botkins, Ohio, thence over unnumbered highway via Sidney,

Piqua, Troy, and Vandalia, Ohio, to Dayton, Ohio; (2) from Findlay, Ohio, over U.S. Highway 68 to Springfield, Ohio; (3) from Springfield, Ohio, over U.S. Highway 40 to Brandt, Ohio; and (4) from Brandt, Ohio, over U.S. Highway 40 to junction U.S. Highway 35, and return over the same routes.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-9237 Filed 6-29-71;8:49 am]

[Notice 22]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

JUNE 25, 1971.

The following letter-notices of proposals to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969 (49 CFR 1042.4(d)(11)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.4(d)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.4(d)(12) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successfully filed letter-notices of the same carrier under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC-61440 (Deviation No. 17), LEE WAY MOTOR FREIGHT, INC., 3000 West Reno, Post Office Box 82488, Oklahoma City, OK 73108, filed June 18, 1971. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Salem, Ill., over Illinois Highway 37 to Mount Vernon, Ill., thence over U.S. Highway 460 to Crossville, Ill., thence over Illinois Highway 1 to junction Illinois Highway 64, thence over Illinois Highway 64 to the Illinois-Indiana State line, thence over Indiana Highway 64 to New Albany, Ind., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From Tulsa, Okla., over U.S. Highway 66 to St. Louis, Mo., (2) from St. Louis, Mo., over U.S. Highway 50 to Aurora, Ind.; and (3) from junction U.S. Highways 50 and 150, near Shoals, Ind., over U.S. Highway 150 to New Albany, Ind., thence over Indiana Highway 62 to Madison, Ind., and return over the same routes.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-9238 Filed 6-29-71;8:49 am]

[Notice 51]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

JUNE 25, 1971.

The following publications are governed by the new Special Rule 247 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of December 3, 1963, which became effective January 1, 1964.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

APPLICATIONS ASSIGNED FOR ORAL HEARING

MOTOR CARRIERS OF PROPERTY

No. MC 114290 (Sub-No. 52) (Amendment), filed October 8, 1970, published in the FEDERAL REGISTER issue of November 13, 1970, and republished as amended this issue. Applicant: EXLEY EXPRESS, INC., 2610 Southeast Eighth, Portland, OR 97202. Applicant's representative: James T. Johnson, 1610 IBM Building, Seattle, Wash. 98101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Meat and meat products*, from points in Washington to points in Oregon, California, and Arizona, and (2) *frozen foods*, from points in Oregon, to points in California, Washington, and Arizona. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. The purpose of this republication is to redescribe the authority sought.

HEARING: Assigned for hearing on July 28, 1971, at 9:30 a.m., daylight saving time (or 9:30 a.m., U.S. standard time, if that time is observed), in Room 1155, Federal Office Building, 909 First Avenue, Seattle, WA.

No. MC 103993 (Sub-No. 432) (Republication) filed June 25, 1969, published in the FEDERAL REGISTER issue of July 17, 1969, and republished this issue. Applicant: MORGAN DRIVE-AWAY, INC., 2800 West Lexington Avenue, Elkhart, IN 46514. Applicant's representative: Paul D. Borghesani (same address as applicant). The modified procedure has been followed in this proceeding and a report and order of the Commission, Review Board No. 1, decided June 8, 1971, and served June 17, 1971, finds; that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of conveyors and bins, mounted on wheeled undercarriages; (1) from Glasgow and Kansas City, Mo., to points in the United States (except Alaska and Hawaii); and (2) from Leavenworth, Kans., to points in the United States (except Alaska, Hawaii, Kansas, Iowa, Minnesota, South Dakota, Nebraska, Illinois, Colorado, Oklahoma, Texas, Louisiana, and Arkansas); that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other persons, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings of this report, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 127787 (Sub-No. 2) (Republication), filed March 12, 1970, published in the FEDERAL REGISTER issue of April 2, 1970, and republished this issue. Applicant: ANTHONY PALLOTTA AND FRANK PALLOTTA, a partnership, doing business as PALLOTTA BROS., 285 Hickory Avenue, Bergenfield, NJ 07621. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. The modified procedure has been followed in this proceeding and a report and order of the Commission, Review Board No. 1, decided June 8, 1971, and served June 17, 1971, finds; that operation by applicants, in interstate or foreign commerce, as a contract carrier by motor vehicle, over irregular routes, of foodstuffs (other than frozen), except in bulk, between the plantsite of B. Manischewitz Co., at Jersey City, N.J., and the warehouse of B. Manischewitz Co., at East Rutherford, N.J., on the one hand, and, on the other, East Farmingdale, N.Y., under a continuing contract or contracts with B. Manischwitz Co., of Newark, N.J., will be consistent with the public interest and the national transportation policy; that applicants are fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other persons who have relied upon the notice of the application as published in the FEDERAL REGISTER may

have an interest in and would be prejudiced by the lack of proper notice, a notice of the authority actually granted applicant will be published in the FEDERAL REGISTER and issuance of the permit in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

NOTICE OF FILING OF PETITION

No. MC 116816 (Sub-No. 10) (Notice of filing of petition to modify permit by adding a new shipper and deleting an existing shipper), filed June 7, 1971. Petitioner: MERIT TRUCKING CORP., Kearny, N.J. Petitioner's representatives: Edward M. Alfano and John L. Alfano, 2 West 45th Street, New York, NY 10036. Petitioner holds authority in No. MC 116816 (Sub-No. 10) to conduct operations as a motor contract carrier, transporting: Household appliances, air conditioning equipment, water heaters, central home heating and cooling units, radio, recorder, phonograph, and television sets, and parts and equipment therefor, from site of carrier's warehouse at Kearny, N.J., to New York, N.Y., to points in Nassau, Suffolk, Westchester, and Rockland Counties, N.Y., and Fairfield County, Conn.; and returned shipments of the above-specified commodities, on return, under a continuing contract, or contracts, with the following shippers; Apollo Distributing Co., of Newark, N.J., Warren-Connolly Co., Inc., of Long Island City, N.Y., L & P Distributors of New Jersey, of Maspeth, N.Y., Cooper Distributing Co., Inc., of Newark, N.J., Philco Distributors, Inc., of New York, N.Y., and Motorola Metro, Inc., of Franklin Park, Ill. By the instant petition, petitioner requests permission to add the name of a new shipper, Bruno-New York, Inc., of New York, N.Y., and deleting an existing shipper, Warren-Connolly Co., Inc., of Long Island City, N.Y. Any interested person desiring to participate may file an original and six copies of his written representations, views or argument in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

APPLICATIONS FOR CERTIFICATES OR PERMITS WHICH ARE TO BE PROCESSED CONCURRENTLY WITH APPLICATIONS UNDER SECTION 5 GOVERNED BY SPECIAL RULE 240 TO THE EXTENT APPLICABLE

No. MC 112999 (Sub-No. 4), filed May 28, 1971. Applicant: WEST TRANSPORTATION, INC., 961 South 14th Street, Richmond, CA 94802. Applicant's representative: Martin J. Rosen, 140 Montgomery Street, San Francisco, CA 94104. Authority sought to operate as a *common carrier*, by motor vehicle, over regular and irregular routes, transporting: *General commodities* (except uncrated used household goods, livestock and fresh fruit and vegetables), Part (1) (a) between all points in the following territories over any and all highways, streets and roads as follows: San Francisco territory includes all the city of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County boundary line meets the Pacific Ocean; thence easterly along said boundary line to a point 1 mile west of U.S. Highway 101; southerly along an imaginary line 1 mile west of the paralleling U.S. Highway 101 to its intersection with Southern Pacific Co. right-of-way at Arastradero Road; southeasterly along the Southern Pacific Co. right-of-way to Pollard Road, including industries served by the Southern Pacific Co. spur line extending approximately 2 miles southwest from Simla to Permanente; easterly along Pollard Road to West Parr Avenue; easterly along West Parr Avenue to Capri Drive; southerly along Capri Drive to East Parr Avenue; easterly along East Parr Avenue to the Southern Pacific Co. right-of-way; southerly along the Southern Pacific Co. right-of-way to the Campbell-Los Gatos city limits; easterly along said limits and the prolongation thereof to the San Jose-Los Gatos Road; northeasterly along San Jose-Los Gatos Road to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to U.S. Highway 101; northwesterly along U.S. Highway 101 to Tully Road;

Northeasterly along Tully Road to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 17 (Oakland Road); northerly along State Highway 17 to Warm Springs; northerly along the unnumbered highway via Mission San Jose and Niles to Hayward; northerly along Foothill Boulevard to Seminary Avenue; easterly along Seminary Avenue to Mountain Boulevard; northerly along Mountain Boulevard and Moraga Avenue to Estates Drive; westerly along Estates Drive, Harbord Drive, and Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland boundary line; northerly along said boundary line to the campus boundary of the University of California; northerly and westerly along the campus boundary of the University of California to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to U.S. Highway 40 (San Pablo Avenue); northerly along U.S. Highway 40 to and including the city of Richmond; southwesterly along the highway extending from the city of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco waterfront at the foot of Market Street; westerly along said waterfront and shoreline to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to point of beginning. Part (2) Los Angeles Basin Territory includes that area embraced by the following boundary: Beginning at the point the Ventura County-Los Angeles County boundary line intersects the Pacific Ocean; thence northeasterly along said county line to the point it intersects State Highway No. 118, approximately 2 miles west of Chatsworth;

Easterly along State Highway No. 118 to Sepulveda Boulevard; northerly along Sepulveda Boulevard to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the city of San Fernando; westerly and northerly along said corporate boundary to McClay Avenue; northeasterly along McClay Avenue and its prolongation to the Angeles National Forest boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest boundary to the county road known as Mill Creek Road; westerly along Mill Creek Road to the county road 3.8 miles north of Yucaipa; southerly along said county road to and including the unincorporated community of Yucaipa; westerly along Redlands Boulevard to U.S. Highway No. 99; northwesterly along U.S. Highway No. 99 to the corporate boundary of the city of Redlands; westerly and northerly along said corporate boundary to Brookside Avenue; westerly along Brookside Avenue to Barton Avenue; westerly along Barton Avenue and its prolongation to Palm Avenue; westerly along Palm Avenue to La Cadena Drive; southwesterly along La Cadena Drive to Iowa Avenue; southerly along Iowa Avenue to U.S. Highway No. 60; southwesterly along U.S. Highways Nos. 60 and 395 to the county road approximately 1 mile north of Perris; easterly along said county road via Nuevo and Lakeview to the corporate boundary of the city of San Jacinto; easterly, southerly and westerly along said corporate boundary to San Jacinto Avenue; southerly along San Jacinto Avenue to State Highway No. 74; westerly along State Highway No. 74 to the corporate boundary of the city of Hemet; southerly, westerly and northerly along said corporate boundary to the right-of-way of the Atchison, Topeka & Santa Fe Railway Co.;

Southwesterly along said right-of-way to Washington Avenue; southerly along Washington Avenue, through and including the unincorporated community of Winchester to Benton Road; westerly along Benton Road to the county road intersection U.S. Highway No. 395, 2.1 miles north of the unincorporated community of Temecula; southerly along said county road to U.S. Highway No. 395; southeasterly along U.S. Highway No. 395 to the Riverside County-San Diego County boundary line; westerly along said boundary line to the Orange County-San Diego County boundary line; southerly along said boundary line to the Pacific Ocean; northwesterly along the shoreline of the Pacific Ocean to point of beginning. Part (3) (B) between all points on or within 20 miles of the following routes: (1) U.S. Highways

101, 101 Bypass and 101-A between Novato and the Mexican border line, inclusive; (2) State Highway 48 between junction with U.S. Highway 101, near Ignacio, and U.S. Highway 40, inclusive; (3) State Highway 37 between Sears Point and Napa, inclusive; (4) State Highway 29 between U.S. Highway 40 and Napa, inclusive; (5) State Highway 12 between Schellville and U.S. Highway 50, near Lodi, inclusive; (6) U.S. Highway 40 between San Francisco and the California-Nevada State line, inclusive; (7) U.S. Highway 40A between Davis Junction and the California-Nevada State line, inclusive; (8) State Highway 24 between Oakland and Oroville, inclusive; (9) State Highway 89 between U.S. Highway 40A, near Blairsden and Tahoe Valley, inclusive; (10) U.S. Highways 99, 99E and 99W between Red Bluff and the Mexican border line, inclusive; (11) State Highway 20 between Williams and junction with U.S. Highway 40, near Cisco;

(12) State Highway 49 between Placerville and Sattley, inclusive; (13) U.S. Highway 50 between San Francisco and the California-Nevada State line, inclusive; (14) State Highway 4 between junction with U.S. Highway 40, near Pinole and Stockton, inclusive; (15) State Highway 33 between junction with U.S. Highway 50, near Tracy and junction with U.S. Highway 99, at Mettler; (16) State Highway 152 between Watsonville and Califa, inclusive; (17) State Highway 132 between Vernalis and Modesto, inclusive; (18) State Highway 120 between junction with U.S. Highway 50, near Lathrop and Manteca, inclusive; (19) State Highway 399 between Ventura and Greenfield, inclusive; (20) U.S. Highway 466 between Paso Robles and the California-Nevada State line, inclusive; (21) State Highway 198 between junction with State Highway 33, near Coalinga and junction with State Highway 65, near Exeter, inclusive; (22) State Highway 65 between junction with State Highway 198, near Exeter and U.S. Highway 99, near Bakersfield; (23) U.S. Highway 395 between San Diego and the California-Nevada State line, inclusive; (24) U.S. Highway 6 between Los Angeles and the California-Nevada State line, inclusive; (25) U.S. Highway 66 between Los Angeles and the California-Arizona State line, inclusive; and

(26) U.S. Highway 60 between Los Angeles and the California-Arizona State line, inclusive. The service authorized herein is restricted against the transportation of any property to or from Cajon Junction and Barstow and intermediate points along U.S. Highway 66, and Part (4) Regular and irregular routes: *Talc*, from mines in Nevada within 10 miles of Palmetto, Nev., to Lone Pine, Calif., serving the intermediate points of Zurich and Big Pine, Calif., for delivery only: From mines in Nevada within 10 miles of Palmetto, over irregular routes to junction Nevada Highway 3, thence over Nevada Highway 3 to the Nevada-California State line, thence over California Highway 3 (formerly California Highway 63) to Big Pine, Calif., and thence over U.S. Highway 395 to Lone Pine; and *Mining machinery and supplies*, maximum 10,000 pounds, from Lone Pine, Calif., to mines in Nevada within 10 miles of Palmetto, Nev., serving the intermediate points of Zurich and Big Pine, Calif., for pickup only: From Lone Pine over the above-specified regular and irregular routes to mines in Nevada within 10 miles of Palmetto, Nev. irregular routes: *Talc and clay*, in bulk, between points in Inyo County, Calif. NOTE: This application is a matter directly related to MC-F-11191, published in the FEDERAL REGISTER issue of June 9, 1971. Applicant presently holds the authority described in Parts (1), (2), and (3) above in a certificate of registration, and conversion of that authority to an original certificate by the Commission will be required. If a hearing is deemed necessary, applicant requests it be held at San Francisco, Calif.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carriers of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto (49 CFR 1.240).

MOTOR CARRIERS OF PROPERTY

No. MC-F-11212. Authority sought for purchase by GALLATIN-PORTLAND FREIGHT LINES, INC., James Street, Post Office Box 888, Gallatin, TN 37066, of the operating rights of ROBERT H. BRADSHAW, doing business as HARTSVILLE FREIGHT COMPANY, Broad Street, Post Office Box 1, Hartsville, TN 37074, and for acquisition by SHELBY GREGORY, also of Gallatin, Tenn. 37066, of control of such rights through the purchase. Applicants' attorney: Walter Harwood, 1822 Parkway Towers, Nashville, Tenn. 37219. Operating rights sought to be transferred: Under certificates of registration in Docket No. MC-120585 Sub-1 and Sub-2, covering the transportation of general commodities, as a common carrier, in interstate commerce, within the State of Tennessee. Vendee is authorized to operate as a common carrier in Tennessee. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-11213. Authority sought for control by THE BEKINS COMPANY, 1335 South Figueroa Street, Los Angeles, CA 90015, of the operating rights and property of (A) O.K. VAN & STORAGE, INC., 5950 East Paisano Drive, El Paso, TX, and (B) OK VAN & STORAGE CO. OF NEW MEXICO, 2315 South Valley Drive, Las Cruces, NM, and for acquisition by MARTIN B. AND SALLY HOLT of 445 South June Street, Los Angeles, CA 90005, IDA RAINEY BEKINS HECKER, MILO W. BEKINS, FLOYD R. BEKINS, SR., FLOYD R. BEKINS, JR., MILO W. BEKINS, JR., DOROTHY ELOISE BEKINS, DONALD R. BEKINS, AND KATHERINE BEKINS PALMER, all of 1335 South Figueroa Street, Los Angeles, CA 90015, of control of (A) O.K. VAN & STORAGE, INC., and (B) OK VAN & STORAGE CO. OF NEW MEXICO, through the acquisition by THE BEKINS COMPANY. Applicants' attorneys: Vernon V. Baker, 1250 Connecticut Avenue NW., Washington, DC 20036, Irving J. Raley, 3017 North Military Road, Arlington, VA 22207, and Eldon R. Clawson, 1335 South Figueroa Street, Los Angeles, CA 90015. Operating rights sought to be controlled: (A) *Used household goods*, as a *common carrier*, over irregular routes, between points in El Paso County, Tex., with restriction; and (B) *used household goods*, as a *common carrier*, over irregular routes, between points in Dona Ana and Otero Counties, N. Mex., with restriction. THE BEKINS COMPANY holds no authority from this Commission. However, it is affiliated with (1) BEKINS VAN & STORAGE CO., 3429 Troost, Kansas City, MO 64109; (2) BEKINS MOVING & STORAGE CO., 1335 South Figueroa Street, Los Angeles, CA 90015; (3) BEKINS VAN LINES CO., 333 South Cedar Street, Hillside, IL 60162 (4) BEKINS MOVING & STORAGE CO., 1347 South Sheridan Road, Tulsa, OK 74112; and (5) BEKINS MOVING & STORAGE CO. OF HAWAII, INC., 2839 Mokumoa Street, Honolulu, HI 96819, which are authorized to operate as *common carriers* in (1) Kansas and Missouri; (2) California; (3) Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, Wisconsin, Wyoming, Nebraska, Washington, Idaho, Montana, Utah, Maine, New Hampshire, and Vermont; (4) Arizona; and (5) Hawaii. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-11214. Authority sought for control by REFRIGERATED TRANSPORT CO., INC., Post Office Box 308, Forest Park, GA 30050, of the operating rights of A-1 CONTRACT CARRIERS CORPORATION (KY.), Post Office Drawer 84, Winston-Salem, NC 27102, and for acquisition by LAMAR BEAUCHAMP, Post Office Box 1699, Winter Haven, FL 33880, and RICHARD BEAUCHAMP, Post Office Box 308, Forest Park, GA 30050, of control through capital stock of A-1 CONTRACT CARRIERS CORPORATION (KY.), through the acquisition by REFRIGERATED TRANSPORT CO., INC. Applicants' attorneys and representative: Paul M. Daniell, Post Office Box 872, Atlanta, GA 30301; W. F. Womble, Post Office Drawer 84, Winston-Salem, NC 27102; and Harry A. Greenburg, 420 Lincoln Road, Miami Beach, FL 33039. Operating rights sought to be controlled: *Tobacco* (except leaf,

chopped leaf, redried leaf, stemmed leaf, and stems of tobacco), *leaf, redried leaf, stemmed leaf, and stems of tobacco,* when transported in the same vehicle and at the same time with commodities subject to economic regulations, *tobacco products and articles* used in the production, processing, manufacture, sale, and distribution of tobacco products, as a *contract carrier,* over irregular routes, between the facilities of Lorillard, a division of Loew's Theatres, Inc., in Danville, Va., Greensboro, N.C., and Lexington and Louisville, Ky., on the one hand, and, on the other, points in Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, District of Columbia, Arizona, Arkansas, California, Colorado, Idaho, Iowa, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming; with restriction. REFRIGERATED TRANSPORT CO., INC., is authorized to operate as a *common carrier* in Mississippi, North Carolina, South Carolina, Georgia, Florida, Tennessee, Alabama, Louisiana, Arkansas, Nebraska, Illinois, Indiana, Iowa, Minnesota, Missouri, Oklahoma, Texas, Wisconsin, Kentucky, Michigan, Ohio, Kansas, Virginia, West Virginia, Nevada, Utah, Pennsylvania, Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, Wyoming, South Dakota, North Dakota, Colorado, New Mexico, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-9239 Filed 6-29-71;8:49 am]

[Drought Order No. 67]

CERTAIN DROUGHT AREAS IN ARIZONA

Transportation of Hay at Reduced Rates

In the matter of relief under section 22 of the Interstate Commerce Act.

Present: Dale W. Hardin, Vice Chairman, to whom the above-entitled matter has been assigned for action thereon.

It appearing, that by reasons of drought conditions existing in certain portions of the State of Arizona, hereinafter referred to as the disaster area, the Assistant Secretary of the U.S. Department of Agriculture has requested the Commission to enter an order under section 22 of the Interstate Commerce Act authorizing railroads subject to the Commission's jurisdiction to transport hay to the disaster area at reduced rates:

It is ordered, That carriers by railroad participating in the transportation of hay to the counties of:

Apache.	Navajo.
Coconino.	Pima.
Gila.	Pinal.
Graham.	Santa Cruz.
Maricopa.	Yavapai.
Mohave.	

all located in the State of Arizona, referred to herein as the disaster area, be, and they are hereby, authorized under section 22 of the Interstate Commerce Act to establish and maintain until July 31, 1971, reduced rates for such transportation, the rates to be published and filed in the manner prescribed in section 6 of the Interstate Commerce Act except that they may be effective 1 day after publication and filing instead of 30.

It is further ordered, That the class of persons entitled to such reduced rates is hereby defined as persons designated as being in distress and in need of relief by the U.S. Department of Agriculture or by such State agents or agencies as may in turn be designated by the U.S. Department of Agriculture to assist in relieving the distress caused by the drought.

It is further ordered, That, during the period in which any reduced rates authorized by this order are effective the carriers may, notwithstanding the provisions of section 4 of the Interstate Commerce Act, maintain higher rates to directly intermediate points and maintain through rates in excess of the aggregate of intermediate rates over the same routes if one or more of the factors of such aggregate of intermediate rates is a reduced rate established under the authority of this order.

It is further ordered, That any tariffs or tariff provisions published under the authority of this order shall explicitly so state, making reference to this order by number and date.

And it is further ordered, That, subject to the conditions in the succeeding paragraphs hereof, the use of reduced rates established by authority of this order may be conditioned upon the release by the shipper of the value of the commodity, which released value, in its relation to the invoice value of the property at time of shipment, shall be in the same percentage relation which the reduced rates bear to the rates which otherwise would apply.

And it is further ordered, That tariffs containing released rates filed under authority of this order shall show in connection with such rates the following notation:

The released value must be entered on shipping order and bill of lading in the following form:

The agreed or declared value of the property is hereby specifically stated by the shipper to be not in excess of (show percent) of the invoice value of the property herein described.

If the shipper fails or declines to execute the above statement, shipments will not be accepted for transportation at the rates subject hereto. Rates published elsewhere in other tariffs lawfully filed with the Interstate Commerce Commission will apply in such a case. Rates herein published on released value have been authorized by the Interstate Commerce Commission in Drought Order No. 67 of June 9, 1971.

And it is further ordered, That notice to the affected railroads and the general public shall be given by depositing a copy of this order in the Office of the Secretary of the Commission and by filing a copy with the Director, Office of the Federal Register; and that copies be mailed to the Chairman of the Traffic Executive Association—Eastern Railroads, New York, N.Y.; the Chairman of the Southern Freight Association, Atlanta, Ga.; the Chairman of the Executive Committee, Western Railroads Traffic Association, Chicago, Ill.; the Vice President and Director, Economics and Finance Department, Association of American Railroads, Washington, D.C.; and to the President of the American Short Line Railroad Association, Washington, D.C.

Dated at Washington, D.C., this 9th day of June 1971.

By the Commission, Vice Chairman Hardin.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-9257 Filed 6-29-71;8:53 am]

[Drought Order No. 68]

CERTAIN DROUGHT AREAS IN NEW MEXICO

Transportation of Hay at Reduced Rates

In the matter of relief under section 22 of the Interstate Commerce Act.

Present: Dale W. Hardin, Vice Chairman, to whom the above-entitled matter has been assigned for action thereon.

It appearing, that by reasons of drought conditions existing in certain portions of the State of New Mexico, hereinafter referred to as the disaster area, the Assistant Secretary of the U.S. Department of Agriculture has requested the Commission to enter an order under section 22 of the Interstate Commerce Act authorizing railroads subject to the Commission's jurisdiction to transport hay to the disaster area at reduced rates:

It is ordered, That carriers by railroad participating in the transportation of hay to the counties of:

Bernalillo.	Otero.
Chaves.	Quay.
Colfax.	Sandoval.
De Baca.	San Miguel.
Eddy.	San Juan.
Grant.	Santa Fe.
Guadalupe.	Sierra.
Hidalgo.	Socorro.
Lea.	Torrance.
Lincoln.	Union.
McKinley.	Valencia.
Mora.	

all located in the State of New Mexico, referred to herein as the disaster area,

be, and they are hereby, authorized under section 22 of the Interstate Commerce Act to establish and maintain until August 15, 1971, reduced rates for such transportation, the rates to be published and filed in the manner prescribed in section 6 of the Interstate Commerce Act except that they may be effective 1 day after publication and filing instead of 30.

It is further ordered, That the class of persons entitled to such reduced rates is hereby defined as persons designated as being in distress and in need of relief by the U.S. Department of Agriculture or by such State agents or agencies as may in turn be designated by the U.S. Department of Agriculture to assist in relieving the distress caused by the drought.

It is further ordered, That, during the period in which any reduced rates authorized by this order are effective, the carriers may, notwithstanding the provisions of section 4 of the Interstate Commerce Act, maintain higher rates to directly intermediate points and maintain through rates in excess of the aggregate of intermediate rates over the same routes if one or more of the factors of such aggregate of intermediate rates is a reduced rate established under the authority of this order.

It is further ordered, That any tariffs or tariff provisions published under the authority of this order shall explicitly so state, making reference to this order by number and date.

And it is further ordered, That, subject to the conditions in the succeeding paragraphs hereof, the use of reduced rates established by authority of this order may be conditioned upon the release by the shipper of the value of the commodity, which released value, in its relation to the invoice value of the property at time of shipment, shall be in the same percentage relation which the reduced rates bear to the rates which otherwise would apply.

And it is further ordered, That tariffs containing released rates filed under authority of this order shall show in connection with such rates the following notation:

The released value must be entered on shipping order and bill of lading in the following form:

The agreed or declared value of the property is hereby specifically stated by the shipper to be not in excess of (show percent) of the invoice value of the property herein described.

If the shipper fails or declines to execute the above statement, shipments will not be accepted for transportation at the rates subject hereto. Rates published elsewhere in other tariffs lawfully filed with the Interstate Commerce Commission will apply in such a case. Rates herein published on released value have been authorized by the Interstate Commerce Commission in Drought Order No. 68 of June 9, 1971.

And it is further ordered, That notice to the affected railroads and the general public shall be given by depositing a copy of this order in the Office of the Secretary of the Commission and by filing a copy with the Director, Office of the Federal Register; and that copies be mailed to the Chairman of the Traffic Executive Association—Eastern Railroads, New York, N.Y.; the Chairman of the Southern Freight Association, Atlanta, Ga.; the Chairman of the Executive Committee, Western Railroads Traffic Association, Chicago, Ill.; the Vice President, Economic and Finance Department, Association of American Railroads, Washington, D.C.; and to the President of the American Short Line Railroad Association, Washington, D.C.

Dated at Washington, D.C., this 9th day of June 1971.

By the Commission, Vice Chairman Hardin.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-9258 Filed 6-29-71;8:53 am]

[Drought Order No. 66, Sub. No. 3]

CERTAIN DROUGHT AREAS IN TEXAS

Transportation of Hay at Reduced Rates

In the matter of relief under section 22 of the Interstate Commerce Act.

Present: Dale W. Hardin, Vice Chairman, to whom the above entitled matter has been assigned for action thereon.

It appearing, that by reasons of drought conditions existing in certain portions of the State of Texas, hereinafter referred to as the disaster area, the Assistant Secretary of the U.S. Department of Agriculture has requested the Commission to enter an order under section 22 of the Interstate Commerce Act authorizing railroads subject to the Commission's jurisdiction to transport hay to the disaster area at reduced rates:

It is ordered, That carriers by railroad participating in the transportation of hay to the counties of:

Borden.	Lamb.
Castro.	Lipscomb.
Childress.	Lubbock.
Clay.	Lynn.
Collingsworth.	Ochiltree.
Cooke.	Pecos.
Crane.	Reagan.
Crosby.	Real.
Dawson.	Roberts.
Donley.	Shackelford.
Ector.	Somervell.
Floyd.	Stephens.
Gaines.	Taylor.
Glasscock.	Terry.
Hall.	Throckmorton.
Hardeman.	Upton.
Hemphill.	Wheeler.
Irion.	Wise.
Jackson.	Young.
Jones.	

all located in the State of Texas, referred to herein as the disaster area, be, and they are hereby, authorized under section 22 of the Interstate Commerce Act to establish and maintain until June 30, 1971, reduced rates for such transportation, the rates to be published and filed in the manner prescribed in section 6 of the Interstate Commerce Act except that they may be effective 1 day after publication and filing instead of 30.

It is further ordered, That the class of persons entitled to such reduced rates is hereby defined as persons designated as being in distress and in need of relief by the U.S. Department of Agriculture or by such State agents or agencies as may in turn be designated by the U.S. Department of Agriculture to assist in relieving the distress caused by the drought.

It is further ordered, That, during the period in which any reduced rates authorized by this order are effective the carriers may, notwithstanding the provisions of section 4 of the Interstate Commerce Act, maintain higher rates to directly intermediate points and maintain through rates in excess of the aggregate of intermediate rates over the same routes if one or more of the factors of such aggregate of intermediate rates is a reduced rate established under the authority of this order.

It is further ordered, That any tariffs or tariff provisions published under authority of this order shall explicitly so state, making reference to this order by number and date.

And it is further ordered, That, subject to the conditions in the succeeding paragraphs hereof, the use of reduced rates established by authority of this order may be conditioned upon the release by the shipper of the value of the commodity, which released value, in its relation to the invoice value of the property at time of shipment, shall be in the same percentage relation which the reduced rates bear to the rates which otherwise would apply.

And it is further ordered, That tariffs containing released rates filed under authority of this order shall show in connection with such rates the following notation:

The released value must be entered on shipping order and bill of lading in the following form:

The agreed or declared value of the property is hereby specifically stated by the shipper to be not in excess of (show percent) of the invoice value of the property herein described.

If the shipper fails or declines to execute the above statement, shipments will not be accepted for transportation at the rates subject hereto. Rates published elsewhere in other tariffs lawfully filed with the Interstate Commerce Commission will apply in such a case. Rates herein published on released value have been authorized by the Interstate Commerce Commission in Drought Order No. 68 (Sub No. 3) of June 9, 1971.

And it is further ordered, That notice to the affected railroads and the general public shall be given by depositing a copy of this order in the Office of the Secretary of the Commission and by filing a copy with the Director, Office of the Federal Register; and that copies be mailed to the Chairman of the Traffic Executive Association—Eastern Railroads, New York, N.Y.; the Chairman of the Southern Freight Association, Atlanta, Ga.; the Chairman of the Executive Committee, Western Railroads Traffic Association, Chicago, Ill.; the Vice President, Economics and Finance Department,

Association of American Railroads, Washington, D.C.; and to the President of the American Short Line Railroad Association, Washington, D.C.

Dated at Washington, D.C., this 9th day of June 1971.

By the Commission, Vice Chairman Hardin.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-9255 Filed 6-29-71;8:53 am]

[Drought Order No. 66, Sub No. 4]

CERTAIN DROUGHT AREAS IN TEXAS

Transportation of Hay at Reduced Rates

In the matter of relief under section 22 of the Interstate Commerce Act.

Present: Dale W. Hardin, Vice Chairman, to whom the above-entitled matter has been assigned for action thereon.

It appearing, that by reasons of drought conditions existing in certain portions of the State of Texas, hereinafter referred to as the disaster area, the Assistant Secretary of the U.S. Department of Agriculture has requested the Commission to enter an order under section 22 of the Interstate Commerce Act authorizing railroads subject to the Commission's jurisdiction to transport hay to the disaster area at reduced rates:

It is ordered, That carriers by railroad participating in the transportation of hay to the counties of:

Andrews.	Howard.
Bailey.	Jack.
Cochran.	Martin.
Eastland.	Yoakum.
Hockley.	

all located in the State of Texas, referred to herein as the disaster area, be, and they are hereby, authorized under section 22 of the Interstate Commerce Act to establish and maintain until June 30, 1971, reduced rates for such transportation, the rates to be published and filed in the manner prescribed in section 6 of the Interstate Commerce Act except that they may be effective 1 day after publication and filing instead of 30.

It is further ordered, That the class of persons entitled to such reduced rates is hereby defined as persons designated as being in distress and in need of relief by the U.S. Department of Agriculture or by such State agents or agencies as may in turn be designated by the U.S. Department of Agriculture to assist in relieving the distress caused by the drought.

It is further ordered, That, during the period in which any reduced rates authorized by this order are effective the carriers may, notwithstanding the provisions of section 4 of the Interstate Commerce Act, maintain higher rates to directly intermediate points and maintain through rates in excess of the aggregate of intermediate rates over the same routes if one or more of the factors of such aggregate of intermediate rates is a reduced rate established under the authority of this order.

It is further ordered, That, any tariffs or tariff provisions published under authority of this order shall explicitly so state, making reference to this order by number and date.

And it is further ordered, That, subject to the conditions in the succeeding paragraphs hereof, the use of reduced rates established by authority of this order may be conditioned upon the release by the shipper of the value of the commodity, which released value, in its relation to the invoice value of the property at time of shipment, shall be in the same percentage relation which the reduced rates bear to the rates which otherwise would apply.

And it is further ordered, That tariffs containing released rates filed under authority of this order shall show in connection with such rates the following notation:

The released value must be entered on shipping order and bill of lading in the following form:

The agreed or declared value of the property is hereby specifically stated by the shipper to be not in excess of (show percent) of the invoice value of the property herein described.

If the shipper fails or declines to execute the above statement, shipments will not be accepted for transportation at the rates subject hereto. Rates published elsewhere in other traiffs lawfully filed with the Interstate Commerce Commission will apply in such a case. Rates herein published on released value have been authorized by the Interstate Commerce Commission in Drought Order No. 66 (Sub No. 4) of June 18, 1971.

And it is further ordered, That notice to the affected railroads and the general public shall be given by depositing a copy of this order in the Office of the Secretary of the Commission and by filing a copy with the Director, Office of the Federal Register; and that copies be mailed to the Chairman of the Traffic Executive Association—Eastern Railroads, New York, N.Y.; the Chairman of the Southern Freight Association, Atlanta, Ga.; the Chairman of the Executive Committee, Western Railroads Traffic Association, Chicago, Ill.; the Vice President, Economics and Finance Department, Association of American Railroads, Washington, D.C.; and to the President of the American Short Line Railroad Association, Washington, D.C.

Dated at Washington, D.C., this 18th day of June 1971.

By the Commission, Vice Chairman Hardin.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-9256 Filed 6-29-71;8:53 am]

CHEROKEE HAULING AND RIGGING, INC., AND HORNE HEAVY HAULING, INC.

Assignment of Hearings

JUNE 25, 1971.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 127834 Sub 32, Cherokee Hauling & Rigging, Inc., application dismissed.

MC 35045 Sub 4, Horne Heavy Hauling, Inc., application dismissed.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-9235 Filed 6-29-71;8:49 am]

[No. 34543]

NEW JERSEY AND NEW YORK RAILROAD CO. AND ERIE LACKAWANNA RAILROAD CO.

Increased Suburban Fares

MAY 25, 1971.

Notice is hereby given that the Erie Lackawanna Railway Co., successor to Erie Lackawanna Railroad Co., which has acquired the properties of New Jersey and New York Railroad Co., has filed a petition on April 28, 1971, with the Interstate Commerce Commission, through its attorney named below, for leave to file a petition attached thereto praying that the Commission modify its outstanding order in this proceeding, decided May 21, 1965 (not printed), to the extent necessary to permit the petitioner to file tariffs (or supplements), on statutory notice and subject to the usual suspension and investigation procedures, increasing interstate fares for monthly and weekly commutation service in the New York-New Jersey suburban area. The order of May 21, 1965, modified the outstanding orders in No. 33147, Increased Suburban Fares, Erie Railroad Co. and New Jersey & New York Railroad Co., decided September 18, 1959, embraced in Pennsylvania Railroad Company Increased Commutation Fares, 308 I.C.C. 593, and in No. 32946, Increased Passenger Fares, Delaware, Lackawanna and Western Railway Co., decided July 14, 1959, embraced in Increased Commutation Fares, Central Railroad Company of New Jersey, 308 I.C.C. 119, to the extent necessary to permit the establishment of certain changed interstate suburban fares, but otherwise continued such orders in full force and effect.

The petitioner proposes to increase all interstate suburban passenger fares in the New York-New Jersey suburban area, including commutation fares, by approximately 15 percent. The fares for monthly commutation tickets will be rounded to even dollars, with amounts of 49 cents and less dropped, and 50 cents and more increased to the next dollar; weekly tickets will be priced in multiples of 50 cents, with 24 cents and less dropped, and 25 cents and more increased to the next multiple of 50 cents.

The petitioner points out that it has not increased its commutation fares since May 1965, but has experienced increases in wage rates and other costs. It urges that passenger fares of other railroads have been increased 15 percent or more in the past year, and that the proposal will place the petitioner's fares on a similar level. Furthermore, petitioner states that the other railroads are presently seeking additional commutation fare increases of 10 percent or more.

Any persons interested in this matter may, on or before 30 days from the publication of this notice in the FEDERAL REGISTER, file replies to the petitions supporting or opposing the determination sought. An original and 15 copies of such replies must be filed with the Commission and must show service of two copies thereof upon petitioner's Attorney, J. T. Clark, 1336 Midland Building, Cleveland, Ohio 44115. Thereafter, the Commission will proceed to render its decision in this matter, including additional proceedings if they appear to be warranted to assure due process of law.

Notice of the filing of this petition will be given by publication in the FEDERAL REGISTER. It is not contemplated that any further notices, orders, etc., in this proceeding will be published in the FEDERAL REGISTER. Service will be solely upon the persons responding to this notice.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-9259 Filed 6-29-71;8:53 am]

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WEDNESDAY, JUNE 30, 1971
WASHINGTON, D.C.
Volume 36 ■ Number 126

PART II

UNITED STATES POSTAL SERVICE

■

Regulations and Notices Implementing the Postal Reorganization Act

Title 39—POSTAL SERVICE

Chapter I—United States Postal Service

SUBCHAPTER D—ORGANIZATION AND ADMINISTRATION

SUBCHAPTER L—ORGANIZATION STATEMENTS

RESTATEMENT OF HEADQUARTERS ORGANIZATION

The regulations set out below reflect enactment of the Postal Reorganization Act (Public Law 91-375). They are interim regulations, and relate basically to headquarters. A reorganization of Regional Offices is underway at this time. This reorganization will reduce the number of Regional Offices from 15 to 5, to be designated as Postal Regions. Regulations will be issued stating that reorganization when it is completed.

Delegations of authority in existence prior to the effective date of these regulations remain in full force and effect, except to the extent that any such delegation is inconsistent with these regulations.

Accordingly, the following amendments to regulations codified in Title 39, Code of Federal Regulations, are hereby made to be effective July 1, 1971:

SUBCHAPTER D—ORGANIZATION AND ADMINISTRATION

1. In Subchapter D (36 F.R. 4755) Part 221, *Office of the Postmaster General and Deputy Postmaster General,* is revoked.

2. Parts 211, 212, 213, 222, and 235 are revised to read as follows:

PART 211—GENERAL PRINCIPLES OF ORGANIZATION

Sec.
211.1 The U.S. Postal Service.
211.2 Board of Governors of the Postal Service.
211.3 Postmaster General.
211.4 Deputy Postmaster General.
211.5 Executive Assistant to the Postmaster General.
211.6 Postal Service Advisory Council.
211.7 Groups and Departments.
211.8 Officers serve at pleasure of Postmaster General.
211.9 Postal Field Service.
211.10 Conversion of terms.

AUTHORITY: The provisions of this Part 211 issued under authority of 39 U.S.C. 201, 202, 203, 204, 206, 401(2), 402, 403, 404, as enacted by Public Law 91-375, 84 Stat. 719.

§ 211.1 The U.S. Postal Service.

(a) The U.S. Postal Service has been established as an independent establishment within the executive branch of the Government of the United States under the provisions of the Postal Reorganization Act of August 12, 1970, Public Law 91-375, 84 Stat. 719.

(b) As a complement to the information in the regulations in this part, a concise statement of the organization of the Postal Service can be found in the U.S. Government Organization Manual.

§ 211.2 Board of Governors of the Postal Service.

(a) The Board of Governors directs the exercise of the powers of the Postal Service. It reviews the practices and policies of the Postal Service and directs and controls its expenditures.

(b) For composition of the Board of Governors, see § 3.1 of this chapter.

§ 211.3 Postmaster General.

(a) The Postmaster General is the chief executive officer of the Postal Service and is responsible for its overall operation. He is named and can be removed by the nine members of the Board of Governors, statutorily designated "Governors", who are appointed by the President with the advice and consent of the Senate. He is a voting member of the Board of Governors.

(b) The Postmaster General determines appeals from the actions of staff and department heads, except as delegated.

(c) The Board of Governors has directed that the Postmaster General exercise the powers of the Postal Service to the extent that such exercise does not conflict with power reserved to the Board by law. The Postmaster General is authorized to direct any officer, employee, or agency of the Postal Service to exercise such of his powers as he deems appropriate. For the direction of the Board of Governors that the Postmaster General exercise the powers of the Postal Service, see §§ 3.9 and 5.3 of this chapter.

§ 211.4 Deputy Postmaster General.

(a) The Deputy Postmaster General is the chief operating officer of the Postal Service and a voting member of the Board of Governors. He is appointed and can be removed by the Postmaster General and Governors.

(b) He directs all postal operations and delegates such of his authority as he considers appropriate. He is required to perform all tasks assigned him by the Postmaster General. He acts as Postmaster General in the Postmaster General's absence or whenever a vacancy exists in the Office of Postmaster General.

(c) During any period when, by reason of absence, disability or vacancy in office, neither the Postmaster General nor the Deputy Postmaster General is available to exercise the powers or perform the functions of the office of Postmaster General, the first official on the list in § 212.1(c) of this chapter who is available to do so shall perform the functions of the Postmaster General.

(d) For delineation of authority of the Deputy Postmaster General by the Board of Governors see § 5.4 of this chapter.

§ 211.5 Executive Assistant to the Postmaster General.

The Executive Assistant to the Postmaster General coordinates certain activities on behalf of the Postmaster General, directs the Postmaster General's office staff, and performs such additional duties as are assigned by the Postmaster General. He reports directly to the Postmaster General.

§ 211.6 Postal Service Advisory Council.

The Postal Service Advisory Council consults with and advises the Postal Service with regard to all aspects of postal operations. It consists of the Postmaster General who is Chairman, the Deputy Postmaster General who is Vice Chairman, and 11 additional members appointed by the President as follows: four representatives of postal labor organizations, four representatives of major mail users, and three representatives of the public at large.

§ 211.7 Groups and Departments.

(a) Postal Service Headquarters personnel is partially divided into three groups—Mail Processing, Customer Services, and Support. Each group is headed by a Senior Assistant Postmaster General who reports to the Deputy Postmaster General. Senior Assistant Postmasters General are responsible for the following activities with respect to Postal Service activities within their assigned areas:

(1) Program planning, direction, and review;

(2) Establishment of policies, procedures, and standards; and

(3) Operational determinations not within the full jurisdiction of field officers.

(b) The operating groups are in turn divided into departments of offices headed by either Assistant Postmasters General or Directors who report to their respective Senior Assistant Postmasters General. The heads of these departments and offices are responsible for assisting their Senior Assistant Postmasters General in carrying out the activities assigned their groups.

(c) In addition to the three operating groups under the Deputy Postmaster General, certain departments report directly to the Postmaser General. These are departments whose activities are not concerned primarily with day-to-day operational matters. They are the Departments of Planning, Communications and Public Affairs, and Research, each headed by an Assistant Postmaster General; Government Relations, headed by an Executive Assistant to the Postmaster General; Inspection Service, headed by the Assistant Postmaster General, Inspection Service; Law Department, headed by the Senior Assistant Postmaster General and General Counsel (sometimes referred to in the regulations in this part simply as General Counsel); and Consumer Advocate. They are responsible for policymaking and overall direction within their assigned areas. There is also a Judicial Officer who performs such quasi-judicial duties as the Postmaster General may assign.

(d) Statements of the functions of the various groups, departments, and offices can be found in Part 222 of this chapter.

§ 211.8 Officers serve at pleasure of Postmaster General.

The following officers, who report directly to the Postmaster General or Deputy Postmaster General, are appointed by the Postmaster General and serve at his pleasure: Senior Assistant Postmasters General (including the General Counsel), Assistant Postmasters General, Executive Assistants who report to the Postmaster General, Directors of offices as referred to in Parts 211 and 222 of this chapter, the Consumer Advocate, and the Judicial Officer. The number of Senior Assistant Postmasters General and Assistant Postmasters General is set by resolution of the Board of Governors.

§ 211.9 Postal Field Service.

(a) *Regional offices.* There are currently 15 regional offices, each under a Regional Director responsible for:

(1) Operations of all postal installations (except those reserved to headquarters) in his region under prescribed delegations, policies, procedures, and standards.

(2) Referral of matters requiring higher decision, with recommendations.

(3) Reporting performance, problems, trends, and information necessary for headquarters' planning and action.

(b) The number of regional offices is to be reduced to five after July 1, 1971. These will be designated Postal Regions. Each Postal Region will be headed by a Regional Postmaster General who will report to the Deputy Postmaster General.

(c) *Postal data centers.* There are six postal data centers, each under a Director who is responsible for:

(1) Accounting and data processing for assigned areas.

(2) Adjudication of claims pursuant to authority delegated to him by the Senior Assistant Postmaster General, Support.

§ 211.10 Conversion of terms.

(a) In any provision of this chapter outside Parts 211, 212, 213, 222, and 235 of this subchapter references to the:

(1) Assistant Postmaster General, Operations Department with regard to matters concerning mail processing shall be deemed to mean the Senior Assistant Postmaster General, Mail Processing Group.

(2) Assistant Postmaster General, Operations Department with regard to matters concerning customers relations and delivery shall be deemed to mean the Senior Assistant Postmaster General, Customer Services Group;

(3) Assistant Postmaster General, Operations Department with respect to functions of the Operations Department as liaison office with the Postal Regions shall be deemed to mean the Deputy Postmaster General.

(4) Assistant Postmaster General, Finance and Administration Department shall be deemed to mean the Senior Assistant Postmaster General, Support Group;

(5) Assistant Postmaster General, Personnel Department shall be deemed to mean the Senior Assistant Postmaster General, Support Group;

(6) Assistant Postmaster General, Facilities Department with regard to matters concerning procurement, shall be deemed to mean the Senior Assistant Postmaster General, Support Group;

(7) Assistant Postmaster General, Facilities Department with regard to matters concerning real property, equipment, and postal facility design and construction shall be deemed to mean the Senior Assistant Postmaster General, Mail Processing Group;

(8) Assistant Postmaster General, Research and Engineering Department with regard to matters concerning research and development shall be deemed to mean the Assistant Postmaster General, Research Department;

(9) Assistant Postmaster General, Research and Engineering Department with regard to matters concerning engineering and processing of mail shall be deemed to mean the Senior Assistant Postmaster General, Mail Processing Group;

(10) Assistant Postmaster General, Research and Engineering Department, with regard to matters concerning procurement shall be deemed to mean the Senior Assistant Postmaster General, Support Group;

(11) Assistant Postmaster General, Planning and Marketing Department with regard to planning shall be deemed to mean the Assistant Postmaster General, Planning Department;

(12) Assistant Postmaster General, Planning and Marketing Department with regard to matters concerning marketing and customer services shall be deemed to mean the Senior Assistant Postmaster General, Customer Services Group;

(13) Chief Postal Inspector shall be deemed to mean the Assistant Postmaster General, Inspection Service;

(14) General Counsel shall be deemed to mean the Senior Assistant Postmaster General and General Counsel;

(15) Assistant Postmaster General, Bureau of Transportation shall be deemed to mean the Senior Assistant Postmaster General, Mail Processing Group;

(b) The same conversion of terms applied in paragraph (a) of this section to officers enumerated there shall apply to the groups, departments, or offices which they head.

(c) Where the conversion rules stated in paragraph (a) of this section do not explicitly cover a particular officer, employee or organizational unit, references shall be deemed to refer to the officer, employee or organizational unit in the new organization performing functions most similar to those performed by the corresponding officer, employee, or organizational unit in the old organization.

PART 212—DELEGATIONS OF AUTHORITY

Sec.
212.1 Authority for delegation.
212.2 Media of delegation.
212.3 Contents of delegations.
212.4 Redelegation.
212.5 Authority to approve personnel actions.
212.6 Authority to administer oaths.
212.7 Authority to designate certifying officers—Headquarters.
212.8 Authority to designate certifying officers—Field.
212.9 Delegation of authority to the Senior Assistant Postmaster General, Support Group.

AUTHORITY: The provisions of this Part 212 issued under 39 U.S.C. 203, 204, 401(2), 402, 403, 404, 409, as enacted by Public Law 91-375, 84 Stat. 719.

§ 212.1 Authority for delegation.

(a) The Postmaster General is empowered to authorize any employee or agency of the Service to exercise any function vested in the Postal Service, in him, or in any other Postal Service employee.

(b) The Deputy Postmaster General is the full alternate to the Postmaster General.

(c) When, by reason of absence, disability, or vacancy in office, neither the Postmaster General nor the Deputy Postmaster General can act as Postmaster General, the first available official on the following list will do so as acting Postmaster General:

(1) Senior Assistant Postmaster General, Support Group;

(2) Senior Assistant Postmaster General, Mail Processing Group;

(3) Senior Assistant Postmaster General, Customer Services Group;

(4) Senior Assistant Postmaster General and General Counsel.

(d) The Postmaster General has been authorized by the Board of Governors to exercise the powers of the Postal Service to the full extent that such exercise is lawful. See §§ 3.9 and 5.3 of this chapter.

(e) The Senior Assistant Postmasters General (including the General Counsel), the Assistant Postmaster General, Research, the Assistant Postmaster General, Planning, the Assistant Postmaster General, Communications and Public Affairs, the Executive Assistant, Government Relations, the Assistant Postmaster General, Inspection Service, the Consumer Advocate, the Judicial Officer and the Executive Assistant to the Postmaster General (see § 211.5 of this chapter), act for the Postmaster General on assigned matters. Each of these officers is authorized to exercise the powers and functions of the Postal Service under the Postal Reorganization Act, in respect to matters within the area of responsibility of his group or department, and departments reporting to him, except as limited by law or by the specific terms of his assignment.

(f) Each head of a department or office who reports to a Senior Assistant Postmaster General is authorized to exercise the powers and functions of that Senior Assistant Postmaster General within the area of responsibility of his department or office, except as such authority may be reserved or rescinded by the Senior Assistant Postmaster General or is limited by law, or the terms of his specific assignment.

(g) In the absence of any head of a group, department, or office, an officer designated by him shall take his place. The acting head of a group, department, or office is authorized to sign documents in his own name as Acting Senior Assistant Postmaster General, Acting Assistant Postmaster General, etc.

§ 212.2 Media of delegation.

(a) All delegations of authority shall be issued through established media such as the Postal Service Manual or other official directives.

(b) Chapter 2 of the Postal Service Manual shall be used to promulgate delegations of authority to groups, departments, and offices and their heads to perform their duties. Other official issuance series may be used as media for conveying specific, related operating authorities. Individual memoranda of delegation, numbered serially for record purposes, may be issued when required.

(c) Headquarters or regional officials shall not orally authorize postmasters to deviate from published instructions, except in emergencies. An oral authorization shall be confirmed by a memorandum or order dated subsequent to the issuance date of the most recently published instructions on the subject. Postal inspectors shall charge as irregularities any improperly authorized deviations observed in the course of office inspections.

§ 212.3 Contents of delegations.

(a) Delegations of authority shall ordinarily be made by position title rather than by name of the individual involved. Such terms as "chief or acting chief" shall not be used; the officer acting in the absence of a principal has his principal's full authority.

(b) When authority is delegated to an officer, the officers above him shall have the same authority. This authority shall not extend to aides, except on an acting basis as specified in paragraph (a) of this section or unless specifically authorized.

(c) A delegation must accord with the law and regulations under which it is made and contain specific limiting conditions as appropriate.

§ 212.4 Redelegation.

(a) Except as otherwise prohibited by law, or by a regulation that expressly prohibits redelegation or by the terms of the delegation:

(1) The head of a group, department, or office at headquarters may redelegate any authority vested in him.

(2) A regional director may redelegate any authority vested in him subject to the following:

(i) Issuance of letters of proposed adverse action against postmasters and the making of the initial decision in an adverse action proceeding involving postmasters may not be redelegated;

(ii) Redelegation to members of a regional office staff must be consistent with the current regional organizational structure; and

(iii) Redelegation to postmasters in his region requires the prior approval of the head of the appropriate group, department, or office at headquarters.

(3) A director, Postal Data Center, may redelegate any authority vested in him.

(4) Heads of other field installations may redelegate any authority vested in them.

(b) Other subordinate officers or employees in groups, departments, or offices at Headquarters and in field installations may not delegate any authority vested in them without the prior approval of the head of the group, department, or office at headquarters, or head of the field installation, as appropriate, except when power of redelegation is granted in the delegation of authority.

§ 212.5 Authority to approve personnel actions.

(a) *Delegation.* The following officials and employees can approve and sign Forms 50, Notification of Personnel Action, for appointments, employment changes, and separations of employees under their jurisdiction in the Postal Field Service, except as limited by the Postal Service Manual or by the Regional Director:

(1) *Inspection Service Divisions.*

Assistant Postmaster General, Inspection Service.
U.S. Postal Security Force Inspector.

(2) *Regional Headquarters.*

Regional Director.
Director, Personnel Division.
Deputy Regional Director.
Chief, Personnel Operations Branch.

(3) *Postal data centers.*

Director, Postal Data Centers.

(4) *Postal installations.*

Postmaster.
Assistant Postmaster.
Supervisor assigned to personnel office.
Area Supply Manager and Superintendent, Supply Center.
Manager and Assistant Manager, Mail Equipment Shops.
Manager, Mailbag Depository and Mailbag Repair Center.

(b) *Redelegation.* The Regional Director or the Director, Postal Data Center, can redelegate the authority to approve and sign Forms 50 to officers and supervisors under his jurisdiction.

(c) *Administrative clearances and approval.* Authority delegated here does not eliminate securing administrative clearances and approvals required by instructions implementing this section issued in other media.

§ 212.6 Authority to administer oaths.

(a) *Delegation.* The following can administer oaths of office in connection with employment:

(1) *Regional headquarters.*

Regional Director.
Deputy Regional Director.
Director, Personnel Division.
Director, Finance Division.
Chief, Personnel Operations Branch.
Employment and Placement Officers.
Personnel Assistant.
Postal Service Officer.

(2) *Postal data centers.*

Director, Postal Data Center.
Director, Systems and Planning Division.

(3) *Postal installations.*

Postmasters.
Assistant Postmasters.
Chief, Administrative Service, or Director, Office of Administrative Services, only to contractors, contract stations and branches.
Superintendent and Administrative Assistant, Mail Bag Depository.
Superintendent, Assistant Superintendent (where authorized) and Administrative Assistant of Combined Mail Bag Depository and Mail Bag Repair Center.
Supervisor assigned to personnel office in postal installation.
Executive Secretary, Postal Board of Civil Service Examiners.
Area Supply Manager; Deputy Area Supply Manager; Superintendent and Personnel Officer, Supply Center.
Manager, Assistant Manager, and Administrative Assistant Mail Equipment Shops.
U.S. Stamped Envelope Agent.

(4) *Inspection Service.*

Postal Inspector in Charge.
Deputy Postal Inspector in Charge.
Assistant Postal Inspector in Charge.
Postal Inspector.
Area Manager, Internal Audit Division.

(5) *Automatic Data Processing Center.*

Director, Automatic Data Processing Center.

(b) *Prohibition on redelegation.* Authority delegated to officers and supervisors specified in paragraph (a) cannot be redelegated by them.

(c) *Administering oaths.* (1) Forms 61, Appointment Affidavit, and 62, Oath of Office and Appointment Affidavit shall be used. No employee shall be assigned to duty if the forms indicate he does not meet requirements. Appointing officers shall especially guard against impersonation.

(2) Administer oath of office on entrance in the Postal Service (or on conversion to career status) without charge or fee.

(3) Postal inspectors may administer oaths on matters coming before them in their official duties.

(4) Members of the Board of Appeals and Review of the Postal Service and each person assigned to conduct a hearing of an appeal from an adverse decision, may administer oaths.

NOTE: For administration of oaths by postmasters and assistant postmasters, see § 244.2 of this chapter.

§ 212.7 Authority to designate certifying officers—Headquarters.

(a) *Delegation.* The following can designate certifying officers at Headquarters for items specified:

(1) The Assistant Postmaster General, Inspection Service, certificates (i)

payment from his special deposit account; (ii) disbursements for rewards based on Postmaster General Notices of Reward; (iii) payments from confidential funds; (iv) salary payments to office division inspectors; (v) advances of funds for confidential purpose; (vi) inspection service, travel advances, transportation of things; and (vii) payments for special analyses and services.

(2) General Counsel certifies payments relating to tort claims and claims under 39 U.S.C. 2603.

(3) The Senior Assistant Postmaster General, Support Group certifies all payments not covered by subparagraphs (1) and (2) of this paragraph.

(b) *Redelegation.* The officials named in paragraph (a) of this section can redelegate their authority to designate certifying officers. The redelegation shall be made by letter to the appropriate postal data center disbursing officer and must bear the specimen signature of the person to whom the authority is redelegated.

(c) *Designating certifying officers*—(1) *Inspection Service and Law Department.* Officials authorized to designate certifying officers (see paragraph (a) of this section) will complete SF 210, Signature Card for Certifying Officer, in duplicate for each postal data center disbursing officer affected to show:

(i) Name of department for which vouchers will be certified.

(ii) Signature of certifying officer written exactly as he will sign vouchers.

(iii) Class of vouchers to be certified.

(iv) His signature and effective date.

(2) *Other departments and offices.* Other departments and offices requiring certifying officers will complete SF 210 in duplicate as prescribed in subparagraph (1) of this paragraph, except for signature and date. Send both copies to the Senior Assistant Postmaster General, Support Group.

(3) *Submitting SF 210 to postal data center disbursing officers.* The Assistant Postmaster General, Inspection Service, the General Counsel, and the Senior Assistant Postmaster General, Support Group or their designees shall send signed originals of SF 210 to each of the disbursing officers affected and retain duplicates. These will be the official designations of the employees named on the SF 210 as certifying officers.

(d) *Maintaining designations.* Each group and department must keep current its designation of authorized certifying officers. As certifying officers die, retire, transfer, or otherwise leave, groups and departments must inform the affected postal data center disbursing officers promptly so that signature cards may be removed from active files. When new or additional designations are made, this § 212.7 shall be followed.

§ 212.8 Authority to designate certifying officers—Field.

(a) *Delegation.* The following can designate certifying officers in postal data centers, inspection service divisions, and internal audit areas;

(1) The Assistant Postmaster General, Inspection Service, for obligations of the Inspection Service.

(2) Postal Data Center Directors for obligations of all other regional functions.

(3) The New York Postal Data Center Director for obligations for Headquarters functions except those under § 212.7(a)(1) and (2) and those certified by the Senior Assistant Postmaster General, Support Group, or his designee.

(b) *Redelegation.* These officials can redelegate their authority to designate certifying officers. Redelegate by letter to each disbursing officer affected, with the specimen signature of the person to whom authority is redelegated.

(c) *Designating certifying officers*—(1) *Inspectors in charge and internal audit area managers.* These officials, who are designated certifying officers, as limited by the Assistant Postmaster General, Inspection Service, can designate certifying officers for obligations incurred by the Inspection Service. They will complete SF 210, Signature Card for Certifying Officer, in duplicate to show:

(i) Inspection Service division or internal audit area for which vouchers will be certified.

(ii) Signature of certifying officer written in the same manner that he will sign vouchers.

(iii) Class of vouchers to be certified.

(iv) His signature and effective date.

Inspectors in charge and internal audit area managers cannot redelegate their authority to designate authorized certifying officers.

(2) *Postal Data Center Directors.* Officers under direction of Postal Data Center Directors will complete SF 210 in duplicate as in paragraph (c)(1) of this section except for signature and date. Send both copies to him for completion.

(3) *Submitting SF 210 to disbursing officer.* The inspector in charge, internal audit area manager, and Postal Data Center Director (or his designees) will send the signed originals of SF 210 to each disbursing officer affected and keep the duplicates. These will be the official designations of the employees named on the SF 210 as certifying officers.

(d) *Maintaining designations.* Each office under jurisdiction of the officials named in § 212.8 must keep current its designation of authorized certifying officers. As certifying officers leave the certifying activity, send notices of termination and appointment through the offices of the named officials to each disbursing officer affected.

§ 212.9 Delegation of authority to the Senior Assistant Postmaster General, Support Group.

(a) *Delegation.* The Senior Assistant Postmaster General, Support Group, may take final action in his own name, on:

(1) Claims for overpayment of pay.

(2) Relief of accountable officers of liability for loss.

(3) Relief of accountable officers of liability for illegal, improper, or incorrect payments.

(4) Certifying officers; accountability.

(5) Deposit to and withdrawal from Postal Service fund.

(6) Collection of debts due the Postal Service with the exception of those falling under the jurisdiction of the Assistant Postmaster General, Inspection Service.

(7) Adjustment of claims of postmasters and Armed Forces postal clerks, including the loss of funds or valuable papers from their official custody resulting from burglary, fire, or unavoidable casualty, with concurrence by General Counsel in cases involving doubtful questions of law or fact.

(8) Certification on fourth-class mail revenue—cost relationship.

(b) *Redelegation.* Except for the authority described in paragraph (a)(8) of this section, the Senior Assistant Postmaster General, Support Group can redelegate all or part of the authority vested in him by paragraph (a) of this section to such subordinate officers as he may deem appropriate.

PART 213—RELATIONSHIPS AND CHANNELS OF COMMUNICATION

Sec.
213.1 Relationships.
213.2 Channels of communication.

AUTHORITY: The provisions of this Part 213 issued under 39 U.S.C. 203, 204, 401(2), 402, 403, 404, as enacted by Public Law 91-375, 84 Stat. 719.

§ 213.1 Relationships.

(a) *Between Headquarters groups, departments, and offices.* Headquarters groups, departments, and offices serve in a staff relationship to the Postmaster General and his Deputy in assigned functional areas.

(b) *Between Headquarters, regional offices, and postal data centers.* Each Headquarters group, department, and office shall provide guidance and policy interpretation to regional officials in its area of responsibility. The Support Group shall provide guidance and policy interpretation to postal data centers.

(c) *Between regional offices and postal installations.* The Regional Director shall provide guidance to the installations within his region with the assistance of his staff in their areas of specialization.

§ 213.2 Channels of communication.

(a) *Headquarters and regional offices.* (1) The heads of groups, departments, and offices formulate the necessary directives to provide guidance to Regional Directors.

(2) Policy directives shall be issued over the signatures of the heads of the groups, departments, and offices covering matters within their responsibility, except when the Postmaster General or Deputy Postmaster General may wish to issue such directives personally. Policy directives shall be coordinated through the Senior Assistant Postmaster General, Support, with other appropriate staffs and departments groups, departments, or offices before issuance.

(3) Instructions and procedures not involving policy shall ordinarily be issued over the signature of the group, depart-

ment, or office head having jurisdiction, and shall have the same effect as though it were sent to the Regional Director by the Postmaster General or his Deputy.

(4) Regional staff officers may communicate directly with the corresponding functional group, department, or office in Headquarters on matters within their area of jurisdiction. In addition, where authorized, they may also directly contact supporting Headquarters departments such as Law Department, Inspection Service, and Department of Communications and Public Affairs on technical matters not requiring administrative judgment of the Regional Director.

(b) *Regional offices and postal installations.* The regular channel of communication to and from the postmaster or the head of any postal installation is through the Regional Director, and his staff specialists in the areas concerned.

(c) *Headquarters, regional offices, and other postal installations with postal data centers.* (1) The Support Group provides the necessary directives to the postal data centers. All other Headquarters communications to and from the postal data centers shall be coordinated with the Support Group. The Law Department and the postal data centers shall maintain direct contact on matters relating to professional and policy guidance on claims.

(2) Regional offices and postal data centers may communicate directly with each other.

(3) Other postal installations and postal data centers may communicate directly on routine accounting matters. All other communications shall be coordinated with the regional staff.

PART 222—FUNCTIONS OF GROUPS AND DEPARTMENTS

Sec.

222.1 Mail Processing Group.
222.2 Customer Services Group.
222.3 Support Group.
222.4 Planning Department.
222.5 Research Department.
222.6 Communications and Public Affairs Department.
222.7 Government Relations Department.
222.8 Postal Inspection Service.
222.9 Consumer Advocate.
222.10 General Counsel.
222.11 Judicial Officer.

AUTHORITY: The provisions of this Part 222 issued under 39 U.S.C. 203, 204, 401(2), 402, 403, 404, 409, as enacted by Public Law 91-375, 84 Stat. 719.

§ 222.1 Mail Processing Group.

(a) The Mail Processing Group is headed by the Senior Assistant Postmaster General, Mail Processing, who reports to the Deputy Postmaster General. It has overall responsibility for all aspects of mail processing within the Postal Service. This responsibility includes the distribution and processing functions, the construction and mechanization of the processing facilities, and the transportation of mail throughout the Postal Service. It establishes and evaluates mail processing policies. It has responsibility for the operation of the bulk mail network and transportation between the bulk mail facilities. Also, it has responsibility for coordination of the use of the Corps of Engineers in constructing all major postal facilities. This includes internal capability for design and construction of major modifications or additions to existing facilities.

(b) The Senior Assistant Postmaster General, Mail Processing, participates in the planning and budget process and reviews and evaluates the mail processing, transportation, and construction portions of the plans and budget requests of each Region. He monitors for the Deputy Postmaster General the performance of the Mail Processing Group and of each Region within his area of responsibility.

(c) The Mail Processing Group is divided into three departments whose heads report to the Senior Assistant Postmaster General, Mail Processing Group:

(1) *Preferential Mail Processing Department.* The Preferential Mail Processing Department is headed by the Assistant Postmaster General, Preferential Mail Processing. It is concerned with processing of preferential mail and has overall responsibility for the development of the preferential mail network. It is responsible for the systems and equipment development work required to develop and implement the preferential mail network. It is also responsible for the development of methods and standards, and distribution systems to be used in the system. It is responsible for review and evaluation of the Preferential Mail Processing Budget.

(2) *Bulk Mail Processing Department.* The Bulk Mail Processing Department is headed by the Assistant Postmaster General, Bulk Mail Processing. It is concerned with the processing of bulk mail. It has overall responsibility for the management of bulk mail processing operations throughout the Postal Service. It provides central staff support to Regional Directors for bulk mail operations and has staff capability in the areas of systems, equipment and facility engineering; distribution procedures and mail handling; industrial engineering, plant and equipment maintenance and performance appraisal. It also has responsibility for monitoring the productivity performance of the bulk mail processing operations of the Regions. In addition, it has direct responsibility for bulk mail installations as assigned by the Deputy Postmaster General. In this regard, it exercises direct supervision over and is responsible for review and evaluation of the individual Bulk Mail Facility plans and budgets.

(3) *Engineering and Logistics Department.* The Engineering and Logistics Department is headed by the Assistant Postmaster General, Engineering and Logistics. It has overall responsibility for the policy direction of all transportation within the Postal Service, to foreign countries and to and between military installations outside the United States, and is responsible for all types of engineering necessary to support present mail processing operations. It plans and develops a national transportation and routing system and monitors performance of each region with respect to achievement of transportation and processing standards and productivity goals. It is also responsible for budget review and approval for all mail processing and transportation activities not designated as part of the preferential or the bulk mail networks.

§ 222.2 Customer Services Group.

(a) The Customer Service Group is headed by the Senior Assistant Postmaster General, Customer Services, who reports to the Deputy Postmaster General. It has overall responsibility for all of the marketing and public contact activities of the Postal Service, including retail and delivery services. It carries out all of the product management functions, including the development and implementation of marketing programs, market research and product development. It has program planning and field support responsibilities for customer cooperation activities. This includes programs for both the general public and major customers. It also has management responsibilities for the merchandising, delivery, and collection programs and provides staff direction to the window clerk and carrier forces. Other responsibilities include the design of postal lobbies, developing new forms of window and delivery services, lobby equipment and improving present work methods in these areas. The group also evaluates service levels.

(b) The Senior Assistant Postmaster General, Customer Services participates in the planning and budget process, and reviews and evaluates the marketing, delivery, and retail portions of the plans and budget requests of each region. He monitors, for the Deputy Postmaster General, the performance of the Customer Services Group and of each Region within his area of responsibility.

(c) The Customer Services Group is divided into three departments whose heads report to the Senior Assistant Postmaster General, Customer Services Group:

(1) *Marketing Department.* The Marketing Department is headed by the Assistant Postmaster General, Marketing. It is responsible for developing customer cooperation programs for mail users, developing program objectives, and setting cost savings targets for programs directed at large postal customers, such as presort and mail early. It provides staff guidance for regional services and sales staffs and customers service representatives in the field through sales methods, presentation kits, prototype sales letters, computerized zip code lists, and other support materials directed at large mailers. In conjunction with the Employees Relations Department, it develops and carries out sales training programs for both the regional direct sales forces and the customer service representatives in the field. It directs the work of a small direct sales force in Washington which sells postal services to businesses and other Government agencies, coordinating this effort with the field sales force. In conjunction with the Department of Communication

and Public Affairs it develops and executes a comprehensive program of cooperation from the general public; develops cost savings objectives; establishes promotional budgets; and secures advertising for such programs as ZIP Code and Christmas mail early. It develops educational and promotional support materials such as ZIP Code manuals. It coordinates the National Postal Forum and activities of the Postmaster General's Mailers Technical Advisory Committee. It maintains the principal marketing and sales contact with associations and industry officials at the national level necessary to support marketing and sales objectives. It shares responsibility for developing new postal products, modifying current ones, and executing marketing programs for all products. It defines service goals and other product characteristics, works with the Finance Department to develop pricing recommendations for each postal product, and directs the work of Product Managers who have broad responsibility for the day-to-day business of each product. This includes:

(i) Setting sales volume objectives and monitoring performance against these objectives in conjunction with the Headquarters and field sales forces;

(ii) Establishing, in conjunction with the Department of Communications and Public Affairs, product marketing plans, including the formulation of advertising and promotion strategies, programs and budgets;

(iii) Developing advertising, in concert with the Department of Communications and Public Affairs;

(iv) Monitoring product profit and loss and recommending areas for improvement.

To assist in establishing marketing programs, it supervises a market research function which carries out (or obtains from contractors) market studies to measure customer reaction to present and proposed postal products and product concepts. It also maintains a product development staff responsible for revising current products and developing new ones, and directs the work of product promotion.

(2) *Delivery Program Management Department.* The Delivery Program Management Department is headed by the Assistant Postmaster General, Delivery Program Management. It has overall responsibility for the national postal collection and delivery program including fleet management. It works with the Marketing Department to set national collection and delivery policy and standards as they relate to published product characteristics. It establishes policy and develops programs for using the postal delivery system. It has national program planning and budget responsibility, and conducts cost benefit analyses of the entire postal delivery program, recommending potential areas for cost reductions and improvement. It has overall staff responsibility for all postal carriers. In conjunction with the Employees Relations Department, it develops training programs with respect to carriers and specifies uniform and mailbag design. It works in cooperation with the Research Department to develop safety equipment such as shoes and boots. It is responsible for the design of and experimentation with carrier vehicles and for specifying and compiling vehicle requirements. As part of its program management efforts, it is responsible for developing, testing, and implementing alternate means of delivery and for establishing improved work methods and designs relating to present delivery techniques. To accomplish these two functions, it directs developmental and industrial engineering staffs which develop and evaluate prototype equipment and originate improved delivery techniques or monitor contracts for these services.

(3) *Retail Management Department.* The Retail Management Department is headed by the Assistant Postmaster General, Retail Management. It has broad responsibility for all the Postal Service's window operations, retail requirements, contract stations, self-service and automated postal units, and merchandising. It establishes policies relating to the use of the Postal Service retail network and has overall budget review and program planning responsibility. It determines what products and services, in addition to postal products, will be offered to the public through the system. It develops national retail merchandising and promotion programs, lobby exhibits and graphic design for lobbies, and directs the National Program for lobby design and customer counter services. It is responsible for overall post office lobby design and for customer support equipment, and in conjunction with the Research Department, for developing such alternatives to traditional window service as self-service units, and all retail locations outside traditional post office lobbies. It develops and tests new and improved vending equipment. It also has staff responsibility for window clerk training and uniform design and develops policies relating to stocks supply.

§ 222.3 Support Group.

(a) Seven activities that provide specialized support for postal activities are included in the Support Group headed by the Senior Assistant Postmaster General, Support Group, who reports to the Deputy Postmaster General.

(b) The Support Group is divided into four departments and three offices, corresponding to the seven support activities. The heads of these departments and offices report to the Senior Assistant Postmaster General, Support Group. The Support Group departments and offices are:

(1) *Finance Department.* The Finance Department is headed by the Assistant Postmaster General, Finance. It is responsible for forecasting and meeting the Postal Service's requirements for long-term capital and short-term borrowing. It invests the funds of the Service and prescribes and monitors practices governing cash management. It works with other officials in developing credit management policies. The Finance Department designs and maintains the Postal Service rate structure, develops and administers standards and procedures relating to mail classification, cost analysis and attribution, and related functions, and makes and defends recommendations to the Postal Rate Commission in conjunction with the Law Department. The Finance Department develops the systems and specifies the standards and schedules for the Postal Service's budget process. It analyzes budget requests and makes recommendations to the Deputy Postmaster General on budget levels. It analyzes Postal Service performance with reference to operating plans continuously. The Finance Department develops accounting policy and procedures. It operates the financial reporting program and maintains accounting controls throughout the Service. It provides the basic processing services associated with the money order program and assists the Customer Services Group in developing money order program policy.

(2) *Employee Relations Department.* The Employee Relations Department is headed by the Assistant Postmaster General, Employee Relations. It provides direction and authority for all matters pertaining to employee relations throughout the Postal Service. It directs the development, implementation, and auditing of employee relations plans, policies, standards, and procedures. It establishes broad employee relations policy for the Postal Service in the areas of labor relations, employee services, and manpower planning and development. It represents and takes final action for the Postmaster General in all employee relations matters including negotiating for the Postal Service in collective bargaining with the postal unions. It directs the administration of collective bargaining agreements and negotiated grievance procedures. It directs the implementation of the National Labor Relations Act pertinent to employee relations matters. It directs the development and maintenance of a strong auditing system for assuring compliance with established employee relations policy throughout the Postal Service. It directs an organization and manpower planning program to serve all postal units in establishing the proper "table of organization" and to improve the operating effectiveness of these units through management and career development, skills training, and professional development. It establishes and maintains a manpower information system to provide accurate data in manpower planning, staffing, and other employee relations matters. It directs the administration of all employee services throughout the Postal Service which includes salary administration and benefits, recruiting and staffing, personnel services, accident prevention, and occupational health service. It directs an employee communications program in conjunction with the Communications and Public Affairs Department to keep the employees informed of plans, programs, and newsworthy items of interest to a well-informed postal worker. It is responsible for the day-to-day implementation of Equal Employment Opportunity affirmative action within the Postal Service, working in coordination

with the Office of Equal Employment Opportunity.

(3) *Administration Department.* The Administration Department is headed by the Assistant Postmaster General, Administration. It is responsible for the procurement activities of the Postal Service. It has responsibility for the policy direction and review of all procurement activities within the Postal Service, including all headquarters procurement except transportation contracting. It is also responsible for administration of Headquarters personnel actions. It manages Headquarters operating services, including printing, library, telephone switchboard, and Headquarters building maintenance and repair. It controls and administers supplies and inventories for the entire Postal Service.

(4) *Management Information Systems Department.* The Management Information Systems Department is headed by the Director of Management Information Systems. It is concerned with automatic data processing, statistical programs, information requirements, and reports. It is responsible for the prompt delivery of information on field activities to postal management. It provides automatic data processing and statistical support to management and assists clients in determining their information needs. It specifies controls on use, modification, or implementation of information systems, including manual and automated systems and exercises those functions of control over information systems which are discharged centrally at Headquarters. It administers the postal data centers and automatic data processing centers in the field.

(5) *Office of International Postal Affairs.* The Office of International Postal Affairs is headed by the Director of International Postal Affairs. It represents the U.S. Postal Service in its relationships with other countries and with international postal organizations, such as the Universal Postal Union and the Postal Union of the Americas and Spain. Working with other functional areas, it develops and recommends U.S. policy and positions on proposals of foreign governments submitted to postal congresses, prepares and recommends U.S. proposals, and negotiates postal agreements with other countries. It maintains liaison with other government agencies, such as the State Department, on nonoperational international mail matters. It assigns international postal matters to functional areas for statements of policy or recommendations of policy, reports or correspondence, particularly in the areas of international rates and classification, international money orders, logistics and parcel post. It directs the foreign visitor programs; develops training programs for visiting postal study groups; maintains liaison with the Agency for International Development on the training of participants from other countries; and directs the international personnel exchange program. It is responsible for protocol in dealing with foreign visitors and for translations of foreign materials.

(6) *Office of Equal Employment Opportunity.* The Office of Equal Employment Opportunity is headed by the Director of Equal Employment Opportunity. It reviews and renders decisions in appeals cases submitted to Headquarters for formal action and directs the staff work required for complete development and presentation of the record, insuring that investigations and conclusions of Appeals Examiners are in accordance with established policy and guidelines. It directs further field investigation and development of the record as necessary and confers with representatives of aggrieved employees and with postal officials when appropriate. It also plans and directs a positive contract compliance program throughout the Postal Service and prescribes the manner and method to govern enforcement and full compliance with Executive Order 11246 as amended. It is responsible for gaining the cooperation and support of contractors with the Postal Service to assure their voluntary compliance. It directs field investigative activities in aggrieved situations and renders formal decisions.

(7) *Office of Management Services.* The Office of Management Services is headed by the Director of Management Services. It serves as the principal advisor and central analytical staff on organization matters and the evaluation and design of management systems and services. It plans and conducts servicewide studies of organization and management systems; it recommends changes to correct identified management deficiencies and designs and installs improved management systems and methods. It designs and administers a servicewide directives and publications distribution program and conucts special systems studies as directed. It is responsible for the development and operation of a servicewide management improvement program and maintains liaison with other Federal agencies and private industry with regard to advanced management techniques.

§ 222.4 Planning Department.

The Planning Department is headed by the Assistant Postmaster General, Planning, who reports directly to the Postmaster General. It is responsible for business planning and strategic studies. It has the principal responsibility for insuring that comprehensive and effective plans are developed. This includes: forecasting the internal and external Postal Service environment; assisting top management in developing goals and objectives in the context of those forecasts; assuring that supporting plans are developed to meet approved objectives; and evaluating progress in meeting plans and objectives. It is also responsible for identifying alternative business strategies and for conducting studies on which to base recommendations to the Postmaster General.

§ 222.5 Research Department.

The Research Department is headed by the Assistant Postmaster General, Research, who reports directly to the Postmaster General. It is concerned with development of new techniques and has overall responsibility for the research and advanced development work done by the Postal Service. It is responsible for keeping abreast of and evaluating state-of-the-art concepts for application to Postal Service requirements, and for maintaining contact with top level representatives of industry, education, appropriate Government agencies, and foreign postal services to obtain new concepts, ideas, and approaches related to postal research and development. It conducts original research to develop and evaluate state-of-the-art concepts and approaches to mechanization and methods for collection, processing, transportation, and delivery of mail. It is also responsible for design and development of new equipment based on state-of-the-art technology. It operates the Postal Laboratory, conducting all phases of research up to and including simulated live-mail testing environment.

§ 222.6 Communications and Public Affairs Department.

The Communications and Public Affairs Department is headed by the Assistant Postmaster General, Communications and Public Affairs, who reports directly to the Postmaster General. It is responsible for the interchange of information with employees, the public, and the press. This includes responsibility for advertising activities. It is responsible for all phases of the philatelic program and serves as liaison with the Citizens Stamp Advisory Committee.

§ 222.7 Government Relations Department.

The Government Relations Department is headed by the Executive Assistant to the Postmaster General, Government Relations. It is responsible for cooperation between the U.S. Postal Service and Members of Congress, other Federal agencies within the Executive Branch, the White House, and other officials at all levels of State and local government. It advises Postal Service officials on legislative and other policy matters in public or political areas involving Congressional committees or individual Congressmen. It maintains liaison with Members of Congress and their staffs for the purpose of consulting and providing information as requested on specific legislation and on Postal Service policies and operations, and (except for the Law Department, as to matters within its responsibility) is the Postmaster General's sole spokesman in this regard.

§ 222.8 Inspection Service.

The Inspection Service is headed by the Assistant Postmaster General, Inspection Service, who reports directly to the Postmaster General. It is responsible for protection of the mails, enforcement of postal laws, plant and personnel security, postal inspection, and internal audits. It directs the execution of policies, regulations, and procedures governing all investigations, including presentation of evidence to the Department of Justice and U.S. attorneys in investigations of a criminal nature. It directs operating inspections and audits for the

Postal Service and acts as security officer and defense coordinator for the Postal Establishment, maintaining liaison with other investigative and law enforcement agencies of the Government.

§ 222.9 Consumer Advocate.

The Consumer Advocate, who reports directly to the Postmaster General, is the spokesman for the individual mail user. He provides the Postmaster General with an independent evaluation of mail service to the individual customer. He also expedites action on customer inquiries and complaints and is responsible for seeing that the responsible office takes corrective action. He makes recommendations for policy changes to improve the individual user's mail service and acts as liaison with consumer groups.

§ 222.10 Law Department.

The Law Department is headed by the Senior Assistant Postmaster General and General Counsel, who reports directly to the Postmaster General. The Law Department:

(a) Serves as legal adviser to the Postmaster General, the Deputy Postmaster General, and the entire Postal Service; this includes making rulings, giving advisory opinions, drafting or approving legal instruments, and representing the Service in administrative proceedings and in judicial proceedings as authorized;

(b) Interprets laws in relation to the Postal Service;

(c) Institutes and maintains administrative proceedings in the consumer protection area;

(d) Prepares the legislative program of the Postal Service, and prepares and submits reports and testimony on all legislation introduced in Congress that would affect the Postal Service;

(e) Is responsible for publication of regulations in the FEDERAL REGISTER;

(f) Manages the regional and field programs that are under the jurisdiction of the General Counsel;

(g) Administers activities under the Tort Claims Act, and other personal injury and physical loss claims;

(h) Maintains liaison with other elements of the Government on legal matters and determines questions concerning legal relations between the Postal Service and Government agencies;

(i) Renders legal services concerning labor relations and standards, employment policy, and personnel security;.

(j) Furnishes legal support in connection with all procurement and contracting activities;

(k) Performs legal services in connection with proceedings before the Postal Rate Commission;

(l) Acts as agent for the receipt of legal process on behalf of the Postal Service and the Postmaster General and other headquarters officials resulting from the performance of their official functions;

(m) Provides legal services in connection with denials and revocations of second-class mailing privileges in proceedings before hearing examiners and the Judicial Officer;

(n) Represents Postal Service Contracting Officers before the Board of Contract Appeals; and,

(o) Administers the Ethical Conduct Program.

§ 222.11 Judicial Officer.

(a) The Judicial Officer is an independent officer who acts for the Postmaster General in the performance of quasi-judicial and other functions. He administratively supervises hearing examiners and hears appeals from their decisions. He serves with them on the Board of Contract Appeals, of which he is ex officio Chairman.

(b) The Judicial Officer has authority to:

(1) Execute in his own name the final decision and order in proceedings authorized by section 1717 of title 18, and by sections 3001(a), 3003, 3004, 3005, and 3007 of title 39, United States Code, appeals from administrative denial, suspension or revocation of second-class mail permits, administrative proposals to refuse to rent, to renew the rental of, or to close a Post Office Box and other proceedings authorized by Postal Service Regulations to be brought before the Hearing Examiner or the Judicial Officer;

(2) Modify, suspend, or rescind any action heretofore taken (including any order issued) or which hereafter may be taken by the Judicial Officer pursuant to the powers, functions, authority, and duties vested in the Postmaster General and the Postal Service with respect to the matters covered by subparagraph (1) of this paragraph;

(3) Preside at the reception of evidence in proceedings where expedited hearings are requested by either party or are provided in rules of practice, and issue a tentative decision in such cases;

(4) Revise or amend the rules governing eligibility to practice before the Postal Service and to revise or amend the Postal Service rules of practice governing proceedings conducted under the Administrative Procedure Act (5 U.S.C. chapters 5 and 7) and in other proceedings in which the Judicial Officer is authorized to execute a final decision and order;

(5) Name and delegate authority to an Acting Judicial Officer;

(6) Exercise jurisdiction over the Hearing Examiner for administrative purposes only, but not to direct or participate in the initial decisions of Hearing Examiners in any proceeding;

(7) Exercise such other authority as the Postmaster General delegates him.

(c) Decisions and orders of the Judicial Officer made under the delegated authority shall be the final Postal Service decisions and orders except that the Judicial Officer may refer any proceeding to either the Postmaster General or the Deputy Postmaster General for final decision. The Judicial Officer does not determine the constitutionality of statutes nor the validity of Postal Service regulations. He is responsible only to the Postmaster General. The Law Department and the Postal Inspection Service do not participate in or advise as to the decisions of the Judicial Officer in any proceeding.

(d) Hearing Examiners:

(1) Hearing examiners are appointed and qualified as prescribed by law (5 U.S.C. 3105). They preside at administrative hearings involving alleged violations of postal laws or conflicts arising over second-class mail permits and other proceedings as provided by Postal Service regulations.

(2) Initial decisions prepared by Hearing Examiners become final Postal Service decisions unless an appeal is taken to the Judicial Officer. Hearing examiners do not determine the constitutionality of statutes nor the validity of Postal Service regulations.

(3) The Hearing Examiners are under the jurisdiction of the Judicial Officer for administrative purposes only, in the same manner as are hearing examiners assigned to independent regulatory commissions.

(e) Board of Contract Appeals:

(1) The Board of Contract Appeals is the authorized representative of the Postmaster General to hear and decide appeals from decisions of contracting officers when and to the extent such appeals are expressly authorized by the terms of any contract to which the Postal Service of the United States is a party. The chairman of the Board of Contract Appeals is authorized to promulgate rules of procedure for the Board of Contract Appeals. These duties shall be performed by the members of the Board of Contract Appeals in addition to their regular duties in the Postal Service.

(2) The Board of Contract Appeals for the Postal Service is composed of the Judicial Officer, who is the permanent chairman, and the Chief Hearing Examiner, who shall be a permanent member. One of the Hearing Examiners of the Postal Service appointed pursuant to the provisions of 5 U.S.C. 3105 designated by the Judicial Officer on an acting basis.

PART 235—DEFENSE DEPARTMENT LIAISON

Sec.
235.1 Postal Service to the Armed Forces.
235.2 Civil Defense.

AUTHORITY: The provisions of this Part 235 issued under 39 U.S.C. 401(2), 402, 403, 404, as enacted by Public Law 91-375, 84 Stat. 719.

§ 235.1 Postal Service to the Armed Forces.

(a) Publication 38, Postal Agreement Between the Post Office Department and the Department of Defense, defines the Postal Service's responsibilities for providing postal service to the Armed Forces.

(b) The Assistant Postmaster General, Inspection Service, is responsible for military liaison.

(c) Postal inspectors provide liaison between postmasters and military commanders, visit military installations as required, and make any necessary recommendations.

§ 235.2 Civil Defense.

(a) Mission: The prime objective of postal civil defense planning is to maintain or restore essential postal service in a national emergency.

(b) Defense Coordinator: The Assistant Postmaster General, Inspection Service, is designated Defense Coordinator for the Postal Service. As Defense Coordinator, he provides general direction and coordination of the national civil defense and defense mobilization programs.

(c) Postmaster General emergency line of succession: (1) Deputy Postmaster General, (2) Senior Assistant Postmaster General, Support Group; (3) Senior Assistant Postmaster General, Mail Processing Group; (4) Senior Assistant Postmaster General, Customer Services Group; (5) Senior Assistant Postmaster General and General Counsel; (6) Assistant Postmaster General, Inspection Service.

(d) Group, department, and field lines of succession: Each group and department shall establish its own internal line of succession to provide for continuity under emergency conditions. Each Regional Director, Postal Data Center Director, Inspector in Charge, and postmaster at first-class post offices shall prepare a succession list of officials who will act in his stead in the event he is incapacitated or absent in an emergency. Orders of succession shall be shown by position titles; those of the inspection division by names.

(e) Field responsibilities: Postmasters and heads of other installations shall:

(1) Carry out civil defense assignments, programs, etc., as directed by regional officials.

(2) Comply with, and cooperate in community civil defense plans (including exercise) for evacuation, take cover, and other survival measures prescribed for local populations.

(3) Designate representatives for continuing liaison with local civil defense organizations where such activity will not interfere with normal duties.

(4) Endeavor to serve (at their own option) as members on the staff of the local civil defense director, provided such service will not interfere with their primary postal responsibility in an emergency.

(5) Authorize and encourage their employees to participate voluntarily in nonpostal preemergency training programs and exercises in cooperation with States and localities.

SUBCHAPTER L—ORGANIZATION STATEMENTS

PART 821—OFFICE OF POSTMASTER GENERAL AND DEPUTY POSTMASTER GENERAL

In Subchapter L (36 F.R. 4755), § 821.3(c) is revoked.

DAVID A. NELSON,
General Counsel.

[FR Doc.71-9041 Filed 6-29-71;8:45 am]

MAIL TRANSPORTATION REGULATIONS AND PROCUREMENT PROCEDURES RELATING TO CONTRACTS FOR MAIL TRANSPORTATION

Effective July 1, 1971, the date of commencement of operations of the U.S. Postal Service, the regulations set out below are adopted by the Postal Service. These regulations, which reflect enactment of the Postal Reorganization Act (Public Law 91-375), prescribe criteria and standards to govern mail transportation generally. They also establish a procurement system for the purchase of mail transportation and related services by contract.

It is recognized that these new regulations and procedures may need modification as experience is gained through use and application. In this regard the Postal Service is receptive to any suggestions for improvement which may be forthcoming from the transportation industry or the public generally. Any such comments may be submitted to the Director, Traffic Management Division, Engineering and Logistics Department, U.S. Postal Service, Washington, D.C. 20260.

Accordingly, effective July 1, 1971, Subchapters G and H (as redesignated, 35 F.R. 18965) of Title 39, Code of Federal Regulations, are amended to read as set forth below.

(39 U.S.C. 401, 404, 410, 2008(c), 5001-5605 as enacted by Public Law 91-375)

DAVID A. NELSON,
General Counsel.

SUBCHAPTER G—TRANSPORTATION OF THE MAILS

PART 510—CONTRACTORS' RESPONSIBILITIES AND ADMINISTRATION OF CONTRACT SERVICE—GENERAL

Sec.

510.1 Contractors' responsibilities.
510.1-1 For operating according to law.
510.1-2 Free transportation of postal employees.
510.1-3 For providing service employees.
510.2 Administration of service.
510.2-1 Administrative official.
510.2-2 Changes in schedules.
510.2-3 Service deficiencies.
510.3 Contractor employees' liens.
510.4 Substitution of sureties.
510.5 Termination.
510.6 Death of contractor-owner operated highway routes.
510.7 Subcontracting.
510.7-1 Part of the route.
510.7-2 The whole route.
510.8 Residence requirements—box delivery routes.
510.9 Claims for damage to contractors' equipment.

AUTHORITY: The provisions of this Part 510 issued under 39 U.S.C. 401, 5001, 5005, 5006, 5007, 5212, 5214.

§ 510.1 Contractors' responsibilities.

The Contracting Officer may make deductions from the compensation due contractors for failure to perform service as required by the contracts, and he may impose forfeitures and fines for other delinquencies as set forth in their contracts. He may also change or remit deductions, forfeitures, or fines. Contractors are also answerable in damages to the Postal Service for the proper care and transportation of the mail. Such damages, as are determined by the Contracting Officer, may be withheld by the Postal Service from compensation otherwise due the contractor. Contractors are accountable to the Postal Service for loss or damage to the mail or any part thereof due to loss, rifling, damage, wrong delivery, depredation upon or other mistreatment of the mail, by the contractor or any of the contractor's officers, agents, or employees or the failure of the contractor or any of the contractor's officers, agents, or employees to exercise due care in the custody, handling, or transportation of the mail. When a contractor having more than one contract for the transportation of mail does not perform the service according to the terms of such contract, the Postal Service may withhold payments on any or all contracts with the contractor until the failure has been removed and all penalties therefor are fully satisfied. The following responsibilities apply generally to all contractors for the transportation of mail.

§ 510.1-1 For operating according to law.

Contractors must comply with applicable Federal and State laws and regulations. The award of a contract to transport mail grants no special right or privilege to the contractor to transport passengers, freight, or express. If passengers are transported, mail must be carried in such a manner so passengers shall not have access to the mail. If other cargo is carried, mail shall be stowed so as to be readily identifiable and not be subject to damage or loss.

§ 510.1-2 Free transportation of postal employees.

Each contractor engaged in the transportation of mail shall carry on any vessel, train, motor vehicle, or aircraft he operates, upon exhibiting their credentials and without extra charge therefor, persons on duty in charge of the mails or when traveling to and from such duty.

§ 510.1-3 For providing service employees.

(a) *Qualifications.* Contractor employees engaged in provision of services under the contract must be:

(1) For highway service, not less than 21 years of age, if driving a vehicle over the highway, otherwise not less than 18.

(2) For airline, railway, and steamship companies, employees of suitable age for the duties required and not less than 18 years of age.

(3) Of good character, reliable and trustworthy.

(4) Sufficiently educated to enable them to perform all required duties in a satisfactory manner.

(b) *Persons ineligible.* The following are ineligible to provide services under the contract.

(1) Persons on parole or under suspended sentence for commission of a felony.

(2) Persons with known criminal records involving moral turpitude or dishonesty.

(3) Persons whose traffic records indicate that their driving motor vehicles would be hazardous. (Applies only to drivers and assistants.)

(4) Officers and employees of the Postal Service including substitutes and temporaries.

(c) *Screening.* Each contractor, subcontractor, or person employed by a contractor or subcontractor to handle mail or drive mail vehicles, except those listed below, must be screened in accordance with established procedures. The following are exempt from screening:

(1) Certificated interstate common carriers and their employees, if the contracting officer and the postal inspector in charge approve the contractor's own security screening procedures.

(2) Civil Service personnel otherwise subject to investigation under Executive Order 10450.

(3) Persons who have been screened previously for another route.

(4) Employees hired for an emergency of only a few days.

(d) *Removal.* A contractor, subcontractor, or contract employee handling mail or driving a mail vehicle shall be removed if the screening process shows that he has: (1) been convicted of a felony; (2) knowingly associates with felons; or (3) if a driver has a record of serious moving traffic convictions, unless the contracting officer has determined that he has since been rehabilitated and has become a responsible citizen.

§ 510.2 Administration of service.

§ 510.2–1 Administrative official.

Routes are under the supervision and administrative control of an official of the Postal Service, as designated by the contracting officer. Generally, routes are under the head of the postal installation serving as the principal terminus point. The advertisement or request for proposals indicate in each instance who shall administer and supervise the route.

§ 510.2–2 Changes in schedules.

The administrative official may issue orders changing exclusive postal contract schedules of departure and arrival, when overall hours required to perform the contract service are not increased.

§ 510.2–3 Service deficiencies.

(a) *Breach not warranting termination.* When a contractor has committed a breach of the contract not considered so grave as to warrant termination, he may be fined an amount determined by the contracting officer, in accordance with the terms of the contract.

(b) *Loss or damage to mail.* When a contractor permits loss or damage to the mail through failure to observe the conditions of the contract, the contracting officer may withhold from the contractor's compensation as damages, the value of the mail lost or damaged plus administrative costs of handling the irregularity.

(c) *Contractor with several routes.* Where a contractor holding several routes is subject to a fine or assessment of damages on one route, the contracting officer may withhold compensation due for other routes operated by the contractor until such fines and damages have been recovered.

§ 510.3 Contractor employees' liens.

If a mail transportation contractor has not paid an employee sums due for service under the contract, such employee may, on proper application to the contracting officer, establish a lien for such wages, which will be withheld from the contractor's compensation and paid directly to the employee.

§ 510.4 Substitution of sureties.

The Postal Service, whenever it deems it consistent with the public interest, may accept or require a new surety on a contract for the transportation of mail in substitution for and release of an existing surety.

§ 510.5 Termination.

Contracts may be terminated at any time as provided by law or by the contract terms.

§ 510.6 Death of contractor-owner operated highway routes.

When a contractor dies, the administrative postal official will immediately notify the contracting officer of the date and approximate time of the contractor's death. If service is not provided promptly by or for the estate of a deceased contractor or his surety, the administrative postal official supervising the route will arrange to hire a temporary operator at the lowest obtainable rate and advise the contracting officer accordingly. Prior to entering into any such temporary arrangements, the administrative postal official shall give notice to the surety.

§ 510.7 Subcontracting.

Execution and recognition of a subcontract does not release the contractor or sureties from their contractual obligations; it does relieve the contractor from personally supervising the performance of service and, in the case of subcontracts for the whole route, permits payments to be made directly to the subcontractor.

§ 510.7–1 Part of the route.

The contractor may subcontract part of the service required by the contract to permit interchange with different modes of transportation or to interline with other carriers of the same mode when such interchanging or interlining is desired to meet the contractor's plan of operation, under the following conditions:

(a) The contractor shall remain responsible to the Postal Service for the care of the mail and shall be chargeable with the acts and omissions of the subcontractor or their employees.

(b) Payments for service performed shall be made to the contractor for the entire service and the contractor shall be expected to pay any subcontractor according to the agreement or understanding between the contractor and subcontractor.

(c) All subcontracts must be approved by the contracting officer and a copy of the subcontracts must be filed with the contracting officer.

(d) Company interline agreements on equipment interchange and joint operations are not subject to the foregoing filing requirements.

§ 510.7–2 The whole route.

The contractor, or surety who has been placed in charge of a route, may subcontract the whole route with the approval of the contracting officer. Whenever the contracting officer determines that a contractor has sublet the whole route without consent, he shall consider the contract as breached and may again advertise the service as provided by law. The contractor and his surety are liable to the Postal Service for damage resulting from the termination of the contract. Subcontracting of the whole route instead of readvertising shall be an exceptional action and shall be permitted only when the contractor furnishes good and valid reasons for such action. A subcontract for the entire route may not be terminated unless first approved in writing by the contracting officer. The provisions of § 510.7–1 (a) and (b) will also apply to subcontracts for the whole route.

§ 510.8 Residence requirements—box delivery routes.

Notwithstanding any provisions of these regulations, when contracts are primarily for the performance of box delivery and collection service, the following will apply:

(a) No bid for a contract shall be considered unless the bidder is a legal resident of one of the counties crossed by the roads over which the mail is to be carried or a legal resident of a county adjoining one through which the mail is to be carried. Advertisements for box delivery and collection service shall set forth the counties in which a bidder must live to be eligible to bid.

(b) A bid shall be considered from two or more individuals who bid jointly if only one of the bidders legally resided in a county in which part of the route lies, or in an adjoining county, if proof is furnished that a bona fide partnership existed at the time the bid was signed.

(c) Bids shall be considered from corporations actually engaged in some business other than contract transportation of mail within the counties in which individuals are restricted as to residence.

§ 510.9 Claims for damage to contractors' equipment.

(a) Claims covered herein are those claims for damage to a contractor's equipment while it is being used pursuant to the performance of a mail transportation contract.

(b) If the equipment is in the custody of the owning contractor when the damage occurs, and such damage resulted from the act or omission of an officer or employee of the Postal Service, the Postal Service shall be liable for such damage, excluding fair wear and tear, when a claim is properly documented and submitted to the contracting officer.

(c) If the equipment owned by a contractor is damaged while in the custody of the Postal Service or a contractor other than the owner except for contractors providing services to other contractors under an interline agreement and is being employed in connection with a mail transportation contract, the Postal Service shall be liable for such damage, excluding fair wear and tear, when a claim is properly documented and submitted to the contracting officer, unless the Postal Service determines that such damage was caused solely by the act of an independent third party.

(d) Claim forms may be obtained from the contracting officer or the administrative official.

PART 520—AIR TAXI AND HIGHWAY TRANSPORTATION CONTRACT ADMINISTRATION

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AUTHORITY: The provisions of this Part 520 issued under 39 U.S.C. 401, 5001, 5005, 5006, 5007, 5402.

§ 520.1 Administrative official.

Routes are under the supervision and administrative control of an official of the Postal Service, as designated by the contracting officer, who will instruct such officials in their duties and responsibilities. This official will be the administrative official of the route. Generally, routes are under the head of the postal installation serving as the principal terminus point.

§ 520.2 Unsatisfactory service by highway contractors.

§ 520.2-1 Standards of performance.

Solicitations (advertisements or requests for proposals—RFPs), PS Notice 82, Additional General Provisions For Service Contracts, and Form 5411-A, Contract General Provisions, state specifically the service on each route.

§ 520.2-2 Irregularities—local action.

(a) Form 5500, Report of Contract Irregularity, will be used to report irregularities on all highway routes. This form will be used only at SCF offices and at offices of other administrative officials. Officials at all other offices will report irregularities to the appropriate administrative official authorized to issue the form.

(b) Only administrative officials who are authorized to prepare Form 5398, Transportation Performance Record—Large Installations, may issue Form 5500 for all highway routes operating to their office whether they are the administrative officials or not. If an administrative official is authorized to record service on Form 5399, Record of Performance of Contract Routes, he will prepare Form 5500 for only the routes for which he is the administrative official. On the other routes operating to his office he will report irregularities to the administrative official by phone or memorandum. The administrative official will then prepare Form 5500 in these cases.

(c) Administrative officials will review the irregularities reported along with the contractor's comments in section 2 of Form 5500, will consult with the contractor, and take any corrective action necessary. If service is omitted, also see § 530.1-7 of this chapter.

(d) If irregularities persist or become more serious in nature, the administrative official will arrange for a conference with the contractor. At this conference, he will inform the contractor of the number and gravity of the irregularities which have occurred; of the need for immediate correction of the irregularities and of the serious consequences which will ensue if corrective action is not immediately taken. Following this conference, he will write a memorandum for the file recording all pertinent statements made by the contractor and him during the course of the conference. A copy of this memorandum will be sent to the contractor and the surety on the contract.

(e) If improved service does not result from the conference, the administrative official will write a letter to the contractor informing him that if service does not improve within 7 days, the case will be forwarded to the contracting officer for appropriate attention. The letter will additionally advise that the contract may be terminated and the surety called upon to assume the route. A copy of this letter will be sent to the surety.

(f) If, by the end of this 7-day period, service still has not improved, the administrative official will forward the complete file to the contracting officer. The memorandum transmitting the file will briefly describe the nature of the irregularities and will contain a recommendation as to the action considered appropriate.

§ 520.2-3 Irregularities—action by contracting officer.

(a) Upon receipt of the file from the administrative official, the contracting officer will prepare a letter warning the contractor that if service does not improve immediately, his contract may be terminated with the surety being called on to provide required service. A copy of this letter will be sent to the surety. The letter should inform the contractor in detail of all irregularities that made the action necessary. Concurrently, if it is felt that it will encourage improved service, a fine in the amount of not less than one-half of, or more than one percent of the annual contract rate may be ordered. Issue orders on Form 5440-C, Contract Route Service Order, fining the contractor and giving all reasons. Send copies to the contractor, the postal data center and the administrative official.

(b) The question of whether or not to levy a fine is strictly a matter within the discretion of the contracting officer, and no fines should be levied in cases where it appears that a lack of funds may possibly be a cause of the contractor's irregularities. If no fine is assessed, tell the contractor the reason why. In any event, no more than one fine will be assessed in any case. Fines must be charged against the account of the contract under which the irregularities occurred and not against any other account of the contractor.

(c) The contracting officer must carefully review any appeals of fines. If he decides to remit a fine, an order should be issued on Form 5440-C. If he decides the fine should stand, he should advise the contractor that his decision is final but appealable, and furnish the contractor a copy of the Rules of Practice Before the Board of Contract Appeals. This final decision will be in writing, will set forth the basis for the final decision in specific detail, and will be mailed to the contractor by Certified Mail/Return Receipt Requested.

§ 520.2–4 Removal of contractor.

If service does not improve after the foregoing procedures have been followed, removal procedures shall be instituted. In removing a contractor, the contracting officer will:

(a) Issue an order on Form 5440–C, terminating the service of the contractor from a specific date, citing provisions of his contract under which his services are being terminated and recognizing the surety in charge effective the following date. The order should suspend payments to the contractor if there is any reason to expect that money will be due the Postal Service as a result of the removal. No indemnity will be allowed.

(b) Transmit by letter a copy of the order to the contractor. The letter should list all irregularities that made the removal action necessary and should advise him that the decision to remove him is final but appealable. It should also transmit a copy of the Rules of Practice Before the Board of Contract Appeals, for his information. The final decision will be mailed to the contractor by Certified Mail/Return Receipt Requested.

(c) Furnish the surety with a copy of the order and a copy of the letter to the contractor, and determine whether the surety will personally continue the service, employ a carrier, or sublet.

§ 520.2–5 Irregularities—major.

Where irregularities occur which are of such proportions that summary suspension or removal is required in the public interest (such as theft, deliberate loss, damage, or abandonment of the mail), the foregoing provisions, insofar as they require consultation, conference, correspondence with and warning of the contractor, do not apply.

§ 520.3 Unsatisfactory service by air taxi contractor.

§ 520.3–1 Standards of performance.

Solicitations (advertisements or requests for proposals—RFPs), PS Notice 82, Additional General Provisions for Service Contracts and Form 2750, General Contract Provisions for Air Taxi Mail Service, state specifically the service required on each route.

§ 520.3–2 Irregularities subject to penalty.

(a) Mail refusal (inability or refusal of contractor to accept mail within the agreed allocation). When mail in excess of amount specified on Form 2752, Air Taxi Mail Service Action, is refused, it is not considered a refusal but will be reported as mail left.

(b) Failure to protect mail (fire, damage, weather, or leaving mail unattended).

(c) Failure to notify postal unit of irregular operations.

(d) Failure to provide specified aircraft. (Except in emergencies when equipment substitution is made with prior approval.)

§ 520.3–3 Irregularities—local action.

(a) Form 2759, Report of Irregular Handling of Mail, will be prepared by postal employees immediately to report any air taxi irregularities in handling mail or mail equipment, including weather damage due to negligence on the part of the contractor, or other irregularity requiring remedial action. When mail is damaged by inclement weather, report only those bags and outside pieces actually wet or otherwise damaged. Do not prepare forms to cover irregular receipt due to weather conditions. Furnish all data required. If accuracy or completeness of the facts are uncertain, get additional information from the contractor involved.

(b) Copies of Form 2759 will be distributed if possible at the close of each day. Send original and first copy to the contracting officer having jurisdiction over the reporting unit, send second copy to the contractor, and retain third copy in files.

§ 520.3–4 Irregularities—action by contracting officer.

(a) The following example shows how to compute penalty for air taxi mail service:

(1) If specified mail capacity requirement is 2,000 pounds;

(2) Capacity of replacement aircraft is 1,500 pounds;

(3) Required weight capacity not available: 500 pounds or 25 percent; and

(4) The normal authorized route payment per mile is: 40 cents.

The amount of the penalty is based on authorized rate (40 cents) per mile. The pro rata penalty would be 10 cents per mile. Concurrently, if it is felt that it will encourage improved service, a fine in the amount of not less than one-half of, or more than 1 percent of the annual contract rate may be ordered by using Form 2765, Authorization to Deduct Fines From Mail Pay fining the contractor, giving reasons. Send copies to the contractor and the postal data center.

(b) The question of whether or not to levy a fine is strictly a matter within the discretion of the contracting officer, and no fines should be levied in cases where it appears that a lack of funds may possibly be a cause of the contractor's irregularities. If no fine is assessed, tell the contractor the reason why. In any event, no more than one fine will be assessed in any case. Fines must be charged against the account of the contract under which the irregularities occurred and not against any other account of the contractor.

(c) The contracting officer will review the irregularities reported along with the contractor's comments. He may consult with the contractor, and will take any corrective action necessary.

(d) If irregularities persist or become more serious in nature, the contracting officer will arrange for a conference with the contractor. At this conference, he will inform the contractor of the number and gravity of the irregularities which have occurred; of the need for immediate correction of the irregularities; and the serious consequences which will ensue if corrective action is not immediately taken. Following this conference, he will write a memorandum for the file recording all pertinent statements made by the contractor and him during the course of the conference. A copy of this memorandum will be sent to the contractor and the surety on the contract.

(e) If improved service does not result from the conference, the administrative official will write a letter to the contractor informing him that if service does not improve within 1 week the contract may be terminated and the surety called upon to assume the route. A copy of this letter will be sent to the surety.

(f) The contracting officer must carefully review any appeals of fines. If he decides to remit a fine, an order should be issued on Form 2765, U.S. Postal Service Authority to Deduct Fines from Mail Pay. If he decides the fine should stand, he should advise the contractor that his decision is final but appealable, and furnish the contractor a copy of the Rules of Practice Before the Board of Contract Appeals. This final decision will be in writing, will set forth the basis for the final decision in specific detail, and will be mailed to the contractor by Certified Mail/Return Receipt Requested.

§ 520.3–5 Removal of contractor.

If service does not improve after the foregoing procedures have been followed, removal procedures shall be instituted. In removing a contractor, the contracting officer will:

(a) Write a letter terminating the service of the contractor from a specific date, citing provisions of his contract under which his services are being terminated and recognizing the surety in charge effective the following date. The letter should suspend payments to the contractor if there is any reason to expect that money will be due the Postal Service as a result of the removal. No indemnity will be allowed.

(b) The letter should list all irregularities that made the removal action necessary and should advise him that the decision to remove him is final but appealable. It should also transmit a copy of the Rules of Practice Before the Board of Contract Appeals, for his information. The final decision will be mailed to the contractor by Certified Mail/Return Receipt Requested.

(c) Furnish the surety with a copy of the order and a copy of the letter to the contractor, and determine whether the surety will personally continue the service, employ a carrier, or sublet.

§ 520.3–6 Irregularities—major.

(a) Where irregularities occur which are of such proportions that summary suspension or removal is required in the public interest (such as theft, deliberate loss, damage, or abandonment of the mail), the foregoing provisions, insofar as they require consultation, conference, correspondence with and warning of the contractor, do not apply.

(b) The contracting officer will remove the contractor at once from air taxi mail service routes and notify the surety when the contractor's operating certificate is revoked by the Federal Aviation Administration or he fails to com-

ply with pilot, flight, and aircraft requirements of his contract. Necessary replacement service will be obtained and the surety will be held responsible according to the terms of its bond (See 39 CFR 619.207-3).

§ 520.4 Release of contractor.

§ 520.4-1 Authority.

The contracting officer may take initiative to release contractors by resoliciting under certain conditions, or may, upon request of contractors, resolicit and award new contracts to release contractors and sureties when undue hardships are imposed by:

(a) Changes ordered which materially increase or decrease the service required.

(b) Abnormal increase in mail requiring larger equipment.

(c) Schedule changes resulting in excessive increase or decrease in time required.

§ 520.4-2 Indemnity payment.

Contractor will be allowed the 1 month's indemnity payment if route is resolicited under § 520.4-1.

§ 520.4-3 Relief of contractor—advertised contracts.

If request of a contractor under an advertised contract for release is based on changed conditions, the contracting officer will consider adjusting the contractor's pay.

§ 520.4-4 Soliciting to relieve contractors.

Solicitations for release of contractors for reasons stated in § 520.4-1 must be issued and new contracts awarded as early as practicable.

§ 520.4-5 Award of contracts.

New advertised or negotiated contracts will be solicited and awarded; emergency contracts will not be made in these instances.

§ 520.5 Screening.

§ 520.5-1 Basic requirement.

Each contractor, subcontractor, or person employed by a contractor or subcontractor to handle mail, drive a mail vehicle, or pilot aircraft must complete Form, 2025, Contract Personnel Questionnaire, and have his fingerprints taken on Form FD-258 (Fingerprint Chart) within 10 days after beginning service, except the following who are exempted:

(a) Certificated interstate common carriers and their employees, if the contracting officer and the postal inspector in charge approve the contractor's own security screening procedures.

(b) Civil service personnel otherwise subject to investigation under Executive Order 10450.

(c) Person who have been screened previously for another route.

(d) Employees hired for an emergency of only a few days. This does not exempt regular relief or substitute employees.

NOTE: Persons who must be screened within 10 days after beginning service may have the time limit extended by the contracting officer, in unusual circumstances.

§ 520.5-2 New contracts and subcontracts.

When a new contract is awarded or subcontract recognized, the administrative official will ascertain whether or not the contractor, subcontractor, or their employees need to be screened according to requirements. If the contractor, subcontractor, or their employees must be screened, the administrative official will forward to the contractor or subcontractor sufficient copies of Form 2025 and FD-258 for the screening and will see that the forms are properly completed. Form 2025 will be prepared in duplicate.

§ 520.5-3 Screened personnel checklists.

The administrative official will maintain a list of contractors, subcontractors, and employees who have been screened. A copy of the list will be furnished to the postal supervisor or, in the case of air taxi service, the driver delivering mail to air taxi contractor who will consult the list before mail is turned over to an unknown driver or pilot. If the contractor's driver's, or pilot's name does not appear on the list, the supervisor or driver will check with the contractor to see if the contractor's driver or pilot is authorized to receive mail and will report the name of any new driver or pilot to the administrative official, who will send screening forms to the contractor or subcontractor.

§ 520.5-4 Time limitations and periodic review.

(a) *Before employment.* Every effort must be made to have the contractors and subcontractors submit screening forms (Form 2025) for all prospective drivers, pilots, and mail handlers, before they are employed, to administrative officials for review. If this procedure is not possible, the administrative official will ensure that forms are received within a 10-day period, after employment. Anyone who has not complied with this request will be denied access to the mails unless the contracting officer has allowed a reasonable time extension due to unusual circumstances.

(b) *Updating the program.* The postal data center will send each contractor and subcontractor Form 5415, Postal Service Screening Program, with their last check for Postal quarters 1 and 3 reminding them of their responsibility for reporting changes in employees to the administrative official. This official will insure that reports are received on all routes for which he is administratively responsible and that new employees are screened by following procedures as outlined above. The contracting officer will remind administrative officials of the periodic review of the screening program.

§ 520.5-5 Unsatisfactory cooperation.

(a) *Local action.* If the administrative official does not receive cooperation from a contractor or subcontractor in completing the screening forms, he will submit the case to the contracting officer for advice. Include with the report the name and address of the contractor, subcontractor, or their employees, with copies of all correspondence in the case. In the event a person claims that he has been screened on another route, or if a certificated interstate common carrier believes he should be exempt as outlined previously, the administrative official will submit the case to the contracting officer for a determination.

(b) *Action of contracting officer.* When the contracting officer receives the case from the administrative official, he will write to the contractor or subcontractor asking for immediate compliance. If this does not achieve the desired results, and if the forms are not completed within a reasonable time as determined by the contracting officer, a fine of $25 should be imposed. If the fine does not bring about compliance, he should submit the case to Headquarters for review and final decision.

§ 520.5-6 Processing forms.

Upon receipt of completed forms, the administrative official will insert the name of the region on Form 2025 and review the forms to make certain that every item on both forms is complete and legible (including signature and date blanks) and that fingerprints appear to be sufficiently clear for classification. If forms are not completed in their entirety, return them for proper completion. Particular attention must be given to Item 18 (Declaration of Arrests and Charges) of Form 2025. If an applicant whose record shows possible undesirable factors (i.e., recent theft charges, habitual driving while intoxicated, narcotic charges, parole and probation violations, and other charges which appear to be serious enough to place the mail in jeopardy) shows up to drive before formal clearance, administrative officials will withhold mail and immediately inform the contracting officer by telephone and request his advice. When the forms are in order, the administrative official will send the original Form 2025 stapled to Form FD-258 to the Personnel Security Officer, U.S. Postal Service, Washington, D.C. 20260.

§ 520.5-7 Removal.

Removal or retention will be governed by the following:

(a) When no derogatory information is developed or when only minor traffic offenses are involved, forms will be returned without comment to the contracting officer, by the Personnel Security Officer. The remainder will be reviewed at Headquarters and returned to the contracting officer, with instructions to retain or remove. Forms will be filed in accordance with § 520.5-9. Administrative officials, contractors, subcontractors, or their employees need not be informed of the results of a favorable investigation.

(b) Do not remove a contractor, subcontractor, or an employee for reasons developed in the screening program without specific instructions from Headquarters.

(c) When the responsible official at Headquarters advises that an individual is unsuitable, the contracting officer will:

(1) In the case of an employee, direct the contractor or subcontractor in writing to remove the unsuitable employee at once and to acknowledge the direction with a certification that the employee has been removed and will no longer be employed in performance of the mail contract.

(2) In the case of the contractor, remove him following procedures as outlined.

(3) In the case of an emergency contractor, terminate his contract.

(4) In the case of a subcontractor, terminate subcontract.

§ 520.5–8 Confidential nature of screening data.

All material developed in the screening program will be treated as privileged information. Do not communicate it to contractors, subcontractors, or their employees, or allow it to become known to unauthorized persons. When removing a contractor, the reason for removal may be given, but only to the contractor. When removing a subcontractor, only the subcontractor should be told the reason for removal if he requests such information. Contractors and subcontractors will be informed only, without details, that unsuitable employees be removed. An employee may be advised of the reason for his removal by the contracting officer, if he requests such information.

§ 520.5–9 Filing and retention requirements.

The original of Form 2025, Form FD–258, and other papers developed will be filed alphabetically in a separate cabinet, equipped with a lock in the office of the contracting officer. Retain all material for 1 year after the contractor, subcontractor, or employee is separated for any reason.

§ 520.6 Special filing requirements—terminated contracts.

Two copies of all documents terminating contracts for any reason shall be filed with the Interstate Commerce Commission and the Civil Aeronautics Board, as appropriate.

§ 520.7 Contract service changes.

§ 520.7–1 Authority.

(a) Contracting officers may take final action to discontinue, extend, or curtail routes; to change and restate service required; and to increase or decrease frequencies.

(b) Give careful consideration to the effect specific route changes will have on other routes and types of service. The contracting officer must not authorize any change contingent on or related to changes in other service without concurrence of all concerned.

(c) The contracting officer may issue instructions to officials to omit or change the frequency of supply of intermediate post offices without issuance of formal orders, if no change in distance or pay is involved.

(d) Negotiated contracts frequently have special contract provisions governing service changes. Therefore, prior to taking any of the actions described in paragraph (a) of this section the contracting officer should review the terms of a negotiated contract to determine if any special conditions apply.

§ 520.7–2 Discontinuance of contract.

(a) A route may be discontinued if unnecessary or if it is to be superseded by some other service, by allowing the contractor the indemnity as provided in the terms of the contract.

(b) Sometimes discontinuance of service under the contract may be to the advantage of the contractor or subcontractor. In these instances, the contractor may waive the indemnity, and the contracting officer should acquire a statement from him to that effect. Consent of the surety is not necessary. The order discontinuing service will include the statement: Without the allowance of indemnity, in accordance with agreement with the contractor. Copy will be sent to the surety.

(c) Contractors are not expected to waive the indemnity upon termination of their contracts after resolicitation.

(d) It is the policy of the Postal Service to furnish contractors as much advance notice as possible when a contract is to be terminated prior to the end of the contract term. A minimum of 30 days advance notice must be given except in an emergency beyond the control of the contracting officer. A contractor may be notified by letter of intention to discontinue in advance of issuance of formal order.

§ 520.7–3 Changes in service.

(a) *Schedule changes.* The contracting officer may issue orders changing schedules of departure and arrival, to meet Postal Service requirements, without increase or decrease in pay, when overall hours required to perform the service are not increased.

(b) *Minor service change.* The contracting officer may at any time, without consulting the contractor, issue orders requiring minor extensions or curtailments, changes in line of travel of the route, and other revisions to the route which do not materially affect the contractor's rate of return by authorizing an increase or decrease in compensation at the existing rate. If, in the judgment of the contracting officer, such revision in compensation is not fair and reasonable, he may order the change and allow the contractor more or less increase or decrease, provided the change in pay does not exceed 2 percent or $1,000, whichever is the lesser amount. If the contractor is not satisfied with the contracting officer's judgment on the amount of compensation changes, he may ask for an adjustment in compensation. If time permits, and the contracting officer desires, he may discuss changes with the contractor before he officially orders changes.

(c) *Box delivery routes.* Service changes on box delivery routes will be made on the basis of the increase or decrease in the number of hours required to service the route.

(d) *Major service changes*—(1) *Advertised contracts.* (i) When major service changes are necessary due to revision in Postal Service patterns requiring substantial extension or curtailment of a route, or when increased or decreased mail volume occurs requiring additional or fewer trips or change in the size or number of vehicles required to operate the route, the contracting officer may advise the contractor, in writing, of the desired change. He will ask the contractor to submit a written proposal to operate the revised service and to send with the proposal cost data to support the request. If the contractor's offer is satisfactory to the contracting officer, the change will be ordered to reflect both the service change and the compensation change without further correspondence. No indemnity will be allowed except when equipment requirements are reduced in which case indemnity will be paid in accordance with the contract terms.

(ii) If agreement cannot be reached in accordance with paragraph a, or by further negotiations before the time the service change must take place, or if the contracting officer feels that the desired service change is so major that readvertising the service rather than negotiating the change would be in the best interest of the Postal Service, the contracting officer will readvertise the route and advise the contractor accordingly. The contractor will be entitled to indemnity in accordance with the contract terms. When possible, the route will be readvertised and a new contract awarded before the change in service is required. If this is not possible, the contract will be terminated and the service will be established as an emergency route.

(iii) The additional new route segments will be allowed by negotiation with the existing contractor, only if the original route and the new segment to be added have at least one common terminus point.

(2) *Negotiated contracts.* If a major service change is necessary, the contract will be terminated.

§ 520.7–4 Readvertisement versus service change—advertised contracts.

(a) Before authorizing a major change in a route, covered by an advertised contract, the contracting officer will consider whether the change will so completely transform the contract that it would not be known whether a competitive price was being paid for actual service performed. If a competitive price cannot be retained for the changed service, consider readvertising. If a change has the effect of transforming the existing contract into a different contract, the services may not be added without advertising.

(b) The point at which a change will have this effect is difficult to determine and careful judgment is required. When a major change is authorized under an existing contract, the contracting officer

must fully document justification for adding the service to an existing route in lieu of advertising the service, and retain such documentation with the contract files.

§ 520.7–5 Preparation and distribution of order.

When a service change must be ordered, the contracting officer will:

(a) Establish effective date of orders on the basis of individual requirements. If possible, effective date will be the beginning of an accounting period. When a change in line travel or frequency is made, the date on which service will start must be the effective date. Additional service may not become effective prior to date of order. This does not apply to emergency service.

(b) Prepare Form 5440–C, for highway routes and Form 2752, for air taxi routes, to authorize the service change. In the case of highway routes, if several copies of order are needed, use Form 5440, Contract Route Service Order, and if necessary, Form 5440–F, Contract Route Service Order (Continuation Sheet), which are preprinted mats. Assign serial number. All changes, including change in line of travel, must be clearly stated to avoid misunderstanding by contractors, administrative officials, and postal data centers. The order will specify that the contractor be allowed as extra pay any indemnity as determined in § 520.7–3. The condition for allowing the extra pay also applies to contracts which have been extended.

(c) Show the new annual mileage on the order forms if the order changes the annual scheduled mileage.

(d) When extending a route primarily to supply additional box customers show extended line of travel in full capital letters and add following note on order:

NOTE: New Line of Travel Shown in Full Caps.

(e) The contracting officer will distribute form(s) as follows:

(1) Original signed copy to postal data center's copy must bear an original signature. Facsimile signatures are not acceptable.

(2) Copy to files.

(3) Copy to contractors, subcontractors, and administrative officials as necessary.

(4) If a major change is ordered involving a substantial increase or decrease in pay, furnish surety on contract with a copy.

(5) If the change involves or affects service in areas outside the geographic authority of the contracting officer, furnish a copy of the order to each affected contracting officer.

§ 520.7–6 Temporary extensions.

The contracting officer may extend existing routes to temporary terminals, post offices, railroad stations, and airports by issuance of an order to read about as follows:

Contractor is hereby authorized to operate from Greensburg Freight Yards instead of Greensburg RR. Station on Part A of this route during the period December ------ to ------, 19--, inclusive, increasing distance ------ of a mile and back, and is to be allowed pay pro rata.

§ 520.8 Schedule changes.

§ 520.8–1 Factors to be considered.

Improvement of mail service must be the primary factor. The contracting officer or administrative official, as appropriate, will consider the following points before making schedule changes:

(a) Reversal of schedules could deprive rural families of transportation to local trading centers. Loss of nonpostal service may outweigh possible Postal Service improvements; consider carefully wishes of the customers.

(b) Consider financial effect on the contractor. Reversal of schedule or requiring an excessive layover might cause sufficient increase in cost of operation to provide basis for a request to adjust pay.

(c) Make every reasonable effort to work out satisfactory arrangements which will not work hardship on contractors or customers. Avoid arbitrary action.

(d) Do not alter schedules for the convenience of contractors, subcontractors, or carriers unless it will not be detrimental to the Postal Service.

(e) Make every effort to see that schedules are realistic. Do not set running or flight time that would require violation of speed limits, or exceed cruising speed of aircraft.

§ 520.8–2 Orders.

The contracting officer or administrative official, as appropriate, will ascertain that schedule changes are coordinated with all other affected service. When schedule changes must be ordered, he will prepare orders on Form 5440–B, Notice of Change in Schedule, for highway routes and Form 2752, for air taxi routes. In the case of highway routes, if several copies of order are necessary, use preprinted mat, Form 5440–A, Notice of Change in Schedule. The schedules should be stated clearly and as briefly as possible. Do not list intermediate points unless necessary, particularly on long routes where detailed schedules are published for all concerned. Copies will be distributed as indicated on form. If the change involves or affects service in another contracting officer's geographic area of responsibility, furnish him with a copy of the order.

§ 520.9 Administration of emergency service contracts.

§ 520.9–1 Administrative official.

Routes will be placed under the supervision and administrative control of an official of the Postal Service, as designated by the contracting officer, who will instruct such officials in their duties and responsibilities. This official will be the administrative official of the route. Generally, routes are under the head of the postal installation serving as the principal termini point.

§ 520.9–2 Certifying service.

Administrative officials will certify service performed under temporary emergency service contracts on Form 5429, Certification of Exceptional Contract Service Performed, for highway routes, and Form 2756, Certification of Air Taxi Mail Service Performed, for air routes.

§ 520.9–3 Abandonment by contractor.

On receipt of information that the contractor has abandoned his route, the contracting officer will prepare an order on Form 5440–C, for highway routes, and Form 2752, terminating services of the contractor.

§ 520.9–4 Screening.

See section 520.5.

§ 520.9–5 Death of contractor-owner operated routes.

In the event of the death of a contractor for emergency service who operated his own route, the contracting officer shall immediately arrange for a new emergency contract to replace the deceased contractor's contract.

PART 530—AIR TAXI AND HIGHWAY TRANSPORTATION CONTRACT PAYMENT PROCEDURES

Sec.
530.1 Air taxi contract payment.
530.1–1 Records and reports.
530.1–2 Condition for payment.
530.1–3 Mileage deductions.
530.1–4 Additional trips.
530.1–5 Review and control of service.
530.1–6 Controls.
530.1–7 Omitted service.
530.2 Highway transportation contract payment.
530.2–1 Records and reports.
530.2–2 Additional service.
530.2–3 Payments for service performed.
530.2–4 Certification of service.
530.2–5 Review and control of annual rate contracts.
530.2–6 Omitted service.

AUTHORITY: The provisions of this Part 530 issued under 39 U.S.C. 401, 5001, 5005, 5006, 5007, 5402.

§ 530.1 Air taxi contract payment.

§ 530.1–1 Records and reports.

(a) *Responsibility.* The contracting officer will assign the responsibility of recording contract performance to an administrative official and will instruct him on the proper presentation of the recording forms.

(b) *Form 2755, Air Taxi Mail Service Performed.* (1) The pilot will complete Form 2755, Air Taxi Mail Service Performed, for each scheduled trip. He will record arrival and departure time for every air stop served. At the end of the trip, copies 1 and 2 will be promptly turned into the terminal postal unit.

(2) If service is provided over a route from the originating terminal to an outer terminal and returns to the originating terminal using the same aircraft and pilot, both the outbound and inbound service will be reported on one Form 2755 as a round trip.

(3) If service is provided over a route from the originating terminal to the outer terminal by one aircraft and pilot, and from the outer terminal to the originating terminal by a second aircraft and pilot, each pilot will report this portion of the service on Form 2755 as a one-way trip.

(c) *Form 2756, Certification of Air Taxi Mail Service Performed.* (1) At the end of each week, the administrative official of the certifying postal unit will prepare Form 2756, as reported on Form 2755 furnished by the pilot for each trip and submit it to the Dallas Postal Data Center for payment of service. Form will be dispatched in a separate envelope endorsed Form 2756 in the lower left corner.

(2) A copy of Form 2756 and related copies of Form 2755 for the week will be forwarded to the Contracting Officer, for each route.

§ 530.1–2 Condition for payment.

Full payment will be allowed when:

(a) Service is performed under published schedule.

(b) Contractor begins a trip but terminates an intermediate stop or an alternate point because of weather or other conditions beyond the pilot's control, except mechanical failures and accidents or incidents which prevent completion of trip.

§ 530.1–3 Mileage deductions.

Mileage deductions will be made for trips, or portions of trips, canceled because of mechanical failure and complete trips canceled because of weather.

§ 530.1–4 Additional trips.

(a) *Policy.* All advertised contracts will, and negotiated contracts may, contain a provision that contractors will be required to perform additional trips between points regularly served for the purpose of relieving congestion in postal facilities and to expedite delivery of mail.

(b) *Advanced planning—holiday.* Service will not be contractually scheduled on holidays or holiday weekends, keeping in mind that extra trips can be operated where volume dictates. Service will be scheduled to meet minimum requirements.

(c) *Delegation of authority.* The contracting officer may authorize the administrative official at the terminal postal unit to operate additional flights when he believes a need exists.

(d) *Payment for additional service.* Payment for additional service will be certified in accordance with §§ 530.1–1, 530.1–2, and 530.1–3.

§ 530.1–5 Review and control of service.

The administrative official for each air taxi route will forward a copy of each Form 2755 and 2756 to the contracting officer at the end of each week for review.

§ 530.1–6 Controls.

(a) Prior to the close of each fiscal year, the contracting officer will furnish a list to the postal data center of contracts that will not be renewed. The postal data center will make final payments under these contracts by the close of accounting period 1, after clearing records of performance with the contracting officer.

(b) The contracting officer will notify the postal data center by Form 5440–C to suspend payment when it is determined that a route will be terminated before expiration of the contract term. On all contracts made for a term to end on a date other than June 30, the contracting officer will notify the postal data center by Form 5440–C during the accounting period in which the contract expires to suspend payment due for the last 2 weeks of this period. The postal data center will make final payment after clearing records of performance.

§ 530.1–7 Omitted service.

(a) Administrative officials will report omitted service to the contracting officer.

(b) The contracting officer must decide whether deductions will be made for omitted service which do not fall under § 530.1–2 *Condition for payment.* Deductions will not generally be made for omitted service caused by catastrophes or other Acts of God. When deductions appear in order, the contracting officer will instruct the administrative official of the route to submit an amended Form 2756 to the data center to reflect the deduction.

§ 530.2 Highway transportation contract payment.

§ 530.2–1 Records and reports.

(a) *Responsibility.* The contracting officer will assign the responsibility of recording contract performance to an administrative official and will instruct him on the proper preparation of the recording forms.

(b) *Form 5398, Transportation Performance Record—Large Installations.* (1) All sectional center facilities will be designated to use Form 5398. Postmasters and heads of other large installations may also be designated to use Form 5398.

(2) *Preparation.* Mats will be prepared by the officials authorized to use Form 5398. Duplicating will be done by the installation if duplicating equipment is available. If duplicating equipment is not available, the installation will send the mat to the contracting officer, who will review the form for accuracy and reproduce the required copies. When minor service changes occur, the stock of duplicated forms may be changed with pen and ink. New forms should be prepared after extensive service changes. The form should be dated to insure use of latest edition.

(3) *Master file.* A copy of the latest edition of Form 5398 will be filed in the office of the contracting officer. Installations which perform their own duplicating will be instructed to send a copy to the contracting officer each time a new edition is printed. The copies in the file of the contracting officer will be corrected as service changes occur. This file will be used to check the mats prepared by the installations.

(c) *Form 5399, Record of Performance of Contract Routes*—(1) *Use.* Postmasters and other installation heads, designated as recording offices and not designated to record on Form 5398 or Form 5463, Report of Performance of Highway Mail Transportation (Unit Rate Contracts), will maintain daily records on Form 5399.

(2) *Recording officials other than administrative officials.* All designated recording offices, other than the administrative office, will submit their Forms 5399 to the administrative official immediately after the end of each accounting period. On interregional and intersectional center routes where the recording official maintains daily record of performance on Form 5398, the Form 5399 will be prepared showing only the exceptions to regular service.

(3) *Administrative official.* If other offices on the route have been designated to send Forms 5399 to the administrative official, the administrative official will review these forms for any information requiring attention and file the forms with the Forms 5398 or 5399 prepared by his office.

(4) *Receipt of Forms 5399.* Form 5418, Control Log, will be used by the administrative official to check in Forms 5399. The first column of the form will be used for route numbers, second column for names of reporting offices, and third column for the number of Forms 5399 due.

(d) *Processing Forms 5398 and 5399.* The administrative official will examine Forms 5398 or 5399 prepared by his office, and Forms 5399 prepared by other recording official, for exceptions to service. Worksheets will be prepared for extra trips and detour mileage for consolidation after all forms have been examined. Omitted service will be reported to the contracting officer.

(e) *Form 5463, Report of Performance of Highway Mail Transportation (Unit Rate Contracts).* Form 5463 will be used to record performance of service under unit rate contracts (piece rate, pound rate, trip rate, mileage rate, etc.).

§ 530.2–2 Additional service.

(a) *Detour travel.* Additional compensation at the basic rate per mile may be paid to contractors for necessary increased travel caused by obstruction of roads, destruction of bridges, discontinuance of ferries, or any other cause occurring during contract period, provided the increase amounts to as much as $1 in any 4-week accounting period and a report is made within 90 days after service is performed. The following actions are required:

(1) *By contractor.* The contractor is responsible for reporting to the administrative official all necessary detours, reasons therefor, and additional distance traveled on each trip.

(2) *By administrative official.* The administrative official is responsible for obtaining all pertinent facts for recording the detour travel on either Form 5398 or Form 5399.

(b) *Additional trips*—(1) *Policy.* All advertised contracts will, and negotiated contracts may, contain a provision that contractors will be required to perform additional trips between points regularly served for the purpose of relieving congestion in post offices, railroad stations, terminals and airports, and to expedite distribution and delivery of mail. If a route, or parts of a route, are set up on a one-way basis, additional trips may be ordered on a one-way basis at the basic rate per mile based on the one-way distance of the trip. In all other cases, additional trips should be ordered on a round-trip basis and the contractor paid at the basic rate per mile for the round-trip mileage even though there may be no mail to be handled on the return trip.

(2) *Advance planning—holidays.* No service will be contractually scheduled on holidays, or holiday weekends, keeping in mind that extra trips may be operated where volume dictates. Rates for such extra service may be negotiated when premium wage conditions prevail. Service will be scheduled to meet the minimum requirements.

(3) *Delegation of authority.* All administrative officials designated to record performance on Form 5398 will be delegated authority to authorize extra trips as the need develops and will be instructed as to the criteria for authorizing extra trips. Officials designated to record performance on Form 5399 may be delegated authority to authorize extra trips if the contracting officer believes the need exists. If the official desiring the extra trip is not the administrative official of the route involved, prior to exercising the authority delegated to him pursuant to this paragraph, he shall first clear such extra trip with the administrative official of the route.

(4) *Form 5397, Contract Extra Trip Authorization.* Each extra trip certified for payment will be supported by Form 5397. The original of this form will be retained in the office of the official certifying on Form 5429, that the service was performed. When additional trips are expected, postmasters will be furnished Forms 5397 in advance. When an additional trip is required by a postmaster not supplied with a Form 5397, the contracting officer will furnish this postmaster a Form 5397 to cover the additional trip.

§ 530.2–3 Payments for service performed.

The postal data center will make payments for service performed after certification as outlined in §§ 530.2–4 and 530.2–5. Payments will not be made under a new contract until a properly executed contract is filed with the postal data center.

§ 530.2–4 Certification of service.

(a) *Under regular annual rate contracts.* The contracting officer will certify annual rate contracts semiannually as provided by § 530.2–5(a)(2).

(b) *Exceptional service.* Administrative officials will certify service performed under emergency contracts, unit rate contracts, extra trips and detours on Form 5429, as follows:

(1) Form 5429, covering items except those being held for review of exceptions, should be mailed in sufficient time to allow for arrival at postal data center by first mail Wednesday morning following end of the accounting period. Form 5429 may be submitted in written form, instead of being typed, if necessary to meet the deadline for submission. Service not included on this regular certification should be covered by a supplemental Form 5429 at a later date. Routes should be listed numerically on the form.

(2) To accelerate the processing of Forms 5429, separate forms must be prepared for emergency contract service, unit rate service, detour and additional service. First priority must be given to certification of emergency contract service and unit rate service, so that the postal data center will have them as soon as possible. Certifications for additional and detour service must follow immediately after the ones given first priority.

(3) In certifying, the administrative official will sign Form 5429 or else designate an employee to sign the form in his behalf. In the latter case, the designated employee should enter the official's name and title and then sign the form giving his title. The word "by" should precede the designated employee's signature.

(4) The basis for the certifying unit rate contracts will be Form 5463. The basis for certifying extra trips will be Form 5397. The basis for certifying emergency contract service and detours will be Form 5398 and Form 5399. These forms will be retained at the office of the official certifying on Form 5429 along with other papers developed to support the certification.

(5) Form 5429 will be prepared in triplicate. The original will be sent to the postal data center, a copy will be sent to the contracting officer, and a copy will be retained in the office preparing the form. The contracting officer will review the copy of the form to see that it is being prepared properly and to check extra trip authorizations.

§ 530.2–5 Review and control of annual rate contracts.

(a) *Semiannual review.* (1) The postal data center will prepare for the contracting officer two additional copies of the report of contractors prepared as of accounting periods 1 and 8, revised to show annual rates of contracts.

(2) The contracting officer will review the report, compare it with records on Form 5443, contract route statement, schedule and specifications, make any necessary corrections on both copies, and return one corrected copy within 15 days of receipt to the postal data center with the following certification:

The information pertaining to annual rate contracts as shown on the attached listing accurately describes such contract service in effect as of (the last day of accounting period 1 or 8).

(b) *Controls.* (1) The contracting officer will advise the postal data center of the serial number of the last order on Form 5440–C, Contract Route Service Order, issued on Friday of the third week of the accounting period. The postal data center will maintain a control listing of these serial numbers, and changes resulting from orders issued during the last week of an accounting period will be adjusted in the subsequent period.

(2) After the close of each fiscal year, the contracting officer will furnish a list to the postal data center of contracts that will not be renewed. The postal data center will make final payments under these contracts for service performed to the end of the fiscal year at the close of accounting period 1, after clearing records of performance with the contracting officer.

(3) The contracting officer will notify the postal data center by Form 5440–C to suspend payment when it is determined that a route will be terminated on a date before the expiration of the contract term. On all annual rate contracts made for a term to end on some date other than June 30, the contracting officer will notify the postal data center by Form 5440–C during the accounting period in which the contract expires to suspend payment due for this accounting period. The postal data center will make final payment after clearing records of performance.

§ 530.2–6 Omitted service.

(a) Administrative officials will report omitted service to contracting officer.

(b) The contracting officer must decide whether deductions will be made for service omitted. He will consider circumstances and past records. Deductions will not generally be made for omitted service caused by catastrophes or other Acts of God. If a deduction appears in order, he will prepare orders as follows on Form 5440–C for deductions:

Deduct $_____ for service not performed as follows, such amount to be deducted from the postal accounting period _____ to _____. (List service omitted and dates.)

(c) The postal data center will adjust payment in a subsequent accounting period as directed by the deduction order.

PART 540—DOMESTIC WATER ROUTE CONTRACTS—ADMINISTRATION AND PAYMENT PROCEDURES

§ 540.1 General.

Administration and payment procedures covering domestic water route transportation contracts shall be the same as those covering highway transportation contracts as set forth in Parts 520 and 530 of this subchapter.

(39 U.S.C. 401, 5001, 5005, 5006, 5007)

PART 550—RAIL TRANSPORTATION CONTRACTS—REGULATIONS COVERING THE PERFORMANCE OF SERVICE

Sec.
550.1 Definitions.
550.2 General conditions of service.
550.2-1 Conditions and class of service.
550.2-2 Service regulations.
550.2-3 Operation according to schedule.
550.2-4 Designated trains.
550.2-5 Changes in service.
550.2-6 Irregularities.
550.3 Services required of railroads.
550.3-1 Equipment.
550.3-2 Switching and placing units.
550.3-3 Loading and unloading of mail.
550.3-4 Designation of trains for local service.
550.3-5 Station services.
550.3-6 Mail exchanges.
550.4 Storage service—general requirements of line haul contracts.
550.4-1 Scope.
550.4-2 Measurement of equipment.
550.4-3 Official registers.
550.4-4 Loading and spacing of storage cars.
550.5 Payment procedures—terminal handling service.
550.5-1 Rates and charges.
550.5-2 Terminal and piece handling services.
550.6 Preparation and processing of forms.
550.6-1 General.
550.6-2 Forms for line-haul mail storage services.
550.6-3 Special contract movements.
550.6-4 Storage cars.
550.7 Irregularities, assessment of damages, and accidents.
550.7-1 Authority for liquidated damages.
550.7-2 Reference.
550.7-3 Policy.
550.7-4 Other responsibilities.
550.7-5 Reporting.
550.7-6 Notification.
550.7-7 Remission of damages.
550.8 Basic administrative policies.
550.8-1 Appearance before State commissions in railroad discontinuances.
550.8-2 Association of American Railroads.

AUTHORITY: The provisions of this Part 550 issued under 39 U.S.C. 401, 5001, 5005, 5006, 5007, Public Law 91-375 (Chapter 52).

§ 550.1 Definitions.

(a) *Regulations.* All provisions of this Part 550 and other pertinent portions of this Subchapter G, and Part 619 of this chapter.

(b) *Space-used system.* A transportation and accounting method under which rail storage mail volume is computed.

(c) *Brief.* Official notice by the U.S. Postal Service to a railroad company of a service failure. Such a notice may become the basis of an assessment of liquidated damages.

(d) *Closed pouch train.* The term "closed pouch" or the symbol CP refers to trains, other than merchandise and freight, designated to carry mail in storage cars which do not have an RPO authorization.

(e) *Destination unit.* A destination storage car or van or container used exclusively for mail and moving intact over its entire run from origin (point of loading) to destination (point of complete unloading).

(f) *Working cars.* A storage car will be classed as a working car when it is operated as:

(1) An exclusive mail car making local exchanges of mail.

(2) A mixed traffic car containing mail, baggage, express, etc., making local exchanges of mail.

(3) A set-out or set-in car used in lieu of loading mail into or loading mail from a working car or cars at an intermediate point.

(g) *RPO.* The abbreviation for a railway post office.

(h) *Train date.* The date a train is scheduled to leave the origin point of the titled RPO or CP shall be used as the date for all service performed in the train. In cases where the RPO line is divided into East, Middle, and West, or North and South Divisions, each division shall be considered separately.

(i) *Railroad and railroad company.* Means railway common carrier.

§ 550.2 General conditions of service.

§ 550.2-1 Conditions and class of service.

(a) *Class of service.* The class, frequency, and distance of service to be provided shall be determined according to the needs of the Postal Service.

(b) *Transportation of postal personnel.* Each railroad engaged in the transportation of mail shall carry on any train it operates, upon exhibiting their credentials and without extra charge therefor, persons on duty in charge of the mails or when traveling to and from such duty.

§ 550.2-2 Service regulations.

(a) *Responsibility.* Officers and employees of the Postal Service are responsible for the transportation of mail by railroad in accordance with these regulations, and with the terms of respective contracts.

(b) *Exceptions.* Exceptions to these regulations or to the requirements of a contract must be in writing and must be approved in advance by the contracting officer.

§ 550.2-3 Operation according to schedule.

(a) *Schedules.* The transit time of trains upon which mail is transported shall be that which is maintained by the carriers for their general transportation business in their published schedules, or those specified by contract.

(b) *Failure to observe schedule.* If any train used for the transportation of mail consistently fails to maintain its schedule on its own line or one required by contract, the contracting officer shall take action in accordance with § 550.7.

§ 550.2-4 Designated trains.

A railroad must carry mail only on trains designated for the transportation of mail. In emergencies, local representatives of the Postal Service or postmasters when authorized by the contracting officer may request a railroad company to provide space on any train. The contracting officer will inform the railroad of such authority.

§ 550.2-5 Changes in service.

(a) *Notification of changes.* Postmasters shall promptly notify the contracting officer and the proper official of a railroad of any change in service or routing of mail which may affect the handling of mail. Changes in consist or operation of trains will be referred to the contracting officer for approval and prompt notification of the proper official of the railroad.

(b) *Establishment, extension, or discontinuance of service*—(1) *Discontinuance procedures.* If a proposed discontinuance of mail service (entire or partial) by diversion to highway or to another railroad will reduce a railroad's contractual operations, a statement shall be secured from the railroad company as to the effect the loss of mail revenues will have on train operation.

(2) *Service changes by railroad.* When a railroad plans withdrawal, adjustment or curtailment of contract service which will require the Postal Service to consider substitute service, the railroad company will give reasonable advance notice of at least 10 days of the changes to the contracting officer.

§ 550.2-6 Irregularities.

(a) *Service failures.* The contracting officer may assess liquidated damages against railroad companies and/or recommended diversion of traffic for each of the following delinquencies:

(1) *Inadequate protection of mail.* Allowing the mail to become wet, lost, injured, or destroyed, or conveying or keeping the mail in a place or manner that exposes it to depredation, loss, or injury.

(2) *Failure to transport mail.* Failure to transport mail in accord with terms of the contract.

(3) *Failure to observe schedules.* (i) Repetitive failure to observe schedules.

(ii) Cars, vans, or piggyback units handled in merchandise freight service that do not meet the agreed availability time because of late train operations will not be subject to a penalty for late running, but, if not corrected, the mail involved will be considered for diversion to another carrier or mode of transportation.

(4) *Leaving mail.* Leaving mail that arrives at a station or terminal within a reasonable time before the departure of the train for which it is intended.

(5) *Holding delayed mail.* Failure to use the first practicable means of forwarding mail delayed en route.

(6) *Failure to furnish proper accommodations.* Failure to furnish proper accommodations for the handling and storage of transit mail in a railroad station if applicable.

(7) *Failure to furnish or to place RPO cars in advance.* Failure to furnish the number of RPO units required or failure to place RPO equipment in a station at the time specified by the Postal Service for the advance distribution of mail.

(8) *Delaying storage cars or vans.* Permitting storage cars or vans to accumulate at any point for operation in other than designated trains.

(9) *Failure to provide sufficient storage units.* Failure to provide sufficient

numbers of storage units or vans to accommodate the normal volume of mail.

(10) *Failure to unload or deramp in time specified.* Failure to unload or deramp storage units at destination within the time specified in accordance with the terms of the contracts.

(11) *Failure to connect mail.* Failure to handle mail between trains resulting in delay in the final delivery of the mail.

(12) *Failure to handle for exchange.* Failure to handle mail from trains at designated points for exchange with postal installations, and highway mail routes delaying final delivery.

(13) *Failure to dispatch.* Failure to dispatch mail at the proper station.

(14) *Improper switching of RPO cars.* Switching crews must notify RPO crew before coupling RPO car to locomotive or other cars when there are fewer than five cars between the RPO car and point of coupling. Failure to switch RPO car accordingly will be regarded as not providing for safety of RPO crew on duty and switching without such notice shall constitute a delinquency.

(15) *Mishandling en route.* Failure to route and interline in accordance with instructions furnished at time of delivery to originating railroad.

(b) *Assessment of liquidated damages.* The amount of damages assessed in each instance shall be governed by the applicable terms of the contract with due consideration being given to the gravity of the service failures. The assessment shall be made by the contracting officer and shall be deducted from the railroad's pay for service.

(c) *Carrier protest.* Any protest by the carrier should be made to the contracting officer, who will try to resolve the differences and notify the carrier of his final decision. Any appeal from this decision shall be processed in accordance with § 550.7–6.

§ 550.3 Services required of railroads.

§ 550.3–1 Equipment.

Each railroad engaged in the transportation of mail is required to furnish equipment necessary for the service contracted for by the U.S. Postal Service.

§ 550.3–2 Switching and placing units.

(a) *General requirements.* Railroad companies may be required to perform all necessary switching of cars, to load mail into cars so as to obtain maximum utilization of storage space, including the proper separation piling, and to unload mail from cars. Handling of mail within railway post office cars and apartments shall be performed by mobile unit clerks. Handling of cars/vans and mail shall be in accordance with the terms of contracts.

(b) *Switching.* Necessary switching means movement of cars to and from trains for the loading and unloading at railroad or Postal Service mail handling facilities, the pickup and set-out of cars at en route points, and the delivery of cars to or receipt of cars from connecting lines.

(c) *Prompt placement.* Contracts with railroad companies may require the company to provide for switching and placing cars at designated post office or other mail handling facilities so as to permit prompt loading, separating, and unloading of mail. If the railroad company fails to perform the agreed services, the contracting officer shall initiate immediate corrective action.

(d) *Trailers, vans, and containers.* When, under contract or agreement, ramping, deramping, shuttle, interlining on rubber and/or hostling is required, railroads are expected to meet the scheduled or availability times predetermined as meeting the needs of the Postal Service.

(e) *Advance placement of RPO cars.* When required, railroad companies must suitably spot RPO cars and make them available for distribution in advance of the schedule departure of the train at the time specified in the contract. If advance distribution time is lost because of the railroad's failure to spot the car, the supervisor must report the failure to the postmaster having jurisdiction.

§ 550.3–3 Loading and unloading of mail.

(a) *Railroad to furnish employees.* Contracts may require a railroad to furnish the station employees to handle mail, to load and pile mail into and unload mail from storage units and baggage cars, and to load mail into and receive from doorways of RPO cars. Mail intended for direct delivery to a mobile clerk must not be placed in an RPO car unless a mobile clerk or an authorized postal representative is on duty.

(b) *Loading instructions for railroads.* Instructions for loading storage mail must be furnished railroads who agree to perform such services by Postal Service officials, so that railroad employees will have full information as to the requirements.

(c) *Time limits.* In collaboration with railroad officials, contracting officers will take necessary action to establish reasonable time limits for unloading storage mail at important railroad stations or terminals so outgoing connections may be assured and delivery to local post offices, postal stations, or postal terminals will not be delayed. Railroads shall be briefed when failure to observe the time limits causes delay to mail.

(d) *Loading delays.* Corrective action for delays in loading causing late dispatch of mail shall be treated as provided in paragraph (c) of this section.

§ 550.3–4 Designation of trains for local service.

Trains for the dispatch and receipt of mail at any station or point serving a post office will be specified in the terms of a contract.

§ 550.3–5 Station services.

(a) *Transfer offices.* Suitable office space for transfer clerks to perform their duties will be leased when needed.

(b) *Letterboxes.* Where the public convenience is better served, the contracting officer may authorize a railroad to place letterboxes in its stations for the receipt of firstclass mail other than that for local delivery.

(c) *Terminal service.* Will be provided in accordance with the contract provisions.

§ 550.3–6 Mail exchanges.

Railroads and other contract carriers or postal representatives will exchange mail in accord with contract terms.

§ 550.4 Storage service—general requirements of line-haul contracts.

§ 550.4–1 Scope.

This service covers the transportation and handling of made-up mail in bulk. Requirements shall include the maintenance and cleaning of equipment. At railroad stations the loading and unloading of storage units shall be performed by company employees, unless otherwise agreed. Service shall be paid for in units as provided by contract.

§ 550.4–2 Measurement of equipment.

(a) *Standard equipment.* A standard storage car for passenger train operations shall have an inside length of 60 feet, be at least 8 feet 6 inches wide, and 7 feet high. The cubic capacity of vans or trailers used in rail service shall be in accordance with the terms of the contract.

(b) *Nonstandard equipment.* The Postal Service at its option may accept storage cars which are more or less than 60 feet in length, inside measurement.

(c) *Determination of inside length.* In determining the inside lengths of storage cars, vans or trailers, fractions of a foot (6 inches or under) shall be disregarded and credit allowed for a full foot if over 6 inches. Interior fittings or obstructions will be measured for deduction from mail pay length and shall be computed on the equation of 69 cubic feet being equal to 1 linear foot of floor space. No deduction shall be made in storage units for the space occupied by interior fittings provided they do not occupy, in the aggregate, more than 1 linear foot of space. Where the aggregate exceeds 1 linear foot of space, the entire space occupied shall be deducted. Such deductions will be reflected in the listing of mail pay length in the official registers.

§ 550.4–3 Official registers.

(a) *Publishing.* The Postal Service will publish official registers and corrections thereto listing all cars, trailers and vans in use in the transportation of storage mail showing the inside length, the mail pay length, and all data affecting the mail pay length. These measurements may be the basis for determining the compensation. The railroads must furnish this information promptly to the Postal Service on both new and rebuilt equipment.

(b) *Checking for accuracy.* When there is any question as to the accuracy of the mail pay length of any car, trailer, van, etc., shown in the official registers, the contracting officer will check the equipment; and if error is found, he will immediately complete Form 5181, Report of Improper Storage Car or Van, thereafter making appropriate distribution of the Form.

§ 550.4–4 Loading and spacing of storage cars.

(a) *Destination.* Destination cars shall be loaded solidly so far as practicable at initial point of the run. Safety devices are not to be obstructed. In cars not provided with safety rods, mail shall be piled to a height of 8 feet. Cars of less height shall be loaded to the ceiling or safety devices.

(b) *Working cars*—(1) *Loading.* In working cars, one end or the middle section between the doorways will be loaded solid without aisle, wherever practical. With due regard for required separations, mail will be piled to the same height as in destination cars. In computing the space occupied, a car will be regarded as loaded when it is filled to capacity except for necessary aisles and doorways and diagrammed separations not completely filled.

(2) *With aisle.* The aisle in a working car will not exceed 18 inches in width at floor level and will extend through as much of the car as will provide access to separations and permit passage by clerks or trainmen in the performance of their duties.

(3) *Intermediate separations.* When mail for dispatch at intermediate points is carried in through cars, it will be piled to permit prompt dispatch at such points without unnecessarily delaying the train.

§ 550.5 Payment procedures—terminal handling service.

§ 550.5–1 Rates and charges.

As specified by agreement.

§ 550.5–2 Terminal and piece handling services.

(a) *Storage service — charges* — (1) *Basis.* The terminal charge may be stated as a per car/van charge or in an amount per foot of mail handled, or per piece handled.

(2) *Determining volume.* All mail loaded into or unloaded from working cars will be by count and be so recorded. The total count of pieces loaded and unloaded will be recorded on appropriate records. The volume of mail loaded into and unloaded from destination units shall be recorded by measurement.

(3) *Mail left in car at destination.* When a storage car is received at the final destination point of its placarded run and mail for a particular point beyond the destination is not fully unloaded but the car is filled out and transferred to another train by agreement between the railroad and the contracting officer, then the railroad company will be entitled to a prorate of the car terminal charge on the basis of the mail actually unloaded. The loading railroad is entitled to a terminal handling charge only on the basis of mail actually handled at that point.

(4) *Payment.* Terminal charges shall be paid as specified by contract.

(b) *Exceptions to application of terminal and piece handling charges*—(1) *Storage cars and lesser units.* Terminal charges are not allowed for rehandling of mail when:

(i) *Car out of service.* A railroad orders a car out of service after mail has been loaded for onward dispatch.

(ii) *Interchange refused.* The receiving railroad at an interchange point refuses to operate a car because of size, type, or bad order, and transfer of the mail to another car is required.

(iii) *Mail carried by in error.* Mail is carried by a station in error and returned in another train.

(2) *Failure by USPS to furnish advance notice when car not needed.* If, after receipt of late notice from USPS that a car is not needed, the car is removed and the mail already loaded into it is transferred to other space in the train at the direction of the local postal representative, an additional terminal charge will become due.

(3) *RPO cars.* Terminal charges will not apply to mail loaded into or unloaded from an RPO car or apartment while mobile clerks are on duty.

(4) *Loading stopped.* When the weight of the mail is exceptionally heavy and a car satisfactory to the Postal Service is furnished, full payment may be allowed for loading to less than space capacity; but payment may not exceed that for the weight-carrying capacity of the car, as converted to feet on the basis of 1,000 pounds per linear foot.

(5) *Loading or unloading by other than employees of the railroad or its agents*—(i) *Definition of terms.* Loading or unloading services as used in this section are defined respectively as: (*a*) the loading, separating, and piling of mail in the car and (*b*) the unloading, separating, and delivering of mail to postal installations and transportation media.

(ii) *At mailers' plants or postal facilities*—(*a*) Terminal charges applicable at origin and destination: When loading or unloading is performed by other than employees of a railroad or its agent, terminal charges shall not be paid. The symbol "PL" (plant loaded) or "POL" (post office loaded), whichever is applicable, shall be properly entered on Form 5118, Line-Haul Mail Storage Service and Related Terminal Services, and the placard of destination storage cars.

(*b*) Terminal charges are applicable only when service of loading/unloading is performed by employees of a railroad or its agent.

(iii) *By highway contractors.* (*a*) When mail at a point is loaded by a highway contractor, terminal charges shall be withheld in the same manner as for plant loaded cars.

(*b*) When only a portion of the mail is loaded by a highway contractor and the remainder by railroad employees, the terminal charge will be credited to the railroad company for that mail loaded by the railroad or its agent.

(iv) *By mobile clerks in storage cars at intermediate points.* When storage mail is transferred between working storage cars and RPO cars or loaded in or unloaded from working storage cars at intermediate points by mobile clerks, no terminal charge will be allowable on mail so transferred or handled.

§ 550.6 Preparation and processing of forms.

§ 550.6–1 General.

(a) *Scope.* This section describes the forms used by postal and railroad personnel to record services performed.

(b) *Application of rates and charges.* Postal data centers will be responsible for the proper application of the prevailing rates and charges. When a disagreement arises between railroads and postal data centers as to the terms applicable to railroad mail transportation, postal data centers shall present the facts to the contracting officer for determination. If agreement cannot be reached at that level, the case shall be referred to the Regional Postmaster General or his authorized representative.

§ 550.6–2 Forms for line-haul mail storage services.

(a) *Form 5118, Line-Haul Storage Service and Related Terminal Services*—(1) *Preparation.* Transfer clerks shall prepare this form in quintuplicate at each station daily by routes for all trains, listing each car or unit on flat car in mail service entering or leaving the line, working, or being respaced. At points where transfer clerks are not assigned, the contracting officer may when he deems circumstances warrant, require a railroad representative to prepare any necessary Form 5118. The form shall be completed as follows:

(i) *Heading.* Fill in all spaces.

(ii) *Column 1.* Show train number.

(iii) *Column 2.* Show point where car or unit is originally loaded.

(iv) *Column 3.* Show destination point where car or unit is to be completely unloaded.

(v) *Column 4.* Show car or unit initials or marks.

(vi) *Column 5.* Show car or unit number.

(vii) *Column 6.* Show mail pay length as recorded on placard.

(viii) *Column 7.* Show type of car by appropriate symbol (D, D–R, I.D., S&R, or W).

(ix) *Column 8.* For working storage cars, show actual piece count on arrival. For destination and destination-relay cars, show footage in car or unit on arrival.

(x) *Column 9.* Show in feet the mail unloaded from destination and destination-relay cars as indicated on the placards. For interline differential cars show pieces unloaded from each "I.D." car.

(xi) *Column 10.* Show actual number of pieces of mail unloaded from each S&R or W (working) car.

(xii) *Column 11.* Show actual feet loaded in each D, and D–R car or unit in 1-foot graduations. For "I.D." cars, record in pieces.

(xiii) *Column 12.* Show actual piece count of working storage mail loaded in each car or unit. Credit shall be given for mail loaded in storage in lieu of RPO space as reported on Form 5061, Statement of Vacant Space in RPO Car, with proper explanation noted in "Comments".

(xiv) *Column 13.* Line-haul shall be reported in Column 13 as follows:

(*a*) Show total pieces in car leaving station for each Working, Set-Out, Set-In, S&R, or I.D. car.

(*b*) Show actual feet of car space occupied by the mail in each D and D-R car in 1-foot graduations.

(xv) *Column 14.* Show actual or visual linear footage of car space occupied by the mail including the aisle necessary to service the separations in each Working, Set-Out, Set-In, S&R, or I.D. car when 295 pieces or more are entered in Column 13.

(2) *Authenticating Forms 5118.* Form 5118 shall be signed jointly by the transfer clerk and railroad representative at the close of each tour. If the railroad representative does not concur in space recorded on Form 5118, the railroad's protest and the transfer clerk's comments shall be entered in the "comments" column or by attachment of an explanatory report.

(3) *Reconciliation of Form 5188 with train baggageman report.* (i) Where there is a difference in the count of pieces recorded on a train baggageman report and the count as shown on Form 5118, the Form 5118 will govern at the points where it is prepared insofar as the "on" and "off" count at these points are concerned. The train baggageman report will govern at all other points.

(ii) Form 5118 recording as taken from car placard shall be accepted as the unloading record at final destination or relay point for destination and destination-relay mail.

(iii) All mail will be counted in a working storage car. Mail volumes shall be determined independently for the purposes of computing line haul and terminal payments, respectively. Form 5366, Report of Mail Arriving-Leaving and train baggageman reports will show working storage car mail by actual count as well as footage. The actual count will be used by the train baggageman for recording the volume of mail carried in a working storage car.

(4) *Distribution.* The following distribution of Form 5118 shall be made promptly at the end of each 24-hour period.

(i) Original and triplicate copies to the contracting officer,

(ii) Duplicate and quadruplicate copies to railroad company, and

(iii) Quintuplicate copy retained at originating point unless otherwise instructed.

(b) *Form 5366, Report of Mail Leaving-Arriving*—(1) *Preparation.* This form is prepared at trainside by Transfer Clerks for each train and date showing the number of pieces and/or feet of mail loaded into each car worked at the railroad station and the record of all mail cars leaving the station.

(2) *Distribution.* Instructions shall be issued by the contracting officer as to the number of copies required and their distribution.

(c) *Form 5048, Mail Storage Car Unloading Record, and Form 5048A, Record of Mail Storage Car Loadings.* Postal employees shall prepare these forms at all points where the contracting officer deems the indicated information is necessary. Instructions shall be issued by the contracting officer as to the places at which these forms will be prepared, the number of copies required, and their distribution.

(d) *Form 5061, Statement of Vacant Space in RPO Cars*—(1) *Preparation.* RPO supervisors shall prepare this form in triplicate in accordance with instructions issued by the contracting officer as to the manner and places where this form will be issued. The following information shall be recorded on this form.

(i) Railroad company involved.

(ii) Date of issuance.

(iii) RPO line and train involved.

(iv) Train date.

(v) Pieces loaded in storage in lieu of RPO car.

(vi) Point of loading (RR. station).

(vii) Signature.

(2) *Where issued.* Form 5061 is designated to be used as a single action form or as a multiple entry form. Where the railroad desires notice at each station involved, the RPO supervisor shall deliver the original copy of the form to the railroad representative at the station. Otherwise, the form shall be completed to cover the entire trip, a separate entry being made for each station involved in "in lieu" loadings and delivered to the railroad representative at the end of the run.

(3) *Agreement to wave issuance.* Agreements may be made with individual railroad companies to waive the issuance of Form 5061 by RPO supervisors. In such cases, the contracting officer shall promptly advise the railroad company of the amount of vacant space in RPO and apartment RPO cars each trip based on trip reports. This may be done by preparing Form 5061 in the office of the contracting officer or by issuing a letter or memorandum covering several days' operation.

(4) *Distribution.* The original shall be delivered to the designated railroad representative. The duplicate and triplicate copies shall be forwarded to the contracting officer with the related trip reports (Form 5012, Mobile Unit Trip Report).

(e) *Form 2558, Statement of Space Used*—(1) *Use.* This form is printed in quadruplicate and is designed for use by the Postal Service in recording and compiling both line-haul and terminal handling data for each train and date where mail is transported in more than one car or where the payload fluctuates over the train run.

(2) *Supporting Documents.* Documents supplying the information necessary for preparation of Form 2558 include the following:

(i) Form 5118, Line-Haul Mail Storage Service and Related Terminal Services.

(ii) Station Reports (railroad equivalent of Form 5118).

(iii) Train baggageman (TBM) reports—unpriced.

(iv) Form 5012, Mobile Unit Trip Report.

(v) Form 5052, Storage Car Mail Loaded, Unloaded, and Transferred.

(vi) Form 5061, Statement of Vacant Space in RPO Cars.

(vii) Any special reports affecting the preparation of Form 2558.

(3) *Classification of trains.* (i) It is essential that standard procedures be established and that each train be classified according to the number of cars in mail service. Classifications shall be mutually determined by the contracting officer and the railroad.

(ii) Trains which normally carry more than one car in mail service on one or more days of the week shall be classified as "space pooled" trains. The contracting officer shall direct Form 2558 to be prepared for those trains even on those days when only one car is in mail service.

(iii) Trains which normally carry one car in mail service shall be classified as "space nonpooled" trains. The railroad will price out the TBM reports on these trains. In those unusual and occasional instances when a "space nonpooled" classified train carries additional cars in mail storage service, the railroad will determine the net mail load transported in accordance with space-used regulations and price out both the line-haul and the terminal services on either the TBM report or a summary sheet attached to the related TBM report.

(iv) The classification of a train shall remain consistent throughout the billing period. However, a train's classification may be changed at the beginning of any billing period to properly reflect changing trends in mail volume. Such changes must be mutually agreed to by the railroad and the contracting officer.

(v) TBM report listing more than one car in mail service trains shall not be classified. The number of cars in mail service each day will determine whether Form 2558 shall be prepared as directed by the contracting officer for the day's service or whether the railroad will price out the TBM report. (NOTE: The price-out of the TBM report or the preparation of Form 2558 may change from day to day within the billing period.)

(4) *Preparation*—(i) *Prepared by.* Form 2558 shall be prepared in quadruplicate by the railroad space accounting unit under the guidance of the contracting officer. This form shall be executed within 7 working days following date of service.

(ii) *Train date.* The date a train is scheduled to leave the initial point on a route shall be used for recording mail service performed in the train.

(iii) *Recording services performed.* Form 2558 shall be completed as follows.

(*a*) Heading: Complete all spaces.

(*b*) Section captioned "Line-Haul Storage": Indicate placarded origin and destination of the car; car initials; car numbers; and classification D, D-R, I.D., W, or S&R. Section captioned "Station and Volume of Mail": At the top of columns (1) through (12), as needed, abbreviate the name of station stops.

Show appropriately whether the station is a lesser unit junction or nonjunction point by placing a check (√) in the box as designated. Subcolumns headed (a) are used for cars loading and/or unloading mail en route. The piece count is taken from Column 13 of Form 5118 and when the figure is 590 or less, it shows actual count. When piece counts exceeds 590, the appropriate space in subcolumn (a) is slashed from top right to lower left showing the actual count above the line and the converted piece count based on space used (Column 14–Form 5118) below the line. In working cars, doorway credits of 3 feet will be earned when the space occupied by the mail in the car is over 30 feet and use of doorway on either side is necessary for loading and/or unloading at intermediate stations on the car's run. Doorway credits shall be earned between junction points on the basis of the maximum volume of mail carried between established division or junction points. When doorways are used to service intermediate stations, credit shall be earned only between the junction before and the junction beyond the intermediate station of exchange. When a doorway is used to exchange mail at a junction point, credit will be earned only back to the next prior junction point. Doorway credits will be recorded in feet in subcolumn (b) (footage) under the station entry.

(c) Items to be entered in line 13 shall be obtained from the TBM report or Form 5051. The entry will reflect the maximum plus balance, if any, of mail put off or taken on at local points between junctions. The recording of this total shall be backed up to the previous applicable junction (full car or lesser unit).

(d) Line 14 will indicate net pieces and feet at each station.

(e) Line 15: Enter under title "Pieces" the items applicable as taken from Form 5061 prepared by the RPO supervisor. Deduct pieces on line 15 from those on line 14 and convert to feet for entry in the "Feet" column. In computing pay for line-haul service, railroad space unit offices shall give full effect to the number of pieces shown on Form 5061. The contracting officer shall make allowance for only the minimum number of pieces that could be accommodated in the RPO car at any point over its run, with one exception. In the case of constantly ascending available vacant space in the RPO car over its entire run, the actual piece loading covered by each Form 5061 shall be taken into consideration.

(f) Compute line 16 by adding footage shown in lines 14 and 15 at each station.

(g) Line 17 will be completed when adjustment is necessary to compute pay footage allowable. Figures in line 16 shall be used for pay purposes where adjustment is not necessary.

(h) Leave line 18 blank. Line-haul charges will be developed at Postal Data Center.

(i) Lines 19, 20, 21, and 22 shall be completed from data on Forms 5118 (by train totals in columns 9, 11, and 12) or the TBM report (at junction points where Form 5118 or Station Reports are not prepared).

(j) Line 23 entries shall be totals computed from TBM reports for mail loaded at intermediate points and from Form 5051 for handling charge purposes (entries shall be made under the previous junction point column).

(k) Lines 19, 20, 21, 22, and 23 shall be totaled and rated and the No. 2 copy computed by Postal Data Center.

(l) Line 24 of No. 2 copy only shall be computed by Postal Data Center.

(m) Line 25, total of all terminal charges, will be developed by Postal Data Center.

(iv) *Certifying Form 2558.* (a) The contracting officer or his designee will certify each Form 2558 and priced TBM as follows: "I certify that the above service has been performed and that supporting documents are on file in this office". This signed statement must appear on the second copy which is sent to postal data center. A facsimile stamp of signature will suffice.

(b) When the contracting officer finds it necessary to correct information that was previously certified on a Form 2558, he will make the necessary correction on his file copy of the Form 2558, show date of correction, prepare a photostat copy of the corrected form, certify in usual manner, and forward to postal data center with instructions to substitute it for the copy originally submitted.

(5) *Recording of destination and destination-relay cars at nonjunction points.* (i) Destination and destination-relay cars originating or terminating at a point between established division or junction points are considered as originating or terminating at the intermediate point for the purpose of line-haul compensation.

(ii) Such cars shall be identified in section headed "Line-Haul Storage" (Form 2558) and recorded in section headed "Stations and Volumes of Mail" using a separate column. The name of the intermediate station and that it is a nonjunction point should be entered at the top of the column. Pricing will be computed independently at the appropriate prorate of a 60-foot car:

(a) *Originating cars.* From the originating intermediate point to the first full car junction point.

(b) *Terminating cars.* From the last full car junction point to the intermediate point.

The footage in such cars shall not be merged with other mail in the train between the intermediate point and the first/last full car junction point.

(6) *Recording working storage mail as loaded or unloaded by other than railroad employees.* With the exceptions as provided for below, one-half of the applicable terminal rate will apply when mail is loaded by other than railroad employees. A deduction of one-half of the applicable terminal rate will apply when the unloading is performed by other than railroad employees. The applicable postings shall be made in line 21 or 22 of Form 2558, as follows:

(i) *Loading.* To determine the proper posting of terminal charges for the mail loaded into a train at a point, add all of the pieces loaded in the working storage cars by railroad employees and one-half of the total number of pieces loaded by other than railroad employees. When the net total is in excess of 590 pieces, prorate to footage and post in line 21. When 590 pieces or less, post in line 22.

(ii) *Unloading.* When mail in working storage cars is left in the car or cars at placarded destination or is unloaded by other than railroad employees, post a deduction for either feet or pieces as applicable in accordance with the following:

(a) When there are 590 pieces or less in the working storage cars in the train for unloading at any one point, post in line 22 a deduction of one-half of the total number of such pieces that were left in the car or cars and/or unloaded by other than railroad employees.

(b) When there are more than 590 pieces in the working storage cars in the train for unloading at the point, post in line 21 a deduction of one-half the total of such pieces (prorated to footage) of mail left in the car or cars and/or unloaded by other than railroad employees.

(7) *Empty mail equipment moving in mail service at special agreement rates.* A separate Form 2558 shall be used in computing charges for this service, and railroads shall submit billing on a separate Standard Form 1034, Public Voucher for Purchases and Services Other Than Personal, identified as "Movement of Empty Mail Equipment."

(8) *Using Form 2558 for Exceptional service.* (i) The railroad space accounting unit, under the guidance of the contracting officer, shall prepare a Form 2558 for mail transported in one-car trains which operate without a baggageman and in which mail is not worked en route between the terminal points and no conductor's report of mail transported is issued.

(ii) The Form 2558 shall be prepared from data reported on Form 5118 by either the railroad or the postal representative, except each day's recording of mail handled in each train shall be posted to a separate column of Form 2558 and priced each day for line-haul and weekly for terminal service with a total for line-haul and terminal earnings for each week.

(9) *Distribution of Forms 2558.* Original retained for file by the contracting officer or the person he designates. First carbon and third carbon to the railroad. Second carbon to postal data center.

(f) *Forms 994 and 2524*—(1) *Form 994, Certification of Contract Railroad Mail Transportation Service Performed.* This is a negative-type certification prepared by the contracting officer in duplicate, showing the railroad route number, contract number, period of service (28-day or monthly), and type of services performed and/or exceptions to services required under the contract terms. The original of Form 994 is sent to the postal data center.

(2) *Form 2524, Bill for Temporary Service in Lieu of Railroad Service.* This form is used when there is a temporary interruption of railroad service. Temporary service in lieu is arranged for locally by the contracting officer or postmaster who is responsible for the movement of mail under emergency conditions due to disruption of train service. The contracting officer shall prepare the forms showing all essential data relative to the contract terms and the amount due the temporary carrier. The carrier must sign the form. The form shall then be certified by the contracting officer and original copy only forwarded to the postal data center.

(g) *Use of Form 5020-B, Railway Mail Service Authorization.* Form 5020-B is a blanket or flat order used in effecting major changes in railroad mail transportation services.

(h) *Forms prepared by railroads.* The railroad will be responsible for the preparation of the following basic operating records of service performed:

(1) *Train baggageman (TBM) report.* (i) Prepared daily by train baggageman (or conductor) reporting all working storage cars operating in U.S. mail service.

(ii) "Space pooled" TBM reports will be separated and copy forwarded to the contracting officer or the person designated, on the day of receipt in the mail billing office.

(iii) "Space nonpooled" TBM reports will be calculated and priced out by the railroad and the original forwarded to the contracting officer or the person designated, within 7 working days following service date.

(iv) Report will be prepared in sufficient copies to furnish railroad mail billing department with the original and second copy. (The third and fourth copies, if required, will be distributed in accordance with local railroad instructions.)

(2) *Form 5118, Line-Haul Mail Storage Service and Related Terminal Service.* Prepared by railroads upon request of the contracting officer at designated stations where transfer clerks are not assigned.

(i) *Claim submission—standard forms 1034 and 1034-A (public voucher for purchases and services other than personal).* (1) These forms shall be used to claim the total line-haul and terminal charge amount due for service performed on each railroad route.

(2) Separate line-haul and terminal charge adding machine tapes (for each payment period) shall be prepared from the daily train totals shown on Forms 2558 and the priced-out train baggageman reports.

(3) A Summary Listing itemizing the total pay claimed for each train shall be prepared in duplicate showing train number, line-haul pay due, and terminal charge pay due. Original will accompany standard form 1034. Second copy will be retained by railroad.

(4) Where contracts provide for annual-rate deductions from line-haul or terminal charges, 7/365 (leap year, 366 days) or 28/365 of the per annum amount shall be entered as a deduction from each claim as applicable.

(5) The railroad will forward standard forms 1034 and 1034-A and supporting documents direct to the postal data center within 10 working days following the close of the 7- or 28-day period.

(6) Additional amounts due for services rendered in any one 28-day postal accounting period will be claimed in a single supplemental billing.

§ 550.6-3 Special contract movements.

(a) *Form 5071, Car/Van Movement Record*—(1) *Services covered.* Form 5071, Car/Van Movement Record, will be used for recording, certifying, and as a basis for compensation for all services performed by railroads under the terms of Document 97, 98, and 99, special contracts except detention charges.

(2) *Preparation and distribution.* Instructions for preparation and distribution are printed on reverse of original form.

(3) *Application*—(i) *Initiating offices.* Form 5071 will be prepared by Transfer Clerk, transit mail expediter, or other designated personnel at offices of dispatch or at interline points according to instructions for each individual carline.

(ii) *Carline instructions.* The contracting officer will issue specific instructions on sample Form 5071, for preparation and forwarding of form for each new carline originating in the region on the following basis:

(*a*) *Single or double-trailer rate at origin and single rate thereafter, through to destination.* (*1*) Forward Form 5071 original to destination region.

(2) Destination region certifies for service from origin through to destination.

(*b*) *Single or double-trailer rate at origin, double-trailer rate at an intermediate segment.* (*1*) Forward Form 5071 original to region at first interline point where double-trailer rate applies.

(2) Region at interline (pairing) point completes Form 5071 and certifies for service from origin to his interline point.

(3) Van control at interline pairing point is notified of movement; arranges to pair the unit for onward dispatch; prepares new Form 5071 or includes the passing unit on Form 5071 prepared for local originating units and/or other passing units; forwards new Form 5071 to destination region or next pairing point, if any.

(4) Region at destination or next pairing point certifies for service from first pairing point through to destination (or next pairing point).

(5) Follow the same procedure for succeeding segments.

(*c*) *Exception.* As a special case, treat ALL eastbound movements entering the Penn Central System at Chicago and St. Louis as though terminating at each of those respective points. Chicago and St. Louis, respectively, will then rebill all such movements onward on Form 5071. This is necessary to prevent excessive adjustments where units of the same carline may move under alternate rate systems.

(iii) *Dissemination of instructions.* Copy of specific instructions on sample Form 5071 for each carline should be furnished as follows:

(*a*) Dispatching units.

(*b*) Postal data center.

(*c*) All five regional level contracting officers.

(*d*) Headquarters (2 copies).

(4) *Additional instructions—preparation and certification.* Instructions to dispatching personnel for preparation of Form 5071 for individual carline should include all particulars required for accurate certification and pay:

(i) *Control number.* Dispatching office will enter the region number at the left-hand side of the Control Number (01, 02, etc.). This will be the region charged with the obligation at origin or at intermediate pairing point, depending on the line haul segment. The postal data center will add the digits necessary to complete the control number for use in computer processing and data analysis.

(ii) *Detention charges and services not covered.* Detention charges and services not specifically included in appropriate 97, 98, or 99 contracts, such as switching service covered by a separate contract, or loading or unloading covered by separate nonrail contract, will not be recorded or certified on Form 5071. Certify for such services separately on Form 994. On Form 5071, indicate the use of such other contract service or alternate handling as follows:

(*a*) *Contract terminal handling.* Where loading or unloading is performed under terms of a separate nonrail or terminal company contract, enter "C" in appropriate column opposite entry on Form 5071 (under "PO" in Column 12 or 19).

(*b*) *Plant loading.* Enter "PL" in Column 12 (under "PO").

(*c*) *Contract shuttle service.* Enter "C" (under "PO") in appropriate column (13 or 18) if shuttle or local drayage is performed under terms of a separate contract.

(iii) *Certification*—(*a*) *Verification.* Verify all computations and entries prior to affixing signature.

(*b*) *Region number.* Enter region number in corner of Title block (06, 07, etc.).

(*c*) *Validation.* The railway space assistant preparing final certification of Form 5071 will validate the photocopy to be forwarded to the Postal Data Center, St. Louis, by initialing that copy in ink in the certification block to the left of the signature block.

(*d*) *Forwarding completed certifications.* Forward respective copies of certifications as completed each day. Do not hold or accumulate.

(iv) *Miscellaneous.* See illustrations for further example and detail.

(5) *Audit and control*—(i) *Periodic Review.* Contracting officers of certifying regions will be responsible for periodic review and spot-audit of certifications for accuracy and adherence to prescribed procedure.

(ii) *Controls.* Certifying regions will establish necessary controls and check-off procedures to prevent double certification and to insure against inadvertent duplicate submission of certifications already forwarded:

(*a*) *Check off.* Space assistants will check off on Form 5048 each unit as it is receipted for on Form 5071. An item already checked may not be receipted for a second time without thorough recheck against possible double certification.

(*b*) *Record.* Certifying regions will maintain a record of the distribution of copies of completed certifications. Entries should include but need not be limited to the following:

(*1*) Carline (origin and destination).

(2) Date(s) of service.

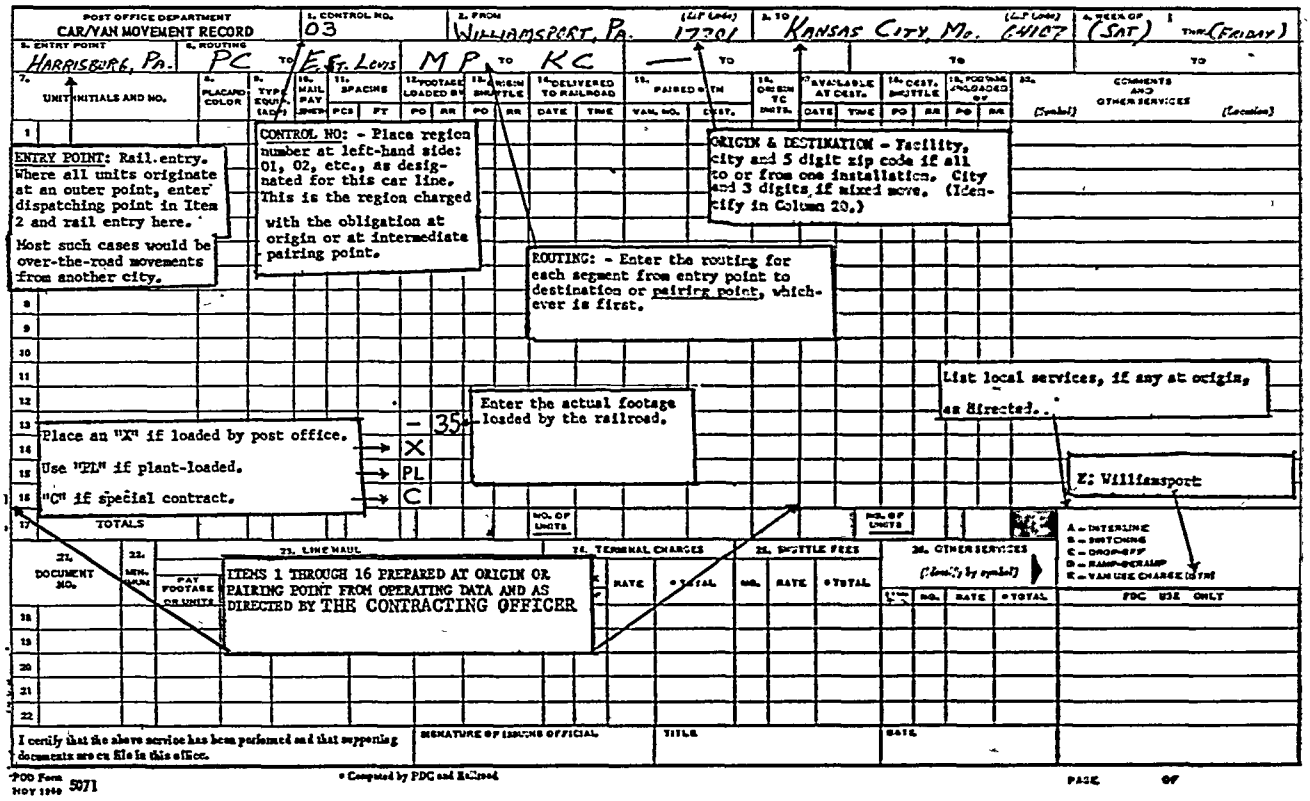
(3) Date certification completed.

(4) Date of distribution of copies.

§ 550.6–4 Storage cars.

(a) *Mail loading diagram and storage mail standpoint dispatch scheme*—(1) *Purpose.* (i) To provide uniform procedures for the loading and dispatch of storage mail to prevent delays in mail and additional handling costs.

(ii) To facilitate coordination between regions for improvement of dispatches and use of space in all storage cars, trailers, vans, and containers.



POST OFFICE DEPARTMENT
CAR/VAN MOVEMENT RECORD

1. CONTROL NO. 12 | 2. FROM Los Angeles, California (ZIP Code) 90201 | 3. TO Jacksonville, Florida (ZIP Code) 32203 | 4. WEEK OF | THRU

COMPLETION AND CERTIFICATION BY SPACE ASSISTANTS AT REGION OF DESTINATION OR PAIRING POINT

5. ENTRY POINT: Los Angeles | 6. ROUTING: Sou. Pac. TO El Paso | Tex. & Pac. TO Shreveport | Ill. Central TO Meridian | Southern TO Jacksonville

	7. UNIT INITIALS AND NO.	8. PLACARD COLOR	9. TYPE EQUIP. (ADP)	10. MAIL PAY LENGTH	11. SPACING PCS	11. SPACING FT	12. FOOTAGE LOADED BY PO	12. FOOTAGE LOADED BY RR	13. ORIGIN SHUTTLE PO	13. ORIGIN SHUTTLE RR	14. DELIVERED TO RAILROAD DATE	14. DELIVERED TO RAILROAD TIME	15. PAIRED WITH VAN. NO.	15. PAIRED WITH DEST.	16. ORIGIN TC INITS.	17. AVAILABLE AT DEST. DATE	17. AVAILABLE AT DEST. TIME	18. DEST. SHUTTLE PO	18. DEST. SHUTTLE RR	19. FOOTAGE UNLOADED BY PO	19. FOOTAGE UNLOADED BY RR	20. COMMENTS AND OTHER SERVICES (Symbol)	(Location)
1	XTRZ - 370079	B	5	34	-	33	X	-	X	-	8/18	0420			JB	8/23	1200	-	X	-	33	AAML	
2	XRTZ - 270054	B	5	35	-	35	X	-	X	-	8/19	2200			JB	8/25	1300	-	X	-	35		
3	XRTZ - 271514	B	5	35	-	35	X	-	X	-	8/20	2100			JB	8/26	1300	-	X	-	35		
4	~~XTRZ - 275895~~	~~B~~	~~5~~	~~35~~	~~-~~	~~35~~	~~X~~	~~-~~	~~X~~	~~-~~	~~8/22~~	~~0200~~			~~RR~~							TRACE INITIATED - Not Rec'd 9/10	
5	XRTZ - 279630	B	5	37	-	37	X	-	X	-	8/22	1900			RR	8/28	1700	-	X	-	37		
6	REAZ - 200946	B	5	35	-	23	X	-	X	-	8/24	0200			JB	8/29	1300	-	X	-	23	AAML	(ADJ. 2.4')
7																							
8																							
9																							
10																							
11																							
12																							
13																							
14																							
15																							
16																							
17	TOTALS			176		163		-		-	NO. OF UNITS						NO. OF UNITS	5		163			

Follow procedure in instructions for missing or delayed units.

Enter totals in appropriate columns. Complete all entries.

Enter data from records, Form 5048, or other positive record

Enter in Comments any adjustment for minimum pay footage. Record actual footage in respective columns.

TRAFFIC ANALYSIS
Columns 10 and 11 Provide Volume and Utilization Data

Record auxiliary contract services performed enroute or at destination.

A = INTERLINE
B = SWITCHING
C = DROP-OFF
D = RAMP-DERAMP
E = VAN USE CHARGE (OTR)

	21. DOCUMENT NO.	22. MINIMUM	23. LINE HAUL SINGLE PAY FOOTAGE OR UNITS	SINGLE RATE	SINGLE * TOTAL	DOUBLE PAY FOOTAGE OR PAIRS	DOUBLE RATE	DOUBLE * TOTAL	24. TERMINAL CHARGES PAY FOOTAGE ON	PAY FOOTAGE OFF	RATE	* TOTAL	25. SHUTTLE FEES NO.	RATE	* TOTAL	26. OTHER SERVICES (Identify by symbol) SYMBOL	NO.	RATE	* TOTAL	PDC USE ONLY
18	98-721	24	164	9.00					—											
19	98-760	24	164	9.33					—											
20	98-351	24	164	3.89					—											
21	98-724	24	164	6.24					—	163	1.93		5	12.00						
22	—																			

Space Assistant's Initial in Ink on PDC Copy.

(Also enter Region No.)

Make positive entries for all items in Columns 21 through 26 except pay totals. Double check your additions and verify the rates.

I certify that the above service has been performed and that supporting documents are on file in this office. | SIGNATURE OF ISSUING OFFICIAL (Signature) | TITLE | DATE (Date)

POD Form 5071 NOV 1969 | * Computed by PDC and Railroad | PAGE 1 OF 1

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POST OFFICE DEPARTMENT
CAR/VAN MOVEMENT RECORD

1. CONTROL NO. 12 | 2. FROM Los Angeles, California (ZIP Code) 90201 | 3. TO Jacksonville, Florida (ZIP Code) 33203 | 4. WEEK OF | THRU

5. ENTRY POINT: Los Angeles | 6. ROUTING: Sou. Pac. TO El Paso | Tex. & Pac. TO Shreveport | Ill. Central TO Meridian | Southern TO Jacksonville | TO

	7. UNIT INITIALS AND NO.	8. PLACARD COLOR	9. TYPE EQUIP. (ADP)	10. MAIL PAY LENGTH	11. SPACING PCS	11. SPACING FT	12. FOOTAGE LOADED BY PO	12. FOOTAGE LOADED BY RR	13. ORIGIN SHUTTLE PO	13. ORIGIN SHUTTLE RR	14. DELIVERED TO RAILROAD DATE	14. DELIVERED TO RAILROAD TIME	15. PAIRED WITH VAN. NO.	15. PAIRED WITH DEST.	16. ORIGIN TC INITS.	17. AVAILABLE AT DEST. DATE	17. AVAILABLE AT DEST. TIME	18. DEST. SHUTTLE PO	18. DEST. SHUTTLE RR	19. FOOTAGE UNLOADED BY PO	19. FOOTAGE UNLOADED BY RR	20. COMMENTS AND OTHER SERVICES (Symbol)	(Location)
1	XTRZ - 370070	B	5	34	-	33	X	-	X	-	8/18	0420			JB	8/23	1200	-	X	-	33	AAML	
2	XTRZ - 270054	B	5	35	-	35	X	-	X	-	8/19	2200			JB	8/25	1300	-	X	-	35		
3	XRTZ - 271514	B	5	35	-	35	X	-	X	-	8/20	2100			JB	8/26	1300	-	X	-	35		
4	XTRZ - 275895	B	5	35	-	35	X	-	X	-	8/22	0200			RR	9/12	1300	-	X	-	35	TRACE INITIATED - ~~Not Rec'd 9/10~~	
5	XRTZ - 279630	B	5	37	-	37	X	-	X	-	8/22	1900			RR	8/28	1700	-	X	-	37		*Rec'd 9/12
6	REAZ - 200946	B	5	35	-	23	X	-	X	-	8/24	0200			~~JB~~	8/29	1300	-	X	-	23	AAML	FLATCAR
7																							BAD ordered
8																							AT ____
9																							
10																							
11																							
12																							
13																							
14																							
15																							
16																							
17	TOTALS			35		35		-		-	NO. OF UNITS						NO. OF UNITS	1		35			

CERTIFICATION
of Missing Van

Mark out units previously certified.

A = INTERLINE
B = SWITCHING
C = DROP-OFF
D = RAMP-DERAMP
E = VAN USE CHARGE (OTR)

	21. DOCUMENT NO.	22. MINIMUM	23. LINE HAUL SINGLE PAY FOOTAGE OR UNITS	SINGLE RATE	SINGLE * TOTAL	DOUBLE PAY FOOTAGE OR PAIRS	DOUBLE RATE	DOUBLE * TOTAL	24. TERMINAL CHARGES PAY FOOTAGE ON	PAY FOOTAGE OFF	RATE	* TOTAL	25. SHUTTLE FEES NO.	RATE	* TOTAL	26. OTHER SERVICES (Identify by symbol) SYMBOL	NO.	RATE	* TOTAL	PDC USE ONLY
18	98-721	24	35	9.00					—				—							
19	98-760	24	35	9.33					—				—							
20	98-351	24	35	3.89					—				—							
21	98-724	24	35	6.24					-	35	1.93		1	12.00						
22																				

I certify that the above service has been performed and that supporting documents are on file in this office. | SIGNATURE OF ISSUING OFFICIAL (Signature) | TITLE | DATE (Date)

POD Form 5071 NOV 1969 | * Computed by PDC and Railroad | PAGE 1 OF 1

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(2) *Procedures*—(i) *Index of mail loading diagrams.* Prepare mail loading plans for each major originating or transfer point within the region listing all destinations to which storage cars, trailers, and vans are dispatched. Include the following:

(*a*) City and railroad or truck terminal of origin.

(*b*) Diagram number.

(*c*) Destination and relay points.

(*d*) Frequency of dispatch.

(*e*) Railroad company and train number.

(*f*) Classification, i.e. (D) destination, (D-R) destination-relay, (W) working, (S&R) mixed. Use the symbols (P-L) immediately after the classification for plant loaded cars. (VAN) for trailers and (P.O.L.) for post office loaded.

(*g*) Contents, indicate type of mail.

(*h*) Following is a brief example for the format:

Index of mail loading diagrams (Union Station), Chicago, Ill.

Diagram No.	Destination	Frequency	Railroad train	Classification	Contents
1	West Oakland, Calif.		C.M. St., P&P 103	W (I-D)	Pref.
2	Denver, Colo.	X1	CB&Q 1	Sct-Out	Mixed.
3	Omaha, Sacramento	X7	CB&Q 1	D-R	Do.
4	Cincinnati		PC 92	D (Van)	Bulk.

(ii) *Storage mail standpoint dispatch scheme.* Each region shall conduct a study of the movement of mail for the States of the region from the major originating points, transfer points, and gateways of the country. When necessary, a standpoint dispatch scheme shall specify the preferred dispatches for all post offices in the State and the separations to be maintained in storage cars entering the region. This study is continuous based on the receipt of mail in the destination region.

(iii) *Distribution of mail loading diagrams and storage mail standpoint dispatch schemes.* Contracting officers shall furnish transfer clerks, railroad employees, and offices concerned with sufficient copies of the mail loading diagrams and storage mail standpoint dispatch schemes together with subsequent changes for dispatching storage mail. Additional copies shall be distributed as follows:

Each of the five regional contracting officers, 3 copies.

Headquarters, 2 copies.

(iv) *Review and evaluation.* All regions will review the plans and schemes affecting them for accuracy and possible improvement of interregional movement of storage mail. Spot checks should be made of storage cars at points of receipt to ascertain whether the mail is being dispatched in conformity with applicable plans and schemes. If not, promptly institute remedial action with the originating region.

(b) *Destination, destination-relay, and working cars*—(1) *Purpose.* (i) To provide standard procedures and prevent unnecessary handling of mail.

(ii) To control orders to hold mail for movement in destination and destination-relay cars, to assure the expeditious movement of bulk mail (circulars, ordinary papers, and parcel post), and to assure that dispatches of value are being made.

(2) *When to use*—(i) *Destination cars.* (*a*) When sufficient mail is available at origin, the car should be fully loaded and dispatched intact to destination with no working en route.

(*b*) Straight destination cars will be made up and scheduled for dispatch within 24 hours.

(ii) *Destination-relay cars.* (*a*) When the mail accumulating for final destination within a 24-hour period is 50 percent of the car capacity, a destination-relay car should be made. Such cars should not be held beyond the 24-hour makeup period.

(*b*) The point selected for relay should be one where mail for the final destination is available to replace that unloaded or add to destination volume at the relay point.

(*c*) The contracting officer of the origin region shall contact the contracting officer concerned to determine the appropriate relay point to assure full utilization of space to destination.

(*d*) A destination-relay car may be made up when the quantity of mail for the final destination is less than 50 percent of car capacity if agreed to by the contracting officer and the railroad. The agreement shall be made a matter of record with a copy to Headquarters.

(*e*) Destination-relay cars should not be made for the same destination when sufficient mail generates within 24 hours to warrant a straight destination car.

(*f*) Destination-relay cars shall remain in such classification to the destination except that when necessary to avoid delay or when economically advantageous the mail may be transferred to available space in other cars at the designated relay point if agreed to by the contracting officer and the railroad representatives concerned. The agreement shall be made a matter of record with a copy to Headquarters.

(*g*) At relay points, destination-relay cars should be given expeditious handling to avoid delay in arrival at final destination.

(iii) *Working cars.* (*a*) The operation of this type car should be held to the minimum based on the needs of the service.

(*b*) Extreme care should be exercised to avoid use of more of these cars than are absolutely necessary. As a general rule, mail space available in a car of this type should be fully utilized before separations are made in other cars in a train. An example of an exception would be when, due to operating or mail-handling conditions, the contracting officer by arrangement with the carrier approves additional set-out or working cars provided no additional transportation costs will accrue.

(*c*) The classification of working cars shall not be changed en route. Ordinarily, they should not be operated beyond the customary run of the car.

(*d*) Under certain circumstances, a working car (white placard) may accumulate separations of mail for destinations beyond the customary terminal of the car run. At that point, the provisions of § 550.5-2(a)(3) will be applied. This type of operation is desirable to expedite the movement of mail, especially over weekends.

(3) *Procedures.* Contracting officers in conjunction with the postmasters concerned will take steps to place in effect and maintain expeditious transportation of bulk mail (circulars, ordinary papers, and parcel post) between offices within each recognized trade area and to provide programed delivery.

(4) *Supervision.* Close supervision should be maintained by field officials at origin, intermediate, and destination points to assure that postmasters, supervisors, and transfer clerks obtain the most efficient and economical use of these cars.

§ 550.7 Irregularities, assessment of damages, and accidents.

§ 550.7-1 Authority for liquidated damages.

Liquidated damages for irregularities and omissions in the handling and transporting of U.S. mail may be assessed against railroads as provided for in the contracts under which the mail is handled and/or transported.

§ 550.7-2 Reference.

Section 550.2 describes the various delinquencies for which damages may be assessed.

§ 550.7-3 Policy.

(a) Liquidated damages are assessed to secure maintenance of proper standards of service and assure that necessary remedial action is taken.

(b) Infrequent irregularities of a minor nature may be recorded and filed without action. However, the contracting officer may assess damages if the carrier concerned is dilatory and/or uncooperative in correcting irregularities officially reported to it.

(c) Irregularities that affect more than one region should be coordinated for corrective action.

(d) Persistent failures to maintain schedules of trains operating with an RPO car or CP trains will be brought to the attention of the railroad involved.

If prompt corrective action is not taken, damages may be assessed. If late operation continues, consideration should be given to moving the mail by other means. No damages will be assessed for late operation of trains that handle vans or cars of bulk nonpreferential mail at special contract rates. Delays resulting from misroutings or mishandlings may result in line-haul adjustments or damages or both, depending on the gravity of the situation.

(e) The damages assessed in each case shall be such sum as the contracting officer may impose in view of the gravity of the delinquency, and shall be deducted from the railroad's pay for service on the route on which the delinquency occurred.

(f) Liquidated damages will not be assessed if the irregularity is the result of circumstances beyond the control of the carrier, such as floods, washouts, wrecks, etc.

(g) Persistent irregularities that cannot be resolved regionally may be referred to appropriate Headquarters officials.

(h) Uniformity between the various regions in the assessment of damages for similar degrees of gravity for the same delinquency is desirable. This applies particularly in the case of damages assessed against railroads operating in more than one region.

§ 550.7–4 Other responsibilities.

(a) *Joint stations.* (1) At joint stations connection mail is considered to be in the custody of the outgoing company. An exception to this rule is when station trucks are not promptly handled and the outgoing train departs. In the latter instance the irregularity should be briefed against the responsible company.

(2) At joint stations mail for the local post office, terminal, airport mail facility, or for transfer to other railroad stations is considered to be in the custody of the incoming carrier, and any irregularities in the handling at the station prior to transfer should be briefed against the incoming company.

(b) *Terminal points.* A railroad route under the jurisdiction of one region operating into a terminal under jurisdiction of another region shall be considered under the supervision of the contracting officer to which the terminal is assigned.

(c) *Damaged mail.* (1) When any railroad company or other mail contractor exchanging mail with a railroad company delivers a parcel, sacked or outside, in a damaged condition, not bearing the endorsement "Received in bad order condition at _____," the damage will be considered to have occurred while in the custody of the delivering carrier, for purposes of assessing damages for irregularities.

(2) Mail handled by two or more lines and found damaged is briefable against the company having custody when the damage was discovered.

(3) Postal employees must not accept mail without calling the attention of the contractor's employee to the damage. The name of the carrier's employee notified must be shown on Form 5257. Report of Damaged Parcel Post. General statements such as rough handling and improperly packed are not acceptable. State how the rough handling occurred and explain how the parcel was packed if the damage was due to improper packing.

§ 550.7–5 Reporting.

(a) *Reporting accidents and injuries.* The contracting officer shall notify the mail traffic manager of the railroad company of accidents resulting in injuries to postal employees on duty on railroad property which indicate there is a possible railroad liability. They should include:

(1) Name and address of each postal employee injured.

(2) Information concerning the type of injury.

(3) Cause of injury.

(4) Time and place of the accident.

(5) All other pertinent information available.

(b) *Reporting irregularities.* (1) All postal employees shall observe the service performed by railroad companies and shall report immediately all failures, irregularities, and delinquencies that come to their attention. Form 5257, shall be prepared and forwarded to the postmaster having jurisdiction over the route on which the irregularity occurred. Form 5367, Notice of Unsatisfactory Condition of Postal Car or HPO Vehicle, and Form 5179, Transfer Office Report of Railroad Mail Irregularity, shall be prepared and distributed according to instructions on the form.

(2) Following is an effective way for reporting late train operations:

(i) Key mail exchange points will be selected by the contracting officer for each route.

(ii) Information will be obtained on late arrivals (16 minutes or more) at those key points.

(iii) Form 5180, Late Train Operations, will be prepared, compiling the required detail from Form 5012, Form 5118, or other documentation as available. These will cover a weekly period beginning Saturday, 0001 hours, to Friday, 2400 hours (train date and time). It will not be necessary to report volumes of mail missing connections.

(3) On receipt of reports of irregularities and delay to transit mail, the postmaster shall determine whether the delinquency is chargeable to negligence or failure of the carrier. If it cannot be established locally, the report must be sent promptly to the contracting officer.

(4) When irregularities indicate that a case is briefable, Form 5178, Notification of Irregularity Service Delay or Damage to Parcel Post shall immediately be prepared in quintuplicate by the postmaster for the consideration of the contracting officer. Each brief should be confined to similar irregularities occurring at a given point or involving a given train or trip although failure on 2 or 3 successive days may be included in one brief. The postmaster shall send four copies of the brief, with supporting papers, to the contracting officer who will determine the remedial action necessary or if liquidated damages should be assessed. The fifth copy of the brief shall be retained in the postmaster's files.

(5) Reports of carrier irregularities which the postmaster may consider minor in nature and not repetitive or for which no brief is prepared shall be forwarded to the contracting officer for filing and future reference.

(6) If the railroad company fails to reply to Form 5178 within 30 days, it shall be considered as acceptance of responsibility for the irregularity. As Forms 5367 and 5179 cover delinquencies of a more urgent nature, reply from the railroad company must be received within 10 working days or 15 days, respectively.

(7) If the railroad requests additional time to complete its investigation of irregularity briefed on Form 5178, an extension of 15 days may be granted.

§ 550.7–6 Notification.

(a) *Preparation of Form 2575, Notification of Penalty Action.* When the contracting officer decides that damages will be assessed, Form 2575, Notification of Penalty Action, will be prepared showing point or train number, date, type of mail, number of pieces, nature of irregularity, and the amount of damages. These can be prepared on a 7-day basis to conform with railroad pay period on a 14-day basis or on a 28-day accounting period basis. Should the number of items require additional listings, the continuation (plain sheets) must show: Page _____ of _____, Route No. _____, Fine No. _____, Railroad _____, Date _____. In such cases, original (page 1) will carry notation, "continued" at the bottom of space for listing irregularities, the signature, and total damages in the designated spaces. Distribution of the copies shall be made as prescribed on Form 2575.

(b) *Exceptions.* When the contracting officer having jurisdiction does not agree in the action taken, he shall so advise the originating contracting officer and if agreement cannot be reached, he shall forward all papers to Headquarters for review.

(c) *Carrier's appeal.* If agreement cannot be reached after reconsideration by the contracting officer, the carrier should request submission of the file to Headquarters. This request should cover the specific items under protest and convey complete detail in support of contention.

§ 550.7–7 Remission of damages.

Contracting officers may remit damages assessed when additional information or evidence indicates they were not fully justified. The contracting officer shall notify the railroads and the postal data center of his decision for remission. This notification shall be by letter and the postal data center may properly credit the railroads' accounts with the amount of damages and either issue a check or approve the addition of remitted damages to the next bills rendered by the railroads.

§ 550.8 Basic administrative policies.

§ 550.8–1 Appearance before State commissions in railroad discontinuances.

(a) *Testimony.* Railroad companies occasionally request that the Postal Service furnish testimony before State regulatory commissions in proceedings involving petitions for discontinuance of train service. The Postal Service does not authorize the voluntary giving or furnishing of such testimony.

(b) *USPS position.* Since such proceedings often involve controversial issues which are primarily the concern of the particular community or the railroad company, the USPS has maintained a neutral policy. It is the USPS position that if train service is withdrawn, adequate mail transportation by other means will be provided. Railroad companies are afforded full opportunity to supply substitute highway service in lieu of the discontinued train service when justified on the basis of service and cost.

(c) *Authorization.* When a request is received from a railroad company for a postal official to testify before a State commission relative to a change in train service, the company should be advised of the above policy and the request politely refused. If the postal official is subpoenaed to appear, he will report to the appropriate Senior Regional Official and after approval will comply and testify simply with respect to the relevant facts regarding the postal service involved.

(d) *Statistics—railroad mail revenue.* When railroad labor organizations request data on payments to railroads, the request should be referred to Headquarters for approval. When approval is given, the data will be developed from records available and submitted in postal accounting period form. An information copy will be furnished to the mail traffic officer of the railroad involved. Although an effort should be made to supply the best information available, it will not be necessary to attest to the accuracy of the figures.

§ 550.8–2 Association of American Railroads.

(a) *Policy.* The USPS is desirous of improving its railroad mail operations through coordination and cooperation on problems of mutual interest with the railroad industry. This is accomplished at the national level by close liaison between the Postal Service and the Association of American Railroads, in handling matters of national scope. Regional Railroad Subcommittees of the AAR, are established in each region to coordinate and cooperate with contracting officers and their representatives on regional matters of mutual interest.

(b) *Implementation.* Contracting officers and their designated representatives should maintain close liaison and cooperation with the subcommittee to obtain full use of the services provided in settling mutual matters of local or regional nature.

PART 560—PURCHASE AND ADMINISTRATION OF NONCONTRACT TRANSPORTATION—AIR

Sec.
560.1 Domestic air carrier mail operations authorized under Civil Aeronautics Board regulations.
560.1–1 General requirements.
560.1–2 Air carrier responsibilities.
560.1–3 Reports, records, and forms.
560.1–4 Penalties and irregularities.
560.1–5 Flight operations.
560.1–6 Payment to air carriers.
560.1–7 Air service for Alaska.
560.1–8 Noncontract air taxi service.
560.1–9 Dispatching mail by air.
560.2 International Transportation of mail by air under Civil Aeronautics Board regulations.
560.2–1 General requirements.
560.2–2 Dispatch to other countries.
560.2–3 Handling and routing to exchange offices.
560.2–4 Routing and division.

AUTHORITY: The provisions of this Part 560 issued under 39 U.S.C. 401, 5001, 5002, 5005, 5007, 5401.

§ 560.1 Domestic air carrier mail operations authorized under Civil Aeronautics Board regulations.

§ 560.1–1 General requirements.

When authorized by certificate to transport mail, or when transporting mail pursuant to Part 298, Economic Regulations, Civil Aeronautics Board (CAB), any air carrier shall provide necessary and adequate facilities and service for the transportation of mail and shall transport mail when required by the U.S. Postal Service. Air carriers must be responsive to the exacting transmission requirements of the Postal Service. Mail must be efficiently and expeditiously transported and transferred as ordered on appropriate post office dispatch documents and related coding on pouch labels.

§ 560.1–2 Air carrier responsibilities.

(a) *For transporting mail.* Air carriers must transport and transfer mail as ordered on dispatch documents and related coding on pouch labels.

(b) *For protecting mail.* Air carriers are responsible and accountable for mail in their custody. Mail must not be left exposed on trucks or otherwise subjected to depredation or weather. Carriers who transport mail between point of exchange with the post office and aircraft ramp positions must provide suitable closed vehicles that will (1) prevent mail from being lost or dropped en route and (2) protect mail from depredation and weather. Every precaution must be taken to protect mail from fire. Mailhandlers must be identified by badges or distinguishing caps or clothing or must be prepared to show their airline identification cards on request of postal employees concerned.

(c) *For cooperating with postal inspectors.* All employees of air carriers engaged in transporting mail must cooperate with and assist postal inspectors in their duties.

(d) *For acknowledging correspondence.* Air carriers must answer promptly all correspondence from officials of the Postal Service.

(e) *For preparation and submission of forms and reports.* Air carriers must submit required forms and reports promptly. They must comply with the provisions of forms to insure proper payment for service given.

(f) *For giving priority to airmail.* (1) From each point served, the normal mail load for each trip must be accepted and transported by the carrier.

(2) The normal mail load for each trip is determined, at the option of the air carrier, for each day of the week on (i) basis of the mail tendered to that trip on the same day of the week for the 5 previous weeks or (ii) basis of the weight of mail tendered to the trip on Tuesday, Wednesday, Thursday, and Friday of the preceding week. When a holiday occurs on one of those days, substitute the same day of the second previous week. In either method of computing the average, exclude mail tendered under abnormal conditions. When a carrier elects to use one of the two methods, it must continue to use the selected method in determining normal mail load.

(3) No part of the mail load, either local boarding or through mail, will be dispatched when a trip requires additional fuel.

(4) Mail in excess of normal mail load must be given priority over all other traffic except confirmed revenue passengers and their baggage. Mail aboard a plane must not be removed to accommodate local boarding passengers or extra fuel.

(5) In loading, unloading, transferring mail to connecting planes, and delivering mail to the designated postal representative, mail must be given preference over all other cargo.

(g) *For providing quarters*—(1) *At air stops.* When requested to do so by the Postal Service, air carriers must furnish adequate and suitable quarters at air stops for the receipt, dispatch, distribution, and transfer of mail, unless and until otherwise provided by the Postal Service.

(2) *Location of quarters.* Quarters must be located to provide expeditious handling of mail to and from planes and be conveniently accessible to mail carrying vehicles.

(3) *Requests for changes in quarters.* Air carriers or postal officials must request changes in existing quarters or establishing new quarters through the regional office.

(h) *For obtaining routing from postal unit*—(1) *Interrupted transportation.* Any carrier in possession of mail for which he does not have proper routing knowledge will immediately request the necessary information from the local postal unit.

(2) *Overload situations.* When all available mail cannot be transported on an intended flight, the air carrier with the overload situation must promptly inform postal personnel at the airport mail

facility or air stop post office and obtain instructions concerning priority to be given in loading mail that can be accommodated. Anticipate potential overload situations as much in advance of flight time as possible. Off-loading of mail already on board in order to carry mail for destinations of greater postal advantage will not be required if this would entail unreasonable delay in departure of the flight.

(i) *For preparing and submitting schedules*—(1) *Preparation.* Air carriers shall prepare schedules as follows:

(i) Arrange schedules north to south and east to west, with flights listed in chronological order left to right.

(ii) Show on related schedules for each route all restrictions on the transportation of mail.

(2) *Submission.* (i) Air carriers shall submit with proposed new schedules a brief explanatory letter or cover sheet detailing proposed changes.

(ii) Copies of changes to existing schedules must be filed with Headquarters not less than 10 days prior to effective date. For major schedule changes, carriers are requested to give not less than 20 days notice so that the Postal Service may have sufficient time to process these schedule changes. The date of filing will be the date of receipt by Headquarters.

(iii) Air Carriers shall distribute copies of proposed new schedules as follows:

(*a*) Two copies to Headquarters. Send related ADP cards also to Headquarters.

(*b*) One copy to the official responsible for air transportation of mail in each region.

(3) *Designation of service.* Air carriers will be notified of flights designated for transportation of mail.

§ 560.1–3 Reports, records, and forms.

(a) *Guidance.* Reports, records, and forms applicable to the movement of mail by air must be complete, accurate, and legible. Responsible regional officials will provide necessary guidance to insure proper and timely submission of required records and reports requested of air carriers and postal units. Handbook M–31 describes the reports and forms used in the movement of mail by air.

(b) *Postmasters' records.* Postmasters operating airport mail facilities and transfer offices or servicing air stops and terminal points must maintain records and submit reports as directed by the region.

(c) *Routing correspondence and reports*—(1) *Local.* Correspondence on mutual local operations is handled directly between the local carrier and local air stop postal unit or field service representatives. Refer matters listed in subparagraph (2) of this paragraph to the region.

(2) *Regional.* Correspondence to and from air carriers on policy, schedules, operations, fining, quarters, irregularities, and changes in dispatch billing procedures and forms; omissions and failures of carriers to perform; division of mail; service requirements; actions involving Civil Aeronautics Board orders and rulings; first-class mail by air; and other matters of regional nature shall be conducted by the responsible regional offices involved. Questions of interregional impact or of Headquarters concern, as specified elsewhere in Postal Service regulations, will be sent to Headquarters.

(d) *Reporting accidents.* (1) Air carriers must make an immediate telegraph or telephone report of any accident resulting in possible damage or loss of mail. The report must be made to the responsible official in the region where the accident occurred. Mail should not be distributed, except to prevent further damage, or until released by a representative of the National Transportation Safety Board or a Federal Aviation Administration official. It must be guarded until a postal official arrives.

(2) When aircraft accidents occur while mail is in transportation channels, the postal unit nearest the scene will, pending receipt of instructions from the postal region, coordinate with appropriate officials; assist with mail recovery operations; and return mail to postal channels as quickly as possible after it is released by investigative authorities.

§ 560.1–4 Penalties and irregularities.

(a) *Authority.* Under title 49, U.S.C., section 1471, air carriers transporting mail must observe all applicable rules and regulations issued by the Postmaster General. A penalty can be imposed against air carriers for failure to comply.

(b) *Purpose of penalties.* Financial penalties are not intended to produce revenue to the Postal Service, but to bring forcibly to the carriers' attention unsatisfactory conditions, and to encourage their correction.

(c) *Handling of irregularities.* The type and description of the most frequent irregularities caused by improper handling of mail by air carriers and reporting procedures are in Handbook M–31. Irregularities applicable to handling of airmail, nonpriority mail, and air taxi operators are included. Irregularities are not confined to this list but may include also any serious infraction, unsatisfactory service, or unusual situations detrimental to the Postal Service.

(d) *Reporting irregularities.* Postal personnel must promptly report all failures, irregularities, and deficiencies that come to their attention. Unit supervisors must promptly review reports to insure that all pertinent information relating to mishandling is included.

(e) *Notification to air carrier.* Local station manager of carriers involved in an irregularity are given a report of the incident within 24 hours after occurrence. For quality control purposes, Headquarters provides each carrier with a monthly consolidated report of irregularities, carrier performance statistics, and a record of fines assessed, if applicable.

§ 560.1–5 Flight operations.

(a) *Scheduled operations*—(1) *Maintaining schedules.* Air carriers transporting mail pursuant to rates prescribed by the Civil Aeronautics Board will operate designated flights as shown in filed schedules, except when prevented from doing so by weather or other causes beyond their control.

(2) *Off-schedule operations.* If a carrier operates other than by the published schedules, it must notify all online postal units as soon as possible, except that advice need not be given of delays of less than 30 minutes.

(b) *Originating section, resumed flights, and delayed operations.* Delayed scheduled trips may operate with available mail from the initial terminal or intermediate points. When a scheduled trip has been canceled at the initial terminal or at some intermediate point, a section may be originated at any intermediate point on the route.

(c) *Commissions of service.* If a scheduled stop will not be made by a trip, the air carrier must immediately notify the local postal representative. If service is to be suspended for 1 week or more, the carrier must immediately notify the appropriate Headquarters and Regional offices and the postal units concerned. The same offices must be notified when service is to be resumed.

(d) *Emergency trips and extra sections.* Emergency trips and extra sections operated by the air carrier may be used for transportation of mail. It may be placed on the plane at an unscheduled stop when offered for dispatch by the local postal representative, except that mail will not be accepted if the air carrier is not authorized to serve that city.

(e) *Holding orders.* In unusual situations, the Postal Service may require the holding of planes at junction points for the connection of mail. If any air carrier desires to take exception to a holding order, a complete statement giving the particulars will be submitted by the air carrier promptly to Headquarters.

§ 560.1–6 Payment to air carriers.

Procedures on preparing and submitting required forms and bills for payment for transporting domestic mail by air are in Handbook M–31, Air Service Instructions. Claims for payment will be forwarded by the air carrier to the Director, Postal Data Center, Transportation Claims Section, Box 1557, Main Post Office Building, Dallas, TX 75299.

§ 560.1–7 Air service for Alaska.

The general policies and procedures outlined in §§ 560.1 and 560.2 apply equally to States-Alaska and intra-Alaska mail moved by air. Policies and procedures that relate solely to intra-Alaska air transportation of mail are outlined in Postal Service Publication 162, Conditions of Service for Air Transport of Intra-Alaska Mail.

§ 560.1–8 Noncontract air taxi service.

(a) *General.* The Economic Regulation of the Civil Aeronautics Board (14 CFR Part 298) describes how noncontract type of air taxi mail service is authorized.

(b) *Notice of intent.* (1) When the Postmaster General determines that air

taxi mail service is required under conditions not applicable to purchase by contract, or that purchase by advertised or negotiated contracts is not practicable, the Postal Service will file a Notice of Intent to use air taxi service with the Civil Aeronautics Board. Regular service will be instituted only when the Postal Service notifies the air taxi operator that the Notice of Intent and Final Mail Rate has become effective.

(2) An effective Notice of Intent or Civil Aeronautics Board exemption for service over an air taxi mail route pertains only to the operator named in the notice or exemption order. The authority of an air taxi operator to transport mail, by exemption or Notice of Intent, may be transferred only with the consent of and action by the Postal Service and the Civil Aeronautics Board.

(c) *Continuity of service.* Air taxi service provided under Notice of Intent procedures may be terminated by either party, without cause, on 30 days' written notice, except that the Postal Service may terminate for cause with no advance notice.

(d) *Penalties for irregularities.* Operators are subject to financial penalties for mishandling mail and for certain operational irregularities, as prescribed in P.S. Publication—Transportation of Mail by Air Taxi Operator Except Those Operating Under Rates Applicable to Scheduled Certificated Air Carriers.

(e) *Cooperating with postal inspectors.* All air taxi operators and their employees engaged in the transportation of mail under this part must cooperate with and assist postal inspectors in performing their duties which may include opening pouches and sacks and examining mail in them.

(f) *Safety.* (1) Air taxi operators must comply with all Federal Aviation Administration safety regulations applicable to air taxi operators involving transportation of passengers, whether or not they are covered by specific instructions from the Postal Service.

(2) Conditions detrimental to a safe operation will be reported by air taxi operators to responsible regional postal officials for consideration and appropriate corrective action.

(3) Operators must comply with specific safety requirements outlined in P.S. Publication 171.

(4) Serious offenses and violation of established postal and Federal Aviation Administration safety requirements may result in mail being withheld from flights until the condition is corrected.

(g) *Performance*—(1) *Standards.* Each operator must provide service and meet performance standards established by the Postal Service.

(2) *Mail handling.* (i) The operator will transport and transfer mail as ordered on dispatch and related coding on pouch labels, or instructions from postal transfer employees. Mishandlings that result in delayed delivery of the mail may subject the operator to a financial penalty.

(ii) Exchange of mail at each airport will be at the time and place authorized by the region.

(3) *Protection.* The operator is responsible and accountable for mail in his custody. The operator assumes responsibility for the mail from the time it is tendered to him for loading until it is unloaded and delivered to post office custody. The following requirements must be observed:

(i) Mail must not be left exposed or otherwise subject to possible theft, rifling, or damage by weather.

(ii) When a damaged pouch is discovered, it will be turned in to the first available postal unit for repouching and redispatch.

(4) *Air taxi publication.* Mail loading, unloading, and other specific responsibilities are in publication 171.

§ 560.1–9 Dispatching mail by air.

(a) *Policies and procedures.* The general policies and procedures governing the movement of airmail and nonpriority mail by air are in Handbook M–31.

(b) *Dispatch documents and records.* (1) Postmasters are responsible for the administration and proper preparation of dispatch documents. Strict supervision will be maintained in preparation of these documents to prevent erroneous payment to air carriers.

(2) Mail dispatched by air must be documented and recorded as outlined in Handbook M–31. Appropriate pouch labeling instructions are also included in the handbook.

(3) Handbook M–31 also prescribes in detail the appropriate forms for dispatch and transfer of mail in Alaska, by air taxis, for mail transported under authorized equalization agreements, and for the dispatch of mail by air under emergency conditions.

(c) *Nonpriority mail (NPM) by air*—(1) *Authorization.* The movement of nonpriority mail by air is authorized for transportation by aircraft between designated points on a space-available, nonpriority basis.

(2) *Priorities.* Air carriers will transport NPM on a space-available basis to the destination shown on the dispatch record and pouch label. The Civil Aeronautics Board order prescribes that no air carrier shall transport NPM if such transportation impedes the carriage of priority airmail, passengers, passenger baggage, air parcel post, air express, or regular air freight, except that NPM that has been loaded in the aircraft need not be removed to permit carriage of regular air freight received later or received at an intermediate point. The movement of NPM by air shall have priority over the movement of deferred air freight.

§ 560.2 International transportation of mail by air under Civil Aeronautics Board regulations.

§ 560.2–1 General requirements.

The Postal Service may dispatch mail for international transportation by air on air carriers holding a certificate issued by the Civil Aeronautics Board authorizing them to engage in the air transportation of mail.

§ 560.2–2 Dispatch to other countries.

(a) Only those postal facilities designated as international airmail exchange offices by the responsible office at Headquarters are authorized to make up and dispatch airmail to other countries.

(b) International airmail exchange office procedure will be governed by Handbooks T–1, Instructions for Handling and Reporting International Airmail at Exchange Offices, and M–31; special instructions as may be issued; and the provisions of the Universal Postal Convention.

§ 560.2–3 Handling and routing to exchange office.

Instructions covering the handling and routing to the appropriate U.S. international exchange office will be published and distributed by each region in a Regional International Standpoint, All Classes, Airmail Scheme. The routing instructions and the scheme format will be furnished by Headquarters.

§ 560.2–4 Routing and division.

(a) *Division of airmail.* (1) Airmail for competitive points will be divided equally between competitive flights of U.S. air carriers as nearly as practicable if such flights are scheduled to depart within 4 hours and arrive at destination airport within 2 hours of each other. When one carrier operates multiple competitive flights scheduled to depart within 4 hours and arrive at an airport within 2 hours of a competitive flight or flights of another carrier, the airmail will be divided equally between air carriers rather than between flights. For each application of these principles, the time period of 2 hours at destination will start with the first scheduled arrival of a flight or flights not included in an earlier division. A divided share of airmail will not be subject to further division.

(2) No division will be made when any divided share is less than 125 kilograms. When a divided share is regularly less than 125 kilograms, each of the competing carriers will be given all of the mail on alternate weeks, but no attempt will be made to balance cumulative total volumes.

(3) Mail will be divided only between competing single plane service except when single plane service is not available.

(4) Mail tendered to an air carrier for transportation pursuant to a contract or to a special rate applicable to a particular market and based on volume tenders or some other condition not generally applicable to all markets in which mail is transported will not be included in the foregoing rule regarding division. In any event, mail will not be tendered to air carriers serving common destinations when transportation and handling costs are not equal—except where justified by the public interest.

(5) When a U.S. air carrier initiates a flight of value requested by the Postal Service, all available mail will be tendered to that flight. Subsequent schedules

competitive to the designated flight will not participate in the market without specific instructions issued by Headquarters.

(b) *Instructions for dispatch.* (1) When single plane service is not available, an on-line connection will be given preference over an interline connection. Interline transfers will not be used unless arrival at destination airport will be advanced by at least 6 hours.

(2) When a transfer is required, transfer at a domestic point will be given preference over the transfer at a foreign point.

(3) Interline transfers of civil and military mail in another country are permitted with the consent of the Postal Administration at which the transfer will take place. Special instructions will be issued by Headquarters in these cases.

(4) Except as authorized by Headquarters interline and on-line transfers will not be authorized at a foreign point unless there is a minimum of 2 hours between schedules involving only passenger flights and 3 hours between schedules which involve cargo flights.

(c) *Policy for dispatch of MOM (Military Official Mail).* MOM for competitive points will be divided equally between competitive flights of U.S. air carriers as nearly as practicable if such flights are scheduled to depart within 4 hours and arrive at destination airport within 2 hours of each other. When one carrier operates multiple competitive flights scheduled to depart within 4 hours and arrive at an airport within 2 hours of a competitive flight or flights of another carrier, the MOM will be divided equally between air carriers rather than between flights. For each application of these principles, the time period of 2 hours at destination will start with the first scheduled arrival of a flight or flights not included in an earlier division. A divided share of MOM will not be subject to further division. See paragraph (a)(2) of this section.

(d) *Policy for dispatch of SAM (Space Available Military Mail).* (1) SAM Mail will be transported by U.S. air carriers on a space-available basis after all other revenue traffic has been accommodated.

(2) SAM Mail to competitive points will be tendered on an equitable basis each 24 hours insofar as practicable with regard to available space. See paragraph (a)(2) of this section.

(3) SAM Mail will be dispatched only to single carrier service; interline transfer will not be permitted except as required and when special instructions are issued.

(e) *Air carrier operations*—(1) *Filing of schedules.* Air carriers will submit schedules and changes affecting overseas and international service in sufficient time to assure receipt by Postal Service Headquarters, not later than 10 days prior to the effective date of such schedules. Three copies should be filed with the appropriate office at Headquarters, one with the responsible office in each Region concerned, and three copies with the carriers' claim for mail transportation charges. Air carriers will also provide copies of schedules to Military Postal Headquarters and to overseas military postal activities from which military mail is dispatched to and from points served.

(2) *Schedule changes.* If a schedule is filed which changes the times for an existing flight or includes additional flights—either of which would become eligible for a divided share of mail—such flights shall not, except on special instructions from Headquarters, be tendered a divided share of mail until such a schedule has been in effect for 30 days.

(3) *Equalization of charges.* When an air carrier elects to equalize its charges on a given segment, routing of mail under such equalization will not be employed by the Postal Service unless all classes of mail moving over the segment are subject to equalization.

PART 570—PURCHASE AND ADMINISTRATION OF NONCONTRACT TRANSPORTATION—SURFACE

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570.2	International surface transportation of mail.
570.2-1	General requirements.
570.2-2	American flag preference.
570.2-3	Dispatch to other countries.
570.2-4	Handling and routing to exchange office.

AUTHORITY: The provisions of this Part 570 issued under 39 U.S.C. 401, 5001, 5002, 5005, 5007, 5203, 5206, 5207, 5208, Public Law 91-375 (Chapter 56).

§ 570.1 Domestic surface transportation of mail [Reserved].

§ 570.2 International surface transportation of mail.

§ 570.2-1 General requirements.

The Postal Service may require a common carrier by water to transport mail as freight or express when:

(a) There is no competition on a water route and the rate or compensation asked is excessive; or

(b) No acceptable bid or proposal is received in response to an advertisement for bid or a solicitation for proposals covering service on the route.

§ 570.2-2 American flag preference.

U.S. surface mail for international destinations shall be carried on vessels of U.S. registry except:

(a) When there is no direct service provided by U.S. registry company and satisfactory service cannot be provided by a U.S. registry company on a transshipment basis; or

(b) When rates charged by the U.S. registry company are noncompetitive and in excess of those rates normally paid by the U.S. Postal Service to other U.S. registry companies for the water transportation of mail for comparable distances.

§ 570.2-3 Dispatch to other countries.

(a) Only those post offices designated as international surface exchange offices by the appropriate office at Headquarters are authorized to make up and dispatch surface mail to other countries.

(b) International exchange office procedures will be governed by Handbook T-4; special instructions as may be issued; and the provisions of the Universal Postal Convention.

§ 570.2-4 Handling and routing to exchange office.

Instructions covering the handling and routing to the appropriate U.S. international exchange office will be published and distributed by each region in a Regional International Standpoint Surface Scheme. The routing instructions and the scheme format will be furnished by Headquarters.

SUBCHAPTER H—PROCUREMENT SYSTEM FOR THE U.S. POSTAL SERVICE

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AUTHORITY: The provisions of this Part 619 issued under 39 U.S.C. 401, 404, 410, 2008(c), 5001-5605 as enacted by Public Law 91-375.

§ 619.000 Scope of part.

(a) This part sets forth policies and procedures governing the purchase of mail transportation and directly related services by contract. It is limited in scope to the purchase by contract of those services authorized in Chapter V of Title 39, United States Code, as enacted by the Postal Reorganization Act of 1970.

(b) Regulations governing the purchase of mail transportation services from regulated transportation companies at published rates not involving direct contractual relationships appear in the Postal Service Manual, Chapter 5 (39 CFR, Subchapter G) and in applicable regulations of the Civil Aeronautics Board and the Interstate Commerce Commission.

(c) Internal procedures relating to the management of mail transportation will be published from time to time in internal issuances.

Subpart 1—General

§ 619.101 Applicability.

These regulations shall apply to the purchase of mail transportation services pursuant to contract.

§ 619.102 Policy.

§ 619.102-1 Surface transportation.

The U.S. Postal Service will usually purchase domestic and international surface transportation service for mail through contracts. It may also, when its needs require, purchase transportation service at rates prescribed by regulatory agencies.

§ 619.102-2 Air transportation.

The U.S. Postal Service will usually purchase air transportation service for mail at rates prescribed by regulatory agencies. It may also, when its needs require, purchase service by contract subject to the restrictions in Title 39 United States Code, Section 5402.

§ 619.102-3 Emergency transportation.

Where an emergency exists which is adversely affecting mail transportation, purchase of contract service will be accomplished without the formalities of advertising or negotiation. See § 619.106.

§ 619.102-4 Competition.

All contracts, whether by advertising or by negotiation, shall be made on a competitive basis to the maximum practicable extent.

§ 619.102-5 Advertising.

Contracts for the transportation and associated terminal handling of mail shall be made by formal advertising except as provided in § 619.102-6. Purchasing by formal advertising shall be in accordance with detailed requirements and procedures set forth in Subpart 2 of this part.

§ 619.102-6 Negotiation.

If the use of formal advertising is not feasible and practicable, and if prior approval at Headquarters has been granted, contracts for the transportation and associated terminal handling of mail may be negotiated in accordance with the detailed requirements and procedures set forth in Subpart 3 of this part.

§ 619.103 Definitions.

The following definitions are applicable to this part:

§ 619.103-1 Bidder.

Bidder means one who offers to transport the mail for a fixed amount in accordance with the terms of a posted advertisement.

§ 619.103-2 Offerer.

"Offerer" means one who negotiates for the transportation of mail in accordance with the terms of a request for proposals.

§ 619.103-3 Mail.

"Mail" means United States or foreign transit mail and the containers in which such mail is tendered for transportation, and includes supplies and equipment of the Postal Service.

§ 619.103-4 Advertised contract.

"Advertised contract" means a contract entered into as the result of a printed notice with definite requirements requesting that sealed bids for the handling of mail over a specific route be submitted.

§ 619.103-5 Negotiated contract.

"Negotiated contract" means a contract entered into after negotiations following a request for proposals.

§ 619.103-6 Regulatory agencies.

"Regulatory agencies" means the Interstate Commerce Commission, in the case of railroads, motor carriers, bus companies, express companies, and freight forwarders and the Civil Aeronautics Board, in the case of air carriers.

§ 619.103-7 Air carrier.

"Air carrier" means anyone engaged in air transportation.

§ 619.103-71 Scheduled certified air carrier.

"Scheduled certificated air carrier" means an air carrier operating regular schedules over routes for which it holds a certificate of public convenience and necessity from the Civil Aeronautics Board authorizing the transportation of mail.

§ 619.103-72 Supplemental air carrier.

"Supplemental air carrier" means an air carrier certificated by the Civil Aeronautics Board to engage in passenger and freight charters but not to carry mail or operate regular schedules.

§ 619.103-73 Air taxi operator.

"Air taxi operator" means an uncertificated air carrier limited to the use of small aircraft transporting mail under contract to the Postal Service or pursuant to authority granted, and rates prescribed, by the Civil Aeronautics Board.

§ 619.104 Types of contract service.

Types of service which may be purchased include but are not limited to:

§ 619.104-1 Highway and railway post office contracts.

Require special vehicles equipped for acceptance, receipt, distribution, storage, dispatch, and delivery of mail by postal clerks.

§ 619.104-2 Contract terminal contracts.

Require equipment, facilities, and/or services for the receipt, storage, processing, and dispatch of mail.

§ 619.104-3 Air taxi contracts.

May be advertised or negotiated as deemed appropriate when the Postal

Service determines that schedules of certificated air carriers are not adequate. These contracts may be up to a 4-year term, but must be canceled before expiration date if a new carrier is certificated and provides schedules which are deemed adequate by the Postal Service.

§ 619.104–4 Certificated air carrier contracts.

May be negotiated for transportation of mail by aircraft between any of the points a certificated air carrier is authorized by the regulatory agency to engage in this service. Such contracts shall be for the transportation of at least 750 pounds of mail per flight; and no more than 10 percent of the domestic mail transported under any such contract or 5 percent, based on weight, of the international mail transported under any such contract shall consist of letter mail.

§ 619.104–5 Uncertificated route contracts.

Contracts with air carriers may be made to transport mail by aircraft between points which the regulatory agency has not authorized a certificated air carrier, or combination of air carriers, to engage in the transportation of mail. All classes may be transported in such manner and under such terms and conditions as deemed appropriate by the Postal Service. These contracts may be up to a 4-year term but must be canceled before expiration date if a new air carrier is certificated and inaugurates service.

§ 619.104–6 Area bus contracts.

May be entered into under such terms and conditions as the Postal Service prescribes and without advertising for bids, for the transportation of mail in passenger-carrying motor vehicles, by passenger common carriers, or by motor vehicles over the regular routes on which the carrier is permitted by law to transport passengers.

§ 619.104–7 Experimental contracts.

May be entered into for testing and developing new means or methods of transportation and associated terminal services or new materials handling techniques to determine whether or not the service or equipment being tested will be of any value to the Postal Service. Such contracts may be made for the length of time needed for proper evaluation. While these contracts normally will not exceed 1 year, they may be made for terms not to exceed 4 years if negotiated and 6 years if advertised.

§ 619.104–8 Contracts for the international transportation of mail by ocean vessel.

May be purchased without advertising for bids.

§ 619.104–9 Passenger train contracts.

May be negotiated with rail carriers when the Postal Service determines that passenger train service will furnish satisfactory, economical transportation.

§ 619.104–10 Basic surface transportation contracts.

May be purchased by advertising or, where allowed under § 619.102–6 by negotiation. These may provide for the transportation of mail between cities using nonpassenger motor vehicles, boats, or rail equipment. They may also provide for transportation by motor vehicle within a metropolitan area. Such contracts may include features providing for intermodal and/or container service; for box delivery, collection, and other services similar to that which is furnished by rural carriers; and for transport-related terminal services.

§ 619.105 General contract provisions.

§ 619.105–1 Negotiated surface contract—posting of requests for proposals.

Contracts for domestic surface transportation which are negotiated for the services described in § 619.104, except for area bus service, may be entered into only after a notice has been posted in advance for a period of not less than 15 days in post offices on the post roads to be served, and interested parties have been given sufficient opportunity to offer to negotiate.

§ 619.105–2 Contract cancellation indemnity.

Indemnity shall be paid for contract cancellation, in accordance with contract terms. Highway post office contractors may elect to waive all indemnity in return for a negotiated contract for highway service for the remainder of the contract term not in excess of the prevailing rate in the area.

§ 619.105–3 Contract rate adjustment.

Adjustment of contract rates during the term for changed conditions may be made under the provisions of the contract.

§ 619.105–4 Contract term.

Except where special conditions or use of special equipment warrant, the term of an advertised or negotiated contract may not exceed 4 years. Where the circumstances or equipment required so warrant it, an advertised contract may be made for a term greater than 4 but not exceeding 6 years.

§ 619.105–5 Contract inspection and service start.

Service may not be initiated under any advertised or negotiated contract until 15 days after copies of such contract are available for inspection by having been filed (a) with the Civil Aeronautics Board for air carrier contracts, or the Interstate Commerce Commission for highway or rail contracts; (b) in the office of the contracting officer; (c) in the office of the administrative postal official; and (d) in the case of surface contracts, in post offices along the route to be served at which deposits and/or collections are to be made. This does not apply to emergency contracts, area bus contracts, or contracts providing for the transportation of mail by surface modes in international service.

§ 619.106 Emergency service contracts.

Emergency service is the transportation of mail and performance of related services under emergency conditions. It shall be used only when time does not permit the purchase of the needed service under normal contractual procedures. Such arrangements shall be terminated at the earliest practicable and feasible date on which regular service can be provided through normal contractual procedures.

§ 619.106–1 Purchase procedures.

Emergency service contracts may be purchased without procedures applicable to regular purchase.

§ 619.106–2 Service requirements.

Each emergency contract shall require service for the duration of the emergency.

§ 619.106–3 Service start.

Service may begin as soon as the contractor and the contracting officer have executed a contract.

§ 619.106–4 Termination.

Each emergency contract shall provide for termination on not less than 24 hours' written notice of the end of the mail transportation emergency.

§ 619.106–5 Contract type.

An emergency contract shall be a fixed-price contract with no provision for adjusting compensation.

§ 619.107 Insurance requirements.

(a) Prior to award of any contract, the successful bidder or offeror will be required to establish that there is an insurance policy in effect covering all motor vehicles to be used under the contract, providing, as a minimum, the following types of coverage:

(1) Limit for bodily injuries to or death of one person: $10,000.

(2) Limit for bodily injuries to or death of all persons injured or killed in any one accident: $20,000.

(3) Limit for loss or damage in any one accident to property of others (other than mail): $5,000.

(b) If greater minimums are required by State or Federal laws, those minimums shall apply in place of the foregoing.

(c) The maintenance of insurance coverage complying with the above restrictions shall be a continuing obligation of the contract, and the lapse or termination of insurance coverage without replacement coverage being obtained shall be grounds for termination of the contractor's right to perform under the contract.

Subpart 2—Advertised Contract Service—General

§ 619.201 General.

The types of service which may be purchased by advertising are described

in § 619.104. Routes are operated under formal contracts, awarded after competitive bidding to the lowest responsible bidder submitting a bid in accordance with the terms of the advertisement. Any service for which the contract term will be more than 4 years must be advertised.

§ 619.202 Establishing and terminating service.

§ 619.202–1 Contract terms.

Advertised contracts are normally made for periods not in excess of 4 years or for the remainder of a term set for the area in which the route operates. Where the Postal Service determines that special conditions or the use of special equipment warrants, contracts may be made for periods not in excess of 6 years.

§ 619.202–2 Extensions and renewals.

§ 619.202–21 Extensions.

Every advertised mail transportation contract shall provide that the contract may be extended for a maximum period of 12 months beyond its normal term on written notice by the contracting officer issued no later than 15 days before the normal expiration date. No extension in excess of 4 months may be made, however, unless Headquarters approval has first been granted.

§ 619.202–22 Renewals.

When the terms of a contract so provide, it may be renewed by agreement of the contractor and the contracting officer at the existing rate for a term no greater than 4 years or, when special conditions or the use of special equipment warrants, no greater than 6 years. The compensation level of the expiring contract shall be applicable to the renewal contract.

§ 619.202–3 Terminations.

§ 619.202–31 For convenience.

If a contract, other than an emergency service contract, is terminated for the convenience of the Postal Service, liquidated damages shall be paid in accordance with the provisions of the terminated contract.

§ 619.202–32 For breach.

If a contract is terminated for a breach, or the contractor is removed, the liability of the contractor shall be as stated in the contract and performance bond.

§ 619.203 Contract inspection and service start.

Service may not be initiated under any advertised contract until 15 days after copies of such contract are available for inspection by having been filed (a) with the Civil Aeronautics Board for air carrier contracts, or the Interstate Commerce Commission for highway or rail contracts; (b) in the office of the contracting officer; (c) in the office of the administrative postal official; and, in the case of surface contracts, (d) in post offices along the route to be served at which deposits and/or collections are to be made. This does not apply to emergency contracts, area bus contracts, or contracts providing for the transportation of mail by surface modes in international service.

§ 619.204 Advertisements.

§ 619.204–1 Posting requirement.

Each advertisement inviting sealed bids for transporting mail shall be posted in post offices on each route for which service is sought.

§ 619.204–2 Posting period.

Each advertisement shall be posted in time to allow at least 30 days for the submission of bids, unless circumstances described in the advertisement warrant a shorter period for bids.

§ 619.204–3 Contents.

Each advertisement shall contain, as a minimum, the points to be served, the schedules to be operated, estimated mail volume to be transported, and instructions for obtaining the bid package.

§ 619.205 Bid package.

A bid package will be furnished to any person requesting it and will contain all of the contract obligations.

§ 619.206 Eligibility requirements.

§ 619.206–1 Persons ineligible to contract.

(a) All officers and employees of the Postal Service.

(b) Any regular member of the household of an officer or employee of the Postal Service.

(c) A partnership or corporation, if a member of the partnership, or an official of the corporation, is an officer or employee of the Postal Service, or a regular member of the household of an officer or employee of the Postal Service. A contractor who later becomes a regular member of such a household will continue to be an eligible contractor insofar as the present contract term is concerned but will not, while such membership continues, be eligible to obtain additional contracts or renewal contracts.

(d) Any individual who has been convicted of a felony, knowingly associates with felons, or has a record of convictions for serious moving traffic violations may not be considered an eligible contractor unless the Contracting Officer determines that such individual has been rehabilitated and has become a responsible citizen.

§ 619.206–2 Person eligible to contract.

(a) Any individual 21 years of age or older; any partnership where at least one of the partners is 21 years of age or older; and any corporation may hold mail transportation contracts, except that contractors for the transportation of mail by air are subject to the following citizenship requirements.

(b) An individual, if he is at least 21 years of age and is a U.S. citizen.

(c) A partnership, if any partner meets the qualifications of paragraph (a) of this section.

(d) A corporation, if it is organized under the laws of the United States or any political subdivision thereof, and at least 75 percent of the voting interest is owned by U.S. citizens.

(e) Chapter 5 of the Postal Service Manual (39 CFR, Subchapter G) contains special requirements applying to box delivery routes relating to the residence of contractors for such service.

(f) These provisions are not applicable to Foreign Flag steamship companies.

§ 619.206–3 Other requirements.

§ 619.206–31 Supervision.

No bid for a contract shall be considered unless the bidder submitting it can assure either personal or representative supervision over the operation of the route and can be easily contacted in event of emergencies, to give personal or representative attention to the problem at hand.

§ 619.206–32 Restraint on competition prohibited.

No contract shall be made with any bidder who has entered into or proposed any combination to prevent the making of any bid or proposal for carrying mail or who has agreed, or given or promised any consideration, to induce another person or carrier not to bid for such a contract. The Postal Service may terminate the contract of any contractor so offending and may disqualify such a person or carrier from contracting for transporting mail under future contracts.

§ 619.207 Bond.

§ 619.207–1 General requirement.

Each bid must be accompanied by a bond executed by a qualified surety company. The amount of the bond will be shown in the advertisement.

§ 619.207–2 Exceptions.

A performance bond is not required if the contract:

(a) Requires the mail to be transported by:

(1) An ocean carrier;

(2) An air carrier certificated to transport mail; or

(3) A rail carrier in railway equipment.

(b) Is for emergency service.

(c) Is an area bus contract.

§ 619.207–3 Terms.

If the bid is accepted, and thereafter the contractor fails to fully comply with the terms of, and in the manner required by the contract, the surety shall then be liable for the amount of bond as liquidated damages to be recovered in a civil action: *Provided, however,* That the surety, after written notice of the contractor's breach, may elect, within 5 days, to complete a contract other than one for air service or to be responsible for the added expense of repurchase of service to the end of the term of the breached contract.

§ 619.207–4 Surety company qualifications.

The surety company executing the bond must be included in the current list of surety companies approved by the Treasury Department as acceptable on

Federal bonds and published as Treasury Department Circular No. 570, available upon request from the Assistant Comptroller (Chief Auditor), Bureau of Accounts, U.S. Treasury Department. The agent representing the company must also have authority to underwrite advertised transportation contract bonds on behalf of the company, at the time the bid or proposal is submitted. A bond executed by or through any organization of mail contractors, or any of its officers or employees, will not be recognized as valid. If a portion of the premium, a commission, or any other thing of value related to the bond will inure to the benefit of any organization of mail contractors, or any of its officers or employees, such a bond will be recognized as valid.

§ 619.208 Bids.

§ 619.208–1 General conditions.

Bids for the transportation of mail shall be sealed. The Postal Service will keep them sealed until the published closing date and hour and then they will be opened and marked in the presence of two or more officers or employees of the Postal Service designated by the contracting officer. Bids may be withdrawn at any time up to the time fixed for their receipt, as stated in the advertisement by serving notice to the Postal Service in writing.

§ 619.208–2 Abstract of bids.

The contracting officer shall complete an abstract of the details of all bids submitted for carrying the mail. He shall preserve the originals of these until disposed of as provided by postal regulations.

§ 619.208–3 Acceptance of bids.

Every sealed bid shall remain available for acceptance for a period of 60 days from the date of opening.

§ 619.208–4 Contract award.

The bid which is accepted as the lowest responsible and responsive shall be the contract form. When it is accepted and signed by the contracting officer it shall constitute the contract for the specified service at the rate stated therein.

§ 619.208–5 Reservations.

The Postal Service reserves the right to:

(a) Reject all bids whenever the public interest requires.

(b) Reject bids from parties who willfully or negligently failed to perform a former contract, provided they have been determined to be irresponsible.

§ 619.208–6 Certification.

The contractor must certify that he has not employed any person to solicit or secure the contract by any agreement for a commission, percentage, brokerage, or contingent fee. He must agree not to discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

§ 619.208–7 Tie bids.

When the lowest acceptable bids are at the same rate, preference shall be given to the present contractor if his is one of tie bids. Otherwise, the selection shall be made by lot.

§ 619.208–8 Restriction on postmasters and other postal employees.

Postmasters and other postal employees may not:

(a) Act as agents of prospective contractors, with or without compensation.

(b) Divulge the amount of any bid or proposal they have certified.

§ 619.209 Late bids.

Bids received at the office designated in the advertisement for receipt of bids after the time specified for receipt of bids will not be considered unless sent by registered or certified mail and satisfactory evidence is presented to establish that late receipt was due solely to delay in the mail. However, a modification which makes the terms of the otherwise successful bid more favorable to the Postal Service will be considered at any time it is received and may thereafter be accepted.

Subpart 3—Purchase of Negotiated Contract Service—General

§ 619.301 Use of negotiation.

§ 619.301–1 Basic policy.

It is the policy of the Postal Service to purchase transportation services from responsible sources at fair and reasonable rates calculated to result in the lowest ultimate overall cost to the Postal Service for the service to be provided.

§ 619.301–2 General requriements.

Negotiated purchase of transportation shall be on a competitive basis to the maximum practical extent. When a proposed purchase appears to be noncompetitive, the contracting officer is responsible not only for determining that competitive purchasing is not reasonably available, but also for acting whenever possible to avoid the need for subsequent noncompetitive purchases.

§ 619.301–3 Factors to be considered.

During the course of negotiations, attention shall be given to the following and any other appropriate factors:

(a) Comparison of prices quoted and consideration of other prices for similar service.

(b) Comparison of the business reputation, capacity, and responsibility of the respective parties who submit offers.

(c) Consideration of the quality of the service offered including the same or similar service previously furnished.

(d) Consideration of the size of the business concern.

(e) Consideration as to whether the prospective supplier will have an adequate supply of qualified labor.

§ 619.302 Circumstances permitting negotiation.

§ 619.302–1 Impracticable to secure competition by formal advertising.

Contracts for the transportation of mail may be negotiated if the nature of service required makes it impracticable to secure competition by formal advertising. The following are illustrative of this circumstance:

(a) When the service can be obtained from so few sources as to make advertising impracticable.

(b) When bids have been solicited pursuant to the requirements of Subpart 2 of this part and no responsive bid has been received from a responsible bidder.

(c) When the contemplated procurement is for stevedoring, terminal, warehousing, or switching services, and when either the rates are established by law or regulation, or the rates are so numerous or complex that it is impracticable to set them forth in the specifications of a formal invitation for bids.

(d) When it is impossible to draft for an invitation for bids adequate specifications or any other adequately detailed description of the required property or services.

§ 619.302–2 Experimental, developmental, or research work.

Contracts may be negotiated without formal advertising if for experimental, developmental, or research work, subject to criteria in § 619.102.

§ 619.302–3 Negotiation after advertising.

Contracts may be negotiated without formal advertising if the contracting officer determines that bid prices after advertising therefor are not reasonable or have not been independently arrived at in open competition. No contract shall be negotiated under this subsection, however, unless:

(a) Notification of intention to negotiate and reasonable opportunity to negotiate have been individually given to each responsible bidder which submitted a bid in response to the advertisement for bids (this requirement being in addition to any general requirement for posting notices of intent to negotiate contracts which may be contained elsewhere in these regulations); and

(b) The negotiated rate is the lowest negotiated rate offered by any responsible offeror and does not exceed the lowest bid rate previously submitted by a responsible bidder.

§ 619.303 Negotiation techniques.

§ 619.303–1 Responsibility of contracting officers.

Contracting officers are responsible for performing or having performed all administrative actions necessary for effective contracting. The contracting officer shall exercise reasonable care, skill, and judgment and shall avail himself of all of the organizational tools necessary to accomplish the purpose as, in his discretion, will best serve the interests of the Postal Service.

§ 619.303–2 Preparation for negotiation.

§ 619.303–21 Preliminary data.

Knowledge of the type of service to be purchased is essential to sound pricing. Before soliciting quotations, every contracting officer should develop, where feasible, an estimate of the proper price level or value of the service to be purchased.

§ 619.303–22 Supply sources.

Selection of qualified sources for solicitation of proposals is basic to sound pricing. Proposals should be invited from a sufficient number of competent sources to ensure adequate competition.

§ 619.303–23 Required posting of notices.

In addition to individually soliciting proposals from specific parties, when the service to be negotiated invloves transportation by rail or by motor vehicle, a request for proposals must be posted in post offices along the route to be served at least 15 days in advance of the commencement of negotiations. This requirement does not apply to area bus contracts.

§ 619.303–24 Requests for proposals.

Requests for proposals shall contain the information necessary to enable a prospective offeror to prepare a quotation properly. Each request shall contain, as a minimum, the time and place of the negotiation meeting, if one is to be held; the points between which service is sought; estimated mail volumes; and a statement that service considerations may outweigh cost and that they may result in award of the contract to an offeror other than the offeror submitting the lowest rate, unless it is known in advance that this condition will not apply. If a price breakdown is required, the request for proposals shall so state. Requests for proposals shall specify a date for submission of proposals. Any extension of time granted to one prospective offeror shall be granted uniformly to all. Each request for proposals shall be released to all prospective offerors at the same time, and if public posting in post offices is required, at the same time as such posting takes place. No offeror shall be given the advantage of advance knowledge that proposals are to be requested.

§ 619.303–25 Negotiation package.

A negotiation package will be furnished to any person requesting it, and will be available after conclusion of the negotiation meeting, if any. The package will contain the general contract requirements.

§ 619.303–3 Type of contract.

The objective of the negotiation process is to negotiate a contract type and rate that includes reasonable contractor risk and provides the contractor with the greatest incentive for effective and economical performance.

§ 619.303–4 Conduct of negotiations.

Evaluation of offerors' or contractors' proposals including price revision proposals by all personnel concerned with the purchase, as well as subsequent negotiations with the offeror or contractor, shall be completed expeditiously. Complete agreement of the parties on all basic issues shall be the objective of the contract negotiations. Oral discussions or written communications shall be conducted with offerors to the extent necessary to resolve uncertainties relating to the rate to be paid and the nature of the service to be provided. Cost and profit figures of one offeror or contractor shall not be revealed to other offerors or contractors.

§ 619.303–5 Selection of offerors for negotiation and award.

(a) After receipt of initial proposals, written or oral discussions shall be conducted with all responsible offerors who submitted proposals within a competitive range, rate and other factors considered, except that this requirement need not necessarily be applied to:

(1) Purchases in which time considerations will not permit such discussions; or

(2) Purchases in which it can be clearly demonstrated, from the existence of adequate competition or accurate prior cost experience with the type of service involved, that acceptance of the most favorable initial proposal without discussion would result in fair and reasonable rate. In this event, however, the request for proposals must contain a notice to all offerors of the possibility that award may be made without discussion of proposals received, and, hence, that proposals should be submitted initially on the most favorable terms which the offeror can submit to the Postal Service. In any case where there is uncertainty as to the rate or service aspects of any proposals, the contracting officer shall not make award without further exploration and discussion prior to award. Also, when the proposal most advantageous to the Postal Service involves a material departure from the stated requirements, other offerors which submitted proposals shall be given an opportunity to submit new proposals on a service basis which is comparable to that of the most advantageous proposal.

(b) Whenever negotiations are conducted with more than one offeror, no indication shall be given to any offeror of a rate which must be met to obtain further consideration, since such practice constitutes an auction technique, which must be avoided. Likewise, no offeror shall be advised of his relative standing with other offerors as to rates or be furnished information as to the rates offered by other offerors. After receipt of proposals, no information regarding the number or identity of the offerors participating in the negotiations shall be made available to the public or to anyone whose official duties do not require such knowledge. Whenever negotiations are conducted with several offerors, while such negotiations may be conducted successively, all offerors selected to participate in such negotiations shall be offered an equitable opportunity to submit such rate, service, or other revisions in their proposals as may result from the negotiations. All such offerors shall be informed of the specified date (and time if desired) of the closing of negotiations and that any revisions to their proposals should be submitted by that date. In addition, all such offerors shall be informed that after the specified date for the closing of negotiations, no information (other than preaward notice of unacceptable proposals) will be furnished to any offeror until award has been made.

(c) When, during negotiations, a substantial change occurs in the Postal Service's requirements or a decision is reached to relax, increase, or otherwise modify the service requirements, such change or modification shall be made in writing as an amendment to the request for proposals, and copies shall be distributed in the same manner as the request for proposals was.

§ 619.303–6 Record of negotiation.

At the conclusion of each negotiation, the contracting officer shall prepare a memorandum setting forth the principal elements of the negotiation, for inclusion in the contract file. The memorandum shall include the following information:

(a) The name, position, and organization of conferees representing the contractor and the Postal Service;

(b) The purpose of the negotiation;

(c) A summary of the contractor's proposals;

(d) The most significant facts or considerations controlling the establishment of the rate; and

(e) Such other facts as are deemed significant.

§ 619.303–7 Award of contract.

§ 619.303–71 Form of contract.

Following selection of the offeror whose offer is judged to be the lowest or whose service proposal will be most advantageous to the Postal Service, he will be requested to execute a contract specifically describing the service to be required and the rate to be paid therefor. Following the offeror's execution of the contract, his compliance with the bond requirements described in § 619.207, and his compliance with such other requirements and regulations of the Postal Service as are appropriate, the contract shall be executed by the contracting officer.

§ 619.303–72 Contractor eligibility.

All offerors must comply with the eligibility requirements stated in § 619.206, and the successful offeror will be required to demonstrate his eligibility and to furnish the certification described in § 619.208–6 at the time of contracting.

§ 619.303–73 Dissemination of information.

Promptly after awarding contract, following negotiation, the contracting officer normally shall give written notice to the offerors of the successful offeror and his price. When the price accepted is not the lowest price offered, those offerors submitting a lower price may be advised of the reasons why their proposals were not accepted.

§ 619.303–8 Contract inspection and service start.

§ 619.303–81 General contract filing requirements.

Service may not be initiated under any negotiated contract until 15 days after copies of such contract are available for inspection by having been filed (a) with the Civil Aeronautics Board for air car-

rier contracts, or the Interstate Commerce Commission for highway or rail contracts; (b) in the office of the contracting officer; (c) in the office of the administrative postal official; and (d) in the case of surface contracts, in post offices along the route to be served at which deposits and/or collections are to be made. This does not apply to emergency contracts, area bus contracts, or contracts providing for the transportation of mail by surface modes in international service.

§ 619.303–82 Special contract filing requirements for certificated air carrier contracts.

In addition, any contract with a certificated air carrier for the transportation of mail by aircraft between any of the points between which the carrier is authorized by the Civil Aeronautics Board to engage in the transportation of mail shall be filed with that agency at least 90 days before its effective date. Unless the Civil Aeronautics Board shall determine otherwise not later than 10 days prior to the effective date of the contract, such contract shall become effective.

§ 619.303–9 Extension and renewal.

Negotiated contracts may not be extended or renewed. They may be renegotiated or advertised.

Subpart 4—Air and Highway Transportation Contract Purchasing

§ 619.401 Purchasing contract service.

§ 619.401–1 Advertisement versus negotiation.

Sections 619.102–5 and 619.102–6 describe the conditions under which advertised and negotiated service is to be used.

§ 619.401–2 References.

§ 619.401–21 General.

See Subpart 1 of this part for procurement regulations applying to all types of contract service.

§ 619.401–22 Advertised service.

See Subpart 2 of this part for regulations governing the procurement of transportation contract service by advertising.

§ 619.401–23 Negotiated service.

See Subpart 2 of this part for regulations governing the procurement of transportation contract service by negotiation.

§ 619.402 Issuance of solicitations.

The Contracting Officer will issue advertisements or requests for proposals (RFP) when:

§ 619.402–1 When issued.

(a) A new route is to be established.

(b) A temporary emergency route is to be placed under an advertised or negotiated contract.

(c) Route conditions have changed materially and agreement with contractor cannot be reached.

(d) A contractor is appointed to a classified postal position. The contractor must waive any indemnity before release.

(e) It is necessary to determine a competitive price due to major changes proposed in the service.

(f) It is necessary to issue advertisements or RFP's for a new contract effective with the beginning of a new contract term for the following reasons:

(1) Contractor does not desire to renew.

(2) Contract is being serviced under a subcontract.

(3) A subcontract was in effect within the last 6 months of a contract term.

(4) The route is in charge of a surety or legal representatives of the estate of a deceased contractor.

(5) Material change is proposed in the route which is not acceptable to the contractor.

(6) Consolidation of routes when all contractors are interested in proposed service.

(7) Contract rate is too high and contractor is not agreeable to a fair and equitable downward adjustment.

§ 619.402–2 Preparation and approval.

The Contracting Officer will prepare Advertisements for Bids and Requests for Proposals on preprinted mats Form 5435, Solicitation for Mail Transportation Contract. The form will be appropriately marked to indicate whether it is an Advertisement for Bids or a Request for Proposals.

§ 619.402–3 Specifications.

§ 619.402–301 General.

(a) Specifications should be designated to permit each person to compete on equal terms. They must be sufficiently definitive to permit preparation and evaluation on a common basis. The minimum requirements must be stated with sufficient clarity and exactness to inform everyone of all factors and permit evaluation of such factors within reasonable limits.

(b) In addition to providing information, the specifications become the basic requirements of the contract after award. This makes it essential that all operating and cost factors are sufficiently detailed to clearly define the contract requirements. Proper specifications will prevent many contract adjustments and provide a sound basis for adjustment when contract changes are made.

§ 619.402–302 Equipment requirements.

Clearly state all equipment requirements including the minimum number of each type required to fulfill the service. List restrictions such as height, length, cube, and lift capacity only when they are applicable.

§ 619.402–303 Ventilation requirements.

Temperature control and air circulation requirements for the protection of baby chicks, bees, and other live mailable matter should be based upon the amount of traffic, distance of haul, and normal temperature of the area traveled. Static ventilators will normally supply the amount of air circulation needed. Temperature control requirements should be expressed only in cases where weather extremes prevail. A statement will be included in all advertisements and RFP's where the service is dedicated solely to the transporting of baby chicks, as follows:

Equipment furnished must provide for temperature control and air circulation devices that will maintain a 90° F. temperature inside the baby chick boxes and a fresh air supply of 2 cubic feet per minute, per 100 baby chicks.

§ 619.402–304 Motive power.

Motive power should be described as sufficient to maintain schedule or designated service with maximum load. The number of axles, or drive wheels, should be stated only when power or weight carrying requirements dictate more than minimums.

§ 619.402–305 Weight requirements.

In States where license purchase is selective by weight carrying designations, the advertisement or RFP should contain a statement that equipment must be licensed to the maximum weight carrying capacity permitted by law, or to a specified figure.

§ 619.402–306 Time and scheduling requirements.

Operating schedules and service requirements must be listed in detail to provide all interested parties with all time elements of labor requirements. Clearly set out time designations for reporting when practicable, or equipment spotting times where applicable. Schedules should be based upon measured length of route, speed restrictions, traffic conditions, and variable load factors. Trial runs should be made when possible. Footnote any schedule requiring an above average miles per hour running time or flight time. Do not show estimated annual mileage.

§ 619.402–307 Loading and unloading requirements.

Loading and unloading requirements should clearly state who will furnish the labor. Designate assistance by postal employee or contract drivers at en route points where volume dictates arrival and departure times in the schedule plate. All terminal service requirements should be coordinated with installations affected before specifications are posted.

§ 619.402–308 Nonannual rate solicitations.

If bids or proposals are not to be submitted at annual rates, include in the advertisement or RFP a condition as follows:

Bids or proposals submitted in response to this advertisement or request for proposals must be at trip, mileage, piece, or other unit rate.

When a round-trip is desired, so state.

§ 619.402–309 Air taxi mileage rate.

Advertisements or RFP's for air taxi service requesting bids or proposals at a mileage rate should specify that payment will be made based on published great circle mileage.

§ 619.402–310 Route identification.

On all advertisements or RFP's identify by note at bottom, the present route or

routes. If new service, so state. Do not show the previous rate of pay.

§ 619.402–311 Box delivery and collection service.

Box delivery and collection service requirements should be stated as follows:

(a) When no box service is to be required, use the statement: Contractor will not be required to deliver and collect mail along the route as specified in section 4(b) of the Contract General Provisions.

(b) When only delivery and collection of ordinary mail is desired, use the statement: Contractor will be required to deliver and collect mail along the route as provided in section 4(b)(1) of the Contract General Provisions.

(c) When it is desired that all services outlined in section 4(b) of the Contract General Provisions be afforded patrons, use the statement: Contractor will be required to perform box service to patrons and perform all other related duties as specified in section 4(b) of the Contract General Provisions.

(d) Advertisements for box delivery and collection service shall set forth the counties in which a bidder must live to be eligible.

§ 619.402–312 Shuttle service requirements.

On routes where it is contemplated that contractors' equipment may be moved to or from a loading dock or within a facility maneuvering area by Postal Service-owned and operated or contract-owned and operated tractors, the following paragraphs should be included in the advertisements:

Contractors' equipment may be moved to or from a loading dock by Postal Service-owned and operated or contract-owned and operated tractor; and the following apply:

If the equipment is in the custody of the owning contractor when the damage occurs, and such damage resulted from the act or omission of an officer or employee of the Postal Service, the Postal Service shall be liable for such damage, excluding fair wear and tear, when a claim is properly documented and submitted to the contracting officer.

If the equipment owned by a contractor is damaged, while in the custody of the Postal Service or a contractor other than the owner, except for contractors providing services to other contractors under an interline agreement, and is being employed in connection with a mail transportation contract, the Postal Service shall be liable for such damage, excluding fair wear and tear, when a claim is properly documented and submitted to the contracting officer, unless the Postal Service determines that such damage was caused solely by the act of an independent third party.

§ 619.402–313 Numbering.

All advertisements and RFP's will be serially numbered. Each region will assign and maintain regional listings. New numerical listings will commence January 1 of each calendar year. The first number will indicate the proper serial number of the advertisement or RFP and the second number, the year of issuance. Example: Advertisement No. 15–70 is the 15th advertisement of the 1970 calendar year.

§ 619.402–314 Administrative official.

Place in each advertisement or RFP the title and the address of the Postal Service installation's head who will provide for the local administration and supervision of the route and who will be known as the administrative official.

§ 619.402–315 Attachments.

As a last condition of each advertisement or RFP, add the following:

Attached as part of this advertisement (or request for proposals) are the following forms: (List the forms showing number, edition date, and title).

§ 619.402–4 Posting period.

Dates for submitting bids and proposals and beginning service depend on individual requirements. All advertisements and RFP's for highway service, except area bus service, must be posted at least 30 days. If impracticable to post for that length of time, they must contain an explanatory note why 30 days' posting is not possible. Short-term advertisement and RFP's must be held to the absolute minimum and must be posted for at least 15 days, except for emergency service.

§ 619.402–5 Advertised contract period—current and new terms.

Advertisements for service to begin the last year of a contract period will generally be for 4 years and extended at the end of this period to cause the contract to expire at the same time as other contracts in the State. In other cases, the original contract period will be from the desired effective date to the end of the contract period for the State involved. However, if service under the contract will require a large investment for equipment a full 4-year contract would be advisable and proper with renewal at the end of the contract term for a period necessary to cause the contract to expire at the same time as other contracts for the State involved. Where the contracting officer determines that special conditions or the use of special equipment warrants contracts which are advertised may be made for periods not in excess of 6 years. Contracts for the transportation of mail by air may not exceed 4 years in duration.

§ 619.402–6 Distribution.

After the advertisement or RFP has been approved, the contracting officer will reproduce sufficient copies, and after attaching any attachments referred to in the advertisement or RFP to each, will distribute as follows:

(a) Sufficient copies to the postmaster at each office named in the advertisement or RFP to give to each potential bidder or offeror. If sending an advertisement for advertised contract service, also send a sufficient supply of Form 5468–5468A/2751B, Contract Service Bid and Bond Worksheet, to make certain that enough copies are available for all prospective bidders. Form 5472, Advertisement for Proposals to Carry Mail, will be used to transmit copies of the advertisements for advertised contract service to the postmasters listed in the advertisement. If sending RFP, the contracting officer will prepare a cover letter to send the request to postmasters.

(b) One copy to custodian along with Form 5473, Abstract of Proposals Received, completed except for name, rate, and signature of opening committee. Form 5473 will be prepared with a typewriter. This applies only to advertisements, not RFP's.

(c) One copy to the contractor or subcontractor whose route is being advertised.

(d) One copy to each surety company actively engaged in this class of bonding.

(e) Copies of advertisements or RFP's will not be sent to individuals or companies or agents of bonding companies except upon request for a specific advertisement or RFP. The contracting officer will maintain a list of individuals and companies who have indicated an interest in bidding or submitting proposals to negotiate. He will use Form 5436, Inquiry of Prospective Bidder, to determine the type of service these individuals and companies are interested in. In lieu of sending them a complete bid package, the contracting officer will prepare a form letter briefly describing the service being advertised to send to interested individuals, companies, or agents of bonding companies. The letter should state that if they are interested in submitting a bid or proposal, they should obtain a bid package from the administrative postal official.

§ 619.402–7 Withdrawal.

After issuance and distribution of the advertisement and before closing date for receipt of bids or, in the case of negotiated contracts, before the commencement of negotiations, the contracting officer may withdraw the advertisement or RFP as follows:

(a) Instruct postmaster to whom the advertisement or RFP was mailed for posting to withdraw it from public notice and return it.

(b) Send copies of withdrawal notice to postmasters to whom the advertisement or RFP was mailed, with instructions that a copy be sent to each person who was furnished a copy of the original advertisement or RFP.

(c) Send a copy of the withdrawal notice as information to all other persons to whom the advertisement or RFP was distributed.

(d) Instruct the bid custodian to return any bids or proposals received, unopened, with a copy of the withdrawal notice.

§ 619.402–8 Corrections and amendments.

There will be no corrections or amendments to advertisements or RFP's which have been posted. If any correction or amendment is needed, the advertisement or RFP will be withdrawn and a new one will be prepared with the desired corrections or amendments.

§ 619.403 Contracting requirements.

§ 619.403–1 Bond.

§ 619.403–11 Advertised contracts.

Each bid must be accompanied by a bond executed by a qualified surety com-

pany. The obligation under the bond is that if the bid is accepted by the Postal Service the accepted bidder will perform service according to the terms of the advertisement and contract. If the accepted bidder fails to perform service as required, his surety is liable for the amount of the bond. If the accepted bidder fails to perform the required service, the surety may, upon receipt of notice of the failure, perform the service in lieu of paying damages to the Postal Service, except that this shall not apply to air taxi contracts.

§ 619.403–12 Negotiated contracts.

At the time of his execution of the contract, the accepted offeror will be required to furnish a bond of the nature described above.

§ 619.403–2 Substitution of surety.—advertised contracts.

After submission of the bid, the bidder cannot change his surety, except that he may submit a new bid to replace the original, provided it is received by the contracting officer prior to expiration of time specified or receipt of bids.

§ 619.403–3 Amount of bond required.

The amount of bond will be shown on each advertisement or RFP. It will be based on the actual present pay if a bid or proposal close to the present pay is expected, and on the estimated cost of the route if a bid or proposal higher than present pay is expected or if a new route is being established, as shown in the following chart:

Estimated or present pay	*Bond*
$0–$866	$600
$867–$1,785	1,200
$1,786–$2,642	1,800
$2,643–$3,769	2,400
$3,770–$4,692	3,000
$4,693–$6,083	3,600
$6,084–$7,083	4,200
$7,084–$8,083	4,800
$8,084–$9,083	5,400
$9,084–$11,000	6,000
$11,001–$14,000	8,000
$14,001–$20,000	10,000
$20,001–$30,000	15,000
$30,001–$40,000	20,000
$40,001–$50,000	25,000
$50,001–$60,000	30,000
$60,001–$70,000	35,000
$70,001–$80,000	40,000
$80,001–$90,000	45,000
$90,001–$100,000	50,000
$100,001–$125,000	60,000
$125,001–$150,000	70,000
$150,001–$175,000	80,000
$175,001–$200,000	90,000
Over $200,000	100,000

§ 619.403–4 Eligibility to bid or submit proposals.

In addition to the requirements of § 619.206, no one may hold a contract for air taxi service unless he holds a valid certificate issued by the Federal Aviation Administration with appropriate operations specifications authorizing categories, classes, and conditions for Airplane Multiengine, Land VFR and IFR Day and Night, Passengers and Cargo (Auto pilot where applicable). The effective date of the Operations Specifications must show an authorization period of 6 months or longer.

§ 619.404 Processing bids.

§ 619.404–1 Receipt and protection prior to opening.

The contracting officer will designate two officers of the Postal Service who perform little or no travel to receive and maintain custody of bids prior to their release to the opening committee. Neither of them will be from an organizational unit immediately responsible for the purchase of air or highway transportation service. A suitable container with key or combination lock will be used to store the bids. Access to the container will be restricted to the two custodians, one of whom will:

(a) Note the time of receipt and the advertisement expiration date on the envelope containing bids. If envelopes are received damaged or open, seal them and mark damaged or open when received, as appropriate. If tampering is indicated, submit the facts with the envelope to the postal inspector in charge. When envelopes are not properly endorsed, open them and determine the route, reseal, and complete the envelope endorsement. Place all envelopes in the locked container.

(b) Prevent unauthorized opening of envelopes endorsed as containing bids and the disclosure of bids while in their custody.

(c) Not accept bids presented in person unless sealed in an envelope properly endorsed; not examine such bids while the advertisement is pending.

(d) When advertisement is withdrawn return any bids received, unopened, with a copy of the withdrawal notice.

(e) When a written withdrawal notice is received from a bidder who has submitted a bid more than 24 hours before the closing date, return the bid, unopened, and retain the withdrawal notice with the remaining bids. Accept any substitute bid presented by the withdrawer before the closing date and treat it as any other bid received.

(f) Release bids only to the opening committee, on the date of opening. At the time they are given to the opening committee, also give the properly completed Form 5473.

§ 619.404–2 Opening and marking.

§ 619.404–21 Committee.

The Regional Postmaster General or Senior Assistant Postmaster General, as appropriate, will appoint an opening committee consisting of three or more officers, at least one of whom will be from the office of the contracting officer. However, no members will be from an organizational unit immediately responsible for the purchase of air or highway transportation contract service. Sufficient committee members will be appointed to assure the presence of the minimum number to provide timely opening of bids. Two or more members, no more than one of whom will be from the office of the contracting officer, will, after closing time, conduct the opening as follows:

§ 619.404–211 Bids received within the time stated in advertisement.

Obtain the bids from the custodian, open them and place the date of opening in the upper right corner of each bid. The member opening the bids and a witnessing member will initial the upper right corner of each bid. Destroy the envelopes.

§ 619.404–212 Bids (and modifications) received after expiration of the time stated in the advertisement.

(a) Determine whether bids will be considered as being on time or after time. Bids received after the specified time limit will not be considered unless they are received before award is made and they are sent by registered mail, or by certified mail for which an officially dated post office stamp (postmarked) on the original receipt has been obtained. The opening committee must determine that late receipt was due solely to delay in the mail. However, a modification which makes the terms of the otherwise successful bid more favorable to the Postal Service will be considered at any time it is received and may thereafter be accepted.

(b) The time of mailing late bids by registered or certified mail shall be deemed to be the last minute of the date shown in the postmark on the registered mail receipt or registered mail wrapper or on the receipt for certified mail unless the evidence is furnished from the post office station of mailing which establishes an earlier time. In the case of certified mail, the only acceptable evidence is:

(1) Where the receipt for certified mail identifies the post office station of mailing, evidence furnished by the bidder submitting the bid which establishes that the business day of that station ended at an earlier time, in which case the time of mailing shall be deemed to be the last minute of the business day of that station; or

(2) Any entry in ink on the receipt for certified mail showing the time of mailing and the initials of the postal employee receiving the item and making the entry, with appropriate written verification of such entry from the post office station of mailing, in which case the time of mailing shall be the time shown in the entry. If the postmark on the original receipt for certified mail does not show date, the bid shall not be considered.

(c) Open and mark the envelope containing bids determined as being on time with the date and time it normally should have arrived before the closing date and attach it to the bid. Mark bid with the adjusted arrival date, initial it in the the upper right corner, and place it with the bids received on time.

(d) Mark bids determined as being after time in the upper right corner with the actual date and time of receipt and the initials of the opening and witnessing members. Attach the envelope to the aftertime bid and retain it separately from the ontime bids.

§ 619.404–213 Completion of abstract procedure.

Enter with typewriter the names of bidders submitting bids and the bid rates on the Form 5473 furnished by the custodian, arranged from the lowest to the

highest. In the case of air taxi mail service bids, also enter bidder's Federal Aviation Administration certificate number, name, and title of person signing bid, together with complete name, model, and any modification of aircraft proposed for use on route. For example: Cessna, Model 402A (Supercharged). List aftertime bids at the bottom of the abstract. Bids received after the initial opening will be listed on a separate abstract. Members of the committee conducting the opening will sign the abstract listing and turn over all bids and abstract to the contracting officer for processing.

§ 619.404–22 Distribution of abstracts.

(a) The contracting officer will reproduce sufficient copies of the abstract for distribution as follows:

(1) Each bidder. (Mail immediately.)

(2) Surety companies involved. (Mail immediately.)

(3) Administrative official—mail after bid has been accepted.

(4) Permanent record. After award has been made, place the route number on a copy, indicate thereon to whom award was made and file with contract.

(5) Postal data center—mail signed original after bid has been accepted.

(b) No notations will be made on the Form 5473 mailed to the bidders and surety companies as set forth in (1) and (2). When low bid is rejected, a letter will be addressed to the rejected bidder giving reasons for rejection with a copy to the surety company that furnished bond. Also send copy to the postal data center with Form 5422, Notice of Acceptance—Mail Route Proposal.

§ 619.404–23 Identical bids.

If identical bids in excess of $10,000 per annum are received under any advertisement, even though they may not be the lowest received, the contracting officer will prepare Form DJ–1500, Identical Bid Report for Procurement, in accordance with the instructions furnished with the form. The report will be prepared promptly after action is taken to award or not to award. Do not suspend award or reject bids for failure to furnish information concerning employer identification or parent company relationship. The original and two copies of the report will be forwarded to the Assistant General Counsel, Transportation Division, Law Department, together with a copy of the advertisement and a copy of the abstract of bids received.

§ 619.404–24 Public attendance at openings.

The public may attend and observe opening procedures.

§ 619.404–3 Unaccepted bids.

Unaccepted bids will be filed chronologically and destroyed after 3 years.

§ 619.405 Processing proposals to negotiate.

Proposals to negotiate will be treated in accordance with the provisions of Subpart 3 of this part, and in conformity with pertinent parts of the Request for Proposals.

§ 619.406 Award of contract—advertised contract service.

§ 619.406–1 Requirements.

§ 619.406–11 To lowest responsible bidder.

All advertised contracts must be in the name of U.S. Postal Service and must be awarded to the lowest responsible and responsive bidder posting the required performance bond.

§ 619.406–12 Delayed award.

In executing the bid form, the bidder and the surety agree that the bid may be accepted within 60 days from the opening date of the bid without further notice.

§ 619.406–13 Tie bids.

When the lowest acceptable bids are at the same rate, preference will be given to the present contractor, if his is one of the tie bids. Otherwise, the selection will be made by lot.

§ 619.406–14 Aftertime bid.

When no other bid is received within the time limit stated in the advertisement, consider an aftertime bid.

§ 619.406–15 Request for withdrawal of bid.

The obligation under bond is that the bidder will perform the service required in the advertisement if the bid is accepted. The contracting officer will not permit withdrawal of a bid except when the advertisement is withdrawn.

§ 619.406–2 Examination of bid and bond.

The contracting officer must examine the bid and bond as follows:

§ 619.406–21 For listing and intent.

Determine if bids are correctly recorded from the lowest to the highest and are for the advertised service. If it covers only part of the service or is for different service, ask bidder's intent. When it is intended for the advertised service, obtain bidder's and sureties' certificate to that effect and attach it to the proposal. If not intended for the advertised service, note on the abstract and remove the bid from competition.

§ 619.406–22 For sufficiency of bond.

Amount of the bond stated on the bid form must not be less than the amount stated in advertisement. Otherwise, the bid is not acceptable.

§ 619.406–23 For authority to execute bond.

(a) If the bond is by a company not shown on the list of acceptable sureties companies approved by the Treasury Department, verify whether the company has been or is approved.

(b) Surety companies which are actively engaged in this type of business normally will furnish a list of officials designated to execute bonds and will issue necessary amendments. If a bond is executed by an agent not on the list, contact the surety company involved and obtain written proof of his authority. If the agent did not have authority to execute the bond at the time of execution, reject the bid.

§ 619.406–24 For legal residence of bidder.

Box delivery routes only.

§ 619.406–25 For eligibility of bidder.

§ 619.406–26 For equal employment opportunity representations.

Determine whether the bidder has furnished information called for under this heading.

§ 619.406–3 Correction of defects in bids.

(a) The contracting officer must return bids as follows for correction of defects:

(1) To the postal official executing the certificate for name of bidder and signatures of witnesses.

(2) To the postmaster at address of the bidder for execution of the certificate as to bidder (or an explanation as to why he cannot in good conscience do so). Before the original bid is sent to a postmaster, a copy should be made and retained in case the original is lost. Instruct the postmasters that all corrections of defects should be made in his presence or in the presence of a specifically designated postal officer or employee. The form will not leave the custody of a postal representative.

(b) If a bid has an unexplained alteration, the contracting officer must obtain a certificate of bidder and surety that the alteration was made before the bond was signed and sealed.

(c) If payments at the rate of the bid would amount to more than $10,000 during the term of the contract and the bidder failed to furnish the information called for in the equal employment opportunity representations, ask him to do so, explaining that his refusal to furnish this information and to file any required compliance reports will make it necessary to reject the bid.

(d) If bidder failed to show identifying number (Social Security No. or Employer Identification No.) on bid, obtain this number before accepting the bid.

§ 619.406–4 Rejection of bids.

§ 619.406–41 Individual bids.

The contracting officer will reject bids under the following circumstances:

(a) Insufficient amount of bond shown on the bid.

(b) Surety company not approved.

(c) Agent of surety company not qualified.

(d) Failure of bidder on box delivery routes to meet legal residence requirements.

(e) Bidder not eligible.

(f) Failure or bidder or bidders to sign in the space specifically designated for such signature.

(g) Failure of surety company agent to sign.

(h) Failure of bidder to have the bond executed on a form containing all required conditions.

(i) Bid signed by an agent for an individual bidder and not accompanied with evidence of authority of the agent to sign for the bidder.

(j) Failure to obtain correction of defects.

(k) Bidder not responsible.

(l) Bid is from a bidder who willfully or negligently failed to perform a former contract.

(m) Bid is not responsive to the specifications in the advertisement.

(n) The successful bidder fails to establish that there is in effect an insurance policy covering any motor vehicles used under the contract meeting Postal Service standards.

§ 619.406–42 All bids.

The contracting officer may reject all bids under the following circumstances:

(a) When the postmaster failed to post the advertisement for the required time.

(b) When the lowest acceptable bid is excessive for the service required. In order for a bid to be considered excessive, it must state a price which is unreasonably high for the service called for in the advertisement. Basically, whether a bid price is reasonable should be determined by such things as a comparison with prevailing rates for similar service in the same area, and with the cost of the service currently being operated on the route, all as adjusted so as to reflect any unique or changed circumstances.

(c) When rejection is otherwise in the public interest.

§ 619.406–5 Mistake in bids.

If a bid appears unreasonably low, the contracting officer will ask the bidder to verify the amount. If the low bidder alleges a mistake before the bid is accepted, or if in response to the request to verify the amount of the bid, he seeks to withdraw or correct the bid, the contracting officer will:

(a) Advise the bidder to support his allegation by statements concerning the alleged mistake and by all data used in preparing the bid, plus any other evidence which will serve to establish the mistake, the manner in which it occurred, and the amount of bid actually intended.

(b) If bidder furnishes evidence in support of an alleged mistake, refer the case to the counsel with the following data:

(1) All evidence furnished by the bidder;

(2) A copy of the advertisement in response to which the bid was submitted;

(3) An abstract of the bids received;

(4) The original bid of the bidder;

(5) A written statement setting forth—

(i) Specific information as to how and when the mistake was alleged;

(ii) A summary of the evidence submitted by the bidder;

(iii) An analysis of Form 5468A/2751B and comments as to the reasonableness of the costs for each item;

(iv) Any additional evidence considered pertinent, including copies of all correspondence exchanged with the bidder concerning the alleged mistake;

(v) Action taken to protect the service pending settlement of the case.

§ 619.407 Award of contract—negotiated contract service.

§ 619.407–1 Execution of proposal.

(a) When an offeror has arrived at a firm offer to be made to perform the service specified in the RFP, either before or after negotiating sessions, he will complete a Form 5468. The form will reflect the price, which the offeror has offered to perform the specified service for. The offeror will attach a complete description of the service offered to the Form 5468 covering it. In the event that the offeror desires to offer alternative types of service for different prices, he shall complete a Form 5468 for each such type of service. No Form 5468 submitted by an offeror shall be considered responsive unless a bond of the nature described in § 619.401–1 is furnished.

(b) An offeror may withdraw any previously submitted Form 5468 and may submit new Form 5468s at any time prior to the time set in the RFP for termination of negotiations.

(c) Form 5468–A will not be completed for negotiated contracts. If a completed Form 5468–A is erroneously submitted, it will immediately be destroyed and the contents of it shall under no circumstances be disclosed to anyone.

§ 619.407–2 Acceptance of proposal.

(a) When the contracting officer selects the most advantageous offer, he shall examine the bid and bond as outlined in § 619.406–2. If the Form 5468 is defectively completed, it shall be returned to the offeror for correction. Offers determined to be the most advantageous shall not thereafter be rejected unless it is determined that the offeror is not eligible (see § 619.403–4); that he is not responsible; that he willfully or negligently failed to perform a former contract; or that rejection is otherwise in the public interest. In the case of such rejection, the file must be fully documented so as to clearly and convincingly establish the grounds for rejection.

(b) If the most advantageous offer calls for the use of motor vehicles, the successful offeror must establish that there is in effect an insurance policy conforming to Postal Service standards prior to being awarded the contract. Failure to do so is grounds for rejection of his offer.

§ 619.407–3 File documentation.

In addition to the file documents otherwise required, all Form 5468 offers on file at the time specified in the RFP for the termination of negotiations shall be included in the contract files. Also, documentation required in Subpart 3 of this part will be included. Where the contract is not awarded to the offeror offering the lowest price, a memorandum specifying the circumstances leading to the award, signed by the contracting officer, will also be included.

§ 619.408 Contract copy distribution.

When the contracting officer makes the decision to accept a bid or proposal, he will sign the Form 5468 in the appropriate space for his acceptance in the presence of two witnesses who will also sign in the appropriate spaces; and after detaching Form 5468–A, Contract Service—Worksheet, he will have sufficient copies of Form 5468 reproduced. He will then prepare Form 5422, Notice of Acceptance—Mail Route Proposal, and after assigning a serial number to it, will make distribution of copies of the bid and Form 5422 as follows:

(a) The original bid or proposal and a copy of Form 5422 will be sent to the postal data center.

(b) A copy of Form 5422 will be sent to the surety company executing accepted bidder's or offeror's bond.

(c) Attach a copy of the advertisement or RFP (Form 5435), a copy of the Contract General Provisions (Form 5411–A) for highway routes and Form 27 for air taxi routes, a copy of POD Notice 82, and all special addendums and attachments to the bid or offer, thereby forming the contract package. Send a copy of Form 5422 and a copy of the contracting package to:

(1) The accepted bidder or offeror (Original of Form 5422). Also, include copy of Department of Labor pamphlet entitled How the Fair Labor Standards Act and the McNamara-O'Hara Service Contract Act Apply to Contract Mail Haulers and a copy of Department of Labor Form SC–1 (combination letter and poster).

(i) If payments under the contract are to exceed $10,000 during the term for which the contract is awarded, complete appropriate portion of Form 5424, EEO Posters and Compliance Report Forms, and send to contractor with four copies of poster entitled Equal Employment Opportunity.

(ii) If payment under the contract amount to $50,000 or more during the term thereof, complete appropriate portion of Form 5424 and send to contractor two copies of SF 100, Equal Employment Opportunity—Employer Information Report EEO–1.

(2) Administrative Official: Also call his attention to the requirement that contractor employees be screened.

(3) Send two photocopies of the front of the signed original Form 5468 attached to two copies of the advertisement or RFP to the Interstate Commerce Commission if this is a contract for highway transportation, and the Civil Aeronautics Board if this is a contract for air transportation. In addition, if this is a negotiated contract, a copy of the description of service attached to the Form 5468 by the successful offeror will be involved.

(4) If this is a contract for highway transportation, send one copy, for posting, to each post office served by the route at which deposits and/or collections are to be made.

(5) File: After attaching a copy of the abstract (Form 5473), marked as required, file numerically by State. Form 5468A/2751B will also be retained by the contracting officer in this file, except that in the case of negotiated contracts these forms will not be used.

(d) Distribution of the copies in paragraphs (3) and (4) of this section must be made so they will be available for inspection in the offices involved at least 15 days prior to the effective date of the contract.

(e) When a bid is to be accepted from a corporation, the contracting officer must require the proposed accepted bidder to furnish evidence in duplicate of the signing official's authority to sign the bid before the bid is accepted. Such evidence may consist of:

(1) Certified copies of the proceedings pursuant to which the individual was elected or appointed officer or agent.

(2) Part of the corporation's bylaws showing authority of officer or agent.

(3) Certified copies of board of directors' or stockholders' resolution conferring such authority.

A copy of the evidence will be sent to the postal data center and the other copy will be retained by the contracting officer in his contract file.

§ 619.409 Renewal of advertised contracts.

§ 619.409–1 Renewal authority.

Advertised contracts may be renewed for additional terms, without advertising, at the existing rate of compensation prevailing at the end of the contract term by mutual agreement between the holder and the Postal Service, for a period not in excess of 4 years, except where the Postal Service determines that special conditions or use of special equipment warrants, contracts may be renewed for a period not in excess of 6 years.

§ 619.409–2 Renewal surveys.

All highway and air taxi contract routes will be reviewed periodically by the contracting officer to determine whether service requirements have changed. Routes operated under contracts expiring in a given year will be surveyed during the fall of the year preceding the expiration.

§ 619.409–3 Renewal documentation.

All actions taken regarding renewals will be thoroughly documented whether or not a contract is renewed. Form 5427, Contract Route Review, will be prepared in each case to assist in the documentation. The form will be completed and signed by the contracting officer. If it is determined that the information on Form 5406 is necessary to fully document the renewal decision, the information should be requested from the administrative official.

§ 619.409–4 Selection.

The contracting officer will determine the contracts to be renewed, based on information on Forms 2750, 5406, 5407, 5427, 5485, and other data developed in connection with renewal. Form 5403, Inquiry Concerning Renewal of Contract Route, will be used to determine whether a contractor desires renewal of contract. All negotiations with contractors will be thoroughly documented whether or not the contract is renewed. The following contracts will not be renewed:

(a) Emergency.

(b) Those operated by a surety or by legal representative of a deceased contractor that have not been sublet.

(c) Those operated by subcontractors.

(d) Those in which the contracting officer has permitted the contractor to terminate a subcontract effective during the last 6 months of the contract term and resume charge of service.

(e) Those that have been or will be readvertised for the new term.

§ 619.409–5 Preparation and execution.

The contracting officer will:

(a) Address Form 5401, Instructions for Execution of Form 5410, Contract Route Renewal Bond and Contract, to the contractor dated 10 days in advance. The bond on renewal contract should correspond to current contract rate, or the contract rate to be effective at the beginning of the renewal contract term if a change is known. Send a tissue copy of Form 5401 to any surety companies that have specifically requested this information, and hold the original until date shown on it.

(b) Prepare Form 5410, original and sufficient copies, by filling out items 1a, 2, 3, and 4, attaching a copy of Form 5411–A, Highway or Water Contract General Provisions, in the case of highway contracts; a copy of Form 2750 in the case of air taxi contracts; and a copy of PS Notice 82, Additional General Provisions for Service Contracts, to each and send to the contractor with Form 5401.

(c) After Form 5410 is returned by the contractor, determine whether it has been properly executed. Check for residence requirements (box delivery routes only). When the contract has been properly executed by the contractor, surety, and contracting officer, prepare Form 5494, Notice of Renewal—Contract Route, serially number Form 5494, attach a copy of Form 5410, 5411–A, or 2750, and Notice 82, thereby forming the renewal contract package, and mail immediately to the following:

(1) The contractor.

(2) Postal data center with original copy of Form 5410.

(3) Administrative official.

(4) The Interstate Commerce Commission if this is a contract of surface transportation and the Civil Aeronautics Board if this is a contract for air transportation. (Two copies.)

(5) Surety on contract.

(6) If this is a renewal contract for highway transportation, send one copy, for posting, to each post office served by the route at which deposits and/or collections are to be made.

(7) File: Distribution of the copies in subparagraphs (3), (4), and (6) of this paragraph must be made so they will be available for inspection in the offices involved at least 15 days prior to the effective date of the renewal contract.

(d) Follow procedures outlined in § 619.408(c)(1).

§ 619.409–6 Restriction on subcontracts.

§ 619.409–61 Nonrenewable.

A contract may be entered into with a subcontractor only after it has been advertised or negotiated. Contracts operated by subcontractors may not be renewed. They must be readvertised or negotiated if service is to be continued.

§ 619.409–62 Termination of subcontract.

If the contracting officer permits the contractor to terminate a subcontract within 6 months of the expiration of the contract term, the contracting officer will readvertise or negotiate the service.

§ 619.410 Extension of advertised contracts.

§ 619.410–1 Extension authority.

Contracts contain a provision under which they may be continued in force beyond their stated expiration date for a period not exceeding 1 year.

§ 619.410–2 Policy.

A contract should not be continued beyond its expiration date if such action would impose a hardship on the contractor.

§ 619.410–3 Orders.

Orders extending term of contract will be issued on Form 5440–C in the case of highway contracts and Form 2752 in the case of air taxi contracts, as follows:

(a) When termination date is known, issue order to read:

Contract for service on this route is continued in force to _____.
(date)

(b) If a contract is extended, and is discontinued before expiration of the period specified in the order authorizing the extension, the contractor will be allowed indemnity payment as provided for in his contract.

(c) When termination date is uncertain, but termination is expected, issue order to read as follows:

Contract for service on this route is continued in force after June 30, 19__, from one 4-week accounting period to another, but not later than June 30, 19__, exact termination date to be stated in a subsequent order. After termination date is determined, issue appropriate order establishing the termination date. Orders issued should terminate service at the end of an accounting period, where possible. If it is necessary to terminate a contract at a date other than the end of the accounting period, the contractor should be allowed indemnity for the number of days remaining in the accounting period.

(d) If it is necessary to extend a contract because a renewal contract has not been executed before the expiration date of the contract, and either renewal is expected, but formal contract papers have not been signed, or renewal is uncertain because no renewal agreement has been reached with the contractor, issue order to read:

Contract for service on this route is continued in force to _____.

(1) Every effort should be made to have the renewal contract executed before extension date; however, if it is not possible then another extension order may be issued up to maximum allowable.

(2) The renewal contract would then be prepared to become effective either

on January 1 or July 1, whichever is appropriate.

§ 619.411 Emergency service.

§ 619.411–1 Authority.

Emergency service is the transportation of mail under emergency conditions and may be used only when time does not permit purchase of the needed service under normal contractual procedures. Reasons for obtaining emergency instead of regular service should be fully documented. Emergency service will be terminated at the earliest practicable and feasible date on which regular transportation can be provided through normal contractual procedures.

§ 619.411–2 Soliciting proposals.

§ 619.411–21 Method.

(a) Whenever possible competitive proposals will be obtained for the emergency service. Proposals may be solicited from anyone known to have the capability of providing the desired service. As many proposals as possible, generally not less than three (3), will be obtained.

(b) When soliciting proposals by letter to postmasters and prospective operators, proceed as follows:

(1) Furnish copies of completed Form 5467, Proposal for Temporary Emergency Service.

(2) Explain to whom proposals must be sent and time limit for receipt. If possible, allow at least 10 days for obtaining proposals.

(c) When time does not permit solicitation of emergency proposals as provided for in paragraph (b) of this section, the contracting officer may obtain them personally or by telephone. Even in such emergencies, endeavor to obtain as many as possible. Document reasons precluding normal solicitation of emergency proposals.

§ 619.311–22 Bond waiver.

No bond is required with the proposal or contract.

§ 619.411–23 Abstract of proposals.

An abstract of proposals received will be prepared on Form 5473, Abstract of Proposals Received, and distributed in accordance with § 619.404–22, except copy will not be sent to the surety companies.

§ 619.411–3 Preparation of solicitation.

The contracting officer will complete Form 5467 to show statement of service, frequency, schedule, and any other special provisions; and he will reproduce it in sufficient quantity as follows:

(a) For distribution to postmasters and prospective operators.

(b) As a statement of service to be attached to notice of acceptance.

§ 619.411–4 Contract terms.

A contract for emergency service will be for a short, but indefinite term. Contract will provide for the following:

(a) Termination on not less than 24 hours' notice by the Postal Service and not less than 15 days' notice by the contractor without the allowance of any indemnity or extra pay in lieu of indemnity to the contractor. Whenever possible, the contracting officer shall give more than 24 hours' notice, up to a maximum of 15 days' notice.

(b) Pay cannot be adjusted. Increases or decreases must be handled by renegotiating new emergency contracts.

(c) Contract cannot be sublet.

§ 619.411–5 Award of contract.

§ 619.411–51 Review.

The contracting officer will analyze proposals to determine whether services offered are commensurate with cost and whether the individual or firm submitting the lowest proposal is responsible and owner of suitable equipment or financially able to get it. Have a personal investigation made if any of these points are doubtful.

§ 619.411–52 Acceptance of proposal.

See §§ 619.406 and 619.408, except that Form 5467 will be substituted for Form 5468 and the 15 days' advance filing requirement to the Interstate Commerce Commission or Civil Aeronautics Board will not apply. Copies will be sent to the appropriate agency as soon after commencement of the service as possible.

§ 619.411–53 Additional instructions.

The contracting officer must prepare necessary instructions to all concerned and furnish postmasters at each terminal of route with arrival and departure schedule for conspicuous posting.

Subpart 5—Domestic Water Transportation Contract Purchasing

§ 619.501 Purchasing regulations.

Contracts for the domestic transportation of mail by water shall be treated the same as contracts for the transportation of mail by highway for purposes of purchasing.

Subpart 6—Area Bus Contract Purchasing

§ 619.601 Authority.

39 U.S.C. 5214—Agreements with Passenger Common Carrier by Motor Vehicle—The Postal Service may enter into contracts, under such terms and conditions as it shall prescribe and without advertising for bids, for the transportation of mail in passenger-carrying motor vehicles, by passenger common carriers, or by motor vehicles over the regular routes on which the carrier is permitted by law to transport passengers.

§ 619.602 Policy.

§ 619.602–1 Term.

Contracts will generally be made for terms of 2 years.

§ 619.602–2 Cancellation.

Contracts contain a provision for cancellation upon 30 days' notice by either party.

§ 619.602–3 Nonrenewable.

Contracts are not renewable. Ninety days before the termination date of each contract, negotiations for a new contract must be commenced if continuance of the service is necessary.

§ 619.602–4 Rates.

Contracts will generally provide for a flat rate per piece of mail carried.

§ 619.602–5 Area to be covered.

Every effort will be made to insure the fact the contractor will carry the mail over the entire system of the carrier, under one contract, and at one rate of pay. However, if for some reason the contractor refuses to enter into such a contract, or the services of the contractor are needed for only a small segment of the system, a contract may be negotiated for specific segments.

§ 619.602–6 Necessity for contract.

When considering whether a contract is justified, the following should be taken into account:

(a) Whether there are any air taxi segments or existing routes covering the service and, if so, whether the cost of using such service would be more economical.

(b) The number of pieces to be handled annually should be estimated.

(c) The annual cost of using a motor vehicle passenger common carrier to transport the mail should be estimated, and it should be determined that no other form of transportation exists that would be less expensive to handle the mail involved at the desired service standards.

§ 619.603 Implementation.

§ 619.603–1 Contract forms.

Form 5408, Area Bus Contracts with attachment; and Form 5408–A, Contract General Provisions, Area Bus Contracts, will be used in awarding contracts.

§ 619.603–2 Authorization and discontinuance of service.

The contracting officer will designate the scheduled trips of the company on which mail will be transported. Form 5440–C, Contract Route Service Order, will be used to establish and discontinue segments of the contract.

Subpart 7—Terminal Handling Contract Purchasing

§ 619.701 Policy.

Terminal handling services may be purchased by advertising or negotiating.

§ 619.702 Types of contracts.

§ 619.702–1 Rail.

This contract provides for the loading and unloading of mail on a railroad's system in conjunction with line haul services provided by that railroad company. This type of contract will be negotiated.

§ 619.702–2 Terminal handling contracts.

This contract provides for the loading and unloading of mail into and out of trucks and/or rail units, related transportation services, and provision of plant, equipment and manpower for these services. This type of contract may be advertised or negotiated.

§ 619.703 Contract format.

§ 619.703–1 General.

Each contract for terminal handling services will be individually written in a

manner so as to clearly describe the service required; the compensation to be paid, if any; and the conditions of service.

§ 619.703–2 Preamble.

Each contract shall contain a preamble stating the names of the parties, the date of the contract, and the effective date of the contract.

§ 619.703–3 Mail involved.

Each contract shall contain a section specifying the class or classes of mail involved.

§ 619.703–4 General terms and conditions.

Each contract shall contain a section clearly describing the services to be provided by the contractor and/or the Postal Service, as appropriate. It shall also contain a provision clearly establishing the liability of the contractor and the Postal Service for damage to the contractor's equipment.

§ 619.703–5 Compensation.

Each contract shall contain a section clearly describing the rates to be paid for the services required, and the method or methods by which such rates are to be computed. The procedures by which payment is to be made shall also be specified.

§ 619.703–6 Equal opportunity.

Under applicable Department of Labor regulations (41 CFR Ch. 60), an Equal Opportunity Clause conforming to those regulations will be included in all contracts.

§ 619.703–7 Service Contract Act.

A copy of PS Notice 82, Additional General Provisions for Service Contracts, will be attached to each contract entered into under this part which calls for total compensation to be paid under the contract in excess of $2,500.

§ 619.704 Termination.

Each contract shall provide for its termination by either party's giving the other written notice of such termination at least 60 days in advance. Such termination shall take effect on the last day of the standard Postal Service payment period ending on or next following the desired termination date. Contracts may provide for indemnity to be paid the contract in the event of termination by the Postal Service. In the absence of a clause providing for indemnity, however, none shall be paid upon termination by either party.

§ 619.705 Contract term.

Contracts entered into under this part may not exceed 4 years in duration except that where conditions warrant, advertised contracts may be for terms of 6 years. Negotiated contracts are nonrenewable and may not be extended. Unless circumstances otherwise warrant, such contracts will normally be entered into for a 4-year term.

§ 619.706 Liquidated damages.

Contracts entered into under this part may contain a provision providing for the computation, assessment, and recovery of damages incurred by the Postal Service as a result of irregularities and/or omissions in the handling of mail by the contractor under the contract.

Subpart 8—Rail Transportation Contract Purchasing

§ 619.801 Policy.

All contracts for the transportation of mail by railroad will be negotiated.

§ 619.802 Types of contracts.

§ 619.802–1 General.

Rail contracts may provide for the transportation of mail in rail cars or in trailers, vans, and/or containers on flat cars, or a combination.

§ 619.802–2 Freight train service.

This contract provides for the transportation of mail by freight train.

§ 619.802–3 Mail train service.

This contract provides for the transportation of mail in special trains established for the primary purpose of transporting mail, on schedules established by the Postal Service.

§ 619.802–4 Passenger train service.

This contract provides for the transportations of mail by passenger train.

§ 619.802–5 Combination service.

This type of contract provides for the transportation of mail by a combination of two or more of the types of service enumerated in §§ 619.802–2, 619.802–3, and 619.802–4.

§ 619.802–6 Car switching.

This type of contract provides for the switching of cars at specified points on the contractor's lines or the switching of cars into and out of postal facilities.

§ 619.803 Contract format.

§ 619.803–1 General.

Each contract for the transportation of mail by rail will be individually written in a manner so as to clearly describe the service required; the compensation to be paid, if any; and the conditions of service.

§ 619.803–2 Preamble.

Each contract shall contain a preamble stating the names of the parties, the date of the contract, and the effective date of the contract.

§ 619.803–3 Mail involved.

Each contract shall contain a section specifying the class or classes of mail involved, and, where appropriate, the terminal points between which such mail will be transported.

§ 619.803–4 General terms and conditions.

Each contract shall contain a section clearly describing the services to be provided by the contractor and/or the Postal Service, as appropriate. Service requirements contained in the contract may include, but need not necessarily be limited to, the following:

(a) Line haul service.
(b) Terminal service.
(c) Drayage service.
(d) Interline service.
(e) Dropoff service.
(f) Use of contractor's vans and/or trailers for over-the-road service.
(g) Trailer and/or van detention.

Each such contract shall also contain a provision clearly establishing the liability of the contractor and the Postal Service for damage to the contractor's equipment.

§ 619.803–5 Compensation.

Each contract shall contain a section clearly describing the rates to be paid for the services required, and the method or methods by which such rates are to be computed. The procedures by which payment is to be made shall also be specified.

§ 619.803–6 Equal opportunity.

Under applicable Department of Labor regulations (41 CFR Ch. 60), an Equal Opportunity Clause conforming to those regulations will be included in all contracts.

§ 619.804 Termination.

Each contract shall provide for its termination by either party's giving the other written notice of such termination at least 60 days in advance. Such termination shall take effect on the last day of the standard Postal Service payment period ending on or next following the desired termination date. Contracts may provide for indemnity to be paid the contractor in the event of termination by the Postal Service. In the absence of a clause providing for indemnity, however, none shall be paid upon termination by either party.

§ 619.805 Contract term.

Contracts entered into under this part may not exceed 4 years in duration. Such contracts are nonrenewable and may not be extended. Unless circumstances otherwise warrant, such contracts will normally be entered into for the full 4-year term.

§ 619.806 Liquidated damages.

Contracts entered into under this part may contain a provision providing for the computation, assessment, and recovery of damages incurred by the Postal Service as a result of irregularities and/or omissions in the handling and/or transportation of mail by the contractor under the contract.

Subpart 9—International Transportation of Mail by Vessel Contract Purchasing

§ 619.901 Policy.

Contracts for the transportation of international surface mail will be purchased by negotiation.

§ 619.902 Issuance of requests for proposals.

Requests for proposals (RFP's) will be issued under the following conditions:

§ 619.902–1 New containerization necessary.

When mail volumes being transported on a "loose sack" basis (i.e., being transported as freight or express at rates published by the Postal Service, and not under contract) warrant containerization, the contracting officer shall issue RFP's. RFP's may also be issued when new container ship operations are introduced in trade areas where they have not heretofore been available.

§ 619.902–2 Expiration of contract.

If, upon expiration of a contract for international surface transportation of mail, it is found to be in the public interest to continue the transportation involved under contract, a new contract for the service will be negotiated and RFP's will therefore be distributed.

§ 619.902–3 Increased competition.

If new shipping companies commence operations in a trade area in which there has heretofore been little or no competition, an existing contract may be terminated and a new contract covering the service involved may be negotiated, provided it is determined that the increased competition will result in a significantly lower rate than the rate being paid under the existing contract.

§ 619.902–4 Service deterioration.

Where the quality of service being provided under the contract becomes unacceptably deficient, the contract may be terminated and a new contract covering the service involved may be negotiated.

§ 619.902–5 Service otherwise necessary.

Contracts may be negotiated when otherwise necessary to provide international surface transportation of mail.

§ 619.903 Contract format.

§ 619.903–1 General.

Each contract for the international transportation of mail by vessel will be individually written in a matter so as to clearly describe the service required; the compensation to be paid, if any; and the conditions of service.

§ 619.903–2 Preamble.

Each contract shall contain a preamble stating the names of the parties, the date of the contract, and the effective date of the contract.

§ 619.903–3 Mail involved.

Each contract shall contain a section specifying the class or classes of mail involved, and, where appropriate, the terminal points between which such mail will be transported.

§ 619.903–4 General terms and conditions.

Each contract shall contain a section clearly describing the services to be provided by the contractor and/or the Postal Service, as appropriate.

§ 619.903–5 Schedule of service.

Each contract shall contain a section clearly setting forth minimum schedules for the transportation of mail. Such schedules generally shall provide for a frequency of service of not less than once a week, normally conforming to the contractor's published schedules.

§ 619.903–6 Liability.

Each contract shall contain a section clearly establishing the liability of the contractor and the Postal Service for damage to the contractor's equipment.

§ 619.903–7 Compensation.

Each contract shall contain a section clearly describing the rates to be paid for the services required, and the method or methods by which rates are to be computed. The procedures by which payment is to be made shall also be specified.

§ 619.903–8 Equal opportunity.

Under applicable Department of Labor regulations (41 CFR Ch. 60), an Equal Opportunity Clause conforming to those regulations will be included in all contracts.

§ 619.904 Termination.

Each contract shall provide for its termination by either party's giving the other written notice of such termination at least 30 days in advance. Such termination shall take effect on the last day of the standard Postal Service payment period ending on or next following the desired termination date. No indemnity shall be paid in the event of termination by either party.

§ 619.905 Contract term.

Contracts entered into under this part may not exceed 4 years in duration. Such contracts are nonrenewable and may not be extended. Unless circumstances otherwise warrant, such contracts will normally be entered into for the full 4-year term.

§ 619.906 American flag preference.

Contracts entered into under this part shall require the transportation of U.S. surface mail for international destinations on vessels of U.S. registry except:

(a) When there is no direct service provided by a U.S. registry company and satisfactory service, comparable to existing foreign flag service, cannot be provided by a U.S. registry company on a transshipment basis, or

(b) When rates charged by the U.S. registry company are noncompetitive and in excess of those rates normally paid by the Postal Service to other U.S. registry companies for the water transportation of mail for comparable distances.

Subpart 10—Other Contract Purchasing

§ 619.1001 Types of contracts.

This part contains regulations applicable to the purchase of the following types of contracts:

§ 619.1001–1 Certified air carrier contracts.

See § 619.104–4 for description.

§ 619.1001–2 Uncertificated route contracts.

See § 619.104–5 for description.

§ 619.1001–3 Experimental contracts.

See § 619.104–7 for description.

§ 619.1002 Policy.

Contracts covered by this part will be procured by negotiation, except, in the case of experimental contracts, advertised procurement may be made if the contracting officer determines the use of that method to be feasible.

§ 619.1003 Distribution of requests for proposals (RFP).

§ 619.1003–1 Certificated air carrier contracts.

RFP's will be sent to all certificated air carriers authorized by the Civil Aeronautics Board to engage in the transportation of mail between the points for which service is to be contracted. RFP's will generally be distributed at least 15 days in advance of the commencement of negotiations unless the contracting officer determines that waiver of this requirement would be in the public interest.

§ 619.1003–2 Uncertificated route contracts.

RFP's will be sent to all air carriers operating in the general area to be served. RFP's will generally be distributed at least 15 days in advance of the commencement of negotiations unless the contracting officer determines that waiver of this requirement would be in the public interest.

§ 619.1003–3 Experimental contracts.

RFP's will be sent to all potential sources within the area in which the contract is to be performed which could reasonably be expected to have an interest in negotiating for the contract. In addition, if the service to be negotiated is national in scope and it is anticipated that total compensation which will be paid under the contract will exceed $5,000, the contracting officer may, at his discretion, have a synopsis of the proposed procurement action published in the Commerce Business Daily under the procedures outlined in the Federal Procurement Regulations (see 41 CFR, Subpart 1–1.10). RFP's will also be posted in post offices along the route to be served. RFP's will be distributed at least 15 days in advance of the commencement of negotiations. This requirement is mandatory and no exceptions to it will be made.

§ 619.1004 Contract format.

§ 619.1004–1 General.

Each contract entered into under this part will be individually written in a manner so as to clearly describe the service required; the compensation to be paid, if any; and the conditions of service.

§ 619.1004–2 Preamble.

Each contract shall contain a preamble stating the names of the parties, the date of the contract, and the effective date of the contract.

§ 619.1004–3 Mail involved.

Each contract shall contain a section specifying the class or classes of mail involved, and, where appropriate, the terminal points between which such mail will be transported.

§ 619.1004–4 General terms and conditions.

Each contract shall contain a section clearly describing the service to be provided by the contractor and/or the Postal Service, as appropriate. Each such contract shall also contain a provision clearly establishing the liability of the contractor and the Postal Service for damage to the contractor's equipment or to the mail.

§ 619.1004–5 Compensation.

Each contract shall contain a section clearly describing the rates to be paid for the services required and the method or methods by which such rates are to be computed. The procedures by which payment is to be made shall also be specified.

§ 619.1004–6 Equal opportunity.

Under applicable Department of Labor regulations (41 CFR Ch. 60), an Equal Opportunity Clause conforming to those regulations, will be included in all contracts.

§ 619.1004–7 Service Contract Act.

A copy of PS Notice 82, Additional General Provisions for Service Contracts, will be attached to all contracts entered into under this part except for contracts with common carriers for the carriage of mail by rail, air, bus, or ocean vessel, where such carriage is performed on regularly scheduled runs of the trains, airplanes, buses, or vessels over regularly established routes, and except for those under which the total compensation which will be paid will be $2,500 or less.

§ 619.1005 Special contract provisions.

§ 619.1005–1 Certificated air carrier contracts.

Each certificated air carrier contract shall contain the following restrictions:

(a) That it is subject to cancellation by virtue of an action of the Civil Aeronautics Board at any time up to 10 days prior to the effective date.

(b) That at least 750 pounds of mail will be carried on each flight operated under the contract.

(c) That no more than 10 percent of the domestic mail and 5 percent of the international mail (determined by weight) may consist of letter mail. These percentages apply to total volume transported under the contract, however, and not to the volumes transported on individual flights.

§ 619.1005–2 Uncertificated route contracts.

Each uncertificated route contract shall contain the following clause:

Notwithstanding any other provision of this contract, if, during the term of the contract, the Civil Aeronautics Board authorizes any air carrier to engage in the transportation of mail by aircraft between any of the points named in the contract, the contract shall be terminated effective on the date of inauguration of scheduled service by such carrier: *Provided, however,* That the Postal Service and the contractor may mutually agree to continue service under the contract between any remaining points served by the contractor between which the Civil Aeronautics Board has not authorized any air carrier to engage in the transportation of mail by aircraft.

§ 619.1005–3 Experimental contracts.

Experimental contracts shall provide that they have been entered into for the purpose of providing transportation services to the Postal Service, and that notwithstanding the fact that they are designed to test and develop new methods and/or materials for use in the mail transportation field, their immediate and paramount purpose is the transportation of mail.

§ 619.1006 Bond requirements.

Bonds will generally not be required for contracts entered into under this part, except that in the case of experimental contracts, the contracting officer at his discretion may require that the contractor post a performance bond. However, a performance bond may not be required unless the RFP requires such a bond.

§ 619.1007 Termination and indemnity.

(a) Each contract shall provide for its termination by either party's giving the other written notice of such termination at least 60 days in advance. Such termination shall take effect on the last day of the standard Postal Service payment period ending on or next following the desired termination date. Experimental contracts, however, shall provide that this requirement may be waived by the contracting officer if he finds such waiver to be in the public interest. Contracts may provide for idemnity to be paid the contractor in the event of termination by the Postal Service. In the absence of a clause providing for indemnity, however, none shall be paid upon termination by either party. Contracts requiring the contractor to furnish specialized equipment suitable primarily for postal purposes may contain a special indemnity clause covering such equipment. This clause may provide for indemnity of up to 100 percent of the lesser of the following figures:

(1) The unamortized value of the equipment as of the date of termination; or

(2) The costs of converting the equipment into a form suitable for commercial use.

(b) In the event such a clause is included in the contract, the following schedules shall be attached to the contract and shall constitute a part of it:

(1) A schedule listing all equipment covered by the special indemnity clause. Any equipment not listed in this schedule will not be covered by the clause; and

(2) A schedule clearly describing the method or methods used by the contractor in computing the amortization of all equipment covered by the special indemnity clause.

§ 619.1008 Contract term.

Contract terms are negotiable, except that they may not exceed 4 years in duration (or, in the case of an advertised experimental contract for rail, highway, or domestic water service, 6 years). Generally, however, air contracts will be limited to 2 years, and experimental contracts to 1 year. This rule may be waived only if the contracting officer determines that it is in the public interest to do so.

[FR Doc. 71-[illegible]32 Filed 6-29-71;8:45 am]

SUBCHAPTER N—PROCEDURES

PART 912—PROCEDURES TO ADJUDICATE CLAIMS FOR PERSONAL INJURY OR PROPERTY DAMAGE ARISING OUT OF THE OPERATION OF THE U.S. POSTAL SERVICE

Regulations codified in Part 912 are amended to read as set forth below. This revision reflects enactment of the Postal Reorganization Act (Public Law 91–375, approved August 12, 1970). However, changes of a substantive nature are not being made. Accordingly, effective July 1, 1971, Part 912 is revised to read as follows:

Sec.
912.1 Claims responsibility.
912.2 Character and limit of claims.
912.3 Time limit for filing.
912.4 Place of filing.
912.5 Definition of claim.
912.6 Who may file.
912.7 Evidence and information to be submitted.
912.8 Limitation on U.S. Postal Service authority.
912.9 Final denial of claim.
912.10 Action on approved claims.
912.11 Review of adjudication.
912.12 Exclusiveness of remedy.
912.13 Review by legal officers.
912.14 Attorneys' fees.
912.15 Conclusiveness of remedy.

AUTHORITY: The provisions of this Part 912 issued under 28 U.S.C. 2671–2680; 28 CFR 14.1–14.11; 39 U.S.C. 409.

§ 912.1 Claims responsibility.

The General Counsel is responsible for settlement of claims made against the U.S. Postal Service under the Federal Tort Claims Act and 39 U.S.C. 2603, with authority to redelegate the functions to General Counsel staff members and other Postal Service employees.

§ 912.2 Character of limit of claims.

(a) Procedure for adjudication of claims for personal injury or property damage arising out of the operation of the U.S. Postal Service, under the provisions of the Federal Tort Claims Act (28 U.S.C. 1346(b), 1402(b), 2401(b), and 2671–2680), and 39 U.S.C. 401, 402, 409, and 2603.

(b) Claims for damage to or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of an employee of the U.S. Postal Service while acting within the scope of his employment under circumstances where the United States, if a private person, would be liable to the

claimant for such damage, loss, injury, or death, are adjudicated in accordance with the law of the place where the act or omission occurred. The authority of the U.S. Postal Service to award compensation for claims accruing on or after January 18, 1967, is limited to $25,000. The Postal Service may, however, award compensation under this Act for claims accruing on or after January 18, 1967, in an amount in excess of $25,000 after obtaining prior written approval of the Attorney General or his designee. (See also § 912.7.)

(c) Where the General Counsel, or his designee, finds a claim for damage to persons or property resulting from operation of the U.S. Postal Service to be a proper charge against the United States and it is not cognizable under 28 U.S.C. 2672, he may adjust and settle it under authority of 39 U.S.C. 2603.

§ 912.3 Time limit for filing.

(a) *Claim.* The statutory time for filing a claim under the Federal Tort Claims Act is 2 years from the date the claim accrues.

(b) *Suit.* The statutory time for filing suit is 6 months after the date of mailing by certified or registered mail of notice of final denial of the claim by the Postal Service. 28 U.S.C. 2401(b). See also § 912.8.)

§ 912.4 Place of filing.

A claim is usually filed with the postmaster of the office within the delivery limits of where the accident happened, but may be filed at any office of the Postal Service, or sent directly to the General Counsel.

§ 912.5 Definition of claim.

For purposes of this part, a claim shall be deemed to have been presented when the U.S. Postal Service receives from a claimant, his duly authorized agent or legal representative, an executed Standard Form 95, Claim for Damage or Injury, or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, personal injury, or death alleged to have occurred by reason of the incident. Standard Form 95 may be obtained from postmaster, postal inspectors, or other local Postal Service establishments.

§ 912.6 Who may file.

(a) A claim for injury to or loss of property may be presented by the owner of the property, his duly authorized agent, or legal representative.

(b) A claim for personal injury may be presented by the injured person, his duly authorized agent, or legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate, or by any other person legally entitled to assert such a claim in accordance with applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the parties individually as their respective interests appear, or jointly.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

§ 912.7 Evidence and information to be submitted.

(a) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at time of death, including monthly or yearly salary or earnings, if any, and the duration of his last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of his death.

(4) Degree of support afforded by the decedent to each survivor dependent upon him for support at the time of his death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the damages claimed.

(b) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by his attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by the agency or another Federal agency. A copy of the report of the examining physician shall be made available to the claimant upon the claimant's written request, provided that he has, upon request, furnished the report referred to in the first sentence of this subparagraph and has made, or agrees to make available to the agency, any other physician's reports previously or thereafter made of the physical or mental condition which is the subject matter of his claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payments for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

(4) If a claim is made for loss of time for employment, a written statement from his employer showing actual time lost from employment, whether he is a full- or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(6) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(c) *Property damage.* In support of a claim for injury to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price and salvage value, where repair is not economical.

§ 912.8 Limitation on U.S. Postal Service authority.

(a) An award, compromise, or settlement of a claim by the Postal Service under the provisions of the Federal Tort Claims Act in excess of $25,000 shall be effected only with the prior written approval of the Attorney General or his designee. For the purposes of this paragraph, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

(b) An administrative claim may be adjudicated, determined, compromised, or settled by the Postal Service under the provisions of the Federal Tort Claims Act only after consultation with the Department of Justice when, in the opinion of the Postal Service:

(1) A new precedent or a new point of law is involved.

(2) A question of policy is or may be involved.

(3) The United States is or may be entitled to indemnity or contribution from a third party and the agency is unable to adjust the third party claim.

(4) The compromise or a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed $25,000.

(c) An administrative claim may be adjusted, determined, compromised, or

settled by the Postal Service under the provisions of the Federal Tort Claims Act only after consultation with the Department of Justice when the Postal Service is informed or is otherwise aware that the United States or an employee, agent, or cost-plus contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

§ 912.9 Final denial of claim.

Final denial of an administrative claim shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the agency action, he may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notification.

§ 912.10 Action on approved claims.

In any case where the General Counsel or his designee, upon consideration of all the evidence submitted, finds that compensation is due a claimant, payment will be made by the U.S. Postal Service and in due course a settlement check will be forwarded to the claimant or his representative.

§ 912.11 Review of adjudication.

(a) The approval and acceptance of any adjudication of any claim made by the General Counsel or his designee constitutes final action so far as the Postal Service is concerned.

(b) If a claim is disallowed or if the claimant is unwilling to accept the amount awarded, the claimant may resort to the U.S. courts for relief. Conditions under which relief may be sought in the courts may be found in title 28 U.S.C. 2675 and other pertinent sections of the Code referred to therein. Before such suit is brought, the pertinent provisions of title 28 of the United States Code should be examined by the claimant.

§ 912.12 Exclusiveness of remedy.

The provisions of 28 U.S.C. 2679 provide that the remedy against the United States, as provided by sections 1346 (b) and 2672 of title 28, for injury or loss or personal injury or death resulting from the operating by an employee of the Government of any motor vehicle while acting within the scope of his employment is exclusive of any other civil action or proceeding by reason of the same subject matter against the employee or his estate whose act or omission gave rise to the claim.

§ 912.13 Review by legal officers.

The authority to adjust, determine, compromise and settle a claim under the provisions of the Federal Tort Claims Act shall, if the amount of a proposed compromise, settlement or award exceeds $1,000, be exercised only after review by a legal officer of the Postal Service.

§ 912.14 Attorneys' fees.

The provisions of 28 U.S.C. 2678 should be consulted in determining the amount of the attorneys' fees.

§ 912.15 Conclusiveness of remedy.

Acceptance by the claimant, his agent, or legal representative, of any award, compromise or settlement made pursuant to the provisions of the Federal Tort Claims Act, shall be final and conclusive on the claimant, his agent, or legal representative and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of any claim against the United States and against any employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

DAVID A. NELSON,
General Counsel.

[FR Doc.71-8933 Filed 6-29-71;8:45 am]

U.S. POSTAL SERVICE

STATUS OF REGULATIONS

Disposition of former title 39, United States Code; status of Regulations of the U.S. Postal Service.

Following are the texts of Postal Service Orders 71-9 and 71-10 issued by the Postmaster General on June 21, 1971, to be effective July 1, 1971.

[Order No. 71-9]

DISPOSITION OF FORMER TITLE 39, UNITED STATES CODE

Except for provisions relating to classes of mail, rates of postage, and fees for postal services that are continued in effect by section 3 of the Postal Reorganization Act, and except for personnel provisions continued in effect by Postal Service Order No. 14, all provisions of former title 39, United States Code, are hereby revoked. This order shall not be construed to revoke regulations which incorporate the text or substance of provisions of former title 39, United States Code.

This order shall become effective on July 1, 1971.

[Order No. 71-10]

STATUS OF REGULATIONS OF THE U.S. POSTAL SERVICE

1. The regulations of the Postal Service consist of: (1) The resolutions of the Governors and the Board of Governors of the U.S. Postal Service and the bylaws of the Board of Governors; (2) this and other Postal Service Orders which shall be published as an appendix to the Postal Service Manual; (3) the Postal Service Manual, and those portions of the former Postal Manual retained in force on a temporary basis; (4) the Headquarters Manual, Regional Instructions, handbooks, delegations of authority and other regulatory issuances and directives of the Postal Service or the former Post Office Department. Any of the foregoing may be published in the FEDERAL REGISTER and the Code of Federal Regulations.

2. The resolutions of the Governors and the Board of Governors of the U.S. Postal Service and the bylaws of the Board of Governors take precedence over all regulations issued by other authority. Except as otherwise provided in this paragraph, "Postal Service Orders" take precedence over all other regulations.

3. The adoption, by reference or otherwise, of any rule of law or regulation in this or any other regulation of the Postal Service shall not be interpreted as any expression on the issue of whether such rule of law or regulation would apply to the Postal Service if it were not adopted as a regulation, nor shall it restrict the authority of the Postal Service to amend or revoke the rule so adopted at a subsequent time.

4. By virtue of section 5(a) of the Postal Reorganization Act, all regulations of the Post Office Department, which are in effect at the time the U.S. Postal Service commences operations, shall continue in effect according to their terms until modified or repealed by the Postal Service. Except as they may be made applicable by some other regulation of the Postal Service, all regulations of other agencies of the United States that might be deemed to be continued in effect by section 5(a) of the Postal Reorganization Act are hereby made inapplicable to the Postal Service.

5. This order shall become effective on July 1, 1971.

(39 U.S.C. 401, 410, as enacted by Public Law 91-375; sec. 5 (a), (f) of Public Law 91-375)

DAVID A. NELSON,
General Counsel.

[FR Doc.71-8934 Filed 6-29-71;8:45 am]

PROCUREMENT OF PROPERTY AND SERVICES

Interim Regulations

Notice is hereby given that, effective July 1, 1971, the date of commencement of operations of the U.S. Postal Service, the interim regulations set out below are adopted by the Postal Service. These regulations, which reflect enactment of the Postal Reorganization Act (Public Law 91-375), will govern the acquisition, disposal, or management of property and services for the Postal Service (excluding property and services relating to the transportation of mail), pending the issuance of a comprehensive manual of postal procurement regulations to be issued in codified form.

These regulations supersede regulations contained in Part 936 of Title 39, Code of Federal Regulations, dealing with rules of procedure for contract financing; and also Chapter 39 of Title 41, relating to procurement regulations of the Post Office Department.

Accordingly, the regulations which follow are adopted as interim regulations of the Postal Service, effective July 1, 1971.

(39 U.S.C. 401, 410, 2003(c) as enacted by by Public Law 91-375)

DAVID A. NELSON,
General Counsel.

I. *Adoption of regulations derived from provisions of former title 39, United States Code.* No provision of former title 39 of the United States Code dealing with the acquisition, disposal, or management of property and services shall apply to the Postal Service.

In lieu thereof the following regulations, which are derived in part from the former Code sections cited in brackets, are adopted:

1. *Contracts for envelopes and other supplies.* (a) The Postal Service may contract, for a period not to exceed 4 years, for—

(1) Stamped envelopes for sale to the public;

(2) Envelopes for use by the executive departments and agencies, subject to applicable regulations under section 431 of title 40, United States Code;

(3) Postal cards and stamps;

(4) Miscellaneous equipment and supplies for the Field Postal Service; and

(5) Printing of post-route maps.

(b) Adhesive stamps prescribed by the Postal Service may be manufactured by the Department of the Treasury, in conformity with an agreement satisfactory to both the Postal Service and the Secretary of the Treasury. (Sec. 2004)

2. *Contracts for money order supplies.* Except when it procures them from the Government Printing Office, the Postal Service shall obtain money order supplies in accordance with these regulations. It shall enter into contracts for a period of not more than 4 years containing such conditions as it may prescribe. (Sec. 2005)

3. *Contracts for rental of equipment and services.* The Postal Service in accordance with these regulations may enter into contracts for a period of not more than 4 years for—

(1) The rental of canceling machines;

(2) The hire of vehicles for mail delivery services. (Sec. 2006)

4. *Purchase of motor-truck parts.* The Postal Service may make agreements without advertising with motor vehicle manufacturers for the purchase of parts for nonpassenger motor vehicles under such arrangements as it deems most advantageous to the Postal Service. (Sec. 2007)

5. *Hire of vehicles from employees.* The Postal Service may hire, by contract or on an allowance basis, vehicles from postal employees, other than supervisors, for use in mail delivery services. (Sec. 2008)

6. *Contracts for delivery of special delivery mail.* The Postal Service when it deems it expedient, may contract for the immediate delivery of all special delivery mail from any post office at any price less than the rates established for such mail. (Sec. 2009)

7. *Contracts for postal stations.* (a) The Postal Service may enter into contracts for the conduct of contract stations for a term not exceeding 3 years. It may renew contracts at the same or lower contract price, for additional terms not exceeding 3 years unless:

(1) It finds that the renewal is not in the interest of the Postal Service, or

(2) Not later than 90 days before the end of a contract term the Postal Service receives a request in writing that the contract be opened for competitive bidding at the end of the term.

Upon such a finding by it or upon receipt of such a request, the Postal Service shall terminate the contract, with respect to which the finding has been made or the request has been received, at the end of the current term and shall advertise for bids thereon in accordance with these regulations.

(b) Notwithstanding subsection (a) of this section contracts for rural stations and branches may be awarded for indefinite terms. (Sec. 2011)

8. *Leases.* (a) The Postal Service may lease, on such terms as it deems appropriate, real property necessary in the conduct of its affairs.

(b) The term of a lease may not exceed 20 years when made for quarters—

(1) For post offices at which the postmaster does not furnish quarters on an allowance basis; and

(2) At public airports.

(c) The Postal Service may rent quarters for postal purposes without entering into a formal written contract where the amount of the rental does not exceed $1,000 per annum.

(d) When a leased building or part thereof becomes unfit for use for the purpose rented, the Postal Service may not pay rent until it is put in satisfactory condition by the lessor, or at its option it may cancel the lease. (Sec. 2102)

9. *Additional leasing authority.* In addition to the authority provided by the preceding section the Postal Service may—

(1) Negotiate and enter into lease agreements for periods not exceeding 30 years for the erection by the lessor of buildings and improvements for postal purposes as the Postal Service deems appropriate, on lands sold, leased, or otherwise disposed of by the Postal Service to, or otherwise acquired by, the lessor;

(2) Acquire by purchase, condemnation, lease, donation, or otherwise, and on such terms as it deems appropriate, real property and interests therein, for use for postal purposes; and

(3) Dispose of real property, and interests therein, acquired for use or used for postal purposes by sale, lease, or otherwise, on such terms as it deems appropriate. (Sec. 2103 as it appears in Public Law 86-682)

10. *Date of orders, entries, contracts.* An officer or employee who—

(1) Makes an order, entry or memorandum on which an action is to be based, allowance made, or money paid; or

(2) Enters into a contract or other obligation on behalf of the Postal Service; or

(3) Files or receives on behalf of the Postal Service any paper relating to contracts or allowances;

shall indicate thereon the date of the action. (Sec. 2205)

II. *Adoption of regulations of other departments and agencies.* Except as adopted in Part II of these regulations, and subject to the provisions of section 410 of title 39, United States Code, as enacted by the Postal Reorganization Act, Public Law 91-375, no rule or regulation of any other department or agency relating to the acquisition, disposal, or management of property or services shall apply to the Postal Service.

Any regulation of another Department or agency which is adopted as a regulation of the Postal Service may be modified, altered, or amended solely at the discretion of the Postal Service. No modification thereof by any other agency shall be considered binding upon the Postal Service unless specifically adopted by the Postal Service. In accordance with the foregoing the following regulations are adopted as regulations of the Postal Service:

a. *Federal Procurement Regulations.* The Federal Procurement Regulations (Title 41, Code of Federal Regulations, Chapter 1) in effect, on July 1, 1971, shall be the basic regulations governing the procurement of property and services by the Postal Service. Any reference herein to the Federal Procurement Regulations System or prescription thereof by the General Services Administration shall be construed in a manner consistent with the foregoing provision that these regulations exist as regulations of the Postal Service; and any reference to any statute or Executive order as authority for any section of such Federal Procurement Regulations shall be construed consistently with the power of the Postal Service under 39 U.S.C. section 401(2) to adopt, amend and repeal such rules and regulations as it deems necessary to accomplish the objectives thereof.

The Federal Procurement Regulations shall apply to the Postal Service in their entirety except as set forth below:

1. Subpart 1-1.7—*Small Business Concerns:* Subpart 1-1.7 is hereby deleted in its entirety and the following substituted therefor. "It is the policy of the Postal Service to encourage the participation of small business concerns in its procurement of property and services to the maximum extent practicable consistent with procurement objectives and its mandate to provide prompt, reliable, and efficient postal service."

2. Subpart 1-1.8—*Labor Surplus Area Concerns:* Subpart 1-1.8 is deleted in its entirety and the following substituted therefor. "It is the policy of the Postal Service to encourage the participation of concerns in areas of persistent and substantial labor surplus in its procurement of property and service to the maximum extent practicable consistent with procurement objectives and its mandate to provide prompt, reliable, and efficient postal service."

3. Section 1-1.1003-2(a)(10) *General requirements:* Section 1-1.1003-2(a)(10) is amended to delete the requirement that a determination thereunder be concurred in by the Administrator, Small Business Administration.

4. Section 1-2.406-3 *Other mistakes disclosed before award:* Section 1-2.406-3 is amended to provide that no mistake disclosed before award, notwithstanding subparagraph (e) thereof, shall be subject to removal to or review by the Comptroller General.

5. Section 1-2.406-4—*Disclosure of mistakes after award:* Section 1-2.406-4 is amended to provide that any mistake disclosed after award shall be determined by the General Counsel; that, such authority shall not be limited by the dollar amount set forth in subparagraph (b); and that, notwithstanding subparagraphs (g), (i), and (j), such determination shall not be subject to removal to or review by the Comptroller General.

6. Section 1-2.407-8 *Protests against award:* Section 1-2.407-8 is hereby deleted in its entirety and the following substituted therefor.

(a) The Comptroller General does not have jurisdiction to determine protests against Postal Service contracting procedures or awards, but the Postal Service will consider and determine such protests to the extent described, and under the conditions set out, in this § 1-2.407.8.

(b) A protest against the terms of a solicitation will be considered only if submitted in writing and received by the contracting officer or the General Counsel at least 5 days prior to the date set for the submission of bids or offers. Other protests will be considered only if submitted in writing and received by the contracting officer or the General Counsel within 5 days after the information on which the protest is based became available to the protestor: *Provided, however,* That no protest will be considered if received more than 5 days after award of the contract in question. A protest against the terms of a solicitation must identify the solicitation and set forth a complete statement of the alleged defect that would render legally invalid or improper any award of a contract based on the solicitation. In all other cases, the protestor shall have 5 days, after filing of an initial protest, to perfect and submit a complete statement of the ground and facts relied upon.

(c) Where a protest that is obviously meritorious or obviously of no merit has been filed with the contracting officer, he shall (with the concurrence of the head of the procuring activity and either Regional Counsel or Assistant General Counsel, whichever is appropriate) either (1) issue an amendment to the solicitation, or return unopened all bids or offers received and issue a new, revised solicitation; (2) determine whether the bid or offer in question is or is not responsive; (3) determine whether the bidder or offerer in question is or is not responsible; (4) reevaluate offers; or (5) take such other action as is appropriate in the circumstances. A contracting officer's decision, made pursuant to this subparagraph (c), shall be issued within 5 days after receipt of the protest; all protests which cannot be resolved under the authority of this subparagraph (c) shall, within 5 days after receipt, be referred to the General Counsel.

(d) In the case of a protest filed initially with the General Counsel, he shall, within 1 day after receipt thereof, telephonically notify the contracting officer and transmit a copy of the protest together with any accompanying documents to the contracting officer. Any additional statements or documents subsequently filed with the General Counsel shall, within 1 day after receipt, be transmitted to the contracting officer.

(e) The contracting officer, within 5 days after referring a protest to the General Counsel or receipt of notification that a protest has been filed with the General Counsel shall, if appropriate:

(1) In the case of a protest against the terms of a solicitation, notify all known prospective bidders or offerors that a protest concerning the terms of the solicitation has been lodged, and the basis of the protest; or

(2) In the case of any other type of protest, notify all bidders or offerors who may be affected that a protest has been filed, furnishing a brief but complete

statement of the grounds on which the protest is based.

Each such notice shall inform the recipient that he may, if desired, submit his views and relevant information to the General Counsel (with a copy to the contracting officer) and that such a submission will be considered if the recipient within 5 days after the date of such notice advises the General Counsel of his intent to make such a submission and files such a submission within 10 days thereafter.

(f) Within 10 days after referring a protest to the General Counsel or after receiving notice that a protest has been filed with the General Counsel, the contracting officer shall transmit to the General Counsel a report which shall include (as may be applicable):

(1) A copy of the protest;

(2) A copy of the bid or offer submitted by the protestor and a copy of the bid or offer against which the protest is directed;

(3) A copy of the solicitation, including the specifications or portions thereof which are relevant to the protest;

(4) A copy of the abstract of bids;

(5) The evaluation of offers;

(6) Any other documents relevant to the protest together with any additional evidence or information pertinent to or necessary for a determination of the validity of the protest; and

(7) A statement setting forth the contracting officer's findings, actions, and recommendations in the matter, which shall be fully responsive to the allegations of the protest.

A copy of the contracting officer's statement (subparagraph (7) above) shall be concurrently forwarded by him to the protestor and the head of the procuring activity (if other than the contracting officer).

(g) The protestor or any other bidder or offeror affected by such protest may request a conference with the contracting officer or General Counsel. To be considered, any such request must be made prior to the contracting officer's decision, or, in the case of a protest referred to or filed with the General Counsel, within 5 days after the date of the notice of protest referred to in paragraph (e) above. If a conference is requested, the contracting officer or General Counsel shall set a date within 10 days after receipt of request therefor. The contracting officer or General Counsel may determine, where appropriate, whether or not the circumstances justify an extension of any time limit specified in this § 1-2.407-8.

(h) When the time for acceptance of bids or offers may expire before a protest will be resolved, the contracting officer should request an extension of the time for acceptance (with the consent of sureties, if any) from each bidder or offeror whose bid or offer might be eligible for acceptance.

(i) On protests filed with or referred to the General Counsel, his decision shall be made no later than 15 days after receipt of all information submitted in accordance with the provisions of this § 1-2.407.8.

(j) The time periods set out herein are based on calendar days. In appropriate cases (for example, where a solicitation includes a wage-rate decision which may expire unless these procedures for resolution of a protest are accelerated), the contracting officer or the General Counsel, as the case may be, shall have the right to require that submissions be furnished within shorter periods of time than those specified herein. In unusual cases (for example, where the decision rests on a close question of law and requires extensive research or where it becomes necessary for the contracting officer to obtain, correlate, and analyze a significant amount of additional information), the General Counsel may extend the period for submission of the contracting officer's report or the period for reaching and issuing a determination.

(k) The General Counsel's decision on each protest filed with or referred to him shall be dispositive of the matter and shall be furnished to the contracting officer, with a copy to the protestor and to any other person or firm who has submitted information or a statement of position with respect to the protest. The General Counsel shall maintain a file of all decisions.

(l) When a protest has been filed in accordance with the provisions of this § 1-2.407-8 award will not be made until the matter has been resolved unless the head of the procuring activity, with the concurrence of the General Counsel, approves a determination by the contracting officer that the Postal Service will be seriously injured financially or otherwise by delaying award until the protest has been resolved and that, therefore, award should be made without awaiting the decision. When authorized to award a contract prior to resolution of a protest, the contracting officer shall immediately send a notice of the award or proposed award to the protestor and to any other persons or firms who submitted information or views on the protest.

(m) Where a protest filed after award is eligible for consideration under the provisions of this § 1-2.407-8, the contractor shall be furnished immediately with a notice of the protest and the basis thereof. The contracting officer shall, with the advice of counsel, determine whether or not it would be to the best interests of the Postal Service to allow the contractor to proceed, seek mutual agreement with the contractor to suspend contract performance on a no-cost basis, or issue a unilateral stop order.

(n) The General Counsel may designate an authorized representative to perform any of his functions relating to the resolution of protests.

7. Section 1-3.216 *Technical or specialized supplies:* Section 1-3.216 is hereby added as a circumstance permitting negotiation:

§ 1-3.216 *Technical or specialized supplies requiring substantial initial investment or extended period of preparation for manufacture.* (a) *Authority.* Purchases and contracts may be negotiated if for technical or special property that the Postmaster General determines to require a substantial initial investment or an extended period of preparation for manufacture and for which he determines that formal advertising would be likely to result in additional cost to the Government by reason of duplication of investment or would result in duplication of necessary preparation which would unduly delay the procurement of the property.

(b) *Application.* The authority of this section may be used for the procurement of technical or specialized supplies—for example: Letter and sack sorters, encoders, character and code readers, and similar items of equipment; major components of any of the foregoing; and any supplies of a technical or specialized nature which may be necessary for the use or operation of any of the foregoing. Such procurement generally involves:

(i) High starting costs which already have been paid for by the Postal Service or by the supplier;

(ii) Preliminary engineering and development work that would not be useful to or usable by any other supplier;

(iii) Elaborate special tooling already acquired;

(iv) Substantial time and effort already expended in developing a prototype or an initial production model; and

(v) Important design changes which will continue to be developed by the supplier.

The authority of this section will, in general, be used in situations where it is preferable to place a production contract with the supplier who had developed the equipment, and thereby either assure to the Government the benefit of the techniques, tooling, and equipment already acquired by that supplier, or avoid undue delay arising from a new supplier having to acquire such techniques, tooling, and equipment. However, this exception should not be used to avoid duplication of private investment unless this duplication would be likely to result in additional cost to the Postal Service.

(c) *Limitation.* The authority of this section shall not be used unless and until the Postmaster General or the Deputy Postmaster General has determined, in writing that:

(i) The supplies are of a technical or special nature requiring a substantial initial investment or an extended period of preparation for manufacture; and

(ii) Procurement by formal advertising either:

(A) Would be likely to result in additional cost to the Postal Service by reason of duplication of investment, or

(B) Would result in duplication of necessary preparation which would unduly delay the procurement.

8. Part 1-16 *Procurement forms:* Standard procurement forms shall be modified to conform with any changes, alterations, or deletions accomplished by this regulation. Effective as of the date of the commencement of operations of the U.S. Postal Service, any reference in any form appearing in this Part to "United States of America" and "Government" shall be modified to read "United States Postal Service" and "Postal Service" respectively.

b. *Federal Property Management Regulations.* Except as provided in Part II b of this order, or by agreement between parties, or as required where the Postal Service is a tenant in a building controlled by the General Services Administration, or as required when the Postal Service is a user of supplies or services furnished by the General Services Administration, the Federal Property Management Regulations (Title 41, Code of Federal Regulations, Chapter 101) shall not apply to the Postal Service.

1. Part 101–11—Records Management and Subchapters, E—Supply and Procurement, F—Telecommunications and Public Utilities, G—Transportation and Motor Vehicles, and H—Utilization and Disposal shall apply to the Postal Service to the same extent as though the Postal Reorganization Act had not been enacted.

2. Part 101–19—Management of Building and Grounds of the Federal Property Management Regulations is hereby adopted as a regulation of the Postal Service, applicable to the operation and maintenance of buildings and grounds jurisdiction of which is vested in the Postal Service by the Postal Reorganization Act; *Provided, however,* That Subpart 101–19.4—Standard Practices for Financing shall not apply. Financing the operation and maintenance of such buildings and grounds occupied jointly by the Postal Service and other agencies shall be the subject of Agreements to be made between the Postal Service and such other agencies.

Any authority or responsibility formerly vested in the General Services Administration or its Administrator by this Part 101–19, other than set forth in Subpart 101–19.6—Federal Fire Council, is hereby vested in the Postal Service. Accordingly, any reference to "GSA" or "General Services Administration" or "Administrator" shall be construed in a manner consistent therewith. Any reference to "Federal" building(s) shall be construed to mean "Postal" building(s).

III. *Labor standards in postal leases*—A. *Payment of prevailing wages in postal lease agreements.* Pursuant to 39 U.S.C. 410(d) any Lease, Agreement to Lease, or Rental Agreement for net interior space in excess of 6,500 square feet, in any building or facility or part of any building or facility to be occupied for purposes of the Postal Service, and any modification of such Lease or Agreement which requires the construction, modification, alteration, repair, painting, decoration, or other improvement of the building or space, or improvement at the site, shall include the following contract clause. Any such Agreement which requires only maintenance work necessary to keep the building or space in such condition that it may be continuously used at an established capacity and efficiency for its intended purpose shall not include this clause.

(CONTRACT CLAUSE)

PAYMENT OF PREVAILING WAGES (39) U.S.C. 410(D)

(a) All mechanics and laborers employed in the construction, modification, alteration, repair, painting, decoration, or other improvement of the building or space covered by this agreement, or improvement at the site of the building or facility covered by this agreement, other than maintenance work necessary to keep the building or space in such condition that it may be continuously used at an established capacity and efficiency for its intended purpose, shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Copeland Regulations (29 CFR Part 3)), the full amounts due at time of payment computed at wage rates not less than the aggregate of the basic hourly rates and the rates of payments, contributions, or costs for any fringe benefits contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the lessor or subcontractor and such laborers and mechanics. A copy of such wage determination decision shall be kept posted by the Lessor at the site of the work in a prominent place where it can be easily seen by the workers.

(b) The lessor may discharge his obligation under this clause to workers in any classification for which the wage determination decision contains:

(1) Only a basic hourly rate of pay, by making payment at not less than such basic hourly rate, except as otherwise provided in the Copeland Regulations (29 CFR Part 3); or

(2) Both a basic hourly rate of pay and fringe benefits payments, by making payment in cash, by irrecovably making contributions pursuant to a fund, plan, or program for, and/or by assuming an enforceable commitment to bear the cost of, bona fide fringe benefits contemplated by 40 U.S.C. 276a, or by any combination thereof. Contributions made, or costs assumed, on other than a weekly basis shall be considered as having been constructively made or assumed during a weekly period to the extent that they apply to such period. Where a fringe benefit is expressed in a wage determination in any manner other than as an hourly rate and the lessor pays a cash equivalent or provides an alternative fringe benefit, he shall furnish information with his payrolls showing how he determined that the cost incurred to make the cash payment or to provide the alternative fringe benefit is equal to the cost of the wage determination fringe benefit. In any case where the lessor provides a fringe benefit different from any contained in the wage determination, he shall similarly show how he arrived at the hourly rate shown therefor. In the event of disagreement between or among the interested parties as to an equivalent of any fringe benefit, the Contracting Officer shall submit the question, together with his recommendation, to the Secretary of Labor for final determination.

(c) The assumption of an enforceable commitment to bear the cost of fringe benefits, or the provision of any fringe benefits not expressly listed in section (b)(2) of 40 U.S.C. 276a or in the wage determination decision forming a part of the contract, may be considered as payment of wages only with the approval of the Secretary of Labor pursuant to a written request by the lessor. The Secretary of Labor may require the lessor to set aside assets, in a separate account, to meet his obligations under any unfunded plan or program.

(d) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination decision and which is to be employed under the contract shall be classified or reclassified in accordance with the wage determination decision, and shall report the action taken to the Secretary of Labor. If the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers or mechanics to be used, the Contracting Officer shall submit the question, together with his recommendation, to the Secretary of Labor for final determination.

(e) Apprentices shall be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, U.S. Department of Labor; or, if no such recognized agency exsists in a State, under a program registered with the aforesaid Bureau of Apprenticeship and Training. The allowable ratio of apprentices to journeymen in any craft classification shall be not greater than the ratio permitted to the Lessor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed.

The lessor shall furnish written evidence of the registration of his program and apprentices as well as of the ratios allowed and the wage rates required to be paid thereunder for the area of construction, prior to using any apprentices in the work.

(f) The lessor shall maintain payrolls and basic records relating thereto during the course of the work and shall preserve them for a period of 3 years thereafter for all laborers and mechanics employed in the work covered by this clause. Such records shall contain the name and address of each such employee, his correct classification, rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the lessor has obtained approval from the Secretary of Labor as provided in paragraph (c) of this clause, he shall maintain records which show the commitment, its approval, written communication of the plan or program to the laborers or mechanics affected, and the costs anticipated or incurred under the plan or program.

(g) The lessor shall submit weekly a copy of all payrolls to the Contracting Officer. The lessor shall be responsible for the submission of copies of payrolls of all subcontractors. The copy shall be accompanied by a statement signed by the lessor indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor, and that the classifications set forth for each laborer or mechanic conform with the work he performed. Submission of the Weekly Statement or Compliance required under this agreement shall satisfy the requirement for submission of the above statement. The lessor shall submit also a copy of any approval by the Secretary of Labor with respect to fringe benefits which is required by paragraph (c) of this clause.

(h) The lessor shall make the records required under this clause available for inspection by authorized representatives of the Contracting Officer and the Department of Labor, and shall permit such representatives to interview employees during working hours on the job.

(i) The lessor shall comply with the Copeland Regulations of the Secretary of Labor (29 CFR Part 3) which are incorporated herein by reference.

(j) The Contracting Officer may withhold or cause to be withheld from the lessor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Lessor or any subcontractor on the work the full amount of wages required by the contract.

(k) If the lessor or any subcontractor fails to pay any laborer or mechanic employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the lessor, take such action as may be necessary to cause suspension of any further payments or advances until such violations have ceased.

(l) The lessor agrees to insert this clause including this paragraph (l) in all subcontracts hereunder. The term "lessor" as used in this clause in any subcontract shall be deemed to refer to the subcontractor.

B. *Regulations.* The following provisions shall apply to any lease agreement containing the clause set forth in Part III A hereof.

1. *Department of Labor regulations.* Pursuant to 40 U.S.C. 276c and Reorganization Plan No. 14 of 1950 (3 CFR, 1949–53 Comp., p. 1007), the Secretary of Labor has issued Parts 3 and 5, Title 29, Subtitle A; Code of Federal Regulations (29 F.R. 97 and 13462 as amended by 36 F.R. 304), covering the administration and enforcement of statutes providing for prevailing wage determinations. These Regulations, as they pertain to prevailing wage determinations, are made applicable to the Postal Service lease agreements described in Part III A hereof, by 39 U.S.C. 410(d)(2).

2. *Laborers, mechanics, and the site or work.* (a) As provided in this section, the requirements of the lease agreement clause apply only to work performed by mechanics and laborers at the site of the work.

(b) Mechanics and laborers are those working predominantly with their hands or with construction tools and equipment. The requirements do not apply to office workers, superintendents, technical engineers, or scientific workers, but they do apply to cooks, storekeepers, and working foremen. The requirements apply to mechanics and laborers whether they are employed by the lessor, the general contractor or by a subcontractor or any tier.

(c) The site of the work may include the sites of job headquarters, storage yards, prefabrication or assembly yards, quarries or borrow pits, batch plants, and similar facilities if they are set up for and serve exclusively the particular construction operation and are reasonably near the construction site. Transportation of materials, equipment, or personnel to and from the construction site by employees of construction contractors or subcontractors is covered by the requirements; however, such transportation by common carriers, material suppliers, or manufacturers is not subject to the requirement.

3. *Administration and enforcement.* The contracting officer shall ascertain that the lessor is fully informed of the prevailing wage provisions of the lease and of his responsibilities thereunder. Unless it is clear that the lessor is otherwise fully informed, the lessor shall be so informed either by conference or by letter as soon as possible after the award of the contract.

4. *Wage determinations.* Detailed instructions for requesting wage determinations for specific contracts and for requesting general wage determinations are contained in 29 CFR 5.3 (29 F.R. 100). The following is a summary of the substance of those instructions:

(a) *Requests for wage determinations for specific contracts.* Requests shall be submitted to the Solicitor of Labor, Department of Labor, Washington, D.C. 20210, on Department of Labor Form DB–11. Only those classifications shall be checked on the form which will be needed in the performance of the work. Needed classifications not on the form may be added. Requests shall:

(1) Include a sufficiently detailed description of the work to indicate the type of construction involved, i.e., heavy, highway, building, or other type.

(2) Include the location of the project, giving the distance in miles and the direction from the nearest point of reference.

(3) Include an evaluation as to whether the project is a building, heavy, highway, or other type of construction project.

(4) Be accompanied by an available pertinent wage payment information, unless the wage patterns in the areas are clearly established.

(b) *Requests for general wage determinations.* A general wage determination may be requested for use on individual leases for a particular type of construction in a particular area whenever (1) the wage patterns in such area for the particular type of construction are well settled, and (2) a large volume of the particular type of construction in the area is anticipated.

(c) *Time of Submission of requests.* Requests for wage determinations should ordinarily be submitted at least 30 calendar days before they are required for advertising for bids for, or negotiation of, the contract for which the determinations are sought.

(d) *Limitations.* Each wage determination is effective for 120 calendar days from the date of the determination, and is void if no lease award is made within that period. Accordingly, if it appears that a wage determination will expire before a lease can be awarded, a new determination should be requested at a date which will permit its receipt and issuance to prospective bidders by amendment of the invitation for bids before the date set for bid opening. In individual cases, upon a written finding by the head of the agency, that due to unavoidable circumstances a wage determination expired after bid opening but before award, the Solicitor of Labor may extend the period of effectiveness of the wage determination whenever he finds it necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business.

(e) *Modifications.* Modifications by the Secretary of Labor of a wage determination shall be made part of the proposed contract if received prior to the award of the lease; *Provided,* That, in procurement by advertising any modification received by the contracting officer less than 10 calendar days before the opening of bids shall be disregarded unless it is determined that such modifications reasonably can be furnished to bidders by means of an amendment of the invitation for bids in time to be considered in the preparation of their bids. Copies of modifications received by the contracting officer should be time-date stamped to show the date of receipt.

(f) *Posting.* The contracting officer shall ascertain that a copy of the wage determination is kept posted at the site of the work in a prominent place where it can be easily seen by the workers.

5. *Additional classification.* As provided in paragraph (d) of the clause set forth in Part III A, the contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination forming a part of the lease, and which is to be employed on the contract work, shall be classified or reclassified conformably to such wage determination, and shall report the action taken to the Secretary of Labor. In the event of disagreement between or among the interested parties as to the proper classification or reclassification, the contracting officer shall submit the question, together with his recommendation, to the Secretary of Labor for final determination.

6. *Apprentices.* As provided in paragraph (e) of the clause set forth in Part III A, the lessor, the general contractor, or subcontractor is required to furnish written evidence of registration of his program and apprentices, as well as of the ratios allowed and the wage rates required to be paid thereunder for the area of construction before using any apprentices on the work.

7. *Subcontracts.* The contracting officer shall obtain a list of all subcontracts, together with a description of the work to be performed thereunder. This list will be useful in obtaining compliance with the requirement for submission of payrolls by the contractor and subcontractor.

8. *Payrolls and statements*—(a) *Submission.* Within 7 calendar days after the regular payment date of the payroll week covered, the lessor is required to submit, or cause to be submitted for himself, his general contractor, if any, and the subcontractors, (1) Copies of weekly payrolls in compliance with the clause set forth in Part III A and (2) Weekly statements of compliance as required by the Copeland Regulations incorporated in the contract by the clause set forth in Part III A. (For form of weekly statement of compliance, see 29 CFR 3.3.)

(b) *Examination.* Such examination of the payrolls and statements shall be made as may be necessary to assure compliance with contract, statutory, and regulatory requirements. Particular attention should be given to the correctness of classifications and disproportion-

ate employment of laborers, helpers, or apprentices.

(c) *Preservation.* Payrolls and statements shall be preserved by the contracting officer for a period of 3 years from the date of completion of the work and shall be produced at the request of the Secretary of Labor an any time during such period.

9. *Investigations.* (a) Such investigations as may be necessary to assure compliance with contract, statutory, and regulatory requirements shall be made. Work of 6 months or less duration shall be investigated before acceptance is made, if feasible. Work of longer duration shall be investigated with such frequency as may be necessary to assure compliance. Such investigations shall include interviews of employees on a sampling basis.

(b) Special investigations in detail shall be made when required by complaints or other evidence of violations. Complaints of violations shall be given priority.

(c) Statements, written or oral, made by an employee shall be treated as confidential and shall not be disclosed to the employer without the consent of the employee.

10. *Reports of violations* — (a) *Enforcement reports.* (1) Where underpayments total less than $500, are nonwillful, restitution has been effected and future compliance assured, no report need be made to the Department of Labor except where the investigation was requested by that Department. In those cases, the contracting officer shall submit a factual summary report in accordance with 29 CFR 5.7(a)(1).

(2) Where underpayments total $500 or more, or are willful, the contracting officer shall furnish to the Department of Labor, as soon as practicable, a detailed enforcement report. Such reports shall include a statement of the findings as to the violations and information as to restitution made, payment deductions contract terminations, and the names and addresses of the workers, contractors, and subcontractors concerned.

(3) Where there is substantial evidence that violations are willful and in breach of the False Affidavits Act (18 U.S.C. 1001) or other criminal statute, the matter shall be forwarded to the Attorney General for prosecution and the Secretary of Labor shall be informed of such action.

(b) *Semiannual enforcement reports.* The Postal Service shall furnish the Secretary of Labor, by July 31 and January 31 of each calendar year, semiannual reports on compliance with and enforcement of the prevailing wage provisions of 39 U.S.C. 410(d) covering the periods January 1 through June 30 and July 1 through December 31, respectively. Such reports shall be prepared in the manner prescribed in circular memoranda issued by the Secretary of Labor, and may be combined with the Postal Service reports of general labor standards compliance.

11. *Suspensions and deductions of contract payments.* In the event of failure or refusal by the lessor, the general contractor or any subcontractor to pay all or any part of the wages due workers, the contracting officer may suspend rental payments to the lessor in amounts equal to such unpaid wages which may be due until either restitution has been made directly by the contractor or subcontractor concerned or deductions against payments are made as provided in this section 11. If such failure or refusal appears continuing and willful, or in the event of any other failure or refusal to comply with lease, statutory, and regulatory requirements, the contracting officer may suspend all future rental payments to the contractor until such violations have ceased. If restitution is not made directly by the contractor or subcontractor within a reasonable time, the contracting officer shall prepare a Schedule of Withholdings Under the Davis-Bacon Act, Standard Form 1093, which amounts shall be deducted from the payments made to the lessor and shall be disposed of in accordance with Postal Service procedures.

12. *Restitution.* The lessor, the general contractor, or subcontractor may make restitution of amounts due workers at any time. Where wage underpayments are found, the contracting officer shall request that the lessor make, or cause to be made, restitution to employees or to plans, funds, or programs for any type of fringe benefit listed in the applicable wage determination.

13. *Contract termination.* Under no circumstances will a lease agreement be terminated merely for the failure of the lessor, the general contractor, if any, or a subcontractor to pay prevailing wages as required by 39 U.S.C. 410(d)(1).

14. *Cooperation with Department of Labor.* The Postal Service shall cooperate with respresentatives of the Department of Labor in the inspection of records, interviews with workers and all other aspects of investigations undertaken by the Department of Labor. When requested, the Postal Service shall furnish to the Secretary of Labor any available information with respect to lessors, contractors, subcontractors, their leases and the nature of the work.

C. *Contract Work Hours and Safety Standards Act.* Pursuant to 39 U.S.C. 410(b)(4)(E) the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333) is made applicable to the Postal Service. Accordingly, any Lease, Lease Agreement or Rental Agreement which requires or involves the employment of laborers and mechanics shall contain the following clause:

(CONTRACT CLAUSE)

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

1. *Overtime compensation.* (a) The lessor shall not require or permit any laborer or mechanic in any workweek in which he is employed on any work under this agreement to work in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek on work subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333) unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek, whichever is the greater number of overtime hours. The "basic rate of pay", as used in this clause, shall be the amount paid per hour, exclusive of the lessor's contribution or cost for fringe benefits and any cash payment made in lieu of providing fringe benefits, or the basic hourly rate contained in the wage determination (if applicable), whichever is greater.

(b) In the event of any violation of the provisions of paragraph (a), the lessor shall be liable to any affected employee for any amounts due, and to the Postal Service for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a) in the sum of $10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by paragraph (a).

(c) The Contracting Officer may withhold from the lessor, from any moneys payable under the lease, such sums as may administratively be determined to be necessary to satisfy any liabilities of the lessor for unpaid wages and liquidated damages.

2. *Health and safety standards.* (a) To the extent this agreement is for construction, alteration, and/or repair, including painting and decorating, the lessor shall not require any laborer or mechanic employed in the performance of this agreement to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety as determined under standards promulgated by the Secretary of Labor under the authority of 40 U.S.C. 333. (See 29 CFR 1518)

(b) In the event it is determined that the lessor has failed to comply with this provision regarding health and safety standards, the Postal Service, in its discretion, may cancel this agreement, contract for the balance of the work or term, and charge the additional cost, if any, incurred thereby to the lessor.

3. *Subcontractors.* The lessor agrees to insert this provision, including this paragraph

3. *Subcontracts.* The lessor agrees to inquire its inclusion in all subcontracts of lower tier. The term "lessor" as used in these clauses in any subcontract shall be deemed to refer to the subcontractor.

IV. These regulations do not apply to the acquisition, disposal, or management of property and services relating to the transportation of the mails.

[FR Doc.71-8935 Filed 6-29-71;8:45 am]

federal register

WEDNESDAY, JUNE 30, 1971
WASHINGTON, D.C.
Volume 36 ■ Number 126

PART III

DEPARTMENT OF LABOR

Office of the Secretary

■

Interagency Committee on Construction; Stabilization of Prices and Compensation

DEPARTMENT OF LABOR

Office of the Secretary

[29 CFR Part 10]

INTERAGENCY COMMITTEE ON CONSTRUCTION: STABILIZATION OF PRICES AND COMPENSATION

Notice of Proposed Rule Making

The President issued Executive Order No. 11588 (36 F.R. 6339) on March 29, 1971, pursuant to the Economic Stabilization Act of 1970 (84 Stat. 799, as amended), in order to stabilize wages and prices in the construction industry, having determined for reasons detailed in the order and in a statement issued therewith that such action with respect to this industry is essential to the maintenance of a strong national economy. Under the provisions of the order, the Interagency Committee on Construction is established with authority and responsibility to develop criteria for the determination of acceptable prices and compensation in the construction industry in consultation with the Secretary of Labor, with the Construction Industry Stabilization Committee established by the order, and with other agencies of the Federal Government, and to issue with the approval of the Secretary of Labor necessary rules and regulations to implement and effectuate the provisions of the order and the criteria established by the Interagency Committee.

Notice is hereby given that it is proposed, pursuant to the foregoing authority, to add to subtitle A of Title 29 of the Code of Federal Regulations a new Part 10 as set forth below, promulgating regulations of the Interagency Committee on Construction with the approval of the Secretary of Labor. The proposed part would prescribe "criteria for the determination of acceptable prices in construction contracts" as well as "for acceptable compensation, including bonuses, stock options and the like" as provided in section 8 of the Executive order and would provide for the application of such criteria and determinations to be made thereunder pursuant to the provisions of sections 9 and 10 of the order. The proposed criteria are designed to assure that prices paid for construction will be decreased in line with decreases in labor costs resulting from actions of the Construction Industry Stabilization Committee, and that compensation paid to overhead personnel in the industry will not be increased disproportionately to comparable levels of pay of other workers. The proposed part also sets forth, in § 10.4, provisions previously adopted concerning organization of the Interagency Committee, channelization of functions, and pertinent procedures concerning matters within its jurisdiction. Functions and procedures concerning the application of the proposed criteria, set forth in other sections of the proposed Part 10, are proposed rules.

Interested persons are accorded 30 days from publication of this notice in the FEDERAL REGISTER to submit in writing any data, views, or arguments regarding the proposal by mailing them to the Interagency Committee on Construction, Room 10000, U.S. Department of Housing and Urban Development Building, Washington, D.C. 20410.

The proposed 29 CFR Part 10 reads as follows:

PART 10—INTERAGENCY COMMITTEE ON CONSTRUCTION: STABILIZATION OF PRICES AND COMPENSATION

GENERAL

Sec.
10.1 Scope and purpose.
10.2 Definitions.
10.3 Coverage.
10.4 Interagency Committee organization and procedure.
10.5 Variations in special cases.

STABILIZATION OF PRICES FOR CONSTRUCTION

10.10 Price limitation.
10.11 Acceptable prices for construction.
10.12 Wage stabilization adjustments.
10.13 Assurance of acceptable prices on Federal and federally assisted projects.
10.14 Assurance of acceptable prices on nonfederally involved projects.
10.15 Rights, obligations, and benefits where contract price adjustments are required.
10.16 Investigations and recordkeeping.

STABILIZATION OF COMPENSATION

10.20 Limitations imposed on compensation.
10.21 Certifications of compliance.
10.22 Records relating to compensation.
10.23 Agency responsibilities.
10.24 Violations.

AUTHORITY: The provisions of this Part 10 issued under secs. 202 and 203, 84 Stat. 799 as amended; 12 U.S.C. 1904 note; secs. 8, 9, and 10, E.O. 11588, 36 F.R. 6339.

GENERAL

§ 10.1 Scope and purpose.

(a) Executive Order 11588 issued on March 29, 1971 by the President pursuant to the Economic Stabilization Act of 1970 (84 Stat. 799, as amended), established the Interagency Committee on Construction and provides, in pertinent part, that the development, in consultation with the Secretary of Labor, with major Government procurement agencies, and with the Construction Industry Stabilization Committee (CISC) established by the order, of "criteria for the determination of acceptable prices in construction contracts" as well as "for acceptable compensation, including bonuses, stock options and the like" is a responsibility of the Interagency Committee. This Committee is authorized, under section 10 of the order, to issue with the approval of the Secretary of Labor such rules and regulations as will effectuate the purposes of the order and as may be necessary to provide for the expeditious and effective conduct of the responsibilities assigned under its provisions.

(b) This part, which may also be cited as Regulation No. 1 of the Interagency Committee on Construction, prescribes criteria and procedures for application pursuant to the Executive order, relating to the acceptability of prices charged by and paid to construction contractors for the construction projects they undertake and to the acceptability of increases in compensation of owners and general overhead personnel of contractor organizations in the construction business. The criteria prescribed in this part are intended to support and help make effective the actions taken by the Construction Industry Stabilization Committee under the provisions of the order, which places responsibilities in the CISC for determining whether wage and salary increases negotiated in collective bargaining agreements in the construction industry are acceptable, and accordingly for approving or disapproving such increases.

§ 10.2 Definitions.

(a) "Executive order" or "order" means Executive Order 11588 (36 F.R. 6339).

(b) "Interagency Committee" means the Interagency Committee on Construction composed of officers and employees of Federal departments and agencies as designated by the Secretary of Housing and Urban Development pursuant to Executive Order 11588.

(c) "CISC" means the Construction Industry Stabilization Committee established by the Executive order to assure that wage and salary increases contained in labor contracts negotiated with unions representing employees in the construction industry are acceptable in accordance with the criteria contained in the order and in the Committee's rules set forth in Part 2001 of this title.

(d) "Board" means each Craft Dispute Board jointly established by national contractor associations and national and international unions pursuant to the provisions of Executive Order 11588 and regulations of the CISC in Part 2001 of this title.

(e) "Chairman" means the Chairman of the Interagency Committee appointed pursuant to Executive Order 11588.

(f) "Construction" means (1) all work relating to the erecting, constructing, altering, remodeling, painting, or decorating of installations such as buildings, bridges, highways, and the like, when performed on a contract basis, but shall not include maintenance work performed by workers employed on a permanent basis in a particular plant or facility for the purpose of keeping such plant or facility in efficient operating condition; (2) the transporting of materials and supplies to or from a particular building or project by the workers of the contractor or subcontractor performing the construction or the manufacturing of materials, supplies, or equipment on the

site of a project by such workers; and (3) all other work classified as construction in 5.2(g) of this subtitle.

(g) "Construction industry" includes every person, firm, company, or entity engaging in or undertaking any construction as defined in paragraph (f) of this section and every employee employed by such person, firm, company, or entity for the performance of work relating to a project of construction. Where a person, firm, company, or entity has its enterprise organized into separate parts or divisions, and one or more, but not others of such parts or divisions engages in or undertakes construction as above described, those parts or divisions which are not involved in construction are not deemed part of the construction industry, within the meaning of the regulations in this part. Also excluded from the construction industry are materialmen, fabricators, and suppliers of architectural, engineering, and other services or supplies to members of the industry generally, except those operations of such suppliers of materials or services which are performed in connection with specific projects of construction in such manner as to make them a part thereof.

(h) "Construction contract" or "contract" includes any construction subcontract regardless of tier as well as the primary contract unless otherwise specified.

(i) "Construction projects" means all projects in which construction, as defined in the Executive order and paragraph (f) of this section, is undertaken. Included are new and currently on-going projects, whether Federal, federally assisted, or other projects. As referred to in this part—

(1) "Federal projects" include all projects performed under direct contract with a department, agency, or independent establishment of the Federal Government.

(2) "Federally assisted" projects include all projects performed under contract with a non-Federal entity and with Federal financial assistance, in whole or in part, in the form of grants, loans, guarantees, insurance, or otherwise.

(3) "Federally involved" projects include all projects described in subparagraphs (1) and (2) of this paragraph.

(4) "Nonfederally involved" projects include all projects performed under contract with non-Federal entities or persons, public or private, without any financial assistance from the Federal Government.

(j) "Compensation" means the total amount of remuneration in basic pay, bonuses, stock options, commissions and the like, including employer contributions for retirement and health programs and other fringe benefits, paid per year by a construction firm or organization or by any organization or entity or division or part thereof undertaking construction, except a public body, to the owners thereof (exclusive of dividends on classes of corporate stock listed on a stock exchange or customarily traded over the counter), or to any class or classes of individuals employed by such firm, organization, entity, or division or part thereof to perform managerial supervisory, sales, architectural, secretarial, and other such functions, and which compensation is taken into account (as, for example, overhead expenses) in computing the contract price to be charged the purchaser for work on a construction project (all such individuals are referred to in this part as "overhead personnel"); but nothing in the foregoing definition shall be deemed to include any wage or salary payments or economic benefits established pursuant to collective bargaining agreements, increases in which are, under the Executive order, subject to review by the CISC.

(k) "Acceptable compensation" means, with respect to bonuses, commissions, or other similar payments, that level of compensation which is calculated according to formulae or procedures that applied prior to March 29, 1971; and with respect to remuneration of overhead personnel on an hourly, weekly, or other periodic basis and related payments, "acceptable compensation" means that level of compensation which does not, after the effective date of the regulations in this part, in general increase the ratio that typically prevailed during the period 1968–1970, or that portion thereof for which records are available, between the compensation paid to overhead personnel on such basis and the wage and salary rates prevailing for construction laborers and mechanics in the area where such overhead personnel are headquartered, or, in the alternative, the ratio between the compensation of such overhead personnel and the pay levels prevailing in such area for "white collar" employment, whichever ratio has been adhered to or has remained relatively stable more constantly in the past. Compensation greater than that defined herein as acceptable shall be deemed unacceptable under the Executive order in the application of the regulations in this part, unless the Interagency Committee determines it to be acceptable by the granting of a variance upon an adequate showing as provided in § 10.20(b).

(l) "Hourly labor cost" means the average cost per hour attributable over a specific period to remuneration, including economic benefits, for the services of a specific classification of employees, whether or not members of any union, employed in a craft or branch of the construction industry to perform duties of a character performed by any class or classes of laborers, mechanics, apprentices or other employees whose wage or salary increases are subject to review by the CISC under the Executive order. Such cost includes the earnings per hour at hourly or other periodic rates of pay or at incentive, task, or other rates on whatever basis computed, as well as the cost per hour of economic benefits of any kinds included in the term "wage or salary" as defined in the Executive order and applied by the CISC, including costs of such payments as for vacation, pension, health and welfare, for defraying costs of apprenticeship or other similar programs and for other bona fide fringe benefits, whether or not paid to a fund, and other direct wage costs determined by the collective bargaining agreement or employment agreement applicable to such employees. Not included are such payments as those for traveling expenses, or other expenses, incurred by the employees in furtherance of their employer's interests and properly reimbursable by the employer or payments, such as workmen's compensation insurance, which the employer is required by law to make.

(m) "Wage or salary" means all wage or salary schedules and economic benefits established pursuant to a collective bargaining agreement in the construction industry (Executive order, section 11(b)).

(n) "Person, firm, company, or entity" includes individuals, corporations, public bodies, partnerships, joint ventures, and any organized group of persons.

(o) "Labor contract" means a collectively bargained agreement which is effective to bind the parties with respect to wages or salaries, subject only to such approval as is required by the Executive order and under the procedures set forth in the CISC regulations published as Part 2001 of this title.

(p) "Federal agency" includes the United States, the District of Columbia, and any executive department, independent establishment, administrative agency, or instrumentality of the United States or the District of Columbia, including any corporation, all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or by any of the foregoing departments, establishments, agencies, or instrumentalities.

(q) "Agency head" means the principal official of the Federal agency and includes those persons duly authorized to act in his behalf.

§ 10.3 Coverage.

(a) Except as otherwise provided in paragraph (b) of this section, construction projects covered by this regulation are any undertaking as defined in § 10.2(f) involving or expected to involve labor services performed by two or more construction mechanics or laborers.

(b) Exempt from the requirements of this regulation are—

(1) All contracts involving the sale of construction services of only a single person who neither employs one or more employees nor employs one or more subcontractors, whether such contracts themselves are primary or subsidiary contracts; and

(2) Other specific projects or classes of projects or contracts or classes of contracts which may from time to time be determined by ruling of the Interagency Committee, based upon criteria and procedure hereinafter set forth.

§ 10.4 Interagency Committee organization and procedure.

(a) The Interagency Committee is composed of its Chairman and eight other members. It has adopted the following procedures.

(b) Five members of the Interagency Committee or their designees shall constitute a quorum.

(c) Decisions of the Interagency Committee shall be by majority vote.

(d) Requests of or submittals to the Interagency Committee may be made by mailing them to the Chairman, Interagency Committee on Construction, Room 10,000, U.S. Department of Housing and Urban Development Building, Washington, D.C. 20410.

(e) The Interagency Committee shall convene at the request of its chairman or any two of its members.

(f) The Chairman may make appropriate arrangements to provide such staff personnel for the Interagency Committee as may be determined to be necessary to carry out its functions under the order and the provisions of this part.

(g) The Interagency Committee may utilize such subcommittees and make such delegations of functions as it determines to be necessary to effectuate the purposes of the order.

§ 10.5 Variations in special cases.

The Interagency Committee may, with the approval of the Secretary of Labor, make variations, tolerances, or exemptions from provisions of the regulations in this part in special cases where it finds that such action is necessary and proper in the public interest or to prevent injustice and undue hardship or serious impairment in the conduct of Government business. Such action in cases of federally involved construction will be taken only upon application submitted through the Federal agency having jurisdiction with respect to the project and after consideration of its recommendations. Such action in cases of nonfederally involved construction will be taken only upon application submitted by the petitioner to the Interagency Committee, which may seek the advice of other Federal agencies as appropriate.

STABILIZATION OF PRICES FOR CONSTRUCTION

§ 10.10 Price limitation.

No construction firm, company, or entity performing construction work shall charge a price for construction greater than, and no person, firm, company or entity shall pay a price for construction greater than the price level established as acceptable for such construction by § 10.11, unless such construction is specifically exempt from the application of this part under the provisions of § 10.3.

§ 10.11 Acceptable prices for construction.

The maximum price level acceptable for construction which is subject to the provisions of the Executive order and this part shall be the construction price arrived at between the parties, whether through competitive bidding, negotiation or otherwise, less the amount of any wage stabilization adjustment required pursuant to the provisions of § 10.12 and computed as provided therein. No maximum price level established under this section shall, however, be less than that prevailing for such construction on May 25, 1970.

§ 10.12 Wage stabilization adjustments.

(a) Wage stabilization adjustments shall be computed and applied as provided in this section whenever a wage or salary increase proposed or scheduled to be placed in effect pursuant to a collective bargaining agreement has been determined by a Board or the CISC to be unacceptable under the provisions of section 3 or 4 of the Executive order and certification of such determination has been made by the Secretary of Labor. Such action shall be taken whether the disapproved increase was newly negotiated or was a deferred increase provided as part of a collective bargaining agreement negotiated prior to the date of the order and scheduled to take effect after such date.

(b) (1) After such certification that a wage or salary increase has been determined to be unacceptable under the order, a wage stabilization adjustment for each affected contract shall be computed as provided in paragraph (c) of this section.

(2) For purposes of this section any contract pursuant to which any construction work is undertaken shall be deemed an affected contract if—

(i) the contractor or any subcontractor for the work is, after the date on which the disapproved increase would have been effective if found acceptable, obligated to provide labor services in connection with the contract work which involve the employment of any employees in any craft or branch of the construction industry to perform duties of a character performed in such craft or branch by the class or classes of laborers, mechanics, apprentices, or other employees for whom such disapproved increase had been negotiated, and if

(ii) the rates of pay or fringe benefits received by such employees of the contractor or subcontractor or by some of them would normally have been raised to a higher level as a result of the increase which was disapproved, in the absence of the review requirements of the order or of the failure to secure approval of such negotiated increase thereunder.

(3) No contract involving construction which is awarded on the basis of bids submitted or negotiations concluded after the certification that a wage or salary increase has been determined to be unacceptable under the order shall, for purposes of this section, be considered a contract affected by the disapproval of such increase, for which a wage stabilization adjustment is required.

(4) No contract involving construction shall, for purposes of this section, be deemed an affected contract or be subject to a wage stabilization adjustment hereunder if, as in certain "cost-plus" type contracts, its provisions ensure that the price payable by the purchaser of the construction services for items dependent on the remuneration, including fringe benefits, received by employees engaged in the performance of the contract will include not more than the actual costs to the contractor.

(c) (1) The wage stabilization adjustment for a contract subject to the provisions of paragraph (b) of this section shall be the amount computed as provided in the following subparagraphs of this paragraph (c), representing the decrease in cost to the contractor or subcontractor, attributable to disapproval under the Executive order of the negotiated wage increase, of the services of the individuals employed in the performance of his contract.

(2) Each affected class of employees shall first be determined. Each such class includes all those employees employed, after the date on which the disapproved increase would have been effective if found acceptable, to perform duties of a character performed in the same craft or branch of the construction industry by a specific class of laborers, mechanics, apprentices, or other employees for whom a wage increase previously negotiated was rendered ineffective by the disapproval action. There shall then be determined, for each affected class of employees employed on the contract work in the specified craft or branch for which the wage or salary increase was disapproved, the difference per hour in labor cost between the unacceptable wage and salary level which would have prevailed under the labor contract if the increase had not been disapproved and the acceptable pay level actually prevailing on the contract construction after certification of the disapproval. The determination shall be made by subtracting the hourly labor cost (as defined in § 10.2(1)) at such acceptable level from the hourly labor cost at such unacceptable level. For this purpose the acceptable pay level shall be deemed to be either the preexisting level, if the rates of pay and economic benefits of employees in the affected class continue at that level following certification of the disapproved increase, or, if such rates or benefits have been increased to a higher level as a result of a subsequent approval under the order of a lesser increase than previously disapproved, then such higher level shall be deemed the acceptable level.

(3) The difference in hourly labor cost resulting from disapproval of the wage or salary increase, computed in accordance with subparagraph (2) of this paragraph for each affected class of employees, shall then be multiplied by the

number of hours worked by employees of that class on the contract construction from the beginning of the period during which such increase would have been effective if it had not been disapproved. The resulting figure represents the portion of the wage stabilization adjustment directly attributable to employment of workers of that class on the contract.

(4) The amounts determined for each class of affected employees by the computation in subparagraph (3) of this paragraph shall then be added together. Whenever the calculation of any portion or portions of the contract price for items other than remuneration of the employees in the affected classes depends wholly or in part on the amount of such remuneration, there shall also be computed a difference in price for such items proportionate to the difference between remuneration of such employees during the period involved at the unacceptable level which was disapproved and the acceptable level actually in effect during such period, and the amount of such difference shall be added to the above sum. The resulting total is the wage stabilization adjustment to be subtracted, as provided in § 10.11, from the construction price otherwise arrived at by the parties to the contract in order to determine the maximum acceptable price level for that contract. The price thus determined shall constitute the maximum legal price to be paid and accepted for such construction work, and all final and progress payments shall be adjusted to reflect the reduction in price to a legal level.

(d) Every contract described in paragraph (b) of this section is subject to the wage stabilization adjustment provisions of this section, regardless of whether the employees employed in its performance are covered by a collective bargaining agreement. No variance shall be granted unless the affected contractor shows to the satisfaction of the Interagency Committee that the putting into effect of the negotiated wage increase which was certified as unacceptable would not, on the basis of his past practice, have been followed by a commensurate increase in the pay of his employees performing like work in the same area.

§ 10.13 Assurance of acceptable prices on Federal and federally assisted projects.

Federal departments and agencies are to assure that appropriate provisions to facilitate contract adjustments so as to arrive at acceptable prices are included in all contracts for Federal and federally assisted construction projects on which solicitations for bids or proposals are issued 30 days or more after the effective date of the regulations in this part. The inclusion of such provisions in all contracts not yet entered into on such effective date is also desirable, and should be effected by the Federal agency wherever practicable under applicable statutes and procedures. Each new contractor, as well as contractors on contracts currently in effect, should in any event be advised of the provisions of the regulations in this part relating to acceptable prices for the contract construction to be performed. Departments and agencies shall also, through whatever procedures they have available, secure necessary price adjustments on any contract for a Federal or federally assisted project whenever such adjustments are required under the provisions of this part as a result of certification by the Secretary of Labor of the disapproval of a negotiated wage or salary increase pursuant to the Executive order and applicable regulations. All price adjustments should be initiated as soon as practicable after the disapproval action.

§ 10.14 Assurance of acceptable prices on nonfederally involved projects.

The parties to contracts for nonfederally involved construction projects which are entered into after the effective date of the regulations in this part should take steps to insure that explicit provision for any price adjustments that may be required under the provisions of §§ 10.10–10.12 is made in the prime contract and any subcontracts thereunder. Upon publication in the FEDERAL REGISTER of any certification by the Secretary of Labor of a wage or salary increase as unacceptable under provisions of the Executive order and applicable regulations, the parties to any contract that may be affected thereby under the provisions of §§ 10.10–10.12 shall promptly take the action required for compliance with those provisions. In anticipation of the need for such compliance, the parties to presently existing contracts should endeavor to find ways to make appropriate price adjustments if these should be required.

§ 10.15 Rights, obligations, and benefits where contract price adjustments are required.

(a) Whenever, pursuant to the provisions of §§ 10.11 and 10.12, the construction price arrived at between the parties must be reduced by the amount of a necessary wage stabilization adjustment in order to keep the construction price at a level acceptable under the provisions of the regulations in this part, such reduction shall inure to the benefit of the person or entity purchasing the project work and, where Federal financial assistance to such purchaser is provided for the project, a proportionate adjustment in such assistance may be made by the Federal agency. Any necessary adjustment in the price on the primary contract shall include the amounts of adjustment attributable to the labor savings on the subcontracts thereunder, if any, and the prime contractor shall be responsible therefor to the purchaser of the project work and for effecting the corresponding adjustments on his subcontracts.

(b) No contract, agreement, or arrangement for construction shall be rendered void, voidable, or otherwise unenforceable by reason of the establishment under the regulations in this part of a price ceiling lower than the price originally arrived at by the parties, the only effect of such ceiling being to reduce the construction price to reflect the decrease in cost to the construction contractor resulting from a decrease in labor costs as a result of wage stabilization action taken under the Executive order.

(c) Private rights of action in law and in equity shall be available to private parties to enforce the regulations in this part relating to acceptable prices for construction in addition to all actions authorized by law to the Federal Government to carry out the purposes of these regulations and the Executive order. In the case of claims relating to construction contracts on private or nonfederally involved projects, disputants shall have normal access to litigation proceedings and/or may request mediation and/or expert testimony from an official of a Federal department or agency with jurisdiction over Federal or federally-assisted construction projects affected by the same disapproval action of the CISC that gives rise to the dispute on the private project.

§ 10.16 Investigations and recordkeeping.

(a) Officials in Federal departments and agencies shall have authority to investigate all construction contracts on federally involved projects under their jurisdiction that are affected by the wage stabilization adjustment provisions of § 10.12 of this part and shall have authority to take whatever action is customary in settling or assisting in settling claims on such contracts. Necessary coordination and direction will be provided by the Interagency Committee with the approval of the Secretary of Labor. The Secretary of Labor may direct that investigations be made of contracts on nonfederally involved projects in appropriate cases.

(b) All contractors shall maintain records, to be preserved for at least 1 year after completion of the work on a construction project and to be available for inspection and copying to the Interagency Committee, Federal agencies concerned, and their authorized representative or designees, which are adequate to establish the hourly labor cost to be used in calculating wage stabilization adjustments under § 10.12. Payroll records maintained in accordance with the regulations of the Secretary of Labor in Part 5 of this subtitle and Part 516 of this title will be acceptable for this purpose.

STABILIZATION OF COMPENSATION

§ 10.20 Limitations imposed on compensation.

(a) Criteria established for determining whether compensation in the construction industry, as defined in § 10.2(j), is at a level acceptable under the provisions of Executive Order 11588 are set forth in the definition of "acceptable compensation" in § 10.2(k). The payment to overhead personnel of compensation at a level greater than that defined as acceptable compensation in § 10.2(k), except to the extent specifically

authorized by a variance issued as provided in paragraph (b) of this section, is payment of unacceptable compensation within the meaning of the order, and it shall be a violation of the order for any construction firm, contractor, or other seller of construction services, after the effective date of the regulations in this section, to make any such payment or to place into effect any increase in compensation of overhead personnel which would result in the payment of unacceptable compensation as herein determined.

(b) The Interagency Committee may, pursuant to the provisions of § 10.5, allow a variance from the established criteria for determining acceptable compensation where the need for such adjustment has been adequately demonstrated in cases such as those of new firms, new employees, or of the extension of compensation schedules already used in one part of a firm or organization to other parts. A contractor asserting that his pay practices as established in the past justify the application of different criteria has the burden of showing what such practices are and why an adjustment of the criteria to conform with them is necessary and proper.

§ 10.21 Certifications of compliance.

(a) Certifications from sellers of construction services assuring compliance with the provisions of this part relating to acceptability of compensation paid to overhead personnel shall be furnished as provided in this section, and records in support thereof shall be maintained and preserved as provided in § 10.22. Such certifications and supporting records are required of all contractors and subcontractors performing or seeking to perform work on federally involved projects. Persons purchasing or seeking to purchase construction services on nonfederally involved projects may request the sellers to certify that compensation paid to their overhead personnel is in conformance with the provisions of § 10.20 of the regulations in this part. In the event of any refusal of the request the refusal may be reported to the Chairman of the Interagency Committee for such action as the Committee may deem appropriate.

(b) It shall be a condition of every Federal and federally assisted construction contract, and of every bid or negotiation for such a contract that the contractor file with the Federal agency concerned with the project a signed certification to read as follows:

This is to certify that the compensation paid to overhead personnel of this firm is and will continue to be in conformance with the provisions of § 10.20 of Regulation No. 1 issued by the Interagency Committee on Construction (Title 29, Substitle A, Part 10, Code of Federal Regulations; that supporting records are and will continue to be maintained and preserved as required by § 10.22 of such Regulation and will be made available for inspection and copying to the Federal agency concerned and to the Interagency Committee, the Secretary of Labor and their authorized representatives or designees; and that like certifications will be obtained from all firms involved in all subcontracts on all Federal and federally assisted projects undertaken by this firm and kept available for inspection with this firm's records relating to each such project.

Each head of a Federal agency administering programs for Federal or federally assisted construction shall assure that necessary procedures for the filing of such certifications are provided within 30 days after the adoption of the regulations in this section. Within 30 days after promulgation of such procedural provisions, each primary contractor currently engaged on a contract for federally involved construction and each seller of construction services who has submitted a bid or proposal in response to a solicitation for a proposed contract for federally involved construction shall file such a certificate with the appropriate Federal agency in accordance with the procedures provided therefor. After the promulgation of such procedures, each seller of construction services submitting a bid or proposal in response to a solicitation for a federally involved project shall file such a certification therewith or at such time prior to contract award as the Federal agency head may designate.

(c) Prior to final acceptance of a construction project each primary contractor for a Federal or federally assisted project or his authorized representative shall furnish a signed certification in accordance with the procedures provided by the Federal agency head, reading as follows:

This will certify that the compensation paid to overhead personnel of this firm is and has been maintained in conformance with the certification filed previously as a condition for this contract, that certifications of similar conformance have been received from all firms involved in subcontracts on this project, and that appropriate records have been maintained to support these certifications which will be preserved and made available as provided in 29 CFR 10.22.

§ 10.22 Records relating to compensation.

(a) Every construction firm, contractor, or other seller of construction services shall maintain records adequate to establish conformance to the provisions of § 10.20. Records of the following types will satisfy the requirements of this section:

(1) The rates of total compensation being paid to all overhead personnel in the firm or organization;

(2) The rates of wages currently being paid to laborers and mechanics, including apprentices, employed on projects undertaken by the firm in the area or areas where overhead personnel are headquartered;

(3) Relevant comparisons of compensation and laborer and mechanic wages currently being paid in such area, or "white collar" pay there, as the case may be, together with comparisons of compensation paid and such other pay during the period 1968–70 or that portion thereof for which records are available;

(4) Formulae or other procedures currently being used to determine commissions and similar forms of compensation together with such formulae used prior to March 29, 1971;

(5) Certification for each subcontractor working on the project that information on compensation paid by the subcontractor firm or organization which meets the requirements of subparagraphs (1), (2), (3), and (4) of this paragraph has been placed in the appropriate records of such subcontractor. To the extent that such information is available from records maintained and available in accordance with the regulations of the Secretary of Labor in 29 CFR 516 prescribing recordkeeping requirements under the Fair Labor Standards Act, such records will be acceptable for this purpose.

(b) The records required by paragraph (a) of this section shall be updated at least annually until final settlement of the construction contract to which they relate. They shall be maintained for 1 year after final settlement of the contract, and shall be made available for inspection and copying to the Interagency Committee, Federal agencies concerned, and their authorized representatives. Reports thereon from contractors subject to the Fair Labor Standards Act may be required, if deemed necessary, as provided in § 516.8.

§ 10.23 Agency responsibilities.

(a) Each Federal agency head shall exercise such authority as may be available to him to take such steps as may be necessary and appropriate to assure compliance with the compensation stabilization provisions of the regulations in this part by sellers of construction services on projects with which the agency is concerned, including the making of such examinations and investigations as the agency head may deem necessary or appropriate to assure such compliance or verify the accuracy of any certification furnished pursuant to § 10.21, and resolution of disputes under the disputes clause of the contract. Each agency head shall make reports periodically to the Interagency Committee at such intervals and on such matters as may be required by the Committee and at any other time at the specific request of its Chairman. To assure compliance on nonfederally involved projects as well as on federally involved projects the Secretary of Labor may take any action authorized under the provisions of the Fair Labor Standards Act or other legislation administered by the Department of Labor.

(b) The Secretary of Labor or his duly authorized representative may, where he deems it reasonably necessary to the proper execution of enforcement responsibility under this section, and in response to requests from the Interagency Committee, utilize the authority available to him under the Executive order and pertinent statutes to serve upon any person subject to obligations under § 10.20–10.22 an order directing him

to produce specific documents in his possession. Such orders shall be served by certified mail, shall describe the documents sought and shall specify the time and place where they are to be produced.

§ 10.24 Violations.

(a) Upon the recommendation of the Interagency Committee, and after evidence received through investigation or otherwise provides reason to believe that a contractor or subcontractor on a federally involved project has disregarded his responsibilities assumed pursuant to the regulations in this part, the Secretary of Labor may authorize an administrative determination, after opportunity to the contractor to be heard, as to whether the contractor may be relied upon as a responsible contractor to carry out his obligations under future federally involved contracts, and if such determination is that he may not be so relied upon, may debar such contractor and any firm in which he may have an interest from future participation in contracts for Federal and federally assisted construction work, for a period not to exceed 3 years.

(b) Contractors found in violation of any certification required under the regulations in this part shall be referred immediately to the attention of the Interagency Committee and the CISC. The Interagency Committee shall recommend appropriate disciplinary action to the Secretary of Labor, including debarment of the violator as provided in paragraph (a) of this section.

(c) Any other action authorized by law shall be available to the Secretary of Labor to carry out the purposes of the Executive order and the regulations in this part.

Signed at Washington, D.C., this 24th day of June 1971.

For the Interagency Committee on Construction.

GEORGE ROMNEY,
Chairman.

Approved:

J. D. HODGSON,
Secretary of Labor.

[FR Doc.71-9215 Filed 6-29-71;8:45 am]

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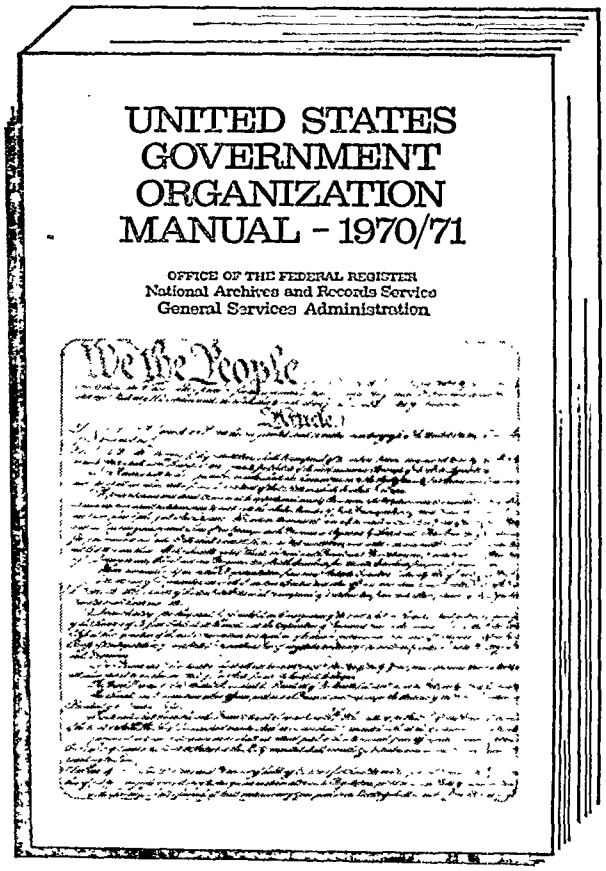

UNITED STATES GOVERNMENT ORGANIZATION MANUAL 1970/71

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