federal register

THURSDAY, DECEMBER 21, 1972

WASHINGTON, D.C.

Volume 37 ■ Number 246

Pages 28117–28263

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PART 213—EXCEPTED SERVICE

Temporary Boards and Commissions

Section 213.3199 shows that the Schedule A authority covering 30 positions at GS-15 and below on the staff of the Cabinet Committee on Education expires on December 31, 1972.

Effective December 31, 1972, § 213.3199 (h) is revoked.

(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.72-21908 Filed 12-20-72;8:51 am]

Title 6—ECONOMIC STABILIZATION

Chapter III—Price Commission

PART 300—PRICE STABILIZATION

Which Base Price Determine by Predecessor Entity

The purpose of this amendment is to modify paragraph (c) of § 300.409 of the Price Commission's regulations (6 CFR 300.409(c)) in two respects.

Section 300.409 was amended and republished in its entirety in the December 16, 1972, edition of the FEDERAL REGISTER (37 F.R. 26817) to become effective on December 18, 1972. As so amended paragraph (c) of § 300.409 deals with base prices determined by predecessor entities. It has come to the Price Commission's attention that there is a question as to whether the rule stated in paragraph (c) applies to situations in which the acquisition took place before December 18, 1972. To make it clear that the rule applies only in the case of an acquisition that takes place on or after the effective date of the amendment, paragraph (c) is being further amended by inserting the words "after December 17, 1972."

In addition, a sentence is being added at the end of paragraph (c) to make it clear that the acquisition does not negate any permitted increases above base price which the predecessor may have accrued, whether or not those increases were ever reflected in the predecessor's actual selling price.

Because the purpose of this amendment is to provide immediate guidance and information as to price stabilization rules, it is hereby found that notice and public procedure thereon is impracticable and that good cause exists for making them effective less than 30 days after publication.

(Economic Stabilization Act of 1970, as amended, Public Law 91-379, 84 Stat. 799; Public Law 91-558, 84 Stat. 1468; Public Law 92-8, 85 Stat. 13; Public Law 92-15, 85 Stat. 38; Economic Stabilization Act Amendments of 1971, Public Law 92-210; Executive Order No. 11640, 37 F.R. 1213, Jan. 27, 1972; Cost of Living Council Order No. 4, 36 F.R. 20202, Oct. 16, 1971)

Effective December 18, 1972, § 300.409 (c) is amended to read as set forth below.

Issued in Washington, D.C., on December 18, 1972.

C. JACKSON GRAYSON, Jr.,
Chairman, Price Commission.

§ 300.409 New property and new services.

* * * * *

(c) *Base prices determined by predecessor entities.*

If a legal entity or a component of a legal entity determines a base price for a product or service which it sells or leases to a particular market and the entity or component is acquired by another person after December 17, 1972, the property or service does not become a new property or new service with respect to the same market. The base price of the property or service with respect to that market remains the base price determined for it by the predecessor entity or component. In determining the price the acquiring person may charge for the property or service, there may be added to that base price any increase allowed under this part before or after the acquisition.

* * * * *

[FR Doc.72-21988 Filed 12-19-72;12:31 pm]

PART 301—RENT STABILIZATION

Rent Controlled Units; Furnishing of Information to Price Commission

The purpose of this amendment is to eliminate the filing deadline in § 301.105 (c)(1) of the Price Commission's rent stabilization regulations. That section instructed Federal, State, and local governments or agencies or instrumentalities thereof, administering rent control programs to file certain information with the Price Commission before April 15, 1972, if they wanted to continue to operate their own programs. The April 15, 1972, deadline has expired and no longer serves any useful purpose. Until an agency or instrumentality files the information, § 301.105(b) prohibits the rent for any of its rent controlled units from being raised above the base rent for that unit determined pursuant to the provisions of Subpart C of Part 301 of the Economic Stabilization Regulations. Consequently, an agency or instrumentality which has continued to operate its rent control program under its own rules and regulations and has not filed the information as provided in § 301.105(c) remains subject to all provisions of Part 301.

In addition a question has been raised as to whether it is mandatory for any agency or instrumentality which could bring its rent control program within the purview of § 301.105 to do so and whether the Price Commission can compel an agency or instrumentality to bring its program under that section. This amendment restates Price Commission policy that the decision lies with the agency or instrumentality as to whether to (1) file the necessary information with the Price Commission and continue to operate its program according to its own laws and regulations, or (2) not file and operate pursuant to the rent stabilization regulations. The option lies with the governmental agency or instrumentality concerned.

The introductory clause in paragraph (c) is being amended by inserting between the words "which elects to comply with this section" to make it clear that the choice lies with the governmental authority concerned.

Paragraph (c)(1) is being amended by deleting the words "Before April 15, 1972" and adding after the word "procedures" the phrase in effect on November 14, 1971," and after the word "implemented" the phrase "and any changes in such laws, regulations, and procedures subsequent thereto through the date of initial submission to the Price Commission."

Paragraph (c)(3) is being amended by adding after the words "calendar quarter" the phrase "beginning with the quarter ending on March 31, 1972".

The changes in paragraph (c) (1) and (3) provide for keeping open an agency's or instrumentality's option to file and operate its own program.

Because the purpose of this amendment is to provide immediate guidance and information as to the rent stabilization program, and for its effective implementation, it is hereby found that notice and public procedure thereon is impracticable and that good cause exists for making it effective less than 30 days after publication.

(Economic Stabilization Act of 1970, as amended, Public Law 91-379, 84 Stat. 799; Public Law 91-558, 84 Stat. 1468; Public Law 92-8, 85 Stat. 13; Public Law 92-210, Executive Order No. 11640, 37 F.R. 1213, Jan. 27, 1972; Cost of Living Council Order No. 4, 36 F.R. 20202, October 16, 1971.)

In consideration of the foregoing, § 301.105(c) of Part 301 of Title 6 of the Code of Federal Regulations is amended as set forth below, effective December 18, 1972.

Issued in Washington, D.C., on December 18, 1972.

C. JACKSON GRAYSON, Jr.,
Chairman, Price Commission.

* * * * *

(c) *Instruction to governmental authorities.* Each governmental authority referred to in paragraph (a) (1) or (2) of this section which elects to comply with this section shall—

(1) Furnish the Price Commission a full description of its method of rent control and a copy of each of its laws, regulations, and procedures in effect on November 14, 1971, by which that control is implemented, and any changes in such laws, regulations, and procedures subsequent thereto through the date of initial submission of such information to the Commission;

* * * * *

(3) Report to the Price Commission within 30 days after the end of each calendar quarter, beginning with the quarter ending on March 31, 1972, on the aggregate percentage of rent increases for controlled rents under its jurisdiction during that quarter, and

* * * * *

[FR Doc.72-21989 Filed 12-19-72;12:32 pm]

Title 7—AGRICULTURE

Chapter VII—Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

[Amdt. 2]

PART 729—PEANUTS

Subpart—Regulations for Determination of Acreage Allotments and Marketing Quotas for 1972 and Subsequent Crops of Peanuts

CLOSING DATES FOR TRANSFER, RELEASE AND REAPPORTIONMENT

This amendment of the allotment and marketing quota regulations for peanuts of the 1972 and subsequent crops is issued pursuant to the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et seq.).

The purposes of this amendment are to exclude from §§ 729.22 (a) and (b) and 729.69(b) of the regulations the dates of transfer, release and reapportionment of peanut acreage allotments since these dates are now published under Part 731 of this chapter. In addition, §§ 729.22 and 729.69 are revised to delete certain obsolete provisions, to change the 15-day period for reapportionment to 30 days, and to delete the requirement of approval by the Deputy Administrator of a State committee decision to accept a late-filed record of transfer.

The changes made by this amendment merely exclude from the regulations closing dates now published in Part 731 of this chapter, delete certain obsolete provisions, and make other minor procedural changes. Also, peanut producers are now making plans for the 1973 crop year and need to know the provisions of this amendment as soon as possible. Accordingly, it is hereby determined that compliance with the notice, public procedure, and effective date provisions of 5 U.S.C. 553 is unnecessary, impracticable, and contrary to the public interest, and this document shall become effective upon the date of publication in the FEDERAL REGISTER (12-21-72).

The regulations for determination of acreage allotments and marketing quotas for 1972 and subsequent crops of peanuts (37 F.R. 2645, 3629, 23413) are amended as follows:

1. Paragraphs (a), (b), and (c) of § 729.22 are revised to read as follows:

§ 729.22 Release and reapportionment.

(a) *Release of acreage allotments.* Except as provided in this paragraph, any part of a farm allotment on which peanuts will not be produced and which the operator of the farm voluntarily surrenders in writing to the county committee shall be deducted from the allotment to such farm if such acreage is surrendered not later than the applicable closing date specified under Part 731 of this chapter. Where the entire farm allotment was released in each of the 2 years preceding the current year, the release of the effective farm allotment for the current year shall be in writing and signed by both the owner and the operator of the farm. If any part of the farm allotment is permanently released (i.e., for the current year and all subsequent years), such release shall be in writing and signed by both the owner and operator of the farm. Acreage allotments may not be released (1) from new farms, (2) from farms owned by the Federal Government or any agency thereof, if there is in effect a lease or operating agreement prohibiting the production of peanuts, (3) for the current year, if the owner of the farm notifies the county committee in writing, before acreage is released by the operator, that he objects to such a release, and (4) from the allotment pool if an application for transfer from the pool has been filed in accordance with Part 719 of this chapter. In addition, the peanut acreage may not be released from a farm covered under a long-term land use conservation program, if the allotment is designated.

(b) *Reapportionment of released acreage allotment.* The acreage released under paragraph (a) of this section may be reapportioned by the county committee to other farms in the same county receiving allotments in amounts determined by the county committee to be fair and reasonable on the basis of land, labor, and equipment available for the production of peanuts; crop-rotation practices; and soil and other physical factors affecting the production of peanuts. A farm shall be eligible to receive reapportionment of released acreage only if a written request is filed by the farm owner or operator at the office of the county committee not later than the applicable dates specified under Part 731 of this chapter.

(c) *Closing date for reapportionment of released acreage.* Any acreage released to the county committee may be reapportioned by the county committee to other farms in the county at any time not later than 30 days following the closing date established under Part 731 of this chapter for the filing of a request for an increase in allotment from released acreage.

* * * * *

2. Paragraph (b) of § 729.69 is revised to read as follows:

§ 729.69 Terms and conditions applicable to transfer under section 358a of the act.

* * * * *

(b) *Filing record of transfer.* Form ASCS-375 "Record of Transfer of Allotment or Quota" shall be filed not later than the dates provided for in Part 731 of this chapter, in the year the transfer is to take effect. The State committee may authorize the acceptance of a late-filed record in cases where the State committee determines that the producer was prevented from timely filing for reasons beyond his control.

* * * * *

(Secs. 358, 358a, 359, 375, 55 Stat. 89, as amended, 81 Stat. 658, as amended, 55 Stat. 90, as amended, 52 Stat. 66 as amended; 7 U.S.C. 1358, 1358a, 1359, 1375)

Effective date: Date of publication in the FEDERAL REGISTER (12-21-72).

Signed at Washington, D.C., on December 14, 1972.

GLENN A. WEIR,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.72-21890 Filed 12-20-72;8:49 am]

PART 731—CLOSING DATES FOR TRANSFER, AND FOR RELEASE AND REAPPORTIONMENT

Pursuant to the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et seq.), this new Part 731 is established for the publication of closing dates for transfer and for release and reapportionment of farm marketing quotas and farm acreage allotments. The regulations for establishing farm marketing quotas and farm acreage allotments for each commodity for which quotas or allotments are determined provides generally that closing dates governing the transfer and the release and reapportion-

ment of such quotas and allotments will be established by the appropriate State Agricultural Stabilization and Conservation Committee. Since these closing dates for each State or area of a State will, in most cases, be the same for all such commodities it is desirable that a new part be provided for this purpose. Accordingly, a new Part 731, as above indicated, is hereby established.

The closing dates set forth in this part have been recommended by the respective State Agricultural Stabilization and Conservation Committee.

Since farmers need to know the dates for effecting transfers, release, and reapportionments of 1973 marketing quotas and farm acreage allotments as soon as possible, it is hereby determined that compliance with the notice, procedure, and effective date provisions of 5 U.S.C. 553 is impracticable and contrary to the public interest, and this document shall become effective upon the date of its filing with the Director, Office of the Federal Register.

The regulations are as follows:

Sec.
731.1 Applicability.
731.2 Closing dates.

AUTHORITY: The provisions of this Part 731 issued under secs. 313, 316, 318, 319, 344, 344a, 347, 353, 358, 358a, 375, 378, 52 Stat. 47, as amended, 75 Stat. 469, as amended, 81 Stat. 120, as amended, 85 Stat. 23, 52 Stat. 57, as amended, 79 Stat. 1197, as amended, 52 Stat. 59, as amended, 61, as amended, 55 Stat. 88, as amended, 81 Stat. 856, as amended, 52 Stat. 66, as amended, 72 Stat. 995, as amended; 7 U.S.C. 1313, 1314b, 1314d, 1314e, 1344, 1344b, 1347, 1353, 1358, 1358a, 1375, 1378.

§ 731.1 Applicability.

The provisions of this part apply: (i) for cotton, peanuts, and tobacco (except burley and flue-cured) to the final date on which producers may request a transfer by lease, sale, or owner; (ii) for cotton, peanuts, rice, and tobacco, to the final date on which producers may release or request reapportioned acreage allotments or farm marketing quotas and the final date by which County Agricultural Stabilization and Conservation Committees must reapportion released acreage allotments or farm marketing quotas. The transfer and release and reapportionment regulations and the criteria for establishing the closing dates may be found in this chapter as follows: (i) cotton, part 722; (ii) peanuts, part 729; (iii) rice, part 730; (iv) fire-cured, dark air-cured, Virginia sun-cured, cigar-binder (types 51 and 52), cigar-filler and binder (types 42, 43, 44, 53, 54 and 55) tobacco, part 724; (v) flue-cured tobacco, part 725; and (vi) burley tobacco, part 726.

§ 731.2 Closing dates.

The closing dates are as follows:

State (1)	Closing date for transfer by lease, sale or owner (except burley and flue-cured tobacco); release and reapportionment requests (2)	Final date for reapportionment (3)
Alabama	Feb. 23	1 month following applicable closing dates for transfer, release and requesting reapportionment.
Arizona	Mar. 9	Do.
Arkansas	Mar. 2	Do.
California	Mar. 16	Do.
Connecticut	June 1	Do.
Florida	Apr. 1	Do.
Georgia	Feb. 15	Do.
Illinois	Apr. 18	Do.
Indiana	May 1	Do.
Iowa	do	Do.
Kansas	Apr. 1	Do.
Kentucky	May 1	Do.
Louisiana	Mar. 16	Do.
Massachusetts	June 20	Do.
Minnesota	June 1	Do.
Mississippi	Mar. 2	Do.
Missouri	Apr. 18	Do.
Nevada	Mar. 1	Do.
New Mexico	Feb. 15	Do.
New York	June 1	Do.
North Carolina (Zone I).[1]	Mar. 10	Do.
North Carolina (Zone II): All counties not listed in zone I.	Apr. 1	Do.
Ohio	Mar. 2	Do.
Oklahoma	Mar. 31	Do.
Pennsylvania	June 1	Do.
South Carolina	Mar. 1	Do.
Tennessee (cotton and peanuts).	Apr. 1	Do.
Tennessee (tobacco).	June 25	Do.
Texas (Zone I)[2]	Mar. 1	Do.
Texas (Zone II): All counties not listed in zone I.	Apr. 1	Do.
Virginia (cotton and peanuts).	May 1	Do.
Virginia (tobacco)	June 1	Do.
West Virginia	Apr. 10	Do.
Wisconsin	Mar. 15	Do.

[1] Counties: Alamance, Alexander, Alleghany, Anson, Ashe, Avery, Buncombe, Burke, Cabarrus, Caldwell, Carteret, Caswell, Catawba, Chatham, Cherokee, Clay, Cleveland, Craven, Cumberland, Dare, Davidson, Davie, Duplin, Durham, Forsyth, Franklin, Gaston, Graham, Granville, Greene, Guilford, Harnett, Haywood, Henderson, Hoke, Iredell, Jackson, Johnson, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Madison, Mecklenburg, Mitchell, Montgomery, Moore, Orange, Pamlico, Person, Polk, Randolph, Richmond, Robeson, Rockingham, Rowan, Rutherford, Sampson, Scotland, Stanly, Stokes, Surry, Swain, Transylvania, Union, Vance, Wake, Warren, Watauga, Wayne, Wilkes, Wilson, Yadkin, Yancey.

[2] Counties: Aransas, Atascosa, Austin, Bastrop, Bee, Bexar, Brazoria, Brooks, Caldwell, Calhoun, Cameron, Chambers, Colorado, Comal, DeWitt, Dimmit, Duval, Fayette, Fort Bend, Frio, Galveston, Goliad, Gonzales, Guadalupe, Hardin, Harris, Hays, Hidalgo, Jackson, Jefferson, Jim Hogg, Jim Wells, Karnes, Kenedy, Kinney, Kleberg, LaSalle, Lavaca, Liberty, Live Oak, McMullen, Maverick, Matagorda, Medina, Montgomery, Nueces, Orange, Refugio, San Patricio, Starr, Travis, Uvalde, Val Verde, Victoria, Waller, Webb, Wharton, Willacy, Wilson, Zapata, Zavala.

Effective date: Upon filing with the Director, Office of the Federal Register.

Signed at Washington, D.C., on December 14, 1972.

GLENN A. WEIR,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.72-21889 Filed 12-20-72;8:49 am]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

[Navel Orange Reg. 280]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

§ 907.580 Navel Orange Regulation 280.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Navel oranges, as hereinafter provided, will tend to effectuate the declared policy of this act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of per-

sons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on December 19, 1972.

(b) *Order.* (1) The respective quantities of Navel oranges grown in Arizona and designated part of California which may be handled during the period December 22, 1972, through December 28, 1972, are hereby fixed as follows:

(i) District 1: 637,000 cartons;
(ii) District 2: 68,000 cartons;
(iii) District 3: 45,000 cartons;

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in said amended marketing agreement and order.

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

Dated: December 20, 1972.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.72-22073 Filed 12-20-72;11:09 am]

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

[Milk Order 65; Docket No. AO-86-A27]

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA 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 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 Nebraska-Western Iowa 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 sec. 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 amending the order, except for the Class I Base Plan, 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; and

(4) The issuance of the order amending the order to include provisions constituting the Class I Base Plan 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.

ORDER RELATIVE TO HANDLING

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Nebraska-Western Iowa 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:

§ 1065.7 [Amended]

1. § 1065.7 *Producer,* the period at the end of the provision is changed to a colon and the following proviso is added:

Provided, That a dairy farmer shall not be a producer in any month in which he holds a Class I base if any portion of his milk is delivered, other than as producer milk, to a nonpool plant at which there is Class I disposition.

§ 1065.9 [Amended]

2. In § 1065.9, the word "and" at the end of paragraph (b) is deleted, the period at the end of paragraph (c) is changed to a semicolon followed by the word "and", and a new paragraph (d) is added to read as follows:

(d) Has met the requirements pursuant to § 1065.97(c).

§ 1065.10 [Amended]

3. In § 1065.10 *Distributing plant,* the words "an appropriate health authority" are changed to "a duly constituted health authority."

§ 1065.11 [Amended]

4. In § 1065.11 *Supply plant,* the words "an appropriate health authority" are changed to "a duly constituted health authority"; also, the words "under a Grade A label" are changed to "as Grade A milk."

§ 1065.12 [Amended]

5. In § 1065.12 *Pool plant,* the words "any health authority" in the language preceding paragraph (a) is changed to "a duly constituted health authority."

6. Paragraph (k) of § 1065.22 is amended by revising subparagraph (2) to read as follows:

§ 1065.22 Additional duties of the market administrator.

* * * * *

(k) * * *

(2) The 12th day after the end of each month, the applicable uniform prices pursuant to § 1065.71 or § 1065.71a, and the butterfat differential to be paid pursuant to § 1065.72;

* * * * *

§ 1065.71 [Amended]

7. In § 1065.71, paragraphs (h), (i), (j), (k), and (l) are revoked and paragraph (g) is revised to read as follows:

(g) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price," and except for any month in which a Class I base plan is effective shall be the "uniform price" for milk received from producers.

8. A new § 1065.71a is added to read as follows:

§ 1065.71a Computation of uniform prices for base milk and excess milk.

For each month in which a base plan is effective the market administrator shall compute the uniform prices per hundredweight for base milk and excess milk of 3.5 percent butterfat content received from producers as follows:

(a) From the net amount computed pursuant to § 1065.71 (a) through (e) subtract the amounts specified in subparagraphs (1) through (5) of this paragraph:

(1) The amount computed by multiplying the hundredweight of milk specified in § 1065.71(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 who have no Class I base; and

(3) The amount computed by multiplying the hundredweight of excess milk by the class III price for 3.5 percent butterfat milk provided that the quantity of milk to which the Class III price is applied pursuant to this subparagraph plus the quantity pursuant to subparagraph (2) of this paragraph shall not

exceed the quantity of producer milk in Class III;

(4) An amount computed by multiplying any remaining hundredweight of excess milk by the Class II price for 3.5 percent butterfat milk to the extent that producer milk in Class II is available for such assignment; and

(5) An amount computed by multiplying any remaining hundredweight of excess milk by the Class I price for 3.5 percent butterfat milk.

(b) Divide the net amount obtained in paragraph (a) of this section by the total hundredweight of base milk and subtract not less than 4 cents but less than 5 cents. This result shall be known as the uniform base price per hundredweight of milk of 3.5 percent butterfat content; and

(c) Divide the amount obtained in paragraphs (a) (3), (4), and (5) of this section by the hundredweight of excess milk, and subtract any fractional part of 1 cent. This result shall be known as the uniform excess price per hundredweight of milk of 3.5 percent butterfat content.

9. Section 1065.73 is amended by adding a new paragraph (d) to read as follows:

§ 1065.73 Location differentials to producers and on nonpool milk.

* * * * *

(d) For any month in which a base plan is effective, the uniform price for base milk computed pursuant to § 1065.71a shall be adjusted in the same manner as specified in paragraphs (a) and (b) of this section; *Provided,* That if the milk of a producer is delivered as producer milk to plants at which different base prices apply, then for purposes of location adjustment the base milk of the producer shall be prorated to plants in proportion to deliveries of the producer's milk to such plants.

10. In § 1065.80, the introductory text preceding paragraph (a), and the introductory text of paragraph (d) preceding subparagraph (1) thereof is revised to read as follows:

§ 1065.80 Time and method of payment.

Except in each month in which § 1065.80a applies, each handler shall make payments as follows:

* * * * *

(d) To a cooperative association with respect to receipts of milk for which such cooperative association is the handler pursuant to § 1065.8(d) as follows:

* * * * *

11. A new § 1065.80a is added to read as follows:

§ 1065.80a Time and method of payment to producers and to cooperative associations.

For each month in which a base plan is effective each handler shall make payment as follows:

(a) On or before the 15th day after the end of each month during which the milk was received, to each producer for whom payment is not made pursuant to paragraphs (c) and (d) of this section, at not less than the uniform base price for the quantity of base milk received, adjusted by the butterfat differential computed pursuant to § 1065.72 and by any location adjustment applicable under § 1065.73, at not less than the uniform excess price for the quantity of excess milk received, adjusted by the butterfat differential computed pursuant to § 1065.72 and at not less than the Class III price adjusted by the butterfat differential pursuant to § 1065.72 for the quantity of milk received from producers for whom no base milk is computed, less the following amounts: (1) The payments made pursuant to paragraph (b) of this section; (2) Marketing service deductions pursuant to § 1065.85; and (3) Any proper deductions authorized by the producer: *Provided,* That if by such date such handler has not received full payment for such month pursuant to § 1065.83, 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;

(b) On or before the 27th day of each month to each producer for whom payment is not received from the handler by a cooperative association pursuant to paragraph (c) or (d) of this section and who has not discontinued shipping milk to such handler, a partial payment with respect to milk received from such producer during the first 15 days of the month in an amount per hundredweight not to be less than the weighted average price for the preceding month:

(c) To a cooperative association which has filed a written request for such payment with such handler with respect to producers for whose milk the market administrator determines such cooperative association is authorized to collect payment as follows:

(1) On or before the 26th day of the month, an amount not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (b) of this section, less any deductions authorized in writing by such cooperative association:

(2) On or before the 14th day after the end of each month an amount not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a) of this section, less proper deductions authorized in writing by such cooperative association;

(d) To a cooperative association with respect to receipts of milk for which such cooperative association is the handler pursuant to § 1065.8(d) as follows:

(1) On or before the 26th day of the month, for milk received during the first 15 days of the month an amount per hundredweight equal to not less than the weighted average price for the preceding month; and

(2) On or before the 14th day after the end of each month not less than the value of such milk at the applicable class prices, less payment made pursuant to subparagraph (1) of this paragraph;

(e) In making payments to producers pursuant to paragraphs (a) and (c) of this section, each handler shall furnish each producer or cooperative association with a supporting statement, in such form that it may be retained by the producer, which shall show:

(1) The month and the identity of the handler and of the producer;

(2) The pounds per shipment, the total pounds, and the average butterfat test of milk delivered by the producer;

(3) The minimum rate or rates at which payment to the producer is required under the provisions of §§ 1065.71a, 1065.72, and 1065.73;

(4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight of each deduction claimed by the handler, including any deduction claimed under paragraph (b) of this section and § 1065.85 together with a description of the respective deductions; and

(6) The net amount of payment to the producer.

§ 1065.82 [Amended]

11a. In § 1065.82, *Payments to the producer-settlement fund,* paragraph (b) (1) is revised to read:

(b) (1) The value of such handler's producer milk at the applicable uniform prices specified in § 1065.80 or § 1065.80a; and

12. A new centerhead "Class I Base Plan" is inserted after § 1065.86 and new §§ 1065.90 through 1065.98 are added as follows:

CLASS I BASE PLAN

§ 1065.90 Production history base and Class I base.

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

(a) "Production history base" as assigned to each producer means a quantity of milk in pounds per day as computed pursuant to §§ 1065.92, 1065.93, or 1065.94.

(b) "Production history period" means the period to be used for the computation of production history base. Subject to the conditions of subparagraphs (1), (2), and (3) of this paragraph, a production history period for a producer shall be a 1-year, 2-year, or 3-year production history period depending on whether milk deliveries by the producer began on or before July 1 in the first, second, or third calendar year, respectively, preceding the February 1 on which the production history base is being determined or preceding the most recent February 1.

(1) The production history period of a producer who has forfeited his Class I base pursuant to § 1065.97(a) or has disposed of all of his Class I base shall begin on the later of the following dates:

(i) The first day of the 13th month after the month in which the producer ceased deliveries of producer milk or disposed of his Class I base, or

(ii) The first day of production delivered when the producer resumes deliveries of producer milk.

(2) Except as provided in subparagraph (1) of this paragraph, if the milk deliveries of any dairy farmer are interrupted for 90 days or more during the period prior to the effective date of this provision or prior to the dairy farmer qualifying as a producer, only the period of milk deliveries following such interruption shall be included in the producer's production history period.

(3) In the case of a producer who has acquired the herd of a member of his immediate family (either before or after the effective date of this provision) and has continued production with such herd, the deliveries made by the previous producer during the production history period shall be assumed to have been delivered by the current producer for use in computing a production history base, unless the previous owner transferred the Class I base to a third person.

(c) "Class I base" means a quantity of milk in pounds per day as computed pursuant to § 1065.95 for which a producer may receive the uniform price for base milk;

(d) "Average daily milk deliveries" of a producer in any specified period used for computing production history bases means the total pounds of milk delivered during the period by the producer to pool plants and to nonpool plants excluding milk delivered other than as a producer pursuant to the proviso of § 1065.7 divided by the greater of the number of days pursuant to subparagraphs (1) or (2) of this paragraph.

(1) The number of days' production delivered; or

(2) The calendar days from the first day of delivery through the last day of the period less the number of days' production the producer is prevented from delivering because of storm conditions: *Provided,* That the subtraction for storm conditions shall not exceed 8 days in any calendar year or exceed 4 days if a period of 6 months or less is involved.

§ 1065.91 Base milk and excess milk.

(a) "Base milk" means milk received from a producer during a month 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

(b) "Excess milk" means producer milk other than that defined under paragraph (a) of this section from producers delivering base milk.

§ 1065.92 Computation of production history base for each producer.

A production history base shall be determined by the market administrator pursuant to this section and § 1065.93 for each producer eligible for such base on the effective date of this provision and on February 1 of each year thereafter, respectively. Subject to the conditions of paragraph (h) of this section, a production history base for each producer on the effective date of this provision shall be determined by the market administrator as follows:

(a) The production history base for each producer who began milk deliveries not later than July 1, 1971, shall be calculated by adding the average daily milk deliveries during 1971 to the average daily milk deliveries in 1972 and dividing by two.

(b) The production history base for each producer who began delivery after July 1, 1971, but not later than July 1, 1972, shall be the average daily milk deliveries during the period beginning with the first delivery and through the end of the year 1972.

(c) The production history base for each producer not specified in paragraphs (a) and (b) of this section who began milk deliveries before October 1, 1972, shall be the average daily milk deliveries during the period beginning with the first delivery and through the end of such year multiplied by 0.80.

(d) The production history base for each producer who began milk deliveries on or after October 1, 1972, shall be computed pursuant to § 1065.93(c).

(e) For each producer who became a producer for this market before the effective date of this provision 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 (a), (b), (c), or (d) of this section, based on his deliveries of milk as if the nonpool plant(s) to which he delivered had been a pool plant(s) during the representative period;

(f) A producer not described pursuant to paragraph (e) of this paragraph who delivered milk to a nonpool plant(s) prior to becoming a producer shall be assigned a production history base if such base can be computed pursuant to paragraph (a), (b), (c), or (d) of this section from deliveries of milk from the same farm on which he is a producer at time of base assignment as if the plant(s) to which he delivered had been a pool plant(s) during the production history period.

(g) For a producer who held producer-handler status at any time subsequent to January 1, 1971, a production history base shall be calculated as described in paragraph (a), (b), (c), or (d) of this section as if the milk of his own production received at his producer-handler plant had been received at a pool plant;

(h) The determination of a production history base pursuant to this section shall be subject to the following conditions:

(1) If a producer operated more than one farm at the same time, a separate production history base shall be determined with respect to the average daily producer milk deliveries from each farm, except that only one production history base shall be determined with respect to milk production resources and facilities of a producer handler; and

(2) Only one production history base shall be allowed with respect to milk produced by one or more persons at a single location where the land, building, and equipment, are jointly used, owned, or operated.

§ 1065.93 New producers.

The market administrator shall determine a production history base for each producer for whom a production history base was not determined pursuant to § 1065.92 as follows:

(a) Any producer who delivered his milk to a nonpool plant that became a pool plant shall be assigned a production history base on the same basis as other producers under the order as though the deliveries to the nonpool plant had been deliveries to a pool plant, except that assignment of base in the case of any producer who previously forfeited base or disposed of base by transfer will be subject to the provisions of paragraph (d) of this section.

(b) A producer other than a producer pursuant to paragraph (a) of this section who delivered milk to a nonpool plant prior to becoming a producer as defined in this order and who has at least a 1-year production history period shall be assigned a production history base, effective on the first day of the second month following the month in which he began deliveries of producer milk to a pool plant, on the same basis as if he had been a producer under the order and his milk deliveries to the nonpool plant had been deliveries to a pool plant: *Provided,* That the production history base effective for such producer pursuant to this paragraph in any month before updating shall not exceed the average daily milk deliveries of such producer during the first 2 months of producer milk deliveries from the same production facilities from which milk deliveries were made during his production history period.

(c) A producer whose production history period is less than a 1-year production history period, except a producer assigned production history base pursuant to § 1065.92(c), shall be assigned a production history base on the effective date of this provision or on the first day of the second month following the month in which as a producer he began milk deliveries in an amount equal to 50 percent of his average daily milk deliveries during the immediately preceding 2-month period. Such production history base shall be effective for such producer unless a production history base is acquired by transfer, in which case the greater of the acquired or the base computed from his own production shall be the effective production history base.

(d) A producer who, after having forfeited or disposed of all his Class I base, either continues as a producer on the market or discontinues deliveries to the market and thereafter returns to the market as a producer, shall be assigned a production history base in the manner provided in paragraph (c) of this section, such assignment to be effective not earlier than the first day of the 15th month after the month in which the pro-

ducer who forfeits his base ceases deliveries or a producer who disposes of all his Class I base makes such disposition. 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. This provision shall be applied also to any production facility to which a Class I base has not been assigned that is 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: *Provided,* That in the case of a producer who forfeited his base because he continued to deliver his milk to a plant that had been a pool plant but lost its pool plant qualification, assignment of base pursuant to paragraph (a) of this section will not be subject to delay to the first day of the 15th month after forfeiture, and deliveries by such producer during the period of forfeiture shall not be excluded from production history by reason of such forfeiture.

§ 1065.94 Updating of production history bases.

The production history base for each producer who has neither disposed of his entire base by transfer nor forfeited his base pursuant to § 1065.97(a), or after having disposed of his entire base by transfer or forfeiture has met the delivery requirement prescribed in § 1065.93 (d) for determination of new production histotry base, shall be determined by the market administrator on February 1, 1974, and each February 1 thereafter as follows:

(a) 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 milk deliveries in prior years shall be made as follows:

(1) The prior production history base assigned to such producer shall be changed in proportion to the change in Class I base due to adjustment for hardship or loss of Class I base because of underdelivery of base. In the case of transfer of base production history base shall be adjusted as specified in § 1065.96 (a).

(2) The average daily milk deliveries of a producer in any calendar year that is part of his production history period prior to any net disposal of Class I base by transfers since January 31 of the preceding year or any underdelivery causing reduction of Class I base, shall be reduced in proportion to the net change in Class I base. For the purpose of this subparagraph disposal of base in January shall be treated as if disposed of in the preceding December.

(3) If the average daily milk deliveries of the producer in the preceding year are less than 90 percent of the Class I base assigned to such producer in the preceding year as adjusted for hardship and less any net disposal of base by transfer, then the producer's Class I base shall be reduced by the amount of the difference between such average daily milk deliveries and such Class I base as adjusted for hardship and disposal of base by transfer, and the production history base of such producer shall be reduced in the same proportion as the reduction of Class I base: *Provided,* That this subparagraph shall not apply in any year in which total producer milk is 135 percent or more of the Class I disposition described in § 1065.95(a)(1).

(4) If the net effect of all adjustments for any period is a reduction greater than the production history base or average daily deliveries prior to adjustment, then the resulting amount shall be zero and such period shall not be a production history period.

(b) Effective February 1, 1974, the market administrator shall update the production history base of each producer who has a production history period of 1 year or more as follows: Add (1) the average daily milk deliveries of such producer during the year 1973 and (2) twice the production history base previously assigned to such producer as adjusted pursuant to paragraph (a) of this section, and divide the sum by 3. If such result is less than the production history base previously assigned to such producer as adjusted pursuant to paragraph (a) of this section, then such previous production history base as adjusted shall be the effective production history base.

(c) Effective February 1, 1975, and February 1 in each year thereafter the market administrator shall update the production history base for specified producers as follows:

(1) For each producer who has a 3-year production history period, add (i) the average daily milk deliveries during the preceding calendar year and (ii) the average daily milk deliveries during each of the second and third preceding calendar years (or portion of a year) reduced by any adjustment pursuant to paragraph (a) of this section, and divide such total by 3. If such result is less than the production history base assigned to such producer on or after February 1 of the preceding year as adjusted pursuant to paragraph (a) of this section then such previously assigned production history base, as adjusted, shall be the effective production history base.

(2) For each producer who has a 2-year production history period who did not acquire Class I base by transfer add (i) the average daily milk deliveries in the preceding year, (ii) the average daily milk deliveries in the second preceding year reduced by any adjustment pursuant to paragraph (a) of this section, and (iii) the initial production history base assigned to (or computed for) such producer pursuant to § 1065.92 (c) or (d) or § 1065.93(c) adjusted pursuant to paragraph (a) of this section, and divide the sum by 3. If such result is less than the production history base assigned to such producer on or after February 1 of the preceding year as adjusted pursuant to paragraph (a) of this section, then such previously assigned production history base, as adjusted, shall be the effective production history base.

(3) For each producer who has a 1-year production history period add (i) the average daily milk deliveries of such producer during such 1-year period and (ii) twice the initial production history base assigned to (or computed for) such producer pursuant to § 1065.93(c) adjusted pursuant to paragraph (a) of this section, and divide the sum by 3. If such result is less than the initial production history base assigned to (or computed for) such producer as adjusted pursuant to paragraph (a) of this section, then such initial production history base, as adjusted, shall be the effective production history base.

(4) For each producer who has a 2-year production history period and who has acquired Class I base by transfer, add (i) the average daily milk deliveries of such producer during the preceding year and (ii) twice the production history base assigned to such producer on or after February 1 of the preceding year adjusted pursuant to paragraph (a) of this section, and divide the sum by 3. If such result is less than the production history base previously assigned to such producer as adjusted pursuant to paragraph (a) of this section, then such previously assigned production history base, as adjusted, shall be the effective production history base.

(d) For a producer who is assigned an initial history of production pursuant to § 1065.92 (e), (f), (g) and § 1065.93 the market administrator shall update his history of production from year to year in the manner applicable to a producer delivering to a pool plant as provided in paragraphs (b) and (c) of this section.

§ 1065.95 Computation of Class I base for each producer.

On the effective date of this provision and on February 1, 1974, and 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 § 1065.-93 when they are issued production history bases. On February 1 of each year 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 specified in subdivisions (i), (ii), and (iii) of this subparagraph:

(i) Class I producer milk pursuant to § 1065.46;

(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 a person who was a producer-handler during a portion of the year and who held producer status in the preceding December.

(2) Multiply the quantity computed pursuant to subparagraph (1) by 1.20 and divide such result by the number of days in such year.

(3) Divide the quantity computed pursuant to subparagraph (2) of this paragraph by a quantity which is the total of production history bases computed pursuant to §§ 1065.92, 1065.93, and 1065.94, whichever is applicable. 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" and rounding the result to the nearest pound: *Provided,* That with respect to a producer with a production history period of less than 3 years beginning after the effective date of this provision, 20 percent shall be subtracted from the result of the preceding calculation, and: *Provided further,* That such 20 percent reduction shall be effective continuously with respect to a producer for a period not exceeding 36 months from the beginning of such production history period. With respect to a producer who has acquired production history base by transfer, such 20 percent reduction shall apply only to base exclusive of that acquired by transfer.

§ 1065.96 Transfer of bases.

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

(a) A transfer of base means the disposal of Class I base and production history base by a transferor and the associated acquisition of Class I base and production history base by transferee. Disposal of base means disposal of Class I base and disposal of a proportionate amount of the production history base held by the transferor. Acquisition of base means the acquisition of Class I base and an amount of production history base which is the quantity of Class I base acquired multiplied by the reciprocal of the Class I base percentage. A transfer may be made only to a person who is a dairy farmer. The amount of Class I base credited to the transferee shall be two-thirds of the Class I base disposed of by the transferor: *Provided,* That such one-third reduction shall not apply to:

(1) An intrafamily transfer (including transfer to an estate and from an estate to a member of the immediate family);

(2) The division of base except as provided pursuant to paragraph (h) of this section; and

(3) The combining of bases of two or more producers for purpose of joint enterprise operated by such producers.

(b) A person receiving base by transfer must notify the market administrator in writing of the name of the producer transferring the base, the effective date of the transfer and the amount of base to be transferred. Application for transfer must be made to the market administrator on forms approved by the market administrator and signed by the transferor, his heirs, executor, or trustee and by the person to whom such base is to be transferred;

(c) Subject to paragraphs (a) and (k) of this section, transfers of an entire base or transfers other than pursuant to paragraph (d) of this section may not be made except in the case of:

(1) Death of the baseholder;

(2) Intrafamily transfers;

(3) Termination of the dairy enterprise of base holder;

(4) The baseholder entering the armed services;

(5) Transfer to a partnership or corporation in which the transferor has a material management interest; and

(6) Transfers allowed as a hardship adjustment.

(d) Subject to paragraphs (a) and (k) of this section, a producer may transfer a portion of his Class I base, in multiples of 150 pounds, as follows:

(1) Not more than the larger of 150 pounds or 30 percent of the Class I base assigned to a producer on the most recent of the effective date, February 1 of any year, or the initial assignment of base to such producer, may be disposed of by transfer prior to the February 1 following.

(2) A jointly held base may be divided among individuals engaged in a joint enterprise.

(e) Subject to paragraph (k) of this section a transfer of an entire base may be made effective on any day of the month if application for such transfer is filed with the market administrator within 5 days thereafter. Otherwise such transfer shall be effective on the first day of the month following that in which application is made;

(f) A transfer of a portion of a base shall be effective the first day of the month following that in which application for which such transfer is made to the market administrator;

(g) A base which is jointly held or in a partnership may be transferred subject to limitations otherwise provided in this section only upon application signed by each joint holder or partner, his heirs, executors, or trustee and by the person to whom such base is to be transferred;

(h) A base which has been established by two or more persons operating a dairy farm jointly or as a partnership may be divided among the joint holders or partners if written notification of the agreed division of base signed by each joint holder or partner, his heirs, executor, or trustee, is filed with the market administrator prior to the first day of the month for which such division is to be effective: *Provided,* That, however, a one-third lapse of base shall apply to base to the extent it constitutes a transfer by a person leaving a joint enterprise of base held by such person as an individual not more than 12 months prior to leaving such enterprise.

(i) It must be established to the satisfaction of the market administrator that the conveyance of 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;

(j) In the case of an intrafamily transfer (including transfers to an estate and from an estate to a member of the immediate family), or any transfer not subject to the one-third lapse, all restrictions on transferring base applicable to the transferor producer shall also apply to the transferee;

(k) A producer who receives a base pursuant to § 1065.92 (c), (d), (e), (f), or (g) or § 1065.93 (a), (b), or (c) may not transfer such base, for 1 year from the date of receipt, provided, however, that such limitation shall not apply to:

(1) Intrafamily transfers; or

(2) The quantity of base such producer acquires by transfer.

(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 other than a member of the immediate family of the person transferring such stock will be considered to result in a transfer of base and in this case compliance with all base rules affecting transfers will be required: *Provided,* That if the transferor(s) is the sole holder of the stock and transfers such stock to a member or members of the immediate family, there will be no lapse of base.

(m) A dairy farmer who has ceased deliveries of producer milk because he is delivering milk to a plant formerly a pool plant that no longer has pool plant qualification shall not be permitted to dispose of Class I base.

§ 1065.97 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 90 consecutive days after a Class I base is issued to him or fails to begin delivery of producer milk within 90 days of receipt of a Class I base by transfer 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 such production history, Class I base and production history base 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 if the producer is not a member of a qualified cooperative association, and to the cooperative association of which the producer is a member;

(c) As a condition for designation as a producer-handler pursuant to § 1065.9, 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; and

(d) In assigning Class I base to a producer, the market administrator shall round such base to the nearest pound.

§ 1065.98 Hardship provisions.

Requests of producers for relief from hardship or inequity arising under the provisions of §§ 1065.92 through 1065.97 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 building, herds, or other facilities by fire, flood or storms, official quarantine, disease, pesticide residue, condemnation of milk, military service of the producer or his son;

(3) Loss or potential loss of Class I base pursuant to § 1065.97(a);

(4) Loss or potential loss of Class I base because of underdeliveries pursuant to § 1065.94(a)(3).

(5) Inability to transfer base.

(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 § 1065.97(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 request 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 § 1065.86 for their services at $30 per day or portion thereof, plus necessary travel and subsistence expense 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.

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

Effective date: February 1, 1973.

Signed at Washington, D.C., on December 15, 1972.

RICHARD E. LYNG,
Assistant Secretary.

[FR Doc.72-21888 Filed 12-20-72;8:49 am]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Animal and Plant Health Inspection Service, Department of Agriculture

SUBCHAPTER E—VIRUSES, SERUMS, TOXINS, AND ANALOGOUS PRODUCTS; ORGANISMS AND VECTORS

PART 114—PRODUCTION REQUIREMENTS FOR BIOLOGICAL PRODUCTS

PART 115—INSPECTIONS

Miscellaneous Amendments to Subchapter

Pursuant to the authority contained in the Virus-Serum-Toxin Act of March 4, 1913 (21 U.S.C. 151-158), Subchapter E, Chapter I, Parts 114 and 115 of Title 9 of the Code of Federal Regulations are amended by changing the titles of said Parts and by redesignating § 114.5 as § 115.1, and § 115.1 as § 115.2, and reserving § 114.5 for future use, as follows:

1. Part 114 is amended by changing the title to read: Part 114—Production Requirements for Biological Products.

§ 114.5 [Reserved]

2. Section 114.5 is reserved.

3. Part 115 is amended to read as follows:

Sec.
115.1 Inspections of licensed establishments.
115.2 Inspections of biological products.

AUTHORITY: The provisions of this Part 115 issued under 37 Stat. 832-833; 21 U.S.C. 151-158.

§ 115.1 Inspections of licensed establishments.

(a) Any inspector shall be permitted to enter any establishment licensed under the regulations in Parts 101 through 117 of this subchapter at any hour during the day or night, and shall be permitted to inspect, without previous notification, the entire premises of the establishment, including all buildings, compartments, and other places, all biological products, and organisms and vectors in the establishment, and all equipment, such as chemicals, instruments, apparatus, and the like, and the methods used in the manufacture of, and all records maintained relative to, biological products produced at such establishment.

(b) Each inspector will be furnished with a numbered official badge or identification card, which he shall not allow to leave his possession. Either shall be sufficient identification to entitle him to admittance at all regular entrances and to all parts of the licensed establishment and premises and to any place at any time for the purpose of making an inspection pursuant to paragraph (a) of this section.

§ 115.2 Inspections of biological products.

All biological products, the containers of which bear United States veterinary license numbers or United States veterinary permit numbers or other marks required by these regulations may be inspected at any time or place. If, as a result of such inspection, it appears that any such product, even those prepared in a licensed establishment or imported under permit issued by the Secretary, is worthless, contaminated, dangerous, or harmful, the Secretary shall give notice thereof to the manufacturer or importer and to any jobbers, wholesalers, dealers, or other persons known to have any of such product in their possession. Unless and until the Secretary shall otherwise direct, no persons so notified shall thereafter sell, barter, or exchange any such product in any place under the jurisdiction of the United States or ship or deliver for shipment any such product from any State, Territory, or the District of Columbia. However, failure to receive such notice shall not excuse any person from compliance with the Virus-Serum-Toxin Act.

These amendments are merely editorial and make no substantive change in the regulations. Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure concerning the amendments are impracticable and unnecessary, and good cause is found for making the amendments effective less than 30 days after publication in the FEDERAL REGISTER.

The foregoing amendments shall become effective upon issuance.

Done at Washington, D.C., this 15th day of December 1972.

G. H. WISE,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc.72-21954 Filed 12-20-72;8:54 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airspace Docket No. 72-CE-31]

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

Alteration of Control Zones and Transition Areas

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the control zones at Garden City, Kans., Manhattan, Kans., and North Platte, Nebr., and to alter the transition areas at Garden City, Kans., Manhattan, Kans., and Springfield, Mo.

Nondirectional beacon/radio beacon navigational aids (NDB/RBN) are described in the control zone and/or transition area designations at the above location. Recently these NDB/RBN's have been renamed to avoid duplication and the possibility of misleading pilots. Accordingly, alteration of the control zones and transition areas referred to herein is necessary to reflect these name changes.

Since this amendment is minor in nature and imposes no additional burden on any person, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended effective 0901 G.m.t., December 30, 1972, as hereinafter set forth:

In § 71.171 (37 F.R. 2056), the following control zones are amended to read:

1. The description of the Garden City control zone is amended by deleting "Garden City RBN" each place it appears in the text and substituting "Holcomb RBN" therefor.

2. The description of the Manhattan control zone is amended by deleting "Manhattan RBN" each place it appears in the text and substituting "McDowell Creek RBN" therefor.

3. The description of the North Platte control zone is amended by deleting "North Platte RBN" each place it appears in the text and substituting "Bignell RBN" therefor.

In § 71.181 (37 F.R. 2143), the following transition areas are amended to read:

1. The description of the Garden City transition area is amended by deleting "Garden City RBN" each place it appears in the text and substituting "Holcomb RBN" therefor.

2. The description of the Manhattan transition area is amended by deleting "Manhattan RBN" each place it appears in the text and substituting "McDowell Creek" therefor.

3. The description of the Springfield transition area is amended by deleting "Springfield RBN" each place it appears in the text and substituting "Willard RBN" therefor.

(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 December 6, 1972.

CHESTER W. WELLS,
Acting Director, Central Region.

[FR Doc.72-21883 Filed 12-20-72;8:49 am]

[Airspace Docket No. 72-GL-41]

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

Alteration of Federal Airway Segments

On September 9, 1972, a notice of proposed rule making (NPRM) was published in the FEDERAL REGISTER (37 F.R. 18396) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 71 of the Federal Aviation Regulations that would establish an alternate airway between Briggs, Ohio, and Youngstown, Ohio.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., March 1, 1973, as hereinafter set forth.

In § 71.123 (38 F.R. 307) Victor Airway 43 is amended to read as follows:

V-43 From Appleton, Ohio, via Tiverton, Ohio; Briggs, Ohio; Youngstown, Ohio; including a west alternate from Tiverton via INT Tiverton 040° and Akron, Ohio, 233° radials; Akron to Youngstown; including an E alternate from Briggs via INT Briggs 057° and Youngstown 177° radials to Youngstown; to Erie, Pa.

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

Issued in Washington, D.C., on December 14, 1972.

CHARLES H. NEWPOL,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.72-21882 Filed 12-20-72;8:49 am]

[Docket No. 12437; Amdt. 843]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Amendments

This amendment to Part 97 of the Federal Aviation Regulations incorporates by reference therein changes and additions to the Standard Instrument Approach Procedures (SIAPs) that were recently adopted by the Administrator to promote safety at the airports concerned.

The complete SIAP's for the changes and additions covered by this amendment are described in FAA Forms 3139, 8260-3, 8260-4, or 8260-5 and made a part of the public rule making dockets of the FAA in accordance with the procedures set forth in Amendment No. 97-696 (35 F.R. 5609).

SIAP's are available for examination at the Rules Docket and at the National Flight Data Center, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. Copies of SIAP's adopted in a particular region are also available for examination at the headquarters of that region. Individual copies of SIAP's may be purchased from the FAA Public Document Inspection Facility, HQ-405, 800 Independence Avenue SW., Washington, DC 20591 or from the applicable FAA regional office in accordance with the fee schedule prescribed in 49 CFR 7.85. This fee is payable in advance and may be paid by check, draft or postal money order payable to the Treasurer of the United States. A weekly transmittal of all SIAP changes and additions may be obtained by subscription at an annual rate of $150 per annum from the Superintendent of Documents, U.S. Gov-

ernment Printing Office, Washington, D.C. 20402. Additional copies mailed to the same address may be ordered for $30 each.

Since a situation exists that requires immediate adoption of this amendment, I find that further notice and public procedure hereon is impracticable and good cause exists for making it effective in less than 30 days.

In consideration of the foregoing, Part 97 of the Federal Aviation Regulations is amended as follows, effective on the dates specified:

1. Section 97.23 is amended by originating, amending, or canceling the following VOR-VOR/DME SIAP's, effective February 1, 1973.

Allegan, Mich.—Padgham Field, VOR Runway 27, Amdt. 3.
Atlanta, Ga.—The William B. Hartsfield ATL International Airport, VOR Runway 26, Amdt. 5.
Atlanta, Ga.—The William B. Hartsfield ATL International Airport, VOR Runway 27R, Amdt. 5.
Austin, Tex.—Robert Mueller Municipal Airport, VORTAC Runway 12R, Amdt. 1.
Austin, Tex.—Robert Mueller Municipal Airport, VORTAC Runway 16R, Amdt. 1.
Austin, Tex.—Robert Mueller Municipal Airport, VOR/DME Runway 30L, Amdt. 1.
Clarksburg, W. Va.—Benedum Airport, VOR Runway 3, Amdt. 8.
Cortland, N.Y.—Cortland Co.-Chase Field, VOR Runway 24, Original.
Davis, Calif.—University Airport, VOR/DME-A, Original.
Flint, Mich.—Bishop Airport, VOR Runway 9R, Amdt. 12.
Flint, Mich.—Bishop Airport, VOR Runway 18, Amdt. 6.
Flint, Mich.—Bishop Airport, VOR Runway 27L, Amdt. 8.
Flint, Mich.—Bishop Airport, VOR Runway 36, Amdt. 2.
Harlingen, Tex.—Harlingen Industrial Airpark, VOR Runway 13, Amdt. 3.
Ironwood, Mich.—Gogebic Co. Airport, VOR Runway 9, Amdt. 5.
Ironwod, Mich.—Gogebic Co. Airport, VOR/DME Runway 27, Amdt. 1.
Johnstown, Pa.—Johnstown-Cambria Co. Airport, VOR Runway 15, Amdt. 3.
Lambertville, Mich.—Wagonwheel Airport, VOR-A, Amdt. 2.
Lancaster, Pa.—Lancaster Airport, VOR Runway 8, Amdt. 8.
Madras, Oreg.—City-Co. Airport, VOR/DME Runway 34R, Original.
Ozark, Ala.—Blackwell Field, VOR Runway 30, Original.
Plymouth, Ind.—Plymouth Municipal Airport, VOR Runway 10, Amdt. 3.
Plymouth, Ind.—Plymouth Municipal Airport, VOR Runway 28, Amdt. 2.
St. Paul, Minn.—St. Paul Downtown Holman Field, VOR Runway 30, Amdt. 6.
West Point, Miss.—McCharen Field, VOR/DME-B, Original.
Wharton, Tex.—Wharton Municipal Airport, VORTAC-A, Original.
Youngstown, Ohio—Youngston Municipal Airport, VOR Runway 18, Amdt. 11.

* * * effective January 4, 1973.

Waterloo, Iowa—Waterloo Municipal Airport, VOR Runway 12, Amdt. 2.
Waterloo, Iowa—Waterloo Municipal Airport, VOR Runway 18, Amdt. 2.
Waterloo, Iowa—Waterloo Municipal Airport, VOR Runway 24, Amdt. 10.
Waterloo, Iowa—Waterloo Municipal Airport, VOR Runway 30, Amdt. 8.
Waterloo, Iowa—Waterloo Municipal Airport, VOR Runway 36, Amdt. 11.

2. Section 97.25 is amended by originating, amending, or canceling the following SDF-LOC-LDA SIAP's, effective February 1, 1973.

Atlanta, Ga.—The William B. Hartsfield ATL International Airport, LOC (BC) Runway 27R, Amdt. 8.
Austin, Tex.—Robert Mueller Municipal Airport, LOC/DME (BC) Runway 12R, Amdt. 1.
Flint, Mich.—Bishop Airport, LOC (BC) Runway 27L, Amdt. 6.
Ft. Lauderdale, Fla.—Ft. Lauderdale Executive Airport, SDF Runway 8, Amdt. 2.
Pocatello, Idaho—Pocatello Municipal Airport, LOC/DME (BC) Runway 3, Original.
Seattle, Wash.—Boeing Field International King Co. Airport, LOC (BC) Runway 31L, Amdt. 3.
Tacoma, Wash.—Tacoma Industrial Airport, LOC Runway 17, Amdt. 1.

* * * effective January 4, 1973.

Waterloo, Iowa—Waterloo Municipal Airport, LOC/DME (BC) Runway 30, Original.

3. Section 97.27 is amended by originating, amending or canceling the following NDB/ADF SIAPs, effective February 7, 1973.

Atlanta, Ga.—The William B. Hartsfield, ATL International Airport, NDB Runway 8, Amdt. 34.
Atlanta, Ga.—The William B. Hartsfield, ATL International Airport, NDB Runway 9R, Amdt. 10; Canceled.
Atlanta, Ga.—The William B. Hartsfield, ATL International Airport, NDB Runway 26, Amdt. 7.
Atlanta, Ga.—The William B. Hartsfield, ATL International Airport, NDB Runway 27R, Amdt. 7.
Atlanta, Ga.—The William B. Hartsfield, ATL International Airport, NDB Runway 33, Amdt. 15.
Austin, Tex.—Robert Mueller Municipal Airport, NDB Runway 30L, Amdt. 25.
Clarksburg, W. Va.—Benedum Airport, NDB Runway 21, Amdt. 1.
Crossett, Ark.—Crossett Municipal Airport, NDB Runway 23, Amdt. 1.
Everett, Wash.—Snohomish County (Paine Field), NDB Runway 16, Amdt. 8.
Harlingen, Tex.—Harlingen Industrial Airpark, NDB Runway 17R, Amdt. 3.
Lancaster, Pa.—Lancaster Airport, NDB (ADF) Runway 8, Amdt. 10; Canceled.
Michigan City, Ind.—Michigan City Airport, NDB Runway 20, Amdt. 7.
Naples, Fla.—Naples Municipal Airport, NDB Runway 4, Original.
Naples, Fla.—Naples Municipal Airport, NDB Runway 22, Original.
Omaha, Nebr.—Millard Municipal Airport, NDB Runway 12, Amdt. 1.
Presque Isle, Maine—Municipal Airport, NDB-A, Amdt. 2; Canceled.
Seattle, Wash.—Boeing Field International King County Airport, NDB-A, Amdt. 2.
Seattle, Wash.—Boeing Field International King County Airport, NDB-B, Amdt. 2.
Sheldon, Iowa—Sheldon Municipal Airport, NDB Runway 33, Amdt. 1.
Tacoma, Wash.—Tacoma Industrial Airport, NDB Runway 17, Amdt. 1.
Tacoma, Wash.—Tacoma Industrial Airport, NDB Runway 35, Amdt. 2.
Van Wert, Ohio—Van Wert Municipal Airport, NDB Runway 9, Original.

* * * effective January 4, 1973.

Waterloo, Iowa—Waterloo Municipal Airport, NDB Runway 12, Original.

* * * effective December 7, 1973.

Oelwein, Iowa—Oelwein Municipal Airport, NDB Runway 13, Amdt. 1.

4. Section 97.29 is amended by originating, amending, or canceling the following ILS SIAPs, effective February 1, 1973.

Atlanta, Ga.—The William B. Hartsfield, ATL International Airport, ILS Runway 8, Amdt. 41.
Atlanta, Ga.—The William B. Hartsfield, ATL International Airport, ILS Runway 9L, Amdt. 17.
Atlanta, Ga.—The William B. Hartsfield, ATL International Airport, ILS Runway 9R, Original.
Atlanta, Ga.—The William B. Hartsfield ATL International Airport, ILS Runway 26, Amdt. 8.
Atlanta, Ga.—The William B. Hartsfield ATL International Airport, ILS Runway 33, Amdt. 20.
Austin, Tex.—Robert Mueller Municipal Airport, ILS Runway 30L, Amdt. 25.
Clarksburg, W. Va.—Benedum Airport, ILS Runway 21, Amdt. 2.
Harlingen, Tex.—Harlingen Industrial Airpark, ILS Runway 17R, Amdt. 1.
Indianapolis, Ind.—Indianapolis Municipal (Weir-Cook) Airport, ILS Runway 4L, Amdt. 15.
Seattle, Wash.—Boeing Field International King Co. Airport, ILS Runway 13R, Amdt. 15.

* * * effective January 4, 1973.

Waterloo, Iowa—Waterloo Municipal Airport, ILS Runway 12, Original.

* * * effective December 28, 1972.

Scottsbluff, Nebr.—Scotts Bluff Co. Airport, ILS Runway 30, Original.

5. Section 97.31 is amended by originating, amending, or canceling the following Radar SIAP's, effective February 1, 1973.

Atlanta, Ga.—The William B. Hartsfield ATL International Airport, Radar-1, Amdt. 18.
Seattle, Wash.—Boeing Field International King Co. Airport, Radar-1, Amdt. 4.
Tacoma, Wash.—Tacoma Industrial Airport, Radar-1, Amdt. 2.

6. Section 97.33 is amended by originating, amending, or canceling the following RNAV SIAP's, effective February 1, 1973.

Washington, D.C.—Dulles International Airport, RNAV Runway 1R, Original.
Washington, D.C.—Dulles International Airport, RNAV Runway 19R, Original.

(Secs. 307, 313, 601, 1110, Federal Aviation Act of 1958; 49 U.S.C. 1438, 1354, 1421, 1510; sec. 6(c) Department of Transportation Act, 49 U.S.C. 1655(c), 5 U.S.C. 552(a)(1))

Issued in Washington, D.C., on December 15, 1972.

C. R. MELUGIN, Jr.,
Acting Director,
Flight Standards Service.

NOTE: Incorporation by reference provisions in §§ 97.10 and 97.20 (35 F.R. 5610), approved by the Director of the Federal Register on May 12, 1969.

[FR Doc.72-21831 Filed 12-20-72;8:49 am]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

SUBCHAPTER C—REGULATIONS UNDER SPECIFIC ACTS OF CONGRESS

[Docket No. 205-12]

PART 302—RULES AND REGULATIONS UNDER FLAMMABLE FABRICS ACT

Guaranties, Testing and Labeling for Carpets and Rugs

Amendment of: § 302.9 *Form of separate guaranty;* § 302.10 *Continuing Guaranties;* addition of: § 302.16 *Reasonable and representative tests and recordkeeping requirements relating to small carpet guaranties;* §§ 302.17 *Carpets and rugs with fire-retardant treatment;* and 302.18 *Small carpets and rugs not meeting acceptance criterion.*

This proceeding was initiated by the Federal Trade Commission (hereinafter sometimes referred to as "Commission") by notice of proposed rule making promulgated February 4, 1972, entitled "Proposed Guaranties, Testing and Labeling for Carpets and Rugs," 37 F.R. 3443, February 16, 1972 (hereinafter referred to as "Proposal"). Interested parties were given 30 days within which to submit their written views, arguments, or other data, including suggested revisions, additions, or deletions. A number of such submissions were received.

The Flammable Fabrics Act, 15 U.S.C. section 1191, et seq. (hereinafter sometimes referred to as "Act"), was amended in 1967 by "An Act to amend the Flammable Fabrics Act, etc.", 81 Stat. 568, et seq., December 14, 1967 (hereinafter referred to as the "1967 Amendment"), to increase the protection afforded consumers. The 1967 Amendment permitted the Secretary of Commerce to issue or amend flammability standards under rule making procedures (outlined in section 4 of the Act as amended in 1967, 15 U.S.C., section 1193) by modifying existing standards or establishing new standards for categories of products for which a standard of flammability was not previously provided, such as carpets and rugs, etc. It enlarged the coverage of the Act from "wearing apparel" and "fabric * * * which is intended or sold for use in wearing apparel", to "wearing apparel" and "interior furnishing," including "fabric" or "related material" "intended for use or which may reasonably be expected to be used in any product" ("product" being defined as wearing apparel or interior furnishing). It continued in effect standards existing at the time of its passage until superseded or modified by the Secretary of Commerce.

Section 8 of the Act, 15 U.S.C., section 1197, provides, in effect, that a person marketing or handling products, fabrics, or related materials subject to a flammability standard under the Act may issue either separate or continuing guaranties with regard thereto, provided "reasonable and representative tests" have been performed which show that such products, fabrics, or related materials conform with whichever flammability standard is applicable to them. The recipient of such a guaranty is protected from criminal prosecution under the Act regarding the guaranteed goods if he received the guaranty in good faith and did nothing to affect the flammability of the goods.

Sections 302.9 and 302.10 of the rules and regulations under the Act suggest or prescribe the guaranty forms contemplated in section 8 and provide for their use. Numerous small changes, editorial in nature, have been made in these sections to conform their language to the terminology of the Act as altered by the 1967 Amendment. These sections, as revised, appear hereinafter under the same CFR section numbers.

The 1967 Amendment also changed section 8 of the Act to provide for continuing guaranties "given by seller to buyer applicable to any product, fabric, or related material sold or to be sold to buyer by seller in a form as the Commission by rules and regulations may prescribe", section 6, 1967 Amendment. This type of guaranty is in addition to the two types which were already provided for in section 8, i.e., separate guaranties and continuing guaranties filed with the Commission. In order to effectuate this provision in section 8, the Commission has included a seller-to-buyer guaranty form in new § 302.10. It appears as paragraph (f) thereof.

Both §§ 302.9 and 302.10 have been promulgated as proposed, except for paragraphs (c) and (d) of § 302.10 insofar as they relate to limited continuing guaranties on file with the Commission. These paragraphs were changed to prohibit any reference to such a guaranty on an invoice or other paper covering any product, fabric, or related material, subject to a flammability standard under the Act, which would not be covered by the guaranty because of its limited nature.

The Commission is also amending the rules and regulations under the Act to add a new section thereto, § 302.16, set out hereinafter, prescribing reasonable and representative tests and recordkeeping requirements relative to small carpets and rugs for guaranty purposes pursuant to section 8 of the Act. The need for this section arose when, on December 29, 1970, the Secretary of Commerce, pursuant to authority granted by the 1967 Amendment, promulgated and caused to be published in the FEDERAL REGISTER a "Standard for the Surface Flammability of Small Carpets and Rugs (Pill test), Small Carpets and Rugs DOC FF 2-70" (hereinafter sometimes referred to as "Small Carpet Standard DOC FF 2-70"), to become effective 12 months from the above publication date. This standard is made applicable to manufacturers, importers, and all other persons marketing or handling small carpets and rugs as provided in section 3 of the Act, 15 U.S.C. section 1192, as amended December 14, 1967.

The provisions of 16 CFR 302.15 published in the FEDERAL REGISTER on July 20, 1971, at 36 F.R. 13328, entitled "Reasonable and representative tests and recordkeeping requirements relating to carpet guaranties," issued under section 8 of the Act for carpets and rugs subject to the "Standard for the Surface Flammability of Carpets and Rugs, DOC FF 1-70" (hereinafter sometimes referred to as "Carpet Standard DOC FF 1-70"), are adopted by reference for small carpets and rugs subject to Small Carpet Standard DOC FF 2-70, except that testing and recordkeeping is to be on the basis of units or square yards of small carpets and rugs rather than on the basis of linear yards or square yards. These provisions appear hereinafter as new § 302.16. This section varies from the way it appeared in the proposal. The alternative for testing and recordkeeping on the basis of square yards has been added due to the fact that it was stated in the comments that some small carpet and rug manufacturers currently operate and keep records on a yardage rather than a unit basis. Also, the testing frequency has been reduced from one test every 3,000 units to one test every 25,000 units or square yards as a result of further study of this matter in light of the comments.

Both Carpet Standard DOC FF 1-70 and Small Carpet Standard DOC FF 2-70 require that if a carpet or rug or small carpet or rug has had a fire-retardant treatment or is made of fibers which have had a fire-retardant treatment, it shall be labeled with the letter "T" pursuant to conditions or rules and regulations established by the Commission. This provision with regard to both large carpets and rugs and small carpets and rugs is effectuated primarily by new § 302.17, set forth hereinafter, which provides that, if applicable, the letter "T" shall appear legibly and conspicuously at each place where the fiber content disclosure is made on a label or invoice pursuant to the requirements of the Textile Fiber Products Identification Act, 15 U.S.C. section 70, et seq. (hereinafter sometimes referred to as "Textile Act").

Proposed paragraph (b) of this section has been modified to clarify that the required "T" marking be on all labels and invoices except where the Textile Act and the rules and regulations thereunder permit the use of the invoice alone. From the comments, it appeared that its original form caused some confusion.

Also, paragraph (b) has been changed to make it clear that, where applicable, the "T" markings must be on the Textile Act labels at all times.

Finally, paragraph (c) has been added to better effectuate the intent of the section. It is self-explanatory.

Small Carpet Standard DOC FF 2-70 requires that if a small carpet or rug does not meet the acceptance criterion of such standard, it shall, prior to its introduction into commerce, be "permanently" labeled, pursuant to rules and regulations established by the Commission, with

the statement: "FLAMMABLE (FAILS U.S. DEPARMENT OF COMMERCE STANDARD FF 2-70); SHOULD NOT BE USED NEAR SOURCES OF IGNITION." This provision is effectuated primarily by new § 302.18 set forth hereinafter.

This section too is somewhat different from the way it appeared in the proposal. A point raised in the comments was whether, if a label required by the Textile Act is put on the front of the small carpet or rug, this means that the separate permanent label permitted by this section (which must be in immediate proximity to the Textile Act label) has to be on the front also. The section has been changed to make it clear that under described circumstances, labels on opposite sides of a small carpet or rug can still be "in immediate proximity" to each other.

The Commission has reviewed the comments submitted in connection with this requirement, and finds that the disclosure is reasonable in view of the need to alert consumers to the cautionary statement contained in the label.

The Commission has noted concern in some segments of the merchandising industry regarding the requirement of paragraph (b) of this section that the full cautionary statement appear in all advertisements in which the small carpets or rugs are sold under circumstances where the consumer will not have an opportunity to inspect the label before receiving the merchandise. The concern is that mail order catalogs already published or in print on the date of these amendments would, if they contained solicitations for small carpet and rug orders, be subject to this requirement. This was not the intent. Paragraph (b) applies prospectively; therefore, it would not apply to solicitations in mail order catalogs published or printed or set in print in final form for imminent publishing, before its effective date.

Five additional paragraphs, (c) through (g), have been added to better effectuate the intent of this section. They are self-explanatory.

After full consideration of the views, arguments, and data submitted pursuant to the proposal and other pertinent information and material available to the Commission, the Commission has determined to amend the rules and regulations under the Act in the manner set forth below. Such amendment is necessary and proper for administration and enforcement of the Act and is made pursuant to section 5(c) thereof, 15 U.S.C. section 1194 (c); section 8, 15 U.S.C. section 1197; and Subpart B of Part 1 of the Commission's procedures and rules of practice, 16 CFR 1.11, et seq. The amendment shall be effective 30 days after publication in the FEDERAL REGISTER.

Sections 302.9 and 302.10, Part 302, Subchapter C, Chapter I, Title 16, Code of Federal Regulations, are hereby changed as appears in their corresponding revised sections set forth below; and three new §§ 302.16, 302.17, and 302.18 are hereby added to Part 302, Subchapter C, Chapter I, Title 16, Code of Federal Regulations; all as set forth below:

§ 302.9 Form of separate guaranty.

The forms which follow are suggested forms of separate guaranties under section 8 of the Act for use by guarantors residing in the United States. Representations contained in these suggested forms of separate guaranties with respect to reasonable and representative tests may be based upon a guaranty received and relied upon in good faith by the guarantor, tests performed by or for a guarantor, or class tests, where permitted under these rules. Where the forms are used as part of an invoice or other paper relating to the marketing or handling of products, fabrics, or related materials subject to the Act, wording may be varied to limit the guaranty to specific items in such invoice or other paper. The name, address of the guarantor, and date on the invoice or other paper will suffice to meet the signature, address, and date requirements indicated on the forms.

(a) *General form.*

The undersigned hereby guarantees that reasonable and representative tests, made in accordance with procedures prescribed and applicable standards or regulations issued, amended, or continued in effect under the Flammable Fabrics Act, as amended, show that the product, fabric, or related material covered and identified by, and in the form delivered under this document conforms to the applicable standard or regulation issued, amended, or continued in effect.

Date: _____ _____
Name

_____
Address

(b) *Guaranty based on guaranty.*

Based upon a guaranty received, the undersigned hereby guarantees that reasonable and representative tests, made in accordance with procedures prescribed pursuant to the Flammable Fabrics Act, as amended, show that the product, fabric, or related material covered and identified by, and in the form delivered under this document conforms to the applicable standard or regulation issued, amended, or continued in effect.

Date: _____ _____
Name

_____
Address

(Sec. 5 of the Act, 67 Stat. 112, as amended by 81 Stat. 570, 15 U.S.C.; sec. 1194; sec. 8 of of the Act, 67 Stat. 114, as amended by 81 Stat. 572, 15 U.S.C. sec. 1197)

§ 302.10 Continuing guaranties.

(a) Any person residing in the United States may file with the Federal Trade Commission a continuing guaranty under section 8 of the Act applicable to any product, fabric, or related material marketed or handled by such person. When filed with the Commission, a continuing guaranty shall be fully executed in duplicate and execution of each copy shall be acknowledged before a notary public. Forms for use in preparing continuing guaranties to be filed with the Commission will be supplied by the Commission upon request. To remain in effect, such guaranties must be renewed every 3 years and at such other times as any change occurs in the legal business status of the person filing the guaranty. It is therefore required that any person who has filed a continuing guaranty with the Commission shall promptly advise the Commission in writing of any change in the legal status of the guarantor or in the address of the guarantor's principal office and place of business. Representations contained in the prescribed form of continuing guaranty with respect to reasonable and representative tests may be based upon (1) a guaranty received and relied upon in good faith by the guarantor, (2) tests performed by or for a guarantor, or (3) class tests, where permitted under these rules.

(b) The following is the prescribed form of continuing guaranty for filing with the Commission:

CONTINUING GUARANTY UNDER THE FLAMMABLE FABRICS ACT FOR FILING WITH FEDERAL TRADE COMMISSION

The undersigned, _____, a _____ residing in the
(Corporation, partnership, proprietorship)
United States and having principal office and place of business at _____,
(Street and number)
_____, _____,
(City) (State or territory, ZIP code)
and being engaged in the marketing or handling of products, fabrics, or related materials subject to the Flammable Fabrics Act, as amended, and regulations thereunder,

Hereby guarantee(s) that with regard to all the products, fabrics, or related materials [described as follows: _____
_____
_____]

(If guaranty is limited to certain products, fabrics, or related materials, list the general categories here. If guaranty is not so limited, leave these lines blank.)

hereafter marketed or handled by the undersigned, and for which flammability standards have been issued, amended, or continued in effect under the Flammable Fabrics Act, as amended, reasonable and representative tests as prescribed by the Federal Trade Commission have been performed, which show that the products, fabrics, or related materials conform to such of the above-mentioned flammability standards as are applicable thereto.

Dated, signed, and executed this __ day of _____, 19__, at _____,
(City)
_____.
(State or Territory)

_____ (Impression of corporate seal, if corporation.) (If firm is a partnership list partners below.) _____ _____	_____ (Name under which business is conducted.) _____ (Signature of proprietor, partner, or authorized official of corporation.)

State of_____ } ss
County of_____ }

On this __ day of _____, 19__, before me personally appeared the said _____,
(Signer of guaranty)
proprietor, partner (strike nonapplicable words) _____
(If corporation, give title of signing official)
of _____, to me personally known, and
(Firm name)

acknowledged the execution of the foregoing instrument on behalf of the firm, for the uses and purposes therein stated.

(Impression of notary seal required here.)	_____ Notary Public in and for County of_____ State of_____ My commission expires _____

(c) Any person who has a continuing guaranty on file with the Commission may, during the effective period of the guaranty, give notice of such fact by setting forth on the invoice or other paper covering the marketing or handling of the product, fabric, or related material guaranteed the following:

Continuing guaranty under the Flammable Fabrics Act filed with the Federal Trade Commission.

Provided, however, That such statement may not be used where the guaranty is limited and the invoice or other paper covers any product, fabric, or related material, subject to a flammability standard under the Act, which is not covered by the guaranty because of its limited nature.

(d) Any person who falsely represents that he has a continuing guaranty on file with the Commission when such is not a fact, or who falsely represents that a limited continuing guaranty he does have on file with the Commission covers any product, fabric, or related material when such is not the case, shall be deemed to have furnished a false guaranty under section 8(b) of the act.

(e) Any seller residing in the United States may give a continuing guaranty under section 8 of the act to a buyer applicable to any product, fabric, or related material sold or to be sold to said buyer by seller. All such continuing guaranties shall be fully executed in duplicate and execution of each copy shall be acknowledged before a notary public. To remain in effect, such guaranties must be renewed every 3 years and at such other times as any change occurs in the legal business status of the person giving the guaranty. Representations contained in the prescribed form of continuing guaranty from seller to buyer with respect to reasonable and representative tests may be based upon (1) a guaranty received and relied upon in good faith by the guarantor, (2) tests performed by or for a guarantor, or (3) class tests, where permitted under these rules.

(f) The following is the prescribed form of continuing guaranty from seller to buyer:

CONTINUING GUARANTY FROM SELLER TO BUYER UNDER THE FLAMMABLE FABRICS ACT

The undersigned, _____,
a _____
(Corporation, partnership, proprietorship)
residing in the United States and having its principal office and place of business at
_____, _____,
(Street and number)
_____, _____,
(City) (State or Territory and ZIP code)
and being engaged in the marketing or handling of products, fabrics, or related materials subject to the Flammable Fabrics Act, as amended, and Regulations thereunder,
Hereby guarantee(s) to _____,
(Name and address)
buyer, that with regard to all the products, fabrics, or related materials [described as follows: _____
(If guaranty is limited to certain products, fabrics, or related materials, list the _____ general categories here. If guaranty is not so _____] hereafter limited, leave these lines blank.)
sold or to be sold to buyer by the undersigned, and for which flammability standards have been issued, amended, or continued in effect under the Flammable Fabrics Act, as amended, reasonable and representative tests as prescribed by the Federal Trade Commission have been performed which show that the products, fabrics, or related materials, at the time of their shipment or delivery by the undersigned, conform to such of the above-mentioned flammability standards as are applicable thereto.

Dated, signed, and executed this _____ day of _____ 19____, at _____, _____.
(City) (State or Territory)

(Impression of corporate seal, if corporation.)	_____ (Name under which business is conducted.)
(If firm is a partnership list partners below.) _____ _____ _____ _____	_____ (Signature of proprietor, partner, or authorized official of corporation.)

STATE OF_____,
*County of*_____, *ss:*

On this _____ day of _____, 19____, before me personally appeared the said _____, proprietor, partner
(Signer of guaranty) (Strike non-applicable words) _____
(If corporation, give title of signing official)
of _____
(Firm name), to me personally known, and acknowledged the execution of the foregoing instrument on behalf of the firm, for the uses and purposes therein stated.

(Impression of notary seal required here.)	_____ Notary Public in and for County of_____ State of_____ My commission expires _____

(Sec. 5 of the Act, 67 Stat. 112, as amended by 81 Stat. 570, 15 U.S.C. sec. 1194: section 8 of the Act, 67 Stat. 114, as amended by 81 Stat. 572, 15 U.S.C. sec. 1197)

§ 302.16 Reasonable and representative tests and recordkeeping requirements relating to small carpet guaranties.

(a) The provisions of § 302.15, *Reasonable and representative tests and recordkeeping requirements relating to carpet guaranties,* applicable to carpets and rugs subject to the "Standard for the Surface Flammability of Carpets and Rugs, DOC FF 1–70" shall also apply to small carpets and rugs subject to the "Standard for the Surface Flammability of Small Carpets and Rugs (Pill Test), DOC FF 2–70" promulgated by the Secretary of Commerce, 35 F.R. 19702 (hereinafter referred to as DOC FF 2–70), and references to "Standard" in § 302.15 shall include DOC FF 2–70. Persons issuing guaranties under section 8(a) of the act for small carpets and rugs subject to DOC FF 2–70 shall be subject to all of the requirements of § 302.15 except as provided in paragraph (b) of this section.

(b) In lieu of performing tests and maintaining records on the basis of linear yards or square yards as provided in § 302.15, persons furnishing guaranties for small carpets and rugs subject to DOC FF 2–70 shall perform tests and maintain records on the basis of units of carpets or rugs, with "unit" being defined as a single carpet or rug, or on the basis of square yards. At least one test shall be performed upon commencement of production, importation, or other receipt of such small carpet or rug and every 25,000 units or square yards thereafter.

(Sec. 5 of the Act, 67 Stat. 112, as amended by 81 Stat. 570, 15 U.S.C. section 1194; sec. 8 of the Act, 67 Stat. 114, as amended by 81 Stat. 572, 15 U.S.C. sec. 1197)

§ 302.17 Carpets and rugs with fire-retardant treatment.

(a) For the purposes of this section the following definitions apply:

(1) "Carpet" and "rug" mean "carpet" and "rug" as defined in the "Standard for the Surface Flammability of Carpets and Rugs, DOC FF 1–70," promulgated by the Secretary of Commerce, 35 F.R. 6211.

(2) "Small carpet" and "small rug" means "small carpet" and "small rug" as defined in the "Standard for the Surface Flammability of Small Carpets and Rugs (Pill Test), Small Carpets and Rugs DOC FF 2–70," promulgated by the Secretary of Commerce, 35 F.R. 19702.

(3) "Fire-retardant treatment" means "fire-retardant treatment" as defined in the above-mentioned Carpet and Rug Standard (DOC FF 1–70) or Small Carpet and Rug Standard (DOC FF 2–70).

(b) If a carpet or rug or small carpet or rug is manufactured, imported, or otherwise marketed or handled which has had a fire-retardant treatment or is made of fibers which have had a fire-retardant treatment, the letter "T" shall be set forth legibly and conspicuously, and shall appear at all times, on each label and/or invoice relating thereto pursuant to the requirements of the Textile Fiber Products Indentification Act, 15 U.S.C. section 70, et seq., and the rules and regulations thereunder, whether or not such letter "T" appears elsewhere on said product. Samples, pieces, rolls, or squares used to promote or effect the sale of such carpet or rug are subject to the aforementioned requirements. As provided in the applicable portions of the aforesaid Act and the rules and regulations thereunder, where a carpet or rug or a small carpet or rug; which has had a fire-retardant treatment or is made of fibers which have had a fire-retardant treatment, is sold to an ultimate consumer and was either custom made or commercially installed for such consumer, the labeling required by this section shall not apply with respect to the carpet or rug if an invoice or other paper relating thereto, containing the letter

"T", legibly and conspicuously written, is delivered to the consumer in due course of business.

(c) No person subject to the Flammable Fabrics Act shall manufacture, import, distribute, or otherwise market or handle any carpet or rug or small carpet or rug, including samples, swatches, or specimens used to promote or effect the sale thereof, which is not in compliance with this section.

(Sec. 5 of the Act, 67 Stat. 112, as amended by 81 Stat. 570, 15 U.S.C. sec. 1194)

§ 302.18 Small carpets and rugs not meeting acceptance criterion.

(a) If any small carpet or rug as defined in the Standard for the Surface Flammability of Small Carpets and Rugs (pill test) DOC FF 2-70, is manufactured, imported, or otherwise marketed or handled and does not meet the acceptance criterion of such standard, it shall, prior to its introduction into commerce, be legibly and conspicuously labeled with a permanent label which sets forth the following statement:

"FLAMMABLE (FAILS U.S. DEPARTMENT OF COMMERCE STANDARD FF 2-70): SHOULD NOT BE USED NEAR SOURCES OF IGNITION."

The required cautionary statement may be set out on or affixed to the small carpet or rug on the same label as the fiber content label required to be affixed under the Textile Fiber Products Identification Act, if said label is permanent, or said statement shall be set forth on a separate permanent label on or affixed to the small carpet or rug in immediate proximity to the said required label under the Textile Fiber Products Identification Act. A label on the front of a small carpet or rug shall be considered to be in immediate proximity to a label on the back, provided they are directly opposite each other and are in immediate proximity to the edge of the small carpet or rug.

(b) Such cautionary statements shall also appear in a conspicuous manner in all advertisements in which said small carpets or rugs are being offered for sale through direct mail, telephone solicitation, or under any other circumstances where the consumer, in the ordinary course of dealing, will not have an opportunity to inspect the label before receiving the merchandise. The phrase "Flammable—Read The Label" shall conspicuously appear in all other advertisements of small carpets or rugs which do not meet the acceptance criterion of the standard.

(c) The information required by this section shall be set forth separately from any other information, representations, or disclosures appearing on the same label or elsewhere on the small carpet or rug, and any such other information, representations, or disclosures shall in no way interfere with, minimize, detract from, or conflict with the information required by this section.

(d) Samples, swatches, or specimens used to promote or effect the sale of small carpets or rugs shall be labeled with the information required by this section, in addition to the label required to be affixed to the small carpets or rugs.

(e) Where small carpets or rugs are marketed at retail in packages, and the labeling information required by this section is not readily visible to prospective purchasers, the packages must also be prominently, conspicuously, and legibly labeled with the information required by this section.

(f) No person, other than the ultimate consumer, shall remove, mutilate, or cause or participate in the removal or mutilation of any affixed labeling information required by this section.

(g) No person subject to the Flammable Fabrics Act shall manufacture, import, distribute, or otherwise market or handle any small carpet or rug, including samples, swatches, or specimens used to promote or effect the sale thereof, which is not in compliance with this section.

(Sec. 5 of the Act, 67 Stat. 112, as amended by 81 Stat. 570, 15 U.S.C. sec. 1194)

Issued: December 18, 1972.

By the Commission: Effective 30 days after publication in the FEDERAL REGISTER.

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

[FR Doc.72-21951 Filed 12-20-72;8:54 am]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 19534; FCC 72-1133]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Stations in Fresno, Calif.

Report and order. In the matter of amendment of § 73.202(b), *table of assignments,* FM broadcast stations (Fresno, Calif.), Docket No. 19534, RM-1928.

1. The Commission here considers the notice of proposed rule making, adopted June 28, 1972 (FCC 72-570), proposing amendment of the FM table of assignments (§ 73.202(b) of the rules) to add Channel 290 at Fresno, Calif. This action was based on the petition of John and Sylvia Sonder, doing business as Atlas Broadcasting Co. (Atlas), licensee of daytime AM Station KXEX, Fresno.[1] Fresno, population 165,972, is the seat of Fresno County, population 413,053, which comprises the Fresno Standard Metropolitan Statistical Area (SMSA).[2]

2. The notice pointed out that Fresno has six FM channel assignments, all of which are occupied, 10 AM stations, of which five are daytime only, and there are two other daytime AM stations in the SMSA (at Coalinga and Fowler) and a Class A FM assignment at Fowler (Channel 244A). Additionally, Atlas' arguments were summarized. Atlas contended that an additional assignment should be made in view of the fact that Fresno is located in a growing area of California in the middle of the San Joaquin Valley which is surrounded by mountain ranges, and it is isolated from other major markets. As a further justification for the channel, Atlas relied on the need for Spanish language programing to serve the Spanish-surnamed population in the Fresno metropolitan area estimated at about 9 percent. Atlas furnished a preclusion study showing that while Channel 290 would preclude some areas of possible assignment at least three other FM channels were available for assignment to these areas.

3. The notice also noted that because of population, Fresno was entitled to only six FM assignments under criteria set forth in the further notice of proposed rule making in Docket No. 14185, adopted July 25, 1962 (FCC 62-867), and incorporated by reference in paragraph 25 of the third report, memorandum opinion and order, dated July 25, 1963, 23 R.R. 1859, 1871 (1963). As to Atlas' argument that another FM channel is needed to provide programing for Spanish-speaking population, it was pointed out that there was no assurance that if assigned the petitioner would be the successful applicant. As to population criteria, the notice pointed out that perhaps the population of the SMSA might be better considered.

4. Comments and reply comments were filed by Atlas and Universal Broadcasting Co. (Universal). Universal is the licensee of KFIG(FM), Channel 266 at Fresno. Atlas feels that the suggestion that the SMSA population of Fresno as being more realistic is a valid concept. It also relies on that portion of the third report, memorandum opinion and order in Docket 14185, 23 R.R. at 1867-1868, where the Commission stated that another criterion for assignment of FM channels was the importance of service to minority and specialized audiences. In the latter respect, Atlas points to the almost 30 percent Spanish-surnamed population in the Fresno SMSA. Atlas also relies on information from the 1971 Statistical Abstract of the United States and other data to show various increases in personal income, housing units and other growth of Fresno. Universal feels that the Commission should strictly adhere to the population criteria, and, since Fresno already has six FM channel assignments, another is not permitted. As to Atlas' reliance on programing needs of the community, Universal takes the position that the pending applications for Channel 255 at Dinuba of Korus Corp. (BPH-7657) and Radio Dinuba Co. (BPH-7567) would suffice; both propose substantial Spanish language programing and service would be provided to

[1] Atlas also filed petitions for stay and for partial reconsideration as concerns this proceeding and the report and order in Docket No. 19378 (35 FCC 2d 603 (1972)), but these are rendered moot by our action here. In the circumstances, discussion of the issues raised by these petitions is unnecessary.

[2] All population data are from the 1970 U.S. census.

Fresno.[3] Moreover, Universal says that the five AM stations at Fresno operating at night program for this segment of the community. The reply comments of parties add nothing to the basic issues raised by the notice or by the parties themselves.

5. It is clear that the issues raised in this proceeding in substance are those pointed out in the notice. We agree with Universal that the intent to program Channel 290 (if assigned) to accommodate the Spanish-speaking population of the area is invalid in the light of the requirement for all broadcasters to serve community needs. The principal contention is that assignment of Channel 290 to Fresno would exceed the population criteria. In this respect, it is clear that the population criteria are a guide and not an immutable standard. For example, we have deviated from it when denial of the petition would have meant that a channel could not be used at all because of mileage separations or for other reasons, see, e.g., first report and order in Docket 19413, 37 FCC 2d 54, 55–6, 58 (1972). Albuquerque, N. Mex., which under the criteria is entitled to only six FM channels, has seven; the recent "Albuquerque" case discussed by the parties concerned the possible assignment of an eighth channel which we declined primarily because the seventh FM channel is not yet on the air (see 35 FCC 2d 230, 235 (1972)).

6. On balance, it would appear that the public interest, convenience, and necessity would be served by allocating Channel 290 at Fresno. For one thing, considering all aural broadcast services, there are only 11 nighttime signals for a substantial population. Another important consideration is that the particular area involved is one where there are a substantial number of FM channels available for assignment to communities in the area[4] as well as Fresno. In sum, there is no reason for not making an additional FM assignment to Fresno on a demand basis.

7. Authority for the action taken here is contained in sections 4(i), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended. In accordance with the foregoing: *It is ordered,* That effective January 29, 1973, the FM table of assignments (§ 73.202(b) of the rules) is amended with respect to the city listed below as follows:

City	*Channel No.*
Fresno, California	229, 238, 250, 266, 270, 274, 290

8. *It is further ordered,* That this proceeding is terminated.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

Adopted: December 13, 1972.

Released: December 18, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[5]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-21918 Filed 12-20-72;8:52 am]

[3] These applications are now in hearing status; see Docket Nos. 19566 and 19567.

[4] Certainly the more populous ones. For examples, Sanger (population 10,088), Clovis (population 13,856), and Reedley (population 8,131).

[Docket No. 19598; FCC 72-1134]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Stations in Certain Cities in Certain States

First report and order. In the matter of amendment of § 73.202(b), *table of assignments,* FM broadcast stations. (Washington, Iowa, Centerville, Tenn., Winnsboro, Tex., Stanton, Ky., Gordon, Ga., Mercersburg, Pa., Elkader, Iowa, and Kernville, Calif., Docket No. 19598, RM-1926, RM-1969, RM-1972, RM-1988, RM-1993, RM-1996, RM-2009, RM-2010.

1. The Commission has before it its notice of proposed rule making issued on September 27, 1972 (FCC 72-860), 37 F.R. 21353, inviting comments on a number of changes in the FM table of assignments as advanced by various parties. All comments and data filed in response to the notice were considered in making the following determinations. There were no opposing comments. Population figures were taken from the 1970 U.S. census reports. The following decision disposes of all subject petitions except RM-2010 (Kernville, Calif.) which will be taken up at a later date.

2. RM-1926, Washington, Iowa (Leighton Enterprises, Inc.); RM-1969, Centerville, Tenn. (Trans-Aire Broadcast Corp.); RM-1972, Winnsboro, Tex (Clegmo, Inc.); RM-1988, Stanton, Ky. (A. Dale Bryant); RM-1993, Gordon, Ga. (Piedmont Broadcasting Co., Inc.); RM-1996, Mercersburg, Pa. (Richard A. Fulton); and RM-209, Elkader, Iowa (J. R. Evans).

In the above cases interested parties seek the assignment of a first FM channel (Class A) to a community without requiring any other changes in the FM table of assignments, and each assignment can be made in conformance with the Commission's minimum mileage separation rule. Each of the petitioners stated its intention to apply for the channel, if assigned, and to build a station, if authorized. In the notice of proposed rule making in this proceeding we set out economic and other information pertaining to the need for a first FM assignment in each of the communities. We shall, therefore, not repeat it in this document. The communities range in size from 1,592 persons for Elkader, Iowa, to 7,704 persons for Stanton, Ky. Each of the following communities has one daytime-only AM station: Washington, Iowa; Centerville, Tenn.; and Gordon, Ga. The remaining communities have no local broadcast facilities. None of the communities is a part of an urbanized area (1970 census) and each appears to warrant the proposed assignment. We are of the view that adoption of each proposal would serve the public interest.

[5] Chairman Burch concurring in the result.

3. Authority for the adoption of the amendments contained herein appears in sections 4(i), 303, and 307(b) of the Communications Act of 1934, as amended.

4. In view of the foregoing: *It is ordered,* That effective January 29, 1973, § 73.202(b) of the Commission's rules, the FM table of assignments, is amended to read as follows:

City	*Channel No.*
Georgia:	
Gordon	296A
Iowa:	
Elkader	261A
Washington	237A
Kentucky:	
Stanton	285A [1]
Pennsylvania:	
Mercersburg	221A
Tennessee:	
Centerville	244A [2]
Texas:	
Winnsboro	285A

[1] A site at least 7 miles south-southeast of Stanton would be required in order to meet the minimum spacing requirements of the rules for Channel 285A.

[2] A site at least 6.6 miles northwest of the Centerville post office would be required in order to meet the minimum spacing requirements of the rules for Channel 244A.

5. *It is further ordered,* That this proceeding is terminated.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

Adopted: December 13, 1972.

Released: December 18, 1972.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-21919 Filed 12-20-72;8:52 am]

[Docket No. 19544; FCC 72-1120]

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA-PUBLIC FIXED STATIONS

Public Coast Radiotelegraph Stations

Order. In the matter of inquiry into problems of public coast radiotelegraph stations, Docket No. 19544.

1. In its notice of inquiry in the instant matter, released July 20, 1972 (37 F.R. 15197), the Commission directed, among other things, that each licensee supply specified technical information regarding transmitters in service and, in addition, information regarding costs associated with any changes to equipment required to bring that equipment into conformity with the Commission's type acceptance requirements.

2. As a part of its requirements for type acceptance, the Commission's rules (Part 81, § 81.137(d)) require that transmitters authorized to be used at public coast radiotelegraph stations conform, on January 1, 1973, with the level of suppression of spurious emissions as set forth in Part 81, § 81.140. Three licensees of public coast radiotelegraph stations have stated that the cost of complying with this re-

quirement represents a substantial investment.

3. The requirement for conformance of these transmitters with this spurious emission requirement comes into force at a time when:

(a) Transmitters at stations which the licensee has requested be closed would be required to conform, notwithstanding the fact that those transmitters will be removed from service if the application to close is granted by the Commission as a part of its decision in the instant proceeding.

(b) Transmitters at public coast radiotelepgraph stations for which no application to close has been filed may be discontinued, or their existing use affected, depending upon the nature of the decision reached by the Commission in the instant proceeding.

(c) A substantial and unnecessary expense in the modification or replacement of affected transmitters may be avoided if the Commission's decision in the instant proceeding were available at this time, or if the effective date for conformance with the spurious emission requirements were postponed until the Commission's decision in the instant proceeding is available.

4. In view of the above we find that it would be unreasonable to require the licensees of the subject radio stations, at substantial expense, to install equipment which may be used for only a temporary period and that the rules should be amended to provide relief as set forth below. We also conclude that in granting this relief there will be no significant adverse effect on the efficiency of radio communications or degradation of the quality of service to the public.

5. Since the radio stations involved must, pursuant to the rules, comply with the equipment requirements by January 1, 1973, there is not sufficient time to publish a routine general notice of rule making in this case if relief is to be provided. Therefore, the furnishing of prior notice of rule making in this instance is not practicable, and the prior notice and effective date provisions of 5 U.S.C. 553(b) do not apply.

6. *Accordingly, it is ordered,* Pursuant to sections 4(i) and 303 (e), (f), and (r) of the Communications Act of 1934, as amended, Part 81 of the Commission rules is amended effective December 29, 1972, as set forth below.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Adopted: December 13, 1972.

Released: December 18, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Secretary.

Part 81, Stations on Land in the Maritime Services and Alaska-Public Fixed Stations, is amended as follows:

1. In §81.137, paragraph (d) is amended to read as follows:

[1] Commissioner concurring in the result.

§ 81.137 Acceptability of transmitters for licensing.

* * * * *

(d) Each radiotelegraph transmitter operating on frequencies below 27.5 MHz and authorized for use at public coast radiotelegraph stations (other than transmitters authorized solely for developmental stations) after January 1, 1971, must be of a type which has been type accepted by the Commission: *Provided, however,* That nontype accepted transmitters installed at coast radiotelegraph stations and operating on any frequency below 27.5 MHz prior to January 1, 1971, may continue to be used until further order which will be based on information to be derived from the notice of inquiry in Docket No. 19544 provided such nontype accepted transmitters shall, on a day-to-day basis, conform to all of the technical standard requirements of Subpart E of this Part 81, except those set forth in § 81.140.

[FR Doc.72-21920 Filed 12-20-72;8:52 am]

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Limited Coast Stations; Correction

Order. In the matter of amendment of Part 83 to correct a reference in § 83.358.

1. Section 83.358(c)(3) of the FCC rules contains a cross reference to § 81.365(b). In the first report and order in Docket 18307, FCC 70-608, released June 16, 1970 (35 F.R. 10212) § 81.365 was deleted. The provisions of that section were included in newly adopted § 81.360. Through oversight, this change was not reflected in § 83.358.

2. This amendment is editorial in nature, and hence the prior notice, and effective date provisions of 5 U.S.C. 553 are not applicable. Authority for the promulgation of this amendment is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and § 0.231(d) of the Commission's rules.

3. *Accordingly, it is ordered,* Effective December 29, 1972, that Part 83 of the rules and regulations is amended as set forth below.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Adopted: December 14, 1972.

Released: December 15, 1972.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] JOHN M. TORBET,
Executive Director.

In § 83.358, subparagraph (3) of paragraph (c) is amended to read as follows:

§ 83.358 Frequencies below 3000 kHz for safety purposes.

* * * * *

(c) * * *

(3) Shall not prohibit communications between a ship and a limited coast station on either or both frequencies where the limited coast station has been authorized under the provisions of § 81.360 (b) of this chapter.

* * * * *

[FR Doc.72-21921 Filed 12-20-72;8:52 am]

PART 87—AVIATION SERVICES

Type Acceptance of Equipment

Order. In the matter of amendment of Part 87 of the Commission's rules to change the name and address of the Federal Aviation Administration division to which notice must be sent when an application for type acceptance of certain types of radio equipment is filed with the Commission.

1. The Federal Aviation Administration (FAA) has recently undergone a reorganization which affected the agency's frequency management organization, among others.

2. The Frequency Management Division has been abolished and portions of the previous organization assigned to different services. The organization now having cognizance over type acceptance notification to the FAA is the Systems Research and Development Service, Spectrum Analysis Branch. Section 87.79(d) of the rules presently require that notice of type acceptance applications to the Commission be sent to the now defunct FAA Frequency Management Division, which will be corrected by this order.

3. This amendment is editorial in nature, and hence, the prior notice, procedure, and effective date provisions of 5 U.S.C. 553 are not applicable. Authority for the promulgation of this amendment is contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended, and § 0.231(d) of the Commission's rules.

4. *Accordingly, it is ordered,* Effective December 29, 1972, that Part 87 of the rules and regulations is amended as set forth below.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Adopted: December 14, 1972.

Released: December 15, 1972.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] JOHN M. TORBET,
Executive Director.

Part 87, Aviation Services, is amended as follows:

1. Paragraph (d) of § 87.79 is changed to read:

§ 87.79 Type acceptance of equipment.

* * * * *

(d) In the case of applications for type acceptance of equipment (ground and airborne) intended for transmission in any of the frequency bands listed below, the applicant shall, on a date no later than the date of filing of the application with the Commission, transmit to the Federal Aviation Administration (FAA) a letter of notification advising that agency of the intent to file, or the filing, as appropriate, of the type acceptance application. (Manufacturers and inven-

tors are encouraged to contact the FAA in the early conceptual or developmental stages to reduce the possibilities of acceptance delays and economic loss.) The letter of notification shall be transmitted to: Federal Aviation Administration, Systems Research and Development Service, Spectrum Analysis Branch, 800 Independence Avenue SW., Washington, DC 20591. It shall describe the equipment, giving the identification by manufacturer and type number and including statements of the antenna characteristics, rated output power, type and characteristics of emission, the frequency or frequencies of operation, statement of essential receiver characteristics if protection is required, and the purpose for which the equipment is to be used. The type acceptance application shall include a copy of the letter of notification and shall attest to its transmittal, and date thereof, to the FAA. Action will be withheld for a period of 21 days following the date of receipt of the type acceptance application in order to afford the FAA an opportunity to comment. If the Commission receives from FAA an objection to issuance of type acceptance which includes a showing of noncompatibility of the equipment with the National Airspace System, the Commission will consider this showing together with all other information in its possession concerning the equipment before taking final action on the application. The frequency bands are as follows:

108 MHz to 117.975 MHz.
328.6 MHz to 335.4 MHz.
960 MHz to 1215 MHz.
1535 MHz to 1660 MHz.
5000 MHz to 5250 MHz.
14.0 GHz to 14.4 GHz.
15.40 GHz to 15.70 GHz.
24.25 GHz to 25.25 GHz.
31.80 GHz to 33.40 GHz.

[FR Doc.72-21922 Filed 12-20-72;8:52 am]

Title 24—HOUSING AND URBAN DEVELOPMENT

Chapter X—Federal Insurance Administration, Department of Housing and Urban Development

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

Section 1914.4 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence a new entry to the table. In this entry, a complete chronology of effective dates appears for each listed community. Each date appearing in the last column of the table is followed by a designation which indicates whether the date signifies the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. The entry reads as follows:

§ 1914.4 Status of participating communities.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
* * *	* * *	* * *	* * *	* * *	* * *	* * *
Maryland	Carroll	Unincorporated areas.				Dec. 22, 1972. Emergency.
Massachusetts	Norfolk	Wellesley, Town of.				Do.
Michigan	St. Clair	Clay, Township of.				Do.
Do	Macomb and Wayne.	Grosse Pointe Shores, Village of.				Do.
Minnesota	Blue Earth	Mankato, City of.	I 27 013 4480 03. I 27 013 4480 04.	Division of Waters, Soils and Minerals, Department of Natural Resources, Centennial Office Bldg., St. Paul, Minn. 55101. Minnesota Division of Insurance, R-210 State Office Bldg., St. Paul, Minn. 55101.	Mankato City Engineering Department., 202 East Jackson St., Mankato, MN 56001.	Oct. 23, 1970. Emergency. Dec. 22, 1972. Regular.
Do	Mower	Unincorporated areas.				Dec. 22, 1972. Emergency.
Do	Hennepin	St. Louis Park, City of.				Do.
New Jersey	Middlesex	Dunellen, Borough of.				Do.
Do	Gloucester	West Deptford, Township of.				Do.
New York	Tioga	Owego, Village of				Dec. 22, 1972. Emergency.
Oregon	Lincoln	Lincoln City, City of.				Do.
Pennsylvania	Montgomery	Norristown, Borough of.	I 42 091 6000 01.	Department of Community Affairs, Commonwealth of Pennsylvania, Harrisburg, Pa. 17120. Pennsylvania Insurance Department, 108 Finance Bldg., Harrisburg, Pa. 17120.	Public Works Department, City Hall, DeKalb and Airy Sts., Norristown, Pa. 19401.	July 10, 1971. Emergency. Dec. 22, 1972. Regular.
Do	Bucks	Doylestown, Township of.				Dec. 22, 1972. Emergency.
Do	Luzerne	Kingston, Township of.				Do.
Do	Lycoming	Duboistown, Borough of.				Do.
Tennessee	Rhea	Spring City, Town of.	I 47 143 2330 01 through I 47 143 2330 04.	Tennessee State Planning Commission, Room C2-203, Central Services Bldg., Nashville, Tenn. 37219. Tennessee Department of Insurance and Banking, 114 State Office Bldg., Nashville, Tenn. 37219.	Municipal Bldg., Town of Spring City, Spring City, Tenn. 37381.	Feb. 20, 1972. Emergency. Dec. 22, 1972. Regular.
Wisconsin	Trempealeau	Unincorporated areas.	I 55 121 0000 01 through I 55 121 0000 03.	Department of Natural Resources, Post Office Box 450, Madison, WI 53701. Wisconsin Insurance Department, 212 North Bassett St., Madison, WI 53703.	Office of the Zoning Administrator, Trempealeau Company Zoning Department, Court House, Whitehall, Wis. 54773.	May 14, 1971. Emergency. Dec. 22, 1972. Regular.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 23, 1969 (33 F.R. 17804, Nov. 28, 1968), as amended (secs. 408–410, Public Law 91–152, Dec. 24, 1969), 42 U.S.C. 4001–4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 F.R. 2680, Feb. 27, 1969)

Issued: December 14, 1972.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.72-21826 Filed 12-20-72;8:46 am]

PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

List of Communities With Special Hazard Areas

Section 1915.3 is amended by adding in alphabetical sequence a new entry to the table, which entry reads as follows:

§ 1915.3 List of communities with special hazard areas.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
* * *	* * *	* * *	* * *	* * *	* * *	* * *
Minnesota	Blue Earth	Mankato, City of	H 27 013 4480 03. H 27 013 4480 04.	Division of Waters, Soils and Minerals, Department of Natural Resources, Centennial Office Bldg., St. Paul, Minn. 55101. Minnesota Division of Insurance, R-210 State Office Bldg., St. Paul, Minn. 55101.	Mankato City Engineering Department, 232 East Jackson St., Mankato, MN 56001.	Oct. 23, 1970.
Pennsylvania	Montgomery	Norristown, Borough of.	H 42 091 0000 01.	Department of Community Affairs, Commonwealth of Pennsylvania, Harrisburg, Pa. 17120. Pennsylvania Insurance Department, 108 Finance Bldg., Harrisburg, Pa. 17120.	Public Works Department, City Hall, DeKalb and Airy Sts., Norristown, Pa. 19401.	July 19, 1971.
Tennessee	Rhea	Spring City, Town of.	H 47 143 2300 01 through H 47 143 2300 04.	Tennessee State Planning Commission, Room C2-203, Central Services Bldg., Nashville, Tenn. 37219. Tennessee Department of Insurance and Banking, 114 State Office Bldg., Nashville, Tenn. 37219.	Municipal Bldg., Town of Spring City, Spring City, Tenn. 37381.	Feb. 26, 1972.
Wisconsin	Trempealeau	Unincorporated areas.	H 55 121 0000 01 through H 55 121 0000 03.	Department of Natural Resources, Post Office Box 450, Madison, WI 53701. Wisconsin Insurance Department, 212 North Bassett St., Madison, WI 53703.	Office of the Zoning Administrator, Trempealeau County Zoning Department, Court House, Whitehall, Wis. 54773.	May 14, 1971.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 23, 1969 (33 F.R. 17804, Nov. 28, 1968), as amended (secs. 408–410, Public Law 91–152, Dec. 24, 1969), 42 U.S.C. 4001–4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 F.R. 2680, Feb. 27, 1969)

Issued: December 14, 1972.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.72-21827 Filed 12-20-72;8:46 am]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 7229]

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

Unrelated Debt-Financed Income

On July 31, 1971, notice of proposed rule making with respect to amendment of the Income Tax Regulations (26 CFR Part 1) under sections 48, 512, 514, and 1443 of the Internal Revenue Code of 1954 to conform such regulations to changes made by sections 121 (d) and (g) of the Tax Reform Act of 1969 (83 Stat. 543, 549) was published in the FEDERAL REGISTER (36 F.R. 14190). After consideration of all relevant matters as was presented by interested persons regarding the rules proposed, the amendment of the regulations as proposed, is hereby adopted, subject to the changes set forth below.

PARAGRAPH 1. Section 1.512(b)–1, as set forth in the notice of proposed rule making, is further revised by amending paragraphs (k) and (l)(5)(i) thereof, to read as set forth below.

PAR. 2. Section 1.514(a), as set forth in the notice of proposed rule making, is revised by amending the historical note to read as set forth below.

PAR. 3. Section 1.514(a)–1, as set forth in the notice of proposed rule making, is revised by amending paragraph (b)(2) thereof to read as set forth below.

PAR. 4. Section 1.514(a)–2, as set forth in the notice of proposed rule making, is revised by amending paragraphs (b)(2) and (c)(3) thereof to read as set forth below.

PAR. 5. Section 1.514(b), as set forth in the notice of proposed rule making, is revised by amending section 514(b)(1)(C) and the historical note to read as set forth below.

PAR. 6. Section 1.514(b)–1, as set forth in the notice of proposed rule making, is revised by amending paragraph (a), example (2) of paragraph (b)(1)(iii), paragraph (b)(2)(ii), so much of paragraph (b)(3) as precedes the examples, paragraph (c)(2) and (3)(i), exemple (4) of paragraph (d)(3)(i)(*b*), and the example contained in paragraph (d)(4)(ii), and by adding a new subparagraph (6) at the end of paragraph (b) thereof. These amended and added provisions read as set forth below.

PAR. 7. Section 1.514(c), as set forth in the notice of proposed rule making, is revised by amending section 514(c)(3) and the historical note to read as set forth below.

PAR. 8. Section 1.514(c)–1, as set forth in the notice of proposed rule making, is revised by amending example (3) of paragraph (a)(2), paragraphs (a)(5), (b)(2), and (g), and by adding an example

(4) at the end of paragraph (a) (2) thereof. These amended and added provisions read as set forth below.

PAR. 9. Section 1.514(d), as set forth in the notice of proposed rule making, is revised by amending the historical note to read as set forth below.

PAR. 10. Section 1.514(e)-1, as set forth in the notice of proposed rule making, is amended to read as set forth below.

PAR. 12. Section 1.1443, as set forth in the notice of proposed rule making, is further revised by adding section 1443(b) and by amending the historical note. These added and amended provisions read as set forth below.

PAR. 13. Section 1.1443-1, as set forth in the notice of proposed rule making, is further revised by amending paragraph (a) (2) and by reserving paragraph (b) thereof. These amended and reserved provisions read as set forth below.

(Sec. 7805 of the Internal Revenue Code of 1954, 68A Stat. 917; 26 U.S.C. 7805)

[SEAL] JOHNNIE M. WALTERS,
Commissioner of Internal Revenue.

Approved: December 14, 1972.

FREDERIC W. HICKMAN,
Assistant Secretary of the Treasury.

In order to conform the Income Tax Regulations (26 CFR Part 1) under sections 48, 512, 514, and 1443 of the Internal Revenue Code of 1954 to sections 121(d) and 121(g) of the Tax Reform Act of 1969 (83 Stat. 543), such regulations are amended as follows:

PARAGRAPH 1. Section 1.48 is amended by revising section 48(a)(4), and by adding a historical note. The amended and added provisions read as follows:

§ 1.48 Statutory provisions; definitions; special rules.

SEC. 48 *Definitions; special rules*—(a) *Section 38 property.*

* * * * *

(4) *Property used by certain tax-exempt organizations.* Property used by an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter shall be treated as section 38 property only if such property is used predominantly in an unrelated trade or business the income of which is subject to tax under section 511. If the property is debt-financed property (as defined in section 514 (c) [(b)], the basis or cost of such property for purposes of computing qualified investment under section 46(c) shall include only that percentage of the basis or cost which is the same percentage as is used under section 514(b) [(a)], for the year the property is placed in service, in computing the amount of gross income to be taken into account during such taxable year with respect to such property.

[Sec. 48(a)(4) as amended by sec. 121(d), Tax Reform Act 1969 (83 Stat. 547)]

PAR. 2. Paragraph (j) of § 1.48-1 is amended to read as follows:

§ 1.48-1 Definition of section 38 property.

* * * * *

(j) *Property used by certain tax-exempt organizations.* The term "section 38 property" does not include property used by an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by chapter 1 of the Code unless such property is used predominantly in an unrelated trade or business the income of which is subject to tax under section 511. If such property is debt-financed property as defined in section 514(b), the basis or cost of such property for purposes of computing qualified investment under section 46(c) shall include only that percentage of the basis or cost which is the same percentage as is used under section 514(a), for the year the property is placed in service, in computing the amount of gross income to be taken into account during such taxable year with respect to such property. The term "property used by an organization" means (1) property owned by the organization (whether or not leased to another person), and (2) property leased to the organization. Thus, for example, a data processing or copying machine which is leased to an organization exempt from tax would be considered as property used by such organization. Property (unless used predominantly in an unrelated trade or business) leased by another person to an organization exempt from tax or leased by such an organization to another person is not section 38 property to either the lessor or the lessee, and in either case the lessor may not elect under § 1.48-4 to treat the lessee of such property as having purchased such property for purposes of the credit allowed by section 38. This paragraph shall not apply to property leased on a casual or short-term basis to an organization exempt from tax.

PAR. 3. Section 1.512(b) is amended by revising subsection (b)(4) and revising the historical note. These amended provisions read as follows:

§ 1.512(b) Statutory provisions; unrelated business taxable income; modifications.

SEC. 512 *Unrelated business taxable income.*

* * * * *

(b) *Modifications.*

* * * * *

(4) Notwithstanding paragraph (1), (2), (3), or (5), in the case of debt-financed property (as defined in section 514) there shall be included, as an item of gross income derived from an unrelated trade or business, the amount ascertained under section 514(a)(1), and there shall be allowed, as a deduction, the amount ascertained under section 514(a)(2).

* * * * *

[Sec. 512(b) as amended by Act of Apr. 7, 1958 (Public Law 85-367, 72 Stat. 80); Act of July 17, 1964 (Public Law 88-380, 78 Stat. 333); section 121(b)(2), Tax Reform Act, 1969 (83 Stat. 538)]

PAR. 4. Section 1.512(b)-1 is amended by revising that part that precedes paragraph (c), by revising paragraph (d), and by adding a paragraph (k) immediately following paragraph (j). These amended and added provisions read as follows:

§ 1.512(b)-1 Modifications.

Whether a particular item of income falls within any of the modifications provided in section 512(b) shall be determined by all the facts and circumstances of each case. For example, if a payment termed "rent" by the parties is in fact a return of profits by a person operating the property for the benefit of the tax-exempt organization or is a share of the profits retained by such organization as a partner or joint venturer, such payment is not within the modification for rents. The modifications provided in section 512 (b) are as follows:

(a) *Dividends, interest, and annuities.* Dividends, interest, and annuities, and the deductions directly connected therewith, shall be excluded in computing unrelated business taxable income. However, for taxable years beginning after December 31, 1969, certain dividends, interest, and annuities derived from and certain deductions in connection with debt-financed property (as defined in section 514(b)), and certain interest and annuities derived from and certain deductions in connection with controlled organizations (as defined in paragraph (1) of this section) shall be included in computing unrelated business taxable income.

(b) *Royalties.* Royalties, including overriding royalties, and the deductions directly connected with such income shall be excluded in computing unrelated business taxable income. However, for taxable years beginning after December 31, 1969, certain royalties from and certain deductions in connection with either, debt-financed property (as defined in section 514(b)) or controlled organizations (as defined in paragraph (1) of this section) shall be included in computing unrelated business taxable income. Mineral royalties shall be excluded whether measured by production or by gross or taxable income from the mineral property. However, where an organization owns a working interest in a mineral property, and is not relieved of its share of the development costs by the terms of any agreement with an operator, income received from such an interest shall not be excluded. In-oil payments shall be treated in the same manner as royalty payments for the purpose of computing unrelated business taxable income.

* * * * *

(d) *Gains and losses from the sale, etc. of property.* There shall also be excluded from the computation of unrelated business taxable income gains or losses from the sale, exchange, or other disposition of property other than (1) stock in trade or other property of a kind which would properly be included in the inventory of the organization if on hand at the close of the taxable year, or (2) property held primarily for sale to customers in the ordinary course of the trade or business. This exclusion does not apply with respect to the cutting of timber which is considered, upon the application of section 631(a), as a sale or exchange of such timber. In addition, for taxable years beginning after December 31, 1969, this exclusion does not apply to the gain derived from the sale or other disposition of debt-financed property (as de-

fined in section 514(b)). Otherwise, the exclusion under section 512(b)(5) applies with respect to gains and losses from involuntary conversions, casualties, etc.

* * * * *

(k) *Income and deductions from debt-financed property.* For taxable years beginning after December 31, 1969, in the case of debt-financed property (as defined in section 514(b)), there shall be included in the unrelated business taxable income of an exempt organization, as an item of gross income derived from an unrelated trade or business, the amount of unrelated debt-financed income determined under section 514(a)(1) and § 1.514(a)-1(a), and there shall be allowed, as a deduction with respect to such income, the amount determined under section 514(a)(2) and § 1.514(a)-1(b).

(l) *Interest, annuities, royalties, and rents from controlled organizations.* * * *

(5) *Amounts taxable under other provisions of the Code*—(i) *In general.* Except as provided in subdivision (ii) of this subparagraph, section 512(b)(15) and this paragraph do not apply to amounts which are included in the computation of unrelated business taxable income by operation of any other provision of the Code. However, amounts which are not included in unrelated business taxable income by operation of section 512(a)(1), or which are excluded by operation of section 512(b)(1), (2), or (3), may be included in unrelated business taxable income by operation of section 512(b)(15) and this paragraph.

* * * * *

PAR. 5. The regulations under section 514 are recodified. Sections 1.514(a), 1.514(a)-1, 1.514(a)-2, 1.514(b), 1.514(b)-1, 1.514(c), 1.514(c)-1, and 1.514(d) are revised, and there are added §§ 1.514(d)-1, 1.514(e), 1.514(e)-1, 1.514(f), 1.514(f)-1, 1.514(g), 1.514(g)-1, and 1.514(h). These revised, added, and recodified provisions read as follows:

§ 1.514(a) Statutory provisions; unrelated debt-financed income; unrelated debt-financed income and deductions.

SEC. 514. *Unrelated debt-financed income*—(a) *Unrelated debt-financed income and deductions.* In computing under section 512 the unrelated business taxable income for any taxable year—

(1) *Percentage of income taken into account.* There shall be included with respect to each debt-financed property as an item of gross income derived from an unrelated trade or business an amount which is the same percentage (but not in excess of 100 percent) of the total gross income derived during the taxable year from or on account of such property as (A) the average acquisition indebtedness (as defined in subsection (c)(7)) for the taxable year with respect to the property is of (B) the average amount (determined under regulations prescribed by the Secretary or his delegate) of the adjusted basis of such property during the period it is held by the organization during such taxable year.

(2) *Percentage of deductions taken into account.* There shall be allowed as a deduction with respect to each debt-financed property an amount determined by applying (except as provided in the last sentence of this paragraph) the percentage derived under paragraph (1) to the sum determined under paragraph (3). The percentage derived under this paragraph shall not be applied with respect to the deduction of any capital loss resulting from the carryback or carryover of net capital losses under section 1212.

(3) *Deductions allowable.* The sum referred to in paragraph (2) is the sum of the deductions under this chapter which are directly connected with the debt-financed property or the income therefrom, except that if the debt-financed property is of a character which is subject to the allowance for depreciation provided in section 167, the allowance shall be computed only by use of the straight-line method.

[Sec. 514(a) as amended by sec. 121(d), Tax Reform Act 1969 (83 Stat. 543)]

§ 1.514(a)-1 Unrelated debt-financed income and deductions.

(a) *Income includible in gross income*—

(1) *Percentage of income taken into account*—(i) *In general.* For taxable years beginning after December 31, 1969, there shall be included with respect to each debt-financed property (as defined in section 514 and § 1.514(b)-1) as an item of gross income derived from an unrelated trade or business the amount of unrelated debt-financed income (as defined in subdivision (ii) of this subparagraph). See paragraph (a)(5) of § 1.514(c)-1 for special rules regarding indebtedness incurred before June 28, 1966, applicable for taxable years beginning before January 1, 1972, and for special rules applicable to churches or conventions or associations of churches.

(ii) *Unrelated debt-financed income.* The "unrelated debt-financed income" with respect to each debt-financed property is an amount which is the same percentage (but not in excess of 100 percent) of the total gross income derived during the taxable year from or on account of such property as—

(*a*) The average acquisition indebtedness (as defined in subparagraph (3) of this paragraph) with respect to the property is of

(*b*) The average adjusted basis of such property (as defined in subparagraph (2) of this paragraph).

(iii) *Debt/basis percentage.* The percentage determined under subdivision (ii) of this subparagraph is hereinafter referred to as the "debt/basis percentage".

(iv) *Example.* Subdivisions (i), (ii), and (iii) of this subparagraph are illustrated by the following example. For purposes of this example it is assumed that the property is debt-financed property.

Example. X, an exempt trade association, owns an office building which in 1971 produces $10,000 of gross rental income. The average adjusted basis of the building for 1971 is $100,000, and the average acquisition indebtedness with respect to the building for 1971 is $50,000. Accordingly, the debt/basis percentage for 1971 is 50 percent (the ratio of $50,000 to $100,000). Therefore, the unrelated debt-financed income with respect to the building for 1971 is $5,000 (50 percent of $10,000).

(v) *Gain from sale or other disposition.* If debt-financed property is sold or otherwise disposed of, there shall be included in computing unrelated business taxable income an amount with respect to such gain (or loss) which is the same percentage (but not in excess of 100 percent) of the total gain (or loss) derived from such sale or other disposition as—

(*a*) The highest acquisition indebtedness with respect to such property during the 12-month period, preceding the date of disposition, is of

(*b*) The average adjusted basis of such property.

The tax on the amount of gain (or loss) included in unrelated business taxable income pursuant to the preceding sentence shall be determined in accordance with the rules set forth in Subchapter P, Chapter 1 of the Code (relating to capital gains and losses). See also section 511(d) and the regulations thereunder (relating to the minimum tax for tax preferences).

(2) *Average adjusted basis*—(i) *In general.* The "average adjusted basis" of debt-financed property is the average amount of the adjusted basis of such property during that portion of the taxable year it is held by the organization. This amount is the average of:

(*a*) The adjusted basis of such property as of the first day during the taxable year that the organization holds the property, and

(*b*) The adjusted basis of such property as of the last day during the taxable year that the organization holds the property.

See section 1011 and the regulations thereunder for determination of the adjusted basis of property.

(ii) *Adjustments for prior taxable years.* For purposes of subdivision (i) of this subparagraph, the determination of the average adjusted basis of debt-financed property is not affected by the fact that the organization was exempt from taxation for prior taxable years. Proper adjustment must be made under section 1011 for the entire period since the acquisition of the property. For example, adjustment must be made for depreciation for all prior taxable years whether or not the organization was exempt from taxation for any such years. Similarily, the fact that only a portion of the depreciation allowance may be taken into acount in computing the percentage of deductions allowable under section 514(a)(2) does not affect the amount of the adjustment for depreciation which is used in determining average adjusted basis.

(iii) *Cross reference.* For the determination of the basis of debt-financed property acquired in a complete or partial liquidation of a corporation in exchange for its stock, see § 1.514(d)-1.

(iv) *Example.* This subparagraph may be illustrated by the following example. For purposes of this example it is assumed that the property is debt-financed property.

Example. On July 10, 1970, X, an exempt educational organization, purchased an office building for $510,000, using $300,000 of bor-

rowed funds. During 1970 the only adjustment to basis is $20,000 for depreciation. As of December 31, 1970, the adjusted basis of the building is $490,000 and the indebtedness is still $300,000. X files its return on a calendar year basis. Under these circumstances, the debt/basis percentage for 1970 is 60 percent, calculated in the following manner:

	Basis
As of July 10, 1970 (acquisition date)	$510,000
As of December 31, 1970	490,000
Total	$1,000,000

Average Adjusted basis:
$1,000,000÷2=$500,000
Debt/basis percentage:

$$\frac{\text{Average acquisition indebtedness}}{\text{Average adjusted basis}} = \frac{\$300,000}{\$500,000} = 60 \text{ percent}$$

For an illustration of the determination of the debt/basis percentage as changes in the acquisition indebtedness occur, see example (1) of subparagraph (3)(iii) of this paragraph.

(3) *Average acquisition indebtedness*—(i) *In general.* The "average acquisition indebtedness" with respect to debt-financed property is the average amount of the outstanding principal indebtedness during that portion of the taxable year the property is held by the organization.

(ii) *Computation.* The average acquisition indebtedness is computed by determining the amount of the outstanding principal indebtedness on the first day in each calendar month during the taxable year that the organization holds the property, adding these amounts together, and then dividing this sum by the total number of months during the taxable year that the organization held such property. A fractional part of a month shall be treated as a full month in computing average acquisition indebtedness.

(iii) *Examples.* The application of this subparagraph may be illustrated by the following examples. For purposes of these examples it is assumed that the property is debt-financed property.

Example (1). Assume the facts as stated in the example in subparagraph (2)(iv) of this paragraph, except that beginning July 20, 1970, the organization makes payments of $21,000 a month ($20,000 of which is attributable to principal and $1,000 to interest). In this situation, the average acquisition indebtedness for 1970 is $250,000. Thus, the debt/basis percentage for 1970 is 50 percent, calculated in the following manner:

Month:	*Indebtedness on the first day in each calendar month that the property is held*
July	$ 300,000
August	280,000
September	260,000
October	240,000
November	220,000
December	200,000
Total	1,500,000

Average acquisition indebtedness:
$1,500,000÷6 months=$250,000

Debt/basis percentage:

$$\frac{\text{Average acquisition indebtedness}}{\text{Average adjusted basis}} = \frac{\$250,000}{\$500,000} = 50 \text{ percent}$$

Example (2). Y, an exempt organization, owns stock in a corporation which it does not control. At the beginning of the year, Y has an outstanding principal indebtedness with respect to such stock of $12,000. Such indebtedness is paid off at the rate of $2,000 per month beginning January 30, so that it is retired at the end of 6 months. The average acquisition indebtedness for the taxable year is $3,500, calculated in the following manner:

Month:	*Indebtedness on the first day in each calendar month that the property is held*
January	$12,000
February	10,000
March	8,000
April	6,000
May	4,000
June	2,000
July thru December	0
Total	42,000

Average acquisition indebtedness:
$42,000÷12 months=$3,500

(4) *Indeterminate price*—(i) *In general.* If an exempt organization acquires (or improves) property for an indeterminate price, the initial acquisition indebtedness and the unadjusted basis shall be determined in accordance with subdivisions (ii) and (iii) of this paragraph, unless the organization has obtained the consent of the Commissioner to use another method to compute such amounts.

(ii) *Unadjusted basis.* For purposes of this subparagraph, the unadjusted basis of property (or of an improvement) is the fair market value of the property (or improvement) on the date of acquisition (or the date of completion of the improvement). The average adjusted basis of such property shall be determined in accordance with paragraph (a)(2) of this section.

(iii) *Initial acquisition indebtedness.* For purposes of this subparagraph, the initial acquisition indebtedness is the fair market value of the property (or improvement) on the date of acquisition (or the date of completion of the improvement) less any down payment or other initial payment applied to the principal indebtedness. The average acquisition indebtedness with respect to such property shall be computed in accordance with paragraph (a)(3) of this section.

(iv) *Example.* The application of this subparagraph may be illustrated by the following example. For purposes of this example it is assumed that the property is debt-financed property.

Example. On January 1, 1971, X, an exempt trade association, acquires an office building for a down payment of $310,000 and an agreement to pay 10 percent of the income generated by the building for 10 years. Neither the sales price nor the amount which X is obligated to pay in the future is certain. The fair market value of the building on the date of acquisition is $600,000. The depreciation allowance for 1971 is $40,000. Unless X obtains the consent of the Commissioner to use another method, the unadjusted basis of the property is $600,000 (the fair market value of the property on the date of acquisition), and the initial acquisition indebtedness is $290,000 (fair market value of $600,000 less initial payment of $310,000). Under these circumstances, the average adjusted basis of the property for 1971 is $580,000, calculated as follows:

$$\frac{\text{initial fair market value} + (\text{initial fair market value less depreciation})}{2} = \frac{\$600,000 + (\$600,000 - \$40,000)}{2} = \$580,000$$

If no payment other than the initial payment is made in 1971, the average acquisition indebtedness for 1971 is $290,000. Thus, the debt/basis percentage for 1971 is 50 percent, claculated as follows:

$$\frac{\text{average acquisition indebtedness}}{\text{average adjusted basis}} = \frac{\$290,000}{\$580,000} = 50 \text{ percent}$$

(b) *Deductions*—(1) *Percentage of deductions taken into account.* Except as provided in subparagraphs (4) and (5) of this paragraph, there shall be allowed as a deduction with respect to each debt-financed property an amount determined by applying the debt/basis percentage to the sum of the deductions allowable under subparagraph (2) of this paragraph.

(2) *Deductions allowable.* The deductions allowable are those items allowed as deductions by chapter 1 of the Code which are directly connected with the debt-financed property or the income therefrom (including the dividends received deductions allowed by sections 243, 244, and 245), except that—

(i) The allowable deductions are subject to the modifications provided by section 512(b) on computation of the unrelated business taxable income, and

(ii) If the debt-financed property is of a character which is subject to the allowance for depreciation provided in section 167, such allowance shall be computed only by use of the straight-line method of depreciation.

(3) *Directly connected with.* To be "directly connected with" debt-financed property or the income therefrom, an item of deduction must have proximate

and primary relationship to such property or the income therefrom. Expenses, depreciation, and similar items attributable solely to such property are proximately and primarily related to such property or the income therefrom, and therefore qualify for deduction, to the extent they meet the requirements of subparagraph (2) of this paragraph. Thus, for example, if the straight-line depreciation allowance for an office building is $10,000 a year, an organization would be allowed a deduction for depreciation of $10,000 if the entire building were debt-financed property. However, if only one-half of the building were treated as debt-financed property, then the depreciation allowed as a deduction would be $5,000. (See example (2) of § 1.514(b)-1(b)(1)(iii).)

(4) *Capital losses*—(i) *In general.* If the sale or exchange of debt-financed property results in a capital loss, the amount of such loss taken into account in the taxable year in which the loss arises shall be computed in accordance with paragraph (a)(1)(v) of this section. If, however, any portion of such capital loss not taken into account in such year may be carried back or carried over to another taxable year, the debt/basis percentage is not applied to determine what portion of such capital loss may be taken as a deduction in the year to which such capital loss is carried.

(ii) *Example.* This subparagraph is illustrated by the following example. For purposes of this example it is assumed that the property is debt-financed property.

Example. X, an exempt educational organization, owns securities which are capital assets and which it has held for more than 6 months. In 1972 X sells the securities at a loss of $20,000. The debt/basis percentage with respect to computing the gain (or loss) derived from the sale of the securities is 40 percent. Thus, X has sustained a capital loss of $8,000 (40 percent of $20,000) with respect to the sale of the securities. For 1972 and the preceding three taxable years X has no other capital transactions. Under these circumstances, the $8,000 of capital loss may be carried over to the succeeding 5 taxable years without further application of the debt/basis percentage.

(5) *Net operating loss*—(i) *In general.* If, after applying the debt/basis percentage to the income derived from debt-financed property and the deductions directly connected with such income, such deductions exceed such income, the organization has sustained a net operating loss for the taxable year. This amount may be carried back or carried over to other taxable years in accordance with section 512(b)(6). However, the debt/basis percentage shall not be applied in such other years to determine the amounts that may be taken as a deduction in those years.

(ii) *Example.* This subparagraph may be illustrated by the following example. For purposes of this example it is assumed that the property is debt-financed property.

Example. During 1974, Y, an exempt organization, receives $20,000 of rent from a building which it owns. Y has no other unrelated business taxable income for 1974. For 1974 the deductions directly connected with this building are property taxes of $5,000, interest of $5,000 on the acquisition indebtedness, and salary of $15,000 to the manager of the building. The debt/basis percentage for 1974 with respect to the building is 50 percent. Under these circumstances, Y shall take into account in computing its unrelated business taxable income for 1974, $10,000 of income (50 percent of $20,000) and $12,500 (50 percent of $25,000) of the deductions directly connected with such income. Thus, for 1974 Y has sustained a net operating loss of $2,500 ($10,000 of income less $12,500 of deductions) which may be carried back or carried over to other taxable years without further application of the debt/basis percentage.

§ 1.514(a)-2 Business lease rents and deductions for taxable years beginning before January 1, 1970.

(a) *Effective date.* This section applies to taxable years beginning before January 1, 1970.

(b) *In general*—(1) *Rents includible in gross income.* There shall be included with respect to each business lease, as an item of gross income derived from an unrelated trade or business, an amount which is the same percentage (but not in excess of 100 percent) of the total rents derived during the taxable year under such lease as—

(i) The amount of the business lease indebtedness at the close of the taxable year of the lessor tax-exempt organization, with respect to the premises covered by such lease, is of

(ii) The adjusted basis of such premises at the close of such taxable year.

For definition of business lease as a lease for a term of more than 5 years, and for rules for determining the computation of such 5-year term in certain specific situations, see § 1.514(f)-1. For definition of business lease indebtedness and allocation of business lease indebtedness where only a portion of the property is subject to a business lease, see § 1.514(g)-1.

(2) *Determination of basis.* For purposes of the unrelated business income tax the basis (unadjusted) of property is determined under section 1012, and the adjusted basis of property is determined under section 1011. The determination of the adjusted basis of property is not affected by the fact that the organization was exempt from tax for prior taxable years. Proper adjustment must be made under section 1011 for the entire period since the acquisition of the property. Thus adjustment must be made for depreciation for all taxable years whether or not the organization was exempt from tax for any of such years. Similarly, for taxable years during which the organization is subject to the tax on unrelated business taxable income the fact that only a portion of the deduction for depreciation is taken into account under paragraph (c)(1) of this section does not affect the amount of the adjustment for depreciation.

(3) *Examples.* The application of this paragraph may be illustrated by the following examples, in each of which it is assumed that the taxpayer makes its returns under section 511 on the basis of the calendar year, and that the lease is not substantially related to the purpose for which the organization is granted exemption from tax.

Example (1). Assume that a tax-exempt educational organization purchased property in 1952 for $600,000, using borrowed funds, and leased the building for a period of 20 years. Assume further that the adjusted basis of such building at the close of 1954 is $500,000 and that, at the close of 1954, $200,000 of the indebtedness incurred to acquire the property remains outstanding. Since the amount of the outstanding indebtedness is two-fifths of the adjusted basis of the building at the close of 1954, two-fifths of the gross rental received from the building during 1954 shall be included as an item of gross income in computing unrelated business taxable income. If, at the close of a subsequent taxable year, the outstanding indebtedness is $100,000 and the adjusted basis of the building is $400,000, one-fourth of the gross rental for such taxable year shall be included as an item of gross income in computing unrelated business taxable income for such taxable year.

Example (2). Assume that a tax-exempt organization owns a four-story building, that in 1954 it borrows $100,000 which it uses to improve the whole building, and that it thereafter in 1954 rents the first and second floors of the building under six-year leases at rentals of $4,000 a year. The third and fourth floors of the building are leased on a yearly basis during 1954. Assume, also, that the adjusted basis of the real property at the end of 1954 (after reflecting the expenditures for improving the building) is $200,000, allocable equally to each of the four stories. Under these facts, only one-half of the real property is subject to a business lease since only one-half is rented under a lease for more than 5 years. See § 1.514(f)-1. The percentage of the rent under such lease which is taken into account is determined by the ratio which the allocable part of the business lease indebtedness bears to the allocable part of the adjusted basis of the real property, that is, the ratio which one-half of the $100,000 of business lease indebtedness outstanding at the close of 1954, or $50,000, bears to one-half of the adjusted basis of the business lease premises at the close of 1954, or $100,000. The percentage of rent which is business lease income for 1954 is, therefore, one-half (the ratio of $50,000 to $100,000) of $8,000, or $4,000, and this amount of $4,000 is considered an item of gross income derived from an unrelated trade or business.

(c) *Deductions*—(1) *Deductions allowable against gross income.* The same percentage is used in determining both the portion of the rent and the portion of the deductions taken into account with respect to the business lease in computing unrelated business taxable income. Such percentage is applicable only to the sum of the following deductions allowable under section 161:

(i) Taxes and other expenses paid or accrued during the taxable year upon or with respect to the real property subject to the business lease;

(ii) Interest paid or accrued during the taxable year on the business lease indebtedness;

(iii) A reasonable allowance for exhaustion, wear and tear (including a reasonable allowance for obsolescence) of the real property subject to such lease.

Where only a portion of the real property is subject to the business lease, there shall be taken into account only those amounts of the above-listed deductions which are properly allocable to the premises covered by such lease.

(2) *Excess deductions.* The deductions allowable under subparagraph (1) of this paragraph with respect to a business lease are not limited by the amount included in gross income with respect to the rent from such lease. Any excess of such deductions over such gross income shall be applied against other items of gross income in computing unrelated business taxable income taxable under section 511(a).

(3) *Example.* The application of this paragraph may be illustrated by the following example:

Example. Assume the same facts as those in example (1) in paragraph (b)(3) of this section. Assume, also that for 1954 the organization pays taxes of $4,000 on the property, interest of $6,000 on its business lease indebtedness, and that the depreciation allowable for 1954 under section 167 is $10,000. Under the facts set forth in such example (1) and in this example, the deductions to be taken into account for 1954 in computing unrelated business taxable income would be two-fifths of the total of the deductions of $20,000, that is $8,000.

§ 1.514(b) Statutory provisions; unrelated debt-financed income; definition of debt-financed property.

SEC. 514 *Unrelated debt-financed income.*

* * *

(b) *Definition of debt-financed property*—(1) *In general.* For purposes of this section, the term "debt-financed property" means any property which is held to produce income and with respect to which there is an acquisition indebtedness (as defined in subsection (c)) at any time during the taxable year (or, if the property was disposed of during the taxable year, with respect to which there was an acquisition indebtedness at any time during the 12-month period ending with the date of such disposition), except that such term does not include—

(A) (i) Any property substantially all the use of which is substantially related (aside from the need of the organization for income or funds) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501 (or, in the case of an organization described in section 511(a)(2)(B), to the exercise or performance of any purpose or function designated in section 501(c)(3)), or (ii) any property to which clause (i) does not apply, to the extent that its use is so substantially related;

(B) Except in the case of income excluded under section 512(b)(5), any property to the extent that the income from such property is taken into account in computing the gross income of any unrelated trade or business;

(C) Any property to the extent that the income from such property is excluded by reason of the provisions of paragraph (7), (8), or (9) of section 512(b) in computing the gross income of any unrelated trade or business; or

(D) Any property to the extent that it is used in any trade or business described in paragraph (1), (2), or (3) of section 513(a).

For purposes of subparagraph (A), substantially all the use of a property shall be considered to be substantially related to the exercise or performance by an organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501 if such property is real property subject to a lease to a medical clinic entered into primarily for purposes which are substantially related (aside from the need of such organization for income or funds or the use it makes of the rents derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501.

(2) *Special rule for related uses.* For purposes of applying paragraphs (1) (A), (C), and (D), the use of any property by an exempt organization which is related to an organization shall be treated as use by such organization.

(3) *Special rules when land is acquired for exempt use within 10 years*—

(A) *Neighborhood land.* If an organization acquires real property for the principal purpose of using the land (commencing within 10 years of the time of acquisition) in the manner described in paragraph (1)(A) and at the time of acquisition the property is in the neighborhood of other property owned by the organization which is used in such manner, the real property acquired for such future use shall not be treated as debt-financed property so long as the organization does not abandon its intent to so use the land within the 10-year period. The preceding sentence shall not apply for any period after the expiration of the 10-year period and shall apply after the first 5 years of the 10-year period only if the organization establishes to the satisfaction of the Secretary or his delegate that it is reasonably certain that the land will be used in the described manner before the expiration of the 10-year period.

(B) *Other cases.* If the first sentence of subparagraph (A) is inapplicable only because—

(i) The acquired land is not in the neighborhood referred to in subparagraph (A), or

(ii) The organization (for the period after the first 5 years of the 10-year period) is unable to establish to the satisfaction of the Secretary or his delegate that it is reasonably certain that the land will be used in the manner described in paragraph (1)(A) before the expiration of the 10-year period, but the land is converted to such use by the organization within the 10-year period, the real property (subject to the provisions of subparagraph (D)) shall not be treated as debt-financed property for any period before such conversion. For purposes of this subparargaph, land shall not be treated as used in the manner described in parargaph (1)(A) by reason of the use made of any structure which was on the land when acquired by the organization.

(C) *Limitations.* Subparagraphs (A) and (B)—

(i) Shall apply with respect to any structure on the land when acquired by the organization, or to the land occupied by the structure, only if (and so long as) the intended future use of the land in the manner described in paragraph (1)(A) requires that the structure be demolished or removed in order to use the land in such manner;

(ii) Shall not apply to structures erected on the land after the acquisition of the land; and

(iii) Shall not apply to property subject to a lease which is a business lease (as defined in subsection (f)).

(D) *Refund of taxes when subparagraph (B) applies.* If an organization for any taxable year has not used land in the manner to satisfy the actual use condition of subparagraph (B) before the time prescribed by law (including extensions thereof) for filing the return for such taxable year, the tax for such year shall be computed without regard to the application of subparagraph (B), but if and when such use condition is satisfied, the provisions of subparagraph (B) shall then be applied to such taxable year. If the actual use condition of subparagraph (B) is satisfied for any taxable year after such time for filing the return, and if credit or refund of any overpayment for the taxable year resulting from the satisfaction of such use condition is prevented at the close of the taxable year in which the use condition is satisfied, by the operation of any law or rule of law (other than chapter 74, relating to closing agreements and compromises), credit or refund of such overpayment may nevertheless be allowed or made if claim therefor is filed before the expiration of 1 year after the close of the taxable year in which the use condition is satisfied. Interest on any overpayment for a taxable year resulting from the application of subparagraph (B) after the actual use condition is satisfied shall be allowed and paid at the rate of 4 percent per annum in lieu of 6 percent per annum.

(E) *Special rule for churches.* In applying this paragraph to a church or convention or association of churches, in lieu of the 10-year period referred to in subparagraphs (A) and (B) a 15-year period shall be applied, and subparagraphs (A) and (B)(ii) shall apply whether or not the acquired land meets the neighborhood test.

[Sec. 514(b) as amended by sec. 121(d), Tax Reform Act 1969 (83 Stat. 543)]

§ 1.514(b)-1 Definition of debt-financed property.

(a) *In general.* For purposes of section 514 and the regulations thereunder, the term "debt-financed property" means any property which is held to produce income (e.g., rental real estate, tangible personal property, and corporate stock), and with respect to which there is an acquisition indebtedness (determined without regard to whether the property is debt-financed property) at any time during the taxable year. The term "income" is not limited to recurring income but applies as well to gains from the disposition of property. Consequently, when any property held to produce income by an organization which is not used in a manner described in section 514(b)(1) (A), (B), (C), or (D) is disposed of at a gain during the taxable year, and there was an acquisition indebtedness outstanding with respect to such property at any time during the 12-month period preceding the date of disposition (even though such period covers more than 1 taxable year), such property is "debt-financed property". For example, assume that on June 1, 1972, an organization is given mortgaged, unimproved property which it does not use in a manner described in section 514(b)(1) (A), (B), (C), or (D) and that the organization assumes payment of the mortgage on such property. On July 15, 1972, the organization sells such property for a gain. Such property is "debt-financed property" and such gain is taxable as unrelated debt-financed income. See section 514(c) and § 1.514(c)-1 for rules relating to when there is acquisition indebtedness with respect to property. See paragraph (a) of § 1.514(a)-1 for rules determining the amount of income or gain from debt-financed property

which is treated as unrelated debt-financed income.

(b) *Exceptions*—(1) *Property related to certain exempt purposes.* (i) To the extent that the use of any property is substantially related (aside from the need of the organization for income or funds or the use it makes of the profits derived) to the exercise or performance by an organization of its charitable, educational, or other purpose or function constituting its basis for exemption under section 501 (or, in the case of an organization described in section 511(a)(2)(B), to the exercise or performance of any purpose or function designated in section 501(c)(3)) such property shall not be treated as "debt-financed property". See § 1.513–1 for principles applicable in determining whether there is a substantial relationship to the exempt purpose of the organization.

(ii) If substantially all of any property is used in a manner described in subdivision (i) of this subparagraph, such property shall not be treated as "debt-financed property". In general the preceding sentence shall apply if 85 percent or more of the use of such property is devoted to the organization's exempt purpose. The extent to which property is used for a particular purpose shall be determined on the basis of all the facts and circumstances. These may include (where appropriate)—

(*a*) A comparison of the portion of time such property is used for exempt purposes with the total time such property is used,

(*b*) A comparison of the portion of such property that is used for exempt purposes with the portion of such property that is used for all purposes, or

(*c*) Both the comparisons described in (*a*) and (*b*) of this subdivision.

(iii) This subparagraph may be illustrated by the following examples. For purposes of these examples it is assumed that the indebtedness is acquisition indebtedness.

Example (1). W, an exempt organization, owns a computer with respect to which there is an outsanding principal indebtedness and which is used by W in the performance of its exempt purpose. W sells time for the use of the computer to M corporation on occasions when the computer is not in full-time use by W. W uses the computer in furtherance of its exempt purpose more than 85 percent of the time it is in use and M uses the computer less than 15 percent of the total operating time the computer is in use. In this situation, substantially all the use of the computer is related to the performance of W's exempt purpose. Therefore, no portion of the computer is treated as debt-financed property.

Example (2). X, an exempt college, owns a four story office building which has been purchased with borrowed funds. In 1971, the lower two stories of the building are used to house computers which are used by X for administrative purposes. The top two stories are rented to the public for purposes not described in section 514(b)(1)(A), (B), (C), or (D). The gross income derived by X from the building is $6,000, all of which is attributable to the rents paid by tenants. There are $2,000 of expenses, allocable equally to each use of the building. The average adjusted basis of the building for 1971 is $100,000, and the outstanding principal indebtedness throughout 1971 is $60,000. Thus, the average acquisition indebtedness for 1971 is $60,000. In accordance with subdivision (i) of this subparagraph, only the upper half of the building is debt-financed property. Consequently, only the rental income and the deductions directly connected with such income are to be taken into account in computing unrelated business taxable income. The portion of such amounts to be taken into account is determined by multiplying the $6,000 of rental income and $1,000 of deductions directly connected with such rental income by the debt/basis percentage. The debt/basis percentage is the ratio which the allocable part of the average acquisition indebtedness is of the allocable part of the average adjusted basis of the property, that is, the ratio which $30,000 (one-half of $60,000) bears to $50,000 (one-half of $100,000). Thus, the debt/basis percentage for 1971 is 60 percent (the ratio of $30,000 to $50,000). Under these circumstances, X shall include net rental income of $3,000 in its unrelated business taxable income for 1971, computed as follows:

Total rental income	$6,000	
Deductions directly connected with rental income	$1,000	
Debt/basis percentage ($30,000/$50,000)		60 percent
Rental income treated as gross income from an unrelated trade or business (60 percent of $6,000)	$3,600	
Less the allowable portion of deductions directly connected with such income (60 percent of $1,000)	$600	
Net rental income included by X in computing its unrelated business taxable income pursuant to section 514	$3,000	

Example (3). Assume the facts as stated in example (2) except that on December 31, 1971, X sells the building and realizes a long-term capital gain of $10,000. This is X's only capital transaction for 1971. An allocable portion of this gain is subject to tax. This amount is determined by multiplying the gain related to the nonexempt use, $5,000 (one-half of $10,000), by the ratio which the allocable part of the highest acquisition indebtedness for the 12-month period preceding the date of sale, $30,000 (one-half of $60,000), is of the allocable part of the average adjusted basis, $50,000 (one-half of $100,000). Thus, the debt/basis percentage with respect to computing the gain (or loss) derived from the sale of the building is 60 percent (the ratio of $30,000 to $50,000). Consequently, $3,000 (60 percent of $5,000) is a net section 1201 gain. The portion of such gain which is taxable shall be determined in accordance with rules contained in subchapter P, chapter 1 of the Code (relating to capital gains and losses). See also section 511(d) and the regulations thereunder (relating to the minimum tax for tax preferences).

(2) *Property used in an unrelated trade or business*—(i) *In general.* To the extent that the gross income from any property is treated as income from the conduct of an unrelated trade or business, such property shall not be treated as "debt-financed property". However, any gain on the disposition of such property which is not included in the income of an unrelated trade or business by reason of section 512(b)(5) is includible as gross income derived "from or on account of debt-financed property" under paragraph (a)(1) of § 1.514(a)–1.

(ii) *Amounts specifically taxable under other provisions of the Code.* Section 514 does not apply to amounts which are otherwise included in the computation of unrelated business taxable income, such as rents from personal property includible pursuant to section 512(b)(3) or rents and interest from controlled organizations includible pursuant to section 512(b)(15). See paragraph (1)(5) of § 1.512(b)–1 for the rules determining the manner in which amounts are taken into account where such amounts may be included in the computation of unrelated business taxable income by operation of more than one provision of the Code.

(3) *Examples.* Subparagraphs (1) and (2) of this paragraph may be illustrated by the following examples. For purposes of these examples it is assumed that the indebtedness is acquisition indebtedness.

Example (1). X, an exempt scientific organization, owns a 10-story office building. During 1972, four stories are occupied by X's administrative offices, and the remaining six stories are rented to the public for purposes not described in section 514(b)(1)(A), (B), (C), or (D). On December 31, 1972, the building is sold and X realizes a long-term capital gain of $100,000. This is X's only capital transaction for 1972. The debt/basis percentage with respect to computing the gain (or loss) derived from the sale of the building is 30 percent. Since 40 percent of the building was used for X's exempt purpose, only 60 percent of the building is debt-financed property. Thus, only $60,000 of the gain (60 percent of $100,000) is subject to this section. Consequently, the amount of gain treated as unrelated debt-financed income is $18,000 ($60,000 multiplied by the debt/basis percentage of 30 percent). The portion of such $18,000 which is taxable shall be determined in accordance with the rules contained in subchapter P, chapter 1 of the Code. See also section 511(d) and the regulations thereunder (relating to the minimum tax for tax preferences).

Example (2). Y, an exempt organization, owns two properties, a restaurant and an office building. In 1972, all the space in the office building, except for the portion utilized by Y to house the administrative offices of the restaurant, is rented to the public for purposes not described in section 514(b)(1)(A), (B), (C), or (D). The average adjusted basis of the office building for 1972 is $2 million. The outstanding principal indebtedness throughout 1972 is $1 million. Thus, the highest acquisition indebtedness in the calendar year of 1972 is $1 million. It is determined that 30 percent of the space in the office building is used for the administrative functions engaged in by the employees of the organization with respect to the restaurant. Since the income attributable to the restaurant is attributable to the conduct of an unrelated trade or business, only 70 percent of the building is treated as debt-financed property for purposes of determining the portion of the rental income which is unrelated debt-financed income. On December 31, 1972, the office building is sold and Y realizes a long-term capital gain of $250,000. This is Y's only capital transaction for 1972. In accordance with subparagraph (2)(i) of this paragraph, all the gain derived from this sale is taken into account in computing the amount of such gain subject to tax. The portion of such gain which is taxable is determined by multiplying the $250,000 gain by the debt/basis percentage. The debt/basis percentage is the ratio which the highest acquisition indebtedness for the 12-month period preceding the date of sale, $1 million, is of the average adjusted basis,

$2 million. Thus, the debt/basis percentage with respect to computing the gain (or loss) derived from the sale of the building is 50 percent (the ratio of $1 million to $2 million). Consequently, $125,000 (50 percent of $250,000) is a net section 1201 gain. The amount of such gain which is taxable shall be determined in accordance with the rules contained in subchapter P, chapter 1 of the Code. See also section 511(d) and the regulations thereunder.

Example (3). (*a*) Z, an exempt university, owns all the stock of M, a nonexempt corporation. During 1971 M leases from Z University a factory unrelated to Z's exempt purpose and a dormitory for the students of Z, for a total annual rent of $100,000: $80,000 for the factory and $20,000 for the dormitory. During 1971, M has $500,000 of taxable income, disregarding the rent paid to Z: $150,000 from the dormitory and $350,000 from the factory. The factory is subject to a mortgage of $150,000. Its average adjusted basis for 1971 is determined to be $300,000. Z's deductions for 1971 with respect to the leased property are $4,000 for the dormitory and $16,000 for the factory. In accordance with subdivision (ii) of this subparagraph, section 514 applies only to that portion of the rent which is excluded from the computation of unrelated business taxable income by operation of section 512(b)(3) and not included in such computation pursuant to section 512(b)(15). Since all the rent received by Z is derived from real property, section 512(b)(3) would exclude all such rent from computation of Z's unrelated business taxable income. However, 70 percent of the rent paid to Z with respect to the factory and 70 percent of the deductions directly connected with such rent shall be taken into account by Z in determining its unrelated business taxable income pursuant to section 512(b)(15), computed as follows:

M's taxable income (disregarding rent paid to Z)	$500,000
Less taxable income from dormitory	$150,000
Excess taxable income	$350,000
Ratio ($350,000/$500,000)	7/10
Total rent paid to Z	$100,000
Total deductions ($4,000+$16,000)	$20,000
Rental income treated under section 512(b)(15) as gross income from an unrelated trade or business (7/10 of $100,000)	$70,000
Less deductions directly connected with such income (7/10 of $20,000)	$14,000
Net rental income included by Z in computing its unrelated business taxable income pursuant to section 512(b)(15)	$56,000

(*b*) Since only that portion of the rent derived from the factory and the deductions directly connected with such rent not taken into account pursuant to section 512(b)(15) may be included in computing unrelated business taxable income by operation of section 514, only $10,000 ($80,000 minus $70,000) of rent and $2,000 ($16,000 minus $14,000) of deductions are so taken into account. The portion of such amounts to be taken into account is determined by multiplying the $10,000 of income and $2,000 of deductions by the debt/basis percentage. The debt/basis percentage is the ratio which the average acquisition indebtedness ($150,000) is of the average adjusted basis of the property ($300,000). Thus, the debt/basis percentage for 1971 is 50 percent (the ratio of $150,000 to $300,000). Under these circumstances, Z shall include net rental income of $4,000 in its unrelated business taxable income for 1971, computed as follows:

Total rents	$10,000
Deductions directly connected with such rents	$2,000
Debt/basis percentage ($150,000/$300,000)	50 percent
Rental income treated as gross income from an unrelated trade or business (50 percent of $10,000)	$5,000
Less the allowable portion of deductions directly connected with such income (50 percent of $2,000)	$1,000
Net rental income included by Z in computing its unrelated business taxable income pursuant to section 514	$4,000

(4) *Property related to research activities.* To the extent that the gross income from any property is derived from research activities excluded from the tax on unrelated business income by paragraph (7), (8), or (9) of section 512(b), such property shall not be treated as "debt-financed property".

(5) *Property used in "thrift shops", etc.* To the extent that property is used in any trade or business which is excepted from the definition of "unrelated trade or business" by paragraph (1), (2), or (3) of section 513(a), such property shall not be treated as "debt-financed property".

(6) *Use by a related organization.* For purposes of subparagraph (1), (4), or (5) of this paragraph, use of property by a related exempt organization (as defined in paragraph (c)(2)(ii) of this section) for a purpose described in such subparagraphs shall be taken into account in order to determine the extent to which such property is used for a purpose described in such subparagraphs.

(c) *Special rules*—(1) *Medical clinic.* Property is not debt-financed property if it is real property subject to a lease to a medical clinic, and the lease is entered into primarily for purposes which are substantially related (aside from the need of such organization for income or funds or the use it makes of the rents derived) to the exercise or performance by the lessor of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501. For example, assume that an exempt hospital leases all of its clinic space to an unincorporated association of physicians and surgeons who, by the provisions of the lease, agree to provide all of the hospital's out-patient medical and surgical services and to train all of the hospital's residents and interns. In this situation, the rents received by the hospital from this clinic are not to be treated as unrelated debt-financed income.

(2) *Related exempt uses*—(i) *In general.* Property owned by an exempt organization and used by a related exempt organization or by an exempt organization related to such related exempt organization shall not be treated as "debt-financed property" to the extent such property is used by either organization in furtherance of the purpose constituting the basis for its exemption under section 501. Furthermore, property shall not be treated as "debt-financed property" to the extent such property is used by a related exempt organization for a purpose described in paragraph (b)(4) or (5) of this section.

(ii) *Related organizations.* For purposes of subdivision (i) of this subparagraph, an exempt organization is related to another exempt organization only if—

(*a*) One organization is an exempt holding company described in section 501(c)(2) and the other organization receives the profits derived by such exempt holding company,

(*b*) One organization has control of the other organization within the meaning of paragraph (e)(4) of § 1.512(b)-1,

(*c*) More than 50 percent of the members of one organization are members of the other organization, or

(*d*) Each organization is a local organization which is directly affiliated with a common state, national, or international organization which is also exempt.

(iii) *Examples.* This subparagraph may be illustrated by the following examples. For purposes of these examples it is assumed that the indebtedness is acquisition indebtedness.

Example (1). M, an exempt trade association described in section 501(c)(6), leases 70 percent of the space of an office building for furtherance of its exempt purpose. The title to such building is held by N, an exempt holding company described in section 501(c)(2), which acquired title to the building with borrowed funds. The other 30 percent of the space in this office building is leased to L, a nonstock exempt trade association described in section 501(c)(6). L uses such office space in furtherance of its exempt purpose. The members of L's Board of Trustees serves for fixed terms and M's Board of Directors has the power to select all such members. N pays over to M all the profits it derives from the leasing of space in this building to M and L. Accordingly, M is "related" to N (as such term is defined in subdivision (ii)(*a*) of this subparagraph) and L is "related" to M (as such term is defined in subdivision (ii)(*b*) of this subparagraph). Under these circumstances, since all the available space in the building is leased to either an exempt organization related to the exempt organization holding title to the building or an exempt organization related to such related exempt organization, no portion of the building is treated as debt-financed property.

Example (2). W, an exempt labor union described in section 501(c)(5), owns a 10-story office building which has been purchased with borrowed funds. Five floors of the building are used by W in furtherance of its exempt purpose. Four of the other floors are rented to X which is an exempt voluntary employees' beneficiary association described in section 501(c)(9), operated for the benefit of W's members. X uses such office space in furtherance of its exempt purpose. Seventy percent of the members of W are also members of X. Accordingly, X is "related" to W (as such term is defined in subdivision (ii)(*c*) of this subparagraph). The remaining floor of the building is rented to the general public for purposes not described in section 514(b)(1)(A), (B), (C), or (D). Under these circumstances, no portion of this building is treated as debt-financed property since more than 85 percent of the office space available in this building is used either by W or X, an exempt organization related to W, in furtherance of their respective exempt purpose. See paragraph (b)(1) of this section for rules relating to the use of property substantially

related to an exempt purpose. See paragraph (b)(6) of this section for rules relating to uses by related exempt organizations.

Example (3). Assume the same facts as in example (2), except that W and X are each exempt local labor unions described in section 501(c)(5) having no common membership and are each affiliated with N, an exempt international labor union described in section 501(c)(5). Under these circumstances, no portion of this building is treated as debt-financed property since more than 85 percent of the office space available in this building is used either by W or X, an exempt organization related to W, in furtherance of their respective exempt purpose.

Example (4). Assume the same facts as in example (3), except that W and X are directly affiliated with different exempt international labor unions and that W and X are not otherwise affiliated with, or members of, a common exempt organization, other than an association of international labor unions. Under these circumstances, the portions of this building which are rented to X and to the general public are treated as debt-financed property since X is not related to W and W uses less than 85 percent of the building for its exempt purpose.

(3) *Life income contracts.* (i) Property shall not be treated as "debt-financed property" when—

(*a*) An individual transfers property to a trust or a fund subject to a contract providing that the income is to be paid to him or other individuals or both for a period of time not to exceed the life of such individual or individuals in a transaction in which the payments to the individual or individuals do not constitute the proceeds of a sale or exchange of the property so transferred, and

(*b*) The remainder interest is payable to an exempt organization described in section 501(c)(3).

(ii) Subdivision (i) of this subparagraph is illustrated by the following example.

Example. On January 1, 1967, A transfers property to X, an exempt organization described in section 501(c)(3), which immediately places the property in a fund. On January 1, 1971, A transfers additional property to X, which property is also placed in the fund. In exchange for each transfer, A receives income participation fund certificates which entitle him to a proportionate part of the fund's income for his life and for the life of another individual. None of the payments made by X are treated by the recipients as the proceeds of a sale or exchange of the property transferred. In this situation, none of the property received by X from A is treated as debt-financed property.

(d) *Property acquired for prospective exempt use*—(1) *Neighborhood land*—(i) *In general.* If an organization acquires real property for the principal purpose of using the land in the exercise or performance of its exempt purpose, commencing within 10 years of the time of acquisition, such property will not be treated as debt-financed property, so long as (*a*) such property is in the neighborhood of other property owned by the organization which is used in the performance of its exempt purpose, and (*b*) the organization does not abandon its intent to use the land in such a manner within the 10-year period. The rule expressed in this subdivision is hereinafter referred to as the "neighborhood land rule".

(ii) *"Neighborhood" defined.* Property shall be considered in the "neighborhood" of property owned and used by the organization in the performance of its exempt purpose if the acquired property is contiguous with the exempt purpose property or would be contiguous with such property except for the interposition of a road, street, railroad, stream, or similar property. If the acquired property is not contiguous with exempt function property, it may still be in the "neighborhood" of such property, but only if it is within 1 mile of such property and the facts and circumstances of the particular situation make the acquisition of contiguous property unreasonable. Some of the criteria to consider in determining this question include the availability of land and the intended future use of the land. For example, a university attempts to purchase land contiguous to its present campus but cannot do so because the owners either refuse to sell or ask unreasonable prices. The nearest land of sufficient size and utility is a block away from the campus. The university purchases such land. Under these circumstances, the contiguity requirement is unreasonable and the land purchased would be considered "neighborhood land".

(iii) *Exception.* The neighborhood land rule shall not apply to any property after the expiration of 10 years from the date of acquisition. Further, the neighborhood land rule shall apply after the first 5 years of the 10-year period only if the organization establishes to the satisfaction of the Commissioner that future use of the acquired land in furtherance of the organization's exempt purpose before the expiration of the 10-year period is reasonably certain. In order to satisfy the Commissioner, the organization does not necessarily have to show binding contracts. However, it must at least have a definite plan detailing a specific improvement and a completion date, and some affirmative action toward the fulfillment of such a plan. This information shall be forwarded to the Commissioner of Internal Revenue, Washington, D.C. 20224, for a ruling at least 90 days before the end of the fifth year after acquisition of the land.

(2) *Actual use.* If the neighborhood land rule is inapplicable because—

(i) The acquired land is not in the neighborhood of other property used by the organization in performance of its exempt purpose, or

(ii) The organization (for the period after the first 5 years of the 10-year period) is unable to establish to the satisfaction of the Commissioner that the use of the acquired land for its exempt purposes within the 10-year period is reasonably certain,

but the land is actually used by the organization in furtherance of its exempt purpose within the 10-year period, such property (subject to the provisions of subparagraph (4) of this paragraph) shall not be treated as debt-financed property for any period prior to such conversion.

(3) *Limitations*—(i) *Demolition or removal required.* (*a*) Subparagraphs (1) and (2) of this paragraph shall apply with respect to any structure on the land when acquired by the organization, or to the land occupied by the structure, only so long as the intended future use of the land in furtherance of the organization's exempt purpose requires that the structure be demolished or removed in order to use the land in such a manner. Thus, during the first 5 years after acquisition (and for subsequent years if there is a favorable ruling in accordance with subparagraph (1)(iii) of this paragraph) improved property is not debt-financed so long as the organization does not abandon its intent to demolish the existing structures and use the land in furtherance of its exempt purpose. Furthermore, if there is an actual demolition of such structures, the use made of the land need not be the one originally intended. Therefore, the actual use requirement of this subdivision may be satisfied by using the land in any manner which furthers the exempt purpose of the organization.

(*b*) Subdivision (i)(*a*) of this subparagraph may be illustrated by the following examples. For purposes of the following examples it is assumed that but for the application of the neighborhood land rule such property would be debt-financed property.

Example (1). An exempt university acquires a contiguous tract of land on which there is an apartment building. The university intends to demolish the apartment building and build classrooms and does not abandon this intent during the first 4 years after acquisition. In the fifth year after acquisition it abandons the intent to demolish and sells the apartment building. Under these circumstances, such property is not debt-financed property for the first 4 years after acquisition even though there was no eventual demolition or use made of such land in furtherance of the university's exempt purpose. However, such property is debt-financed property as of the time in the fifth year that the intent to demolish the building is abandoned and any gain on the sale of the property is subject to section 514.

Example (2). Assume the facts as stated in example (1) except that the university did not abandon its intent to demolish the existing building and construct a classroom building until the eighth year after acquisition when it sells the property. Assume further that the university did not receive a favorable ruling in accordance with subparagraph (1)(iii) of this paragraph. Under these circumstances, the building is debt-financed property for the sixth, seventh, and eighth years. It is not, however, treated as debt-financed property for the first 5 years after acquisition.

Example (3). Assume the facts as stated in Example (2) except that the university received a favorable ruling in accordance with subparagraph (1)(iii) of this paragraph. Under these circumstances, the building is not debt-financed property for the first 7 years after acquisition. It only becomes debt-financed property as of the time in the eighth year when the university abandoned its intent to demolish the existing structure.

Example (4). (1) Assume that a university acquires a contiguous tract of land containing an office building for the principal purpose of demolishing the office building and building a modern dormitory. Five years later the dormitory has not been constructed, and the university has failed to satisfy the Commissioner that the office building will be demolished and the land will be used

in furtherance of its exempt purpose (and consequently has failed to obtain a favorable ruling under subparagraph (1)(iii) of this paragraph). In the ninth taxable year after acquisition the university converts the office building into an administration building. Under these circumstances, during the sixth, seventh, and eighth years after acquisition, the office building is treated as debt-financed property because the office building was not demolished or removed. Therefore, the income derived from such property during these years shall be subject to the tax on unrelated business income.

(2) Assume that instead of converting the office building to an administration building, the university demolishes the office building in the ninth taxable year after acquisition and then constructs a new administration building. Under these circumstances, the land would not be considered debt-financed property for any period following the acquisition, and the university would be entitled to a refund of taxes paid on the income derived from such property for the sixth through eighth taxable years after the acquisition in accordance with subparagraph (4) of this paragraph.

(ii) *Subsequent construction.* Subparagraphs (1) and (2) of this paragraph do not apply to structures erected on the land after the acquisition of the land.

(iii) *Property subject to business lease.* Subparagraphs (1) and (2) of this paragraph do not apply to property subject to a lease which is a business lease (as defined in § 1.514(f)-1) whether the organization acquired the property subject to the lease or whether it executed the lease subsequent to acquisition. If only a portion of the real property is subject to a lease, paragraph (c) of § 1.514(f)-1 applies in determining whether such lease is a business lease.

(4) *Refund of taxes.* (i) If an organization has not satisfied the actual use condition of subparagraph (2) of this paragraph or paragraph (e)(3) of this section before the date prescribed by law (including extensions) for filing the return for the taxable year, the tax for such year shall be computed without regard to the application of such actual use condition. However, if—

(*a*) A credit or refund of any overpayment of taxes is allowable for a prior taxable year as a result of the satisfaction of such actual use condition, and

(*b*) Such credit or refund is prevented by the operation of any law or rule of law (other than chapter 74, relating to closing agreements and compromises),

such credit or refund may nevertheless be allowed or made, if a claim is filed within 1 year after the close of the taxable year in which such actual use condition is satisfied. Interest on any overpayment for a taxable year resulting from the application of subparagraph (2) of this paragraph or paragraph (e)(3) of this section shall be allowed and paid at the rate of 4 percent per annum in lieu of 6 percent per annum.

(ii) This subparagraph may be illustrated by the following example. For purposes of this example it is assumed that but for the neighborhood land rule such property would be debt-financed property.

Example. Y, a calendar year exempt organization, acquires real property in January 1970, which is contiguous with other property used by Y in furtherance of its exempt purpose. However, Y does not satisfy the Commissioner by January 1975, that the existing structure will be demolished and the land will be used in furtherance of its exempt purpose. In accordance with this subparagraph, from 1975 until the property is converted to an exempt use, the income derived from such property shall be subject to the tax on unrelated business income. During July 1979, Y demolishes the existing structure on the land and begins using the land in furtherance of its exempt purpose. At this time Y may file claims for refund for the open years 1976 through 1978. Further, in accordance with this subparagraph, Y may also file a claim for refund for 1975, even though a claim for such taxable year may be barred by the statute of limitations, provided such claim is filed before the close of 1980.

(e) *Churches*—(1) *In general.* If a church or association or convention of churches acquires real property, for the principal purpose of using the land in the exercise or performance of its exempt purpose, commencing within 15 years of the time of acquisition, such property shall not be treated as debt-financed property so long as the organization does not abandon its intent to use the land in such a manner within the 15-year period.

(2) *Exception.* This paragraph shall not apply to any property after the expiration of the 15-year period. Further, this paragraph shall apply after the first 5 years of the 15-year period only if the church or association or convention of churches establishes to the satisfaction of the Commissioner that use of the acquired land in furtherance of the organization's exempt purpose before the expiration of the 15-year period is reasonably certain. For purposes of the preceding sentence, the rules contained in paragraph (d)(1)(iii) of this section with respect to satisfying the Commissioner that the exempt organization intends to use the land within the prescribed time in furtherance of its exempt purpose shall apply.

(3) *Actual use.* If the church or association or convention of churches for the period after the first 5 years of the 15-year period is unable to establish to the satisfaction of the Commissioner that the use of the acquired land for its exempt purpose within the 15-year period is reasonably certain, but such land is in fact converted to an exempt use within the 15-year period, the land (subject to the provisions of paragraph (d)(4) of this section) shall not be treated as debt-financed property for any period prior to such conversion.

(4) *Limitations.* The limitations stated in paragraph (d)(3) (i) and (ii) of this section shall similarly apply to the rules contained in this paragraph.

§ 1.514(c) Statutory provisions; unrelated debt-financed income; acquisition indebtedness.

SEC. 514. *Unrelated debt-financed income.* * * *

(c) *Acquisition indebtedness*—(1) *General rule.* For purposes of this section, the term "acquisition indebtedness" means, with respect to any debt-financed property, the unpaid amount of—

(A) The indebtedness incurred by the organization in acquiring or improving such property;

(B) The indebtedness incurred before the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement; and

(C) The indebtedness incurred after the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement and the incurrence of such indebtedness was reasonably foreseeable at the time of such acquisition or improvement,

except that in the case of any taxable year beginning before January 1, 1972, any indebtedness incurred before June 28, 1966, shall not be taken into account. In the case of an organization (other than a church or convention or association of churches) such indebtedness incurred before June 28, 1966, shall be taken into account if such indebtedness constitutes business lease indebtedness (as defined in subsection (g)).

(2) *Property acquired subject to mortgage, etc.* For purposes of this subsection—

(A) *General rule.* Where property (no matter how acquired) is acquired subject to a mortgage or other similar lien, the amount of the indebtedness secured by such mortgage or lien shall be considered as an indebtedness of the organization incurred in acquiring such property even though the organization did not assume or agree to pay such indebtedness.

(B) *Exceptions.* Where property subject to a mortgage is acquired by an organization by bequest or devise, the indebtedness secured by the mortgage shall not be treated as acquisition indebtedness during a period of 10 years following the date of the acquisition. If an organization acquires property by gift subject to a mortgage which was placed on the property more than 5 years before the gift, which property was held by the donor more than 5 years before the gift, the indebtedness secured by such mortgage shall not be treated as acquisition indebtedness during a period of 10 years following the date of such gift. This subparagraph shall not apply if the organization, in order to acquire the equity in the property by bequest, devise, or gift, assumes and agrees to pay the indebtedness secured by the mortgage, or if the organization makes any payment for the equity in the property owned by the decedent or the donor.

(3) *Extension of obligations.* For purposes of this section, an extension, renewal, or refinancing of an obligation evidencing a preexisting indebtedness shall not be treated as the creation of a new indebtedness.

(4) *Indebtedness incurred in performing exempt purpose.* For purposes of this section, the term "acquisition indebtedness" does not include indebtedness the incurrence of which is inherent in the performance or exercise of the purpose or function constituting the basis of the organization's exemption, such as the indebtedness incurred by a credit union described in section 501(c)(14) in accepting deposits from its members.

(5) *Annuities.* For purposes of this section, the term "acquisition indebtedness" does not include an obligation to pay an annuity which—

(A) Is the sole consideration (other than a mortgage to which paragraph (2)(B) applies) issued in exchange for property if, at the time of the exchange, the value of the annuity is less than 90 percent of the value of the property received in the exchange,

(B) Is payable over the life of one individual in being at the time the annuity is issued, or over the lives of two individuals in being at such time, and

(C) Is payable under a contract which—

(i) Does not guarantee a minimum amount of payments or specify a maximum amount of payments, and

(ii) Does not provide for any adjustment of the amount of the annuity payments by reference to the income received from the transferred property or any other property.

(6) *Certain federal financing.* For purposes of this section, the term "acquisition indebtedness" does not include an obligation, to the extent that it is insured by the Federal Housing Administration, to finance the purchase, rehabilitation, or construction of housing for low and moderate income persons.

(7) *Average acquisition indebtedness.* For purposes of this section, the term "average acquisition indebtedness" for any taxable year with respect to a debt-financed property means the average amount, determined under regulations prescribed by the Secretary or his delegate, of the acquisition indebtedness during the period the property is held by the organization during the taxable year except that for the purpose of computing the percentage of any gain or loss to be taken into account on a sale or other disposition of debt-financed property, such term means the highest amount of the acquisition indebtedness with respect to such property during the 12-month period ending with the date of the sale or other disposition.

[Sec. 514(c) as amended by sec. 121(d), Tax Reform Act, 1969 (83 Stat. 545)]

§ 1.514(c)-1 Acquisition indebtedness.

(a) *In general*—(1) *Definition of acquisition indebtedness.* For purposes of section 514 and the regulations thereunder, the term "acquisition indebtedness" means, with respect to any debt-financed property, the outstanding amount of—

(i) The principal indebtedness incurred by the organizaton in acquiring or improving such property;

(ii) The principal indebtedness incurred before the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement; and

(iii) The principal indebtedness incurred after the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement and the incurrence of such indebtedness was reasonably foreseeable at the time of such acquisition or improvement.

Whether the incurrence of an indebtedness is reasonably foreseeable depends upon the facts and circumstances of each situation. The fact that an organization did not actually foresee the need for the incurrence of an indebtedness prior to the acquisition or improvement does not necessarily mean that the subsequent incurrence of indebtedness was not reasonably foreseeable.

(2) *Examples.* The application of subparagraph (1) of this paragraph may be illustrated by the following examples:

Example (1). X, an exempt organization, pledges some of its investment securities with a bank for a loan and uses the proceeds of such loan to purchase an office building which it leases to the public for purposes other than those described in section 514(b)(1) (A), (B), (C), or (D). The outstanding principal indebtedness with respect to the loan constitutes acquisition indebtedness incurred prior to the acquisition which would not have been incurred but for such acquisition.

Example (2). Y, an exempt scientific organization, mortgages its laboratory to replace working capital used in remodeling an office building which Y rents to an insurance company for purposes not described in section 514(b)(1) (A), (B), (C), or (D). The indebtedness is "acquisition indebtedness" since such indebtedness, though incurred subsequent to the improvement of the office building, would not have been incurred but for such improvement, and the indebtedness was reasonably foreseeable when, to make such improvement, Y reduced its working capital below the amount necessary to continue current operations.

Example (3). (*a*) U, an exempt private preparatory school, as its sole educational facility owns a classroom building which no longer meets the needs of U's students. In 1971, U sells this building for $3 million to Y, a corporation which it does not control. U receives $1 million as a down payment from Y and takes back a purchase money mortage of $2 million which bears interest at 10 percent per annum. At the time U became the mortgagee of the $2 million purchase money mortgage, U realized that it would have to construct a new classroom building and knew that it would have to incur an indebtedness in the construction of the new classroom building. In 1972, U builds a new classroom building for a cost of $4 million. In connection with the construction of this building, U borrows $2.5 million from X Bank pursuant to a deed of trust bearing interest at 6 percent per annum. Under these circumstances, $2 million of the $2.5 million borrowed to finance construction of the new classroom building would not have been borrowed but for the retention of the $2 million purchase money mortgage. Since such indebtedness was reasonably foreseeable, $2 million of the $2.5 million borrowed to finance the construction of the new classroom building is acquisition indebtedness with respect to the purchase money mortgage and the purchase money mortgage is debt-financed property.

(*b*) In 1972, U receives $200,000 in interest from Y (10 percent of $2 million) and makes a $150,000 interest payment to X (6 percent of $2.5 million). In addition, assume that for 1972 the debt/basis percentage is 100 percent ($2 million/$2 million). Accordingly, all the interest and all the deductions directly connected with such interest income are to be taken into account in computing unrelated business taxable income. Thus, $200,000 of interest income and $120,000 ($150,000 × $2 million/$2.5 million) of deductions directly connected with such interest income are taken into account. Under these circumstances, U shall include net interest income of $80,000 ($200,000 of income less $120,000 of deductions directly connected with such income) in its unrelated business taxable income for 1972.

Example (4). In 1972 X, an exempt organization, forms a partnership with A and B. The partnership agreement provides that all three partners shall share equally in the profits of the partnership, shall each invest $3 million, and that X shall be a limited partner. X invests $1 million of its own funds in the partnership and $2 million of borrowed funds. The partnership purchases as its sole asset an office building which is leased to the general public for purposes other than those described in section 514(b)(1) (A), (B), (C), or (D). The office building cost the partnership $24 million of which $15 million is borrowed from Y bank. This loan is secured by a mortgage on the entire office building. By agreement with Y bank, X is held not to be personally liable for payment of such mortgage. By reason of section 702(b) the character of any item realized by the partnership and included in the partner's distributive share shall be determined as if the partner realized such item directly from the source from which it was realized by the partnership and in the same manner. Therefore, a portion of X's income from the building is debt-financed income. Under these circumstances, since both the $2 million indebtedness incurred by X in acquiring its partnership interest and $5 million, the allocable portion of the partnership's indebtedness incurred with respect to acquiring the office building which is attributable to X in computing the debt/basis percentage (one-third of $15 million), were incurred in acquiring income-producing property, X has acquisition indebtedness of $7 million ($2 million plus $5 million). Similarly, the allocable portion of the partnership's adjusted basis in the office building which is attributable to X in computing the debt-basis percentage is $8 million (one-third of $24 million). Assuming no payment with respect to either indebtedness and no adjustments to basis in 1972, X's average acquisition indebtedness is $7 million and X's average adjusted basis is $8 million for such year. Therefore, X's debt/basis percentage with respect to its share of the partnership income for 1972 is 87.5 percent ($7 million/$8 million).

(3) *Changes in use of property.* Since property used in a manner described in section 514(b)(1) (A), (B), (C), or (D) is not considered debt-financed property, indebtedness with respect to such property is not acquisition indebtedness. However, if an organization converts such property to a use which is not described in section 514(b)(1) (A), (B), (C), or (D) and such property is otherwise treated as debt-financed property, the outstanding principal indebtedness with respect to such property will thereafter be treated as "acquisition indebtedness". For example, assume that in 1971 a university borrows funds to acquire an apartment building as housing for married students. In 1974 the university rents the apartment building to the public for purposes not described in section 514(b)(1) (A), (B), (C), or (D). The outstanding principal indebtedness is "acquisition indebtedness" as of the time in 1974 when the building is first rented to the public.

(4) *Continued indebtedness.* If—

(i) An organization sells or exchanges property, subject to an indebtedness (incurred in a manner described in subparagraph (1) of this paragraph),

(ii) Acquires another property without retiring the indebtedness, and

(iii) The newly acquired property is otherwise treated as debt-financed property,

the outstanding principal indebtedness with respect to the acquired property is "acquisition indebtedness", even though the original property was not debt-financed property. For example, to house its administrative offices, an exempt organization purchases a building with $600,000 of its own funds and $400,000 of borrowed funds secured by a pledge of its securities. It later sells the building for $1,000,000 without redeeming the pledge. It uses these proceeds to purchase an apartment building which it rents to

the public for purposes not described in section 514(b)(1) (A), (B), (C), or (D). The indebtedness of $400,000 is "acquisition indebtedness" with respect to the apartment building even though the office building was not debt-financed property.

(5) *Indebtedness incurred before June 28, 1966.* For taxable years beginning before January 1, 1972, "acquisition indebtedness" does not include any indebtedness incurred before June 28, 1966, unless such indebtedness was incurred on rental real property subject to a business lease and such indebtedness constituted business lease indebtedness. Furthermore, in the case of a church or convention or association of churches, the preceding sentence applies without regard to whether the indebtedness incurred before June 28, 1966, constituted business lease indebtedness.

(b) *Property acquired subject to lien*—(1) *Mortgages.* Except as provided in subparagraphs (3) and (4) of this paragraph, whenever property is acquired subject to a mortgage, the amount of the outstanding principal indebtedness secured by such mortgage is treated as "acquisition indebtedness" with respect to such property even though the organization did not assume or agree to pay such indebtedness. The preceding sentence applies whether property is acquired by purchase, gift, devise, bequest, or any other means. Thus, for example, assume that an exempt organization pays $50,000 for real property valued at $150,000 and subject to a $100,000 mortgage. The $100,000 of outstanding principal indebtedness is "acquisition indebtedness" just as though the organization had borrowed $100,000 to buy the property.

(2) *Other liens.* For purposes of this paragraph, liens similar to mortgages shall be treated as mortgages. A lien is similar to a mortgage if title to property is encumbered by the lien for the benefit of a creditor. However, in the case where State law provides that a tax lien attaches to property prior to the time when such lien becomes due and payable, such lien shall not be treated as similar to a mortgage until after it has become due and payable and the organization has had an opportunity to pay such lien in accordance with State law. Liens similar to mortgages include (but are not limited to):

(i) Deeds of trust,

(ii) Conditional sales contracts,

(iii) Chattel mortgages,

(iv) Security interests under the Uniform Commercial Code,

(v) Pledges,

(vi) Agreements to hold title in escrow, and

(vii) Tax liens (other than those described in the third sentence of this subparagraph).

(3) *Certain encumbered property acquired by gift, bequest or devise*—(i) *Bequest or devise.* Where property subject to a mortgage is acquired by an organization by bequest or devise, the outstanding principal indebtedness secured by such mortgage is not to be treated as "acquisition indebtedness" during the 10-year period following the date of acquisition. For purposes of the preceding sentence, the date of acquisition is the date the organization receives the property.

(ii) *Gifts.* If an organization acquires property by gift subject to a mortgage, the outstanding principal indebtedness secured by such mortgage shall not be treated as "acquisition indebtedness" during the 10-year period following the date of such gift, so long as—

(*a*) The mortgage was placed on the property more than 5 years before the date of the gift, and

(*b*) The property was held by the donor for more than 5 years before the date of the gift.

For purposes of the preceding sentence, the date of the gift is the date the organization receives the property.

(iii) *Limitation.* Subdivisions (i) and (ii) of this subparagraph shall not apply if—

(*a*) The organization assumes and agrees to pay all or any part of the indebtedness secured by the mortgage, or

(*b*) The organization makes any payment for the equity owned by the decedent or the donor in the property (other than a payment pursuant to an annuity excluded from the definition of "acquisition indebtedness" by paragraph (e) of this section).

Whether an organization has assumed and agreed to pay all or any part of an indebtedness in order to acquire the property shall be determined by the facts and circumstances of each situation.

(iv) *Examples.* The application of this subparagraph may be illustrated by the following examples:

Example (1). A dies on January 1, 1971. His will devises an office building subject to a mortgage to U, an exempt organization described in section 501(c)(3). U does not at any time assume the mortgage. For the period 1971 through 1980, the outstanding principal indebtedness secured by the mortgage is not acquisition indebtedness. However, after December 31, 1980, the outstanding principal indebtedness secured by the mortgage is acquisition indebtedness if the building is otherwise treated as debt-financed property.

Example (2). Assume the facts as stated in example (1) except that on January 1, 1975, U assumes the mortgage. After January 1, 1975, the outstanding principal indebtedness secured by the mortgage is acquisition indebtedness if the building is otherwise treated as debt-financed property.

(4) *Bargain sale before October 9, 1969.* Where property subject to a mortgage is acquired by an organization before October 9, 1969, the outstanding principal indebtedness secured by such mortgage is not to be treated as "acquisition indebtedness" during the 10-year period following the date of acquisition if—

(i) The mortgage was placed on the property more than 5 years before the purchase, and

(ii) The organization paid the seller a total amount no greater than the amount of the seller's cost (including attorney's fees) directly related to the transfer of such property to the organization, but in any event no more than 10 percent of the value of the seller's equity in the property transferred.

(c) *Extension of obligations*—(1) *In general.* An extension, renewal, or refinancing of an obligation evidencing a preexisting indebtedness is considered as a continuation of the old indebtedness to the extent the outstanding principal amount thereof is not increased. Where the principal amount of the modified obligation exceeds the outstanding principal amount of the preexisting indebtedness, the excess shall be treated as a separate indebtedness for purposes of section 514 and the regulations thereunder. For example, if the interest rate on an obligation incurred prior to June 28, 1966, by an exempt university is modified subsequent to such date, the modified obligation shall be deemed to have been incurred prior to June 28, 1966. Thus, such an indebtedness will not be treated as acquisition indebtedness for taxable years beginning before January 1, 1972, unless the original indebtedness was business lease indebtedness (as defined in § 1.514(g)-1).

(2) *Extension or renewal.* In general, any modification or substitution of the terms of an obligation by the organization shall be an extension or renewal of the original obligation, rather than the creation of a new indebtedness to the extent that the outstanding principal amount of the indebtedness is not increased. The following are examples of acts which result in the extension or renewal of an obligation:

(i) Substitution of liens to secure the obligation;

(ii) Substitution of obligees, whether or not with the consent of the organization;

(iii) Renewal, extension or acceleration of the payment terms of the obligation; and

(iv) Addition, deletion, or substitution of sureties or other primary or secondary obligors.

(3) *Allocation.* In cases where the outstanding principal amount of the modified obligation exceeds the outstanding principal amount of the unmodified obligation and only a portion of such refinanced indebtedness is to be treated as acquisition indebtedness, payments on the amount of the refinanced indebtedness shall be apportioned prorata between the amount of the preexisting indebtedness and the excess amount. For example, assume that an organization has an outstanding principal indebtedness of $500,000 which is treated as acquisition indebtedness. It borrows another $100,000, which is not acquisition indebtedness, from the same lending institution and gives the lender a $600,000 note for its total obligation. In this situation, a payment of $60,000 on the amount of the total obligation would reduce the acquisition indebtedness by $50,000 and the excess indebtedness by $10,000.

(d) *Indebtedness incurred in performing exempt purpose.* "Acquisition indebtedness" does not include the incur-

rence of an indebtedness inherent in the performance or exercise of the purpose or function constituting the basis of the organization's exemption. Thus, "acquisition indebtedness" does not include the indebtedness incurred by an exempt credit union in accepting deposits from its members or the obligation incurred by an exempt organization in accepting payments from its members to provide such members with insurance, retirement or other similar benefits.

(e) *Annuities*—(1) *Requirements.* The obligation to make payment of an annuity is not "acquisition indebtedness" if the annuity meets all the following requirements—

(i) It must be the sole consideration (other than a mortgage to which paragraph (b)(3) of this section applies) issued in exchange for the property acquired;

(ii) At the time of the exchange, the present value of the annuity (determined in accordance with subparagraph (2) of this paragraph) must be less than 90 percent of the value of the prior owner's equity in the property received in the exchange;

(iii) The annuity must be payable over the life of one individual in being at the time the annuity is issued, or over the lives of two individuals in being at such time; and

(iv) The annuity must be payable under a contract which—

(*a*) Does not guarantee a minimum number of payments or specify a maximum number of payments, and

(*b*) Does not provide for any adjustment of the amount of the annuity payments by reference to the income received from the transferred property or any other property.

(2) *Valuation.* For purposes of this paragraph, the value of an annuity at the time of exchange shall be computed in accordance with section 101(b), § 1.101–2(e)(1)(iii)(*b*)(*2*), and section 3 of Rev. Rul. 62–216, C.B. 1962–2, 30.

(3) *Examples.* The application of this paragraph may be illustrated by the following examples. For purposes of these examples it is assumed that the property transferred is used for purposes other than those described in section 514(b)(1)(A), (B), (C), or (D).

Example (*1*). On January 1, 1971, X, an exempt organization, receives property valued at $100,000 from donor A, a male aged 60. In return X promises to pay A $6,000 a year for the rest of A's life, with neither a minimum nor maximum number of payments specified. The annuity is payable on December 31 of each year. The amounts paid under the annuity are not dependent on the income derived from the property transferred to X. The present value of this annuity is $81,156, determined in accordance with Table A of Rev. Rul. 62–216. Since the value of the annuity is less than 90 percent of A's equity in the property transferred and the annuity meets all the other requirements of subparagraph (1) of this paragraph, the obligation to make annuity payments is not acquisition indebtedness.

Example (*2*). On January 1, 1971, B transfers an office building to Y, an exempt university, subject to a mortgage. In return Y agrees to pay B $5,000 a year for the rest of his life, with neither a minimum nor maximum number of payments specified. The amounts paid under the annuity are not dependent on the income derived from the property transferred to Y. It is determined that the actual value of the annuity is less than 90 percent of the value of B's equity in the property transferred. Y does not assume the mortgage. For the taxable years 1971 through 1980, the outstanding principal indebtedness secured by the mortgage is not treated as acquisition indebtedness. Further, Y's obligation to make annuity payments to B never constitutes acquisition indebtedness.

(f) *Certain Federal financing.* "Acquisition indebtedness" does not include an obligation to finance the purchase, rehabilitation, or construction of housing for low and moderate income persons to the extent that it is insured by the Federal Housing Administration. Thus, for example, to the extent that an obligation is insured by the Federal Housing Administration under section 221(d)(3) (12 U.S.C. 1715(d)(3)) or section 236 (12 U.S.C. 1715z–1) of title II of the National Housing Act, as amended, the obligation is not "acquisition indebtedness".

(g) *Certain obligations of charitable remainder trusts.* For purposes of section 664(c) and § 1.664–1(c), a charitable remainder trust (as defined in § 1.664–1(a)(1)(iii)(*a*) does not incur "acquisition indebtedness" when the sole consideration it is required to pay in exchange for unencumbered property is an "annuity amount" or a "unitrust amount" (as defined in § 1.664–1(a)(1)(iii)(*b*) and (*c*)).

§ 1.514(d) Statutory provisions; unrelated debt-financed income; basis of debt-financed property acquired in corporate liquidation.

SEC. 514. *Unrelated debt-financed income.* * * *

(d) *Basis of debt-financed property acquired in corporate liquidation.* For purposes of this subtitle, if the property was acquired in a complete or partial liquidation of a corporation in exchange for its stock, the basis of the property shall be the same as it would be in the hands of the transferor corporation, increased by the amount of gain recognized to the transferor corporation upon such distribution and by the amount of any gain to the organization which was included, on account of such distribution, in unrelated business taxable income under subsection (a).

[Sec. 514(d) as amended by sec. 121(d), Tax Reform Act 1969 (83 Stat. 547)]

§ 1.514(d)–1 Basis of debt-financed property acquired in corporate liquidation.

(a) If debt-financed property is acquired by an exempt organization in a complete or partial liquidation of a corporation in exchange for its stock, the organization's basis in such property shall be the same as it would be in the hands of the transferor corporation, increased by the amount of gain recognized to the transferor corporation upon such distribution and by the amount of any gain which is includible, on account of such distribution, in the gross income of the organization as unrelated debt-financed income.

(b) The application of this section may be illustrated by the following example:

Example. On July 1, 1970, T, an exempt trust, exchanges $15,000 of borrowed funds for 50 percent of the shares of M Corporation's stock. M uses $35,000 of borrowed funds in acquiring depreciable assets which are not used at any time for purposes described in section 514(b)(1)(A), (B), (C), or (D). On July 1, 1978, and for the 12-month period preceding this date, T's acquisition indebtedness with respect to M's stock has been $3,000. On this date, there is a complete liquidation of M Corporation to which section 331(a)(1) applies. In the liquidation T receives a distribution in kind of depreciable assets and assumes $7,000 of M's indebtedness which remains unpaid with respect to the depreciable assets. On this date, M's adjusted basis of these depreciable assets is $9,000, and such assets have a fair market value of $47,000. M recognizes gain of $6,000 with respect to this liquidation pursuant to sections 1245 and 1250. T realizes a gain of $25,000 (the difference between the excess of fair market value of the property received over the indebtedness assumed, $40,000 ($47,000–$7,000) and T's basis in M's stock, $15,000). A portion of this gain is to be treated as unrelated debt-financed income. This amount is determined by multiplying T's gain of $25,000 by the debt/basis percentage. The debt/basis percentage is 20 percent, the ratio which the average acquisition indebtedness ($3,000) is of the average adjusted basis ($15,000). Thus, $5,000 (20 percent of $25,000) is unrelated debt-financed income. This amount and the gain recognized pursuant to sections 1245 and 1250 are added to M's basis to determine T's basis in the property received. Consequently, T's basis in the property received from M Corporation is $20,000, determined as follows:

M Corporation's adjusted basis	$9,000
Gain recognized by M Corporation on the distribution	6,000
Unrelated debt-financed income recognized by T with respect to the distribution	5,000
T's transferred basis	20,000

§ 1.514(e) Statutory provisions; unrelated debt-financed income; allocation rules.

SEC. 514. *Unrelated debt-financed income.* * * *

(e) *Allocation rules.* Where debt-financed property is held for purposes described in subsection (b)(1)(A), (B), (C), or (D) as well as for other purposes, proper allocation shall be made with respect to basis, indebtedness, and income and deductions. The allocations required by this section shall be made in accordance with regulations prescribed by the Secretary or his delegate to the extent proper to carry out the purposes of this section.

[Sec. 514(e) as added by sec. 121(d), Tax Reform Act 1969 (83 Stat. 547)]

§ 1.514(e)–1 Allocation rules.

Where only a portion of property is debt-financed property, proper allocation of the basis, indebtedness, income, and deductions with respect to such property must be made to determine the amount of income or gain derived from such property which is to be treated as unrelated debt-financed income. See examples (2) and (3) of paragraph (b)(1)(iii) of § 1.514(b)–1 and examples (1), (2), and (3) of paragraph (b)(3)(iii) of

§ 1.514(b)-1 for illustrations of proper allocation.

§ 1.514(f) Statutory provisions; unrelated debt-financed income; definition of business lease.

SEC. 514. *Unrelated debt-financed income.* * * *

(f) *Definition of business lease.*

(1) *General rule.* For purposes of this section, the term "business lease" means a lease for a term of more than 5 years of real property by an organization (or by a partnership of which it is a member), if at the close of the lessor's taxable year there is a business lease indebtedness (as defined in subsection (g)) with respect to such property.

(2) *Special rules for applying paragraph (1).* For purposes of paragraph (1)—

(A) In computing the term of a lease which contains an option for renewal or extension, the term of such lease shall be considered as including any period for which such option may be exercised; and the term of any lease made pursuant to an exercise of such option shall include the period during which the prior lease was in effect. If real property is acquired subject to a lease, the term of such lease shall be considered to begin on the date of such acquisition.

(B) If the property has been occupied by the same lessee for a total period of more than 5 years commencing not earlier than the date of acquisition of the property by the organization or trust (whether such occupancy is under one or more leases, renewals, extensions, or continuations thereof), the occupancy of such lessee shall be considered to be under a lease for a term of more than 5 years within the meaning of paragraph (1). However, subsection (a) shall apply in the case of a tendency described in this subparagraph (and not within subparagraph (A)) only with respect to the sixth and succeeding years of occupancy by the same lessee. For purposes of this subparagraph, the term "same lessee" shall include any lessee of the property whose relationship with a lessee of the same property is such that losses in respect of sales or exchanges of property between the two lessees would be disallowed under section 267(a).

(3) *Exceptions.*—

(A) No lease shall be considered a business lease if—

(i) Such lease is entered into primarily for purposes which are substantially related (aside from the need of such organization for income or funds or the use it makes of the rents derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501, or

(ii) The lease is of premises in a building primarily designed for occupancy, and occupied by the organizations.

(B) If a lease for more than 5 years to a tenant is for only a portion of the real property, and space in the real property is rented during the taxable year under a lease for not more than 5 years to any other tenant of the organization, leases of the real property for more than 5 years shall be considered as business leases during the taxable year only if—

(i) The rents derived from the real property during the taxable year under leases for more than 5 years (not including, as a lease for more than 5 years, an occupancy which is considered as such a lease by reason of paragraph (2)(B)) represent 50 percent or more of the total rents derived during the taxable year from the real property; or the area of the premises occupied under leases for more than 5 years (not including, as a lease for more than 5 years, an occupancy which is considered as such a lease by reason of paragraph (2)(B)) represents, at any time during the taxable year, 50 percent or more of the total area of the real property rented at such time; or

(ii) The rent derived from the real property during the taxable year from any tenant under a lease for more than 5 years (including as a lease for more than 5 years an occupancy which is considered as such a lease by reason of paragraph (2)(B)) or from a group of tenants (under such leases) who are either members of an affiliated group (as defined in section 1504) or partners, represents more than 10 percent of the total rents derived during the taxable year from such property; or the area of the premises occupied by any one such tenant or by any such group of tenants, represents at any time during the taxable year more than 10 percent of the total area of the real property rented at such time.

In the application of clause (i), if during the last half of the term of a lease a new lease is made to take effect after the expiration of such lease, the unexpired portion of such lease on the date the second lease is made shall not be treated as a part of the term of the second lease.

[Sec. 514(f) as redesignated by sec. 121(d), Tax Reform Act 1969 (83 Stat. 548)]

§ 1.514(f)-1 Definition of business lease.

(a) *In general.* The term "business lease" means any lease, with certain exceptions discussed in paragraph (c) of this section, for a term of more than 5 years of real property by an organization subject to section 511 (or by a partnership of which it is a member) if at the close of the organization's taxable year there is a business lease indebtedness as defined in section 514(g) and § 1.514(g)-1 with respect to such property. For the purpose of this section the term "real property" and the term "premises" include personal property of the lessor tax-exempt organization leased by it to a lessee of its real estate if the lease of such personal property is made under, or in connection with, the lease of such real estate. For amounts of business lease rents and deductions to be included in computing unrelated business taxable income for taxable years beginning before January 1, 1970, see § 1.514(a)-2.

(b) *Special rules.* (1) In computing the term of the lease, the period for which a lease may be renewed or extended by reason of an option contained therein shall be considered as part of the term. For example, a 3-year lease with an option for renewal for another such period is considered a lease for a term of 6 years. Another example is the case of a 1-year lease with option of renewal for another such term, where the parties at the end of each year renew the arrangement. In this case, during the fifth year (but not during the first 4 years), the lease falls within the 5-year rule, since the lease then involves 5 years and there is an option for the sixth year. In determining the term of the lease, an option for renewal of the lease is taken into account whether or not the exercise of the option depends upon conditions or contingencies.

(2) If the property is acquired subject to a lease, the term of such lease shall be considered to begin on the date of such acquisition. For example, if an exempt organization purchases, in whole or in part with borrowed funds, real property subject to a 10-year lease which has 3 years left to run, and such lease contains no right of renewal or extension, the lease shall be considered a 3-year lease and hence does not meet the definition of a business lease in section 514(f) and paragraph (a) of this section. However, if this lease contains an option to renew for a period of 3 years or more, it is a business lease.

(3) Under the provisions of section 514(f)(2)(B) a lease is considered as continuing for more than 5 years if the same lessee has occupied the premises for a total period of more than 5 years, whether the occupancy is under one or more leases, renewals, extensions, or continuations. Continued occupancy shall be considered to be by the same lessee if the occupants during the period are so related that losses in respect of sales or exchanges of property between them would be disallowed under section 267(a). Such period shall be considered as commencing not earlier than the date of the acquisition of the property by the tax-exempt organization or trust. This rule is applicable only in the sixth and succeeding years of such occupancy by the same lessee. See, however, paragraph (c)(3) of this section.

(c) *Exceptions.* (1) A lease shall not be considered a business lease if such lease is entered into primarily for a purpose which is substantially related (aside from the need of such organization for income or funds, or the use it makes of the rents derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption. For example, where a tax-exempt hospital leases real property owned by it to an association of doctors for use as a clinic, the rents derived under such lease would not be included in computing unrelated business taxable income if the clinic is substantially related to the carrying on of hospital functions. See § 1.513-1 for principles applicable in determining whether there is a substantial relationship to the exempt purpose of an organization.

(2) A lease is not a business lease if the lease is of premises in a building primarily designed for occupancy and occupied by the tax-exempt organization.

(3) If a lease for more than 5 years to a tenant is for only a portion of the real property, and space in the real property is rented during the taxable year under a lease for not more than 5 years to any other tenant of the tax-exempt organization, all leases of the real property for more than 5 years shall be considered as business leases during the taxable year only if—

(i) The rents derived from the real property during the taxable year under leases for more than 5 years represent 50 percent or more of the total rents derived during the taxable year from the real property; or the area of the premises occupied under leases for more than 5 years represents, at any time during the taxable year, 50 percent or

more of the total area of the real property rented at such time; or

(ii) The rent derived from the real property during the taxable year from any tenant under a lease for more than 5 years, or from a group of tenants (under such leases) who are either members of an affiliated group (as defined in section 1504) or are partners, represents more than 10 percent of the total rents derived during the taxable year from such property; or the area of the premises occupied by any one such tenant, or by any such group of tenants, represents at any time during the taxable year more than 10 percent of the total area of the real property rented at such time.

In determining whether 50 percent or more of the total rents are derived from leases for more than 5 years, or whether 50 percent or more of the total area is occupied under leases for more than 5 years—

(iii) An occupancy which is considered to be a lease of more than 5 years solely by reason of the provisions of paragraph (b)(3) of this subparagraph shall not be treated as such a lease for purposes of subdivision (i) of this subparagraph, and

(iv) An occupancy which is considered to be a lease of more than 5 years solely by reason of the provisions of paragraph (b)(3) of this section shall be treated as such a lease for purposes of subdivision (ii) of this subparagraph, and

(v) If during the last half of the term of a lease a new lease is made to take effect after the expiration of such lease, the unexpired portion of the first lease will not be added to the second lease to determine whether such second lease is a lease for more than 5 years for purposes of subdivision (i) of this subparagraph.

(4) The application of subparagraph (3) of this paragraph may be illustrated by the following example:

Example. In 1954 an educational organization, which is on the calendar year basis, begins the erection of an 11-story apartment building using funds borrowed for that purpose, and immediately leases for a 10-year term the first floor to a real estate development company to sublet for stores and shops. As fast as the new apartments are completed, they are rented on an annual basis. At the end of 1959 all except the 10th and 11th floors are rented. Those two floors are completed during 1960 and rented. Assume that for 1954 and each subsequent taxable year through 1959, and for the taxable year 1963, the gross rental for the first floor represents more than 10 percent of the total gross rents derived during the taxable year from the building. Under this set of facts the 10-year lease of the first floor would be considered to be a business lease for all except the taxable years 1961, 1962, and 1964.

§ 1.514(g) Statutory provisions; unrelated debt-financed income; business lease indebtedness.

SEC. 514. *Unrelated debt-financed income.* * * *

(g) *Business lease indebtedness*—(1) *General rule.* The term "business lease indebtedness" means, with respect to any real property leased for a term of more than 5 years, the unpaid amount of—

(A) The indebtedness incurred by the lessor in acquiring or improving such property;

(B) The indebtedness incurred before the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement; and

(C) The indebtedness incurred after the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement and the incurrence of such indebtedness was reasonably foreseeable at the time of such acquisition or improvement.

(2) *Property acquired subject to mortgage, etc.* Where real property is acquired subject to a mortgage or other similar lien, the amount of the indebtedness secured by such mortgage or lien shall be considered (whether the acquisition was by gift, devise, or purchase) as an indebtedness of the lessor incurred in acquiring such property even though the lessor did not assume or agree to pay such indebtedness, except that where real property was acquired by gift, bequest, or devise before July 1, 1950, subject to a mortgage or other similar lien, the amount of such mortgage or other similar lien shall not be considered as an indebtedness of the lessor incurred in acquiring such property.

(3) *Certain property acquired by gift, etc.* Where real property was acquired by gift, bequest, or devise before July 1, 1950, subject to a lease requiring improvements in such property on the happening of stated contingencies, indebtedness incurred in improving such property in accordance with the terms of such lease shall not be considered as an indebtedness for purposes of this subsection.

(4) *Certain corporations described in section 501(c)(2).* In the case of a corporation described in section 501(c)(2), all of the stock of which was acquired before July 1, 1950, by an organization described in paragraph (3), (5), or (6) of section 501(c) (and more than one-third of such stock was acquired by such organization by gift or bequest), any indebtedness incurred by such corporation before July 1, 1950, and any indebtedness incurred by such corporation on or after such date in improving real property in accordance with the terms of a lease entered into before such date, shall not be considered as an indebtedness with respect to such corporation or such organization for purposes of this subsection.

(5) *Certain trusts described in section 401(a).* In the case of a trust described in section 401(a), or in the case of a corporation described in section 501(c)(2), all of the stock of which was acquired prior to March 1, 1954, by a trust described in section 401(a), any indebtedness incurred by such trust or such corporation before March 1, 1954, in connection with real property which is leased before March 1, 1954, and any indebtedness incurred by such trust or such corporation on or after such date necessary to carry out the terms of such lease, shall not be considered as an indebtedness with respect to such trust or such corporation for purposes of this subsection.

(6) *Business lease on portion of property.* In determining the amount of the business lease indebtedness where only a portion of the real property is subject to a business lease, proper allocation to the premises covered by such lease shall be made of the indebtedness incurred by the lessor with respect to the real property.

(7) *Special rule applicable to trusts described in section 401(a).* In the application of paragraph (1), if a trust described in section 401(a) forming part of a stock bonus, pension, or profit-sharing plan of an employer lends any money to another trust described in section 401(a) forming part of a stock bonus, pension, or profit-sharing plan of the same employer, such loan shall not be treated as an indebtedness of the borrowing trust, except to the extent that the loaning trust—

(A) Incurs any indebtedness in order to make such loan;

(B) Incurred indebtedness before the making of such loan which would not have been incurred but for the making of such loan; or

(C) Incurred indebtedness after the making of such loan which would not have been incurred but for the making of such loan and which was reasonably foreseeable at the time of making such loan.

(8) *Trusts described in section 501(c)(17).*

(A) In the case of a trust described in section 501(c)(17), or in the case of a corporation described in section 501(c)(2), all of the stock of which was acquired before January 1, 1969, by a trust described in section 501(c)(17), any indebtedness incurred by such trust or such corporation before January 1, 1969, in connection with real property which is leased before January 1, 1969, and any indebtedness incurred by such trust or such corporation on or after such date necessary to carry out the terms of such lease, shall not be considered as an indebtedness with respect to such trust or such corporation for purposes of this subsection.

(B) In the application of paragraph (1), if a trust described in section 501(c)(17) forming part of a supplemental unemployment compensation benefit plan lends any money to another trust described in section 501(c)(17) forming part of the same plan, such loan shall not be treated as an indebtedness of the borrowing trust, except to the extent that the loaning trust—

(i) Incurs any indebtedness in order to make such loan,

(ii) Incurred indebtedness before the making of such loan which would not have been incurred but for the making of such loan, or

(iii) Incurred indebtedness after the making of such loan which would not have been incurred but for the making of such loan and which was reasonably foreseeable at the time of making such loan.

[Sec. 514(g) as redesignated by sec. 121(d), Tax Reform Act 1969 (83 Stat. 548)]

§ 1.514(g)-1 Business lease indebtedness.

(a) *Definition.* The term "business lease indebtedness" means, with respect to any real property leased by a tax-exempt organization for a term of more than 5 years, the unpaid amount of—

(1) The indebtedness incurred by the lessor tax-exempt organization in acquiring or improving such property;

(2) The indebtedness incurred by the lessor tax-exempt organization prior to the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement; and

(3) The indebtedness incurred by the lessor tax-exempt organization subsequent to the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement and the incurrence of the indebtedness was reasonably foreseeable at the time of such acquisition or improvement.

See paragraph (i) of this section with respect to subsidiary corporations.

(b) *Examples.* The rules of section 514(g) respecting business leases also cover certain cases where the leased property itself is not subject to an indebtedness. For example, they apply to cases such as the following:

Example (1). A university pledges some of its investment securities with a bank for a loan and uses the proceeds of such loan to purchase (either directly or through a subsidiary corporation) a building, which building is subject to a lease that then has more than 5 years to run. This would be an example of a business lease indebtedness incurred prior to the acquisition of the property which would not have been incurred but for such acquisition.

Example (2). If the building itself in example (1) in this paragraph is later mortgaged to raise funds to release the pledged securities, the lease would continue to be a business lease.

Example (3). If a scientific organization mortgages its laboratory building to replace working capital used in remodeling another one of its building or a building held by its subsidiary corporation, which other building is free of indebtedness and is subject to a lease that then has more than 5 years to run, the lease would be a business lease inasmuch as the indebtedness though incurred subsequent to the improvement of such property would not have been incurred but for such improvement, and the incurrence of the indebtedness was reasonably foreseeable when, to make such improvement, the organization reduced its working capital below the amount necessary to continue current operations.

(c) *Property acquired subject to lien.* Where real property is acquired subject to a mortgage or similar lien, whether the acquisition be by gift, bequest, devise, or purchase, the amount of the indebtedness secured by such mortgage or lien is a business lease indebtedness (unless paragraph (d) (1) of this section applies) even though the lessor does not assume or agree to pay the indebtedness. For example, a university pays $100,000 for real estate valued at $300,000 and subject to a $200,000 mortgage. For the purpose of the tax on unrelated business taxable income, the result is the same as if $200,000 of borrowed funds had been used to buy the property.

(d) *Certain property acquired by gifts, etc.* (1) Where real property was acquired by gift, bequest, or devise, before July 1, 1950, subject to a mortgage or other similar lien, the amount of such mortgage or other similar lien shall not be considered as an indebtedness of the lessor tax-exempt organization incurred in acquiring such property. An indebtedness not otherwise covered by this exception is not brought within the exception by reason of a transfer of the property between a parent and its subsidiary corporation.

(2) Where real property was acquired by gift, bequest, or devise, before July 1, 1950, subject to a lease requiring improvements in such property upon the happening of stated contingencies, indebtedness incurred in improving such property in accordance with the terms of such lease shall not be considered as indebtedness described in section 514(g) and in this section. An indebtedness not otherwise covered by this exception is not brought within the exception by reason of a transfer of the property between a parent and its subsidiary corporation.

(e) *Certain corporations described in section 501(c)(2).* In the case of a title holding corporation described in section 501(c)(2), all of the stock of which was acquired before July 1, 1950, by an organization described in section 501(c)(3), (5), or (6) (and more than one-third of such stock was acquired by such organization by gift or bequest), any indebtedness incurred by such corporation before July 1, 1950, and any indebtedness incurred by such corporation on or after such date in improving real property in accordance with the terms of a lease entered into before such date, shall not be considered an indebtedness described in section 514(g) and in this section with respect to either such section 501(c)(2) corporation or such section 501(c) (3), (5), or (6) organization.

(f) *Certain trusts described in section 401(a).* In the case of a trust described in section 401(a), or in the case of a corporation described in section 501(c)(2) all of the stock of which was acquired before March 1, 1954, by such a trust, any indebtedness incurred by such trust or such corporation before such date, in connection with real property which is leased before such date, and any indebtedness incurred by such trust or such corporation on or after such date necessary to carry out the terms of such lease, shall not be considered as an indebtedness described in section 514(g) and in this section.

(g) *Business lease on portion of property.* Where only a portion of the real property is subject to a business lease, proper allocation of the indebtedness applicable to the whole property must be made to the premises covered by the lease. See example (2) of paragraph (b) (3) of § 1.514(a)-2.

(h) *Special rule applicable to trusts described in section 401(a).* If an employees' trust described in section 401(a) lends any money to another such employees' trust of the same employer, for the purpose of acquiring or improving real property, such loan will not be treated as an indebtedness of the borrowing trust except to the extent that the loaning trust—

(1) Incurs any indebtedness in order to make such loan;

(2) Incurred indebtedness before the making of such loan which would not have been incurred but for the making of such loan; or

(3) Incurred indebtedness after the making of such loan which would not have been incurred but for the making of such loan and which was reasonably forseeable at the time of making such loan.

(i) *Subsidiary corporations.* The provisions of section 514 (f), (g), and (h) are applicable whether or not a subsidiary corporation of the type described in section 501(c)(2) is availed of in making the business lease. For example, assume a parent organization borrows funds to purchase realty and sets up a separate section 501(c)(2) corporation as a subsidiary to hold the property. Such subsidiary corporation leases the property for a period of more than 5 years, collects the rents and pays over all of the income, less expenses, to the parent organization, the parent organization being liable for the indebtedness. Under these assumed facts, the lease by section 501 (c)(2) subsidiary corporation would be a business lease with respect to such subsidiary corporation, and the rental income would be subject to the tax, whether or not the subsidiary itself assumes the indebtedness and whether or not the property is subject to the indebtedness.

(j) *Certain trusts described in section 501(c)(17).* (1) In the case of a supplemental unemployment benefit trust described in section 501(c)(17), or in the case of a corporation described in section 501(c)(2) all of the stock of which was acquired before January 1, 1960, by such a trust, any indebtedness incurred by such trust or such corporation before such date, in connection with real property which is leased before such date, and any indebtedness incurred by such trust or such corporation on or after such date necessary to carry out the terms of such lease, shall not be considered as an indebtedness described in section 514(g) and in this section.

(2) If a supplemental unemployment benefit trust described in section 501(c)(17) lends any money to another such supplemental unemployment benefit trust forming part of the same plan, for the purpose of acquiring or improving real property, such loan will not be treated as an indebtedness of the borrowing trust except to the extent that the loaning trust—

(i) Incurs any indebtedness in order to make such loan;

(ii) Incurred indebtedness before the making of such loan which would not have been incurred but for the making of such loan; or

(iii) Incurred indebtedness after the making of such loan which would not have been incurred but for the making of such loan and which was reasonably foreseeable at the time of making such loan.

§ 1.514(h) Statutory provisions; business leases; personal property leased with real property.

SEC. 514. *Unrelated debt-financed property.* * * *

(h) *Personal property leased with real property.* For purposes of this section, the term "real property" and the term "premises" include personal property of the lessor leased by it to a lessee of its real estate if the lease of such personal property is made under, or in connection with, lease of such real estate.

[Sec. 514(h) as redesignated by sec. 121(d), Tax Reform Act 1969 (83 Stat. 548)].

PAR. 6. Section 1.1443 is amended by revising section 1443(a) and by adding a historical note. The amended and added provisions read as follows:

§ 1.1443 Statutory provisions; foreign tax-exempt organizations.

SEC. 1443. *Foreign tax-exempt organizations*—(a) *Income subject to section 511.* In the case of income of a foreign organization subject to the tax imposed by section 511, this chapter shall apply to income in-

cludible under section 512 in computing its unrelated business taxable income, but only to the extent and subject to such conditions as may be provided under regulations prescribed by the Secretary or his delegate.

(b) *Income subject to section 4948.* In the case of income of a foreign organization subject to the tax imposed by section 4948(a), this chapter shall apply except that the deduction and withholding shall be at the rate of 4 percent and shall be subject to such conditions as may be provided under regulations prescribed by the Secretary or his delegate.

[Sec. 1443 as amended by secs. 101(j)(22) and 121(d), Tax Reform Act 1969 (83 Stat. 528, 547)]

PAR. 7. Section 1.1443-1 is amended by revising subparagraph (1) and adding a new subparagraph (2) to paragraph (a). These amended and added provisions read as follows:

§ 1.1443-1 Foreign tax-exempt organizations.

(a) *Income subject to section 511*—(1) *Taxable years beginning after December 31, 1966, and before January 1, 1970.* In the case of a foreign tax-exempt organization which is subject to the tax imposed by section 511, any rents paid to such organization in a taxable year beginning after December 31, 1966, and before January 1, 1970, which are includible under section 512 in determining its unrelated business taxable income, shall not be subject to withholding under § 1.1441-1. See paragraph (a)(2) of § 1.1441-4 for rules for claiming the exemption from withholding in the case of such rents.

(2) *Taxable years beginning after December 31, 1969.* In the case of a foreign tax-exempt organization which is subject to the tax imposed by section 511, any income received by such organization in a taxable year beginning after December 31, 1969, which is includible under section 512 in determining its unrelated business taxable income, shall be subject to withholding under § 1.1441-1 unless such income is, or may be expected to be, effectively connected with the conduct of a trade or business within the United States. See paragraph (a)(2) of § 1.1441-1 for rules for claiming the exemption from withholding in the case of such income.

(b) *Income subject to section 4948.* [Reserved]

[FR Doc.72-21849 Filed 12-20-72;8:46 am]

[T.D. 7233]

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

SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES

PART 53—FOUNDATION EXCISE TAXES

Termination of Private Foundation Status and Certain Taxable Expenditures

On April 22, 1972, notice of proposed rule making was published with respect to promulgation of Income Tax Regulations (26 CFR Part 1) under section 507 of the Internal Revenue Code of 1954, relating to termination of private foundation status, as enacted by section 101 (a) of the Tax Reform Act of 1969 (83 Stat. 492), and Foundation Excise Tax Regulations (26 CFR Part 53) under section 4945 of the Internal Revenue Code of 1954, relating to taxes on taxable expenditures, as enacted by section 101(b) of the Tax Reform Act of 1969 (83 Stat. 512). A public hearing with respect to these proposed regulations was held on August 8, 1972. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of the regulations as proposed is hereby adopted, subject to the changes set forth below. Except where otherwise specifically provided, the following regulations take effect on January 1, 1970.

PARAGRAPH 1. Section 1.507-1, as set forth in paragraph 1 of the appendix to the notice of proposed rule making, is changed by revising paragraphs (b)(1) and (7), and (c)(5). These revised provisions read as set forth below.

PAR. 2. Section 1.507-3, as set forth in paragraph 2 of the appendix to the notice of proposed rule making, is changed by revising paragraph (a)(2)(i) and (ii), (5), (7), (8) and (9)(i), and by revising paragraphs (b) and (c)(1). The revised provisions read as set forth below.

PAR. 3. Paragraph (c) of § 1.507-7, as set forth in paragraph 3 of the appendix to the notice of proposed rule making, is amended to read as set forth below.

PAR. 4. Paragraph (c) of § 53.4945-6, as added by paragraph 4 of the appendix to the notice of proposed rule making, is amended by revising subparagraphs (2) and (3). These revised provisions read as set forth below.

(Sec. 7805, Internal Revenue Code of 1954, 68A Stat. 917; 26 U.S.C. 7805)

[SEAL] JOHNNIE M. WALTERS,
Commissioner of Internal Revenue.

Approved: December 16, 1972.

FREDERIC W. HICKMAN,
Assistant Secretary of the Treasury.

The following regulations are prescribed in order to provide Income Tax Regulations (26 CFR Part 1) under section 507 as added by section 101(a) of the Tax Reform Act of 1969 (83 Stat. 492) and Foundation Excise Tax Regulations (26 CFR Part 53) under section 4945 as added by section 101(b) of the Tax Reform Act of 1969 (83 Stat. 512). Except where otherwise specifically provided, these regulations take effect on January 1, 1970.

PARAGRAPH 1. Immediately after § 1.504-1 insert the following section:

§ 1.507-1 General rule.

(a) *In general.* Except as provided in § 1.507-2, the status of any organization as a private foundation shall be terminated only if—

(1) Such organization notifies the district director of its intent to accomplish such termination, or

(2) (i) With respect to such organization, there have been either willful repeated acts (or failures to act), or a willful and flagrant act (or failure to act), giving rise to liability for tax under chapter 42, and

(ii) The Commissioner notifies such organization that, by reason of subdivision (i) of this subparagraph, such organization is liable for the tax imposed by section 507(c),

and either such organization pays the tax imposed by section 507(c) (or any portion not abated under section 507(g)) or the entire amount of such tax is abated under section 507(g).

(b) *Termination under section 507 (a)(1).* (1) In order to terminate its private foundation status under paragraph (a)(1) of this section, an organization must submit a statement to the district director of its intent to terminate its private foundation status under section 507(a)(1). Such statement must set forth in detail the computation and amount of tax imposed under section 507(c). Unless the organization requests abatement of such tax pursuant to section 507(g), full payment of such tax must be made at the time the statement is filed under section 507(a)(1). An organization may request the abatement of all of the tax imposed under section 507 (c), or may pay any part thereof and request abatement of the unpaid portion of the amount of tax assessed. If the organization requests abatement of the tax imposed under section 507(c) and such request is denied, the organization must pay such tax in full upon notification by the Internal Revenue Service that such tax will not be abated. For purposes of subtitle F of the Code, the statement described in this subparagraph, once filed, shall be treated as a return.

(2) Termination of private foundation status under section 507(a)(1) does not relieve a private foundation, or any disqualified person with respect thereto, of liability for tax under chapter 42 with respect to acts or failures to act prior to termination or for any additional taxes imposed for failure to correct such acts or failures to act. See subparagraph (8) of this paragraph as to the possible imposition of transferee liability in cases not involving termination of private foundation status.

(3) In the case of an organization which has terminated its private foundation status under section 507(a) and continues in operation thereafter, if such organization wishes to be treated as described in section 501(c)(3), then pursuant to section 509(c) and § 1.509(c)-1 such organization must apply for recognition of exemption as an organization described in section 501(c)(3) in accordance with the provisions of section 508(a).

(4) See § 53.4947-1(c)(7) of this chapter as to the application of section 507(a) to certain split-interest trusts.

(5) For purposes of section 508(d)(1), the Internal Revenue Service shall make notice to the public (such as by publication in the Internal Revenue Bulletin) of any notice received from a private foundation pursuant to section 507(a)(1) or of any notice given

to a private foundation pursuant to section 507(a)(2).

(6) If a private foundation transfers all or part of its assets to one or more other private foundations (or one or more private foundations and one or more section 509(a) (1), (2), (3), or (4) organizations) pursuant to a transfer described in section 507(b)(2) and § 1.507-3(c), such transferor foundation will not have terminated its private foundation status under section 507(a)(1). See § 1.507-3, however, for the special rules applicable to private foundations participating in section 507(b)(2) transfers.

(7) Neither a transfer of all of the assets of a private foundation nor a significant disposition of assets (as defined in § 1.507-3(c)(2)) by a private foundation (whether or not any portion of such significant disposition of assets is made to another private foundation) shall be deemed to result in a termination of the transferor private foundation under section 507(a) unless the transferor private foundation elects to terminate pursuant to section 507(a)(1) or section 507(a)(2) is applicable. Thus, if a private foundation transfers all of its assets to one or more persons, but less than all of its net assets to one or more organizations described in section 509(a)(1) which have been in existence and so described for a continuous period of 60 calendar months, for purposes of this paragraph such transferor foundation will not be deemed by reason of such transfer to have terminated its private foundation status under section 507 (a) or (b) unless section 507(a)(2) is applicable. Such foundation will continue to be treated as a private foundation for all purposes. For example, if a private foundation transfers all of its net assets to a section 509(a)(2) organization in 1971 and receives a bequest in 1973, the bequest will be regarded as having been made to a private foundation and the foundation will be subject to the provisions of chapter 42 with respect to such funds. If a private foundation makes a transfer of all of its net assets to a section 509(a)(2) or (3) organization, for example, it must retain sufficient income or assets to pay the tax imposed under section 4940 for that portion of its taxable year prior to such transfer. For additional rules applicable to a transfer by a private foundation of all of its net assets to a section 509(a)(1) organization which has not been in existence and so described for a continuous period of 60 calendar months, see § 1.507-3(e).

(8) If a private foundation makes a transfer described in subparagraph (7) of this paragraph and prior to, or in connection with, such transfer, liability for any tax under chapter 42 is incurred by the transferor foundation, transferee liability may be applied against the transferee organization for payment of such taxes. For purposes of this subparagraph, liability for any tax imposed under chapter 42 for failure to correct any act or failure to act shall be deemed incurred on the date on which the act or failure to act giving rise to the initial tax liability occurred.

(9) A private foundation which transfers all of its net assets is required to file Form 990, Annual Information Return, and the foundation managers are required to file Form 990-AR, Annual Report of Private Foundation, or the equivalent thereof, for the taxable year in which such transfer occurs. However, neither such foundation nor its foundation managers will be required to file such forms for any taxable year following the taxable year in which the last of any such transfers occurred, if at no time during the subsequent taxable years in question the foundation has either legal or equitable title to any assets or engages in any activity.

(c) *Involuntary termination under section 507(a)(2).* (1) For purposes of section 507(a)(2)(A), the term "willful repeated acts (or failures to act)" means at least two acts or failures to act both of which are voluntary, conscious, and intentional.

(2) For purposes of section 507(a)(2)(A), a "willful and flagrant act (or failure to act)" is one which is voluntarily, consciously, and knowingly committed in violation of any provision of chapter 42 (other than section 4940 or 4948(a)) and which appears to a reasonable man to be a gross violation of any such provision.

(3) An act (or failure to act) may be treated as an act (or failure to act) by the private foundation for purposes of section 507(a)(2) even though tax is imposed upon one or more foundation managers rather than upon the foundation itself.

(4) For purposes of section 507(a)(2), the failure to correct the act or acts (or failure or failures to act) which gave rise to liability for tax under any section of chapter 42 by the close of the correction period for such section may be a willful and flagrant act (or failure to act).

(5) No motive to avoid the restrictions of the law or the incurrence of any tax is necessary to make an act (or failure to act) willful. However, a foundation's act (or failure to act) is not willful if the foundation (or a foundation manager, if applicable) does not know that it is an act of self-dealing, a taxable expenditure, or other act (or failure to act) to which chapter 42 applies. Rules similar to the regulations under chapter 42 (see, for example, § 53.4945-1(a)(2)(iii) of this chapter) shall apply in determining whether a foundation or a foundation manager "knows" that an act (or failure to act) is an act of self-dealing a taxable expenditure or other such act (or failure to act).

PAR. 2. Immediately after § 1.507-2, insert the following sections:

§ 1.507-3 Special rules; transferee foundations.

(a) *General rule.* (1) For purposes of Part II, Subchapter F, Chapter 1 of the Code, in the case of a transfer of assets of any private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization, the transferee organization shall not be treated as a newly created organization. Thus, in the case of a significant disposition of assets to one or more private foundations within the meaning of paragraph (c) of this section, the transferee organization shall not be treated as a newly created organization. A transferee organization to which this paragraph applies shall be treated as possessing those attributes and characteristics of the transferor organization which are described in subparagraphs (2), (3), and (4) of this paragraph.

(2) (i) A transferee organization to which this paragraph applies shall succeed to the aggregate tax benefit of the transferor organization in an amount determined as follows: Such amount shall be an amount equal to the amount of such aggregate tax benefit multiplied by a fraction the numerator of which is the fair market value of the assets (less encumbrances) transferred to such transferee and the denominator of which is the fair market value of the assets of the transferor (less encumbrances) immediately before the transfer. Fair market value shall be determined as of the time of the transfer.

(ii) Notwithstanding subdivision (i) of this subparagraph, a transferee organization which is not effectively controlled (within the meaning of § 1.482-1(a)(3)), directly or indirectly, by the same person or persons who effectively control the transferor organization shall not succeed to an aggregate tax benefit in excess of the fair market value of the assets transferred at the time of the transfer.

(iii) This subparagraph may be illustrated by the following examples:

Example (1). Pursuant to a transfer described in section 507(b)(2), F, a private foundation, transfers to G, a private foundation, all of its assets, which have a fair market value of $400,000. Immediately before the transfer F's aggregate tax benefit was $200,000, and G's aggregate tax benefit was $300,000. After the transfer G's aggregate tax benefit is $500,000 ($200,000+$300,000).

Example (2). Pursuant to a transfer described in section 507(b)(2), M, a private foundation, transfers all of its assets, which immediately prior to the transfer have a fair market value of $100,000. The assets were transferred to the following organizations at the following fair market values (determined at the time of transfer) $40,000 to N, a private foundation, $30,000 to O, a private foundation, and $30,000 to P, an organization described in section 170(b)(1)(A)(vi). Immediately before the transfer M's aggregate tax benefit was $50,000. Therefore, N succeeds to M's aggregate tax benefit to the extent of $20,000 ($50,000×$40,000/$100,000) and O succeeds to M's aggregate tax benefit to the extent of $15,000 ($50,000×$30,000/$100,000). The remaining $15,000 of M's aggregate tax benefit is retained by M as M has not terminated under section 507.

Example (3). Assume the same facts as in Example (2) except that the transfers were made as follows: M transferred $30,000 to N on January 1, 1972, $40,000 to P on July 1, 1972, and $30,000 to O on December 31, 1972. Further, assume that the fair market value of the assets and the aggregate tax benefit do not change during 1972 and that O is not effectively controlled (directly or indirectly) by the same person or persons who effectively control M. N succeeds to M's aggregate tax benefit to the extent of $15,000 ($50,000×

$30,000/$100,000). However, since $40,000 of the remaining $70,000 ($100,000—$30,000) of assets of M was transferred to P on July 1, 1972, immediately before the transfer to O, the fair market value of the assets held by M is $30,000 ($70,000—$40,000). On the other hand, because P is not a private foundation, M's aggregate tax benefit immediately before the transfer to O remains $35,000 ($50,000—$15,000). Therefore, before applying subdivision (ii) of this subparagraph, O would succeed to $35,000 ($35,000×$30,000/$30,000) of M's aggregate tax benefit. However, applying subdivision (ii) of this subparagraph since M transferred only $30,000 to O, O shall succeed to only $30,000 of M's aggregate tax benefit. The remaining $5,000 ($35,000—$30,000) of M's aggregate tax benefit is retained by M as M has not terminated under section 507.

(3) For purposes of section 507(d)(2), in the event of a transfer of assets described in section 507(b)(2), any person who is a "substantial contributor" (within the meaning of section 507(d)(2)) with respect to the transferor foundation shall be treated as a "substantial contributor" with respect to the transferee foundation, regardless of whether such person meets the $5,000-two percent test with respect to the transferee organization at any time. If a private foundation makes a transfer described in section 507(b)(2) to two or more transferee private foundations, any person who is a "substantial contributor" with respect to the transferor foundation prior to such transfer shall be considered a "substantial contributor" with respect to each transferee private foundation.

(4) If a private foundation incurs liability for one or more of the taxes imposed under chapter 42 (or any penalty resulting therefrom) prior to, or as a result of, making a transfer of assets described in section 507(b)(2) to one or more private foundations, in any case where transferee liability applies each transferee foundation shall be treated as receiving the transferred assets subject to such liability to the extent that the transferor foundation does not satisfy such liability.

(5) Except as provided in subparagraph (9) of this paragraph, a private foundation is required to meet the distribution requirements of section 4942 for any taxable year in which it makes a section 507(b)(2) transfer of all or part of its net assets to another private foundation. Such transfer shall itself be counted toward satisfaction of such requirements to the extent the amount transferred meets the requirements of section 4942(g). However, where the transferor has disposed of all of its assets, the recordkeeping requirements of section 4942(g)(3)(B) shall not apply during any period in which it has no assets. Such requirements are applicable for any taxable year other than a taxable year during which the transferor has no assets.

(6) For purposes of section 4943(c)(4), (5), and (6), whenever a private foundation makes a section 507(b)(2) transfer of all or part of its net assets to another private foundation, the applicable period of time described in section 4943(c)(4), (5), or (6) shall include both the period during which the transferor foundation held such assets and the period during which the transferee foundation holds such assets.

(7) Except as provided in subparagraph (9) of this paragraph, where the transferor has disposed of all of its assets, during any period in which the transferor has no assets, section 4945(d)(4) and (h) shall not apply to the transferee or the transferor with respect to any "expenditure responsibility" grants made by the transferor. However, the exception contained in this subparagraph shall not apply with respect to any information reporting requirements imposed by section 4945 and the regulations thereunder for any year in which any such transfer is made.

(8) (i) Except as provided in subdivision (ii) of this subparagraph or subparagraph (9) of this paragraph, whenever a private foundation makes a transfer of assets described in section 507(b)(2) to one or more private foundations, the transferee foundation:

(*a*) Will not be treated as being in existence prior to January 1, 1970, with respect to any transferred assets;

(*b*) Will not be treated as holding the transferred assets prior to January 1, 1970; and

(*c*) Will not be treated as having engaged in, or become subject to, any transaction, lease, contract, or other obligation with respect to the transferred assets prior to January 1, 1970.

(ii) Notwithstanding subdivision (i) of this subparagraph, the provisions enumerated in (*a*) through (*g*) of this subdivision shall apply to the transferee foundation with respect to the assets transferred to the same extent and in the same manner that they would have applied to the transferor foundation had the transfer described in section 507(b)(2) not been effected:

(*a*) Section 4940(c)(4)(B) and the regulations thereunder with respect to basis of property,

(*b*) Section 4942(f)(4) and the regulations thereunder with respect to distributions of income,

(*c*) Section 101(l)(2) of the Tax Reform Act of 1969 (83 Stat. 533) with respect to the provisions of section 4941,

(*d*) Section 101(*l*)(3)(A) of the Tax Reform Act of 1969 (83 Stat. 534) with respect to the provisions of section 4942, but only if the transferor qualified for the application of such section immediately before the transfer, and at least 85 percent of the fair market value of the net assets of the transferee immediately after the transfer was received pursuant to the transfer,

(*e*) Section 101(*l*)(3) (B) through (E) of the Tax Reform Act of 1969 (83 Stat. 534) with respect to the provisions of section 4942,

(*f*) Section 101(*l*)(5) of the Tax Reform Act of 1969 (83 Stat. 535) with respect to the provisions of section 4945, and

(*g*) Section 101(*l*)(6) of the Tax Reform Act of 1969 (83 Stat. 535) with respect to the provisions of section 508(e).

(9) (i) If a private foundation transfers all of its net assets to one or more private foundations which are effectively controlled (within the meaning of § 1.482-1(a)(3)), directly or indirectly, by the same person or persons which effectively controlled the transferor private foundation, for purposes of chapter 42 (section 4940 et seq.) and part II of subchapter F of chapter 1 of the Code (sections 507 through 509) such a transferee private foundation shall be treated as if it were the transferor. However, where proportionality is appropriate, such a transferee private foundation shall be treated as if it were the transferor in the proportion which the fair market value of the assets (less encumbrances) transferred to such transferee bears to the fair market value of the assets (less encumbrances) of the transferor immediately before the transfer.

(ii) Subdivision (i) of this subparagraph shall not apply to the requirements under sections 6033, 6056, and 6104 which must be complied with by the transferor private foundation, nor to the requirement under section 6043 that the transferor file a return with respect to its liquidation, dissolution, or termination.

(iii) This subparagraph may be illustrated by the following examples:

Example (*1*). The trustees of X charitable trust, a private foundation, form the Y charitable corporation, also a private foundation, in order to facilitate the conduct of their activities. The trustees of X are also the directors of Y. Y has the same charitable purposes as X. All of the assets of X are transferred to Y, and Y continues to carry on X's charitable activities. Under such circumstances, Y shall be treated as if it were X for the purposes of subdivision (i) of this subparagraph. Thus, for example, Y will be permitted to take advantage of any special rules or savings provisions with respect to chapter 42 to the same extent as X could have if X had continued in existence.

Example (*2*). A and B are the trustees of the P charitable trust, a private foundation, and are the only substantial contributors to P. On July 1, 1973, in order to facilitate accomplishment of diverse charitable purposes, A and B create and control the R Foundation, the S Foundation and the T Foundation and transfer the net assets of P to R, S, and T. As of the end of 1973, P has an outstanding grant to Foundation W and has been required to exercise expenditure responsibility with respect to this grant under sections 4945(d)(4) and (h). Under these circumstances, R, S, and T shall each be treated as if they are P in the proportion the fair market value of the assets transferred to each bears to the fair market value of the assets of P immediately before the transfer. Since R, S, and T are treated as P, absent a specific provision for exercising expenditure responsibility with respect to the grant to W, each of them is required to exercise expenditure responsibility with respect to such grant. If, as a part of the transfer to R, P assigned, and R assumed, P's duties with respect to the expenditure responsibility grant to W, only R would be required to exercise expenditure responsibility with respect to the grant to W. Since R, S, and T are treated as P rather than as recipients of "expenditure responsibility" grants, there are no expenditure responsibility requirements which must be exercised under sections 4945(d)(4) and (h) with respect to the transfers of assets to R, S, and T.

(10) For certain rules relating to filing requirements where a private foun-

dation has transferred all its net assets, see § 1.507-1(b)(9).

(b) *Status of transferee organization under section 507(b)(2).* Since a transfer of assets pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization or reorganization to an organization not described in section 501(c)(3) (other than an organization described in section 509(a)(4)) or 4947 is a taxable expenditure under section 4945(d)(5), in order for such a transfer of assets not to be a taxable expenditure, it must be to an organization described in section 501(c)(3) (other than an organization described in section 509(a)(4)) or treated as described in section 501(c)(3) under section 4947. See § 53.4945-6(c)(3) of this chapter. Consequently, unless such a transferee is an organization described in section 509(a) (1), (2), or (3), the transferee is a private foundation and the rules of section 507(b)(2) and paragraph (a) of this section apply. On the other hand, if such a transfer of assets is made to a transferee organization which is not described in either section 501(c)(3) (other than an organization described in section 509(a)(4)) or 4947, and in order to correct the making of a taxable expenditure, such assets are transferred to a private foundation, section 507(b)(2) and paragraph (a) of this section shall apply as if the transfer of assets had been made directly to such private foundation.

(c) *Section 507 (b)(2) transfers.* (1) A transfer of assets is described in section 507(b)(2) if it is made by a private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization. This shall include any organization or reorganization described in subchapter C of chapter 1. For purposes of section 507(b)(2), the terms "other adjustment, organization, or reorganization" shall include any partial liquidation or any other significant disposition of assets to one or more private foundations, other than transfers for full and adequate consideration or distributions out of current income. For purposes of this paragraph, a distribution out of current income shall include any distribution described in section 4942(h)(1) (A) and (B).

(2) The term "significant disposition of assets to one or more private foundations" shall include any disposition for a taxable year where the aggregate of:

(i) The dispositions to one or more private foundations for the taxable year, and

(ii) Where any disposition to one or more private foundations for the taxable year is part of a series of related dispositions made during prior taxable years, the total of the related dispositions made during such prior taxable years,

is 25 percent or more of the fair market value of the net assets of the foundation at the beginning of the taxable year (in the case of subdivision (i) of this subparagraph) or at the beginning of the first taxable year in which any of the series of related dispositions was made (in the case of subdivision (ii) of this subparagraph). A "significant disposition of assets" may occur in a single taxable year (as in subdivision (i) of this subparagraph) or over the course of two or more taxable years (as in subdivision (ii) of this subparagraph). The determination whether a significant disposition has occurred through a series of related distributions (within the meaning of subdivision (ii) of this subparagraph) will be made on the basis of all the facts and circumstances of the particular case. However, if one or more persons who are disqualified persons (within the meaning of section 4946) with respect to the transferor private foundation are also disqualified persons with respect to any of the transferee private foundations, such fact shall be evidence that the transfer is part of a series of related dispositions (within the meaning of subdivision (ii) of this subparagraph). In the case of a series of related dispositions described in subdivision (ii) of this subparagraph, each transferee private foundation shall (on any date) be subject to the provisions of section 507(b)(2) (with respect to all such dispositions made to it on or before such date) to the extent described in paragraphs (a) and (b) of this section.

(3) A private foundation which fails to meet the requirements of section 507(b)(1)(A) for a taxable year may be required to file a return under section 6043(b) by reason of a transfer of assets to one or more section 509(a) (1), (2), or (3) organizations. Hence, such filing does not necessarily mean that a section 507(b)(2) transfer has occurred. See § 1.6043-3(f)(1).

(4) This paragraph applies to any section 507(b)(2) transfer made by a private foundation referred to in section 170(b)(1)(E) (i), (ii), or (iii).

(5) The provisions of this paragraph may be illustrated by the following examples:

Example (1). M is a private foundation on the calendar year basis. It has net assets worth $100,000 as of January 1, 1971. In 1971, in addition to distributions out of current income, M transfers $10,000 to N, $10,000 to O, and $10,000 to P. N, O, and P are all private foundations. Under subparagraph (2)(i) of this paragraph, M has made a significant disposition of its assets in 1971 since M has disposed of more than 25 percent of its net assets (with respect to the fair market value of such assets as of January 1, 1971). M has therefore made section 507(b)(2) transfers within the meaning of this paragraph, and section 507(b)(2) applies to the transfers made to N, O, and P.

Example (2). U, a tax-exempt private foundation on the calendar year basis, has net assets worth $100,000 as of January 1, 1971. As part of a series of related dispositions in 1971 and 1972, U transfers in 1971, in addition to distributions out of current income, $10,000 to private foundation X and $10,000 to private foundation Y, and in 1972, in addition to distributions out of current income, U transfers $10,000 to private foundation Z. Under subparagraph (2)(ii) of this paragraph, U is treated as having made a series of related dispositions in 1971 and 1972. The aggregate of the 1972 disposition (under subparagraph (2)(i) of this paragraph) and the series of related dispositions (under subparagraph (2)(ii) of this paragraph) is $30,000, which is more than 25 percent of the fair market value of U's net assets as of the beginning of 1971 ($100,000), the first year in which any such disposition was made. Thus, U has made a significant disposition of its assets and has made transfers described in section 507(b)(2). The provisions of paragraphs (a) and (b) of this section apply to each of the transferees as of the date on which it received assets from U.

(d) *Inapplicability of section 507(a) to section 507(b)(2) transfers.* Unless a private foundation voluntarily gives notice pursuant to section 507(a)(1), a transfer of assets described in section 507(b)(2) will not constitute a termination of the transferor's private foundation status under section 507(a)(1). Such transfer must, nevertheless, satisfy the requirements of any pertinent provisions of chapter 42. See subparagraphs (5) through (7) of paragraph (a) of this section. However, if such transfer constitutes an act or failure to act which is described in section 507(a)(2)(A), then such transfer will be subject to the provisions of section 507(a)(2) rather than section 507(b)(2). For example, X, a private nonoperating foundation, transfers all of its net assets to Y, a private operating foundation, in 1971. X does not file the notice referred to in section 507(a)(1) and the transfer does not constitute either a willful and flagrant act (or failure to act), or one of a series of willful repeated acts (or failures to act), giving rise to liability for tax under chapter 42. Under these circumstances, the transfer is described in section 507(b)(2) and the provisions of paragraph (a) of this section apply with respect to Y. The private foundation status of X has not been terminated under section 507(a).

(e) *Transfers to certain section 509 (a) (1), (2), or (3) organizations.* If a private foundation transfers all or part of its assets to one or more organizations described in section 509(a) (1), (2), or (3) and, within a period of 3 years from the date of such transfers, one or more of the transferee organizations lose their section 509(a) (1), (2), or (3) status and become private foundations, then for purposes of this section, a transfer of assets within the meaning of paragraph (c) of this section to such an organization which becomes a private foundation will be treated as a transfer described in section 507(b)(2), and the provisions of paragraph (a) of this section shall be treated as applying to such a transferee organization from the date on which any such transfer was made to it.

(f) *Certain transfers made during section 507(b)(1)(B) terminations.* If—

(1) During the course of the 12-month or 60-month period described in section 507(b)(1)(B), a private foundation makes one or more transfers to one or more private foundations;

(2) Such transfers are described in § 1.507-3(c)(1); and

(3) Even though the transferor foundation thereafter meets the requirements of section 507(b)(1)(B),

then for purposes of this section, the provisions of § 1.507-2(e) shall not apply

with respect to such transfers, and such transfers will be treated as transfers described in section 507(b)(2) and § 1.507-3 rather than as transfers from an organization described in section 509(a)(1), (2), or (3).

§ 1.507-4 Imposition of tax.

(a) *General rule.* Section 507(c) imposes on each organization the private foundation status of which is terminated under section 507(a) a tax equal to the lower of:

(1) The amount which such organization substantiates by adequate records (or other corroborating evidence which may be required by the Commissioner) as the aggregate tax benefit (as defined in section 507(d)) resulting from the section 501(c)(3) status of such organization, or

(2) The value of the net assets of such organization.

(b) *Transfers not subject to section 507(c).* Private foundations which make transfers described in section 507(b)(1)(A) or (2) are not subject to the tax imposed under section 507(c) with respect to such transfers unless the provisions of section 507(a) become applicable. See §§ 1.507-1(b), 1.507-2(a)(6) and 1.507-3(d).

§ 1.507-5 Aggregate tax benefit; in general.

(a) *General rule.* For purposes of section 507(c)(1), the aggregate tax benefit resulting from the section 501(c)(3) status of any private foundation is the sum of:

(1) The aggregate increases in tax under chapters 1, 11, and 12 (or the corresponding provisions of prior law) which would have been imposed with respect to all substantial contributors to the foundation if deductions for all contributions made by such contributors to the foundation after February 28, 1913, had been disallowed,

(2) The aggregate increases in tax under chapter 1 (or the corresponding provisions of prior law) which would have been imposed with respect to the income of the private foundation for taxable years beginning after December 31, 1912, if (i) it had not been exempt from tax under section 501(a) (or the corresponding provisions of prior law), and (ii) in the case of a trust, deductions under section 642(c) (or the corresponding provisions of prior law) had been limited to 20 percent of the taxable income of the trust (computed without the benefit of section 642(c) but with the benefit of section 170(b)(1)(A)),

(3) The amount succeeded to from transferors under § 1.507-3(a) and section 507(b)(2), and

(4) Interest on the increases in tax determined under subparagraphs (1), (2), and (3) of this paragraph from the first date on which each such increase would have been due and payable to the date on which the organization ceases to be a private foundation.

(b) *Contributions.* In computing the amount of the aggregate increases in tax under subparagraph (1) of this paragraph, all deductions attributable to a particular contribution shall be included. For example, if a substantial contributor has taken deductions under sections 170 and 2522 (or the corresponding provisions of prior law) with respect to the same contribution, the amount of each deduction shall be included in the computations under section 507(d)(1)(A). Accordingly, the aggregate tax benefit may exceed the fair market value of the property transferred.

PAR. 3. Immediately after § 1.507-6, insert the following sections:

§ 1.507-7 Value of assets.

(a) *In general.* For purposes of section 507(c), the value of the net assets shall be determined at whichever time such value is higher:

(1) The first day on which action is taken by the organization which culminates in its ceasing to be a private foundation, or

(2) The date on which it ceases to be a private foundation.

(b) *Valuation dates.* (1) In the case of a termination under section 507(a)(1), the date referred to in paragraph (a)(1) of this section shall be the date on which the terminating foundation gives the notification described in section 507(a)(1).

(2) In the case of a termination under section 507(a)(2), the date referred to in paragraph (a)(1) of this section shall be the date of occurrence of the willful and flagrant act (or failure to act) or the first of the series of willful repeated acts (or failures to act) giving rise to liability for tax under chapter 42 and the imposition of tax under section 507(a)(2).

(c) *Fair market value.* For purposes of this section, fair market value shall be determined pursuant to the provisions of § 53.4942(a)-2(c)(4) of this chapter.

(d) *Net assets.* For purposes of section 507 and the regulations thereunder, the term "net assets" shall mean the gross assets of a private foundation reduced by all liabilities of the foundation, including appropriate estimated and contingent liabilities. Thus, a determination of net assets may reflect reductions for any liability or contingent liability for tax imposed upon the private foundation under chapter 42 with respect to acts or failures to act prior to termination, for any liability or contingent liability for failures to correct such acts or failures to act, or for any liability or estimated or contingent liability with respect to expenses associated with winding up the organization. If a private foundation's determination of net assets reflects any reduction for any estimated or contingent liability, such private foundation must establish, to the satisfaction of the Commissioner, the reasonableness of such reduction. If the amount of net assets reflects a reduction for any estimated or contingent liability, at the earlier of the final determination of the contingency or the termination of a reasonable time, any excess of the amount by which the gross assets was reduced over the amount of the liability shall be treated in the same manner as if such excess had been considered part of the net assets.

§ 1.507-8 Liability in case of transfers.

For purposes of determining liability for the tax imposed under section 507(c) in the case of assets transferred by the private foundation, such tax shall be deemed to have been imposed on the first day on which action is taken by the organization which culminates in its ceasing to be a private foundation. If an organization's private foundation status is terminated under section 507(a)(2), the first day on which action is taken which culminates in its ceasing to be a private foundation (within the meaning of section 507(f)) shall be the date described in § 1.507-7(b)(2). If an organization terminates its private foundation status under section 507(a)(1), the first day on which action is taken which culminates in its ceasing to be a private foundation (within the meaning of section 507(f)) shall be the date described in §1.507-7(b)(1).

§ 1.507-9 Abatement of taxes.

(a) *General rule.* The Commissioner may at his discretion abate the unpaid portion of the assessment of any tax imposed by section 507(c), or any liability in respect thereof, if:

(1) The private foundation distributes all of its net assets to one or more organizations described in section 170(b)(1)(A) (other than in clauses (vii) or (viii)) each of which has been in existence and so described for a continuous period of at least 60 calendar months, or

(2) Effective assurance is given to the Commissioner in accordance with paragraphs (b) and (c) of this section that the assets of the organization which are dedicated to charitable purposes will, in fact, be used for charitable purposes.

The provisions of § 1.507-2(a)(2), (3), and (7) shall apply to distributions under subparagraph (1) of this paragraph. Since section 507(g) provides only for the abatement of tax imposed under section 507(c), no tax imposed under any provision of chapter 42 shall be abated under section 507(g). Where the taxpayer files a petition with the Tax Court with respect to a notice of deficiency regarding any tax under section 507(c), such tax shall be treated as having been assessed for the purposes of abatement of such tax under section 507(g) and the regulations thereunder.

(b) *State proceedings.* (1) The Commissioner may at his discretion abate the unpaid portion of the assessment of any tax imposed by section 507(c), or any liability in respect thereof, under the procedures outlined in subparagraphs (2) and (3) of this paragraph. Such tax may not be abated by the Commissioner unless he determines that corrective action as defined in paragraph (c) of this section has been taken. The Commissioner may not abate by reason of section 507(g) any amount of such tax which has already been collected since only the unpaid portion thereof can be abated.

(2) The appropriate State officer shall have 1 year from the date of notification prescribed in section 6104(c) that a notice of deficiency of tax imposed under

section 507(c) has been issued with respect to a foundation, to advise the Commissioner that corrective action has been initiated pursuant to State law as may be ordered or approved by a court of competent jurisdiction. Corrective action may be initiated either by the appropriate State officer or by an organization described in section 509(a) (1), (2), or (3) which is a beneficiary of the private foundation and has enforceable rights against such foundation under State law. Copies of all pleadings and other documents filed with the court at the initial stages of the proceedings shall be attached to the notification made by the State officer to the Commissioner. Prior to notification by the appropriate State officer that corrective action has been initiated, the Commissioner shall follow those procedures which would apply with respect to the assessment and collection of the tax imposed under section 507(c) without regard to section 507(g)(2). Subsequent to notification by the appropriate State officer that corrective action has been initiated, the Commissioner shall suspend action with respect to the assessment or collection of tax imposed under section 507(c) until notified of the final determination of such corrective action, as long as any such resulting delay does not jeopardize the collection of such tax and does not cause collection to be barred by operation of law or any rule of law. In any case where collection of such tax is about to be barred by operation of section 6502 and the Commissioner has not been advised of the final determination of corrective action, the Commissioner should make every effort to obtain appropriate agreements with the foundation subject to such tax to extend the period of limitations under section 6502(a)(2). Where such agreements are obtained, action with respect to the assessment and collection of such tax may be suspended to the extent not inconsistent with this subparagraph.

(3) Upon receipt of certification from the appropriate State officer that action has been ordered or approved by a court of competent jurisdiction, the Commissioner may abate the unpaid portion of the assessment of tax imposed by section 507(c), or any liability in respect thereof, if in his judgment such action is corrective action within the meaning of paragraph (c) of this section. In the event that such action is not corrective action, the Commissioner may in his discretion again suspend action on the assessment and collection of such tax until corrective action is obtained, or if in his judgment corrective action cannot be obtained, he may resume the assessment and collection of such tax.

(c) *Corrective action.* The term "corrective action" referred to in paragraph (b) of this section means vigorous enforcement of State laws sufficient to assure implementation of the provisions of chapter 42 and insure that the assets of such private foundation are preserved for such charitable or other purposes specified in section 501(c)(3). Except where assets of the terminated private foundation are transferred to an organization described in section 509(a) (1) through (4) the State is required to take such action to assure that the provisions of section 508(e)(1) (A) and (B) are applicable to the terminated foundation (or any transferee) with respect to such assets as if such organization were a private foundation. Thus, the governing instrument of such organization must include provisions with respect to such assets—

(1) Requiring its income therefrom for each taxable year to be distributed at such time and in such manner as not to subject such organization to tax under section 4942 (as if the organization were a private foundation),

(2) Prohibiting such organization from engaging in any act of self-dealing (as defined in section 4941(d) as if the organization were a private foundation),

(3) Prohibiting such organization from retaining any excess business holdings (as defined in section 4943(c) as if the organization were a private foundation),

(4) Prohibiting such organization from making any investments in such manner as to subject such organization to tax under section 4944 (as if the organization were a private foundation), and

(5) Prohibiting such organization from making any taxable expenditures (as defined in section 4945(d) as if the organization were a private foundation). Consequently, in cases where the preceding sentence applies, although the private foundation status of an organization is terminated for tax purposes, it is contemplated that its status under State law would remain unchanged, because the tax under section 507(c) has been abated solely because the Commissioner has been given effective assurance that there is vigorous enforcement of State laws sufficient to assure implementation of the provisions of chapter 42. Therefore, in such a case while chapter 42 will not apply to acts occurring subsequent to termination which previously would have resulted in the imposition of tax under chapter 42, it is contemplated that there will be vigorous enforcement of State laws (including laws made applicable by the provisions in the governing instrument) with respect to such acts. Notwithstanding the preceding three sentences, no amendment to the organization's governing instrument is necessary where there are provisions of State law which have the effect of requiring a terminated private foundation to which the rules of subparagraphs (1) through (5) of this paragraph apply to be subject to such rules whether or not there are such provisions in such terminated private foundation's governing instrument.

PAR. 3. Paragraph (b) of § 53.4945-5 is amended by adding the following subparagraphs:

§ 53.4945-5 Grants to organizations.

* * * * *

(b) *Expenditure responsibility.* * * *

(7) *Expenditure responsibility with respect to certain transfers of assets described in section 507*—(i) *Transfers of assets described in section 507(b)(2).* For rules relating to the extent to which the expenditure responsibility rules contained in section 4945 (d)(4) and (h) and this section apply to transfers of assets described in section 507(b)(2), see §§ 1.507-3(a)(7), 1.507-3(a)(8)(ii)(*f*), and 1.507-3(a)(9) of this chapter.

(ii) *Certain other transfers of assets.* For rules relating to the extent to which the expenditure responsibility rules contained in section 4945 (d)(4) and (h) and this section apply to certain other transfers of assets described in § 1.507-3(b) of this chapter, see § 1.507-3(b) of this chapter.

(8) *Restrictions on grants (other than program-related investments) to organizations not described in section 501(c)(3).* For other restrictions on certain grants (other than program-related investments) to organizations which are not described in section 501(c)(3), see § 53.4945-6(c).

PAR. 4. Section 53.4945-6 is amended by adding the following paragraphs:

§ 53.4945-6 Expenditures for noncharitable purposes.

* * * * *

(c) *Grants to "noncharitable" organizations*—(1) *In general.* Since a private foundation cannot make an expenditure for a purpose other than a purpose described in section 170(c)(2)(B), a private foundation may not make a grant to an organization other than an organization described in section 501(c)(3) unless

(i) The making of the grant itself constitutes a direct charitable act or the making of a program-related investment, or

(ii) Through compliance with the requirements of subparagraph (2) of this paragraph, the grantor is reasonably assured that the grant will be used exclusively for purposes described in section 170(c)(2)(B).

For purposes of this paragraph, an organization treated as a section 509(a)(1) organization under § 53.4945-5(a)(4) shall be treated as an organization described in section 501(c)(3).

(2) *Grants other than transfers of assets described in § 1.507-3(c)(1).* (i) If a private foundation makes a grant which is not a transfer of assets pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization or reorganization to any organization (other than an organization described in section 501(c)(3) except an organization described in section 509(a)(4)), the grantor is reasonably assured (within the meaning of subparagraph (1)(ii) of this paragraph) that the grant will be used exclusively for purposes described in section 170(c)(2)(B) only if the grantee organization agrees to maintain and, during the period in which any portion of such grant funds remain unexpended, does continuously maintain the grant funds (or other assets transferred) in a separate fund dedicated to one or more purposes described in section 170(c)(2)(B). The grantor of a grant described in this paragraph must also comply with the expenditure respon-

sibility provisions contained in sections 4945 (d) and (h) and § 53.4945-5.

(ii) For purposes of this paragraph, a foreign organization which does not have a ruling or determination letter that it is an organization described in section 501(c)(3) (other than section 509(a)(4)) will be treated as an organization described in section 501(c)(3) (other than section 509(a)(4)) if in the reasonable judgment of a foundation manager of the transferor private foundation, the grantee organization is an organization described in section 501(c)(3) (other than section 509(a)(4)). The term "reasonable judgment" shall be given its generally accepted legal sense within the outlines developed by judicial decisions in the law of trusts.

(3) *Transfers of assets described in § 1.507-3(c)(1)*. If a private foundation makes a transfer of assets (other than a transfer described in subparagraph (1)(i) of this paragraph) pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization to any person, the transferred assets will not be considered used exclusively for purposes described in section 170(c)(2)(B) unless the assets are transferred to a fund or organization described in section 501(c)(3) (other than an organization described in section 509(a)(4)) or treated as so described under section 4947(a)(1).

[FR Doc.72-21955 Filed 12-20-72;8:54 am]

SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

[T.D. 7234]

PART 301—PROCEDURE AND ADMINISTRATION; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Offset of Overpayments of Income Tax

In order to revise the regulations on procedure and administration (26 CFR Part 301) under section 6402 of the Internal Revenue Code of 1954, relating to credit or refund of income tax overpayments, such regulations are amended as follows:

Paragraph (b) of § 301.6402-3 is revised to read as set forth below.

Because this Treasury decision revised departmental policy and procedure, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. 553(b) or subject to the effective date of limitations of 5 U.S.C. 553(d).

(Sec. 7805, Internal Revenue Code of 1954, 68A Stat. 917; 26 U.S.C. 7805)

[SEAL] JOHNNIE M. WALTERS,
Commissioner of Internal Revenue.

Approved: December 16, 1972.

FREDERIC W. HICKMAN,
Assistant Secretary of the Treasury.

§ 301.6402-3 Special rules applicable to income tax.

(a) (1) In the case of income tax, claims for refund may not only be made on Form 843 but may also be made on any individual, fiduciary, or corporation income tax return, or on any amended income tax return.

(2) In the case of an overpayment for a taxable year of an individual for which a Form 1040 has been filed, claim for refund may be made on Form 1040X ("Amended U.S. Individual Income Tax Return"). In cases to which this subparagraph applies, the taxpayer is encouraged to use Form 1040X.

(3) In the case of an overpayment for a taxable year of a corporation for which a corporation tax return has been filed, claim for refund may be made on Form 1120X ("Amended U.S. Corporation Income Tax Return"). In cases to which this subparagraph applies, the taxpayer is encouraged to use Form 1120X.

(b) (1) A properly executed individual, fiduciary, or corporation income tax return shall, at the election of the taxpayer, constitute a claim for refund or credit within the meaning of section 6402 and section 6511 for the amount of the overpayment disclosed by such return. For purposes of section 6511, such claim shall be considered as filed on the date on which such return is considered as filed, except that if the requirements of § 301.7502-1, relating to timely mailing treated as timely filing, are met the claim shall be considered to be filed on the date of the postmark stamped on the cover in which the return was mailed.

(2) An election to treat the return as a claim for refund or credit shall be evidenced by a statement on the return setting forth the amount determined as an overpayment and advising whether such amount shall be refunded to the taxpayer or shall be applied as a credit against the taxpayer's estimated income tax for the taxable year immediately succeeding the taxable year for which such return is filed. If the taxpayer elects to have all or part of the overpayment shown by his return applied to his estimated income tax for his succeeding taxable year, no interest shall be allowed on such portion of the overpayment credited and such amount shall be applied as a payment on account of the estimated income tax for such year or the installments thereof.

(3) Notwithstanding elections made under subparagraph (2) of this paragraph, for taxable years ending after December 20, 1972, the Commissioner, within the applicable period of limitations, may credit any overpayment of individual, fiduciary, or corporation income tax, against any outstanding liability for any tax (or for any interest, additional amount, addition to the tax, or assessable penalty) owed by the taxpayer making the overpayment, and only the balance, if any, shall be treated in the manner so elected.

* * * * *

[FR Doc.72-21956 Filed 12-20-72;8:54 am]

Title 30—MINERAL RESOURCES

Chapter I—Bureau of Mines, Department of the Interior

SUBCHAPTER O—COAL MINE HEALTH AND SAFETY

PART 77—MANDATORY SAFETY STANDARDS, SURFACE COAL MINES AND SURFACE WORK AREAS OF UNDERGROUND COAL MINES

Federal Standards for Qualification of Persons Performing Electrical Work in Coal Mines

Correction

In F.R. Doc. 72-17789, appearing on page 22375 of the issue for Thursday, October 19, 1972, in § 77.103(a)(2), the seventh line should be deleted.

Title 32—NATIONAL DEFENSE

Chapter VII—Department of the Air Force

SUBCHAPTER H—AIR RESERVE OFFICERS' TRAINING CORPS

PART 874—AIR FORCE ROTC SUBSISTENCE ALLOWANCE AND RATES OF COMMUTATION IN LIEU OF UNIFORMS

Miscellaneous Amendments

Part 874, Subchapter H of Chapter VII of Title 32 of the Code of Federal Regulations is amended as follows:

1. Section 874.3 is amended by revising paragraph (e) to read as follows:

§ 874.3 Definitions.

* * * * *

(e) *College Scholarship Program (CSP)*. A program in which selected cadets of the 4-year program receive educational financial assistance, including tuition fees, laboratory fees, books, and a monthly subsistence allowance (§ 874.5).

2. Section 874.5 is revised to read as follows:

§ 874.5 Subsistence allowances authorized.

Except when member is on field training, subsistence allowance for each POC or CSP member is established as follows:

(a) *POC cadets*—$100 a month, not to exceed 20 months.

(b) *CSP cadets*—$100 a month, not to exceed 4 academic years, for cadets appointed under section 2107, 10 U.S.C.

3. Section 874.6 is amended by revising the introductory text to read as follows:

§ 874.6 Commutation rates.

Educational institutions maintaining AFROTC units may elect to receive commutation in lieu of Government clothing.

Beginning in FY 1971, uniform commutation rates are based on the latest approved items of clothing rates by using climatic zone. Compute current commutation rates by using the formulas in § 874.7.

* * * * *

4. Section 874.7 is revised to read as follows:

§ 874.7 Commutation rates for Air Force ROTC cadet uniforms.

(a) Climatic zones used to determine rates of uniform commutation.

(1) ZONE I

Alabama.
Arizona, only 100-mile-wide belt along south border.
Arkansas, southern two-thirds.
California.
Delaware.
District of Columbia.
Florida.
Georgia.
Hawaii.
Kentucky, southeastern one-third.
Louisiana.
Maryland.
Mississippi.
New Mexico, only 100-mile-wide belt along south border.
North Carolina.
Oklahoma, only southeastern portion.
Puerto Rico.
South Carolina.
Tennessee, except northwest corner.
Texas, except area north of 34° north.
Virginia.

(2) ZONE II

Alaska.
*Arizona, except 100-mile-wide belt along south border.
*Arkansas, northern one-third.
Colorado.
Connecticut.
Idaho.
Illinois.
Indiana.
Iowa.
Kansas.
*Kentucky, northwestern two-thirds.
Maine.
Massachusetts.
Michigan.
Minnesota.
Missouri.
Montana.
Nebraska.
Nevada.
New Hampshire.
New Jersey.
*New Mexico, except a 100-mile-wide belt along south border.
New York.
North Dakota.
Ohio.
*Oklahoma, except southeastern portion.
Oregon.
Pennsylvania.
Rhode Island.
South Dakota.
*Tennessee, only northwest corner.
*Texas, only area north of 34° north.
Utah.
Vermont.
Washington.
West Virginia.
Wisconsin.
Wyoming.

* These areas were formerly Zone I and remain entitled to Zone I rates unless application for change to Zone II is submitted to the major command with evidence that the average monthly temperature of the coldest month for each of the past 3 consecutive years was below 32° F.

(b) ROTC commutation rates (male and female).

(1) Basic course: (General Military Course).

Total package cost of authorized items:
+ 10 percent inventory stockage
= Adjusted packaging cost
Amortized by:
2 year life, shoes and socks, 2 year life insignia, 5 year life, balance of package
+ 20 percent custodial services
+ $5 uniform maintenance
= Net rate per year (rounded to nearest dollar)

(2) Advanced course: (Professional Officers Course).

Total package cost of authorized items:
− One-half amount of insignia cost (2-year amortization)
+ 5 percent custodial services
+ $5 uniform maintenance
= Net rate 2-year period (rounded to nearest dollar)

(3) Summer camp: (Field Training).

Total package cost of authorized items:
Amortized by 2 year life (entire package except shoes and socks)
+ 5 percent custodial services
+ $5 uniform maintenance
= Net rate (rounded to nearest dollar)

(c) Illustration of GMC formula.

	Zone I	Zone II
Total package cost	$74.44	$96.20
Plus 10 percent inventory stockage	7.44	9.62
Adjusted package cost	81.88	105.82
Amortization schedule:		
2 years shoes and socks (50 percent of $8.50)	4.25	4.25
2 years insignia (50 percent of $2.50)	1.25	1.25
5 years balance package (20 percent zone I $70.88, 20 percent zone II $94.82)	14.18	18.96
Amortized package cost	19.68	24.46
Add:		
20 percent custodial services	3.94	4.89
Maintenance allowance	5.00	5.00
Total cost	28.62	34.35
Rounded for official rate (per year)	29.00	34.00

(d) Illustration of POC formula.

	Zone I	Zone II
Total package cost (authorized items)	$79.82	$101.58
Less insignia amortization (50 percent of $2.50)	1.25	1.25
Adjusted package cost	78.57	100.33
Add:		
5 percent custodial service	3.93	5.02
Maintenance allowance	5.00	5.00
Total cost	87.50	110.35
Rounded cost (2 years)	88.00	110.00

(e) Illustration of 4-week Field Training formula.

	Zone I	Zone II
Total package cost	$30.50	$43.70
Amortization schedule:		
Total package less $12.75 (boots and socks) (not reissued)	23.81	35.05
50 percent Amortization (2 year life)	11.91	17.03
Boots and socks added	12.75	12.75
Amortized package cost	24.66	39.73
Add:		
5 percent custodial service	1.23	1.54
Maintenance allowance	5.00	5.00
Total cost	30.89	37.27
Rounded cost	31.00	37.00

5. Section 874.9 is amended by revising paragraph (d), adding a new paragraph (e) and a note to read as follows:

§ 874.9 Restrictions on use of commutation of uniform funds.

* * * * *

(d) Maintenance of the uniform, including laundry, dry cleaning, renovating, alteration, and sizing.

(e) Salaries covering custodial services paid to institutional employees not to exceed 20 percent of the commutation funds drawn against actual enrollments for the preceding year.

NOTE: "Related expenses" as used in this section means those expenditures are required and incurred as an integral part of the uniform procurement, issue, and maintenance process. This term includes administrative supplies only if such supplies are specifically required in the procurement, issue, and maintenance of the uniform. Examples of authorized procurement expenses are transportation, postage, telephone calls, and various other administrative costs directly related to the procurement of uniforms; supplies of forms and administrative materials required to insure effective receipt, issue, and maintenance of uniforms. Examples of unauthorized expenditures are procurement of office or other specialized equipment, custodial comfort items, and renovation of storage facilities.

(10 U.S.C. 8012, except as otherwise noted)

By order of the Secretary of the Air Force.

JOHN W. FAHRNEY,
Colonel, USAF, Chief, Legislative Division, Office of The Judge Advocate General.

[FR Doc.72-21753 Filed 12-20-72;8:45 am]

SUBCHAPTER I—MILITARY PERSONNEL

PART 885—APPOINTMENT OF OFFICERS IN THE REGULAR AIR FORCE

Part 885, Subchapter I of Chapter VII of Title 32 of the Code of Federal Regulations is revised to read as follows:

PART 885—APPOINTMENT OF OFFICERS IN THE REGULAR AIR FORCE

Sec.
885.0 Purpose.
885.1 Regular Air Force appointment program.

Sec.
885.2 Eligibility for consideration.
885.3 How appointments are made.
885.4 Reappointment as a judge advocate.
885.5 Discharge from reserve appointment.
885.6 Withholding or withdrawing appointment.
885.7 DD Form 1AF, "Certificate of Commission."
885.8 Recording appointments.
885.9 Active duty service commitment.
885.10 Probationary period.
885.11 Posthumous appointment.
885.12 Category of personnel to be considered for regular Air Force appointment and statutory authority.
885.13 Basic eligibility of line of the Air Force, medical service, or biomedical science officer (except dietitian or occupational or physical therapist), veterinarian, chaplain, judge advocate, and AFROTC distinguished graduates.
885.14 Basic eligibility—physician or dentist.
885.15 Basic eligibility—nurse and biomedical sciences corps personnel (dietitian; occupational and physical therapists).
885.16 Eligible year groups—line of the Air Force.
885.17 Use of AF Form 17, "Application for Appointment in the Regular Air Force" and AF Form 17a.
885.18 Consolidated Base Personnel Office actions on applications.
885.19 Major command and medical facility actions on applications.
885.20 Dental screening officer actions.
885.21 Service credit.
885.22 Regular grade.
885.23 Active duty grade.
885.24 Administrative procedures after selection.
885.25 Sample letters.

AUTHORITY: The provisions of this Part 885 issued under 10 U.S.C. 8012, except as otherwise noted.

§ 885.0 Purpose.

(a) This part tells how appointments are made in the Regular Air Force. It applies to officers on extended active duty, academy graduates, AFROTC distinguished graduates, and civilian dentists.

(b) Part 806 of this chapter states the basic policies and instructions governing the disclosure of records and tells members of the public what they must do to inspect or obtain copies of the material referenced herein.

§ 885.1 Regular Air Force appointment program.

Regular Air Force (RegAF) appointments are made annually to maintain the RegAF officer structure established by law. The statutory ceiling on officer grades and the statutory tenure of Regular officers dictate that the number of such officers be controlled closely by years of promotion list service (PLS). Appointments are made at the direction of the President, by and with the advice and consent of the Senate.

§ 885.2 Eligibility for consideration.

Section 885.12 should be used to determine basic eligibility for the different officer categories. A person who meets the basic eligibility in the appropriate section is ineligible for the RegAF appointment if he:

(a) Is not of good moral character.

(b) Is not a U.S. citizen. (A person selected for appointment who is not a citizen by birth must furnish documentary evidence of citizenship if his master personnel record does not contain such evidence.)

(c) Is in a failed status for promotion to the temporary grade of captain, major, or lieutenant colonel.

(d) Is in a deferred status for promotion to a higher Reserve grade.

(e) Has been ordered to active duty under 10 U.S.C. 265, 8033, or 8496, or he is on active duty for training.

(f) Has an established date of separation (DOS) during the month the appointment board convenes or during the 2-month period after the board convened. Example: If a board convenes in April 1971, officers with an established DOS through June 1971 are ineligible. Officers should be encouraged to establish eligibility by obtaining additional service retainability through a specified period of time contract (SPTC) under AFR 36-94 or through Career Reserve Status (CRS) according to AFR 36-14. To insure consideration by the appointment board, officers should apply for SPTC or CRS at least 3 months before the board convenes.

(g) Is not given a favorable National Agency Check (NAC).

(h) Is not medically qualified. An officer found medically disqualified continues to be eligible for appointment if it can be reasonably assumed that he will qualify medically within 2 years of the date of presidential approval of his appointment.

§ 885.3 How appointments are made.

(a) *Central Appointment Boards.* (1) *Groups considered by the Board.* Using the best qualified method of selection, Central Appointment Boards are convened at HQ USAF to select eligible:

(i) Line officers within the 2-, 3-, 4-, and 7-year PLS groups to fill known vacancies (§ 885.16). The 2-year group is limited to nonrated officers; the 3-year group to pilots and navigators.

(ii) Medical Services officers, chaplains, and judge advocates to fill known vacancies. Each year HQ USAF sends a letter to all major commands listing the year groups to be considered that year. A physician or dentist who is not in career status is not eligible under this program; however, he may apply for a RegAF appointment according to § 885.17, Rule 1. A Reserve Medical Service Corps (MSC) officer is ineligible for a RegAF appointment in the MSC if he is participating in the education program according to Part 908 of Subchapter K of this chapter, "Medical, Dental, and Veterinary Education of Regular and Reserve Air Force Officers."

NOTE: There are no reporting requirements since all officers eligible to be considered by Central Appointment Boards are identified from the Uniform Officer Record.

(2) *Records considered by the Board.* To insure that all officers receive equitable consideration, boards base evaluation of an officer's qualification for appointment on the records shown in the following subdivisions. Boards will not consider letters of recommendation or similar documents not authorized for inclusion in selection folders.

(i) Officer, HQ USAF, Selection Record Group.

(ii) Any reasonably substantiated information not in an officer's selection folder that raises serious doubt of his suitability for an appointment may be presented to the board by the Assistant DCS/Personnel for Military Personnel, HQ USAF.

(iii) AF Form 1483, "Statement of Intent for Appointment in the Regular Air Force," whenever the form is required by USAFMPC/DPMAJB.

(b) *U.S. Air Force Academy cadets.* Cadets are appointed in the RegAF according to 10 U.S.C. 9353. For cadets desiring appointment in another service, the Superintendent of the Air Force Academy furnishes USAFMPC/DPMAJB1, Randolph Air Force Base, Tex. 78148:

(1) The names of the cadets and their service and assignment preferences.

(2) Each cadet's relative class standing, and the total number of cadets at the end of his third academic year.

(3) SF 88, "Report of Medical Examination" (in duplicate), and SF 93, "Report of Medical History."

(4) AF Form 47, "Certificate of Eligibility and Record of Personnel Security Clearance."

(5) DD Form 98, "Armed Forces Security Questionnaire."

(c) *U.S. Military Academy cadets and U.S. Naval Academy midshipmen.* For cadets and midshipmen requesting appointment in the RegAF, the superintendent of each academy furnishes USAFMPC/DPMAJB1, Randolph Air Force Base, Tex. 78148:

(1) The names of the cadets or midshipmen and their assignment preferences.

(2) Information and completed forms listed in (b) (2) through (5) of this section.

(d) *Secondary zone selectees.* Regardless of vacancies in their PLS year groups, officers selected for promotion to the temporary grades of major, lieutenant colonel, and colonel in the secondary zone are tendered a RegAF appointment if they are eligible. Appointments are announced after the promotion board results have been released.

(e) *Dental officers.* Dental officers on extended active duty (EAD) who are not eligible for consideration by central appointment boards and civilian dentists may apply for a RegAF appointment according to § 885.17. Selected civilian applicants are notified by HQ USAF after presidential nomination. Selected applicants on EAD are notified by major commands according to § 885.24. Applicants not selected are ineligible to apply again until 1 year after the date they are notified that they were not selected.

(f) *Medical officers.* Physicians (including osteopaths) serving on EAD who are not eligible for consideration by cen-

tral appointment boards may apply for a RegAF appointment according to § 885.17.

(g) *Distinguished Graduates (DG's).* (1) *Percentage of DG's to be selected for RegAF appointments.* DG's from the Air Force Reserve Officer Training Corps (AFROTC) program can be selected for RegAF appointments as shown below:

AFROTC class	*Maximum percent of DG's*
January 1972	3
June 1972	1

NOTE: DG's who are not selected for RegAF appointments are considered under other programs as they become eligible (paragraph (a) of this section). Also, those graduating after June 1972 will be considered according to paragraph (a) of this section.

(2) *AFROTC DG's. The Air University (AU).* (i) Convenes boards each November and May. The November board alines in order of merit all prospective DG's scheduled to graduate during the period April through August; the May board alines those scheduled to graduate during the period September through March. The best qualified method is used to aline individuals.

(ii) Prepares a selection folder for each person. This contains:

(*a*) AF Form 709, "Officer Performance Report," with a narrative summary typed on the reverse of the form as section VII. The summary contains a brief résumé of the person's performance and potential, and specific comments on his interest in a RegAF career.

(*b*) A copy of his college transcript.

(*c*) A photograph 3 by 5 inches with his name printed on the back.

(*d*) AF Form 1356, "Findings and Hearings of Air Force Personnel Board." (Grade point average is entered in the "Education" block of this form.)

(*e*) AFROTC Form 73, "Cadet Evaluation Form."

(iii) Sends to USAFMPC/DPMAJB1, Randolph Air Force Base, Tex. 78148, within 30 days after the board adjourns, the board results and a selection folder for each DG. These are forwarded to the Secretary of the Air Force Personnel Council for final selection.

NOTE: A DG selected for RegAF appointment, who is later authorized a delay in his entry on EAD to complete an advanced educational program under Part 875 of Subchapter H, is tendered his appointment when he enters on EAD.

§ 885.4 Reappointment as a judge advocate.

A RegAF officer may apply for reappointment in the RegAF with a view to designation as a judge advocate according to §§ 885.13 and 885.17.

§ 885.5 Discharge from Reserve appointment.

When a Reserve officer accepts a RegAF appointment, his servicing CBPO completes a DD Form 214, "Armed Forces of the United States Report of Transfer or Discharge," according to AFM 35-5.

§ 885.6 Withholding or withdrawing appointment.

(a) After receiving a selected list, the CBPO immediately notifies USAFMPC/DPMAJB1 (also sends a copy to the major command) if the propriety of appointing a selectee is questionable because of unfavorable data or for any other qualitative reason. The notice must contain all pertinent details, including the commander's recommendation on the appointment. The CBPO will then withhold all appointment actions pending additional instructions from HQ USAF.

(b) After reviewing the information in paragraph (a) of this section, the major command will notify USAFMPC/DPMAJB1 by letter signed by the major commander, his vice commander, or chief of staff if withholding or withdrawing appointment is recommended.

§ 885.7 DD Form 1AF, "Certificate of Commission."

HQ USAF prepares a DD Form 1AF according to AFR 36-55 for each officer appointed in the RegAF. It is based on information furnished by the officer at the time of his final appointment action. A request to reissue the form is sent to USAFMPC/DPMAJB1. The form will not be reissued because of a date of rank amendment.

§ 885.8 Recording appointments.

USAFMPC/DPMAJB1 enters in the Uniform Officer Record (UOR) any appointment made under this part.

§ 885.9 Active duty service commitment.

An officer appointed in the RegAF must serve 5 years of continuous active commissioned service during his current tour of active duty, including 1 year after accepting the RegAF appointment (Part 888c of this chapter).

§ 885.10 Probationary period.

The appointment of any person under this part is probationary for 3 years.

§ 885.11 Posthumous appointment.

A posthumous appointment in the RegAF may be issued in the name of a member who was selected for appointment, but who was unable to accept it because he died in line of duty. To accomplish this, his immediate commander will send a request through channels to USAFMPC/DPMAJB1 to publish the posthumous appointment order. USAFMPC/DPMSC will send a letter with copies of the order to the officer's next of kin. (No financial benefits accrue as a result of a posthumous appointment.)

§ 885.12 Category of personnel to be considered for regular Air Force appointment and statutory authority.

Rule	A If the person being considered for RegAF appointment is—	B And the statutory authority for such appointment is—	C Then to determine basic eligibility for such appointment, go to—
1	Line of the Air Force member	Chapter 835, 10 U.S.C.	§885.13.
2	Physician (including osteopath)		§885.14.
3	Dentist		§885.14.
4	Nurse		§885.15.
5	Biomedical sciences member (except dietitian or physical or occupational therapist).		§885.13.
6	Biomedical sciences member—a dietitian, or physical or occupational therapist.		§885.15.
7	Medical service officer		§885.13.
8	Veterinarian		§885.13.
9	Judge advocate		§885.13.
10	Chaplain		§885.13.
11	AFROTC DG (graduated before October 13, 1964)		§885.13.
12	AFROTC DB (graduated after October 12, 1964)	Chapter 103, 10 U.S.C.	§885.13.
13	Cadet of the U.S. Air Force Academy	10 U.S.C. 541 and 9353, and Chapter 835, 10 U.S.C.	§885.3 (b) and (c).
14	Cadet or midshipman of the U.S. Military or Naval Academy.		§885.3 (b) and (c).
15	Regular officer of Army, Navy, or Marine Corps applying for interservice transfer.	10 U.S.C. 716	AFR 36-23.

§ 885.13 Basic eligibility of line of the Air Force, medical service, or biomedical sciences officer (except dietitian or occupational or physical therapist), veterinarian, chaplain, judge advocate, and AFROTC DG.

Rule	A If a person to be considered for RegAF appointment is—	B Then he must be—	C And at time of appointment he must be—	D And must—	E And to determine service credit, go to—
1	Line of the Air Force officer.	A Reserve officer serving on EAD.	At least 21 years old and be able to complete 20 years of active commissioned service in the U.S. Armed Forces before his 55th birthday.		§ 885.21.
2	Medical service officer.				
3	Biomedical sciences officer (except dietitian, or occupational or physical therapist.				
4	Veterinarian			Currently be designated to perform veterinary school acceptable to the Surgeon General, USAF.	
5	Chaplain			Be currently assigned to perform chaplain duties; have at least 120 undergraduate semester hours of credit from an accredited or recognized college or university, have completed at least 60 graduate semester hours from a theological seminary or graduate school of theology that is a component part of a university, and have an ecclesiastical endorsement from his religious indorsing agency.	
6	Judge advocate			Be a graduate of an accredited law school, currently designated as a judge advocate, a member of a bar of a Federal court or of the highest court of a State and be in good standing at the bar.	
7	Regular officer applying for reappointment with a view to designation as a judge advocate.			Have obtained all his legal education while not on EAD and be currently serving as a captain or in a lower grade. If serving in a higher grade, he must be currently designated as a judge advocate (and so designated before June 23, 63).	
8	AFROTC DG		See note.		

NOTE: A DG appointed under 10 U.S.C., chapter 103, may be appointed before his 21st birthday.

§ 885.14 Basic eligibility—physician or dentist.

Rule	A If a person to be considered for RegAF appointment is a—	B Then at the time of appointment he must be—	C And he must be a graduate (or prospective graduate) of a—	D And go to—
1	Physician (including osteopath) or medical intern on EAD as a commissioned officer.	At least 21 years old, his age not exceeding 35 years by more than the number of years, months, and days that he has served on active duty as commissioned officer of the U.S. Armed Forces (note 1).	Medical school acceptable to the Surgeon General, USAF.	§ 885.21, to determine service credit; § 885.17, for application instructions.
2	Dentist or dental intern on EAD as a commissioned officer.		Dental school acceptable to the Surgeon General, USAF.	
3	Dentist not on EAD applying more than 1 year after graduation from dental school (note 2).		Dental school acceptable to the Surgeon General, USAF, and possess a license to practice dentistry in a State or territory of the U.S. or in the District of Columbia.	
4	Dentist not on EAD applying less than 1 year after graduation from dental school or a senior dental student within 4 months of graduation.		Dental school acceptable to the Surgeon General, USAF.	

NOTES: 1. Age requirement may be waived by the Surgeon General, USAF.
2. To be appointed in a grade above captain, a person normally must be certified by an American Specialty Board or have outstanding qualifications for a special position as determined by the Surgeon General, USAF.

§ 885.15 Basic eligibility—nurse and biomedical sciences corps personnel (dietitian; occupational and physical therapists).

Rule	A If a person to be considered for RegAF appointment is a—	B Then he must be—	C And at time of Presidential nomination (note 1) he must not have passed—	D And must—	E And to determine service credit, go to—
1	Nurse	Performing duty in the indicated specialty and have completed at least 1 year of active commissioned service.	His 30th birthday if he has less than 7 years of service credit (note 2); or his 39th birthday if he has 7 or more years of service credit.	Be a graduate of a school of nursing offering no less than a 3-year basic curriculum acceptable to the Surgeon General, USAF, and must hold current registration from a State, the District of Columbia, or a territory.	§ 885.21.
2	Dietitian or occupational or physical therapist (note 3).			Have an AB degree from an approved school, college or university, and must have completed either a dietetic internship, occupational or physical therapy course, as appropriate, acceptable to the Surgeon General, USAF.	

NOTES: 1. For advance computational purposes only, Presidential nomination is estimated as the date that is 5 weeks from the date the appointment board convened.
2. The maximum age must be increased by a period equal to the officer's active commissioned service in the U.S. Armed Forces after December 6, 1941, not exceeding 5 years; however, service before age 21 is not creditable.
3. Initial appointment is to the medical specialist corps with placement on the biomedical sciences corps promotion list.

§ 885.16 Eligible year groups—line of the Air Force.

Rule	A If officer's total active Federal commissioned service date (TAFCSD) is within the following inclusive dates—	B	C	D	E	F
		Then he is considered for appointment under the program and fiscal year indicated				
		FY 71	FY 72	FY 73	FY 74	FY 75
1	Jan. 1 to Dec. 31, 1963	7 year.				
2	Jan. 1 to Dec. 31, 1964		7-year.			
3	Jan. 1 to Dec. 31, 1965			7-year.		
4	Jan. 1 to Dec. 31, 1966	4-year			7-year.	
5	Jan. 1 to Dec. 31, 1967	3-year (note 1)	4-year.			7-year.
6	Jan. 1 to Dec. 31, 1968	2-year (note 2)	3-year (note 1)	4-year.		
7	Jan. 1 to Dec. 31, 1969		2-year (note 2)	3-year (note 1)	4-year.	
8	Jan. 1 to Dec. 31, 1970			2-year (note 2)	3-year (note 1)	4-year.
9	Jan. 1 to Dec. 31, 1971				2-year (note 2)	3-year (note 1).
10	Jan. 1 to Dec. 31, 1972					2-year (note 2).

NOTES: 1. Pilots and navigators only.
2. Nonrated officers only.

§ 885.17 Use of AF Form 17, "Application for Appointment in the Regular Air Force," and AF Form 17A.

Rule	A If the person is a—	B Then he—	C And submits them with—	D To—	E And request (in writing) a letter of reference from persons listed—
1	Physician (including osteopath) or a dentist serving on EAD as a Reserve officer who is not eligible to be considered by a central appointment board due to his PLS group or non-career status; or a medical or dental intern on EAD.	Completes two copies of AF Form 17 and AF Form 17a, "Supplement to Application for commission in the U.S. Air Force Medical Service."	A copy of his diploma (Note 1).	His CBPO for action under § 885.18.	In AF Form 17a, Item 7 one of whom must be the dean of the appropriate medical or dental school (Note 2) § 885.23(b)(1).
2	Dentist not on EAD and applying no later than 1 year after graduation from dental school.		A copy of DD Form 214 for any prior military service; copy of diploma awarding DDS degree; evidence of postgraduate work or residency; current head and shoulder type photograph 3" x 5" or larger, with name typed or printed on back; one DD Form 398, "Statement of Personal History"; one FBI fingerprint card; and one DD Form 1584, "DOD National Agency Check Request" (Note 1).	USAFMPC/DPMAJB1, Randolph AFB, Tex. 78148.	
3	Dentist not on EAD and applying more than 1 year after graduation from dental school.		The items listed in Rule 2, Col. C, and a copy of his State license (Note 1).		
4	Senior dental student within 4 months of graduation (Note 3).		A copy of DD Form 214 for any prior military service; current head and shoulder type photograph 3" x 5" or larger, with name typed or printed on back; one DD Form 398; one FBI fingerprint card; and one DD Form 1584 (Note 1).		
5	Regular officer applying for reappointment with a view to designation as a judge advocate (Note 4).	Prepare a letter of application containing request for reappointment with a view to designation as a judge advocate; request for release from flying status, if rated; summary of legal experience; and names and addresses of two lawyers with knowledge of his professional qualifications.	A transcript of college credits (including undergraduate and law school credits) and certificates of admission to practice, and current standing at the bar.	His CBPO for action under § 885.18.	As professional references in his letter of application (§ 885.23(b)(2)).

NOTES: 1. An applicant who is not a U.S. citizen by birth furnishes a certificate accomplished by an officer, notary public, or other person authorized by law to administer oaths, as follows: "I certify that I have this date seen the original Certificate of Citizenship ..... (or certified copy of court order establishing citizenship) stating that (full name) was admitted to U.S. citizenship by the ..... Court of (District or County and State) on (date)." Under no circumstances will facsimiles or copies, photographs, or otherwise of naturalization certificates be made (18 U.S.C. 1426(h)).

2. Letters of reference are not required if the officer has 3 or more years of active duty as a physician or dentist.

3. After graduation and receipt of notification of selection, and before appointment action is completed, selectees are required to furnish a copy of a diploma awarding the DDS degree and a statement showing actual date of graduation to USAFMPC/DPMAJB1, Randolph Air Force Base, Tex. 78148.

4. This applies only to officers currently performing other than judge advocate duties. Officers already assigned to the Judge Advocate General's department at time of application need only submit to USAFMPC/DPMAJB1, Randolph Air Force Base, Tex. 78148, through channels, a letter of application requesting reappointment to the judge advocate promotion category.

§ 885.18 CBPO actions on applications.

Line	If applicant is—	Rule 1	Rule 2	Rule 3
A	Physician, osteopath, or dentist	Yes.		
B	Medical or dental intern		Yes.	
C	Regular officer applying for reappointment with a view to designation as a judge advocate.			Yes.
	Then—			
D	Check application for eligibility and completeness, returning it to applicant if he is ineligible or the application is incomplete.	×	×	×
E	Insure that the base medical facility administers a physical examination if applicant is not in career status; insure that he completes AF Form 944, part I if he is a career Reserve officer, and that the base medical facility completes the form and physical examination, if required.	×	×	
F	Prepares and attach with AF Form 17 a brief statement on the applicant's current duty performance, his potential strengths, weaknesses, and social behavior (see note).	×		
G	Schedule the applicant for an appearance before the local Medical and Dental Training Committee for an impartial evaluation to determine his qualifications for a RegAF appointment.		×	
H	Prepare and attach with letter of application a concise statement on the applicant's duty performance and his potential strengths and weaknesses (see note).			×
I	Indorse AF Form 17 or letter of application and allied papers to major command within 5 workdays, recommending either approval or a substantiated disapproval (see note).	×	×	×
J	Include a statement showing type of security clearance applicant has, where it is filed, and action taken to complete NAC.	×	×	
K	Include a statement indicating any unfavorable information in applicant's record	×	×	×

NOTE: The officer's immediate supervisor or commander furnishes the CBPO the necessary information to comply with this rule.

§ 885.19 Major command and medical facility actions on applications.

Line	If applicant is a—	Rule 1	Rule 2	Rule 3	Rule 4
A	Physician or osteopath	Yes.			
B	Dentist		Yes.		
C	Medical or dental intern			Yes.	
D	Regular officer applying for reappointment with a view to designation as a judge advocate.				Yes.
	Then—				
E	Check application for eligibility and completeness, returning it to applicant through CBPO if he is ineligible or the application is incomplete.	×	×	×	
F	Check application for eligibility and completeness; refer it to the command staff judge advocate for review and recommendation.				×
G	Request USAFMPC/SGPSS, Randolph AFB TX 78148, for screening instructions.		×		
H	Forward applicant's complete application papers to USAFMPC/DPMAJB1, Randolph AFB TX 78148, with any information affecting his eligibility. Include recommendation of staff judge advocate made under line F.	×		×	×
I	After receiving screening instructions on an EAD applicant, send duplicate AF Form 17 and a letter of instructions to the commander of the medical facility designated as the dental screening center. No applicant will be screened within his own organization.		×		
J	After receiving instructions from HQ USAF on a non-EAD applicant or from a major command on an EAD applicant, the medical facility appoints a screening officer who must be a RegAF dental officer equal or senior in grade to the applicant. The screening officer completes the actions in § 885.20 and in the letter of instructions § 885.25(c).		×		
K	After receiving the completed dental screening report on EAD applicant, the major command sends the application and allied papers to USAFMPC/DPMAJB1, Randolph AFB TX 78148. The medical facility sends the dental screening report on non-EAD applicants to USAFMPC/DPMAJB1, Randolph AFB TX 78148.		×		

§ 885.20 Dental screening officer actions.

Line	If the person being screened is a dentist—	Rule 1	Rule 2
A	Not on EAD or is a dental student within 4 months of graduation	Yes.	
B	On EAD as a Reserve officer		Yes.
	Then—		
C	Schedule the applicant for screening and notify him in writing about place, time, and duration of screening; and what documents he must have in his possession during the screening.	X	X
D	Inform applicant that cost of travel, quarters, and subsistence is at his expense. (Make every effort to schedule screening at a time convenient to applicant.)	X	
E	Arrange for applicant to undergo a complete medical examination, and submit results on SF 88 (in duplicate) and SF 93.	X	
F	Request applicant's immediate commander to issue necessary travel instructions		X
G	Welcome the applicant, explain screening schedule, and inform him of on-base facilities, such as food service, billeting, and recreation.	X	X
H	Spend enough time with applicant to make a written evaluation concerning his qualifications for a Reg AF appointment.	X	X
I	Convene a board of officers to conduct examination	X	X

§ 885.21 Service credit.

Rule	A If a person selected for appointment in the RegAF is—	B Then when appointed he is credited with—	C And he is credited also with—	D And to determine his Regular grade, go to—
1	Line of the Air Force officer	An amount of service equal to the length of active Federal commissioned service (AFCS) performed in the U.S. Armed Forces before RegAF appointment and after becoming 21 years of age (Notes 1 and 2).		§885.22.
2	Chaplain			
3	Judge advocate		3 year's service.	
4	Veterinarian			
5	Medical service officer			
6	Biomedical sciences officer (except dietitian or occupational or physical therapist).		(Note 3).	
7	Nurse, dietitian, or therapist		(Note 4).	
8	An AFROTC graduate		(Note 5).	
9	Physician (including osteopath or dentist).		(Note 6).	

NOTES: 1. DG's of AFROTC program appointed under 10 U.S.C. chapter 103, may be appointed in the RegAF before age 21.
2. The amount of such service credited to a nurse, dietitian, or therapist may not exceed 14 years.
3. The Surgeon General, USAF, may grant 3 years of service credit if the person has a Ph. D. (or a comparable degree) in a science allied to medicine and if the academic requirements for the degree were not fulfilled while the person was on active duty.
4. Officers with less than 3 years of AFCS who have professional experience will be granted constructive service for the professional experience; however, constructive service and AFCS will not exceed 3 years. Professional experience is defined as: Nurses: Experience after graduating from an approved school of nursing. Dietitians and occupational and physical therapists: Experience in medical institutions after completing a dietetic internship, or occupational or physical therapy course.
5. The date of rank and PLS date of DG's of the AFROTC program appointed under 10 U.S.C. chapter 103, in May or June of any year are the date of graduation of the cadets of the Air Force Academy in that year.
6. PLS credit is granted from the date that precedes by 4 years the person's graduation from medical or dental school. Example: If he was graduated on June 4, 1964, his PLS date is June 4, 1960. If a school requires internship before graduation, PLS credit is granted from the date that precedes by 5 years the person's graduation. However, a doctor of medicine or osteopathy who has completed an internship of 1 year, or the equivalent, may not be credited with less than 5 years.

§ 885.22 Regular grade.

Rule	A If promotion list service credit is—	B The Regular grade upon appointment is (note 1)—	C And to determine his active duty grade, go to—
1	Less than 3 years	Second lieutenant	§885.23.
2	3 years but less than 7	First lieutenant	
3	7 years but less than 14	Captain	
4	14 years but less than 21	Major	
5	21 years or more (note 2)	Lieutenant colonel	

NOTES: 1. Grades and dates of rank are computed as of the date of Presidential nomination.
2. When the Surgeon General, USAF, determines that a medical or dental applicant has had outstanding professional training or experience, and recommends that he be awarded more than 23 years of PLS credit upon RegAF appointment, the appointment is made in the grade of colonel. Dental appointments in the grade of major and above normally require the person to be certified by an American Specialty Board and/or to have outstanding qualifications for a special position as determined by the Surgeon General.

§ 885.23 Active duty grade.

Rule	A If the person is a—	B And he is—	C And—	D Then he will—
1	Line of the Air Force officer, chaplain, judge advocate medical service officer, veterinarian, biomedical sciences officer (except dietitian, or physical or occupational therapist) or AFROTC DG.	Serving on EAD.	In a Reserve grade equal to or higher than the Regular grade to which appointed.	Vacate his Reserve appointment when he accepts the RegAF appointment and he will be tendered a temporary appointment in a grade equal to his former Reserve grade with no change in his active duty date of rank.
2			In a temporary grade equal to or higher than the Regular grade to which appointed.	Continue to serve in his temporary grade and date of rank when he accepts the RegAF appointment.
3			In a lower grade than the Regular grade to which he would be appointed.	Not be eligible for a RegAF appointment.
4	Physician, osteopath, dentist, nurse, dietitian, or occupational or physical therapist.		In a Reserve grade equal to or higher than the Regular grade to which appointed.	Vacate his Reserve appointment when he accepts the RegAF appointment and he will be tendered a temporary appointment in a grade equal to his former Reserve grade with no change in his active duty date of rank.
5			In a temporary grade equal to or higher than the Regular grade to which appointed.	Continue to serve in his temporary grade and date of rank when he accepts the RegAF appointment.
6			In a lower grade than the Regular grade to which appointed.	Assume the higher grade and vacate the temporary grade on the date he accepts the RegAF appointment.
7	Dentist	Not serving on EAD.	Being appointed in the RegAF in the grade of first lieutenant or captain.	Be tendered, on the date he accepts the RegAF appointment, a temporary appointment in the grade of captain with rank from the date he was graduated from dental school.

§ 885.24 Administrative procedures after selection.

Rule	A If action is to—	B Then the major command—	C And the CBPO (note 1)	D And each selectee—
1	Notify selectees	After receiving advance selected list, insures that selectees receive proper recognition; letters of notification (through each person's immediate commander) are signed by commanders of wing or comparable or higher level (HQ USAF establishes release date).	Interviews each selectee, explaining benefits of RegAF appointment; notifies selectee to comply either with rule 3D if he desires appointment or with rule 2D if he declines it; tells selectee, if he is chaplain who intends to accept, that before appointment can be effected, he must obtain an ecclesiastical indorsement for RegAF appointment from his religious indorsing agency and forward it to USAFMPC/DPMAJB1 and to advise CBPO/DPMQS date document was forwarded.	
2	Submit declination statement (note 2).	Monitors compliance with established suspense dates.	Monitors compliance with established suspense dates and sends a copy of statement to MAJCOM.	Sends completed AF Form 1371 to USAFMPC/DPMAJB1, Randolph AFB TX 78148.
3	Obtain medical qualification of selectees accepting appointment (not required of persons who applied under § 885.17).		Insures that each selectee completes AF Form 944, part I, and that base medical facility completes form and physical examination, if required no later than 60 days after Presidential approval.	Obtains letter of instruction and AF Form 944 from CBPO and reports to nearest medical facility.
4	Tender oath of office.	Insures that oath of office is executed in suitable ceremony; if possible, commander who took action under rule 1B participates in ceremony.	After receiving appointment kit from HQ USAF, plans ceremony and gives it local publicity; sends executed oath and completed appointment checklist to USAFMPC/DPMAJB1, Randolph AFB TX 78148.	After completing checklist (furnished in appointment kit), executes oath of office (note 4).

NOTES: 1. CBPO sends appointment documents for selectee who has been reassigned to gaining organization and notifies USAFMPC/DPMAJB1 of this action.

2. Selectee may request withdrawal of his declination statement within 2 years from date of Presidential nomination unless: (a) Intervening appointment board considers, but does not select him, or (b) he can be considered by another appointment board within 1 year.

3. Selectee in medical service (Medical Corps, Dental Corps, Veterinary Corps, Biomedical Sciences Corps, Medical Service Corps, or Nurse Corps) or selectee who is chaplain or judge advocate must be qualified by physical examination under AFM 160-1 if he is not currently in Career Reserve status.

4. If selectee is unable to certify that his health has not changed since completing AF Form 944 or if his circumstances require affirmatively checking item 2 of appointment checklist, CBPO returns appointment kit with explanation to USAFMPC/DPMAJB1.

§ 885.25 Sample letters.

(a) Letter to hospital commander transmitting AF Form 944, "Medical Certificate for Career Reserve Status and Regular Appointments":

Subject: Medical qualification for Regular Air Force appointment.

To: Commander, Air Force Medical Installation.

1. The bearer of this letter has been selected for appointment as an officer in the Regular Air Force, subject to medical qualification. Request this person's medical records be reviewed. If he is qualified for unrestricted worldwide duty according to AFM 35-4, complete Part II of the attached form, otherwise complete Part III and schedule the person for a medical examination to be completed according to AFM 160-1. This examination will be submitted with SF 93, "Report of Medical History" (formerly SF 89). To facilitate handling the following instructions apply:

a. Mark in right upper corner of SF 88 officer's total years of active Federal commissioned service performed after age 21.

b. SF 88, paragraph 17—complete when officer is rated.

c. SF 88, paragraph 48—complete EKG.

d. SF 88, paragraph 60—refraction is required if uncorrected visual acuity is less than 20/20 bilaterally.

e. SF 88, paragraph 71—record audiometric reading at 500, 1000, 2000, 3000, 4000, and 6000 cycles per second.

2. Whether Part II or III is completed forward AF Form 944 to USAFMPC/DPMAJB1, Randolph AFB Tex. 78148, as expeditiously as possible. Also, forward report of medical examination, if required, to the same address.

3. If a medical examination is required, send the original and one copy of SF 88 and two copies of the SF 93. The single sheet SF 88 printed on both sides is preferred; however, the long sheet may be used. Before forwarding, remove all carbons. Fold each long sheet separately, so that it is no longer than 10½ inches, for convenient review and certification. This examination does not in any way conflict with or fulfill the requirement for submission of any report of examination normally required for any other purpose.

(b) Letter of references. (1) Physicians and dentists.

DEAR _____: I am applying for a commission in the Regular Air Force. My application must be endorsed by members of our profession who can render a personal evaluation of my suitability for such an appointment, professional capabilities and potential, relative class standing,[1] personal attributes, and any other appropriate comments. I have listed your name for such reference. Please furnish this information to USAFMPC/SGPSS, Randolph AFB, Tex. 78148, at your earliest convenience. That office will hold your evaluation and comments in confidence and not disclose them to me.

(2) Judge advocates.

DEAR _____: I am applying for reappointment in the Regular Air Force as a judge advocate. My application must be endorsed by members of the legal profession who can render a personal evaluation of my suitability for such an appointment, professional capabilities and potential, relative class standing,[1] personal attributes, and any other appropriate comments. I have listed your name for such reference. Please furnish this information to USAFMPC/DPMAJB1, Randolph AFB, Tex. 78148, at your earliest convenience. That office will hold your evaluation and comments in confidence and not disclose them to me.

(c) Letter to screening officers.

Subject: Screening applicant for Regular Air Force Commission (Dental Officer).

To: (Appropriate Medical Facility) (Dental Screening Officer).

1. (Applicant's name, grade, SSAN, organization and mailing address) has applied for a commission in the Regular Air Force.

2. Please accomplish, at the earliest possible date, the screening actions outlined below. If action cannot be completed within 15 days after receipt of this letter, advise USAFMPC/DPMAJB1, of the reasons therefor and the estimated date of completion.

a. Schedule the applicant for screening according to § 885.20.

b. Upon the applicant's arrival, convene a screening board to examine and evaluate him. The board will consist of the senior Regular dental officer or his appointed representative, who must be a Regular officer senior in both temporary and regular grade to the temporary and prospective regular grade of the applicant, and one or more additional dental officers. The board:

(1) Conducts an oral examination that includes operative dentistry, prosthetics, crown and bridge, oral surgery, periodontia, oral diagnosis, dental roentgenology, and treatment planning.

(2) Conducts a practical examination that includes insertion of the following restorations: A multisurface amalgam, a silicate, and a three-fourths or full crown; also, the impression procedure for a complete denture, the removal of a tooth, and the exposure of a full-mouth set of X-ray film. If required for a thorough evaluation of the applicant, additional technical procedures may be prescribed by the board.

(3) Prepares a report, signed by all board members, containing:

(a) The applicant's numerical grade on each subject covered in the examination. Grades are based on a 0-100 scale and are recorded separately for the oral and practical phases of the examination. A grade of 75 is considered passing.

(b) A personal evaluation of the applicant, in narrative form, including a statement concerning his professional competence and his acceptability for Regular appointment. If the applicant is not recommended for appointment, state the specific reasons. In preparing this portion of the report, consider the applicant's bearing, manner, and other personality characteristics. When possible, comment on his career motivation, growth potential, intelligence, attitude, maturity, judgment, emotional stability, leadership traits, and devotion to duty.

c. Within 5 days after the completion of the screening action, please mail the attached copy of the application and the screening board's report (original and one copy) to this headquarters (office symbol).

By Order of the Secretary of the Air Force.

JOHN W. FAHRNEY,
Colonel, USAF, Chief, Legislative Division, Office of The Judge Advocate General.

[FR Doc.72-21635 Filed 12-20-72;8:45 am]

[1] Include only in letter to the dean.

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

SUBCHAPTER B—HUNTING AND POSSESSION OF WILDLIFE

PART 18—MARINE MAMMALS

There was published in the FEDERAL REGISTER of December 1, 1972 (37 F.R. 25524), a notice of proposed rule making which notified the public that the Bureau of Sport Fisheries and Wildlife intended to adopt interim regulations to implement the Marine Mammal Protection Act of 1972 (86 Stat. 1027). Comments, suggestions, and objections were invited. Those received by December 15, 1972, would be considered for incorporation into the rules which were planned for publication in the FEDERAL REGISTER on or about December 21, the date the Act became effective. wo comments were received. Both of these suggested that § 18.32 as proposed be reworded to more closely follow the Act. These suggestions have merit and this has been done, and the section has been renumbered as explained below.

As a result of continuing consultation with interested parties including representatives of the U.S. Department of Commerce, the proposed rules published on December 1, 1972 (37 F.R. 25524), have been reworded for clarity and for purposes of uniformity conform to rules of that agency. Sections 18.31 and 18.32 are presently being drafted and will be published at a later date.

The procedures to be followed in the assessment of civil penalties which are contained in Part 17 (§§ 17.13 through 17.15) of this subchapter will be applicable to the assessment of civil penalties under this Part 18.

Additional comments, suggestions, and objections, with respect to this Part 18 will be received until February 21, 1972. If additional changes are merited, this part will be amended.

Subpart A—Introduction

Sec.
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18.2 Scope of regulations.
18.3 Definitions.
18.4 State laws and regulations.

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18.31 Scientific research permits [Reserved].
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18.51 Assessment and hearings.
18.52 Holding, return, and disposal of seized property.
18.53 Forfeiture of seized property.

AUTHORITY: The provisions of this Part 18 are issued under authority of the Marine Mammal Protection Act of 1972, 86 Stat. 1027, —— U.S.C. ——, Public Law 92-522.

Subpart A—Introduction

§ 18.1 Purpose of regulations.

The regulations contained in this part implement the Marine Mammal Protection Act of 1972, 86 Stat. 1027, —— U.S.C. ——, Public Law 92-522, which among other things, restricts the taking, possession, transportation, selling, offering for sale, and importing of marine mammals.

§ 18.2 Scope of regulations.

This Part 18 applies solely to marine mammals and marine mammal products as defined in § 18.3. For regulations under the Act with respect to other marine mammals and marine mammal products, see 50 CFR Part 216.

§ 18.3 Definitions.

In addition to definitions contained in the Act and unless the context otherwise requires, in this Part 18:

"Act" means the Marine Mammal Protection Act of 1972, 86 Stat. 1027, Public Law 92-522.

"Alaskan Native" means a person defined in the Alaska Native Claims Settlement Act [43 U.S.C. section 1603(b) (85 Stat. 588)] as a citizen of the United States who is of one-fourth degree or more Alaska Indian (including Tsimshian Indians enrolled or not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or combination thereof. The term includes any Native, as so defined, either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or town of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any Native village or Native town. Any such citizen enrolled by the Secretary pursuant to section 5 of the Alaska Native Claims Settlement Act shall be conclusively presumed to be an Alaskan Native for purposes of this part.

"Authentic native articles of handicrafts and clothing" means items which (a) were commonly produced on or before December 21, 1972, and (b) are composed wholly or in some significant respect of natural materials, and (c) which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices, or other improved methods of production utilizing modern implements, such as sewing machines. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting.

"Endangered species" means a species or subspecies of marine mammal listed pursuant to the Endangered Species Conservation Act of 1969 (See Part 17 of this subchapter).

"Marine mammal" means a specimen of the following species or subspecies of mammal, whether alive or dead, and any part thereof, including but not limited to, any raw, dressed, or dyed fur or skin:

Scientific name	*Common name*
Ursus maritimus	Polar bear.
Enhydra lutris lutris	Northern sea otter.
Enhydra lutris nereis	Southern sea otter.
Odobenus rosmarus rosmarus	Atlantic walrus.
Odobenus rosmarus divergens	Pacific walrus.
Dugong dugong	Dugong.
Trichechus manatus	West African manatee.
Trichechus inunguis	West Indian manatee.
Trichechus senegalensis	Amazonian manatee.

NOTE: Common names given may be at variance with local usage, they are not required to be provided by the Act, and they have no legal significance.

"Native village or town" means any tribe, band, clan, group, village, community, or association in Alaska which the Alaska Native Claims Settlement Act or the Secretary finds eligible for land conveyances under subsection 14(a) of that Act.

"Pregnant" means pregnant near term.

"Subsistence" means the use by Alaskan Natives of marine mammals taken by Alaskan Natives for food, clothing, shelter, heating, transportation, and other uses necessary to maintain life of the taker or for those who depend upon the taker to provide them with such subsistence.

"Take" means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal, including, without limitation, any of the following: The restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; or the operation of an aircraft or vessel, or the doing of any other acts which results in the disturbing or molesting of a marine mammal.

"Wasteful manner" means any taking or method of taking which is likely to result in the killing or injuring of marine mammals beyond those needed for subsistence purposes or for the making of authentic native articles of handicrafts and clothing or which results in the waste of a substantial portion of the marine mammal and includes without limitation the employment of a method of taking which is not likely to assure the capture or killing of a marine mammal, or which is not immediately followed by a reasonable effort to retrieve the marine mammal.

§ 18.4 State laws and regulations.

(a) Section 109 of the Act provides that on or after December 21, 1972, no State may adopt any law or regulation, or enforce any existing law or regulation, which relates to the taking of marine mammals or which in effect nullifies an exemption or exception created by the Act, unless such laws or regulations have been previously reviewed by the Secretary and determined by him to be consistent with the provisions of the Act and the regulations in this part. In no event, however, will the Secretary approve any State laws or regulations which:

(1) Purport to authorize a State to issue permits in situations which would require a Federal permit under the Act, unless and until appropriate Federal regulations have been issued under section 103 of the Act, and where appropriate, the Secretary has waived the moratorium on such taking or importation under section 101(a)(3) of the Act; or

(2) Purport to authorize a State to issue permits for scientific research or for public display (except that a State may, under authority of a general scientific research permit granted by the Secretary to it, assign individual scientific research permits to State employees or representatives of State universities or other State agencies, subject to the provisions of the general permit); or

(3) Purport to authorize the State to grant exemptions from the Act on the grounds of economic hardship under § 18.33.

(b) Any State may obtain a review and determination of its existing laws and regulations from the Secretary by submitting a written request to that effect to the Director accompanied by the following documents, unless otherwise specified by the Secretary:

(1) A complete set of the laws and regulations to be reviewed, certified as complete, true and correct, by the appropriate State official;

(2) A scientific description by species and population stock of the marine mammals to be subjected to such laws and regulations;

(3) A description of the organization, staffing and funding for the administration and enforcement of the laws and regulations to be reviewed;

(4) A description, where such laws and regulations provide for discretionary authority on the part of State officials to issue permits, of the procedures to be used in granting or withholding such permits and otherwise enforcing such laws; and

(5) Such other materials and information as the Secretary may request or which the State may deem necessary or advisable to demonstrate the compatibility of such laws and regulations with the policy and purposes of the Act and the rules and regulations issued thereunder.

(c) In making a determination with respect to any State laws and regulations, the Secretary shall take into account:

(1) The extent to which such laws and regulations are consistent with the purposes and policies of the Act and the rules and regulations issued thereunder;

(2) The extent to which such laws and regulations are consistent with, or constitute an integrated management or protection program with, the laws and regulations of other jurisdictions whose activities may affect the same species or stocks or marine mammals; and

(3) The existence of or preparations for an overall State program regarding the protection and management of marine mammals to which the laws and regulations under review relate.

(d) To assist States in preparing laws and regulations relating to marine mammals, the Secretary will also, at the written request of any State, make a preliminary review of any such proposed laws or regulations. Such review will be strictly advisory in nature and shall not be binding upon the Secretary. Upon adoption of previously reviewed laws and regulations, the same shall be subject to a complete review for a final determination pursuant to these regulations. To be considered for preliminary review, all legislative and regulatory proposals must be forwarded to the Director and certified by the appropriate State official. In addition, they shall be accompanied to the extent available with the same materials required under paragraph (b) above, unless otherwise provided by the Secretary.

All determinations by the Secretary (other than as a result of preliminary reviews of proposed laws and regulations) shall be final and binding on the parties.

(f) The implementation and enforcement of all State laws and regulations previously approved by the Secretary pursuant to this section shall be subject to continuous monitoring and review by the Secretary pursuant to such rules and regulations as he may adopt. Any modifications, amendments, deletions or additions to laws or regulations previously approved shall be deemed to be new laws and regulations for the purposes of these regulations and shall require review and approval by the Secretary before their adoption.

(g) Notwithstanding the foregoing, nothing herein shall prevent (1) the taking of a marine mammal by a State or local government official pursuant to § 18.22 of the regulations in this part, or (2) the adoption or enforcement of any law or regulation relating to any marine mammal taken or imported prior to the effective date of the Act.

Subpart B—Prohibitions

§ 18.11 Prohibited taking.

Except as otherwise provided in Subparts C and D of this Part 18, it is unlawful for:

(a) Any person, vessel, or conveyance subject to the jurisdiction of the United States to take any marine mammal on the high seas, or

(b) Any person, vessel, or conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States.

§ 18.12 Prohibited importation.

(a) Except as otherwise provided in Subparts C and D of this Part 18, it is unlawful for any person to import any marine mammal or marine mammal product into the United States.

(b) Regardless of whether an importation is authorized pursuant to Subparts C and D of this Part 18, it is unlawful for any person to import into the United States any:

(1) Marine mammal

(i) Taken in violation of the Act, or

(ii) Taken in another country in violation of the laws of that country;

(2) Any marine mammal product if

(i) The importation into the United States of the marine mammal from which such product is made would be unlawful under subparagraph (1) of this paragraph, or

(ii) The sale in commerce of such product in the country of origin of the product is illegal.

(c) Except in accordance with an exception referred to in Subpart C and §§ 18.31 and 18.33 of this Part 18, it is unlawful to import into the United States any:

(1) Marine mammal which was pregnant at the time of taking,

(2) Marine mammal which was nursing at the time of taking, or less than 8 months old, whichever occurs later,

(3) Specimen of an endangered species or subspecies of marine mammals,

(4) Specimen taken from a depleted species or stock of marine mammals, or

(5) Marine mammal taken in an inhumane manner.

(d) It is unlawful to import into the United States any fish, whether fresh, frozen, or otherwise prepared, if such fish was caught in a manner proscribed by the Secretary of Commerce for persons subject to the jurisdiction of the United States, whether or not any marine mammals were in fact taken incident to the catching of the fish.

§ 18.13 Prohibited uses, possession, transportation, and sales.

Except as otherwise provided in the Act or these regulations, it is unlawful for:

(a) Any person to use any port, harbor or other place under the jurisdiction of the United States for any purpose in any way connected with a prohibited taking or an unlawful importation of any marine mammal or marine mammal products; or

(b) Any person subject to the jurisdiction of the United States to possess any marine mammal taken in violation of the Act or these regulations, or to transport, sell, or offer for sale any such marine mammal or any marine mammal product made from any such mammal.

(c) Any person subject to the jurisdiction of the United States to use in a commercial fishery, any means or method of fishing in contravention of regulations and limitations issued by the Secretary of Commerce for that fishery to achieve the purposes of this Act.

Subpart C—General Exceptions

§ 18.21 Actions permitted by international treaty, convention, or agreement.

The Act and these regulations shall not apply to the extent that they are inconsistent with the provisions of any international treaty, convention or agreement, or any statute implementing the same, relating to the taking or importation of marine mammals or marine mammal products, which was existant and in force prior to December 21, 1972, and to which the United States was a party.

§ 18.22 Taking by State or local government officials.

A State or local government official or employee may take a marine mammal in the course of his duties as an official or employee, and no permit shall be required, if such taking:

(a) Is accomplished in a humane manner;

(b) Is for the protection or welfare of such mammal or for the protection of the public health or welfare; and

(c) Includes steps designed to insure return of such mammal, if not killed in the course of such taking, to its natural habitat.

In addition, any such official or employee may, incidental to such taking, possess and transport, but not sell or offer for sale, such mammal and use any port, harbor or other place under the jurisdiction of the United States. All steps reasonably practicable under the circumstances shall be taken by any such employee or official to prevent injury or death to the marine mammal as the result of such taking.

§ 18.23 Native exceptions.

(a) *Taking.* Notwithstanding the prohibitions of Subpart B of this Part 18, but subject to the restrictions contained in this section, any Indian, Aleut, or Eskimo who resides on the coast of the North Pacific Ocean or the Arctic Ocean may take any marine mammal without a permit, if such taking is:

(1) By Alaskan Natives who reside in Alaska and such taking is for subsistence, or

(2) For purposes of creating and selling authentic native articles of handicraft and clothing, and

(3) In each case, not accomplished in a wasteful manner.

(b) *Restrictions.* (1) No marine mammal taken pursuant to this section may be sold or otherwise transferred to any person other than an Indian, Aleut, or Eskimo, or delivered, carried, transported, or shipped in interstate or foreign commerce by any person, unless:

(i) It has first been transformed into an authentic native article or handicraft or clothing, or

(ii) It is an edible portion and sold in Alaskan native villages and towns.

(2) No person who is not an Indian, Aleut, or Eskimo may purchase or otherwise acquire, or possess any marine mammal taken pursuant to this section except as permitted in this subsection.

(3) No person shall use any aircraft to take any marine mammal in violation of 16 U.S.C. 742j-1, 85 Stat. 480, Public Law 92-159.

(c) Notwithstanding the preceding provisions of this section, whenever, under the Act, the Secretary determines any species or stock of marine mammals to be depleted, he may prescribe regulations pursuant to section 103 of the Act upon the taking of such marine mammals by any Indian, Aleut, or Eskimo and, during the existence of such regulations, all takings of such marine mammals by such persons shall conform to such regulations.

§ 18.24 Taking incidental to commercial fishing operations.

Persons may take marine mammals incidental to commercial fishing operations until October 21, 1974: *Provided,* That such taking is by means of equipment and techniques prescribed in regulations issued by the Secretary of Commerce. It shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate.

§ 18.25 Exempted marine mammals or marine mammal products.

(a) The provisions of the Act and these regulations shall not apply:

(1) To any marine mammal taken before December 21, 1972, or

(2) To any marine mammal product if the marine mammal portion of such product consists solely of a marine mammal taken before such date.

(b) Sections 18.12(c) (3) and (4) shall not apply to marine mammals or marine mammal products imported into the United States before the date on which the Secretary publishes notice in the FEDERAL REGISTER of his proposed rule making with respect to the designation of the species or stock concerned as depleted or endangered;

(c) Section 18.12(b) shall not apply to articles imported into the United States before the effective date of the foreign law making the taking or sale, as the case may be, of such marine mammals or marine mammal products unlawful.

(d) In order to assist processors, aquariums, zoos, and any other persons holding specimens or inventories of marine mammals or marine mammal products to prove their rights of exclusion from the provisions of the Act and these regulations pursuant to paragraph (a) of this section, there is hereby authorized a voluntary registration program. Any such person may register his inventories or specimens of marine mammals or marine mammal products which consist solely of marine mammals taken prior to December 21, 1972, with the Secretary by sending a complete listing of all such inventories or stocks to the Director postmarked no later than midnight, January 8, 1973. In order to be eligible for registration, such specimens or inventories must be physically located within the jurisdiction of the United States, and the listing with respect thereto must contain the following information:

(1) In the case of living marine mammals, a breakdown showing each species of subspecies of animal, and within each such category, the number of animals involved, their age, sex, and location, and any distinctive brands or markings.

(2) As to nonliving marine mammals and marine mammal products, a listing per geographic location of each such marine mammal or marine mammal product segregated by species and subspecies, together with a description, by class, of the product or article involved. In addition, such description shall indicate which of the items listed constitute raw materials, work in process, or finished goods, and shall indicate any identifying marks or brands thereon.

Each such list shall be prepared and certified by an independent Certified Public Accountant or independent attorney, and shall also be signed and attested by the person owning such inventory. In addition, no listing shall be accepted by the Secretary unless it contains the following certification:

I hereby certify that the information shown herein is complete, true and correct and lists no marine mammals or marine mammal products consisting of marine mammals taken after midnight on December 20, 1972. This information is submitted for the purpose of obtaining the benefit of the provisions of the Marine Mammal Protection Act of 1972, and I understand that any false statement contained herein may subject me to the criminal penalties of 18 U.S.C. 1001 or to penalties under the Marine Mammal Protection Act of 1972.

There shall be a conclusive presumption that no marine mammal or marine mammal product shown on a listing furnished to the Secretary pursuant to this section was taken, or consists of a marine mammal which was taken, as the case may be, after December 21, 1972; *Provided, however,* That the Secretary may at his discretion refuse to accept all or any portion of any such list if he has reason to believe that such list is false, or if such list is insufficient to clearly identify the marine mammal or marine mammal products referred to therein. In the event that any false information is supplied it shall be a violation of the regulations in this part. In the event that the Secretary shall determine to reject any list in whole or in part, he shall, as soon as practicable, notify the person submitting such list, in writing, of his decision indicating his reason for such rejection.

Subpart D—Special Exceptions

§ 18.31 Scientific research permits. [Reserved]

§ 18.32 Public display permits [Reserved]

§ 18.33 Undue economic hardship.

(a) Persons other than those engaged in commercial fishing operations referred to in § 18.24 may be exempted by the Secretary from the provisions of the Act through October 20, 1973, if the Secretary determines to his satisfaction, that such persons will suffer an undue economic hardship.

(b) Any person desiring to obtain an economic hardship exemption may make application to the Secretary. Such application shall be in writing, addressed to the Director and shall contain the following information:

(1) The name and address of the applicant;

(2) A description of the marine mammal or the marine mammal product to be taken or imported, including the species or subspecies involved; the population stock, when known; the number of specimens or products (or the weight thereof, where appropriate); and the anticipated age, size, sex, and condition (i.e., whether pregnant or nursing) of the animals involved;

(3) A complete description of the location, date, and manner of the proposed importation or taking;

(4) If the marine mammal is to be taken and transported alive, or held for public display, a complete description of the manner of transportation, care and maintenance, including the type, size and construction of the container or artificial environment; arrangements for feeding and sanitation; a statement of the applicant's qualifications and previous experience in caring for and handling captive marine mammals and a like statement as to the qualifications of any common carrier or agent to be employed by the applicant to transport the animal; and a written certification of a licensed veterinarian knowledgeable in the field or marine mammals that he has personally reviewed the arrangements for transporting and maintaining the animal and that in his opinion they are adequate to provide for the well-being of the animal;

(5) A full statement of the facts, circumstances and reasons why failure to grant an exemption under this section would lead to undue economic hardship, together with all supporting documents, including certified copies of all relevant corporate minutes and resolutions, contracts and agreements, financial commitments, and current and historical financial data. In particular, copies of all contrcts, agreements, or other arrangements entered into prior to the enactment of the Act necessitating the taking or importation of marine mammals or marine mammal products and documents showing the dollar amount of anticipated loss or economic hardship should be enclosed.

(6) If the exemption sought relates to scientific research, a detailed description of the scientific research project or program in which the marine mammal or marine mammal product is to be used, including a copy of the research proposal relating to such program or project and the names and addresses of the sponsoring or cooperating institutions and the scientists involved;

(7) If the exemption sought relates to scientific research, and if the marine mammal proposed to be taken or imported is listed as an endangered species pursuant to the Endangered Species Conservation Act of 1969 (for which a permit under Part 17 of this subchapter is required), or has been designated by the Secretary as depleted, a detailed justification of the need for such a marine mammal, including a discussion of possible alternatives, whether or not under the control of the applicant;

(8) If the exemption sought relates to public display, a detailed description of the proposed use to which the marine mammal or marine mammal product is to be put, including the manner, location and times of display, whether such display is for profit, an estimate of the numbers and types of persons who it is anticipated will benefit from such display, and whether and to what extent the display is connected with educational or scientific programs. There shall also be included a complete description of the enterprise seeking the display permit and its educational, scientific, medical, or governmental affiliations, if any.

(9) Such other information as the Secretary may request.

(10) A certification in the following language:

I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the Marine Mammal Protection Act of 1972 (86 Stat. 1072) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the Marine Mammal Protection Act of 1972.

(11) Such application shall be signed by the applicant.

The sufficiency of the application shall be determined by the Secretary and in that connection, he may waive any requirement for information, or require any additional information deemed necessary.

(c) In determining whether to issue an economic hardship exemption, the Secretary shall consider, among other criteria, the following:

(1) The effect of granting the exemption on the species or population stock in question and the marine ecosystem;

(2) The degree of economic hardship to be anticipated should the exemption not be granted; and

(3) The economic and legal alternatives available to the applicant.

(d) Exemptions issued under this section shall contain such terms and conditions as the Secretary may deem appropriate, including:

(1) The number and kind of marine mammals which are authorized to be taken or imported;

(2) The location and manner in which such marine mammals may be taken or from which they may be imported;

(3) The period during which the exemption is valid;

(4) The methods of transportation, care and maintenance to be used with live marine mammals;

(5) Any requirements for reports or rights of inspections with respect to any activities carried out pursuant to the exemption;

(6) The transferability or assignability of the exemption;

(7) The sale or other disposition of the marine mammal, its progeny or the marine mammal product; and

(8) A reasonable fee covering the costs of issuance of such exemption, including an appropriate apportionment of overhead and administrative expenses of the Bureau.

(e) Failure to observe any of the terms and conditions of the exemption shall be cause for the revocation, suspension or modification of the exemption by the Secretary in his sole discretion and may subject the exemption holder to the penalties of the Act.

(f) In no event shall an exemption be granted pursuant to this section which continues in effect beyond midnight of October 20, 1973.

(g) The decision of the Secretary regarding the granting or denial of an exemption, or the revocation, modification or suspension thereof, shall be final and binding. Upon taking any such action, the Secretary shall notify the applicant or the exemption holder, as the case may be, in writing as soon as practicable of such action.

Subpart E—Depleted Species or Stocks [Reserved]

Subpart F—Procedures for Civil Violations

§ 18.51 Assessment and hearings.

Section 17.13 of Part 17 of this subchapter is hereby incorporated by reference and applies to assessments and hearings under this Part 18.

§ 18.52 Holding, return, and disposal of seized property.

Section 17.14 of Part 17 of this subchapter is hereby incorporated by reference and applies to holding, return, and disposal of seized property under this Part 18.

§ 18.53 Forfeiture of seized property.

Section 17.15 of Part 17 of this subchapter is hereby incorporated by reference and applies to forfeiture of seized property under this Part 18.

The required notice under 5 U.S.C. 553(d) is dispensed with inasmuch as these regulations are interpretative rules, statements of policy and are necessary to implement the Marine Mammal Protection Act of 1972 which became effective on December 21, 1972 and makes procedures for administering civil penalty provisions of The Endangered Species Conservation Act of 1969 applicable to the Marine Mammal Protection Act of 1972, it is found for good cause described herein that these regulations shall become effective upon publication in the FEDERAL REGISTER (12-21-72).

F. V. SCHMIDT,
Acting Director.

DECEMBER 20, 1972.

[FR Doc.72-22077 Filed 12-20-72;11:18 am]

PART 33—SPORT FISHING

Sand Lake National Wildlife Refuge, N. Dak.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (12-21-72).

§ Special regulations; sport fishing; for individual wildlife refuge areas.

SOUTH DAKOTA

SAND LAKE NATIONAL WILDLIFE REFUGE

Sport fishing on the Sand Lake National Wildlife Refuge, S. Dak., is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 150 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, Federal Building, Fort Snelling, Twin Cities, MN 55111. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions;

(1) The open season for sport fishing on the refuge extends from January 1 through December 31, 1973, inclusive,

(2) The use of boats is not permitted.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1973.

LYLE J. SCHOONOVER,
Refuge Manager, Sand Lake National Wildlife Refuge, Columbia, South Dakota 57433.

DECEMBER 13, 1972.

[FR Doc.72-21752 Filed 12-20-72;8:46 am]

Chapter II—National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

On December 2, 1972, a notice of proposed rule making, to establish a new Part 216, was published in the FEDERAL REGISTER (37 F.R. 25731). The new part sets forth interim regulations to implement the Marine Mammal Protection Act of 1972 (Public Law 92-522) relating

to the taking and importing of marine mammals and marine mammal products. The published regulations have been amended to: (i) Reflect comments received on, or before December 15, 1972, (ii) correct certain technical errors and omissions, and (iii) set forth in full Subpart D—Penalties and Procedures for their Assessment, previously reserved. As set forth in the explanatory section of the December 2, 1972, FEDERAL REGISTER (37 F.R. 25731), these regulations will constitute interim regulations which are necessary to implement the Marine Mammal Protection Act of 1972 on its effective date, December 21, 1972. However, written comments, views, and objections, may be made with respect to such interim regulations to the Director, National Marine Fisheries Service, during the additional 60-day period ending at the close of business on February 21, 1973. Final regulations on the matters covered by the interim regulations will be published as soon thereafter as practicable.

The authority of the Secretary of Commerce to carry out the functions prescribed by the Marine Mammal Protection Act of 1972 was delegated to the Administrator of the National Oceanic and Atmospheric Administration. This delegation of authority was effective November 30, 1972, and was published in the FEDERAL REGISTER on December 15, 1972 (37 F.R. 26745). Therefore, the regulations, as so proposed, are hereby adopted, subject to the following changes:

1. Paragraph (e) of § 216.2, is changed by inserting "(1)" between the words "mammal" and "because" on the second line, and inserting "(2)" between the words "or" and "as" on the fourth line, and delete the word "necessary" on the fifth line, and insert the word "used."

2. Section 216.8(a), is changed by adding the following sentence at the end of the existing paragraph "It shall be permissible to dispose of the carcass of a marine mammal taken in accordance with this subsection whether the animal is dead at the time of taking or dies subsequent thereto."

3. Paragraph (a), of § 216.10, is changed by inserting the word "temporarily" between the words "be" and "possessed" in line seven, and eight, and adding the following sentence at the end of existing paragraph (a), "In any event, it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching zero mortality and serious injury rate."

4. Paragraph (b), of § 216.10, is changed by deleting the number "109" and inserting the number "111" and deleting the entire last sentence beginning with the word "notwithstanding" on the 25th line.

5. Section 216.11(c), is changed by inserting the words "or by the consignee in possession" at the end of the sentence following the word "inventory" in the line 50.

6. Subparagraph (4) of § 216.12(a), is changed by correcting the misspelling of the word "arrangements" on line 18.

7. Subparagraph (5), of § 216.12(a), is changed by deleting the words "of 1969 or have been designated by the" on line five and inserting the words "or marine mammal product is to be used."

8. Subparagraph (10), of § 216.12(a), is changed by deleting the period following the word "secretary" and adding the following words, "and in that connection, he may waive any requirement for information, or require any elaboration or further information deemed necessary."

9. Paragraph (b) of § 216.12 is revised.

10. Paragraph (c), of § 216.12, is changed.

11. Section 216.13 is changed by deleting "(a)" following "(v)" and adding the words "and in that connection, he may waive any requirement for information, or may require any elaboration or further information deemed necessary."

12. Add Subpart D as set forth below.

Effective date. These regulations are effective December 21, 1972.

Issued at Washington, D.C., and dated December 19, 1972.

ROBERT M. WHITE,
Administrator.

Subpart A—General

Sec.
216.1 Purpose and objectives.
216.2 Definitions.
216.3 Other laws and regulations.

Subpart B—Moratorium and Prohibitions

216.4 Moratorium.
216.5 Prohibitions.

Subpart C—Exceptions

216.6 Scope and purpose.
216.7 Exceptions not requiring prior Secretarial action—actions permitted by international treaty, convention and related statutes.
216.8 Same—takings and related acts by state or local government officials or employees.
216.9 Same—takings and related acts by certain natives.
216.10 Same—taking and related acts incidental to commercial fishing operations.
216.11 Same—exempted marine mammals and marine mammal products.
216.12 Exceptions requiring prior Secretarial approval—scientific research permits and public display permits.
216.13 Same—economic hardship exemption.
216.14 Same—waivers of the moratorium [Reserved].
216.15 Same—procedures for issuance of permits and modification, suspension or revocation thereof.
216.16 Same—possession of permit.

Subpart D—Penalties and Procedures for Their Assessment

AUTHORITY: The provisions of this Part 216 are issued under the authority of title I of the Marine Mammal Protection Act of 1972, 86 Stat. 1027, Public Law No. 92-522. This part applies solely to marine mammals and marine mammal products which are, or consist of, members of the Order Cetacea and members, other than walruses, of the Order Pinnipedia, which are morphologically adapted to the marine environment. For regulations under the aforesaid Act with respect to other marine mammals and marine mammal products, see 50 CFR Part 18.

Subpart A—General

§ 216.1 Purpose and objectives.

The following regulations implement the Marine Mammal Protection Act of 1972, 86 Stat. 1027, Public Law No. 92-522, which, among other things, restricts the taking, possession, transportation, selling, offering for sale, and importing of marine mammals and marine mammal products.

§ 216.2 Definitions.

Except as otherwise set forth in this section, the definitions in the Act shall apply for purposes of this part.

(a) "Act" shall mean the Marine Mammal Protection Act of 1972, Public Law 92-522, 86 Stat. 1027.

(b) "Authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices, or other improved methods of production utilizing modern implements, such as sewing machines. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups, such as cooperatives, is permitted so long as no large scale mass production industry results.

(c) "Commercial fishing operation" shall mean the lawful harvesting of fish from the marine environment for profit as part of an on-going business enterprise. Such term shall not include sport fishing activities whether or not carried out by charter boat or otherwise, and whether or not the fish so caught are subsequently sold.

(d) "Endangered species" shall mean a species or subspecies of marine mammal listed as threatened with extinction pursuant to the Endangered Species Conservation Act of 1969.

(e) "Incidental catch" shall mean the taking of a marine mammal (1) because it is directly interfering with commercial fishing operation or (2) as a consequence of the steps used to secure the fish in connection with commercial fishing operations.

(f) "'Indian, Aleut, or Eskimo" shall mean a citizen of the United States who is one-fourth degree or more American or Alaskan Indian (including Tsimshian Indians enrolled or not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or combination thereof. The term includes any such person either or both of whose adoptive parents do not fall within such definition. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the

[1] Notice of proposed rule making in Docket No. R-424 was published at 36 F.R. 16069, Aug. 19, 1971, and in Docket No. R-446 at 37 F.R. 13805, July 14, 1972.

United States residing in the State of Alaska who is regarded as being an Indian, Aleut or Eskimo by the native village or town in Alaska of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as being an Indian, Aleut, or Eskimo by any native village or native town in such State. Any citizen enrolled by the Secretary of the Interior pursuant to section 5 of the Alaska Native Claims Settlement Act shall be conclusively presumed to be an Indian, Aleut, or Eskimo for purposes of this part.

(g) "Marine environment" shall include estuarine and brackish waters.

(h) "Marine mammal" shall mean those members of the order Cetacea and those members, other than walruses, of the order Pinnipedia, which are morphologically adapted to the marine environment, and includes any part of any such marine mammal, including its raw, dressed, or dyed fur or skin.

(i) "Native" shall mean any Indian, Aleut, or Eskimo as defined in paragraph (f) of this section, and "Alaskan native" shall mean any such person who is a resident of the State of Alaska.

(j) "Native village or town" shall mean any tribe, band, clan, group, village, community, or association of Alaskan natives in Alaska which the Alaska Native Claims Settlement Act or the Secretary of the Interior finds eligible for land conveyances under subsection 14(a) of that Act.

(k) "Pregnant" as to any marine mammal, shall mean near term. A marine mammal shall be presumed to be pregnant and near term, unless proven otherwise, if, at the time with respect to which such condition is sought to be established, such mammal would customarily have been pregnant and near term by reason of the season of the year, the location of the animal in the migratory pattern, or other relevant circumstances.

(l) "Products from fish" shall include the primary processed products of fish, such as fish meal, fish protein derivatives, or processed fish oil.

(m) "Secretary" shall mean the Secretary of Commerce or his authorized representative.

(n) "Subsistence purposes" shall mean, with respect to any marine mammal, the direct consumption by Alaskan natives of all usable portions of such mammal for food, clothing, shelter, heating, transportation, and the other necessities of life.

(o) "Take" shall mean to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal, including, without limitation, any of the following: The restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; or the operation of an aircraft or vessel, or the doing of any other acts, which results in the harassment of a marine mammal.

(p) "Wasteful manner" shall mean the employment of a method of taking which is not likely to assure the capture or killing of a marine mammal, or which is not immediately followed by a reasonable effort to retrieve the marine mammal, or which is likely to result in the killing or injuring of marine mammals beyond those needed for subsistence purposes or for the making of authentic native articles of handicrafts and clothing.

§ 216.3 Other laws and regulations.

(a) *Federal.* Nothing in this part, nor any permit issued under authority of this part, shall be construed to relieve a person from any other requirements imposed by a statute or regulation of the United States, including any applicable wildlife and fisheries, health, quarantine, agriculture, or customs statutes or regulations.

(b) *State laws or regulations.* (1) Section 109 of the Act provides that on or after December 21, 1972, no State may adopt certain laws or regulations, or enforce certain existing laws or regulations, relating to marine mammals, except as otherwise therein and herein provided, unless such laws or regulations have been previously reviewed by the Secretary and determined by him to be consistent with the provisions of the Act and any rule or regulation promulgated thereunder, including, without limitation, the regulations, if any, promulgated under section 103 of the Act. In no event, however, will the Secretary approve any State laws or regulations which:

(i) Purport to authorize a State to issue permits in situations which would require a Federal permit under the Act, unless and until appropriate Federal regulations have been issued under section 103 of the Act, and where appropriate, the Secretary has waived the moratorium on such taking or importation under section 101(a)(3) of the Act; or

(ii) Purport to authorize a State to issue permits for scientific research or for public display (except that a State may, under authority of a general scientific research permit granted by the Secretary to it, assign individual scientific research permits to State employees or representatives of State universities or other State agencies, subject to the provisions of the general permit); or

(iii) Purport to authorize the State to grant exemptions from the Act on the grounds of economic hardship under section 101(c) thereof.

(2) Any State may obtain a review and determination of its existing laws and regulations from the Secretary by submitting a written request to that effect to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, accompanied by the following documents, unless otherwise permitted by the Secretary:

(i) A complete set of the laws and regulations to be reviewed, certified as complete, true and correct, by the appropriate State official;

(ii) A scientific description by species and population stock of the marine mammals to be subjected to such laws and regulations;

(iii) A description of the organization, staffing, and funding for the administration and enforcement of the laws and regulations to be reviewed;

(iv) A description, where such laws and regulations provide for discretionary authority on the part of State officials to issue permits, of the procedures to be used in granting or withholding such permits and otherwise enforcing such laws; and

(v) Such other materials and information as the Secretary may request or which the State may deem necessary or advisable to demonstrate the compatibility of such laws and regulations with the policy and purposes of the Act and the rules and regulations issued thereunder.

(3) In making a determination with respect to any State laws and regulations, the Secretary shall take into account:

(i) The extent to which such laws and regulations are consistent with the purposes and policies of the Act and the rules and regulations issued thereunder;

(ii) The extent to which such laws and regulations are consistent with, or constitute an integrated management or protection program with, the laws and regulations of other jurisdictions whose activities may affect the same species or stocks of marine mammals; and

(iii) The existence of or preparations for an overall State program regarding the protection and management of marine mammals to which the laws and regulations under review relate.

(4) To assist States in preparing laws and regulations relating to marine mammals, the Secretary will also, at the written request of any State, make a preliminary review of any such proposed laws or regulations. Such review will be strictly advisory in nature and shall not be binding upon the Secretary. Upon adoption of previously reviewed laws and regulations, the same shall be subject to a complete review for a final determination pursuant to these regulations. To be considered for preliminary review, all legislative and regulatory proposals must be forwarded to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, and certified by the appropriate State official. In addition, they shall be accompanied to the extent available with the same materials required under subparagraph (2) of this paragraph, unless otherwise provided by the Secretary.

(5) All determinations by the Secretary (other than as a result of preliminary reviews of proposed laws and regulations) shall be final and binding on the parties.

(6) The implementation and enforcement of all State laws and regulations previously approved by the Secretary pursuant to this section shall be subject to continuous monitoring and review by the Secretary pursuant to such rules and regulations as he may adopt. Any modifications, amendments, deletions, or additions to laws or regulations previously approved shall be deemed to be new laws and regulations for the purposes of these regulations and shall require review and approval by the Secretary before their adoption.

(7) Notwithstanding the foregoing, nothing herein shall prevent (i) the taking of a marine mammal by a State or

local government official pursuant to § 216.8, or (ii) the adoption or enforcement of any law or regulation relating to any marine mammal taken or imported prior to the effective date of the Act.

Subpart B—Moratorium and Prohibitions

§ 216.4 Moratorium.

Except as otherwise provided in the Act or the regulations in this part, on or after December 21, 1972, there shall be a moratorium consisting of a complete cessation of the taking of marine mammals and a complete ban on the importation into the United States of marine mammals and marine mammal products.

§ 216.5 Prohibitions.

(a) During the continuance of the moratorium, except as otherwise provided in the Act or these regulations, the Act prohibits:

(1) Any person, vessel, or conveyance subject to the jurisdiction of the United States from taking any marine mammal on the high seas;

(2) Any person, vessel, or conveyance from taking any marine mammal in waters or on lands under the jurisdiction of the United States;

(3) Any person from using any port, harbor, or other place under the jurisdiction of the United States for any purpose in any way connected with the taking or importation of marine mammals or marine mammal products; or

(4) Any person subject to the jurisdiction of the United States from possessing any marine mammal taken in violation of the Act or these regulations, or from transporting, selling, or offering for sale any such marine mammal or any marine mammal product made from any such mammal.

(b) Regardless of whether the moratorium is continuing, except as otherwise provided by these regulations and the Act, the Act prohibits the importation into the United States of:

(1) Any marine mammal if such mammal was:

(i) Pregnant at the time of taking;

(ii) Nursing at the time of taking, or less than 8 months old, whichever occurs later;

(iii) Taken from a species or population stock designated as depleted by the Secretary or which has been listed as endangered under the Endangered Species Conservation Act of 1969;

(iv) Taken in a manner found to be inhumane by the Secretary;

(v) Taken in violation of the Act; or

(vi) Taken in another country in violation of the laws of that country;

(2) Any marine mammal product if:

(i) The importation into the United States of the marine mammal from which such product is made would be unlawful under the Act or the regulations in this part, or

(ii) The sale in commerce of such product in the country of origin of the product is illegal;

(3) Any fish, whether fresh, frozen, or otherwise prepared, if such fish was caught in a manner proscribed by the Secretary for persons subject to the jurisdiction of the United States, whether or not any marine mammals were in fact taken incident to the catching of the fish.

(c) In addition, the Act at all times prohibits any person from violating the provisions of any permit or regulation issued thereunder, including, without limitation, the use by any person in a commercial fishery of any means or methods of fishing in contravention of regulations issued by the Secretary for that fishery to achieve the purposes of the Act.

Subpart C—Exceptions

§ 216.6 Scope and purpose.

Notwithstanding the moratorium and prohibitions set forth in Subpart B of this part and the Act, marine mammals may be taken, marine mammals and marine mammal products may be imported into the United States, places subject to the jurisdiction of the United States may be used for such taking and importation, and it shall be lawful to possess, transport, sell, or offer for sale any marine mammal, or transport, sell, or offer for sale any marine mammal product, as and to the extent provided in the regulations in this subpart and the applicable provisions of the Act.

§ 216.7 Exceptions not requiring prior Secretarial action—actions permitted by international treaty, convention, and related statutes.

The Act and the regulations in this part shall not apply to the extent that they are inconsistent with the provisions of any international treaty, convention or agreement, or any statute implementing the same, relating to the taking, or importation, of marine mammals or marine mammal products, which was existing and in force prior to December 21, 1972, and to which the United States was a party. Specifically, the regulations in Subpart B of this part and the provisions of the Act shall not apply to activities carried out pursant to the Interim Convention on the Conservation of North Pacific Fur Seals signed at Washington on February 9, 1957, and the Fur Seal Act of 1966, 16 U.S.C. 1151–1187, as, in each case, from time to time amended.

§ 216.8 Same—Takings and related acts by State or local government officials or employees.

(a) A State or local government official or employee may take a marine mammal in the course of his duties as an official or employee, and no permit shall be required, if such taking:

(1) Is accomplished in a humane manner;

(2) Is for the protection or welfare of such mammal or for the protection of the public health or welfare; and

(3) Includes steps designed to insure return of such mammal, if not killed in the course of such taking, to its natural habitat.

In addition, any such official or employee may, incidental to such taking, possess and transport, but not sell or offer for sale, such mammal and use any port, harbor, or other place under the jurisdiction of the United States. All steps reasonably practicable under the circumstances shall be taken by any such employee or official to prevent injury or death to the marine mammal as the result of such taking. Where the marine mammal in question is injured or sick, it shall be permissible to place it in temporary captivity until such time as it is able to be returned to its natural habitat. It shall be permissible to dispose of a carcass of a marine mammal taken in accordance with this subsection whether the animal is dead at the time of taking or dies subsequent thereto.

(b) Each taking permitted under this section shall be reported in writing to the Secretary not more than 30 calendar days after its occurrence. Unless otherwise permitted by the Secretary, the report shall contain a description of:

(1) The animal involved;

(2) the circumstances requiring the taking;

(3) The method of taking;

(4) The name and official position of the State official or employee involved;

(5) The disposition of the animal, including, in cases where the animal has been retained in captivity, a description of the place and means of confinement and the measures taken for its maintenance and care; and

(6) Such other information as the Secretary may require.

The aforesaid reports shall be mailed to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235.

§ 216.9 Same—Takings and related acts by certain natives.

(a) Any marine mammal may be taken by any Indian, Aleut, or Eskimo who resides on the coast of the North Pacific Ocean or the Arctic Ocean in the States of Alaska, Washington, Oregon, or California, and no permit shall be required, if the taking is:

(1) By Alaskan Natives for subsistence purposes of Alaskan Natives, or

(2) For purposes of creating and selling authentic native articles of handicraft and clothing, and

(3) In each case, not accomplished in a wasteful manner.

In addition, any such Indian, Aleut, or Eskimo, and direct and indirect transferees of such native may, incidental to such taking and disposition, possess and transport such marine mammal or a marine mammal product made therefrom, and use any port, harbor, or other place under the jurisdiction of the United States. No marine mammal taken pursuant to subparagraph (2) of this paragraph may be sold except when transformed into authentic native articles of handicraft and clothing, provided that edible portions of such marine mammal may be sold in Alaskan Native villages and towns or for native consumption so

long as, in each case, no interstate commerce is involved.

(b) Notwithstanding the preceding provisions of this section, whenever, under the Act, the Secretary determines any species or stock of marine mammals to be depleted, he may prescribe regulations pursuant to section 103 of the Act upon the taking of such marine mammals by any Indian, Aleut, or Eskimo and, during the existence of such regulations, all takings of such marine mammals by such persons shall conform to such regulations.

§ 216.10 Same—taking and related acts incidental to commercial fishing operations.

(a) Until October 21, 1974, marine mammals may be taken incidental to the course of commercial fishing operations, and no permit shall be required, so long as the taking constitutes an incidental catch. In addition, such mammals may, incidental to such taking, be temporarily possessed and transported, but not sold or offered for sale, by the persons involved in such commercial fishing operations and such persons may use any port, harbor, or other place under the jurisdiction of the United States. In any event, it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching zero mortality and serious injury rate.

(b) In furtherance of the Secretary's research and development program under section III of the act, the following regulations shall apply: Any duly authorized agents of the Secretary may from time to time, after timely oral or written notice to the vessel owner or charterer, board and/or accompany commercial fishing vessels documented under the laws of the United States, whenever the Secretary determines that there is space available, on regular fishing trips, for the purpose of conducting research or observation operations. Such research and observation operations shall be carried out in such manner as to minimize interference with commercial fishing operations. No master, charterer, operator or owner of such vessel shall impair or in any way interfere with the research or observations being carried out. The Secretary shall provide for the payment of all reasonable costs directly related to the quartering and maintaining of such agents on board such vessels.

§ 216.11 Same—Exempted marine mammals and marine mammal products.

(a) The provisions of the Act and these regulations shall not apply—

(1) To any marine mammal taken before December 21, 1972, or

(2) To any marine mammal product if the marine mammal portion of such product consists solely of a marine mammal taken before such date.

(b) Subsection (b)(3) of section 102 of the Act shall not apply to marine mammals or marine mammal products imported into the United States before the date on which the Secretary publishes notices in the FEDERAL REGISTER of his proposed rule making with respect to the designation of the species or stock concerned as depleted or endangered; and subsection (c)(1)(B) and subsection (c)(2)(B) of section 102 of the Act shall not apply to articles imported into the United States before the effective date of the foreign law making the taking or sale, as the case may be, of such marine mammals or marine mammal products unlawful.

(c) In order to assist processors, acquariums, zoos, and any other persons holding stocks or inventories of marine mammals or marine mammal products to prove their rights of exclusion from the provisions o the Act and these regulations pursuant to paragraph (a) of this section, there is hereby authorized a voluntary registration program. Any such person may register his inventories or stocks of marine mammals or marine mammal products which consist solely of marine mammals taken prior to December 21, 1972, with the Secretary by sending a complete listing of all such inventories or stocks to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, postmarked no later than midnight, January 8, 1973. In order to be eligible for registration, such stocks or inventories must be physically located within the jurisdiction of the United States, and the listing with respect thereto must contain the following information:

(1) In the case of living marine mammals, a breakdown showing each species or subspecies of animal, and within each such category, the number of animals involved, their age, sex, and location, and any distinctive brands or markings.

(2) As to nonliving marine mammals and marine mammal products, a listing per geographic location of each such marine mammal or marine mammal product segregated by species and subspecies, together with a description, by class, of the product or article involved. In addition, such description shall indicate which of the items listed constitute raw materials, work in process, or finished goods, and shall indicate any identifying marks or brands thereon.

Each such list shall be prepared and certified by an independent certified public accountant or independent attorney, and shall also be signed and attested by the person owning such inventory or by the consignee in possession. In addition, no listing shall be accepted by the Secretary unless it contains the following certification:

I hereby certify that the information shown herein is complete, true, and correct and lists no marine mammals or marine mammal products consisting of marine mammals taken after midnight on December 20, 1972. This information is submitted for the purpose of obtaining the benefit of the provisions of the Marine Mammal Protection Act of 1972, and I understand that any false statement contained herein may subject me to the criminal penalties of 18 U.S.C. 1001 or to penalties under the Marine Mammal Protection Act of 1972.

There shall be a conclusive presumption that no marine mammal or marine mammal product shown on a listing furnished to the Secretary pursuant to this section was taken, or consists of a marine mammal which was taken, as the case may be, after December 21, 1972; *Provided, however*, That the Secretary may at his discretion refuse to accept all or any portion of any such list if he has reason to believe that such list is false, or if such list is insufficient to clearly identify the marine mammal or marine mammal products referred to therein. In the event that the Secretary shall determine to reject any list in whole or in part, he shall, as soon as practicable, notify the person submitting such list, in writing, of his decision indicating his reason for such rejection.

§ 216.12 Exceptions requiring prior secretarial action—scientific research permits and public display permits.

(a) Marine mammals may be taken and marine mammals and marine mammal products may be imported for the purposes of scientific research and for public display if such taking and/or importation is done pursuant to a valid permit issued by the Secretary in accordance with the following regulations. Incidental to such taking or importation, the permittee, or persons acting as agents for or dealing with the permittee, may possess and transport such marine mammal or marine mammal product, and use any port, harbor, or other place under the jurisdiction of the United States. Any person desiring to obtain a scientific research or display permit may make application therefor to the Secretary. Such application shall be in writing, addressed to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, and shall contain, unless otherwise permitted by the Secretary, the following information:

(1) The name and address of the applicant;

(2) A description of the marine mammal or the marine mammal product to be taken or imported, including the species or subspecies involved; the population stock, when known; the number of specimens or products (or the weight thereof, where appropriate); and the anticipated age, size, sex, and condition (i.e., whether pregnant or nursing) of the animals involved;

(3) A complete description of the location, date, and manner of the importation or taking;

(4) If the marine mammal is to be taken and transported alive, or held for public display, a complete description of the manner of transportation, care, and maintenance, including the type, size, and construction of the container or artificial environment; arrangements for feeding and sanitation; a statement of the applicant's qualifications and previous experience in caring for and handling captive marine mammals and a like statement as to qualifications of any

common carrier or agent to be employed by the applicant to transport the animal; and a written certification of a licensed veterinarian knowledgeable in the field of marine mammals that he has personally reviewed the arrangements for transporting and maintaining the animal and that in his opinion they are adequate to provide for the well-being of the animal;

(5) If the application is for a scientific research permit, a detailed description of the scientific research project or program in which the marine mammal or marine mammal product is to be used including a copy of the research proposal relating to such program or project and the names and addresses of the sponsor or cooperating institutions and the scientists involved;

(6) If the application is for a scientific research permit, and if the marine mammal proposed to be taken or imported is listed as an endangered species pursuant to the Endangered Species Act of 1969, or has been designated by the Secretary as depleted, a detailed justification of the need for such a marine mammal, including a discussion of possible alternatives, whether or not under the control of the applicant;

(7) If the application is for a public display permit, a detailed description of the proposed use to which the marine mammal or marine mammal product is to be put, including the manner, location, and times of display, whether such display is for profit, an estimate of the numbers and types of persons who it is anticipated will benefit from such display, and whether and to what extent the display is connected with educational or scientific programs. There shall also be included a complete description of the enterprise seeking the display permit and its educational, scientific, medical, or governmental connections, if any;

(8) Such other information as the Secretary may request.

(9) A certification in the following language:

I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the Marine Mammal Protection Act of 1972 (86 Stat. 1072) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the Marine Mammal Protection Act of 1972.

(10) Such application shall be signed by the applicant.

The sufficiency of the application shall be determined by the Secretary and in that connection, he may waive any requirement for information, or require any elaboration or further information deemed necessary.

(b) Upon receipt of an application for a scientific research permit or a public display permit, the Secretary shall forward the application to the Marine Mammal Commission together with a request for the recommendations of the Commission and the Committee of Scientific Advisors on Marine Mammals on the permit application. In order to comply with the time limits provided in these regulations, the Secretary shall request that such recommendation be submitted within 30 days of receipt of the application by the Commission. If the Commission or the Committee, as the case may be, does not respond within 30 days from the receipt of such application by the Commission, the Secretary shall advise the Commission in writing that failure to respond within 45 days from original receipt of the application (or such longer time as the Secretary may establish) shall be considered as a recommendation from the Commission and the Committee that the permit be issued. The Secretary may also consult with any other person, institution or agency concerning the application.

(c) Permits applied for under this section shall be issued, suspended, modified and revoked pursuant to regulations contained in § 216.15. In determining whether to issue a scientific research permit, the Secretary shall, among other criteria, consider whether the proposed taking or importation will be consistent with the policies and purposes of the Act; and whether the granting of the permit is required to further a bona fide and necessary or desirable scientific purpose, taking into account the benefits anticipated to be derived from the scientific research contemplated and the effect of the proposed taking or importation on the population stock and the marine ecosystem. In determining whether to issue a public display permit, the Secretary shall, among other criteria, consider whether the proposed taking or importation will be consistent with the policies and purposes of the Act; whether a substantial public benefit will be gained from the display contemplated, taking into account the manner of the display and the anticipated audience on the one hand, and the effect of the proposed taking or importation on the population stocks of the marine mammal in question and the marine ecosystem on the other; and the applicant's qualifications for the proper care and maintenance of the marine mammal or the marine mammal product, and the adequacy of his facilities.

(d) Permits applied for under this section shall contain such terms and conditions as the Secretary may deem appropriate, including

(1) The number and kind of marine mammals which are authorized to be taken or imported;

(2) The location and manner in which such marine mammals may be taken or from which they may be imported;

(3) The period during which the permit is valid;

(4) The methods of transportation, care and maintenance to be used with live marine mammals;

(5) Any requirements for reports or rights of inspections with respect to any activities carried out pursuant to the permit;

(6) The transferability or assignability of the permit;

(7) The sale or other disposition of the marine mammal, its progeny or the marine mammal product; and

(8) A reasonable fee covering the costs of issuance of such permit, including an appropriate apportionment of overhead and administrative expenses of the Department of Commerce.

§ 216.13 Same—economic hardship exemption.

(a) (1) During a period not exceeding 1 year from the date of enactment of the Act (i.e., not beyond midnight October 20, 1973), in the discretion of the Secretary, marine mammals may be taken and marine mammal products may be imported by any person who has obtained from the Secretary an exemption for such taking or importation by reason of a showing that he will suffer undue economic hardship if such taking or importation is prohibited.

(2) Incidental to such taking or importation, the recipient of such exemption, and persons acting as agents for or dealing with such person, may possess and transport such marine mammal or marine mammal product, use any port, harbor, or other place under the jurisdiction of the United States and, to the extent specified in such exemption, sell or offer for sale such marine mammal or marine mammal product. Any person desiring to obtain an economic hardship exemption may make application to the Secretary. Such application shall be in writing, addressed to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, and shall contain, unless otherwise permitted by the Secretary, the following information:

(i) The information required by § 216.12(a) (1), (2), (3), (4), (8), (9), and (10);

(ii) A full statement of the facts, circumstances, and reasons why failure to grant an exemption under this section would lead to undue economic hardship, together with all supporting documents, including certified copies of all relevant corporate minutes and resolutions, contracts and agreements, financial commitments, and current and historical financial data. In particular, copies of all contracts, agreements, or other arrangements entered into prior to the enactment of the Act necessitating the taking or importation of marine mammals or marine mammal products and documents showing the dollar amount of anticipated loss or economic hardship should be enclosed.

(iii) If the exemption sought relates to scientific research, a detailed description of the scientific research project or program in which the marine mammal or marine mammal product is to be used, including a copy of the research proposal relating to such program or project and the names and addresses of the sponsoring or cooperating institutions and the scientists involved;

(iv) If the exemption sought relates to scientific research, and if the marine mammal proposed to be taken or imported is listed as an endangered species pursuant to the Endangered Species Act of 1969, or has been designated by the Secretary as depleted, a detailed justification of the need for such a marine

mammal, including a discussion of possible alternatives, whether or not under the control of the applicant;

(v) If the exemption sought relates to public display, a detailed description of the proposed use to which the marine mammal or marine mammal product is to be put, including the manner, location, and times of display, whether such display is for profit, an estimate of the numbers and types of persons who it is anticipated will benefit from such display, and whether and to what extent the display is connected with educational or scientific programs. There shall also be included a complete description of the enterprise seeking the display permit and its educational, scientific, medical, or governmental connections, if any.

The sufficiency of the application shall be determined by the Secretary and in that connection he may waive any requirement for information, or may require any elaboration or further information deemed necessary.

(b) In determining whether to issue an economic hardship exemption, the Secretary shall consider, among other criteria, the following:

(1) The effect of granting the exemption on the species or populations stock in question and the marine ecosystem;

(2) The degree of economic hardship to be anticipated should the exemption not be granted;

(3) The economic and legal alternatives available to the applicant;

(4) The likelihood of the anticipated economic hardship; and

(5) Such of the criteria relative to the issuance of scientific research permits and/or public display permits as may be applicable to the application.

(c) Exemptions issued under this section shall contain such terms and conditions as the Secretary may deem appropriate, including—

(1) The number and kind of marine mammals which are authorized to be taken or imported;

(2) The location and manner in which such marine mammals may be taken or from which they may be imported;

(3) The period during which the exemption is valid;

(4) The methods of transportation, care, and maintenance to be used with live marine mammals;

(5) Any requirements for reports or rights of inspections with respect to any activities carried out pursuant to the exemption;

(6) The transferability or assignability of the exemption;

(7) The sale or other disposition of the marine mammal, its progeny, or the marine mammal product; and

(8) A reasonable fee covering the costs of issuance of such exemption, including an appropriate apportionment of overhead and administrative expenses of the Department of Commerce.

(d) Failure to observe any of the terms and conditions of the exemption shall be cause for the revocation, suspension, or modification of the exemption by the Secretary in his sole discretion and may subject the exemption holder to the penalties of the Act.

(e) In no event shall an exemption be granted pursuant to this section which continues in effect beyond midnight of October 20, 1973.

(f) The decision of the Secretary regarding the granting or denial of an exemption, or the revocation, modification or suspension thereof, shall be final and binding. Upon taking any such action, the Secretary shall notify the applicant or the exemption holder, as the case may be, in writing as soon as practicable of such action. The Secretary may, at his discretion, hold hearings on any applicant's request for an exemption under this section.

§ 216.14 Same—Waivers of the Moratorium. [Reserved]

§ 216.15 Same—Procedures for Issuance of Permits and Modification, Suspension or Revocation Thereof.

(a) Whenever application for a permit is received by the Secretary which the Secretary deems sufficient, he shall, as soon as practicable, publish a notice thereof in the FEDERAL REGISTER. Such notice shall set forth a summary of the information contained in such application. Any interested party may, within 30 days after the date of publication of such notice, submit to the Secretary his written data or views with respect to the taking or importation proposed in such application and may request a hearing in connection with the action to be taken thereon.

(b) If a request for a hearing is made within the 30-day period referred to in paragraph (a) of this section, or if the Secretary determines that a hearing would otherwise be advisable, the Secretary may, within 60 days after the date of publication of the notice referred to in paragraph (a) of this section, afford to such requesting party or parties an opportunity for a hearing. Such hearing shall also be open to participation by any interested members of the public. Notice of the date, time, and place of such hearing shall be published in the FEDERAL REGISTER not less than 15 days in advance of such hearing. Any interested person may appear in person or through representatives at the hearing and may submit any relevant material, data, views, comments, arguments, or exhibits. A summary record of the hearing shall be kept.

(c) As soon as practicable but not later than 30 days after the close of the hearing (or if no hearing is held, as soon as practicable after the end of the 30 days succeeding publication of the notice referred to in paragraph (a) of this section, the Secretary shall issue or deny issuance of the permit. Notice of the decision of the Secretary shall be published in the FEDERAL REGISTER within 10 days after the date of such issuance or denial. Such notice shall include the date of the issuance or denial and indicate where copies of the permit, if issued, may be obtained.

(d) Any permit shall be subject to modification, suspension, or revocation by the Secretary in whole or in part in accordance with these regulations and the terms of such permits. The permittee shall be given written notice by registered mail, return receipt requested, of any proposed modification, suspension, or revocation. Such notice shall specify:

(1) The action proposed to be taken along with a summary of the reasons therefor; and

(2) Shall advise the permittee that he is entitled to a hearing thereon, if a written request for such a hearing is received by the Secretary within 10 days after receipt of the aforesaid notice by the permittee.

The time and place for the hearing, if requested by the permittee, shall be determined by the Secretary and written notice thereof given to the permittee by registered mail, return receipt requested, not less than 15 days prior to the date of hearing specified. The Secretary may, in his discretion, allow participation at the hearing by interested members of the public. The permittee and other parties participating may submit all relevant material, data, views, comments, arguments, and exhibits at the hearing. A summary record shall be kept of any such hearing.

(e) The Secretary shall make a decision regarding the proposed modification, suspension or revocation as soon as practicable after the close of the hearing, or if no hearing is held, as soon as practicable after the close of the 10-day period during which a hearing could have been requested. Notice of the modification, suspension, or revocation shall be published in the FEDERAL REGISTER within 10 days from the date of the Secretary's decision. In no event shall the proposed action take effect until notice of the Secretary's decision is published in the FEDERAL REGISTER.

§ 216.16 Same—Possession of permit.

(a) Any permit issued under these regulations must be in the possession of the person to whom it is issued (or an agent of such person) during:

(1) The time of the authorized taking or importation;

(2) The period of any transit of such person or agent which is incident to such taking or importation; and

(3) Any other time while any marine mammal taken or imported under such permit is in the possession of such person or agent.

(b) A duplicate copy of the issued permit must be physically attached to the container, package, enclosure, or other means of containment, in which the marine mammal is placed for purposes of storage, transit, supervision, or care.

Subpart D—Penalties and Procedures for Their Assessment

§ 216.17 Penalties.

Any person who violates any provision of the Act or of any permit or regulation, including without limitation, conditions imposed by the Secretary with respect to the taking, importing, maintenance, or transporting of marine mammals or marine mammal products, issued thereunder may be assessed a civil penalty by the Secretary of not more than $10,000 for each violation. Each unlawful taking or importation shall be a separate offense.

§ 216.18 Notice of proposed assessment; opportunity for hearing.

(a) Prior to the assessment of a civil penalty pursuant to section 105(a) of the Act, a notice of proposed assessment issued by the Secretary shall be served personally or by registered or certified mail, return receipt requested, upon the person believed to be subject to a penalty (the respondent). The notice shall contain:

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the provisions of the Act, regulations, or permit allegedly violated; and

(3) The amount of penalty proposed to be assessed.

The notice shall inform the respondent that he has 20 days from receipt of the notice in which to request a hearing or to waive it. The request or waiver shall be in writing and addressed to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235. The notice shall further inform the respondent that if he does not respond to the notice within the 20 days allowed, he shall be deemed to have waived his right to a hearing and to have consented to the making of an assessment without a hearing.

(b) With his request for a hearing or with his written waiver of a hearing, the respondent may submit objections to the proposed assessment. He may deny the existence of the violation or ask that no penalty be assessed or that the amount be reduced. The respondent must set forth in full all facts supporting his denial of the alleged violation or his request for relief.

§ 216.19 Waiver of hearing; assessment of penalty.

(a) If a written waiver of a hearing is timely made, or if a hearing is deemed to have been waived as provided in § 216.18(a), the Secretary shall proceed either to make an assessment of a civil penalty or to rescind the proposed assessment, taking into consideration such showing as may have been made by respondent pursuant to § 216.18(b). Such action shall become the final administrative decision of the Secretary when rendered, and any civil penalty assessed shall be collected in accordance with § 216.28. Notice of such final decision shall be promptly sent to the respondent by registered or certified mail, return receipt requested.

(b) If, despite the waiver of a hearing, the Secretary believes that there are material facts at issue which cannot otherwise be satisfactorily resolved, he may refer the case to an administrative law judge as provided in § 216.20.

§ 216.20 Appointment of administrative law judge and agency representative; notice of hearing.

(a) If a written request for a hearing has been timely made, or the Secretary determines, pursuant to § 216.19(b), that a hearing should be held, the case shall be assigned to an administrative law judge appointed pursuant to 5 U.S.C. 3105. Written notice of the assignment shall promptly be given to the respondent, together with the name and address of the person who will present evidence on behalf of the Secretary at the hearing (the agency representative), and thereafter all pleadings and other documents shall be filed directly with the administrative law judge, with a copy served on the agency representative or the respondent as the case may be.

(b) The Secretary shall deliver to the administrative law judge a copy of the notice of proposed assessment, any response of the respondent thereto, and other materials deemed relevant to the case and shall furnish to the respondent a copy of any such materials not already in respondent's possession.

(c) The administrative law judge shall promptly cause to be served on the parties notice of the time and place of the hearing, which shall not be less than 10 days after service of the notice of hearing except in extraordinary circumstances.

§ 216.21 Failure to appear; official transcript; record for decision.

(a) If the respondent fails to appear at the hearing, he will be deemed to have consented to a decision being rendered on the record made at the hearing.

(b) The Secretary shall provide the services of an official reporter who shall make the [only] official transcript of the proceedings. Copies of the official transcript may be obtained from the official reporter upon payment of the charges therefor.

(c) The transcript of testimony and exhibits, together with all papers and requests filed in the proceedings, shall constitute the exclusive record for decision.

§ 216.22 Duties and powers of the administrative law judge.

It shall be the duty of the administrative law judge to inquire fully into the facts as they relate to the matter before him. Upon assignment to him and before submission of the case, pursuant to § 216.26, to the Secretary, the administrative law judge shall have authority to:

(1) Rule on offers of proof and receive relevant evidence;

Take or cause depositions to be taken whenever the ends of justice would be served thereby;

(2) Take or cause depositions to be taken whenever the ends of justice would be served thereby;

(3) Regulate the course of the hearing and, if appropriate, exclude from the hearing persons who engage in misconduct, and strike all testimony of witnesses refusing to answer any questions ruled to be proper which are related to such questions;

(4) Hold conferences for the settlement or simplification of the issues by consent of the parties or upon his own motion;

(5) Dispose of procedural requests, motions or similar matters and order hearings reopened prior to issuance of the administrative law judge's report and recommendations;

(6) Grant requests for appearance of witnesses or production of documents;

(7) Limit lines of questioning or testimony which are immaterial, irrelevant, or unduly repetitious;

(8) Examine and cross-examine witnesses and introduce into the record documentary or other evidence;

(9) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(10) Continue, at his discretion, the hearing from day-to-day, or adjourn it to a later date or to a different place;

(11) Take official notice of any matters not appearing in evidence in the record which are among the traditional matters of judicial notice; or of technical or scientific facts within the general or specialized knowledge of the Department of Commerce as an expert body; or of a document required to be filed with or published by a duly constituted Government body: *Provided,* That the parties shall be given notice, either during the hearing or by reference in the administrative law judge's decision, of the matters so noticed, and shall be given adequate opportunity to show the contrary;

(12) Prepare, serve, and submit his report and recommendations pursuant to § 216.26;

(13) Take any other action necessary and not prohibited by this § 216.22.

§ 216.23 Appearance of the respondent and the agency representative.

The respondent and the agency representative shall have the right to appear at such hearing in person, by counsel, or by other representative, to examine and cross-examine witnesses to the extent required for a full and true disclosure of the facts, to conduct oral argument at the close of testimony and to introduce into the record relevant documentary or other evidence, except that the participation of either party shall be limited to the extent prescribed by the administrative law judge.

§ 216.24 Evidence.

All evidence which is relevant, material, reliable, and probative, and not duly repetitious or cumulative, shall be admissible in the hearing.

§ 216.25 Filing of briefs.

The respondent and the agency representative may submit a brief to the administrative law judge. The original and one copy of such brief shall be filed within 7 days after the close of the hearing, except that the administrative law judge may, for good cause, grant an extension of such time for filing.

§ 216.26 Decisions.

(a) After the close of the hearing and the receipt of briefs, if any, the administrative law judge shall expeditiously prepare an initial decision. The initial decision shall contain findings of fact, conclusions, and the reasons or basis

therefor, upon the material issues presented, and shall specifically find whether the respondent committed the violations alleged and, if so, the amount of the civil penalty to be assessed.

(b) The administrative law judge shall cause his initial decision to be served on the respondent and the agency representative within 20 days after the close of the hearing or the receipt of all briefs, whichever is later, and shall forthwith transfer the record in the case to the Secretary.

(c) Within 10 days of receipt of the initial decision of the administrative law judge, either the respondent or the agency representative may file with the Secretary an appeal of the initial decision. If no appeal is received within such period, the initial decision shall become the final administrative decision of the Secretary. If an appeal is received within such period, the Secretary shall render a final decision after considering the record and the appeal. Notice of an appeal by either party shall be promptly given in writing to the other party and notice of the Secretary's final decision upon appeal shall be promptly given in writing to both parties.

§ 216.27 Remission or mitigation.

For good cause shown, the Secretary may at any time remit or mitigate the assessment of a civil penalty made under the provisions of these regulations.

§ 216.28 Payment of penalty.

The respondent shall have 15 days from receipt of the final assessment decision within which to pay the penalty assessed. Upon a failure to pay the penalty, the Secretary may request the Attorney General to institute a civil action in the appropriate United States District Court to collect the penalty.

§ 216.29 Forfeiture and return of seized property.

(a) Whenever any cargo or marine mammal or marine mammal product has been seized pursuant to 107 of the Act, the Secretary shall expedite any proceedings commenced under these regulations.

(b) Whenever a civil penalty has been assessed by the Secretary under these regulations, any cargo, marine mammal, or marine mammal product seized pursuant to 107 of the Act shall be subject to forfeiture. If respondent voluntarily forfeits any such seized property or the monetary value thereof without court proceedings, the Secretary may apply the value thereof, if any, as determined by the Secretary, toward payment of the civil penalty.

(c) Whenever a civil penalty has been assessed under these regulations, and whether or not such penalty has been paid, the Secretary may request the Attorney General to institute a civil action in an appropriate U.S. District Court to compel forfeiture of such seized property or the monetary value thereof to the Secretary for disposition by him in such manner as he deems appropriate. If no judicial action to compel forfeiture is commenced within 30 days after final decision-making assessment of a civil penalty, pursuant to § 216.26, such seized property shall immediately be returned to the respondent.

(d) If the final decision of the Secretary under these regulations is that respondent has committed no violation of the Act or of any permit or regulations issued thereunder, any marine mammal, marine mammal product, or other cargo seized from respondent in connection with the proceedings under these regulations, or the bond or other monetary value substituted therefor, shall immediately be returned to the respondent.

(e) If the Attorney General commences criminal proceedings pursuant to section 105(b) of the Act, and such proceedings result in a finding that the person accused is not guilty of a criminal violation of the Act, the Secretary may institute proceedings for the assessment of a civil penalty under this part: *Provided,* That if no such civil penalty proceedings have been commenced by the Secretary within 30 days following the final disposition of the criminal case, any property seized pursuant to section 107 of the Act shall be returned to the respondent.

(f) If any seized property is to be returned to the respondent, the Regional Director shall issue a letter authorizing such return. This letter shall be dispatched to the respondent by registered mail, return receipt requested, and shall identify the respondent, the seized property, and, if appropriate, the bailee of the seized property. It shall also provide that upon presentation of the letter and proper identification, the seized property is authorized to be released. All charges for storage, care, or handling of the seized property accruing 5 days or more after the date of the return receipt shall be for the account of the respondent: *Provided,* That if it is the final decision of the Secretary under these regulations that the respondent has committed the alleged violation, all charges which have accrued for the storage, care, or handling of the seized property shall be for the account of the respondent.

§ 216.30 Holding and bonding.

(a) Any marine mammal, marine mammal product, or other cargo seized pursuant to section 107 of the Act shall be delivered to the appropriate Regional Director of the National Marine Fisheries Service (see § 201.2 of this chapter) or his designee, who shall either hold such seized property or arrange for the proper handling and care of such seized property.

(b) Any arrangement for the handling and care of seized property shall be in writing and shall state the compensation to be paid. The Regional Director of the National Marine Fisheries Service, or his designee, shall attempt immediately to notify the respondent by telephone, but in any case shall, within 48 hours of the receipt of the seized property, dispatch notice thereof by registered or certified mail, return receipt requested, to the respondent. Such notice shall describe the property seized, including its declared value, and state the time, place, and reason for the seizure. Such notice shall also give the name and telephone number of a person in the Regional Director's Office who may be contacted regarding such seized property.

(c) The Regional Director of the National Marine Fisheries Service, upon written request of the respondent, may permit the respondent to post a bond or other surety satisfactory to the Regional Director, in lieu of the seized property: *Provided,* That posting of bond or other surety will not be permitted in the case of a living marine mammal seized under the Act. Such bond or other surety shall be in the amount of $10,000 for each alleged violation, as determined by the Regional Director, or an amount equal to the value of the seized property, whichever is greater. Such posting of bond or other surety will not be permitted unless the Regional Director is convinced that the respondent intends to maintain possession or control of the seized property until all proceedings regarding the seized property are completed; or unless the Regional Director is convinced that release of the seized property will not adversely interfere with such proceedings or with the purposes of the Act.

§ 216.31 Enforcement officers.

Enforcement Agents of the National Marine Fisheries Service shall enforce the provisions of the Act and may take any actions authorized by the Act with respect to enforcement. In addition, the Secretary may utilize, by agreement, the personnel, services, and facilities of any other Federal Agency for the purposes of enforcing this Act. Pursuant to the terms of section 107(b) of the Act, the Secretary may also designate officers and employees of any State or of any possession of the United States to enforce the provisions of this Act.

[FR Doc.72-22038 Filed 12-20-72;9:59 am]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

[9 CFR Part 201]

PACKERS AND LIVE POULTRY DEALERS AND HANDLERS

Time of Payment for Live Poultry Purchases; Extension of Time To File Comments

Notice was published at 37 F.R. 23729, of a proposal to add to the regulations under the Packers and Stockyards Act (9 CFR Part 201), a new § 201.111 pertaining to packers, live poultry dealers and handlers regarding the time of payment for live poultry purchases. It was provided that written data, views, or arguments concerning the proposed amendment might be filed in duplicate with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, within 60 days from November 8, 1972, the date of publication of the notice in the FEDERAL REGISTER.

In response to a request from the industry, the time for filing such written data, views, or arguments is hereby extended to and including January 23, 1973.

Done at Washington, D.C., this 18th day of December 1972.

MARVIN L. MCLAIN,
Administrator, Packers and Stockyards Administration.

[FR Doc.72-21892 Filed 12-20-72;8:50 am]

Packers and Stockyards Administration

[9 CFR Part 201]

MARKET AGENCY AND DEALER BONDS

Notice of Proposed Rule Making

On July 29, 1971, a notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 14012 et seq.) concerning amendments to §§ 201.5, 201.10(a), 201.10(b), 201.13, 201.27, 201.29(b), 201.30(a), 201.33, and 201.34, of the regulations under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.) (9 CFR 201.5, 201.10(a), 201.10(b), 201.13, 201.27, 201.29(b), 201.30(a), 201.33, and 201.34). Any person who wished to submit written data, views, or arguments concerning the proposed amendments, was invited to do so by October 1, 1971.

The proposed amendments to §§ 201.5, 201.10 (a) and (b) and 201.13, are already in effect (36 F.R. 23139).

With respect to the proposed changes in § 201.30(a) there is evidence indicating that changes, in addition to those previously proposed, may be necessary. In order that the Administration may consider additional information, further action with respect to § 201.30(a) is being postponed. Any future action as a result of continued study will be made the subject of a separate notice to be published when appropriate.

The proposals concerning changes in §§ 201.29(b) and 201.34 are still being considered as initially published in the FEDERAL REGISTER, except that § 201.29 (b) has been slightly revised to clarify the meaning thereof. In view of what has been submitted by interested persons, the Administration is proposing certain other amendments to §§ 201.27 and 201.33. Said sections as now proposed to be revised are set forth herein.

In § 201.27(b), in addition to the changes previously proposed, certain other changes are being considered to avoid the need for multiple trust fund agreements where the amount of the bond requirement exceeds $20,000.

Part of what was proposed in connection with §§ 201.27(c) and 201.33 was a requirement that the bond or trust fund agreement filed and maintained to secure performance of obligations arising out of certain livestock transactions subject to the Act, contain a provision that no claim shall be allowed thereunder unless it is filed with the surety, trustee, or Administrator, within 120 days from the date of the transaction on which the claim is based. The intent of this requirement was to expedite the settlement of such claims, to lessen the need for court adjudication of such claims, to facilitate the release of collateral to the principals in those cases where no such claims are filed, and generally, to fix a time certain within which a surety or trustee can be certain of the amount and nature of all such claims and can thus be able to proceed with disbursement of the proceeds of the bond or trust fund. Among the views and arguments submitted by interested persons, was the view that there also ought to be a time limitation for the filing of actions in court to recover under such bonds or trust fund agreements. Such a time limitation appears appropriate to effectuate more fully the intent to expedite the settlement of such claims, lessen the need for court adjudication of such claims, and facilitate the release of collateral to the principals in those cases where no such claims are filed.

Accordingly, under such circumstances, it is proposed that the standard forms prescribed in § 201.27(c) and the provisions of § 201.33, as initially proposed, be further modified so as to contain a specific time limitation for the filing of suit in an appropriate court to recover under a registrant's bond. The proposal, as modified, would provide in effect that a claim must be filed with the surety, trustee, or Administrator within 120 days from the date of the transaction on which the claim is based, and no court action to recover under the bond can be filed unless the claim has been so filed within 120 days. It also provides that such a court action cannot be filed sooner than 180 days (to provide time for the surety to act on claims submitted within the 120 days) or later than 547 days (which is approximately 18 months).

It is proposed to amend § 201.33 further by deleting paragraph (b) thereof, for the reason that that paragraph deals with release of information, a subject which is dealt with in Part 204 of 9 CFR. The subject matter which is now dealt with in § 201.33(b) is now under study.

Notice is hereby given that the Packers and Stockyards Administration is considering the revision of § 201.27 by changing the caption thereof, the revision of § 201.27(b) and the issuance of a new § 201.27(c), and the revision of §§ 201.29(b), 201.33, and 201.34 of the regulations under the Packers and Stockyards Act, 1921, as amended (9 CFR §§ 201.27, 201.29(b), 201.33, and 201.34), to read as follows:

§ 201.27 Underwriter; equivalent in lieu of bonds; standard forms.

* * * * *

(b) A bond equivalent may be filed in lieu of a bond. A bond equivalent shall be in the form of a trust fund agreement based on funds actually deposited and readily convertible to currency in the amount required by § 201.30. Such funds shall be invested or deposited, in the name of a trustee as set forth in § 201.32, in: (1) Fully negotiable obligations of the United States, or (2) deposits or accounts fully insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, but no more of such funds shall be invested or deposited in any one such institution, than is so insured. The provisions of §§ 201.27 through 201.38 shall be applicable to such trust fund agreements.

(c) The following forms of a bond and trust fund agreement are suggested for use in connection with the filing of bonds or bond equivalents as required by these regulations:

Bond No. _____

BOND REQUIRED OF LIVESTOCK MARKET AGENCIES AND DEALERS UNDER THE PACKERS AND STOCKYARDS ACT, 1921, AS AMENDED

Know all men by these presents, that we_____ _____ of _____ as Principal, and_____ as Surety, are held and firmly bound unto_____

(Trustee need not be named unless required by State, principal, or surety)

(or his successors in official position, if any) as Trustee for all persons who may be damaged through the breach of this bond, as Obligee, in the aggregate sum of_____Dollars ($_____), lawful money of the United States of America, for the payment whereof to the Obligee we bind ourselves, our heirs, executors, administrators, successors and assigns jointly and severally by these presents.

Signed, sealed and dated this_____day of_____, 19____.

Now, Therefore, the Condition of this Bond is such that:

Applicable if Principal SELLS on commission: (1) If the said Principal shall pay when due to the person or persons entitled thereto the gross amount, less lawful charges, for which all livestock is sold for the accounts of others by said Principal,

Applicable if Principal BUYS on commission or as a dealer: (2) If the said Principal shall pay when due to the person or persons entitled thereto the purchase price of all livestock purchased by said Principal for his own account or for the accounts of others, and if the said Principal shall safely keep and properly disburse all funds, if any, which come into his hands for the purpose of paying for livestock purchased for the accounts of others,

Applicable if others clear through Principal: (3) If the said Principal, acting as a clearing agency responsible for the financial obligations of other registrants engaged in buying livestock, viz.: (insert here the names of such other registrants as they appear in the application for registration),

of if such other registrants, shall (1) pay when due to the person or persons entitled thereto the purchase price of all livestock purchased by such other registrants for their own account or for the accounts of others and (2) safely keep and properly disburse all funds coming into the hands of such Principal or such other registrants for the purpose of paying for livestock purchased for the accounts of others,

then this bond shall be null and void, otherwise to remain in full force and virtue, subject to the following terms, conditions, and limitations:

(a) This bond shall apply only to transactions occurring on or at any time after the date hereof, and before the effective date of termination hereof as hereinafter provided.

(b) Payment by the Surety to a claimant or to the Trustee in settlement of one or more claims shall discharge the Surety as to those claims and shall reduce the penal sum of this bond to the extent of such payment or payments.

(c) Any person damaged by failure of the Principal to comply with any condition clause of this bond, may maintain suit in his own name to recover on this bond even though such person is not a party named in this bond. The Trustee may maintain suit in his own name, the recovery to be made for the use of the persons damaged. Principal and Surety hereby waive every defense, if any there be, based on the fact that any person damaged or in whose name a suit shall be brought, is not a party or privy to this bond.

(d) Any claim for recovery on this bond may be filed with either the Surety, or the Trustee if one is named, or the Administrator, Packers and Stockyards Administration, U.S. Department of Agriculture, Washington, D.C. 20250, and whichever of these parties receives such a claim shall notify the other such party or parties at the earliest practicable date.

(e) The Administrator, Packers and Stockyards Administration, U.S. Department of Agriculture, is authorized to designate a trustee to represent all claimants under this bond if (1) any claim is filed or any action is required to recover damages for breach of any condition of this bond, and if (2) a trustee is not designated herein or the trustee designated herein fails or is unable to act or serve.

(f) The Surety shall not be liable to pay any claim for recovery on this bond if it is not filed in writing within 120 days from the date of the transaction on which the claim is based, or if suit thereon is commenced less than 180 or more than 547 days (which is approximately 18 months) from the date of the transaction on which the claim is based.

(g) The proceeds of this bond shall not be used to pay fees, salaries, or expenses for legal representation of the Surety or the Principal.

(h) The term "person" as used in this bond shall be construed to mean and include both singular and plural, corporations, partnerships, associations, individuals, and the heirs, executors, administrators, successors, or assigns thereof.

(i) The acts, omissions or failures of authorized agents or representatives of said Principal or persons whom said Principal shall knowingly permit to represent themselves as acting for said Principal shall be taken and construed to be the acts, omissions, or failures of said Principal and to be within the protection of this bond to the same extent and in the same manner as if they were the personal acts of said Principal.

(j) Termination of the clearance of a registrant under condition clause 3 of this bond may be accomplished by issuance of a rider or endorsement by the Surety herein deducting the name of the clearee. Termination of the clearance shall become effective thirty (30) days after the date of receipt of the rider or endorsement by the Administrator, Packers and Stockyards Administration, Washington, D.C.

(k) This bond may be terminated by either party hereto delivering written notice of termination to the other party and the Administrator of the Packers and Stockyards Administration at Washington, D.C., at least thirty (30) days prior to the effective date of such termination. In the event that the Surety named herein writes a new bond to replace this bond for the same principal named herein, the 30-day termination provision will be waived, and this bond will become terminated as of the effective date of the replacement bond. Immediately upon filing of a claim for recovery on this bond, unless the Surety believes that such claim is frivolous, the Surety shall cause termination of this bond in accordance with this paragraph.

(l) A fully executed duplicate of this bond and of any endorsement, amendment, rider, or other attachment hereto, shall be filed with the Area Supervisor, Packers and Stockyards Administration, for the area in which the Principal resides or has his or its principal place of business.

(m) Conditions _____ and _____ were deleted prior to execution and are not part hereof.

In witness whereof the parties hereto have executed this bond under their seals on the day and date appearing herein.

_____ [SEAL]
(Principal)

By _____ [SEAL]
_____
(Surety)

By _____ [SEAL]
_____
(Trustee—if named.)

TRUST FUND AGREEMENT

Whereas, the provisions of the Packers and Stockyards Act, 1921, as amended and supplemented, and the regulations of the Secretary of Agriculture issued pursuant thereto, require a good and sufficient surety bond or its equivalent of all market agencies and dealers as defined in the Packers and Stockyards Act to cover their obligations as such; and

Whereas, _____, hereinafter known as the Principal, is engaged in business as a market agency or dealer as defined in the Packers and Stockyards Act.

Now, therefore, the sum of_____ dollars ($), invested as follows:
_____
_____
_____
is hereby deposited by_____
(name of Principal)
with _____
(name of Trustee)
as Trustee, for the following purposes and subject to the following conditions:

Applicable if Principal SELLS on commission:

(1) If the said Principal shall pay when due to the person or persons entitled thereto the gross amount, less lawful charges, for which all livestock is sold for the accounts of others by said Principal.

Applicable if Principal BUYS on commission or as a dealer:

(2) If the said Principal shall pay when due to the person or persons entitled thereto the purchase price of all livestock purchased by said Principal for his own account or for the accounts of others, and if the said Principal shall safely keep and properly disburse all funds, if any, which come into his hands for the purpose of paying for livestock purchased for the accounts of others.

Applicable if others clear through Principal:

(3) If the said Principal, acting as a clearing agency responsible for the financial obligations of other registrants engaged in buying livestock, viz.: (insert here the names of such other registrants as they appear in the application for registration), or if such other registrants, shall (1) pay when due to the person or persons entitled thereto the purchase price of all livestock purchased by such other registrants for their own account or for the accounts of others and (2) safely keep and properly disburse all funds coming into the hands of such Principal or such other registrants for the purpose of paying for livestock purchased for the accounts of others.

then this fund shall not be liable; but if there shall be any defaults, failures, or neglects under any one or more of said conditions, then this fund shall be liable, subject to the following terms, conditions and limitations:

(a) This trust fund agreement shall apply only to transactions occurring on or at any time after the date hereof, and before the effective date of termination hereof as hereinafter provided.

(b) Payment by the Trustee to a claimant in settlement of one or more claims shall discharge the Trustee as to those claims and shall reduce the amount of this fund to the extent of such payment or payments.

(c) Any person damaged by failure of the Principal to comply with any condition clause of this agreement, may maintain suit in his own name to recover on this agreement even though such person is not a party named in this agreement. Principal and Trustee hereby waive every defense, if any there be, based on the fact that any person damaged or in whose name a suit shall be brought, is not a party or privy to this agreement.

(d) Any claim for recovery on this agreement may be filed with either the Trustee or the Administrator, Packers and Stockyards Administration, United States Department of Agriculture, Washington, D.C. 20250, and whichever of these parties receives such a claim shall notify the other such party at the earliest practicable date.

(e) The Administrator, Packers and Stockyards Administration, United States Department of Agriculture, is authorized to designate a person to act as Trustee under this agreement if the trustee designated herein fails or is unable to act or serve. In the event of such designation by the Administrator, all assets of the trust fund to which this agreement refers, shall be paid over to the person so designated by the Administrator.

(f) The Trustee shall not be liable to pay any claim for recovery on this agreement if it is not filed in writing within 120 days from the date of the transaction on which the claim is based, or if suit thereon is commenced less than 180 or more than 547 days (which is approximately 18 months) from the date of the transaction on which the claim is based.

(g) The trust fund shall not be used to pay fees, salaries, or expenses, for legal representation of the Principal.

(h) The term "person" as used in this agreement shall be construed to mean and include both singular and plural, corporations, partnerships, associations, individuals, and the heirs, executors, administrators, successors, or assigns thereof.

(i) The acts, omissions, or failures of authorized agents or representatives of said Principal or persons whom said Principal shall knowingly permit to represent themselves as acting for said Principal shall be taken and construed to be the acts, omissions, or failures of said Principal and to be within the protection of this agreement to the same extent and in the same manner as if they were the personal acts of said Principal.

(j) Termination of the clearance of a registrant under condition clause 3 of this trust fund agreement may be accomplished by issuance of a rider deducting the name of the clearee. Termination of the clearance shall become effective thirty days after the date of receipt of the rider by the Administrator, Packers and Stockyards Administration, Washington, D.C.

(k) This agreement may be terminated by either party hereto delivering written notice of termination to the other party and the Administrator of the Packers and Stockyards Administration at Washington, D.C., at least 30 days prior to the effective date of such termination. In no case shall the funds deposited with the Trustee herein be returned to the Principal until a Trust Fund Agreement Special Report Form P&SA-5, has been submitted by the Principal to the Administrator of the Packers and Stockyards Administration certifying that all obligations arising under the conditions of this agreement prior to the effective date of its termination have been discharged and authorization for the release of the funds has been received from the Administrator. Immediately upon filing of a claim for recovery on this agreement, unless the Trustee believes that such claim is frivolous, the Trustee shall cause termination of this agreement in accordance with this paragraph.

(l) The interest or dividends accruing on the above-described bonds or other securities are to be delivered by the Trustee to _____ _____ _____ hereby accepts the trust hereunder and agrees that it will hold all the bonds or other securities herein described, under the above agreement.

(m) A fully executed duplicate of this agreement, and of any endorsement, amendment, rider, or other attachment hereto, shall be filed with the Area Supervisor, Packers and Stockyards Administration, for the area in which the Principal resides or has his or its principal place of business.

(n) The securities pledged by the principal under this agreement may be disbursed to known valid claimants by the Trustee after he has been presented with a sworn proof of claim form and other papers to support such claims. In the event that claims filed against this agreement exceed the penal sum of the securities pledged hereunder, the securities shall be prorated to the known valid claimants by the Trustee. The Trustee named herein shall determine the total amount of claims prior to disbursing any portion of the securities pledged under this trust fund agreement.

(o) Conditions _____ and _____ were deleted prior to execution and are not part hereof.

Signed at _____ this _____ day of _____, 19_____.

I accept the obligations as Trustee:

_____[Seal]
(Signature of Trustee)

_____[Seal]
(Signature of Principal)

§ 201.29 Market agencies and dealers required to file and maintain bonds.

* * * * *

(b) Every market agency buying on a commission basis and every dealer buying for his own account or for the accounts of others shall file and maintain a bond to secure the performance of his buying obligations, such bond to contain condition clause No. 2 as set forth in § 201.31(b) of the regulations in this part. If a registrant operates as both a market agency buying on a commission basis and as a dealer, only one bond to cover both buying operations need be filed. Any person operating as a market agency selling on a commission basis and as a market agency buying on a commission basis or as a dealer, shall file and maintain separate bonds to cover his selling and buying operations. The bond maintained for his selling operations shall contain condition clause No. 1 set forth in § 201.31(a) of these regulations and the bond for his buying operations shall contain condition clause No. 2 of § 201.31(b) of the regulations in this part.

* * * * *

§ 201.33 Persons damaged may maintain suit; filing and notification of claims; time limitations; legal expenses.

Each bond and each trust fund agreement filed pursuant to these regulations, shall contain provisions that:

(a) Any person damaged by failure of the principal to comply with any condition clause of the bond or trust fund agreement, may maintain suit to recover on the bond or trust fund agreement even though such person is not a party named in the bond or trust fund agreement;

(b) Any claim for recovery on the bond or trust fund agreement may be filed with either the surety, if any, or the trustee, if any, or the Administrator, and whichever of these parties receives such a claim shall notify the other such party or parties at the earliest practicable date;

(c) The Administrator is authorized to designate a trustee pursuant to § 201.32;

(d) The surety on the bond, or the trust fund, as the case may be, shall not be liable to pay any claim if it is not filed in writing within 120 days from the date of the transaction on which the claim is based, or if suit thereon is commenced less than 180 or more than 547 days (which is approximately 18 months) from the date of the transaction on which the claim is based;

(e) The proceeds of the bond, or the trust fund, as the case may be, shall not be used to pay fees, salaries, or expenses, for legal representation of the surety or the principal.

§ 201.34 Termination of market agency and dealer bonds.

(a) Each bond shall contain a provision requiring that, prior to terminating such bond, at least 30 days' notice in writing shall be given to the Administrator, Packers and Stockyards Administration, U.S. Department of Agriculture, Washington, D.C. 20250, by the party terminating the bond. Such provision may state that in the event the surety named therein writes a replacement bond for the same principal, the 30-day notice requirement may be waived and the bond will be terminated as of the effective date of the replacement bond.

(b) Each bond filed by a market agency who clears other registrants who are named in the bond shall contain a provision requiring that, prior to terminating the bond coverage of any clearee named therein, at least 30 days' notice in writing shall be given to the

Administrator, Packers and Stockyards Administration, U.S. Department of Agriculture, Washington, D.C. 20250, by the surety. Such written notice shall be in the form of a rider or endorsement to be attached to the bond of the clearing agency.

Any person who wishes to submit written data, views, or arguments concerning the proposed amendments may do so by filing them in duplicate with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C., on or before March 1, 1973.

All written submissions made pursuant to this notice will be made available for public inspection at times and places and in a manner convenient to the public business (7 CFR 1.27(b)).

(Sec. 407 of the Packers and Stockyards Act, 42 Stat. 159, as amended, 7 U.S.C. 228; and 57 Stat. 422, 7 U.S.C. 204; 29 F.R. 16210, 32 F.R. 7186 and 11895, 34 F.R. 6938, 36 F.R. 21529)

Done at Washington, D.C., this 18th day of December 1972.

MARVIN L. MCLAIN,
Administrator, Packers and Stockyards Administration.

[FR Doc.72-21953 Filed 12-20-72;8:54 am]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 260]

LABEL DESIGNATIONS FOR SELECTED FISHERY PRODUCTS

Notice of Proposed Rule Making

In the June 10, 1972, issue of the FEDERAL REGISTER a notice was published by the National Marine Fisheries Service regarding the application of recent technological innovations to separate fish flesh from skin and bone. Such separated fish flesh can be processed into various end item fishery products as well as into uniformly shaped rectangular blocks. Fish blocks thus formed, have a potential for being further processed into portion-controlled fish sticks and portions.

The June 10, 1972, notice also described the traditional "frozen fish blocks" prepared from fillets of fish and pieces thereof, and explained that the essential difference between the two types of blocks lies in the state of the fish flesh prior to processing.

It was further explained in the June 10, 1972, notice that voluntary quality standards for fish blocks, sticks, and portions were developed and promulgated by NMFS during the period 1954–70, and based upon research carried out on blocks of the historical type and end item products made therefrom. However, inadequate studies have been carried out on the newer type fish blocks and products made therefrom.

In view of significant interest expressed relative to the newer type products by industry representatives, and in order to insure consideration of all legitimate interests concerning these products, NMFS invited all interested persons to express their views relative to the need for standardization of products manufactured by the application of current technology and how this could best be done. Related views were also invited concerning how such products might be appropriately defined and designated through labeling.

In the August 19, 1972, issue of the FEDERAL REGISTER a Statement of Findings and Intent was published by the National Marine Fisheries Service in respect to the comments received relative to the June 10, 1972, notice. One of the findings based on the comments received, was "a need to identify end item products manufactured from the two types of blocks to consumers clearly and in such a way as to avoid misrepresentation and/or confusion." In view of this finding NMFS also indicated in the FEDERAL REGISTER notice of August 19, 1972, that it intended to "develop and recommend for use, designations for end products manufactured from the newer type blocks," i.e., those made of mechanically separated fish flesh.

NMFS subsequently has considered a number of descriptive or qualifying terms which have been used or suggested to distinguish end products made from blocks composed of mechanically separated fish flesh; from end products made from blocks composed of whole and pieces of fish fillets.

Most of the terms considered convey the fact that a disintegrating treatment had been applied to the fish flesh prior to its being formed into fish blocks. Among the terms considered, "grated" was regarded as particularly appropriate since, (1) it reasonably describes the mechanical process of separating edible fish flesh from the inedible parts of the fish, (2) it is a term well understood by consumers, (3) it is presently used in respect of other food commodities including fishery products.

Based upon the foregoing findings and considerations, new §§ 260.200 and 260.201 are hereby proposed to be added to Part 260, reading as follows:

LABELING REQUIREMENTS

§ 260.200 General labeling requirements.

The labeling provisions specified in § 260.201 are applicable to labels of prepackaged fishery products when, (a) such products are manufactured in accordance with the voluntary regulations contained in this part and (b) the product labels will bear official approved identification, or will be certified in respect to quality, quantity, condition, or other pertinent product characteristics.

§ 260.201 Mechanically separated fish flesh products.

The following labeling provisions apply for end products, fish sticks and fish portions manufactured from fish blocks composed entirely of mechanically separated fish flesh:

(a) The product shall be declared as "fish sticks" or "fish portions" as the case may be, and qualified by the words "grated and shaped."

(b) The words "grated and shaped" shall either immediately precede or follow the words "fish sticks" or "fish portions."

(c) The color and prominence of the words "grated and shaped" shall be the same as, and the type size shall be no less than half that of the words "fish sticks" or "fish portions."

(d) The product name "fish sticks" or "fish portions" and the qualifying words "grated and shaped" shall appear on the same background color on the label.

Interested persons are provided 45 days in which to make their views known relative to this matter, to the Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, D.C. 20235.

PHILIP M. ROEDEL,
Director, National Marine Fisheries Service.

[FR Doc.72-21853 Filed 12-20-72;8:46 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social and Rehabilitation Service

[45 CFR Part 206]

USE OF PUBLIC RECORDS AND OUTSIDE SOURCES

Notice of Proposed Rule Making

Notice is hereby given that the regulation set forth in tentative form below is proposed by the Administrator, Social and Rehabilitation Service, with the approval of the Secretary of Health, Education, and Welfare. The proposed regulation would clarify the use of public records, i.e., records of any public agency, in determining an individual's eligibility for assistance and the amount of the assistance payments, and would distinguish public records from "outside contacts." The need for clarification became evident when the intent of the regulation was questioned during State court litigation.

Prior to adoption of the proposed regulation, consideration will be given to any comments, suggestions, or objections thereto which are submitted in writing to the Administrator, Social and Rehabilitation Service, Department of Health, Education, and Welfare, 330 Independence Avenue SW., Washington, DC 20201, within a period of 30 days from date of publication of this notice in the FEDERAL REGISTER.

Comments received will be available for public inspection in Room 5121 of the Department's offices at 301 C Street SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Area Code 202—963-7361).

AUTHORITY: The provisions of this section are to be issued under section 1102, 49 Stat., 647, 42 U.S.C. 1302.

Dated: November 6, 1972.

JOHN D. TWINAME,
Administrator, Social and Rehabilitation Service.

Approved: December 15, 1972.

ELLIOT L. RICHARDSON,
Secretary.

Part 206 of Chapter II of Title 45 of the Code of Federal Regulations is amended by revising paragraph (a)(12) to read as set forth below:

§ 206.10 Application, determination of eligibility and furnishing of assistance.

(a) *State plan requirements.* * * *

(12) In determining initial and continuing eligibility:

(i) Applicants and recipients will be relied upon as the primary source of information in making the decision about their eligibility.

(ii) The agency will help applicants and recipients provide needed information, as necessary, or will obtain the information for them if, because of physical, mental, or other difficulties, they themselves are unable to provide it.

(iii) Verification of circumstances pertaining to eligibility will be limited to what is reasonably necessary to ensure the legality of expenditures under this program.

Under the requirements of this subparagraph:

(*a*) The agency gives a clear explanation of what information is desired, why it is needed, and how it will be used.

(*b*) The agency takes no steps in the exploration of eligibility to which the applicant or recipient does not agree, and obtains specific consent for outside contacts, except that:

(1) The agency may use information from public records (i.e. records of any public agency, whether or not available for public inspection) without seeking consent; and

(2) In exceptional situations the agency may use other procedures provided that they are consistent with subparagraph (10) of this paragraph and the case record specifies what procedures were followed and why they were needed.

(*c*) When information available from the applicant or recipient (or from public records) is inconclusive and does not support a decision of eligibility, the agency explains to the individual what questions remain and how he can resolve or help to resolve them, what actions the agency can take to resolve them and the need for their resolution if eligibility is to be established or reconfirmed. If the individual is unwilling to have the agency seek verifying information, the agency, unable to determine that eligibility exists, denies or terminates assistance.

(*d*) If a simplified method is used in the determination and redetermination of eligibility, the requirements of § 205.20 of this chapter apply.

* * * * *

[FR Doc.72-21917 Filed 12-20-72;8:52 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 72-CE-25]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the transition area at Scottsbluff, Nebr.

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 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. 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 proposal 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 Scottsbluff, Nebr., a new instrument approach procedure has been developed for the Scottsbluff County Airport utilizing a new ILS system as a navigational aid. Accordingly, it is necessary to alter the transition area to adequately protect aircraft executing the new approach procedure.

In consideration of the foregoing, the Federal Aviation Administration propose to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (37 F.R. 2143), the following transition area is amended to read:

SCOTTSBLUFF, NEBR.

That airspace extending upward from 700 feet above the surface within a 9½-mile radius of the Scottsbluff County Airport (latitude 41°52'30" N., longitude 103°35'40" W.); within 4.5 miles south and 9.5 miles north of the Scottsbluff VORTAC 079° radial; extending from the 9½-mile radius area to 13 miles east of the VORTAC, within 4.5 miles southwest and 9½ miles northeast of the ILS localizer southeast course extending from the 9½-mile radius area to 13 miles southeast of the outer marker; and that airspace extending upward from 1,200 feet above the surface within a 21-mile radius of the Scottsbluff VORTAC.

This amendment is 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 December 1, 1972.

JOHN M. CYROCKI,
Director, Central Region.

[FR Doc.72-21884 Filed 12-20-72;8:49 am]

[14 CFR Part 71]

[Airspace Docket No. 72-EA-121]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the Doylestown, Pa., transition area (37 F.R. 2143, 5254).

A new instrument procedure has been developed for runway 23 of the Doylestown Airport, Doylestown, Pa., and will require additional airspace to protect the aircraft executing the new procedures. Thus the transition area must be altered.

Interested parties may submit such written data or views as they may desire. Communications should be submitted in triplicate to the Director, Eastern Region, Attention: Chief, Air Traffic Division, Department of Transportation, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y. 11430. All communications received within 30 days after publication in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements may be made for informal conferences with Federal Aviation Administration officials by contacting the Chief, Airspace and Procedures Branch, Eastern Region.

Any data or views 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 proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested parties at the Office of Regional Counsel, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y.

The Federal Aviation Administration, having completed a review of the airspace requirements for the terminal area

of Doylestown, Pa., proposes the airspace action hereinafter set forth:

1. Amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to delete the description of the Doylestown, Pa. 700-foot floor transition area and insert the following in lieu thereof:

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the center (40°20'20" N., 75°07'20" W.) of Doylestown Airport, Doylestown, Pa.; within 8 miles northwest and 4.5 miles southeast of the 224° bearing and the 044° bearing from the Doylestown, Pa. RBN (40°19'59" N., 75°07'21" W.), extending from 5.5 miles southwest of the RBN to 11.5 miles northeast of the RBN; within 8 miles northwest and 4.5 miles southeast of the Solberg, N.J. VORTAC 229° radial, extending from 7.5 miles southwest of the VORTAC to 24.5 miles southwest of the VORTAC, excluding the portions which coincide with the North Philadelphia, Pa., Pittstown, N.J. and Readington, N.J. transition areas.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Jamaica, N.Y., on December 7, 1972.

ROBERT H. STANTON,
Acting Director, Eastern Region.

[FR Doc.72-21885 Filed 12-20-72;8:49 am]

[14 CFR Part 71]

[Airspace Docket No. 72-EA-120]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the Babylon, N.Y., transition area (37 F.R. 2143).

A new instrument procedure has been developed for runway 14 of Republic Airport, Farmingdale, N.Y. However, additional airspace will be required to protect aircraft executing the new procedures, thus requiring an alteration of the transition area.

Interested parties may submit such written data or views as they may desire. Communications should be submitted in triplicate to the Director, Eastern Region, Attention: Chief, Air Traffic Division, Department of Transportation, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y. 11430. All communications received within 30 days after publication in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements may be made for informal conferences with Federal Aviation Administration officials by contacting the Chief, Airspace and Procedures Branch, Eastern Region.

Any data or views 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 proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested parties at the Office of Regional Counsel, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y.

The Federal Aviation Administration, having completed a review of the airspace requirements for the terminal area of Babylon, N.Y., proposes the airspace action hereinafter set forth:

1. Amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to amend the description of the Babylon, N.Y. 700-foot floor transition area by inserting after "(latitude 40°43'45" N., longitude 73°24'45" W.);", the following:

within 4.5 miles northeast and 6.5 miles southwest of the Republic Airport ILS localizer northwest course, extending from the OM (40°46'35" N., 73°28'59" W.) to 11.5 miles northwest of the OM;

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Jamaica, N.Y., on December 7, 1972.

ROBERT H. STANTON,
Acting Director, Eastern Region.

[FR Doc.72-21886 Filed 12-20-72;8:49 am]

CIVIL SERVICE COMMISSION

[5 CFR Part 900]

NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY REGULATIONS IN FEDERALLY ASSISTED PROGRAMS

Notice of Proposed Rule Making

Notice is hereby given that pursuant to the authority of section 503 of the Intergovernmental Personnel Act of 1970 (Public Law 91-648, 84 Stat. 1909), the Civil Service Commission proposes to add Subpart E to Part 900 of Title 5 of the Code of Federal Regulations to effectuate nondiscrimination and equal employment opportunity under programs and activities receiving Federal financial assistance from the Commission.

Interested persons may submit written comments, objections, or suggestions to the U.S. Civil Service Commission, Bureau of Intergovernmental Personnel Programs, Room 2F05, 1900 E Street NW., Washington, DC 20415, within 30 days after the date of publication of this notice in the FEDERAL REGISTER. Written comments, objections, and suggestions submitted will be available for public inspection at the address given in this notice during the Commission's regular business hours (8:15 a.m. to 4:45 p.m., Monday through Friday). The proposed subpart E reads as follows:

Subpart E—Nondiscrimination and Equal Employment Opportunity in Federally Assisted Programs of the U.S. Civil Service Commission

Sec.
900.501 Purpose.
900.502 Applicability.
900.503 Definitions.
900.504 Program consistency with merit principles.
900.505 Discrimination against participants and beneficiaries prohibited.
900.506 Employment practices.
900.507 Certification required.
900.508 Compliance information.
900.509 Conduct of investigations.
900.510 Procedure for effecting compliance.
900.511 Grant suspension or termination.

AUTHORITY: The provisions of this Subpart E issued under sec. 503, 84 Stat. 1926.

§ 900.501 Purpose.

The purpose of this subpart is to effectuate nondiscrimination and equal employment opportunity under programs receiving Federal financial assistance from the Commission under the Intergovernmental Personnel Act of 1970, 84 Stat. 1909 (hereafter referred to as the IPA).

§ 900.502 Applicability.

(a) *Programs.* This subpart applies to each program for which Federal financial assistance is authorized under the IPA as administered by the Commission including applications approved before the effective date of this subpart.

(b) *Individuals.* The provisions of this subpart do not apply to: (1) Individuals elected to public office in any State or political subdivision of any State by the qualified voters thereof, (2) an individual chosen by these elected officers to be on their personal staff, (3) an appointee on the policymaking level and an immediate advisor with respect to the exercise of the constitutional or legal powers of the office, except that these exceptions shall not apply to individuals specifically subject to the Civil Service laws of a State government, governmental agency, or political subdivisions.

§ 900.503 Definitions.

In this subpart:

(a) "Applicant" means a person submitting an application, request, or plan requiring Commission approval as a condition of eligibility for IPA financial assistance, and "application" means that application, request, or plan.

(b) "Facility" means all or part of structures, equipment, or other real or personal property or interests therein.

(c) "Federal financial assistance" and "IPA financial assistance" mean:

(1) A grant of Federal funds authorized by the IPA;

(2) The detail or temporary assignment of Federal personnel authorized by title IV of the IPA; and

(3) An agreement, arrangement, or contract which has as one of its purposes the provision of Federal assistance.

(d) "Program" means a project or activity providing services or other benefits, authorized by the IPA, including education or training whether provided

through employees of a recipient of IPA financial assistance or provided by others through contracts or other arrangements with a recipient.

(e) "Recipient" means a State, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, or a political subdivision or instrumentality thereof, a public or private agency, institution, organization, or other entity, or an individual in a State, the District of Columbia, the Commonwealth of Puerto Rico, or territory or possession of the United States, to whom IPA financial assistance is extended, directly or through another recipient, including a successor, assignee, or transferee, but the term does not include an ultimate beneficiary under a program.

(f) "Employment practices" means practices relating to recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees.

(g) "Other organization" has the meaning given that term by section 304 of the IPA.

§ 900.504 Program consistency with merit principles.

(a) The substance, design, and administration of a program shall assure the fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, or religious creed and with proper regard for their privacy and constitutional rights as citizens.

(b) A program related to recruiting, selecting, and advancing employees, to which this subpart applies, shall provide for recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

§ 900.505 Discrimination against participants and beneficiaries prohibited.

(a) *General.* A recipient may not exclude an individual from participation in, deny an individual the benefits of, or otherwise subject an individual to discrimination on the basis of race, color, national origin, sex, religious creed, or political affiliation.

(b) *Specific discriminatory actions.* (1) A recipient may not, directly or through contractual or other arrangements, on the basis of race, color, national origin, sex, religious creed, or political affiliation—

(i) Deny an individual a service, financial aid, or other benefit provided under the program;

(ii) Provide a service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in a matter related to his receipt of a service, financial aid, or benefit under the program;

(iv) Restrict an individual in the enjoyment of an advantage or privilege enjoyed by others receiving a service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies an admission, enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided a service, financial aid, or other benefit provided under the program; or

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise afford him an opportunity to do so which is different from that afforded others under the program.

(2) A recipient, in determining the site or location of a facility, may not make the selection with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination on the basis of race, color, national origin, sex, religious creed, or political affiliation, or with the purpose or effect of defeating or substantially impairing the accomplishments of the objectives of this subpart.

(3) As used in this section, the services, financial aid, or other benefits provided under a program receiving IPA financial assistance include a service, financial aid, or other benefit provided in or through a facility provided with the aid of IPA financial assistance.

(4) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the prohibition in paragraph (a) of this section to other instances of discrimination.

§ 900.506 Employment practices.

(a) A recipient may not, on the basis of race, color, national origin, sex, religious creed, or political affiliation—

(1) Fail or refuse to hire or to discharge an individual, or otherwise to discriminate against an individual with respect to his compensation, terms, conditions, or privileges of employment; or

(2) Limit, segregate, or classify his employees, including applicants for employment, in any way which would deprive, or tend to deprive, an individual of employment opportunities or otherwise adversely affect his status as an employee.

(b) Affirmative action. A State or local government agency, department, or office, or other organization administering a program to which this section applies shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, national origin, sex, religious creed, or political affiliation.

(c) Written affirmative action plans. The Commission may require a recipient to develop a written affirmative action plan for equal employment opportunity when in the Commission's judgment it is warranted and feasible. This section does not affect the requirement that State and local government agencies, subject to the Standards for a Merit System of Personnel Administration (45 CFR Part 70), have a written affirmative action plan.

(d) An affirmative action plan under this section shall be consistent with the principles stated in section 2 of the IPA.

(e) Discrimination on the basis of sex is prohibited except where sex requirements constitute a bona fide occupational qualification.

§ 900.507 Certification required.

(a) *General.* Each application for IPA financial assistance, as a condition to its approval and the extension of financial assistance, shall contain or be accompanied by, a certification that the program will be conducted in compliance with the requirements of this subpart. The assurance shall obligate the recipient for the period during which the IPA financial assistance is extended to the program.

(b) *Certification from "other organizations".* In an application for IPA financial assistance from an "other organization," as this term is used in section 304 of the IPA, the certification required by this section shall apply to the admission, membership, and all other practices relating to the treatment of members, unless the applicant establishes, to the satisfaction of the responsible Commission official, that the practices of the organization in no way affect (1) its practices in the program or part of the organization for which IPA financial assistance is sought, or (2) the beneficiaries of or participants in, or persons affected by the program, or (3) employees or applicants for employment in that part of the organization.

§ 900.508 Compliance information.

(a) *Cooperation and assistance.* The Commission, to the fullest extent practicable, shall seek the cooperation of recipients in obtaining compliance with this subpart and shall provide assistance and guidance to recipients to aid them in complying with this subpart.

(b) *Compliance reports.* Each recipient shall maintain records and submit to the Commission timely, complete, and accurate compliance reports, at the times, in the form, and containing the information the Commission determines necessary to enable it to determine whether the recipient has complied or is complying with this subpart. In a program in which a recipient provides IPA financial assistance to another recipient, the other recipient shall submit necessary compliance reports to the recipient providing the IPA financial assistance to permit it to carry out its obligations under this subpart.

(c) *Access to sources of information.* Each recipient shall permit the Commission, during normal business hours, to examine its books, records, accounts, and other sources of information, and its facilities as may be useful to determine whether there has been compliance with this subpart. When information required of a recipient is in the exclusive possession of another agency, institution, or person which fails or refuses to furnish the required information, the recipient

shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons the information regarding the provisions of this subpart and its applicability to the program under which the recipient receives an IPA grant, in a manner the Commission finds necessary to apprise these persons of the protections against discrimination assured by the IPA and this subpart.

§ 900.509 Conduct of investigations.

(a) *Periodic compliance reviews.*—The Commission may periodically review the practices of recipients to determine whether they are complying with this subpart.

(b) *Complaints.* A person who believes himself to have been subjected to discrimination prohibited by this subpart may by himself or by a representative file a written complaint with the appropriate Commission office listed in § 900.102 of this chapter. A complaint may be filed no later than 90 days after the date on which the alleged discrimination occurred, except that the Commission may extend the time limit in this paragraph when the complainant shows that he was unaware of the time limit or that he was prevented by circumstances beyond his control from filing within the time limit.

(c) *Investigations.* (1) The Commission shall make a prompt investigation whenever a compliance review, report, complaint, audit, or other information indicates a possible failure to comply with this subpart. The purpose of an investigation under this section is to determine whether there has been a failure to comply with this subpart. The investigation will include, when appropriate, a review of the pertinent practices and policies of the recipient or other participant, the circumstances under which the possible noncompliance with this subpart occurred, and other factors relevant to a determination as to whether the recipient or other participant has failed to comply with this subpart.

(2) The complainant may also avail himself of the procedures provided under title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-5).

(d) *Resolution on matters.* (1) When an investigation under paragraph (c) of this section indicates a failure to comply with this subpart, the Commission shall inform the recipient and shall attempt to resolve the matter by informal means. When it has been determined that the matter cannot be resolved by informal means, action shall be taken as provided for in § 900.510.

(2) When an investigation does not warrant action pursuant to subparagraph (1) of this paragraph, the Commission shall inform, in writing, the recipient and the complainant, if any.

(e) *Intimidatory or retaliatory acts prohibited.* A recipient may not intimidate, threaten, coerce, or discriminate against an individual for the purpose of interfering with a right or privilege secured by this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subpart.

§ 900.510 Procedure for effecting compliance.

When the Commission determines that a recipient has failed or threatens to fail to comply with this subpart, and the noncompliance or threatened noncompliance cannot be corrected by informal means, the Commission may suspend or terminate or refuse to grant or to continue IPA financial assistance until the recipient complies with this subpart.

§ 900.511 Grant suspension or termination.

Regulations regarding suspension and termination of IPA grants will be published at a later date.

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

[FR Doc.72-21909 Filed 12-20-72;8:51 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 19524; FCC 72-1132]

FM BROADCAST STATIONS IN TERRELL HILLS, TEX.

Proposed Table of Assignment; Terminating Proceeding

Report and order. In the matter of amendment of § 73.202(b), *Table of assignments,* FM Broadcast Stations. (Terrell Hills, Texas), Docket No. 19524.

1. The Commission here considers its notice of proposed rulemaking, adopted June 14, 1972 (35 F.C.C. 2d 488, 37 F.R. 12328), inviting comments on whether FM Channel 292A, assigned at Terrell Hills, Tex., in the San Antonio urbanized area, should be deleted since it would soon be vacated by its occupant (KBUC-FM),[1] and on whether the channel should be reassigned to fill a present or future need for FM service outside the San Antonio urbanized area. Reassignment proposals for this Terrell Hills assignment were also invited.

2. The decision to hold rulemaking on these proposals was made upon reconsideration of our "Memorandum Opinion and Order of February 23, 1972" (FCC 72-180), wherein we deleted the Terrell Hills Channel 292A assignment without prior rulemaking in order to eliminate a short separation between it and a co-channel assignment at Gonzales, Tex. Upon reconsideration, requested by two prospective applicants for the Terrell Hills Channel 292A assignment (S.S.S. Broadcasting, Inc., licensee of a daytime AM station (KAPE) at San Antonio, and Terrell Hills Broadcasting Co.), we determined that the short spacing problem could be resolved by judicious site selection for a Terrell Hills Channel 292A operation, there being sufficient area approximately 8 miles west of Terrell Hills where a transmitter could be located and satisfy all separation and city service requirements of the rules. We therefore decided that the short spacing problem did not warrant deleting Channel 292A from Terrell Hills and took action rescinding that action in our "Memorandum Opinion and Order of June 14, 1972" (35 F.C.C. 2d 482). We also decided, however, that further consideration of whether the channel should be retained or deleted from Terrell Hills and reassigned elsewhere warranted further consideration in rule making. Consequently, this proceeding was instituted.

3. Comments were received from S.S.S. Broadcasting and Terrell Hills Broadcasting. Both take the position that Channel 292A should be retained as a Terrell Hills assignment and reaffirm their intention to apply for its use if it is retained there. S.S.S. Broadcasting also reaffirms its interest in using the channel to provide a first FM service in the San Antonio area which is primarily oriented to the needs of the black residents. Terrell Hills Broadcasting expresses particular interest in using the channel to provide needed programing not only for the black residents but for the Mexican-American and Chicano residents of the area as well. It points out that these residents of the area constituted approximately 57 percent of the total population of the San Antonio Standard Metropolitan Statistical area in 1970, approximately 50 percent of whom are Spanish-surnamed, of Mexican origin, and approximately 7 percent of whom are black (1971 Statistical Abstract of the United States). S.S.S. Broadcasting also submits with its comments, and with a supplement filed thereto, a number of letters from San Antonio community leaders, organizations and others in the area which express a need and desire for black-oriented programing during evening hours in the San Antonio area. No comments or reassignment proposals supporting the deletion of Channel 292A from Terrell Hills were received.

4. Terrell Hills (1970 population, 5,225) is an incorporated city located within the corporate limits of San Antonio (1970 population, 654,153) and within the San Antonio urbanized area

[1] Station KBUC-FM changed over to operation on the San Antonio Channel 298C assignment on Aug 17, 1972, under program test authority, pursuant to authorization granted its licensee, Turner Broadcasting Corp., on Nov. 10, 1971 (BPH-6285), after hearing (Decision adopted July 20, 1971, docket No. 18239, 31 F.C.C. 2d 162; stayed by order, adopted Aug. 31, 1971, F.C.C. 71-830; stay dissolved by further order, adopted Nov. 10, 1971, F.C.C. 71-1150). The license for the Station KBUC-FM operation on the San Antonio Channel 298C assignment was granted Sept. 11, 1972.

(1970 population, 830,460), which is coextensive with Bexar County. Eleven FM channels (one educational) are assigned to this area. Other than the Terrell Hills Channel 292A assignment, all are class C channels, assigned to San Antonio and in use now that Channel 298C has been activated by Station KBUC-FM. Eleven AM stations also serve as local outlets in the area. These stations provide Terrell Hills and the rest of the San Antonio urbanized area with a variety of local FM and AM services. From all indications, it also appears that Terrell Hills' broadcast needs are not distinct from those of the San Antonio area in general.[2] In these circumstances, now that the Terrell Hills Channel 292A assignment is vacant, and since it is the only class A assignment in the San Antonio urbanized area, not designed for wide area coverage, as are class C channels, to serve markets of the size of the San Antonio urbanized area, and cannot provide a service technically comparable to that which the class C stations in this area can provide[3], we felt it necessary and desirable to give consideration to whether there is any justifiable reason for retaining this class A assignment at Terrell Hills. The notice stated that the public interest might be better served by reassigning this class A channel to meet a need for FM service in unserved or underserved areas outside the San Antonio urbanized area. It pointed out, among the technically feasible possibilities are Texas communities within a radius of 40 miles and 40 to 65 miles from San Antonio, such as Charlotte, Jourdanton, Poteet, and Pleasanton, to the south and Boerne, Kerrville, Fredericksburg, and Blanco to the northwest.

5. Now that we have considered the record herein, we believe it unrealistic to expect that if Channel 292A is deleted from Terrell Hills it is likely that it would be put to use for a needed local service outside the San Antonio area in the foreseeable future; there is a real possibility that the channel might, instead, remain unused indefinitely. The fact that no comments or proposals were submitted which would indicate an interest, demand or need for use of Channel 292A in any area outside the San Antonio urbanized area tends to bear this out. The comments received also do. In commenting on the eight communities outside the San Antonio urbanized area which were mentioned in the notice as possibilities for a Channel 292A assignment, both S.S.S. Broadcasting and Terrell Hills Broadcasting contend that it is doubtful whether any of the named communities could support a new FM facility since the three largest communities (Pleasanton, with a 1970 population of 5,407; Kerrville, with a 1970 population of 12,672; and Fredericksburg, with a 1970 population of 5,326) already have occupied FM assignments and local service, and the other five named, the largest of which had a 1970 population of 3,013 (Poteet), appear too small to make a local FM outlet economically feasible. They also point out that all but two of the named communities (Fredericksburg and Blanco) fall within the 1 mv.-m.-contour of the nine San Antonio class C stations, and that those two communities and other towns in the area are served by the San Marcos and Austin, Tex., class C stations. In addition, they observe that should a need arise, FM channels other than Channel 292A could be assigned to all of the named communities without FM assignments except Blanco (1970 population, 1,022).

6. On the other hand, the comments filed by S.S.S. Broadcasting and Terrell Hills Broadcasting do evidence that there is interest and demand for use of Channel 292A at Terrell Hills and that it is reasonable to expect that Channel 292A would be used if retained there. They also dispel our concern that a Terrell Hills class A station would not be able to provide a sufficiently strong signal throughout the San Antonio urbanized area to serve is effectively or to compete with the San Antonio class C stations serving this area for audience and support. In view of the flat terrain advantages in the San Antonio area, it appears from Terrell Hills Broadcasting's showing that, in the area where a transmitter meeting all spacing requirements for a Terrell Hills Channel 292A operation could be located, a Channel 292A operation could provide the requisite city grade signal (70 dB(U)) to all of Terrell Hills, and also to most of the San Antonio urbanized area—95 percent or more of the area, according to its estimate—and could provide a signal of at least 67 dB(U) to all of the San Antonio urbanized area. A signal of that strength is adequate for effective service in the flat terrain in this area and should not put a class A station at a significant disadvantage in competing with the other class C stations in the San Antonio urbanized area, despite their superior technical capability for providing a stronger signal over a greater area.

7. The comments filed do not, however, provide a basis for concluding that Terrell Hills has a distinct need for a local outlet or that a Channel 292A operation there would serve any area which could be considered underserved from the standpoint of assignments and services available. The showings of S.S.S. Broadcasting and Terrell Hills Broadcasting as to aural broadcast programing needs of substantial segments of the population in the San Antonio area which are not being met by the existing local stations are, of course, of interest and concern and useful in our licensing processes, where such problems are properly dealt with. They are not, however, dispositive in assignment proceedings, such as this, where competing needs of communities and areas for FM assignments must be considered in making a fair and equitable distribution of the available FM channels under the standard of section 307(b) of the Communications Act.

8. Nevertheless, since there has been no demonstrated need for Channel 292A outside the San Antonio urbanized area, we think that, on balance, the public interest and the objectives of the Act and our assignment policies are best served by retaining Channel 292A at Terrell Hills. There is no public interest advantage in deleting this assignment if the channel then remains fallow, as appears likely. We are also now satisfied that the technical disadvantages of the Terrell Hills Channel 292A assignment are not such as to preclude its use for serving Terrell Hills and the San Antonio urbanized area effectively in conformity with all spacing and other technical requirements of the rules. This being the case, we believe the public interest advantages clearly lie in retaining Channel 292A at Terrell Hills to provide opportunity for Terrell Hills to continue to have its own local outlet and a market the size of the San Antonio urbanized area to have an additional and greater variety of services.

9. Accordingly, we are retaining Channel 292A at Terrell Hills, Tex., in the FM table of assignments, § 73.202(b) of the rules, and this proceeding is terminated.

Adopted: December 13, 1972.

Released: December 18, 1972.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-21923 Filed 12-20-72;8:52 am]

[2] The examiner in the comparative hearing case for the San Antonio Channel 298C assignment, Turner Broadcasting Corp., 31 F.C.C. 2d 164 (1969), concluded in this regard, as follows (at p. 184):

"Based on the record as a whole, it is concluded that Terrell Hills is realistically a residential enclave wholly within the city limits of San Antonio which shares the needs, interests, social, civic and recreational facilities of San Antonio generally; and is in large degree dependent on San Antonio for governmental services. The extent to which the record shows Terrell Hills to be distinctive rests in the higher economic position and educational achievements of its residents. Stated simply, it is one of the better residential areas of the community and nothing more, with the broadcast stations there assigned being dependent on San Antonio and its metropolitan area for existence."

[3] Aside from our desire to avoid mixing classes of FM assignments in the same city, wherever possible, or of assigning limited class A channels to the principal city of a large metropolitan area, this class A channel could not be reassigned to San Antonio, as S.S.S. Broadcasting previously suggested, since, as the notice pointed out, it could not provide the requisite 70 dB(U) signal over all of San Antonio, as § 73.315(a) of the rules requires.

FEDERAL POWER COMMISSION

[18 CFR Part 2]

[Docket No. R-362]

RELIABILITY AND ADEQUACY OF ELECTRIC SERVICE

Regional Bulk Power Supply Programs; Information To Be Reported; Extension of Time

DECEMBER 14, 1972.

Reliability and adequacy of electric service—reporting of data—participation of regulatory personnel in regional councils.

On December 1, 1972, the National Electric Reliability Council filed a request for an extension of time within which to file comments concerning the "Notice of Proposed Change in Docket No. R-362 Statement of Policy Informational Reporting (Appendix A) and Request for Comments" issued November 10, 1972, in the above-designated matter.[1]

Upon consideration, notice is hereby given that the time is extended to and including January 25, 1973, within which any interested person may submit data, views, comments, or suggestions, in writing, in the above-designated matter.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-21904 Filed 12-20-72;8:51 am]

[1] Published at 37 F.R. 24447, November 17, 1972.

[18 CFR Part 35]

[Docket No. R-463]

ELECTRIC SERVICE TARIFF CHANGES

Proposed Filing Requirements

DECEMBER 14, 1972.

1. Notice is given pursuant to section 553 of title 5 of the United States Code and to section 309 of the Federal Power Act that the Commission is proposing (a) to amend § 35.13 of its regulations under the Federal Power Act to require all electric utilities that apply for rate increases in excess of $50,000 annually to file unadjusted cost of service data for the most recent 12 consecutive months of actual experience plus estimated cost data for the 12 month period beginning 3 months after the end of the 12 months of actual data and (b) to add a new § 35.8(a) to provide for the filing of a form of public notice with each tariff change.

2. Section 35.13(b)(4)(iii) of our present regulations under the Federal Power Act requires a cost of service for a test period of 12 consecutive months of available actual experience and provides for the submittal of information regarding any significant changes in facilities, operations, or costs which will become effective within 8 months of the last month of available actual experience.

3. We are now proposing that the public utility file an unadjusted cost of service for the most recent 12 consecutive months for which actual data are available (period I). In addition the public utility would be required to file estimated cost of service data for the 12 month period beginning 3 months after the end of the 12 months of actual data (period II).

It is expected that this information will enable the Commission to consider data more suitable for the determination of rates for future use than under present methods. In addition it will minimize adjustments or annualizations of book or estimated book data.

4. To effect this change it is proposed:

a. To delete the present § 35.13(b)(4), (iii) and (iv), and substitute a new subdivision (iii) as set forth below.

b. In Statement A, B, C, D, E, F, H, I, J, K, L, M, and N, wherever the expression "the test period" is used, substitute the expression "periods I and II."

c. In Statement G, sections (a) and (b), change the phrase "as of the date of the most recently available balance sheet" to "as of the end of period I and estimated to be outstanding as of the end of period II." In section (c), change the phrase "preceding the date of the most recently available balance sheet" to "preceding the end of period I". Provide estimates of similar data for each projected sale of common stock during the time between the end of period I and the end of period II, except that the data in the last three columns of the table may be omitted for this latter period.

d. In § 35.13(b)(5)(i), change the phrase "subparagraph (4)(iv) of this paragraph" to "paragraph (4)(iii) of this paragraph".

§ 35.13 Filing of changes in rate schedules.

* * * * *

(b) * * *

(4) * * *

(iii) The statement of the cost of service should contain unadjusted system costs for the most recent 12 consecutive months for which actual data are available (period I) including return, taxes, depreciation, and operating expenses, and an allocation of such costs to the service rendered. The statement of cost of service shall include an attestation by the chief accounting officer or other accounting representative of the filing public utility that the cost statements and supporting data submitted as a part of the filing which purport to reflect the books of the public utility do, in fact, set forth the results shown by such books. Following is a description of statements A through O required to be filed pursuant to this subparagraph. In addition, the public utility shall file statements A through O based on estimates for the 12 consecutive months beginning 3 months after the end of period I (period II). Full explanation of the bases of each of the estimated figures shall be included. Period II shall be the "test period."

* * * * *

The Commission proposes to add to its regulations under the Federal Power Act § 35.8(a) which would require each electric public utility filing a tariff change with the Commission to include in its filing a notice of the proposed change, suitable for publication in the FEDERAL REGISTER, which will briefly summarize the facts contained in the filing in such a way as to acquaint the public with its scope and purpose. The proposed section is as follows:

§ 35.8 Form of notice for Federal Register.

(a) The public utility shall file a form of notice suitable for publication in the FEDERAL REGISTER which shall be in the following form:

FEDERAL POWER COMMISSION

Name of Public Utility Docket No.___

NOTICE OF PROPOSED CHANGES IN FPC ELECTRIC SERVICE TARIFF

Take notice that (name of public utility), on (date), tendered for filing proposed changes in its FPC Electric Service Tariff, (volume Nos.). [The following language in the first paragraph applies only to increased rate filings]. The proposed changes would increase revenues from jurisdictional sales and service by (amount) based on the 12 month period ending (date). [If changes other than increased rates and charges are proposed, the public utility shall concisely state the nature of these changes].

[The public utility shall briefly describe the reasons for the proposed changes in the second paragraph.]

Copies of the filing were served upon the public utility's jurisdictional customers, (other parties the public utility served, inter alia, State public service commissions, other Government agencies, etc.)

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 441 G Street NW., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

_____
Secretary

5. Any interested person may submit to the Federal Power Commission, Washington, D.C. 20426, not later than January 29, 1973, data, views, and comments in writing concerning the matters herein proposed. An original and 14 conformed copies should be filed with the Commission. Submissions to the Commission should indicate the name and address of the person to whom correspondence in regard to the proposal should be addressed, and whether the person filing them requests a conference at the Federal Power Commission to discuss the proposed revision. The Commission will consider all such written submissions before action on the matters herein proposed.

By direction of the Commission.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-21893 Filed 12-20-72;8:50 am]

[18 CFR Part 154]

[Docket No. R-464]

NATURAL GAS TARIFF CHANGES

Proposed Filing Requirements

DECEMBER 14, 1972.

Pursuant to 5 U.S.C. 553 and sections 8, 10, and 16 of the Natural Gas Act (52 Stat. 825, 826, 830; 15 U.S.C. 717g, 717i,

717o), the Commission gives notice that it proposes to add section 154.28 and to amend section 154 of its regulations under the Natural Gas Act.

Our regulations presently require that a natural gas company, in operation for 12 months at the time of filing for an increase in rates, file a cost of service for a test period consisting of 12 consecutive months of most recent actual experience, adjusted for changes in revenues and costs which are known and measurable with reasonable accuracy and which will become effective within 9 months after the last month of actual experience, but in no event shall such test period extend more than 6 months beyond the date of filing.

We are now proposing that the natural gas company file a cost of service for a test period consisting of 12 consecutive months of most recent actual experience, adjusted for changes in revenues and costs which will become effective within 9 months after the last month of actual experience, but in no event shall such test period extend more than 9 months beyond the date of the filing.

The intent of this rule making is to facilitate the use of a yearend rate base adjusted to reflect the conditions that exist at the end of the 9 month adjustment period.

Under this proposal changes in operation and maintenance expenses, return, depreciation and taxes would be adjusted to equivalent annual levels at the end of the 9-month period. Such a test period would be reasonably representative of sales, plant, depreciation and other costs when the rates go into effect and provide a test period more suitable for the determination of rates for future use than under present methods. To effect this change it is expected that amendments to several sections of Part 154 will be required as set forth below:

PROPOSED CHANGES TO § 154.63

CHANGES IN A TARIFF, EXECUTED SERVICE AGREEMENT OR PART THEREOF OF THE REGULATIONS UNDER THE NATURAL GAS ACT

Present	*Proposed Changes*
Paragraph (c) (1) and (2): Item by reference for major rate increase.	Change: "Chief, Pipeline Division" to "Chief, Pipeline and Producer Rate Division".
Paragraph (e) (4): Working papers and supporting data.	Change: "Pipeline Division" to "Pipeline and Producer Rate Division".
Schedule C-2 showing major plant addition and retirement projects for the test period, brief descriptions, approximate dates of commercial operation or retirement from service, and cost.	Schedule C-2 showing major plant addition and retirement projects during the 9 months after the last month of the base period, brief descriptions, approximate dates of operation or retirement from service, and costs classified by functions.
Schedule C-3, which is to be part of the working papers showing 12 average monthly book balances, during the 12 months in the base period, for each detailed plant account, each subtotal representing functional classifications and total plant, the sum of such 12 average balances shall be divided by 12; and the effect of proposed adjustments on the average balances: *Provided, however,* That to the extent plant costs are not available by detailed plant accounts they may be shown by functional classifications.	Schedule C-3 which is to be part of the working papers showing monthly book balances, for each of the 12 months in the base period by functional classification and detailed by plant account. In adjoining columns there should be shown the effect of the adjustments shown in Schedule C-2 on the balance at the end of the base period to arrive at an adjusted balance as of the end of the 9-month adjustment period.
Schedule C-4.	Change: "The last 5 calendar years" to "the last calendar year".
Schedule C-5 showing in respect of Accounts 106 and 107, at the beginning and end, respectively, of the 12 months of actual experience a list of uncompleted work orders (small items grouped) claimed in the rate base, giving the work order number, description and amount of each, and the amounts of each type of undistributed construction overheads. As part of the working papers include: A mainline map showing all major projects completed during the base period, with a key system indicating major work orders included in each project and reference to FPC certificate numbers; a list of principal projects certificated by FPC (including temporary certificates for the last 5 calendar years, ending during the 12 months of actual experience), setting forth the actual or estimated cost of the facility and indicating the total increase in contract demand and annual volumes associated with each major certificate.	Schedule C-5 showing in respect of Accounts 106 and 107, at the end of the 12 months of actual experience a list of uncompleted work orders (small items group claimed in the rate base, giving the work order number, docket number, description and amount of each and the amounts of each type of undistributed construction overheads.
Schedule C-10, which is to be part of the working papers, giving full details including docket number of any acquisitions of gas in place, other than acquisition of leasehold interests, for the last 5 calendar years, ending during the 12 months of actual experience.	Schedule C-10 which is to be part of the working papers, giving full details including docket number of any acquisitions of gas in place, other than acquisition of leasehold interests for the calendar years since the last rate filing, but not to exceed 5 years.
Schedule C-12, which is to be part of the working papers, and may be cross-referenced if such material is in the company's FPC Form No. 2, complete statement of methods and procedures followed in capitalizing interest during construction and other construction overheads, including any policy changes, effective dates and reasons therefor for the last 5 calendar years, ending during the 12 months of actual experience.	Schedule C-12, which is to be part of the working papers, a complete statement of methods and procedures followed in capitalizing interest during construction and other construction overheads, only if a change in such methods and procedures has been made since the end of the year reported in the company's last FPC Form No. 2.
Schedule C-13, which is to be part of the working papers, and may be cross-referenced if such material is in the company's FPC Form No. 2, showing any significant changes in intangible plant for the last 5 calendar years, ending during the 12 months of actual experience.	Schedule C-13, which is to be part of the working papers showing any significant changes in intangible plant since the end of the year reported in the company's last FPC Form No. 2.
Schedule C-14, which is to be part of the working papers, setting forth the cost of plant in service and description thereof carried on the company's books as gas utility plant which was not being used in rendering gas service.	Schedule C-14, which is to be part of the working papers, setting forth the cost of plant in service and description thereof carried on the company's books as gas utility plant which was not being used in rendering gas service, only if there is a significant change in such amounts since the end of the year reported in the company's last FPC Form No. 2.
Schedule C-15.	Delete entire schedule.

Present	*Proposed Change*
Schedule C-16, which is to be part of the working papers, setting forth any operating units or systems acquired for which Commission approval of the final accounting has not been obtained. For such acquisitions submit summary analysis of the property acquired, proposed journal entries to record the acquisition and the proposed disposition of any difference between cost of acquisition and net original cost.	Schedule C-16, which is to be part of the working papers, setting forth any operating units or systems acquired for which Commission approval of the final accounting has not been obtained, the proposed journal entries to record the acquisition, and the proposed disposition of any difference between cost of acquisition and net original cost, only if there is a significant change in such amounts since the end of the year reported in the company's last FPC Form No. 2.
Statement D—Accumulated provisions for depreciation, depletion, amortization, and abandonment. This statement shall show the accumulated provisions for depreciation, amortization, depletion, and abandonment (Accounts 108, 109, 110, 111.1, 111.2, 111.3, 112, 113.1, 113.2), as of the beginning of the 12 months of actual experience, the book additions and reductions during the 12 months, together with the balances at the end of the 12-month period. In adjoining columns there should be shown the adjustments, if any, to the book amounts and the total. All adjustments shall be clearly and fully explained in the supporting material submitted.	Statement D—Accumulated provisions for depreciation, depletion, amortization, and abandonment. This statement shall show the accumulated provisions for depreciation, depletion, amortization, and abandonment (Accounts 108 [detailed by functional plant classification], 109, 110, 111.1, 111.2, 111.3, 112, 113.1, 113.2), as of the beginning of the 12 months of actual experience, the book additions and reductions during the 12 months, together with the balances at the end of the 12-month period. In adjoining columns there should be shown adjustments to these ending book balances and the total adjusted balances.
Schedule D-1, which is to be part of the working papers showing 12 average monthly book balances, during the 12 months in the base period, for each account and functional plant classification, the sum of such 12 average balances shall be divided by 12; and the effect of proposed adjustments on the average balances.	Schedule D-1, which is to be part of the working papers showing monthly book balances, for each of the 12 months in the base period by functional plant classification. In adjoining columns there should be shown the effect of the adjustments shown in Schedule D on the balances at the end of the base period to arrive at adjusted balances as of the end of the 9-month adjustment period.
Statement E—Working capital.	Delete the following sentence which is no longer applicable, "also, during the period corporate tax payment provisions of the Internal Revenue Code of 1954 remain in effect there shall be reflected a credit to the gross working capital an amount equal to 50 percent of the current portion of the claimed Federal income tax allowance in the cost of service."
Statement F(2).	Statement F(2)—Add footnote 3 at the end of the sentence. "[3] Where the common equity of the filing company is obtained from a controlling company but the senior securities are sold to nonaffiliated parties the capitalization, cost of debt, and cost of preferred stock capital of the controlling company shall be furnished on an unconsolidated basis."
	Statement F(3)—After "12 months actual experience" add "and as of the end of the 9-month period."
New statement.	Statement F(3) (f)—If the company has acquired at a discount some part of the outstanding debt which could be used to meet sinking fund requirements it shall show the gain, amortized over the remaining life of the debt from the date of acquisition, being retired and show the total amount of amortization applicable to the test period.
	Statement F(3) (f)—Change "(f)" to "(g)".
	Statement F(4)—After "12 months actual experience" add "and as of the end of the 9-month period."
New subparagraph.	Statement F(4) (i)—If the company has acquired at a discount some part of the outstanding preferred stock which could be used to meet sinking fund requirements it shall show the gain, amortized over the remaining life of the preferred stock from the date of acquisition being retired and show the total amount of amortization applicable to the test year.
	Statement F(4) (i)—Change "(i)" to "(j)".
New schedule of Statement F(5)-5.	Schedule F(5)-5—Show the "Times Interest Earned," before and after taxes, produced by the claimed rate of return and include the method of computation.
New statement.	Statement F(6)—Submit a statement of source and application of funds for the base period and also for the 9-month period used in the test year.
Schedule H(1)-3.	Delete sentence, "If any of such prices are effective subject to refund, there shall be shown, by contract and the Commission docket number, for the base period, the rate per Mcf, and the amount collected subject to refund."
	Delete after producing area, "But with a statement of the extent to which prices effective subject to refund are included."
	Delete entire last paragraph, "If the company records any amount on its books in a given month during the 12 months of actual experience which apply to gas purchases for a previous month or other period, a schedule indicating month and amount of payment made and distribution of payment and volumes to months to which applicable shall be submitted."
Schedule H(3)—Income taxes.	Delete sentence, "The latter representing 52 percent of the excess of liberalized description and accelerated amortization of emergency facilities, if any, claimed under sections 167 and 168 of the Internal Revenue Code, respectively, over straight-line depreciation allowable for tax purposes."

Present	*Proposed Change*
New statement.	Schedule H(3)-6—Accumulated deferred income taxes. This statement shall show monthly book balances of accumulated deferred income taxes for each of the 12 months during the base period. In adjoining columns there should be shown additions and reductions for the 9 months subsequent to the base period balance and the total adjusted balance.
Statement O—Description of company operations. A description of the company's area and diversity of operations including miles of pipe and compressor stations operated and breakdown of sales as among field and transmission and jurisdictional and nonjurisdictional. A concise statement of the last rate case of applicant with reference to FPC docket numbers and reference to FPC decisions, orders, and rate schedules applicable to applicant.	Statement O—Description of company operations. A description of the company's area and diversity of operations including the following: (1) A detailed system map. (2) A complete rate history showing filings and rate levels since the beginning of the company with a brief description of each filing. (3) A detailed history of each major expansion (new service) and major abandonment certificate filing since the beginning of the company along with a brief description of each filing. (4) A digest of contractual provisions with individual producer suppliers relative to pricing, volumes (minimum and maximum obligations), and term, by contract. (5) A detailed description of how the company designs and operates its systems, including design temperature or temperatures and the effect of conjunctive billing on design considerations.

In addition the Commission proposes to add to its Regulations under the Natural Gas Act, § 154.28 which would require each natural gas company filing a tariff change with the Commission to include in its filing a notice of the proposed change, suitable for publication in the FEDERAL REGISTER, which will briefly summarize the facts contained in the filing in such a way as to acquaint the public with its scope and purpose. The proposed new section is as follows:

§154.28 Form of notice for Federal Register.

The company shall file a form of notice suitable for publication in the FEDERAL REGISTER which shall be in the following form:

FEDERAL POWER COMMISSION

[Docket No. ——]

[NAME OF COMPANY]

NOTICE OF PROPOSED CHANGES IN FPC GAS TARIFF

Take notice that (name of company), on (date), tendered for filing proposed changes in its FPC Gas Tariff, Volume No. (number). [The following language in the first paragraph applies only to increased rate filings.] The proposed changes would increase revenues from jurisdictional sales and service by (dollar amount) based on the 12-month period ending (date), as adjusted. [If changes other than increased rates and charges are proposed, the company shall state concisely the nature of these changes.

[The company shall briefly describe the reasons for the proposed changes in the second paragraph.]

Copies of the filing were served upon the company's jurisdictional customers (other parties the company served, inter alia state regulatory commissions, other government agencies, etc.).

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 441 G Street NW., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Secretary.

Any interested person may submit to the Federal Power Commission, Washington, D.C. 20426, not later than January 29, 1973, data, views, comments, or suggestions in writing concerning all or any part of the revisions proposed herein. Written submittals will be placed in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, Washington, D.C. 20426, during regular business hours. The Commission will consider all such written submittals before acting on the matters herein proposed. An original and 14 conformed copies should be filed with the Commission. Submittals to the Commission should indicate the name, title, mailing address and telephone number of the person to whom correspondence in regard to the proposal should be addressed, and whether the person filing them requests a conference at the Federal Power Commission to discuss the proposed revisions. The staff, at its discretion, may grant or deny requests for conferences. The Secretary shall cause prompt publication of this notice to be made in the FEDERAL REGISTER.

By direction of the Commission.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-21894 Filed 12-20-72;8:50 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 270]

[Release No. IC-7535; File No. S7-459]

APPLICATIONS FOR EXEMPTIONS AND NOTICE OF PUBLIC PROCEEDINGS

Notice of Proposed Rule Making

Notice is hereby given that the Securities and Exchange Commission has under consideration the adoption of a new rule and the amendment of present Rule 0-5 (17 CFR 270.0-5), under the Investment Company Act of 1940 ("Act"), as amended (15 U.S.C. 80a-1 et seq.). The proposed adoption and amendment would be ordered pursuant to section 38(a) of the Act (15 U.S.C. 80a-37(a)) for the purpose of facilitating the processing of applications for orders under the provisions of the Act and the rules promulgated thereunder.

I. *Proposed Rule 0-2(g) (17 CFR 270.02 (g))*. Rule 0-2 under the Act, "General Requirements of Papers and Applications," specifies procedures to be followed by persons in filing papers and applications with the Commission and prescribes a format for their preparation.

In recent years applications desiring expedited treatment have informally submitted proposed notices which might be used by the Commission in giving public notice of the applications. (Such submissions were requested by the Commission in Investment Company Act Release No. 5632, March 12, 1969 (34 F.R. 5547).) While this procedure has been of assistance to the staff in reducing its backlog of applications, certain difficulties have arisen. In some instances, the draft notice, an informal document not heretofore subject to the verification requirements of Rule 0-2(d) (17 CFR 270.0-2(d)) under the Act, has been at variance with the application it was intended to describe. Further, because the procedure for submission of such a document was informal and not known to all applicants, it was followed only irregularly, and thus the expedited treatment which it sometimes permitted was not as uniformly available to all applicants as we would wish it to be. For these reasons and to further facilitate the processing of such applications, the Commission is now proposing to make the submission of a proposed notice a formal requirement for applications under Rule 0-2.

Notices are designed to inform the public of the nature of the underlying transaction or matter, and proposals

submitted by applicants should not ignore relevant, material facts which might be viewed as militating against the granting of applications. Applicants must be aware that the notices so submitted will be regarded as proposals only and need not be followed by the Commission.

II. *Proposed Deletion of Rule 0-5(b) (17 CFR 270.0-5(b))*. Rule 0-5 under the Act presently provides, in pertinent part, that "with respect to any proceeding initiated by the filing of an application, or upon the Commission's own motion, pursuant to any section of the Act or any rule or regulation thereunder, unless in the particular case a different procedure is provided: * * *

(b) An order disposing of the matter will be issued as of course on a date to be specified in the notice, unless prior to such date the Commission orders a hearing on the matter.

It appears to the Commission that the procedure described above is neither appropriate nor practical in the circumstances involved. Even now notices typically contain no exact date when "a(n) order disposing of the matter will be issued." Instead, as prescribed by Rule 0-5(a) (17 CFR 270.0-5(a)), they specify the date by which interested persons who wish to do so must request a hearing on the matter and provide that an order disposing of the matter may be issued at any time after that date. For these reasons, the Commission is now considering the deletion of present subsection (b) of Rule 0-5 and, as a consequence thereof, the redesignation of subsequent subsections.

Commission action. The Commission proposes to amend Part 270 of Chapter II of Title 17 of the Code of Federal Regulations by (1) adding a new paragraph (g) to § 270.0-2 and by (2) revising § 270.0-5 by (i) deleting paragraph (b) and by redesignating present paragraphs (c) and (d) as (b) and (c) as indicated below:

I. As proposed, § 270.0-2 would be amended by adding a new paragraph (g) reading as follows:

§ 270.0-2 General requirements of papers and applications.

* * * * *

(g) *Proposed notice.* A proposed notice of the proceeding initiated by the filing of the application shall accompany each application and, if necessary, shall be modified to reflect any amendments to such application.

II. As proposed, § 270.0-5 would be revised by deleting paragraph (b) and by redesignation present paragraphs (c) and (d) as paragraphs (b) and (c) reading as follows:

§ 270.0-5 Procedure with respect to applications and other matters.

The procedure hereinbelow set forth will be followed with respect to any proceeding initiated by the filing of an application, or upon the Commission's own motion, pursuant to any section of the Act or any rule or regulation thereunder, unless in the particular case a different procedure is provided:

(a) Notice of the initiation of the proceeding will be published in the FEDERAL REGISTER and will indicate the earliest date upon which an order disposing of the matter may be entered. The notice will also provide that any interested person may, within the period of time specified therein, submit to the Commission in writing any facts bearing upon the desirability of a hearing on the matter and may request that a hearing be held, stating his reasons therefor and the nature of his interest in the matter.

(b) The Commission will order a hearing on the matter, if it appears that a hearing is necessary or appropriate in the public interest or for the protection of investors, (1) upon the request of any interested person or (2) upon its own motion.

(c) At the time of filing an application under the Act, the applicant or applicants shall pay to the Commission a total fee of $500, no part of which shall be refunded; however, this fee shall not be applicable to (1) any application for deregistration of an investment company pursuant to section 8(f) of the Investment Company Act if such company has assets of less than $100,000; or (2) any application pursuant to section 9(c) of such Act.

(Sec. 38(a), 54 Stat. 841, 15 U.S.C. 80a-37(a))

All interested persons are invited to submit views and comments with respect to the proposals, in writing to Ronald F. Hunt, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, on or before January 3, 1973. All communications with respect to this matter should refer to File No. S7-459. Such communications will be available for public inspection.

By the Commission, December 1, 1972.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72-21870 Filed 12-20-72;8:47 am]

Notices

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

DEFENSE INTELLIGENCE AGENCY SCIENTIFIC ADVISORY COMMITTEE

Notice of Meeting

A panel of the Defense Intelligence Agency Scientific Advisory Committee will hold a closed meeting to discuss classified matters at 9:00 a.m. on January 9 and 10, 1973.

MAURICE W. ROCHE,
Director, Correspondence and Directives Division, Office of the Assistant Secretary of Defense (Comptroller).

[FR Doc.72-21906 Filed 12-20-72;8:51 am]

DEFENSE INTELLIGENCE AGENCY SCIENTIFIC ADVISORY COMMITTEE

Notice of Meeting

The Defense Intelligence Agency Scientific Advisory Committee will hold a closed meeting to discuss classified matters at 9 a.m., on January 18 and 19, 1973.

MAURICE W. ROCHE,
Director, Correspondence and Directives Division, Office of the Assistant Secretary of Defense (Comptroller).

[FR Doc.72-21907 Filed 12-20-72;8:51 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[New Mexico 17369]

NEW MEXICO

Order Closing Lands to Collection of Petrified Wood; Correction

DECEMBER 14, 1972.

In F.R. Doc. 72-20293 appearing at page 25060 of the issue for Saturday, November 25, 1972 (37 F.R. 25060) the following changes should be made in the land description:

T. 23 N., R. 13 W., add "Sec. 3, N½ NW¼;" Sec. 4, change "N½SE¼" to "N½NE¼."

T. 24 N., R. 13 W., add, "Sec. 34, SW¼;" and eliminate "Sec. 35, SW¼."

W. J. ANDERSON,
State Director.

[FR Doc.72-21865 Filed 12-20-72;8:47 am]

National Park Service

[Order 76]

DEPUTY DIRECTOR, ASSOCIATE DIRECTORS, ET AL.

Delegation of Authority

SECTION 1. Deputy Director. The Deputy Director of the National Park Service and officers designated by him to serve in an acting capacity for him in his absence, may exercise all of the authority of the Director, with respect to any matter which may come before him.

SEC. 2. Associate Directors. The Associate Directors of the National Park Service, and officers designated by them to serve in acting capacities for them in their absence, may exercise all of the authority of the Director, with respect to any matter which may come before them within their program responsibility, as outlined in Part 145 of the Departmental Manual.

SEC. 3. Deputy Associate Director and Assistant Directors (excluding Assistant Director Service Center Operations) and officers designated by them to serve in acting capacities for them in their absence, may exercise all of the authority of the Director, with respect to any matter which may come before them within their program responsibility, as outlined in Part 145 of the Departmental Manual.

SEC. 4. Redelegation. The authority delegated in this Order No. 76 may be redelegated.

SEC. 5. Revocation. This order supersedes National Park Service Delegation of Authority Order No. 21, as amended, dated August 2, 1962, and published August 9, 1962, 27 F.R. 7903.

(245 DM, 34 FR 13879-13880 of August 29, 1969.)

Dated: December 11, 1972.

THOMAS FLYNN,
Acting Director, National Park Service.

[FR Doc.72-21863 Filed 12-20-72;8:47 am]

Office of Hearings and Appeals

[Docket No. M 73-5]

KANAWHA COAL CO.

Mandatory Safety Standard; Petition for Modification

In regard to petition of Kanawha Coal Co. for modification of Mandatory Safety Standard (30 CFR 77.516).

In accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. § 861(c) (1970)), notice is hereby given that the Kanawha Coal Co. has filed a petition to modify the application of 30 CFR 77.516, so far as it adopts Articles 502-11 and 502-13 of the current National Electric Code, to its Ashford (or Madison) Mine.

Petitioner requests that it not be required to comply with the following requirements relating to the installation of receptacles, attachment plugs, and lighting fixtures in its coal processing plant:

3. The receptacles and attachment plugs must be designed so that connection to the supply circuit cannot be made or broken while live parts are exposed. This requirement exists due to the plant being classed as a hazardous location.

4. The lighting fixtures in that part of the plant where coal is being processed need to be of the type approved for class II, group F hazardous locations, as defined by the current edition of the National Electrical Code.

Petitioner asks as an alternative that it be permitted to use the receptacles, attachment plugs, and lighting fixtures as installed in the plant. Petitioner states that such installations will at all times guarantee no less than the same measure of protection as the quoted standard.

Parties interested in this petition may request a hearing on the petition or furnish comments on it within 30 days from the date of publication of this notice in the FEDERAL REGISTER. Such request or comments must be filed with the Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203. Copies of the petition are available for inspection at that address.

JAMES N. DAY,
Director, Office of Hearings and Appeals.

DECEMBER 13, 1972.

[FR Doc.72-21864 Filed 12-20-72;8:47 am]

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

EAST ALABAMA LIVESTOCK SALE, OXFORD, ALA., ET AL.

Posted Stockyards

Pursuant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. et seq.), it was ascertained that the livestock markets named below were stockyards within the definition of that term contained in section 302 of the Act, as amended (7 U.S.C. 202), and notice was given to the owners and to the public by posting notices at the stockyards as required by

said section 302, on the respective dates specified below.

Facility Number, name, and location of stockyard and date of posting

ALABAMA

AL-154 East Alabama Livestock Sale, Oxford, December 4, 1972.

KANSAS

KS-197 Miami County Livestock Co., Inc., Paola, November 15, 1972.

MISSOURI

MO-228 Seaton Livestock Auction, Inc., Nixa, October 24, 1972.

TENNESSEE

TN-171 Rhea County Livestock Auction Company, Inc., Dayton, November 2, 1972.

VIRGINIA

VA-145 Front Royal Livestock Sales, Inc., Front Royal, November 3, 1972.

Done at Washington, D.C., this 15th day of December 1972.

EDWARD L. THOMPSON,
Acting Chief, Registrations, Bonds, and Reports Branch, Livestock Marketing Division.

[FR Doc.72-21891 Filed 12-20-72;8:49 am]

DEPARTMENT OF COMMERCE

Office of Import Programs

COLUMBIA UNIVERSITY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 F.R. 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No. 72-00285-01-77030. Applicant: Columbia University, Department of Chemistry, Box 666 Havemeyer Hall, New York, NY 10027. Article: NMR spectrometer, Model PS-100. Manufacturer: JEOL, Ltd., Japan. Intended use of article: The article is intended to be used for physical, chemical, dynamic, and structural studies on organic and inorganic molecules and nmr studies on 1_H, 19_F, 13_C, 31_P, 11_B, 14_N, and 15_N will be carried out. The article is also intended to be used to train both graduate and undergraduate students in both FT and c.w. NMR spectroscopy.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The National Bureau of Standards (NBS) advised in its memorandum dated October 24, 1972, that a method of comparing the pulse power of the foreign and most closely comparable domestic instrument is to compare their 90° pulse width for C^{13}. The foreign article has a guaranteed specification of 10 microseconds. The manufacturer of the most closely comparable domestic instrument, the Varian Model XL100 and accessories, has offered a guaranteed specification of 40 microseconds which is significantly longer. NBS advises that a high pulse power which is at least equal to that of the foreign article is pertinent to the T_1 (relaxation time) measurements for which the article is intended to be used. NBS also advises that it knows of no domestic instrument which is scientifically equivalent to the foreign article for the applicant's intended use.

For these reasons, we find the Model XL100 and accessories are not of equivalent scientific value to the foreign article for the purposes for which the article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

B. BLANKENHEIMER,
Acting Director,
Office of Import Programs.

[FR Doc.72-21939 Filed 12-20-72;8:53 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

POLYCHLORINATED BIPHENYLS

Availability of Final Environmental Impact Statement

The Commissioner of Food and Drugs published a notice of proposed rule making in the FEDERAL REGISTER of March 18, 1972 (37 F.R. 5705), limiting the sources by which polychlorinated biphenyls (PCB's) may contaminate animal feed, food, and food-packaging materials during manufacturing, handling, and storage. The notice also proposed limiting the level of PCB's in food-packaging materials and in certain foods containing unavoidable PCB residues as a result of environmental contamination. The proposed action is designed to minimize and eliminate human exposure to PCB's from dietary sources by dealing with identified sources or causes of PCB contamination of food.

Notice is hereby given that a document entitled "Final Environmental Impact Statement—Rule Making on Polychlorinated Biphenyls" has been issued by the Food and Drug Administration. Copies of the statement are available from the Office of the Assistant Commissioner for Public Affairs, Room 15B-42, or the Office of the Hearing Clerk, Room 6-88, 5600 Fishers Lane, Rockville, Md. 20852.

This notice is issued pursuant to provisions of the National Environmental Policy Act of 1969, Public Law 91-190 (sec. 102(2)(c), 83 Stat. 853; 42 U.S.C. 4332) and the Council on Environmental Quality guidelines published in the FEDERAL REGISTER of April 23, 1971 (36 F.R. 7724), and under authority delegated to the Commissioner (21 CFR 2.120).

Dated: December 18, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-21957 Filed 12-20-72;8:54 am]

National Institutes of Health

AUTOMATION IN THE MEDICAL LABORATORY SCIENCES REVIEW COMMITTEE

Notice of Meeting

Pursuant to Executive Order 11671, notice is hereby given of the meeting of the Automation in the Medical Laboratory Sciences Review Committee, January 31-February 1, 1973, at 9 a.m., Bellevue Hotel, San Francisco. This meeting will be open to the public from 9 a.m. to 3 p.m., to discuss administrative details of the committee and progress reports of supported contracts, and closed to the public thereafter to discuss and evaluate and/or rank grant applications and contract proposals in accordance with section 13(d) of Executive Order 11671 and the Secretary's Determination of September 27, 1972. Attendance by the public will be limited to space available.

Mr. Paul Deming, Information Officer, NIGMS, Building 31, Room 4A46, Bethesda, Md. 20014, Telephone: 301—496-5676, will furnish a summary of the meeting and a roster of committee members.

Substantive program information may be obtained from Dr. Robert S. Melville, Executive Secretary, Westwood Building, Room 938, Telephone: 301—496-7081.

Dated: December 12, 1972.

JOHN F. SHERMAN,
Deputy Director, National Institutes of Health.

[FR Doc.72-21767 Filed 12-20-72;8:45 am]

GROWTH AND DEVELOPMENT RESEARCH AND TRAINING COMMITTEE

Notice of Meeting

Pursuant to Executive Order 11671, notice is hereby given of the meeting of the Growth and Development Research and Training Committee, January 29-30, 1973, at 9 a.m., at the Montgomery West Room of the Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD. This meeting will be open to the public from 9 to 11 a.m., January 29, to discuss general business of the Committee and reports given by the Associate Director for Extramural Programs, Growth and Development Program Director, and Executive Secretary of the Committee, and closed

to the public from 11 a.m. to 5 p.m. on January 29 and from 9 a.m. to the conclusion of the meeting on January 30, to review, discuss, and evaluate and/or rank grant applications in accordance with section 13(d) of Executive Order 11671 and the Secretary's Determination of September 27, 1972. Attendance by the public will be limited to space available.

Ms. Patricia Gabbett, Information Officer, NICHD, Landow Building, Room A-804B, National Institutes of Health, 496-5133, will furnish summaries of the meeting and rosters of the committee members.

Substantive information may also be obtained from Dr. George Morgan, Executive Secretary of the Committee, Landow Building, Room C717A, National Institutes of Health, 496-5575.

Dated: December 12, 1972.

JOHN F. SHERMAN,
Deputy Director, National Institutes of Health.

[FR Doc.72-21765 Filed 12-20-72;8:45 am]

HEALTH MANPOWER OPPORTUNITY ADVISORY COMMITTEE

Notice of Meeting

Pursuant to Executive Order 11671, notice is hereby given of the meeting of the Health Manpower Opportunity Advisory Committee, January 29-31, 1973, at 9 a.m. The location of the meeting is not definite—the Executive Secretary may be contacted. This meeting will be open to the public from 9 to 10:30 a.m. to discuss special health career opportunity grants program guidelines, and closed to the public from 10:45 a.m. on January 29 through January 31 adjournment, to review, discuss, and evaluate and/or rank grant applications in accordance with section 13(d) of Executive Order 11671 and the Secretary's Determination of September 27, 1972. Attendance by the public will be limited to space available.

The name of the Executive Secretary who will furnish summaries of the closed meeting and rosters of committee members as well as substantive program information is Mr. Albert L. Barringer, Associate Director of the Office of Health Manpower Opportunity, BHME, OD, Room 5C11, Building 31, NIH. Mr. Barringer's telephone number is 496-2112.

Dated: December 12, 1972.

JOHN F. SHERMAN,
Deputy Director, National Institutes of Health.

[FR Doc.72-21763 Filed 12-20-72;8:45 am]

NATIONAL HEART AND LUNG INSTITUTE

Notice of Meetings

Pursuant to Executive Order 11671, notice is hereby given of meetings of the following committees and the executive secretaries from whom substantive information may be obtained.

Committee, date, time, and location of meeting

Pulmonary Training Committee: Dr. Robert C. Stroud, 496-7761, Room 6A05, Westwood Building, NIH, Bethesda, Md.; January 24, 1973; 8:30 a.m.-5 p.m.; NIH Building 31, Conference Room 6, Bethesda, Md.

Therapeutic Evaluations Committee: Dr. Eleanor M. K. Darby, 496-7445, Room 657, Westwood Building, NIH, Bethesda, Md.; January 25-26, 1973; 1-5 p.m., 9 a.m.-5 p.m.; NIH Building 31, Conference Room 4, Bethesda, Md.

Cardiovascular Training Committee: Dr. Robert C. Stroud, 496-7761, Room 6A05, Westwood Building, NIH, Bethesda, Md.; February 1-2, 1973; 8:30 a.m.-5 p.m.; NIH Building 31, Conference Room 9, Bethesda, Md.

Dr. Jerome G. Green, Director, Division of Extramural Affairs, National Heart and Lung Institute, Westwood Building, Room 5A14, NIH, 496-7416, will furnish summaries of the meetings and rosters of the committee members.

These meetings shall be closed to the public in accordance with section 13(d) of Executive Order 11671 and the Secretary's Determination of September 27, 1972, in order to review, discuss and evaluate and/or rank grant applications.

Dated: December 12, 1972.

JOHN F. SHERMAN,
Deputy Director, National Institutes of Health.

[FR Doc.72-21769 Filed 12-20-72;8:45 am]

NATIONAL INSTITUTE OF GENERAL MEDICAL SCIENCES

Notice of Meetings

Pursuant to Executive Order 11671, notice is hereby given of meetings and the individuals from whom summaries of meetings may be obtained.

Summaries of meetings and rosters of committee members may be obtained from Mr. Paul Deming, Information Officer for the National Institute of General Medical Sciences, Building 31, Room 4A46, Bethesda, Md. 20014. Telephone: 301-496-5676. Substantive program information may be obtained from the Executive Secretaries.

Committee and executive secretary, date, time, and location of meeting

Behavioral Sciences Training Committee, Dr. William M. Taylor, Westwood Building, Room 925, Telephone 301-496-7294; January 8-9, 1973; 9 a.m.; Building 31C, Conference Room 6.

Genetics Training Committee, Dr. Dorothea S. Miller, Westwood Building, Room 920, Telephone 301-496-7137; January 10-11, 1973; 9 a.m.; Asilomar Conference Grounds, Pacific Grove, Calif.

Pathology Training Committee, Dr. Edward G. Hampp, Westwood Building, Room 904, Telephone 301-496-7563; January 12, 1972; 9 a.m.; Building 31C, Conference Room 7.

Radiology Training Committee, Dr. Dorothy R. Brodie, Westwood Building, Room 905, Telephone 301-496-7368; January 15, 1973; 10 a.m.; Building 31C, Conference Room 7.

Microbiology Training Committee, Dr. Elizabeth M. O'Hern, Westwood Building, Room 921, Telephone 301-496-7048; January 15-16, 1973; 9 a.m.; Building 31A, Conference Room 2.

Engineering in Biology and Medicine Training Committee, Dr. Ronald B. Ross, Westwood Building, Room 921, Telephone 301-496-7048; January 18, 1973; 8:30 a.m.; Building Westwood, Conference Room D.

Biophysical Sciences Training, Dr. George A. Hayden, Westwood Building, Room 925, Telephone 301-496-7294; January 18-19, 1973; 9 a.m.; Building Westwood, Conference Room C.

Medical Scientist Training Committee, Dr. Leo H. von Euler, Westwood Building, Room 904, Telephone 301-496-7563; January 18-19, 1973; 8 a.m.; Building 31A, Conference Room 2.

Anesthesiology Training Committee, Dr. Edward G. Hampp, Westwood Building, Room 904, Telephone 301-496-7563; January 23, 1973; 9 a.m.; Building 31C, Conference Room 9.

Surgery Training Committee, Dr. Dorothy R. Brodie, Westwood Building, Room 905, Telephone 301-496-7368; January 22, 1973; 8:30 a.m.; Building 31C, Conference Room 7.

Pharmacology-Toxicology Program Committee, Dr. George J. Cosmides, Westwood Building, Room 9A03, Telephone 301-496-7707; January 25-27, 1973; 9 a.m.; Building 31C, Conference Room 7.

Physiology Training Committee, Dr. Ronald B. Ross, Westwood Building, Room 921, Telephone 301-496-7048; January 26-27, 1973; 8:30 a.m.; Building Westwood, Conference Room C.

Anatomical Sciences Training Committee, Dr. Dorothea S. Miller, Westwood Building, Room 920, Telephone 301-496-7137; January 29, 1973; 9 a.m.; Building 31C, Conference Room 7.

Biochemistry Training Committee, Dr. Russell Hilmoe, Westwood Building, Room 910, Telephone 301—496-7463; January 28-30, 1973; 2 p.m.; Building 31C, Conference Room 8.

These meetings will be open to the public for approximately 1 hour at the first session of the first day to discuss administrative details of the committee, and closed thereafter in accordance with section 13(d) of Executive Order 11671 and the Secretary's determination of September 27, 1972, in order to review, discuss and evaluate and/or rank grant applications/contract proposals. Attendance by the public will be limited to space available.

Dated: December 12, 1972.

JOHN F. SHERMAN,
Deputy Director, National Institutes of Health.

[FR Doc.72-21766 Filed 12-20-72;8:45 am]

POPULATION RESEARCH AND TRAINING COMMITTEE

Notice of Meeting

Pursuant to Executive Order 11671, notice is hereby given of the meeting of the Population Research and Training Committee, January 17-19, 1973, at 7 p.m., Belmont, the Smithsonian Institution's Conference Center at Elkridge, Md. This meeting will be open to the public from 7 p.m. to 10 p.m. with opening remarks from the Chairman, an administrative report by the Executive Secretary and two research reports given by the

Committee members, and closed to the public from 9 a.m. to 5 p.m., January 18 and 19, 1973, to review, discuss and evaluate and/or rank grant applications in accordance with section 13(d) of Executive Order 11671 and the Secretary's Determination of September 27, 1972. Attendance by the public will be limited to space available.

Ms. Patricia Gabbett, Information Officer, NICHD, Landow Building, Room A-804B, National Institutes of Health, 496-5133, will furnish summaries of the meeting and rosters of the committee members. Substantive information may also be obtained from Dr. Bengt Liljeroot, Executive Secretary of the Committee, Landow Building, Room C-729A, National Institutes of Health, 496-6515.

Dated: December 12, 1972.

JOHN F. SHERMAN,
Deputy Director,
National Institutes of Health.

[FR Doc.72-21764 Filed 12-20-72;8:45 am]

VISION RESEARCH AND TRAINING COMMITTEE

Notice of Meeting

Pursuant to Executive Order 11671, notice is hereby given of a meeting of the following committee and the individuals from whom a summary of the meeting may be obtained.

Committee, dates, time, and location of committee meeting

Vision Research and Training Committee; January 18, 1973; 9:00 a.m.; January 19, 1973; 9:00 a.m.; Conference Room No. 8; Building 31C, National Institutes of Health, Bethesda, MD.

The NEI Information Officer will furnish a summary of the meeting and rosters of committee members:

Mr. Julian Morris, Information Officer, National Eye Institute, National Institutes of Health, Bethesda, MD 20014, Building 31, Room 6A-27, Telephone: 496-5248.

The Executive Secretary from whom substantive information may be obtained:

Dr. Samuel Schwartz, Chief, Scientific Programs Branch, National Eye Institute, National Institutes of Health, Bethesda, MD 20014, Building 31, Room 6A-47, Telephone: 496-5301.

This meeting will be closed to the public in accordance with section 13(d) of Executive Order 11671 and the Secretary's Determination of September 27, 1972, in order to review, discuss and/or rank grant applications.

Dated: December 12, 1972.

JOHN F. SHERMAN,
Deputy Director,
National Institutes of Health.

[FR Doc.72-21768 Filed 12-20-72;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Interstate Land Sales Registration

[Docket No. N-72-131; Administrative Division Dec. No. Z-154]

LAKE ASHUELOT ESTATES, ET AL.

Notice of Hearing

Notice is hereby given that:

1. Lake Ashuelot Estates, Inc., its officers and agents, hereinafter referred to as "Respondent," being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Public Law 90-448) (15 U.S.C. 1701 et seq.), received a notice of proceedings and opportunity for hearing dated November 21, 1972, which was sent to the developer pursuant to 15 U.S.C. 1706(d) and 24 CFR 1710.45(b) (1) informing the developer of information obtained by the Office of Interstate Land Sales Registration showing that a change had occurred which affected material facts in the developer's statement of record for Lake Ashuelot Estates and the failure of the developer to amend the pertinent sections of the statement of record and property report.

2. The Respondent filed an answer postmarked November 30, 1972, in answer to the allegations of the notice of proceedings and opportunity for a hearing.

3. In said answer the Respondent requested a hearing on the allegations contained in the notice of proceedings and opportunity for a hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(b), *It is hereby ordered,* That a public hearing for the purpose of taking evidence on the questions set forth in the notice of proceedings and opportunity for hearing will be held before David Knight in Room 7233, Department of HUD Building, 451 Seventh Street SW., Washington, DC, on January 10, 1973, at 10 a.m.

The following time and procedure is applicable to such hearing: All affidavits and a list of all witnesses are requested to be filed with the Hearing Clerk, HUD Building, Room 10150, Washington, D.C. 20410, on or before January 4, 1973.

5. The Respondent is hereby notified that failure to appear at the above scheduled hearing shall be deemed a default and the proceeding shall be determined against Respondent, the allegations of which shall be deemed to be true, and an order suspending the statement of record, herein, identified, shall be issued pursuant to 24 CFR 1710.45(b) (1).

This notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1720.440.

By the Secretary, George Romney, Secretary of Housing and Urban Development.

Dated: December 14, 1972.

GEORGE K. BERNSTEIN,
Interstate Land Sales Administrator.

[FR Doc.72-21905 Filed 12-20-72;8:51 am]

ATOMIC ENERGY COMMISSION

[Dockets Nos. 50-413, 50-414]

DUKE POWER CO.

Notice of Receipt of Application for Construction Permits and Facility Licenses and Availability of Applicant's Environmental Report; Time for Submission of Views on Antitrust Matter

Duke Power Co., Post Office Box 2178, 422 South Church Street, Charlotte, NC 28201, pursuant to section 103 of the Atomic Energy Act of 1954, as amended, has filed an application which was docketed October 27, 1972, for authorization to construct and operate two pressurized water nuclear reactors at its site, located in York County, S.C. The site consists of 2,000 acres and is located on the shore of Lake Wylie.

The proposed nuclear facilities, designated by the applicant as Catawba Nuclear Station, Units 1 and 2, are designed for initial operation at approximately 3,411 megawatts (thermal) for each unit with a net electrical output of approximately 1180 megawatts for each unit.

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 December 1, 1972.

A copy of the application is available for public inspection at the Commission's Public Document Room, 171 H Street NW., Washington, DC 20545, and at the York County Library, 325 South Oakland Avenue, Rock Hill, SC 29730.

Duke Power Co. has also filed, pursuant to the National Environmental Policy Act of 1969 and the regulations of the Commission in Appendix D to 10 CFR Part 50, a report entitled, "Duke Power Co., Catawba Nuclear Station, Units 1 and 2, Environmental Report." The report has been made available for public inspection at the aforementioned locations. The report, which discusses environmental considerations related to the proposed construction of Catawba Nuclear Station, Units 1 and 2, is also being made available at the Office of the Governor, Division of Administration, Wade Hampton Office Building, Columbia, S.C., and at

the Central Piedmont Regional Planning Commission, Post Office Box 862, 107 Hampton Street, Rock Hill, S.C. 29730.

After the report has been analyzed by the Commission's Director of Regulation or his designee, a draft environmental statement related to the proposed action will be prepared by the Commission. Upon preparation of the draft environmental statement, the Commission will, among other things, cause to be published in the FEDERAL REGISTER, a summary notice of availability of the draft statement. The summary notice will request comments from interested persons on the proposed action and on the draft statement. The summary notice will also contain a statement to the effect that comments of Federal agencies and State and local officials thereon will be made available when received.

Dated at Bethesda, Md., this 28th day of November 1972.

For the Atomic Energy Commission.

KARL R. GOLLER,
Acting Assistant Director for Pressurized Water Reactors, Directorate of Licensing.

[FR Doc.72-20740 Filed 12-6-72;8:45 am]

[Dockets Nos. 50-315, 50-316]

INDIANA & MICHIGAN ELECTRIC CO.

Notice of Availability of AEC Draft Environmental Statement and Applicant's Environmental Report and Supplemental Environmental Reports

Pursuant to the National Environmental Policy Act of 1969 and the Atomic Energy Commission's regulations in Appendix D to 10 CFR Part 50, notice is hereby given that a document entitled "Draft Environmental Statement," related to the continuation of Construction Permits Nos. CPPR-60 and CPPR-61 and the issuance of an operating license to the Indiana & Michigan Electric Co., for the Donald C. Cook Nuclear Plant, Units 1 and 2, located on the shore of Lake Michigan in Lake Township, Berrien County, Mich., has been prepared by the Commission's Directorate of Licensing. The statement is available for inspection by the public in the Commission's Public Document Room at 1717 H Street NW., Washington, DC, and in the St. Joseph Public Library, 500 Market Street, St. Joseph, MI 49085. The statement is also being made available at the Office of Planning Coordination, Executive Office of the Governor, Lewis Cass Building, Lansing, Mich. 48913. Copies of the Commission's draft environmental statement may be obtained upon request addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing.

Documents entitled "Applicant's Environmental Report—Construction Permit Stage" and Supplements 1, 2, and 3, submitted by the Indiana and Michigan Electric Co., are also available for inspection at the above-designated locations. Notice of availability of "Applicant's Environmental Report" and Supplement No. 1 thereto was published in the FEDERAL REGISTER on January 6, 1972 (37 F.R. 151).

Pursuant to Appendix D to 10 CFR Part 50, interested persons may, within forty-five (45) days from date of publication of this notice in the FEDERAL REGISTER, submit comments for the Commission's consideration, on the proposed actions, "Applicant's Environmental Report" and supplements thereto, the draft environmental statement and whether the construction permits for the D. C. Cook Plant should be continued, modified, or appropriately conditioned to protect environmental values. Federal and State agencies are being provided with copies of these reports and the draft environmental statement (local agencies may obtain these documents upon request) and, when any comments thereon by Federal, State, and local officials are received, they will be made available for public inspection at the above-designated locations. Comments on the draft environmental statement from interested members of the public should be addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing.

Dated at Bethesda, Md., this 15th day of December 1972.

For the Atomic Energy Commission.

DANIEL R. MULLER,
Assistant Director for Environmental Projects, Directorate of Licensing.

[FR Doc.72-21914 Filed 12-20-72;8:51 am]

[Dockets Nos. 50-416, 50-417]

MISSISSIPPI POWER AND LIGHT CO.

Notice of Availability of Applicant's Environmental Report

Pursuant to the National Environmental Policy Act of 1969 and the Atomic Energy Commission's regulations in Appendix D to 10 CFR Part 50, notice is hereby given that an Environmental Report—Construction Permit Stage, Grand Gulf Nuclear Station, submitted by the Mississippi Power and Light Co., has been placed in the Commission's Public Document Room at 1717 H Street NW., Washington, DC, and in the Harriet Person Memorial Library, Municipal Building, Port Gibson, Miss. 39150. The report is also being made available at the Coordinator Federal State Program, Office of the Governor, 510 Lamar Life Building, Jackson, Miss. 39201, and the Southwest Mississippi Planning and Development District, Post Office Box 686, McComb, MS 39648.

This report discusses environmental considerations related to the proposed construction of the Grand Gulf Nuclear Station, Units 1 and 2, located in Claiborne County, Miss.

After the report has been analyzed by the Commission's Director of Regulation or his designee, a draft detailed statement of environmental considerations related to the proposed action will be prepared. Upon preparation of the draft detailed statement, the Commission will, among other things, cause to be published in the FEDERAL REGISTER a summary notice of availability of the draft detailed statement. The summary notice will request comments from interested persons on the proposed action and on the draft statement. The summary notice will also contain a statement to the effect that the comments of Federal agencies and State and local officials thereon will be available when received.

Dated at Bethesda, Md., this 14th day of December, 1972.

For the Atomic Energy Commission.

ROGER S. BOYD,
Assistant Director for Boiling Water Reactors, Directorate of Licensing.

[FR Doc.72-21852 Filed 12-20-72;8:46 am]

[Dockets Nos. 50-354, 50-355]

PUBLIC SERVICE ELECTRIC & GAS CO.

Notice of Availability of Draft Environmental Statement and Applicant's Environmental Report

Pursuant to the National Environmental Policy Act of 1969 and the regulations of the Atomic Energy Commission (the Commission) in Appendix D to 10 CFR Part 50, notice is hereby given that a Draft Environmental Statement related to the proposed issuance of a construction permit to the Public Service Electric & Gas Co., for its Newbold Island Nuclear Generating Station, Units 1 and 2, to be located in the Township of Bordentown, Burlington County, N.J., has been prepared by the Commission's Directorate of Licensing. The statement is available for inspection by the public in the Commission's Public Document Room at 1717 H Street NW., Washington, DC 20545, and in the Trenton Free Public Library, 120 Academy Street, Trenton, NJ 08608. The statement is also being made available at the Division of State and Regional Planning, Department of Community Affairs, Post Office Box 1978, Trenton, NJ 08625, and at the Delaware Valley Regional Planning Commission, 1317 Filbert Street, Philadelphia, PA 19107. Copies of the Commission draft environmental statement may be obtained upon request addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545. Attention: Deputy Director for Reactor Projects, Directorate of Licensing. The draft environmental statement replaces the "Draft Detailed Statement on Environmental Considerations by the Division of Reactor Licensing, U.S. Atomic Energy Commission, related to the pro-

posed construction of the Newbold Island Nuclear Generating Station, Units 1 and 2, by the Public Service Electric & Gas Co.," dated April 19, 1971.

The "Environmental Report—Construction Permit Stage," dated January 1971, and the "Supplemental Environmental Report—Construction Permit Stage," dated April 25, 1972, are also available for public inspection at the above-named locations. The notice of availability of the Supplemental Environmental Report was published in the FEDERAL REGISTER on June 23, 1972 (37 F.R. 12421).

Pursuant to Appendix D, 10 CFR Part 50, interested persons may, within thirty (30) days from the date of publication of this notice in the FEDERAL REGISTER, submit comments on the proposed action and the draft environmental statement for the Commission's consideration. Federal and State agencies are being provided with copies of the applicant's environmental report, supplemental environmental report and amendments thereto, and the draft environmental statement (local agencies may obtain these documents upon request) and, when any comments thereon by Federal, State, and local officials are received, they will be made available for public inspection at the above-designated locations. Comments on the draft environmental statement from interested members of the public should be addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing.

Dated at Bethesda, Md., this 15th day of December 1972.

For the Atomic Energy Commission.

B. J. YOUNGBLOOD,
Acting Assistant Director for Environmental Projects, Directorate of Licensing.

[FR Doc.72-21913 Filed 12-20-72;8:51 am]

[Docket No. 50-305]

WISCONSIN PUBLIC SERVICE CORP.

Notice of Availability of Final Statement on Environmental Considerations

Pursuant to the National Environmental Policy Act of 1969 and the Atomic Energy Commission's regulations in Appendix D to 10 CFR Part 50, notice is hereby given that a document entitled "Final Environmental Statement Related to the Operation of the Kewaunee Nuclear Power Plant," is being placed in the following locations where it will be available for public inspection by members of the public: The Commission's Public Document Room at 1717 H Street NW., Washington, DC 20545 and in the Kewaunee Public Library, 314 Milwaukee St., Kewaunee, WI 54216. The report is also being made available at the State Planning Bureau, Department of Administration, 1 Wilson Street, State Office Building, Madison, WI 53701, and at the Brown County Planning Commission, 100 North Jefferson Street, Green Bay, WI 54301.

The notice of availability of the draft environmental statement for the Kewaunee Nuclear Power Plant and request for comments from interested persons was published in the FEDERAL REGISTER on July 21, 1972, 37 F.R. 14635. The comments received from Federal, State, local officials, and interested members of the public have been included as appendices to the final statement.

Single copies of the statement may be obtained by writing the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing.

Dated at Bethesda, Md., this 13th day of December 1972.

For the Atomic Energy Commission.

B. J. YOUNGBLOOD,
Acting Assistant Director for Environmental Projects, Directorate of Licensing.

[FR Doc.72-21806 Filed 12-20-72;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 23333; Order 72-12-41]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Specific Commodity Rates

Issued under delegated authority December 11, 1972.

Agreements have been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations, between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of the International Air Transport Association (IATA), and adopted pursuant to the provisions of Resolution 590 dealing with specific commodity rates.

The agreements name additional specific commodity rates, and a new commodity description as set forth in the attachment hereto,[1] and reflect reductions from the otherwise applicable general cargo rates. The agreements, which have been assigned the above-designated C.A.B. agreement numbers, were adopted pursuant to unprotested notices to the carriers and promulgated in IATA letters dated November 21, 1972 and November 27, 1972, respectively.

Pursuant to authority duly delegated by the Board in the Board's regulations, 14 CFR 385.14, it is not found that the subject agreements are adverse to the public interest or in violation of the act: *Provided*, That approval is subject to the condition hereinafter ordered.

Accordingly, it is ordered, That:

Agreements C.A.B. 23410, R-1 through R-4, and 23412, be and hereby are approved: *Provided*, That approval shall not constitute approval of the specific commodity descriptions contained therein for purposes of tariff publications: *Provided further*, That tariff filings shall be marked to become effective on not less than 30 days' notice from the date of filing.

Persons entitled to petition the Board for review of this order, pursuant to the Board's regulations, 14 CFR 385.50, may file such petitions within 10 days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZIPPE,
Secretary.

[FR Doc.72-21941 Filed 12-20-72;8:54 am]

[1] Filed as part of the original document.

[Docket No. 24531; Order 72-12-55]

SOUTHERN AVIATION, INC.

Order To Show Cause Regarding Establishment of Service Mail Rates

Issued under delegated authority December 13, 1972.

A final service mail rate of 49.89 cents per great circle aircraft mile for the transportation of mail by aircraft between Kansas City, Mo., and Lawton, Okla., via Tulsa and Oklahoma City, Okla., established by Order 71-6-42, dated June 8, 1971, is currently in effect for Southern Aviation, Inc. (Southern), an air taxi operating pursuant to 14 CFR Part 298.

By petition filed June 6, 1972, Southern requested the Board to reopen its current service mail rate and fix a new final service mail rate of 60.26 cents per great circle aircraft mile over the route described above. In support of the requested increase in its mail rate Southern alleged it had experienced increased costs in virtually all categories of aircraft operating costs and indirect expenses. These increases were shown in the POD Form 2751-C, exhibits A, B, and attachments thereto.

On July 6, 1972, the Board received a copy of a letter from the Postal Service to Southern stating that Southern's petition lacked documentation of the increased costs alleged. The Postal Service stated that it could not make "any sort of reply," and requested additional information documenting the costs.

The Postmaster General petitioned the Board for leave to file a late reply to Southern's petition, which is granted, and filed a late reply on December 4, 1972. The Postal Service stated that the information documenting the costs had since been received. This plus other information on hand had culminated in allowances of cost increases in several cost areas, among which were the cost of living increase, fuel, oil, rentals, and

overhead.[1] In their reply they stated that the parties had considered and agreed to a final service mail rate of 52.61 cents per great circle aircraft mile for service performed during the period June 6, 1972, through November 10, 1972, and 52.71 cents per great circle aircraft mile for service performed on and after November 11, 1972.

It is in the public interest to fix, determine, and establish the fair and reasonable rates of compensation to be paid by the Postmaster General for the proposed transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between the aforesaid points. Upon consideration of the petition and other matters officially noticed, it is proposed to issue an order [2] to include the following findings and conclusions:

The fair and reasonable final service mail rates to be paid to Southern Aviation, Inc., in their entirety by the Postmaster General pursuant to section 406 of the Act for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, shall be the rates per great circle aircraft mile based on 5 roundtrips per week flown with Beechcraft 18 aircraft as set forth below:

Route and Effective Date	*Rate (cents per mile)*
Kansas City, Mo. and Lawton, Okla., via Tulsa and Oklahoma City, Okla.	
From June 6, 1972, through November 10, 1972	52.61
On and after November 11, 1972	52.71

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 406 thereof, and regulations promulgated in 14 CFR Part 302, 14 CFR Part 298, and 14 CFR 385.16(f),

It is ordered, That:

1. Southern Aviation, Inc., the Postmaster General, American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Frontier Airlines, Inc., Ozark Air Lines, Inc., Trans-World Airlines, Inc., and all other interested persons are directed to show cause why the Board should not adopt the foregoing proposed findings and conclusions and fix, determine, and publish the final rates specified above for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith as specified above as the fair and reasonable rate of compensation to be paid to Southern Aviation, Inc.;

2. Further procedures herein shall be in accordance with 14 CFR Part 302, and notice of any objection to the rates or to the other findings and conclusions proposed herein, shall be filed within 10 days, and if notice is filed, written answer and supporting documents shall be filed within 30 days after service of this order;

3. If notice of objection is not filed within 10 days after service of this order, or if notice is filed and answer is not filed within 30 days after service of this order, all persons shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision by the Board, and the Board may enter an order incorporating the findings and conclusions proposed herein and fix and determine the final rates specified herein;

4. If answer is filed presenting issues for hearing, the issues involved in determining the fair and reasonable final rates shall be limited to those specifically raised by the answer, except insofar as other issues are raised in accordance with rule 307 of the rules of practice (14 CFR 302.307); and

5. This order shall be served on Southern Aviation Inc., the Postmaster General, American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Frontier Airlines, Inc., Ozark Air Lines, Inc., and Trans-World Airlines, Inc.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK, *Secretary.*

[FR Doc.72-21942 Filed 12-20-72;8:54 am]

[1] All the adjustments made herein by the Postal Service are in compliance with Regional Instruction 530-4, "Air Taxi Transportation Rate Adjustments, Part 298 Operators."

[2] As this order to show cause is not a final action, it is not regarded as subject to the review provisions of 14 CFR, Part 395. These provisions will apply to final action taken by the staff under authority delegated in § 385.16(g).

[Docket No. 21238; Order 72-12-84]

WESTERN AIR LINES, INC.

Order To Show Cause Regarding Service Mail Rates for Intra-Alaska Routes

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 18th day of December 1972.

By this order the Board proposes to establish new final service rates for the transportation of mail over the intra-Alaska routes of Western Air Lines, Inc. (Western), for the past periods July 25, 1969, through September 4, 1970; September 5 through September 18, 1970; and for the period on and after September 19, 1970.[1]

This proceeding was initiated by petition of the Postmaster General filed July 25, 1969, requesting the Board to reopen the service mail rates for intra-Alaska service [2] and to establish new final rates for such service. The issues raised by the Postmaster General were set for investigation in the "Service Mail Rates for Intra-Alaska Routes" case.[3] This case involved the question of establishing service mail rates for six carriers providing intra-Alaska services, namely, Western Alaska Airlines, Inc., Alaska Airlines, Inc., Wien Consolidated Airlines, Inc., Reeve Aleutian Airways, Inc., Kodiak Airways, Inc., and Western Air Lines, Inc. The Board has established final service mail rates for five of the six carriers involved.[4] The only remaining carrier still operating under temporary mail rates is Western.

On July 1, 1971, the Postmaster General filed a petition requesting the Board to issue a show cause order proposing to establish the following service mail rates for Western for the transportation of mail on its intra-Alaska routes during the periods indicated:

1. For the period July 25, 1969, through September 4, 1970, inclusive, a final service mail rate of $1.05 per ton-mile;

2. For the period September 5 through September 18, 1970, a final service mail rate of 45 cents per ton-mile;

3. For the period beginning on and after September 19, 1970, service mail rates consisting of a line-haul rate of 24 cents per ton-mile for priority mail, and 9.3 cents per ton-mile for nonpriority mail and terminal charges for priority and nonpriority mail of 2.34, 4.68, and 9.36 cents per pound of mail enplaned, respectively, at class X, Y, and Z stations.

The proposed rates for the respective periods are based primarily on cost information for the year ended June 30, 1969, which the parties submitted in the instant mail rates investigation as direct exhibits and as responses to information requests, and which the parties have adjusted to reflect actual and more current operating conditions. These materials were reviewed by the Postmaster General and Western, and on the basis of this data, and after further conferences and negotiations, the parties mutually agreed to the rates proposed in the Postmaster General's petition. In effect, the rates proposed by the parties herein were the result of arm's length negotiations between Western and the Postmaster General. However, the fact that the parties have reached agreement after negotiations and a detailed exchange of data, does not relieve the Board of its statutory responsibility to find that the results are reasonable and consistent with the criteria and standards utilized in the determination of service mail rates under section 406 of the Act.

Accordingly, we have reviewed all of the materials involved, the contentions of the parties, and the rationale utilized and are satisfied that the rates which we are proposing herein fall within the zone

[1] Western subsequent to Sept. 19, 1970, carried mail between Anchorage-Juneau-Ketchikan, each of which involves a "mainline" segment as provided in Order 71-2-102, Feb. 23, 1971. Basically, any segment having a frequency of five or more schedules a week is a "mainline" segment over which both priority and nonpriority O. & D. mail transportation will apply in intra-Alaska service.

[2] By Order E-26334, Feb. 9, 1968, and 68-8-67, Aug. 15, 1968, the Board established an intra-Alaska service mail rate providing for the payment of $1.29 per ton-mile. This rate was made effective from July 1, 1967.

[3] See Order 69-8-163, Aug. 29, 1969.

[4] See Orders 71-2-56, Feb. 10, 1971, and 71-2-102, Feb. 23, 1971, which established service mail rates for Alaska Airlines and Wien Consolidated Airlines. Orders 71-4-81, Apr. 13, 1971, 72-1-41, Jan. 14, 1972, 72-1-103, Jan. 28, 1972, established service mail rates for Kodiak Airways and Western Alaska Airlines. Orders 71-7-28, July 6, 1971, and 71-7-111, July 20, 1971, established a service mail rate for Reeve Aleutian Airways.

of reasonableness and constitute fair and reasonable rates for past intra-Alaska mail services by Western. We are satisfied that the proposed rate of $1.05 per mail ton-mile for the period July 25, 1969, through September 4, 1970, is fair and reasonable. As for the period September 5–18, 1970[5] we think the fair and reasonable rate per mail ton-mile is 40.27 cents, the same as the priority yield for the period beginning on and after September 19, 1970.[6] With respect to the period commencing September 19, 1970, we agree with the conclusion by the parties that overall mail costs will equal 35 cents per ton-mile.[7] We disagree, however, with the line-haul rate calculations of the parties of 24 cents per ton-mile for priority mail and 9.3 cents per ton-mile for nonpriority mail. The 9.3-cent rate is a derived figure which comes about primarily because the parties in arriving at their rates accepted the present domestic terminal charges and accepted the line-haul charges for all mail other than nonpriority mail. Thus, the 9.3-cent nonpriority rate is in effect the charge that is needed to recoup the overall cost of 35 cents per ton-mile, which is Western's total cost for transporting both types of mail in intra-Alaska service. The more realistic approach is to determine the relative costs of transporting each type of mail. When consideration is given to the densities[8] of the two types of mail and recognized methods for costing the mail,[9] then line-haul charges of 17.82 and 13.53 cents are produced, respectively, for priority and nonpriority mail. Appendix III attached hereto[10] sets forth these computations.

As indicated, a substantial reduction occurs in the mail rates beginning September 5, 1970. The main factors causing the rate reduction are the substantial economies that resulted from the termination by Western of its high-cost operations on the Kenai Peninsula which the carrier served with nonjet aircraft. The termination of the Kenai operation left only Western's pure jet longer-haul Anchorage-Juneau-Ketchikan service available for intra-Alaska mail transportation. The overall cost of 35 cents per ton-mile beginning September 19, 1970, reflects this limited operation and the division of mail tendered by the Postal Service into priority and nonpriority classifications.

[5] This 14-day period was prior to classification of the intra-Alaska mail tendered to Western by the U.S. Postal Service into priority and nonpriority mail, but after the termination of Western's operation in the Kenai Peninsula.

[6] See app. III, which is filed as part of the original document, p. 1 for the calculation of this rate.

[7] See app. II, which is filed as part of the original document.

[8] The densities are the result of intra-Alaska mail density tests conducted at Fairbanks, Anchorage, and Juneau.

[9] Nonpriority mail rates, Order 70-4-9, Apr. 2, 1970.

[10] Appendices I, II, III filed as part of the original document.

We have concluded that the rates we are proposing to establish herein fall within the zone of reasonableness and constitute the fair and reasonable rates for the mail service of this carrier. However, in reaching this conclusion we have confined our determination to the peculiar facts of this case. Moreover, we would note that domestic mail rates are presently under investigation in Docket 23080, and the appropriate methodology for costing mail service is at issue in that case. Thus our decision herein should not be construed as dispositive of the issues in that case.

PROPOSED FINDINGS AND CONCLUSIONS

Based on the foregoing, the Board tentatively finds that the fair and reasonable rates of compensation to be paid Western Air Lines, Inc., by the Postmaster General, pursuant to the provisions of section 406 of the Federal Aviation Act of 1958, for the transportation of mail by aircraft over its intra-Alaska routes, the facilities used and useful therefor, and the services connected therewith are:

1. $1.05 per mail ton-mile for the period July 25, 1969 through September 4, 1970, inclusive;

2. 40.27 cents per mail ton-mile for the period September 5 through September 18, 1970, inclusive;

3. On and after September 19, 1970, service mail rates consisting of the following charges:

(a) Terminal charges for priority and nonpriority mail of 2.34 cents, 4.68 cents, and 9.36 cents per pound of mail enplaned respectively at class X, Y, and Z stations;

(b) Line haul charges of 13.53 cents per mail ton-mile for nonpriority mail and 17.82 cents per mail ton-mile for priority mail;

4. The mail ton-miles used in computing the service mail payments at the foregoing rates shall be based upon the great-circle airport-to-airport mileage between points served for the carriage of mail;

5. The provisions in ordering paragraph No. 2 on page 2 (terminal charges) of Order E-25610, dated August 28, 1967, are hereby incorporated by reference for application to priority mail service, and the provisions of ordering paragraph No. 2 on page 3 (terminal charges) of Order 70-4-9, dated April 2, 1970, are hereby incorporated by reference for application to nonpriority mail service;

6. The conditions of service for the air transportation of intra-Alaska mail as set forth in appendix 3 of Order 71-2-56, dated February 10, 1971, are hereby incorporated by reference as applicable to the transportation of mail by Western over its intra-Alaska routes;

7. The provisions for the equalization of rates for the air transportation of mail by Western over its intra-Alaska routes shall be those as set forth in appendix 4 to Order 71-2-56, dated February 10, 1971, which are hereby incorporated by reference; and

8. The final service mail rates fixed and determined are to be paid in their entirety by the Postmaster General.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 406 thereof, and pursuant to the Board's procedural regulations promulgated in 14 CFR, Part 302,

It is ordered, That:

1. All interested persons and particularly Western Air Lines, Inc., and the Postmaster General are directed to show cause why the Board should not adopt the foregoing proposed findings and conclusions, and fix, determine, and publish the final rates specified above.

2. Further procedures herein shall be in accordance with 14 CFR, Part 302, and, if there is any objection to the rates or to the other findings and conclusions proposed herein, notice thereof shall be filed within 10 days after the date of service of this order, and if notice is filed, written answer and supporting documents shall be filed within 30 days after date of service of this order.

3. If notice of objection is not filed within 10 days or if notice is filed and answer is not filed within 30 days after service of this order, all persons shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision by the Board, and the Board may enter an order incorporating the findings and conclusions proposed herein and fix and determine the final rates specified herein.

4. If answer is filed presenting issues for hearing, the issues involved in determining the fair and reasonable rates herein shall be limited to those specifically raised by such answers except as otherwise provided in 14 CFR 302.307.

5. This order shall be served upon Western Air Lines, Inc., and the Postmaster General.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK, *Secretary*.

[FR Doc.72-21943 Filed 12-20-72;8:54 am]

[Docket No. 29724]

REMANDED ATLANTA-DETROIT/CLEVELAND CINCINNATI INVESTIGATION

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding will be held on January 23, 1973, at 10 a.m. (local time), in Room 911, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, before Administrative Law Judge William F. Cusick.

For information concerning the issues involved and other details in this proceeding, interested persons are referred to the Prehearing Conference Report

and other documents which are in the docket of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., December 15, 1972.

[SEAL] WILLIAM F. CUSICK, *Administrative Law Judge.*

[FR Doc.72-21944 Filed 12-20-72;8:54 am]

COUNCIL ON ENVIRONMENTAL QUALITY

NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

Removal by States of Discharges

In the FEDERAL REGISTER of August 20, 1971 (36 F.R. 16215), the Council promulgated the National Oil and Hazardous Substances Pollution Contingency Plan, pursuant to the provisions of paragraph 11(c)(2) of the Federal Water Pollution Control Act (FWPCA), as amended, 33 U.S.C. § 1161(c)(2), and section 4 of Executive Order 11548 (July 20, 1970). Pursuant to section 4 of Executive Order 11548, the Council in 37 F.R. 18411 (September 9, 1972) amended the plan in certain respects.

The National Response Team (NRT) is currently preparing for submission to the Council a proposed revision of the plan, in light of both operating experience and the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500). Pending this revision, the Council, on the advice of the NRT, has determined that it is desirable to amend the existing plan to establish a system of State removal of discharges, pursuant to section 311(c)(2)(H) of the FWPCA, as amended by Public Law 92-500. As amended, the existing plan will remain in effect until further notice, although the term "navigable waters" as used therein will be interpreted in light of section 502(7) of the FWPCA, as amended by Public Law 92-500.

At least part of the forthcoming revision of the plan, including those sections implementing section 311(c)(2)(H) of the FWPCA, as amended by Public Law 92-500, will be codified in Chapter 5 of Title 40 of the Code of Federal Regulations. Through a notice of proposed rule making, interested persons will be afforded an opportunity to submit comments. In order to make immediate provision for State action which may be necessary to protect the public health and welfare, however, the amendments to the existing plan published with this notice are effective as of December 18, 1972. Comments concerning these interim regulations will be considered prior to their codification, and may be addressed to the General Counsel, Council on Environmental Quality, 722 Jackson Place NW., Washington, DC 20006.

Based on the NRT's advice and paragraph 311(c)(2)(H) of Public Law 92-500, and pursuant to the authority contained in section 4 of Executive Order 11548, Part 203 of the plan and section 1904 of Annex IX of the plan are amended to read as follows:

203 NONFEDERAL RESPONSIBILITY

203.1 Each State within a region may designate a liaison to the Regional Response Team and an agency of the State government to supervise State removal operations. The designated agency will be the State governmental unit to request reimbursement pursuant to sec. 311(c)(2)(H) of Public Law 92-500. Conditions and requirements respecting such reimbursement are set forth in Annex IX to this plan.

203.2 Industry groups, the academic community, and others are encouraged to commit resources for response to a spill. Their specific commitments are outlined by the regional plans. Of particular relevance is the organization of a standby scientific response capability.

1904 POLLUTION REVOLVING FUND

1904.1 A pollution revolving fund, administered by the Commandant, USCG, has been established pursuant to subsection (k) of section 11 of the Act. Regulations governing the administration and use of the fund are contained in 33 CFR 153.301-153.319.

1904.2 Pursuant to sec. 311(c)(2)(H) of Public Law 92-500, the State or States affected by a discharge of oil or hazardous substance may act where necessary to remove such discharge and may, pursuant to regulations which the Commandant, USCG, may prescribe, be reimbursed from the fund for the reasonable costs incurred in such removal.

1904.2-1 Removal by a State is necessary when the OSC determines that the owner or operator of the vessel, onshore facility, or offshore facility from which the discharge occurs does not effect removal properly and that:

1904.2-1.1 State action is required to minimize or mitigate significant damage to the public health or welfare which Federal action cannot minimize or mitigate, or

1904.2-1.2 Removal or partial removal can be effected by the State at a cost which is not significantly greater than the cost which would be incurred by the Federal departments or agencies.

1904.2-2 Notwithstanding the above, State removal actions are not necessary if not in compliance with Annex X of this plan.

1904.2-3 State removal operations are considered to be Response Phase II or Response Phase III actions to the extent that the same operations undertaken by a Federal agency would be so considered.

1904.2-4 When supervised by the State agency designated pursuant to section 203.1 of this plan, removal operations of a local government are considered to be actions of the State for purposes of this section.

RUSSELL E. TRAIN, *Chairman.*

DECEMBER 18, 1972.

[FR Doc.72-22014 Filed 12-19-72;12:46 pm]

FEDERAL COMMUNICATIONS COMMISSION

[Dockets Nos. 19186-19189; FCC 72-1096]

ALBERT L. CRAIN, ET AL.

Memorandum Opinion and Order for Remand

In regard applications of Albert L. Crain, Humble, Tex., Docket No. 19186, File No. BP-17550; Artlite Broadcasting Co., Houston, Tex., Docket No. 19187, File No. BP-17577; Jester Broadcasting Co., Nassau Bay, Tex., Docket No. 19188, File No. BP-17579; Space City Broadcasting Co., Houston, Tex., Docket No. 19189, File No. BP-17871; for construction permits.

1. The Commission has before it for consideration: (a) A memorandum opinion and order of the Review Board, FCC 72R-56, 33 FCC 2d 893, released March 9, 1972; (b) an application for review of the Board's memorandum opinion and order filed April 10, 1972, by the Broadcast Bureau; (c) separate oppositions to the application for review, filed on April 25, 1972, by Albert L. Crain, Artlite Broadcasting Co., Jester Broadcasting Co., and Space City Broadcasting Co.;[1] and (d) a reply to the oppositions filed May 4, 1972, by the Broadcast Bureau.

2. This proceeding involves four mutually exclusive applications for a construction permit for a new daytime-only standard broadcast station on 850 kHz. The applicants seek stations for Humble, Texas (Albert L. Crain), Houston, Tex. (Artlite Broadcasting Co. and Space City Broadcasting Co.), and Nassau Bay, Tex. (Jester Broadcasting Co.). The applications were designated for hearing by our order, 28 FCC 2d 381, released March 31, 1971, on issues concerning technical and financial qualifications, program proposals, and a section 307(b) comparison of the four applications. In addition, we included an issue to determine whether Albert L. Crain and Jester Broadcasting Co. will realistically provide local transmission facilities for their specified station locations or for another larger community. See "Policy Statement on Section 307(b) Considerations for Standard Broadcast Facilities Involving Suburban Communities," 2 FCC 2d 190 (1965).

3. Before an evidentiary hearing commenced, the applicants entered into a joint agreement providing for the dismissal of the applications of Crain, Jester, and Space City and for reimbursement by Artlite of the other applicants' reasonable and prudent expenses incurred in the preparation and prosecution of their applications. The joint agreement is contingent upon a grant of Artlite's application and dismissal of

[1] Artlite Broadcasting Co. and Space City Broadcasting Co. support and join in the concurrently filed opposition of Jester Broadcasting Co.

the other applications without publication under § 1.525(b) of the rules.

4. Chief Administrative Law Judge Gladstone issued a memorandum opinion and order (FCC 72M-172) on February 2, 1972, dismissing the respective applications of Crain, Jester, and Space City without requiring publication and granting the application of Artlite. The order was released on February 7, 1972; however, the proceeding was not to be terminated until the 20th day following issuance of the order to allow one applicant time to file an affidavit regarding claimed engineering expenses to be reimbursed under the joint agreement. Subsequently, the affidavit was filed and an additional order (FCC 72M-220) was released on February 17, 1972, authorizing and approving reimbursement of the claimed engineering expenses.

5. The Broadcast Bureau wished to contest Judge Gladstone's order with respect to the dismissal of the Jester application without requiring publication in view of § 1.525(b) of the rules. Toward that end, the Bureau filed a notice of appeal on February 25, 1972, and an appeal on March 6, 1972. The Review Board, in a memorandum opinion and order (33 FCC 2d 893) released March 9, 1972, dismissed the Bureau's notice of appeal and appeal on the ground that the Bureau did not comply with § 1.302 of the rules. Section 1.302 reads as follows:

(a) If the presiding officer's ruling terminates a hearing proceeding, any party to the proceeding, as a matter of right, may file an appeal from that ruling within 30 days after the ruling is released.

(b) Any party who desires to preserve the right to appeal shall file a notice of appeal within 10 days after the ruling is released. If a notice of appeal is not filed within 10 days, the ruling shall be effective 30 days after the ruling is released and within this period, may be reviewed by the Commission or the Review Board on its own motion * * *.

The Review Board stated that, if a notice of appeal is not filed within 10 days from the release date of a final ruling, the right to appeal no longer exists. The Board concluded that the Bureau's right to appeal was foreclosed because its notice of appeal was not filed within 10 days from the February 7, 1972, release date.[2] The Bureau then filed an application for review of the Board's order.

6. The Bureau acknowledges that, if this were a "normal case," the notice of appeal should have been filed within 10 days after Judge Gladstone's order was released on February 7, 1972. However, the Bureau argues that, since the release date did not coincide with the termination date, the controlling date under § 1.302(b) is the termination date. The Bureau also contends that, since its appeal was filed within 30 days of the release date as required by § 1.302(a), its failure to file a notice of appeal within the 10-day period did not prolong the proceeding or prejudice any party. Finally, the Bureau urges that its appeal raises a question "replete with public interest considerations * * *" and that this case should thus be remanded to the Board with instructions to rule on the merits of the Bureau's appeal.

7. The applicants unanimously oppose the Bureau's application for review, urging that the filing requirements of § 1.302 are based on the release date of the order in question, that an appeal is foreclosed unless a notice of appeal has been filed within 10 days after the ruling is released, and that the Review Board thus lacked any jurisdictional basis for considering the Bureau's appeal. The applicants also dispute the Bureau's contention that the public interest requires consideration of its appeal, since the substantive question has been given extensive consideration by Judge Gladstone, since there is a public policy in favor of orderliness, expedition, and finality in the adjudicatory process, and since grant of the Bureau's appeal would return the parties to their status as competing applicants in a potentially lengthy hearing.

8. We agree with the applicants and the Review Board that the filing requirements of § 1.302 are based solely upon the release date of the order in question and that the timely filing of a notice of appeal is a prerequisite for consideration of an appeal. However, we are also persuaded that the circumstances surrounding Judge Gladstone's order, which specified a termination date in future, raised a legitimate question as to when the notice of appeal in this case should have been filed. Although it appears that the notice of appeal should have been filed within 10 days after the ruling was released, the language of § 1.302 makes no specific provision for the situation presented by this case.

9. While we are convinced that the prompt and orderly disposition of the Commission's business requires that the filing requirements, with respect to any subsequent order similar to the one issued by Judge Gladstone, should be controlled in the absence of extraordinary circumstances,[3] by the release date of the order terminating the proceeding, we recognize that there was some ambiguity as to the proper course of action here. When this fact is considered in light of the additional circumstances that the Bureau's appeal was filed within the requisite 30-day period after release of Judge Gladstone's order and that the Bureau's appeal goes to the merits of the ultimate disposition of this proceeding, we believe that a sufficient public interest showing has been made to warrant consideration of the substance of the Bureau's appeal as suggested by dissenting Board Member Berkemeyer.

10. For the reasons set forth above, we have concluded that the Bureau's application for review should be granted, that the Review Board's Memorandum Opinion and Order dismissing the Bureau's appeal should be set aside, that the provisions of § 1.302(b) should be waived to the extent that they would otherwise preclude consideration of the Bureau's appeal, and that this matter should be remanded to the Board for full consideration of the merits of the Bureau's appeal.

11. *Accordingly, it is ordered:*

(a) That the application for review filed by the Broadcast Bureau on April 10, 1972, is granted;

(b) That the Review Board's Memorandum Opinion and Order, FCC 72R-56, 33 FCC 2d 893, released March 9, 1972, is set aside;

(c) That the provisions of § 1.302 of our rules are waived; and

(d) That this matter is remanded to the Review Board.

Adopted: December 6, 1972.

Released: December 8, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[4]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-21924 Filed 12-20-72;8:52 am]

[Dockets Nos. 19573-19574; FCC 72R-375]

BETHANY COLLEGE AND CALVARY CHRISTIAN COLLEGE

Memorandum Opinion and Order Enlarging Issues

In regard applications of Bethany College, Noncommercial Educational FM Station WVBC, Bethany, W. Va., Docket No. 19573, File No. BPED-1109; Calvary Christian College, Paris, Ohio, Docket No. 19574, File No. BPED-1278; for construction permits.

1. This proceeding was designated for hearing by Commission Order, FCC 72-812, 37 F.R. 20054, published September 23, 1972, under various issues, including an issue to determine whether Calvary Christian College (Calvary) has funds available in an amount of $12,295 for estimated costs of construction and first-year's operation. Now before the Review Board is a petition to enlarge issues, filed October 10, 1972, by Bethany College (Bethany) [1] seeking modification of the financial issue to encompass an inquiry into several of Calvary's esti-

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[2] Review Board Member Berkemeyer issued a dissenting statement noting that: "* * * the juxtaposition of the 2 subsections, with the general unrestricted one coming first, leaves sufficient chance of misunderstanding to justify acceptance of the Bureau's appeal in this case. The Examiner's order which delayed termination of the proceeding for 20 days also raises a legitimate question as to how the viewing of the 10 days allowed for the filing of a notice of appeal should be determined. Following issuance of this document with its clarifying interpretations, I would in future cases join with the majority in rejecting appeals which do not satisfy these requirements."

[3] For example, if the original ruling should be supplemented by a subsequent order which includes a new matter, the filing requirements of § 1.302 would be governed by the release date of the second order as to an appeal of that new matter.

[4] Chairman Burch absent; Commissioners Reid and Wiley concurring in the result.

[1] Comments on the petition were filed by the Broadcast Bureau on October 25, 1972. No responsive pleading was filed by Calvary.

mated costs, and addition of an issue to determine whether Calvary is eligible to receive the construction permit for which it has applied.

2. In its petition, Bethany first questions Calvary's estimate of $4,070 for 1st-year's operating costs, alleging that it (petitioner) has estimated a substantially higher amount; that Calvary will need a full-time first-class engineer and its allocation of $2,000 to meet this expense is insufficient; that Calvary will need, but has not provided for, a paid general manager or station manager and other staff personnel; and that Calvary has made no provision for taxes, insurance, BMI or ASCAP fees, promotion or programming expenses. However, as pointed out by the Broadcast Bureau in its comments, the fact that Bethany's estimate for operating costs is higher does not, of itself, raise a question as to the sufficiency of the amount budgeted by its opponent,[2] and the Commission's rules do not require Calvary to employ a full-time first-class engineer. See § 73.565 (b). Moreover, petitioner's allegations that Calvary will need a paid general manager and staff, and that it will incur additional expenses for taxes, insurance, promotion, etc., are not substantiated by affidavits from persons with personal knowledge and must therefore be rejected.[3] Petitioner next challenges Calvary's estimate for "other costs", alleging that Calvary will need additional funds for legal and engineering expenses, and for constructing its proposed studio and transmitter. While Bethany's allegations as to costs for studio and transmitter must be rejected since they are unsubstantiated, we agree with petitioner that, in light of the fact that Calvary has retained an attorney and an engineer, it is incumbent on the applicant to explain its failure to include any allotment of funds (other than $500 for "misc. expenses") for their fees within its estimated costs. The existing financial issue will therefore be modified to encompass an appropriate inquiry.[4] Finally, absent more specific allegations and supporting affidavits, we cannot accept petitioner's assertion that Calvary will be unable to obtain the used equipment it proposes to utilize.

3. Petitioner's request for an issue to determine whether Calvary is eligible to receive a construction permit for an educational FM station will be denied. As noted by the Bureau, this matter was thoroughly considered by the Commission in the designation order, and under the policy set forth in "Atlantic Broadcasting Co. (WUST)," 5 FCC 2d 717, 8 RR 2d 991 (1966), the Review Board is bound by that determination. The only new circumstance relied on by Bethany is a letter from a Congressman, wherein it is asserted that Calvary "does not really exist." This unsworn assertion is clearly not specific enough to raise a substantial question warranting an evidentiary inquiry into this matter.

4. *Accordingly, it is ordered,* That the petition to enlarge issues, filed October 10, 1972, by Bethany College is granted to the extent indicated below, and is denied in all other respects; and

5. *It is further ordered,* That Issue No. 1, as specified in the designation order, FCC 72-812, released September 20, 1972, is amended to read as follows:

1. To determine with respect to the application of Calvary Christian College:

(a) The amount and basis of the applicant's estimated costs for legal and engineering services; and

(b) Whether funds in the amount of $12,295, plus any additional funds found to be necessary under subissue (a), will be available for the construction and 1st-year operation of the proposed facility; and

(c) Whether, in light of the evidence adduced under the above issue, the applicant is financially qualified.

Adopted: December 12, 1972.

Released: December 15, 1972.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-21926 Filed 12-20-72;8:52 am]

[2] Cf. Eastern Broadcasting Corp., 28 FCC 2d 28, 21 RR 2d 417 (1971); and Marbro Broadcasting Co., Inc., 2 FCC 2d 1030, 7 RR 2d 216 (1966).

[3] See § 1.229(c) of the Rules. Cf. Eastern Broadcasting Corp., *supra*; and Community Broadcasting Co. of Hartsville, 16 FCC 2d 647, 15 RR 2d 814 (1967).

[4] Cf. Community Broadcasters, Inc., 33 FCC 2d 714, 23 RR 2d 723 (1972).

[Dockets Nos. 19445-19447; FCC 72R-374]

CHARLES W. HOLT ET AL.

Memorandum Opinion and Order Enlarging Issues

In regard applications of Charles W. Holt, Tallahassee, Fla., Docket No. 19445, File No. BP-18189; Talquin Broadcasting Co., Quincy, Fla., Docket No. 19446, File No. BP-18464; B. F. J. Timm, Tallahassee, Fla., Docket No. 19447, File No. BP-18487; for construction permits.

1. The Broadcast Bureau filed a petition to enlarge issues on July 12, 1972, and a supplement thereto on July 28, 1972, requesting the addition of a § 1.514 and/or 1.65 issue[1] against Charles W. Holt (Holt), an applicant in the above entitled proceeding. Untimely responsive pleadings thereto[2] were filed by Holt and B. F. J. Timm (Timm). For the reasons set forth in note 3 below,[3] the Bureau's petition will be treated as an unopposed petition, and will be granted to the extent indicated below.

2. The initial petition herein was prompted by disclosures in Holt's biographical statement, exchanged July 2, 1972, prior to the hearing in this proceeding, wherein the biographical sketch of Holt indicated that he had interests in three businesses, namely, Holt Development Corp.,[4] an investment company; Air Enterprises, Inc.,[5] a program production and service company; and Southern National Bank[6] in Hattiesburg. However, examination of Holt's subject application, filed on May 7, 1968, revealed that he had not reported these interests in table II of section II of the application despite the fact that such information is required to be reported. More specifically, the application requires a report of all businesses or financial enterprises in which an owner has a 25 percent or greater interest or official relationship within the 5-year period preceding the filing of the application. Although Holt at no time prior to the filing of the subject petition amended the application to reflect these omitted business interests, a revised balance sheet was filed which listed investments in these three com-

[1] The requested issue reads, as follows:

(a) To determine whether Charles W. Holt has failed to comply with the provisions of §§ 1.514 and/or 1.65 of the Commission's rules, and, if so, to determine the effect of such noncompliance on the applicant's basic or comparative qualification to be a Commission licensee.

[2] Also before the Board are the following filed related pleadings: (a) Comments, filed on Aug. 3, 1972, by Holt; (b) Comments, filed Aug. 11, 1972, by B. F. J. Timm; (c) Broadcast Bureau's reply, filed Aug. 15, 1972; and (d) Holt's motion to strike, Timm's comments, filed Aug. 22, 1972.

[3] Section 1.294(c) of the Commission's rules prescribes the time limitations for responsive pleadings as 10 days for oppositions and 5 days for replies to oppositions. Although the rule speaks in terms of oppositions and replies, it is evident that the purpose of the rule is to prescribe time limitations for responsive pleadings irrespective of their nomenclature. Thus, the purpose of the rule cannot be subverted by different or special label terms, and the labelling of a pleading as comments does not extend the time limitations prescribed by the rule. Stated another way, under the rule, the 10-day period allowed for the filing of oppositions and the 5-day period allowed for the filing of reply pleadings govern the time period for all responsive pleadings irrespective of their nomenclature. Here, Holt belatedly filed his responsive pleading on Aug. 3, 1972, labelling it "Comments" although it is, in substance, an opposition pleading. Similarly, Timm belatedly filed his responsive pleading to the Bureau's initial petition, labelling it as "Comments," and, indeed, even seeking a different issue than that requested by the Bureau despite the fact that it is now well established that the Board does not consider requests for new or additional issues filed in a responsive pleading because the opposing parties have no chance to analyze or challenge such requests. "Cf. East St. Louis Broadcasting Co.," 9 FCC 2d 212, 10 RR 2d 859 (1967). Accordingly, Holt's motion to strike Timm's comments will be granted. The Board will not consider these responsive pleadings, and will treat the Bureau's petition as an unopposed petition.

[4] Holt has been a controlling stockholder for over 5 years.

[5] Holt has been the 100% stockholder for more than 5 years. He testified that Air Enterprises is a regional sports network and administrative service company for Holt Stations. (Tr. 119-20.)

[6] Holt is a director and less than 5% stockholder. He testified that he was one of the organizers of the bank and has served continuously on its board since 1965. (Tr. 121.)

panies; however, the balance sheet did not reveal the information called for by table II of section II of the application relating to the date of acquisition, the extent of the interest, or the official relationship, if any, with these business enterprises. Subsequent to the filing of the subject petition, the hearing in this proceeding commenced, and at the hearing Holt testified concerning his ownership interest in the above named companies. He also testified that he had three additional business interests, namely, Donavan Lane Clothing,[7] Nylonate Paint Co.,[8] and Happy Products Toy Co.[9] His testimony at the hearing in these respects resulted from a voluntary agreement by counsel for Holt to the adduction of evidence regarding these alleged nondisclosures as if the issue sought herein by the Broadcast Bureau had already been added. (Tr. 123.) Thus, all of this unreported information was adduced either by cross-examination or examination of Holt by his own counsel.

3. As indicated by notes 4 and 5, supra, Holt is a controlling stockholder of Holt Development Corp., an investment company, and Air Enterprises, Inc., a program production and service company, for his radio stations. Since the Commission specifically indicated in its designation order that the respective proposals herein for Quincy and Tallahassee, Fla., would serve substantial areas in common, and, therefore, specially specified a contingent comparative issue, it is evident that Holt's ownership of Air Enterprises, Inc., the program production and service company for his radio stations, as well as his ownership and official relationship with other nonbroadcast enterprises, may be of decisional significance under the comparative issue. If so, there may have been a motive for Holt's failure to disclose these interests in table II of section II of the application. We will, accordingly, add the issue. However, the scope of this issue is limited to alleged nondisclosures in Holt's subject application. Contrary to the view of the Bureau, §§ 1.65 and 1.514 of the rules speak in terms of or relate solely to pending applications,[10] and, therefore, the issue sought by the Bureau cannot be expanded to include alleged nondisclosures of nonbroadcast interests in prior renewal applications filed by Holt in connection with his other broadcast interests.

4. *Accordingly, it is ordered,* That the Broadcast Bureau's petition to enlarge issues, filed July 12, 1972, is granted to the extent indicated herein, and is denied in all other respects; and

5. *It is further ordered,* That the issues in this proceeding are enlarged to determine whether Charles W. Holt has failed to comply with the provisions of §§ 1.514 and/or 1.65 of the Commission's rules and regulations, and, if so, to determine the effects of such noncompliance on the applicant's basic or comparative qualifications to be a broadcast licensee; and

6. *It is further ordered,* That the burden of proceeding shall be upon the Broadcast Bureau, and the burden of proof under such issue shall be upon Charles W. Holt; and

7. *It is further ordered,* That the motion to strike, filed August 22, 1972, by Charles W. Holt, is granted.[11]

Adopted: December 11, 1972.

Released: December 15, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[12]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-21928 Filed 12-20-72;8:52 am]

[Docket No. 11227, etc.; FCC 72R-379]

CITY OF NEW YORK MUNICIPAL BROADCASTING SYSTEM AND MIDWEST RADIO-TELEVISION, INC.

Memorandum Opinion and Order Enlarging Issues

In regard applications of City of New York Municipal Broadcasting System (WNYC), New York, N.Y., Docket No. 11227, File No. BSSA-226, for special service authorization to operate additional hours from 6 a.m., e.s.t., to sunrise, New York, N.Y., and from sunset, Minneapolis, Minn., to 10 p.m., e.s.t.; City of New York Municipal Broadcasting System (WNYC), New York, N.Y., Docket No. 17588, File No. BP-16148, Midwest Radio-Television, Inc. (WCCO), Minneapolis, Minn., Docket No. 19403, File No. BP-19151; for construction permits.

1. Before the Review Board is a petition to enlarge issues, filed by the Broadcast Bureau on August 2, 1972, requesting the addition of an issue in the above-captioned proceeding to determine whether the 50 kilowatt proposal of the City of New York Municipal Broadcasting System (WNYC) would provide adequate daytime and nighttime coverage of New York City, as required by § 73.188 (b) (2).[1 2]

2. The Review Board finds that good cause exists for accepting the Bureau's petition because WNYC did not, until coverage maps were made available on July 27, 1972, clearly depict the proposed 50 kw. coverage in relation to the boundaries of New York City. We therefore cannot agree with WNYC that the petition must be denied because of untimely filing. "Great River Broadcasting, Inc.," 11 FCC 2d 333, 12 RR 2d 130 (1968); "Chicagoland TV Co.," 5 FCC 2d 154, 155, 8 RR 2d 71, 73 (1966).[3] Moreover, provision of a premium grade signal to the principal city has long been held an important public interest consideration ("The Greenwich Broadcasting Corporation," 36 FCC 1294 at 1307-08, 2 RR 2d 548, 566 (1964)), and WNYC's most recent exhibits reveal that substantial portions of the Borough of Queens would not be within the 50 kw. proposed 5 mv/m contour and the nighttime interference-free contours. WNYC's argument that the reduction in coverage would have been less if the FCC Figure M-3 conductivities had been used for the WNYC 1 kw. and 50 kw. operations is irrelevant, since the valid measurements made on WNYC's 1 kw. operation take precedence over Figure M-3 computations. See § 73.183(c).[4] As adequately detailed by the Bureau, WNYC's stated aim is to provide better service to all of New York, and the Bureau's petition raises a substantial question as to the extent to which this goal will be achieved by the subject proposal which can best be resolved in the evidentiary proceeding. In view of the foregoing, the Board will add the requested issue with a slight modification to encompass a determination of compliance with § 73.30(c) in order that all pertinent evidence may be adduced.[5]

3. *Accordingly, it is ordered,* That the petition to enlarge issues, filed August 2, 1972, by the Broadcast Bureau, is granted, and that the issues are enlarged to include the following issue:

To determine whether Station WNYC's 50 kw. proposal would provide coverage of the city of New York as required by §§ 73.188 (b) (2) and 73.30(c) of the Commission rules, the extent of gain and loss of such coverage when compared with its present 1 kw. and SSA operations, and, if there is such a violation, whether circumstances exist which would warrant a waiver of these sections.

4. *It is further ordered,* That the burden of proceeding and the burden of

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[7] This is a retail clothing store. Holt has been a director and 6% stockholder since approximately 1955. (Tr. 125, 269-70.)

[8] Holt has been a director and less than 1% stockholder since about 1971. (Tr. 125.)

[9] Holt has been a director and a 7½% stockholder since August 1971. (Tr. 125, 270.)

[10] In passing, the Board merely notes the apparent desire of the Bureau and Timm to cross-examine Holt with respect to alleged nondisclosure of nonbroadcast interests in prior renewal applications relating to Holt Stations. (Tr. 275-7, 293.) As indicated at notes 1 and 3, a general type of nondisclosure issue has not been the subject of a timely petition, and cannot for reasons set forth in note 3 be lodged in a responsive pleading to the Bureau's petition here which seeks a more limited type of issue.

[11] See note 3, supra.

[12] Board Member Nelson not participating.

[1] Section 73.188(b)(2) specifies that "a minimum filed intensity of 5 to 10 mv./m. will be obtained over the most distant residential section."

[2] Also before the Board are: An opposition, filed by WNYC on Aug. 15, 1972, and the Bureau's reply, filed Aug. 24, 1972.

[3] The cases cited by WNYC in its opposition do not hold otherwise.

[4] This rule requires the use of M-3 conductivities in the absence of measurement data.

[5] The Bureau did not include § 73.30(c) in its recommended issue. This rule requires primary coverage of the entire principal city. Since the proposed WNYC 50 kw. nighttime interference-free contour is shown by WNYC as not encompassing all areas of the city, this rule will be included in the issue.

proof under the issue added herein shall be upon the city of New York Municipal Broadcasting System (WNYC).

Adopted: December 13, 1972.

Released: December 15, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[6]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-21927 Filed 12-20-72;8:52 am]

[Docket No. 19600; FCC 72-1097]

COURT HOUSE BROADCASTING CO. AND CHILLICOTHE TELCOM, INC.

Memorandum Opinion and Order Designating Application for Evidentiary Hearing and Enlarging Issues

In regard application of the Court House Broadcasting Co. (Assignor), and Chillicothe Telcom, Inc. (Assignee), Docket No. 19600, File No. BAL-7227, application for voluntary assignment of license for radio station WCHI-AM, Chillicothe, Ohio.

1. On February 5, 1971, the Commission accepted for filing the joint application of the Court House Broadcasting Co. (Court House) (Assignor) and Chillicothe Telcom, Inc. (Telcom) (Assignee) for authority to assign the license for radio station WCHI-AM, Chillicothe, Ohio. In an order, FCC 72-877, released October 13, 1972, we noted that Telcom is a subsidiary of the Chillicothe Telephone Co., a telephone common carrier, within whose exchange area WCHI-AM is located. Expressing our concerns over "whether a telephone common carrier should be permitted to acquire and operate a broadcast facility," we designated the captioned assignment application for oral argument on the following issue:

Whether the public interest would be served by permitting a telephone common carrier to acquire and operate a broadcast facility within its exchange area.

2. Subsequent pleadings, affidavits of principals of the assignor and assignee, a stipulation entered into between the parties, and oral argument held before the Commission, en banc, on November 20, 1972, have raised certain questions of fact with respect to the merits of the subject assignment application. In its application (BAL-7227) at section 1, page 2, question 9c, Court House was specifically asked if it had any applications pending before the Commission. It answered, "No." In spite of its representation to the contrary, our records show that Court House has a pending application for new FM facilities in Chillicothe, Ohio (BPH-6214, filed March 16, 1968). Court House's application is mutually exclusive with an application (BPH-6327, filed May 31, 1968) for new facilities on the same frequency, in the same community, filed by Telcom.

3. The instant assignment agreement provides that Telcom will pay Court House $175,000 for WCHI-AM. Of this sum, $33,000 is consideration for a covenant not to compete. Under the terms of the covenant, Court House and its principals, Wilbur N. Nungesser and Grace Nungesser, agree that "they will not, directly or indirectly, engage in radio broadcasting or otherwise compete" with Telcom. The covenant specifically provides that its provisions will not apply to Court House's existing station WCHO, located in Washington Court House, Ohio. It appears, however, that the covenant requires the dismissal of Court House's pending FM application. During the negotiations leading to the execution of the assignment agreement, Telcom and Court House were aware of the mutually exclusive FM applications pending before us.

4. The foregoing facts raise serious questions with respect to the incorrect statement contained in the assignment application and possible violations of section 311(c) of the Communications Act and § 1.525 of the Commission's rules.[1] We are not persuaded by the unsupported and untested statements of Court House and Telcom that the withdrawal of Court House's application was not contemplated in the covenant and that, in any event, no compensation will be paid for the withdrawal. The plain wording of the agreement requires the withdrawal of Court House's FM application. That the exact terms of the covenant were negotiated by the parties is evident from the exception given to Court House which will enable it to continue to operate WCHO.

5. Moreover, the parties admitted that they were aware of the competing FM applications during those negotiations, Telcom admitted at oral argument that it wanted Court House to withdraw its FM application and that it would benefit from the withdrawal (TR 33); and Court House's principal, Mr. Nungesser, stated in an affidavit that he believed that withdrawal of the FM application was required by the terms of the covenant. Nor have we received a satisfactory explanation concerning the allocation of funds and compensation for the covenant which would rebut any questions concerning a possible violation of section 311(c) of the Act. Under these circumstances a question exists as to whether the payment is, at least in part, consideration for withdrawal of the FM application, which requires that the parties should have the burden of establishing the validity of their allegation that Court House is not being compensated for the anticipated withdrawal of its FM application.

6. *Accordingly, it is ordered,* That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the above captioned application is designated for evidentiary hearing at a time and place to be specified in a subsequent order and that the issues herein are enlarged as follows:

1. What effect, if any, does the incorrect statement contained in the application for authority to assign license, File No. BAL-7227, have on the legal qualifications of the assignor.

2. Whether the covenant not to compete contained in the agreement between the Court House Broadcasting Co., and Chillicothe Telcom, Inc., includes, inter alia, an agreement for withdrawal of FM application, File No. BPH-6214, filed by the Court House Broadcasting Co.

3. Whether in light of issue 2 the assignment agreement is in violation of section 311(c) of the Communications Act and § 1.525 of the rules.

4. In view of the foregoing whether the grant of the requested authority would serve the public interest, convenience, and necessity.

7. *It is further ordered,* That, the Court House Broadcasting Co., Chillicothe Telcom, Inc., the Chief, Broadcast Bureau and the Chief, Common Carrier Bureau are made parties to this proceeding.

8. *It is further ordered,* That, the burden of proceeding with the introduction of evidence and the burden of proof with respect to all issues is hereby placed on the Court House Broadcasting Co., and Chillicothe Telcom, Inc.

9. *It is further ordered,* That, to avail themselves of the opportunity to be heard, the parties named herein, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall within twenty (20) days of the mailing of this order file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

10. *It is further ordered,* That, the Court House Broadcasting Co. shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594 of the rules.

11. *It is further ordered,* That, pursuant to the provisions of § 0.365 of the rules, any review of the initial decision herein shall be by the Commission.

Adopted: December 6, 1972.

Released: December 8, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[2]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-21925 Filed 12-20-72;8:52 am]

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[6] Board member Nelson not participating.

[1] Section 311(c) of the Act provides that consideration may be paid for withdrawal of a pending application only if the "value of such payment * * * is not in excess of the amount * * * legitimately and prudently expended and to be expended * * * in connection with preparing, filing and advocating the granting of the application." Section 1.525 of the rules provides the procedures for the implementation and enforcement of section 311(c) of the Act.

[2] Chairman Burch absent; Commissioner Johnson not participating.

[Docket No. 19544]

PUBLIC COAST RADIOTELEGRAPH STATIONS

Order Regarding Inquiry Into Problems

In the matter of inquiry into problems of public coast radiotelegraph stations, Docket No. 19544.

1. By letter dated September 20, 1972, seven members of the Radio Officers' Union of the United Telegraph Workers, Messrs. Robert Smith, Kenneth Cossaboom, Charles Karafatias, Eugene Kauder, Joseph Penot, Lester Parnell, and John Chow, request an extension of time until December 31, 1972, in which to file comments, and until March 31, 1973, in which to file replies in the above-captioned Inquiry. In the same letter, respondents submit their joint comments regarding the Inquiry.

2. Respondents allege that the existing time schedule is too limited and that as a consequence, radio officers on board ships in distant ports will be unable to file comments in the Inquiry.

3. Respondents represent that their joint filing, including the subject request and the comments that follow, represents a position founded upon their combined experience and does not necessarily constitute a reflection of the views or official position of the Radio Officers' Union.

4. We find that the respondents' request for an extension of time in which to file comments and replies in the Inquiry, insofar as it purports to be on behalf of radio officers in distant ports, is made without the appropriate representative authority and that, insofar as they file on their own behalf, the respondents, having complied with the existing time schedule for filing comments in the Inquiry, have not shown good cause for the requested extension.

5. We find that the Commission's orders of October 19, 1972, extending the time in which to file comments in the inquiry until December 1, 1972 (and the time in which to file replies until January 15, 1973), and of November 30, 1972, extending the time in which to file comments in the inquiry until December 11, 1972 (and the time in which to file replies until January 25, 1973), satisfy to a large extent, the need asserted by respondents in their October 13, 1972 filing. Requests for an extension of time in which to file replies in the inquiry will be entertained after December 11, 1972.

6. We wish to point out that for purposes of expediting the processing of requests for extensions of time in which to file comments and replies in a Commission inquiry, it is advisable to file requests independently of actual comments or replies.

7. *Accordingly, it is ordered,* Pursuant to §§ 0.303 and 0.331(b)(4) of the Commission's rules pertaining to delegation of authority that the request of respondents is denied.

Adopted: December 8, 1972.

Released: December 11, 1972.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] JAMES E. BARR,
Chief, Safety & Special Radio Services Bureau.

[FR Doc.72-21929 Filed 12-20-72;8:53 am]

FEDERAL MARITIME COMMISSION

[Docket No. 71-85]

AIR-MAR SHIPPING, INC.

Application for Independent Ocean Freight Forwarder License; Enlargement of Proceeding

On November 24, 1972, Air-Mar Shipping, Inc., filed a motion to dismiss the above docketed proceeding or, in the alternative, to enlarge the proceeding to incorporate and pass upon its application for license as an independent ocean freight forwarder, filed November 17, 1972.

The present proceeding is limited to determinations whether Air-Mar has violated section 44(a) Shipping Act, 1916; whether Air-Mar is carrying on the business of freight forwarding in violation of section 44(a) Shipping Act, 1916; and whether Air-Mar should be ordered to cease and desist from any such activity.

The Commission, after full and careful consideration of the record in the above proceeding, has determined that good cause would be served by the enlargement of the case to incorporate Air-Mar's latest application for license as an independent ocean freight forwarder within the present proceeding.

Accordingly, it is ordered, That the proceeding in the above-captioned matter presently styled to determine: (1) Whether Air-Mar Shipping, Inc., has violated section 44(a) Shipping Act, 1916; (2) whether Air-Mar is violating section 44(a) Shipping Act, 1916, by engaging in the business of ocean freight forwarding in violation of section 44 (a) Shipping Act, 1916; and (3) whether respondent should be ordered to cease and desist from such activity; be enlarged by the inclusion of consideration and decision upon Air-Mar's application for license as an independent ocean freight forwarder filed November 17, 1972, to determine whether applicant is "fit" to carry on the business of forwarding and to conform to the provisions of the Shipping Act, 1916, within the meaning of that statute; and whether its application should be granted or denied.

By the Commission.

[SEAL] FRANCIS C. HURNEY, *Secretary.*

[FR Doc.72-21950 Filed 12-20-72;8:54 am]

[Docket No. 71-86]

TWIN EXPRESS, INC.

General Increases in Rates in the U.S. Atlantic and Puerto Rico Trade; Reopening and Remand of Proceedings

In his initial decision, Administrative Law Judge Stanley M. Levy denied the proposed rate increase of respondent Twin Express, Inc. Exceptions to that decision were filed by Twin Express, but no final decision has been issued.

Twin Express has now moved that the proceeding be reopened and remanded to the Administrative Law Judge for further hearing. The motion is grounded upon the inadequacy and inaccuracy of the record upon which the Administrative Law Judge reached his decision. This deficiency of the record was due to the "nonrecognition" of Twin Express and its then counsel of record, with their "burden of establishing the propriety of its rate increases." Twin Express has now secured other counsel to represent it and urges it is now ready to establish its need for the rate increase. Hearing Counsel, the only other party in the case, does not oppose the motion.

The Commission does not find this a case of simple failure on the merits. While in some instances the axiom that "ignorance of the law is no excuse" is an old truth, it is equally true that some people through no fault of their own find themselves penalized by their unfamiliarity with the often bewildering maze of Federal regulation and control. This the Commission always seeks to avoid. The motion will be granted with the full expectation that respondent and its counsel will expend every effort to expedite these proceedings.

Accordingly, it is ordered, That this proceeding is hereby remanded to the Office of Administrative Law Judges for such further proceedings as the Administrative Law Judge may find necessary and appropriate for the establishment of an adequate record.

By the Commission.

[SEAL] FRANCIS C. HURNEY, *Secretary.*

[FR Doc.72-21949 Filed 12-20-72;8:54 am]

UNITED STATES ATLANTIC & GULF-JAMAICA CONFERENCE

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 1015; 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 20 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:

C. D. Marshall, Chairman, United States Atlantic & Gulf-Jamaica Conference, 11 Broadway, New York, N.Y. 10004.

Agreement No. 4610-19, entered into by the member lines of the United States Atlantic & Gulf-Jamaica Conference, amends article 3 of their basic conference agreement (No. 4610, as amended) to provide that the member lines shall pay a commission to bona fide freight forwarders as may be agreed but not less than 1¼ percent of the freight charges specified in the applicable tariff regulations. Article 3 of the conference agreement presently provides that any member line may, at its discretion, pay a commission not in excess of 1¼ percent of the freight and charges to bona fide freight forwarders.

By order of the Federal Maritime Commission.

Dated: December 18, 1972.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.72-21948 Filed 12-20-72;8:54 am]

AMERICAN EXPORT LINES, INC., AND LYKES BROS. STEAMSHIP CO., INC.

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 1015; 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 20 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:

J. Alton Boyer, Esq., Kominers, Fort, Schlefer & Boyer, Tower Building, 1401 K Street NW., Washington, DC 20005.

Agreement No. 10030 between the above-named carriers provides that Lykes will withdraw its opposition and request for hearing pursuant to section 605(c) of the Merchant Marine Act of 1936, with respect to AEL's petition for reinstatement of operating differential subsidy in connection with its services between the U.S. South Atlantic Coast and North Europe now pending before the Maritime Subsidy Board of the U.S. Maritime Administration.

In consideration of Lykes' withdrawal, AEL pledges not to set rates on any cargo carried by it in any subsidized service between the U.S. South Atlantic and Western Europe, Scandinavia and the Baltic at levels intended to divert through South Atlantic ports cargo originating in or destined to areas which would otherwise be naturally tributary to ports on the Gulf of Mexico.

By order of the Federal Maritime Commission.

Dated: December 15, 1972.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.72-21945 Filed 12-20-72;8:53 am]

NORTH ATLANTIC WESTBOUND FREIGHT ASSOCIATION

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 1015; 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 20 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:

Howard A. Levy, Esq., Suite 631, 17 Battery Place, New York, NY 10004.

Agreement No. 5850-21 modifies the basic agreement of the above-named conference to define the term U.S. South Atlantic ports as including coastal ports and ports tributary to such coastal ports situated on inland waters navigable by member lines' ocean vessels including LASH type barges. It also provides for automatic expiration of this definition on September 30, 1973, unless the members unanimously agree to extend it.

By order of the Federal Maritime Commission.

Dated: December 18, 1972.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.72-21946 Filed 12-20-72;8:54 am]

SCANDINAVIA BALTIC/UNITED STATES NORTH ATLANTIC WESTBOUND FREIGHT CONFERENCE

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 1015; 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 20 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:

Howard A. Levy, Esq., Suite 631, 17 Battery Place, New York, NY 10004.

Agreement No. 9982-1 modifies the basic agreement to provide that: (1) The conference shall be policed in accordance with the provisions of Agreement No. 9978 and that the Executive Director of the Associated North Atlantic Freight Conferences is appointed as the exclusive enforcement authority for such purposes; (2) none of the parties, their principals or affiliated companies shall give or promise, either directly or indirectly, to anyone any gift of substantial value or remuneration for any service beyond that called for in the contracts of affreightment or tariffs; and (3) the disclosure by any member, agent, or representative to any third party of any conference decision, discussion, deliberation, vote, communication, or any other conference business shall be deemed to constitute a breach of the agreement and subject to such fines as the enforcement authority may consider appropriate.

By order of the Federal Maritime Commission.

Dated: December 15, 1972.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.72-21947 Filed 12-20-72;8:54 am]

FEDERAL POWER COMMISSION

[Docket No. CP73-158] [1]

CONSOLIDATED GAS SUPPLY CORP. ET AL.

Order Setting Formal Hearing, Providing for Intervention of Interested Parties, and Setting Date for Prehearing Conference

DECEMBER 14, 1972.

On September 15, 1972, in Consolidated Gas Supply Corp. et al., Docket No. R-386, the Commission found that good cause had not been shown for continuance of deliveries of natural gas beyond a 60-day limitation specified in the Commission's Order No. 402-A.

The arrangement between Consolidated and the nonaffiliated companies (Algonquin Gas Transmission Co., Equitable Gas Co., Long Island Lighting Co., and Public Service Electric Gas Co.), and four of Consolidated's affiliates (East Ohio Gas Co., Peoples Natural Gas Co., River Gas Co., and West Ohio Gas Co.) provided that the Consolidated system would receive 19.722 Bcf of natural gas during the summer of 1972, and Consolidated would return 4.049 Bcf to Algonquin, Long Island and Public Service during the 1972-73 winter period. Consolidated would thus obtain about 15.7 Bcf net for its own use by purchases of these net volumes through offsetting deliveries from common suppliers, Texas Eastern Transmission Corp. and Transcontinental Gas Pipe Line Corp.

The Commission in its letter of September 15 denied an extension of time for deliveries of volumes beyond September 15 by those companies providing natural gas to Consolidated; the Commission, however, granted a waiver up to March 31, 1973, solely so that Consolidated could make redeliveries to the suppliers.

The Commission further ordered that its waiver was without prejudice to any final action the Commission might take regarding the circumstances, terms, and conditions and ultimate effects on consumers of the transactions, the first of which commenced on May 26, 1972, after an opportunity for a public disclosure of all of the facts is afforded through a formal hearing. The purpose of today's order is to establish procedures for the conduct of such a formal hearing. In order to provide all interested parties with an opportunity to participate herein, petitions to intervene may be filed as specified in this order. So that the presiding officer will be properly enabled to obtain the necessary information required for completing the record, the Consolidated system Algonquin, Long Island Lighting, Equitable, and Public Service will be designated as respondents in this matter.

In the petition of Consolidated, East Ohio, Peoples, River Gas, and West Ohio, which requested waiver of the regulations to continue noncertificated transactions for a third 60-day period, Consolidated alleged that emergency deliveries of gas to its system were required for injection into underground storage even though it was contemporaneously making deliveries to industrial customers. Further allegations were made of the necessity for emergency deliveries to Algonquin, Long Island Lighting, and Public Service during the 1972-73 winter period. The petition of the Consolidated system requested the Commission issue a statement that the participation of Long Island Lighting and Public Service would not affect their section 1(c) exemption by their participation in this transaction. In addition to resolving these allegations, the purpose of the formal hearings to be convened hereafter will be to determine, among other things: (1) Whether an emergency existed when the transaction was instituted as to each of the participating members, from an evaluation of the end-uses to which the subject volumes of gas were to be used; (2) whether certificate authorizations should have been sought and obtained by parties to these transactions in light of the previous knowledge of the parties that the transaction was to extend beyond a 60-day period provided by the regulations; and (3) whether the public interest requires some form of restitution by the Consolidated system to the other parties to the transaction. Appropriate detailed information, among other material, on storage operations, large industrial sales, and curtailments of the Consolidated system should be presented.

The Commission finds:

(1) A formal hearing is required in the above-described matter.

(2) The specified persons should be designated as respondents in this proceeding.

(3) Interested parties should be permitted to intervene in order that they may present evidence and submit recommendations to the Commission prior to final action herein.

(4) A prehearing conference should be convened by the presiding officer as scheduled herein for the purpose of framing the issues and the evidence to be presented by respondents and interveners so that a complete record may be prepared.

The Commission orders:

(A) A formal hearing shall be convened pursuant to authority conferred upon the Federal Power Commission by the Natural Gas Act and the Commission's regulations respecting the matter more fully set forth above and designated as Consolidated Gas Supply Corp. et al., Docket No. CP73-158.

(B) An Administrative Law Judge to be hereinafter designated by the Chief Administrative Law Judge shall preside at the conference and hearings and, in his discretion, shall control the proceedings thereafter.

(C) A prehearing conference will be convened before the presiding officer on December 21, 1972, at 10 a.m. e.s.t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, DC, pursuant to § 1.18 of the rules of practice and procedure.

(D) Interested parties in the above-described matters shall file petitions to intervene herein on or before December 29, 1972, as provided for in § 1.8 of the rules of practice and procedure.

(E) Consolidated Gas Supply Corp., East Ohio Gas Co., Peoples Gas Co., River Gas Co., West Ohio Gas Co., Long Island Lighting Co., Algonquin Gas Transmission Co., Equitable Gas Co., and Public Service Electric & Gas Co., are hereby designated as respondents in this proceeding.

By the Commission.

[SEAL] MARY B. KIDD,
Acting Secretary.

[FR Doc.72-21895 Filed 12-20-72;8:50 am]

[1] For the convenience of the Commission, this matter is being docketed separately even though no certificate application has been filed, in order to distinguish these transactions from other matters docketed in R-386.

[Docket No. CP73-148]

DISTRIGAS PIPELINE CORP.

Notice of Application

DECEMBER 15, 1972.

Take notice that on November 29, 1972, Distrigas Pipeline Corp. (Applicant), High Street, Boston, Mass. 02110, filed in Docket No. CP73-148 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas pipeline facilities and the transportation of natural gas by means of such facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate approximately 6,000 feet of 24-inch gas transmission line, with a 30-inch looped river crossing, from a point in Rossville, Staten Island, N.Y., under the Arthur Kill, to a point in Woodbridge, N.J., together with appurtenant facilities, and to transport by said line natural gas owned by Distrigas Corp.,[1] an affiliated company, to certain of the latter's customers in New Jersey and natural gas to be purchased by certain New Jersey customers from Eascogas LNG, Inc., as described in Eascogas LNG, Inc.'s pending applications in Dockets Nos. CP73-47 and CP73-88. Applicant states that the proposed pipeline is necessary to enable delivery of vaporized liquified natural gas (LNG) to New Jersey customers from the site of the LNG terminal now under construction at Staten Island by an affiliate of Applicant, Distrigas of New York Corp. Applicant expects 16.1 trillion B.t.u. of gas to be transported through the proposed facilities from November 1973 to October 1974, increasing to 165.4 trillon B.t.u. of gas for the period, October 1979 to October 1980.

Applicant proposes to charge each transportation customer (owner) a monthly demand charge for transportation of its gas determined by multiplying the sum of $105,000 by a fraction, the numerator of which shall be the maximum hourly quantity (MHQ) specified in that owner's service agreement and the denominator of which shall be the total MHQ of all the owners entitled to have gas transported through Applicant's facilities during that month.

Applicant desires to proceed with the construction of these facilities no later than November 1973, and states that its willingness to proceed with construction is not dependent upon the grant of any pending Distrigas Corporation or Eascogas LNG, Inc., applications.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 8, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-21896 Filed 12-20-72;8:50 am]

[1] Distrigas Corp. has an application pending in Docket No. CP73-78 for the importation of LNG from Algeria. By Commission Opinion No. 613, issued Mar. 9, 1972, in Docket No. CP70-196 it was authorized to import into the United States certain other LNG from Algeria.

[Docket No. CP 73-150]

FLORIDA GAS TRANSMISSION CO.

Notice of Application

DECEMBER 15, 1972.

Take notice that on December 1, 1972, Florida Gas Transmission Co. (Applicant), Post Office Box 44, Winter Park, FL 32789, filed in Docket No. CP73-150 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities in Florida, all as more fully set forth in the application in this proceeding which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate approximately 6.43 miles of 30-inch pipeline loop paralleling an equal length of its existing 24-inch main transmission pipeline in Jefferson, Madison, and Taylor Counties, Fla., and a regulator station on said main pipeline in Gadsden County, Fla. Applicant states that the proposed facilities are to be installed in order to enable it to comply with safety regulations of the Department of Transportation issued pursuant to the Natural Gas Pipeline Safety Act of 1968. The proposed facilities are said to be required in connection with the retesting of Applicant's 24-inch main line north of Tallahassee, Fla., to qualify them for continued operation in accordance with said regulations. Applicant further states that this is the most feasible method for complying with the regulations.

Applicant estimates the cost of the proposed facilities at $1,870,000, which it plans to finance from internally generated funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 8, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-21897 Filed 12-20-72;8:50 am]

[Docket No. CI73-410]

HUMBLE OIL & REFINING CO.

Notice of Application

DECEMBER 15, 1972.

Take notice that on December 11, 1972, Humble Oil & Refining Co. (Applicant), Post Office Box 2180, Houston, TX 77001, filed in Docket No. CI73-410 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 Natural Gas Pipeline Company of America from the Tenerias Field, Willacy County, Tex.,

all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell up to 15,000 Mcf of gas per day at 35 cents per Mcf at 14.65 p.s.i.a., subject to B.t.u. adjustment, for 1 year within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70).

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 December 29, 1972, 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 Applicant to appear or be represented at the hearing.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-21898 Filed 12-20-72;8:50 am]

[Docket No. CI73-411]

HUMBLE OIL & REFINING CO.

Notice of Application

DECEMBER 15, 1972.

Take notice that on December 11, 1972, Humble Oil & Refining Co. (Applicant), Post Office Box 2180, Houston, TX 77001, filed in Docket No. CI73-411 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 Panhandle Eastern Pipe Line Co. from the Vici Field, Ellis County, Okla., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell gas for 2 years at 35 cents per Mcf at 14.65 p.s.i.a., subject to upward and downward B.t.u. adjustment, within the contemplation of section 2.70 of the Commission's general policy and interpretations (18 CFR 2.70). Estimated initial upward B.t.u. adjustment is 4.48 cents per Mcf. Applicant will deliver up to 3,000 Mcf of gas per day until March 31, 1973, and 1,000 Mcf per day thereafter.

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 December 28, 1972, 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 Applicant to appear or be represented at the hearing.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-21899 Filed 12-20-72;8:50 am]

[Docket No. E-7821]

LOCKHART POWER CO.

Notice of Initial Rate Filing

DECEMBER 15, 1972.

Take notice that Lockhart Power Co. tendered for filing on November 13, 1972, its FPC Rate Schedule, "Resale Service, Municipalities". The submitted rate schedule is applicable to electric service to the company's only wholesale customer, the city of Union, S.C. The company asserts that it is not a public utility as defined under Part II of the Federal Power Act, but is submitting its wholesale rate schedules for filing as requested by the Commission.

Any person desiring to be heard or protest said filing should file a petition to intervene or protest with the Federal Power Commission, 441 G Street NW., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 27, 1972. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-21900 Filed 12-20-72; 8:50 am]

[Docket No. E-7690]

NEPOOL POWER POOL AGREEMENT

Notice of Further Extension of Time

DECEMBER 13, 1972.

On November 20, 1972, the New England Power Pool Executive Committee filed a motion to extend the time from January 30, 1973, to April 7, 1973, within which applicants shall file their prepared testimony and exhibits and that the remaining procedural dates be adjusted accordingly. The motion states that Commission staff counsel and counsel for the interveners have no objection to the requested extension. On November 30, 1972, Commission staff counsel filed an answer to the motion objecting to the requested extension. Staff's answer recommends that if the time is extended, it be for no more than 60 days after the interveners' evidence is filed.

Upon consideration, notice is hereby given that the procedural dates fixed by the order issued September 21, 1972, as amended by the notice issued October 27, 1972, are further modified as follows:

Prepared testimony and exhibits by interveners, December 29, 1972 (no change).
Prepared testimony and exhibits by applicants, February 27, 1973.
Testimony by staff, March 20, 1973.
Rebuttal testimony, April 12, 1973.
Prehearing conference, April 24, 1973 (10 a.m. e.s.t.).
Cross-examination on all evidence, May 1, 1973 (10 a.m. e.d.t.).

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-21901 Filed 12-20-72;8:50 am]

[Docket No. CP73-154]

SOUTHERN NATURAL GAS CO.

Notice of Application

DECEMBER 14, 1972.

Take notice that on December 6, 1972, Southern Natural Gas Co. (Applicant), Post Office Box 2563, Birmingham, AL 35202, filed in Docket No. CP73-154 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities in Alabama, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate the following facilities to connect the Big Escambia Creek Field in Escambia County, Ala., to its existing pipeline system:

PHASE I

1. Approximately 107 miles of 16-inch pipeline extending from the Big Escambia Creek Field, to Applicant's existing Selma Compressor Station in Dallas County, Ala.;
2. Two pipelines, one 16 inches and one 12¾ inches, each approximately 1,600 feet in length, crossing the Alabama River, in Dallas County, Ala.;
3. A receiving station to be located at the Big Escambia Creek Field;
4. A regulator station to be located near Applicant's existing Selma Compressor Station; and
5. The addition of 3,800 horsepower of compressing facilities at Applicant's existing Selma Compressor Station.

PHASE II

A maximum utilization plant in the Big Escambia Creek Field composed of the following:

1. A liquid extraction unit, including ancillary facilities, which will remove natural gas liquids (light condensate) from the inlet natural gas stream; and
2. A liquid conversion unit, including ancillary facilities, which will convert light condensate natural gas liquids and heavy condensate natural gas liquids into methane.

Applicant states that the proposed Phase I facilities will enable it to receive and transport into its main transmission system approximately 36,000 Mcf of natural gas per day, which Applicant proposes to purchase from Mallard Exploration, Inc., et al. (Mallard), and other producers in the Big Escambia Creek Field. Applicant anticipates that in the near future it will enter into contracts covering approximately 100 percent of the working interest in the Big Escambia Creek Field, although only a contract for 50.3 percent of the working field interest has been agreed upon with Mallard. Applicant further states that the proposed Phase I facilities will, upon commencement of the operations of the proposed Phase II facilities, permit it to transport a total of approximately 92,000 Mcf of natural gas per day by compressing methane produced from its maximum utilization plant and blending it with the stripped natural gas.

Applicant estimates cost of the Phase I facilities at $11,399,010 and cost of Phase II facilities at $13,832,560 which it expects to finance initially from bank loans, which will be repaid from cash from current operations and from permanent financing.

Applicant alleges that these proposed facilities will serve to aid it in attempting to meet the requirements of its customers for the winter of 1976-77 and thereafter and that these facilities will connect to the interstate market a new and previously uncommitted hydrocarbon reservoir.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 8, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-21902 Filed 12-20-72;8:50 am]

[Docket No. CP73-153]

TENNESSEE GAS PIPELINE CO.

Notice of Application

DECEMBER 15, 1972.

Take notice that on December 5, 1972, Tennessee Gas Pipeline Co., a division of Tenneco Inc. (Applicant) filed in Docket No. CP73-153 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of offshore natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate approximately 5.2 miles of 12-inch gas gathering line and approximately 5.2 miles of 2½-inch liquid gathering line in the West Delta Area of offshore Louisiana. Applicant states that these facilities are required in order to connect natural gas reserves of Belco Petroleum Corp., agent (Belco), in Block 64 of the West Delta Area to its existing pipeline system on Continental Oil Company's "B" Platform located in West Delta Block 40, offshore Louisiana. Applicant also proposes to construct metering facilities on Belco's production platform to measure the gas produced and sold and to install on Belco's platform the necessary liquid meter to measure the condensate produced and sold by Belco to Continental Oil Co.

Belco has filed an application in Docket No. CI73-293 pursuant to § 2.75 of the Commission's general policy and interpretations (18 CFR 2.75), the optional pricing procedure, for a certificate of public convenience and necessity to sell such gas to Applicant. Applicant estimates that there are approximately 49 million Mcf of recoverable natural gas reserves dedicated to it by Belco and anticipates an initial delivery of approximately 20,000 Mcf per day. Applicant has advanced to Belco $2,500,000 to be utilized to produce and develop the subject gas reserves. Applicant states that it can obtain the subject gas only by its agreement to construct, operate, and maintain the liquid gathering and measuring facilities.

Applicant estimates the cost of the gas-gathering line and related metering facilities at $1,260,900, the cost of the liquid-gathering line $265,000, and the total cost of both pipelines, including overheads, filing fees, and an allowance for funds used during construction at $1,844,800.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 8, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the

Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-21903 Filed 12-20-72;8:50 am]

FEDERAL RESERVE SYSTEM

AFFILIATED BANKSHARES OF COLORADO, INC.

Merger of Bank Holding Companies

DECEMBER 15, 1972.

Affiliated Bankshares of Colorado, Inc., Boulder, Colo., has applied for the Board's approval under section 3(a)(5) of the Bank Holding Company Act (12 U.S.C. 1842(a)(5)) to merge with First Colorado Bankshares, Inc., Littleton, Colo., with Affiliated Bankshares of Colorado, Inc., being the surviving corporation. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than January 10, 1973.

Board of Governors of the Federal Reserve System, December 14, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.72-21854 Filed 12-20-72;8:46 am]

CITIZENS AGENCY, INC.

Formation of Bank Holding Company and Continuation of Insurance Agency Activities

The Citizens Agency, Inc., Minneapolis, Kans., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 60 percent or more of the voting shares of The Citizens National Bank of Minneapolis, Kans., in addition to the 22 percent of the voting shares that Applicant presently owns. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The Citizens Agency, Inc., has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(2) of the Board's Regulation Y, for permission to continue to engage in insurance agency activities. Notice of the application was published on August 24, 1972, in The Minneapolis Messenger, a newspaper circulated in Minneapolis, Kans.

Applicant states that it engages in the activities of a general insurance agency in a community of less than 5,000 people. Such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal filed under section 4(c)(8) can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views on these applications or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than January 10, 1973.

Board of Governors of the Federal Reserve System, December 14, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.72-21855 Filed 12-20-72;8:46 am]

COMMERCE BANCSHARES, INC.

Order Approving Acquisition of Bank

Commerce Bancshares, Inc., Kansas City, Mo., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire more than 80 percent of the voting shares of Lexington Bank and Trust Co., Lexington, Mo.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and none has been timely received. The Board has considered the application in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant has 22 subsidiary banks with total deposits of $988.4 million, representing 7.9 percent of total commercial bank deposits in Missouri, and is the third largest bank holding company and banking organization in the State. (All banking data are as of June 30, 1972, adjusted to reflect holding company formations and acquisitions approved by the Board through November 30, 1972.) The acquisition of Bank ($7.5 million deposits) would increase Applicant's share of the State's total deposits by .06 percent, and applicant would become the second largest banking organization in Missouri. Consummation of the acquisition would not result in a significant increase in the concentration of banking resources in the State.

Bank, the smaller of two banks in Lexington and the fifth largest of 11 banks competing in the relevant market area which includes the southeast portion of Ray County and the northwest and north central portions of Lafayette County, holds 11.42 percent of market deposits. Applicant's closest subsidiary banking office is located in a separate market area, approximately 23 miles northwest of Lexington. There is no meaningful present competition between any of Applicant's subsidiary banks and Bank. Furthermore, it appears unlikely that any significant competition would develop between any of Applicant's subsidiaries and Bank in the future due to the distances separating the banking offices, Missouri's restrictive branching law, and the presence of numerous banking alternatives in the intervening areas. The Board concludes that consummation of the proposal would not eliminate existing or potential competition, nor would it have adverse effects on any competing bank.

Considerations relating to the financial and managerial resources and future prospects of Applicant, its subsidiary banks, and Bank are satisfactory and consistent with approval of the application. While it appears that major banking needs in the area are being met, considerations relating to the convenience and needs of the communities to be served lend some weight toward approval of the application in view of the fact that some specialized banking services will become available locally. It is the Board's judgment that the proposed transaction would be in the public interest, and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the 13th calendar day following the effective date of this order or (b) later than 3 months after the effective date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Kansas City pursuant to delegated authority.

By order of the Board of Governors,[1] effective December 14, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.72-21856 Filed 12-20-72;8:46 am]

COMMERCE BANCSHARES, INC.

Acquisition of Bank

Commerce Bancshares, Inc., Kansas City, Mo., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of The Citizens National Bank of Harrisonville, Harrisonville, Mo. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than January 10, 1973.

Board of Governors of the Federal Reserve System, December 14, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.72-21857 Filed 12-20-72;8:46 am]

CROCKER NATIONAL CORP.

Proposed Acquisition of Schumacher Mortgage Co., Inc.

Crocker National Corp., San Francisco, Calif., has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(2) of the Board's Regulation Y, for permission to acquire Schumacher Mortgage Co., Inc., Memphis, Tenn., which operates various offices in Tennessee and Minnesota. Notice of the application was published on the dates indicated in newspapers of general circulation as follows:

1. October 13-20, 1972, The Germantown Star, Millington, Tenn.
2. October 25, 1972, The Commercial Appeal, Memphis, Tenn.
3. October 13, 1972, Chattanooga News-Free Press, Chattanooga, Tenn.
4. October 13, 1972, The Knoxville News-Sentinel, Knoxville, Tenn.
5. October 13, 1972, Kingsport Times, Kingsport, Tenn.
6. October 13, 1972, The Minneapolis Star and Minneapolis Tribune, Minneapolis, Minn.

The proposed subsidiary would engage in making or acquiring real estate loans, servicing real estate loans and acting as agent or broker in the sale of certain insurance directly related to extensions of credit. Applicant states that these activities would be consistent with the activities specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Applicant proposes that Schumacher would also perform the following services: (1) General property management with respect only to Government subsidized low and moderate income housing projects, such as section 236 projects under the National Housing Act of 1968; (2) real estate broker or agent with respect only to properties acquired by the bank holding company or its credit extending subsidiaries as a result of a default on a loan; and (3) general property management in connection with properties which are the subject of permanent loans being serviced by Schumacher. By its order of March 23, 1972 (1972 Federal Reserve Bulletin 428) the Board of Governors determined that engaging in general real estate brokerage, other than in connection with a default on a loan, is not so closely related to banking or managing or controlling banks as to be a proper incident thereto. By its order of March 28, 1972 (1972 Federal Reserve Bulletin 429) the Board determined that engaging in the purchase and sale of land, and acting as a joint venturer in real estate development are not activities that are so closely related to banking as to be a proper incident thereto. On June 30, 1972 (1972 Federal Reserve Bulletin 652) the Board announced that, with certain exceptions, it does not consider property management services a permissible activity for bank holding companies under section 4(c)(8) of the Bank Holding Company Act.

Interested persons may express their views as to whether any of the aforementioned three activities which are proposed to be conducted by Schumacher are presently authorized to be conducted by bank holding companies or are otherwise so closely related to banking or managing or controlling banks as to be a proper incident thereto, in view of the Board's earlier determinations, cited above.

Interested persons may also express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than January 9, 1973.

Board of Governors of the Federal Reserve System, December 13, 1972.

MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.72-21858 Filed 12-20-72;8:46 am]

FIRST NATIONAL CITY CORP.

Order Approving Acquisition of Acceptance Finance Company et al.

First National City Corp., New York, N.Y., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 4(c)(8) of the Act and section 225.4(b)(2) of the Board's Regulation Y to acquire all of the voting shares of Acceptance Finance Co., Clayton, Mo. ("Acceptance") and to indirectly acquire through that acquisition: (1) The Samuel Morgan Corp. ("Samuel"), (2) the Anna Morgan Corp. ("Anna"), and (3) Financial Forms, Inc. ("Forms"), all Missouri corporations, and the assets of Daniel Charles Agency ("Agency"), a Missouri partnership.[1] Acceptance engages in the activities of (1) making personal loans to individuals, (2) purchasing of consumer installment paper, and (3) acting as agent for the sale of credit life, accident, health, property, and casualty insurance in connection with its own extensions of credit. Agency acts as an agent for the sale of property and casualty insurance, directly related to the extension of credit by Acceptance. Such activities have been determined by the Board to be closely related to the business of banking. (12 CFR 225.4(a)(1) and (9)) Samuel and Anna will confine their activities to premises holding for Acceptance and its subsidiaries and Forms will confine its activities to the printing of forms used in Acceptance's business. Such activities are permissible as incidental to activities determined by the Board to be closely related to banking.

Notice of the application affording opportunity for interested persons to submit comments and views on the public interest factors has been duly published (37 F.R. 19402). The time for filing comments and views has expired and none have been timely received.

Applicant controls the banks, with aggregate deposits of approximately $13.83 billion representing 14.7 percent of the total commercial bank deposits in New York.[2] Applicant also has non-

[1] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Brimmer, and Sheehan. Absent and not voting: Governor Bucher.

[1] Applicant has filed a separate application to acquire Gateway Life Insurance Co., a wholly owned credit life insurance underwriting subsidiary of Acceptance, which application will be the subject of separate consideration by the Board.

[2] All banking and consumer loan data are as of Dec. 31, 1971, adjusted to reflect bank holding company acquisitions approved by the Board through Sept. 15, 1972.

banking subsidiaries engaged principally in mortgage banking, lease and conditional sales financing, but no present consumer finance subsidiaries.

Acceptance has total assets of $31 million and operates 85 small loan offices in 14 States throughout the South, the Mid-West, and the Far West. The closest office of Applicant's banking subsidiaries to offices of Acceptance is over 800 miles distant. Since typically small personal loans tend to be of a local nature and service, there is no existing competition between Acceptance and Applicant in this product line. Nor would consummation of the transaction appear to have any significantly adverse effects on potential competition. The barriers to entry for the small personal loan business do not appear to be particularly high in most States, capital requirements are low, and there are no significant economies of scale. Moreover, Applicant appears to be only one of numerous potential entrants into the small loan business so that following consummation of the proposal there would remain numerous companies with the ability and incentive to enter each of the local small loan markets. Acceptance does not appear to have a dominant position in any of the various local markets in which it has small loan offices. Rather it appears that its market share with only a few minor exceptions is rather small and that the acquisition of Acceptance by Applicant can be characterized as a "foothold" acquisition in the great majority of local markets.

Acceptance on its own and through its affiliated partnership agency acts as agent for the sale of credit-related insurance. However, it does not seem to be a significant factor in this product line in any of the areas it operates, nor does Applicant have any subsidiary operating as an agent for credit-related insurance. For these reasons it does not appear that acquisition of Acceptance and Agency by Applicant would have a significantly adverse effect on either existing or potential competition.

There is no evidence in the record indicating that consummation of the proposal would result in any undue concentration of resources, unfair competition, conflicts of interest or unsound banking practices. Approval of the application, by giving Acceptance access to Applicant's financial resources, should enhance its competitive effectiveness and enable it to expand the range of services it offers.

Based upon the foregoing and other considerations reflected in the record, the Board has determined that consummation of the proposal herein can reasonably be expected to produce benefits to the public that outweigh possible adverse effects.

Accordingly, the application is hereby approved. This determination is subject to the conditions set forth in section 225.4(c) of Regulation Y and the Board's authority to require such modification or termination of the activities of a holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to prevent evasion thereof.

By order of the Board of Governors,[3] effective December 14, 1972.

[SEAL] TYNAN SMITH, *Secretary of the Board.*

[FR Doc.72-21859 Filed 12-20-72;8:46 am]

GRAND HAVEN STATE BANK

Order Approving Application for Consolidation of Banks

The Grand Haven State Bank, Grand Haven, Mich., a nonoperating proposed member State bank of the Federal Reserve System, has applied for the Board's approval pursuant to the Bank Merger Act (12 U.S.C. 1828(c)) of the consolidation of that bank with Security First Bank & Trust Co., Grand Haven, Mich. ("Grand Haven Bank") under the charter of the former and the name of the latter. As an incident to the consolidation, the present branches of Grand Haven Bank will continue as branches of the resulting bank. The bank into which Grand Haven Bank is to be consolidated has no significance except as a means to facilitate the acquisition of the voting shares of Grand Haven Bank by Pacesetter Financial Corp., Grand Haven, Mich.

As required by the Act, notice of the proposed consolidation, in form approved by the Board, has been published, and the Board has requested reports on competitive factors from the Attorney General, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation. The Board has considered the application and all comments and reports received in the light of the factors set forth in the Act.

On the basis of the record, the application is approved for the reasons summarized in the Board's order of November 30, 1972, approving the application of Pacesetter Financial Corp. to become a bank holding company through acquisition of 100 percent of the voting shares of the successor by consolidation to Security First Bank & Trust Co., Grand Haven, Mich., and the successor by consolidation to Traverse City State Bank, Traverse City, Mich., provided that said consolidations shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Chicago pursuant to delegated authority.

By order of the Board of Governors,[1] effective November 30, 1972.

[SEAL] MICHAEL A. GREENSPAN, *Assistant Secretary of the Board.*

[FR Doc.72-21860 Filed 12-20-72;8:46 am]

[3] Voting for this action: Chairman Burns and Governors Daane, Brimmer, Sheehan, and Bucher. Voting against and issuing a dissenting statement, which is filed as part of the original document: Governor Robertson. Absent and not voting: Governor Mitchell.

TEXAS COMMERCE BANCSHARES, INC.

Order Approving Acquisition of Banks

Texas Commerce Bancshares, Inc., Houston, Tex., a bank holding company within the meaning of the Bank Holding Company Act, has applied in separate applications for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of Westwood Commerce Bank ("Westwood Bank") and 90 percent or more of the voting shares of Lakeside Commerce Bank ("Lakeside Bank"), proposed new banks both located in Houston, Tex.

Notice of the applications, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the applications and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant controls seven banks located in the Houston, Beaumont, and San Angelo, Tex., areas with aggregate deposits of $1.5 billion, representing 4.9 percent of total deposits of commercial banks in the State.[2] Applicant, the fourth largest banking organization in Texas, is the second largest banking organization in the Houston banking market with four subsidiary banks controlling approximately 17.9 percent of deposits of commercial banks in that market. In addition, applicant holds through a subsidiary, between 20 and 24 percent of each of three other banks located in the Houston area. These three banks hold aggregate deposits of $77.2 million, representing 1.1 percent of the total deposits of commercial banks in

[1] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Brimmer, Sheehan, and Bucher.

[2] On Nov. 2, 1972, the Board approved applicant's application to acquire Bank Plaza del Oro, N.A., Houston, Tex., a proposed new bank. On Nov. 28, 1972, the Board announced its approval of applicant's application to acquire American Bank of Commerce, Odessa, Tex. As a condition to the Board's approval of that application, applicant is required to divest, within 2 years, its interest in Permian Bank & Trust, Odessa, Tex., acquired as an incident to acquisition of American Bank. On Dec. 11, 1972, the Board announced its approval of applicant's application to acquire The Citizens National Bank of Lubbock, Lubbock, Tex.

the Houston area. (All banking data are as of December 31, 1971, and reflect holding company formations and acquisitions approved through October 31, 1972.) Acquisition of Lakeside and Westwood banks, both proposed new banks, will have no immediate affect on applicant's share of deposits of commercial banks in the State.

Lakeside and Westwood banks are proposed to be located in adjacent areas in the southwest section of Houston, Tex., approximately 5 miles apart and approximately 11 and 12 miles, respectively, from that city's central business district in which applicant's lead bank is located.[2] Applicant's other subsidiary banks in the Houston market are all located to the north of the central business district. Bank Plaza del Oro, a proposed new bank subsidiary of applicant, will be located south of downtown Houston approximately 10 miles east of the proposed site of Westwood Bank in a separate but adjacent service area.[3]

Since both Lakeside and Westwood banks are proposed new banks, no existing competition between these banks and any of applicant's subsidiary banks would be eliminated as a result of consummation of the proposals herein; and concentration of banking resources would not be increased in any relevant area. Expansion de novo by applicant into the suburban markets of Houston to be served by these proposed new banks should eliminate neither meaningful future competition among commercial banks nor have any significant effect on the future concentration of bank resources in the Houston area. The areas to be served by both banks are experiencing substantial growth. De novo entry by applicant into these areas will provide additional banking alternatives and should stimulate competition among those financial institutions already located in the area to be served by Westwood Bank; and will provide (along with another newly-chartered but unopened bank) a needed source of banking services in the area proposed to be served by Lakeside Bank. As development of the western portions of Houston continues, prospects appear favorable for entry by additional banking organizations into that area. Entry de novo by applicant into these areas should not serve to foreclose the opportunity for entry by other banking organizations. The Board concludes that consummation of the proposals herein will not have an adverse effect on competition in any relevant area and may, in fact, serve to stimulate competition in the areas proposed to be served.

[2] Applicant has filed charter applications with the appropriate supervisory authorities for four additional new banks proposed to be located in the Houston area.

[3] The proposed site of Westwood Bank is located approximately 5 miles north of The First National Bank of Stafford, Stafford, Tex. Applicant holds 24 percent of the outstanding voting shares of this bank and has neither filed application nor expressed an intention to acquire additional shares of this bank.

The financial and managerial resources of applicant and its subsidiary banks are regarded as satisfactory and prospects for the group appear favorable. Lakeside and Westwood banks have no financial or operating history. However, as subsidiaries of applicant, their prospects appear favorable. Banking factors are consistent with approval of these applications. There are presently no banks operating in the immediate area to be served by Lakeside Bank. Although at least one other newly-chartered bank will be operating in that area in the near future, the rapid growth in this area indicates the need for additional banking alternatives. Establishment of Westwood Bank will provide residents of that bank's service area a convenient source of the wide variety of banking services offered through applicant. Considerations relating to the convenience and needs of the residents of the areas proposed to be served by Lakeside and Westwood banks are consistent with approval of these applications.

It is the Board's judgment that the proposed acquisitions would be in the public interest and that the applications should be approved.

On the basis of the record, the applications are approved for the reasons summarized above. The transactions shall not be consummated (a) before the 30th calendar day following the effective date of this order or (b) later than 3 months after the effective date of this order; and (c) Lakeside Commerce Bank and Westwood Commerce Bank, both of Houston, Tex., shall be opened for business not later than 6 months after the date of this order. Each of the periods described in (b) and (c) may be extended for good cause by the Board, or by the Federal Reserve Bank of Dallas pursuant to delegated authority.

By order of the Board of Governors,[4] effective December 14, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.72-21861 Filed 12-20-72;8:47 am]

TRAVERSE CITY BANK AND TRUST CO.

Order Approving Application for Consolidation of Banks

The Traverse City Bank and Trust Co., Traverse City, Mich., a nonoperating proposed member State bank of the Federal Reserve system, has applied for the Board's approval pursuant to the Bank Merger Act (12 U.S.C. 1828(c)) of the consolidation of that bank with Traverse City State Bank, Traverse City, Mich. ("Traverse City Bank") under the charter of the former and the name of the latter. As an incident to the consolidation, the present branches of Traverse City Bank will continue as branches of the resulting bank. The bank into which Traverse City Bank is to be consolidated has no significance except as a means to facilitate the acquisition of the voting shares of Traverse City Bank by Pacesetter Financial Corp., Grand Haven, Mich.

As required by the Act, notice of the proposed consolidation in form approved by the Board, has been published, and the Board has requested reports on competitive factors from the Attorney General, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation. The Board has considered the application and all comments and reports received in the light of the factors set forth in the Act.

On the basis of the record, the application is approved for the reasons summarized in the Board's order of November 30, 1972, approving the application of Pacesetter Financial Corp. to become a bank holding company through acquisition of 100 percent of the voting shares of the successor by consolidation to Traverse City State Bank, Traverse City, Mich., and the successor by consolidation to Security First Bank & Trust Co., Grand Haven, Mich., provided that said consolidations shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Chicago pursuant to delegated authority.

By order of the Board of Governors,[1] effective November 30, 1972.

MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.72-21862 Filed 12-20-72;8:47 am]

[4] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Brimmer, and Sheehan. Absent and not voting: Governor Bucher.

[1] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Brimmer, Sheehan, and Bucher.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 72-29]

NASA SPACE PROGRAM ADVISORY COUNCIL

Notice of Date and Place of Meeting

The NASA Space Program Advisory Council will meet at the headquarters of the National Aeronautics and Space Administration on January 11 and 12, 1973. The meeting will be held in Room 5026 of Federal Office Building 6, located at 400 Maryland Avenue SW., Washington, DC 20546. The meeting is open to members of the public during the open portion, from 9:30 a.m. to 5 p.m. on January 11 and from 8:30 a.m. to 10 a.m. on January 12, to within the 60-seat capacity of the room.

The NASA Space Program Advisory Council serves in a consultative capacity to the National Aeronautics and Space Administration to review the NASA pro-

grams, objectives, and contributes to the overall agency objectives. The Council has 10 members including the Chairman, Dr. Brian O'Brien. For further information regarding the meeting, please contact Mr. George Duncan: Area code 202—755-3700. The agenda for the meeting is as follows:

JANUARY 11, 1973

Time	Topic
9:30 a.m.	Major thrusts in the 1980's (action: The Council will review the recommendations proposed by its committees and will formulate its final recommendations as to the major thrusts for NASA in the 1980's).
10:30 a.m.	Report of Committee Activities (action: The chairman of each committee is to report on the activities of his committee during period June through December 1972).
1 p.m.	Review of the NASA space science program (action: The Council is required periodically to review and assess the plans, the accomplishments and the work in progress on the NASA space science program and to recommend alternatives and new approaches to NASA).
2 p.m.	Review of the NASA applications program (action: The Council is required periodically to review and assess the plans, the accomplishments and the work in progress on the NASA applications program and to recommend alternatives and new approaches to NASA).
3 p.m.	Review of NASA space shuttle planning (action: The Council is to aid and advise NASA on the planning for the space shuttle to meet the requirements of using organizations).

JANUARY 12, 1973

8:30 a.m.	Reducing costs of the space program (action: NASA personnel will brief the Council on the NASA efforts to reduce the costs of the space program to enable the Council to include improved approaches to cost reduction in all recommendations to NASA).
9 a.m.	Review of the NASA earth ecology program (action: The Council will review the NASA earth ecology program and, if required, recommend appropriate alternatives and new approaches).
10 a.m.	Executive session (closed to the public). (Action: The Council is to review proposed programs for the fiscal year 1974 budget with the program associate administrators and to present recommendations for the consideration of the Administrator and the Deputy Administrator of NASA.)

HOMER E. NEWELL,
Associate Administrator, National Aeronautics and Space Administration.

DECEMBER 15, 1972.

[FR Doc.72-21869 Filed 12-20-72;8:47 am]

NATIONAL SCIENCE FOUNDATION

NSF PROGRAMS

Notice of Policy on Industry Participation

The National Science Foundation Act of 1950, as amended (42 U.S.C. 1861 et seq.) permits the Foundation to support basic research, without limit.

Moreover, pursuant to section 3(c) of the above Act (42 U.S.C. 1862(c)) the President has recently directed that:

The Foundation, in making grants or contracts for applied scientific research relevant to national problems involving the public interest, may support such work at other than academic and nonprofit institutions when the Director of the National Science Foundation determines that it would be advantageous to use the capabilities of such other institutions to accomplish the program objectives. (Letter dated April 13, 1972, to the Director of NSF.)

Within the limits of this directive, it is the policy of the National Science Foundation to support research at industrial or commercial organizations when it is advantageous for the attainment of its program objectives. The Director of the Foundation shall determine in which research program areas industrial and commercial organizations will be encouraged to participate and shall approve the criteria for participation in the program.

The Foundation will continue to emphasize its traditional role of support for a strong national basic research capacity, particularly in academic institutions, and the improvement of science education. At the same time, the participation of individual industry and other nonacademic organizations is encouraged in the following NSF program areas:

1. RANN (Research Applied to National Needs).
2. Experimental R. & D. Incentives Program.
3. National R. & D. Assessment Program.
4. International Decade of Ocean Exploration Program.
5. Computer Applications in Research Programs.
6. Computer Impact on Society Program.

Also, collaboration between industry and university researchers, as well as between industry and State or local governments, on appropriate programs is encouraged. Similarly, broader efforts through industry associations, groups of companies, or professional societies may be supported. Prospective proposers are encouraged to contact the appropriate program for program announcements and brochures and for preliminary discussions and guidance prior to the submission of a proposal.

Generally, awards are made in response to both solicited and unsolicited proposals. Normally, awards resulting from unsolicited proposals are made on a cost-sharing or jointly funded basis while those from solicited proposals may provide for payment of full costs including fee. Proposals in response to specific program announcements are considered solicited only when the annoucement so indicates.

Disposition of rights to data and inventions resulting from government-supported research are subject to negotiation. Factors to be considered are the nature and purpose of the project and other factors involving the public interest, the commercial position of the awardee, and any equities he may have. At a minimum the government will receive a royalty-free, paid-up license and the right to require the licensing of others on reasonable terms in certain circumstances.

Changes to the list of NSF programs in which industry and other nonacademic organizations are encouraged to participate will be published in the FEDERAL REGISTER.

The National Science Foundation looks forward to being able to utilize and properly integrate the capabilities of all institutions in the support of science and its contribution to society and the nation.

Dated: December 15, 1972.

[SEAL] RAYMOND L. BISPLINGHOFF,
Acting Director, National Science Foundation.

[FR Doc.72-21866 Filed 12-20-72;8:47 am]

PRICE COMMISSION

[Order 13]

TERMINATION OF TERM LIMIT PRICING (TLP) ARRANGEMENTS

Requirement of Special Report

Since November 14, 1971, the Price Commission has entered into 185 Term Limit Pricing (TLP) arrangements with prenotification firms which agreed to limit their overall weighted average price increases over base prices to 2 percent or less, per fiscal quarter, for a 1-year period.

Many of these TLP arrangements are scheduled to expire in the near future. Under § 300.51 of the Commission's regulations, upon expiration of a TLP arrangement, and for the next fiscal quarter unless and only to the extent that additional price increase authority has

been granted by the Commission, a firm's prices may not be at a level higher than that which would insure compliance with the TLP arrangement were the firm to continue under the arrangement. Until a price increase request is submitted and approved under § 300.51, after expiration of a TLP arrangement a prenotification firm is not authorized to increase a price above base price.

It is therefore ordered, to insure compliance with the foregoing, that, upon the expiration of each TLP arrangement, each affected firm shall, pursuant to § 300.59 of the regulations, submit a special report containing the following information within 45 days after the expiration of its TLP arrangement:

(a) Sales revenues which would be obtained during the fiscal quarter following expiration of the TLP arrangement assuming that anticipated sales during that fiscal quarter will be made at base prices;

(b) Revenues from price increases on the sales revenues in (a), above, which would have been authorized by the TLP arrangement had it not expired; computed by multiplying the product obtained under (a), above, by the weighted average price increase authorized in the TLP arrangement;

(c) Sales revenues from net price increases effected during the period of the TLP arrangement which will be derived from the anticipated sales during the fiscal quarter following expiration of the TLP arrangement; computed by multiplying the product obtained under (a), above, by the weighted average net price increase effected during the period of the TLP arrangement;

(d) The difference between (b) and (c), above.

Issued in Washington, D.C., on December 15, 1972.

C. JACKSON GRAYSON, Jr.,
Chairman, Price Commission.

[FR Doc.72-21911 Filed 12-20-72;8:51 am]

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

ACCURATE CALCULATOR CORP.

Order Suspending Trading

DECEMBER 14, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.01 par value, and all other securities of Accurate Calculator Corp., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from December 16 through December 25, 1972.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72-21871 Filed 12-20-72;8:48 am]

[File No. 500-1]

FIRST LEISURE CORP.

Order Suspending Trading

DECEMBER 14, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.10 par value and all other securities of First Leisure Corp., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from December 17 through December 26, 1972.

By the Commission.

RONALD F. HUNT,
Secretary.

[FR Doc.72-21872 Filed 12-20-72;8:48 am]

[File No. 500-1]

FIRST WORLD CORP.

Order Suspending Trading

DECEMBER 14, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the Class A and Class B common stocks, $0.15 par value, and all other securities of First World Corp. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from December 16 through December 25, 1972.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72-21873 Filed 12-20-72;8:48 am]

[811-2267]

PASCO, INC.

Notice of Filing of Application

DECEMBER 15, 1972.

Notice is hereby given that Pasco, Inc. ("Pasco"), Delaware Trust Building, Ninth and Market Streets, Wilmington, Del. 19801, has filed an application pursuant to section 8(f) of the Investment Company Act of 1940 ("Act") for an order of the Commission declaring that Pasco has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below.

Pasco is a Delaware corporation, and its capital stock is listed on the New York Stock Exchange and registered under the Securities Exchange Act of 1934. Since its organization and until June 30, 1967, Pasco was engaged principally in the business of exploring for, producing and selling sulphur. Substantially all such activities were carried on by Azufrera Panamericana S.A. de C.V. ("Azufrera"), a Mexican corporation which was a wholly owned subsidiary of Pasco. In 1967 Pasco sold 66 percent of its stock interest in Azufrera to Mexican interests. Pasco invested the proceeds of such sale in certificates of deposit and other cash items. As a result of these transactions, Pasco fell within the definition of an investment company under section 3(a)(3) of the Act. On January 31, 1972, therefore, Pasco filed with the Commission a notification of registration on Form N-8A, and on May 1, 1972, it filed a registration statement on Form N-8B-1.

On September 21, 1972, Pasco entered into a Letter of Intent with Atlantic Richfield Co. ("ARCO") providing for the purchase by Pasco from ARCO of certain properties which ARCO acquired through the merger in 1969 of Sinclair Oil Corp. into ARCO. Pursuant to a Final Judgment entered by the District Court for the Southern District of New York on August 28, 1970, ARCO was ordered to divest the properties which Pasco now desires to acquire. Such properties include oil-producing properties, an oil refinery and a crude oil gathering system (all located in Wyoming), interests in two pipelines and about 1,500 gasoline service stations (located in 14 States) which are either owned in fee or leased. Such properties and the inventory and receivables related to them are herein referred to as the "Sinclair Properties".

The aggregate purchase price of the Sinclair Properties is estimated to be approximately $185 million. Pasco proposes to finance such purchase price in the following manner: (a) $80 million from a petroleum production payment loan (the "Production Payment Loan"); (b) $40 million from a revolving credit and term loan (the "Term Loan"); and (c) Approximately $65 million from Pasco's certificates of deposit and other cash items. If Pasco should need funds in addition to its cash items, either to finance such purchase price or for working capital, it plans to borrow on a short-term basis not in excess of $10 million from a bank or banks.

Pasco and First National Bank of Chicago have entered into a Commitment Letter Agreement which commits First National Bank of Chicago until January

1, 1973, to make the Production Payment Loan and the Term Loan. Pasco and The Chase Manhattan Bank have entered into a Participation Letter Agreement which commits The Chase Manhattan Bank to a 50 percent participtaion in the Production Payment Loan and the Term Loan. An estimated $25 million of the Term Loan will be applied to the purchase by the two banks from ARCO of the notes to be issued by Pasco to ARCO in payment for the inventory and receivables included in the Sinclair Properties, and the remaining balance, if any, may be added to Pasco's working capital.

Consideration is now being given to the possibility of amending certain provisions of the Commitment Letter Agreement and the Participation Letter Agreement, but not to change the aggregate principal amount of the above financing or to increase the interest rates payable.

The closing of the purchase of the Sinclair Properties and related inventory and receivables and the above financing arrangements would necessarily take place simultaneously.

Upon consummation of the purchase of the Sinclair Properties, Pasco will own directly operating assets having a value in excess of $150 million, together with related inventory and receivables, and an insignificant amount of investment securities, the value of which will be less than 1 percent of the value of Pasco's total assets. Pasco's business will be that of an integrated oil company, and it will cease to be an "investment company" as defined in the Act. Pasco is purchasing the Sinclair Properties as a "going concern" and will be an operating company immediately upon completion of the purchase.

At the Annual Meetings of Stockholders of Pasco held on September 23, 1971, and May 17, 1972, its stockholders adopted resolutions authorizing Pasco's Board of Directors in its discretion to change the nature of Pasco's business so that it will no longer be, or be deemed to be, an "investment company" as defined in the Act. At its meeting, on August 1, 1972, the Board of Directors of Pasco considered the purchase of the Sinclair Properties. In order to permit further consideration of the proposed transaction the meeting was adjourned until August 9, at which time the Board approved the execution and delivery to ARCO of a letter of intent providing for the purchase of the Sinclair Properties.

Section 8(f) of the Act provides that the Commission, having found that a registered investment company has ceased to be an investment company, shall so declare by order and, upon the taking effect of such order, the registration of such company shall cease to be in effect. However, until the entry of the Commission's order declaring that Pasco is no longer an investment company, Pasco will be subject to the Act and the rules and regulations thereunder and to the restrictions on its activities contained in its registration statement. The result, Pasco asserts, will be to subject it, when it will not be an investment company, to requirements which were not intended to be applicable to an integrated oil company and which might unnecessarily restrict Pasco in the conduct of its business.

In view of the foregoing, Pasco has requested that the Commission enter an order under section 8(f) of the act declaring that Pasco has ceased to be an investment company, such order to be issued upon notice to the Commission that Pasco has completed the purchase of the Sinclair Properties.

Notice is further given that any interested person may, not later than January 8, 1973, 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 issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Pasco 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 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 Investment Company Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72-21880 Filed 12-20-72;8:48 am]

[File No. 500-1]

VIPONT CHEMICAL CO.

Order Suspending Trading

DECEMBER 12, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.10 par value, and all other securities of Vipont Chemical Co. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period beginning at 10 a.m. (e.s.t.), on December 13, 1972, through December 22, 1972.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72-21879 Filed 12-20-72;8:48 am]

[File No. 500-1]

VIPONT MINING CO.

Order Suspending Trading

DECEMBER 12, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.10 par value, and all other securities of Vipont Mining Co. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period beginning at 10 a.m. (e.s.t.), on December 13, 1972, through December 22, 1972.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72-21878 Filed 12-20-72;8:48 am]

[File No. 500-1]

TRANS-EAST AIR, INC.

Order Suspending Trading

DECEMBER 14, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $.50 par value, and all other securities of Trans-East Air, Inc., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, That trading in such securities otherwise than on a national securities exchange be summarily suspended. This order to be effective for the period from December 16, 1972, through December 25, 1972.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72-21875 Filed 12-20-72;8:48 am]

[File No. 500-1]

TOPPER CORP.

Order Suspending Trading

DECEMBER 13, 1972.

The common stock, $1 par value of Topper Corp. being traded on the American Stock Exchange, pursuant to provi-

sions of the Securities Exchange Act of 1934 and all other securities of Topper Corp. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchanges and otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to sections 19 (a)(4) and 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from December 15, 1972, through December 24, 1972.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72-21876 Filed 12-20-72;8:48 am]

[File No. 500-1]

POWER CONVERSION, INC.

Order Suspending Trading

DECEMBER 13, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $.01 par value, and all other securities of Power Conversion, Inc., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from December 15, 1972, through December 24, 1972.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72-21874 Filed 12-20-72;8:48 am]

[File No. 500-1]

U.S. FINANCIAL, INC.

Order Suspending Trading

DECEMBER 13, 1972.

The common stock, $2.50 par value, of U.S. Financial Inc. being traded on the New York Stock Exchange, pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of U.S. Financial Inc. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to sections 15 (c)(5) and 19(a)(4) of the Securities Exchange Act of 1934, that trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from December 15, 1972, through December 24, 1972.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72-21877 Filed 12-20-72;8:48 am]

TARIFF COMMISSION

[TEA-W-165]

LOS ANGELES ASSEMBLY PLANT AND CHRYSLER CORP.

Workers' Petition for a Determination; Notice of Investigation

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of the former workers of the Los Angeles Assembly Plant, Los Angeles, Calif., of Chrysler Corp., Detroit, Mich., the U.S. Tariff Commission, on December 18, 1972, instituted an investigation under section 301 (c)(2) of the Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with new passenger automobiles (of the type provided for in items 692.10 and 692.11 of the tariff schedules of the United States) produced by said firm are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such firm or an appropriate subdivision thereof.

The optional public hearing afforded by law has not been requested by the petitioners. Any other party showing a proper interest in the subject matter of the investigation may request a hearing, provided such request is filed within 10 days after the notice is published in the FEDERAL REGISTER.

The petition filed in this case is available for inspection at the Office of the Secretary, U.S. Tariff Commission, Eighth and E Streets NW., Washington, DC, and at the New York City office of the Tariff Commission located in Room 437 of the Customhouse.

By order of the Commission.

Issued: December 18, 1972.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.72-21915 Filed 12-20-72;8:51 am]

[AA1921-103]

KRAFT WRAPPING PAPER FROM CANADA

Determination of No Injury or Likelihood Thereof

DECEMBER 18, 1972.

On September 19, 1972, the Tariff Commission received advice from the Treasury Department that 30-pound MF (machine finish) kraft wrapping paper from Canada is being, or is likely to be, sold in the United States at less than fair value within the meaning of the Antidumping Act, 1921, as amended. In accordance with the requirements of section 201(a) of the Antidumping Act (19 U.S.C. 160(a)), the Tariff Commission instituted investigation No. AA1921-103 to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Notice of the investigation and hearing was published in the FEDERAL REGISTER of September 29, 1972 (37 F.R. 20354). A public hearing was held on November 9, 1972. Appearances were entered by representatives of importers. No appearances were entered for the domestic industry.

In arriving at a determination in this case, the Commission gave due consideration to all written submissions from interested parties, evidence adduced at the hearing, and all factual information obtained by the Commission's staff from questionnaires, personal interviews, and other sources.

On the basis of the investigation, the Commission has determined unanimously that an industry in the United States is not being or is not likely to be injured, or is not prevented from being established, by reason of the importation of 30-pound MF (machine finish) kraft wrapping paper from Canada sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

STATEMENT OF REASONS [1]

In our opinion, no industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of 30-pound MF (machine finish) kraft wrapping paper from Canada sold at less than fair value (LTFV).

Description of the product. 30-pound MF kraft wrapping paper (hereinafter referred to as 30-pound kraft paper) which is generally made entirely from wood pulp—principally from softwood species—is produced by the chemical sulphate (kraft) process. It is chiefly used for wrapping purposes; however, among other uses are production of merchandising bags, grocery bags, laminates, as well as plain and reinforced gumming tape. Paper used for gummed tape is made to rigid specifications and requires a substantially slower machine run than that made for other purposes.

The industry. The Treasury Department's determination of sales at LTFV covered all 30-pound kraft paper imported from Canada; however, its price comparisons to determine sales at LTFV were made only on such paper used for gumming. Consequently, in making its decision in this case, the Commission considered the effects of the LTFV sales

[1] Commissioner Ablondi concurs in the result.

on the facilities in the United States used in the production of 30-pound kraft paper, and gave special attention to the effects of those sales on the facilities producing such paper used for gumming purposes.

The U.S. market. Information developed in the investigation indicated that, prior to the entry of Canadian paper, certain U.S. producers of 30-pound kraft paper used for gumming had shifted their productive capacity to the production of other paper on which they could realize greater revenues. As a result, the domestic supply of 30-pound kraft paper for gumming purposes was inadequate to meet the demand of U.S. converters producing gummed tape. The shortage was so severe that one of the U.S. producers of gummed tape testified at the hearing that he was compelled to seek out the Canadian supplier of such paper in order to meet his requirements. Thus, it is evident that by 1971 Canadian 30-pound kraft paper for gumming use became a necessary supplement to that obtainable from U.S. sources.

Impact of sales at LTFV. Whether considering all 30-pound kraft paper or only that used for gumming purposes, we find no discernible adverse impact on domestic industry by reason of sales at LTFV.

U.S. producers' sales of 30-pound kraft paper, including such paper used for gumming, increased each year during 1969–71 and were higher in January–June 1972 than in the corresponding period in 1971. Such sales, however, represented only 2 percent of the total yearly sales of all products by the establishments in which such paper was produced.

In 1971, the year in which sales at LTFV were determined, imports from Canada (nonexistent prior to 1970) supplied less than 3 percent of total U.S. consumption of all 30-pound kraft paper, and 11 percent of that for gumming. In view of the minor significance of 30-pound kraft paper in the total operation of the U.S. establishments concerned, and the general shortage of paper for gumming use from U.S. sources, the level attained by imports in the U.S. market could not have had an injurious effect.

Neither did the Commission find evidence of price depression or suppression. Prices of Canadian 30-pound kraft paper for gumming were equal to or higher than prices of comparable domestic paper during 1971 and January–June 1972. Thus, prices of the Canadian paper had no depressing effect on prices of comparable U.S. paper. On the contrary, evidence obtained in the investigation indicates that prices (both Canadian and domestic) increased during the period.

Finally, the operations of those U.S. establishments which produced 30-pound kraft paper, including such paper used for gumming, have been profitable during the period considered.

Conclusion. Based on the foregoing, the Commission has made a negative determination.

By order of the Commission.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.72-21916 Filed 12-20-72; 8:52 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[V-72-4]

GENERAL MOTORS CORP. ET AL.

Notice of Applications for Variances and for an Interim Order; Grant of Interim Order

I. General Motors Corp. *Notice of application.* Notice is hereby given that General Motors Corp., 3044 West Grand Boulevard, Detroit, MI 48202, has made application pursuant to section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR 1905.11 for a variance, and for an interim order pending a decision on the application for a variance, from the requirement of 29 CFR 1910.252(c)(3) (ii) and (iii) that safety chains and clevis be used for the support of portable welding machines and related equipment.

Applicant states that the facility affected by this application is the General Motors Assembly Division, Fairfax Plant, 100 Kindelberger Road, Kansas City, KS 66115. Applicant certifies that the employees who would be affected by the variance have been notified of the application by mailing of a copy to International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW-CIO), Solidarity House, 8000 East Jefferson Avenue, Detroit, MI 48214, and by posting of copies of the application in the affected areas of the facilities involved. Employees have received notice, through the above posting, of their right to petition for a hearing.

Applicant's operations at its Fairfax plant involve the use of portable spot-welding transformers which are subject to 29 CFR 1910.252(c)(3) (ii) and (iii). Rather than using the safety chains and clevis prescribed in the regulation for the purpose of supporting this equipment, applicant utilizes "four-point" and "two-point" suspension devices. Applicant states that these devices are capable of supporting the total shock loads involved in case of failure of other components of the supporting system, as required by the standard. Testing is said to have demonstrated that the system has a safety factor of 28 to 1, rather than the normal engineering safety factor of 3 to 1. Applicant argues that these and other factors demonstrate that its method of support is at least as safe as that provided in the regulations.

For further information, interested persons are referred to copies of the application which will be made available for inspection and copying upon request, at the following offices:

U.S. Department of Labor, Occupational Safety and Health Administration, Office of Standards—Room 500, 400 First Street NW., Washington, DC 20210.

U.S. Department of Labor, Occupational Safety and Health Administration, 823 Walnut Street, Waltower Building—Room 300, Kansas City, MO 64106.

U.S. Department of Labor, Occupational Safety and Health Administration, 1617 Main Street—Room 1100, Kansas City, MO 64108.

Interim order. It appears from the application for a variance and interim order, and supporting data, filed by General Motors Corp., that the method of supporting portable welding machines and related equipment presently in use at its Fairfax plant provides employment and places of employment as safe and healthful as those which would prevail if the applicant were to make the changes necessary in order to comply with 29 CFR 1910.252(c)(3) (ii) and (iii). It further appears that an interim order is necessary to prevent interruption of operations of the applicant and hardships to both applicant and affected employees.

Therefore, it is ordered, pursuant to authority in section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 and 29 CFR 1905.11 (c), that General Motors Corp. be, and it is hereby, authorized to use the portable welding machine support arrangement as described above, in lieu of complying with 29 CFR 1910.252(c)(3) (ii) and (iii).

Applicant shall give notice to affected employees of the terms of this interim order by the same means required to be used to inform them of the application for a variance.

Effective date. This interim order shall be effective as of December 21, 1972, and shall remain in effect until a decision is rendered on the application for a variance.

II. Formatop, Inc. *Notice of application.* Notice is hereby given that Formatop, Inc., 281 McGlincey Lane, Post Office Box 901, Campbell, CA 95008, has made application pursuant to section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR 1905.11 for a variance from the requirement of 29 CFR 1910.213(c) (1) and (2), and (d)(1) that hand-fed rip and crosscut table saws be guarded by hoods and furnished with spreaders.

Applicant states that the employees who will be affected by the variance have been notified of the application by posting of a copy in the work area where notices are normally posted. Employees have received notice, through the above means, of their right to petition for a hearing.

Applicant's operations involve the use of three circular table saws of the type subject to 29 CFR 1910.213(c) (1) and (2), and (d)(1). Applicant argues that the use of required hoods and spreaders would render its operations more dangerous and impracticable. Applicant states that where the saws are used to cut particle board, only dust rather than splint-

ers is generated, so that an oxygen mask is adequate protection; when plastic is being cut, the guardrail would represent a hazard as it would interfere with an operator's freedom to uncurl the plastic, thereby threatening to kick back at the operator; when small pieces of wood are being cut, a guardrail would interfere with the use of a pusher stick, which is necessary for the cutting of wood for trim. For these reasons, applicant contends that it is safer for the guard to be removed than it is to have a guard over the blade.

For further information, interested persons are referred to copies of the application which will be made available for inspection and copying upon request, at following offices:

U.S. Department of Labor, Occupational Safety and Health Administration, Office of Standards—Room 500, 400 First Street NW., Washington, DC 20210.
U.S. Department of Labor, Occupational Safety and Health Administration, 9470 Federal Building, 450 Golden Gate Avenue, Post Office Box 36017, San Francisco, CA 94102.
U.S. Department of Labor, Occupational Safety and Health Administration, Squire Plaza Building, 100 McAllister Street, San Francisco, CA 94102.

III. Lebanon Steel Foundry *Notice of application.* Notice is hereby given that Lebanon Steel Foundry, First Avenue and East Lebanon Street, Lebanon, Pa. 17042, has made application pursuant to section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR 1905.11 for a variance from the requirement of 29 CFR 1910.243(c), that safety guards be used on abrasive wheels.

Applicant states that the employees who will be affected by the variance have been notified of the application by delivery of a copy to the president of the employees' local union and by posting of a copy on the company's main bulletin board. Employees have received notice, through the above means, of their right to petition for a hearing.

Applicant is engaged in the manufacture of steel castings, and uses in its operations abrasive wheels which are subject to the safety guard requirements of 29 CFR 1910.243(c). Applicant states that the size of many of its castings preclude the use of machines with such wheel guards, as the guards interfere with an operator's ability to perform his work. Applicant intends to use safety guards in those phases of its operations where it is possible to do so without interfering with the work being performed. Applicant contends that it currently provides a safe and healthful environment for its employees, and that no appreciable benefit would be gained by installation of the required guards.

For further information, interested persons are referred to copies of the application which will be made available for inspection and copying, upon request, at the following offices:

U.S. Department of Labor, Occupational Safety and Health Administration, Office of Standards—Room 500, 400 First Street NW., Washington, DC 20210.
U.S. Department of Labor, Occupational Safety and Health Administration, Penn Square Building—Room 623, 1317 Filbert Street, Philadelphia, PA 19107.
U.S. Department of Labor, Occupational Safety and Health Administration, Federal Building—Room 445D, 1000 Liberty Avenue, Pittsburgh, PA 15222.

IV. Boyertown Planing Mill Co. *Notice of application.* Notice is hereby given that Boyertown Planing Mill Co., Boyertown, Pa. 19512, has made application pursuant to section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR 1905.11 for a variance from the requirement of 29 CFR 1910.141(c)(1)(vi), that adequate washing facilities be provided in or adjacent to every toilet room.

Applicant certifies that the employees who would be affected by the variance have been notified of the application by delivery of a copy to the authorized representative of the employees, and by posting of a copy on the employees bulletin board. Employees have received notice, through the above means, of their right to petition for a hearing.

The applicant's washing facilities are located approximately 40 feet from the mens' toilet facilities. Applicant argues that this distance is not excessive, as access to the washing facility is not obstructed, and there is free passage between the toilet room and the washing facility at all times. Applicant contends that the cost necessary to comply with this standard would be excessive and that the method to be used would be impracticable, while not benefiting the employees in any appreciable way.

For further information, interested persons are referred to copies of the application which will be made available for inspection and copying upon request, at the following offices:

U.S. Department of Labor, Occupational Safety and Health Administration, Office of Standards—Room 500, 400 First Street NW., Washington, DC 20210.
U.S. Department of Labor, Occupational Safety and Health Administration, Penn Square Building—Room 623 (or Suite 1010), 1317 Filbert Street, Philadelphia, PA 19107.

V. Sterling Faucet Co. *Notice of application.* Notice is hereby given that the Sterling Faucet Co., Post Office Box 798, Morgantown, WV 26605, has made application pursuant to section 6(b)(6)(A) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR 1905.10 for a temporary variance from the standards prescribed in 29 CFR 1910.93 (tables G-1 and G-2) concerning threshold limit values for lead, copper, zinc oxide, and nickel, and from 29 CFR 1910.94(b)(5) requirements on ventilation and dust-hood design, to be effective until June 30, 1973.

Applicant states that the employees who would be affected by the variance have been notified of the application by delivery of a copy to their authorized representative and by posting summaries of the application on company bulletin boards. Employees have received notice, through the above means, of their right to petition for a hearing. A hearing has been requested by the United Steelworkers of America, Local Union 6214, Morgantown, W. Va. 26505.

Applicant states that its polishing and buffing operations do not comply with the air contaminant threshold limits for lead, copper, zinc oxide, and nickel, as required by 29 CFR 1910.93 (tables G-1 and G-2), nor with the dust-hood design requirements of 29 CFR 1910.94(b)(5). Applicant states that it is unable to comply with these requirements because the necessary engineering control equipment has not been fully designed and selected, administrative controls are not feasible, and because there is presently being undertaken an environmental study of the workplace. Applicant states that in order to protect its employees, it is implementing a respirator program for all affected employees, administering certain medical tests at quarterly intervals, implementing a personal hygiene and educational program, cleaning all affected areas, and ordering new hood guards.

Applicant expects either to comply fully with these standards or to eliminate these operations by June 30, 1973.

For further information, interested persons are referred to copies of the application which will be made available for inspection and copying upon request, at the following offices:

U.S. Department of Labor, Occupational Safety and Health Administration, Office of Standards—Room 500, 400 First Street NW., Washington, DC 20210.
U.S. Department of Labor, Occupational Safety and Health Administration, Penn Square Building—Room 623, 1317 Filbert Street, Philadelphia, PA 19107.
U.S. Department of Labor, Occupational Safety and Health Administration, Federal Building—Room 445-D, 1000 Liberty Avenue, Pittsburgh, PA 15222.

All interested persons, including employers and employees who believe they will be affected by the grant or denial of any of the above applications for a variance, are invited to submit written data, views, and arguments, regarding the application within 30 days following the publication of this notice in the FEDERAL REGISTER. In addition, employers and employees who believe they would be affected by the grant or denial of any of the variances may request a hearing on the application within 30 days after the publication of this notice in the FEDERAL REGISTER, in conformity with the requirements of 29 CFR 1906.15. Submissions of written comments and requests for a hearing should be in quadruplicate and shall be addressed to the U.S. Department of Labor, Occupational Safety and Health Administration, Office of Standards—Room 500, 400 First Street NW., Washington, DC 20210.

Signed at Washington, D.C., this 18th day of December 1972.

G. C. GUENTHER,
Assistant Secretary of Labor.

[FR Doc.72-21940 Filed 12-20-72;8:53 am]

INTERSTATE COMMERCE COMMISSION

[Notice 140]

ASSIGNMENT OF HEARINGS

DECEMBER 18, 1972.

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. No amendments will be entertained after the date of this publication.

MC-F-10196, Overnite Transportation Co.—Purchase (Portion)—Alabama Highway Express, Inc., MC 109533 Sub 36, Overnite Transportation Co., now assigned January 15, 1973, at Birmingham, Ala., is postponed indefinitely.

MC-136358, John S. Badger, Common Carrier Application, and MC-136362 Bob R. Thrush, Common Carrier Application, now assigned January 9, 1973, will be held in Room 1430, Federal Building, 1961 Stout Street, Denver, Colo.

MC 133316 Sub 7, Frank R. Givigliano, doing business as Givigliano Transport, now assigned January 22, 1973, at Denver, Colo., hearing will be held in Room 1430, Federal Building, 1961 Stout Street.

MC-121495 (Sub-No. 5), Englewood Transit Co., now assigned January 31, 1973, will be held in Room 1430, Federal Building, 1961 Stout Street, Denver, Colo.

MC-C-7909, Red Ball Van Lines, Inc.—Investigation and Revocation of Certificate, now assigned January 15, 1973, at Miami, Fla., will be held in Room 208, Federal Building, 51 SW. First Avenue.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.72-21933 Filed 12-20-72;8:53 am]

[Ex Parte 241; Rule 19, Third Rev. Exemption 19, Amdt. 1]

BALTIMORE & OHIO RAILROAD CO. ET AL.

Exemption From Mandatory Car Service Rules

Upon further consideration of Third Revised Exemption No. 19 issued November 15, 1972 (37 F.R. 24475, Nov. 17, 1972).

It is ordered, That, under authority vested in me by Car Service Rule 19, Third Revised Exemption No. 19 to the Mandatory Car Service Rules ordered in Ex Parte No. 241, be, and it is hereby, amended to expire January 31, 1973.

This amendment shall become effective December 15, 1972.

Issued at Washington, D.C., December 13, 1972.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER, *Agent.*

[FR Doc.72-21934 Filed 12-20-72;8:53 am]

[Rev. S.O. 994; I.C.C. Order 65, Amdt. 3]

ILLINOIS CENTRAL RAILROAD CO.

Rerouting or Diversion of Traffic

Upon further consideration of ICC Order No. 65 (Illinois Central Railroad Co.) and good cause appearing therefor:

It is ordered, That:

ICC Order No. 65 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., June 30, 1973, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., December 31, 1972, and that this order 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 it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., December 15, 1972.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER, *Agent.*

[FR Doc.72-21937 Filed 12-20-72;8:53 am]

[Rev. S. O. 994; ICC Order 78, Amdt. 2]

LONG ISLAND RAILROAD CO.

Rerouting or Diversion of Traffic

Upon further consideration of ICC Order No. 78 (The Long Island Railroad Co.) and good cause appearing therefor:

It is ordered, That:

ICC Order No. 78 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.*—This order shall expire at 11:59 p.m., December 22, 1972, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., December 15, 1972, and that this amendment 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 it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., December 15, 1972.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER, *Agent.*

[FR Doc.72-21938 Filed 12-20-72;8:53 am]

[Rev. S. O. 934; ICC Order 76, Amdt. 1]

READING CO.

Rerouting or Diversion of Traffic

Upon further consideration of ICC Order No. 76 (Reading Co., Richardson Dilworth and Andrew L. Lewis, Jr., Trustees) and good cause appearing therefor:

It is ordered, That:

ICC Order No. 76 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.*—This order shall expire at 11:59 p.m., March 31, 1973, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., December 15, 1972, and that this amendment 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 it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., December 15, 1972.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER, *Agent.*

[FR Doc.72-21936 Filed 12-20-72;8:53 am]

[S. O. 1112, Exception 4]

MOVEMENT OF FREIGHT CARS ORIGINATING ON LINES OTHER THAN PURCHASING RAILROAD

It appearing, that there are various movements of railroad company material originating on lines other than the purchasing railroad; that the purchasing carriers frequently send their system cars to off-line origin points to transport company material; and that the cars used for such freight are usually unfit for general service by reason of general body condition or the installation of special devices, or are assigned by the owner for exclusive company use.

It is ordered, That, pursuant to the authority vested in the Railroad Service Board by Service Order No. 1112, paragraph (a) (1) (xiv), empty cars furnished by the owner to another carrier for return loading with company freight shall be exempt from the provisions of Service Order No. 1112, paragraph (a) (2) (ii) while held at the point of loading until actually placed or ordered placed by the

shipper, provided that the immediately following use is for the loading and transportation of company freight consigned to the car owner and destined to a station served by the car owner. After actual or constructive placement for loading with company freight consigned to the car owner, all subsequent detention, use, and movements of these cars shall be subject to the provisions of Service Order No. 1112 without further exception.

Effective December 9, 1972.

Issued at Washington, D.C., December 8, 1972.

RAILROAD SERVICE BOARD,
[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-21932 Filed 12-20-72;8:53 am]

[Notice 186]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-73937. By order of November 30, 1972, the Motor Carrier Board approved the transfer to Perkiomen Valley Bus Co., a corporation, Pennsburg, Pa., of the operating rights in certificate No. MC-1729 issued May 26, 1969, to Levy Bus Service, Inc., Trumbauresville, Pa., authorizing the transportation of passengers and their baggage, in charter operations, from points in Lehigh, Bucks, and Montgomery Counties, Pa., to points in New Jersey, and return, restricted to traffic originating in the territory indicated. Robert H. Griswold and Harry H. Frank, Post Office Box 1166, Harrisburg, PA 17108, attorney for applicants.

No. MC-FC-74055. By order entered November 30, 1972, the Motor Carrier Board approved the transfer to Mishak Truck Line, Inc., Clear Lake, Iowa, of the operating rights set forth in certificates Nos. MC-59899, MC-59899 (Sub-No. 1), and MC-59899 (Sub-No. 2), issued by the Commission April 18, 1957, May 4, 1964, and August 29, 1967, respectively, authorizing the transportation of livestock, feed, tankage, seeds, flax, lubricating oil and paint, in containers, household goods, agricultural commodities, farm machinery, and parts, mill feeds, and beer, from, to, or between points in Iowa and Minnesota. Larry D. Knox, 910 Hubbell Building, Des Moines, Iowa 50309, attorney for applicants.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-21935 Filed 12-20-72;8:53 am]

[Notice No. 104]

MOTOR CARRIER, BROKER, WATER CARRIER AND FREIGHT FORWARDER APPLICATIONS

DECEMBER 15, 1972.

The following applications (except as otherwise specifically noted, each applicant (on applications filed after March 27, 1972) states that there will be no significant effect on the quality of the human environment resulting from approval of its application), are governed by Special Rule 1100.247[1] of the Commission's general rules of practice (49 CFR, as amended), published in the FEDERAL REGISTER issue of April 20, 1966, effective May 20, 1966. These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after date of notice of filing of the application is published in the FEDERAL REGISTER. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with section 247(d)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one (1) copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or applicant if no representative is named. If the protest includes a request for oral hearing, such requests shall meet the requirements of section 247(d)(4) of the special rules, and shall include the certification required therein.

Section 247(f) of the Commission's rules of practice further provides that each applicant shall, if protests to its application have been filed, and within 60 days of the date of this publication, notify the Commission in writing (1) that it is ready to proceed and prosecute the application, or (2) that it wishes to withdraw the application, failure in which the application will be dismissed by the Commission.

Further processing steps (whether modified procedure, oral hearing, or other procedures) will be determined generally in accordance with the Commission's general policy statement concerning motor carrier licensing procedures, published in the FEDERAL REGISTER issue of May 3, 1966. This assignment will be by Commission order which will be served on each party of record. Broadening amendments will not be accepted after the date of this publication except for good cause shown, and restrictive amendments will not be entertained following publication in the FEDERAL REGISTER of a notice that the proceeding has been assigned for oral hearing.

No. MC 409 (Sub-No. 46), filed November 13, 1972. Applicant: SCHROETLIN TANK LINE, INC., Post Office Box 511, Sutton, NE 68979. Applicant's representative: Patrick E. Quinn, 605 South 14th Street, Post Office Box 82028, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer, fertilizer materials, ammonium nitrate*, in bags or bulk, from warehouse site of Farmland Industries, Inc., at or near Hastings, Nebr., to points in Wyoming, Colorado, Kansas, and South Dakota. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Lincoln or Omaha, Nebr.

No. MC 1977 (Sub-No. 15), filed November 9, 1972. Applicant: NORTHWEST TRANSPORT SERVICE, INC., 5231 Monroe Street, Denver, CO 80216. Applicant's representative: Jerry D. McMorris (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, commodities in bulk and commodities requiring special equipment) (1) between Trinidad, Colo. and Phoenix, Ariz., from Trinidad south over Interstate Highway 25 to junction Interstate Highway 40, thence west over Interstate Highway 40 to junction U.S. Highway 666 at Sanders, Ariz., thence south over U.S. Highway 666 to junction Arizona Highway 61 at St. Johns, Ariz., thence over Arizona Highway 61 to junction U.S. Highway 60, thence over U.S. Highway 60 to Phoenix, and return over the same route, serving the off-route point of Rosario, N. Mex., and all intermediate points (except those between Albuquerque, N. Mex., and the New Mexico-Arizona State line), and further restricted against service

[1] Copies of Special Rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

between Albuquerque, N. Mex., and Phoenix, Ariz.; (2) between Walsenburg, Colo., and Phoenix, Ariz., from Walsenburg, west over U.S. Highway 160 to junction U.S. Highway 89, thence south over U.S. Highway 89 to junction Interstate Highway 17, thence south over Interstate Highway 17 to Phoenix, Ariz., and return over same route, serving all intermediate points and the off-route point of Dolores, Colo.; and (3) between Durango, Colo. and junction Arizona State Highway 504 and U.S. Highway 160, from Durango south and west over U.S. Highway 550 to junction New Mexico State Highway 504, thence west over New Mexico Highway 504 to Arizona-New Mexico State line, thence over Arizona State Highway 504 to junction U.S. Highway 160, and return over same route, serving all intermediate points. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Trinidad, Colo., Albuquerque, N. Mex., or Phoenix, Ariz.

No. MC 5623 (Sub-No. 22), filed November 14, 1972. Applicant: ARROW TRUCKING CO., a corporation, 3131 North Lewis (Post Office Box 6027), Tulsa, OK 74106. Applicant's representative: Kenneth Weeks (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, between Tulsa and the Port of Catoosa, Okla., on the one hand, and, on the other points in Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Iowa, Kansas, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Tennessee, Texas, Utah, Washington, and Wyoming. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Tulsa or Oklahoma City, Okla.

No. MC 8535 (Sub-No. 44), filed November 9, 1972. Applicant: GEORGE TRANSFER AND RIGGING COMPANY, INCORPORATED, Interstate 83 at Route 439, Baltimore, Md. 21120. Applicant's representative: John Guandolo, 1000 16th Street NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities requiring special equipment and those injurious or contaminating to other lading), between the site of applicant's terminal at or near South Hill, Va., on the one hand, and, on the other, points in North Carolina, serving South Hill, Va., for purpose of joinder only. NOTE: Applicant presently holds authority as above described between Victoria and Kenbridge, Va., on the one hand, and, on the other, points in North Carolina. The purpose of this application is to permit applicant's terminal site at or near South Hill, Va., about 20 miles south of Kenbridge, Va., to be used as an additional gateway but not a point of service. Applicant further states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 11220 (Sub-No. 127), filed November 15, 1972. Applicant: GORDONS TRANSPORTS, INC., 185 West McLemore Avenue, Post Office Box 59, Memphis, TN 38101. Applicant's representative: W. F. Goodwin (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, livestock, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment and those injurious or contaminating to other lading), between Mobile and Birmingham, Ala., from Mobile over Interstate Highway 65 to Birmingham, and return over the same route with authority to operate over adjacent access highways where necessary, due to incompleted portions of Interstate Highway 65, as an alternate route in connection with applicant's authorized regular route operations, serving no intermediate points. Restriction: The alternate route operations described herein are to be restricted against the transportation of traffic originating at, destined to, or received from or delivered to connecting carriers, at Birmingham, Ala., or Atlanta, Ga., or points in their respective commercial zones. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Memphis, Tenn., or Washington, D.C.

No. MC 16502 (Sub-No. 16), filed November 16, 1972. Applicant: WILLIAM A. ROBINSON, KENNETH D. ROBINSON, HENRY CLAY ROBINSON, JR., RICHARD RAY ROBINSON, AND FRANK TAYLOR ROBINSON, doing business as ROBINSON TRUCK LINES, West Main Street, West Point, Miss. 39773. Applicant's representative: Donald B. Morrison, 717 Deposit Guaranty Bank Building, Post Office Box 22628, Jackson, MS 39205. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) between Shuqualak, Miss. and DeKalb, Miss.: From Shuqualak over Mississippi Highway 21 to the junction of Mississippi Highway 397 at or near Preston, Miss., thence over Mississippi Highway 397 to junction Mississippi Highway 16, thence over Mississippi Highway 16 to DeKalb, and return over the same route, serving all intermediate points. NOTE: Applicant states that the requested authority will be joined with its presently authorized operations between Memphis, Tenn., on the one hand, and, on the other, various points in Mississippi, including Shuqualak, Miss. If a hearing is deemed necessary, applicant requests it be held at Jackson, Miss.

No. MC 30837 (Sub-No. 456), filed November 6, 1972. Applicant: KENOSHA AUTO TRANSPORT CORPORATION, 4200 39th Avenue, Kenosha, WI 53140. Applicant's representative: Paul F. Sullivan, 711 Washington Building, Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Automobiles, trucks and buses*, in secondary movements, in truckaway service (a) from Buffalo, N.Y., and points within 20 miles thereof, to point in New York and Pennsylvania; (b) from Farmingham, Mass., and points within 20 miles thereof, to points in Connecticut, Maine, Massachusetts, New Hampshire, and Rhode Island; (c) from Hagerstown, Md., and points within 20 miles thereof, to points in Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and the District of Columbia; (d) from Montebello and Los Angeles, Calif., and points within 20 miles thereof, to points in California and Nevada; (e) from Oakland, Calif., and points within 20 miles thereof, to points in California and Nevada; (f) from St. Paul, Minn., and points within 20 miles thereof, to points in Minnesota, North Dakota, South Dakota, and Wisconsin; (g) from Selkirk, N.Y., and points within 20 miles thereof, to points in Connecticut, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont; and (h) from Tigard, Oreg., and points within 20 miles thereof, to points in Oregon and Washington, restricted in (a) through (h) to the transportation of vehicles manufactured or assembled at the sites of the plants of Jeep Corp., a subsidiary of American Motors Corp. at Toledo, Ohio and South Bend, Ind. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 30887 (Sub-No. 185), filed November 8, 1972. Applicant: SHIPLEY TRANSFER, INC., 49 Main Street, Post Office Box 55, Reisterstown, MD 21136. Applicant's representative: Theodore Polydoroff, Suite 600, 1250 Connecticut Avenue, NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Molten liquid polypropolene*, in bulk, in tank vehicles, from Crowley, La., and Baltimore, Md., to points in the United States (except Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 39167 (Sub-No. 11), filed November 21, 1972. Applicant: CHARLES J. ROGERS TRANSPORTATION COMPANY, a corporation, 2947 Greenfield Road, Melvindale, MI 48122. Applicant's representative: Robert D. Schuler, One Woodward Avenue, Suite 1700, Detroit, MI 48226. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Gypsum and gypsum products, and materials and supplies* used in the installation or distribution thereof, from the plantsite and

facilities of U.S. Gypsum Co. at River Rouge, Mich., to points in Illinois, Kentucky, Pennsylvania, West Virginia, and Wisconsin. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Detroit, Mich., or Chicago, Ill.

No. MC 40898 (Sub-No. 19), filed November 6, 1972. Applicant: S & W MOTOR LINES, INC., Post Office Box 22065, N.C. Highway No. 68, Greensboro, NC 27420. Applicant's representative: A. W. Flynn, Jr., Post Office Box 180, Greensboro, NC 27402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt in packages; pepper in packages*, in mixed shipments with salt in packages, and *materials and supplies* used in the agricultural, water treatment, food processing, wholesale grocery, and institutional supply industries, in mixed shipments with salt in packages, from Rittman, Ohio to points in North Carolina, South Carolina, and Virginia. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Greensboro or Raleigh, N.C.

No. MC 41406 (Sub-No. 32), filed November 13, 1972. Applicant: ARTIM TRANSPORTATION SYSTEM, INC., 7105 Kennedy Avenue, Hammond, IN 46323. Applicant's representative: Ferdinand Born, 601 Chamber of Commerce Building, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lead oxides, litharge and red lead*, from Hammond, Ind., to points in Illinois, Iowa, Kentucky, Michigan, Minnesota, Ohio, Pennsylvania, and Wisconsin. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. No duplicating authority is being sought. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Indianapolis, Ind.

No. MC 44445 (Sub-No. 7), filed November 16, 1972. Applicant: HAROLD KLEIN CARTAGE, INC., 5235 North Hopkins Street, Milwaukee, WI 53209. Applicant's representative: William C. Dineen, 710 North Plankinton Avenue, Milwaukee, WI 53203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commodities* which because of size or weight require the use of special equipment or special handling, between Milwaukee, Wis., on the one hand, and, on the other, points in Wisconsin. NOTE: Applicant holds a motor contract carrier permit in No. MC 129568 authorizing the transportation of lumber from Milwaukee, Wis., to limited points in Illinois, therefore dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Milwaukee or Madison, Wis.

No. MC 48958 (Sub-No. 115), filed November 20, 1972. Applicant: ILLINOIS-CALIFORNIA EXPRESS, INC., 510 East 51st Avenue, Denver, CO 80216. Applicant's representative: Morris G. Cobb, Post Office Box 9050, 601 Ross Street, Amarillo, TX 79105. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the warehouse and facilities of Western Electric Co., Inc., located at or near Underwood, Iowa, as an off-route point in connection with applicant's authorized regular-route operations between Omaha, Nebr., and Chicago, Ill., in Certificate No. MC 48958. NOTE: If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr.

No. MC 49387 (Sub-No. 42), filed November 15, 1972. Applicant: ORSCHELN BROS. TRUCK LINES, INC., Highway 24 East, Moberly, Mo. 65270. Applicant's representative: Gregory M. Rebman, 314 North Broadway, St. Louis, MO 63102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise as is dealt in by wholesale and retail grocery houses*, from the storage facilities utilized by CPC International, Inc., and United Facilities, Inc., at or near Galesburg, Ill., on the one hand, and, on the other, points in Missouri. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at St. Louis, Mo., or Chicago, Ill.

No. MC 52579 (Sub-No. 134), filed November 15, 1972. Applicant: GILBERT CARRIER CORP., One Gilbert Drive, Secaucus, NJ 07094. Applicant's representative: W. Abel (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wearing apparel*, loose and on hangers, (1) from Little Rock, Ark., Dresden, Greenfield, Rutherford, and Trenton, Tenn., and Brownsville and Morgantown, Ky., to Columbus, Ohio; and (2) from Rutherford and Trenton, Tenn., and Brownsville and Morgantown, Ky., to Chicago, Ill. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y., or Newark, N.J.

No. MC 59583 (Sub-No. 132), filed November 17, 1972. Applicant: THE MASON AND DIXON LINES, INCORPORATED, Post Office Box 969, Eastman Road, Kingsport, TN 37662. Applicant's representative: A. Alvis Layne, 915 Pennsylvania Building, Washington, DC 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those which because of size or weight require the use of special equipment), between Chattanooga, Tenn., and Birmingham, Ala., from Chattanooga over Interstate Highway 59 to Birmingham, and return over the same route, serving no intermediate points, and serving the plantsite of Monsanto Textile Co. at Sand Mountain, Ala., as an off-route point, serving Chattanooga and Birmingham for purposes of joinder only. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Birmingham, Ala.

No. MC 61592 (Sub-No. 291), filed November 20, 1972. Applicant: JENKINS TRUCK LINE, INC., 3708 Elm Street, Bettendorf, IA 52722. Applicant's representative: Donald Smith, 900 Circle Tower Building, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by retail grocery and food business houses from Hopkins, Minn., to Champaign, Ill. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn.

No. MC 61592 (Sub-No. 292), filed November 20, 1972. Applicant: JENKINS TRUCK LINE, INC., 3708 Elm Street, Bettendorf, IA 52722. Applicant's representative: Donald Smith, 900 Circle Tower Building, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles and pipe*, between points in Oregon and Washington. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Portland, Oreg.

No. MC 68539 (Sub-No. 26), filed November 13, 1972. Applicant: ROMANS MOTOR FREIGHT, INC., Post Office Box 201, Ord, NE 68862. Applicant's representative: Donald L. Stern, 530 Univac Building, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) serving the warehouse site of Western Electric Co., Inc., located at or near Underwood, Iowa as an off-route point in connection with applicant's regular route operations via Omaha, Nebr. NOTE: If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr.

No. MC 71459 (Sub-No. 33), filed October 27, 1972. Applicant: O.N.C. FREIGHT SYSTEMS, a corporation, 2800 West Bayshore Road, Palo Alto, CA 94303. Applicant's representative: C. J. Boddington (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value,

classes A and B explosives, household goods, commodities in bulk, commodities requiring special equipment and those injurious or contaminating to other lading) (1) between junction U.S. Highways 89 and 160 (near Tuba City, Ariz.) and Denver, Colo.; from the junction of U.S. Highways 89 and 160 over U.S. Highway 160 to Walsenburg, Colo., thence over Interstate Highway 25 to Denver, Colo., and return over the same route, serving all intermediate points; (2) between Monte Vista, Colo., and Denver, Colo.; from Monte Vista, Colo., over U.S. Highway 285 to Denver, Colo., and return over the same route, serving all intermediate points; (3) between the junction of U.S. Highway 50 and U.S. Highway 285 (near Salida, Colo.) and the junction of Colorado Highway 291 and U.S. Highway 285; from the junction of U.S. Highway 50 and U.S. Highway 285, over U.S. Highway 50 to Salida, Colo., thence over Colorado Highway 291 to the junction of U.S. Highway 285 and return over the same route, serving all intermediate points; (4) between Alamosa, Colo., and Antonito, Colo.; from Alamosa, Colo., over U.S. Highway 285 to Antonito, Colo., and return over the same route, serving all intermediate points. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at either Alamosa, Durango, or Denver, Colo.; Los Angeles or San Francisco, Calif., or Reno, Nev.

No. MC 81412 (Sub-No. 31), filed October 24, 1972. Applicant: VALLEY TRANSFER & STORAGE COMPANY, INC., 4754 James Street, Philadelphia, PA 19137. Applicant's representative: Arnold Machles, 1315 Two Penn Center Plaza, Philadelphia, Pa. 19102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Steel transmission poles, transmission pole anchor bolt clusters, transmission pole arms and transmission pole hardware*, from the plantsite of Meyer Industries, Inc., Borough of West Hazelton, Pa., to points in New York, New Jersey, Connecticut, Massachusetts, Rhode Island, Delaware, Maryland, Virginia, West Virginia, New Hampshire, North Carolina, Ohio, and Vermont. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Philadelphia, Pa.

No. MC 85465 (Sub-No. 51), filed November 15, 1972. Applicant: WEST NEBRASKA EXPRESS, INC., Post Office Box 952, Scottsbluff, NE 69361. Applicant's representative: John H. Lewis, The 1650 Grant Street Building, Denver, Colo. 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from New Hampton, Iowa to points in North Dakota, South Dakota, Nebraska, Kansas, and Colorado. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Des Moines, Iowa or Omaha, Nebr.

No. MC 87532 (Sub-No. 7), filed November 17, 1972. Applicant: CLAY PRODUCTS TRANSPORT, INC., Rural Route 2, Box 429, Dover, OH 44622. Applicant's representative: James M. Burtch, 100 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Refractory sleeves and nozzles*, from Carrollton, Ohio to points in Pennsylvania, West Virginia, New York, Michigan, Illinois, and Indiana. NOTE: Applicant holds contract carrier authority under MC 129187, therefore dual operations and common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio.

No. MC 100666 (Sub-No. 230), filed November 10, 1972. Applicant: MELTON TRUCK LINES, INC., Post Office Box 7666, Shreveport, LA 71107. Applicant's representatives: Paul Caplinger (same address as applicant), and Wilburn L. Williamson, 3535 Northwest 58th Street, 280 National Foundation Life Building, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Poles, posts, piling, crossarms, lumber, and crossties*, from Beaumont, Tex. and Texarkana, Ark-Tex., to points in Arizona, Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and the District of Columbia. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Oklahoma City, Okla.

No. MC 100666 (Sub-No. 231), filed November 16, 1972. Applicant: MELTON TRUCK LINES, INC., Post Office Box 7666, Shreveport, LA 71107. Applicant's representatives: Paul Caplinger (same address as applicant), and Wilburn W. Williamson, 3535 Northwest 58th Street, 280 National Foundation Life Building, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic pipe, plastic tubing, plastic conduit, plastic valves, plastic fittings, compound, joint sealer, and bonding cement*, from Bakers, N.C., to points in Alabama, Arkansas, Kansas, Louisiana, Mississippi, Missouri, New Mexico, Oklahoma, Texas, Kentucky, and Tennessee. NOTE: Applicant states that the requested authority can be tacked with its authority in No. MC 100666 (Sub-No. 84), at the plantsite of Smith Plastics, Inc., at Little Rock, Ark., to serve points in the United States. If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex., Shreveport, La., or Little Rock, Ark.

No. MC 103191 (Sub-No. 37), filed November 10, 1972. Applicant: THE GEO. A. RHEMAN CO., INC., 2019 Elgin Street, Post Office Box 2095, Station A, Charleston, SC 29403. Applicant's representative: Harris G. Andrews, Post Office Box 4255, Greenville, SC 29608. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal feeds*, in bulk, from Fountain Inn, S.C., to points in Georgia, North Carolina, and South Carolina. NOTE: Common control and dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Columbia, S.C. or Atlanta, Ga.

No. MC 104523 (Sub-No. 52), filed November 20, 1972. Applicant: HUSTON TRUCK LINE, INC., Friend, Nebr. 68359. Applicant's representative: David R. Parker, Post Office Box 82028, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Prepared animal and poultry feed*, from Lincoln, Nebr., to points in Illinois, Kansas, Minnesota, and Missouri; and (2) *grain products*, from Lincoln, Nebr., to points in Colorado, Iowa, Kansas, or Missouri. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Lincoln or Omaha, Nebr.

No. MC 105269 (Sub-No. 53), filed November 14, 1972. Applicant: GRAFF TRUCKING COMPANY, INC., 2110 Lake Street, Kalamazoo, MI 49005. Applicant's representative: John M. Veale, Suite 1700, One Woodward Avenue, Detroit, MI 48226. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper, paper products, and papermill products*, from Niles, Mich., to Davenport, Iowa; Louisville, Ky.; St. Louis, Mo.; and points in Illinois, Indiana, Ohio, and Wisconsin; and (2) *papermill machinery, materials, and supplies*, from Davenport, Iowa; Louisville, Ky.; St. Louis, Mo.; and points in Illinois, Indiana, Ohio and Wisconsin to Niles, Mich. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Washington, D.C.

No. MC 106400 (Sub-No. 92) (Amendment), filed September 28, 1972, published in the FEDERAL REGISTER issue of October 27, 1972, and republished as amended this issue. Applicant: KAW TRANSPORT COMPANY, a corporation, Post Office Box 12628, North Kansas City, MO 64116. Applicant's representative: Robert L. Hawkins, Jr., Post Office Box 456, Jefferson City, MO 65101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paint, lacquer, varnish, solvents, laundry supplies, and products of chemical processes*, in tank or hopper type vehicles, from, to, or between points or described areas: From Kansas City, Kans., Kansas City, Mo. commercial zone, to points in Alabama, Arkansas, Colorado, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma,

South Carolina, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. The purpose of this republication is to redescribe the commodities to be transported and territorial descriptions. If a hearing is deemed necessary, applicant requests it be held at Kansas City, Mo.

No. MC 106497 (Sub-No. 74), filed November 6, 1972. Applicant: PARKHILL TRUCK COMPANY, a corporation, Post Office Box 912 (Business Route I-44 East), Joplin, MO 64801. Applicant's representative: A. N. Jacobs, Post Office Box 113, Joplin, MO 64801. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles, aluminum articles, and contractors' machinery, equipment, materials, and supplies* (except commodities in bulk), between Indian Oaks, Ill., and points in Arkansas, California, Colorado, Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, Virginia, Washington, West Virginia, Wyoming, and the District of Columbia. NOTE: Common control may be involved. Applicant states that the requested authority can be tacked with its existing authority under MC 106497 Sub Nos. 4 and 35 where "size or weight" commodities are involved, but tacking is not intended. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Chicago, Ill.

No. MC 106775 (Sub-No. 33), filed November 20, 1972. Applicant: ATLAS TRUCK LINE, INC., Post Office Box 9848, Houston, TX 77015. Applicant's representative: Joe G. Fender, 802 Houston First Savings Building, Houston, Tex. 77002. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *General commodities*, in cargo containers and/or cargo vans; and (2) *empty cargo containers and empty cargo vans*, between Galveston, Tex., on the one hand, and, on the other, points in Kansas, Oklahoma, Texas, Louisiana, Mississippi, Arkansas, and New Mexico. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Houston or Dallas, Tex.

No. MC 106775 (Sub-No. 34), filed November 20, 1972. Applicant: ATLAS TRUCK LINE, INC., Post Office Box 9848, Houston, TX 77015. Applicant's representative: Joe G. Fender, 802 Houston First Savings Building, Houston, Tex. 77002. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *General commodities*, in cargo containers and/or cargo vans; and (2) *empty cargo containers and empty cargo vans*, between points in Montana, North Dakota, Wyoming, South Dakota, Nebraska, Utah, Colorado, Kansas, Missouri, Illinois, Indiana, Kentucky, Tennessee, New Mexico, Texas, Oklahoma, Arkansas, Louisiana, Mississippi, Alabama, Georgia, and Florida. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Houston or Dallas, Tex.

No. MC 107002 (Sub-No. 428), filed November 16, 1972. Applicant: MILLER TRANSPORTERS, INC., Post Office Box 1123, Jackson, MS 39205. Applicant's representatives: John J. Borth, Post Office Box 8573, Battlefield Station, Jackson, MS 39204, and H. D. Miller, Jr., Post Office Box 22567, Jackson MS 39205. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry chemicals*, in bulk, in tank vehicles, from Memphis, Tenn., to points in Alabama, Arkansas, Louisiana, and Mississippi. NOTE: Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no *present* intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Memphis, Tenn., or St. Louis, Mo.

No. MC 107129 (Sub-No. 9), filed September 20, 1972. Applicant: E. K. MOTOR SERVICE, INC., 2005 North Broadway, Joliet, IL 60435. Applicant's representative: Tom B. Kretsinger, 450 Professional Building, Kansas City, Mo. 64106. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Roofing and building materials and commodities* used in the manufacture, distribution and shipping thereof, between points in Will County, Ill., on the one hand, and, on the other, points in Iowa, Ohio, and Wisconsin, under contract with GAF Corp. NOTE: Common control and dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill. or Washington, D.C.

No. MC 107403 (Sub-No. 839), filed November 20, 1972. Applicant: MATLACK, INC., 10 West Baltimore Avenue, Lansdowne, PA 19050. Applicant's representative: John Nelson (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Corn products*, in bulk, in tank or hopper type vehicles, from Dayton, Ohio, to points in Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia. NOTE: Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no present intention to tack. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio, or Washington, D.C.

No. MC 108121 (Sub-No. 11), filed November 10, 1972. Applicant: TRANSPORT STORAGE & DISTRIBUTING CO., a corporation, 321 Third Avenue, Renton, WA 98055. Applicant's representative: Joseph O. Earp, 607 Third Avenue, Seattle, WA 98104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New and used automobiles and trucks*, in secondary movements, in driveaway service, between points in Washington, Oregon, Idaho, and Montana. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Applicant further states no duplicating authority sought. If a hearing is deemed necessary, applicant requests it be held at Seattle, Wash.

No. MC 108207 (Sub-No. 363), filed November 15, 1972. Applicant: FROZEN FOOD EXPRESS, INC., 318 Cadiz Street, Dallas, TX 75222. Applicant's representative: Ralph W. Pulley, Jr., 4555 First National Bank Building, Dallas, Tex. 75202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from points in Texas to points in New Mexico, Arizona, and California. NOTE: Applicant states that the requested authority can be tacked with its existing authority in Subs 1, 12, 51, 54, 104, 117, 124, 198, 223, and 245. Applicant also states it can now tack these subs with Sub 38 and perform substantially all of the service it could by tacking with the proposed authority. If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex.

No. MC 108207 (Sub-No. 364), filed November 15, 1972. Applicant: FROZEN FOOD EXPRESS, INC., 318 Cadiz Street, Post Office Box 5888, Dallas, TX 75222. Applicant's representative: Ralph W. Pulley, Jr., 4555 First National Bank Building, Dallas, Tex. 75202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Meats, meat products and meat byproducts, dairy products, and articles distributed by meat packinghouses* as described in sections A, B, and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, 273 and 766, *frozen foods, salad dressing, yeast, uncooked bakery goods, fish, and prepared salads*, in vehicles equipped with mechanical refrigeration and (2) *foodstuffs*, in vehicles equipped with mechanical refrigeration (except those described in (1) above), when moving in mixed loads with one or more of the commodities described in (1) above, from Dallas and Fort Worth, Tex., to Oklahoma City and Tulsa, Okla.; Wichita and Kansas City, Kans.; St. Louis and Kansas City, Mo. NOTE: Ap-

plicant states that the requested authority can be tacked with its existing authority in MC 108207 (Sub 147) over Texas to serve all points from California. Can now so tack with existing authority to a substantial extent. If a hearing is deemed necessary, applicant requests it be held at Dallas or Fort Worth, Tex.

No. MC 112184 (Sub-No. 39), filed November 2, 1972. Applicant: THE MANFREDI MOTOR TRANSIT COMPANY, a corporation, Route 87, Newbury, Ohio 44065. Applicant's representative: John P. McMahon, 100 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paint and paint products*, in bulk, in tank vehicles, from Cleveland, Ohio, to points in Massachusetts, New Jersey, and Wisconsin, under contract with PPG Industries, Inc. NOTE: Applicant holds common carrier authority under MC 128302 and Subs thereto, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C. or Columbus, Ohio.

No. MC 112184 (Sub-No. 40), filed November 20, 1972. Applicant: THE MANFREDI MOTOR TRANSIT COMPANY, a corporation, Route 87, Newbury, Ohio 44065. Applicant's representative: John P. McMahon, 100 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Corn products and blends thereof*, in bulk, in tank or hopper type vehicles, from Dayton, Ohio, to points in Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia, under a contract of contracts with Cargill, Inc. NOTE: Applicant holds common carrier authority under MC 128302 and Subs thereunder, therefore, dual operations may be involved. If a hearing is deemed necessary, applicant does not specify a location.

No. MC 113459 (Sub-No. 76), filed November 17, 1972. Applicant: H. J. JEFFRIES TRUCK LINE, INC., Post Office Box 94850, Oklahoma City, OK. Applicant's representative: James W. Hightower, 136 Wynnewood Professional Building, Dallas, Tex. 75224. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Solid waste shredders*, from Albuquerque, N. Mex., to points in the United States (except Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Albuquerque, N. Mex., or Dallas, Tex.

No. MC 114019 (Sub-No. 241), filed November 6, 1972. Applicant: MIDWEST EMERY FREIGHT SYSTEM, INC., 7000 South Pulaski Road, Chicago, IL 60629. Applicant's representative: Arnold L. Burke, 127 North Dearborn Street, Chicago, IL 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Corn products*, in bulk, in tank vehicles, from Lafayette, Ind., to points in the United States (except points in Aroostook County, Maine, Alaska and Hawaii), restricted to traffic originating at the plantsite and/or warehouse facilities of Anheuser-Busch, Inc., at Lafayette, Ind. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 114211 (Sub-No. 185), filed November 20, 1972. Applicant: WARREN TRANSPORT, INC., 324 Manhard Street, Post Office Box 420, Waterloo, IA 50704. Applicant's representative: Daniel Sullivan, 327 South La Salle, Chicago, IL 60604. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) (a) *Self-propelled vehicles* (except those motor vehicles as defined in section 203 (a) (13) of the Interstate Commerce Act and commodities moving in driveaway service); (b) *equipment, materials, and supplies designed for use in conjunction with self-propelled vehicles* (except tank semitrailers), and (c) *parts and attachments* for the commodities in (a) and (b) above, from Minneapolis, Minn., to points in the United States (except Alaska and Hawaii); and (II) *materials, equipment, and supplies* used in the manufacture, sale or distribution of the commodities described in (1) above (except commodities in bulk), from points in the United States (except Alaska and Hawaii) to points in Minneapolis, Minn. NOTE: Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no present intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. Applicant further states that no duplicating authority is being sought. If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn., or Chicago, Ill.

No. MC 114533 (Sub-No. 267), filed November 10, 1972. Applicant: BANKERS DISPATCH CORPORATION, 4970 South Archer Avenue, Chicago, IL 60632. Applicant's representatives: Warren W. Wallin, 330 South Jefferson Street, Chicago, IL 60606, and Arnold Burke, Suite 1133, 127 North Dearborn, Chicago, IL 60604. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Audit media and other business records*, between Cherry Hill, N.J., on the one hand, and, on the other, points in Northampton, Lehigh, Berks, Bucks, Philadelphia, and Montgomery Counties, Pa. NOTE: Applicant holds a motor contract carrier permit in No. MC 128616 and Subs thereunder, therefore dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Philadelphia, Pa., or Chicago, Ill.

No. MC 114533 (Sub-No. 268), filed November 10, 1972. Applicant: BANKERS DISPATCH CORPORATION, 4970 South Archer Avenue, Chicago, IL 60632. Applicant's representatives: Warren W. Wallin, 330 South Jefferson Street, Chicago, IL 60606, and Arnold Burke, Suite 1133, 127 North Dearborn, Chicago, IL 60604. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Audit media and other business records;* (1) between Milwaukee, Wis., on the one hand, and, on the other, points in Indiana, Ohio, Illinois, Iowa, Missouri, Minnesota, Wisconsin, and Michigan; (2) between Elk Grove Village, Ill., on the one hand, and, on the other, points in Indiana; and (3) between Goshen, Ind., on the one hand, and, on the other, Milwaukee, and Watertown, Wis. NOTE: Applicant holds a motor contract carrier permit in No. MC 128616 and Subs thereunder, therefore dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 115311 (Sub-No. 142), filed November 15, 1972. Applicant: J & M TRANSPORTATION CO., INC., Post Office Box 488, Milledgeville, GA 31061. Applicant's representative: Paul M. Daniell, Post Office Box 872, Atlanta, GA 30301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bricks, blocks, tile and masonry products and materials and supplies* used in the manufacture and installation thereof, between the plantsite and warehouse facilities of Certain-Teed Products Corp. near Lithonia (DeKalb County), Ga., on the one hand, and, on the other, points in Alabama, Florida, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 115331 (Sub-No. 336), filed November 13, 1972. Applicant: TRUCK TRANSPORT, INCORPORATED, 1931 North Geyer Road, St. Louis, MO 63131. Applicant's representative: J. R. Ferris, 230 St. Clair Avenue, East St. Louis, IL 62201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in bulk, from the Kansas City, Missouri-Kansas commercial zone, to points in Kansas, Missouri, Arkansas, Colorado, Illinois, Iowa, Louisiana, Minnesota, Montana, Nebraska, New Mexico, North Dakota, South Dakota, Texas, Wisconsin, and Wyoming. NOTE: Common control may be involved. Applicant states that

the requested authority can be tacked with its existing authority, but indicates that it has no present intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Kansas City, Mo.

No. MC 115840 (Sub-No. 83), filed November 10, 1972. Applicant: COLONIAL FAST FREIGHT LINES, INC., 1215 Bankhead Highway, Post Office Box 10327, Birmingham, AL 35202. Applicant's representative: C. E. Wesley (same address as applicant's). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pipe, valves and components, fire hydrants, and fittings and accessories* (except pipe and pipe fittings as described in Mercer Oil Field Extension, 74 M.C.C. 459), from Bessemer and Birmingham, Ala., to points in Colorado, Kansas, Missouri, Minnesota, Nebraska, New Mexico, North Dakota, South Dakota, Texas, and that part of Louisiana west of the Mississippi River, and return shipments of *materials, supplies, and equipment* (except in bulk, in tank vehicles), on return. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Nashville or Memphis, Tenn., or Birmingham, Ala.

No. MC 116073 (Sub-No. 248), filed November 10, 1972. Applicant: BARRETT MOBILE HOME TRANSPORT, INC., Post Office Box 919, Moorhead, MN 56560. Applicant's representative: David L. Wanner, 1819 Fourth Avenue South, Moorhead, MN 56560. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers* designed to be drawn by passenger automobiles, from points in Jackson County, W. Va., to points in the United States, including Alaska and Hawaii. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Charleston, W. Va.

No. MC 116280 (Sub-No. 13), filed November 15, 1972. Applicant: W. C. McQUAIDE, INC., 153 Macridge Avenue, Johnstown, PA 15904. Applicant's representative: Christian V. Graf, 407 North Front Street, Harrisburg, PA 17101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper, carbon paper, checks, tickets, autographic register paper, and paper form, plain, printed or ruled*, (1) from Fredericksburg, Va., to Sidman, Pa.; and (2) from Sidman, Pa., to points in Pennsylvania. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Applicant holds contract carrier authority under MC 88299, therefore, dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Harrisburg, Pa., or Washington, D.C.

No. MC 117160 (Sub-No. 5), filed November 7, 1972. Applicant: ROBERTS CARTAGE, INC., 2088 South Arlington Street, Akron, OH 44306. Applicant's representative: Robert W. Oliver, 1100 Connecticut Avenue NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except classes A and B explosives) between Cleveland-Hopkins Airport, Cleveland, Ohio, and John F. Kennedy Airport and LaGuardia Airports, New York, N.Y. and Newark Airport, Newark, N.J. Restriction: Restricted to shipments moving on an air carrier through bill of lading in service substituted for air service. NOTE: Common control and dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Cleveland, Ohio or Washington, D.C.

No. MC 117565 (Sub-No. 73), filed November 13, 1972. Applicant: MOTOR SERVICE COMPANY, INC., Route 3, Post Office Box 448, Coshocton, OH 43812. Applicant's representative: John R. Hafner (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Self-propelled vehicles*, weighing each less than 15,000 lbs. (except motor homes), in initial movements, from points in Ross County, Ohio, to points in the United States (including Alaska but excepting Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Applicant has pending an application for contract carrier authority under permit No. MC 135701 (Sub-No. 1), therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio.

No. MC 117574 (Sub-No. 220), filed November 2, 1972. Applicant: DAILY EXPRESS, INC., Post Office Box 39, Carlisle, PA 17013. Applicant's representative: James W. Hagar, 100 Pine Street, Post Office Box 1166, Harrisburg, PA 17108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commodities*, the transportation of which because of size or weight require the use of special equipment, and *related materials, supplies, and parts* of such commodities, when their transportation is incidental to the transportation of commodities which because of size or weight require the use of special equipment; and *self-propelled articles* each weighing 15,000 pounds or more, and *related machinery, tools, parts, and supplies* moving in connection therewith, restricted to self-propelled articles which are transported on trailers, between points in Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Ohio, and Wisconsin, NOTE: Applicant states that tacking would take place with its Subs 57, 87, 71, and 72 which authorized similar commodities and with its authority with Subs 124, 161, and 73. Applicant also states that it operates Johnson Trucking Co., MC 84726 under temporary authority of the Commission. Tacking would occur at any point in Indiana, Kentucky, Michigan, or Ohio to serve points east and southwest. As authority is now held between points in the eastern States and Illinois, Indiana, Kentucky, Michigan, Minnesota, Ohio, and Wisconsin, the only appreciable effect of the tacking would be service to or from Iowa and Missouri. Several other specific grants could possibly also be tacked to the authority sought herein. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 117940 (Sub-No. 84), filed November 16, 1972. Applicant: NATIONWIDE CARRIERS, INC., Post Office Box 104, Maple Plain, MN 55359. Applicant's representative: Donald Stern, 530 Univac Building, 7100 West Center Road, Omaha, NE 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dairy products, yogurt, and prepared desserts*, from Walton, N.Y., and Hagerstown, Md., to points in North Carolina, South Carolina, Georgia, and Florida. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 118159 (Sub-No. 129), filed November 16, 1972. Applicant: EVERETT LOWRANCE, INC., 1925 National Plaza, Tulsa, Okla. 74151. Applicant's representative: Jack R. Anderson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products*, and *meat byproducts*, and *articles distributed by meat packinghouses*, as described in sections A and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except bulk and hides or skins), from St. Louis, Mo. to points in Alabama, Arkansas, Georgia, Florida, Louisiana, Mississippi, Ohio, Oklahoma, North Carolina, South Carolina, and Virginia. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant does not specify a location.

No. MC 118490 (Sub-No. 4), filed November 13, 1972. Applicant: ALASKA VAN & STORAGE CO., INC., 18800 Southcenter Parkway, Seattle, WA 98188. Applicant's representative: Alan F. Wohlstetter, 1700 K Street NW., Washington, DC 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between Seattle, Wash., on the one hand, and, on the other, points in Alaska. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is

deemed necessary, applicant requests it be held at Seattle, Wash.

No. MC 119349 (Sub-No. 4), filed November 13, 1972. Applicant: STARLING TRANSPORT LINES, INC., 3724 U.S. Highway 1, Fort Pierce, FL 33450. Applicant's representative: John P. Bond, 30 Giralda Avenue, Coral Gables, FL 33134. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, in containers, from the Quaker State plantsite at Congo, W. Va., to points in Florida in and south of Levy, Marion, Lake, and Volusia Counties, Fla. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Applicant now holds contract carrier authority under its permit No. MC 133867 and subs, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Miami or Orlando, Fla.

No. MC 119765 (Sub-No. 30), filed November 13, 1972. Applicant: HENRY G. NELSEN, INC., 1548 Locust Street, Avoca, IA 51521. Applicant's representative: Joseph M. Scanlan, 111 West Washington Street, Chicago, IL 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat by-products, and articles distributed by meat packinghouses*, as described in sections A and C of Appendix I to the report in *Description in Motor Carrier Certificates*, 61 M.C.C. 209 & 766 (except hides and commodities in bulk), from the Blackhills Packing Co. in Rapid City, S. Dak., to points in Nebraska, Iowa, Illinois, Wisconsin, and Minnesota. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr. or Sioux Falls, S. Dak.

No. MC 119988 (Sub-No. 53), filed November 6, 1972. Applicant: GREAT WESTERN TRUCKING CO., INC., Highway 103 East, Post Office Box 1384, Lufkin, TX 75901. Applicant's representative: Hugh T. Matthews, 630 Fidelity Union Tower, Dallas TX 75201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Empty boxes*, knocked down or set up; (2) *printed advertising matter and periodicals;* and (3) *newspaper supplements* otherwise exempt pursuant to section 203(b)(7) of the Act when transported in mixed loads with commodities, named in (2) above, between points in Montgomery County, Kans. and points in the United States including Alaska and Hawaii. NOTE: Applicant states that the requested authority will be tacked with its Sub-No. 26 at points in Texas to serve other destination state sought directly in this application. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex.

No. MC 121142 (Sub-No. 11), filed November 21, 1972. Applicant: J & G EXPRESS, INC., 489 Julienne Street, Post Office Box 2069, Jackson, MS 39205. Applicant's representative: James N. Clay III, 2100 Sterick Building, Memphis, Tenn. 38103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, class A and B explosives, household goods as defined by the Commission, commodities in bulk and commodities requiring special equipment), between points in Mississippi on and south of Mississippi Highway 8, on and west of U.S. Highway 51, on and north of U.S. Highway 80, and east of the Mississippi River. Restriction: (1) The authority granted herein to the extent that it duplicates the authority presently held by said carrier in MC 121142 Sub 8 shall not be construed as conferring more than one operating right on Mississippi Highway 8, and (2) restricted against handling any traffic originating at or destined to Vicksburg, Miss., and points within its commercial zone. NOTE: Applicant states that the requested authority can be tacked with its existing authority at all common points with carriers presently certificated rights in Docket No. 121142 to render through service to its other territory. If a hearing is deemed necessary, applicant requests it be held at Jackson and Greenwood, Miss.

No. MC 123407 (Sub-No. 111), filed November 22, 1972. Applicant: SAWYER TRANSPORT, INC., South Haven Square, U.S. Highway 6, Valparaiso, Ind. 46383. Applicant's representative: Robert W. Sawyer (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Cement slabs*, from Hammond, Ind., to points in the United States in and east of Montana, Wyoming, Colorado, and New Mexico; and (2) *Materials* and *supplies* used in the manufacture of the above described commodities, on return. NOTE: Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no present intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Indianapolis, Ind.

No. MC 124004 (Sub-No. 23), filed November 28, 1972. Applicant: RICHARD DAHN, INC., Rural Delivery No. 1, Sparta, N.J. 07871. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Animal and poultry feed ingredients*, dry and cracklings, (a) from points in Massachusetts, Connecticut, Rhode Island, and Luzerne County, Pa., to points in New Jersey, New York, Pennsylvania, Connecticut, Rhode Island, Massachusetts, New Hampshire, Maine, and Vermont, restricted against the transportation of fish meal from points in Rhode Island; (b) from points in Luzerne County, Pa., to points in New Jersey, Connecticut, Massachusetts, New Hampshire, Vermont, Maine, Rhode Island, and New York (except points in Chemung, Tioga, and Broome Counties, N.Y.); and (c) between points in Luzerne County, Pa., on the one hand, and, on the other, points in New Jersey, Connecticut, Massachusetts, New Hampshire, Vermont, Maine, Rhode Island, and New York (except points in Chemung, Tioga, and Broome Counties); and (2) *quarry products*, from Franklin and Ogdenburg, N.J., to points in Maine, New Hampshire, Ohio, Virginia, Vermont, and West Virginia. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y., or Washington, D.C.

No. MC 124839 (Sub-No. 20), filed November 28, 1972. Applicant: BUILDERS TRANSPORT, INC., Post Office Box 7057, Savannath, Ga. 31408. Applicant's representative: William P. Sullivan, 1819 H Street NW., Washington, DC 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Insulating materials, mineral wool, and mineral wool products*, between points in DeKalb County, Ga., and points in Tennessee and Mississippi, under a continuing contract or contracts with Certain-Teed Products Corp. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Atlanta, Ga.

No. MC 125430 (Sub-No. 6), filed November 9, 1972. Applicant: WAGNER TRUCKING, INC., Route 1, McHenry, Md. 21541. Applicant's representative: Paul F. Sullivan, 711 Washington Building, Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Animal and poultry feed*, from Bellevue, Marion, and Circleville, Ohio, to points in Maryland, Pennsylvania, and West Virginia; and (2) *building stone*, from Frostburg, Md., to points in Pennsylvania, West Virginia, and Ohio, and Wilmington, Del., Detroit, Mich. and Highland Park, Ill. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 126514 (Sub-No. 39), filed November 14, 1972. Applicant: SCHAEFFER TRUCKING, INC., 5200 West Bethany Home Road, Glendale, AZ 85001. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper articles*, from

points in New Hampshire, Rhode Island, New York, Massachusetts, Connecticut, New Jersey, Pennsylvania, and Illinois to points in Arizona, California, Nevada, New Mexico, Oregon, and Washington. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Boston, Mass., or Los Angeles, Calif.

No. MC 126666 (Sub-No. 4), filed November 20, 1972. Applicant: HOWARD C. FOSTER, doing business as FOSTER'S TRANSFER & STORAGE, 1521 Nevin Avenue, Richmond, CA 94104. Applicant's representative: Daniel W. Baker, 405 Montgomery Street, San Francisco, CA 94104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized and further restricted to the performance of a pickup and delivery service in connection with packing, crating, and containerization or unpacking, uncrating, and decontainerization of such traffic, between Sonoma, Napa, Yolo, Sacramento, Solano, Marin, San Francisco, Contra Costa, Alameda, San Joaquin, San Mateo, Santa Cruz, and Santa Clara Counties, Calif. NOTE: Applicant presently holds authority to provide the requested service between Napa, Contra Costa, Solano, Alameda, Sonoma, San Francisco, and Marin Counties, Calif. in certificate No. MC 126666 (Sub-No. 1), therefore duplicating authority may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at San Francisco, Calif.

No. MC 127042 (Sub-No. 109), filed November 13, 1972. Applicant: HAGEN, INC., 4120 Floyd Boulevard, Post Office Box 98-Leeds Station, Sioux City, IA 51108. Applicant's representative: Donald L. Stern, 530 Univac Building, 7100 West Center Road, Omaha, NE 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from points in Jasper and Newton Counties, Mo., to points in and west of Michigan, Ohio, Kentucky, Tennessee, and Alabama. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Kansas City, Mo.

No. MC 127238 (Sub-No. 6), filed October 30, 1972. Applicant: DOROTHY R. ZUMMO, doing business as: AIR DELIVERY SERVICE, Post Office Box 1102, Scranton, PA 18501. Applicant's representative: Russell S. Bernhard, 1625 K Street NW., Washington, DC 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those which because of size or weight require the use of special equipment), between John F. Kennedy International Airport, New York, N.Y.; LaGuardia Airport, New York, N.Y.; Newark Airport, Newark, N.J.; Allentown-Bethlehem-Easton Airport, Northampton and Lehigh Counties, Pa.; and Philadelphia International Airport, Philadelphia, Pa.; on the one hand, and, on the other, points in Washington Township, Morris County, N.J., restricted to the transportation of shipments having a prior or subsequent movement by air. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Scranton, Pa., or Washington, D.C.

No. MC 128791 (Sub-No. 9), filed November 10, 1972. Applicant: L & S BOAT TRANSPORTATION COMPANY, INC., 5924 Ulmerton Road, Clearwater, FL 33516. Applicant's representative: M. Craig Massey, 202 East Walnut Street (Post Office Drawer J), Lakeland, FL 33802. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Boats and boat parts and supplies and equipment* moving in connection therewith, from points in California to points in the United States (except Alaska, Colorado, Hawaii, Idaho, Montana, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Los Angeles, Calif.

No. MC 128896 (Sub-No. 2), filed October 24, 1972. Applicant: ANDRES-BELL CONSTRUCTION LIMITED, Box 133, Virgil, ON Canada. Applicant's representative: Robert G. Gawley, Post Office Box 184, Buffalo, NY 14221. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Boats*, between ports of entry on the International Boundary line between the United States and Canada located on the Detroit, St. Clair, and St. Lawrence Rivers on the one hand, and, on the other, points in the United States (excluding Alaska and Hawaii), restricted to shipments originating in or destined to the Province of Ontario, Canada. NOTE: If a hearing is deemed necessary, applicant requests it be held at Detroit, Mich., or Buffalo, N.Y.

No. MC 133450 (Sub No. 3), filed November 14, 1972. Applicant: CLARK COUNTY WHOLESALE MERCANTILE COMPANY, a corporation, 512 South Main Street, Las Vegas, NV 89101. Applicant's representative: Ernest D. Salm, 8179 Havasu Circle, Buena Park, CA 90621. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lime, limestone, gypsum plaster, gypsum lath, and gypsum wallboard*, from points in Clark County, Nev., to points in San Diego, San Luis Obispo, Santa Barbara, and Ventura Counties, Calif. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Los Angeles, Calif.

No. MC 133708 (Sub-No. 6), filed November 20, 1972. Applicant: FIKSE BROS., INC., 12647 East South Street, Artesia, CA 90701. Applicant's representative: Carl H. Fritze, 1545 Wilshire Blvd., Los Angeles, CA 90017. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, in bulk, (1) between points in Arizona; (2) between points in California; and (3) between points in Nevada; restricted to the transportation of shipments having an immediate prior movement by rail. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Los Angeles, Calif.

No. MC 133796 (Sub-No. 12), filed November 21, 1972. Applicant: GEORGE APPEL, 249 Carverton Road, Trucksville, PA 18708. Applicant's representative: Kenneth R. Davis, 999 Union Street, Taylor, PA 18517. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Athletic, camping, mountain climbing, and ski equipment*, between Colton and Los Angeles, Calif., on the one hand, and, on the other, Boston, Mass., New York, and Schaghticoke, N.Y., and Kingston, Pa. NOTE: Applicant also holds contract carrier authority under MC 129239, therefore dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 134142 (Sub-No. 2), filed November 13, 1972. Applicant: BROWN REFRIGERATED EXPRESS, INC., Post Office Box 603, Fort Scott, KS 66701. Applicant's representative: Melvin F. Brown (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages*, in container from Golden, Colo., to points in Kansas, Oklahoma, and Texas, and (2) *Empty malt beverages continers*, from the destination territory in (1) to Golden, Colo., under contract with Adolph Coors Co.; John P. Ward & Son, Inc., and Valley Distributors, Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at Denver, Colo., or Kansas City, Mo.

No. MC 134404 (Sub-No. 5), filed November 15, 1972. Applicant: AMERICAN TRANS-FREIGHT, INC., Post Office Box 499, South Bound Brook, NJ 08880. Applicant's representative: Bert Collins, 140 Cedar Street, New York, NY 10006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Cleaning products, nutritional foods and related articles, materials, supplies, and equipment* used in the manufacture, distribution or sale of the above commodities

(except in bulk), (1) between East Stroudsburg, Pa., on the one hand, and, on the other, Syracuse, N.Y.; Saylesville, R.I.; and Richmond, Va.; and (2) between Urbana, Ohio, Franklin, Ky., and East Stroudsburg, Pa., on the one hand, and, on the other, Detroit, Mich.; Atlanta, Ga.; Richmond, Va.; East Stroudsburg, Pa.; Saylesville, R.I.; Syracuse, N.Y.; and Jacksonville, Fla. Restriction: The operations to be limited to a service under contract with The Drackett Products Co., Division of Bristol Myers. NOTE: If a hearing is deemed necessary, applicant requests it be held at New York, N.Y.

No. MC 134599 (Sub-No. 64), filed November 13, 1972. Applicant: INTERSTATE CONTRACT CARRIER CORP., Post Office Box 748, Salt Lake City, UT 84110. Applicant's representative: Richard A. Peterson, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Rubber, rubber products, and equipment, chemicals, materials, and supplies* used in the manufacture and production of rubber products except commodities in bulk and except commodities which, because of size or weight, require special handling or special equipment, from Kennett, Mo., to points in Washington, Oregon, California, Nevada, Idaho, Utah, Arizona, Montana, Wyoming, Colorado, New Mexico, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Texas, Minnesota, Iowa, Missouri, Arkansas, and Louisiana, under contract with Uniroyal, Inc. NOTE: No duplicating authority is being sought. If a hearing is deemed necessary, applicant requests it be held at Salt Lake City, Utah, or Lincoln, Nebr.

No. MC 134631 (Sub-No. 14) (Correction), filed September 18, 1972, published in the FEDERAL REGISTER, issue of October 12, 1972, and republished as corrected this issue. Applicant: SCHULTZ TRANSIT, INC., Post Office Box 503, Winona, MN 55987. Applicant's representative: Val M. Higgins, 1000 First National Bank Building, Minneapolis, Minn. 55402. The purpose of this republication is to show the correct docket number assigned as shown above in lieu of No. MC 134631 (Sub-No. 143), which was in error. The rest of the notice remains as previously published.

No. MC 134922 (Sub-No. 37), filed November 6, 1972. Applicant: B. J. MCADAMS, INC., Route 6, Box 15, North Little Rock, AR 72118. Applicant's representative: William J. Boyd, 29 South LaSalle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from Temple, Pa., to Arkansas, Oklahoma, Texas, Louisiana, Mississippi, Florida, Arizona, and Tennessee. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Philadelphia, Pa. or Washington, D.C.

No. MC 135385 (Sub-No. 2), filed November 6, 1972. Applicant: J. C. BANGERTER & SONS, INC., 1265 North Main Street, Bountiful, UT 84010. Applicant's representative: Zar E. Hayes and Harry D. Pugsley, 400 El Paso Gas Building, 315 East Second South, Salt Lake City, UT 84111. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by wholesale, retail, and chain grocers and food business houses (except commodities in bulk), from the warehouse of Smith Management Corp. at Layton, Utah, to grocery outlets owned, operated, or supplied by Smith Management Corp. at points in Idaho south of Idaho County and from points in Idaho south of Idaho County to the warehouse of Smith Management Corp. at Layton, Utah, under contract with Smith Management Corp. NOTE: If a hearing is deemed necessary, applicant requests it be held at Salt Lake City, Utah.

No. MC 136211 (Sub-No. 7), filed November 20, 1972. Applicant: MERCHANT'S HOME DELIVERY SERVICE, INC., 210 St. Mary's Drive, Suite G, Oxnard, CA 93030. Applicant's representatives: Max G. Morgan and Robert J. Mildfelt, 600 Leininger Building, Oklahoma City, Okla. 73112. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *New home furnishings, appliances, and recreational equipment*, (1) from Nashville, Tenn., to points in Kentucky within an area bounded by a line beginning at the junction of Kentucky State Highway 139 and the Kentucky-Tennessee boundary; thence over Kentucky State Highway 139 to its junction with U.S. Highway 62; thence over U.S. Highway 62 to its junction with Kentucky State Highway 88; thence over Kentucky State Highway 88 to its junction with Kentucky State Highway 61; thence over Kentucky State Highway 61 to its junction with the Kentucky-Tennessee boundary, including points on the highways designated; and (2) from Louisville, Ky., to points in Indiana within an area bounded by a line beginning at the junction of U.S. Highway 231 and the Indiana-Kentucky boundary; thence over U.S. Highway 231 to its junction with U.S. Highway 50; thence over U.S. Highway 50 to its junction with Indiana State Highway 7; thence over Indiana State Highway 7 to its junction with the Indiana-Kentucky boundary, including points on the highways designated above, with the operations in (1) and (2) above performed under a continuing contract, or contracts, with John F. Lawhon Company, at Tulsa, Okla. Restriction: The transportation service in (1) and (2) above shall be restricted against the transportation of shipments to retail or commercial enterprises. NOTE: If a hearing is deemed necessary, applicant requests it be held at Louisville, Ky., or Nashville, Tenn.

No. MC 136247 (Sub-No. 5), filed November 6, 1972. Applicant: WRIGHT TRUCKING, INC., 1303 10th Street SE., Jamestown, ND 58401. Applicant's representative: Thomas J. Van Osdel, 502 First National Bank Building, Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Empty beverage containers, caps, lids, ends, accessories and materials, and supplies* used in connection with the manufacture of empty beverage containers and distribution of beverages, except commodities in bulk, from Minneapolis, St. Paul, Shakopee, and Mankato, Minn., Alton and Streator, Ill., and Sapulpa, Okla., to points in North Dakota; and (2) *sugar*, from Moorhead and Crookston, Minn., and Sidney, Mont., to points in North Dakota. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Fargo, N. Dak., or St. Paul, Minn.

No. MC 136343 (Sub-No. 6), filed November 14, 1972. Applicant: MILTON TRANSPORTATION, INC., Post Office Box 207, Milton, PA 17847. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Authority sought to operate as a *common carrier*, by motor vehicle, regular and irregular routes, transporting: Regular routes: (1) *Iron cores*, from Dumellen, N.J., to Tyrone, Pa., serving no intermediate points: From Dumellen over New Jersey Highway 28 to Somerville, N.J., thence over U.S. Highway 22 to Water Street, Pennsylvania, and thence over Pennsylvania Highway 350 to Tyrone, Pa., and return over the same route with no transportation for compensation except as otherwise authorized; (2) *Activated carbon*, (a) Between Tyrone, Pa., and Luke, Md., serving no intermediate points: From Tyrone over U.S. Highway 220 via Duncansville, Pa., to McCoole, Md., thence over Maryland Highway 36 to Westernport, Md., thence over Maryland Highway 135 to Luke and return over the same route. (b) From Tyrone, Pa., to Carney's Point, N.J., serving no intermediate points: From Tyrone over Pennsylvania Highway 350 to Water Street, Pennsylvania, thence over U.S. Highway 22 to Harrisburg, Pa., thence over U.S. Highway 230 to Lancaster, Pa., thence over U.S. Highway 30 to Gap, Pa., thence over Pennsylvania Highway 41 to the Pennsylvania-Delaware State line, thence over Delaware Highway 41 to junction U.S. Highway 40, thence over U.S. Highway 40 to New Castle, Del., thence across the Delaware River to Pennsville, N.J., thence over U.S. Highway 130 to Carney's Point, and return over the same route with no transportation for compensation except as otherwise authorized.

Regular and irregular routes: *Activated carbon*, from Tyrone, Pa., to points in New York and New Jersey, serving no intermediate points, as follows: From Tyrone over Pennsylvania Highway 350 to Water Street, Pennsylvania, thence over U.S. Highway 22 to Somerville, N.J., and thence over irregular routes to Newark, N.J., and points within 25 miles of Newark, N.J.; and return over the same

route with no transportation for compensation, except as otherwise authorized, over irregular routes to Somerville, N.J., and thence over the above specified regular route to Tyrone; (2) *Printing paper*, other than newsprint, (a) between Tyrone and Williamsburg, Pa., and Luke, Md., serving no intermediate points, as follows: From Tyrone over the above-specified route to Luke; and from Williamsburg over Pennsylvania Highway 203 to junction U.S. Highway 22, thence over U.S. Highway 22 to Duncansville, Pa., and thence to Luke as specified above; and return over these routes to Tyrone and Williamsburg (b) From Tyrone and Williamsburg, Pa., to Brooklyn and New York, N.Y., and points within 25 miles of Newark, N.J., serving no intermediate points, as follows: From Tyrone to Harrisburg, Pa., as specified above, thence continuing over U.S. Highway 22 to Somerville, N.J., and thence over irregular routes to Brooklyn and New York, N.Y., and points within 25 miles of Newark, N.J.; and from Williamsburg over Pennsylvania Highway 203 to junction U.S. Highway 22, thence over U.S. Highway 22 via Water Street, Pennsylvania, to Somerville, N.J., and thence over irregular routes to Brooklyn and New York, N.Y., and points within 25 miles of Newark, N.J.; and return with no transportation for compensation except as otherwise authorized over irregular routes to Somerville, N.J., and thence over the above-specified regular routes to Tyrone and Williamsburg and (3) *Iron paper winding cores*, from Brooklyn and New York, N.Y., and points within 25 miles of Newark, N.J., to Tyrone and Williamsburg, Pa., serving no intermediate points, as follows: From Brooklyn and New York and points within 25 miles of Newark, N.J., except Dunellen, N.J., over irregular routes to Somerville, and thence over the above-specified routes to Tyrone, Pa.; and from Brooklyn and New York and points within 25 miles of Newark, N.J., over irregular routes, to Somerville and thence over the above-specified regular routes to Williamsburg, Pa., and return with no transportation for compensation except as otherwise authorized over the above-specified regular routes to Somerville, and thence over irregular routes to the above-specified origin points.

Irregular routes: (1) *Flakeboard*, from Tyrone, Pa., to points in Massachusetts, Rhode Island, Connecticut, Delaware, North Carolina, and South Carolina, and points in Ohio (except those west of Ohio Highway 4), points in Maryland (except Cumberland and points within 50 miles of Gaithersburg, Md.), points in West Virginia (except points within 50 miles of Gaithersburg, Md.), points in New Jersey (except points in Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Union, and Warren Counties), and points in New York (except points in Dutchess, Kings, Nassau, Putnam, Queens, Richmond, Suffolk, and Westchester Counties), with no transportation for compensation on return except as otherwise authorized; (2) *Paper and paper products*, from Tyrone, Pa., to points in Vermont, with no transportation for compensation on return except as otherwise authorized. Restriction: The operations authorized under the two commodity descriptions next above are limited to a transportation service to be performed to or from the facilities of Westvaco Corp.; (3) *Paper and paper products, woodpulp and wastepaper*, from the plantsite of Westvaco Corp., at or near Wickliffe, Ky., to points in Massachusetts, Connecticut, Rhode Island, New Jersey, Pennsylvania, Maryland, Delaware, Virginia, West Virginia, and the District of Columbia; (4) *Materials and supplies* used in the manufacture and distribution of paper and paper products (except commodities in bulk), from points in Massachusetts, Connecticut, Rhode Island, New Jersey, Pennsylvania, Maryland, Delaware, Virginia, West Virginia, and the District of Columbia, to the plantsite of Westvaco Corp., at or near Wickliffe, Ky. Restriction: The operations authorized under the two commodity descriptions next above are limited to a transportation service to be performed to or from the facilities of Westvaco Corp.; (5) *Paper and paper products, woodpulp and wastepaper*, from the plantsite of Westvaco Corp. near Wickliffe, Ky., to points in New York; (6) *Materials and supplies* used in the manufacture and distribution of paper and paper products (except commodities in bulk), from points in New York, to the plantsite of Westvaco Corp., near Wickliffe, Ky.

Restriction: The operations authorized under the two commodity descriptions next above are limited to a transportation service to be performed, under a continuing contract, or contracts, with Westvaco Corp. of New York, N.Y., and (7) *Printing paper* (other than newsprint), from Tyrone, Pa., to points in Connecticut, New Hampshire, New York (except Poughkeepsie and New York, N.Y., and all intermediate points on U.S. Highway 9 between Poughkeepsie and New York, N.Y.), and Rhode Island, with no transportation for compensation on return except as otherwise authorized. Restriction: The operations authorized under the commodity description immediately above are limited to a transportation service to be performed to or from the facilities of Westvaco Corp. Irregular routes: (1) *Paper and paper products and woodpulp*, from the facilities of Westvaco Corp. at Tyrone, Pa., to points in Massachusetts, Maine, and Michigan and (2) *Materials, equipment, and supplies*, used in the manufacture and distribution of paper and paper products (except commodities in bulk), from points in Massachusetts, Maine, and Michigan, to the facilities of Westvaco Corp. at Tyrone, Pa. Irregular routes: *Flakeboard*, from the facilities of Westvaco Corp. at Tyrone, Pa., to points in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, that part of Maryland within 50 miles of Gaithersburg, Md., Michigan, Minnesota, Mississippi, Missouri, New Hampshire, that part of Ohio west of Ohio Highway 4, Oklahoma, Tennessee, Texas, Vermont, Virginia, that part of West Virginia within 50 miles of Gaithersburg, Md., Wisconsin, and the District of Columbia, with no compensation on return except as otherwise authorized. Irregular routes: *Scrap paper*, from points in Connecticut, Delaware, Maryland, Massachusetts, Michigan, New York, North Carolina, Ohio, and Virginia, to the facilities of Westvaco Corp. at Williamsburg, Pa., with no transportation for compensation on return except as otherwise authorized. From points in New Jersey to the facilities of Westvaco Corp. at Williamsburg, Pa., with no transportation for compensation on return except as otherwise authorized. Restriction: The separately stated authorities herein shall not be tacked or joined one to another for the purpose of performing any through transportation. NOTE: Applicant states that the purpose of this application is to convert to common carriage the operating authority of Rowe Cambridge Motor Transportation, Inc., which applicant presently seeks to acquire pursuant to the application in No. MC-F 11708, published in the FEDERAL REGISTER issue of November 8, 1972, and which operating rights are more specifically set forth herein. Applicant requests concurrent handling of the instant application with that in MC-F 11708. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 136451 (Sub-No. 3), filed November 13, 1972. Applicant: HUBBARD CARTAGE, INC., 3737 North Lincoln, Chicago, IL 60613. Applicant's representative: Arnold L. Burke, 127 North Dearborn Street, Chicago, IL 60602. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer*, dry in bulk, from Kenosha, Wis., to points in Illinois, under a continuing contract or contracts with Koos, Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 136685 (Sub-No. 1), filed October 10, 1972. Applicant: PRICE'S PRODUCERS, INC.; PRICE'S VALLEY GOLD DAIRIES, INC.; AND LACORONA FOODS, INC., a limited partnership, doing business as: PRICE'S TRANSPORTATION, 5025 West Peoria Avenue, Glendale, AZ 85311. Applicant's representative: Phil B. Hammond, 10th floor, 111 West Monroe, Phoenix, AZ 85003. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Ice cream, sherbets, ice milk, and flavored ice or ice cream novelties*, from El Paso, Tex., to Phoenix, Ariz., points in California; Las Vegas, Nev.; Albuquerque, Farmington, Gallup, Grants, and Roswell, N. Mex.; (2) *yogurt, dips and cheese*, from Glendale, Ariz., to points in California, Chicago, Ill.; Albuquerque, N. Mex.; and Dallas, El Paso, San Antonio, and Houston, Tex.; Wichita and Kansas City, Kans.; Kansas City, Mo.; Oklahoma City, Okla.; and Denver and Colorado Springs, Colo.; (3) *cottage cheese, sour cream, dips, milk and milk products*, from Al-

buquerque, N. Mex., to Phoenix and Flagstaff, Ariz., Cortez, Colo., El Paso, Tex., and Grants and Gallup, N. Mex.; (4) *cartons* for dairy packaging; *fruits, flavors, and concentrates* used in the processing and packaging of food products which are manufactured or distributed by dairies, *stabilizers* for the processing of milk products; and *cartons* for the processing and manufacturing of fruit drinks, from points in Texas on and east of U.S. Highway 281, points in California south of the northern boundaries of San Luis Opispo, Kern, and San Bernardino Counties; Kansas City, Kans.; Kansas City and Springfield, Mo.; to Glendale, Ariz.; Albuquerque and Roswell, N. Mex.; El Paso, Tex., and Cortez, Colo.: (5) *sugar; powdered milk*; and *fiberboard containers* for milk and ice cream mix, from points in Maricopa County, Ariz., to Albuquerque and Roswell, N. Mex., El Paso, Tex., and Cortez, Colo.; (6) *chemicals* for cleaning dairy farms and dairy farms and dairy processing plants, from points in Los Angeles County, Calif., and Burlington, Iowa to Glendale, Ariz., Albuquerque and Roswell, N. Mex., El Paso, Tex., and Cortez, Colo., for the account of Price's Producers, Inc., and Price's Valley Gold Dairies, Inc., and LaCorona Foods, Inc., and (7) *milk and ice cream containers*, from La Puente, Calif., to Gerland, Tex., for the account of Weyerhaeuser Co. NOTE: If a hearing is deemed necessary, applicant requests it be held at Phoenix, Ariz.; Albuquerque, N. Mex.; or Los Angeles, Calif.

No. MC 136814 (Sub-No. 2), filed November 13, 1972. Applicant: JESSE E. MATLOCK, doing business as: MATLOCK TRANSPORTATION, 1718 East Commonwealth, No. 101, Fullerton, CA 92631. Applicant's representative: Milton W. Flack, 4311 Wilshire Boulevard, Suite 300, Los Angeles, CA 90010. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (a) *Magazines*, for the account of Time, Inc., from Los Angeles, Calif., to Chico and Redding, Calif., Medford, Eugene, and Portland, Oreg., Seattle, Olympia, and Tacoma, Wash., and (b) *magazine paper*, for the account of Time, Inc., from Oregon City, Oreg., to Los Angeles, Calif. NOTE: If a hearing is deemed necessary, applicant requests it be held at Los Angeles, Calif.

No. MC 136897 (Sub-No. 3), filed November 13, 1972. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 335 West Elwood Road, Phoenix, AZ 85041. Applicant's representative: Donald E. Fernaays, Suite 312, 4040 East McDowell Road, Phoenix, AZ 85008. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Composition and prepared roofing*, from points in Louisiana, Arkansas, Texas, and Albuquerque, N. Mex., to points in Arizona, under contract with Roofing Wholesale Co., Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at Phoenix, Ariz.

No. MC 136897 (Sub-No. 4), filed November 13, 1972. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 335 West Elwood Road, Phoenix, AZ 85041. Applicant's representative: Donald E. Fernaays, Suite 312, 4040 East McDowell Road, Phoenix, AZ 85008. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Printing paper*, other than newsprint, from Zee, La., to Jonesboro, Ark., and (2) *Printed matter*, from Jonesboro, Ark., to points in Texas, New Mexico, Arizona, and California, under contract with W. A. Krueger Co. NOTE: If a hearing is deemed necessary, applicant requests it be held at Phoenix, Ariz.

No. MC 136897 (Sub-No. 5), filed November 13, 1972. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 335 West Elwood Road, Phoenix, AZ 85041. Applicant's representative: Donald E. Fernaays, Suite 312, 4040 East McDowell Road, Phoenix, AZ 85008. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed by meat packinghouses*, as described in sections A and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk and hides), from Tolleson, Ariz., to points in Alabama and Tennessee, under contract with Swift Fresh Meats Co. NOTE: If a hearing is deemed necessary, applicant requests it be held at Phoenix, Ariz.

No. MC 136953 (Sub-No. 1), filed November 13, 1972. Applicant: KAY'S TRUCKING, INC., 1424 Liberty Avenue, Union, NJ 07083. Applicant's representative: Edward F. Bowes, 744 Broad Street, Newark, NJ 07102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Houseware, hardware, garden supplies and garden hand implements and small hand operated electrical appliances*, for the account of Eagle Sales Co., Inc., from the storage facilities of Eagle Sales Co., Inc., at Dunellen, N.J., to New York, N.Y., and points in Nassau, Rockland, Suffolk, and Westchester Counties, N.Y. NOTE: If a hearing is deemed necessary, applicant requests it be held at Newark, N.J.

No. MC 138005 (Sub-No. 2), filed November 10, 1972. Applicant: J. C. CLIFT TRUCK LINE, INC., Route 1, Box 468, Malvern, Ark. Applicant's representative: Donald T. Jack, Jr., 1550 Tower Building, Little Rock, Ark. 72201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wood chips, wood shavings, and sawdust*, from points in Polk, Montgomery, Garland, Saline, Pulaski, Lonoke, Arkansas, Desha, Lincoln, Jefferson, Grant, Hot Spring, Clark, Pike, Howard, Sevier, Little River, Hempstead, Nevada, Dallas, Cleveland, Drew, Bradley, Calhoun, Ouachita, Miller, Columbia, Union, Ashley, and Chicot Counties, Ark., to points in McCurtain County, Okla.; Cass County, Tex.; and Bossier, Webster, Union, and Morehouse Counties, La. NOTE: If a hearing is deemed necessary, applicant requests it be held at Little Rock, Ark.

No. MC 138030 (Sub-No. 2), filed November 13, 1972. Applicant: C. I. WHITTEN TRANSFER (QUEBEC), INC., Post Office Box 181, Montreal 160, PQ, Canada. Applicant's representative: J. G. Dail, Pr., 1111 E Street NW., Washington, DC 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ammunition explosives, substitutes for explosives, and equipment or accessories* related to the use or storage of explosives, between points on the international boundary between the United States (New York, Vermont, New Hampshire, and Maine) and Canada, on the one hand, and, on the other, points in New York, Vermont, New Hampshire, and Maine. Restriction: Restricted to shipments originating at or destined to points in Canada. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. However, it intends to interchange with C. I. Whitten Transfer Co. at points in New York, Vermont, New Hampshire, and Maine. If a hearing is deemed necessary, applicant requests it be held at Plattsburgh, Albany or New York, N.Y.

No. MC 138085, filed September 29, 1972. Applicant: INDUSTRIAL SWEETENERS, INC., Post Office Box 6411, Wheeling, WV. Applicant's representative: D. L. Bennett, 129 Edington Lane, Wheeling, WV 26003. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid sugar and/or corn syrup*, in bulk, in tank trailers, (1) from points in Kanawha County, W. Va., to points in West Virginia; (2) from points in Kanawha County, W. Va., to Ashland, Pikeville, and Hazard, Ky., and (3) from points in Kanawha County, W. Va., to Middleport, Marietta, Gallipolis, Athens, and Portsmouth, Ohio. NOTE: If a hearing is deemed necessary, applicant requests it be held at Pittsburgh, Pa., or Washington, D.C.

No. MC 138095, filed September 1, 1972. Applicant: R. A. THOMECZEK TRANSPORT, INC., Foot of Front Street, Post Office Box 66, Alton, IL 62002. Applicant's representative: William H. Hoagland, 401 Alton Street, Alton IL 62002. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Gasoline and distillates*, in bulk, in tank vehicles, from the J. D. Street Co. pipeline terminal at Hartford, Ill., to the facilities of Pit Stop of West Alton, Inc., located at West Alton, Mo. NOTE: Applicant states that the proposed operations would be under contract with Pit Stop of West Alton, Inc. If a hearing is deemed necessary, applicant requests it be held at Alton, Ill. or Springfield, Ill.

No. MC 138189 filed November 8, 1972. Applicant: CAMP BAGGAGE SERVICE, INC., 108-30 66th Road, Forest Hills, NY

11375. Applicant's representative: S. Harrison Kahn, Suite 733, Investment Building, Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Campers' baggage and personal effects*, between the boroughs of Manhattan, Bronx, Brooklyn, Queens, and Staten Island, New York, N.Y.; Nassau and Westchester Counties, N.Y.; and points in that part of New Jersey bounded on the north by Interstate Highway 95 and Interstate Highway 80 to their intersection with the Garden State Parkway, and thence south on the Garden State Parkway to the Raritan River, including points on the aforesaid highway boundary lines in New Jersey, on the one hand, and, on the other, that part of Massachusetts bounded on the east by Massachusetts Highway 8 to its intersection with Interstate Highway 90 and thence west by Interstate Highway 90 to its intersection with the New York-Massachusetts State line, including points the highway boundary lines in Massachusetts; points in New York; and points in that part of Pennsylvania bounded on the west by Interstate Highway 81 commencing at the New York-Pennsylvania State line to its intersection with Pennsylvania Highway 171, thence along Pennsylvania Highway 171 to its intersection with U.S. Highway 6, thence along U.S. Highway 6 to its intersection with the Pennsylvania-New Jersey State line, including points on the aforesaid highway boundary lines in Pennsylvania. NOTE: If a hearing is deemed necessary, applicant requests it be held at New York, N.Y.

No. MC 138213 filed November 7, 1972. Applicant: REDI LEASE CO., a corporation, 811 West Hale Street, Osceola, AR 72370. Applicant's representative: Gerald K. Gimmel, 666 11th Street NW., Washington, DC 20001. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper and related articles* as sold and distributed by Graham Paper Co., such as printing paper (other than newsprint); wrapping paper; paper bags; pulpboard, corrugated or other than corrugated; paper towels and dispensers; paper napkins and dispensers; toilet tissue; tissue paper; paper cups; paper lids; fiberboard and pulpboard boxes; envelopes; paper straws; autographic register paper; blotting paper; carbon paper; index cards; cover paper; pulpboard dishes and trays; file folders; paper gummed tape and dispensers; sanitary napkins and dispensers; papeteries; printed advertising matter; paper tags and fasteners; building paper; paper cup dispensers; moulded egg cartons; tape, teletype; paper bags, insulated or padded with macerated paper; computing machine paper; newsprint; racks, for rolls of paper; paper tablets and pads; paper binders; twine and cordage; cabinets for paper samples; cellulose film tape and film wrapping; ink for printing and stamping; easels for paper; *plastic articles*, such as cups and glasses, with or without lids; forks, knives and spoons; moulded egg cases; dishes and trays, containers with or without covers; bags; straws and plastic wrapping, between the plantsites, warehouses and storage facilities of Graham Paper Co., at or near St. Louis, Mo., Atlanta, Ga., Chattanooga, Knoxville, Nashville, and Memphis, Tenn., Louisville, Ky., Maywood, Ill., Minneapolis, Minn., North Kansas City, Mo., Wichita, Kans., Oklahoma City, Okla., Fort Smith, Ark., Dallas, Houston, and Lubbock, Tex., New Orleans, La., and Jackson, Miss.; (2) *wrapping paper and paper bags* from the facilities of Crown Zellerbach at or near Bogalusa, La., to the points indicated in (1) above; (3) *printing paper* from the facilities of Beckett Paper at or near Hamilton, Ohio, to the points indicated in (1) above; (4) *wrapping paper, paper bags, tape and toilet tissue* from the facilities of Hudson Pulp & Paper Co., at or near Palatka, Fla., to the points indicated in (1) above; (5) *printing paper* from the facilities of Bergstrom Paper at or near West Carrollton, Ohio, to the points indicated in (1) above; (6) *printing paper* from the facilities of Weyerhaeuser Co., at or near Plymouth, N.C., to the points indicated in (1) above; (7) *paper tablets and pads* from the facilities of Southern Central Co., at or near Memphis, Tenn., to the points indicated in (1) above; (8) *printing paper* from the facilities of Howard Paper Co. at or near Urbana and Dayton, Ohio, to the points indicated in (1) above;

(9) *Printing paper and waxed papers* from the facilities of Badger Papermill, at or near Peshtigo, Wis., to the points indicated in (1) above; (10) *printing paper* from the facilities of Flambeau Paper Co., at or near Park Falls, Wis., to the points indicated in (1) above; (11) *printing paper, wrapping paper, and paper bags* from the facilities of Thilmany Pulp & Paper Co., at or near Kaukauna, Wis., to the points indicated in (1) above; (12) *printing paper, drawing paper, and newsprint* from the facilities of B & J Supply Co., at or near Appleton, Wis., to the points indicated in (1) above; (13) *printing paper* from the facilities of Consolidated Paper Co., at or near Wisconsin Rapids, Wis., to the points indicated in (1) above; (14) *paper tablets and pads* from Southwest Tablet Co., at or near Dallas, Tex., to the points indicated in (1) above; (15) *printing paper and pulpboard* from the facilities of International Paper Co., at or near Springhill and Bastrop, La., and Mobile, Ala., to the points indicated in (1) above; (16) *paper towels, napkins, and toilet tissue* from the facilities of Georgia Pacific Co., at or near Crossett, Ark., to the points indicated in (1) above; (17) *autographic register pages, computing paper, and index cards* from the facilities of Benton Paper-Products Co., at or near Oceola, Ark., to the points indicated in (1) above; (18) *paper envelopes* from the facilities of Osceola Envelope Co., at or near Osceola, Ark., to the points indicated in (1) above; (19) *printing paper* from the facilities of Crown Zellerbach, at or near St. Francisville, La., to the points indicated in (1) above; (20) *printing paper* from the facilities of Beveridge Paper Co., at or near Indianapolis, Ind., to the points indicated in (1) above; (21) *printing paper* from the facilities of Bergstrom Paper Co., at or near Neenah, Wis., to the points indicated in (1) above; (22) *clipboard boxes and trays* from the facilities of Winchester Carton at or near Eutaw, Ala., to the points indicated in (1) above; and (23) *printing paper* from the facilities of SCM-Gates Paper Co. at or near Jackson, Ala., and Marion, Ind., to the points indicated in (1) above. All to be performed pursuant to a continuing contract or contracts with Graham Paper Co., St. Louis, Mo. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 138225, filed November 17, 1972. Applicant: HEDRICK ASSOCIATES, INC., 9 Galloping Hill Road, Basking Ridge, NJ 07920. Applicant's representative: William P. Jackson, Jr., 919 18th Street NW., Washington, DC 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Swimming pools, swimming pool parts, materials, accessories, supplies, and equipment* (except in bulk), from Garfield and East Paterson, N.J., to points in the United States (except Alaska and Hawaii), under contract with Heldor Associates, Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 138226, filed November 16, 1972. Applicant: CHEVALLEY MOVING AND STORAGE OF DEWEY, INC., 600 North Shawnee, Post Office Box 70, Dewey, OK 74029. Applicant's representative: Dean Williamson, 280 National Foundation Life Building, 3535 Northwest 58th Street, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Materials, supplies, and equipment used in the manufacture of travel trailers, mobile homes, motor homes, and modular homes*, from the warehouse facilities of Chevalley Moving and Storage of Dewey, Inc., at or near Dewey, Okla., to points in Kansas on and south and east of a line beginning at the Kansas-Oklahoma State line and extending along U.S. Highway 281 to junction U.S. Highway 156 at or near Great Bend, Kans., thence along U.S. Highway 156 to junction Interstate Highway 70, thence along Interstate Highway 70 to junction Kansas State Highway 18 at or near Junction City, Kans., thence along Kansas State Highway 18 to junction U.S. Highway 24 at or near Manhattan, Kans., thence along U.S. Highway 24 to junction U.S. Highway 59 at or near Williamstown, Kans., thence along U.S. Highway 59 to junction Kansas State Highway 68 at or near Ottawa, Kans., thence along Kansas State Highway 68 to the Kansas-Missouri State line. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Tulsa or Oklahoma City, Okla.

No. MC 138227, filed November 10, 1972. Applicant: RODNEY H. BLACKWELL doing business as MISS-LOU

TRUCK LINE, Post Office Box 37, Picayune, MS 39466. Applicant's representative: Douglas C. Wynn, Post Office Box 1295, Greenville, MS 38701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except commodities in bulk, household goods as defined by the Commission, and commodities which because of size, weight, or value require the use of special equipment), between New Orleans, La., and points in its commercial zone and points in Pearl River and Lamar Counties, Miss. NOTE: If a hearing is deemed necessary, applicant requests it be held at Hattiesburg, Miss.; New Orleans, La.; or Jackson, Miss.

APPLICATIONS FOR FREIGHT FORWARDERS

No. FF-330 (Sub-No. 1) (HOME-PACK TRANSPORT, INC. EXTENSION—DOMESTIC SERVICE), filed December 1, 1972. Applicant: HOME-PACK TRANSPORT, INC., 57-48 49th Street, Maspeth, NY 11378. Applicant's representative: Alan F. Wohlstetter, 1700 K Street NW., Washington, DC 20006. Authority sought under section 410, Part IV of the Interstate Commerce Act for an amended permit authorizing new operations as a freight forwarder in the forwarding of *used household goods and unaccompanied baggage*, between points in the United States (excluding Hawaii and Alaska).

No. FF-430 (MOLLERUP FREIGHT FORWARDING, NEVADA, INC. FREIGHT FORWARDER APPLICATION), filed December 1, 1972. Applicant: MOLLERUP FREIGHT FORWARDING, NEVADA, INC. doing business as MOLLERUP FREIGHT FORWARDING CO., 2900 South Main Street, Salt Lake City, UT 84115. Applicant's representative: Alan Wohlstetter, 1700 K Street NW., Washington, DC 20006. Authority sought under section 410, Part IV of the Interstate Commerce Act for a permit authorizing applicant to continue operation as a freight forwarder, in interstate or foreign commerce, in the forwarding of (a) *used household goods and unaccompanied baggage*, and (b) *used automobiles*, between points in the United States (including Hawaii, but excluding Alaska), restricted in (b) to the transportation of import-export traffic.

APPLICATIONS IN WHICH HANDLING WITHOUT ORAL HEARING HAS BEEN REQUESTED

No. MC 59367 (Sub-No. 84), filed November 13, 1972. Applicant: DECKER TRUCK LINE, INC., Post Office Box 915, Fort Dodge, IA 50501. Applicant's representative: William L. Fairbank, 900 Hubbell Building, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from the facilities of Kitchens of Sara Lee at New Hampton, Iowa, to points in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin, restricted to the transportation of shipments originating at the above-named origin and destined to the named destination States.

No. MC 113908 (Sub-No. 247), filed November 17, 1972. Applicant: ERICKSON TRANSPORT CORPORATION, 2105 East Dale Street, Springfield, MO 65804. Applicant's representative: B. B. Whitehead (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal and poultry feed and feed ingredients*, in bulk, in tank vehicles, between Verona, Mo., and West Alexandria, Ohio. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority.

No. MC 115841 (Sub-No. 441) (Correction), filed August 31, 1972, published in the FEDERAL REGISTER issue of October 5, 1972, and republished in part as corrected this issue. Applicant: COLONIAL REFRIGERATION TRANSPORTATION, INC., 1215 Bankhead Highway West, Birmingham, AL 35204. Applicant's representative: Roger M. Shaner, Post Office Box 168, Concord, TN 37720. NOTE: The sole purpose of this partial republication is to state that the requested authority *would* be tacked with its authority to and from points in Florida, Tennessee, Alabama, and Georgia in lieu of *could* be tacked which was erroneously stated in the previous publication. The rest of the application remains the same.

No. MC 125985 (Sub-No. 12), filed November 22, 1972. Applicant: AUTO DRIVEAWAY COMPANY, a Corporation, 343 South Dearborn Street, Chicago, IL 60604. Applicant's representative: Daniel B. Johnson, 716 Perpetual Building, 1111 E Street NW., Washington, DC 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *School buses*, in driveaway service, between points in Guilford County, N.C., and points in the United States (including Alaska and Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority.

No. MC 134599 (Sub-No. 53) (Amendment), filed August 14, 1972, published in the FEDERAL REGISTER issue of September 7, 1972, and republished as amended this issue. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, Post Office Box 748, Salt Lake City, UT 84110. Applicant's representative: Richard A. Peterson, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Tires, rubber and rubber products, synthetic rubber, plastic powder and granules*, and *equipment, materials, and supplies* used in the manufacture of the aforementioned commodities, except commodities in bulk, in tank vehicles and except commodities which because of size or weight require special equipment and handling, between Painesville, Ohio, and Detroit, Mich., on the one hand, and, on the other, points in Washington, Oregon, California, Nevada, Idaho, New Mexico, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Texas, Minnesota, Iowa, Missouri, Arkansas, Louisiana, Tennessee, North Carolina, South Carolina, Florida, Alabama, Georgia, and Mississippi, under contract with Uniroyal, Inc. NOTE: The purpose of this republication is to redescribe the authority sought. If a hearing is deemed necessary, applicant requests it be held at Salt Lake City, Utah.

No. MC 136797 (Sub-No. 1), filed November 13, 1972. Applicant: CHARLES E. BRADLEY AND J. M. POWERS, a partnership, doing business as BRADLEY & POWERS, Depot Road, Paintsville, Ky. 41240. Applicant's representative: Charles E. Bradley, Post Office Box 551, Paintsville, KY 41240. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Telephone equipment, materials and supplies, including tools used in the construction and maintenances of telephone systems and communications* between Paintsville, Ky., and points in Boyd, Carter, Elliott, Floyd, Greenup, Johnson, Knott, Lawrence, Letcher, Lewis, Martin, Morgan, Magoffin, and Pike Counties, Ky., under contract with Western Electric Co., Atlanta, Ga.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary*.

[FR Doc.72-21831 Filed 12-20-72;8:50 am]

SMALL BUSINESS ADMINISTRATION

[Licence No. 01/01-5268]

W.C.C.I. CAPITAL CORP.

Issuance of License as Minority Enterprise Small Business Investment Company

On August 23, 1972, a notice was published in the FEDERAL REGISTER (37 F.R. 16999) stating that W.C.C.I. Capital Corp., 791 Main Street, Worcester, MA 01610, had filed an application with the Small Business Administration (SBA), pursuant to § 107.102 of the SBA rules and regulations governing Small Business Investment Companies (13 CFR 107.102 (1972)) for a license to operate as a minority enterprise small business investment company (MESBIC).

Interested parties were given to the close of business September 7, 1972, to submit their written comments to SBA.

Notice is hereby given that, having considered the application and all other pertinent information, SBA has issued License No. 01/01-5268 to W.C.C.I. Capital Corp., pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended.

Dated: December 13, 1972.

ANTHONY G. CHASE, *Deputy Administrator*.

[FR Doc.72-21863 Filed 12-20-72;8:47 am]

[Declaration of Disaster Loan Area 940]

WISCONSIN

Declaration of Disaster Loan Area

Whereas, it has been reported that during the month of August 1972, because of heavy rains and flooding, damage resulted to property located in the State of Wisconsin;

Whereas, the Small Business Administration has investigated and has received other reports of investigations of conditions in the areas affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act, as amended.

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b) of the Small Business Act (15 U.S.C. 636(b)) as amended, may be received and considered by the office below indicated from persons or firms whose property situated in or adjacent to Ashland County, Wis., suffered damage or destruction resulting from heavy rains and flooding beginning about August 15, 1972, and continuing.

Office: Small Business Administration District Office, 25 West Main Street, Madison, WI 53703.

2. Temporary offices will be established at such areas as are necessary, addresses to be announced locally.

3. Applications for disaster loans under the authority of this declaration will not be accepted subsequent to December 31, 1972.

Dated: September 19, 1972.

THOMAS S. KLEPPE,
Administrator.

[FR Doc. 72-21867 Filed 12-20-72;8:47 am]

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federal register

THURSDAY, DECEMBER 21, 1972
WASHINGTON, D.C.

Volume 37 ■ Number 246

PART II

DEPARTMENT OF TRANSPORTATION

Coast Guard

■

Pollution Prevention

Vessels and Oil Transfer Facilities

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation

SUBCHAPTER O—POLLUTION

[CGD 71-160R]

POLLUTION PREVENTION VESSEL AND OIL TRANSFER FACILITIES

1. *Description and purpose of action.* The U.S. Coast Guard, acting under the authority of section 311(j) of the Federal Water Pollution Control Act, as amended (FWPCA), intends to issue regulations governing the design, construction, and operation of vessels operating in the navigable waters and contiguous zone of the United States, and governing the design, construction, and operation of onshore and offshore facilities engaged in the transfer of oil in bulk (more than 250 barrels) to and from vessels.

The purpose of these regulations is to reduce the probability of an accidental discharge of oil or oily wastes during normal vessel operations, during the bulk transfer of oil or oily wastes to or from vessels, or as a result of certain vessel accidents of limited energy. Although the high-energy collision or grounding is spectacular and may create locally severe environmental degradation, more significant and continuous degradation generally results from the regular and frequent discharges of oil into the waters of the United States. Furthermore, it is believed that the most effective means of minimizing the ecological damage of high-energy accidents is to prevent their occurrence through operational controls external to the vessel. The recently enacted Bridge-to-Bridge Communications Act and Ports and Waterways Safety Act should provide this control.

The final regulations are set forth below and constitute a part of this statement.

2. *Probable environmental impact.* The expected impact of these regulations is a reduction in the amount of oil discharged into the navigable waters of the United States.

The magnitude of the incidents at which these regulations are aimed is not known with certainty at this time. It is clear that not all discharges of harmful quantities of oil are reported and that quantities of reported discharges are often underestimated. For this reason, thorough assessment of the impact of these regulations on oil pollution can only follow an initial period of actual regulation. In general, vessel casualties involving a discharge of oil are relatively infrequent and result in medium or major incidents. Discharges during transfer operations are generally more frequent and involve minor or medium incidents, though the potential for a major incident is present whenever large quantities of bulk cargo are handled. It is anticipated that in combination with vessel traffic systems and vessel construction requirements to be developed under authority of the Ports and Waterways Safety Act of 1972, the preventive regulations will significantly reduce the incidence of discharges of oil into U.S. waters.

3. *Adverse environmental effects.* There are no expected adverse environmental effects.

4. *Alternatives.* The Coast Guard has available two distinct alternative courses of regulatory action:

a. Take no action and continue to enforce civil penalties without the benefit of preventive regulation. This course is the "status quo" alternative. Penalty enforcement, however, involves the disadvantage of post-factum action—viz, the damage has already been done. Vigorous penalty action can have only a limited impact upon faulty equipment or procedures which persist in use because of ignorance, indifference, or competitive pressure. The goal of the intended action is to promote oil-free water resources by removing the costs of environmental protection from the competitive arena and making them a fixed cost of operation applicable to all businesses.

b. Issue regulations more stringent than those described in this statement. To do so is to increase the additional cost of compliance out of proportion to the additional enhancement of the marine environment. The public costs of complying with the regulations the Coast Guard intends to promulgate are not precisely known. The regulations, however, based upon comments received at the public hearing, are considered to be a reasonable attempt to deal with known problems at a not unreasonable public cost. In the extreme, oil pollution might be virtually eliminated by issuing regulations so onerous as to make oil transfer or vessel operations economically unfeasible.

Stronger regulations could establish a requirement for persons engaged in oil transfer operations to obtain a permit issued by the Coast Guard. A formal permit system would produce a current inventory of all oil-handling facilities and allow inspection and control of such facilities to determine the adequacy of the physical plant, personnel, and procedures. A permit program of this kind was included in the Notice of Proposed Rule Making for the preventive regulations but has been withdrawn by the Coast Guard for the present time. A discussion of the permit system is contained in the preamble to the final regulations.

Besides these alternatives available to the Coast Guard, there are at least two broad alternative national policies which would significantly reduce oil pollution in U.S. waters. One alternative is to reduce the national demand for oil and thereby to reduce the amount of oil transported by tank vessel and transferred at marine facilities. This reduction might be brought about by one of two means. Demand for oil could be arbitrarily reduced by placing a substantial tax upon the production, transport, or consumption of oil or by establishing a system of rationing or other controls. On the other hand, demand for oil could be more naturally reduced (i.e., without disrupting market forces) by developing alternative sources of energy, such as natural or synthetic gas, nuclear power, solar energy, or geothermal steam. A second national alternative is to promote a substitute for transhipment of oil by waterborne vessel. Other modes of transportation might include pipelines, rail or truck tank cars, or even transmission of electricity generated at oil sources.

The Coast Guard regulations described in this statement represent an attempt to achieve oil-free waters through a reasonable balance of punitive deterrence and modification of design, construction, and operation intended to minimize the opportunity for and the effects of human error or negligence. Recognizing this Nation's social and industrial dependence upon oil, these regulations are intended to provide maximum protection to the environment while remaining within economic and practical bounds. The regulatory process, however, is dynamic and evolutionary. As our experience and information improve, the preventive regulations will be modified as necessary.

5. *Relationship between local short-term use of man's environment and the maintenance and enhancement of long-term productivity.* Studies showing that oil can be harmful to marine organisms lead biologists to believe that chronic or excessive introduction of petroleum and its products into marine ecosystems may seriously disrupt those systems. Therefore, reducing the quantity of oil being discharged into U.S. waters is beneficial to both the short-term uses and the long-term productivity of the marine environment.

6. *Commitments of environmental resources.* This action does not result in any irreversible or irretrievable commitment of environmental resources.

7. *Government, public, and industry problems or objections.* The Coast Guard's proposed regulations were widely disseminated to interested parties and were the subject of a public hearing held on February 15, 1972, in Washington, D.C. Following the public hearing, written comments were accepted through April 21, 1972. All comments, written and oral, were reviewed, and the regulations were subsequently revised as noted in the preamble.

Comments on the draft environmental impact statement for this proposed action were received from only three sources. In light of these comments, the discussion of alternatives was expanded to consider both less extreme and non-Coast Guard alternatives. The anticipated reduction in pollution and the expected public cost of compliance have been discussed qualitatively in paragraphs 2 and 4(b), since no quantitative data are available. Copies of comments received on the draft statement are attached.

This amendment promulgates new regulations that govern certain aspects of the design, equipment, and operation

of facilities and vessels engaged in the transfer of oil. The purpose of the regulations is to prevent the discharge of oil into the navigable waters and contiguous zone of the United States. A minor change to Part 151 of the same Subchapter O, concerning submission of oil record books from vessels in coastwise service, is also included.

A notice of proposed rule making (CGFR 71-160) with respect to these regulations was published in the December 24, 1971, issue of the FEDERAL REGISTER (36 F.R. 24960). Subsequent thereto the Ports and Waterways Safety Act of 1972 (Public Law 92-340) was enacted and which requires regulations be promulgated by the Coast Guard governing ship design and operation to prevent pollution from marine operations. It is emphasized that the regulations promulgated herein are not those required by the Ports and Waterways Safety Act but are issued under the Federal Water Pollution Control Act.

A public hearing on the proposed regulations was held on February 15, 1972, and the record remained open for written comment until April 21, 1972. Some 185 written comments were received from the public in addition to 31 State and territorial government responses and written comments from Coast Guard field offices. As a result of the written and oral comments the proposed regulations have been revised in part.

Many changes have been made to improve clarity without significant change in substance. Those changes that significantly alter the proposed regulations and those items that received considerable comment but which were not revised are discussed in the following paragraphs.

A comment generally applicable throughout the regulations was that the petroleum industry generally uses "barrels" rather than "gallons" as its unit of liquid measure. This change has been made and all volumes have been cited in barrels and rounded off. For example 10,000 gallons has been changed to 250 barrels (10,500 U.S. gallons).

Another general comment concerned the effective dates assigned to the various parts and the consequences of having different effective dates for vessels and facilities. As a result of this latter difficulty, and to allow adequate time for both vessels and facilities to make the necessary physical and administrative changes required, most of these rules become effective on July 1, 1974. However, although enforcement will not occur before July 1, 1974, it should be noted that §§ 154.500, 154.510, and 155.800 place special requirements on hoses and loading arms manufactured or placed in service after June 30, 1973. Also, to allow the Coast Guard a reasonable period of time to handle the many administrative problems and to assure compliance by July 1, 1974, all existing transfer facilities are required by § 154.110 to file before July 1, 1973, a letter of intent to operate. Section 154.110 becomes effective 30 days after publication of these amendments.

The applicability of Part 154 was questioned and, in particular, objection was made to defining a large facility by the oil capacity of the vessels it serviced. The proposed applicability of Part 154 to oil transfer operations between facilities and vessels with a tank capacity of 10,000 gallons (now 250 barrels) is retained. The Coast Guard believes that this definition is the only way to reflect the operation's potential to pollute. Facilities that service vessels of this minimum capacity, regardless of the amount of oil actually transferred, will do so with equipment and pumping capacities of very large size. As to those objecting to any limitation on the facilities governed, the Coast Guard finds that presently the larger facilities are the significant problem and further, that smaller operations encompass different problems requiring different solutions. If spill data indicates that small facilities are a problem warranting regulation then further rule making action will be undertaken.

Several definitions were added to § 154.105 for clarification of the text and, in particular, the definition of oil was modified to exclude LNG and LPG (liquefied natural and petroleum gases), since, as a result of their properties, they cause an insignificant oil pollution problem.

The regulation which received the most comment was that of Part 154 requiring facility permits to conduct oil transfer operations. Public interest groups strongly supported this proposal and further recommended that vessel to vessel transfers should also be subject to a permit system. Opposition to the permit system was based not upon the concept, but upon the onerous administrative burden that such a system would place upon the industry, States, and the Coast Guard. The status of the existing discharge permit system administered by the Corps of Engineers and the Environmental Protection Agency was cited as a specific example. Opposition further cited legislative history as a basis for argument that a permit system is illegal because Congress had specifically considered and rejected such an approach to oil pollution prevention. The problem of State certification under section 401(a) of the Federal Water Pollution Control Act (FWPCA) was directly addressed by the Coast Guard to each of the State and Territorial Governments. Only 31 replies were received of which only 10 indicated the State had a certification program in existence.

The purpose of the Coast Guard program must be kept clearly in mind when considering permits for oil transfer operations. The program is intended to minimize the risk of a spill during operations which do not include any intentional discharge into the water at a facility which has, by appropriate local, State and Federal agencies, been authorized to be built and operated. It is now the view of the Coast Guard that this purpose can best be achieved by a direct regulatory approach. The permit program will be held in abeyance while experience is gained in controlling oil transfer operations. Based upon this experience, the need for a permit program will be reassessed. Therefore the proposed regulations have been extensively revised to delete the requirements concerning permits and in lieu thereof require each facility to file a letter of intent to operate, control the equipment and conduct of operations, and require operations manuals for each facility. The Coast Guard will inspect each facility, will issue a report of inspection to each facility, will invoke civil penalties for operations conducted in violation of the regulations, and will take action to suspend operations when conditions are found that constitute an unacceptable risk to the environment.

Section 154.110, Letter of Intent, specifies that all facilities that conduct oil transfer operations must submit a letter, 60 days in advance of intended operations, that specifies the name of the operator and the facility and its location. For mobile facilities, such as tank trucks, the Captain of the Port must be advised of specific transfer locations at least 4 hours before each transfer. Initial filing of letters for existing facilities must be done by July 1, 1973.

Section 154.120, Facility inspection, is a revision of proposed § 154.370. The revision requires the facility operator to maintain a record of all inspections conducted by the Coast Guard and to conduct any tests which the Coast Guard deems necessary to determine the facility's compliance with these regulations. The entries in the record of inspection will be made by the Coast Guard inspecting personnel and will reflect the scope of the inspection conducted and the conditions found to exist at the time of inspection. The requirement that the facility conduct all required tests is in keeping with the intent of the proposed regulations and with current policy that testing is a responsibility of the equipment owner or operator.

A new § 154.140, Suspension of oil transfer operations, provides for the Captain of the Port to suspend oil transfer operations whenever, in his opinion, the conditions found at the facility are in such variance with the regulations that further operations would constitute an undue threat to the environment.

A revision to proposed § 154.360, Operations manual: Contents (now designated § 154.310) is to require a description of the "person in charge" training and qualification program to be included in the operations manual.

A new § 154.760, Operations manual: Changes, has been added to Subpart D, Facility Operations, to clarify the intent of the proposals that the facility operator must maintain the manual current to reflect the operations as conducted, and must submit copies of the changes to the Captain of the Port.

Section 154.500 has been modified to permit nonferrous flange materials. The omission of nonferrous flanges was an oversight to the draft proposals and the Coast Guard is not aware of any condition which prevents their usage.

Numerous comments requested that a pressure shutdown switch be accepted in § 154.500 to limit hose and system pressures. The Coast Guard does not believe that a pressure switch and the

necessary associated control circuitry is an acceptable method upon which to rely for pressure control and no change is made in this regard.

A new paragraph (b) has been added to § 154.530, Small discharge containment, to define the "hose handling and loading arm areas" as those areas traversed by the free end of the hose or loading arm to which any oil in the hose may be discharged.

Several comments proposed that § 154.545 should require vessels to be enclosed by booms during transfer operations. The Coast Guard is of the opinion that these regulations are sufficiently broad that a Captain of the Port may, if specific conditions warrant, require a boom in place about the vessel (see §§ 154.140, 154.300(b) and 154.310(m)). However, booms, regardless of size or type, are ineffective in a current of more than 1½ knots and therefore a mandatory requirement for booms in place is not considered appropriate.

Comments suggested that § 154.550, Emergency shutdown, should permit a communications system to suffice under certain conditions. The comments submitted are particularly valid for offshore type facilities where a pier or other such structure is not used. Therefore, the proposed section has been modified to permit dedicated communications systems to a continuously manned control station and to amplify acceptable types of systems and their location.

Second only to the proposed permit requirement in number of comments received was the requirement for lighting contained in §§ 154.570 and 155.790. The objections were basically: The illumination specified was excessive for the need; the high cost of providing the specified degree of lighting; the degree of lighting specified created a navigation hazard to transient vessels by blinding the navigating officers; and many communities have ordinances which would class such illumination as a public nuisance. Because of the general objection to the degree of illumination specified, the Coast Guard conducted illumination surveys at existing facilities that were considered to be adequately illuminated. As a result of these surveys the required illumination level has been reduced to 5 and 1 foot-candles from 10 and 2 as proposed. Additionally, the regulation has been modified to permit the Captain of the Port to accept lighting from portable sources at small or remote facilities and to permit the vessel to provide facility illumination. Fixed lighting is preferred but in some remote areas power is not available and a fixed installation is impracticable.

Proposed §§ 154.710 and 720, which concern designation and qualification of persons in charge, have been combined into a new § 154.710. Additionally, proposed § 154.710(a)(2) has been modified to permit the required 48 hours of experience to be at any facility engaged in oil transfer operations with the provision that the designee must also be familiar with and qualified to operate the facility for which designation is given. This change was made to facilitate the use of personnel at various locations. The Coast Guard retains the prerogative to review the designation of a person in charge to assure he has adequate experience.

Section 154.740 is changed to require the facility operator to maintain a record of facility inspection as previously discussed.

Proposed § 154.365 has been revised and relocated as §§ 154.760 and 154.770, Operations manual: Changes, and availability, respectively. The revision was made for clarity and the relocation was made because the regulation is more a condition for operation than a general requirement.

On June 15, 1972, the United States published a notice for the purpose of implementation and enforcement of laws and treaties in the contiguous zone as permitted by Article 24 of the Convention on the Territorial Sea and Contiguous Zone. Therefore the applicability of Part 155 has been expanded to govern vessels in the navigable waters and contiguous zone in accordance with section 311 of the Federal Water Pollution Control Act. The Contiguous Zone is that area of water extending seaward 9 miles from the 3-mile territorial sea and thus, in general, extends applicability of the vessel oil pollution prevention regulations to 12 miles off shore.

Part 155.105 has several new definitions added for clarity in application of the part.

A great deal of criticism concerned the definition of "vessel" excluding public vessels, Navy or Coast Guard vessels, and thereby exempting them from the provisions of this part. The definition used is that contained in the Federal Water Pollution Control Act, as amended. However, attention is invited to Executive Order 11507 signed February 4, 1970, which requires all Federal vessels and facilities to have programs completed or underway by December 31, 1972, which will bring such facilities and vessels into compliance with air and water quality standards. The Army, Navy, and the Coast Guard have comprehensive programs underway and their vessels will, in fact, meet generally more restrictive requirements. Coast Guard vessels will for example, when in the navigable waters and contiguous zone, retain all vessel-generated wastes (sewage, laundry drains, galley waste, bilge wastes, and slop oil) on board.

A new § 155.130, similar to proposed § 154.140, has been added to provide that the Captain of the Port or the Officer in Charge, Marine Inspection, may suspend oil transfer operations if he deems that a severe risk to the environment would otherwise exist.

The inland barge industry entered strong objection to the proposed requirements for double wall construction of inland tank barges. The basis of the objection is that the costs have neither been adequately investigated nor has a case been made that double wall construction would significantly reduce oil pollution. The Coast Guard has, in cooperation with the Maritime Administration, entered into a study of costs and alternatives, including complete double hull construction, which will be completed within 18 months. Therefore, implementation of proposed § 155.305 is being withheld pending the results of the study.

Proposed § 155.320 *Fuel oil discharge containment* has been extensively revised because of many problems which existing vessels would have in complying with the proposed regulation. Specifically, present fuel tank fill and vent lines on river towboats are so arranged as to make centralization economically impossible. As modified, the regulation requires all new construction to have an installed deck spill containment system to retain all small spills and overflows that occur during vessel fueling operations. For existing vessels, the use of small portable spill containment systems is allowed. Additionally, it was pointed out that many small river towboats are fueled with gas station type fuel hoses and have not been a pollution source. Therefore, for existing vessels, the proposed regulations have been modified to allow the use of flush deck fuel fittings when serviced by an automatic back pressure shut-off nozzle.

Sections 155.340 and 155.350, bilge slops, have been revised to clarify that these requirements apply only to vessels with machinery space bilges. Specifically, the requirements of these sections do not apply to the double bottoms of barges which would need pumping only in the event of a leak or casualty.

The applicability of §§ 155.340 and 155.350 has been clarified by substituting "Ocean or Coastwise service" for the proposed "international voyages." One purpose of this section is to provide and establish an internationally accepted standard fitting on all vessels using facilities that service both domestic and international vessels. The proposed fitting is one recognized by the Intergovernmental Maritime Consultative Organization (IMCO).

Section 155.350 has been modified to establish a 4-inch flange as the inland standard for oily waste discharge connections instead of the proposed large international standard fitting. This was done at the request of the inland industry which considers the international fitting unnecessarily large for small inland vessels.

Proposed §§ 155.400, 155.410, 155.420, and 155.430 concerning the sealing of vessel overboard discharge valves have been deleted. Most comments indicated that such system was an unnecessary redundancy in view of the other sections of the regulations; that sealing would not be effective and would not provide a significant deterrent to intentional discharges of oil or oily waste; and that it would not be enforceable. Note that proposed §§ 155.450 and 155.460 have been renumbered §§ 155.400 and 155.410 respectively. With the deletion of the valve sealing requirements the proposed § 155.440: Placard, has been made applicable to all domestic vessels over 26 feet in length to alert shipboard personnel of the consequences of an intentional or careless discharge of oil.

Section 151.470 *Prohibited oil spaces* has been modified to apply only to self-propelled vessels. Self-propelled vessels have been the major source of spills from oil in forward spaces. It was pointed out that coastwise barges presently carry oil in their very large forward compartments and the proposed regulation would reduce their capacity by approximately 20 percent until the vessels could be modified. Since many of the technical details of defining the prohibited spaces on a barge are dependent upon much of the same data to be developed by the inland barge study, adoption of this proposed section is being stayed.

Many comments interpreted § 155.470 (b) as prohibiting vessels from carrying oil in wing tanks adjacent to the hull plate. Paragraph (b) applies only to spaces forward of the collision bulkhead specified in § 155.470(a).

Comments from the inland barge industry stated that their methods of operation were such that the requirement of § 155.700 *Designation of person in charge* could not be accomplished. The Coast Guard feels it is essential that the owner, or an agent acting on behalf of the owner, recognize a responsibility for the conduct of operations on the vessel. Therefore, § 155.700 has been modified only to the extent of recognizing that an agent may act on behalf of the owner in designating persons in charge.

The major concern voiced about Part 156, Oil transfer operations, was that the Coast Guard did not assign an overall responsibility and therefore, liability for oil transfer operations. That is, the vessel and the facility presently share responsibility, each being responsible for his own area and jointly responsible for common areas (such as mooring lines, adequate freedom in hoses, etc.), and neither has overall responsibility for the entire operation. The Coast Guard feels it cannot go beyond the designation of responsibility which has been done in the proposed regulations. However, some wording changes have been included to recognize that a person in charge need not completely inspect both units and that he may accept the signature of the other unit's person in charge on the declaration of inspection as satisfactory evidence of the acceptable condition of the other unit.

In consideration of the foregoing, Subchapter O, Title 33, Code of Federal Regulations is amended to read as follows:

PART 151—OIL POLLUTION REGULATIONS

a. By revising § 151.35(h) of Part 151 to read as follows:

§ 151.35 Oil Record Book.

* * * * *

(h) The Oil Record Book maintained on a vessel when not engaged on a foreign voyage shall be submitted during the months of April and October with entries for the preceding 6 months to the Commander, 3d Coast Guard District (m), New York, if the homeport is located on the east or gulf coast; or to the Commander, 12th Coast Guard District (m), San Francisco, if the homeport of the vessel is located on the west coast.

(Sec. 311(j)(1)(C), Federal Water Pollution Control Act, 86 Stat. 816, 868; sec. 9, 75 Stat. 404, as amended; sec. 6(g)(5), 80 Stat. 937; 33 U.S.C. 1161(j)(1)(C), 33 U.S.C. 1003, 49 U.S.C. 1655(g)(5); E.O. 11548, 3 CFR, 1966–1970 COMP., p. 949; 49 CFR 1.46(c)(7) and (m))

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b. By adding new Parts 154, 155 and 156:

PART 154—LARGE OIL TRANSFER FACILITIES

Subpart A—General

Sec.
154.100 Applicability.
154.105 Definitions.
154.110 Letter of intent.
154.120 Facility inspection.
154.140 Suspension of oil transfer operations.

Subpart B—Operations Manual

154.300 Operations manual: General.
154.310 Operations manual: Contents.
154.320 Operations manual: Amendment.
154.330 Operations manual: Waivers.

Subpart C—Equipment Requirements

154.500 Hose assemblies.
154.510 Loading arms.
154.520 Closure devices.
154.530 Small discharge containment.
154.540 Discharge removal.
154.545 Discharge containment equipment.
154.550 Emergency shutdown.
154.560 Communications.
154.570 Lighting.

Subpart D—Facility Operations

154.700 General.
154.710 Persons in charge: Designation and qualification.
154.730 Persons in charge: Evidence of designation.
154.740 Records.
154.750 Compliance with operations manual.
154.760 Operations manual: Changes.
154.770 Operations manual: Availability.
154.780 Compliance with suspension order.

AUTHORITY: The provisions of this Part 154 issued under section 311(j)(1)(C) of the Federal Water Pollution Control Act (86 Stat. 816, 868); 33 U.S.C. 1161(j)(1)(C); E.O. 11548, 3 CFR, 1966–1970 COMP., p. 949; 49 CFR 1.46 (m).

Subpart A—General

§ 154.100 Applicability.

This part applies to each onshore and offshore facility, when it transfers oil in bulk to or from any vessel that has a capacity of 250 or more barrels of that oil except when it transfers—

(a) Lubricating oil for use on board a vessel; or

(b) Nonpetroleum based oil to or from a vessel other than a tank vessel.

§ 154.105 Definitions.

As used in this part:

(a) "Barrel" means that unit of liquid measure equivalent to 42 U.S. gallons at 60° Fahrenheit.

(b) "Commandant" means the Commandant of the Coast Guard or his authorized representative.

(c) "Captain of the Port" means a U.S. Coast Guard officer commanding a Captain of the Port Area described in Part 3 of this chapter, or his authorized representative or, where there is no Captain of the Port Area, a District Commander of a Coast Guard District described in Part 3 of this chapter, or his authorized representative.

(d) "Discharge" includes but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(e) "District Commander" as used in this part, means the officer of the Coast Guard designated by the Commandant to command a Coast Guard District, as described in Part 3 of this chapter or his authorized representative.

(f) "Facility" means either an onshore facility or an offshore facility.

(g) "Incompatible products" means products that, when mixed, create a hazard, such as spontaneous combustion, or energy release or form a product that is hazardous to health.

(h) "Officer in Charge, Marine Inspection" means a U.S. Coast Guard officer commanding a Marine Inspection Zone described in Part 3 of this chapter, or his authorized representative.

(i) "Offshore facility" means any facility of any kind located in, on, or under any of the navigable waters of the United States other than a vessel or a public vessel.

(j) "Oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. For the purposes of this part liquefied natural gas and liquefied petroleum gas (LNG and LPG) are excluded.

(k) "Onshore facility" means any facility (including, but not limited to motor vehicles and rolling stock) of any kind located in, on, or under any land within the United States other than submerged land.

(l) "Person" includes an individual, firm, corporation, association and a partnership.

(m) "Person in charge" means a person designated as a person in charge of oil transfer operations under § 154.710 or § 155.700 of this chapter.

(n) "Public vessel" means a vessel owned or bare-boat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such a vessel is engaged in commerce.

(o) "Tank vessel" means any vessel especially constructed or converted to carry liquid bulk cargo in tanks.

(p) "Vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, other than a public vessel.

§ 154.110 Letter of intent.

(a) The operator of any facility to which this part applies shall submit a letter of intent to operate a facility or to conduct mobile facility operations to

the Captain of the Port not less than 60 days before the intended operations unless a shorter period is allowed by the Captain of the Port; and, for facilities in operation on January 30, 1973, that are intended to be in operation on July 1, 1974, shall submit a letter of intent to operate before July 1, 1973.

(b) The letter of intent required by paragraph (a) of this section may be in any form but must contain—

(1) The name, address, and telephone number of the operator;

(2) The name, address, and telephone number of the facility or, in the case of a mobile facility, the dispatching office; and

(3) Except for mobile facility operations, the geographical location of the facility with respect to the associated body of navigable waters. The operator of a mobile facility shall advise the Captain of the Port of the location of each transfer operation at least 4 hours prior to each operation.

(c) The facility operator of any facility for which a letter of intent has been submitted, shall immediately advise the Captain of the Port in writing of any changes of information in the letter and shall cancel, in writing, the letter for any facility at which oil transfer operations are no longer conducted.

§ 154.120 Facility inspections.

(a) The facility operator shall allow the Commandant, at any time, to make any inspection and shall perform, upon request, any test to determine compliance with the Federal Water Pollution Control Act and this part. All required testing of facility equipment must be conducted by the facility operator in a manner acceptable to the Commandant.

(b) The Captain of the Port records the date, scope, and results of each facility inspection in the facility's inspection record required by § 154.740(e) and lists the deficiencies in the inspection record when the facility is not in compliance with the regulations in this part.

§ 154.140 Suspension of oil transfer operations.

The Captain of the Port may issue an order to suspend oil transfer operations to the operator of a facility if he finds that there is a condition requiring immediate action to prevent the discharge or threat of discharge of oil.

(a) An order of suspension may be effective immediately.

(b) An order of suspension includes a statement of each condition requiring immediate action to prevent the discharge of oil.

(c) The facility operator may petition the District Commander in writing, or in any manner when the order is effective immediately, to reconsider the issuance of the order of suspension. The decision of the District Commander is the final administrative decision.

Subpart B—Operations Manuals

§ 154.300 Operations manual: General.

(a) The facility operator of each facility to which this part applies must prepare and submit with his letter of intent to operate an operations manual that describes—

(1) The means and procedures that the applicant uses to meet the operating rules and equipment requirements prescribed by this part; and

(2) The duties and responsibilities of operations personnel in conducting oil transfer operations under this part.

(b) In determining whether the manual meets the requirements of this part, the Captain of the Port considers the size, complexity and capacity of the facility.

§ 154.310 Operations manual: Contents.

Each operations manual required by § 154.300 must contain—

(a) The geographic location of the facility;

(b) A physical description of the facility including a plan of the facility showing mooring areas, transfer locations, control stations, and locations of safety equipment;

(c) The hours of operation of the facility;

(d) The sizes, types, and number of vessels that the facility can transfer oil to or from simultaneously;

(e) The grade and trade name of each product transferred at the facility that is incompatible with oil;

(f) The minimum number of personnel on duty during transfer operations and their duties;

(g) The names and telephone numbers of facility, Coast Guard, and other personnel who may be called by the employees of the facility in an emergency;

(h) The duties and responsibilities of watchmen required by § 155.810 of this chapter and 46 CFR 35.05–15 for unmanned vessels moored at the facility;

(i) A description of each communication system required by this part;

(j) The location and facilities of each personnel shelter, if any;

(k) A description and instructions for use of drip and discharge collection and vessel slop reception facilities if any;

(l) A description and the location of each emergency shutdown system;

(m) Quantity, type, location and instructions for use of the containment equipment required by § 154.545;

(n) The maximum relief valve setting (or maximum system pressure when relief valves are not provided) for each oil transfer system;

(o) Procedures for—

(1) Operating each loading arm including the limitations of each loading arm;

(2) Transferring oil;

(3) Completion of pumping;

(4) Emergencies;

(p) A contingency plan for reporting and containing oil discharges; and

(q) A brief summary of applicable Federal, State, and local oil pollution laws and regulations.

(r) A description of the training and qualification program for persons in charge.

(s) Any other item the Captain of the Port requires, under § 154.320 to cover a particular condition at the facility.

§ 154.320 Operations manual: Amendment.

(a) The Captain of the Port may require the facility operator to amend the operations manual if he finds that the operations manual does not meet the requirements of this part. See § 154.760 (a).

(b) When the Captain of the Port determines to require an amendment of an operations manual he notifies the facility operator in writing of a date not less than 14 days from the date of the notice, on or before which the facility operator may submit written information, views, and arguments on the amendment. After considering all relevant material presented, the Captain of the Port notifies the facility operator of any amendment required or adopted or he rescinds the notice. The amendment becomes effective not less than 30 days after the facility operator receives the notice unless the facility operator petitions the Commandment to reconsider the notice, in which case its effective date is stayed pending a decision by the Commandant. Petitions to the Commandant must be submitted in writing to the Captain of the Port.

(c) If the Captain of the Port finds that there is a condition requiring immediate action to prevent the discharge or risk of discharge of oil that makes the procedure in paragraph (a) of this section impracticable or contrary to the public interest, he may issue an amendment effective, without stay, on the date the facility operator receives notice of it. In such a case, the Captain of the Port includes a brief statement of the reasons for his finding in the notice, and the owner or operator may petition the District Commander, in any manner, to reconsider the amendment.

§ 154.330 Operations manual: Waivers.

The Captain of the Port may, by an appropriate amendment to the operations manual, waive, in whole or in part, compliance with any requirement in this part if—

(a) Application for the waiver is submitted to the Captain of the Port at least 30 days before operations under the waiver are proposed unless a shorter time is authorized by the Captain of the Port; and

(b) The Captain of the Port finds that an equivalent level of protection of the navigable waters from pollution by oil will be provided by the alternative procedures, methods, or equipment standards to be used by the applicant.

Subpart C—Equipment Requirements

§ 154.500 Hose assemblies.

(a) Each hose assembly, consisting of a hose that is larger than 3 inches inside diameter and couplings, that is manufactured after June 30, 1973, and used for transferring oil, must meet the requirements of this section.

(b) The pressure, which the manufacturer represents to be the minimum bursting pressure, for each hose assembly must be—

(1) 600 pounds per square inch or more; and

(2) At least four times the pressure of the relief valve setting (or four times the maximum pump pressure when no relief valve is installed) plus the static head pressure of the oil transfer system at the point where the hose is installed.

(c) The pressure that the manufacturer represents to be the recommended working pressure for each hose assembly must be—

(1) 150 pounds per square inch or more; and

(2) More than the pressure of the relief valve setting (or the maximum pump pressure when no valve is installed) plus the static head pressure of the oil transfer system at the point where the hose is installed.

(d) Each nonmetallic hose must be specified for oil service by its manufacturer.

(e) Each hose assembly must have—

(1) Full threaded connections;

(2) Flanges that meet standard B16.5, Steel Pipe Flanges and Flanges Fittings, or standard B16.31, Nonferrous Pipe Flanges, of the American National Standards Institute; or

(3) Quick-connect couplings that are acceptable to the Commandant.

(f) Except as provided in paragraph (g) of this section, each hose must be marked with—

(1) The products for which the hose may be used or the words "oil service;"

(2) Date of manufacture;

(3) Burst pressure;

(4) Manufacturer's recommended working pressure;

(5) Date of the last test required by § 156.170 of this chapter; and

(6) The pressure used for that test.

(g) The information required by paragraph (f) of this section need not be marked on a hose if it is recorded elsewhere at the facility and the hose is marked so as to identify it with the information in the record.

§ 154.510 Loading arms.

(a) Each mechanical loading arm used for transferring oil and placed into service after June 30, 1973, must meet the design, fabrication, material, inspection, and testing requirements in Standard B31.3, Petroleum Refinery Piping, of the American National Standards Institute.

(b) Each mechanical loading arm used for transferring oil must have a means of being drained or closed before disconnecting after transfer of oil.

§ 154.520 Closure devices.

The facility must have enough butterfly valves, wafer-type resilient seated valves, blank flanges, or other means acceptable to the Captain of the Port to blank off the end of each hose or loading arm that is disconnected after transfer of oil.

§ 154.530 Small discharge containment.

(a) Except as provided in paragraph (d) of this section, the facility must have fixed catchments, curbing, or other fixed means to contain oil discharged in at least—

(1) Each hose handling and loading arm area; and

(2) Each hose connection manifold area.

(b) "Hose handling and loading arm area" means that area on the facility which, with the loading arm or the hose attached to the facility discharge piping, is within the area traversed by the free end of the hose or loading arm when moved from its normal stowed or idle position into a position for connection to the vessel.

(c) The discharge containment means required by paragraph (a) of this section must hold at least—

(1) Three barrels if it serves one or more hoses of 6-inch inside diameter or smaller or loading arm connections of 6-inch nominal pipe size diameter or smaller;

(2) Four barrels if it serves one or more hoses larger than 6-inch inside diameter or loading arm connections larger than 6-inch nominal pipe size but less than 12 inches diameter; or

(3) Six barrels if it serves one or more hoses or a 12-inch inside diameter or larger or loading arm connections of 12-inch nominal pipe size diameter or larger.

(d) The facility may have portable means to meet the requirements of paragraph (a) of this section if the Captain of the Port finds that fixed means to contain discharges are not feasible for part or all of the facility.

§ 154.540 Discharge removal.

The facility must have a means to safely and quickly remove discharged oil from the containment means required by § 154.530 without mixing incompatible products or discharging it into the water.

§ 154.545 Discharge containment equipment.

(a) Each oil transfer facility must have ready access to oil containment material and equipment to contain oil discharged on the water considering—

(1) Oil handling rates;

(2) Oil capacity susceptible to being spilled;

(3) Frequency of facility operations;

(4) Tidal and current conditions;

(5) Facility age, capability, arrangement and past experience; and

(6) If the equipment is shared, the expected frequency of use and probability of availability.

(b) For the purpose of this section, "access" may be by direct ownership, joint ownership, cooperative venture, or contractual agreement.

§ 154.550 Emergency shutdown.

(a) The facility must have, in addition to the means of communication required by § 154.560, an emergency means to enable the person in charge of the transfer of oil on board the vessel at his usual operating station to stop the flow of oil to the vessel. This means must be an electrical, pneumatic, or mechanical linkage to the shore facility or a continuous dedicated communications system manned by a person ashore who can stop the flow of oil in an emergency.

(b) The point in the oil transfer system at which the emergency means stops the flow of oil must be located on the facility near the loading arm or transfer hose connection point so as to minimize the loss of oil in the event of hose rupture or loading arm failure.

§ 154.560 Communications.

(a) Each facility must have a means that enables two-way voice communication between the person in charge of the transfer operation on board the vessel and the person in charge of the facility transfer operation.

(b) Each facility must have a means, which may be the communications system itself, that enables a person on board a vessel or on the facility to effectively indicate his desire to use the means of communication required by paragraph (a) of this section.

§ 154.570 Lighting.

(a) For opertaions between sunset and sunrise, the facility must have fixed lighting that illuminates—

(1) Each transfer connection point on the facility with an average minimum lighting intensity of 5-foot candles;

(2) Each oil transfer operations work area on the facility with an average minimum lighting intensity of 1-foot candle;

(3) Each transfer connection point in use on any barge moored at the facility, to or from which oil is being transferred, with an average minimum lighting intensity of 5-foot candles; and

(4) Each oil transfer operations work area on any barge moored at the facility, to or from which oil is being transferred, with an average minimum lighting intensity of 1 foot candle.

(b) The lighting intensity must be measured on a horizontal plane 3 feet above the barge deck or walking surface.

(c) For small or remote facilities, the Captain of the Port may authorize operations with an equivalent intensity of lighting provided by the vessel or by portable means.

Subpart D—Facility Operations

§ 154.700 General.

No person may operate a facility to which this part applies unless the equipment, personnel, and operating procedures of that facility meet the requirements of this part.

§ 154.710 Persons in charge; designation and qualification.

No person may serve, and the facility operator may not use the services of a person, as person in charge of facility oil transfer operations unless—

(a) The facility operator has designated that person as a person in charge and has advised the Captain of the Port in writing of his designation;

(b) He has had at least 48 hours of experience in oil transfer operations at a facility in operations to which this part applies;

(c) He has enough experience at the facility for which qualification is desired to enable the facility operator to determine that his experience is adequate and that he can operate the oil transfer equipment of the facility, except that, for new facilities, the Captain of the Port may authorize alternative experience requirements; and

(d) The facility operator has determined that he knows—

(i) The hazards of each product to be transferred;

(ii) The rules in this part and in Part 156 of this chapter;

(iii) The facility operating procedures as described in the operations manual;

(iv) Vessel oil transfer systems, in general;

(v) Vessel oil transfer control systems, in general;

(vi) Each facility oil transfer control system to be used;

(vii) Local discharge reporting procedures; and

(viii) The facility's contingency plan for discharge reporting and containment.

§ 154.730 Person in charge: Evidence of designation.

Each person in charge shall carry evidence of his designation as a person in charge when he is engaged in transfer operations unless such evidence is immediately available at the facility.

§ 154.740 Records.

Each facility operator shall keep at the facility and make available for inspection by the Captain of the Port—

(a) A copy of the letter of intent for the facility;

(b) The name of each person currently designated as a person in charge of oil transfer operations;

(c) The date and result of the most recent test or inspection of each item tested or inspected under § 156.70 of this chapter;

(d) The hose information required by § 154.500(f) unless that information is marked on the hose; and

(e) The record of each inspection of the facility by the Captain of the Port.

§ 154.750 Compliance with operations manual.

The facility operator shall use and require its personnel to use the procedures in the operations manual prescribed by § 154.300 for operations under this part.

§ 154.760 Operations manual: Changes.

(a) Each facility operator shall keep the operations manual current so that at all times it meets the requirements in §§ 154.300 and 154.310.

(b) The facility operator shall provide a copy of each change to the operations manual to the Captain of the Port before transferring oil in operations to which this part applies.

§ 154.770 Operations manual: Availability.

Each facility operator shall keep an operations manual at the facility and shall make it readily available to the operating personnel, vessel personnel and, upon request, to the Captain of the Port.

§ 154.780 Compliance with suspension order.

No facility operator to whom an order of suspension has been issued under § 154.140 may conduct oil transfer operations until that order is withdrawn by the Captain of the Port or the District Commander.

PART 155—VESSEL DESIGN AND OPERATIONS

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Appendix A—Specifications for shore connection.

AUTHORITY: The provisions of this Part 155 issued under section 311(j)(1)(C) and (D) of the Federal Water Pollution Control Act (86 Stat. 816, 868); 33 U.S.C. 1161(j)(1)(C) and (D); E.O. 11548, 3 CFR, 1966–1970 COMP. p. 949; 49 CFR 1.46(m).

Subpart A—General

§ 155.100 Applicability.

This part prescribes rules that apply to the operation of vessels on the navigable waters and contiguous zone of the United States for the purpose of preventing the discharge of oil into or upon the navigable waters or contiguous zone of the United States after June 30, 1974. U.S. vessels must meet the vessel design and equipment requirements in this part to be eligible for the issuance of a Certificate of Inspection under 46 CFR Ch. I.

§ 155.105 Definitions.

(a) "Barrel" means that unit of liquid measure equivalent to 42 U.S. gallons at 60° Fahrenheit.

(b) "Commandant" means the Commandant of the U.S. Coast Guard or his authorized representative.

(c) "Captain of the Port" means a U.S. Coast Guard officer commanding a Captain of the Port area described in Part 3 of this chapter or his authorized representative or, where there is no Captain of the Port area, a District Commander of a Coast Guard District described in Part 3 of this chapter or his authorized representative.

(d) "Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

(e) "Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(f) "District Commander" as used in this part means the officer of the Coast Guard designated by the Commandant to command a Coast Guard district as described in Part 3, of this chapter or his authorized representative.

(g) "Facility" means either an onshore facility or an offshore facility.

(h) "Incompatible products" means products that, when mixed, create a hazard such as spontaneous combustion or energy release or form a product that is hazardous to health.

(i) "Officer in Charge, Marine Inspection" means a U.S. Coast Guard officer commanding a Marine inspection zone described in Part 3 of this chapter or his authorized representative.

(j) "Offshore facility" means any facility of any kind located in, on, or under any of the navigable waters of the United States other than a vessel or a public vessel.

(k) "Oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. For the purpose of this part liquefied natural gas and liquefied petroleum gas (LNG and LPG) are excluded.

(l) "Onshore facility" means any facility (including, but not limited to motor vehicles and rolling stock) of any kind located in, on, or under any land within the United States other than submerged land.

(m) "Person" includes an individual, firm corporation, association, and a partnership.

(n) "Person in Charge" means an individual designated as a person in charge of oil transfer operations under § 154.710 or § 155.700 of this chapter.

(o) "Public vessel" means a vessel owned or bare-boat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such a vessel is engaged in commerce.

(p) "Tank vessel" means any vessel especially constructed or converted to carry liquid bulk cargo in tanks.

(q) "Tank barge" means any tank vessel not equipped with a means of self-propulsion.

(r) "U.S. vessel" means a vessel that is owned, documented, or registered in the United States and that is not a public vessel.

(s) "Vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel.

§ 155.110 Waivers.

The Commandant may waive, in whole or in part, compliance with any requirement in this part if—

(a) Application for the waiver is submitted to the Captain of the Port or Officer in Charge, Marine Inspection, 30 days before operations under the waiver are proposed unless a shorter time is authorized by the Captain of the Port or Officer in Charge, Marine Inspection; and

(b) The Commandant finds that an equivalent level of protection of the navigable waters or contiguous zone from pollution by oil will be provided by the alternative procedures, methods, or equipment standards to be used by the vessel operator.

§ 155.130 Suspension of operations.

The Captain of the Port or Officer in Charge, Marine Inspection may issue an order to suspend oil transfer operations to the operator of the vessel when he finds there is a condition requiring immediate action to prevent the discharge or threat of discharge of oil.

(a) An order of suspension may be effective immediately.

(b) An order of suspension includes a statement of each condition requiring immediate action to prevent the discharge of oil.

(c) The vessel operator may petition the District Commander in writing, or in any manner when the order is effective immediately, to reconsider the issuance of the order of suspension. The decision of the District Commander is the final administrative decision.

Subpart B—Vessel Design and Equipment

§ 155.310 Cargo oil discharge containment.

(a) No person may operate a tank vessel carrying oil that has a capacity for 250 or more barrels of cargo oil unless it has—

(1) Fixed containers or enclosed deck areas that meet the requirements of this section under or around each oil loading manifold and each oil transfer connection area; and

(2) A means of draining or removing discharged oil from each container or enclosed deck area without mixing incompatible products or discharging it into the water.

(b) Each drain and scupper in an enclosed deck area required by this section must have a mechanical means of closing.

(c) Each fixed container or enclosed deck area must hold, in all conditions of vessel list or trim to be encountered during the loading operation, at least—

(1) Three barrels if it serves one or more hoses of 6-inch inside diameter or smaller or loading arms of 6-inch nominal pipe size diameter or smaller;

(2) Four barrels if it serves one or more hoses larger than 6-inch inside diameter or loading arms larger than 6-inch nominal pipe size diameter, but less than 12-inch diameter; or

(3) Six barrels if it serves one or more hoses of 12-inch inside diameter or larger or loading arms of 12-inch nominal pipe size diameter or larger.

§ 155.320 Fuel oil discharge containment.

No person may transfer oil for fuel to a vessel of 100 or more gross tons unless—

(a) For vessels constructed after June 30, 1974, it has a fixed container or enclosed deck area of at least two barrels capacity under or around each fuel tank vent, overflow, and fill pipe;

(b) For vessels constructed before July 1, 1974, it—

(1) Complies with paragraph (a) of this section; or

(2) Each fuel tank vent, overflow, and fill pipe is located where a portable container that is at least 18 inches deep and has at least a 5 U.S. gallon capacity can be placed under it; or

(3) It is a flush deck fill fitting and is being serviced by an automatic back pressure shutoff nozzle.

§ 155.330 Oily waste and slop retention.

(a) No person may operate a vessel of 100 or more gross tons unless it has capacity to retain on board all oily waste and oily bilge slops that may accumulate while operating in the navigable waters or contiguous zone.

(b) No person may use a tank for oily bilge slops or oily waste on U.S. vessels certificated under 46 CFR Ch. I unless the tank meets the requirements of 46 CFR 56.50-50(h) for isolation between oil and bilge systems.

§ 155.340 Bilge slops on vessels of 100 or more gross tons: Ocean or coastwise service.

No person may operate a U.S. vessel of 100 or more gross tons certificated under 46 CFR Ch. I for Ocean or coastwise service, or a foreign vessel of 100 or more gross tons, that is fitted with either main or auxiliary machinery spaces, unless—

(a) The vessel has at least one pump installed to discharge oily bilge slops through a fixed piping system;

(b) The piping system required by this section has at least one outlet—

(1) For vessels of 1,600 or more gross tons, on each side of the weather deck; or

(2) For vessels of less than 1,600 gross tons, accessible from the weather deck;

(c) Each outlet required by this section has a shore connection that meets the specifications in Appendix A of this part or the vessel has at least one portable adapter that meets the specifications in Appendix A of this part and fits the required outlets;

(d) The vessel has a means on the weather deck near the discharge outlet to stop each pump that is used to discharge oily waste; and

(e) The vessel has a stop valve installed for each outlet required by this section.

§ 155.350 Bilge slops on vessels of 100 or more gross tons: Operations other than ocean or coastwise service.

No person may operate a vessel of 100 or more gross tons that is fitted with either main or auxiliary machinery spaces and is not subject to § 155.340, unless—

(a) The vessel has at least one pump installed to discharge oily bilge slops through a fixed piping system;

(b) The piping system required by this section has at least one outlet that is accessible from the weather deck;

(c) Each outlet required by this section has a shore connection that meets the specifications in Appendix A of this part or that meets standard B16.5, Steel Pipe Franges and Flanged Fittings, or B16.31, Nonferrous Pipe Flanges, of the American National Standards Institute for a 4-inch standard flange; and

(d) The vessel has a stop valve installed for each outlet required by this section.

§ 155.360 Bilge slops on vessels less than 100 gross tons.

No person may operate a vessel of less than 100 gross tons unless it has a fixed or portable means to discharge oily bilge slops to a reception facility.

§ 155.370 Ballast discharge: Vessels of 100 or more gross tons: Ocean or coastwise service.

No person may operate a U.S. vessel of 100 or more gross tons that is certificated under 46 CFR Ch. I for ocean or coastwise service, or a foreign vessel of 100 or more gross tons, that ballasts fuel tanks or has combined fuel and ballast tanks unless—

(a) The vessel has at least one pump installed to discharge ballast through a fixed piping system;

(b) The piping system required by this section has at least one outlet—

(1) For vessels of 1,600 or more gross tons, on each side of the weather deck; or

(2) For vessels of less than 1,600 gross tons, accessible from the weather deck;

(c) Each outlet required by this section has a shore connection that meets the specifications in Appendix A of this part, or the vessel has at least one portable adapter that meets the specifications in Appendix A of this part and fits the required outlets;

(d) The vessel has a means near the discharge piping on the weather deck to stop each pump that is used to discharge oily ballast; and

(e) The vessel has a stop valve installed for each outlet required by this section.

§ 155.380 Ballast discharge: Vessels of 100 or more gross tons: Operations other than ocean or coastwise service.

No person may operate a vessel of 100 or more gross tons that is not subject to § 155.370 and ballast fuel tanks or has combined fuel and ballast tanks unless—

(a) The vessel has at least one pump installed to discharge all oily ballast through a fixed piping system;

(b) The piping system required by this section has at least one outlet that is accessible from the weather deck;

(c) Each outlet required by this section has a shore connection that meets the specifications in Appendix A of this part or the vessel has at least one portable adapter that meets the specifications in Appendix A of this part and fits the required outlets; and

(d) The vessel has a stop valve installed for each outlet required by this section.

§ 155.390 Ballast discharge: Vessels of less than 100 gross tons.

No person may operate a vessel of less than 100 gross tons that ballasts fuel oil tanks unless it has a fixed or portable means to discharge oily ballast to a reception facility.

§ 155.400 Exception for all vessels: Oily waste processing equipment.

Section 155.340 through 155.390 do not apply to a vessel that has a means acceptable to the Commandant to process oily bilge slops or oily ballast.

§ 155.410 Exception for tank vessels: Oily waste transfer equipment.

Sections 155.340 through 155.390 do not apply to tank vessels that have a means of transferring oily bilge slops or oily ballast to a cargo tank used for slops. On U.S. vessels, this means must meet the bilge and oil system isolation requirements in 46 CFR 56.50-50(h).

§ 155.440 Placard.

No person may operate a vessel, except a foreign vessel or a vessel less than 26 feet in length, unless it has a placard at least 5 by 8 inches, made of durable material, fixed in a conspicuous place in the machinery spaces, or at the bilge and ballast pump control station, stating the following:

DISCHARGE OF OIL PROHIBITED

The Federal Water Pollution Control Act prohibits the discharge of oil or oily waste into or upon the navigable waters and contiguous zone of the United States if such discharge causes a film or sheen upon, or discoloration of, the surface of the water, or causes a sludge or emulsion beneath the surface of the water. Violators are subject to a penalty of $5,000.

§ 155.470 Prohibited oil spaces.

(a) Except as provided in paragraph (b) of this section, no person may operate a self-propelled vessel carrying bulk oil or oily waste in any space forward of a collision bulkhead.

(b) Fuel for use on the vessel may be carried in independent tanks in a space forward of a collision bulkhead if such a tank is at least 24 inches inboard of the hull structure or is aft of the forward quarter length of the vessel.

§ 155.480 Inspection of valves.

No person may operate any U.S. vessel that has a certificate of inspection issued under 46 CFR Ch. I unless each of the following valves has been opened, inspected, and found to function properly by the owner or operator of the vessel, or his representative, at, or since, the last drydocking or hauling out of the vessel required by 46 CFR Ch. I:

(a) Bilge emergency suction valves.

(b) Ballast sea suction valves, except in lines to oil-free tanks.

(c) Bilge overboard discharge valves.

(d) Ballast overboard discharge valves, except in lines to oil-free tanks.

(e) Valves used to separate clean ballast from oil or oily ballast.

(f) Valves used to isolate oil or oily ballast from the sea.

Subpart C—Oil Transfer Personnel Procedures, Equipment, and Records

§ 155.700 Designation of person in charge.

The operator, or his agent, of each vessel that has a capacity for 250 or more barrels of oil shall designate the person or persons in charge of each transfer of oil to or from the vessel and of each tank cleaning operation.

§ 155.710 Qualifications of person in charge.

(a) No person may serve, and the operator of a vessel may not use the services of a person, as a person in charge of the transfer of oil to or from a vessel or of tank cleaning operations unless—

(1) For oil transfer operations on self-propelled tank vessels, he holds a valid license authorizing service on inspected vessels as a master, mate, pilot, or engineer, except that the person in charge of tank cleaning operations conducted at a tank cleaning facility may be a tankerman certificated for the grade of cargo last carried; or

(2) For tank barges, he holds a valid license authorizing service on inspected vessels as a master, mate, engineer, or is a tankerman certificated for the grade of cargo carried; or

(3) For vessels other than tank vessels that are required by 46 CFR Ch. I to have a licensed officer on board, he holds a valid license as a master, mate, pilot, engineer, or operator; or

(4) For all uninspected vessels of 100 or more gross tons, he has been instructed by the operator in his duties and the Federal water pollution laws and regulations that apply to the vessel.

(5) For foreign vessels of the same size and type as those specified in subparagraphs (1), (2), and (3) of this paragraph, he holds a license or certificate authorizing service on that vessel as a master, mate, pilot, engineer, or operator.

§ 155.720 Oil transfer procedures.

No person may operate a vessel that has a capacity for 250 or more barrels of oil that is transferring oil unless that vessel has oil transfer procedures that meet the requirements of this part.

§ 155.730 Compliance with oil transfer procedures.

The operator of each vessel required by § 155.720 to have oil transfer procedures shall maintain them current and shall use and require its personnel to use the oil transfer procedures for each oil transfer operation.

§ 155.740 Posting of oil transfer procedures.

The oil transfer procedures required by § 155.720 must be—

(a) Legibly printed in a language understood by the crew; and

(b) Permanently posted or available at the fueling station or cargo control station or a place where the procedures can be easily seen and used by those members of the crew who engage in oil transfer operations.

§ 155.750 Contents of oil transfer procedures.

The oil transfer procedures required by § 155.720 must contain—

(a) If the vessel carries incompatible products, a list of the products to which the oil transfer procedures apply;

(b) A description of each oil transfer system installed on the vessel including—

(1) A line diagram of the vessel's oil transfer piping including the location of each valve, pump, control device, vent, and overflow; and

(2) The location of the shutoff valve or other isolation device that separates any bilge or ballast system from the oil transfer system.

(c) The number of persons required to be on duty during oil transfer operations;

(d) The duties by title of each officer, person in charge, tankerman, deckhand, and any other person required for each oil transfer operation;

(e) Procedures and duty assignments for tending the vessel's moorings during the transfer of oil;

(f) Procedures for operating the emergency shutdown means required by § 155.780;

(g) Any special procedures for topping off tanks;

(h) Procedures for insuring that all valves used during the oil transfer operations are closed upon completion of transfer;

(i) A description of the deck discharge containment system;

(j) The procedures for emptying the deck discharge containment system; and

(k) Procedures for reporting oil discharges on the water.

§ 155.760 Amendment of oil transfer procedures.

(a) The Captain of the Port or Officer in Charge, Marine Inspection may require the operator of any vessel that is required to have oil transfer procedures to amend those procedures if, after inspection, he finds that the oil transfer procedures are not adequate to meet the requirements of Part 156 of this chapter. See § 155.730.

(b) When the Captain of the Port or Officer in Charge, Marine Inspection determines to require an amendment of an oil transfer procedure, he notifies the operator, in writing, of a date not less than 14 days from the date of the notice on or before which the operator may submit written information, views, and arguments on the amendment. After considering all relevant material presented, the Captain of the Port or Officer in Charge, Marine Inspection notifies the operator of any amendment required or of his decision to rescind the notice. The amendment becomes effective not less than 30 days after the operator receives the notice, unless the operator petitions the Commandant to reconsider the notice, in which case its effective date is stayed pending a decision by the Commandant. Petitions to the Commandant must be submitted in writing to the Captain of the Port or Officer in Charge, Marine Inspection who issued the requirement to amend.

(c) If the Captain of the Port or Officer in Charge, Marine Inspection finds that there is a condition requiring immediate action to prevent the discharge or risk of discharge of oil that makes the procedure in paragraph (b) of this section impractical or contrary to the public interest, he may issue an amendment effective, without stay, on the date the operator receives notice of it. In such a case, the Captain of the Port or Officer in Charge, Marine Inspection includes a brief statement of the reasons for his finding in the notice, and the operator may petition the District Commander, in any manner, to reconsider the amendment.

§ 155.770 Machinery oil drains: U.S. vessels.

No person may drain the sumps of oil lubricated machinery or the contents of oil filters, strainers, or purifiers into the bilge of any U.S. vessel.

§ 155.780 Emergency shutdown.

(a) No person may operate a tank vessel carrying oil that has a capacity for 250 or more barrels of cargo oil unless it has on board an emergency means to enable the person in charge of the transfer of oil to stop the flow of oil to the facility or other vessel.

(b) The emergency means must be a pump control or a quick-acting, power actuated valve. If an emergency pump control is used, it must stop the flow of oil if oil could siphon through the stopped pump.

(c) The emergency means must be operable from the cargo deck, cargo control room, or the usual operating station of the person in charge of the transfer of oil.

§ 155.790 Deck lighting.

(a) No person may operate a self-propelled vessel that has a capacity for 250 or more barrels of oil that is transferring oil to or from the vessel between sunset and sunrise unless that self-propelled vessel has installed deck lighting that illuminates—

(1) Each oil transfer connection point in use with an average minimum lighting intensity of 5 foot-candles; and

(2) Each oil transfer operations work area with an average minimum lighting intensity of 1 foot-candle.

(b) The lighting intensity must be measured on a horizontal plane 3 feet above the deck or walking surface.

§ 155.800 Oil transfer hose.

No person operating any vessel may use, and no person may operate a U.S. vessel that carries an oil transfer hose that is larger than 3 inches inside diameter unless it meets the requirements of § 154.500 of this chapter.

§ 155.810 Tank vessel security.

The owner or operator or person having custody of each tank vessel that contains more oil than the normal clingage and unpumpable bilge or sump residues in any cargo tank shall maintain surveillance of that vessel by a person who is responsible for the security of the vessel and for keeping unauthorized persons off the vessel.

§ 155.820 Records.

The owner or operator of each vessel subject to the following referenced regulations shall keep a written record available for inspection by the Commandant of—

(a) The name of each person currently designated as a person in charge of oil transfer operations as required by § 155.700;

(b) The date and result of the most recent test or inspection of each item tested or inspected as required by § 156.170 of this chapter;

(c) The hose information required by § 154.500(f) of this chapter unless that information is marked on the hose; and

(d) The date and location of each valve inspection required by § 155.480.

APPENDIX A

SPECIFICATIONS FOR SHORE CONNECTION

[See §§ 340, 350, 370, and 380 of this part]

Item	Description	Dimension
1	Outside diameter	215 mm. (8½ in.).
2	Inside diameter	According to pipe outside diameter.
3	Bolt circle diameter	183 mm. (7 3/16 in.).
4	Slots in flange	6 holes 22 mm. (⅞ in.) in diameter shall be equidistantly placed on a bolt circle of the above diameter, slotted to the flange periphery. The slot width is to be 22 mm. (⅞ in.).
5	Flange thickness	20 mm. (¾ in.).
6	Bolts and nuts	6, each of 20 mm. (¾ in.) in diameter and of suitable length.

The flange shall be of steel having a flat face, with a gasket of oilproof material, and both shall be suitable for a service pressure of 6 kg./cm.² (85 p.s.i.).

The steel materials used shall meet the material specifications of standard B16.5, Steel Pipe Flanges and Flanged Fittings of the American National Standards Institute (ANSI).

PART 156—OIL TRANSFER OPERATIONS

Sec.
156.100 Applicability.
156.105 Definitions.
156.107 Waivers.
156.110 Person in charge: Limitations.
156.120 Requirements for oil transfer.
156.130 Connections.
156.150 Declaration of inspection.
156.160 Supervision by person in charge.
156.170 Equipment tests and inspections.

AUTHORITY: The provisions of this Part 156 issued under section 311(j)(1)(C) and (D) of the Federal Water Pollution Control Act (86 Stat. 816, 868); 33 U.S.C. 1161(j)(1)(C) and (D); E.O. 11548, 3 CFR, 1966–1970 Comp., p. 949; 49 CFR 1.46(m).

§ 156.100 Applicability.

This part applies to the transfer of oil to or from any vessel with a capacity of 250 or more barrels for that oil on the navigable waters or contiguous zone of the United States, except the transfer of—

(a) Lubricating oil for use on board the vessel; and

(b) Non-petroleum-based oil that is transferred to or from a vessel other than a tank vessel.

§ 156.105 Definitions.

As used in this part:

(a) "Barrel" means that unit of liquid measure equivalent to 42 U.S. gallons at 60° F.

(b) "Captain of the Port" means a U.S. Coast Guard officer commanding a Captain of the Port area described in Part 3 of this chapter or his authorized representative or, where there is no Captain of the Port area, a District Commander of a Coast Guard district described in Part 3 of this chapter or his authorized representative.

(c) "District Commander" as used in this part means the officer of the Coast Guard designated by the Commandant to command a Coast Guard District as described in Part 3 of this chapter or his authorized representative.

(d) "Facility" means either an onshore facility or an offshore facility.

(e) "Offshore facility" means any facility of any kind located in, on, or under any of the navigable waters of the United States other than a vessel or a public vessel.

(f) "Oil" means oil of any kind or in any form including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. For the purpose of this part lique-

fied petroleum gas (LNG and LPG) are excluded.

(g) "Onshore facility" means any facility (including, but not limited to motor vehicles and rolling stock) of any kind located in, on, or under any land within the United States other than submerged land.

(h) "Person in charge" means a person designated as a person in charge of oil transfer operations under § 154.710 or § 155.700 of this chapter.

(i) "Public vessel" means a vessel owned or bare-boat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such a vessel is engaged in commerce.

(j) "Tank vessel" means any vessel especially constructed or converted to carry liquid bulk cargo in tanks.

(k) "Tank barge" means any tank vessel not equipped with a means of self propulsion.

(l) "Vessel" means every description of watercraft, or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel.

§ 156.107 Waivers.

The Captain of the Port may waive, in whole or in part, compliance with any requirement in this part if—

(a) Application for the waiver is submitted to the Captain of the Port 30 days before operations under the waiver are proposed unless a shorter time is authorized by the Captain of the Port; and

(b) The Captain of the Port finds that an equivalent level of protection of the navigable waters and contiguous zone from pollution by oil will be provided by the alternative procedures, methods or equipment standards to be used.

§ 156.110 Person in charge: Limitations.

(a) No person may serve as the person in charge of oil transfer operations on more than one vessel at a time unless—

(1) The vessels are immediately adjacent;

(2) There is a ready means of access between vessels; and

(3) The person in charge is not also the person in charge of the facility.

(b) No person may serve as the person in charge of both the vessel and the facility during oil transfer operations except when the Captain of the Port authorizes such procedure.

§ 156.120 Requirements for oil transfer.

No person may transfer oil to or from a vessel unless—

(a) The vessel's moorings are strong enough to hold in all expected conditions of surge, current, and weather and are long enough to allow adjustment for changes in draft, drift, and tide during the transfer operation;

(b) Oil transfer hoses or loading arms are long enough to allow the vessel to move to the limits of its moorings without placing strain on the hose, loading arm, or transfer piping system;

(c) Each hose is supported in a manner that prevents strain on its coupling;

(d) Each part of the transfer system necessary to allow the flow of oil is lined up for the transfer;

(e) Each part of the transfer system not necessary for the transfer operation is securely blanked or shut off;

(f) The transfer system is connected to a fixed piping system on the receiving vessel or facility except that when receiving fuel for the vessel an automatic back pressure shutoff nozzle may be used;

(g) Except when used to receive or discharge ballast, each overboard discharge or sea suction valve that is connected to the vessel's oil transfer, ballast, or cargo tank systems is sealed, lashed, or locked in the closed position;

(h) Each oil transfer hose has no loose covers, kinks, bulges, soft spots, and no gouges, cuts, or slashes that penetrate the hose reinforcement;

(i) Each coupling meets the requirement of § 156.130;

(j) The discharge containment required by §§ 154.530, 155.310, and 155.320 of this chapter, as appropriate, is in place;

(k) Each scupper or drain in a discharge containment system is closed;

(l) Any continuing loss of oil from any transfer component is at a rate that will not exceed the capacity of the containment system;

(m) The communications required by § 154.560 of this chapter are operable for the transfer operation;

(n) The emergency means of shutdown required by §§ 154.550 and 155.780 of this chapter, as appropriate, is in position and operable;

(o) The designated personnel are on duty to conduct the transfer operations in accordance with the facility operations manual and vessel oil transfer procedures that apply to the transfer operation;

(p) At least one person is present who fluently speaks the language spoken by each person in charge;

(q) The person in charge of oil transfer operations on the transferring vessel or facility and the person in charge of oil transfer operations on the receiving vessel or facility have held a conference, to assure that each person in charge understands the following details of the transfer operations—

(1) The identity of the product to be transferred.

(2) The sequence of transfer operations.

(3) The transfer rate.

(4) The name or title and location of each person participating in the transfer operation.

(5) Particulars of the transferring and receiving systems.

(6) Critical stages of the transfer operation.

(7) Federal, State, and local rules that apply to the transfer of oil.

(8) Emergency procedures.

(9) Discharge containment procedures.

(10) Discharge reporting procedures.

(11) Watch or shift arrangement.

(12) Transfer shutdown procedures.

(r) The person in charge of oil transfer operations on the transferring vessel or facility and the person in charge of oil transfer operations on the receiving vessel or facility agree to begin the transfer operation;

(s) Each person in charge required by this part is present;

(t) Between sunset and sunrise the lighting required by §§ 154.570 and 155.790 of this chapter is provided; and

(u) For vessel to vessel transfer operations involving a tank barge between sunset and sunrise, lighting of the intensity specified in § 155.790 of this chapter is provided on the barge.

§ 156.130 Connections.

(a) Each person who makes a connection for oil transfer operations shall—

(1) Use suitable material in joints and couplings to make a tight seal;

(2) Use a bolt in at least every other hole and in no case less than four bolts in each temporary connection utilizing an American National Standards Institute (ANSI) standard flange coupling;

(3) Use a bolt in each hole of couplings other than ANSI standard flange couplings;

(4) Use a bolt in each hole of each permanently connected flange coupling;

(5) Use bolts of the same size in each bolted coupling; and

(6) Tighten each bolt and nut uniformly to distribute the load.

(b) No person who makes a connection for oil transfer operations may use any bolt that shows signs of strain or is elongated or deteriorated.

(c) No person may use a connection for oil transfer operations unless it is—

(1) A bolted or full threaded connection; or

(2) A quick-connect coupling approved by the Commandant; or

(3) An automatic back pressure shutoff nozzle used to fuel the vessel.

§ 156.150 Declaration of inspection.

(a) No person may transfer oil to or from a vessel unless each person in charge, designated under §§ 154.710 and 155.700 of this chapter, has signed the declaration of inspection form prescribed in paragraph (c) of this section.

(b) No person in charge may sign the declaration of inspection unless he or the other person in charge has determined by inspection that the facility and vessel meets the requirements in § 156.120.

(c) The declaration of inspection required to be signed in paragraph (a) of this section may be in any form but must contain at least—

(1) The name or other identification of the transferring vessel or facility and the receiving vessel or facility;

(2) The address of the facility or location of the transfer operation if not at a facility;

(3) The date the transfer operation is started;

(4) A list of the requirements in § 156.120 of this chapter with spaces on the form following each requirement for the person in charge of the vessel or facility to indicate whether the requirement is met for the transfer operation; and

(5) A space for the date, time of signing, signature, and title of each person in charge during oil transfer operations on the transferring vessel or facility and

a space for the date, time of signing, signature, and title of each person in charge during the oil transfer operations on the receiving facility or vessel.

(d) The form for the declaration of inspection required in paragraph (a) of this section may incorporate the declaration-of-inspection requirements of 46 CFR 35.35-30.

(e) The operator of each facility shall retain for at least 1 month from the date of signature, a signed copy of each declaration of inspection required for that facility.

(f) The operator of each vessel engaged in vessel-to-vessel transfers shall retain for at least 1 month from the date of signature a signed copy of each declaration of inspection for such vessel-to-vessel transfers.

§ 156.160 Supervision by person in charge.

(a) No person may connect, top off, disconnect, or engage in any other critical oil transfer operation unless the person in charge, designated under § 154.710 or § 155.700 of this chapter, personally supervises the operation.

(b) No person may start the flow of oil to or from a vessel unless instructed to do so by the person in charge.

(c) No person may transfer oil to or from a vessel unless the person in charge is in the immediate vicinity of the transfer operation and immediately available to the oil transfer personnel.

§ 156.170 Equipment tests and inspections.

(a) No person may use any item of equipment listed in paragraph (c) of this section, except hose used in underwater service, in oil transfer operations unless the operator of the vessel or facility has tested and inspected it annually in accordance with paragraphs (b) and (c) of this section and found that it is in the condition specified in paragraph (c) of this section.

(b) During any test or inspection required by this section, a hose must be in a straight and horizontal position and the entire external surface must be accessible.

(c) For the purpose of paragraph (a) of this section—

(1) Each nonmetallic oil transfer hose that is larger than 3 inches inside diameter must—

(i) Have no loose covers, kinks, bulges, soft spots, and no gouges, cuts, or slashes that penetrate the hose reinforcement;

(ii) Have no external and, to the extent internal inspection is possible with both ends of the hose open, no internal deterioration; and

(iii) Not burst, bulge, leak, or abnormally distort under static liquid pressure at least as great as the pressure of the relief valve setting (or maximum pump pressure when no relief valve is installed) plus any static head pressure of the system in which the hose is used;

(2) Each transfer system relief valve must open at or below the pressure at which it is set to open;

(3) Each pressure gage must show pressure within 10 percent of the actual pressure;

(4) Each loading arm and each oil transfer piping system, including each metallic hose, must not leak under static liquid pressure at least as great as the pressur of the relief valve setting (or maximum pump pressure when no relief valve is installed) plus any static head pressure in the system; and

(5) Each item of remote operating or indicating equipment, such as a remotely operated valve, tank level alarm, or emergency shutdown device, must perform its intended function.

(d) No person may use any hose in underwater service for oil transfer operations unless the operator of the vessel or facility has tested and inspected it biennially in accordance with paragraph (c)(1) or (c)(4) of this section, as applicable.

Effective date. These amendments shall become effective on July 1, 1974, except § 154.110 shall become effective on January 30, 1973, and the revision of § 151.35 shall become effective on January 30, 1973.

Dated: December 14, 1972.

C. R. BENDER,
Admiral, U.S. Coast Guard,
Commandant.

[FR Doc.72-21816 Filed 12-20-72;8:45 am]

Title 46—SHIPPING

Chapter I—Coast Guard, Department of Transportation

[CGD 71-161R]

PART 10—LICENSING OF OFFICERS AND MOTORBOAT OPERATORS AND REGISTRATION OF STAFF OFFICERS

PART 12—CERTIFICATION OF SEAMEN

PART 31—INSPECTION AND CERTIFICATION

PART 71—INSPECTION AND CERTIFICATION

PART 91—INSPECTION AND CERTIFICATION

PART 105—COMMERCIAL FISHING VESSELS DISPENSING PETROLEUM PRODUCTS

PART 175—GENERAL PROVISIONS

PART 176—INSPECTION AND CERTIFICATION

PART 187—LICENSING

PART 188—GENERAL PROVISIONS

PART 189—INSPECTION AND CERTIFICATION

Pollution Prevention Inspection of Vessels and Deck and Engineer Officers' Licenses

This amendment promulgates new regulations that require merchant marine officers and seamen to have additional knowledge of oil pollution and of laws, regulations, and procedures to prevent oil pollution; to require pollution prevention equipment for vessel certification; and to require more frequent hull inspection (drydocking) of tank barges in fresh water service.

A notice of proposed rule making (CGFR 71-161) with respect to these regulations was published in December 24, 1971, issue of the FEDERAL REGISTER (36 F.R. 24970). Subsequent thereto the Ports and Waterways Safety Act of 1972 (Public Law 92-340) was enacted and which requires regulations to be promulgated by the Coast Guard governing ship design and operation to prevent pollution from marine operations. It is emphasized that the regulations promulgated herein are not those required by the Ports and Waterways Safety Act but are issued under the Federal Water Pollution Control Act (86 Stat. 816; 33 U.S.C. 1151).

A public hearing on the proposed regulations was held on February 15, 1972, and the record remained open until April 21, 1972, for public comment. One hundred and eighty-five public comments were received on the two notices. The comments of record have been carefully reviewed and the following changes have been made to the regulations proposed in notice CGFR 71-161 amending Chapter I of Title 46 Code of Federal Regulations.

The majority of comments received as a result of CGFR 71-161 concerned the proposed changes to § 31.10-20, *Drydocking or hauling out TB/ALL.* The comments principally objected to the wording which could be read to mean vessels operating in salt water must be docked every 18 months; to the shortening of the fresh water service period between drydockings; and to the time allowed to bring vessels into compliance with the new schedule. The proposed wording has been revised to clarify that vessels regardless of service need not be docked more frequently than every 24 months.

The present drydocking schedule is based upon anticipated corrosion and deterioration. However, Coast Guard records and comments received indicate that the principal hull problem with barges is damage resulting from handling and operations rather than long-term corrosion. One comment received, which is supported by Coast Guard data, is that on the average a barge will suffer sufficient damage to cause a leak once a year. Another comment stated that, on the average, the bilge knuckles must be replaced every 6 or 7 years. The Coast Guard believes that the existing authorized interval of 5 years between required drydocking is excessive and is therefore retaining the proposed 3-year cycle for drydocking.

It is emphasized that the effective date of July 1, 1974, for this section means that by that date all tank vessels in fresh water service must be on the 3-year cycle for drydocking. Thus, on July 1, 1974, all U.S. tank vessels, except those double hulled vessels meeting the internal inspection exemption, must have been drydocked since June 30, 1971.

Because of the unanticipated delays in publishing these regulations, the effective date after which an examination in pollution abatement will be required for an original, raise of grade or first renewal of a merchant mariner's license has been changed from June 30, 1972, to July 30, 1973. The Coast Guard will publish examination preparation material and sample examination questions at least 120 days prior to instituting the license renewal pollution examination. That portion of the examination dealing with statutes and their implementing rules and regulations will be open book. Publications covering these will be available in all license examination offices for use by the applicants. The examination on the subjects concerning pollution will initially be basic and the questions will be continued and expanded upon as the regulations become well known and as additional reference books become available.

Numerous comments, both pro and con, were received in response to the proposed increases in scope of merchant seamen examinations to include additional knowledge of marine pollution and its prevention. It is emphasized that the pollution abatement examination for license renewal is only for the first renewal after publication of the regulations and is intended to insure that all licensed personnel are knowledgeable on the subject. The examinations will be scaled to suit the license and it is not intended to make every seaman an expert on the laws and regulations, but it is intended that every seaman be aware of the pollution problem, the penalties that he may be subject to for violating the law, generally what constitutes a violation of the law and a knowledge of good practices to prevent pollution.

The requirement for oil pollution prevention examination subjects for the rating of lifeboatman has been deleted as unnecessary.

In consideration of the above, Chapter I of Title 46, Code of Federal Regulations, is amended to read as follows:

a. By amending Part 31 as follows:

§ 31.01–1 [Amended]

1. By amending § 31.01–1(a) by striking the period and adding the words "and 33 CFR Part 155, Subpart B."

2. By revising the citation of authority following § 31.01–1 to read as follows:

(R.S. 4418, as amended, 4433, as amended, 4472, as amended, 4488, as amended, section 311(j)(1)(C) and (D) of the Federal Water Pollution Control Act, 86 Stat. 816, 868, National Environmental Policy Act of 1969, 83 Stat. 852; 46 U.S.C. 392, 411, 170, 481, 33 U.S.C. 1161(j)(1)(C) and (D), 42 U.S.C. 4321, et seq.; E.O. 11548; 3 CFR 1966–1970 Comp., p. 949; 49 CFR 1.46(m))

3. By revising § 31.05–1(a) to read as set forth below.

4. By adding a citation of authority following § 31.05–1 to read as set forth below.

§ 31.05–1 Issuance of certificate of inspection—TB/ALL.

(a) When a tank vessel is found to comply with law and the regulations in this subchapter, and applicable provisions of Subchapters E, F, J, O, and Q of this chapter and 33 CFR Part 155, Subpart B, a certificate of inspection shall be issued to it, or to its owners, by the Officer in Charge, Marine Inspection.

* * * * *

(Sec. 311(j)(1)(C) and (D) of the Federal Water Pollution Control Act, 86 Stat. 816, 868, National Environmental Policy Act of 1969, 83 Stat. 852; 33 U.S.C. 1161(j)(1)(C) and (D), 42 U.S.C. 4321, et seq.; E.O. 11548; 3 CFR, 1966–1970 Comp., p. 949; 49 CFR 1.46(m))

5. By revoking subparagraphs (4) and (5) and revising subparagraphs (2) and (3), of § 31.10–20(a) to read as follows:

§ 31.10–20 Drydocking or hauling out—TB/ALL.

(a) * * *

(2) Each tank vessel that operates in salt water an aggregate of less than 6 months in any 12-month period since it was last drydocked or hauled out shall be drydocked or hauled out at intervals not to exceed 36 months. Each tank vessel that operates in salt water an aggregate of more than 6 months in any 12-month period shall be drydocked or hauled out within 12 months of the end of such 12-month period or within 36 months of its last drydocking or hauling out, whichever occurs first.

(3) Tank barges which operate in salt water an aggregate of less than 1 month in any 12-month period shall meet the requirements of subparagraph (2) of this paragraph except that the Officer in Charge, Marine Inspection, may accept an internal inspection in lieu of the first required drydocking or hauling out after date of build, and for double hulled barges (double sides, ends, and bottoms), he may also accept an internal inspection for each alternate drydocking or hauling out thereafter.

(4) [Revoked]

(5) [Revoked]

* * * * *

§ 31.10–20 [Amended]

6. By adding an authority citation following § 31.10–20 to read as follows:

(National Environmental Policy Act of 1969, 83 Stat. 852; 42 U.S.C. 4321, et seq.)

b. By amending Part 71 as follows:

§ 71.20–15 [Amended]

1. By amending § 71.20–15(a) by inserting the words "pollution prevention equipment," immediately after the words "pilot ladders," in the second sentence.

2. By revising the citation of authority following § 71.20–15 to read as follows:

(R.S. 4472, as amended, sec. 2, 23 Stat. 118, as amended, sec. 2, 63 Stat. 496, as amended, sec. 633, 63 Stat. 545, sec. 311(j)(1)(C) of the Federal Water Pollution Control Act, 86 Stat. 816, 868; National Environmental Policy Act of 1969, 83 Stat. 852; 46 U.S.C. 170, 2, 14 U.S.C. 2, 633, 33 U.S.C. 1161(j)(1)(C), 42 U.S.C. 4321, et seq.; E.O. 11548; 3 CFR, 1966–1970 Comp., p. 949; 49 CFR 1.46(m))

3. By adding immediately following § 71.25–35 a new § 71.25–37 with an authority citation to read as follows:

§ 71.25–37 Pollution prevention.

At each inspection for certification, the inspector shall examine the vessel to determine that it meets the vessel design and equipment requirements for pollution prevention in 33 CFR Part 155, Subpart B.

(Sec. 311(j)(1)(C) and (D) of the Federal Water Pollution Control Act, 86 Stat. 816, 868, National Environmental Policy Act of 1969, 83 Stat. 852; 33 U.S.C. 1161(j)(1)(C) and (D), 42 U.S.C. 4321, et seq.; E.O. 11548; 3 CFR 1966–1970 Comp., p. 949; 49 CFR 1.46(m))

c. By amending Part 91 as follows:

§ 91.20–15 [Amended]

1. By amending § 91.20–15(a) by inserting the words "pollution prevention equipment," immediately after the words "pilot ladders," in the second sentence.

2. By amending the citation of authority following § 91.20–15 to read as follows:

(R.S. 4472, as amended, sec. 2, 23 Stat. 118, as amended, sec. 2, 63 Stat. 496, as amended, sec. 633, 63 Stat. 545, sec. 311(j)(1)(C) of the Federal Water Pollution Control Act, 86 Stat. 816, 868; National Environmental Policy Act of 1969; 83 Stat. 852; 46 U.S.C. 170, 2, 14, U.S.C. 2, 633, 33 U.S.C. 1161(j)(1)(C), 42 U.S.C. 4321, et seq.; E.O. 11548; 3 CFR 1966–1970 Comp., p. 949; 49 CFR 1.46(m))

§ 91.25–10 [Amended]

3. By amending § 91.25–10(a) by inserting the words "pollution prevention equipment," immediately after the words "pilot ladders," in the second sentence.

4. By adding a citation of authority following § 91.25–10 to read as follows:

(Sec. 311(j)(1)(C) of the Federal Water Pollution Control Act 86 Stat. 816, 868, National Environmental Policy Act of 1969 83 Stat. 852; 33 U.S.C. 1161(j)(1)(C), 42 U.S.C. 4321, et seq.; E.O. 11548; 3 CFR 1966–1970 Comp., p. 949; 49 CFR 1.46(m))

5. By adding immediately following § 91.25–37 a new § 91.25–38 with an authority citation to read as follows:

§ 91.25–38 Pollution prevention.

At each inspection for certification, the inspector shall examine the vessel to determine that it meets the vessel design and equipment requirements for pollution prevention in 33 CFR Part 155, Subpart B.

(Sec. 311(j)(1)(C) and (D) of the Federal Water Pollution Control Act 86 Stat. 816, 868), National Environmental Policy Act of 1969, 83 Stat. 852; 33 U.S.C. 1161(j)(1)(C), 42 U.S.C. 4321, et seq.; E.O. 11548; 3 CFR 1966–1970 Comp., p. 949; 49 CFR 1.46(m))

d. By amending the citation authority for Part 175, Subchapter T, by striking the words ", unless otherwise noted" and adding the words "Additional authority cited with regulations affected."

e. By amending Part 176 as follows:

§ 176.05–5 [Amended]

1. By amending § 176.05–5(c) by inserting the words "pollution prevention equipment," immediately after the words

"fire extinguishing equipment," in the first sentence.

2. By adding a citation of authority following § 176.05-5 to read as follows:

(Sec. 311(j)(1)(C) of the Federal Water Pollution Control Act, 86 Stat. 816, 868; National Environmental Policy Act of 1969, 83 Stat. 852; 33 U.S.C. 1161(j)(1)(C), 42 U.S.C. 4321 et seq.; E.O. 11548; 3 CFR, 1966-1970 Comp., p. 949; 49 CFR 1.46(m))

3. By amending § 176.05-10 by inserting the words "pollution prevention equipment," immediately after the words "fire extinguishing equipment," and by adding a new paragraph (b) to read as set forth below.

4. By adding a citation of authority following § 176.05-10 to read as set forth below.

§ 176.05-10 Subsequent inspections for certification.

* * * * *

(b) At each inspection for certification, the inspector shall examine the vessel to determine that it meets the vessel design and equipment requirements for pollution prevention in 33 CFR Part 155, Subpart B.

(Sec. 311(j)(1)(C) and (D) of the Federal Water Pollution Control Act, 86 Stat. 816, 868; National Environmental Policy Act of 1969, 83 Stat. 852; 33 U.S.C. 1161(j)(1)(C) and (D), 42 U.S.C. 4321, et seq.; E.O. 11548; 3 CFR, 1966-1970 Comp., p. 949; 49 CFR 1.46(m))

f. By amending the citation of authority for Part 188, Subchapter U, by adding the following words: "Additional authority cited with regulations affected."

g. By amending Part 189 as follows:

§ 189.20-15 [Amended]

1. By amending § 189.20-15(a) by inserting the words "pollution prevention equipment," immediately after the words "pilot ladders," in the second sentence.

2. By adding an authority citation following § 189.20-15 to read as follows:

(Sec. 311(j)(1)(C) of the Federal Water Pollution Control Act, 86 Stat. 816, 868; National Environmental Policy Act of 1969, 83 Stat. 852; 33 U.S.C. 1161(j)(1)(C), 42 U.S.C. 4321, et seq.; E.O. 11548; 3 CFR, 1966-1970 Comp., p. 949; 49 CFR 1.46(m))

§ 189.25-10 [Amended]

3. By amending § 189.25-10(a) by inserting the words "pollution prevention equipment," immediately following the words "pilot ladders," in the second sentence.

4. By adding an authority citation following § 189.25-10 to read as follows:

(Sec. 311(j)(1)(C) of the Federal Water Pollution Control Act, 86 Stat. 816, 868; National Environmental Policy Act of 1969, 83 Stat. 852; 33 U.S.C. 1161(j)(1)(C), 42 U.S.C. 4321, et seq.; E.O. 11548; 3 CFR, 1966-1970 Comp., p. 949; 49 CFR 1.46(m))

5. By adding immediately following § 189.25-35 a new § 189.25-38 with an authority citation to read as follows:

§ 189.25-38 Pollution prevention.

At each inspection for certification, the inspector shall examine the vessel to determine that it meets the vessel design and equipment requirements for pollution prevention in 33 CFR Part 155, Subpart B.

(Sec. 311(j)(1)(C) and (D) of the Federal Water Pollution Control Act, 86 Stat. 816,868; National Environmental Policy Act of 1969, 83 Stat. 852; 33 U.S.C. 1161(j)(1)(C) and (D), 42 U.S.C. 4321, et seq.; E.O. 11548; 3 CFR, 1966-1970 Comp., p. 949; 49 CFR 1.46(m))

h. By amending Parts 10, 12, 105, and 187 of Title 46 as follows:

1. By adding the following sentence as subparagraph (2) of § 10.02-9(a); subparagraph (2) of § 10.20-9(a); and paragraph (e) of § 187.15-1:

"Upon the first renewal of a license after July 30, 1973, each applicant must demonstrate a knowledge of pollution abatement equivalent to that required for an original license."

2. By amending the authority citations following §§ 10.02-9 and 10.20-9 by adding an additional citation and by adding a new authority citation to follow § 187.15-1 to read as follows:

(National Environmental Policy Act of 1969, 83 Stat. 852; 42 U.S.C. 4321, et seq.)

3. By adding a new subject "Pollution abatement" as subject number (7-a) in § 10.05-43(a); (28-a) in the table in § 10.05-45(b); (20-a) in § 10.05-47(a); (13-a) in § 10.05-49(a); (9-a) in § 10.05-51(a); (10-a) in § 10.05-52(a); (9-a) in § 10.05-58(a); and by inserting an X in each column for the new subject "(28-a) pollution abatement" in the table in § 10.05-45(b).

4. By adding the following authority citation following §§ 10.05-43, 10.05-45, 10.05-47, 10.05-49, 10.05-51, 10.05-52, and 10.05-58 to read as follows:

(National Environmental Policy Act of 1969, 83 Stat. 852; 42 U.S.C. 4321, et seq.)

5. By adding the following sentence to §§ 10.05-53; 10.05-55; 10.05-57; 10.05-59; as (c-1) of § 12.05-9; to 12.20-5; as (a)(10) of § 105.60-10; as (a)(8) of § 187.20-10; (a)(8) of § 187.20-15; (a)(8) of § 187.20-17; (12-a) of § 187.25-15; (12-a) of § 187.25-20(a); (12-a) of § 187.25-21(a); and (4-a) of § 187.25-25(a);

"The applicant must demonstrate to the satisfaction of the Officer in Charge, Marine Inspection, his knowledge of pollution laws and regulations, procedures for discharge containment and cleanup, and methods for disposal of sludge and waste material from cargo and fueling operations."

§ 12.15-9 [Amended]

6. By inserting an X in each column for the following new subject (29-a) in table 12.15-9(b): 29-a Pollution laws and regulations, procedures for discharge containment and cleanup, and methods for disposal of sludge and waste from cargo and fueling operations.

7. By adding an authority citation to the following §§ 10.05-53, 10.05-55, 10.05-57, 10.05-59, 12.05-9, 12.10-5, 12.15-9, 12.20-5, 105.60-10, 187.20-10, 187.20-15, 187.20-17, 187.25-20, 187.25-21, and 187.25-25 to read as follows:

(National Environmental Policy Act of 1969, 83 Stat. 852; 42 U.S.C. 4321, et seq.)

§ 10.10-4 [Amended]

8. By adding the following new subjects set forth below to the table in § 10.10-4(b) and by inserting an X in each column for each new subject.

9. By adding an authority citation following § 10.10-4 to read as set forth below.

POLLUTION

78. Pollution laws and regulations.
79. Discharge containment and clean-up.
80. Disposal of sludge and waste.
81. Loading and transfer of bunkers.
82. Bilge and ballast disposal.

(National Environmental Policy Act of 1969, (83 Stat. 852); 42 U.S.C. 4321, et. seq.)

§ 10.15-31 [Amended]

10. By adding the subject "pollution abatement" as new paragraphs (b)(2)(viii); (c)(8); and (e)(7) of § 10.15-31.

11. By adding an authority citation following § 10.15-31 to read as follows:

(National Environmental Policy Act of 1969, (83 Stat. 852); 42 U.S.C. 4321, et. seq.)

12. By adding the following new subdivision (vii) to § 10.20-5(b)(1) as set forth below.

13. By adding an authority citation following § 10.20-5 to read as set forth below.

§ 10.20-5 Professional examinations.

* * * * *

(b) * * *

(1) * * *

(vii) Pollution laws and regulations, procedures for discharge containment and clean-up, and methods for disposal of sludge and waste material from cargo and fueling operations.

* * * * *

(National Environmental Policy Act of 1969, 83 Stat. 852; 42 U.S.C. 4321, et seq.)

These amendments shall become effective on July 1, 1974, except the amendments to Parts 10, 12, 105, and 187, which shall become effective July 30, 1973.

(R.S. 4405, as amended, R.S. 4462, as amended, section 311(j)(1)(C) and (D) of the Federal Water Pollution Control Act, 86 Stat. 816, 868; National Environmental Policy Act of 1969, 83 Stat. 852; sec. 6(b)(1), 80 Stat. 937; 46 U.S.C. 375, 416, 33 U.S.C. 1161(j)(1)(C) and (D), 42 U.S.C. 4321, et seq.; 49 U.S.C. 1655(b)(1); E.O. 11548; 3 CFR, 1966-1970 Comp., p. 949; 49 CFR 1.46 (b) and (m))

Dated: December 14, 1972.

C. R. BENDER,
Admiral, U.S. Coast Guard,
Commander.

[FR Doc.72-21817 Filed 12-20-72;8:45 am]