THE NATIONAL ARCHIVES OF THE UNITED STATES 1934

FEDERAL REGISTER

VOLUME 20 NUMBER 249

Washington, Friday, December 23, 1955

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 2—FILLING COMPETITIVE POSITIONS

PART 9—SEPARATIONS, SUSPENSIONS, AND DEMOTIONS

MISCELLANEOUS AMENDMENTS

Sections 2.101, 9.101 (b) and 9.106 (b) are amended as set out below:

§ 2.101 *Methods of filling vacancies.* In his discretion an appointing officer may fill any position in the competitive service either by competitive appointment from a civil service register or by appointment of a present or former Federal employee through noncompetitive action in accordance with the regulations in this chapter. He shall exercise his discretion in all personnel actions solely on the basis of merit and fitness. (In determining the merit and fitness of any person under this paragraph, there shall be no discrimination on the basis of his religious or political affiliations, or his marital status, physical handicap, race, color, or national origin.)

§ 9.101 *Agency responsibility for separation or demotion of employees.* * * *

(b) The discretion vested in the appointing officer to remove employees under his jurisdiction, or to take other disciplinary action, is subject only to the following restrictions:

(1) Employees in the competitive service who are not serving probationary or trial periods and who are not serving under temporary appointments, and employees having a competitive status who occupy positions in Schedule B, under other than temporary appointments, shall not be removed, suspended, or involuntarily demoted except for such cause as will promote the efficiency of the service and in accordance with the procedure prescribed in § 9.102.

(2) Discrimination shall not be exercised in removals, suspensions, or demotions because of the employee's race, religion, color, national origin, marital status, or physical handicap, or (except as may be required by law) because of his political opinions or affiliations.

(3) Like penalties shall be imposed for like offenses whenever removals, suspensions, or demotions are made, or when other disciplinary actions are taken.

§ 9.106 *Authority of Commission to investigate separations, suspensions, reassignments, or demotions.* * * *

(b) The Commission may investigate the removal, suspension, reassignment, or demotion of an employee who establishes a prima facie case that:

(1) The procedure prescribed by the Commission under § 9.102 (a) (1) has not been followed (regardless of other allegations), or

(2) The removal, suspension, reassignment, or demotion was made for political reasons, except as may be required by law, or resulted from discrimination because of marital status or physical handicap.

NOTE: Allegations of discrimination because of race, religion, color, or national origin will not be investigated under § 9.106, inasmuch as a procedure for review of such cases is provided by Executive Order 10590 and Part 401 of this title.

(3) No case will be investigated under this paragraph unless the request for such investigation is received by the Commission within ten (10) days after the effective date of separation, suspension, reassignment, or demotion. This time limit may be extended in the discretion of the Commission only upon a showing by the employee that circumstances beyond his control prevented him from filing a request for an investigation within the prescribed ten (10) days. The regulations of the Commission under section 14 of the Veterans' Preference Act of 1944 as amended (Part 22 of this chapter), relating to appeals to the Commission of preference eligibles, are applicable whenever a request is received from a preference eligible to investigate a removal, suspension for more than thirty (30) days, or demotion.

(4) The Commission has no authority to investigate a suspension or termination of employment under Public Law 733, 81st Congress, where it is alleged that the agency failed to follow the procedure prescribed in the law.

(R. S. 1753; sec. 2, 22 Stat. 403, as amended; 5 U. S. C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] WM. C. HULL,
Executive Assistant.

[F. R. Doc. 55-10287; Filed, Dec. 22, 1955; 8:47 a. m.]

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Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Federal Register Division, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U. S. C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D. C.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1.50 per month or $15.00 per year, payable in advance. The charge for individual copies (minimum 15 cents) varies in proportion to the size of the issue. Remit check or money order, made payable to the Superintendent of Documents, directly to the Government Printing Office, Washington 25, D. C.

The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended August 5, 1953. The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of books and pocket supplements vary.

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PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

DEPARTMENT OF AGRICULTURE

The following paragraphs were inadvertently omitted in the revision and republication of Part 6 which appeared in the FEDERAL REGISTER of December 15, 1955:

§ 6.311 *Department of Agriculture.*

* * *

(j) *Commodity Credit Corporation.* (1) The President.

(2) The Executive Vice President.

(3) The Secretary.

(4) One Confidential Assistant to the President.

(k) *Extension Service.* (1) Director of Extension Work.

(2) One Assistant Director.

(3) One Confidential Assistant to the Director.

(4) One Private Secretary to the Director.

(l) *Soil Conservation Service.* (1) Chief.

(2) One Deputy Chief.

(3) One Confidential Assistant to the Chief.

(4) One Private Secretary to the Chief.

(m) *Office of the Director, Agricultural Credit Services.* (1) The Director, Agricultural Credit Services.

(2) One Confidential Assistant to the Director.

(3) One Private Secretary to the Director.

(R. S. 1753, sec. 2, 22 Stat. 403; 5 U. S. C. 631, 633; E. O. 10440, March 31, 1953, 18 F. R. 1823, 3 CFR 1953 Supp.)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] WM. C. HULL,
Executive Assistant.

[F. R. Doc. 55-10289; Filed, Dec. 22, 1955; 8:47 a. m.]

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

EXPORT-IMPORT BANK OF WASHINGTON

Effective upon publication in the FEDERAL REGISTER, paragraph (h) is added to § 6.340 as set out below.

§ 6.340 *Export-Import Bank of Washington.* * * *

(h) One Special Assistant to the Board of Directors.

(R. S. 1753, sec. 2, 22 Stat. 403; 5 U. S. C. 631, 633; E. O. 10440, March 31, 1953, 18 F. R. 1823, 3 CFR 1953 Supp.)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] WM. C. HULL,
Executive Assistant.

[F. R. Doc. 55-10288; Filed, Dec. 22, 1955; 8:47 a. m.]

PART 20—RETENTION PREFERENCE REGULATIONS FOR USE IN REDUCTIONS IN FORCE

PART 35—RESTORATION OF FEDERAL EMPLOYEES AFTER ACTIVE MILITARY DUTY

MISCELLANEOUS AMENDMENTS AND REVISION OF PART

1. Sections 20.4, 20.5 and 20.6 are amended in pertinent part as set out below:

§ 20.4 *Order of selection*—(a) *Determination of competitive area.* (1) An agency may establish a general plan of competitive areas by obtaining prior approval from the central office of the Commission. Subsequent clearance with the Commission will not be required concerning competitive areas conforming to the approved general plan unless there has been a material change in the agency's organizational structure or in other factors on which the general plan was approved.

(2) In the absence of an approved general plan the normal competitive area shall be a bureau or equivalent part of an agency in the departmental service, or all of a field installation in a local commuting area, or any combination of these as may be determined by the agency.

(b) *Determination of competitive level.* Within the competitive area, the agency will determine competitive levels of positions to be affected by a reduction in force.

(c) *Determination of tenure groups.* For the purpose of determining relative retention preference in reductions in force, competing employees with performance ratings of "Satisfactory" or better shall be classified according to tenure of employment and veteran preference in groups and subgroups as follows:

(1) *Group I.* (i) In the competitive service, this group consists of career employees who have completed probation and who are not indefinite because they occupy military or defense-transfer vacancies. Career employees serving under temporary or indefinite promotions shall be considered in this group with respect to positions at and below the grade in which they last served on a permanent basis.

(ii) In positions excepted from the competitive service, this group includes all employees serving under appointments with no conditions or restrictions.

(2) *Group II.* (i) In the competitive service, this group includes career employees who are serving probationary periods, all career-conditional employees, and career employees who are "indefinite" because they occupy military or defense-transfer vacancies.

(ii) In positions excepted from the competitive service, it includes employees who are conditional solely because they occupy military or defense-transfer vacancies, or whose tenure is otherwise conditioned without specific time limitation.

(3) *Group III.* In the competitive service, this group includes indefinite employees, employees serving under temporary appointments pending establishment of registers, and employees serving under other nonstatus nontemporary appointments.

(4) *Subgroups.* Within each tenure group, employees entitled to veteran preference are in subgroup "A" and others are in subgroup "B"

(i) Employees in subgroup "A" of tenure Group I or II who are entitled to be retained for one year after exercising their restoration rights under section 9 of the Universal Military Training and Service Act of 1951, as amended, shall be given priority in retention over other employees in subgroup "A" until the expiration of the one-year period.

(ii) Employees in subgroup "B" of tenure Group I or II who are entitled to be retained for six (6) months after exercise of restoration rights under subsection 262 (f) of the Reserve Forces Act of 1955 shall be given priority in retention over other employees in subgroup "B" until the expiration of the six-month period.

(d) *Retention register*—(1) *Compilation.* When two or more competing employees are in a competitive level which is to be affected by a reduction in force, the retention records of such employees shall be brought up to date and a retention register shall be compiled. All employees in positions in the particular competitive level, whether in duty, leave, or furlough status, excluding only those absent on active military duty with reemployment rights, shall be entered on the register in the order of tenure groups and subgroups, and according to retention credits in any subgroup when there are two or more. One (1) retention credit shall be given for each full year of Federal Government service, and four (4) retention credits shall be given for an "outstanding" performance rating. Two (2) retention credits shall be given for a rating representing a level of performance between "Satisfactory" and "Outstanding" where the agency's performance rating plan provides for a fourth performance rating level. If any employees serving under temporary appointments specifically limited to one (1) year or less are assigned to positions in the competitive level, their names and the expiration dates of their appointments shall be entered below the space provided for employees in tenure groups on the register. Likewise, if there are any employees serving in positions in the competitive level under any kind of appointments, with current official performance ratings of "Unsatisfactory," their names shall be entered on the register below the names of temporary employees.

(2) *Separation of registers.* Separate registers shall be compiled to show the distinctions between competitive levels representing positions in the competitive service; excepted from the competitive service; and those filled on a seasonal, when-actually-employed (WAE), or part-time basis.

(3) *Availability for inspection.* Employees notified of proposed adverse action in a reduction in force shall have an opportunity to examine retention registers and other records which have a bearing on the actions in their cases. All registers and records shall be open for inspection by representatives of the Commission.

(e) *Sequence of selection.* With respect to each competitive level, action must be taken to remove all employees with official "Unsatisfactory" performance ratings, and all employees serving under temporary appointments specifically limited to one (1) year or less from positions affected by a reduction in force before any competing employee, in any tenure group, is reached for action. Thereafter, selections for action must be made in order from the bottom to the top of the register. Half years of service will be used in breaking ties in retention standing, but any ties still remaining will be decided administratively.

§ 20.5 *Actions*—(a) *In general.* Employees who cannot be retained in their positions because of a reduction in force will be changed to positions that will last as long as three (3) months, separated, or furloughed.

(b) *Employees in positions in the competitive service.* (1) No employee may be separated, furloughed for more than thirty (30) days, or reduced in pay or grade in a reduction in force while a competing employee with lower retention standing and without a statutory retention right is retained in the same competitive level.

(2) No employee in any subgroup of tenure group I or II who is willing to accept a reasonable change in position may be separated, furloughed for more than thirty (30) days, or subjected to greater reduction in pay than necessary under such reasonable change in position, (i) if he is qualified for a position

which will last as long as three (3) months in another competitive level in his present competitive area in which an employee with lower subgroup standing is retained, or (ii) if he is qualified to go back to a position which will last as long as three (3) months from which he was promoted (or to an essentially identical position) in his present competitive area in which an employee with lower retention standing and without a statutory retention right is retained.

* * * * *

§ 20.6 *Notice to employees.* * * *

(e) *Employee with statutory retention rights.* Notices to employees in positions in which they have statutory retention rights as the result of restoration after military training or service shall show effective dates on or after the expiration of such rights.

* * * * *

(Secs. 11, 19, 58 Stat. 390, 391; 5 U. S. C. 860, 868)

2. Part 35 is revised and amended as set out below:

PART 35—RESTORATION OF FEDERAL EMPLOYEES AFTER ACTIVE MILITARY DUTY

Subpart A—Statutory Restoration of Nontemporary Employees

Sec.
35.1 Employees covered.
35.2 Agency action at time employee leaves.
35.3 Agency action while employee is absent.
35.4 Requirements for restoration.
35.5 Agency action at time employee returns.
35.6 Appeals to the Commission.
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Subpart B—Regulatory Restoration of Indefinite Employees

35.51 Employees covered.
35.52 Agency action at time employee leaves.
35.53 Agency action while employee is absent.
35.54 Requirements for restoration.
35.55 Agency action at time employee returns.
35.56 Appeals to the Commission.
35.57 Commission action on appeal.

SUBPART A—STATUTORY RESTORATION OF NONTEMPORARY EMPLOYEES

AUTHORITY: §§ 35.1 to 35.7 issued under sec. 9, 62 Stat. 614, 50 U. S. C. App. 459. Interpret or apply sec. 262, 69 Stat. 602.

§ 35.1 *Employees covered.* (a) The regulations in this subpart shall apply to any employee in the following groups who leaves a position in the Federal Government or the District of Columbia Government to enter on active military duty:

(1) Career and career-conditional employees in the competitive service;

(2) Nontemporary employees in the excepted service of the Executive branch of the Federal Government or in the District of Columbia Government; or

(3) Nontemporary employees of the legislative branch of the Federal Government who cannot be restored in the legislative branch and who are eligible to acquire a competitive status under section 2 (b) of the Act of November 6, 1940 (54 Stat. 1212)

(b) (1) "Active military service," as used in this subpart, means active duty in full pay status in the armed forces of the United States entered upon subsequent to June 24, 1948.

(2) "Active military duty," as used in this subpart, means (i) active military service or (ii) an initial period of active duty for training in the armed forces in accordance with section 262 of the Reserve Forces Act of 1955 (69 Stat. 600)

§ 35.2 *Agency action at time employee leaves*—(a) *Military furlough or separation*—(1) *Recording of action.* Each employee entering on active military duty shall be furloughed or separated at the option of the agency. At the time he returns to civilian duty the employee shall be considered as having been on military furlough and shall be entitled to all the benefits provided by law or the regulations in this subpart.

(2) *Job identity requirements.* The agency concerned shall positively identify the position the employee is leaving.

(b) *Leave of absence*—(1) *For active military duty.* Agencies shall grant leave of absence to an employee for the purpose of entering, or determining physical fitness to enter, on active military duty as defined in § 35.1 (b) Upon application within thirty (30) days after rejection for active duty, the employee shall be returned to his position without reduction in seniority, status, or pay, except as such reduction may be made for all employees similarly situated.

(2) *For other training duty.* Agencies shall also grant leave of absence to an employee for the performance of other training duty in the Armed Forces of the United States. Upon application within thirty (30) days after release from training duty, the employee shall be returned to his position without reduction in seniority, status, or pay, except as such reduction may be made for all employees similarly situated.

§ 35.3 *Agency action while employee is absent*—(a) *Regradings.* If the employee's position is regraded upward during his absence, personnel action shall be taken placing him in the regraded position unless it is clearly shown that he is not qualified for the position. If the position is regraded downward during his absence, no personnel action shall be taken until he returns and is restored. At that time the downgrading of an employee with veteran preference shall be processed under section 14 of the Veterans' Preference Act of 1944, as amended.

(b) *Promotions.* An employee absent on active military duty shall be given the same consideration for promotion as employees who are serving in the agency at that time. He shall be considered for any and all promotions for which he would normally have been considered had he not been absent on military duty. Agencies shall be held responsible for maintaining adequate records to assure such consideration during the time he is absent. Any such promotion shall be effected as of the date it would have been made notwithstanding the absence for military duty.

(c) *Reorganizations.* In the event of any reorganization within an agency which affects the position of any employee absent on military duty, the agency shall be responsible for determining the position of comparable grade to which the employee shall be assigned and for recording the same on official records.

(d) *Abolition of the agency or transfer of functions.* If any functions of any agency are transferred to another agency or a successor agency, the employee absent on military duty may be reassigned to another position of comparable grade in his agency. If this is not done, the head of the agency to to which the functions are transferred shall be responsible for taking official action transferring the employee to its rolls. If an agency is abolished and its functions are not transferred to any other agency, it shall be the responsibility of the agency being abolished to furnish to the Commisison a list of all employees absent on active military duty and to note the official personnel folders accordingly. This list shall include, in addition to the names of the employees, the employee's date of birth, position, grade, and salary, and the organizational unit of the agency in which he was employed.

§ 35.4 *Requirements for restoration*—(a) *After active military service.* Any employee covered by the regulations in this subpart who is inducted, enlists, or is ordered or called into the armed forces of the United States for active service after June 24, 1948, is entitled to restoration if he:

(1) Serves not more than four (4) years (exclusive of any additional service imposed according to law),

(2) Receives a certificate of Satisfactory Completion of Training and Service;

(3) Makes application for restoration within ninety (90) days after discharge or after hospitalization continuing after discharge for not more than one (1) year; and

(4) Is qualified to perform the duties of the position.

(b) *After active duty for training.* Any employee covered by the regulations in this subpart who enters on an initial period of active duty for training in the armed forces of the United States pursuant to clause (1) of subsection 262 (c) of the Reserve Forces Act of 1955 (69 Stat. 600) shall be entitled to restoration if he:

(1) Satisfactorily completes such period of active duty for training;

(2) Applies for restoration within sixty (60) days after his release from such required period of active duty for training or after his discharge from hospitalization incident to such duty continuing for not more than six (6) months after such release; and

(3) Is qualified to perform the duties of the position.

§ 35.5 *Agency action at time employee returns*—(a) *Time limit for restoration.* Restoration shall be made as soon as possible, and in no event later than thirty (30) days after the employee's application is received in the agency

(b) *Position to which restored.* Employees shall be restored to employment

in the following order, unless the position is occupied by an employee with greater retention preference:

(1) To the position to which promoted while in the miltary service;

(2) To a position of like seniority, status, and pay·

(3) To the next best available position for which he is qualified.

(c) *Employees with reemployment rights after transfer* Any employee who cannot be restored to his latest grade or level in the agency he left to enter active military duty may exercise his reemployment rights in the agency in which he has such rights in accordance with Part 10 of this chapter.

(d) *Physical qualifications.* A returning employee who is not qualified to perform the duties of the position to which he is entitled to be restored, because of disability sustained during active military duty, but who is qualified to perform the duties of any other position in the agency, shall be restored to such other position in such a way as to provide him like seniority, status, and pay, or the nearest approximation thereof consistent with the circumstances in his case.

(e) *Conflicting rights.* In case two (2) or more employees are entitled to be restored to the same position, the employee who left such position first shall have the prior right to be restored thereto. The second employee shall be assigned to a position of like seniority, status, and pay for which he is qualified, if there is such a position not occupied by an employee with equal or greater retention preference. If such an assignment is impossible, the second employee shall be offered restoration to the next best available position for which he is qualified.

(f) *Notice of right to appeal.* When an agency refuses to restore or determines that it is not feasible to restore an employee as provided under this subpart, the agency shall notify the employee in writing to this effect and of his right to appeal to the Commission. A copy of the notice shall be forwarded to the Commission.

§ 35.6 *Appeals to the Commission*—(a) *Executive branch and District of Columbia employees.* An employee may appeal to the Commission to establish his rights to restoration as follows:

(1) *Former agency not in existence.* If the agency in which he was employed is no longer in existence and its functions have not been transferred to another agency, appeal may be filed not later than ten (10) days after expiration of the period specified in § 35.4 for apply for restoration.

(2) *Not feasible to restore.* Appeal from the decision of an agency that it is not feasible for him to be restored to employment may be filed not later than ten (10) days after receipt of notice from the agency.

(3) *Failure of restoration.* If the agency fails to restore him within thirty (30) days after receipt of his application, appeal may be filed not later than ten (10) days after expiration of this thirty-day period.

(4) *Refusal of restoration.* If the agency refuses to restore him to employment, appeal may be filed not later than ten (10) days after receipt of notice from the agency.

(5) *Improper restoration.* If the agency has improperly restored him to employment, appeal may be filed not later than ten (10) days after such improper restoration.

(6) *Delayed appeals.* An appeal filed after expiration of the ten-day filing period may be accepted in the discretion of the Commission when the employee shows good cause for not filing within that period.

(b) *Legislative employees.* An employee of the legislative branch of the Government who is eligible to acquire a competitive status under section 2 (b) of the Act of November 26, 1940 (54 Stat. 1212), may file an appeal with the Commission when it is not possible for him to be restored in the legislative branch. The appeal must be filed not later than ten (10) days after expiration of the period specified in § 35.4 for applying for restoration.

§ 35.7 *Commission action on appeal*—(a) *Agency not in existence or not feasible to restore.* When the Commission finds that the employee cannot be restored because the agency is no longer in existence and its functions have not been transferred, or that it is not feasible for the employee to be restored, it shall determine whether there is a position in any other agency in the executive branch of the Government or the government of the District of Columbia for which the employee is qualified and which is vacant or held by a temporary employee. When it is so determined, the employee shall be restored to such position as directed by the Commission.

(b) *Legislative employees.* When the Commission finds that the employee is eligible to acquire a competitive status in accordance with section 2 (b) of the Act of November 26, 1940 (54 Stat. 1212) it shall determine whether there is a position in any agency for which the employee is qualified and which is vacant or held by a temporary employee. When it is so determined, he shall be restored to such position as directed by the Commission.

(c) *Failure or refusal to restore.* When the Commission finds that an employee has not been restored in accordance with the regulations in this subpart, or that an agency has failed or refused to restore an employee in accordance with paragraph (a) or (b) of this section, it shall issue an order specifically requiring such agency of the Government or the government of the District of Columbia to restore the employee and to compensate him for any loss of salary suffered by reason of refusal or failure to comply with the regulations in this subpart. Such compensation shall be less any amount received by him through other employment, unemployment compensation, or readjustment allowances. An affidavit of the employee, subject to verification of any amounts claimed to have been received, shall be required for the employing agency to determine the compensation due.

SUBPART B—REGULATORY RESTORATION OF INDEFINITE EMPLOYEES

AUTHORITY: §§ 35.51 to 35.57 issued under R. S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U. S. C. 631, 633.

§ 35.51 *Employees covered.* (a) The regulations in this subpart shall apply to any employee who leaves a position in the competitive service while serving under indefinite appointment (not limited to one year or less) and enters on active military duty, including any such employee who has been given reemployment rights under Part 10 (or former Part 8) of this chapter.

(b) (1) "Active military service," as used in this subpart, means active duty in full pay status in the armed forces of the United States entered upon subsequent to June 24, 1948.

(2) "Active military duty," as used in this subpart, means (i) active military service or (ii) an initial period of active duty for training in the armed forces in accordance with section 262 of the Reserve Forces Act of 1955 (69 Stat. 600)

§ 35.52 *Agency action at time employee leaves*—(a) *Military furlough or separation*—(1) *Recording of action.* Each employee entering on active military duty shall be furloughed or separated at the option of the agency. At the time he returns to duty the employee shall be considered as having been on military furlough and shall be entitled to all the benefits provided by the regulations in this subpart.

(2) *Job identity requirements.* The agency concerned shall positively identify the position the employee is leaving.

(b) *Leave of absence*—(1) *For active military duty.* Agencies shall grant leave of absence to an employee for the purpose of entering, or determining physical fitness to enter, on active military duty as defined in § 35.1 (b) Upon application within thirty (30) days after rejection for active duty, the employee shall be returned to his position without reduction in seniority, status, or pay, except as such reduction may be made for all employees similarly situated.

(2) *For other training duty.* Agencies shall also grant leave of absence to an employee for the performance of other training duty in the armed forces of the United States. Upon application within thirty (30) days after release from training duty, the employee shall be returned to his position without reduction in seniority, status, or pay, except as such reduction may be made for all employees similarly situated.

§ 35.53 *Agency action while employee is absent*—(a) *Regradings.* If the employee's position is regraded upward during his absence, personnel action shall be taken placing him in the regraded position unless it is clearly shown that he is not qualified for the position. If the position is regraded downward during his absence, no personnel action shall be taken until he returns and is restored. At that time the downgrading of an employee with veteran preference must be processed under section 14 of the Veterans' Preference Act of 1944, as amended.

(b) *Promotions.* An employee absent on active military duty may be given the same consideration for promotion as employees who are serving in the agency at that time. He may be considered for any and all promotions for which he would normally have been considered had he not been absent on military duty.

(c) *Transfer of functions.* If any functions of any agency are transferred to another agency or successor agency, the employee absent on military duty may be reassigned to another position of comparable grade in his agency. If this is not done, the head of the agency to which the functions are transferred shall be responsible for taking official action transferring the employee to its rolls.

§ 35.54 *Requirements for restoration*—(a) *After active military service.* Any employee covered by the regulations in this subpart who is inducted, enlists, or is ordered or called into the armed forces of the United States for active service after June 24, 1948, is entitled to restoration if he:

(1) Serves not more than four (4) years (exclusive of any additional service imposed according to law)

(2) Receives a certificate of Satisfactory Completion of Training and Service;

(3) Makes application for restoration within ninety (90) days after discharge or after hospitalization continuing after discharge for not more than one (1) year; and

(4) Is qualified to perform the duties of the position.

(b) *After active duty for training.* Any employee covered by the regulations in this subpart who enters on an initial period of active duty for training in the armed forces of the United States pursuant to clause (1) of subsection 262 (c) of the Reserve Forces Act of 1955 (69 Stat. 600) shall be entitled to restoration if he:

(1) Satisfactorily completes such period of active duty for training;

(2) Applies for restoration within sixty (60) days after his release from such required period of active duty for training or after his discharge from hospitalization incident to such duty continuing for not more than six (6) months after such release; and

(3) Is qualified to perform the duties of the position.

§ 35.55 *Agency action at time employee returns*—(a) *Time limit for restoration.* Restoration shall be made as soon as possible, and in no event later than thirty (30) days after the employee's application is received in the agency.

(b) *Position to which restored.* The employee shall be restored to the position indicated below or to one of like seniority, status, and pay, unless such position is occupied by an employee with greater retention preference:

(1) To the position to which promoted while in the military service;

(2) To the position in which he was serving at the time he entered military service;

(3) To the next best available position for which he is qualified.

(c) *Employees with reemployment rights after transfer* If an employee is unable to be restored at an appropriate grade or level in the agency he left to enter active military duty, he may exercise his reemployment rights in the agency in which he has such rights in accordance with Part 10 of this chapter.

(d) *Physical qualifications.* A returning employee who is not qualified to perform the duties of the position to which he is entitled to be restored, because of disability sustained during active military duty, but who is qualified to perform the duties of any other position in the agency, shall be restored to such other position in such a way as to provide him like seniority, status, and pay, or the nearest approximation thereof consistent with the circumstances in his case.

(e) *Conflicting rights.* In case two (2) or more employees are entitled to be restored to the same position, the employee who would have greater retention preference shall have the prior right to be restored thereto. The second employee shall be assigned to a position of like seniority, status, and pay for which he is qualified. If such assignment is impossible, the second employee shall be offered restoration to the next best available position. In neither case may an employee be restored to a position occupied by an employee with greater retention preference.

(f) *Geographical area.* The right of restoration of an employee shall be restricted to the geographical area in which the installation in which he was formerly employed is located.

(g) *Effect of restoration.* Restoration of an employee shall not cause his employment to extend beyond the date it would otherwise be terminated.

(h) *Notice of right to appeal.* When an agency refuses to restore or determines that it is not feasible to restore an employee as provided in this subpart, the agency shall notify the employee in writing to this effect and of his right to appeal to the Commission. A copy of the notice shall be forwarded to the Commission.

§ 35.56 *Appeals to the Commission.* An employee may appeal to the Commission to establish his rights to restoration as follows:

(a) *Not feasible to restore.* Appeal from the decision of an agency that it is not feasible for him to be restored to employment may be filed not later than ten (10) days after receipt of notice from the agency.

(b) *Failure of restoration.* If the agency fails to restore him within thirty (30) days after receipt of his application, appeal may be filed not later than ten (10) days after expiration of this thirty-day period.

(c) *Refusal of restoration.* If the agency refuses to restore him to employment, appeal may be filed not later than ten (10) days after receipt of notice from the agency.

(d) *Improper restoration.* If the agency has improperly restored him to employment, appeal may be filed not later than ten (10) days after such improper restoration.

(e) *Delayed appeals.* An appeal filed after expiration of the ten (10) day filing period may be accepted in the discretion of the Commission when the employee shows good cause for not filing within that period.

§ 35.57 *Commission action on appeal.* When the Commission finds that an employee has not been restored in accordance with the regulations in this subpart, it shall notify and require the agency concerned to restore the employee.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] WM. C. HULL,
Executive Assistant.

[F. R. Doc. 55-10290; Filed, Dec. 22, 1955; 8:47 a. m.]

TITLE 21—FOOD AND DRUGS

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

PART 3—STATEMENTS OF GENERAL POLICY OR INTERPRETATION

PESTICIDE CHEMICALS; FURTHER EXTENDED DATES ON WHICH STATUTE SHALL BECOME FULLY EFFECTIVE

Requests have been received for extension of the date on which the pesticide chemicals amendment (68 Stat. 511 et seq., 21 U. S. C. 342, 346a) shall become fully effective. McLaughlin Gormley King Company has requested extension for MGK 264 (also known as *N*-oxtylbicyclo (2,2,1)-5-heptene-2,3-dicarboximide) for use in fly sprays. S. B. Penick and Company has requested extension for Sulfoxide (also known as *N*-oxtyl sulfoxide of isosafrole) for use in fly sprays.

These uses are considered nonseasonal. The requested extensions are necessary. Therefore the following order is issued pursuant to sections 402 (a) (2) and 408, 68 Stat. 511, 517 (ch. 559, secs. 2, 5), 21 U. S. C. 342 and note 1 under section 342; 346a, and under authority delegated to the Commissioner of Food and Drugs by the Secretary of Health, Education, and Welfare (20 F R. 1996)

Section 3.44 *Pesticide chemicals; further extended dates on which statute shall become fully effective,* published in the FEDERAL REGISTER of December 20, 1955 (20 F R. 9553) is amended in paragraph (a) (2) by inserting the following items in proper alphabetical order.

MGK 264: In fly sprays.
Sulfoxide: In fly sprays.

(Sec. 701, 52 Stat. 1055; 21 U. S. C. 371. Interprets or applies secs. 402, 408, 68 Stat. 511; 21 U. S. C. 342, 346a)

Dated: December 16, 1955.

[SEAL] GEO. P LARRICK,
Commissioner of Food and Drugs.

[F. R. Doc. 55-10297; Filed, Dec. 22, 1955; 8:48 a. m.]

TITLE 14—CIVIL AVIATION

Chapter II—Civil Aeronautics Administration, Department of Commerce

[Amdt 175]

PART 609—STANDARD INSTRUMENT APPROACH PROCEDURES

PROCEDURE ALTERATIONS

The standard instrument approach procedure alterations appearing hereinafter are adopted to become effective when indicated in order to promote safety Compliance with the notice, procedures, and effective date provisions of section 4 of the Administrative Procedure Act would be impracticable and contrary to the public interest, and therefore is not required

Part 609 is amended as follows:

NOTE: Where the general classification (LFR VAR, ADF ILS, GCA, or VOR) location and procedure number (if any) of any procedure in the amendments which follow, are identical with an existing procedure, that procedure is to be substituted for the existing one as of the effective date given, to the extent that it differs from the existing procedure; where a procedure is canceled, the existing procedure is revoked; new procedures are to be placed in appropriate alphabetical sequence within the section amended

1 The low frequency range procedures prescribed in § 609 6 are amended to read in part:

LFR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, and courses are magnetic. Distances are in statute miles unless otherwise indicated. Elevations and altitudes are in feet, MSL. Ceilings are in feet above airport elevation.

If an LFR instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure authorized by the Administrator for Civil Aeronautics for such airport Initial approaches shall be made over specified routes Minimum altitude(s) shall correspond with those established for en route operation in the particular area or as set forth below

City and State; airport name, elevation; facility; class and identification; procedure No; effective date	Initial approach to facility from—	Course and distance	Minimum altitude (ft)	Procedure turn (—) side of final approach course (outbound and inbound); altitudes; limiting distances	Minimum altitude over facility on final approach course (ft)	Course and distance, facility to airport	Ceiling and visibility minimums: Condition	Ceiling and visibility minimums: Type aircraft: 75 m. p. h or less	Ceiling and visibility minimums: Type aircraft: More than 75 m p h	If visual contact not established at authorized landing minimums after passing facility within distance specified or if landing not accomplished
1	2	3	4	5	6	7	8	9	10	11
BETTLES, ALASKA. Bettles Airport, 663'. SBRAZ-VPD-BTT. Procedure No. 1 Amendment No 4. Effective date: January 21, 1956. Supersedes Amendment M-3, dated March 31, 1954. Major changes: (1) New format; (2) departure procedure deleted; (3) runway headings corrected; (4) air carrier note added	Shuttle—SE course: 123° outbound. 303° inbound. 4 000' within 25 miles.			W side of SE course: 123° outbound 303° inbound. 2,000' within 10 miles. Not authorized beyond 10 miles.	1,000	003—1.4	2 engines or less			Within 1.4 miles, turn left immediately, climb to 4,000' on SE course (123°) Bettles LFR within 25 miles. *Takeoff runway 1, N, 600-2 day and 1 night. Right turn after takeoff runway 1 not authorized. CAUTION: 1,000 terrain 2 miles NNE 2,000' hills 5 miles E, 3,000' hills 7 miles E, 2,000 hills 9 miles W. of airport. AIR CARRIER NOTE: Sliding scale not applicable.
							*T-dn	800-1	800-1	
							C-dn	700-1½	700-1½	
							A-dn	1,000-3	1,000-3	
							More than 2 engines			
							*T-dn	--	800-1	
							C-dn	-- --	700-2	
							A-dn	- - -	1,000-3	
DAVENPORT, IOWA Davenport Municipal, 763' SBRAZ DTV-ML I Procedure No. 1 Amendment No 2. Effective date: January 21, 1956. Supersedes No 1, dated June 10, 1954 Major changes: (1) column 5 reduces procedure turn area from 25 to 10 miles; (2) columns 7 and 11 distances revised to agree with O&G	Moline VOR	203—21 5	2,000	S side of W course: 265° outbound 085° inbound. 2 000' within 10 miles	1 000	040—2.6	2 engines or less			Within 2.6 miles, climb to 2 000' on E course ML I LFR. CAUTION: Official weather information indicating conditions at Davenport are at or above minimums specified must be obtained prior to the time a letdown is started
							T-dn	800-1	800-1	
							S-dn	400-1	400-1	
							C-dn	400 1	400-1	
							A-dn	800-2	800-2	
							More than 2 engines			
							T-dn		800-1½	
							S-dn	-- -	600-1½	
							C-dn	--- -	400 1½	
							A-dn	800-2	800-2	

2 The automatic direction finding procedures prescribed in § 609 8 are amended to read in part:

ADF STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, and courses are magnetic. Distances are in statute miles unless otherwise indicated Elevations and altitudes are in feet, MSL. Ceilings are in feet above airport elevation.
If an ADF instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure authorized by the Administrator for Civil Aeronautics for such airport Initial approaches shall be made over specified routes Minimum altitude(s) shall correspond with those established for en route operation in the particular area or as set forth below

City and State; airport name, elevation; facility: class and identification; procedure No; effective date	Initial approach to facility from—	Course and distance	Minimum altitude (ft)	Procedure turn (—) side of final approach course (outbound and inbound); altitudes; limiting distances	Minimum altitude over facility on final approach course (ft)	Course and distance, facility to airport	Ceiling and visibility minimums: Condition	Type aircraft: 75 m. p. h or less	Type aircraft: More than 75 m p h	If visual contact not established at authorized landing minimums after passing facility within distance specified or if landing not accomplished
1	2	3	4	5	6	7	8	9	10	11
MANSFIELD, OHIO Mansfield, 1,296' BMH-MFD. Procedure No. 1 Amendment No. 6. Effective date, January 21, 1956 Supersedes Amendment 5 dated May 15 1954. Major changes: Reduction in circling minimums Restriction in missed approach	Intersection NE course Columbus LFR and 310° bearing to Mansfield BMH	310—3 0	2,500	W side of course: 310° outbound. 130 inbound. 2 500' within 10 miles	1,900	On airport	T-dn C-dn A-dn	300-1 600-1 800-2	200-½ 600-1½ 800-2	Within 0 mile, climb to 2,500 on course of 130° within 10 miles of Mansfield BMH.
	Mansfield VOR	312—6 7	2,500							

3 The very high frequency omnirange procedures prescribed in § 609 9 (a) are amended to read in part:

VOR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, and courses are magnetic. Distances are in statute miles unless otherwise indicated. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation.
If a VOR instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure authorized by the Administrator for Civil Aeronautics for such airport Initial approaches shall be made over specified routes Minimum altitude(s) shall correspond with those established for en route operation in the particular area or as set forth below

City and State; airport name, elevation; facility: class and identification; procedure No; effective date	Initial approach to facility from—	Course and distance	Minimum altitude (ft)	Procedure turn (—) side of final approach course (outbound and inbound); altitudes; limiting distances	Minimum altitude over facility on final approach course (ft)	Course and distance, facility to airport	Ceiling and visibility minimums: Condition	Type aircraft: 75 m. p. h or less	Type aircraft: More than 75 m p h	If visual contact not established at authorized landing minimums after passing facility within distance specified, or if landing not accomplished
1	2	3	4	5	6	7	8	9	10	11
ANDERSON, S C Anderson, 783' BVOR-DME-RYN Procedure No. 1. Amendment: Original. Effective date: January 21 1956.	RYN VOR to 10 nautical miles DME Fix on R-067	067—10 nautical miles	#2 000	S side R-067 within 15 nautical miles of RYN VOR 2,000'.# (Procedure turn is between VOR and airport and is not required with DME)	After passing 15 nautical mile fix on R-067 1,200' (#)	From 15 nautical mile fix to runway 5 067° 6 nautical cal miles	2 engines or less# T-dn C-dn S-dn 5 A-dn	300-1 500-1 400-1 800-2	300-1 500-1 400-1 800-2	Within 21 nautical miles, turn left and climb on course 247° to 2 000'# before reaching RYN VOR. #Without DME, landing minimums are 1,500' ceiling (do not descend below 2 300' mean sea level)
	From 10 nautical miles DME Fix on R-67 to 15 nautical mile fix on R-67.	067—5 nautical miles	#1 500				More than 2 engines T-dn C-dn S-dn 5 A-dn	--- -	300-1 500-1½ 400-1 800-2	
	From 15 nautical miles DME Fix on R-67 to 21 nautical mile fix on R-067 (final)	067—6 nautical miles	#1 200			From VOR to runway 5 067° 21 nautical miles #				
ASHEVILLE, N C. Asheville Hendersonville 2,090'. VORW-AVL Procedure No. 1 Amendment No 2. Effective date: January 21 1956. Supersedes Amendment 1 dated November 12, 1955. Major change: Add note.	Asheville Radiobeacon	100—11	6,000	N side of course: 100° outbound. 280° inbound. 5 000' within 10 miles.	4,500	280—11.0	2 engines or less T-d C-d A-d	2,000-1 2,000-2 2,000-2	2,000-1 2,000-2 2,000-2	Within 11 miles turn left climb SE to 6,000' on radial 310° of the Spartanburg VOR within 25 miles. Night operation no authorized. AIR CARRIER NOTES: No reduction in landing minima below 1½ miles, and no reduction in takeoff minima authorized.
							More than 2 engines Not authorized.			

VOR STANDARD INSTRUMENT APPROACH PROCEDURE—Continued

City and State; airport name, elevation; facility; class and identification; procedure No; effective date	Initial approach to facility from—	Course and distance	Minimum altitude (ft)	Procedure turn (—) side of final approach course (outbound and inbound); altitudes; limiting distances	Minimum altitude over facility on final approach course (ft)	Course and distance, facility to airport	Ceiling and visibility minimums: Condition	Typo aircraft: 75 m. p. h or less	Typo aircraft: More than 75 m p h	If visual contact not established at authorized landing minimums after passing facility within distance specified or if landing not accomplished
1	2	3	4	5	6	7	8	9	10	11
LOUISVILLE, KY. Standiford Field 497' BVOR-LOU. Procedure No. 1 Amendment No 2. Effective date: January 21, 1956. Supersedes Amendment 1, dated January 22, 1955. Major changes: Missed approach revised	Louisville LFR	160—0	2,000	N side of course: 120° outbound 300° inbound. 2 000' within 10 miles	1,500	300—0 7	2 engines or less T-dn C-dn S-dn 29 A-dn	300-1 600-2 600-1½ 800-2	300-1 600-2 600-1½ 800-2	Within 9.7 miles, climb to 2,500 on 300° radial within 10 miles. Alternate missed approach, when requested by ATC, make a right climbing turn return to VOR at 2 000'
	Clermont Intersection	347—21	2,000				More than 2 engines T-dn C-dn S-dn 29 A-dn		200-½ 600-2 600 1½ 800-2	
	Bourbon Intersection	008—16	2,000							
MANSFIELD, OHIO Mansfield, 1,296'. BVOR-VDT-MFD Procedure No. 1 Amendment No 2. Effective date: January 21, 1956. Supersedes Amendment 1, dated April 22 1954. Major changes: Reduction in circling minimums. Revised missed approach procedure	--		----	N side of course: 134° outbound. 314° inbound. 2 500' within 10 miles	2,000	314-6.6	2 engines or less T-dn C-dn S-dn 32 A-dn	300-1 500-1 500-1 800-2	300-1 500-1 500-1 800-2	Within 6.6 miles, climb to 2,500' within 10 miles on Mansfield VOR on radial 314 NOTE: 1 485' tower SE of airport
							More than 2 engines T-dn C-dn S-dh 32 A-dn	-- - - - --	200-½ 500-1½ 500 1 800-2	
SPRINGFIELD, ILL Capital, 595'. BVOR-DTV-DME-SPI. Procedure No. 1. Amendment No 3. Effective date: January 21, 1956. Supersedes No 2, dated June 10, 1954. Major changes: (1) Column 5, distance revised to 10 miles (criteria); (2) Column 7, distance revised to agree with C&GS; (3) New format on minimums; (4) column 11 revised; (5) adds DME note	Springfield LFR	030—8.7 nautical miles	2,000	N side of course: 035° outbound. 216° inbound. 1,900' within 10 nautical miles.∅	1,400	216—3 2 nautical miles	2 engines or less T-dn C-dn S-dn 22 A-dn	300-1 400-1 400-1 800-2	300-1 400-1 400-1 800-2	Within 3.2 nautical miles climb to 2 000' on radial 216° within 25 nautical miles. ∅NOTE: When authorized by ATC, DME may be used within 15 nautical miles at 2,000' orbiting altitude to position aircraft for final approach with the elimination of a procedure turn.
							More than 2 engines T-dn C-dn S-dn 22 A-dn	---- -- --- ----------	200-½ 500-1½ 400-1 800-2	
SPRINGFIELD, ILL Capital, 595'. BVOR-DTV-DME-SPI. Procedure No 2. Amendment Original. Effective date: January 1956. Major changes: Establishes back course approach.	Springfield LFR	030—8.7 nautical miles	2,000	S side of course: 035° outbound. 216° inbound 2 000' within 15 miles.∅	After passing 15 nautical miles DME Fix 1,500⊙	216—4.3 nautical miles	2 engines or less T-dn ⊙C-dn ⊙S-dn 4 ⊙A-dn	300-1 400-1 400-1 800-2	300-1 400-1 400-1 800-2	DME: At 4.3 nautical miles DME Fix, climb to 2 000' and hold at SPI VOR on radial 216° No DME: At 0 mile climb to 2 000 on course 036° within 10 miles, return to SPI VOR and hold on radial 216°. ⊙Minimums are 800-2 and altitude is 1 [illegible] mean sea level with no DME ∅NOTE: When authorized by ATC, DME may be used within 15 nautical miles at 2,000 orbiting altitude to position aircraft for final approach with the elimination of a procedure turn
	From 15 nautical miles DME Fix to 8 nautical miles DME Fix (final)	030—7 nautical miles	⊙1,000		After passing 8 nautical miles DME Fix 1 000⊙		More than 2 engines T-dn ⊙C-dn ⊙S-dn 4 ⊙A-dn		200-½ 500-1½ 400-1 800-2	
	From 8 nautical miles DME Fix to 4.3 nautical miles DME Fix (final to runway 3)	030—3.7 nautical miles	⊙1 000							
WACO, TEX. Municipal, 515' BVOR-DME-ACT Procedure No 2. Amendment: Original. Effective date: January 21, 1956	DME orbit from radial 187° E to radial 139° at 12 nautl miles		2 000	E side of course: 139° outbound 319° inbound 2,000' within 10 nautical miles.	1,500 over 7 nautical mile fix* on radial 139	139—3.5 nautical miles VOR to airport	2 engines or less⊙ T-dn C-dn ∅S-dn 32 A-dn	300-1 400-1 400 1 800-2	300-1 400-1 400 1 800-2	At 4 nautical mile fix*, climb to 2,000' on radial 319° within 20 nautical miles. No DME: Within 0 mile (over VOR) ⊙climb to 2,000' on radial 319° within 20 nautical miles *DME Fix. ∅570 feet per minute descent required at 120 miles per hour. ⊙Landing ceiling minimums without DME are 1,000' (1,500' mean sea level)
	From 12 nautical miles fix* on radial 139° to 7 nautical mile fix* on radial 139° (final)	310—5 nautical miles	1,500		If no DME 1,500 over VOR	310—3 nautical miles from 7 nautical mile fix* to runway 34	More than 2 engines⊙ T-dn C-dn ∅S-dn 32 A-dn		200-½ 500 1½ 400 1 800 2	
	From 7 nautical miles fix* on radial 139° to 4 nautical mile fix* on radial 139° (final to runway 32)	310—3 nautical miles	⊙900							

4 The very high frequency omnirange procedures prescribed in § 609 9 (c) are amended to read in part:

VOR/DME STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses, and radials are magnetic Elevations and altitude are in feet MSL.
If a VOR/DME instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure authorized by the Administrator of Civil Aeronautics for such airport Initial approaches shall be made over specific routes Minimum altitude(s) shall correspond with those established for enroute operation in the particular area or as set forth below.
NOTE: Distances are in nautical miles unless otherwise indicated except visibilities which are in statute miles

Springfield Ill ; Capital Airport; elevation 593 ; facility VOR/DME; identification SPI; Amendment No Original; effective date September 17 1955

Transition to facility or transition to DME orbit				Procedure turn; side of approach radial; altitudes; limiting distances	Minimum altitude on approach radial				Procedure No.; direct or right or left turn to final approach orbit; Runway No	Minimum altitude on final approach orbit			Ceiling and visibility minimums				If visual contact not established at authorized landing minimums at fix specified or if landing not accomplished—
													Condition	Two engines or less		More than two engines	
From— (mi)	To— (mi.)	Radial	Minimum altitude (ft)		From— (mi)	To— (mi)	Radial	Minimum altitude (ft)		From radial	To radial	Minimum altitude (ft.)		65 knots or less	More than 65 knots	More than 65 knots	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18

PROCEDURE CANCELED JANUARY 21 1956—REISSUED ON FORM ACA-511 3A

5 The instrument landing system procedures prescribed in § 609 11 are amended to read in part:

ILS STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings headings, and courses are magnetic. Distances are in statute miles unless otherwise indicated. Elevations and altitudes are in feet, MSL Ceilings are in feet above airport elevation.
If an ILS instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure authorized by the Administrator for Civil Aeronautics for such airport Initial approaches shall be made over specified routes Minimum altitude(s) shall correspond with those established for on route operation in the particular area or as set forth below:

City and State; airport name, elevation; facility: class and identification; procedure No ; effective date	Transition to ILS				Procedure turn (—) side of final approach course (outbound and inbound); altitudes; limiting distances	Minimum altitude at glide slope intercepts inbound (ft)	Altitude of glide slope and distance to approach end of runway at—		Ceiling and visibility minimums			If visual contact not established upon descent to authorized landing minimums or if landing not accomplished
	From—	To—	Course and distance	Minimum altitudes (ft)			Outer marker	Middle marker	Condition	Type aircraft: 75 m.p.h or less	Type aircraft: More than 75 m p h	
1	2	3	4	5	6	7	8	9	10	11	12	13
DALLAS, TEX. Love Field, 485′ ILS-IDAL. Procedure No. 2 Amendment No. 1. Effective January 21 1956. Supersedes Amendment Original dated April 23, 1955. Major changes: Adds VOR fix on final approach. Lowers straight in minima	DAL VOR	Ross Avenue Intersection.	216—9.0	2 000	S side of SE course: 127° outbound 307 inbound 2 000′ within 10 miles of Ross Avenue Intersection.	No glide slope Ross Avenue Intersection 1 500	Ross Avenue Intersection to Tank Fix# 2 miles		2 engines or less			Within 3.7 miles of Ross Avenue Intersection climb to 2,200′ on NW course of ILS or turn right, climb to 2,000′ on 063° radial DAL VOR within 25 miles
	DAL VOR	Fair Park Intersection	193—9 0	2 000					T-dn	300-1	300-1	CAUTION: 695 mean sea level tank 1.7 miles from approach end of runway 31.
	DAL LFR	Ross Avenue Intersection	086—3 5	2 000		Tank Fix 1 000#	Tank Fix# to runway 31 1 7 miles		C-dn	400-1	500-1	
	Trinity Fork Intersection.	Fair Park Intersection.	307—16.0	2 000					S-dn 31	400-1	400-1	AIR CARRIER NOTES: On cargo and ferry flights no reduction in landing minima authorized. No takeoff minima below 200-½ authorized on runway 31.
	Fair Park Intersection (final)	Ross Avenue Intersection.	307—3.7	1,500					More than 2 engines			#Tank Fix is intersection radial 229° DAL VOR and SE course ILS.
	Duncanville Radiobeacon.	Fair Park Intersection.	032—10 0	2 000					T-dn		200-½	Descent below 1,000′ mean sea level not authorized unless position over Tank Fix determined.
	Radar terminal area transition altitude: 2 000′ within 5 to 20 nautical miles. Radar control must provide 3 nautical miles or 1,000′ vertical separation or 3 to 5 nautical miles and 500 vertical separation from radio towers—1 108′ mean sea level 20 nautical miles N; 2,349′ mean sea level 16 nautical miles SSW; 1,230′ mean sea level 10 nautical miles WNW of airport.								C-dn		500-1½	
									S-dn 31		400-1	
									All aircraft			
									A-dn	800-2		

These procedures shall become effective on the dates indicated in Column 1 of the procedures.

(Sec. 205, 52 Stat. 984, as amended; 49 U. S. C. 425. Interpret or apply sec. 601, 52 Stat. 1007, as amended; 49 U. S. C. 551)

[SEAL] C. J. LOWEN,
Administrator of Civil Aeronautics.

[F. R. Doc. 55-10234; Filed, Dec. 22, 1955; 9:42 a. m.]

[Amdt. 94]

PART 610—MINIMUM EN ROUTE IFR ALTITUDES

MISCELLANEOUS AMENDMENTS

The minimum en route IFR altitudes appearing hereinafter have been coordinated with interested members of the industry in the regions concerned insofar as practicable. The altitudes are adopted without delay in order to provide for safety in air commerce. Compliance with the notice, procedures, and effective date provisions of section 4 of the Administrative Procedure Act would be impracticable and contrary to the public interest, and therefore is not required. Part 610 is amended as follows: (Listed items to be placed in appropriate sequence in the sections indicated.)

1. Section 610.12 *Green civil airway 2* is amended to read in part:

From—	To—	Minimum altitude
Buffalo, N. Y., LFR	Rush INT, N. Y.	2,100
E. Pembroke, N. Y. FM.	Buffalo, N. Y., LFR westbound only.	1,900
Rush INT, N. Y.	Rochester, N. Y. LFR.	2,000

2. Section 610.15 *Green civil airway 5* is amended to read in part:

From—	To—	Minimum altitude
Jackson, Tenn., LFR	Nashville, Tenn., LFR.	3,000
Lebanon INT, Tenn.	Smithville, Tenn., LF/RBN.	3,500
Smithville, Tenn., LF/RBN.	Watts Bar[1] INT, Tenn.	4,500

3. Section 610.101 *Amber civil airway 1* is amended to read in part:

From—	To—	Minimum altitude
San Diego, Calif., LFR.	Oceanside, Calif., LF/RBN northbound.	3,000
	Southbound	2,500
Oceanside, Calif., LF/RBN.	Long Beach, Calif., LFR.	4,000

[1] 4,500'—Minimum crossing altitude at Watts Bar INT, westbound.

4. Section 610.103 *Amber civil airway 3* is amended to read in part:

From—	To—	Minimum altitude
Pueblo, Colo., LFR	Colorado Springs, Colo., LF/RBN: Southbound	7,000
	Northbound	8,000

5. Section 610.104 *Amber civil airway 4* is amended to read in part:

From—	To—	Minimum altitude
Tulsa, Okla., LFR	Claremore INT, Okla.	2,000
Claremore INT, Okla.	Chanute, Kans., LFR.	2,200
Verdigris River, Okla., FM.	Tulsa, Okla., LFR southwest bound only.	1,800

6. Section 610.106 *Amber civil airway 6* is amended to read in part:

From—	To—	Minimum altitude
Nashville, Tenn., LFR.	Green Brier INT, Tenn.	3,000
Green Brier INT, Tenn.	Bowling Green, Ky., LFR.	2,000

7. Section 610.207 *Red civil airway 7* is amended to read in part:

From—	To—	Minimum altitude
Greenville, S. C., LFR.	Beacon 14 INT, S. C.	3,000
Beacon 14 INT, S. C.	Spartanburg, S. C., LFR.	2,800

8. Section 610.213 *Red civil airway 13* is amended to read in part:

From—	To—	Minimum altitude
Providence, R. I., LFR.	Bedford, Mass., LF/RBN	1,800

9. Section 610.225 *Red civil airway 25* is added to read:

From—	To—	Minimum altitude
U. S. Canadian Border	Kokadjo INT, Maine	5,500
Kokadjo INT, Maine	East Dover INT, Maine.	6,000

10. Section 610.237 *Red civil airway 37* is amended to read in part:

From—	To—	Minimum altitude
Prescott INT, Ark.	Little Rock, Ark., LFR.	1,800

11. Section 610.287 *Red civil airway 87* is amended to read in part:

From—	To—	Minimum altitude
Honolulu, T. H., LFR.	Maui, T. H.,[1] LFR	6,000

[1] 8,000' minimum crossing altitude at Maui LFR, eastbound; 6,000, westbound.

12. Section 610.603 *Blue civil airway 3* is amended to read in part:

From—	To—	Minimum altitude
Grand Rapids, Mich., LFR.	Traverse City, Mich., LFR.	2,800

13. Section 610.606 *Blue civil airway 6* is amended to read in part:

From—	To—	Minimum altitude
Wichita Falls, Tex., LFR.	Washington INT, Okla.	2,700

14. Section 610.613 *Blue civil airway 13* is amended to read in part:

From—	To—	Minimum altitude
Texarkana, Ark., LFR.	Hartford INT, Ark.[1]	3,800
Hartford INT, Ark.	Ft. Smith, Ark., LF/RBN.	3,800

[1] 6,000'—Minimum reception altitude.

15. Section 610.622 *Blue civil airway 22* is amended to read in part:

From—	To—	Minimum altitude
Corner Stone INT, Ark.	Little Rock, Ark., LFR.	1,800

16. Section 610.630 *Blue civil airway 30* is amended to read in part:

From—	To—	Minimum altitude
Kingsville INT, Tex.	Driscoll INT, Tex.	1,000
Driscoll INT, Tex.	Corpus Christi, Tex., LFR.	1,400
Corpus Christi, Tex., LFR.	Cleveville INT, Tex.	1,400
Cleveville INT, Tex.	Lozoya INT, Tex.	1,800
Lozoya INT, Tex.	Kelly, Tex., LFR	2,000

17. Section 610.674 *Blue civil airway 74* is amended to delete:

From—	To—	Minimum altitude
Willard INT, N. Mex.	Otto, N. Mex. LFR	12,000

18. Section 610.1001 *Direct routes—U. S.* is amended to delete:

From—	To—	Minimum altitude
Colorado Springs, Colo., LF/RBN.	Pueblo, Colo., LFR:	
	Southbound	7,000
	Northbound	8,000
Jacksonville, Fla., LFR.	Charleston, S. C., LFR.	1,300

19. Section 610.6005 *VOR civil airway 5* is amended to read in part:

From—	To—	Minimum altitude
Louisville, Ky., VOR	Warsaw INT, Ky.[1]	2,400
Warsaw INT, Ky.[1]	Cincinnati, Ohio, VOR.	2,000

[1] 2,800′—Minimum reception altitude.

20. Section 610.6006 *VOR civil airway 6* is amended to delete:

From—	To—	Minimum altitude
Omaha, Nebr., VOR, via S alter.	Des Moines, Iowa, via S alter.	[1] 3,600

[1] 2,700′—Minimum terrain clearance altitude.

21. Section 610.6006 *VOR civil airway 6* is amended to read in part:

From—	To—	Minimum altitude
Sacramento, Calif., VOR.	Folsom INT, Calif.	3,000
Folsom INT, Calif.	Coloma INT, Calif.[1]	
	Northeastbound	9,500
	Southwestbound	5,000
Coloma INT, Calif.	Tahoe INT, Calif.	
	Northeastbound	13,000
	Southwestbound	9,500
Tahoe INT, Calif.	Reno, Nev.[2] VOR	13,000
Sacramento, Calif.,[3] VOR, via N alter.	Blue Canyon, Calif., FM, via N alter:	
	Northeastbound	11,000
	Southwestbound	7,000
Blue Canyon, Calif., FM, via N alter.	Mt. Lola INT, Calif., via N alter.	11,000
Mt. Lola INT, Calif., via N alter.	Reno, Nev.,[4] VOR, via N alter.	11,000

[1] 9,500′—Minimum crossing altitude at Coloma INT, northeastbound.
[2] 12,000′—Minimum crossing altitude at Reno VOR, southwestbound.
[3] 3,000′—Minimum crossing altitude at Sacramento VOR, northeastbound.
[4] 10,000′—Minimum crossing altitude at Reno VOR, westbound.

22. Section 610.6007 *VOR civil airway 7* is amended to read in part:

From—	To—	Minimum altitude
Graham, Tenn. VOR	Nashville, Tenn. VOR.	3,000
Nashville, Tenn. VOR	Lewisburg INT, Ky.	3,000

23. Section 610.6008 *VOR civil airway 8* is amended to delete:

From—	To—	Minimum altitude
Omaha, Nebr., VOR, via S alter.	Des Moines, Iowa, VOR via S alter.	[1] 3,600
Des Moines, Iowa, VOR, via N alter.	Monroe[1] INT, Iowa, via N alter.	2,200
Monroe INT, Iowa, via N alter.	Grinnel INT, Iowa, via N alter.	2,200
Grinnell INT, Iowa, via N alter.	Big Rock INT, Iowa, via N alter.	[2] 7,500
Grinnell INT, Iowa, via N alter.	Big Rock INT, Iowa, via N alter.	[4] 2,200
Big Rock INT, Iowa, via N alter.	Moline, Ill., VOR, via N alter.	2,200

[1] 2,700′—Minimum terrain clearance altitude.
[2] 3,500′—Minimum reception altitude.
[3] 2,200′—Minimum terrain clearance altitude.
[4] Utilizing Cedar Rapids LF/RBN.

24. Section 610.6009 *VOR civil airway 9* is amended to read in part:

From—	To—	Minimum altitude
New Orleans, La., VOR.	Hammond[1] INT, La.	1,700
Hammond[1] INT, La.	McComb, Miss., VOR.	1,700
Jackson, Miss., VOR	Greenwood, Miss., VOR.	[2] 2,000
Via W alter	Via W alter	[3] 2,000
Greenwood, Miss., VOR.	Memphis, Tenn., VOR.	[3] 2,000
Via E alter	Via E alter	[4] 2,000

[1] 2,000′—Minimum reception altitude.
[2] 1,700′—Minimum terrain clearance altitude.
[3] 1,800′—Minimum terrain clearance altitude.
[4] 1,600′—Minimum terrain clearance altitude.

25. Section 610.6010 *VOR civil airway 10* is amended to read in part:

From—	To—	Minimum altitude
Pueblo, Colo., VOR	Lamar, Colo., VOR	6,000
Via N alter	Via N alter	6,800
Emporia, Kans., VOR.	Pomona[1] INT, Kans.	[2] 2,800
Pomona INT, Kans.	Kansas City, Mo., VOR.	[2] 2,800

[1] 2,800′—Minimum reception altitude.
[2] 2,500′—Minimum terrain clearance altitude.

26. Section 610.6011 *VOR civil airway 11* is amended to delete:

From—	To—	Minimum altitude
Houston, Tex., VOR	Humble[1] INT, Tex.	1,600
Humble INT, Tex.	Cleveland[2] INT Tex.	1,600
Cleveland INT, Tex.	Lufkin, Tex., VOR	1,600
Lufkin, Tex., VOR	Shreveport, La., VOR.	2,400
Pine Bluff, Ark., VOR.	Memphis, Tenn., VOR.	2,500
Via E alter	Via E alter	3,000
Ft. Wayne, Ind., VOR via W alter.	Litchfield, Mich., VOR, via W alter.	2,700
Litchfield, Mich., VOR, via W alter.	Wolf Lake INT, Mich. via W alter.	2,300
Wolf Lake, INT, Mich. via W alter.	Salem, Mich., VOR, via W alter.	2,300

[1] 2,300′—Minimum reception altitude.
[2] 3,000′—Minimum reception altitude.

27. Section 610.6012 *VOR civil airway 12* is amended to delete:

From—	To—	Minimum altitude
St. Louis, Mo., VOR via N alter.	Fidelity[1] INT, Ill., via N alter.	2,000
Fidelity[1] INT, Ill., via N alter.	Gillespie INT, Ill., via N alter.	[2] 3,000
Gillespie INT, Ill., via N alter.	Vandalia, Ill., VOR, via N alter.	2,000
Vandalia, Ill., VOR, via N alter.	Terre Haute, Ind., VOR via N alter.	2,200

[1] 3,000′—Minimum reception altitude.
[2] 2,000′—Minimum terrain clearance altitude

28. Section 610.6012 *VOR civil airway 12* is amended to read in part:

From—	To—	Minimum altitude
Emporia, Kans., VOR.	Pomona[1] INT, Kans.	[2] 2,800
Pomona INT, Kans.	Kansas City, Mo., VOR.	[1] 2,800

[1] 2,800′—Minimum reception altitude.
[2] 2,500′—Minimum terrain clearance altitude.

29. Section 610.6014 *VOR civil airway 14* is amended to read in part:

From—	To—	Minimum altitude
Caprock INT, N. Mex.	Whiteface[1] INT, Tex.	[2] 7,000
Whiteface INT, Tex.	Lubbock, Tex., VOR.	4,800
Pep[3] INT, Tex., via N alter.	Lubbock, Tex., VOR, via N alter.	4,600

[1] 7,000′—Minimum reception altitude.
[2] 5,500′—Minimum terrain clearance altitude.
[3] 11,300′—Minimum reception altitude.

30. Section 610.6016 *VOR civil airway 16* is amended to delete:

From—	To—	Minimum altitude
Memphis, Tenn., VOR, via S alter.	Jackson Tenn., VOR, via S alter.	2,000
Jackson, Tenn., VOR, via S alter.	Graham, Tenn., VOR, via S alter.	2,000

31. Section 610.6016 *VOR civil airway 16* is amended to read in part:

From—	To—	Minimum altitude
Memphis, Tenn., VOR.	Fisherville[1] INT, Tenn.	2,000
Fisherville INT Tenn.	Williston[1] INT Tenn.	2,000
Williston INT, Tenn.	Graham, Tenn., VOR.	3,000
Knoxville, Tenn., VOR via N alter.	Yuma INT, Tenn., via N alter.	[2] 4,700
Yuma INT, Tenn., via N alter.	Hilton INT, Tenn., via N alter.	[3] 5,500
Hilton INT, Tenn., via N alter.	Hayters Gap INT, Tenn., via N alter.	6,000
Hayters Gap INT, Tenn., via N alter.	Pulaski, Va., VOR, via N alter.	6,500

[1] 2,500′—Minimum reception altitude.
[2] 4,400′—Minimum terrain clearance altitude.
[3] 5,200′—Minimum terrain clearance altitude.

32. Section 610.6018 *VOR civil airway 18* is amended to read in part:

From—	To—	Minimum altitude
Anniston, Ala., VOR	Carrollton INT, Ga	4,000
Carrollton INT, Ga	Campbellton INT, Ga.	2,700
Campbellton INT, Ga.	Atlanta, Ga. ILS, localizer.	2,200
Atlanta, Ga., ILS, localizer.	Oxford INT, Ga	2,200
Oxford INT, Ga	Madison INT, Ga	[1] 3,500
Madison INT, Ga	Raytown INT, Ga	[2] 3,800
Raytown INT, Ga	Augusta, Ga., VOR	1,800

[1] 2,100'—Minimum terrain clearance altitude.
[2] 1,800'—Minimum terrain clearance altitude.

33. Section 610.6020 *VOR civil airway 20* is amended to read in part:

From—	To—	Minimum altitude
Houston, Tex., VOR, via S alter.	High Island [1] INT, Tex., via S alter.	1,500
High Island INT, Tex., via S alter.	Lake Charles, La., VOR via S alter.	[2] 3,000
Clemson INT, S. C., via N alter.	Spartanburg, S. C., VOR, via N alter.	[3] 4,500

[1] 3,000'—Minimum reception altitude.
[2] 1,400'—Minimum terrain clearance altitude.
[3] 3,200'—Minimum terrain clearance altitude.

34. Section 610.6023 *VOR civil airway 23* is amended to read in part:

From—	To—	Minimum altitude
San Diego, Calif., VOR.	Oceanside, Calif. VOR:	
	Northbound	3,000
	Southbound	2,500
Oceanside, Calif., VOR.	Long Beach, Calif., VOR.	4,000

35. Section 610.6027 *VOR civil airway 27* is amended to read in part:

From—	To—	Minimum altitude
Salinas, Calif., VOR	Stinson Beach INT, Calif.	5,000

36. Section 610.6035 *VOR civil airway 35* is amended to read in part:

From—	To—	Minimum altitude
Asheville, N. C., VOR	Roan Mt. [1] INT, N. C.	8,500
Roan Mt. [1] INT, N. C.	Tri-City Tenn., VOR.	5,000
Charleston, W. Va., VOR.	Sandyville [2] INT, W. Va.	2,500
Sandyville [2] INT, W. Va.	Parkersburg, W. Va., VOR.	2,500

[1] 7,000'—Minimum crossing altitude at Roan Mt. INT, southbound.
[2] 4,000'—Minimum reception altitude.

37. Section 610.6037 *VOR civil airway 37* is amended by adding:

From—	To—	Minimum altitude
Savannah, Ga., VOR	Columbia, S.C., VOR	1,400
Columbia, S. C., VOR	Charlotte, N. C., VOR.	2,000

38. Section 610.6037 *VOR civil airway 37* is amended to read in part:

From—	To—	Minimum altitude
Morgantown, W. Va., VOR.	Millsboro INT, Pa	4,000
Millsboro INT, Pa	Pittsburgh, Pa., VOR.	3,000

39. Section 610.6051 *VOR civil airway 51* is amended to read in part:

From—	To—	Minimum altitude
Jacksonville, Fla., VOR, via W alter.	Alma, Ga., VOR, via W alter.	1,000

40. Section 610.6054 *VOR civil airway 54* is amended to read in part:

From—	To—	Minimum altitude
Texarkana, Ark., VOR.	Malvern INT, Ark	2,000
Malvern INT, Ark	Little Rock, Ark. VOR.	1,800
Chattanooga, Tenn., VOR.	Crandall INT, Ga	3,000

41. Section 610.6065 *VOR civil airway 65* is amended by adding:

From—	To—	Minimum altitude
St. Joseph, Mo., VOR	Lamoni, Iowa, VOR	2,400

42. Section 610.6066 *VOR civil airway 66* is amended to read in part:

From—	To—	Minimum altitude
San Diego, [1] Calif., VOR	Seeley INT, Calif	8,000
Seeley INT, Calif	Yuma, Ariz., VOR	4,000
San Diego, Calif., VOR.	Jamul, Calif., LF/RBN westbound only.	4,500
Jamul, Calif., LF/RBN.	Barrett Lake, Calif., FM westbound only.	6,000

[1] 4,000'—Minimum crossing altitude at San Diego VOR, eastbound.

43. Section 610.6068 *VOR civil airway 68* is amended to read in part:

From—	To—	Minimum altitude
Hobbs, N. Mex., VOR.	Pipe Line [1] INT, Tex.	5,500
Pipe Line [1] INT, Tex.	Midland, Tex., VOR.	4,000
Lonoke INT, Ark	Walnut Ridge, Ark., VOR.	[2] 2,500

[1] 5,500'—Minimum reception altitude.
[2] 1,500'—Minimum terrain clearance altitude.

44. Section 610.6070 *VOR civil airway 70* is amended to read in part:

From—	To—	Minimum altitude
Lake Charles, La., VOR.	Lafayette, La., VOR.	1,000
Baton Rouge, La., VOR.	Hammond [1] INT, La.	2,000

[1] 2,000'—Minimum reception altitude.

45. Section 610.6071 *VOR civil airway 71* is amended to read in part:

From—	To—	Minimum altitude
Flippin, Ark., VOR	Ozark [1] INT, Mo	3,000
Ozark [1] INT, Mo	Springfield, Mo., VOR.	3,000

[1] 4,000'—Minimum reception altitude.

46. Section 610.6075 *VOR civil airway 75* is amended to read in part:

From—	To—	Minimum altitude
Flat Rock, Va., VOR	Gordonsville, Va., VOR	2,000

47. Section 610.6077 *VOR civil airway 77* is amended to read in part:

From—	To—	Minimum altitude
Wichita Falls, Tex., VOR via E alter.	Oklahoma City, Okla., VOR via E alter.	[1] 2,800

[1] 2,700'—Minimum terrain clearance altitude.

48. Section 610.6088 *VOR civil airway 88* is amended to read in part:

From—	To—	Minimum altitude
White Oak INT, Okla.	Waco [1] INT, Mo	[2] 6,500
Waco INT, Mo	Avilla INT, Mo	[2] 6,500
Avilla INT, Mo	Springfield, Mo., VOR.	2,600
White Oak INT, Okla.	Joplin, Mo., LOM	[3] 3,000
Joplin, Mo., LOM	Avilla INT, Mo	[3] 2,600

[1] 6,500'—Minimum reception altitude.
[2] 2,000'—Minimum terrain clearance altitude.
[3] Utilizing Joplin LOM.

49. Section 610.6097 *VOR civil airway 97* is amended to read in part:

From—	To—	Minimum altitude
Atlanta, Ga., VOR	Nelson INT, Ga	3,000
Nelson INT, Ga	Murphy INT, Ga	[1] 7,000
Murphy INT, Ga	Knoxville, Tenn., VOR.	7,000

[1] 6,500'—Minimum terrain clearance altitude.

50. Section 610.6114 *VOR civil airway 114* is amended to read in part:

From—	To—	Minimum altitude
Pueblo, Colo., VOR	Purgatoire INT, Colo.	7,500
Purgatoire INT, Colo.	Clayton INT, Tex.	[1] 10,000

[1] 8,000′—Minimum terrain clearance altitude.

51. Section 610.6128 *VOR civil airway 128* is amended to read in part:

From—	To—	Minimum altitude
Greensboro, N. C., VOR, via S alter.	Moncure INT, N. C., via S alter.	2,100
Moncure INT, N. C., via S alter.	Raleigh, N. C., VOR, via S alter.	1,600

52. Section 610.6131 *VOR civil airway 131* is amended by adding:

From—	To—	Minimum altitude
Emporia, Kans., VOR	Pomona [1] INT, Kans.	[2] 2,800
Pomona INT, Kans.	Topeka, Kans., VOR	2,300

[1] 2,800′—Minimum reception altitude.
[2] 2,500′—Minimum terrain clearance altitude.

53. Section 610.6140 *VOR civil airway 140* is amended to read in part:

From—	To—	Minimum altitude
Corbin, Ky. VAR	Daley INT, Ky.	[1] 6,000
Daley INT, Ky.	Gap Mills INT, W. Va.	[2] 8,000
Gap Mills INT, W. Va.	Montebello, Va., VOR.	6,000

[1] 4,000′—Minimum terrain clearance altitude.
[2] 6,000′—Minimum terrain clearance altitude.

54. Section 610.6154 *VOR civil airway 154* is amended by adding:

From—	To—	Minimum altitude
Macon, Ga. VOR	Savannah, Ga., VOR	[1] 4,700

[1] 1,800′—Minimum terrain clearance altitude.

55. Section 610.6161 *VOR civil airway 161* is amended to read in part:

From—	To—	Minimum altitude
Blue Springs, Mo., VOR.	Lawson INT, Mo.	2,40

56. Section 610.6172 *VOR civil airway 172* is amended to delete:

From—	To—	Minimum altitude
Iowa City, Iowa, VOR	Moline, Ill., VOR	2,000
Moline, Ill., VOR	Polo, Ill., VOR	2,200
Iowa City, Iowa, VOR, via N alter.	Big Rock INT, Iowa, via N alter.	2,000
Big Rock INT, Iowa, via N alter.	Thomson INT, Ill., via N alter.	[1] 3,000
Thomson INT, Ill., via N alter.	Polo, Ill. VOR, via N alter.	2,000

[1] 2,000′—Minimum terrain clearance alt.

57. Section 610.6172 *VOR civil airway 172* is amended by adding:

From—	To—	Minimum altitude
Omaha, Nebr., VOR	Des Moines, Iowa, VOR.	[1] 3,600
Des Moines, Iowa, VOR.	Monroe [2] INT, Iowa	2,200
Monroe INT, Iowa	Grinnell INT, Iowa	2,200
Grinnell INT, Iowa	Polo, Ill., VOR	[3] 8,600
Grinnell INT, Iowa	Cedar Rapids, Iowa, LF/RBN.	[4] 2,200
Cedar Rapids, Iowa, LF/RBN.	Polo, Ill., VOR	[4] 3,200

[1] 2,700′—Minimum terrain clearance altitude.
[2] 3,500′—Minimum reception altitude.
[3] 2,200′—Minimum terrain clearance altitude.
[4] Utilizing Cedar Rapids LF/RBN.

58. Section 610.6174 *VOR civil airway 174* is amended to read in part:

From—	To—	Minimum altitude
Sandyville [1] INT, W. Va.	Clara INT, W. Va.	[2] 4,000

[1] 4,000′—Minimum reception altitude.
[2] 3,000—Minimum terrain clearance altitude.

59. Section 610.6185 *VOR civil airway 185* is amended by adding:

From—	To—	Minimum altitude
Savannah, Ga., VOR	Augusta, Ga. VOR	1,800

60. Section 610.6190 *VOR civil airway 190* is amended to read in part:

From—	To—	Minimum altitude
Gage, Okla., VOR	Capron INT, Okla.	3,500
Capron INT, Okla.	Ponca City, Okla. VOR	[1] 3,500
Ponca City, Okla.[2] VOR	Waco [2] INT, Mo.	[1] 7,000
Waco INT, Mo.	Avilla INT, Mo.	[3] 6,500
Avilla INT, Mo.	Springfield, Mo., VOR	2,600
Joplin, Mo., LOM	Avilla INT, Mo.	[4] 2,600

[1] 2,500′—Minimum terrain clearance altitude.
[2] 6,500′—Minimum reception altitude.
[3] 2,600—Minimum terrain clearance altitude.
[4] Utilizing Joplin LOM.

61. Section 610.6193 *VOR civil airway 193* is amended by adding:

From—	To—	Minimum altitude
Pullman, Mich., VOR	Grand Rapids, Mich., ILS/LOM.	2,200

62. Section 610.6194 *VOR civil airway 194* is amended to read in part:

From—	To—	Minimum altitude
Charlotte, N. C., VOR	Norwood INT, N. C.	[1] 3,000
Norwood INT, N. C.	Moncure INT, N. C.	[1] 3,500
Moncure INT, N. C.	Raleigh, N. C., VOR	1,600

[1] 1,800′—Minimum terrain clearance altitude.

63. Section 610.6195 *VOR civil airway 195* is amended to delete:

From—	To—	Minimum altitude
Williams, Calif., VOR, via W alter.	Red Bluff, Calif., VOR, via W alter.	3,000

64. Section 610.6200 *VOR civil airway 200* is amended to delete:

From—	To—	Minimum altitude
Williams, Calif., VOR, via S alter.	Coloma INT, Calif., via S alter:	
	Westbound	6,000
	Eastbound	7,000
Coloma [1] INT, Calif., via S alter.	Reno, Nev.[2] VOR, via S alter.	13,000

[1] 9,500′—Minimum crossing altitude at Coloma INT, Northeast bound.
[2] 12,000′—Minimum crossing altitude at Reno VOR, Southwest bound.

65. Section 610.6200 *VOR civil airway 200* is amended to read in part:

From—	To—	Minimum altitude
Williams,[1] Calif., VOR	Mt. Lola INT, Calif.	13,000
Mt. Lola INT, Calif.	Reno, Nev., VOR	11,000

[1] 10,000′—Minimum crossing altitude at Williams VOR, Northeast bound.

66. Section 610.6205 *VOR civil airway 205* is amended to read in part:

From—	To—	Minimum altitude
Bolivar INT, Mo.	Blue Springs, Mo., VOR.	2,400
Blue Springs, Mo., VOR.	Kansas City, Mo., VOR.	2,400

67. Section 610.6206 *VOR civil airway 206* is amended to read in part:

From—	To—	Minimum altitude
Blue Springs, Mo., VOR.	Lexington INT, Mo.	2,400

68. Section 610.6210 *VOR civil airway 210* is added to read:

From—	To—	Minimum altitude
Los Angeles,[1] Calif., VOR.	Daggett, Calif., VOR.	12,000

[1] 9,000'—Minimum crossing altitude at Los Angeles VOR, Northeast-bound.

69. Section 610.6214 *VOR civil airway 214* is added to read:

From—	To—	Minimum altitude
Muskegon, Mich., VOR.	Saginaw, Mich., LF/RBN.	[1] 4,000

[1] 2,400'—Minimum terrain clearance altitude.

70. Section 610.6215 *VOR civil airway 215* is added to read:

From—	To—	Minimum altitude
Muskegon, Mich., VOR.	White Cloud, Mich., VOR.	2,000

71. Section 610.6221 *VOR civil airway 221* is added to read:

From—	To—	Minimum altitude
Ft. Wayne, Ind., VOR.	Litchfield, Mich., VOR.	2,700
Litchfield, Mich., VOR.	Wolf Lake INT, Mich.	2,300
Wolf Lake INT, Mich.	Salem, Mich., VOR.	2,300

72. Section 610.6223 *VOR civil airway 223* is added to read:

From—	To—	Minimum altitude
Herndon, Va., VOR.	Harrisburg, Pa., VOR.	3,000

73. Section 610.6402 *Hawaii VOR civil airway 2* is amended to read in part:

From—	To—	Minimum altitude
Honolulu, T. H., VOR, via S alter.	Lanai, T. H.,[1] VOR, via S alter.	5,000

[1] 5,000'—Minimum crossing altitude at Lanai VOR, eastbound.

74. Section 610.6405 *Hawaii VOR civil airway 5* is amended to read in part:

From—	To—	Minimum altitude
Rainbow INT, T. H.	Maui, T. H.,[1] VOR.	4,000

[1] 4,000'—Minimum crossing altitude at Maui VOR, southbound.

75. Section 610.6406 *Hawaii VOR civil airway 6* is amended to read:

From—	To—	Minimum altitude
Lanai, T. H. VOR.	Maui,[1] T. H., VOR.	6,500

[1] 6,500'—Minimum crossing altitude at Maui VOR, westbound.

76. Section 610.6408 *Hawaii VOR civil airway 8* is amended to read:

From—	To—	Minimum altitude
Pineapple INT, T. H.	Maui,[1] T. H., VOR.	5,000

[1] 4,000'—Minimum crossing altitude at Maui VOR, southwestbound.

(Sec. 205, 52 Stat. 984, as amended; 49 U. S. C. 425. Interpret or apply sec. 601, 52 Stat. 1007, as amended; 49 U. S. C. 551)

These rules shall become effective January 12, 1956.

[SEAL] C. J. LOWEN,
Administrator of Civil Aeronautics.

[F. R. Doc. 55-10138; Filed, Dec. 22, 1955; 8:45 a. m.]

TITLE 7—AGRICULTURE

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture

Subchapter C—Regulations and Standards Under the Farm Products Inspection Act

PART 55—GRADING AND INSPECTION OF EGG PRODUCTS

MISCELLANEOUS AMENDMENTS

Notice of a proposed amendment to the regulations governing the grading and inspection of egg products (7 CFR Part 55) was published in the FEDERAL REGISTER on December 3, 1955 (20 F. R. 8932) The amendment hereinafter promulgated is pursuant to authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087; 7 U. S. C. 1621 et seq.)

The amendment will implement Public Law 272, 84th Congress, 1st Session, approved August 9, 1955, amending the aforesaid act by designating the certificates, memoranda, marks and other identifications and devices for making such marks or identifications, with respect to inspection, class, grade, quality, size, or condition, that are official for the purposes of said act. The amendment also makes a minor change in the sanitary requirements dealing with the procedures for washing eggs prior to breaking. The language of the amendment set forth herein is the same as was published in the aforesaid notice with the exception of minor clarifying changes.

It is hereby found that it would be impractical, unnecessary and contrary to the public interest to delay the effective date of this amendment until thirty (30) days after publication in the FEDERAL REGISTER for the reasons that (1) the amendment is in the nature of an interpretative rule, (2) the language changes represent a needed improvement in clarifying the meaning and intent of the regulations, and (3) no additional time is required by interested persons to prepare for compliance with this amendment.

The amendment is as follows:

1. Delete paragraph (q) of § 55.2 *Terms defined.*

2. Add a new § 55.2a, to read as follows:

§ 55.2a *Designation of official certificates, memoranda, marks, other identifications, and devices for purposes of the Agricultural Marketing Act.* Subsection 203 (h) of the Agricultural Marketing Act of 1946, as amended by Public Law 272, 84th Congress, provides criminal penalties for various specified offenses relating to official certificates, memoranda, marks or other identifications, and devices for making such marks or identifications, issued or authorized under section 203 of said act, and certain misrepresentations concerning the inspection or grading of agricultural products under said section. For the purposes of said subsection and the provisions in this part, the terms listed below shall have the respective meanings specified:

(a) "Official certificate" means any form of certification, either written or printed, used under this part to certify with respect to the sampling, inspection, class, grade, quality, size, quantity, or condition of products (including the compliance of products with applicable specifications).

(b) "Official memorandum" means any initial record of findings made by an authorized person in the process of grading, inspecting, or sampling pursuant to this part, any processing or plant-operation report made by an authorized person in connection with grading, inspecting or sampling under this part, and any report made by an authorized person of services performed pursuant to this part.

(c) "Official mark" means the grade mark, inspection mark, combined form of inspection and grade mark, and any other mark, or any variations in such marks, approved by the Administrator and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product, stating that the product was graded or inspected or both, or indicating the appropriate U. S. grade or condition of the product, or for the purpose of maintaining the identity of products graded or inspected or both under this part, including but not limited to those set forth in §§ 55.36 through 55.38.

(d) "Official identification" means any United States (U. S.) standard designation of class, grade, quality, size, quantity, or condition specified in this part or any symbol, stamp, label, or seal indicating that the product has been officially graded or inspected and/or indicating the class, grade, quality, size, quantity, or condition of the product approved by the Administrator and authorized to be affixed to any product, or

affixed to or printed on the packaging material of any product.

(e) "Official device" means a stamping appliance, branding device, stencil, printed label, or any other mechanically or manually operated tool that is approved by the Administrator for the purpose of applying any official mark or other identification to any product or the packaging material thereof.

3. Change § 55.30 *Denial of service,* to read as follows:

§ 55.30 *Denial of service.* (a) The following acts or practices or the causing thereof may be deemed sufficient cause for the debarment, by the Administrator, of any person, including any agents, officers, subsidiaries or affiliates of such person, from any or all benefits of the act for a specified period, after notice and opportunity for hearing has been accorded him:

(1) *Misrepresentation, deceptive, or fraudulent act or practice.* Any wilful misrepresentation or any deceptive or fraudulent act or practice found to be made or committed by any person in connection with:

(i) The making or filing of an application for any grading service, inspection service, or sampling service, appeal or regrading service;

(ii) The making of the product accessible for sampling, grading or inspection;

(iii) The making, issuing or using or attempting to issue or use any grading certificate, inspection certificate, symbol, stamp, label, seal, or identification authorized pursuant to the regulations in this part;

(iv) The use of the terms "United States" or "U. S." in conjunction with the grade of the product;

(v) The use of any of the aforesaid terms or any official stamp, symbol, label, seal, or identification in the labeling or advertising of any product; or

(vi) The use of the terms "Government Graded", "Federal-State Graded", "U. S. Inspected" "Government Inspected" or terms of similar import in the labeling or advertising of any product.

(2) *Use of facsimile forms.* Using or attempting to use a form which simulates in whole or in part any certificate, symbol, stamp, label, seal or identification authorized to be issued or used under the regulations in this part.

(3) *Willful violation of the regulations.* Any willful violation of the regulations in this part or the act.

(4) *Interfering with a grader or inspector* Any interference with or obstruction or any attempted interference or obstruction of any grader or inspector in the performance of his duties.

(5) *Misleading labeling.* The use of the terms "Government Graded", "Federal-State Graded" or terms of similar import in the labeling or advertising of any product without stating in the label or advertisement the U. S. grade of the product as determined by an authorized grader.

(6) *Miscellaneous.* The existence of any of the conditions set forth in § 55.24 constituting the basis for the rejection of an application for grading or inspection service.

(b) Whenever the Administrator has reason to believe that any person, or his employee, agent, or representative has flagrantly or repeatedly committed any of the acts or practices specified in paragraph (a) of this section, he may without hearing direct that the benefits of the act be denied such person, including any agents, officers, subsidiaries or affiliates of such person, pending investigation and hearing and shall give notice thereof by registered mail. A written petition for reconsideration of such interim denial may be filed with the Administrator by any person so denied the benefits of the act if postmarked or delivered within 10 days after notice of the interim denial. Such petition shall state specifically the errors alleged to have been made by the Administrator in denying the benefits of the act pending investigation and hearing. Within 20 days following the receipt of such petition for reconsideration, the Administrator shall reinstate the benefits of the act or notify the petitioner by registered mail of the reasons for continued interim denial.

4. Change paragraph (b) of § 55.81 *Egg washing operations,* to read as follows:

(b) Shell eggs with adhering dirt shall be washed, rinsed with a water spray and dried. Such eggs may be immersed in or sprayed with a bactericidal solution immediately following the water rinse and thereafter dried prior to breaking: *Provided,* That, if other than hypochlorites are used for the bactericidal treatment, the eggs shall again be rinsed prior to drying and breaking.

(Sec. 205, 60 Stat. 1090; 7 U. S. C. 1624)

Issued at Washington, D. C. this 20th day of December 1955, to become effective upon publication in the FEDERAL REGISTER.

[SEAL] ROY W LENNARTSON,
Deputy Administrator
Agricultural Marketing Service.

[F. R. Doc. 55-10302; Filed, Dec. 22, 1955; 8:50 a. m.]

PART 56—GRADING AND INSPECTION OF SHELL EGGS AND UNITED STATES STANDARDS, GRADES AND WEIGHT CLASSES FOR SHELL EGGS

MISCELLANEOUS AMENDMENTS

Notice of a proposed amendment to the regulations governing the grading and inspection of shell eggs and United States standards, grades and weight classes for shell eggs (7 CFR Part 56) was published in the FEDERAL REGISTER on December 3, 1955 (20 F. R. 8933) The amendment hereinafter promulgated is pursuant to authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087; 7 U. S. C. 1621 et seq.)

The amendment will implement Public Law 272, 84th Congress, 1st Session, approved August 9, 1955, amending the aforesaid act by designating the certificates, memoranda, marks and other identifications and devices for making such marks or identifications, with respect to inspection, class, grade, quality, size, or condition, that are official for the purposes of said act. The amendment also includes minor changes with respect to the information which is required in the grade mark, and changes the language in the U. S. wholesale grades for shell eggs in the interest of clarity. The language of the amendment set forth herein is the same as was published in the aforesaid notice with the exception of minor clarifying changes.

It is hereby found that it would be impractical, unnecessary and contrary to the public interest to delay the effective date of this amendment until thirty (30) days after publication in the FEDERAL REGISTER for the reasons that (1) the amendment is in the nature of an interpretative rule, (2) the language changes represent a needed improvement in clarifying the meaning and intent of the regulations, and (3) no additional time is required by interested persons to prepare for compliance with this amendment.

The amendment is as follows:

1. Delete paragraph (p) of §56.2 *Terms defined.*

2. Add a new § 56.2a, to read as follows:

§ 56.2a *Designation of official certificates, memoranda, marks, other identifications and devices for purposes of the Agricultural Marketing Act.* Subsection 203 (h) of the Agricultural Marketing Act of 1946, as amended by Public Law 272, 84th Congress, provides criminal penalties for various specified offenses relating to official certificates, memoranda, marks or other identifications, and devices for making such marks or identifications, issued or authorized under section 203 of said act, and certain misrepresentations concerning the inspection or grading of agricultural products under said section. For the purposes of said subsection and the provisions in this part, the terms listed in this section shall have the respective meanings specified:

(a) "Official certificate" means any form of certification, either written or printed, used under this part to certify with respect to the sampling, inspection, class, grade, quality, size, quantity, or condition of products (including the compliance of products with applicable specifications)

(b) "Official memorandum" means any initial record of findings made by an authorized person in the process of grading, inspecting, or sampling pursuant to this part, any processing or plant-operation report made by an authorized person in connection with grading, inspecting or sampling under this part, and any report made by an authorized person of services performed pursuant to this part.

(c) "Official mark" means the grade mark, inspection mark, combined form of inspection and grade mark, and any other mark, or any variations in such marks, approved by the Administrator and authorized to be affixed to any product, or affixed to or printed on the pack-

aging material of any product, stating that the product was graded or inspected or both, or indicating the appropriate U. S. grade or condition of the product, or for the purpose of maintaining the identity of products graded or inspected or both under this part, including but not limited to, those set forth in § 56.38.

(d) "Official identification" means any United States (U. S.) standard designation of class, grade, quality, size, quantity, or condition specified in this part or any symbol, stamp, label, or seal indicating that the product has been officially graded or inspected and/or indicating the class, grade, quality, size, quantity, or condition of the product approved by the Administrator and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product.

(e) "Official device" means a stamping appliance, branding device, stencil, printed label, or any other mechanically or manually operated tool that is approved by the Administrator for the purpose of applying any official mark or other identification to any product or the packaging material thereof.

3. Change § 56.31 *Denial of service*, to read as follows:

§ 56.31 *Denial of service.* (a) The following acts or practices or the causing thereof may be deemed sufficient cause for the debarment, by the Administrator, of any person, including any agents, officers, subsidiaries or affiliates of such person, from any or all benefits of the act for a specified period, after notice and opportunity for hearing has been accorded him:

(1) *Misrepresentation, deceptive, or fraudulent act or practice.* Any wilful misrepresentation or any deceptive or fraudulent act or practice found to be made or committed by any person in connection with:

(i) The making or filing of an application for any grading service, inspection service, or sampling service, appeal or regrading service;

(ii) The making of the product accessible for sampling, grading or inspection;

(iii) The making, issuing or using or attempting to issue or use any grading certificate, inspection certificate, symbol, stamp, label, seal, or identification authorized pursuant to the regulations in this part;

(iv) The use of the terms "United States" or "U. S." in conjunction with the grade of the product;

(v) The use of any of the aforesaid terms or any official stamp, symbol, label, seal, or identification in the labeling or advertising of any product; or

(vi) The use of the terms "Government Graded" "Federal-State Graded", "U. S. Inspected" "Government Inspected" or terms of similar import in the labeling or advertising of any product.

(2) *Use of facsimile forms.* Using or attempting to use a form which simulates in whole or in part any certificate, symbol, stamp, label, seal or identification authorized to be issued or used under the regulations in this part.

(3) *Willful violation of the regulations.* Any willful violation of the regulations in this part or the act.

(4) *Interfering with a grader or inspector* Any interference with or obstruction or any attempted interference or obstruction of any grader or inspector in the performance of his duties.

(5) *Misleading labeling.* The use of the terms "Government Graded", "Federal-State Graded", or terms of similar import in the labeling or advertising of any product without stating in the label or advertisement the U. S. grade of the product as determined by an authorized grader.

(6) *Miscellaneous.* The existence of any of the conditions set forth in § 56.24 constituting the basis for the rejection of an application for grading or inspection service.

(b) Whenever the Administrator has reason to believe that any person, or his employee, agent, or representative has flagrantly or repeatedly committed any of the acts or practices specified in paragraph (a) of this section, he may without hearing direct that the benefits of the act be denied such person, including any agents, officers, subsidiaries or affiliates of such person, pending investigation and hearing and shall give notice thereof by registered mail. A written petition for reconsideration of such interim denial may be filed with the Administrator by any person so denied the benefits of the act if postmarked or delivered within 10 days after notice of the interim denial. Such petition shall state specifically the errors alleged to have been made by the Administrator in denying the benefits of the act pending investigation and hearing. Within 20 days following the receipt of such a petition for reconsideration, the Administrator shall reinstate the benefits of the act or notify the petitioner by registered mail of the reasons for continued interim denial.

4. Change § 56.38 *Form of grade mark*, with the exception of Figures 1 and 2, to read as follows:

§ 56.38 *Form of grade mark.* The grade mark permitted to be used to officially identify cartons containing one dozen shell eggs, which are graded pursuant to the regulations in this part, shall be contained in a shield of the form and design indicated in examples in Figures 1 and 2 of this section. The information (including the form and arrangement of its wording) which is to be included in such marks shall be: (1) The letters "U. S. D. A."; (2) the U. S. grade, such as, "U. S. A Grade"; (3) one of the following phrases: "Graded Under Federal-State Supervision", "Graded Under U. S. and State Supervision", or a term of similar import, and (4) the size or weight class of the product, such as, "Large". *Provided*, That, the size may be omitted from the grade mark if it appears prominently on the main panel of the carton. The grade mark shall be printed on the carton or on a label used to seal the carton. When the size or weight class is included as a part of the grade mark the form of such mark shall be as indicated in Figure 1 of this section and when the size or weight class designation is not included in the grade mark the form of the grade mark shall be as indicated in Figure 2 of this section. The grade mark shall also include the plant number of the official plant where the product was packed if the appropriate plant number does not appear elsewhere on the packaging material. In addition, the date the eggs were graded shall be stamped either on the grade mark used to seal the carton or applied in a legible manner elsewhere on the carton. Such date of grading shall be expressed as the month and day or as the consecutive day of the year. The grade mark shall be not less than 1⅛ inches in height and should not exceed 1¾ inches in height. The size of the letters designating the grade shall be not less than ¼ inch in height. The size of the print and the arrangement of the other information within the shield shall be in approximately the same proportion as shown in the examples in Figures 1 and 2 of this section.

5. Change § 56.226 *Grades*, to read as follows:

§ 56.226 *Grades.* (a) "U. S. Specials __% AA Quality" shall consist of eggs of which at least 20 percent are AA Quality and the actual percentage of AA Quality eggs shall be stated in the grade name. Within the maximum of 80 percent which may be below AA Quality, not more than 7.5 percent may be B Quality, C Quality, Dirties or Checks in any combination and not more than 2.0 percent may be Loss.

(b) "U. S. Extras __% A Quality" shall consist of eggs of which at least 20 percent are not less than A Quality and the actual total percentage of A Quality and better quality eggs shall be stated in the grade name. Within the maximum of 80 percent which may be below A Quality, not more than 11.7 percent may be C Quality, Dirties, or Checks in any combination, and not more than 3.0 percent may be Loss.

(c) "U. S. Standards __% B Quality" shall consist of eggs of which at least 20 percent are not less than B Quality and the actual total percentage of B Quality and better quality eggs shall be stated in the grade name. Within the maximum of 80 percent which may be below B Quality not more than 11.7 percent may be Dirties or Checks in any combination, and not more than 4 percent may be Loss.

(d) "U. S. Trades __% C Quality" shall consist of eggs of which at least 83.3 percent are not less than C Quality; and the actual total percentage of C Quality and better quality eggs shall be stated in the grade name. Within the maximum of 16.7 percent which may be below C Quality not more than 11.7 percent may be Dirties or Checks in any combination and not more than 5 percent may be Loss.

(e) "U. S. Dirties" shall consist of eggs that are Dirty and shall contain not more than 11.7 percent Checks and not more than 5 percent Loss.

(f) "U. S. Checks" shall consist of eggs that are Checks and shall contain not more than 5 percent Loss.

(g) "No grade" means eggs of possible edible quality that fail to meet the requirements of an official U. S. Grade or that have been contaminated by smoke, chemicals, or other foreign material that has seriously affected the character, appearance, or flavor of the eggs.

6. Change § 56.227 *Summary of grades*, to read as follows:

§ 56.227 *Summary of grades.* A summary of the United States Wholesale Grades for Shell Eggs follows as Table I of this section:

TABLE I—SUMMARY OF UNITED STATES WHOLESALE GRADES FOR SHELL EGGS

Wholesale grade designation	Minimum percentage of eggs of specific qualities required [1]				Maximum tolerance permitted (lot average)				
	AA Quality	A Quality or better	B Quality or better	C Quality or better	B Quality, C Quality, Dirties, and Checks	C Quality, Dirties, and Checks	Dirties and Checks	Checks	Loss
					Percent	*Percent*	*Percent*	*Percent*	*Percent*
U. S. Specials--% AA Quality.[2]	20	Balance	None permitted except for tolerances.		7.5				2
U. S. Extras--% A Quality.[2]		20	Balance	None permitted except for tolerances.		11.7			3
U. S. Standards--% B Quality.[2]			20	Balance			11.7		4
U. S. Trades--% C Quality.[2]				83.3			11.7		5
U. S. Dirties--%								11.7	5
U. S. Checks--%									5

[1] Substitution of eggs possessing higher qualities for those possessing lower specified qualities is permitted.
[2] The actual total percentage must be stated in the grade name.

(Sec. 205, 60 Stat. 1090; 7 U. S. C. 1624)

Issued at Washington, D. C. this 20th day of December 1955, to become effective upon publication in the FEDERAL REGISTER.

[SEAL] ROY W LENNARTSON,
Deputy Administrator
Agricultural Marketing Service.

[F. R. Doc. 55-10304; Filed, Dec. 22, 1955; 8:51 a. m.]

PART 70—GRADING AND INSPECTION OF POULTRY AND EDIBLE PRODUCTS THEREOF; AND UNITED STATES CLASSES, STANDARDS, AND GRADES WITH RESPECT THERETO

MISCELLANEOUS AMENDMENTS

Notice of a proposed amendment to the regulations governing the grading and inspection of poultry and edible products thereof and United States classes, standards, and grades with respect thereto (7 CFR Part 70) was published in the FEDERAL REGISTER on November 29, 1955 (20 F R. 8754) The amendment hereinafter promulgated is pursuant to authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087; 7 U. S. C. 1621 et seq.)

The amendment will implement Public Law 272, 84th Congress, 1st Session, approved August 9, 1955, amending the aforesaid act by designating the certificates, memoranda, marks and other identifications and devices for making such marks or identifications, with respect to inspection, class, grade, quality, size, or condition, that are official for the purposes of said act. The amendment also makes minor changes in the manner of providing poultry inspection service on a Federal-State basis. The language of the amendment set forth herein is the same as was published in the aforesaid notice with the exception of minor clarifying changes.

It is hereby found that it would be impractical, unnecessary and contrary to the public interest to delay the effective date of this amendment until thirty (30) days after publication in the FEDERAL REGISTER for the reasons that (1) the amendment is in the nature of an interpretative rule, (2) the language changes represent a needed improvement in clarifying the meaning and intent of the regulations, and (3) no additional time is required by interested persons to prepare for compliance with this amendment.

The amendment is as follows:

1. Delete the definition of "Official Identification" in § 70.1.

2. Delete the definition of "State Supervisor" in § 70.1 *Definitions*, and substitute in lieu thereof the following: "State supervisor" or "Federal-State supervisor" means any authorized and designated individual who is in charge of the poultry grading service or the poultry inspection service in a State. A State supervisor or a Federal-State supervisor of poultry inspection service shall be a veterinarian and a Federal employee.

3. Add new § 70.2 to read as follows:

§ 70.2 *Designation of official certificates, memoranda, marks, other identifications, and devices for purposes of the Agricultural Marketing Act.* Subsection 203 (h) of the Agricultural Marketing Act of 1946, as amended by Public Law 272, 84th Congress, provides criminal penalties for various specified offenses relating to official certificates, memoranda, marks or other identifications, and devices for making such marks or identifications, issued or authorized under section 203 of said act, and certain misrepresentations concerning the inspection or grading of agricultural products under said section. For the purposes of said subsection and the provisions in this part, the terms listed in this section shall have the respective meaning specified:

(a) "Official certificate" means any form of certification, either written or printed, used under this part to certify with respect to the sampling, inspection, class, grade, quality, size, quantity, or condition of products (including the compliance of products with applicable specifications)

(b) "Official memorandum" means any initial record of findings made by an authorized person in the process of grading, inspecting, or sampling pursuant to this part, any processing or plant-operation report made by an authorized person in connection with grading, inspecting, or sampling under this part, and any report made by an authorized person of services performed pursuant to this part.

(c) "Official mark" means the grade mark, inspection mark, combined form of inspection and grade mark, and any other mark, or any variations in such marks, approved by the Administrator and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product, stating that the product was graded or inspected or both, or indicating the appropriate U. S. Grade or condition of the product, or for the purpose of maintaining the identity of products graded or inspected or both under this part, including but not limited to, those set forth in §§ 70.381 through 70.384.

(d) "Official identification" means any United States (U. S.) standard designation of class, grade, quality, size, quantity, or condition specified in this part or any symbol, stamp, label, or seal indicating that the product has been officially graded or inspected and/or indicating the class, grade, quality, size, quantity, or condition of the product approved by the Administrator and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product.

(e) "Official device" means a stamping appliance, branding device, stencil, printed label, or any other mechanically or manually operated tool that is approved by the Administrator for the purpose of applying any official mark or other identification to any product or the packaging material thereof.

4. Delete the first sentence of § 70.14 *Dressed poultry; eligibility.*

5. Change the number "70.404" in § 70.390 *Basis of providing Federal-State service*, to read "70.401"

6. Change § 70.60 *Denial of service*, to read as follows:

§ 70.60 *Denial of service.* (a) The acts or practices set forth in §§ 70.61 to 70.66 or the causing thereof may be deemed sufficient cause, for the debarment, by the Administrator, of any person, including any agents, officers, subsidiaries, or affiliates of such person from any or all benefits of the act for a specified period, after notice and opportunity for hearing has been accorded him.

(b) Whenever the Administrator has reason to believe that any person, or his employee, agent, or representative has flagrantly or repeatedly committed any of the acts or practices specified in

§§ 70.61 to 70.66, he may without hearing, direct that the benefits of the act be denied such person, including any agents, officers, subsidiaries, or affiliates of such person, pending investigation and hearing and shall give notice thereof by registered mail. A written petition for reconsideration of such interim denial may be filed with the Administrator by any person so denied the benefits of the act within 10 days after notice of the interim denial. Such petition shall state specifically the errors alleged to have been made by the Administrator in denying the benefits of the act pending investigation and hearing. Within 20 days following the receipt of such petition for reconsideration, the Administrator shall reinstate the benefits of the act or notify the petitioner of the reasons for continued interim denial.

7. Change paragraph (c) of § 70.61 *Misrepresentation, deceptive, or fraudulent acts or practices,* to read as follows:

(c) The making, issuing, or using, or attempting to issue or use any grading certificate, inspection certificate, symbol, stamp, label, seal or identification, authorized pursuant to the regulations in this part;

8. Change paragraph (e) of § 70.61, to read as follows:

(e) The use of any of the aforesaid terms or any official stamp, symbol, label, seal or identification in the labeling or advertising of any product; or

9. Change § 70.62 *Use of facsimile forms,* to read as follows:

§ 70.62 *Use of facsimile forms.* Using or attempting to use a form which simulates in whole or in part, any certificate, symbol, stamp, label, seal or identification authorized to be issued or used under the regulations in this part.

10. Change § 70.63, to read as follows:

§ 70.63 *Wilful violation of the regulations.* Any wilful violation of the regulations in this part or the act.

11. Change § 70.64, to read as follows:

§ 70.64 *Interfering with a grader or inspector* Any interference with or obstruction or any attempted interference or obstruction of any grader or inspector in the performance of his duties.

12. Change § 70.65, to read as follows:

§ 70.65 *Misleading labeling.* The use of the terms "Government Graded" "Federal-State Graded" or terms of similar import in the labeling or advertising of any product without stating in the labeling or advertisement, the U. S. grade of the product as determined by an authorized grader.

13. Delete §§ 70.391 through 70.404 and insert in lieu thereof the following renumbered sections:

§ 70.391 *Supervision.* All inspection service which is provided under this part shall be technically and administratively supervised by the Agricultural Marketing Service (hereinafter referred to as AMS) through its national and area supervisory organization. It shall be the responsibility of AMS to determine that the services rendered pursuant to any cooperative agreement under the regulations are conducted in a satisfactory manner, that the actual post-mortem inspection of poultry is adequate, and that uniform procedures and policies are followed in all plants in accordance with the requirements of the regulations. Inspection service furnished on a Federal-State basis shall be carried on either under the direct supervision of a Federally-employed Circuit Supervisor (hereinafter referred to as Alternative I) or under the direct supervision of a Federally-employed State Supervisor (hereinafter referred to as Alternative II). In either case, such supervisor shall be immediately responsible for the activities within the State. However, any supervisory official of AMS of a higher administrative level shall have the authority to observe, independently of or in conjunction with the Federal-State supervisor, any particular station or the official activities of any particular inspector at any time he deems it advisable; and shall have the authority to supervise such activities as may be desirable and necessary.

CONDITIONS

§ 70.395 *Regulations.* The regulations of the Secretary of Agriculture governing the grading and inspection of poultry and edible products thereof and instructions of the Administrator governing the inspection of products shall apply to both Federal-State inspection service and to Federal inspection service. AMS shall assume the responsibility for developing the regulations and any instructions issued pursuant thereto and for the supervision of inspection work carried on under the service.

§ 70.396 *Duties of the Federal-State Supervisor.* The Federal-State supervisor of inspection service shall be responsible for the supervision and proper conduct of inspection service within the State or States to which he is assigned. He may be assigned to supervise inspection service in a single State or in two or more adjoining States providing this is agreed to by AMS and the cooperating agencies in such States. He shall examine each prospective State inspector and recommend acceptable applicants for a license. Such recommendation shall be in writing and accompanied by a statement of the qualifications of the applicant. He shall be responsible for making surveys of plants applying for service within the State. The assignment of State employed inspectors to plants shall be mutually agreeable to the State agency and AMS. Insofar as practicable inspectors will not be assigned to plants where they have been previously employed.

§ 70.397 *Employment and licensing of State inspectors.* (a) The cooperating State agency shall assume responsibility for recruitment and employment of State inspectors for plants under the Federal-State service, and the salaries of such inspectors shall be paid by the State. Such inspectors may be employed only when licensed by AMS, and it shall be understood that AMS shall have the authority to withdraw such license at any time (and thus terminate the services of any such inspector) in accordance with the provisions of this part. The licensed State inspector shall not, while a licensed inspector, accept employment, money or remuneration of any kind from the company to which assigned.

(b) Each State inspector at the time he begins service as an inspector shall complete a period of training under the immediate supervision of a Federally employed training supervisor. The license issued to such inspector shall be a limited license authorizing him to perform inspection work only under the supervision of the inspector-in-charge of the station to which he is assigned. A license authorizing the State inspector to serve as inspector-in-charge of a station may be issued when it has been determined by the officer-in-charge of the poultry inspection service of AMS that the inspector is qualified for such position.

§ 70.398 *Duties of State-employed inspectors.* The duties of the State-employed inspectors shall be the same as the duties of Federally-employed inspectors. Inspectors shall make proper, accurate, and adequate post-mortem examinations of poultry carcasses and shall thoroughly familiarize themselves with and adhere to the inspection procedures and the applicable provisions of the Federal regulations governing inspection service.

§ 70.399 *Replacement of Federal inspectors.* When Federal-State inspection service replaces Federal inspection service in a State the replacement of Federal inspectors by State inspectors shall not be carried out until satisfactory transfers of the Federal inspectors to plants out of the State can be accomplished by AMS.

§ 70.400 *Collection of fees.* Through designated representatives, the State Agency shall collect all fees and charges for services rendered under cooperative agreements, except to branches of the Federal Government, and will establish a special fund into which these fees and charges will be deposited. Any person or firm desiring Federal-State inspection service shall make application therefor to the State Agency. The application shall set forth the conditions under which service is to be performed. Such applications shall be approved or concurred in by AMS.

§ 70.401 *Reimbursement of AMS by State cooperating agency.* The State Agency shall reimburse AMS from fees collected or from State appropriations, or both, for the following:

(a) An amount equal to (1) the salaries of any Federally employed inspectors assigned to plants under the Federal-State inspection service, plus an amount to cover travel costs, annual leave accrued, and sick leave earned and taken while such Federally employed inspectors are assigned to plants in the State; (2) an amount to cover travel costs incurred by AMS with respect to training activities performed by any Federal training supervisors in the State; and (3) an amount calculated upon the amounts specified in subparagraphs (1) and (2) of this paragraph to cover administrative costs incurred by AMS with respect to Federal em-

ployees while they are assigned in the State.

(b) An amount equal to the actual amounts reimbursed to the Agricultural Research Service by AMS, plus fifteen (15) percent of such amounts to cover administrative costs of AMS when inspectors of the Agricultural Research Service are employed in any plant, performing the inspection of canning or other processing of poultry food products.

(c) An amount equal to fifteen (15) percent of the salaries and other expenses of inspectors employed by the State Agency, to cover administrative costs of AMS when such inspectors are employed in any plant, performing the inspection of canning or other processing of poultry food products.

(d) As compensation toward supervisory and administrative costs of AMS as well as toward costs incurred for supplies, equipment, certificates, report forms, and other materials furnished by AMS as follows:

(1) Where Alternative I, referred to in § 70.391 is adopted, an amount equal to thirty-five (35) cents per thousand pounds of eviscerated poultry processed in each official plant operating under Federal-State inspection service, plus one hundred and twenty-five ($125) dollars, for the combined initial and final survey made of each plant in the State by AMS pursuant to § 70.44 of the regulations. (The request for such survey will be made by the State Agency to AMS upon receipt by the State Agency, of an application for inspection service.)

(2) Where Alternative II, referred to in § 70.391 is adopted, an amount equal to (i) the salary of the Federally employed State Supervisor, plus an amount to cover travel costs, annual leave accrued, and sick leave earned and taken while such State Supervisor is employed in the State, and (ii) an amount equal to twenty (20) cents per thousand pounds of eviscerated poultry processed in each official plant operating under Federal-State inspection service to cover administrative and supervisory costs of AMS, above the State level.

(Sec. 205, 60 Stat. 1090; 7 U. S. C. 1624)

Issued at Washington, D. C., this 20th day of December 1955, to become effective upon publication in the FEDERAL REGISTER.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator
Agricultural Marketing Service.

[F. R. Doc. 55-10303; Filed, Dec. 22, 1955; 8:50 a. m.]

Chapter III—Agricultural Research Service, Department of Agriculture

[P. P. C. 575, Revised]

PART 301—DOMESTIC QUARANTINE NOTICES

SUBPART—MEXICAN FRUIT FLY

REVISED ADMINISTRATIVE INSTRUCTIONS PRESCRIBING METHODS OF TREATMENT OF CITRUS FRUIT UNDER MEXICAN FRUIT FLY QUARANTINE

Pursuant to the authority conferred by § 301.64-4 (e) of the regulations supplemental to the Mexican Fruit Fly Quarantine (Notice of Quarantine No. 64, 7 CFR and Supp. 301.64-1 et seq.) the Chief of the Plant Pest Control Branch hereby issues revised administrative instructions to appear as § 301.64-4a in Title 7, Code of Federal Regulations, as follows:

§ 301.64-4a *Administrative instructions prescribing methods of treatment of citrus fruit.* (a) Any of the approved methods of fumigation and sterilization specified in paragraph (b) of this section will meet sterilization requirements imposed under § 301.64-4 (e) as a condition of the issuance of permits for the interstate movement of citrus fruits.

(b) *Approved methods of treatment*—(1) *Ethylene dibromide fumigation.* (i) This approved treatment shall consist of fumigation of citrus fruit with vaporized ethylene dibromide at normal atmospheric pressure in specially constructed fumigation chambers at the prescribed dosage under the following fruit and air temperatures:

(*a*) 8 ounces of ethylene dibromide per 1,000 cubic feet of space for 2 hours at temperatures (both fruit and fumigation chamber) of 77° F. or above.

(*b*) 10 ounces of ethylene dibromide per 1,000 cubic feet of space for 2 hours at temperatures (both fruit and fumigation chamber) of 70° F to 76° F inclusive.

(ii) No specifications as to the exact methods and equipment used in obtaining the required temperatures, volatilizing and circulating the gas, are prescribed but the conditions under which fumigation takes place must be satisfactory to the supervising inspector. Vapor-heat sterilization rooms and equipment, with certain alterations, may be made into satisfactory fumigation chambers. However, extreme care must be taken to prevent the escape of gas into the packing plant during the fumigation process as ethylene dibromide gas is toxic to human beings.

(2) *Vapor-heat methods.* (i) The following methods of vapor-heat treatment are approved:

(*a*) The temperature of the fruit shall be raised to 110° F., at the approximate center of the fruit, in a period of 8 hours and shall be held at that level during the following 6 hours. This method is adapted to sterilization plants that do not have the capacity to increase the temperature of the fruit steeply at the beginning of the treating period.

(*b*) The temperature of the fruit shall be raised to 110° F., at the approximate center of the fruit, in a period of 6 hours and shall be held at that level during the following 4 hours. The temperature of the fruit must be raised rapidly during the first 2 hours, after which it may be gradually raised to 110° F., in the following 4 hours.

(ii) While no specifications as to the exact methods and equipment for obtaining these conditions are prescribed, the air within the room shall be maintained at the temperature and under the humidity conditions required by the supervising inspector. Available information clearly indicates that by the application of dry heat the required temperatures cannot be reached without injury to the fruit. To prevent such injury it is necessary to maintain a very high humidity throughout the period of treatment. In the tests where successful performance was obtained, live steam as the source of heat was applied in such a way as to secure as nearly as possible a uniform distribution of steam-heated air so directed as not to discharge directly on the fruit. The air temperature ranged from 110° to 112° F., and the air was very moist. The fruit was held in field boxes stacked six boxes high and without special means of separating the boxes in each stack. The experiments indicate that the fruit should be sterilized after coloring, if this is necessary, and before packing for shipment, and then cooled down to a temperature around 45° F as soon as possible after sterilizing. Wax or paraffin, either dry or in solution, should not be applied to this fruit before sterilization.

(3) *Low-temperature methods.* This approved treatment shall consist of either:

(i) Cooling until the approximate center of the fruit reaches a temperature of 33° F. and holding the fruit at or below that temperature for a period of 18 days; or,

(ii) Cooling until the approximate center of the fruit reaches a temperature of 34° F and holding the fruit at or below that temperature for a period of 20 days.

(iii) Cooling until the approximate center of the fruit reaches a temperature of 35° F and holding the fruit at or below that temperature for a period of 22 days.

(c) *Other conditions.* Such treatments as are approved in paragraph (b) of this section may be conducted only in packing or refrigeration plants that are located in the regulated area and are approved by the Plant Pest Control Branch. The Branch will approve only those plants that are adequately equipped to handle and fumigate or sterilize fruit. Such treatment will be done under the supervision of inspectors of the Branch. These inspectors shall at all times be given access to fruit while in the process of treatment.

(d) *Department not responsible for damage.* While the results of the fruit treatment experiments so far conducted have been successful, it should be emphasized that inexactness and carelessness in operation may result in injury to fruit. In approving the methods of treatment specified in paragraph (b) of this section the United States Department of Agriculture does not accept the responsibility for fruit injury.

The foregoing administrative instructions shall be effective December 23, 1955, and at that time shall supersede B. E. P. Q. 575, effective February 1, 1949, (7 CFR, 1954 Supp., 301.64-4a)

The foregoing revised administrative instructions provide a new alternate method of ethylene dibromide fumigation. In this respect, they relieve restrictions now imposed. In addition they restate methods of low-temperature and vapor-heat treatments previously approved in administrative instructions now in effect. In order to be of maximum benefit to shippers of citrus fruit,

such new alternate method should be made available as soon as possible. Therefore, pursuant to section 4 of the Administrative Procedure Act (5 U. S. C. 1003) it is found upon good cause that notice and public procedure on the foregoing administrative instructions are unnecessary, impracticable, and contrary to the public interest, and since these instructions relieve restrictions they may properly be made effective under said section 4 less than 30 days after their publication in the FEDERAL REGISTER.

(Secs. 1, 3, 33 Stat. 318; 7 U. S. C. 141, 143, 162. Interprets or applies sec. 8, 37 Stat. 318, as amended; 7 U. S. C. 161)

Done at Washington, D. C., this 20th day of December 1955.

[SEAL] W. L. POPHAM,
Chief,
Plant Pest Control Branch.

[F. R. Doc. 55-10305; Filed, Dec. 22, 1955; 8:51 a. m.]

[P. P. C. 612, Second Revision]

PART 301—DOMESTIC QUARANTINE NOTICES

SUBPART—KHAPRA BEETLE

REVISED ADMINISTRATIVE INSTRUCTIONS DESIGNATING PREMISES AS REGULATED AREAS UNDER REGULATIONS SUPPLEMENTAL TO THE KHAPRA BEETLE QUARANTINE

Pursuant to § 301.76-2 of the regulations supplemental to the Khapra Beetle Quarantine (7 CFR 301.76-2, 20 F R. 1012) under sections 8 and 9 of the Plant Quarantine Act of 1912, as amended (7 U. S. C. 161, 162) revised administrative instructions are hereby issued as follows, listing warehouses, mills, and other premises in which infestations of the khapra beetle have been determined to exist and designating such premises as regulated areas within the meaning of said quarantine and regulations.

§ 301.76-2a *Administrative instructions designating certain premises as regulated areas under the khapra beetle quarantine and regulations.* Infestations of the khapra beetle have been determined to exist in the warehouses, mills, and other premises listed below. Accordingly, such warehouses, mills, and other premises are hereby designated as regulated areas within the meaning of the provisions in this subpart:

ARIZONA

Acme Bag & Burlap Co., 3200 South Seventh Street, Phoenix.

Allied Grain Company, 310 South 24th Avenue, Phoenix.

Arizona Flour Mills, South Peart Road at Southern Pacific Railroad, Casa Grande.

Arizona Flour Mills, Tempe.

Arizona Flour Mills, 177 East Toole, Tucson.

Arizona Grain Storage Co., 100 South Nevada, Chandler.

Arizona Stock Farms, Inc., Arlington.

Arizona Wholesale Supply Co., 191 Toole Avenue, Tucson.

Arlington Cattle Co. (warehouse and mill), Highway 80, Arlington.

C. A. Batty Farm, Box 27, Glenbar.

Box O Ranch P. O. Box 424, Coolidge.

Brown's Farm Store, 3555 East Washington, Phoenix.

Capitol Feed & Seed, South Pacific Street and East Dirkley Avenue, Coolidge.

Capitol Feed & Seed Co., 312 South 15th Avenue, Phoenix.

Chandler Feed & Seed Store, 250 South Arizona Avenue, Chandler.

Delinting & Seed Treating Co., 3100 South Seventh Street, Phoenix.

Elloc Farm, Route 4, Box 182, Phoenix.

Erly-Fat Livestock Feed Co., South Peart Road at Southern Pacific Railroad, Casa Grande.

Erly-Fat Livestock Feed Co., 117 East Toole Avenue, Tucson.

C. H. Espy (town property), 1089 B Avenue, Yuma.

John H. Evans Farm Storage, Route 4, Box 330, located ¼ mile east of 75th Avenue on south side of Van Buren Street, Phoenix.

Farm Equipment & Supply, First Street and California Avenue, Parker.

Farmers' Coop. Marketing Association, 401 Eighth Street, Yuma.

Farmers' Coop. Marketing Association, Highway 95, Yuma.

Feeders Supply Co., 751 West Main, Mesa.

G & H Feed Store, 812 Thatcher Boulevard, Safford.

Grubbs Hatchery, P. O. Box 1808, Yuma.

International Market (Jimmy Ng), 106 Main Street, Somerton.

Frank Kornegay Farm (storage bins), 10th Street and Avenue D, Yuma.

Henry Leivas Farm, Route 1, Box 48-B, Parker.

Long's Dairy (barn), Buckeye.

Mrs. Pearl McCreary Ranch, Route 1, Gilbert.

McElhaney Cattle Company, cattle feed lot, 44 North Central Avenue, located 1 mile south and 1½ miles east of Tempe, on east Broadway, Phoenix.

Millett Feed Barn & Millett Feed & Storage Warehouse, 254 South Sirrine Street, Mesa.

Northrup-King Seed Co., 953 Third Avenue, Yuma.

Pablo Franco Ranch, 1704 Avenue B, Yuma.

Peterson's Feed & Supply, 940 North Stone Avenue, Tucson.

Phoenix Hay & Feed Company, 4111 North Seventh Street, Phoenix.

Quick Seed & Feed, 2101 Grand Avenue, Phoenix.

Ranchers Feed & Supply, 204 South Scottsdale Road, Scottsdale.

Red Star Feed & Seed Store, 220 Mill Street, Tempe.

R. F. Richter Feed Store, Box 51, Parker.

South Central Feed & Supply (warehouse), 3710 South Central Avenue, Phoenix.

Southern Feed & Hardware, 25 East Southern Avenue, Phoenix.

Southwest Flour & Feed, 347 East A Street, Glendale.

Tiemann Feed & Supply Co., 2001 North Stone Avenue, Tucson.

Tovrea Land & Cattle Co., 5001 East Washington, Phoenix.

Tucson Hay and Grain Co., 4734 East Speedway, Tucson.

Valley Feed & Seed, 1918 West Van Buren, Phoenix.

Valley Hay Market, 334 West Prince Road, Tucson.

Vita-Gro Feed Store, 155 West Main Street, Mesa.

Norman Welker Farm, Route 1, Safford.

Whitman Grain Co., 11th Street, Yuma.

Whitman Seed Co., 11th Street, Yuma.

Yuma County Feed & Seed Warehouse & Store, 2101 Eighth Street, Yuma.

CALIFORNIA

Paul H. Aspey Farm Storage Bins, 1 mile south of Highway 80 on Highway 111, and 1 mile east of Acacia Canal Gate 67, El Centro. Mail address Box 264, El Centro.

Janice Axtell Farm, Route 4, Box 2250, Oroville.

I. V. Bag Company (Nick Robolino, owner), located East A and Road 46, 304 North Ninth Street, Brawley. Mail address P. O. Box 1313, Brawley.

Bakersfield Cattle Feeding Co. Ranch, Box 3155, Greenfield.

B. S. Baldwin & Son Ranch, Route 2, Box 753, Bakersfield.

Beckwith & Co., 614 High Street, Delano.

E. M. Bevins Ranch, Route 2, Box 22, El Centro.

John Binnell (chicken ranch), 1697 South Cucamonga Avenue, Ontario.

Thomas Blackman Property (Bag fumigation), southwest corner of intersection of Sixth Street and Emerson, Calexico.

L. R. Bonesteel Ranch, located one-sixth mile north of Highway 93 from a point 1.7 miles east of Bonds Corner, Holtville. Mail address Route 1, Holtville.

Joe Bowers Ranch, Road 66, three-fourths mile west of Road B, Route 1, Box 14, Calipatria.

Herbel Brady Ranch, 1531 East A Street, Brawley.

Madeline Britton Property, 219 First Street, Calexico.

C. H. Burns Ranch, located two miles northeast of Shafter at southwest corner of Mettler and Merced Avenue. Mail address Route 1, Box 12, Shafter.

Camp and Mebane Cattle Co. Feed Yard, 3½ miles east of Cawelo on Lerdo Road, Cawelo.

Louis Carano Ranch, east of Southern Pacific Railroad tracks at intersection of County Roads East B and No. 8, 1 mile south of Heber.

Charles C. Causey (small farm used for storage and farm feeding), 653 South Imperial Avenue, northwest corner intersection County Roads East M and 46, Brawley.

Central Valley Feed Yard, Inc., East Eighth Street and RR. tracks, Imperial.

Louis J. Charlebois, Jr., Ranch, Route 2, Box 375, Blythe.

Fred Clendonon Ranch, Route 5, Box 359, Bakersfield.

Coachella Valley Feed Yard, east side of Highway 111, south of Avenue 54. Mail address Box 226, Thermal.

J. E. Conrad Ranch, 18782 Livermore Street, Reedley.

C. E. Cook Ranch, ¼ mile south of intersection of County Roads 39 and West 1, Imperial.

Olaf Dahlquist Ranch, intersection of Road 28 and West N, Route 2, Box K, Imperial.

W. Denewiler Ranch, Route 1, Box 77, Blythe.

Rosie Diffenbacher Ranch, County Road No. 63, one-half mile west of Highway 111, Calipatria.

C. R. Dow Ranch, Long Valley, North fork of Wolf Creek, 4 miles north of Highway 20, P. O. Clearlake Oaks.

El Centro High School, barn on County Farm, El Centro.

The Farmers Cattle Feeding Yard, three-quarter mile west of Highway 111, north of Brawley. Mail address Box 155, Brawley.

Harry Finney Ranch, Somerset Road, SW¼ of sec. 24, T. 10 N., R. 3 W., near Hinkley.

Archie Frick Ranch, SE¼ of sec. 7, T. 32 S., R. 29 E., near Arvin. Mail address 325 Third Avenue, Arvin.

Forrest Frick Ranch, located one mile east of Lamount on west side of Vineland Road, 160 yards south of Di Giorgio Road. Mail address Route 5, Box 437, Bakersfield.

Forrest Frick Ranch, located west side of Vineland Road, four-tenths of a mile south of Di Giorgio Road. Mail address Route 5, Box 437, Bakersfield.

Fred Frick Ranch, the south 100 acres of the NW¼ of sec. 7, T. 32 S., R. 29 E., near Arvin. Mail address 325 Third Avenue, Arvin.

Bud Frye Ranch, 72155 Frankwood (2 miles north of Reedley), Reedley.

Ernest Furrer Ranch, northeast corner of intersection of county roads West J and 18, El Centro.

Pete Gardner Ranch, one-half mile south of Cemetery Road on west side of unnamed road, one-half mile east of Evergreen Cemetery, 2 miles east of courthouse, El Centro.

Joe Grassotti Ranch, 899 West Fairview Road, Bakersfield.

Bud Gunterman Ranch, on East G, one-half mile south of road 8 on west side of Acacia Canal at Gate 4, Calexico.

Gunterman Ranches (Bud Gunterman, owner), intersection of East L and Road 14, Calexico.

L. R. Hamilton Ranch, Route 3, Box 568, Visalia.

Hangover Farms, located northwest corner Road 20 (Highway 80) and West E, Box 418, El Centro.

F. J. Hauseur & Sons Feed Lot, located 2 miles south of Orita, 1½ miles east on Oxalio Canal, Brawley.

Gilbert Hayden Ranch, located at northwest corner of West 26 and F Road. Mail address P. O. Box 195, Imperial.

Hiett Dairy, located one mile west of Delano on Hiett Avenue, 300 yards south of County Line Road, Route 1, Box 1088, Delano.

C. P. Hiles Ranch, Route 5, Box 2309, Oroville.

Oscar Holdenried Farm Storage Bins, Renfro Drive, 1 mile west of Kelseyville. Mail address Box 338, Lakeport.

Holly Sugar Co. Feed Lot, located at intersection of East B and Road 34, Brawley.

Holtville Milk Coop., Holtville.

Ray J. Hovely Ranch, Old Calipatria Highway, 2½ miles north of Brawley, Brawley.

Harold Hunt Ranch, 742 Olive (7 miles east of Heber), El Centro.

Alvin Immel Ranch, located Oasis Canal, Gate 24, intersection of East O and Road 35, Holtville.

J. A. Ivey Ranch, Route 2, Box 167, Blythe.

Burt and Clinton James Store, southeast corner Johnson Dale Highway and Buena Vista Drive, Kernville.

Carl Johns & Son Ranch, located 10 miles northwest of Bakersfield on west side of Calloway Drive, 200 yards south of Snow Road, Route 4, Box 576, Bakersfield.

D. H. Johnson Ranch, Route 2, Box 104, Imperial.

Johnson & Drysdale Cattle Co., Route 1, Box 143, Calexico.

H. Johnson Ranch, Route 1, Box 206, Terra Bella.

Everet Jones Ranch, intersection of East R and Road 56, Route 2, Box 174, Brawley.

A. H. Karpe Greenfield Ranch, Station A, Box 187, Greenfield.

Clarence Keel Ranch, Highway 111, 4 miles north of Calipatria.

J. R. Kennedy Ranch, located in Long Valley, approximately 6 miles north of Highway 20, P. O. Clearlake Oaks.

Kern County Land Company, Gosford Feed Yard, 2920 M Street, Bakersfield.

Kern Valley Farms, on Wheeler Ridge Road, 1 mile south of Herring Road, Box 184, Arvin.

Henry Kirchener Dairy, on west side of County Road East B, one-fourth mile north of County Road 28, El Centro.

C. E. Kline Ranch, Route 2, Box 282, El Centro.

Estle Lain Ranch, located one-eighth mile west of intersection of Road West C and Road 21, north side of Road 21, Route 1, Box 9, El Centro.

R. Langley Ranch, Route 2, Box 39A, Holtville.

N. K. Larsen Ranch, located at intersection West G and Road 33, Route 2, Box 138, Imperial.

Fritz Lehman Ranch, Route 1, Box 99, northeast of El Centro.

Miss Mattie Lund and Irene Lund Parker Ranch, 6 miles east of Oroville, P. O. Drawer 309, Oroville.

Gene Malone Ranch, Route 1, Box 1440M, Indio.

Tom Manning Feed Barns, north end of Sones Drive, east side of Adobe Creek, north of Finley. Mail address Box 54, Lakeport.

F. B. Marlow Ranch, intersection of West A and Road 54, Star Route, Box 27, Westmoreland.

Marshall Seed & Feed Co., 126 South Sixth, El Centro.

Peter L. Marston Ranch, Route 2, Box 261, El Cajon.

John T. Martin Ranch, Route 1, Box 99, Earlimart.

Kelly McCollum Ranch, intersection of Road 28 and West E, Route 1, Box G, Imperial.

M. L. McFarland (small farm), County Road West A, one-fourth mile north of County Road 28, P. O. Box 327, Imperial.

S. C. McGonagle Ranch, two miles east of El Centro from Highway 80 on the Dogwood Canal. Mail address Box 978, El Centro.

Mee Ranches (lessee), 1901 East Brundage Lane, Bakersfield.

Milham Farms, Blue Moon Ranch, Lerdo Road, Buttonwillow.

Henry Munger Feed Lot, 299 Main Street, El Centro.

L. C. Myers Ranch, intersection of East V and County Road 58, Brawley.

Newhall Land & Farming Company, Route 3, Box 77, Saugus.

Niland Food Market (store), west side of 200 block, east side of Highway 111, Niland.

Onyx Store property (Oscar Rudnick, owner), Onyx.

Oro Farm and Cattle Co. (Benjamin Kosdon, owner), located one and one-half miles northeast of Buttonwillow on west side of Wasco Way, one-half mile north of Highway 178, Box 274, Buttonwillow.

Outsen Milling Co., 925 Bryant Street, San Francisco.

Palo Verde School District Farm, Palo Verde Junior College, west side of Lovekin, between Chancelor Way and 10th Avenue, Blythe.

Pauba Ranch Mill & Feed Yard (Vail Co., owner), north side of Highway 71, 3½ miles north of junction with Highway 395, south of Temecula.

I. F. Porter (small farm), Route 2, Box 9A, Brawley.

Raymond A. Powell and Mike Deniz Ranch, Route 1, Box 166, 1 mile north of Glenn.

Paul Pryor Dairy, 5501 Olive Drive, Oildale, located four miles west of U. S. Highway 99, south side of Olive Drive, approximately three miles northwest of Bakersfield.

C. B. Ralph's Ranch, at northeast corner of intersection of County Roads East C and 32, Imperial.

Emil Rebik Ranch, near East P on north side of Road 58, Box 184, Brawley.

Clare Rexroth Ranch, in sec. 8, T. 27 S., R 27 E., Route 1, Box 98, McFarland.

J. W. Roberts Ranch, located at Ash Canal, Gate 160, intersection of East J and Road 18, Route 2, Box 57, Holtville.

F. O. Rosenbaum Ranch, Route 2, Box 29, Imperial.

Harold B. Ross Ranch, Route 1, Box 78, Holtville.

Oscar Rudnick Ranch, on Highway 178, across highway from Onyx Store, Onyx.

Oscar Rudnick Ranch, one-half mile north of Onyx Store, Onyx.

Rudinick Trust Feed Lot, 1½ miles west of Oak Street, on Panama Lane, Bakersfield.

Leroy Schaad Ranch, at northwest corner of intersection of Ware Road and Lone Star Road, Williams.

F. W. Schoneman Ranch, at southwest corner of intersection of County Roads East T and 54, Brawley.

Walter E. Scott Ranch, southwest corner of 14th Avenue and Defrain Boulevard, P. O. Box 283, Blythe.

Roy C. Shank Ranch, Route 2, Box 17A, Brawley.

K. K. Sharp (small farm and storage), Route 1, Box 44, southeast corner intersection County Roads East R and 26, on Pampas Canal, Holtville.

Shaw and Dower (feed lot and bulk storage at residence), three-fourths mile north of Sandia, Holtville.

Frank Sherwood Ranch, 920 Lowelling Avenue, Hayward.

Alice Sinclair Ranch, Vail Canal No. 3, Gate 309, 5½ miles west, thence one-half mile north of Calipatria, on northwest corner of intersection of West I and County Road 66, Calipatria.

Mrs. L. E. Sinclair (residence), Road East A, one-half mile south of intersection with Road 65, P. O. Box 234, Calipatria.

Snyder's Termite Control, 4428 Magnolia Avenue, Riverside.

Starkey Bros. Dairy, Imperial.

Studer Bros. Ranch, County Road 6, two miles east of Mt. Signal School, Wisteria Lot 4, Route 1, Box 74A, Calexico.

K. W. Taylor Feed Lot, located at intersection of West H. and Road 9, Route 2, Box 45A, El Centro.

E. W. Thornton Ranch, Route 2, Box 2, Imperial.

Union Development Co. Warehouse, approximately 100 yards south of intersection of County Roads No. 86 and West A, Niland.

John Waterman Ranches, located one-eighth mile west of El Centro on Ross Avenue, Route 2, Box 95, El Centro.

Albert Whitlock Ranch, southeast corner of intersection of Highway 111 and Road 77, P. O. Box 19, Calipatria.

Wildlife Refuge Unit No. 1, at northeast corner of intersection of West I and County Road 60, Brawley.

Wildlife Refuge Unit No. 2, on east side of West I, one-fourth mile north of County Road 74, Brawley.

Wilkerson Brothers Ranch, on south side of County Road No. 74, one-half mile east of County Road East J, Calipatria.

Ray Willis Ranch, Route 1, Box 106, Brawley.

R. B. Wilson Co. Feed Yard, 300 K Street, Brawley.

T. O. Witt Ranch, on Highway 178, 13 miles northeast of Isabella Lake, Onyx.

D & A Wittenberg Ranch, located south side of Tulare Avenue, one-half mile west of Scaroni Avenue, 3 miles west of Shafter, Route 1, Box 238, Shafter.

Wright Feed Yards, Seeley.

W. E. Young Ranch, intersection of East N and Road 66, P O. Box 267, Calipatria.

William Youtsler Ranch, intersection of West J and Road 58, Route 1, Brawley.

Miguel D. Yslava Ranch, Route 1, Box 200, El Centro.

NEW MEXICO

Slone Grain Co., 223 North Avenue B, Portales.

This revision combines into a single list the warehouses, mills, and other premises that were designated as khapra beetle regulated areas in revised administrative instructions effective June 22, 1955 (20 F. R. 4361) as amended effective July 13, 1955, July 30, 1955, August 17, 1955, September 17, 1955, October 11, 1955, and November 17, 1955 (20 F R. 4979, 5447, 5961, 6992, 7565, 8515)

By omitting from the list 7 establishments in Arizona, 15 establishments in California, and 3 establishments in New Mexico, the revision revokes the designation of these establishments as regulated areas and deletes them from the list. The revision also adds to the list 2 establishments in Arizona and 6 establishments in California, thereby designating them as regulated areas.

This revision shall be effective December 23, 1955, and on that date shall supersede revised administrative in-

structions effective June 22, 1955, and amendments thereof effective July 13, 1955, July 30, 1955, August 17, 1955, September 17, 1955, October 11, 1955, and November 17, 1955 (20 F. R. 4361, 4979, 5447, 5961, 6992, 7565, 8515)

These instructions supplement khapra beetle quarantine regulations already effective. They also relieve restrictions insofar as they revoke the designation of certain regulated areas. They must be made effective promptly in order to carry out the purposes of the regulations and to permit unrestricted movement of regulated products from the premises being removed from designation as regulated areas. Accordingly, under section 4 of the Administrative Procedure Act (5 U. S. C. 1003), it is found upon good cause that notice and other public procedure with respect to the foregoing administrative instructions are impracticable and contrary to the public interest, and good cause is found for making the effective date thereof less than 30 days after publication in the FEDERAL REGISTER.

(Secs. 1, 3, 33 Stat. 1269, 1270, sec. 9, 37 Stat. 318; 7 U. S. C. 141, 143, 162. Interprets or applies sec. 8, 37 Stat. 318, as amended; 7 U. S. C. 161)

Done at Washington, D. C., this 20th day of December 1955.

[SEAL] W. L. POPHAM,
Chief,
Plant Pest Control Branch.

[F. R. Doc. 55-10306; Filed, Dec. 22, 1955; 8:51 a. m.]

Chapter VIII—Commodity Stabilization Service (Sugar), Department of Agriculture

Subchapter B—Sugar Requirements and Quotas

[Sugar Regs. 814.15, 814.16]

PART 814—ALLOTMENT OF SUGAR QUOTAS

QUOTAS AND DIRECT CONSUMPTION PORTION, PUERTO RICO, 1956

Basis and purpose. This allotment order is issued under section 205 (a) of the Sugar Act of 1948, as amended (hereinafter called the "act") for the purpose of (A) allotting the 1956 sugar quota for Puerto Rico for consumption in the continental United States (including raw sugar transferred for further processing and shipment within the direct-consumption portion of such quota) and the 1956 sugar quota for local consumption in Puerto Rico among persons who process Puerto Rican sugarcane into sugar (1) to be brought into the continental United States and (2) to be marketed for local consumption in Puerto Rico and (B) allotting the portion of the 1956 sugar quota for Puerto Rico which may be filled by direct-consumption sugar among persons who market such sugar for consumption in the continental United States.

The sugar quota for Puerto Rico for consumption in the continental United States is referred to herein as "mainland quota" allotments thereof are referred to as "mainland allotments" and the allotments of the direct-consumption portion thereof as "direct-consumption allotments" The sugar quota for consumption in Puerto Rico and allotments thereof are referred to as "local quota" and "local allotments," respectively.

Omission of recommended decision and effective date. The record of the hearing regarding allotment of the 1956 sugar quotas for Puerto Rico shows that inventories of sugar on January 1, 1956, will approximate 140,000 tons and production of sugar from 1955-56 crop sugarcane will be approximately the sum of the local and mainland quotas established by the Secretary of Agriculture (R. 5, 6) Some of the mainland and local allotments made by this order could be exceeded by the marketing of the 1955 carryover plus a comparatively small quantity of new-crop sugar. Also, the record of the hearing regarding allotment of direct-consumption sugar shows that the capacity of Puerto Rican refineries to produce direct-consumption sugar far exceeds the sum of 126,033 short tons, raw value, of such sugar which may be marketed in the continental United States under the act and the quantity of sugar needed for local consumption in Puerto Rico in 1956 (R. 23) Some of the direct-consumption allotments made by this order are small and delay in the issuance of the order might result in some persons marketing more than their fair share of the direct-consumption portion of the quota. Since this proceeding was instituted for the purpose of issuing allotments to prevent disorderly marketing of sugar and to afford all interested persons an equitable opportunity to market, it is hereby found that due and timely execution of the functions imposed upon the Secretary under the act imperatively and unavoidably requires omission of a recommended decision in this proceeding. It is hereby further found that compliance with the 30-day effective date requirement of the Administrative Procedure Act (60 Stat. 237), is impracticable and contrary to the public interest and, consequently, this order shall be effective on January 1, 1956.

Preliminary statement. Under the provisions of section 205 (a) of the act, the Secretary is required to allot a quota or proration thereof whenever he finds that allotment is necessary (1) to assure an orderly and adequate flow of sugar or liquid sugar in the channels of interstate or foreign commerce, (2) to prevent the disorderly marketing of sugar or liquid sugar, (3) to maintain a continuous and stable supply of sugar or liquid sugar, or (4) to afford all interested persons equitable opportunities to market sugar within the quota for the area. Section 205 (a) also requires that such allotment be made after such hearing and upon such notice as the Secretary may by regulation prescribe.

Pursuant to the applicable rules of practice and procedure (7 CFR 801.1 et. seq.), a preliminary finding was made that allotment of the quotas is necessary and a notice was published on September 24, 1955 (20 F. R. 7170), of a public hearing to be held at Santurce, Puerto Rico, in the Conference Room, Caribbean Area Office, ASC, Segarra Building, on October 5, 1955, at 10:00 a. m., for the purpose of receiving evidence to enable the Secretary to make a fair, efficient and equitable distribution of (A) the 1956 mainland quota (including raw sugar transferred for further processing and the shipment within the direct-consumption portion of the quota) and the 1956 local quota among persons who process Puerto Rican sugarcane into sugar (1) to be brought into the continental United States and (2) to be marketed for local consumption in Puerto Rico, and of (B) the direct-consumption portion of the 1956 sugar quota for Puerto Rico. The hearing was held at the time and place specified in the notice.

In arriving at the findings, conclusions, and regulatory provisions of this order, all proposed findings and conclusions were carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that findings and conclusions proposed by interested persons are inconsistent with the findings and conclusions contained herein, the specific or implied requests to make such findings and reach such conclusions are denied on the basis of the facts found and stated in connection with the conclusions herein set forth.

Basis for findings and conclusions. Section 205 (a) of the act reads in pertinent part as follows:

> * * * Allotments shall be made in such manner and in such amounts as to provide a fair, efficient, and equitable distribution of such quota or proration thereof, by taking into consideration the processing of sugar or liquid sugar from sugar beets or sugarcane to which proportionate shares, determined pursuant to the provisions of subsection (b) of section 302, pertained; the past marketings or importations of each such person and the ability of such person to market or import that portion of such quota or proration thereof allotted to him * * *

A. *Allotment of mainland and local quotas.* The record of the hearing indicates that the prospective Puerto Rican sugar supplies for 1956 sufficiently exceed the quota for Puerto Rico that allotment of the quotas is necessary (R. 5, 6).

All three factors specified in the provision of law quoted above have been considered and each is given a percentile weighting by the formula on which this allotment of the 1956 quotas for Puerto Rico is based. That formula follows a proposal made in the record as to the measures and weightings of factors to be used for determining combined mainland and local allotments (R. 6-7), with provisions for estimates to be used in making initial allotments (R. 8) and sources of data to be used in making final allotments (R. 9).

The formula is made applicable to combined allotments because total marketing opportunities are of greatest significance in determining an equitable distribution among the allottees and because two of the three factors specified in the act for consideration, processings from proportionate shares and ability to market, represent quantities applicable to total marketings. Direct measurement of these factors in relation to local allotments has little relevance because, for the area as a whole, local marketings

amount to only about 10 percent of these factors, and the relative proportion for different allottees varies from zero to about 50 percent (R. 10–11) All processings from a crop are used as a measure of the factor "processing of sugar or liquid sugar from * * * sugarcane to which proportionate shares * * * pertained," even though small quantities of processings from non-proportionate share sugar may be included, since such raw sugar for direct consumption in the formula used for fixing allotments (R. 9)

No other proposals were made and no exception was taken to the proposed procedure which is essentially the same as that which proved satisfactory in allotting the 1955 quota.

A proposal was made in the record for dividing the combined allotment of each allottee into mainland and local allotments on the basis of the percentage that local marketings of each allottee was of its total marketings in 1954 and 1955 (R. 11, 12) Local marketings utilized in the findings and conclusions include all of the marketings to purchasers in Puerto Rico not accounted for by sugar (1) brought into the continental United States by a refiner to whom the allottee transferred sugar for that purpose, or (2) exported at so-called "world prices" (R. 9) A representative of Central Juanita, Inc., proposed using only 1955 instead of a two-year period (R. 21) In finding that local allotments should be based on local marketings in 1955 only, recognition has been given to the testimony at the hearing that marked changes have occurred in the local marketings of individual processors in recent years (R. 11) No other exceptions were taken or proposals made with respect to dividing combined allotments into mainland and local allotments.

As proposed in the hearing record (R. 12) a finding is made to limit initial allotments to 80 percent of the quota, because the use of estimates may result in allotments higher than those resulting from the use of final data. Findings also are made upon uncontroverted evidence in the record that revisions be made in the order, without further notice or hearing, for the purposes of substituting final data for estimates (R. 8) and for revising allotments resulting from the release of allotments by any allottee, or resulting from the proration of any deficit in a quota of another area (R. 13, 14) All allottees stipulated for the record that deficits in quotas or allotments, and final production, marketing and inventory data for each allottee shall become a part of the record.

Findings are made under paragraphs 13 and 14, and paragraphs (b) Producers marketings under allotments; (c) Restrictions on marketings; (d), Exchange of allotments, and (e), Specific charges against allotments, are included in the order since similar provisions operated satisfactorily in 1955, and no objection was made to the proposal in the record that such provision be included (R. 13)

In view of the testimony in the record by a representative of Central San Francisco that his firm, formerly known as the Estate of Arturo Lluberas and Sobrinos had changed its name to Central San Francisco (R. 18) such change in name has been reflected accordingly in the findings and allotment order.

B. *Allotment of the direct-consumption portion of the mainland quota.* The record of the hearing shows that the potential capacity of Puerto Rican refiners to produce direct-consumption sugar sufficiently exceeds the quantity of such sugar which may be marketed within quotas that allotment of direct-consumption sugar is necessary (R. 23)

While all three factors specified in the provisions of section 205 (a) of the act quoted above have been considered, only the "past marketing" and "ability to market" factors have been given percentile weightings in the formula used on which the allotment of the direct-consumption portion of the 1956 mainland quota for Puerto Rico is based. Testimony indicates that allottees accounting for 95 percent of the marketings of direct-consumption sugar to the continental United States do not process sugar from sugarcane and that giving weight to the factor "processing from proportionate shares" would not lead to equitable allotments (R. 24)

The findings and conclusions for measuring and weighting the two factors "past marketing" and "ability to market" follow a proposal made in the record (R. 24, 25) By using marketings of direct-consumption sugar in the continental United States during the years 1951–55, inclusive, as a measure of "past marketings," a period of years has been selected that represent experience under marketing conditions similar to those which may be expected in 1956, and also provide a period of time sufficient to offset short-run factors affecting data for a single year. By using the largest marketings of direct-consumption sugar in the continental United States by each allottee in any year during the period 1935 through 1955 as a measure of "ability to market," a sufficient period of time has been provided to permit the selection of a year for each allottee which will reflect relative abilities. A shorter period as proposed by a representative of the Western Sugar Refining Company (R. 30, 31) would not afford the same opportunity to measure relative abilities on the basis of one year's shipments. A comparison with present plant capacity shows no impairment in the ability of any of the allottees to produce direct-consumption sugar (R. 25)

Two hundred tons of the direct-consumption portion of the quota to be allotted has been set aside for the marketing of raw sugar for direct consumption as proposed in the record (R. 27) It is not practicable to allot such a small quantity to numerous raw sugar mills in advance, hence allotments will be made upon application for specific sales. This procedure continues a trade practice followed in previous years, and contributes to an efficient allocation of the direct-consumption portion of the 1956 sugar quota to be allotted.

The two hundred tons set aside would permit the marketing of Puerto Rican raw sugar for direct consumption in the continental United States at a slightly higher rate than in 1955 prior to the hearing, but at a lower rate than in any other recent year (R. 27)

In accordance with the record of the hearing (R. 27, 28) provision has been made in the findings and the order to reallocate, without further notice or hearing, any quantity of an allotment released by an allottee or any quantity of the unallotted reserve not needed for the marketing of raw sugar for direct consumption. Also, as proposed in the record (R. 28) the findings and order contain provisions relating to restrictions on marketing similar to those contained in the 1955 Puerto Rican allotment order, since such provisions operated successfully in 1955 and no objection was made in the record to their inclusion in 1956.

The name of the allottee formerly known as Estate of Arturo Lluberas y Sobrinos has been changed to Central San Francisco in accordance with testimony in the record (R. 18)

Findings and conclusions. On the basis of the record of the hearing, I hereby find and conclude that in regard to:

A. *Allotment of mainland and local quotas.* (1) For the calendar year 1956 Puerto Rican processors will have available for marketing on the mainland and in Puerto Rico an amount of sugar which exceeds the combined mainland and local quotas by approximately 140,000 short tons.

(2) The allotment of the 1956 mainland quota for Puerto Rico (including raw sugar transferred for further processing to be brought in within the direct-consumption portion of the quota) and the 1956 local quota for Puerto Rico is necessary to prevent disorderly marketing of such sugar and to afford all interested persons equitable opportunities to market such sugar in the continental United States and in Puerto Rico.

(3) To assure a fair, efficient and equitable distribution of the mainland and local quotas for Puerto Rico for 1956 the three statutory standards should be weighted as follows: "processings * * * from * * * proportionate shares," 70 percent; "past marketings," 10 percent; and "ability to market," 20 percent.

(4) The percentage which all of each allottee's processings for the 1955–56 crop is of the total of such processings for all allottees constitutes a fair and equitable measure of "processings * * * from * * * proportionate shares" and in the initial order all processings from 1954–55 crop sugarcane should be used as estimates of processings from 1955–56 crop sugarcane.

(5) A fair and equitable measure of the factor past marketings for each allottee is the percentage which its average mainland and local marketings during the years 1951 through 1955 is of the total of such average marketings for all allottees and in the initial order the combined allotments for 1955 as set forth in Exhibit 4, corrected, of the record

should be used as estimates of marketings for 1955.

(6) The sum for each allottee of processings of sugar from 1955–56 crop sugar plus the inventory of sugar on January 1, 1956, as a percentage of the total of such sums for all allottees constitutes a fair and equitable measure of the ability of each allottee to market sugar during 1956. In the initial order the estimate of 1955–56 processings indicated in paragraph (4) above, should be used, and the January 1, 1955, inventories plus processings of sugar from 1954–55 crop sugarcane less 1955 combined allotments as indicated in (5) above, should be used as estimates of the January 1, 1956, inventories.

(7) The percentages that local marketings were of combined mainland and local marketings for each processor during 1955 are representative for the purpose of dividing the combined 1956 allotment for each processor into a mainland allotment and a local allotment and in the initial order the local allotments for 1955 adjusted for exchanges of local and mainland allotments between allottees effected prior to September 30, 1955, as set forth in the record (Ex. 4 corrected) should be used as estimates of local marketings for 1955.

(8) The quantities of sugar and the percentages referred to in paragraphs (4) (5) (6), and (7), above, are as set forth in the following table:

Processor	Production of sugar from 1954–55 crop sugarcane		Average annual marketings (estimated) 1951 through 1955		Jan. 1, 1956, estimated stocks plus production from 1954–55 crop sugarcane		Estimated local marketings 1955	
	Short tons raw value	Percent of total	Short tons raw value	Percent of total	Short tons raw value	Percent of total	Short tons raw value	Percent of allottee's total 1955 marketings
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Antonio Roig, Sucesores, S. en C.	47,395	4.065	47,035	4.163	52,344	4.604	21,274	41.020
Asociacion Azucarera Cooperativa	33,768	2.896	33,047	2.929	35,177	2.091	67	.200
Central Aguirre Sugar Co., a trust	109,133	9.356	109,700	9.722	118,228	9.048	1,018	1,405
Central Coloso, Inc	61,938	5.312	59,872	5.040	70,782	5.413	574	.020
Central Eureka, Inc	40,816	3.501	37,053	3.284	40,828	3.084	635	1.551
Central Guamani, Inc	12,250	1.051	11,297	.993	13,337	1.020	----------	----------
Central Igualdad, Inc	44,147	3.786	43,417	3.848	50,749	3.882	17,494	33.019
Central Juanita, Inc	41,631	3.570	38,225	3.388	53,821	4.117	2,165	5.021
Central Mercedita, Inc	86,240	7.396	75,964	6.732	91,873	7.027	23,705	27.844
Central Monserrate, Inc	25,979	2.228	25,491	2.259	28,632	2.190	199	.531
Central San Francisco	9,203	.789	7,093	.629	10,738	.821	1,875	20.007
Central San Vicente, Inc	67,170	5.761	60,419	5.354	80,339	6.143	12	.018
Compania Azucarera del Camuy, Inc	14,622	1.254	14,236	1.264	15,617	1.194	----------	----------
Compania Azucarera del Toa	32,562	2.793	31,915	2.829	40,990	3.135	----------	----------
Cooperativa Azucarera Los Canos	37,567	3.222	36,329	3.219	42,169	3.221	----------	----------
Eastern Sugar Associates, a trust	122,449	10.502	123,029	10.902	136,785	10.462	14,763	11.834
Fajardo Sugar Co	112,894	9.682	111,935	9.917	132,437	10.129	15	.013
Land Authority of Puerto Rico	71,084	6.098	68,239	6.051	74,099	5.665	----------	----------
Mario Mercado e Hijos	32,864	2.819	32,078	2.843	35,793	2.738	625	1.772
Mayaguez Sugar Co., Inc	9,124	.783	9,939	.881	9,387	.718	139	1.499
Plata Sugar Co	50,653	4.344	48,217	4.276	57,638	4.409	275	.537
Soller Sugar Co	12,686	1.088	12,369	1.096	13,192	1.009	----------	----------
South Porto Rico Sugar Co. of Puerto Rico	89,853	7.706	94,499	8.372	98,499	7.539	14,778	19.193
Total	1,166,028	100.000	1,128,412	100.000	1,307,422	100.000	100,000	----------

(9) The combined local and mainland quotas should be allotted by applying the weightings of the factors specified in paragraph (3) above to the percentage measures of those factors listed for each allottee in paragraph (8), and by multiplying the sum of such weighted percentages for each allottee by the sum of such quotas. The combined allotments so established should be divided into local and mainland allotments on the basis of the percentages local marketings are of total marketings in 1955 as listed in paragraph (8), above.

(10) In order to prevent any allottee from marketing a quantity of sugar in excess of the allotments established therefor on the basis of final data relating to 1955–56 crop processings, 1955 marketings and January 1, 1956, inventories, allotments established by this order should not exceed 80 percent of the combined mainland and local quotas.

(11) The order shall be revised without further notice or hearing for the purpose of (a) substituting data on processings of the 1955–56 crop sugarcane, 1955 local and mainland marketings and January 1, 1956, inventories for estimates used in measuring the factors in (4), (5) (6) and (7) (b) allotting any quantity of an allotment which may be released by an allottee, in writing to the Director of the Sugar Division, to other allottees able to utilize additional allotment in proportion to the established allotments of such allottees; and (c) allotting any area deficits to which Puerto Rico may become a beneficiary by allotting such quantities to allottees in the same proportion as the allotments then in effect.

(12) The name of the allottee formerly referred to as Estate of Arturo Lluberas y Sobrinos shall be changed to Central San Francisco.

(13) Any producer who receives sugar in payment for sugarcane (a) should be permitted to market, within the allotment of the processor who processed his sugarcane, a quantity of sugar equal to the same percentage of the producer's 1955–56 crop sugar that the sum of the processor's mainland and local allotments is of the total 1955–56 crop sugar processed from cane by such processor, and (b) such permitted quantity should be within the mainland allotment unless the producer requests local allotment. Further, a person who, as a producer, has sugar received from a processor in settlement for sugarcane of crops prior to that of 1955–56 shall be permitted to market such sugar within that processor's mainland allotment.

(14) An efficient distribution of the quotas requires exchanges between allottees of quantities of mainland allotment for like quantities of local allotment, subject to the approval of an officer of the Department designated in the order.

(15) Allotments established in the foregoing manner and in the amounts set forth in the order provide a fair, efficient, and equitable distribution of the quotas, as required by section 205 (a) of the act.

B. *Allotment of direct-consumption portion of the mainland quota.* (1) The potential capacity of Puerto Rican refiners to produce direct-consumption sugar during the calendar year 1956 exceeds 200,000 short tons and this quantity is far greater than the total quantity of such sugar which may be marketed within the 1956 sugar quotas for Puerto Rico.

(2) The allotment of the direct-consumption portion of the 1956 sugar quota for Puerto Rico is necessary to prevent disorderly marketing of such sugar and to afford each interested person an equitable opportunity to market such sugar in the continental United States.

(3) Assignment of a percentile weight to the "proportionate shares" factor in the final allotment formula would not result in fair, efficient and equitable allotment.

(4) The best measure of the "past marketings" factor for each allottee is its percentage of the average marketings of direct-consumption sugar of all allottees in the continental United States during the years 1951 through 1955.

(5) The best measure of the "ability to market" factor for each allottee is its percentage of the sum of the largest quantities of direct-consumption sugar of all allottees marketed in the continental United States during any calendar year during the period 1935–55, inclusive, and the ability so measured is within the present plant capacity of each refiner.

(6) The allotments of the direct-consumption portion of the 1955 mainland quota for Puerto Rico as established in Sugar Regulation 814.14 (19 F. R. 9322) and set forth in the record (Ex. 6) are adequate measures of 1955 marketings of direct-consumption sugar in the continental United States.

(7) The quantity of sugar marketed referred to in paragraphs (4) and (5) above, are as follows:

[Short tons, raw value]

Allottee	Average 1951–55	Highest year 1935–55
Central Aguirre Sugar Co., a trust	5,946	10,640
Central Roig Refining Co	19,794	28,665
Central San Francisco	776	2,590
Porto Rican American Sugar Rfy., Inc	78,853	116,611
Western Sugar Refining Co	19,696	29,983
Total	125,065	188,494

(8) A small part of the direct-consumption portion of the mainland quota is normally marketed in the continental United States as raw sugar for direct consumption. Two hundred short tons, raw value, should be reserved for this purpose in 1956.

(9) Allotments totaling 125,833 short tons, raw value, should be established by giving fifty percent weight to past marketings, measured as provided in paragraph (4) above, and fifty percent weight to ability to market, measured as provided in paragraph (5) above.

(10) Any quantity that may be released by any allottee who finds that it cannot use its full allotment and so indicates in writing to the Director of the Sugar Division, or any quantity that may not be needed to meet the demands upon the unallocated reserve for raw sugar for direct consumption, may be reallotted to allottees in proportion to their established allotments without further notice or hearing.

(11) The name of the allottee formerly referred to as Estate of Arturo Lluberas y Sobrinos shall be changed to Central San Francisco.

(12) Each allottee in 1956 should be restricted from bringing into the continental United States for consumption therein any direct-consumption sugar in excess of the smaller of its allotment established herein or the quantity transferred to such allottee and charged against an allotment of the 1956 Puerto Rican mainland quota. All other persons should be prohibited from bringing such sugar into the continental United States in 1956 for consumption therein except such sugar acquired from an allottee within its allotment established herein, or brought in as raw sugar within the quantity established therefor.

(13) Allotments established in the foregoing manner and in the amounts set forth in the order provide a fair, efficient, and equitable distribution of the direct-consumption portion of the mainland quota, as required by section 205 (a) of the act.

Order Pursuant to the authority vested in the Secretary of Agriculture by section 205 (a) of the act, it is hereby ordered:

§ 814.15 *Allotment of 1956 sugar quotas for Puerto Rico*—(a) *Allotments.* The 1956 sugar quota for Puerto Rico for consumption in the continental United States (including raw sugar to be further processed and marketed within the direct-consumption portion of such quota) and the 1956 sugar quota for local consumption in Puerto Rico, are hereby allotted, to the extent shown in this section, to the following processors in amounts which appear in columns (1) and (2) opposite their respective names:

[Short tons, raw value]

Processor	(1) Mainland allotment	(2) Local allotment
Antonio Roig, Sucesores, S. en C	21,283	17,071
Asociacion Azucarera Cooperativa	26,926	54
Central Aguirre Sugar Co., a trust	86,797	1,287
Central Coloso, Inc	49,619	460
Central Eureka, Inc	32,492	510
Central Guamani, Inc	9,818	--------
Central Igualdad, Inc	22,010	13,966
Central Juanita, Inc	32,829	1,731
Central Mercedita, Inc	49,472	19,025
Central Monserrate, Inc	20,914	80
Central San Francisco	5,842	1,511
Central San Vicente, Inc	54,714	10
Compania Azucarera del Camuy, Inc	11,734	--------
Compania Azucarera del Toa	27,046	--------
Cooperativa Azucarera Los Canos	30,416	--------
Eastern Sugar Associates, a trust	87,652	11,789
Fajardo Sugar Co	92,453	12
Land Authority of Puerto Rico	56,687	--------
Mario Mercado e Hijos	26,058	421
Mayaguez Sugar Co., Inc	7,259	104
Plata Sugar Co	40,844	220
Soller Sugar Co	10,129	--------
South Porto Rico Sugar Co. of Puerto Rico	61,006	11,749
All other persons	--------	--------
Subtotal	864,000	80,000
Unallotted	216,000	20,000
Total	1,080,000	100,000

(b) *Producers' marketings under allotments.* Each processor shall reserve a share of its mainland allotment for the marketings of each producer with whom settlement for sugarcane is made in sugar equal to the same percentage of the producer's 1955–56 crop sugar that the sum of the processor's mainland and local allotments is of the processor's total production of 1955–56 crop sugar. Provided, That upon written request to the processor within 30 days of the effective date of this order, the producer's share shall be divided between local and mainland allotments as the sum of the processor's allotments is divided between mainland and local allotments. Further, a person who, as a producer, has sugar received from a processor in settlement for sugarcane of crops prior to that of 1955–56 shall be permitted to market such sugar within that processor's mainland allotment.

(c) *Restrictions on marketings.* (1) During the period January 1, 1956, to the date the allotments established in this section are revised on the basis of final data on processings from 1955–56 crop sugarcane, 1955 marketings and January 1, 1956, inventories, each processor named in paragraph (a) of this section, together with the producers with whom it shares its allotments under paragraph (b) of this section and all other persons are hereby prohibited from bringing into the continental United States for consumption therein, or marketing to a local refiner or any other person for that purpose, and from marketing for local consumption in Puerto Rico, any sugar in excess of the applicable quantities established in columns (1) and (2) of the table in paragraph (a) of this section.

(2) During the calendar year 1956 all persons who acquire raw sugar for further processing and resale as direct-consumption sugar are hereby prohibited from marketing sugar for local consumption in Puerto Rico in excess of the sum of (i) the quantity of sugar acquired for such purpose under the limitations specified in § 814.13, as amended (19 F R. 9319· 20 F R. 2686, 5674) and held in inventory on December 31, 1955, and (ii) the quantity of sugar acquired for such purpose within the limits specified in this section.

(d) *Exchange of allotments.* The allotments established in paragraph (a) of this section, or producers' shares thereof established under paragraph (b) of this section, shall not be exchanged without the approval of the Chief of the Quota and Allotment Branch, Sugar Division, Commodity Stabilization Service of the Department.

(e) *Specific charges against allotments.* Sugar produced in Puerto Rico which is brought into the continental United States for consumption therein or marketed for local consumption in Puerto Rico during 1956 shall be charged to the applicable allotment of the processor who processed such sugar.

§ 814.16 *Allotment of the direct-consumption portion of 1956 sugar quota for Puerto Rico*—(a) *Allotments.* The direct-consumption portion of the 1956 sugar quota for Puerto Rico, amounting to 126,033 short tons, raw value, is hereby allotted as follows:

Allottee	*Direct-consumption allotment (short tons, raw value)*
Central Aguirre Sugar Co., a trust	6,542
Central Roig Refining Co	19,526
Central San Francisco	1,255
Porto Rican American Sugar Refinery, Inc	78,502
Western Sugar Refining Co	19,918
All other persons (raw sugar only)	200
Total	126,033

(b) *Restrictions on marketing.* (1) During the calendar year 1956, each allottee named in paragraph (a) of this section is hereby prohibited from bringing into the continental United States, for consumption therein, any direct-consumption sugar from Puerto Rico in excess of the smaller of (i) the allotment therefor established in paragraph (a) of this section, or (ii) the quantity transferred to such allottee and charged against a 1956 mainland allotment under § 814.15.

(2) During the calendar year 1956, all persons other than the allottees specified in paragraph (a) of this section are hereby prohibited from bringing into the continental United States, for consumption therein, any direct-consumption sugar from Puerto Rico except (i) that acquired from an allottee within the quantity established in this section, and (ii) that brought in within the quantity established in this section for "all other persons"

(Sec. 403, 61 Stat. 932; 7 U. S. C. 1153. Interpret or apply secs. 205, 209, 61 Stat. 926, 928; 7 U. S. C. 1115)

Done at Washington, D. C., this 16th day of December 1955. Witness my hand and the seal of the Department of Agriculture.

[SEAL] TRUE D. MORSE,
Acting Secretary of Agriculture.

[F. R. Doc. 55-10261; Filed, Dec. 22, 1955; 8:45 a. m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Docket No. AO-262]

PART 911—MILK IN THE TEXAS PANHANDLE MARKETING AREA

ORDER REGULATING THE HANDLING OF MILK

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AUTHORITY: §§ 911.0 to 911.111 issued under sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup. 608c.

§ 911.0 *Findings and determinations*—(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, as amended, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon a proposed marketing agreement and a proposed order regulating the handling of milk in the Texas Panhandle marketing area. Upon the basis of the evidence introduced in such hearing and the record thereof, it is found that:

(1) The said order, 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 the market supply of and demand for milk in the said marketing area, and the minimum prices specified in the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest;

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

(4) All milk and milk products handled by handlers, as defined in this order, are in the current of interstate commerce or directly burden, obstruct or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler as his pro rata share of such expense, 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight, as the Secretary may prescribe with respect to butterfat and skim milk contained in (a) receipts of producer milk, (b) other source milk at a pool plant which is allocated to Class I milk pursuant to § 911.46 and, (c) Class I milk disposed of in the marketing area (except to a pool plant) from a nonpool plant not subject to the classification and pricing provisions of another order issued pursuant to the act.

(b) *Additional findings.* In view of the fact that this order will constitute the original imposition of a regulatory program of this nature for the market, the provisions other than those relating to prices and payments to producers, should be put into effect prior to the effective date of the entire order to afford handlers an opportunity to make any necessary changes in their accounting procedure or other adjustments as required to conform with all provisions of the order. Reasonable time will have been afforded interested parties to prepare to comply with the aforesaid provisions. The provisions of said order are known to handlers. The decision of the Assistant Secretary of Agriculture containing all provisions of this order was issued on November 22, 1955. In view of the foregoing, it is hereby found and determined that good cause exists for making §§ 911.1 through 911.19; 911.25 through 911.27; 911.30 through 911.33; 911.40 through 911.46; 911.60 and 911.61, 911.88 through 911.90; 911.100 through 911.103; 911.110 and 911.111, effective on January 1, 1956 and the entire order (§§ 911.1 through 911.111) effective February 1, 1956. It would be contrary to the public interest to delay such effective dates of this order for 30 days after its publication in the FEDERAL REGISTER. (See sec. 4 (c), Administrative Procedure Act, 5 U. S. C. 1001 et seq.)

(c) *Determinations.* It is hereby determined that handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping milk covered by this order) of more than 50 percent of the milk covered by this order which is marketed within the Texas Panhandle marketing area refused or failed to sign the proposed marketing agreement regulating the handling of milk in the said marketing area and it is hereby further determined that:

(1) The refusal or failure of such handlers to sign said proposed marketing agreement tends to prevent the effectuation of the declared policy of the act;

(2) The issuance of this order is the only practical means pursuant to the declared policy of the act of advancing the interests of producers of milk which is produced for sale in the marketing area; and

(3) The issuance of this order is approved or favored by at least two-thirds of the producers who participated in a referendum thereon and who, during the determined representative period (October 1955) were engaged in the production of milk for sale in the said marketing area.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the Texas Panhandle marketing area

shall be in conformity to and in compliance with the following terms and conditions:

DEFINITIONS

§ 911.1 *Act.* "Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.)

§ 911.2 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the United States authorized to exercise the powers or to perform the duties of the said Secretary of Agriculture.

§ 911.3 *Department.* "Department" means the United States Department of Agriculture or any other Federal agency authorized to perform the price reporting functions of the United States Department of Agriculture.

§ 911.4 *Person.* "Person" means any individual, partnership, corporation, association, or other business unit.

§ 911.5 *Cooperative association.* "Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"· and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

§ 911.6 *Texas Panhandle marketing area.* "Texas Panhandle marketing area," hereinafter called the "marketing area," means all the territory within the counties of Armstrong, Briscoe, Carson, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchison, Moore, Oldham, Ochiltree, Potter, Randall, Roberts, Sherman and Wheeler, all in the State of Texas.

§ 911.7 *Producer* "Producer" means any person, except a producer-handler, who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority, which milk is (a) received at a pool plant, or (b) diverted from a pool plant to a nonpool plant for the account of either the operator of the pool plant or a cooperative association (1) any day during the months of March through June and (2) on not more than 15 days during any of the months of July through February· *Provided,* That milk diverted pursuant to this section shall be deemed to have been received at the location of the plant from which diverted.

§ 911.8 *Distributing plant.* "Distributing plant" means a plant which is approved by an appropriate health authority for the processing or packaging of Grade A milk and from which any fluid milk product is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) located in the marketing area.

§ 911.9 *Supply plant.* "Supply plant" means a plant from which milk, skim milk or cream which is acceptable to the appropriate health authority for distribution in the marketing area under a Grade A label is shipped during the month to a pool plant qualified pursuant to § 911.10 (a)

§ 911.10 *Pool plant.* "Pool plant" means:

(a) A distributing plant from which a volume of Class I milk equal to not less than 50 percent of the Grade A milk received at such plant from dairy farmers and from other plants is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) and not less than 15 percent of such receipts are so disposed of to such outlets in the marketing area: *Provided,* That if a portion of a plant is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authorities for the receiving, processing or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section.

(b) A supply plant from which the volume of fluid milk products shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is equal to not less than 50 percent of the Grade A milk received at such plant from dairy farmers during such month: *Provided,* That if such shipments are not less than 75 percent of the receipts of Grade A milk at such plant during the immediately preceding period of September through November, such plant may, upon written application to the market administrator on or before March 1 of any year, be designated as a pool plant for the months of March through June of such year: *And provided further* That if a portion of a plant is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authority for the receiving, processing or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section.

§ 911.11 *Nonpool plant.* "Nonpool plant" means any milk manufacturing, processing or bottling plant other than a pool plant.

§ 911.12 *Handler* "Handler" means: (a) Any person in his capacity as the operator of one or more distributing or supply plants, or (b) any cooperative association with respect to the milk from producers diverted by the association for the account of such association from a pool plant to a nonpool plant.

§ 911.13 *Producer-handler* "Producer-handler" means any person who operates a dairy farm and a distributing plant but who receives no milk from other dairy farmers.

§ 911.14 *Producer milk.* "Producer milk" means only that skim milk or butterfat contained in milk (a) received at the pool plant directly from producers, or (b) diverted from a pool plant to a nonpool plant in accordance with the conditions set forth in § 911.7.

§ 911.15 *Fluid milk product.* "Fluid milk product" means milk, skim milk, buttermilk, milk drinks (plain or flavored) cream, or any mixture in fluid form of skim milk and cream (except storage cream, aerated cream products, eggnog, ice cream mix, evaporated or condensed milk, and sterilized products packaged in hermetically sealed containers)

§ 911.16 *Other source milk.* "Other source milk" means all skim milk and butterfat contained in:

(a) Receipts during the month in the form of fluid milk products except (1) fluid milk products received from pool plants, or (2) producer milk; and

(b) Products other than fluid milk products from any source (including those produced at the plant) which are reprocessed or converted to another product in the plant during the month.

§ 911.17 *Chicago butter price.* "Chicago butter price" means the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any range as one price) per pound of 92-score bulk creamery butter at Chicago as reported during the month by the Department.

§ 911.18 *Base milk.* "Base milk" means milk received at a pool plant from a producer during any of the months of March through June which is not in excess of such producer's daily base computed pursuant to § 911.95 multiplied by the number of days in such month: *Provided,* That all milk received at a pool plant from a producer or diverted from such a plant during any of the months of March through June 1956 shall be base milk.

§ 911.19 *Excess milk.* "Excess milk" means milk received at a pool plant from a producer during any of the months of March through June which is in excess of base milk received from such producer during such month, and milk received during such month from a producer for whom no base can be computed pursuant to § 911.95.

MARKET ADMINISTRATOR

§ 911.25 *Designation.* The agency for the administration of this part shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

§ 911.26 *Powers.* The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To receive, investigate, and report to the Secretary complaints of violations;

(c) To make rules and regulations to effectuate its terms and provisions; and

(d) To recommend amendments to the Secretary.

§ 911.27 *Duties.* The market administrator shall perform all duties necessary to administer the terms and provi-

sions of this part, including but not limited to the following:

(a) Within 45 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon his duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount, and with reasonable surety thereon, covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds provided by § 911.88 (1) the cost of his bond and of the bonds of his employees, (2) his own compensation, and (3) all other expenses, except those incurred under § 911.87, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this part, and upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Publicly announce, at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, after the date upon which he is required to perform such acts, has not made reports pursuant to §§ 911.30 and 911.31, or payments pursuant to §§ 911.80, 911.84, 911.86, 911.87, and 911.88;

(g) Submit his books and records to examination by the Secretary and furnish such information and reports as may be required by the Secretary;

(h) Verify all reports and payments of each handler by audit of such handler's records and of the records of any other handler or person upon whose utilization the classification of skim milk or butterfat for such handler depends, or by such investigation as the market administrator deems necessary;

(i) Prepare and disseminate to the public such statistics and such information as he deems advisable and as do not reveal confidential information;

(j) Publicly announce on or before:

(1) The 5th day of each month, the minimum price for Class I milk, pursuant to § 911.51 (a) and the Class I butterfat differential, pursuant to § 911.52 (a) both for the current month; and the minimum price for Class II milk, pursuant to § 911.51 (b) and the Class II butterfat differential, pursuant to § 911.52 (b) both for the preceding month;

(2) The 10th day after the end of the months of July through February the uniform price pursuant to § 911.72 and the producer butterfat differential pursuant to § 911.81;

(3) The 10th day after the end of each of the months of March through June, the uniform prices for base milk and excess milk pursuant to § 911.73 and the producer butterfat differential pursuant to § 911.81, and

(k) On or before the 10th day after the end of each month, report to each cooperative association, which so requests, the percentage of the milk caused to be delivered by the cooperative association or by its members to the pool plant(s) of each handler during the month, which was utilized in each class. For the purpose of this report, the milk so delivered shall be allocated to each class for each handler in the same ratio as all producer milk received by such handler during the month.

REPORTS, RECORDS AND FACILITIES

§ 911.30 *Reports of receipts and utilization.* On or before the 7th day after the end of each month, each handler, except a producer handler, shall report for such month to the market administrator in the detail and on forms prescribed by the market administrator:

(a) The quantities of skim milk and butterfat contained in receipts of producer milk, and the aggregate quantities of base and excess milk;

(b) The quantities of skim milk and butterfat contained in fluid milk products received from other pool plants;

(c) The quantities of skim milk and butterfat contained in other source milk;

(d) The quantities of skim milk and butterfat contained in producer milk diverted to nonpool plants pursuant to § 911.7;

(e) Inventories of fluid milk products on hand at the beginning and end of the month; and

(f) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement of the disposition of Class I milk outside the marketing area.

§ 911.31 *Other reports.* (a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler, except a producer-handler, shall report to the market administrator in detail and on forms prescribed by the market administrator:

(1) On or before the 20th day after the end of the month for each of his pool plants his producer payroll for such month which shall show for each producer: (i) His name and address, (ii) the total pounds of milk received from such producer, including, for the months of March through June, the total pounds of base and excess milk, (iii) the number of days, if less than the entire month for which milk was received from such producer, (iv) the average butterfat content of such milk, and (v) the net amount of such handler's payment, together with the price paid and the amount and nature of any deductions;

(2) On or before the first day other source milk is received in the form of any fluid milk product at his pool plant(s), his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product;

(3) Prior to his diversion of producer milk to a nonpool plant, his intention to divert such milk, the proposed date or dates of such diversion and the plant to which such milk is to be diverted; and

(4) Such other information with respect to his utilization of butterfat and skim milk as the market administrator may prescribe.

§ 911.32 *Records and facilities.* Each handler shall maintain and make available to the market administrator or to his representative during the usual hours of business such accounts and records of his operations, together with such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipt and utilization of all skim milk and butterfat handled in any form during the month;

(b) The weights and butterfat and other content of all milk, skim milk, cream and other milk products handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products on hand at the beginning and end of each month; and

(d) Payments to producers and cooperative associations including the amount and nature of any deductions and the disbursement of money so deducted.

§ 911.33 *Retention of records.* All books and records required under this subpart to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain: *Provided,* That if, within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records is necessary in connection with a proceeding under section 8c (15) (A) of the act or a court action specified in such notice the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 911.40 *Skim milk and butterfat to be classified.* The skim milk and butterfat which are required to be reported pursuant to § 911.30 shall be classified each month by the market administrator, pursuant to the provisions of §§ 911.41 through 911.46.

§ 911.41 *Classes of utilization.* Subject to the conditions set forth in § 911.44, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk (including concentrated and reconstituted skim milk) and butterfat (1) disposed of in the form of a fluid milk product (except as provided in paragraph (b) (2) of this section) and (2) not accounted for as Class II milk:

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat (1) used to produce any product other than a fluid milk product; (2) disposed of and

used for livestock feed; (3) contained in inventory of fluid milk products on hand at the end of the month; and (4) in shrinkage allocated to receipts of producer milk and other source milk (except milk diverted to a nonpool plant pursuant to § 911.7) but not in excess of 2 percent of such receipts of skim milk and butterfat, respectively.

§ 911.42 *Shrinkage.* The market administrator shall allocate shrinkage over a handler's receipts as follows:

(a) Compute the total shrinkage of skim milk and butterfat for each handler; and

(b) Prorate the resulting amounts between the receipts of skim milk and butterfat contained in producer milk and in other source milk.

§ 911.43 *Responsibility of handlers and reclassification of milk.* (a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat can prove to the market administrator that such skim milk or butterfat should be classified otherwise;

(b) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

§ 911.44 *Transfers.* Skim milk or butterfat disposed of each month from a pool plant shall be classified:

(a) As Class I milk, if transferred in the form of a fluid milk product to the pool plant of another handler, except a producer-handler, unless utilization as Class II milk is claimed by both handlers in their reports submitted for the month to the market administrator pursuant to § 911.30: *Provided,* That the skim milk or butterfat so assigned to Class II milk shall be limited to the amount thereof remaining in Class II milk in the plant of the transferee-handler after the subtraction of other source milk pursuant to § 911.46 and any additional amounts of such skim milk or butterfat shall be classified as Class I milk: *And provided further* That if either or both handlers have received other source milk, the skim milk or butterfat so transferred shall be classified at both plants so as to allocate the greatest possible Class I utilization to the producer milk of both handlers;

(b) As Class I milk, if transferred to a producer-handler in the form of fluid milk product;

(c) As Class I milk, if transferred or diverted in the form of a fluid milk product to a nonpool plant located more than 300 miles by the shortest highway distance as determined by the market administrator from the nearest point in the marketing area,

(d) As Class I milk, if transferred or diverted in the form of a fluid milk product in bulk to a nonpool plant located not more than 300 miles by the shortest highway distance as determined by the market administrator from the nearest point in the marketing area unless:

(1) The transferring or diverting handler claims classification in Class II milk in his report submitted to the market administrator pursuant to § 911.30 for the month within which such transaction occurred;

(2) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification; and

(3) The skim milk and butterfat in the fluid milk products (except in ungraded cream disposed of for manufacturing uses) disposed of from such nonpool plant do not exceed the receipts of skim milk and butterfat in milk received during the month from dairy farmers who the market administrator determines constitute the regular source of supply for such plant: *Provided,* That any skim milk or butterfat in fluid milk products (except in ungraded cream disposed of for manufacturing uses) disposed of from the nonpool plant which is in excess of receipts from such dairy farmers shall be assigned to the fluid milk products so transferred or diverted and classified as Class I milk: *And provided further* That if the total skim milk and butterfat in fluid milk products which were transferred by all handlers to such nonpool plant during the month is less than the skim milk and butterfat classified as Class I milk pursuant to the preceding proviso hereof, the assignment to Class I milk shall be prorated over the claimed Class II classification reported by each such handler on transfers to the nonpool plant.

§ 911.45 *Computation of the skim milk and butterfat in each class.* For each month, the market administrator shall correct for mathematical and for other obvious errors the reports of receipts and utilization for the pool plant(s) of each handler and shall compute the pounds of butterfat and skim milk in Class I milk and Class II milk for such handler: *Provided,* That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water reasonably associated with such solids in the form of whole milk.

§ 911.46 *Allocation of skim milk and butterfat classified.* After making the computations pursuant to § 911.45 the market administrator shall determine the classification of producer milk received at the pool plant(s) of each handler each month as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II milk the pounds of skim milk assigned to producer milk pursuant to § 911.41 (b) (4)

(2) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk received in the form of fluid milk products which were not subject to the Class I pricing provisions of an order issued pursuant to the act;

(3) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk other than that received in the form of fluid milk products;

(4) Subtract from the remaining pounds of skim milk in Class II milk an amount equal to such remainder, or the product obtained by multiplying the pounds of skim milk in producer milk by 0.05, whichever is less;

(5) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source received in the form of fluid milk products which are subject to the Class I pricing provisions of another order issued pursuant to the act;

(6) Add to the pounds of skim milk remaining in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (4) of this paragraph;

(7) Subtract from the remaining pounds of skim milk in each class the skim milk in fluid milk products received from the pool plants of other handlers according to the classification of such products as determined pursuant to § 911.44 (a)

(8) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk contained in inventory of fluid milk products on hand at the beginning of the month;

(9) Add to the pounds of skim milk remaining in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph and if the remaining pounds of skim milk in both classes exceed the pounds of skim milk contained in producer milk, subtract such excess from the remaining pounds of skim milk in series beginning with Class II. Any amount of excess so subtracted shall be called "overage"

(b) Butterfat shall be allocated in accordance with the same procedure prescribed for skim milk in paragraph (a) of this section.

(c) Determine the weighted average butterfat content of producer milk remaining in each class computed pursuant to paragraphs (a) and (b) of this section.

MINIMUM PRICES

§ 911.50 *Basic formula price.* The basic formula price shall be the highest of the prices computed pursuant to paragraphs (a) and (b) of this section, rounded to the nearest cent.

(a) The average of the basic or field prices per hundredweight reported to have been paid or to be paid for milk of 3.5 percent butterfat content received from farmers during the month at the following milk plants for which prices have been reported to the market administrator or to the Department, divided by 3.5 and multiplied by 4.0:

Present Operator and Location

Borden Co., Mount Pleasant, Mich.
Carnation Co., Sparta, Mich.
Pet Milk Co., Hudson, Mich.
Pet Milk Co., Wayland, Mich.
Pet Milk Co., Coopersville, Mich.
Borden Co., Orfordville, Wis.
Borden Co., New London, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Oconomowoc, Wis.
Pet Milk Co., New Clarus, Wis.
Pet Milk Co., Belleville, Wis.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(b) The price obtained by adding together the amounts calculated pursuant to subparagraphs (1) and (2) of this paragraph:

(1) Subtract 3 cents from the Chicago butter price and multiply the remainder by 4.8; and

(2) From the simple average as computed by the market administrator of the weighted averages of carlot prices per pound for nonfat dry milk solids, spray and roller process, respectively, for human consumption, f. o. b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department, deduct 5.5 cents, and multiply by 8.16.

§ 911.51 *Class prices.* Subject to the provisions of §§ 911.52 and 911.53, the class prices per hundredweight for the month shall be as follows:

(a) *Class I milk price.* From the effective date of this part through August, 1957, the Class I milk price shall be the basic formula price for the preceding month, plus $2.15 during the months of July through February and plus $1.85 during all other months.

(b) *Class II milk price.* The Class II milk price shall be:

(1) For the months of March through June, the average of the prices reported to have been paid or to be paid for ungraded milk of 4 percent butterfat content received from farmers during the month at the following plants for which prices have been reported to the market administrator or the Department:

Present Operator and Location

Plains Creamery, Arnett, Okla.
Price Creamery, Portales, N. Mex.
Quint County Creamery, Mangum, Okla.
Swisher County Creamery, Tulia, Tex.

(2) For the months of July through February, the higher of the prices computed pursuant to subparagraph (1) of this paragraph and paragraph (b) of § 911.50.

§ 911.52 *Butterfat differentials to handlers.* For milk containing more or less than 4.0 percent butterfat, the class prices for the month calculated pursuant to § 911.51 shall be increased or decreased, respectively, for each one-tenth percent butterfat at the appropriate rate, rounded to the nearest one-tenth cent, determined as follows:

(a) *Class I price.* Multiply the Chicago butter price for the preceding month by 0.120.

(b) *Class II prices.* Multiply the Chicago butter price for the current month by 0.110.

§ 911.53 *Location differentials to handlers.* For that milk which is received from producers at a pool plant located 100 miles or more from the City Hall, Amarillo, Texas, by the shortest hard-surfaced highway distance, as determined by the market administrator, and which is transferred to a distributing plant which is a pool plant in the form of a fluid milk product and assigned to Class I pursuant to the proviso of this section, or otherwise classified as Class I milk, the price specified in § 911.51 (a) shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

Distance from the Amarillo City Hall (miles)	*Rate per hundredweight (cents)*
100 but less than 110	35.0
For each additional 10 miles or fraction thereof an additional	1.6

Provided, That for the purpose of calculating such location differential, fluid milk products which are transferred between pool plants shall be assigned to any remainder of Class II milk in the transferee-plant after making the calculations prescribed in § 911.46 (a) (5), and the comparable steps in (b) for such plant, such assignment to transferor plants to be made in sequence according to the location differential applicable at each plant, beginning with the plant having the largest differential.

§ 911.54 *Use of equivalent prices.* If for any reason a price quotation required by this order for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

APPLICATION OF PROVISIONS

§ 911.60 *Producer-handlers.* Sections 911.40 through 911.46, 911.50 through 911.53, 911.70 through 911.73, 911.80 through 911.88, and 911.95 through 911.97 shall not apply to a producer-handler.

§ 911.61 *Plants subject to other Federal orders.* The provisions of this part shall not apply to a distributing plant or a supply plant during any month in which such plant would be subject to the classification and pricing provisions of another order issued pursuant to the act unless: (a) Such plant is qualified as a pool plant pursuant to § 911.10 (a) and a greater volume of fluid milk products is disposed of from such plant to retail or wholesale outlets (excluding pool plants) in the Texas Panhandle marketing area than in the marketing area regulated pursuant to such other order, or (b) such plant is qualified as a pool plant pursuant to § 911.10 (b) *Provided,* That the operator of a distributing plant or a supply plant which is exempted from the provisions of this order pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require (in lieu of the reports required pursuant to § 911.30) and allow verification of such reports by the market administrator.

§ 911.62 *Handlers operating nonpool plants.* None of the provisions from §§ 911.44 through 911.53, inclusive, or from §§ 911.70 through 911.85, inclusive, shall apply in the case of a handler in his capacity as the operator of a nonpool plant, except that such handler shall, on or before the 13th day after the end of each month, pay to the market administrator for deposit into the producer-settlement fund an amount calculated by multiplying the total hundredweight of butterfat and skim milk disposed of as Class I milk from such plant to retail or wholesale outlets (including sales by vendors and plant stores) in the marketing area during the month, by the rate determined pursuant to § 911.63.

§ 911.63 *Rate of payment on unpriced milk.* The rate of payment per hundredweight to be made by handlers on unpriced other source milk allocated to Class I milk shall be any plus amount calculated as follows:

(a) During the months of March through June, subtract from the Class I price adjusted by the Class I butterfat and location differentials applicable at a pool plant of the same location as the nonpool plant supplying such other source milk, the Class II price adjusted by the Class II butterfat differential; and

(b) During the months of July through February subtract from the Class I price f. o. b. such nonpool plant the uniform price to producers adjusted by the Class I butterfat differential.

DETERMINATION OF UNIFORM PRICES TO PRODUCERS

§ 911.70 *Computation of value of milk for each handler.* The value of producer milk received during each month by each handler shall be a sum of money computed by the market administrator as follows:

(a) Multiply the pounds of milk in each class by the applicable class price and add together the resulting amounts;

(b) Add the amounts computed by multiplying the pounds of overage deducted from each class pursuant to § 911.46 (a) (9) and the corresponding step of (b) by the applicable class prices;

(c) Add the amount obtained in multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the hundredweight of producer milk classified in Class II less shrinkage during the preceding month, or the hundredweight of milk subtracted from Class I pursuant to § 911.46 (a) (8) and the corresponding step of (b), whichever is less; and

(d) Add an amount calculated by multiplying the hundredweight of skim milk and butterfat subtracted from Class I milk pursuant to § 911.46 (a) (2) and (3) and the corresponding step of (b), by the rate of payment on unpriced milk determined pursuant to § 911.63 at the nearest nonpool plant(s) from which an equivalent amount of other source skim milk or butterfat was received: *Provided,* That if the source of any such fluid milk product received at a pool plant is not clearly established or if such skim milk and butterfat is received or used in a form other than as a fluid milk product such product shall be considered to have been received from a source at the location of the pool plant where it is classified.

§ 911.71 *Computation of aggregate value used to determine uniform prices.* For each month the market administrator shall compute an aggregate

value from which to determine uniform prices per hundredweight for producer milk, of 4.0 percent butterfat content, f. o. b. plants located within 100 miles of the City Hall of Amarillo, Texas, as follows:

(a) Combine into one total the values computed pursuant to § 911.70 for all handlers who made the reports prescribed in § 911.30 for such month, except those in default of payments required pursuant to § 911.84 for the preceding month;

(b) Add or subtract for each one-tenth percent that the average butterfat content of producer milk represented by the values included under paragraph (a) of this section is less or more, respectively, than 4.0 percent, an amount computed by multiplying such differences by the butterfat differential to producers, and multiplying the result by the total hundredweight of producer milk;

(c) Add an amount equal to the sum of the location differential deductions to be made pursuant to § 911.82; and

(d) Add an amount equal to one-half of the unobligated cash balance in the producer-settlement fund.

§ 911.72 *Computation of uniform price.* For each of the months of July through February, the market administrator shall compute a uniform price for producer milk of 4.0 percent butterfat content f. o. b. pool plants located within 100 miles of the City Hall of Amarillo, Texas, as follows:

(a) Divide the aggregate value computed pursuant to § 911.71 by the total hundredweight of producer milk included in such computations; and

(b) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (a) of this section. The resulting figure shall be the uniform price for producer milk.

§ 911.73 *Computation of uniform prices for base milk and excess milk.* For each of the months of March through June, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 4.0 percent butterfat content, f. o. b. pool plants located within 100 miles of the City Hall of Amarillo, Texas, as follows:

(a) From the reports submitted by handlers pursuant to § 911.30, determine the aggregate classification of producer milk included in the computation of value pursuant to § 911.71 and the total hundredweight of such milk which is base milk and which is excess milk;

(b) Determine the value of such excess milk on a 4 percent butterfat basis by multiplying the total hundredweight of such milk which is not greater than the total Class II milk pursuant to paragraph (a) of this section by the Class II milk price and by adding thereto the value obtained by multiplying the hundredweight of such excess milk which is greater than the quantity of such Class II milk by the Class I milk price;

(c) Divide the value of excess milk obtained in paragraph (b) of this section by the total hundredweight of such milk, and subtract not less than 4 nor more than 5 cents from the price thus computed. The resulting figure shall be the uniform price for excess milk;

(d) Subtract the value of excess milk obtained in paragraph (b) of this section from the aggregate value of all milk obtained in § 911.71, and

(e) Divide the amount obtained in paragraph (d) of this section by the total hundredweight of base milk obtained in paragraph (a) of this section, and subtract not less than 4 cents nor more than 5 cents from the price thus computed. The resulting figure shall be the uniform price for base milk.

§ 911.80 *Time and method of payment for producer milk.* Except as provided in paragraph (c) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

(a) On or before the last day of each month, for milk received during the first 15 days of the month, at not less than the Class II price for the preceding month;

(b) On or before the 15th day after the end of each month, for milk received during such month, an amount computed at not less than the uniform prices per hundredweight pursuant to §§ 911.72 and 911.73 subject to the butterfat differential computed pursuant to § 911.81 plus or minus adjustments for errors made in previous payments to such producer; and less (1) payment made pursuant to paragraph (a) of this section, (2) location differential deductions pursuant to § 911.82, (3) marketing service deductions pursuant to § 911.87 and (4) proper deductions authorized by such producer: *Provided,* That if such handler has not received full payment for such month pursuant to § 911.85 he may reduce uniformly per hundredweight for all producers his payments pursuant to this paragraph by an amount not in excess of the per hundredweight reduction in payment from the market administrator. The handler shall make such balance of payment 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 payment is received from the market administrator;

(c) (1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association each handler shall pay to the cooperative association on or before the 13th and 26th days of each month, in lieu of payments pursuant to paragraphs (a) and (b), respectively, of this section an amount equal to the sum of the individual payments otherwise payable to such producers. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association.

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

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

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

(2) The daily and total pounds and the average butterfat content of milk received from such producer, including for the months of March through June, the pounds of base milk and excess milk;

(3) The minimum rate or rates at which payment to the producer is required pursuant to the order;

(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 and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer or cooperative association.

§ 911.81 *Butterfat differentials to producers.* The applicable uniform prices to be paid each producer pursuant to § 911.80 shall be increased or decreased for each one-tenth of one percent which the butterfat content of his milk is above or below 4.0 percent, respectively, at the rate determined by multiplying the total pounds of butterfat in the producer milk allocated to Class I and Class II milk during the month pursuant to § 911.46 by the respective butterfat differential for each class, dividing the sum of such values by the total pounds of such butterfat, and rounding the resultant figure to the nearest one-tenth of a cent.

§ 911.82 *Location differentials to producers.* In making payment pursuant to § 911.80 the uniform price pursuant to § 911.72 and the uniform price for base milk pursuant to § 911.73 to be paid for milk which is received from producers at a pool plant located 100 miles or more from the City Hall, Amarillo, Texas, by the shortest hard-surfaced highway distance as determined by the market administrator shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

Distance from the Amarillo City Hall (miles)	*Rate per hundredweight (cents)*
100 but less than 110	35.0
For each additional 10 miles or fraction thereof an additional	1.0

§ 911.83 *Producer-settlement fund.* The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 911.62, 911.84, and 911.86, and out of which he shall make all payments pursuant to §§ 911.85 and 911.86: *Provided,* That payments due to any handler shall be offset by payments due from such handler.

§ 911.84 *Payments to the producer-settlement fund.* On or before the 12th day after the end of each month each handler shall pay to the market administrator the amount by which the value of milk for such handler, pursuant to § 911.70, for such month exceeds the obligation, pursuant to § 911.80, of such handler to producers for milk received during the month.

§ 911.85 *Payments out of the producer-settlement fund.* On or before the 13th day after the end of each month, the market administrator shall pay to each handler the amount by which the obligation, pursuant to § 911.80, of such handler to producers for milk received during the month exceeds the value of milk for such handler computed pursuant to § 911.70. If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section the market administrator shall reduce uniformly per hundredweight such payments and shall complete such payments as soon as the appropriate funds are available.

§ 911.86 *Adjustment of errors in payment.* Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund pursuant to § 911.84, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, pursuant to § 911.85, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by § 911.80, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

§ 911.87 *Marketing services.* (a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 911.80 (b) shall deduct 6 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to all milk received by such handler from such producer (except such handler's own farm production), during the month, and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of milk received by handlers from such producers during the month and to provide such producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) *Producers' cooperative associations.* In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

§ 911.88 *Expense of administration.* As his pro rata share of the expense of the administration of the order, each handler shall pay to the market administrator, on or before the 15th day after the end of each month, 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to butterfat and skim milk contained in (a) producer milk, (b) other source milk at a pool plant which is allocated to Class I milk pursuant to § 911.46, and (c) Class I milk disposed of in the marketing area (except to a pool plant) from a nonpool plant not subject to the classification and pricing provisions of another order issued pursuant to the act.

§ 911.89 *Adjustment of overdue accounts.* There shall be added to any balance due the market administrator pursuant to §§ 911.62, 911.84, 911.86, 911.87, and 911.88 an amount equal to one-half of one percent of such balance for each month or any portion thereof that payment of the balance is overdue.

§ 911.90 *Termination of obligations.* The provisions of this section shall apply to any obligation under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or wilful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler within the applicable period of time, files pursuant to section 8c (15) (A) of the act, a petition claiming such money.

DETERMINATION OF BASE

§ 911.95 *Daily base.* The daily base for each producer shall be the amount obtained by dividing the total pounds of producer milk received from such producer by all handlers during the months of September through December immediately preceding, by the number of days from the first day of delivery by such producer during such months to the last day of December inclusive, less the number of days for which no deliveries are made, but not less than 112 days.

§ 911.96 *Base rules.* The following rules shall apply in connection with the establishment of bases:

(a) A base shall apply to deliveries of milk by the producer for whose account that milk was delivered during the months of September through December;

(b) An entire base shall be transferred from a person holding such base to any other person effective as of the first day of any month following receipt by the market administrator of an application for such transfer. Such application shall be on a form approved by the market administrator and shall be signed by the baseholder and by the person to whom such base is to be transferred: *Provided,* That if a base is held jointly, the entire base shall be transferable only

upon receipt of such application signed by all joint holders.

§ 911.97 *Announcement of established bases.* On or before February 15 of each year subsequent to 1956, the market administrator shall notify each producer and the handler receiving milk from such producer of the daily base established by such producer.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 911.100 *Effective time.* The provisions of this part, or any amendments to this part, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

§ 911.101 *Suspension or termination.* The Secretary shall suspend or terminate any or all of the provisions of this part, whenever he finds that it obstructs or does not tend to effectuate the declared policy of the act. This part shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

§ 911.102 *Continuing power and duty of the market administrator* (a) If, upon the suspension or termination of any or all of the provisions of this part, there are any obligations arising hereunder, the final accrual or ascertainment or which requires further acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided,* That any such acts required to be performed by the market administrator shall if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

(b) The market administrator, or such other person as the Secretary may designate shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all funds or property on hand together with the books and records of the market administrator, or such person, to such person as the Secretary shall direct; and (3) if so directed by the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant thereto.

§ 911.103 *Liquidation after suspension or termination.* Upon the suspension or termination of any or all provisions of this part the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under this control, together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this part, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 911.110 *Separability of provisions.* If any provision of this part, or its application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

§ 911.111 *Agents.* The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

Sections 911.1 through 911.19; 911.25 through 911.27; 911.30 through 911.33; 911.40 through 911.46; 911.60 and 911.61, 911.88 through 911.90; 911.100 through 911.103; 911.110 and 911.111 shall be effective on and after the 1st day of January 1956 and the entire order (§§ 911.1 through 911.111) shall be effective on and after the 1st day of February 1956.

Issued at Washington, D. C., this 19th day of December 1955.

[SEAL] EARL L. BUTZ,
Assistant Secretary.

[F. R. Doc. 55-10291; Filed, Dec. 22, 1955; 8:47 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1948]

PART 161—THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS

Part 161, The Federal Range Code for Grazing Districts, is revised, effective 30 days from date of publication, to read as follows:

Sec.
161.1 Basic policy and plan of administration.
161.2 Definitions.
161.3 Qualifications of applicants.
161.4 Minimum requirements; classification of base properties.
161.5 Rating and classification of Federal range.
161.6 Issuance of licenses and permits.
161.7 Transfers of base property; base property qualifications; relinquishments.
161.8 Fees; time of payment; refunds.
161.9 Procedure in applications; protests.
161.10 Appeals and hearings.
161.11 General rules of the range.
161.12 Procedure for enforcement of rules and regulations.
161.13 Grazing District advisory boards.
161.14 Local associations of stockmen.
161.15 Construction and maintenance of improvements on Federal range.
161.16 Special rules for grazing districts.
161.17 Contributions for administration, protection, and improvement of public lands.
161.18 Pledge of licenses and permits as security for loans; applications for extension of permit term by borrower-permittee.
161.19 Saving clause.

AUTHORITY: §§ 161.1 to 161.19 issued under sec. 2, 48 Stat. 1270; 43 U. S. C. 315a.

§ 161.1 *Basic policy and plan of administration.* (a) *Purposes; general requirements.* Grazing districts will be administered to conserve and regulate the public grazing lands, to stabilize the livestock industry dependent upon them, and in aid thereof to promote the proper use of the privately controlled lands and waters dependent upon those public grazing lands. In furtherance of these objectives, grazing privileges will be granted with a view to the protection of those livestock operations that are recognized as established and continuing and which normally involve the substantial use of the public range in a regular, continuing manner each year. To promote the highest use of the public lands within grazing districts which have been or hereafter are established, possession or control of sufficient land or water to insure a year-round operation for a certain number of livestock in connection with the use of the Federal range will be required of all users.

(b) *Preference applicants.* Preference in the granting of grazing privileges will be given to those applicants within or near a district who are landowners engaged in a livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of lands, water, or water rights owned, occupied, or leased by them. When the demands of all such preference applicants cannot be satisfied, prior consideration will be given applicants in the manner specified in § 161.6. Provision will be made for other applicants so far as Federal range remains available.

(c) *Permits; annual licenses.* Grazing permits may be issued as soon as the necessary data can be obtained or after agreements as to the extent of their individual grazing privileges have been reached by the interested applicants and such agreements have been reduced to writing, a recommendation thereon made by the advisory board, and approval thereof given by the range manager. No such agreement will be approved unless it appears that it is fair and that it represents a substantial compliance with the provisions of the Federal Range Code for Grazing Districts, and no applicant shall be prejudiced by his failure or refusal to enter into such an agreement. The practice of issuing an annual license will be continued until such time as a permit is issued. Upon the issuance of a permit any outstanding license or part thereof which has been granted on the same qualifications on which the permit is based will terminate. Upon expiration of a term permit an annual license may be issued, pending issuance of a new term permit.

§ 161.2 *Definitions.* Wherever used in rules, instructions, or interpretations issued by the Bureau of Land Management in or pursuant to the Federal Range Code for Grazing Districts, unless the context otherwise requires:

(a) The "act" means the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269; 43 U. S. C. 315, 315a-315r), as amended and supplemented.

(b) "The Federal Range Code for Grazing Districts" means all of the rules and regulations pertaining to the administration of grazing districts.

(c) The "Secretary" means the Secretary of the Interior or his authorized agent.

(d) The "Director" means the Director of the Bureau of Land Management or his authorized agent.

(e) "State Supervisor" means the supervising Bureau of Land Management officer for the State in which the particular range lies, or his authorized agent.

(f) "Federal range" means land within established grazing districts administered by the Bureau of Land Management under the Federal Range Code for Grazing Districts, including the vacant, unappropriated, and unreserved public land of the United States chiefly valuable for grazing and forage crops; State, County, and privately-owned land leased for such administration; and lands so administered pursuant to a cooperative agreement with the Federal department or agency having jurisdiction over such land.

(g) "Property" means privately owned or controlled land or water used in range livestock operations.

(h) "Base property" means property used for the support of the livestock for which a grazing privilege is sought and on the basis of which the extent of a license or permit is computed.

(i) "Base property qualifications" means the maximum amount of grazing privileges on Federal range properly allowable to base properties in Class I or Class II.

(j) "Forage land" means land the principal use of which is the production of natural or cultivated feed for livestock.

(k) (1) "Land dependent" by use means forage land other than Federal range of such character that the conduct of an economic livestock operation requires the use of the Federal range in connection with it and which, in the "priority period" was used as a part of an established, permanent, and continuing livestock operation for any two consecutive years or for any three years of such priority period in connection with substantially the same part of the public domain, now part of the Federal range. The priority period shall be the five-year period immediately preceding June 28, 1934, except that if such Federal range was placed within a grazing district after June 28, 1938, or added to an existing grazing district by boundary modification after the latter date, the priority period shall be the five years immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

(2) No land shall be considered as dependent by use unless offered as base property in an application for a grazing license or permit within one year after the date when the Federal range used in creating the dependency by use first became a part of a grazing district, except that if the Federal range used in creating the dependency by use became a part of a grazing district prior to June 28, 1938, such base property shall not be considered as dependent by use unless offered in an application for a grazing license or permit filed prior to said date. Only the last set of base properties used during the priority period by a livestock operation can be invested with dependency by use by such operation.

(3) The extent to which grazing licenses or permits will be granted on the basis of dependency by use of land, shall be governed by the following:

(i) It shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of any two consecutive years or any three years in which use was actually made during the priority period, whichever is more favorable to the applicant, on that part of the public land which, at the time of the issuance of the license or permit, is Federal range.

(ii) It shall not exceed the amount of forage needed for the proper support of the number of livestock creating such dependency by use which is available on the base property during the minimum period established under § 161.4.

The grazing privileges which may be granted hereunder shall not exceed the amounts determined under subdivision (i) or (ii) of this subparagraph, whichever is the lesser. Where the base property provides forage in excess of that necessary for the proper support of the number of livestock used in creating the dependency by use (Class I) the base property, to the extent of such excess forage capacity, may be treated as dependent by location (Class II) if so qualified.

(iii) Whenever the dependency by use of two or more base properties was created by the use of all or part of the same Federal range, during the same or at different seasons of the year, by two or more livestock operations, the relative dependency by use of each of the base properties shall be proportionate to the average annual use actually and properly made of the Federal range during the priority period by each of the livestock operations.

(l) "Land dependent by location" means forage land other than Federal range, which is so situated and of such character that it can properly be used as a base for an economic livestock operation utilizing the forage resources of the Federal range.

(m) "Animal-unit month" means the amount of natural or cultivated feed necessary for the sustenance of one cow or its equivalent, for a period of one month; as applied to Federal range, it means also the grazing privileges represented by the grazing of one cow or its equivalent for a period of one month. For the purposes of this definition, one cow shall be considered the equivalent of one horse or five sheep or five goats; provided, however, that only for the purposes of establishing fees for grazing privileges under § 161.8 (b) the charge for one horse grazing on the Federal range for one month shall be at twice the rate charged for one cow grazing for the same period.

(n) "Grazing capacity" means the total animal-unit months of forage available from a tract or tracts of forage land during a given period.

(o) "Full-time water" means water which is suitable for consumption by livestock and available, accessible, and adequate for a certain number of livestock during those months in the year for which the range is classified as suitable for use. Such water may be from one source or may be the aggregate amount available from several sources.

(p) (1) "Prior water" is water which, during all or not less than two years of the priority period was used to service certain public domain now part of the Federal range for a livestock operation that was established, permanent, and continuing, and which, normally involved the grazing of livestock on the same areas of public land for a certain portion or portions of the years of such use. For the purpose of this definition the priority period shall be the five-year period immediately preceding June 28, 1934, except that in any area placed within a grazing district or added to an existing district by boundary modification after September 23, 1942, the priority period shall be the five-year period immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

(2) Where a livestock operation used a water or waters during the priority period in such manner as would, in the absence of other factors, have served to invest such water with the attribute of priority, but such livestock operation subsequently ceased using such water or waters and used other water or waters in such manner as to invest them, too, with priority, only the latter water or waters shall be considered as prior, unless the former are also prior because of use by another livestock operation.

(3) No water shall be considered as prior unless offered as base property in an application for a grazing license or permit filed within one year after the public lands which were used in creating the priority first became a part of a grazing district except that when such lands became a part of a grazing district more than one year prior to March 16, 1942, a water shall not be considered as prior unless offered in an application filed prior to that date.

(4) The extent to which grazing privileges will be granted on the basis of the priority of water shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of the years in which use was actually made during the priority period, on substantially that part of the public lands within the service area which, at the time of the issuance of the license or permit, is Federal range.

(q) "Service area" means the area that can be properly grazed by livestock watering at a certain water. In determining such area, natural and cultural barriers, recognized habits of livestock, proper livestock practices, and range management factors will be considered.

§ 161.3 *Qualifications of applicants*—(a) *Qualifications.* An applicant for a grazing license or permit is qualified if engaged in the livestock business and:

(1) Is a citizen of the United States, or

(2) Has on file before a court of competent jurisdiction a valid declaration of intention to become a citizen or a valid petition for naturalization, or

(3) Is a group, association, or corporation authorized to conduct business under the laws of the State in which the grazing privileges sought are to be exercised, and the controlling interest in which is vested in persons who would be qualified as individual applicants under subparagraphs (1) or (2) of this paragraph.

(b) *Effect of transfer arising through operation of law.* The acquisition of rights in base property by an unqualified person through operation of law or testamentary disposition will not adversely affect any outstanding license or permit, or preclude the issuance or renewal of a license or permit, based on such property, for a period of two years after such acquisition. Upon the failure of such person to qualify within the two year period the license or permit will be subject to cancellation in accordance with § 161.9 (d)

§ 161.4 *Minimum requirements; classification of base properties.* (a) The range manager, after recommendation by the advisory board, shall establish minimum base property requirements as a condition of qualification for the issuance of a license or permit in each district or unit thereof, taking into consideration the availability of base properties for proper use with and their relative dependence upon Federal range, land and water conditions, and other factors affecting livestock operations in the area according to customary use and best practices for good range management.

(b) The range manager after recommendation by the advisory board will classify base properties as land or water and further in the following manner:

Class 1. Land dependent by use, or full-time prior water.

Class 2. Land dependent by location, or full-time water.

§ 161.5 *Rating and classification of Federal range*—(a) *Grazing capacity; seasons and maximum annual period of use.* The range manager, after recommendation by the advisory board, will rate the grazing capacity of each unit or area in a grazing district and will classify each for the proper seasons of use and for the maximum period of time for which any licensee or permittee will be allowed to use the Federal range therein during any one year.

(b) *Wildlife; allowance for maintenance.* In each grazing district a sufficient grazing capacity of Federal range suitable for wildlife will be reserved by the range manager after consulting with wildlife interests and the advisory board, for the maintenance of a reasonable number of wild game animals, to use the range in common with livestock grazing in the district.

(c) *Designation of ranges for particular kinds of livestock.* The range manager may designate certain areas for use exclusively by a certain kind or class of livestock when necessary for the proper use or orderly administration of the Federal range.

(d) *Unit-wide or area-wide adjudication.* (1) The range manager, after recommendation by the advisory board, may make a simultaneous classification under § 161.4 of all offered base properties within a single administrative unit or grazing area and may allocate in a single action the available Federal range within the unit or area upon which such base properties are dependent.

(2) The Range Manager, shall give written notice by registered mail[1] of such classification and allocation to the persons offering such base properties, and allow them 30 days from receipt of the written notice to file protest to the Advisory Board, in accordance with § 161.9 (b) Thereafter, and provided there is then pending a valid application for grazing privileges, the range manager will render his final decision thereon and will allow the right of appeal to the Examiner in accordance with § 161.10.

(e) *Diminution of available Federal range.* Federal range lands to be used under a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, and to withdrawal, appropriation, selection, or other disposal under the public land laws. Reasonable notice of a pending or proposed classification, withdrawal or other disposal which might result in a diminution of the available Federal range will be given to the licensee or permittee of such lands, consistent with § 296.3 of this chapter, and subject to the right of protest or appeal to the Director and to the Secretary of the Interior as may be provided in such notice and the rules of practice, Part 221 of this chapter.

§ 161.6 *Issuance of licenses and permits.* Licenses or permits will be issued in the following order:

(a) *Free-use licenses.* A free-use license will be issued to any free-use applicant for grazing on Federal range in the immediate neighborhood of the applicant's residence for not to exceed the number of livestock owned and kept by him for domestic purposes, that is, livestock whose products are consumed or whose work is directly and exclusively used by the family of the applicant, provided the free-use applicant has adequate facilities for the proper care and maintenance of such domestic livestock on the Federal range.

(b) *Regular licenses and permits; number of livestock.* (1) Regular licenses and permits will be issued to qualified applicants to the extent that Federal range is available in the following preference order and amounts:

(i) To applicants owning or controlling land in class 1, licenses or permits to the extent of the dependency by use of such land; to applicants owning or controlling water in class 1, licenses or permits to the extent of the priority of such water.

(ii) To applicants owning or controlling land or water in class 2, licenses or permits for the number of livestock for which range is available and which can be properly grazed in connection with a livestock operation which involves the use of such land or water.

(2) Any licensee or permittee who desires to use the Federal range for a period or periods other than as authorized by his license or permit may, upon written approval of the range manager, be allowed to use the amount of his authorized grazing privileges during any period of time for which the Federal range is classified as proper for use, provided:

(i) The total of such use does not exceed the maximum amount of time for which any licensee or permittee is allowed to use the Federal range during any one grazing year;

(ii) The number of animal-unit months of Federal range to be utilized is not thereby increased;

(iii) Such use will not be detrimental to the Federal range, and

(iv) Such use will not adversely affect other licensees or permittees.

(c) *Exchange of the use licenses.* Exchange of use licenses may be issued to any applicant having ownership or control of non-Federal land interspersed and normally grazed in conjunction with the surrounding Federal range for not to exceed the grazing capacity of such non-Federal land, without payment of grazing fees, provided that during the term of the license the Bureau shall have the management and control of such non-Federal land for grazing purposes.

(d) *Non-renewable licenses.* Non-renewable licenses may be issued to non-preference applicants only for the period specified by the range manager and for the number of livestock for which range is temporarily available and which can be properly grazed without detriment to the operations on the range of applicants owning or controlling base properties in class 1 and class 2.

(e) *Terms and conditions.* The issuance and continued effectiveness of all regular licensees and permits will be subject to the following terms and conditions:

(1) The possession or control by the applicant, licensee, or permittee, of feed and forage supplies adequate, with the authorized Federal range use, to support his licensed or permitted livestock for a full year-round operation.

(2) No license or permit will provide for the grazing livestock on the Federal range during that part or parts of the year for which the Federal range has not been classified as proper for use.

(3) No license or permit will confer grazing privileges in excess of the grazing capacity of the Federal range to be used.

(4) So far as consistent with proper range practices, licenses and permits will confer grazing privileges on the range lands which were used in creating the dependency by use or priority of the base properties involved.

(5) In the event of range depletion resulting from drought or other causes, the grazing privileges that may be ex-

[1] Wherever registered mail is required in this part, Certified mail may be used in lieu thereof in accordance with § 101.19 of this chapter.

ercised under any license or permit may be reduced in whole or in part, and for such period of time as may be necessary.

(6) Upon the diminution of the Federal range to be used under any license or permit due to withdrawal, appropriation, selection, or otherwise, the license or permit may be reduced proportionately to the reduction in available grazing capacity caused by the loss of such Federal range.

(7) If a licensee or permittee ceases to make substantial use of his base property in connection with his year-round livestock operation, the authorized use under such license or permit will be subject to reduction in proportion to the diminished use of the base property.

(8) If a licensee or permittee loses ownership or control of:

(i) All or part of his base property, the license or permit, to the extent it was based upon such lost property, shall terminate immediately without further notice from the range manager; except that, if the licensee or permittee notifies the range manager, in writing, of such loss within thirty days from the date thereof, such license or permit shall terminate to that extent at the end of the grazing season or grazing year as the range manager shall determine; or

(ii) All or part of such other lands or grazing privileges as are necessary to his year round operation, the license or permit will be subject to reduction in proportion to the loss of such necessary lands or grazing privileges unless the licensee or permittee notifies the range manager within 30 days after such loss and thereafter within the time allowed by the range manager after recommendation by the Advisory Board acquires ownership or control of other lands or grazing privileges sufficient to assure a year-round operation.

(9) Class I base property qualifications, in whole or in part, will be lost upon the failure for any two consecutive years:

(i) To offer base property which is not covered by an outstanding current term permit to the full extent of its qualification in an application for a license or permit or renewal thereof, or to apply for non-use thereof in whole or in part or

(ii) To accept a license or permit issued pursuant to such application.

(10) The failure for any two consecutive years to make substantial use as determined by the range manager after reference to the advisory board, of all or part of the grazing privileges authorized under a license or permit may result in the revocation thereof and in the proportionate loss of the base property qualifications.

(11) Non-use, in whole or in part, of grazing privileges under a license or permit may be authorized by the range manager, upon application by the licensee or permittee, after reference to the advisory board, for the following reasons: conservation and protection of the Federal range, annual fluctuations in livestock operations, or financial or other reasons beyond the control of the licensee or permittee.

(12) A revocation of a license or permit in whole or in part may result in a proportionate loss of the class I or class II base property qualifications, as the case may be.

(13) (i) No readjudication of any license or permit, including free use license, will be made on the claim of any applicant or intervener with respect to the qualifications of the base property, or as to the livestock numbers or seasons of use of the Federal range allotment where such qualifications or such allotment has been recognized and license or permit has issued for a period of three consecutive years or more, immediately preceding such claim.

(ii) The Bureau of Land Management may make such readjudication at any time when necessary to comply with the Federal Range Code for Grazing Districts.

(14) Where Federal range is allotted for the exclusive grazing use of one or more users, the range manager, if the proper use or orderly administration of the range makes it necessary:

(i) May require the licensee(s) or permittee(s) as a condition to the granting and continued effectiveness of grazing licenses or permits, to fence or to contribute an equitable share to the cost of fencing the allotted areas, and of maintenance of such fences;

(ii) May require any licensee or permittee who will benefit in some substantial measure from such fence construction, as a condition to the renewal of an existing license or permit, likewise to pay or to reimburse an equitable share of the cost of such fence construction and maintenance. The amount of such share may be established by agreement of the parties, or, upon their failure to agree, by determination of the range manager.

Any necessary enforcement action under this subparagraph will be taken in accordance with § 161.9 (d)

(f) *Reduction.* (1) If necessary to reach the grazing capacity of any area of the Federal range after licenses or permits have been issued, reductions of grazing privileges applicable to such area shall be made in the following order:

(i) Non-renewable licenses.

(ii) Regular licenses or permits to the extent, if any, to which they have been issued in excess of the base property qualification.

(iii) Regular licenses or permits properly issued, on an equal percentage basis.

(2) Such reductions may be made either by reducing the number of livestock or the time on the Federal range involved or by both methods as determined by the range manager after recommendation by the Advisory Board.

(g) *Allotments; agreements; increases.* Allotments of Federal range will be made to licensees or permittees when conditions warrant. Division of the range by private agreement or former practice will be followed where practicable provided such agreement is reduced to writing and approved by the range manager. Increases in grazing capacity will be participated in by existing preference licensees and permittees to the extent of and in proportion to their respective qualifications.

(h) *Administration of lands additionally available; preference right for lands restored from withdrawal.* (1) Any land within the exterior boundaries of a grazing district made available for administration by the Bureau of Land Management, by a lease under the Pierce Act of June 23, 1938 (52 Stat. 1033; 43 U. S. C. 315m-1-315m-4) by the revocation of a withdrawal, or by the cancellation or relinquishment of a homestead entry or claim, or otherwise, after the grazing privileges in the area embracing the land have been adjudicated, will be administered in accordance with customary use so far as such administration may be practicable and consistent with good range management.

(2) Where public lands are restored from withdrawal and the range manager determines that the lands are available for grazing use, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the lands immediately prior to their restoration, shall have a superior preference to the further grazing use of such lands. The preference right must be asserted and an application for license or permit, on Form 4-1283 obtainable from the range manager, must be filed with that officer not more than 90 days after the date of signing of the order of revocation of the withdrawal, or not more than 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior lease, license, permit or other authority upon which the preference claim is based. The range manager may issue to such applicant an annual license or a term permit as he shall determine, authorizing such grazing use subject to the applicable regulations in this part. (Sec. 1, act of May 28, 1954 (68 Stat. 151), as interpreted and applied to sec. 3, Taylor Grazing Act, 43 U. S. C., 1952 ed., sec. 315 (h))

(i) *Suspension of licenses and permits under Soldiers' and Sailors' Civil Relief Act of 1940.* Any licensee or permittee who enters military service, as defined in section 101 (1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179; 50 U. S. C. War Appendix, 511 (1)), may elect at the beginning of or at any time during the period of such service to suspend his license or permit, in whole or in part, for such period and six months thereafter, subject to the following:

(1) The licensee or permittee shall file with the range manager an application, in duplicate, setting forth the facts and circumstances upon which the application for suspension of the license or permit is based. If the applicant desires the suspension of a license or permit in more than one district, a separate application shall be filed with the range manager for each district.

(2) Upon the approval of the application the suspension shall be effective for the period involved, unless sooner terminated upon further application to the range manager by the licensee or permittee, and no operations under the license or permit to the extent suspended shall be conducted during such period.

(3) No grazing fees will be assessed under a license or permit to the extent and during the period it is suspended and, upon the approval of an application for suspension, any fees that have been paid for the period of suspension will be refunded and any fees that are or may become due for such period will be remitted.

(4) A special temporary license, to the extent of any grazing privileges suspended, may be issued to another applicant for not to exceed the period of such suspension, but upon the termination of the suspension, either by reason of the expiration of the six months' period following the conclusion of the first licensee's or permittee's military service or by reason of an application by the first licensee or permittee for an earlier termination, or otherwise, such temporary license shall terminate as of the beginning of the grazing period next following the termination of the suspension.

(5) No suspension granted hereunder shall entitle a licensee or permittee to any greater privileges subsequently than those to which he would have been entitled in the absence of a suspension.

(6) Any adverse action by the range manager on an application for suspension of a license or permit under this paragraph may be appealed by the licensee or permittee to the Director, and from the Director to the Secretary of the Interior, in accordance with the rules of practice, Part 221 of this chapter.

(j) *Interest of Member of Congress prohibited.* No Member of or Delegate to Congress shall be admitted to any share or part of any license or permit issued under the Act, or to derive any benefit to arise therefrom. (41 U. S. C., sec. 22; 18 U. S. C., secs. 431–433.)

CROSS REFERENCE: For prohibitions against interests of Interior Department employees, see Part 7 of this chapter.

§ 161.7 *Transfers of base property; base property qualifications; relinquishments*—(a) *Transfer of base property; effect.* (1) A transfer of a base property or part thereof, whether by agreement, operation of law, or testamentary disposition will entitle the transferee, if qualified under § 161.3 (a) to so much of the grazing privileges as is based thereon. In any event the original license or permit will be terminated or decreased to the extent of such transfer.

(2) A transferee shall, within 90 days from the date of transfer, file with the range manager documentary evidence of the transfer and an application on Form 4–1283 for a license or permit, active or nonuse, for the grazing privileges based thereon. Failure to comply with these requirements may result in the loss of the qualifications of the base property transferred. Where, however, a transfer, or a different vesting in any manner, of a leasehold interest in land or water may result in interference with the stability of livestock operations or with proper range management, upon a finding to that effect by the range manager, after reference to the advisory board, such land or water will lose its base property qualifications and grazing privileges based thereon will be denied.

(b) *Transfer of base property qualifications; limitations; consent of owner or encumberancer; effect.* (1) A licensee or permittee may request the transfer of the recognized qualifications of base property then owned or controlled by him to other property owned or controlled by him, or to property owned or controlled by another person or persons qualified in accordance with § 161.3 (a) An application for approval of a transfer shall be filed with the range manager on Form 4–1284 as to land base, or on Form 4–1285 as to water base. Transfer of base property qualifications may be made under the following conditions:

(i) When an applicant owns or controls base land or lands having a forage production in excess of that required to support the licensed or permitted livestock, the qualifications may be concentrated on that part of the property having the forage production required by and which will continue to be used for the support of such livestock.

(ii) When such qualifications are to be transferred from land owned or controlled by the applicant, to land owned or controlled by others, the transfer will be recognized only to the extent such qualifications do not exceed the forage production of the new base property.

(iii) When an applicant owns or controls base water, the qualifications may be transferred to another adequate water source which will service the same range area.

(3) No transfer will be allowed under this paragraph if it interferes with the stability of livestock operations or proper range management, or adversely affects the local economy. No transfer will be allowed without the written consent of the owner or owners and any encumbrancer of the base property from which the transfer is to be made, except that in an application for transfer of Class 1 qualifications where the applicant for such transfer is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such consent will not be required. Upon approval of the application by the range manager after reference to the advisory board, the transfer shall be effective as of the date of filing of the application, and the base property from which the transfer is made will thereupon lose its qualifications to the extent indicated in the transfer.

(c) *Relinquishment of base property qualifications; limitation, effect.* Upon request of a licensee or permittee, the range manager may accept a relinquishment or waiver of grazing privileges on the Federal range and of base property qualifications of the base property owned or controlled by the applicant. Upon acceptance of such relinquishment, the base property will lose its qualifications to the extent specified, provided that no such relinquishment will be accepted without the written consent of the owner or owners, if other than the licensee or permittee, and any encumbrancer of the base property, except that if the licensee or permittee is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such owner's consent will not be required.

§ 161.8 *Fees; time of payment; refunds*—(a) *Free-use licenses.* No fee will be charged for the issuance of a free-use license.

(b) *Licenses and permits.* Each regular licensee or permittee, and holder of a non-renewable license will be charged fees, consisting of a grazing fee for the use of the range and a range improvement fee, as established from time to time, for the animal unit months authorized by the license or permit. All livestock six months of age or over allowed on the Federal range will be considered at any point of time during the grazing period as a part of the total number for which a license or permit has been issued. No fees will be charged for livestock under six months of age. Range improvement fees, upon the recommendation of the advisory board and approval of the Director, may vary in accordance with the character or requirements of the various districts or portions thereof. Grazing fees may differ in any district or unit thereof in which the grazing capacity of the Federal range is increased by reason of the addition of land not owned by the United States, or by reason of a cooperative agreement or memorandum of understanding between the Bureau of Land Management, and any State or Federal agency, or any person, association, or corporation. A minimum annual charge of $1 will be made on all regular licenses or permits, and non-renewable licenses.

NOTE: In accordance with § 161.8 (b) of the Federal Range Code for Grazing Districts (19 F. R. 8958, December 23, 1954) and pursuant to the act of June 28, 1934 (48 Stat. 1275), as amended, notice is hereby given that effective January 1, 1956, fees for grazing privileges (equivalent to 15 cents per animal unit month) will be charged each regular licensee or permittee, and every holder of a non-renewable license, for the period covered by the license or permit, as follows: 15 cents per cow per month; 30 cents per horse per month; 3 cents per sheep or goat per month. Seventy-five percent of the total fee will be a grazing fee and twenty-five percent will be a range improvement fee.

This revised basis for computing the grazing and range improvement fees will become effective with all payments received on and after January 1, 1956.

(c) *Crossing permits.* Upon application filed with the range manager by any person showing the necessity for crossing the Federal range with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of one cent per head per day for cattle, 2 cents per head per day for horses, and one-fifth cent per head per day for sheep and goats; except that no fee will be charged where the trail to be used in so limited and defined that no substantial amount of forage will be consumed in transit, or to the extent the crossing permit involves the use of a stock driveway created under section 10 of the Stockraising Homestead Act of December 29, 1916 (39 Stat. 862; 43 U. S. C. 300)

(d) *Payment of fees; reduction or increase in numbers; extension of periods of use.* No license or permit shall be issued or renewed until payment of all

fees and other amounts due the United States under the Federal Range Code for Grazing Districts has been made. Fees for licenses and permits are due the United States upon issuance of the fee notice pursuant to application and are payable annually at least 15 days in advance of the first grazing period and for the full amount indicated on the fee notice; no license or permit shall be effective to authorize grazing use thereunder until such payment has been made.[2] A permit may be canceled or reduced pursuant to § 161.9 (d) for failure to pay the annual fee in accordance with the fee notice. Any licensee or permittee who desires to make temporary use of the grazing privileges during any authorized grazing period or periods in a manner other than that authorized in his existing license or permit must obtain the permission of the range manager at least 30 days prior to the beginning of any such grazing period, in which case an adjusted fee notice will be issued accordingly.

(e) *Refunds.* No refund of fees properly paid will be made because of an unauthorized failure to use the grazing privileges, either in whole or in part, represented by a license or permit, except that:

(1) During periods of range depletion due to severe drought or other natural causes or in case of a general epidemic of disease during the life of a license or permit, the Director may in his discretion credit, remit, refund, reduce in whole or in part, or postpone the payment of fees for such depletion period so long as the emergency exists.

(2) When fees have been paid which are not required by law, or which are in excess of lawful requirements, an application for refund thereof may be filed with the range manager under the provisions of the act of March 26, 1908, as amended (35 Stat. 48; 43 U. S. C. 95, et seq.) or such excess fees may be credited on subsequent fee notices.

§ 161.9 *Procedure in applications; protests*—(a) *Filing and consideration of applications; inter-district agreements; recommendations; service of notice.* (1) Each year a date will be set by the range manager prior to which all applications[3] for grazing licenses or permits in the district must be filed in his office; applications filed on or after such date may be rejected for that year unless satisfactory justification for the belated filing is shown.

(2) Applications for grazing licenses or permits will be considered first by the advisory board of the district in which the Federal range is located, except that applications of district advisers will be considered first by the range manager, without reference to the advisory board.

(3) Where a grazing area or unit is located in one district, but is administered by the range manager of an adjacent district pursuant to a formal inter-district agreement, applications for grazing licenses or permits on such area or unit shall be filed with the range manager of the adjacent district. The advisory board of the district in which the land is actually located may designate one or more of its members, on its behalf, in cooperation with the advisory board of the adjacent district, to make appropriate recommendations to the range manager of the adjacent district with respect to such applications.

(4) The advisory board will make its recommendation to the range manager and, if such recommendation is to any extent adverse, it shall set forth the reasons therefor. If such recommendation is favorable, the range manager will notify the applicant by ordinary mail. If the recommendation is to any extent adverse, notice will be served on the applicant in person or by registered letter sent to his address of record, setting out the reason or reasons given by the advisory board for the adverse recommendations including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficient, and naming a place and date, not less than ten days thereafter, when protests against the recommendation will be heard. In any case where consideration of an application involves only issues previously adjudicated involving the same applicant or his predecessors in interest, the same base property and the same area of use, the advisory board may decide that a protest meeting be not held; whereupon, the range manager shall act upon the recommendation of the board as its final recommendation.

(b) *Protests; reconsideration by advisory board; service of notice.* At the time and place fixed for the protest meeting, any licensee, permittee, or applicant may appear, in person or by attorney or other representative, or may file a written protest with the advisory board, which thereupon will reconsider its previous recommendation in the light of the protest and will make a final recommendation to the range manager. If such recommendation is favorable to the applicant, and the range manager approves, he will notify the applicant thereof by ordinary mail. If the recommendation is to any extent adverse, and the range manager approves, a notice giving the reason or reasons therefor will be served on the applicant in person or by registered mail, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficient. Such notice will constitute the range manager's final decision for purposes of appeal.

(c) *Allowance or rejection of application; modification; service of notice.* The range manager, in the light of all facts and circumstances and after reference to the advisory board, may issue or refuse to issue a grazing license or permit. If the action taken by the range manager on any application is substantially different from that recommended by the advisory board, a notice including a recital of the specific reasons for the action taken will be served on the applicant and on any other applicant or applicants adversely affected by such action, in person or by registered mail. The notice will advise each applicant of his privilege to appeal to an examiner.

(d) *Cancellation or reduction of licenses or permits; show cause; appeal to examiner.* Licenses or permits are subject to cancellation or reduction to the extent that they have been improperly issued, or to the extent that their continued effectiveness is adversely affected pursuant to any of the provisions of § 161.3 (b), § 161.6 (e) § 161.8 (d) § 161.14 (d) or § 161.15 (f) Except as otherwise specifically provided, in any such case or in any case in which it shall appear that a license or permit confers grazing privileges in excess of those properly allowable under the Federal Range Code for Grazing Districts, the range manager will notify the licensee or permittee that the license or permit is thereby held for cancellation or reduction either in whole or in part, as the case may be, and that the licensee or permittee will be allowed fifteen days from receipt of notice within which to show cause why such action should not be made final. Such notice will set forth fully the reasons for the proposed action, specifically referring to the pertinent provisions of the Federal Range Code for Grazing Districts, and will be served on the licensee or permittee by registered mail or in person. In case of failure of the licensee or permittee to show cause within the time allowed, the license or permit will be canceled or reduced to the extent indicated in the notice. The range manager will consider any cause shown and, if satisfied of its sufficiency, will close the case; if not satisfied as to its sufficiency, or if no cause is shown, he will notify the licensee or permittee in person or by registered mail that the cancellation or reduction will become final unless an appeal to the examiner is filed in accordance with § 161.10 (a)

§ 161.10 *Appeals and hearings*—(a) *Appeal to examiner; motion to dismiss.* (1) Any applicant whose interest is adversely affected by a final decision of the range manager may appeal to an examiner by filing his appeal in the office of the range manager within 30 days after receipt of the decision. The appeal shall state the reasons, clearly and concisely, why the appellant thinks the decision of the range manager is in error. All grounds of error not stated will be considered as waived, and no such waived ground of error may be presented at the hearing unless ordered or permitted by the examiner.

(2) When separate appeals are filed and the issue or issues involved are common to two or more appeals, they may be consolidated for purposes of hearing and decision.

(3) The range manager will promptly forward the appeal to the State Supervisor. Within thirty days after his receipt of the appeal, the State Supervisor may file on behalf of the range manager a written motion, serving a copy thereof upon the appellant, requesting that the appeal be dismissed for the

[2] Any grazing on the Federal range within grazing districts in the absence of effective license or permit is unlawful and prohibited; such unauthorized grazing shall be deemed in trespass and may be proceeded against as provided in § 161.12, or by other action under the law.

[3] 18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to submit or cause to be submitted to any agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.

reason that it is frivolous, the appeal was filed late, the errors are not clearly and concisely stated, the issues are immaterial, or all issues involved therein have been previously adjudicated in an appeal involving the same privileges, the same parties or their predecessors in interest. The appellant may file a written answer within twenty days after service of the motion upon him. The appeal, motion, the proofs of service, and the answers will be transmitted to the examiner, who shall rule on the motion, and, if the motion is sustained, dismiss the appeal by written order.

(b) *Time and place of hearing; notice; intervenors.* At least thirty days before the date set the range manger will notify the appellant of the time and place of the hearing within or near the district. Any other person who in the opinion of the range manager may be directly affected by the decision on appeal will also be notified of the hearing; such person may himself appear at the hearing, or by attorney, and upon a proper showing of interest, may be recognized by the examiner as an intervenor in the appeal.

(c) *Authority of examiner · subpoenas; depositions; continuances; witness fees.* (1) The examiner is vested with the duty and general authority to conduct the hearing in an orderly, impartial and judicial manner, including authority to subpoena witnesses, recognize intervenors, administer oaths and affirmations, call and question witnesses, regulate the course and order of the hearing, rule upon offers of proof and the relevancy of evidence, and to make findings of fact, conclusions of law, and a decision. The examiner shall have authority to take or to cause depositions to be taken. Subpoenas, depositions, the attendance of witnesses, and witness and deposition fees shall be governed by Parts 221 and 223 of this chapter, to the extent such regulations are applicable.

(2) The examiner also may grant or order continuances, and set the times and places of further hearings. Continuances shall be granted in accordance with the rules of practice (Part 221 of this chapter) and when the ends of justice will be served thereby. Continuances will not be granted unless they are clearly justified and timely request has been made. Where it appears prior to the date of hearing that a continuance will be desired, the party desiring the continuance should promptly file a request for continuance with the examiner, along with proof of service of the request on the range manager and on other parties. The range manager and other parties shall have five days from receipt of the request to file objection to the continuance. The examiner will then rule on the request, and, if granted, set a new date for the hearing. The range manager will notify all interested persons of the new date.

(d) *Conduct of hearing before examiner* (1) The appellant, the state supervisor or his representative, and recognized intervenors will stipulate so far as possible all material facts and the issue or issues involved. The examiner will state any other issues on which he may wish to have evidence presented. Issues which appear to the examiner to be unnecessary to a proper disposition of the case will be excluded; but the party asserting such issue may state briefly for the record the substance of the proof which otherwise would have been offered in support of the issue. Issues not covered by the appellant's specifications of error may not be admitted except with the consent of the state supervisor or his representative, unless the examiner rules that such issue is essential to the controversy and should be admitted. The parties will then be given an opportunity to submit offers of settlement and proposals of adjustment for the consideration of the examiner and of the other parties.

(2) Unless the examiner orders otherwise, the state supervisor or his representative will then make the opening statement, setting forth the facts leading to the appeal (or issuance of the show cause order where that is involved) Upon the conclusion of the opening statement, the appellant shall present his case, consistent with his specifications of error. Following the appellant's presentation, or upon his failure to make such presentation, the examiner, upon his own motion or upon motion of any of the parties, may order summary dismissal of the appeal with prejudice because of the inadequacy or insufficiency of the appellant's case, to be followed by a written order setting forth the reasons for the dismissal and taking such other action under the Federal Range Code for Grazing Districts as may be proper and warranted. An appeal may be had from such order as well as from any other final determination made by the examiner.

(3) In the absence or upon denial of such motion the State Supervisor or his representative and recognized intervenors may present evidence if such a presentation appears to the examiner to be necessary for a proper disposition of the matters in controversy, adhering as closely as possible to the issues raised by the appellant. All oral testimony shall be under oath or affirmation, and witnesses will be subject to cross-examination by any party to the proceeding. The examiner will himself question any witness whenever it appears necessary. Documentary evidence will be received by the examiner and made a part of the record, if pertinent to any issue, or may be entered by stipulation. No exception need be stated or noted and every ruling of the examiner will be subject to review on appeal. The party affected by an adverse ruling sustaining an objection to the admission of evidence, may insert in the record, as a tender of proof, a brief written statement of the substance of the excluded evidence; and the opposing party may then make an offer of proof in rebuttal. The examiner will summarily stop examination and exclude testimony on any issue which he determines has been adjudicated previously in an appeal involving the same privileges and the same parties or their predecessors in interest, or which is obviously irrelevant and immaterial to the issues in the case. At the conclusion of the testimony the parties at the hearing shall be given a reasonable opportunity, considering the number and complexity of the issues and the amount of testimony, to submit to the examiner proposed findings of fact and conclusions of law, and reasons in support thereof, or to stipulate to a waiver of such findings and conclusions.

(e) *Findings of fact and decision by examiner · notice; submission to Director for decision.* (1) As promptly as possible after the time allowed for presenting proposed findings and conclusions, the examiner will make findings of fact and conclusions of law unless waiver has been stipulated, and will render a decision upon all material issues of fact and law presented on the record. In doing so he may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. He must rule upon each such proposed finding and conclusion. The reasons for the findings, conclusions and decisions made shall be stated, and along with the findings, conclusions and decision, shall become a part of the record in any further appeal. A copy of the decision shall be sent by registered mail to the appellant and all intervenors, or their attorneys of record.

(2) The Director may require, in any designated case, that the examiner make only a recommended decision and that such decision and the record be submitted to the Dierctor for consideration. In such instances the Director shall make the initial decision which shall constitute the decision of the Bureau, without prejudice to the right of any party affected to be furnished with a copy of the transcript of testimony, as provided in the next paragraph, and to appeal to the Secretary in the manner prescribed by the rules of practice (Part 221 of this chapter)

(f) *Notice of appeal to the Director; furnishing copies of the transcript.* Within ten days after the receipt of the decision of the examiner any party, including state supervisor or his representative, desiring to appeal to the Director shall file a written notice of his intention to appeal and may request a copy of the transcript of testimony. Copies of the transcript will be furnished to the state supervisor without charge, and to other appellants and to the intervenors, at a charge of ten cents per folio, except that upon a sufficient showing to the examiner, supported by an affidavit, that an appellant or intervenor is financially unable to pay such fee, a copy will be furnished him without charge. The examiner shall include in the record proof of delivery of the transcript showing the date of such delivery. Notice of appeal and request for a copy of the transcript shall be filed through the office of the Hearing Examiner.

(g) *Appeals to the Director* · An appeal from any decision of the examiner shall be filed in the office of the Director, Bureau of Land Management, Washington 25, D. C., together with any brief in support thereof, within thirty days after date of receipt of the transcript of testimony, or, if the transcript is not requested, within thirty days after receipt of the examiner's decision. A copy of the appeal and of any brief must be served on each party, including the State supervisor either personally or by registered mail. Any party, including the

State supervisor, opposing the appeal, will be allowed twenty days from date of receipt of the copy of the appeal and brief within which to file in the office of the Director a reply brief, a copy of which must be served upon the appellant in the same manner. The appeal in other respects shall be made in accordance with the rules of practice (Part 221 of this chapter)

(h) *Appeals to the Secretary of the Interior* An appeal from the decision of the Director may be made to the Secretary of the Interior in accordance with the rules of practice (Part 221 of this chapter).

(i) *Effect of decision suspended during appeal.* (1) An appeal shall suspend the effect of the decision from which it is taken pending final action on the appeal. Where the appeal is concerned with the grazing privileges to be granted under the current application, an appellant who was granted grazing privileges in the preceding year may continue to use such privileges pending final action on the appeal, unless the decision appealed from is made immediately effective, as herein next provided.

(2) When the orderly administration of the range or other public interest so requires, (i) the range manager may provide initially in his decision that it shall be in full force and effect pending decision on an appeal therefrom; (ii) the examiner or the Director may provide in the decision on an appeal before such officer, that it shall be in full force and effect pending decision on any further appeal; (iii) the Director or the Secretary may provide by interim order that any decision from which an appeal is taken shall be in full force and effect pending final decision on the appeal. Any action taken by the range manager pursuant to a decision shall be subject to modification or revocation by the Examiner, Director, or the Secretary upon an appeal from the decision. In order to insure the exhaustion of administrative remedies before resort to court action, no decision which at the time of its rendition is subject to appeal to a superior authority in the Department shall be considered final so as to be agency action subject to judicial review under sec. 10 (c) of the Administrative Procedure Act of June 11, 1946 (60 Stat. 237) unless it has been made effective pending a decision on appeal in the manner provided in this paragraph.

(j) *Record as basis of decision; definition of record.* No decision shall be rendered except on consideration of the whole record or such portions thereof as may be cited by any party or by the state supervisor and as supported by and in accordance with the reliable, probative and substantial evidence. The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding shall constitute the exclusive record for decision.

(k) *Notice and proof of service.* Any notice or other papers required to be served under this section shall be served in person or by registered mail sent to the last address of record, and proof of service furnished. Proof of service shall consist of the affidavit of the person making the personal service, signed acknowledgement of the person served, or the registry return receipt.

(l) *Effect of substantial compliance.* No adjudication of grazing privileges will be set aside on appeal, if it appears that it is reasonable and that it represents a substantial compliance with the provisions of the Federal Range Code for Grazing Districts.

§ 161.11 *General Rules of the range*—(a) *Acts prohibited.* The following acts are prohibited on the Federal range:

(1) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across the Federal range, including stock driveways, without an appropriate license or permit, regular or free-use, or a crossing permit.

(2) Grazing livestock upon or driving livestock across the Federal range, including stock driveway, in violation of the terms of a license or a permit, either by exceeding the number of livestock permitted, or by allowing livestock to be on the Federal range in an area or at a time different from that designated, or in any other manner.

(3) Constructing or maintaining any kind of improvements, structures, fences, or enclosures on the Federal range, including stock driveways, without authority of law or a permit.

(4) Destroying, molesting, disturbing, or injuring property used or acquired for use by the United States in the administration of Federal range, including stock driveways, or improvements constructed or maintained under section 4 of the act.

(5) Cutting, burning, or removing vegetative cover, brush, woodland growth, or timber for any purpose, except as authroized by law. Permits to carry on controlled burning of vegetative cover or brush may be issued by the range manager in proper cases, subject to such conditions as he may impose, and to all State laws and regulations concerning such burning.

(6) Molesting or driving from the Federal range without authority livestock lawfully grazing thereon under license or permit.

(7) Interference with licensed hunters or fishermen to enter, and hunt and fish on the Federal range covered by such license or permit; or with the entrance of miners, prospectors and mineral lessees of the United States to prospect, locate, develop, mine or patent the mineral resources on such Federal range; or with other persons entitled to enter such range for lawful purposes.

(b) *Rules of fair range practice.* All licensees and permittees shall comply with the following rules of fair range practice:

(1) The statutory provisions of the State in which the Federal range or stock driveway to be used is located relating to the branding of livestock and sanitary requirements shall be followed.

(2) A crossing permittee shall follow the route prescribed in the crossing permit at an average rate of not less than five miles per day for sheep or goats and ten miles per day for cattle or horses, but an increased or decreased rate of travel may be prescribed in the discretion of the range manager.

(3) All licensees and permittees shall provide adequate salt on the range for their licensed or permitted livestock, and shall bed sheep and goats according to instructions issued by the range manager. Upon request by the majority of the users of any community allotment of Federal range, the range manager may prescribe the time for, breed, grade, and number of bulls to be turned into such allotment; in the absence of such express requirements the provisions of State law on the subject shall be applicable.

§ 161.12 *Procedure for enforcement of rules and regulations.* A grazing license or permit may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the license or permit, or for a violation of the act or of any of the provisions of the Federal Range Code for Grazing Districts, or of any approved special rule.

(a) *Violations not clearly wilful.* Whenever it appears that a violation exists, not clearly wilful, the range manager shall serve written notice upon the alleged violator and upon any interested lien holder who has registered notice of his lien with the range manager. The notice shall set forth the act or omission constituting such violation, referring to the specific terms or provisions of the license or permit, of the act or of the Federal Range Code for Grazing Districts or of any approved special rule alleged to have been violated; and will allow the licensee or permittee a reasonable specified time from receipt of notice to demonstrate that there has been no violation or that he has since achieved compliance with such terms and conditions. If such showing is satisfactory to the range manager he will close the case; if satisfactory showing is not made within the time allowed, the violations alleged in the notice will be deemed to have been wilful and the range manager will notify the state supervisor thereof for further action under paragraph (e) of this section.

(b) *Violations clearly wilful; special circumstances.* Whenever it appears to the range manager that a violation is clearly wilful or when the public health, safety, or interest requires, the range manager will refer the matter directly to the state supervisor for further action under paragraph (e) of this section.

(c) *Unlawful grazing on Federal range; removal of livestock; impoundment.* (1) Whenever the charge consists of unlawfully grazing livestock on the Federal range, the notice served on the alleged violator and any interested lien holder who has filed notice of his lien with the range manager will order the alleged violator to remove the livestock or to cause them to be removed immediately or within such reasonable time as may be specified. If the alleged violator fails to comply with the notice the range manager may proceed to exercise the proprietary right of the United States in the Federal range, under local impoundment law and procedure, if practicable; otherwise he may refer the matter through the usual channels for appropriate legal action by the United States against the violator.

(2) In any case where the owner of the trespassing livestock, or his representative, is unknown, or where conservation of the Federal range and of the forage thereon requires it, the range manager when so authorized by order of the State Supervisor may take steps to remove the trespassing livestock by such methods and by such means, including the use of airborne or motor-driven vehicles, as may be necessary, and to dispose of them by sale or otherwise within not less than 48 hours after public notice of his intention to make such disposition, subject to the right of any owner or registered lien holder of such trespassing livestock to redeem the livestock within such nondisposal period upon payment of (i) the value of the forage consumed, (ii) damage to the Federal range and other property of the United States, and (iii) the cost of such impoundment and removal, as determined by the range manager.

(3) Where conservation of the Federal range and the forage thereon requires it, the State Supervisor, with the approval of the Area Administrator, may temporarily close a grazing district or any portion thereof, to grazing by any class of livestock to be specified in such order. Notice of the order shall be published in a local newspaper and shall be posted at the County Courthouse of the County in which the closed area lies. The order shall require all owners of livestock affected thereby, to remove such livestock from the area within not less than five days from date of publication of the notice. Thereafter the range manager shall proceed to impound, remove, and dispose of, in the most humane manner in accordance with the provisions of this paragraph any such livestock trespassing or grazing in violation of the closing order.

(d) *Amicable settlement of civil cases involving damage to Federal property.* All offers of settlement for the value of the forage consumed in trespass and for damage to Federal range or to other property of the United States resulting from an alleged violation of any provision of the act or of the Federal Range Code for Grazing Districts will be transmitted to the State Supervisor for consideration. An offer of settlement will not constitute satisfaction of civil liability for the damage involved until finally accepted by the State Supervisor and in no event will it relieve the violator of criminal liability. No license or permit will be issued or renewed until payment of any amount found to be due the United States under this section has been offered and until payment of any amount due as grazing fees has been made.

(e) *Disciplinary action for violations; show cause.* (1) Whenever it appears to the State Supervisor that a wilful violation exists he shall cause a written notice to be served upon the licensee or permittee. The notice shall set forth the act or acts complained of, specifically referring to the terms, conditions, or provisions of the license or permit, or of the Federal Range Code for Grazing Districts alleged to have been violated, and an estimate of the amount of damages resulting therefrom, including the value of any forage consumed. The notice will cite the licensee or permittee to appear before an examiner of the Bureau of Land Management at a designated time and place to show cause why his license or permit should not be reduced or revoked or renewal thereof denied and satisfaction of damages made.

(2) The hearing upon the order to show cause will be conducted so far as practicable in the same manner as other hearings before an examiner. The evidence shall be confined to the commission of the acts charged and the amount of damages, if any, due to the United States. If the alleged violation is established to the satisfaction of the examiner, or upon the failure, without proper excuse satisfactory to the examiner, of the person named in the notice or his representative to appear at the hearing, the examiner will render a written decision assessing the amount of damages and directing the range manager to suspend, reduce, or revoke the license or permit or to deny renewal, if the facts so warrant.

(f) *Bonds for violations.* Whenever an applicant, licensee, or permittee commits a wilful or wanton violation of any provision of the Federal Range Code for Grazing Districts or has repeatedly committed violations thereof, the State Supervisor may require him to furnish a cash or corporate surety bond on an approved form to cover all probable damages that may result from his violations for a period up to ten years. Upon the violator's failure to furnish a bond when so required, the range manager may refuse to issue or renew a license or permit, or the State Supervisor may take action under paragraph (e) of this section, to revoke such license or permit.

(g) *Penal provision.* Under section 2 of the act any wilful violation of the provisions of the act or of the Federal Range Code for Grazing Districts or of approved special rules, after actual notice of the existence of the provisions of such act or of such rules and regulations, is punishable by a fine of not more than $500.

(h) *Appeals.* Appeal from the decision of the examiner to the Director and from the Director to the Secretary on any matter under this section shall be made in accordance with the applicable provisions of § 161.10 and the rules of practice (Part 221 of this chapter)

§ 161.13 *Grazing District Advisory Boards*—(a) *Authorization for establishment; number of members; qualifications.* The State Supervisor shall fix the number of members to be elected for appointment to the advisory board in each district, such number to be not less than five nor more than twelve, exclusive of a wildlife representative who will not be elective but shall be appointed directly by the State Supervisor. The State Supervisor may fix the number of district advisers to be elected as representatives of each class of stockmen, according to the kind of livestock owned, or may fix the number to be elected from each voting precinct, or both, provided that the free-use licensees in each district shall be entitled to one representative who shall be a free-use licensee. All district advisers, except the wildlife representative, shall be electors qualified to vote in the particular election. If a district is divided into precincts an adviser representing a precinct shall qualify in the precinct in the same manner as in the district.

(b) *Election, time and place; the general procedures.* All district advisers, except wildlife representatives, shall be elected in the manner provided in this section, and in the General Procedures for Grazing District Advisory Board Elections as approved by the Director, Bureau of Land Management and published in the FEDERAL REGISTER. An election of district advisers for each grazing district will be held within ninety days after the publication in the FEDERAL REGISTER of the order establishing the grazing district. Persons elected as advisers at the first election of the new district may hold office for a three-year term, or the range manager may divide the group, by lot, as evenly as may be, into three classes to serve for one year, two years, or three years respectively, and until their successors are elected and have qualified. Thereafter in such new district and in existing district, the Range Manager, after recommendation by the advisory board, shall determine whether elections shall be held annually or every three years and whether by actual polling or by mail, in accordance with the options in the General Procedures for Grazing District Advisory Board Elections.

(c) *Appointment; term of office; removal; vacancies.* Upon receipt of the judges' certificate of returns after conclusion of the election procedure the Range Manager shall notify the State Supervisor of the results thereof. A person elected as district adviser shall assume office only after he has been appointed by the State Supervisor and has taken the oath of office. Such person shall serve for the term for which he has been elected and until his successor is elected and has qualified. The State Supervisor may remove any district adviser from office because of failure to discharge his duties, loss of any of his qualifications to hold the office, or in the public interest. Upon a vacancy occurring in the office of a district adviser other than a wildlife representative by reason of resignation, removal, disqualification, or otherwise, the board shall recommend the name of a person to fill the vacancy and such recommendation, together with that of the range manager, shall be transmitted to the State Supervisor for consideration. A person appointed to fill a vacancy shall hold office until the next regular election. The wildlife representative shall hold office for a term of three years and until a successor is appointed by the State Supervisor.

(d) *Meetings; organization.* District advisory boards shall meet at any time and place within or near the district designated by the State Supervisor or his authorized representative. At the first meeting of the board after an election, it shall organize by electing one of its members as chairman and such other officers from its membership as it may deem necessary. Meetings of a district advisory board shall be open to the public except that, with the approval of the Bureau representative present, it may meet in executive session to consider ap-

plications for the granting of licences or permits or any other business.

(e) *Functions and duties of district advisers; limitations.* District advisers shall advise or make recommendations on the following matters:

(1) The qualifications, classification, and requirements of base property.

(2) The transfer and relinquishment of base property qualifications.

(3) The grazing capacity of the Federal range in the district.

(4) Applications for all types of grazing licenses or permits, including nonuse, or extension of use, except applications of district advisers.

(5) Cancellation of grazing licenses or permits when related to: failure to use base property, loss of all or part of lands used in year-round operation, range depletion, failure to offer base property or to validate a license or permit, or failure to use grazing privileges.

(6) Agreements as to the extent of individual grazing privileges, when such agreements have been reduced to writing and found to be equitable and in substantial compliance with the provisions of the Federal Range Code for Grazing Districts.

(7) Variance in range improvement fees in accordance with the character and requirements of the district or portions thereof.

(8) Requirements for unit or allotment boundary fences and apportionment of costs between the benefiting licensees or permittees.

(9) Proper rules of fair range practice.

(10) Allotments of range by classes of livestock or for community or individual use.

(11) Seasonal use of the Federal range or any part thereof.

(12) Cooperative agreements or application for the construction or maintenance of improvements on the Federal range under section 4 of the act and assignments thereof.

(13) Work plans under the range improvement, weed control or soil and moisture conservation programs.

(14) Any recommendations made by local associations of stockmen in the district.

(15) Reservations of grazing capacity of Federal range for wild game animals, including any agreements in connection therewith proposed for execution with State or Federal wildlife agencies.

(16) Special rules for the district, within the meaning of § 161.16.

(17) Any other matter which they may desire to bring to the attention of the Director, or on which their advice may be requested.

(f) *State Advisory Boards.* Each grazing district advisory board shall select from its members, at the first meeting of the board after each election, two members and two alternates to serve on a State Advisory Board for the State in which the district is located; where the district advisory board has representation for cattle and horses, and sheep and goats, then only one representative and one alternate representing each class shall be selected. The wildlife members of the advisory boards within each State may select one of their number and one alternate to serve on the State Advisory Board as their representative on wildlife matters.

(g) *National Advisory Board Council.* Each State Advisory Board shall select from its members, at its first meeting of each new term, one representative and one alternate representing cattle and horses, and one representative and one alternate representing sheep and goats, to serve on a National Advisory Board Council. The wildlife members of the several State Advisory Boards in each of the three B. L. M. Areas may select one of their number and one alternate to serve on the National Council as their area representative on wildlife matters.

(h) *Functions and duties of State Advisory Boards and National Advisory Board Council.* In addition to the service rendered on grazing district advisory boards, the State Advisory Board members shall consider and make recommendations on grazing administration policies or problems affecting the State as a whole. The National Advisory Board councilmen, in addition to serving on their respective district and State Advisory Boards, shall consider and make recommendations on grazing administration policies and problems of national scope.

§ 161.14 *Local associations of stockmen*—(a) *Organization.* Qualified applicants for grazing licenses or permits in any grazing district may organize a local association, or several associations, according to classes of livestock, or by community of interest or otherwise.

(b) *Articles of incorporation; constitutions; by-laws.* Such associations shall be organized as corporations "not-for-profit" if permissible under the laws of the State in which the grazing district, or the greater part thereof, is situated; or they may be organized as cooperative unincorporated associations. In either case the articles of incorporation, the charters, or the constitutions of such associations shall be submitted to the State Supervisor for approval before the association may be recognized by the Bureau. The by-laws of such associations need not be submitted but in any instance in which they are in conflict with the provisions of the Federal Range Code for Grazing Districts or the terms of any license, permit, or cooperative agreement issued to or made with an association, the latter shall prevail.

(c) *Powers.* Such local association shall be authorized to exercise one or more of the following powers, to be specifically set forth in the articles of incorporation, charter, or constitution, as the case may be, of such association:

(1) To make contributions in cash, property, material or labor toward the administration, protection, and improvement of the Federal range lying within the district.

(2) To construct and maintain fences, wells, reservoirs, and other improvements necessary to the care and management of the livestock grazed in the district, under permit issued by the Bureau.

(3) To act in an advisory capacity in the administration of the Federal range lying within the district.

(4) To recommend the amount, manner of apportionment, time, and method of collection of assessments for strictly association purposes, as well as for the public purposes contemplated by the act.

(5) To enter into cooperative agreement for any of the foregoing purposes or for any other purposes authorized by the act. In addition, the association's powers may include, among others, the power to lease or otherwise acquire the control of State, county, privately owned, tax default, or other lands within or near a district.

(d) *Cooperative agreements for use of lands; obligation of licensees and permittees to share cost.* Whenever the grazing capacity of Federal range is increased whether by reason of the acquisition of control of any lands by the Bureau or otherwise, through a cooperative agreement with a local association, any licensee or permittee benefiting thereby, whether a member of the association or not, shall pay to the association his proportionate share of the cost of the association lands and of the cost of installation, development, and maintenance of range improvements, including reseeding, plus any authorized association assessments for other expenses. Such share shall be determined by the range manager after consideration of the recommendation of the association. The range manager may refuse to issue a license or permit to any applicant or may cancel or refuse to renew the license or permit of any licensee or permittee to graze on any lands covered by such agreement, whether public or association lands, and whether or not such applicant, licensee, or permittee is a member of the association, if he fails or refuses to pay to the association any of the foregoing charges.

§ 161.15 *Construction and maintenance of improvements on the Federal range*—(a) *Qualification of applicants for permits.* An applicant for a permit to construct or maintain improvements under section 4 of the act, or to use and maintain improvements of such character constructed and owned by a prior occupant, on the Federal range, must be qualified under § 161.3 (a)

(b) *Applications.* Applications for such permits shall be filed in triplicate with the range manager on form 4-1115.

(c) *Appeals.* The range manager will act on the application after reference to the advisory board and such action shall be final unless the applicant or any interested party appeals in accordance with § 161.10.

(d) *Assignments.* Assignments of section 4 permits shall be filed with the range manager in triplicate on the authorized form and shall not be effective until approved by the range manager.

(e) *Applications for use of improvements owned by prior occupant; procedure upon failure to agree.* Where an application shows that the applicant and the prior occupant have not agreed on the value of such improvements owned by the latter, the range manager will promptly, at the applicant's expense, cause the prior occupant to be served either personally or by registered mail with a notice of the filing of the application, and an order to show cause within thirty days why the improvements should not be determined to be of the value

alleged by the applicant. Upon such a showing, or if the prior occupant applies within thirty days from the date of service for an appearance before the range manager, then in the light of such evidence as the applicant and the prior occupant may present in such appearance, the range manager will determine the present reasonable value of the improvements. Such determination shall be final unless an appeal is taken in accordance with § 161.10. Upon the failure of the prior occupant to show cause or to apply within thirty days for an appearance, the reasonable value of the improvements will be determined by the range manager but shall be not less than the amount alleged by the applicant in his application, and the decision of the range manager in such case shall be final. In any case when a decision has become final, payment by the applicant of the amount determined and a showing that the improvements are free of all encumbrances may be required prior to favorable action on the application for use of such improvements, and on any application for grazing privileges involving the use of such improvements.

(f) *Cooperative agreements.* A licensee or permittee may enter into a cooperative agreement with the range manager for the construction and maintenance of range improvements on the Federal range. Failure of the licensee or permittee to comply with the terms of such an agreement within a reasonable time as allowed by the range manager may result in cancellation of the license or permit as provided in § 161.9 (d)

(g) *Applications for lands containing range improvements; compensation, reservation.* Public lands embraced in a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, or other public land laws, as specified in § 161.5 (e)

(1) When the disposal application covers land upon which range improvements have been placed pursuant to a permit authorized under section 4 of the act, the owner thereof may be required to remove the improvements; or if the improvements are of a permanent nature, the land applicant may be required to agree in writing to compensate the licensee, permittee, or other owner of such improvements located on the lands applied for, in an amount to be mutually agreed upon, or, if the parties are unable to agree, then in the amount and within the time for payment as determined by the range manager in accordance with the applicable procedure under paragraph (e) of this section,

(2) (i) When the disposal application covers public land upon which range improvements have been placed by the United States, or pursuant to a cooperative agreement heretofore or hereafter entered into between the Bureau and the licensee, permittee, and/or other cooperators, the disposal application will be referred by the land office manager to the range manager for determination as to whether it may be allowed, notwithstanding such improvements, and, if so, whether with or without a reservation. If the application is to be allowed without a reservation of the improvements, the applicant may be required to agree in writing to compensate for the loss of such improvements in the amounts to be mutually agreed upon and payable separately to the Bureau and to the cooperators. In the event of disagreement, the range manager shall determine the total amount of compensation due, as provided in paragraph (e) of this section, and the time for payment. Such amount shall then be payable separately to the Bureau and to the cooperators entitled thereto, in proportion to the amount or value of their respective contributions in money, material, or labor, to the total cost of the improvement, as made by them under the original cooperative agreement, as specified by the range manager.

(ii) The refusal or failure of the land applicant to pay the licensee, permittee, or other party entitled thereto, in accordance with the agreement or in the amount fixed by the range manager and within the time allowed, shall be just cause for the rejection of an application or for the cancellation of any rights or interests in the lands acquired by the applicant by reason of the allowance of his application. Such rejection or cancellation shall be subject to the right of appeal directly to the Director and to the Secretary, in accordance with the rules of practice (Part 221 of this chapter)

(3) Under the act of July 9, 1942, as amended (43 U. S. C. sec. 315q) the holder of a grazing license or permit shall be compensated for the losses sustained by reason of cancellation of or prevention of use of authorized grazing privileges resulting from the use of lands embraced in such license or permit for war or national defense purposes, in an amount determined to be fair and reasonable and to be paid by the head of the Federal department or agency making such use. Such payment shall be deemed payment in full for such losses.

§ 161.16 *Special rules for grazing districts.* Whenever it appears to a state supervisor after considering the recommendation of the district advisory board that local conditions in any district make necessary the adoption of a special rule on any of the matters in the Federal Range Code for Grazing Districts in order better to achieve an administration consistent with the purposes of the act, he may, with the concurrence of the Area Administrator, recommend such a rule, supported by a factual showing of its necessity, for the approval of the Director. Such rule, if approved, shall be published in the FEDERAL REGISTER.

§ 161.17 *Contributions, for administration, protection, and improvement of public lands.* The State Supervisor may accept contributions, under section 9 of the act, of labor, materials, equipment, or money, toward any of the Bureau's functions in administering, protecting, and improving public lands under its jurisdiction in the states.

(a) Any individual, association, corporation, grazing district advisory board, state or local body or private group, may enter into an agreement with the State Supervisor with respect to such contribution. Where the contribution is to include money, the contributor should execute form 4–1268 or 4–1269 as requested by the range manager.

(b) Contributions may be conditioned upon their use for specific projects or in specific localities.

(c) Upon written request of the contributor, the State Supervisor may authorize refund of any amounts deposited, in excess of the contributor's proper share of the expense incident to the purpose for which the contribution was made.

§ 161.18 *Pledge of licenses and permits as security for loans; application for extension of permit term by borrower-permittee.* (a) A license or permit may be pledged as security for a loan of $500 or more from a lending agency if the loan is for the purpose of furthering the licensee's or permittee's livestock operations. Before a loan is made the lending agency may ascertain from the range manager the status of the grazing license or permit and other pertinent information relating thereto. A service fee of $10 will be charged non-Federal lending agencies for such information.

(b) A borrower-permittee desiring an extension of the term of his permit may file a request therefor, in writing, with the range manager, setting forth the name of the lending agency, purpose and amount of loan, and the need for the extension of the permit term. When it appears that such extension will be in accordance with applicable law and regulation and not contrary to the public interest, the range manager, in his discretion, may extend the permit for a period not to exceed 10 years from the date of the loan, subject to the rules and regulations then in force and to such additional terms and conditions as the range manager may provide. The provisions of this paragraph shall not be applicable to grazing licenses which are issued annually on a temporary basis prior to the issuance of term permits.

(c) If the base property to which the grazing privileges on the Federal range covered by the pledged license or permit are attached as a grazing unit is acquired by the lending agency through foreclosure or otherwise, such agency, or purchasers, lessees, or occupants of the property authorized by such agency, if qualified, may apply to be recognized as the successor licensee, or permittee. If in selling the property the lending agency takes back a mortgage on the base property, the agency will receive the same consideration as in the case of an original loan.

(d) Where a lending agency files with the range manager notice that it has made a loan and has accepted a grazing license or permit as security therefor in conformity with the provisions of this section, the range manager as a matter of cooperation will keep such agency advised of any adverse action affecting the license or permit, but the failure to give timely notice of such adverse action shall impose no legal liability or obligation on the range manager or the Bureau or any of its employees.

§ 161.19 *Saving clause.* So far as practicable and consistent with the purposes and provisions of the act and the basic policy and plan of administration

outlined in § 161.1 (a) of the Federal Range Code for Grazing Districts, the provisions of §§ 161.1 to 161.19 inclusive of the Code will not be applied to the prejudice of the position of anyone who on the date of approval of these regulations was the holder of a grazing license or permit or who on that date had pending an application therefor.

Interested persons may submit in triplicate written comments, suggestions, or objections with respect to the regulations to the Bureau of Land Management, Washington 25, D. C., within 30 days from the date of publication in the FEDERAL REGISTER.

CLARENCE A. DAVIS,
Acting Secretary of the Interior

DECEMBER 19, 1955.

[F. R. Doc. 55-10282; Filed, Dec. 22, 1955; 8:45 a. m.]

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

PART 1—PRACTICE AND PROCEDURE

RECAPITULATION

Because of the number of outstanding amendments to Part 1 since it was last recapitulated in the FEDERAL REGISTER (April 7, 1950, at page 1978) Part 1 is recapitulated as of December 1, 1955, to read as set forth herein.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

Subpart A [Reserved]

Subpart B [Reserved]

Subpart C [Reserved]

Subpart D—Rules Relating to Applications and Proceedings Affecting Radio Licenses Under Title III of the Communications Act

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Appendix 1—Applications under the Cable Landing Licenses Act and Executive Order No. 10530.

Appendix 2—A plan of cooperative procedure in matters and cases under the provisions of section 410 of the Communications Act of 1934.

AUTHORITY: §§ 1.301 to 1.896 issued under sec. 4, 48 Stat. 1066, as amended; 47 U. S. C. 154. Statutory provisions interpreted or applied are cited to text in parentheses.

Table showing forms currently in effect and where they are referred to in Part 1 of this chapter.

Form No.	Section
301	1.311 (a), 1.319 (b) (1).
301-A	1.309 (a).
302	1.317 (b) (1), 1.318 (b) (1), 1.328.
303	1.320 (c) (1).
308	1.327.
309	1.311 (b), 1.319 (b) (2).
310	1.317 (b) (2).
311	1.320 (c) (2).
313	1.311 (c), 1.317 (b) (3), 1.319 (b) (3), 1.320 (c) (3).
314	1.321 (a).
315	1.321 (a).
316	1.321 (a) and (b), footnote 6 to 1.343 (a) (2).
317	1.325 (b).
318	1.309 (b).
321	1.314 (c).
323	1.343 (a) and (b).
324	1.341.
336	1.347, 1.557 (a).
337	1.347, 1.557 (a).
338-A	1.560.
338-B	1.560.
340	1.311 (d), 1.319 (b) (4).
341	1.317 (b) (4), 1.318 (b) (2).
342	1.320 (c) (4).
400	1.312 (a), 1.317 (b) (5), 1.319 (b) (5), 1.322 (b) (1).
400-A	1.312 (b), 1.314 (b), 1.319 (b) (6).
401	1.312 (c).
401-A	1.312 (d).
403	1.317 (b) (6), 1.319 (b) (7).
404	1.318 (b) (3), 1.319 (b) (8).
405	1.320 (c) (5).
405-A	1.320 (c) (6).
408	1.324 (c) (1).
410	1.310.
453-B	1.324 (d).
480	1.312 (c).
481	1.318 (b) (5).
481-1	1.320 (c) (7).
482	1.335.
501	1.318 (b) (6), 1.319 (b) (9).
501-A	1.318 (b) (7), 1.319 (b) (10).
505	1.318 (b) (8), 1.319 (b) (11).
525	1.318 (b) (9), 1.319 (b) (12).
602	1.318 (b) (10), 1.319 (b) (13).
610	1.318 (b) (11), 1.319 (b) (14).
701	1.314 (b).

Form No..	Section
702	1.322 (b) (2).
703	1.322 (b) (3).
753-1	1.329 (a).
756	1.329 (a).
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786	1.713 (a).
801	1.330 (a).
808	1.330 (c).
809	1.330 (b).
820	1.331.
820-A	1.331.
901	1.545.
903	1.545.
905	1.545.
H	1.544 (a) (1).
L	1.544 (a) (6).
M	1.544 (a) (2) and (6).
O	1.544 (a) (3).
R	1.544 (a) (4).

SUBPART A [RESERVED]

SUBPART B [RESERVED]

SUBPART C [RESERVED]

SUBPART D—RULES RELATING TO APPLICATIONS AND PROCEEDINGS AFFECTING RADIO LICENSES UNDER TITLE III OF THE COMMUNICATIONS ACT[1]

GENERAL REQUIREMENTS AS TO APPLICATIONS

§ 1.301 *Applications required.*[2] (a) Construction permits, modifications of construction permits, operator and station licenses, renewal of operator and station licenses, modification of station licenses, special temporary authorizations, special service authorizations, assignment of construction permits or licenses and consent to transfer control of a corporation holding a construction permit or license, shall be granted only upon written, subscribed, and verified application upon forms prescribed by the Commission. A separate application shall be filed for each instrument of authorization requested. In cases arising in services other than broadcast, however, where a licensee holds several licenses which are identical in terms, or which are identical with the exception of station locality, and in other cases in the discretion of the Commission, a single application may be filed for renewal or modification of such licenses, provided such single application sets forth in detail an accurate description of the individual licenses sought to be renewed or

[1] Special provisions respecting procedure for consideration of applications for standard broadcast station assignments pending action with respect to ratification and entry into force of the North American Regional Broadcasting Agreement (NARBA), Washington, 1950, and in the light of the existing relationship in the field of standard broadcasting between the United States and other North American countries.

1. The special procedural provisions set out below with respect to the consideration of applications for standard broadcasting station assignments are adopted in order to take into account the policy set out in the note to § 3.28 (b) of this chapter. That note has reference to consideration by the Commission of applications for standard broadcast station assignments in the light of provisions of the North American Regional Broadcasting Agreement, Washington, 1950, referred to herein as NARBA, and the existing relationship in the field of standard broadcasting between the United States and other North American countries. The procedure set forth below is applicable to all applications before the Commission for standard broadcast station assignments except those already being held in a pending status in connection with Dockets Nos. 6741 and 8333.

APPLICATIONS INCONSISTENT WITH NARBA OR WHICH WOULD CAUSE OBJECTIONABLE INTERFERENCE TO STATIONS IN NORTH AMERICAN COUNTRIES NOT SIGNATORY TO THE NARBA

2. *Applications not in hearing status.* (a) Whenever it appears with respect to an application not in hearing status that a grant thereof would be inconsistent with the NARBA or that the operation proposed therein would cause objectionable interference to a station in a North American country not signatory to the NARBA, such application shall, by action of the Secretary upon advice of the Chief of the Broadcast Bureau, be placed in the pending file and, except as provided herein, shall not receive further consideration or action pending modification of the policy set forth in the above-mentioned note to § 3.28 (b) of this chapter. Where it appears that any such application is mutually exclusive with an application or applications, the grant of which would not be inconsistent with the NARBA and would not result in objectionable interference to any station in a North American country not signatory to the NARBA, such application will be designated for hearing in consolidation with the application or applications with which it is in conflict. In such cases, the question of consistency with the NARBA or objectionable interference to stations in North American countries not signatory to the NARBA shall be made a matter of issue in the hearing.

3. *Applications in hearing status.* (a) Whenever it appears with respect to any application which has been designated for hearing by itself or with respect to all of the applications in any consolidated proceeding that a grant of the application or applications involved would be inconsistent with the NARBA or would result in objectionable interference to a station in a North American country, not signatory to the NARBA, and where the hearing involved has not been commenced, such application or applications will be removed from the hearing docket and placed in the pending file. Where the hearing involved has been commenced, such application or applications will be placed in the pending file, but will not be removed from the hearing docket. Such action shall be by order and may be taken by the Commission upon its own motion or by the Motions Commissioner upon motion of any party to the proceeding or of the Chief of the Broadcast Bureau.

(b) Whenever it appears with respect to one or more but not all of the applications in any consolidated proceeding that a grant of such application or applications would be inconsistent with the NARBA or would result in objectionable interference with stations in a North American country not signatory to the NARBA and where consistency with the NARBA or interference to foreign stations is not already a matter at issue in the proceeding, the notice of hearing will be amended to include an appropriate issue and if the record has been closed it will be reopened for the purpose of taking testimony with respect to such issue. Such action will be taken by the Commission upon its own motion or upon motion of any party to the proceeding or the Chief of the Broadcast Bureau.

(c) In any proceeding in which after the hearing has commenced it becomes necessary to place the applications involved in the pending file or to add, with respect to any application or applications, an issue concerning consistency with the NARBA or interference to foreign stations the applicants concerned will, notwithstanding the status of the proceeding and the provisions of § 1.365 (a), be afforded a reasonable opportunity to amend for the purpose of achieving consistency with the NARBA and eliminating interference to foreign stations.

(d) In any proceeding in which there is an issue concerning consistency with the NARBA or interference to foreign stations the presiding officer will include in his decision a finding upon this issue. However, neither the presiding officer nor the Commission will take this factor into account in arriving at a determination whether the grant of any application in the proceeding would serve the public interest. The presiding officer and the Commission will adhere to the policy outlined below in taking final or intermediate action upon the applications involved in such proceedings.

(i) Applications will be granted where such action would not be inconsistent with the NARBA, would not result in interference to a station in a North American country not signatory to the NARBA, and would otherwise be in the public interest.

(ii) Applications will be denied (*a*) which are mutually exclusive with an application granted in accordance with (i) above; and (*b*) where a denial is required for reasons independent of the question whether grant of application would be consistent with the NARBA or would result in objectionable interference to a station in a North American country not signatory to the NARBA.

(iii) Applications will be placed in the pending file without removal from the hearing docket (*a*) where a grant would be inconsistent with the NARBA or would result in interference to a station in a North American country not signatory to the NARBA but would otherwise be in the public interest; and (*b*) where a denial would be based upon comparative consideration with an application placed in the pending file in accordance with the immediately preceding subdivision (iii) (*a*).

4. *General provisions with respect to applications placed in the pending file.* (a) Whenever any application is placed in the pending file pursuant to paragraphs 2 or 3 above, the applicant concerned will be notified and public notice of the action will be given at the offices of the Commission in Washington, D. C. The Commission will maintain a list of all applications placed in the pending file which list will be available for public inspection. Any interested applicant who believes that an application has been erroneously placed in the pending file may petition the Commission for a review of its action or the Secretary's action. Petitions requesting that an application be placed in the pending file will also be entertained. All petitions filed pursuant to this paragraph must be filed in quintuplicate and be accompanied by an affidavit of a qualified radio engineer setting forth the engineering basis for the petition. Upon receipt of a petition filed in accordance with this paragraph, the Commission will review the action to which the petition is directed and provide opportunity for the submission by interested parties of any further data that may be required for full consideration of the matter.

5. *Applications consistent with the NARBA.* As a matter of general practice, except as provided in the procedure set out above, applications consistent with the NARBA which do not propose operations which would cause interference to stations in North American countries not signatory to the NARBA will be considered and acted upon by the Commission in accordance with its established procedure, even though the NARBA may not yet have entered into force. In particular cases involving applications consistent with the NARBA but in which special considerations of an international nature require that a different procedure be followed, the applicant or applicants involved will be formally advised to that effect.

[2] For additional information relative to applications see the respective rules relating to each service.

modified. In cases of emergency, the Commission may issue, for a period not in excess of three months, licenses, renewal of licenses or modification of licenses for stations on vessels or aircraft of the United States, without a formal application. In case of vessels at sea, the Commission may issue, by cable, telegraph, or radio, a permit for the operation of a station until the vessel returns to a port of the continental United States.

(b) Canadian licensees desiring to operate in the United States under the terms of Articles 2 and 3 of the Treaty between United States and Canada, effective May 15, 1952, are required to register and obtain a permit.

§ 1.302 *Place of filing and number of copies.* For places where applications must be filed and number of copies to be filed, see sections 0.409 through 0.414 of the Statement of Organization, Delegations of Authority and Other Information.

§ 1.303 *Subscription and verification of applications.* Each application or amendment thereto shall be personally subscribed and verified or affirmed according to law: (a) By the party filing such application or amendment, or by one of the parties, if there be more than one; (b) by an officer of the party filing the application or amendment if the party be a corporation: *Provided, however,* That subscription and verification may be made by the attorney for the party (1) in case of physical disability of the party, or (2) his absence from the continental United States. If it be made by a person other than the party, he must set forth in the verification the grounds of his belief as to all matters not stated upon his knowledge and the reason why it is not made by the party. Where more than one copy of an application is required to be filed with the Commission, only the original need be signed and verified; the copies may be conformed.

§ 1.304 *Contents of applications.* Each application (unless otherwise directed) shall be specific with regard to frequency or frequencies, power, hours of operation, equipment, location of the station, and other information required by the application forms.[3] An application for broadcast facilities in the standard, FM, or television bands shall be limited to one frequency and an application for radio station construction permit or license requesting alternate facilities will not be accepted. An application for a television broadcast station must request a specific channel provided for in table of assignments (§ 3.606 of this chapter) for the city in which the applicant proposes to construct a station.

§ 1.305 *Full disclosures.* Each application shall contain full and complete disclosures with regard to the real party or parties in interest, and their legal, technical, financial, and other qualifications, and as to all matters and things required to be disclosed by the application forms.

§ 1.306 *Additional statements.* The Commission may require an applicant to submit such documents and written statements of fact, under oath, as in its judgment may be necessary.

§ 1.307 *Form of amendments to applications.* Any amendment to an application shall be subscribed, verified, and submitted in the same manner, and with the same number of copies, as was the original application.

§ 1.308 *Amendments of applications ordered.* The Commission may, upon its own motion or upon motion of any party to a proceeding, order the applicant to amend his application so as to make the same more definite and certain.

RULES RELATING TO FILING OF APPLICATIONS AND DESCRIPTION OF APPLICATION FORMS

§ 1.309 *Special forms.* (a) FCC Form 301-A, "Request for Modification of Broadcast Station Authorization (Remote Control)" For use by existing broadcast licensees or permittees applying for permit to operate a standard or FM broadcast station from a remote control point.

(b) FCC Form 318, "Request For Subsidiary Communications Authorizations." For use by existing FM broadcast licensees applying for permit to establish a SCA service, modification of SCA, renewal of SCA, and assignment and transfer of SCA.

§ 1.310 *FCC Form 410, Application of Canadian Radio Station Licensees for Registration and Permit to Operate in the United States.* For use of Canadian licensees applying for a permit for operation in the United States in accordance with the terms of the treaty between the United States and Canada relating to mutual recognition of certain radio station and operator licenses issued by either country.

§ 1.311 *Application forms for authority to construct a new station or make changes in an existing station, broadcast services.* Applications for new facilities or modification of existing facilities in the broadcast services including standard, FM, television, international, experimental (experimental television, experimental facsimile and developmental) and auxiliary (remote pickup broadcast, broadcast STL, FM inter-city relay, television pickup, television STL and television inter-city relay) shall be made on the following forms:

(a) FCC Form 301 "Application for Authority to Construct a New Broadcast Station or Make Changes in an Existing Broadcast Station."

(b) FCC Form 309, "Application for Authority to Construct or Make Changes in an Existing International, Experimental Television, Experimental Facsimile, or a Developmental Broadcast Station."

(c) FCC Form 313, "Application for Authorization in the Auxiliary Broadcast Services."

(d) FCC Form 340, "Application for Authority To Construct or Make Changes in a Noncommercial Educational FM Broadcast Station."

§ 1.312 *Application forms for construction permit or modification thereof; radio services other than broadcast.* Applications for new facilities or modifications thereof in the Fixed Public Radio Services, Experimental Radio Services, Coastal and Marine Relay Services, Aviation Services, Public Safety Radio Services, Industrial Radio Services, Land Transportation Radio Services, and Radio Stations in Alaska shall be made on the following forms except as noted:

(a) FCC Form 400 "Application for Radio Station Authorization in Public Safety, Industrial and Land Transportation Radio Services." This form is used in these services for New Station, Modification, Renewal, Assignment of Authorization, or License to cover Construction Permit.

(b) FCC Form 400-A "Request for Amendment of Radio Station Authorization." This form may be used when requesting certain amendments to an existing radio station authorization, in the Public Safety, Industrial and Land Transportation Radio Services, as enumerated on the form and specified in the rules for the particular Service.

(c) FCC Form 401 "Application for new or modified Radio Station Construction Permit (other than Broadcast, Public Safety, Industrial, or Land Transportation Radio Services)"

(d) FCC Form 401-A, "Description of Proposed Antenna Structure(s) (services other than Broadcast)"

(e) FCC Form 480, "Application for Civil Air Patrol Radio Station Construction Permit and License"

§ 1.313 *Installation or removal of apparatus; broadcast and nonbroadcast.* Application for construction permit or modification thereof involving the installation of new transmitting apparatus shall be filed at least sixty days prior to the contemplated installation.

NOTE: In the Public Safety, Industrial, and Land Transportation Radio Services replacement of transmitting equipment may be made without prior authorization provided the replacement transmitters appear on the Commission's "List of Equipments Acceptable for Licensing" and designated for use in the Public Safety, Industrial and Land Transportation Radio Services and provided the substitute equipment employs the same type of emission and does not exceed the power limitations as set forth in the station authorization.

§ 1.314 *Application for extension of construction permit or for construction permit to replace expired construction permit (broadcast) application for extension of construction permit (nonbroadcast)* (a) A construction permit shall be automatically forfeited if the station is not ready for operation within the time specified therein or within such further time as the Commission may have allowed for completion, and a notation of the forfeiture of any construction permit under this provision will be placed in the records of the Commission as of the expiration date.

(b) Application for extension of time within which to construct a station shall be filed on FCC Form 701, except in the Public Safety, Industrial, and Land

[3] Applications for FM facilities filed before July 1, 1947, need not specify a particular frequency unless the applicants are directed to do so by the Commission.

Transportation Radio Services when FCC Form 400-A shall be used. Such application shall be filed at least 30 days prior to the expiration date of the construction permit if the facts supporting such application for extension are known to the applicant in time to permit such filing. In other cases such applications will be accepted upon a showing satisfactory to the Commission of sufficient reasons for filing within less than 30 days prior to the expiration date. Such applications will be granted upon a specific and detailed showing that the failure to complete was due to causes not under the control of the grantee, or upon a specific and detailed showing of other matters sufficient to justify the extension.

(c) In the broadcast services, when it is desired to replace an expired construction permit, application shall be made on FCC Form 321, "Application for Construction Permit to Replace Expired Permit."

§ 1.315 *Application for equipment tests or for service or program tests; broadcast and nonbroadcast.* Where the rules applicable to the particular service concerned require the filing of an application for authority to conduct equipment tests or service or program tests or notification to any office of the Commission of the commencement of such tests, such application or notification may be informal.

§ 1.317 *Application for license following construction permit.* (a) In all cases where a construction permit is required for the construction of a station, the application for station license (or for station license or modification thereof, if for station other than broadcast) shall be filed by permittee prior to service or program tests.

(b) The following application forms shall be used:

(1) FCC Form 302, "Application for New Broadcast Station License."

(2) FCC Form 310, "Application for an International, Experimental Television, Experimental Facsimile, or a Developmental Broadcast Station License."

(3) FCC Form 313, "Application for Authorization in the Auxiliary Broadcast Services."

(4) FCC Form 341, "Application for Noncommercial Educational FM Broadcast Station License."

(5) FCC Form 400 "Application for Radio Station Authorization in the Public Safety, Industrial and Land Transportation Radio Services." Check Item 16 to indicate application is for License to cover Construction Permit.

(6) FCC Form 403, "Application for Radio Station License or Modification Thereof (other than broadcasting, amateur, ship, and aircraft) "

§ 1.318 *Application for station license where no construction permit is required.* (a) Where a construction permit is not required by the Communications Act or the applicable rules and regulations of the Commission, an application for a new station license shall be filed at least 60 days prior to the contemplated operation of the station.[4] In emergency and for good cause shown, the Commission may waive the requirements of this section.

(b) The following application forms should be used:

(1) FCC Form 302, "Application for broadcast station license." To be used for all applications for license to use the former main transmitter as the auxiliary transmitter when no new construction is involved, and for regular authorization covering special experimental authorization.

(2) FCC Form 341, "Application for Noncommercial Educational FM Broadcast Station License." To be used for all applications for license to use the former main transmitter as the auxiliary transmitter when no new construction is involved.

(3) FCC Form 404, "Application for Aircraft Radio Station License."

(4) [Reserved.]

(5) FCC Form 481, "Application for Authority to Operate a Station in the Radio Amateur Civil Emergency Service."

(6) FCC Form 501, "Application for Ship Radio Station Licenses."

(7) FCC Form 501-A, "Application for Ship Radiotelephone Station License."

(8) FCC Form 505, "Application for Citizens Radio Station Construction Permit and License."

(9) FCC Form 525, "Application for Disaster Communications Radio Station Construction Permit and License."

(10) FCC Form 602, "Application for Amateur Station License (under special provisions of Section 12.61 of the Commission's Rules)"—to be used for a station of amateurs in the armed forces when located in approved public quarters but not operated by the United States Government.

(11) FCC Form 610, "Application for Amateur Radio Operator and/or Station License."

§ 1.319 *Application for modification of license; broadcast and nonbroadcast.* (a) An application for modification of license, except amateur, and except as otherwise provided by regulations in this part, may be filed for change in frequency, change in operating power where no construction is necessary, change in hours of operation, and for change in name of licensee where no change in ownership or control is involved. In case of a broadcast station, an application for modification of license may be filed for change in location of main studio. In case of all stations other than broadcast, an application for modification of license may be filed for change in points of communication, change in nature of authorized service, and to cover an outstanding construction permit where the station is already licensed. Except when filed to cover construction permit, each application for modification of license shall be filed at least 60 days prior to the contemplated modification of license: *Provided, however* That in emergencies and for good cause shown, the requirements hereof may be waived insofar as time for filing is concerned.

(b) The following application forms should be used:

(1) FCC Form 301, "Application for Authority to Construct a New Broadcast Station or Make Changes in an Existing Broadcast Station." To be used for all applications for modification of any term of an existing authorization of a broadcast station (except in the International, Facsimile, Experimental, or Auxiliary Broadcast Services)

(2) FCC Form 309, "Application for Authority to Construct or Make Changes in an Existing International, Experimental Television, Experimental Facsimile, or a Developmental Broadcast Station"

(3) FCC Form 313, "Application for Authorization in the Auxiliary Radio Broadcast Services."

(4) FCC Form 340, "Application for Authority to Construct or make Changes in a Noncommercial Educational FM Broadcast Station." To be used for all applications for modification of any term of an existing authorization for a noncommercial educational FM broadcast station.

(5) FCC Form 400, "Application for Radio Station Authorization in the Public Safety, Industrial, and Land Transportation Radio Services." Check Item 16 to indicate application is for Modification.

(6) FCC Form 400-A, "Request for Amendment of Radio Station Authorization."

(7) FCC Form 403, "Application for Radio Station License or Modification Thereof (other than broadcasting, amateur, ship, or aircraft)."

(8) FCC Form 404, "Application for Aircraft Radio Station License."

(9) FCC Form 501, "Application for Ship Radio Station Licenses."

(10) FCC Form 501-A, "Application for Ship Radiotelephone Station License."

(11) FCC Form 505, "Application for Citizens Radio Station Construction Permit and License."

(12) FCC Form 525, "Application for Disaster Communications Radio Station Construction Permit and License."

(13) FCC Form 602, "Application for Amateur Station License (under special provisions of Section 12.61 of the Commission's Rules)"—To be used for a station of amateurs in the armed forces when located in approved public quarters but not operated by the United States Government.

(14) FCC Form 610, "Application for Amateur Radio Operator and/or Station License."

§ 1.320 *Application for renewal of license; broadcast and nonbroadcast.* (a) Unless otherwise directed by the Commission each application for renewal of license of a standard broadcast, FM broadcast, noncommercial educational FM broadcast, television broadcast station and an auxiliary broadcast station (remote pickup broadcast, broadcast STL, television pickup, television STL and television inter-city relay) shall be filed at least 90 days prior to the ex-

[4] Applications for amateur station licenses need not be filed 60 days prior to the contemplated operation of the station.

piration date of the license sought to be renewed; and each application for renewal of license of a non-broadcast station shall be filed at least 60[5] days prior to the expiration date of the license sought to be renewed. No application for renewal of license of a broadcast station[5a] will be considered unless there is on file with the Commission the information currently required by §§ 1.341 to 1.344 reference to which by date and file number shall be included in the application.

(b) Whenever the Commission regards an application for a renewal of license as essential to the proper conduct of a hearing or investigation, and specifically directs that it be filed by a date certain, such application shall be filed within the time thus specified. If the licensee fails to file such application within the prescribed time, the hearing or investigation shall proceed as if such renewal application had been received.

(c) The following application forms should be used:

(1) FCC Form 303, "Application for renewal of broadcast station license."

(2) FCC Form 311, "Application for Renewal of an International, Experimental Television, Experimental Facsimile, or a Developmental Broadcast Station License." To be used for all applications for renewal of licenses of International, Experimental Television, Experimental Facsimile, and Developmental Broadcast stations.

(3) FCC Form 313, "Application for Authorization in the Auxiliary Broadcast Services." To be used for all applications for renewal of regular licenses of auxiliary (remote pick-up and ST) radio broadcasting stations.

(4) FCC Form 342, "Application for Renewal of Noncommercial Educational FM Broadcast Station License."

(5) "FCC Form 405, Application for Renewal of Radio Station License." To be used for requesting renewal of license for those stations authorized under Parts 5 and 6 of this chapter.

(6) "FCC Form 405-A, Application for Renewal of Radio License (Short Form)" To be used for requesting renewal of those licenses issued under Parts 7, 8, 9, 10, 11, 12, 14, 16, 19, and 20 of this chapter.

(7) FCC Form 481-1, "Application for Authority to Operate a Station in the Radio Amateur Civil Emergency Service." To be used for all applications for renewal of authorizations of radio amateur civil emergency stations.

§ 1.321 *Application for voluntary assignment or transfer of control; broadcast.* (a) Applications for consent to the assignment of construction permit or license for an AM, FM, television or other broadcast station or for consent to the transfer of control of a corporation holding such a construction permit or license shall be filed with the Commission on FCC Form No. 314 (Assignment of License) FCC Form No. 315 (Transfer of Control) or FCC Form 316 (Short Form) Such applications shall be filed with the Commission at least 60 days prior to contemplated effective date of assignment or transfer of control.

(b) Pro forma assignment or transfer applications shall be filed on FCC Form 316. Such cases are defined as cases in which:

(1) There is an assignment from an individual or individuals (including partnerships) to a corporation owned and controlled by such individuals or partnerships without any substantial change in their relative interests;

(2) There is an assignment from a corporation to its individual stockholders without effecting any substantial change in the disposition of their interests;

(3) There is an assignment or transfer by which certain partners or stockholders retire but no new ones are brought in, provided that the interest transferred is not a controlling one;

(4) There is a corporate reorganization which involves no substantial change in the beneficial ownership of the corporation;

(5) There is an involuntary transfer to an Executor, Administrator or other court appointed officer caused by death or legal disability except that this form does not cover assignments (or transfers) from the Executor, Administrator or other court appointed officers to the ultimate beneficiary;

(6) There is an assignment or transfer from a corporation to a wholly owned subsidiary thereof or vice versa, or where there is an assignment from a corporation to a corporation owned or controlled by the assignor stockholders without substantial change in their interests.

(7) There is an assignment of less than a controlling interest in a partnership.

§ 1.322 *Application for voluntary assignment or transfer of control; nonbroadcast.* (a) Application for consent to voluntary assignment of a construction permit or license or for consent to voluntary transfer of control of a corporation holding a construction permit or license shall be filed with the Commission at least 60 days prior to the contemplated effective date of assignment or transfer of control.

(b) The following application forms should be used:

(1) FCC Form 400, "Application for Radio Station Authorization in the Public Safety, Industrial, and Land Transportation Radio Services" may be used for application for assignment of station authorization. Attached thereto shall be a notarized letter from proposed assignor stating his desire to assign his current authorization in accordance with the rules governing the particular service involved.

(2) FCC Form 702, "Application for Consent to Assignment of Radio Station Construction Permit or License (for stations in services other than Standard Broadcast)"

(3) FCC Form 703, "Application for Consent to Transfer of Control of Corporation Holding Construction Permit or Station License (for stations in services other than Standard Broadcast)"

§ 1.323 *Application for involuntary assignment or transfer of control; broadcast and nonbroadcast.* In the event of a death or legal disability of a permittee or licensee, or a member of a partnership, or a person directly or indirectly in control of a corporation, which is a permittee or licensee:

(a) The Commission shall be notified in writing promptly of the occurrence of such death or legal disability, and

(b) Within 30 days after the occurrence of such death or legal disability (except in the case of a ship or amateur station) application shall be filed for consent to involuntary assignment of such permit or license or for involuntary transfer of control of such corporation to a person or entity legally qualified to succeed to the foregoing interests under the laws of the place having jurisdiction over the estate involved. The procedure and forms to be followed are the same as those specified in §§ 1.321 and 1.322. In the case of ship and amateur stations, involuntary assignment of licenses will not be made; such licenses shall be surrendered for cancellation upon the death or legal disability of the licensee.

§ 1.324 *Application for special temporary authorization.* (a) Special temporary authority may be granted for the operation of a station (other than a standard broadcast station) for a limited time, or in a manner and to an extent or for service other or beyond that authorized in an existing license upon proper application therefor. No such request will be considered unless full particulars as to the purpose for which the request is made are stated and unless the request is received by the Commission at least 10 days previous to the date of proposed operation. A request received within less than 10 days may be accepted upon due showing of sufficient reasons for the delay in submitting such request.

(b) No application by a standard broadcast station for special temporary authority will be accepted by the Commission.

(c) The following application forms should be used:

(1) FCC Form No. 408, Application for Experimental or Special Temporary Authorization (fixed public radio services only) shall be used for new application and for extension or modification of existing authorization.

(2) In all other cases, informal application may be used.

(d) The purchasers of a new aircraft with factory-installed radio equipment may operate the radio station on their aircraft for a period of 30 days under Special Temporary Authority evidenced by a copy of a certificate (F C. C. Form No. 453B) executed by the manufacturer, dealer or distributor, the original of which has been mailed to the Commission with the formal application for station license.

§ 1.325 *Application for special service authorization, broadcast.* (a) Special service authority may be issued to the licensee of a standard broadcast station or, in connection with the furnishing of facilities for service to the United States Government, to the licensee of an inter-

[5] The 60-day requirement does not apply to amateurs.

[5a] This requirement does not apply to noncommercial educational FM broadcast stations.

national broadcast station, for a service other or beyond that authorized in its existing license for a period not exceeding that of its existing license.

(b) Application for special service authorization must be made by formal application on FCC Form No. 317—"Application for Standard Broadcast Station Special Service Authorization or Extension Thereof"—and a satisfactory showing must be made in regard to the following, among others:

(1) That the requested operation may not be granted on a regular basis under the existing rules governing the operation of standard broadcast stations;

(2) That experimental operation is not involved as provided for by § 3.32 of this chapter;

(3) That public interest, convenience, and necessity will be served by the authorization requested.

§ 1.326 *Application for standard broadcast station experimental operation.* Special experimental authorization may be issued in accordance with § 3.32 of this chapter to the licensee of a standard broadcast station in addition to the regular license. An informal application should be used in applying for such authorization.

§ 1.327 *Application concerning programs to be transmitted to foreign radio stations.* Application under section 325 (b) of the Communications Act for authority to locate, use or maintain a radio broadcast studio in connection with a foreign radio station should be made on FCC Form 308, entitled "Application for permit to locate, maintain, or use studio or apparatus for production of programs to be transmitted or delivered to foreign radio station". *Provided,* That licensees or permittees of broadcast stations need not file applications on FCC Form 308 in those cases where the programs to be transmitted or delivered to a foreign radio station has been, is being, or will be broadcast in the United States by said licensee or permittee, but may make informal application for the authority sought.

§ 1.328 *Application to determine operating power by direct measurement of antenna power.* Application to determine operating power of broadcast stations by direct measurement of antenna power shall be made on FCC Form 302, "Application for New Broadcast Station License."

§ 1.329 *Application for radio operator license.* (a) Application for a new, renewed, replacement or duplicate commercial radio operator license or for an endorsement thereon, or for a verification card, shall be filed on FCC Form No. 756, entitled "Application for Commercial Radio Operator License or Permit". *Provided,* That application for a new restricted radiotelephone operator permit may be filed on FCC Form No. 753-1, entitled "Application for Restricted Radiotelephone Operator Permit by Declaration"

(b) Application for an amateur radio operator license is included with the application for station license. (See § 1.318.)

(c) FCC Form No. 759 should be used for filing statement relative to the posting of operator license.

§ 1.330 *Application for ship radio inspection or periodical survey of ships subject to compulsory radio requirements.* (a) Applications for ship radio inspection and certification of the ship radio license in accordance with the requirements of section 360 (b) of the Communications Act, and/or issuance of a Safety Convention certificate in accordance with the terms of Regulations 11 and 12, Chapter I, of the Safety Convention, should be submitted on FCC Form No. 801, entitled "Application for Ship Radio Inspection" This form should be forwarded to the radio district office nearest the desired port of inspection (see section 0.49 of the Statement of Organization, Delegations of Authority and Other Information)

(b) Applications for periodical survey as required by Article 11 of the Great Lakes Agreement and certification prescribed by Article 12 thereof, should be submitted on FCC Form 809 "Application for Periodical Survey (Great Lakes Agreement)" This form should be forwarded to the radio district office nearest the desired place of survey (see section 0.49 of the Statement of Organization, Delegations of Authority and Other Information)

(c) Applications for inspection of ship radio equipment and apparatus for the purposes of Part II of Title III of the Communications Act of 1934, as amended, on a Sunday or a national holiday or during other than the established working hours on any other day, should be submitted on FCC Form 808, entitled "Application for and Certificate of Overtime Service Involving Inspection of Radio Equipment" This form should be forwarded to the radio district office nearest the desired port of inspection (see section 0.49 of the Statement of Organization, Delegations of Authority and Other Information)

§ 1.331 *Applications for exemption from compulsory ship radio requirements.* Applications for exemption filed under the provisions of section 352 (b) of the Communications Act of 1934, as amended, and Regulations 5 or 6, Chapter IV, of the Safety of Life at Sea Convention, London, 1948, shall be submitted on FCC Form 820, entitled "Application for Exemption" Applications for exemption filed under the provisions of Article 6 of the Great Lakes Agreement shall be submitted on FCC Form 820-A, entitled "Application for Exemption (Great Lakes Agreement)"

§ 1.332 *Informal applications.* (a) Whenever Commission authorization is required by the Communications Act or the Commission's rules and regulations in connection with any matter under title III of the act and no application form is specified in this subpart, informal application may be utilized.

(b) A partial list of some of the matters concerning standard broadcast operation as to which informal request may be made is given below:

(1) To operate additional time.

(2) To discontinue operation or services not covered by § 3.71 of this chapter.

(3) To operate with additional power.

(4) To operate with reduced power not covered by § 3.57 of this chapter.

(5) To operate for test purposes (to determine site, etc.).

(6) To rebroadcast programs of stations of other classes.

(7) Other special temporary operation beyond terms of existing license.

(8) Temporary operation without specified items of equipment or with auxiliary equipment:

(i) Operation without thermometer in automatic temperature control chamber.

(ii) Operation with temporary antenna system.

(iii) Operation with auxiliary transmitter as main transmitter.

(9) Operation with new or modified equipment pending repair of existing equipment, or pending receipt and action upon a formal application.

(10) Where formal application is not required, application for new or modified equipment or antenna system.

(11) Change of specifications for painting and lighting antenna towers where formal application is not required.

(12) Relocation of transmitter in same building.

(13) Operations with reduced power or time under §§ 3.57 and 3.71 of this chapter.

(14) Approval of types of equipment as to compliance with outstanding rules or standards.

(15) All authorizations for equipment and program tests, or extensions thereof, where it appears that compliance has been had with the terms of the construction permit.

(16) Extensions of time within which to comply with technical requirements specified in authorizations, orders, and rules or releases of the Commission.

(17) Representations of compliance with technical requirements specified in authorizations, orders, rules, or releases (except formal applications).

(18) Operation with licensed, new, or modified equipment at a temporary location with a temporary antenna system in case of an emergency when, due to causes beyond the control of the licensee, it becomes impossible to continue operating at the licensed location.

(c) Requests for type approval of equipment should be made by informal application. Arrangements should be made through the Bureau of Engineering for inspection and examination of the equipment in question.

(d) Requests from broadcast stations for extension of authority to operate without any of the following indicating instruments should be made by informal application to the Engineer in Charge of the radio district in which the station is located. Such requests must contain information as to when and what steps were taken to repair or replace the defective instrument.

(1) Frequency monitor.

(2) Modulation monitor.

(3) Plate ammeter or voltmeter.

(4) Base current meter or common point meter.

(5) Transmission line meter for FM and television stations.

§ 1.333 *Construction permits.* No construction permit is required for any class of station in the Maritime, Aviation, Public Safety, Industrial, Land Transportation, Citizens Radio, Disaster Communications, and Amateur Services except as follows: A construction permit is required for—

(a) All operational fixed stations;

(b) Land radiopositioning stations in the industrial radiolocation service;

(c) Public coast stations and limited Class I and Class II coast stations;

(d) Shore radiolocation, shore radionavigation, and shore radar stations;

(e) Alaskan public fixed stations; and

(f) Any station involving the erection of a new antenna or changes in an existing antenna if

(1) The antenna structure proposed to be erected will exceed an overall height of 170 feet above ground level, except in the case where the antenna is mounted on top of an existing man-made structure and does not increase the overall height of such man-made structure by more than 20 feet, or

(2) The antenna structure proposed to be erected will exceed an overall height of one foot above the established elevation of any landing area for each 200 feet of distance, or fraction thereof, from the nearest boundary of such landing area, except in the case where the antenna structure does not exceed 20 feet above the ground or is mounted on top of an existing man-made structure or natural formation and does not increase the overall height of such man-made structure or natural formation by more than 20 feet as a result of such mounting.

§ 1.334 *Applications for permission to use lesser grade operators at aural broadcast stations than required by Commission rules.* (a) Applications for temporary permission to operate standard and FM broadcast stations with licensed operators of a lesser grade than normally required by the Commission's rules shall be submitted to the Engineer in Charge of the Commission's district headquarters field office in the area where the station is located. Such permission will be granted for periods of not to exceed 120 days if a proper showing is made, as set forth in this section, and may be renewed upon request only upon the making of an adequate similar showing. Within 60 days of receiving an authorization for a longer period, a written report shall be submitted on behalf of the station setting forth what continuing efforts have been made to obtain licensed operators of a grade normally required by the Commission's rules. The Engineer in Charge may terminate this permission in the absence of a satisfactory showing in the written report that adequate efforts have been made to obtain such operators, or for other good reason in the judgment of the Engineer in Charge.

(b) Such applications or reports are not required to be submitted on any numbered or prescribed form. However, the request or report shall be in writing, signed by the licensee, if the licensee is an individual; by a partner, if the licensee is a partnership; or by an officer of the corporation, if the licensee is a corporation.

(c) A specific request for permission to use operators of lesser grade than required by the Commission's rules shall be included and the following information shall be furnished:

(1) Call letters of the station;

(2) Name of licensee;

(3) The number of persons holding radiotelephone first class operator licenses that will be employed as full-time operators at the station, (this does not include part-time employees and persons only available on call in case of emergencies),

(4) A showing that at least one first class operator will be employed full-time at the station and will be available on call at all times in the event of equipment failure;

(5) A statement that the additional licensed radiotelephone first class operators required for maintaining the normal schedule of operation could not be obtained for employment at the station or in the event an operator of the required grade will not accept employment at the station or was rejected by the station, a statement showing the reason for the failure to employ such operators.

(6) A showing that all known sources of broadcast operators within a reasonable distance have been exhausted. Names and addresses of sources contacted and the date of such contact shall be stated.

(d) The chief operator holding a radiotelephone first class operator license at a station to which temporary permission has been granted shall mail to the Engineer in Charge of the area from whom permission is received, within three days after employment of a lesser grade operator, a written certification setting forth the name and operator license number of the lesser grade operator employed and stating that the operator has the ability to perform the normal operation of the station.

§ 1.335 *FCC Form 482, "Certification of Civil Defense Radio Officer"* To be used by the local Civil Defense Official when certifying as to the loyalty, integrity, and the technical and administrative qualifications of the Radio Officer.

RULES RELATING TO OTHER FORMS AND INFORMATION TO BE FILED WITH THE COMMISSION

§ 1.341 *Financial report, broadcast licensees and permittees.* Each licensee of a broadcast station (standard, FM, television and international) and each permittee of a broadcast station engaged in interim operation shall file with the Commission on or before April 1 of each year on Form 324 broadcast revenue and expense statements for the preceding calendar year together with a statement as to investment in tangible broadcast property as of December 31 of such calendar year.

§ 1.342 *Filing of contracts, broadcast licensees and permittees.* Each licensee or permittee of a standard, FM, television, or international broadcast station shall file with the Commission within 30 days of execution thereof copies of the following contracts, instruments and documents, together with amendments, supplements and cancellations. The term "contract" as used in this section includes any contract, express or implied, oral or written. The substance of oral contracts shall be reported in writing:

(a) Contracts relating to network service. This provision does not require the filing of transcription agreements or contracts for the supplying of film for television stations which do not specify option time, contracts granting the right to broadcast music such as ASCAP BMI, or SESAC agreements. Transcription agreements or contracts for the supplying of film for television stations which do specify option time must be filed.

(b) Contracts, instruments or documents relating to the present or future ownership or control of the licensee or permittee, or of the licensee's or permittee's stock, rights or interests therein, or relating to changes in such ownership or control. All contracts, instruments and documents exempted from the requirements of § 1.343 are similarly exempted in this section. The term "stock" includes any interest in legal or beneficial, right or privilege in connection with stock. The terms "officers" and "directors" include the comparable officials of unincorporated associations. This provision is limited to the following:

(1) Articles of partnership, association and incorporation and changes in such instruments.

(2) Bylaws and any instruments affecting changes in such bylaws.

(3) Any agreement, document or instrument affecting, directly or indirectly, the ownership or voting rights of the licensee's or permittee's stock (common or preferred, voting or non-voting stock), such as (i) agreements for transfer of stock, (ii) instruments for the issuance of new stock, (iii) or agreements for the acquisition of licensee's or permittee's stock by the issuing licensee or permittee corporation. Options to purchase stock, pledges, trusts agreements, and other executory agreements are required to be filed.

(4) Proxies with respect to the licensee's or permittee's stock running for a period in excess of one year; and all proxies, whether or not running for a period of one year, given without full and detailed instructions binding the recipient to act in a specified manner. With respect to the latter proxies given without full and detailed instructions, a statement showing the number of such proxies, by whom given and received, and the percentage of outstanding stock represented by each proxy shall be submitted by the licensee or permittee within 30 days after the stockholders' meeting in which the stock covered by such proxies has been voted: *Provided, however,* That when the permittee or licensee is a corporation having more than 50 stockholders, such complete information need be filed only with respect to proxies given by stockholders who are officers or directors or who have one per-

cent or more of the corporation's stock. In cases where the permittee or licensee is a corporation having more than 50 stockholders and the stockholders giving the proxies are neither officers or directors nor hold one percent or more of the corporation's stock, the only information required to be filed is the name of any person voting one percent or more of the stock by proxy, the number of shares voted by proxy by such person, and the total number of shares voted at the particular stockholders' meeting in which the aforesaid shares were voted by proxy.

(5) Mortgage or loan agreements containing provisions restricting the licensee's or permittee's freedom of operation, such as those specifying or limiting the amount of dividends payable, the purchase of new equipment, the maintenance of current assets, etc.

(6) Any agreement reflecting a change in the officers, directors, or stockholders of a corporation other than the licensee or permittee having an interest, direct or indirect, in the licensee or permittee as specified by § 1.343.

(c) Contracts relating to the sale of broadcast time to "time brokers" for resale.

(d) Contracts relating to functional music operations such as "storecasting" "transitcasting" "background music" and similar services. This provision does not require the filing of contracts granting functional music licensees or permittees the right to broadcast copyright music.

(e) Time sales contracts with the same sponsor for 4 or more hours per day, unless the length of the events broadcast pursuant to the contract is not under control of the station, such as athletic contests, musical programs and special events.

(f) Contracts relating to the utilization in a management capacity of any person other than an officer, director, or regular employee of the licensee or permittee station, and management contracts with any persons, whether or not officers, directors, or regular employees which provide for both a percentage of profits and a sharing in losses. With the above exceptions, this provision does not require the filing of agreements with persons regularly employed as general or station managers or salesmen, contracts with program managers or program personnel, contracts with Chief Engineers or other engineering personnel, contracts with consulting radio engineers, attorneys, or accountants, contracts with performers, contracts with station representatives, contracts with labor unions, or any similar agreements. It does require the filing of management consultant agreements with independent contractors.

§ 1.343 *Ownership reports, broadcast licensees and permittees.* (a) The licensee of each broadcast station shall file an Ownership Report (FCC Form 323) at the time the application for renewal of station license is required to be filed: *Provided, however* That licensees owning more than one Standard, FM or Television broadcast station shall file the Ownership Report together with the first application for renewal of station license filed on or after February 1, 1954, and at three-year intervals thereafter. Ownership Reports shall give the following information as of a date not more than 30 days prior to the filing of the Ownership Report:

(1) In the case of an individual, the name of such individual.

(2) In the case of a partnership, the names of the partners and the interests of each partner.[6]

(3) In the case of a corporation or association: (i) Capitalization, with a description of the classes and voting power of stock authorized and the shares of each class issued and outstanding; (ii) the name, residence, citizenship, and stockholdings of officers and directors, and stockholders; (iii) full information with respect to the interest and identity of any person whether or not a stockholder of record, having any interest direct or indirect, in the licensee or any of its stock;

For example:

(a) Where A is the beneficial owner or votes stock held by B, the same information should be furnished for A as is required for B.

(b) Where X corporation controls the licensee, or holds 25 percent or more of the stock of the licensee, the same information should be furnished with respect to X corporation (its capitalization, officers, directors, and stockholders and the amount of stock in X held by each) as is required in the case of the licensee, together with full information as to the identity and citizenship of the person authorized to vote licensee's stock.

(c) The same information should be furnished as to Y corporation if it controls X corporation or holds 25 percent or more of the stock of X, and as to Z corporation if it controls Y corporation or holds 25 percent or more of the stock of Y and so on back to natural persons.

(iv) Full information as to family relationship or business association between two or more officials and/or stockholders.

(4) In the case of all licensees (i) a list of all contracts still in effect required to be filed with the Commission by § 1.342 showing the date of execution and expiration of each contract; (ii) any interest which the licensee may have in any other broadcast station.

(b) A supplemental Ownership Report (FCC Form 323) shall be filed by each licensee or permittee within 30 days after any change[6][7] occurs in the information required by the Ownership Report (the application or construction permit in the case of a permittee who has not filed an ownership report) from that previously reported. Such report shall include without limitation:

(1) Any change in capitalization or organization.

(2) Any change in officers and directors.

(3) Any transaction affecting the ownership, direct or indirect, or voting rights of licensee's or permittee's stock, such as (i) a transfer of stock, (ii) issuance of new stock or disposition of treasury stock, (iii) acquisition of licensee's or permittee's stock by the issuing corporation.

(4) Any change in the officers, directors, or stockholders of a corporation other than the licensee or permittee such as X, Y, or Z corporation described in the example in paragraph (a) (3) of this section: *Provided, however,* That in the case of a change in the officers, directors, or stockholders of a corporation other than the licensee or permittee (such as X, Y, or Z corporation described in the example in paragraph (a) (3) of this section) such change need not be reported in the supplemental report unless that corporation directly or indirectly owns 25 percent or more of the voting stock in the licensee or permittee.[7]

(c) Exceptions: Where information is required under paragraphs (a) or (b) of this section with respect to a corporation having more than 50 stockholders, such information need be filed only with respect to stockholders who are officers or directors of the corporation, or of other stockholders who have 1 percent or more of the stock of the corporation.

§ 1.344 *Definitions of terms used in §§ 1.341–1.343.* As used in §§ 1.341–1.343:

(a) "Stock" shall include any interest, legal or beneficial in, or right or privilege in connection with stock.

(b) "Officer" and "director" shall include the comparable officials in unincorporated associations.

(c) "Contract" shall include any agreement (including, without limitation, an option, trust, or pledge) or any modification thereof, express or implied, oral or written.

§ 1.346 *Reports in connection with certain fixed public radio service operations.* Monthly and quarterly reports must be filed with the Commission in connection with certain fixed public radio service operations. No form is prescribed. A complete description of the contents of these reports is contained in §§ 6.41 and 6.53 of this chapter.

§ 1.347 *Reports to be filed by international and coastal radiotelegraph carriers.* Commission Orders Nos. 85 and 86 require international telegraph carriers to file on FCC Form No. 336 and common carriers engaged in radiotelegraph communication with maritime mobile stations (with certain exceptions) to file on FCC Form No. 337 certain traffic information at periodic intervals. A complete description of these reports is set forth in Orders Nos. 85 and 86.

RULES RELATING TO ACCEPTANCE, AMENDMENT, OR DISMISSAL OF APPLICATION

§ 1.361 *Defective applications.* (a) Applications which are defective with respect to completeness of answers to required questions, execution or other matters of a purely formal character will not

[6] Any change in partners or in their rights will require prior consent of the Commission upon an application for consent to assignment of license or permit. If such change involves less than a controlling interest, the application for Commission consent to such change may be made upon FCC Form No. 316 (Short Form).

[7] Before any change is made in the organization, capitalization, officers, directors, or stockholders of a corporation other than licensee or permittee, which results in a change in the control of the licensee or permittee, prior Commission consent must be received under section 310 (b) of the Communications Act and § 1.321.

be received for filing by the Commission, unless the Commission shall otherwise direct, and will be returned to the applicant with a brief statement as to the omissions.

(b) If an applicant is requested by the Commission to file any documents or information not included in the prescribed application form, a failure to comply with such request will constitute a defect in the application.

(c) Applications which, because of the nature of the particular rule, regulation, or requirement involved, are patently not in accordance with the Commission's rules, regulations, or other requirements will be considered defective and will be dismissed unless accompanied by a request of the applicant for waiver of, or exception to, any rule, regulation, or requirement with which the application is in conflict. Such requests shall show the nature of the waiver or exception desired and set forth the reasons in support thereof.[8]

(d) Applications found to be complete are accepted for filing and are given a file number. Public notice of broadcast applications accepted for filing is given at regular intervals.

§ 1.362 *Inconsistent or conflicting applications.* When an applicant has an application pending and undecided, no other inconsistent or conflicting application filed by the same applicant, his successor or assignee, or on behalf or for the benefit of said applicant, will be considered by the Commission.

§ 1.363 *Repetitious applications.* (a) Where the Commission has, for any reason, denied an application for a new station, or for any modification of services or facilities, or dismissed such application with prejudice, the Commission will not consider a like application involving service of the same kind to substantially the same area by substantially the same applicant, or by its successor or assignee, or on behalf of or for the benefit of the original parties in interest, until after the lapse of 12 months from the effective date of the Commission's order. The Commission may, for good cause shown, waive the requirements of this section.

(b) Where an appeal has been taken from the action of the Commission in denying a particular application, another application for the same class of broadcast station and for the same area, in whole or in part, filed by the same applicant or by his successor or assignee, or on behalf or for the benefit of the original parties in interest, will not be considered until the final disposition of such appeal.

§ 1.364 *Multiple applications; broadcast service.* In the broadcast service, while there is one application for new or additional facilities pending for a standard, international, television, facsimile, FM, or experimental broadcast station, the Commission will not accept another application for new or additional facilities for a station of the same class (as given above) to serve the same community, by the same applicant or by his successor or assignee, or on behalf or for the benefit of the original parties in interest. Two such applications may not be filed simultaneously.

§ 1.365 *Amendments of applications.* (a) Any application may be amended as a matter of right prior to the designation of such application for hearing merely by filing the appropriate number of copies of the amendments in question duly executed. Requests to amend an application after it has been designated for hearing will be considered only upon written petition properly served upon the parties of record, and will be granted only for good cause shown. Such a petition which requests either a change in frequency or power must be accompanied by the affidavit of a person with knowledge of facts as to whether or not consideration has been promised to or received by petitioner, directly or indirectly, in connection with the filing of such petition for amendment. If such consideration has been promised or received, the affidavit shall set forth in full detail all the relevant facts. A petition to amend an application will not be accepted (other than an amendment which is merely corrective in nature such as the removal of a named person because of death) if it is filed after public notice has been given of the issuance of a proposed decision with respect to such application, or of a recommended or an initial decision, as the case may be, where no proposed decision is to be issued.

(b) When leave to amend has been granted after an application has been designated for hearing, the application will not be removed from the hearing docket unless the Motions Commissioner shall determine that the proposed amendment substantially affects the issues upon which the application has been designated for hearing and orders that the application shall be removed from the hearing docket. An amended application which has been removed from the hearing docket will be reexamined by the Commission and when necessary will be redesignated for hearing at a subsequent time.

(c) When a broadcast applicant seeks removal from the hearing docket by proposing an amendment as to frequency or other matter substantially affecting the issues in the proceeding in which he is involved, and is unable concurrently to specify and submit the desired amendment, his application shall be dismissed without prejudice, subject to the right of reinstatement within a reasonable time. In any proper case of this kind where dismissal without prejudice has been allowed, the application involved will be reinstated upon the filing of a proper petition, accompanied by the amendment necessary to complete the application.

§ 1.366 *Dismissal of applications.* Any application may be dismissed without prejudice as a matter of right prior to the designation of such application for hearing. Requests to dismiss an application without prejudice after it has been designated for hearing will be considered only upon written petition properly served upon all parties of record. Such petition must be accompanied by the affidavit of a person with knowledge of the facts as to whether or not consideration has been promised to or received by petitioner, directly or indirectly, in connection with the filing of such petition for dismissal of the application. Petitions to dismiss an application without prejudice will be granted only for good cause shown, but will in no event be granted after public notice has been given by the Commission of the issuance of a proposed decision proposing to deny the application in question.

THE MANNER IN WHICH APPLICATIONS ARE PROCESSED[9]

§ 1.371 *Acceptance of applications.*[10a] [10b] All applications, other than amateur, operator and ship radio inspec-

[8] This paragraph shall not apply to applications filed prior to its effective date (November 13, 1953) such applications, which could be accepted for filing even though patently not in accordance with the Commission's rules, regulations, or other requirements if accompanied by an appropriate rule-making petition, will remain on file.

[9] This description is applicable to all applications filed under title III. However, some of the detailed provisions governing processing are applicable only to applications which are tendered for filing in Washington. Operator and ship radio inspection applications are filed in the field. Their processing in general is substantially similar to that accorded applications filed in Washington.

[10a] Pending Commission review of the eligibility requirements of the citizens radio service, applications for citizens radio authorization which are eligible under the rules governing some other service shall not, except for good cause shown, be acted upon by the Commission, but shall be placed in the pending files.

[10b] Pending conclusion of the proceeding in Docket No. 8333 action will be withheld on the following:

(1) Applications proposing daytime or limited time assignments on any of the frequencies specified in § 3.25 (a) and (b) of this chapter;

(2) Applications from existing daytime or limited time stations presently assigned to any of the frequencies specified in § 3.25 (a) and (b), of this chapter, proposing (a) a change in operation resulting in an increase in radiation towards the normally protected contour of a United States Class I station on the channel; or (b) proposing a change in transmitter location resulting in a material reduction in the distance from that station to the normally protected contour of a United States Class I station on the channel;

(3) Applications for new stations, and those for changes in frequency assignment, proposing unlimited time Class II assignments on any of the frequencies specified in § 3.25 (b) of this chapter, which would operate differently during the day than at night;

(4) Applications for changes, other than frequency, of unlimited time Class II stations on any of the frequencies specified in § 3.25 (b), of this chapter, where the resulting daytime and nighttime operations are different; and either

(a) It is proposed to change daytime operation resulting in an increase in radiation towards the normally protected contour of a United States Class I station on the channel; or

(b) It is proposed to change transmitter location resulting in a material reduction in the distance from that station to the normally protected contour of a United States Class I station on the channel.

tion, which are tendered for filing by mail are dated upon receipt by Mail and Files Branch of the Bureau of the Secretary and are forwarded to Broadcast License Branch if a broadcast application; otherwise, to Commercial License Branch.[11] Applications tendered for filing, in person, in the Bureau of the Secretary are dated and forwarded to the Broadcast or Commercial License Branch. An administrative examination is made of all applications by the Broadcast or Commercial License Branch to ascertain whether the application is complete. If found to be complete it is accepted and is then routed to the other Bureaus of the Commission.

§ 1.372 *Staff consideration of applications which receive action by the Commission.*[11a] (a) Upon acceptance of an application, the complete file is routed to the appropriate Division of the Bureau of Engineering. The application is there reviewed from an engineering standpoint. A draft report containing the recommendations of the Bureau of Engineering is prepared. In cases where no engineering problems are involved, the report contains no recommendations as to disposition.

(b) The complete file is then routed to the appropriate Division of the Bureau of Accounting where it is reviewed from an accounting standpoint. A draft report containing the recommendations of the Bureau of Accounting is prepared. In cases where no accounting problems are involved the report contains no recommendations as to disposition.

(c) The complete file is then routed to the appropriate Division of the Bureau of Law where it is reviewed to determine whether the authorization requested will be in accordance with the Commission's policies, rules and regulations and any other requirements imposed by law. A joint report containing the recommendations of the Bureau of Law and the other Bureaus and any other documents required is prepared and the entire file routed to the Minute Branch of the Bureau of the Secretary which records, mimeographs, and distributes necessary papers to the members of the Commission, heads of Bureaus and other interested staff members, and places the matter on the Commission's agenda.

§ 1.373 *Procedure with respect to processing of standard broadcast applications.* (a) When an application for the construction of a new broadcast station, or for a change in the facilities of an existing station, is received in the Commission it is immediately referred to the Broadcast License Branch which examines the application to determine whether it is sufficiently complete to permit the Commission to process it. If it is found to be sufficiently complete to be processed—even though it is incomplete in certain minor particulars—it is immediately given a file number and a letter is sent to the applicant requesting the correction of any minor defects that may have been disclosed by the examination. If the examination by the Broadcast License Branch discloses that the application is incomplete in major particulars which makes it impossible to process it, the Broadcast License Branch then with the advice and concurrence of the Offices of the General Counsel and the Chief Engineer returns the application to the applicant with a statement that it cannot be accepted. The reasons for its rejection are specified in the letter returning the application.

(b) There shall be only one processing line and all applications, subject to the exceptions noted in succeeding paragraphs of this section, will be processed in the order of filing with the Commission. Once an application has been given a file number it is referred to a member of the Office of the Chief Engineer to determine whether it is one which must obviously go to hearing. For example, if the application seeks to use 1240 kilocycles in a particular town and there is already pending an application for that same frequency in that same town, then the two obviously must be consolidated for hearing and steps are set in motion at this stage looking toward an order designating the two applications for a consolidated hearing. At this stage, however, only those cases which are obvious conflicts are sifted out and put into hearing. If an engineering study is necessary in order to determine whether the case must go to hearing, the application is not set for hearing at this stage but is put in line for processing by the Office of the Chief Engineer and is set for hearing after the engineering study is completed (provided that such a study discloses an engineering conflict requiring a hearing) In view of this, it is to the advantage of an applicant who knows that his case does present a conflict requiring a hearing promptly to point that fact out to the Commission—preferably at the time the application is filed—so that it will be immediately recognized as a hearing case. This will result in getting the application immediately into line awaiting the assignment of a date on the hearing calendar instead of having the case remain in line awaiting processing by the Office of the Chief Engineer with the result that some weeks or months later it will be recognized as a hearing case and then put in the hearing line.

(c) (1) Where the application is for modification of a construction permit filed because of conditions imposed by the Commission at the time of the original grant, such as conditions with respect to the approval of transmitter site and antenna system, it will be referred to the Civil Aeronautics Administration upon its receipt and will be acted on by the Commission as soon as approval by the Civil Aeronautics Administration is received without reference to the processing line.

(2) Where the application is for minor changes in the construction permit, such as specification of new equipment or very slight changes in the directional antenna pattern, effort will be made to handle these cases promptly upon their receipt without placing them in the processing line.

(3) Where an application for modification of a construction permit involves major changes in the original proposal requiring engineering study and such application is required by the terms of the original grant, such applications will be placed at the head of the construction permit processing line. However, wherever major changes in the original proposal are initiated by the applicant, these applications will be placed in the processing line in accordance with the file number of the original application for the construction permit which is sought to be modified.

(d) Applications take their places on the processing line in proper order according to file number. The oldest (lowest file number) is at the front of the line and the newest (highest file number) is at the back of the line. Cases are drawn by engineers in order of file number. Thus, the file number strictly determines the order in which the staff's work is begun on a particular application. There is one exception to this. The Aural Broadcast Division of the Office of the Chief Engineer is authorized to group together for study, cases which involve interference conflicts where it appears that by making a simultaneous study of such conflicting applications rather than individual studies of separate applications, a substantial amount of the staff's time can be saved. Further, such cases would ordinarily require simultaneous consideration by the Commission and preparation of simultaneous reports is, therefore, necessary.

(e) It takes longer to process some applications than it does others. Also it frequently occurs that when the processing of an application is begun it is discovered that additional information is needed and the staff's work cannot be completed until further word is received from the applicant. Thus, there will be cases where the processing of a particular application may be completed and ready for Commission action prior to another application even though the processing of the latter application began at an earlier date. However, every effort is made, once the processing of an application has begun, to carry its processing through to completion at the earliest possible date in the light of the circumstances involved in the particular case. The Offices of the General Counsel and Chief Accountant, by keeping track of the cases which will be reached next in the processing line, are in position to plan their work so that they will be writing reports on the same applications that are being studied by the Office of the Chief Engineer.

(f) If, as a result of the study by the Offices of the General Counsel, Chief Engineer and Chief Accountant and by the Commission it appears that the application is satisfactory in all respects, it can be granted without a hearing. If,

[11] Applications for Alaskan stations tendered for filing with the engineer in charge of Radio District 14, Seattle, Wash., are forwarded to Washington, D. C., for processing.

[11a] Applications filed by the fixed public and fixed public press international radio carriers for the assignment of additional frequencies not already assigned to a station of the licensee at some other location may be acted on by the Commission upon the recommendation of the Bureau of Engineering only.

on the other hand, the complete study by the staff and the Commission indicates that a hearing is required, then the application will be designated for hearing.

(g) Frequently, when two cases are designated for hearing because they are mutually exclusive, one of the applicants amends and removes the conflict. Where this occurs the appropriate procedure is to petition for leave to amend and remove from the hearing docket. Such motions will be considered promptly and if it appears that the conflict which caused the case originally to be set for hearing has been removed and there is no other obvious conflict, the two cases will be removed from the hearing docket and placed back in their proper position (as determined by the file numbers) in the processing line. Petitions for amendment, removal from the hearing docket, and grant will not be entertained insofar as they request a grant. The Examiner, or Motions Commissioner if an Examiner has not yet been designated, in acting on such petitions, will dismiss the request for a grant. In such a case the matter will simply be put back in its proper place in line.

(h) An application will continue to be carried under the same file number unless major amendment is made which really involves the substitution of a different application. Amendments simply changing the frequency and/or power or changing from full time to daytime only will be accepted without changing the file number.

(i) Sometimes it occurs that when an application is reached for processing it is necessary for the staff or the Commission itself to address a letter to the applicant asking further information. If the application cannot be processed until the information requested is received, then the application is placed in the pending file to await the applicant's response. Also it sometimes occurs that a particular category of cases is placed in the pending file by Commission action. In such cases the Commission makes a public announcement of its policy and notifies the individual applicant as to why his application is being placed in the pending file.

§ 1.374 *Staff consideration of applications which do not require action by the Commission.* Those applications which do not require action by the Commission but which, pursuant to the delegation of authority contained in sections 0.201 to 0.341 of the Statement of Organization, Delegations of Authority and Other Information, may be acted upon by employees designated in that statement, are forwarded to the appropriate heads of Bureaus for necessary action. In those cases where the Secretary may act after securing the approval of the various Bureaus, the applications are forwarded to such appropriate Bureaus. If the application is granted, it is returned to the appropriate License Branch for issuance of the formal authorization. In cases where the Secretary acts by himself the appropriate License Branch reviews the applications before final decision is made and the authorization issued if the application is granted. In any case where it is recommended that it be set down for hearing, where a novel question of policy is presented or where the employee to whom authority is delegated desires instructions from the Commission, the file with necessary recommendations is forwarded to the Minute Branch to be placed on the Commission agenda for action by the Commission.

§ 1.375 *Procedure with respect to amateur and commercial radio operator licenses.* (a) After an application for an amateur radio license is accepted for filing and an examination is conducted in accordance with Part 12 of this chapter, the examination is sent to Washington where it is graded by the Inspection and Operator Examination Branch of the Bureau of Engineering, and if the applicant passes, a license is issued by the Amateur License Section of the Commercial License Branc.. of the Bureau of the Secretary.

(b) After an application for a commercial radio operator license is accepted for filing, and an examination conducted in accordance with Part 13 of this chapter, the examination papers are graded by the office supervising the examination which also issues a license, if the applicant is successful.

§ 1.376 *Procedure with respect to applications for ship radio inspection or periodical survey.* After the following applications are accepted for filing, the district engineer to whom application is made makes the necessary examination and issues the appropriate certification:

(a) Application for ship radio inspection and certification of the ship radio license, pursuant to the requirements of section 360 (b) of the Communications Act, as amended;

(b) Application for a Safety Convention certificate in accordance with the terms of Regulations 11 and 12, Chapter I, of the Safety Convention;

(c) Application for periodical survey as required by Article 11 of the Great Lakes Agreement and certification prescribed by Article 12 thereof.

§ 1.377 *Procedures for handling applications requiring special aeronautical consideration.* (a) All antenna surveys are conducted by the Antenna Survey Branch of the Office of the Chief Engineer.

(b) Each operating bureau or office which is responsible for processing applications for radio facilities examine those applications for which it is responsible to ascertain whether or not special antenna consideration is required. If such consideration is required the operating bureau or office routes the appropriate antenna data to the antenna survey branch of the Office of the Chief Engineer.

(c) The Antenna Survey Branch then ascertains whether a special aeronautical study is required.

(d) If no special aeronautical study is required the application is returned to the appropriate operating division with the required antenna lighting and painting specifications for such further action as might be necessary.

(e) If a special aeronautical study is required the antenna specifications are forwarded to the appropriate regional airspace subcommittee for consideration and the operating bureau concerned advised of this action.

(f) Upon receipt of a report of the airspace subcommittee the Antenna Survey Branch forwards this information to the appropriate operating bureau where appropriate action may be taken.

§ 1.378 *Procedure for processing applications for television broadcast stations.* The following procedures shall apply with respect to the processing of applications for television broadcast stations and for the designation for hearing of such mutually exclusive applications.

(a) Applications for television stations will be processed in the order in which they are accepted for filing.

(b) Regardless of the number of applications filed for channels in a city or the number of assignments available in that city, those applications which are mutually exclusive, i. e., which request the same channel, will be designated for hearing. All other applications for channels will, if the applicants are duly qualified, receive grants. For example, if Channels 6, 13, 47, and 53 have been assigned to City X and there are pending two applications for Channel 6 and one application for each of the remaining channels, the latter three applications will be considered for grants without hearing and the two mutually exclusive applications requesting Channel 6 will be designated for hearing. If there are two pending applications for Channel 6 and two applications for Channel 13, separate hearings will be held.

(c) Where applications are mutually exclusive because the distance between their respective proposed transmitter sites is contrary to the station separation requirements set forth in § 3.610 of this chapter, said applications will be processed and designated for hearing at the time the application with the lower file number is processed. If the question concerning transmitter sites is resolved before a decision is rendered in the matter, the application with the higher file number will be returned to its appropriate place on the processing line. In order to be considered mutually exclusive with a lower file number application, the higher file number must have been accepted for filing at least one day before the lower file number application has been acted upon by the Commission. If the lower file number application is in hearing status at the time the higher file number application is accepted for filing, the 60-day cut-off date specified in § 1.387 (b) (3) will be applicable.

(d) Where a mutually exclusive application on file becomes unopposed, or where an amended application or a new application is filed in place of the several competing applications and the applicant formed by such a merger is completely or substantially the same parties as the parties to the original application or applications, the remaining application may be available for consideration on its merits by the Commission at a succeeding regular meeting as promptly

as processing and review by the Commission can be completed.

ACTION ON APPLICATIONS

§ 1.381 *Failure to prosecute applications.* An applicant not desiring to prosecute his application may request the dismissal of same without prejudice. A request of an applicant for the return of an application which has been accepted for filing will be considered as a request to dismiss the same without prejudice. Where an applicant fails to respond to official correspondence or request for additional material, the application will be dismissed without prejudice.

§ 1.382 *Grants without a hearing.* (a) Where an application for radio facilities is proper upon its face and where it appears from an examination of the application and supporting data that (1) the applicant is legally, technically, and financially qualified; (2) a grant of the application would not involve modification, revocation, or nonrenewal of any existing license or outstanding construction permit; (3) a grant of the application would not cause additional electrical interference to an existing station or station for which a construction permit is outstanding within its normally protected contour as prescribed by the applicable rules and regulations; (4) a grant of the application would not preclude the grant of any mutually exclusive application; and (5) a grant of the application would be in the public interest, the Commission will grant the application without a hearing.

(b) In making its determinations pursuant to the provisions of paragraph (a) of this section, the Commission will not consider any other application as being mutually exclusive with the application under consideration unless such other application was substantially complete and was tendered for filing with the Commission not later than the close of business on the day preceding the day on which the Commission takes action with respect to the application under consideration.

§ 1.383 *Partial grants.* Where the Commission without a hearing grants any application in part, or with any privileges, terms, or conditions other than those requested, or subject to any interference that may result to the station if designated application or applications are subsequently granted, the action of the Commission shall be considered as a grant of such application unless the applicant shall, within 20 days from the date on which public announcement of such grant is made, or from its effective date if a later date is specified, file with the Commission a written request rejecting the grant as made. Upon receipt of such request, the Commission will vacate its original action upon the application and set the application for hearing in the same manner as other applications are set for hearing.

§ 1.384 *Operation pending action on renewal application.* (a) When there is pending before the Commission at the time of expiration of license any proper and timely application for renewal of license with respect to any activity of a continuing nature, in accordance with the provisions of section 9 (b) of the Administrative Procedure Act, such license shall continue in effect without further action by the Commission until such time as the Commission shall make a final determination with respect to the renewal application. No operation by any licensee under this section shall be construed as a finding by the Commission that the operation will serve public interest, convenience, or necessity nor shall such operation in any way affect or limit the action of the Commission with respect to any pending application or proceeding. A licensee operating by virtue of this section shall, after the date of expiration specified in the license, post in addition to the original license the acknowledgment received from the Commission that the renewal application has been accepted for filing or a signed copy of the application for renewal of license which has been submitted by the licensee or, in services other than broadcast and common carrier, a statement certifying that the licensee has mailed or filed a renewal application, specifying the date of mailing or filing.

(b) Where there is pending before the Commission at the time of expiration of license any proper and timely application for renewal or extension of the term of a license with respect to any activity not of a continuing nature, the Commission may in its discretion grant a temporary extension of such license, pending determination of such application. No such temporary extension shall be construed as a finding by the Commission that the operation of any radio station thereunder will serve public interest, convenience, or necessity beyond the express terms of such temporary extension of license nor shall such temporary extension in any way affect or limit the action of the Commission with respect to any pending application or proceeding.

(c) Except where an instrument of authorization clearly states on its face that it relates to an activity not of a continuing nature, or where the authorization is expressly denominated "temporary" or where the non-continuing nature is otherwise clearly apparent upon the face of the authorization, all licenses issued by the Commission shall be deemed to be related to an activity of a continuing nature.

§ 1.385 *Designation for hearing.* Applications will be designated for hearing in the following cases:

(a) Where it does not appear from an examination of the application that the applicant is legally, technically, or financially qualified; or

(b) Where a grant of the application would require the modification, revocation, or nonrenewal of license of an existing station or of any outstanding construction permit; or

(c) Where a grant of the application would cause electrical interference to an existing station or station for which a construction permit is outstanding within its normally protected contour as prescribed by the applicable rules and regulations; or

(d) Where it does not appear from an examination of the application that a grant of the application will be in the public interest.

(e) Where a grant of the application would preclude the grant of an application or applications mutually exclusive with it. However, the Commission may, if public interest will be served thereby, make a conditional grant of one of the applications and designate all of the mutually exclusive applications for hearing. Such conditional grant will be made upon the express condition that such grant is subject to being withdrawn if at the hearing it is shown that public interest will be better served by a grant of one of the other applications. Such conditional grants will be issued only where it appears:

(1) That some or all of the applications were not filed in good faith but were filed for the purpose of delaying or hindering the grant of another application; or

(2) That public interest requires the prompt establishment of radio service in a particular community or area; or

(3) That a grant of one or more applications would be in the public interest and that a delay in making a grant to any applicant until after the conclusion of a hearing on all applications might jeopardize the rights of the United States under the provisions of international agreement to the use of the frequency in question; or

(4) That a grant of one application would be in the public interest and that it appears from an examination of the remaining applications that they cannot be granted because they are in violation of provisions of the Communications Act, or of other statutes, or of the Commission's rules and regulations.

§ 1.386 *Petition for reconsideration and grant without hearing.* Where the Commission has designated an application for hearing, the applicant may file a petition requesting reconsideration and grant of the application without hearing. If the petition shows that a grant of the application without hearing would be consistent with § 1.382, the petition will be granted. Otherwise it will be denied.

§ 1.387 *Procedure when case is designated for hearing.* (a) When an application has been designated for hearing, the Secretary of the Commission will mail a written notice to applicant setting forth the action of the Commission designating the application for hearing, together with such statement of the Commission's reasons therefor as shall be appropriate to the nature of the application. In addition, notice of hearing involving matters under Part I of Title III of the act will be given by publishing the notice of hearing in the FEDERAL REGISTER. The Commission will attempt, when possible, to give at least 30 days advance notice of a hearing in cases other than those involving broadcast applications and at least 60 days advance notice on comparative hearings involving applications for authority to construct broadcast facilities. In order to avail himself of the opportunity to be

heard, the applicant, in person or by his attorney, shall, within 20 days of the mailing of the notice of designation for hearing by the Secretary, file with the Commission, in triplicate, a written appearance stating that he will appear and present evidence on the issues specified in the statement of reasons furnished by the Commission on such date as may be fixed for the hearing. Where an applicant fails to file such a written statement within the time specified, and has not filed prior to the expiration of that time period a petition to dismiss without prejudice pursuant to § 1.366, his application shall be dismissed with prejudice for failure to prosecute. In cases involving applications for facilities other than AM broadcast, FM broadcast, international broadcast, or television, the applicant shall submit with his appearance an additional copy of his application and supporting documents.

(b) The Commission will on its own motion name as parties to the hearing:

(1) Any existing licensee or holder of an outstanding construction permit who, if the application were granted, would suffer electrical interference within his normally protected contour as prescribed by the Commission's rules and regulations.

(2) Any existing licensee or holder of an outstanding construction permit whose license or construction permit would have to be modified or revoked, or whose application for renewal of license would have to be denied, if the application in question were granted.

(3) Any person who, prior to the time the application in question was designated for hearing, had filed with the Commission a mutually exclusive application. Any application that is mutually exclusive with another application or applications aready designated for hearing will be consolidated for hearing with such other application or applications only if the application in question is filed at least 30 days before the date on which the hearing on the prior application or applications is scheduled: *Provided, however,* That in the case of applications for broadcast stations the said period shall be 60 days. If the scheduled date is changed, the date last set shall govern in determining the timeliness of an application for purposes of this paragraph. If the application is filed after the 30-day period, or in the case of broadcast applications after the 60-day period, it will be dismissed without prejudice and will be eligible for refiling only after a decision is rendered by the Commission with respect to the application or applications designated for hearing or after such applications are dismissed or removed from hearing.

(4) In order to avail himself of the opportunity to be heard, any person named as a party pursuant to this subsection shall, within 20 days of the mailing of the notice of his designation as a party, file with the Commission, in person or by attorney, a written appearance in triplicate stating that he will appear and present evidence on the issues specified in the notice of hearing. Any person so named who fails to file this written statement within the time specified, shall, unless good cause for such failure is shown, forfeit his hearing rights.

§ 1.388 *Petitions to intervene.* (a) Where the Commission has failed on its own motion to name as parties to a hearing any person specified in § 1.387 (b), such person will be permitted to participate in the proceeding by filing a petition to intervene showing that he comes within the provisions of § 1.387 (b) Where the petition to intervene is based upon a claim that a grant of the application would cause electrical interference to an existing station or a station for which a construction permit is outstanding within its normally protected contour as prescribed by the applicable rules and regulations, the petition must be accompanied by an affidavit of a qualified radio engineer which shall show either by reference to the standard broadcast Technical Standards of part 3 of this chapter or to actual measurements made in accordance with the methods prescribed therein that electrical interference will be caused to the existing station or station for which a construction permit is outstanding within the normally protected contour of the station.

(b) Any other person desiring to participate in the hearing may file a petition to intervene. The petition must set forth the interest of the petitioner in the proceedings, must show how such person's participation will assist the Commission in the determination of the issues in question, and must be accompanied by the affidavit of a person with knowledge as to the facts set forth in the petition. The Commission in its discretion may grant or deny such petition or may permit intervention by such persons limited to particular issues or to a particular stage of the proceeding.

(c) The granting of any petition to intervene shall not have the effect of changing or enlarging the issues specified in the Commission's notice of hearing unless the Commission shall on motion amend the same.

(d) Petitions to intervene under this section must be filed with the Commission not later than 15 days after the issues in the hearing have first been published in the FEDERAL REGISTER. Any person desiring to file a petition to intervene after the expiration of such 15 days must set forth the reason why it was not possible to file the petition within the prescribed 15 days. Unless good cause is shown for delay in filing, the petition will not be granted.

§ 1.389 *Motions to enlarge or change the issues.* Motions to enlarge or change the issues may be filed by any party to a hearing. Such motions must be filed with the Commission not later than 15 days after the issues in the hearing have first been published in the FEDERAL REGISTER. Any person desiring to file a motion to enlarge or change the issues after the expiration of such 15 days must set forth the reason why it was not possible to file the petition within the prescribed 15 days. Unless good cause is shown for delay in filing, the motion will not be granted.

§ 1.390 *Petitions for reconsideration or for rehearing.* (a) Where an application has been granted without a hearing, any person aggrieved or whose interests would be adversely affected thereby may file a petition for reconsideration of such action. Such petition must be filed with the Commission within 30 days after public notice is given of the Commission's action in granting the application. Such petition will be granted if the petitioner shows that:

(1) Petitioner is an existing licensee or permittee and a grant of the application would require the modification, revocation, or nonrenewal of his license or construction permit; or

(2) That petitioner is an existing licensee or permittee and a grant of the application would cause interference to his station within the normally protected contour as prescribed by applicable rules and regulations; or

(3) At the time the application was granted, petitioner had a mutually exclusive application pending before the Commission; or

(4) A grant of the application is not in the public interest.

(b) Where an application has been granted or denied after hearing, petitions for rehearing may be filed within 30 days after public notice is given of the Commission's action in granting or denying the application. Petitions for rehearing by persons not parties to the Commission's hearing will not be granted unless good cause is shown as to why it was not possible for such person to participate earlier in the Commission's proceeding.

(c) Where a petition for reconsideration or for rehearing is based upon a claim of electrical interference within the normally protected contour of an existing station or a station for which a construction permit is outstanding, such petition must be accompanied by an affidavit of a qualified radio engineer which shall show either by reference to the standard broadcast Technical Standards of Part 3 of this chapter or to actual measurements made in accordance with the methods prescribed therein that electrical interference will be caused to the station within its normally protected contour. If the claim of interference is not based upon actual measurements made in accordance with the standard broadcast Technical Standards of Part 3 of this chapter, it may be controverted by affidavit containing results of actual measurements made in accordance with the standard broadcast Technical Standards of Part 3 of this chapter.

(d) Any opposition to a petition for reconsideration or rehearing may be filed within 10 days after the filing of such petition.

(e) Petitions for reconsideration or rehearing filed under this section may request (1) reconsideration, either in cases decided after hearing or in cases of applications granted without hearing; (2) reargument; (3) reopening of the proceeding; (4) amendment of any finding; or (5) such other relief as may be appropriate. Such petition shall state specifically the form of relief sought and, subject to this requirement, may contain alternative requests. Each such petition shall state with particularity in

what respect the decision, order or requirement or any matter determined therein is claimed to be unjust, unwarranted, or erroneous, and with respect to any finding of fact must specify the pages of record relied on. Where the petition is based upon a claim of newly discovered evidence, it must be accompanied by a verified statement of the facts relied upon, together with the facts relied on to show that the petitioner, with due diligence, could not have known or discovered such facts at the time of the hearing.

(f) The filing of a petition for reconsideration or rehearing shall not excuse any person from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof. However, upon good cause shown the Commission may stay the effectiveness of its order or requirement pending a decision on the petition for rehearing.

§ 1.391 *Special waiver procedure relative to broadcast applications.* (a) In the case of any broadcast applications designated for hearing, the parties may request the Commission to grant or deny the application upon the basis of the information contained in the applications and other papers specified in paragraph (b) of this section without the presentation of oral testimony. Any party desiring to follow this procedure should execute and file with the Commission a waiver in accordance with paragraph (f) of this section and serve copies on all other parties, or a joint waiver may be filed by all the parties. Upon the receipt of waivers from all parties to a proceeding, the Commission will decide whether the case is an appropriate one for determination without the presentation of oral testimony. If it is determined by the Commission that, notwithstanding the waivers, the presentation of oral testimony is necessary, the parties will be so notified and the case will be retained on the hearing docket. If the Commission concludes that the case can appropriately be decided without the presentation of oral testimony, the case will be removed from the hearing docket and the record will be considered as closed as of the date the waivers of all parties were first on file with the Commission.

(b) In all cases which are removed from the hearing docket in accordance with this procedure, the Commission will decide the case upon the basis of the information contained in the applications and any other papers open to public inspection on file with the Commission (as of the date the record was closed) which pertain to the applicants or applications in question. The Commission reserves the right to call upon any party to furnish any additional information which the Commission deems necessary to a proper decision. Such information shall be served upon all parties. The waiver previously executed by the parties shall be considered in effect unless within 10 days of the service of such information the waiver is withdrawn.

(c) This procedure does not in any way change the Commission's practice with respect to protests. Any party, or any member of the public, may file with the Commission any information concerning the applicant which bears upon his qualifications to operate a station in the public interest. Where such protest raises a question of substance which might affect the granting of the application, the presentation of oral testimony will generally be required. If the protest is not of any substance the Commission may proceed to act upon the application without the presentation of oral testimony.

(d) In all cases where the Commission issues a decision pursuant to this procedure without holding the usual hearing, an opinion will be issued by the Commission stating its reasons for its grant or denial of the individual applications. This decision shall have the same effect as a proposed decision, and the procedure thereafter to be followed shall be the same as in the case of a proposed decision made under the regular hearing procedure.

(e) The Commission does not construe this procedure as involving any waiver by the parties of the right to appeal to the Courts from any adverse final decision of the Commission.

(f) The waiver provided for by this section shall be in the following form:

WAIVER

Name of Applicant_____
Call Letters_____
Docket No_____

The undersigned hereby requests the Commission to consider its application and grant or deny it in accordance with the procedure prescribed in § 1.391 of the Commission's rules and regulations. It is understood that all the terms and provisions of § 1.391 are incorporated in this waiver.

PROCEDURE WITH RESPECT TO REVOCATION AND MODIFICATION OF STATION AUTHORIZATIONS, ISSUANCE OF CEASE AND DESIST ORDERS, AND SUSPENSION OF RADIO OPERATOR'S LICENSE

§ 1.401 *Notice of violations.* Any licensee who appears to have violated any provision of the Communications Act of 1934 or of the rules and regulations of the Federal Communications Commission, shall be served with a notice calling the facts to his attention and requesting a statement concerning the matter. Within 3 days from receipt of such notice, or such other period as may be specified, the licensee shall send a written answer direct to the office of the Commission originating the official notice. If an answer cannot be sent nor an acknowledgment made within such 3-day period by reason of illness or other unavoidable circumstances, acknowledgment and answer shall be made at the earliest practicable date with a satisfactory explanation of the delay. The answer to each notice shall be complete in itself and shall not be abbreviated by reference to other communications or answers to other notices. If the notice relates to violations that may be due to the physical or electrical characteristics of transmitting apparatus, the answer shall state fully what steps, if any, have been taken to prevent future violations, and if any new apparatus is to be installed, the date such apparatus was ordered, the name of the manufacturer, and promised date of delivery. If the installation of such apparatus requires a construction permit, the file number of the application shall be given, or if a file number has not been assigned by the Commission such identification shall be given as will permit ready identification thereof. If the notice of violation relates to lack of attention or to improper operation of the transmitter, the name and license number of the operator in charge shall be given.

§ 1.402 *Revocation of station licenses and construction permits and issuance of cease and desist orders.* (a) Whenever it appears that a station license or construction permit should be revoked for any of the reasons set forth in section 312 (a) of the Communications Act of 1934, as amended, or a cease and desist order should be issued for any of the reasons specified in section 312 (b) of the act, the Commission will issue an order directing the licensee, permittee or person to show cause why an order of revocation or a cease and desist order, as the case may be, should not be issued.

(b) Any order to show cause issued in accordance with paragraph (a) of this section will contain a statement of the matters with respect to which the Commission is inquiring and will call upon the licensee or permittee or person to appear before the Commission at a time and place stated in the order, but in no event less than thirty (30) days after the receipt of such order, and give evidence upon the matter specified therein; except that where safety of life or property is involved, the Commission may provide in the order for a shorter period.

(c) In order to avail himself of the opportunity to appear before the Commission at the time and place stated in the show cause order to give evidence upon the matter specified therein, the licensee, permittee or person, in person or by his attorney, shall within 30 days of the receipt of the order, or such shorter period as may be specified therein if the safety of life or property is involved, file with the Commission, in triplicate, a written appearance stating that he will appear and present evidence on the matter specified in the order.

(d) Hearings on the matters specified in the order to show cause and the practice and procedure in connection therewith shall accord with the provisions of Subparts F and G of this part, except that in all such hearings the burden of proceeding with the introduction of evidence and burden of proof shall be upon the Commission, and except that the Commission may, where the circumstances of the proceeding require expedition, specify in the show cause order, or authorize the hearing examiner to specify by subsequent order, times within which the initial decision in such proceedings shall become effective, within which exceptions to such initial decision or replies thereto may be filed, and within which parties may file notice of intent to seek and participate in oral argument, less than those specified in §§ 1.853 and 1.854.

(e) If the licensee, permittee or person does not desire to appear before the Commission and give evidence upon the

matter specified in the show cause order, he shall, within 30 days of the receipt of the order or such shorter period as may be specified therein if the safety of life or property is involved, file with the Commission, in triplicate, a written waiver of hearing. Such waiver, which shall include the name of the licensee, permittee or person to whom the show cause order was addressed, the call letters of his station, if any, and the docket number of the proceeding, may be accompanied by a statement of reasons why the licensee, permittee or person believes that an order of revocation or a cease and desist order, as the case may be, should not be issued.

(f) If the licensee, permittee or person fails timely to respond to an order to show cause or fails to appear at a hearing, such failure will be deemed a waiver of hearing.

(g) If the licensee, permittee or person waives a hearing in accordance with the provisions of paragraph (e) of this section and fails to submit a statement therewith showing why he believes an order of revocation or a cease and desist order should not be issued, or if he is deemed to waive a hearing in accordance with the provisions of paragraph (f) of this section, the allegations specified in the order to show cause will be deemed to be admitted and a decision will be issued by the Commission invoking the sanction specified in the order to show cause. If a hearing is waived pursuant to paragraph (e) of this section but a written statement as to why an order of revocation or cease and desist order should not be issued is submitted, the Commission will, on the basis of the facts before it as supplemented by such written statement, issue a decision stating its reasons for invoking the sanction specified in the order to show cause or for dismissing the proceeding, as the case may be: *Provided*, That where the written statement contains factual allegations contrary to those upon which the show cause order was based the Commission may call upon the submitting party to furnish additional information under oath, or, if necessary, designate the proceeding for oral hearing. The decisions of the Commission referred to in this paragraph shall have the same effect as an initial decision and the procedure to be followed thereafter shall be the same as in the case of an initial decision issued in the course of the regular hearing procedure.[12]

(h) Any order of revocation or cease and desist order issued pursuant to this section shall include a statement of the findings and the grounds and reasons therefor and specify the effective date of the order, and shall be served on said licensee, permittee or person.

§ 1.403 *Modification of licenses.* Whenever it appears that public interest, convenience, and necessity would be served, or the provisions of the Communications Act, or of any treaty ratified by the United States will be more fully complied with, by the modification of any radio station construction permit or license, the Bureaus of Law and Engineering prepare a report and other necessary papers which are presented to the Commission for action. If the Commission concludes that proceedings should be instituted, an order will be issued to show cause why such construction permit or license should not be modified. Such order to show cause shall contain a statement of the grounds and reasons for such proposed modification, and shall specify wherein the said construction permit or license is required to be modified. It shall require the licensee against whom it is directed, to appear at a place and time therein named to show cause why the proposed modification should not be made and the order of modification issued. If the licensee against whom the order to show cause is directed does not appear at the time and place provided in said order, a final order of modification shall issue forthwith.

§ 1.404 *Suspension of operator licenses.* Whenever it appears that grounds exist for suspension of an operator license, as provided in section 303 (m) of the act, the Chief of the Safety and Special Radio Services Bureau, with respect to amateur operator licenses, or the Chief of the Field Engineering and Monitoring Bureau, with respect to commercial operator licenses, pursuant to authority delegated by the Commission, issue an order suspending the operator license. No order of suspension of any operator's license shall take effect until 15 days' notice in writing thereof, stating the cause for the proposed suspension, has been given to the operator licensee, who may make written application to the Commission at any time within said 15 days for a hearing upon such order. The notice to the operator licensee shall not be effective until actually received by him, and from that time he shall have 15 days in which to mail the said application. In the event that physical conditions prevent mailing of the application before the expiration of the 15-day period, the application shall then be mailed as soon as possible thereafter, accompanied by a satisfactory explanation of the delay. Upon receipt by the Commission of such application for hearing, said order of suspension shall be designated for hearing by the Chief, Safety and Special Radio Services Bureau or the Chief, Field Engineering and Monitoring Bureau, as the case may be, pursuant to authority delegated by the Commission, and said order of suspension shall be held in abeyance until the conclusion of the hearing, which shall be conducted under such rules as the Commission shall deem appropriate. Upon the conclusion of said hearing, the Commission may affirm, modify, or revoke said order of suspension. If the license is ordered suspended, the operator shall send his operator license to the office of the Commission in Washington, D. C., on or before the effective date of the order, or, if the effective date has passed at the time notice is received, the license shall be sent to the Commission forthwith.

FORFEITURES AGAINST SHIPS AND SHIP MASTERS

§ 1.410 *Forfeitures against ships and ship masters.* (a) Whenever information is received indicating that reasonable grounds exist to support a suit for collection of forfeitures provided by section 362 of the Communications Act of 1934, as amended, the owner of the ship and the master will be notified of apparent liability for forfeitures. The notification will specify dates, places and the nature of the alleged violations or irregularities, and will advise the parties of the Commission's authority under section 504 (b) of the act to remit or mitigate such forfeitures upon application therefor. Applications for mitigation or remission may be filed within thirty (30) days from the date of receipt of the notification letter, or within such extended time as may for good cause be granted. The application must be in duplicate but need not follow any special form. After a review of the case in the light of all the information available, including the information and arguments presented in the application, the applicant will be notified of the determination, which may be either remission of the entire amount, an offer of mitigation of the forfeiture to the extent which appears warranted under the circumstances, or denial of any relief.

(b) Acceptance of an offer of mitigation may be accomplished through payment, within thirty (30) days from the date of receipt of the notification, of the amount specified therein by check or similar means drawn to the order of the Treasurer of the United States and mailed to the Commission.

(c) In lieu of acceptance of an offer of mitigation, or in the event of denial of relief, application may be made within thirty (30) days from the date of receipt of the notification for review by the Commission as provided in section 5 (d) (2) of the act. The application should set forth the reasons for applicant's belief that the original action on his application should be modified. It may include a statement of any material facts that may have been omitted from the original application for relief. If the Commission grants the application for review, it may affirm, modify or set aside the previous action, or direct any further proceedings that appear necessary and in the public interest.

(d) If the applicant fails to take any action in respect to a notification of apparent liability for forfeiture or an offer of mitigation or a notification of denial of relief, the case may be referred by the Commission to the Attorney General of the United States for appropriate civil action to recover the forfeiture in accordance with the provisions of section 504 (a) of the act.

SUBPART E—RULES RELATING TO APPLICATIONS, REPORTS, AND PROCEEDINGS AFFECTING COMMON CARRIERS UNDER TITLE II OF THE COMMUNICATIONS ACT

GENERAL RULES RELATING TO APPLICATIONS

§ 1.501 *Subscription and verification of applications.* Each application or amendment thereto shall be personally subscribed and verified (a) by the party filing such application or amendment, or by one of the parties, if there be more than one; (b) by an officer of the party filing the application or amendment if the party be a corporation: *Provided*,

[12] See §§ 1.853 to 1.857.

however That subscription and verification may be made by the attorney for the party (1) in case of physical disability of the party, or (2) his absence from the continental United States. If it be made by a person other than the party, he must set forth in the verification the grounds of his belief as to all matters not stated upon his knowledge and the reason why it is not made by the party. Where more than one copy of an application is required to be filed with the Commission, only the original need be signed and verified; the copies may be conformed.

§ 1.502 *Full disclosures.* Each application shall contain full and complete disclosures with regard to the real party or parties in interest and as to all matters and things required to be disclosed by the application forms.

§ 1.503 *Additional statements.* The Commission may require an applicant to submit such documents and written statements of fact, under oath, as in its judgment may be necessary.

§ 1.504 *Form of amendments to applications.* Any amendment to an application shall be subscribed, verified, and submitted in the same manner, and with the same number of copies, as was the original application.

§ 1.505 *Amendments of applications ordered.* The Commission may upon its own motion or upon motion of any party to a proceeding, order the applicant to amend his application so as to make the same more definite and certain.

§ 1.506 *Defective applications.* (a) Applications which are defective with respect to completeness of answers to required questions, execution or other matters of a purely formal character will not be received for filing by the Commission, unless the Commission shall otherwise direct, and will be returned to the applicant with a brief statement as to the omissions.

(b) If an applicant is requested by the Commission to file any documents or information not included in the prescribed application form, a failure to comply with such request will constitute a defect in the application.

(c) Applications which are not in accordance with the Commission's rules, regulations or other requirements will be considered defective unless accompanied either (1) by a petition to amend any rule or regulation with which the application is in conflict, or (2) by a request of the applicant for waiver of, or an exception to, any rule, regulation or requirement with which the application is in conflict. Such request shall show the nature of the waiver or exception desired and set forth the reasons in support thereof.

(d) Applications found to be complete are accepted for filing and are given a file number.

§ 1.507 *Amendments and dismissals of applications.* (a) Any application may be amended or dismissed without prejudice as a matter of right prior to the designation of such application for hearing. Thereafter, requests to amend or dismiss without prejudice will be considered only upon written motion properly served upon all parties of record.

(b) When leave to amend has been granted after an application has been designated for hearing, the application will not be removed from the hearing docket unless the Motions Commissioner shall determine that the proposed amendment substantially affects the issues upon which the application has been designated for hearing and orders that the application shall be removed from the hearing docket. An amended application which has been removed from the hearing docket will be reexamined by the Commission and when necessary will be redesignated for hearing at a subsequent time.

§ 1.508 *Failure to prosecute applications.* An applicant not desiring to prosecute his application may request the dismissal of same without prejudice. A request of an applicant for the return of an application which has been accepted for filing will be considered as a request to dismiss the same without prejudice. Where an applicant fails to respond to official correspondence or request for additional material, the application will be dismissed without prejudice.

§ 1.509 *Partial grants.* Where the Commission without a hearing grants any application in part, or with any privileges, terms or conditions other than those requested, the action of the Commission shall be considered as a grant of such application unless the applicant shall, within 20 days from the date on which public announcement of such grant is made, or from its effective date if a later date is specified, file with the Commission a written request rejecting the grant as made. Upon receipt of such request, the Commission will vacate its original action upon the application and set the application for hearing in the same manner as other applications are set for hearing.

§ 1.510 *Inconsistent or conflicting applications.* When an applicant has an application pending or undecided, no other inconsistent or conflicting application filed by the same applicant, his successor or assignee, or on behalf or for the benefit of said applicant, will be considered by the Commission.

FILING AND PROCESSING OF APPLICATIONS

§ 1.521 *Filing and routing of applications.* All applications under Title II of the act are filed with the Secretary and dated by the Mail and Files Branch of his Bureau. All applications other than for special tariff permission are then routed to the Commercial License Branch of the Bureau of the Secretary, where they are given a file number and then routed to the appropriate units of the Bureaus of Law, Accounting and Engineering. Applications for special tariff permission are routed to the Rates Division of the Bureau of Accounting, where they are numbered and referred to the appropriate branches of that Division.

§ 1.522 *Application for extension of time in which to file financial reports.* Applications for extensions of time in which to file annual, monthly, and special reports required by the Commission pursuant to sections 211 and 219 of the act should be made in writing.

§ 1.523 *Application for special tariff permission; procedure and application form.* Applications under section 203 (a) of the act for special tariff permission shall be made in the form and manner and with the number of copies required by §§ 61.151 through 61.153 of this chapter. Final action is taken by the Chief Accountant where Commission policy in the matter has been established, and in other cases the Commission acts upon the recommendation of the Chief Accountant or upon the recommendation of the Bureaus of Law, Accounting and Engineering.

§ 1.524 *Application for holding interlocking offices or directorates; procedure and application form.* Applications under section 212 of the act for authority to hold the position of officer or director of more than one carrier subject to the act shall be made in the form and manner and with the number of copies required by §§ 62.1, 62.2, 62.11 and 62.21 through 62.25 of this chapter. Final action is taken by the Secretary upon securing the approval of the Bureau of Law where Commission policy in the matter has been established, and in other cases the Commission acts upon the recommendations of the General Counsel.

§ 1.525 *Application for lines.* (a) Applications under section 214 of the act for authority to construct a new line, extend any line, acquire or operate any line or extension thereof, or to engage in transmission over or by means of such additional or extended line, to furnish temporary or emergency service or to supplement existing facilities shall be made on the form and manner and with the number of copies required by §§ 63.01 through 63.06 and §§ 63.51 through 63.54 of this chapter. In accordance with the delegation of authority provided for in the Commission's Statement of Organization, Delegations of Authority and Other Information, the Telegraph Committee, the Telephone Committee, and the Secretary, respectively, take final action on these matters. In other cases, final action is taken by the Commission. Recommendations on these applications are made by the Bureau of Engineering, or by the Bureaus of Engineering, Accounting and Law.

(b) In cases requiring a certificate, notice is given to and a copy of the application is filed with the Secretary of the Army, the Secretary of the Navy, and the Governor of each State involved. Hearing is held if any of these parties desires to be heard or if the Commission determines that a hearing should be held. Copies of applications for certificates are also served upon the state regulatory commissions of the states involved.

§ 1.526 *Application for discontinuance, reduction, or impairment of service.* (a) Applications under section 214 of the act for authority to discontinue, reduce or impair service to a community or part of a community or for the temporary, emergency or partial discontinuance, reduction or impairment of service shall be made on the form and manner

and with the number of copies required by §§ 63.51 to 63.54, §§ 63.60 to 63.68, and §§ 63.500 to 63.507 of this chapter. Posted and published notice shall be given to the public as required by § 63.67, § 63.68 or § 63.90 of this chapter. In accordance with the delegation of authority provided for in the Commission's Statement of Organization, Delegations of Authority and Other Information, the Telegraph Committee, the Telephone Committee, and the Secretary respectively, take final action on these matters. In other cases, final action is taken by the Commission. Recommendations on these applications are made by the Bureau of Accounting where telegraph service is involved, by the Bureau of Engineering where telephone service is involved, or by the Bureaus of Accounting, Engineering and Law.

(b) In cases requiring a certificate, notice is given to and a copy of the application is filed with the Secretary of the Army, the Secretary of the Navy, and the Governor of each State involved. A hearing is held if any of these parties desire to be heard or if the Commission determines that a hearing should be held. Also, copies of all formal applications under this section requesting authorizations are filed with the Governors of the States involved and the Secretary of the Army and Secretary of the Navy.

§ 1.527 *Application for consolidation of telephone companies.* Applications under section 221 (a) of the act, by one or more telephone companies for authority to consolidate their properties or a part thereof into a single company or to acquire the whole or any part of the property of another telephone company or other telephone companies or the control thereof by the purchase of securities or by lease or in any other like manner when such consolidated company would be subject to the Communications Act shall be submitted as follows:

(a) *Contents of application.* Each application shall contain in narrative form the following information:

(1) The exact name and address of each applicant;

(2) A statement as to whether each applicant is a carrier subject to the act and what change or changes in status will result from the consummation of the proposed transaction;

(3) The name, title, and post-office address of the officer to whom correspondence in regard to the application should be addressed;

(4) The Government, State, or Territory under the laws of which each corporate applicant was organized;

(5) Detailed description of the property to be acquired, consolidated, or merged, and a brief history of such property;

(6) In a proposed consolidation or merger, the name of the company resulting therefrom, the capitalization proposed therefor, and the amount and class of capital stock and other securities proposed to be issued;

(7) The manner in which the properties, or control, will be acquired and the consideration, in money and otherwise, to be paid by each applicant;

(8) Statement of action of stockholders and directors of each applicant approving the proposed transaction, giving date and place of each meeting;

(9) Facts as to any intercorporate relations through holding companies, ownership of securities or otherwise, between the applicants, or any of them;

(10) Reasons in general why the proposed transaction will be of advantage to the persons to whom service is to be rendered and in the public interest;

(11) With respect to the full-time employees employed in the exchange area or exchange areas served by properties proposed to be acquired, a complete statement as to the treatment proposed to be accorded to such employees by the acquiring company, with due regard to such matters as severance pay, if any, for employees discharged as a consequence of the transaction; accrued pension and benefit rights, if any; wages; locations of employment; job assignments; seniority and other conditions of employment.

(12) With respect to the full-time employees employed in the exchange area or exchange areas served by properties proposed to be consolidated or merged, a complete statement describing the manner in which the respective labor forces will be integrated or merged, giving due regard to the treatment to be accorded to such matters as severance pay, if any, for employees discharged as a consequence of the transaction; accrued pension and benefit rights, if any; wages; locations of employment; job assignments; seniority and other conditions of employment.

(13) The extent to which the facilities to be acquired or controlled (by purchase, lease, or otherwise) parallel or are competitive with the facilities of the proposed purchaser or others;

(14) A statement as to whether the proposed transaction has been presented to the regulatory authority of each state in which the property is situated, and, if so, with what results.

(b) *Supporting data required with application.* There shall be filed with and made a part of the original of each application under section 221 (a) the following:

(1) One copy of the charter, articles of incorporation and the bylaws of each applicant, duly certified (such copies as are already on file with the Commission may be incorporated in the application by reference)

(2) One copy of resolutions of the stockholders or directors of each of the applicants approving the proposed transaction, such resolutions to be properly attested and accompanied by appropriate excerpts from the minutes, showing the number of votes cast for and against each such resolution;

(3) Map or sketch indicating the facilities of each telephone carrier in the area involved, and the location and ownership of exchange and toll properties before and after consummation of the proposed transaction;

(4) A recent balance sheet and an income statement of each party involved;

(5) A statement showing the book cost and related reserve amounts with respect to the plant items to be acquired unless all of the telephone plant is included in the proposed acquisition, consolidation, or merger;

(6) Copy of any contract or contracts, exclusive of right-of-way and attachment contracts, entered into between the applicants, or any of them, with respect to any of the telephone properties or service included in the proposed transaction;

(7) With respect to the full-time employees employed in the exchange area or exchange areas served by the properties proposed to be acquired, consolidated, or merged, a table showing for each such employee, by name, his job classification, length of service, wage rate and location of employment; except that where twenty-five or more full-time employees are employed in any exchange area served by the properties to be consolidated or merged with another exchange area or exchange areas, such information with respect to those employees may be given on a group basis by job classification.

(8) Copies of any pension or benefit plans which are referred to in the statements supplied pursuant to paragraph (a) (11) and (12) of this section.

(9) Any additional facts or reasons in support of the application.

(c) *Copies required.* Five copies shall be furnished to the Commission for its use. In addition, a copy should be served on any other party to the proceeding.

(d) *Procedure.* These applications are acted upon by the Commission after a public hearing is held thereon. Reasonable notice of the hearing is given by the Commission to the Governor of each State in which the physical property affected, or any part thereof, is situated, and to the State commission having jurisdiction over telephone companies and to such other persons as the Commission may deem advisable.

§ 1.528 *Application for consolidation of domestic telegraph carriers.* (a) Applications under section 222 of the act by two or more domestic telegraph carriers for authority to effect a consolidation or merger or to acquire all or any part of the domestic telegraph properties, domestic telegraph facilities, or domestic telegraph operations of any carrier which is not primarily a telegraph carrier shall contain such information as is necessary for the Commission to act upon such application under the provision of section 222 of the act.

(b) These applications are acted upon by the Commission after public hearing. Reasonable notice in writing of the public hearing and an opportunity to be heard is given by the Commission to the Governor of each of the States in which any of the physical property involved in such proposed consolidation or merger is situated, to the Secretary of State, the Secretary of the Army, the Attorney General of the United States, the Secretary of the Navy, representatives of employees where represented by bargaining representatives known to the Commission, and to such other persons as the Commission may deem advisable.

§ 1.529 *Application with respect to disposition of debit amounts in account 100.4, "Telephone plant acquisition adjustment," for class A and class B telephone companies and in account 1200, "Plant adjustments" for class C telephone*

companies. Sections 31.100:4 (c) (1) and 33.1200 (c) (1) of this chapter contain provisions relating to the disposition of such debit amounts in whole or in part, or for amortization over a reasonable period, through charges to appropriate income or surplus accounts. If a different disposition is desired, application therefor shall be made to the Commission. Final action, in accordance with established Commission policy, is taken on such applications by the Chief Accountant; or such applications are presented to the Commission for action upon the recommendation of the Chief Accountant.

TARIFFS, REPORTS, AND OTHER MATERIAL REQUIRED TO BE SUBMITTED BY CARRIERS

§ 1.541 *Tariffs to be filed.* Schedules of charges required under section 203 of the Communications Act shall be constructed, filed and posted in accordance with Part 61 of this chapter.

§ 1.543 *Contracts to be filed.* Copies of carrier contracts, agreements, concessions, licenses, authorizations or other arrangements, shall be filed in the form and manner and with the number of copies required by § 43.51 of this chapter.

§ 1.544 *Annual financial reports.* (a) Annual financial reports shall be filed by carriers and affiliates as required by § 43.21 of this chapter on the following forms:

(1) Form H (holding companies).

(2) Form M (telephone companies, class A and B)

(3) Form O (wire-telegraph and ocean-cable carriers, class A and B)

(4) Form R (radiotelegraph carriers, class A and B)

(5) [Reserved.]

(6) Form L (licensees in the domestic public land mobile radio services who do not report to the Commission on Annual Report Form M).

(b) Verified copies of annual reports filed with the Securities and Exchange Commission on its Form 10-K, Form 1-MD, or such other form as may be prescribed by that Commission for filing of equivalent information, shall be filed annually with this Commission by each person immediately controlling any communication common carrier in accordance with § 43.21 of this chapter.

(c) Reports shall be filed annually by common carriers with respect to operations of separate departments or divisions of a holding company, servicing, or manufacturing nature in accordance with § 43.21 of this chapter.

§ 1.545 *Monthly financial reports.* Monthly reports of revenues, expenses, and other items shall be filed by carriers as required by § 43.31 of this chapter on the following forms:

F. C. C. Form No. 901 Telephone.

F. C. C. Form No. 903 Radiotelegraph and Ocean-cable.

F. C. C. Form No. 905 Wire-telegraph.

§ 1.547 *Reports to be filed under Part 31 of this chapter.* Reports shall be filed, either periodically or upon the happening of specified events, by carriers under Part 31 of this chapter in regard to the following:

(a) 31.01-2 (d) (1), (2), and (3) Subaccounts, clearing, temporary and experimental accounts.

(b) 31.01-2 (e). Effecting entries to transfer the balances from the old to the new system of accounts.

(c) 31.01-5 (b). Particulars of relatively large delayed items.

(d) 31.01-9. Interpretation of prescribed accounting.

(e) 31.02-83, 31.138 (c), 31.609. Unprovided-for loss in service value of plant retired for causes not factors in depreciation.

(f) 31.1-13 (b). Amortization of amounts ordinarily includible in surplus and relating to the refinancing of the carrier's securities.

(g) 31.1-15 (f). Amortization of amounts ordinarily includible in surplus and relating to the refinancing of the carrier's long-term debt.

(h) 31.1-16. Exchange of securities.

(i) 31.1-16A. Issuance or assumption of nonpar capital stock.

(j) 31.1-16A. Transfer of surplus to nonpar capital stock account.

(k) 31.100:4 (b). Opening entry (and basis of computations of amounts included) in account 100.4, "Telephone plant acquisition adjustment."

(l) 31.100:4, 31.100:7, 31.172, 31.614. Disposition of amounts included in account 100:4, "Telephone plant acquisition adjustment," and in account 100:7, "Telephone plant adjustment."

(m) 31.138 (c), 31.6-64. Extensive replacement of station apparatus, inside, drop and block wires.

(n) 31.2-21 (b) (3). Acquisition of duplicate or other telephone plant to be retired.

(o) 31.2-21 (e). Substantial acquisition of telephone plant.

(p) 31.2-22 (b) (10) (ii) (iii). Interest for period longer than 6 months prior to commencement of construction, and interest during the suspension of construction.

(q) 31.2-24. Changes in list of retirement units.

(r) 31.2-26 (a), (b). Continuing property-record plan.

(s) 31.611 (a). Institution of an employment stabilization program.

(t) 31.672 (d), (f). Changes in (a) pension plan; (b) related matters; and (c) accounting for pension costs.

(u) Appendix B—Standard Practices, CPR: Section 1 (b). Continuing property record; (1) list of accounting areas (with descriptions) and (2) descriptions of subsequent proposed changes in the list.

(v) CPR: Section 2 (a). Continuing property record; proposed revisions in list of property-record units.

§ 1.548 *Reports to be filed under Part 33 of this chapter* Reports shall be filed, either periodically or upon the happening of specified events, by carriers under Part 33 of this chapter in regard to the following:

(a) 33.1 (a) Jurisdictional matters: determination of class.

(b) 33.1 (b) Adoption of accounts prescribed for class A and class B telephone companies.

(c) 33.12 (e) Closing of books on other than a calendar-year basis.

(d) 33.14. Interpretation of prescribed accounting.

(e) 33.14. Spreading of relatively large amounts to prevent distortion of accounts.

(f) 33.14. Disposition of relatively large delayed items.

(g) 33.21 (f) Issuance or assumption of no-par capital stock.

(h) 33.21 (f). Transfer of surplus to no-par capital-stock accounts.

(i) 33.32 (b), 33.1200 (b) Distribution of cost of plant acquired to plant and other accounts.

(j) 33.1200 (c), 33.2700 (a) 33.5200. Disposition of amounts included in account 1200, "Plant adjustments."

(k) 33.34 (c) Replacements of property leased from others.

(l) 33.65 (d) 33.1890 (c), 33.2600 (b) Unprovided-for loss in service value of plant retired for causes not factors in depreciation.

(m) 33.1890 (c) Extensive retirements of station apparatus and inside, drop, and block wires.

(n) 33.2800 (b). Transfer of credit amounts from account 2800, "Contributions of telephone plant."

(o) 33.81. Revision of list of units of property.

§ 1.549 *Reports to be filed under Part 34 of this chapter.* Reports shall be filed, either periodically or upon the happening of specified events, by carriers under Part 34 of this chapter in regard to the following:

(a) 34.03-5 (b) (3) Subaccounts, clearing, temporary and experimental accounts.

(b) 34.03-6. Effecting entries to transfer the balances from the old to the new system of accounts.

(c) 34.03-11. Interpretation of prescribed accounting.

(d) 34.03-13. Particulars of relatively large delayed items.

(e) 34.04-4 (b) 34.1910. Unprovided-for loss in service value of plant retired for causes not factors in depreciation.

(f) 34.10-8. Exchange of securities.

(g) 34.10-9 (c) (a) Issuance of no-par capital stock; (b) transfer of surplus to no-par capital stock account; (c) reduction of capital surplus by use of no-par capital stock account; and (d) reduction of capital stock issued.

(h) 34.10-10 (c) Historical and detailed analysis of capital surplus for prior periods (ended December 31, 1939).

(i) 34.10-14 (f) Amortization of amounts ordinarily includible in income accounts and relating to refinancing of carrier's long-term debt.

(j) 34.1510 (e), 34.1520 (b), 34.4920 (a), 34.5255 (a). Disposition of amounts included in account 1510, "Plant acquisition adjustments."

(k) 34.1515 (b). Relief from mandatory charges to account 6299, "Other extraordinary income charges," to create a credit balance (at January 1, 1940) in account 1515, "Allowance for depreciation—Radiotelegraph plant," equal to sustained depreciation of owned plant.

(l) 34.1520 (c). Relief from mandatory charges to account 6299 to create a credit balance (at January 1, 1940) in account 1520, "Allowance for amortization—Radiotelegraph plant," equal to

the expired service value of certain intangibles.

(m) 34.1599 (d) 34.5089 (d) Changes in optional procedure adopted for recording foreign investments and foreign income.

(n) 34.1935 (a) Relief from mandatory charges to account 6299 of amounts cleared from account 1935, "Preliminary survey and investigation charges," and applicable to abandoned projects.

(o) 34.2220 (a) (c) 34.4198 (a) Institution of a program for equalization of maintenance expenses.

(p) 34.2225 (c) Relief from mandatory charges to account 6299 to create a credit balance (at January 1, 1940) in account 2225, "Provisions for depreciation and replacement of operated plant leased from others," equal to the expired service value of plant leased from others.

(q) 34.2515 (b) Transfer of credit amounts from account 2515, "Contributions of plant."

(r) 34.1–2 (d) (3) Acquisition of duplicate or other plant to be retired.

(s) 34.1–2 (g) Substantial acquisition of plant.

(t) 34.1–2 (g) 34.91 (b) Clearance date for plant acquisition entries.

(u) 34.1–3 (c) (8) Interest during the suspension of construction.

(v) 34.1–5 (g) Disposition of deferred charges and credits relating to plant leases terminated.

(w) 34.1–6 (f) Disposition of balances in account 2225 and account 2230, "Leased operated plant retired," relating to each expired lease of plant from others.

(x) 34.1–8. Continuous property-record plan.

(y) 34.4435 (d), (f) Changes in (a) pension plan, (b) related matters, and (c) in accounting for pension cost.

(z) 34.4950, 34.5260. Revenue-contract payments.

(aa) 34.9010 (Note) Relief from mandatory charges to account 6299 of amounts cleared from account 9010, "Research and development—Undistributed," and applicable to abandoned projects.

(bb) 34.1–6–1 (b) Revision of list of retirement units.

(cc) 34.1–6–1 (b) (d) Changes in list of retirement units (due 45 days after June 30, December 31)

§ 1.550 *Reports to be filed under Part 35 of this chapter* Reports shall be filed, either periodically or upon the happening of specified events, by carriers under Part 35 of this chapter in regard to the following:

(a) 35.03–5 (b) (3) Subaccounts, clearing, temporary and experimental accounts.

(b) 35.03–6. Effecting entries to transfer the balance from the old to the new system of accounts.

(c) 35.03–11 (b) Interpretation of prescribed accounting.

(d) 35.03–13. Particulars of relatively large delayed items.

(e) 35.04–4, 35.1910. Unprovided-for loss in service value of plant retired for causes not factors in depreciation.

(f) 35.10–8. Exchange of securities.

(g) 35.10–9 (c) (a) Issuance of no-par capital stock; (b) transfer of surplus to no-par capital stock account; (c) reduction of capital surplus by use of no-par capital stock account; and (d) reduction of capital stock issued.

(h) 35.10–10 (c) Historical and detailed analysis of capital surplus for period ended December 31, 1942.

(i) 35.10–14 (f) Amortization of amounts ordinarily includible in income accounts and relating to refinancing of company's long-term debt.

(j) 35.1510 (d) 35.1520 (b) 35.4920 (a) 35.5255 (a) Disposition of amounts included in account 1510, "Plant acquisition adjustments."

(k) 35.1515 (b) Relief from mandatory charges to account 6120 "Extraordinary current income charges," to create a credit balance in account 1515 "Allowance for depreciation-wire-telegraph and ocean-cable plant," equal to the sustained depreciation at January 1, 1943, of owned plant.

(l) 35.1520 (c) Relief from mandatory charges to account 6120 to create a credit balance in account 1520 "Allowance for amortization-wire-telegraph and ocean-cable plant," equal to the sustained depreciation at January 1, 1943, of owned plant.

(m) 35.1545 (b) Disposition of amounts included in account 1545, "Plant adjustments."

(n) 35.1599 (d) 35.5089 (d) Changes in optional procedure adopted for recording foreign investments and foreign income.

(o) 35.1935 (a) Relief from mandatory charges to account 6120 of amounts cleared from account 1935, "Preliminary survey and investigation charges," and applicable to abandoned projects.

(p) 35.2220 (a) (c) 35.4180. Institution of a program for equalization of maintenance expenses.

(q) 35.2225 (c) Relief from mandatory charges to account 6120 to create a credit balance (at January 1, 1943) in account 2225, "Provisions for depreciation and replacement of operated plant leased from others."

(r) 35.2515 (b) Transfer of credit amounts from account 2515, "Contributions of Plant."

(s) 35.1–1 (f) Reclassification of plant; and statement of amounts in accounts before and after reclassification (at January 1, 1943)

(t) 35.1–2 (e) Acquisition of duplicate or other plant to be retired.

(u) 35.1–2 (h) Substantial acquisition of plant.

(v) 35.1–2 (h) 35.91 (b) Clearance date for plant acquisition entries.

(w) 35.1–3 (c) (8) Interest during the suspension of construction.

(x) 35.1–5 (g) Disposition of deferred charges and credits relating to plant leases terminated.

(y) 35.1–6 (k) Disposition of balances in account 2225 and account 2230, "Leased operated plant retired," relating to expired leases of plant from others.

(z) 35.1–8 (b) Continuous property-record plan.

(aa) 35.4327 (d) (f) Changes in (a) pension plan, (b) related matters, and (c) accounting for pension costs.

(bb) 35.9011 (b) Relief from mandatory charges to account 6120 of amounts cleared from account 9011, "Research and development clearing account," and applicable to abandoned projects.

(cc) 35.1–6–1 (b) Revision of list of retirement units.

(dd) 35.1–6–1 (b), (d) Permissive changes in list of retirement units (due 90 days after June 30)

§ 1.551 *Reports of proposed changes in depreciation rates.* Carriers shall file reports regarding proposed changes in depreciation rates as required by § 43.43 of this chapter.

§ 1.552 *Reports regarding premature destruction of records.* Carriers shall file reports relating to the premature destruction of records as required by §§ 45.7 and 46.7 of this chapter.

§ 1.553 *Reports regarding pensions and benefits.* Carriers shall file reports regarding pensions and benefits as required by § 43.42 of this chapter.

§ 1.554 *Reports regarding division of international telegraph communication charges.* Carriers engaging in international telegraph communication shall file reports in regard to the division of communication charges as required by § 43.53 of this chapter.

§ 1.555 *Reports regarding telegraph carrier services.* Telegraph carriers shall file description of their services as required by § 43.54 of this chapter.

§ 1.556 *Reports of negotiations regarding foreign communication matters.* Carriers engaging or participating in foreign communications shall file monthly reports covering negotiations conducted as required by § 43.52 of this chapter.

§ 1.557 *Reports on traffic.* (a) Commission Orders Nos. 85 and 86 require international telegraph carriers to file on FCC Form No. 336 and common carriers engaged in radiotelegraph communication with maritime mobile stations (with certain exceptions) to file on FCC Form No. 337 certain traffic information at periodic intervals. A complete description of these reports is set forth in Orders Nos. 85 and 86.

(b) Monthly and quarterly reports must be filed with the Commission in connection with certain fixed public radio service operations. No form is prescribed. A complete description of the contents of these reports is contained in §§ 6.41 and 6.53 of this chapter.

§ 1.558 *Reports under § 63.04 of this chapter* Radio carriers receiving authority under § 63.04 of this chapter shall furnish quarterly reports as required therein.

§ 1.559 *Reports to be filed regarding lines.* Carriers shall furnish reports under § 63.54 of this chapter when a line authorized to be constructed, acquired or operated has been put into service.

§ 1.560 *Reports to be furnished regarding domestic telegraph speed of service.* The Western Union Telegraph Company shall furnish monthly reports under §§ 64.201 through 64.283 of this chapter in regard to Message Center speed of service and Origin to Destination speed of service on FCC Forms No.

338-A and No. 338-B respectively, and copies of instructions to field offices in accordance with § 64.226 of this chapter.

RULES RELATING TO COMPLAINTS

§ 1.571 *Formal or informal complaints.* Complaints filed under title II of the act may be either formal or informal.

§ 1.572 *Informal complaints.* No particular form is prescribed for informal complaints but they must be in writing, subscribed, and verified by the complainant. The complaint shall state the name and address of the complainant, the name of the carrier against whom the complaint is made, and shall state as definitely as possible the basis or reason for the complaint.

§ 1.573 *Action on informal complaints.* Upon receipt of an informal complaint properly drawn and executed, the Commission will, if its nature warrants, take the question up by correspondence with the carrier complained of in an endeavor to bring about satisfaction. Such correspondence with the carrier shall call upon it either to satisfy the complainant or advise the Commission of its refusal or inability to do so within such time as may be prescribed. If the carrier satisfies the complainant, it shall immediately notify the Commission and file with it proof of satisfaction; whereupon the complaint will be dismissed. If the carrier refuses or is unable to satisfy the complainant within the time prescribed, it shall so notify the Commission, which decision the Commission will forthwith give notice of to the complainant.

§ 1.574 *Resubmission, 6 months' rule.* When an informal complaint has not been satisfied pursuant to the foregoing rule, the complainant may either file a formal complaint or resubmit his informal complaint within 6 months from the date of the Commission's notice: *Provided, however* That such resubmitted informal complaint must contain new material matter upon the same cause of action. The procedure prescribed herein for handling of informal complaints will be followed in case of resubmitted informal complaints. If such resubmitted informal complaint or a formal complaint is filed with the Commission within the 6-month period, such resubmission or filing will be deemed to relate back to the date of the filing of the original informal complaint. But reference to the original date of the informal complaint must be made in such resubmission or in the formal complaint filed.

§ 1.575 *Formal complaints; requirements.* (a) Formal complaints shall contain the names of all parties complainant and defendant in full, the address of each complainant, and the name and address of his attorney, if represented by attorney, and shall be subscribed and verified by the complainant.

(b) A form of such complaint is as follows:

(This form may be used in cases to which it is applicable, with such alterations as the circumstances may render necessary.)

COMPLAINT

Before the Federal Communications Commission, Washington, D. C.

COMPLAINANT

Docket No. ------

(To be inserted by the Secretary of the Commission)

Complainant

v.

Defendant

The complainant (here insert full name of each complainant and if a corporation the corporate title of such complainant) respectively shows:

(1) That (here state occupation and post-office address of each complainant).

(2) That (here insert the full name, occupation, and post-office address of each defendant).

(3) That (here insert fully and clearly the specific act or thing complained of, together with such facts as are necessary to give a full understanding of the situation).

Wherefore, complainant asks (here state specifically the relief desired).

Dated at -------- this ---- day of --------, 19-----.

(Name of each complainant)

(Name and address of attorney, if any)

FORM OF VERIFICATION

---------- being first duly sworn, on oath, deposes, and says:

That he is the complainant (or one of the complainants), in the above-entitled matter; that he has read the within and foregoing complaint and knows the contents thereof, and that the matter and things therein stated are true of his own knowledge, save and except those matters therein stated on information and belief, and as to those he believes them to be true.

Subscribed and sworn to before me this ---- day of ---------- 19-----.

(Notary public or other proper officer)

§ 1.576 *Statement of issues; joinder of causes of complaint.* Formal complaints shall be so drawn as to advise the Commission and the defendant fully wherein the provisions of the act, or an order, rule or regulation of the Commission have been violated, the facts claimed to constitute such violation, and the relief sought. Two or more grounds of complaint involving the same principle, subject, or statement of facts may be included in one complaint, but should be separately stated and numbered.

§ 1.577 *Notice of complaints.* Upon receipt of any formal complaint against any common carrier subject to the act, the Commission will forward a copy of the same to such carrier together with a notice of the filing thereof, which notice shall contain an order of the Commission calling upon the carrier to satisfy the complaint or answer the same in writing within the time specified in said notice, which in no event shall be less than 30 days.

§ 1.578 *Charges, etc., specific references.* The several charges, classifications, regulations, or practices complained of shall be set out by specific references to schedules of charges and classifications, and also the particular regulations or practices whenever that is possible.

§ 1.579 *Separate statement of each provision violated.* When a violation of more than one provision of a section of the act is alleged, such violation shall be separately stated with respect to each provision of the act claimed to be violated.

§ 1.580 *Allegations; certainty.* In case recovery of damage is sought, the complaint should contain appropriate allegations showing such data as will serve to identify, with reasonable certainty, the communications or transmissions, or other services, in respect of which recovery is sought and shall state (a) that the complainant makes claim for reparation; (b) the name and address of each individual claimant asking reparation; (c) the name and address of defendants against which claim is made; (d) the communications, transmissions, or other services rendered, the charge applied thereto, the date when charges were paid, by whom paid, and by whom borne; (e) the period of time within which, or the specific dates when such communications, transmissions or other services were rendered; (f) points of origin and reception of such communications or transmissions, and if the damages sought to be recovered are for services other than communications or transmissions, then the allegations of the complaint shall state the nature and extent of such services, the date or dates when rendered, when paid for, and by whom borne; (g) nature and amount of injury sustained by each claimant; (h) if reparation is sought on behalf of others than the complainant, in what capacity or by what authority complaint is made in their behalf; and (i) that claimant has not filed suit in any court on the basis of the same claim.

§ 1.581 *Challenge of general rate adjustments; reparation.* If a general rate adjustment is challenged in the complaint, or many communications and transmissions or points of origin and reception are involved, the Commission will find and determine in its report the issues as to violation of the act, injury thereby to complainant, and right to reparation. The Commission will afford the parties opportunity to agree or make proof respecting the communications, transmissions, or other services, and amount of reparation due under its findings, before entering its order awarding reparation. In such cases, authenticated schedules of charges, receipts, statements, and other exhibits bearing on details of such communications, transmissions, or other services, for which reparation is claimed, and the amount claimed (separately stated with respect to each communication, transmission, or other service rendered) need not be produced at the hearing unless called for or needed to develop other pertinent facts.

§ 1.582 *Discrimination specified.* In case unjust or unreasonable discrimination is alleged, the charge, practice, classification, regulation, facility, or service complained of must be clearly specified.

§ 1.583 *Preference or prejudice.* In case undue or unreasonable preference, advantage, or prejudice is alleged, the particular person, company, firm, corporation, locality, or description of traffic affected thereby, and the particular preference or prejudice or disadvantage, relied upon as constituting a violation, shall be clearly specified.

§ 1.584 *Reparation, prayer for* Reparation will not be awarded upon a complaint unless specifically prayed for, except under unusual circumstances and for good cause shown. Reparation may be awarded, however, upon a supplemental complaint based upon the finding of the Commission in the original proceeding.

§ 1.585 *Limitations: damages pendente lite.* The Commission will consider as in substantial avoidance of the statute of limitations, a complaint in which the complainant alleges that the matters complained of, if continued in the future, will constitute violations of the act in the particulars and to the extent indicated, and prays reparation accordingly as to charges which shall be paid and borne by complainant on all communications, transmissions, or other services affected thereby occurring during the pendency of the proceeding.

§ 1.586 *Supplemental complaints*—(a) *General.* Supplemental complaints may be tendered for filing by the parties complainant, against the parties defendant, setting forth any causes of action under the act alleged to have accrued in favor of the complainants and against the defendants since the filing of the original complaint.

(b) *Seeking damages.* If recovery of damages is sought by supplemental complaint, it must be filed with the Commission within the statutory periods stated in section 415 of the act.

§ 1.587 *Cross complaints.* Cross complaints alleging violations of the act by other carriers, parties to the proceeding, or seeking relief against them under the act, may be tendered for filing by defendants with their answers and, upon leave granted, will be filed and served by the Commission in the manner provided for serving complaints.

§ 1.588 *Answers to complaints and petitions.* Any party upon whom a copy of a complaint, petition, or cross complaint is filed under this subpart shall file an answer within 30 days after service of the complaint. Such answer shall be subscribed by the party answering and shall be so drawn as to advise the parties and the Commission fully and completely of the nature of the defense, and shall admit or deny specifically and in detail all material allegations of the complaint. Collateral or immaterial issues shall be avoided in answers and every effort shall be made to narrow the issues. Matters alleged as affirmative defenses shall be separately stated and numbered. Any defendant failing to file and serve answer within the time and in the manner prescribed will be deemed in default, and the Commission will issue an appropriate order. (Counterclaims and set-offs against users of service supplied by carriers are not within the jurisdiction of the Commission.) This section does not apply to protests or applications seeking suspensions of proposed tariff schedules.

§ 1.589 *Answers to petitions or amended complaints.* Answers to petitions for intervention, or to amended complaints filed and served upon leave granted, need not be separately made unless the defendant so elects, and defendant's answer to the complaint will be deemed its answer to the petition in intervention.

§ 1.590 *Requests for suspension of tariff schedules.* Requests for suspensions of tariff schedules under section 204 of the act will not ordinarily be considered unless made in writing or by telegram at least 10 days before the effective date named in the schedule. Requests for suspensions must indicate the schedule affected by its Federal Communications Commission number and give specific reference to the items against which protest is made, together with a statement of the grounds thereof. If such request is made by telegram, the telegram must be followed and confirmed by request in writing and the telegram should succinctly state the substance of the matters to be set forth in the written request. Sixteen copies of each written request must be furnished to the Commission.

RULES CONCERNING SHOW CAUSE ORDERS AND TENTATIVE VALUATIONS

§ 1.591 *Order to show cause.* (a) Whenever the Commission desires to institute a proceeding within its jurisdiction under title II of the act against any common carrier, it will commence such action by serving upon the carrier an order to show cause. Said order shall contain a statement of the particulars and matters concerning which the Commission is inquiring, and the reasons for such action, and shall call upon the carrier to appear before the Commission at a place and time therein stated, and answer and give evidence upon the matters specified in said order. The Commission may require in said order, that the carrier file with the Commission its verified answer to the order to show cause, on or before a day certain, prior to the hearing date therein fixed, in no event less than 30 days after service of the order.

(b) Any carrier, upon whom an order to show cause has been served under this section shall respond to the same by filing its answer within the time specified in said order. Such answer shall be drawn so as specifically to admit or deny the charges or allegations which may be made in said order, and so as to advise the Commission fully and completely upon the matters and things inquired of.

§ 1.592 *Protests of tentative valuations.* Protests in opposition to a tentative valuation shall be subscribed and verified and shall contain a concise statement of the essential elements of the protest with particularity as to the matters concerning which protest is made. Each object of protest shall be set up as a separate item in a separately numbered paragraph and the protest shall also include a statement of the protestant's interest in the matter in controversy.

SUBPART F—GENERAL RULES OF PRACTICE AND PROCEDURE

GENERAL

§ 1.701 *Suspension, amendment or waiver of rules.* The rules and regulations of the Commission may be suspended, revoked, modified, amended, or supplemented, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act. Any provision of the rules may be waived by the Commission, if good cause therefor exists.

§ 1.702 *Petition for amendment or waiver of rules.* Any interested person may petition for issuance, amendment, repeal or waiver of any rule or regulation. Such petition shall show the text of the proposed rule, or its change, and set forth the reason in support of the petition.

§ 1.703 *Computation of time.* In computing any period of time prescribed or allowed by the Commission's rules or by order of the Commission the day of the act, event, or default, after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or a legal holiday or a Saturday on which the Commission's offices are not open, in which event the period runs until the end of the next day which is not a Sunday holiday, or Saturday on which the Commission's offices are not open. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.

PERSONAL APPEARANCES; PRACTITIONERS

§ 1.711 *Appearances.* Any person appearing before the Commission or any of its representatives may be heard in person and may be accompanied, represented and advised by counsel.

§ 1.712 *Authority for representation.* Any person, in a representative capacity, transacting business with the Commission, may be required to show his authority to act in such capacity.

§ 1.713 *Persons who may be admitted to practice.* (a) The Commission will maintain a register of attorneys admitted to practice before the Commission. Any attorney at law in good standing admitted to practice before any court of the United States, the District of Columbia, or the highest court of any State or Territory, may register by filing with the Commission, an affidavit to this effect on FCC Form No. 786. The Commission may, if it so desires, require additional proof of said attorney's qualifications.

(b) Any attorney at law who has not been admitted to practice before the

Commission may, in the discretion of the Commission or the official presiding at any hearing, be admitted for a particular case in which he may be employed.

§ 1.714 *Suspension or disbarment of attorneys.* The Commission may censure, suspend, disbar, or revoke the right of any person who has been admitted to practice before it if it finds that such person has in obtaining admission concealed any material facts with reference to his legal qualifications, professional standing, character or integrity, or has failed to conform to recognized standards of professional conduct. Before any member of the bar of the Commission shall be censured, suspended, disbarred, or his right to practice before the Commission revoked, charges shall be preferred by the Commission against such practitioner and he shall be afforded an opportunity to be heard thereon.

§ 1.715 *Former employees.* (a) No member, officer, or employee of the Commission shall, within 2 years after his service with the Commission is terminated, appear as attorney before the Commission in any cause or application which he has handled or passed upon while in the service of the Commission.

(b) No member, officer or employee of the Commission (1) whose active service with the Commission has terminated but who is receiving pay while on annual leave not taken prior to separation from such active service, or (2) who is in any other leave status, shall appear as attorney or participate in the preparation or handling of any matter before, or to be submitted to, the Commission.

§ 1.716 *Appearance blanks.* Each attorney representing a party to any proceeding shall enter his appearance in duplicate on the form prescribed for the purpose by the Commission prior to participating in such proceeding, which appearance shall be made a part of the record.

PETITIONS AND OTHER REQUESTS FOR COMMISSION ACTION

§ 1.721 *General.* Persons desiring to file complaints with the Commission or to request information on file with the Commission or for any other relief under the jurisdiction of the Commission may do so either formally or informally. Formal submissions must be by way of petition which shall set forth clearly and concisely the petitioner's interest and facts supporting the relief sought and must comply with the Commission's rules concerning pleadings. All other submittals will be considered as informal in nature.

§ 1.722 *Petitions to intervene.* (a) Special rules governing petitions to intervene in matters arising under title III of the Communications Act are set forth in § 1.388.

(b) In all other proceedings persons desiring to intervene must file a petition setting forth the grounds of the proposed intervention, the position and interest of the petitioner, in the proceeding, the facts on which the petitioner bases his claim that his intervention will be in the public interest. If a proper showing is made, the Commission will grant the petition and permit participation in the proceedings. If the facts warrant, the Commission may limit participation by such persons to particular issues or to a particular stage of the proceedings. The granting of a petition to intervene shall not have the effect of changing or enlarging the issues which shall be those specified in the Commission's notice of hearing unless on motion the Commission shall amend the same.

§ 1.723 *Request by nonparties to participate in hearings; communications relating to applications.* (a) There will be maintained in the office of the Secretary of the Commission a record of all communications received by the Commission relating to the merits of any application pending before the Commission requesting the granting, renewal, modification, or revocation of any license or construction permit, certificate of convenience and necessity, or rate schedule. Such record shall show the name and address of the person making the statement and the substance of such statement. When the date of hearing has been set, if the matter is designated for hearing, the Secretary shall notify all persons shown by the records to have communicated with the Commission regarding the merits of such matter in order that such persons will have an opportunity to appear and give evidence at such hearing. In the case of communications bearing more than one signature, notice shall be given to the person first signing unless the communication clearly indicates that such notice should be sent to someone other than such person.

(b) No such person shall be precluded from giving any relevant material and competent testimony at such hearing because he lacks a sufficient interest to justify his intervention as a party in the matter.

(c) No such communication will be considered by the Commission in determining the merits of any such matter, nor shall any such communication be considered by any hearing officer unless it has been introduced into evidence at the hearing and appears as a part of the record. The admissibility of any such communication or the Secretary's record of any such communication shall be governed by the applicable rules of evidence, and no such communication shall be admissible on the basis of a stipulation unless Commission's counsel as well as counsel for all of the parties shall join in such stipulation.

(d) Such communications, however, may be considered by the Commission if circumstances warrant in deciding whether or not a matter shall be set down for hearing in cases where in the absence of such communication no hearing would be required by the Commission.

§ 1.724 *Petitions to consolidate.* (a) The Commission, upon motion, or upon its own motion, will, where such action will best conduce to the proper dispatch of business and to the ends of justice, consolidate for hearing (1) any cases which involve the same applicant or arise from the same complaint or cause, or (2) any applications which by reason of the privileges, terms, or conditions requested present conflicting claims of the same nature.

(b) Any application that is mutually exclusive with another application or applications already designated for hearing will be consolidated for hearing with such other application or applications only if the application in question is filed at least 30 days before the date on which the hearing on the prior application or applications is scheduled: *Provided, however* That in the case of applications for broadcast stations the said period shall be 60 days. If the scheduled date is changed, the date last set shall govern in determining the timeliness of an application for purposes of this paragraph.

§ 1.725 *Motions to enlarge or change the issues.* (a) Special rules governing motions to enlarge or change the issues in matters arising under title III of the Communications Act are set forth in § 1.389.

(b) In all other proceedings, motions to enlarge or change the issues may be filed by any party to a hearing.

§ 1.726 *Reconsideration or rehearing.* (a) Special rules relating to petitions for reconsideration or rehearing concerning matters arising under title III of the Communications Act are set forth in §§ 1.386 and 1.390.

(b) Rules governing petitions for rehearing in other cases are set forth in §§ 1.891–1.896.

(c) The Commission may on its own motion set aside any action made or taken by it within 30 days after public notice is given of such action.

§ 1.727 *Complaints.* (a) Special rules governing complaints as to matters arising under title II of the Communications Act are set forth in §§ 1.571–1.590.

(b) In other matters, formal petitions may be filed complaining of anything done, or omitted to be done, in contravention of provisions of law or of the Commission's rules and regulations. Upon the filing of such a petition the Commission will either make an investigation and issue a report or will deny the petition, setting forth the reasons therefor. Persons desiring to submit complaints by informal methods may do so. Such complaints may, in the Commission's discretion be investigated or otherwise acted upon in any manner the Commission may deem expedient; but such informal complaint shall not be deemed to be a formal complaint within the meaning of this part, irrespective of any action taken thereon by the Commission.

§ 1.728 *Declaratory rulings.* The Commission may in its discretion on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.

§ 1.729 *Adverse rulings on petitions.* (a) Whenever the Commission denies in whole or in part any petition, prompt notice thereof will be given. This notice will contain or be accompanied by a statement of the reasons for the Commission's action unless it is merely an affirmance of a prior denial where reasons were given or the reasons for the denial are self-evident.

(b) The requirements of this section shall apply only to formal petitions as defined in § 1.721.

§ 1.730 *Oppositions and replies to oppositions.* Except as otherwise provided, oppositions to petitions must be filed within 10 days after such petitions are filed with the Commission. Replies to such oppositions must be filed within 5 days after such oppositions are filed with the Commission. No other pleadings may be filed with the Commission unless (a) specifically requested by the Commission or (b) leave to file such additional pleadings has been granted by the Motions Commissioner upon a showing of good cause.

MOTIONS DOCKET

§ 1.741 *Action by Commission.* In cases designated for formal hearing, all motions, petitions and other pleadings requesting final disposition of any case on its merits, those having the nature of an appeal to the Commission, those changing the issues upon which the hearing was ordered, and those requesting change or modification of a final order made by the Commission, shall be acted upon by the Commission. All other motions, petitions and other pleadings shall be acted upon in accordance with §§ 1.742 to 1.750.

§ 1.742 *Action by Motions Commissioner or Commissioner designated to preside at a hearing.* In cases designated for formal hearing all motions, petitions and other pleadings, except those subject to Commission action under § 1.741, shall be acted upon by the Motions Commissioner or, if a Commissioner has been designated to hear the case, by such Commissioner. When such Commissioner is not available, the Motions Commissioner may act.

§ 1.743 *Action by Hearing Examiner.* (a) After a Hearing Examiner has been designated to preside at a hearing, all motions, petitions and other pleadings, except those described in paragraph (b) of this section, which would be acted upon by the Motions Commissioner in accordance with § 1.742, shall be acted upon by the Hearing Examiner. If the Hearing Examiner is not available, the Motions Commissioner may act.

(b) Petitions to intervene, to dismiss an application or proceeding, or any motion or petition filed after an initial decision is issued will be acted upon in accordance with the provisions of either §§ 1.741 or 1.742.

§ 1.744 *Motions calendar· Time of calling and place; continuances.* (a) There shall be a weekly Motions calendar consisting of two parts:

(1) Motions to be acted upon by the Motions Commissioner; and

(2) Motions to be acted upon by presiding officers.

(b) Each part of the motions calendar shall be called at the offices of the Commission at such times as the Motions Commissioner shall designate.

(c) The Motions Commissioner or Commissioner designated to preside at a hearing or a Hearing Examiner may continue any motion, petition or other pleading, and may upon notice, hear any motion at any time.

§ 1.745 *Time for filing motions.* Unless it is found that irreparable injury would be caused to one of the parties or the public interest so requires, no motion, petition, or other pleading shall be called, considered, or determined in the absence of consent by all parties unless it shall have been on file, accompanied by proof of service upon all parties, for a period of four days.

§ 1.746 *Oppositions.* Any party or the General Counsel of the Commission may file a pleading in opposition within the time specified in § 1.745 and may be heard thereon on the day designated for hearing of the motion, petition, or other pleading.

§ 1.747 *Procedure in Motions calendar* Upon the request of any party or the General Counsel of the Commission, oral argument with respect to any contested matter on the Motions calendar may be heard before the Motions Commissioner, the Commissioner designated to preside at a hearing, or the Hearing Examiner. Failure of any party to request oral argument shall be deemed a waiver of his rights thereto; except that such request may be made after an opposition is filed by any other party. If oral argument is waived by any party, such motion or opposition shall be considered together with any pleadings or briefs which may be filed in support thereof. The waiving of oral argument by any party shall not preclude oral argument by any other party who makes timely request therefor. A motion duly served on all parties may be granted without oral argument if no opposition thereto has been timely filed, unless, in the discretion of the Motions Commissioner, the Commissioner designated to preside, or the Hearing Examiner, oral argument appears necessary prior to action, in which event, he may order such argument. If oral argument has not been requested by any party, the Motions Commissioner, the Commissioner designated to preside, or the Hearing Examiner may, in his discretion, order oral argument.

§ 1.748 *Number of copies.* Eight copies of each motion, petition, or opposition thereto shall be filed unless the subject matter requires consideration by the Commission en banc or a Board or Committee of Commissioners, in which event 15 copies shall be filed.

§ 1.749 *Rulings.* Each motion or petition shall be disposed of by written order of which public notice shall promptly be given. The order upon contested motions or petitions shall contain a brief statement of the reasons for the ruling therein, unless such order is self-explanatory, or is merely the affirmance of a prior denial in which reasons have been given.

§ 1.750 *Review of adverse ruling.* (a) Any interested party may obtain review by the Commission of an adverse ruling with respect to any petition or motion by (1) filing within two days a petition for review· or (2) by stating his exception on the record in the hearing and requesting that it be carried forward therein.

(b) Failure to make timely request for review or to state an exception on the record, shall be deemed a waiver of any right to review.

§ 1.751 *Limitation on length of pleadings in adjudicatory proceedings.* No pleading filed with the Commission or Motions Commissioner by any party to any adjudicatory proceeding which has been designated for hearing which relates to an appeal from an interlocutory ruling of an examiner, or the Motions Commissioner, or to matters covered by section 0.222 of the rules, or to petitions for reconsideration and grant without hearing of applications previously designated for hearing, will be accepted for filing if the pleadings exceed 15 double spaced typewritten pages: *Provided,* That parties may, in a separate pleading, request permission to file pleadings on matters covered by this section of more than 15 pages, which permission will be granted upon good cause shown. Such requests must be filed in the case of the petition for reconsideration and grant without hearing within ten days of the mailing of the notice of designation for hearing by the Commission, and in all other matters covered by this section, within two days of the ruling in question. The two-day requirement of § 1.750 shall be operative only after disposal of the request for permission to file a pleading exceeding the limit here specified.

SPECIFICATIONS AND SERVICE OF PLEADINGS AND OTHER PAPERS

§ 1.761 *Cross reference.* Rules governing applications and reports under title III of the Communications Act are contained in Subpart D of this part. Rules governing applications, reports and complaints under title II of the Communications Act are contained in Subpart E of this part.

§ 1.762 *Specifications as to pleadings and documents.* All pleadings and documents (except briefs) filed in any proceeding shall, unless otherwise specifically provided herein, be on paper either 8 by 10½ or 8½ by 13 or 14 inches, with left-hand margin not less than 1½ inches wide. This requirement shall not apply to original documents, or admissible copies thereof, offered as exhibits or to specially prepared exhibits. The impression shall be on one side of the paper only and shall be double-spaced, except that long quotations shall be single-spaced and indented. All papers, except charts and maps, shall be typewritten or prepared by mechanical processing methods, other than letterpress or printed. The foregoing shall not apply to official publications. All copies must be clearly legible.

§ 1.763 *Briefs.* Briefs may be printed, typewritten, mimeographed, or multigraphed. Printed briefs shall be in 10- or 12-point type, on good unglazed paper, 5⅞ inches wide by 9 inches long, with inside margin not less than 1½ inches wide, and with double-leaded text and single-leaded citations.

§ 1.764 *Number of copies.* Unless otherwise specifically provided, an original and 14 copies of all petitions, mo-

tions, pleadings, briefs and other documents required or permitted to be filed under these rules shall be furnished the Commission, and one extra copy for each party to the proceeding when service is made by the Commission.

§ 1.765 *Subscription and verification.* All petitions, motions, pleadings, briefs, and other documents filed by any party represented by an attorney, shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign and verify the document and state his address. Except when otherwise specifically provided by rule or statute, documents signed by the attorney for a party need not be verified or accompanied by affidavit. The signature of an attorney constitutes a certificate by him that he has read the document; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a document is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the matter may proceed as though the document had not been filed. For a willful violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

§ 1.766 *Amendments to pleadings.* Any pleading may be amended as a matter of right if filed with the Commission not less than 30 days prior to the date set for hearing in the proceeding in which the pleading is filed. Thereafter, requests for leave to amend will be considered only upon written motion. Amendments, amended pleadings, or requests for leave to amend must be served upon all parties of record.

§ 1.767 *Service of documents and proof of service.* All pleadings, petitions, motions, briefs, or other documents filed in any proceeding shall be served by the party filing the same upon all parties of record, at or prior to the date fixed by these rules for the filing thereof, as follows:

(a) Service upon common carriers shall be made as provided in section 413 of the Communications Act of 1934, as amended.

(b) In all other cases whenever under the regulations in this part service is required or permitted to be made upon a party, and such party is represented by an attorney of record in the proceeding, the service shall be made upon the attorney. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last-known address. Delivery of a copy within this rule means: handing it to the attorney or to the party or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein, or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

Proof of service as provided in the foregoing shall be made by appropriate certificate describing the service which shall be signed and attached to the original and copies of which shall be attached to all copies filed with the Commission. If service has been made by a delivery of a copy to the attorney, written acknowledgment thereof on the original filed will be considered proof of service; in such case an appropriate notation of such acknowledgment shall be made on all copies filed.

(c) Applications under title II of the Communications Act, which require service, and formal complaints, supplemental complaints, cross complaints, and amended complaints under title II will be served by the Commission. Service by the Commission upon common carriers shall be by leaving a copy of any document requiring service with the designated agent of such carrier at his office or usual place of residence in the District of Columbia, and if no such agent is designated, then service may be made by posting such notice, process, order, decision, or pleading in the office of the Secretary of the Commission.

§ 1.768 *Withdrawal of papers.* The granting of a request to dismiss or withdraw an application or a pleading does not authorize the removal of such application or pleading from the Commission's records. No application or other document once officially filed shall be returned unless the Commission shall, for good cause shown, order such return.

SUBPART G—RULES RELATING TO HEARINGS AND DECISIONS[1]

§ 1.801 *Informal hearings.* The Commission may upon petition by any person or upon its own motion hold such informal hearings as it may deem necessary from time to time in connection with the investigation of any matter which it has power to investigate under the law, or for the purpose of obtaining information necessary or helpful in the determination of its policies, the carrying out of its duties or the formulation or amendment of its rules and regulations. For such purposes it may subpena witnesses and require the production of testimony as in formal hearings but the procedure to be followed shall be such as in the opinion of the Commission will best serve the purposes of such hearing.

FORMAL HEARINGS

§ 1.802 *Official reporter; transcript.* The Commission will designate from time to time an official reporter for the taking down and transcribing of hearing proceedings. No transcript of the testimony taken, or argument had, at any hearing will be furnished by the Commission, but will be open to inspection under section 0.406 of the Statement of Organization, Delegations of Authority and Other Information. Copies of such transcript, if desired, may be obtained from the official reporter upon payment of the charges therefor.

§ 1.803 *Notice of hearing.* Reasonable notice of hearing will be given to all parties to a proceeding. Such notice shall include:

(a) A statement as to the time, place and nature of the hearing. If the time and place are not specified in the initial notice, the notice will indicate that the time and place will be designated by subsequent notice.

(b) A statement as to the legal authority and jurisdiction under which the hearing is to be held.

(c) A statement of the matters of fact and law involved.

CONTINUANCES AND PREHEARING CONFERENCES

§ 1.811 *Continuances and extensions.* Continuances of any proceeding or hearing and extensions of time for making any filing or performing any act required or allowed to be done within a specified time may be granted upon motion for good cause shown, unless the time for performance or filing is limited by statute.

§ 1.812 *Postponement or change of place.* The Commission or the presiding officer may recess or adjourn a hearing for such time as may be deemed necessary, and may change the place thereof.

§ 1.813 *Prehearing conferences.* (a) The Commission or the presiding officer on its or his initiative, or at the request of any party, may direct the parties or their attorneys to appear at a specified time and place for a conference prior to or during the course of a hearing, or to submit suggestions in writing, for the purpose of considering, among other things, the following matters:

(1) The necessity or desirability of simplification, clarification, amplification or limitation of the issues;

(2) The possibility of stipulating with respect to facts;

(3) The procedure at the hearing;

(4) The limitation of the number of witnesses;

(5) The necessity or desirability of prior mutual exchange between or among the parties of prepared testimony and exhibits;

(6) In cases arising under Title II of the act, the necessity or desirability of amending the pleadings and offers of settlement or proposals of adjustment.

(b) An official transcript of the conference shall be made and action taken at or on the basis of the conference, including agreements reached between the parties, shall be incorporated by the Hearing Examiner in an order issued as promptly as may be feasible subsequent to the conclusion of the conference. All agreements will be subject to such ruling as the Examiner may make upon appropriate objection and, to be effective, must be found to be acceptable and approved by the Hearing Examiner.

DEPOSITIONS

§ 1.821 *Depositions on notice*—(a) *Notice of examination: time and place.* A party to a hearing desiring to take the deposition of any person shall give reasonable notice in writing to every other party. The notice shall state the time and place for taking the deposition, the name and address of each person to be examined, if known, and if the name is not known, a general description suffi-

[1] See footnote to Subpart D.

cient to identify him or the particular class or group to which he belongs, and the matters with which the deposition will be concerned. On motion of any party upon whom the notice is served, the Commission may, for cause shown, enlarge or shorten the time.

(b) *Orders for the protection of parties and deponents.* After notice is served for taking a deposition, upon motion, seasonably made by any party or by the person to be examined, and upon notice and for good cause shown, the Commission may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed the deposition shall be opened only by order of the Commission; or that Commission may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression.

§ 1.822 *Persons before whom depositions may be taken.* (a) *Qualifications.* Depositions shall be taken before any judge of any court of the United States, or any United States commissioner, or any clerk of a district court, or any chancellor, justice or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to any party, nor interested in the event of the proceeding.

(b) *Record of examination; oath, objections.* The officer before whom the deposition is to be taken shall administer an oath or affirmation to the witness and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed, unless the parties agree otherwise. Any objection made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to such objection. In lieu of participating in the oral examination, parties served with notice of taking a deposition may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim.

§ 1.823 *Submission to witness, changes; signing.* When the testimony is fully transcribed the deposition of each witness shall be submitted to him for examination and shall be read to or by him. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless upon a motion to suppress the Commission holds that the reason given for the refusal to sign requires rejection of the deposition in whole or in part.

§ 1.824 *Certification and filing by officer; copies.* The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness, and that said officer is not of counsel or attorney to either of the parties, nor interested in the event of the proceeding or investigation. He shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly send the original and two copies thereof together with the original and two copies of all exhibits by registered mail to the Secretary of the Commission.

§ 1.825. *Inclusion in the record; objections.* (a) No deposition shall constitute a part of the record in any proceeding until received in evidence at a hearing. Except as provided in paragraphs (b) and (c) of this section, objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence, if the witness were then present and testifying.

(b) Objections to the competency of a witness, or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(c) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath, or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

§ 1.826 *Inclusion in record.* The deposition of a person with a substantial interest in or holding a position of responsibility with a party to the proceeding will not be admitted in evidence unless it is shown that the witness is dead or seriously ill, or that such exceptional circumstances exist, or that the testimony proferred is of such character that in the interest of justice and with due regard to the importance of presenting the testimony of the witnesses orally, the deposition should be admitted.

SUBPENAS

§ 1.831 *Who may sign and issue.* Subpenas requiring the attendance and testimony of witnesses, and subpenas requiring the production of any books, papers, schedules of charges, contracts, agreements, and documents relating to any matter under investigation or hearing may be signed and issued as follows:

(a) Hearings before the Commission en banc or before a Committee of Commissioners: By a Commissioner;

(b) Hearings before a presiding officer: By a Commissioner or by the presiding officer.

§ 1.832 *Requests; verification and content.* A subpena, other than one directed by the Commission on its own initiative, will be issued only upon request in writing, unless such request is made on the record while a hearing is in progress, in which case such request on the record may be accepted in lieu of written request. Any request for a subpena shall be supported by a showing of the general relevance and materiality of the evidence sought. A request for a subpena to compel a witness to produce documentary evidence shall be in writing, duly subscribed and verified, and shall specify with particularity the books, papers, and documents desired and the facts expected to be proved thereby. Such requests need not be served upon other parties to the hearing. Prompt notice, including a brief statement of the reasons therefor, will be given of the denial, in whole or in part, of a request for a subpena.

§ 1.833 *Witness fees.* Witnesses who are subpenaed and respond thereto are entitled to the same fees including mileage as are paid for like service in the courts of the United States. The party at whose instance the testimony is taken shall pay such fees at the time the subpena is served.

§ 1.834 *Service of subpenas; return.* (a) A subpena may be served by a United States marshal or his deputy or by any other person who is not a party and is not less than 18 years of age. Service of a subpena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fees for one day's attendance and the mileage allowed by law. If the subpena is issued on behalf of the United States or an officer or agency thereof fees and mileage need not be tendered.

(b) If service of the subpena is made by a person other than a United States marshal or his deputy, such person shall make affidavit thereof, stating the date, time, and manner of service; and return such affidavit on, or with, the original subpena in accordance with the form thereon. In case of failure to make service the reasons for the failure shall be stated on the original subpena. In making service, the original subpena shall be exhibited to the person served, shall be read to him if he is unable to read, and a copy thereof shall be left with him. The original subpena, bearing or accompanied by the required return, affidavit, or statement, shall be returned forthwith to the Secretary of the Commission, or, if so directed on the subpena, to the official before whom the person named in the subpena is required to appear.

HEARINGS AND DECISIONS

§ 1.840 *Applicability.* Sections 1.843, 1.851 and 1.858 shall apply only to (a) cases which have been designated for hearing on or after December 11, 1946; (b) cases which were designated for hearing prior to December 11, 1946, and which after the record was closed were designated for further hearing on and after December 11, 1946, before a Commissioner or a Hearing Examiner appointed pursuant to the Administrative Procedure Act; and (c) cases designated for a hearing prior to December 11, 1946, if consolidated with a case designated for hearing on or after said date.

§ 1.841 *Exchange of exhibits and information; commencement of hearing procedure in cases involving broadcast applications for authority to construct broadcast facilities.* (a) Each applicant in a hearing upon broadcast applications for authority to construct broadcast facilities shall provide all parties to the hearing with a full set of exhibits to be offered in the hearing as the direct case of the said applicant. Such exchange of exhibits shall be made in accordance with such agreements and rulings as may result from the pre-hearing conference held pursuant to § 1.813, and unless otherwise directed by the Examiner, shall take place at least twenty days in advance of the date for commencement of the hearing. The exhibits required to be exchanged by this paragraph shall comprise the full direct case of the applicant, i. e., all data desired to be submitted by the applicant in connection with his qualifications and proposals.

(b) Oral testimony by an applicant or his witnesses in connection with his direct case will be limited to (1) such appropriate qualification and explanation as may be necessary of the applicant's exhibits and (2) testimony concerning any portion of the applicant's affirmative case in substitution of exhibits or portions thereof which are rejected by the Examiner on grounds of competency or form rather than for reasons of lack of materiality or relevance. Such substituted oral testimony, however, is to be limited to the scope of the rejected exhibit or portions thereof: *Provided, however* That the provision of this paragraph shall not be construed to preclude or limit normal cross-examination, rebuttal testimony, or the submission of appropriate exhibits in connection therewith.

(c) Except for good cause found in advance by the presiding officer, in all broadcast hearings involving applications for authority to construct broadcast facilities, there shall be held prior to the exchange of exhibits pursuant to this section a pre-hearing conference,[2] in accordance with § 1.813, and a further conference following such exchange of exhibits. Unless otherwise ordered by the Examiner such further conference shall be held at least ten days prior to the date for the commencement of the hearing looking toward agreement on all matters relating to the conduct of the hearing and not already the subject of agreement. At this conference the Examiner and the parties, including Commission counsel, should be prepared to discuss (1) the possibility of agreements disposing of any evidentiary issues raised with respect to the exhibits previously exchanged between the parties; (2) the limitation on cumulative evidence; (3) number of witnesses and estimated length of testimony; (4) need for the use of depositions; and (5) any other matters which may aid the disposition of the hearing.

(d) The Hearing Examiner shall endeavor to issue an order at least five days prior to the date for commencement of hearing which recites the action taken at the further conference; the date for the hearing on the applicants' affirmative cases which, in the absence of special circumstances warranting greater delay, shall not be later than the date for commencement of the hearing specified by the Commission; agreements reached at the conference and any other matters relating to the subsequent course of the hearing. The orders issued by the Examiner as provided for herein shall control the course of the hearing unless modified by the Hearing Examiner for cause during the course of the hearing or by the Commission upon a review of the Hearing Examiner's ruling.

(e) Unless otherwise provided by agreement pursuant to § 1.813 (b), or by order of the Examiner in the light of the circumstances of a particular case, any party to a proceeding involving application for authority to construct broadcast facilities shall be entitled, upon written request therefor, to receive from any other party to the proceeding such detailed information relevant to the proposals of such other party as may reasonably and timely be requested, including information respecting the cost of station construction and operation, and including any material falling within the categories hereinafter specified:

(1) Background and experience.

(2) Integration of ownership and management.

(3) Past operation of broadcast stations.

(4) Programs.

(5) Studies and surveys.

(6) Studio, transmitter, and auxiliary broadcast equipment.

(7) Studio, office, and transmitter building facilities.

(8) Management and staffing plans.

[2] Such conferences involving applications for broadcast stations in comparative hearings may include matters such as: (1) Narrowing the issues or the areas of inquiry and proof at the hearing; (2) admissions of fact and of documents which will avoid unnecessary proof; (3) reports and letters relating to surveys or contacts; (4) assumptions regarding the availability of equipment; (5) network programming; (6) assumptions regarding the availability of networks proposed; (7) offers of letters in general; (8) the method of handling evidence relating to the past cooperation of existing stations owned and/or operated by the applicants with organizations in the area; (9) proof of contracts, agreements, or understandings reduced to writing; (10) stipulations; (11) need for depositions; (12) the numbering of exhibits; (13) the order of offer of proof with relationship to docket number; and (14) such other matters as will be conducive to an expeditious conduct of the hearing.

§ 1.842 *Order of procedure.* At hearings on a formal complaint or petition, or in a proceeding for any instrument of authorization which the Commission is empowered to issue, the complainant, petitioner, or applicant, as the case may be, shall open and close. At hearings on revocation or modification of a station license under section 312 of the act, on suspension of an operator's license under section 303 of the act, or other like proceedings instituted by the Commission, the Commission shall open and close. At all hearings under Title II of the act, other than hearings on formal complaints, petitions or applications, the respondent shall open and close unless otherwise specified by the Commission. In all other cases, the Commission or presiding officer shall designate the order of presentation. Intervenors shall follow the party in whose behalf intervention is made, and in all cases where the intervention is not in support of an original party, the Commission, or presiding officer, shall designate at what stage such intervenors shall be heard.

§ 1.843 *Designation of presiding officers.* (a) There shall be designated to preside at hearings one or more Commissioners, or a Hearing Examiner appointed pursuant to section 11 of the Administrative Procedure Act.

(b) So far as practicable, Hearing Examiners designated as presiding officers shall be assigned to cases in rotation, due consideration being given to the following factors: (1) The grade classification of the Hearing Examiner, (2) the nature of the case to be heard, (3) the specialized experience of the Hearing Examiner, and (4) the extent of the Hearing Examiner's workload.

(c) Unless the Commission determines that due and timely execution of its functions requires otherwise, presiding officers shall be so designated, and notice thereof made public, at least 10 days prior to the date set for hearing. In the event that a presiding officer deems himself disqualified and desires to withdraw from the case he shall notify the Commission of his withdrawal at least 7 days prior to the date set for hearing. Any party or the General Counsel of the Commission may request the presiding officer to withdraw on the grounds of personal bias or other disqualification. The person seeking disqualification shall file with the presiding officer an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification, and the presiding officer may file a response thereto. Such affidavit shall be filed not later than 5 days before the commencement of the hearing, unless for good cause shown, additional time is necessary; but in no event later than the close of the first day of the hearing. If the presiding officer believes himself not disqualified he shall so rule and proceed with the hearing. If the person seeking disqualification excepts to the ruling, he shall so state at the time the ruling is made, and the presiding officer shall certify the question together with the affidavit and any response filed in connection therewith, to the Commission. The Commission may rule on the question without hearing or it may require testi-

mony or argument on the issues raised. The affidavit, response, testimony and decision thereon shall be part of the record in the case. Unless objection is made and exception is taken as required by this section, the right to request withdrawal of the presiding officer shall be deemed waived.

(d) If a presiding officer becomes unavailable to the Commission before the taking of testimony has been concluded, another presiding officer will be designated by order as provided in paragraph (a) of this section. If a presiding officer becomes unavailable to the Commission after the taking of testimony has been concluded, the record shall be certified by the Secretary to the Commission.

§ 1.844 *Authority of presiding officers.* Presiding officers, with respect to cases assigned to them, from the date of their designations until the submission of their decisions or the transfer of the cases to the Commission, and in addition to and in accordance with the authority elsewhere specified in the rules in this part, shall have authority to:

(a) Administer oaths and affirmations,

(b) Examine witnesses,

(c) Rule upon questions of evidence,

(d) Take or cause depositions to be taken,

(e) Regulate the course of the hearing, maintain discipline and decorum and exclude from the hearing any person found in contemptuous conduct,

(f) Require the filing of memoranda of law, and the presentation of oral argument with respect to any question of law upon which he is required to rule during the course of the hearing,

(g) Issue subpenas authorized by law,

(h) Hold conferences for the settlement or simplification of the issues by consent of the parties,

(i) Dispose of procedural requests or similar matters,

(j) Make decisions or recommended decisions in conformity with the Administrative Procedure Act.

§ 1.845 *Hearing before more than one person.* If more than one person is designated to preside at a hearing, the terms "presiding officer", "Commissioner designated to preside" or "Hearing Examiner" shall apply to all such persons, and authority to act shall be vested in a majority thereof, except as otherwise provided by order of the Commission.

§ 1.846 *Closing of the hearing.* The record of hearing shall be closed by an announcement to that effect, at the hearing, by the presiding officer when the taking of testimony has been concluded. In the discretion of the presiding officer, the record may be closed as of a future specified date in order to permit the admission into the record of exhibits to be prepared: *Provided,* The parties to the proceeding stipulate on the record that they waive the opportunity to cross-examine or present evidence with respect to such exhibits. The record in any hearing which has been adjourned may not be closed by such officer prior to the adjourned date except upon 10 days' notice to all parties to the proceeding and to the General Counsel of the Commission.

§ 1.847 *Certification of transcript.* After the close of the hearing the complete transcript of testimony, together with all exhibits, shall be certified as to identity by the presiding officer and filed in the office of the Secretary of the Commission. Notice of such certification shall be served on all parties to the proceedings.

§ 1.848 *Corrections to transcripts.* Within ten days after the date of notice of certification of the transcript, any party to the proceeding or the General Counsel may file with the presiding officer a motion requesting the correction of the transcript, which motion shall be accompanied by proof of service thereof upon all other parties to the proceedings. Within five days, other parties and the General Counsel may file a pleading in support of or in opposition to such motion. Thereafter, the presiding officer shall, by order, specify the corrections to be made in the transcript, and a copy of the order shall be served upon all parties and made a part of the record. The presiding officer, on his initiative, may specify corrections to be made in the transcript on 5 days' notice.

§ 1.849 *Proposed findings and conclusions.* (a) Each party to the proceeding and the General Counsel of the Commission may file proposed findings of fact and conclusions, briefs or memoranda of law: *Provided, however* That the presiding officer may direct the filing of proposed findings of fact and conclusions, briefs or memoranda of law. Such proposed findings of fact, conclusions, briefs, and memoranda of law shall be filed within 20 days after the record is closed, unless additional time is allowed.

(b) All pleadings and other papers filed pursuant to this section shall be accompanied by proof of service thereof upon all the other counsel.

(c) In the absence of a showing of good cause therefor, the failure to file proposed findings of fact, conclusions, briefs, or memoranda of law, when directed to do so, may be deemed a waiver of the right to participate further in the proceeding.

§ 1.850 *Contents of findings of fact and conclusions.* Proposed findings of fact shall be set forth in serially numbered paragraphs and shall set out in detail and with particularity all basic evidentiary facts developed on the record (with appropriate citations to the transcript of record or exhibit relied on for each evidentiary fact) supporting the conclusions proposed by the party filing same. Proposed conclusions shall be separately stated. Proposed findings of fact and conclusions submitted by a person other than an applicant may be limited to those issues in connection with the hearing which affect the interests of such person.

§ 1.851 *Initial and recommended decisions.* (a) Except as provided in paragraph (b) of this section, the presiding officer shall prepare an "Initial Decision" which shall be transmitted to the Secretary of the Commission who shall make it public immediately and file it in the docket of the case.

(b) In the order designating the presiding officer, or by subsequent order, the Commission may direct that the record in any case be certified to it for initial decision. If a case is certified to the Commission for initial decision, the presiding officer shall first prepare a recommended decision which shall be transmitted to the Secretary and which shall be made public at the time of the issuance of the Commission's initial decision, except that if the case involves rule making or the determination of an application for an initial license, no recommended decision shall be prepared unless it is otherwise ordered by the Commission. If a presiding officer is not required to prepare an initial or a recommended decision, he shall, upon the completion of the testimony, transmit the record of the case to the Secretary.

(c) Each initial and recommended decision shall contain findings of fact and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record; each initial decision shall also contain the appropriate rule or order, and the sanction, relief or denial thereof; and each recommended decision shall contain recommendations as to what disposition of the case should be made by the Commission. Each initial decision will show the date upon which it will become effective in accordance with the rules in this part in the absence of exceptions, appeal or review.

(d) The authority of the presiding officer over the proceedings shall cease when he has filed his initial or recommended decision, or, if it is a case in which he is to file no decision, when he has certified the case to the Commission for decision.

§ 1.852 *Waiver of initial or recommended decision.* At the conclusion of the hearing or within 20 days thereafter, all the parties to the proceeding and the General Counsel may agree to waive an initial or recommended decision, and may request that the Commission issue a final decision or order in the case. The Commission may, in its discretion, grant the request, in whole or in part, if such action will best conduce to the proper dispatch of business and to the ends of justice.

§ 1.853 *Appeal and review of initial decision.* (a) Within 20 days after the date on which public announcement of an initial decision is made, any of the parties or the General Counsel of the Commission may appeal to the Commission by filing exceptions to the initial decision and such decision shall not become effective and shall then be reviewed by the Commission, whether or not such exceptions may thereafter be withdrawn. The time for filing such exceptions may be extended for good cause shown.

(b) The Commission may on its initiative provide, by order adopted within 20 days after the time for filing exceptions expires, that an initial decision shall not become final, and that it shall be further reviewed or considered by the Commission.

(c) In any case in which an initial decision is subject to further review in accordance with paragraphs (a) or (b) of this section, the Commission may take any one or more of the following actions:

(1) Schedule the proceedings for oral argument;

(2) Require the filing of briefs;

(3) Prior to or after oral argument or the filing of briefs, reopen the record and remand the proceedings to the presiding officer to take further testimony or evidence;

(4) Prior to or after oral argument or the filing of briefs remand the proceedings to the presiding officer to make further findings or conclusions; and

(5) Prior to or after oral argument or the filing of briefs, issue a supplemental initial decision.

(d) No initial decision shall become effective before 40 days after public announcement thereof is made unless otherwise ordered by the Commission. The timely filing of exceptions or the further review or consideration of an initial decision on the Commission's initiative shall stay the effectiveness thereof until the Commission's review thereof has been completed. If the effective date of an initial decision falls within any further time allowed for the filing of exceptions it shall be postponed automatically until 20 days after time for filing exceptions has expired.

(e) If no exceptions are filed, and the Commission has not ordered the review of an initial decision on its initiative, the initial decision shall become effective, an appropriate notation to that effect shall be entered in the docket of the case and public notice thereof shall be given by the Commission. The provisions of § 1.726 (c) shall not be applicable with respect to this paragraph.

(f) When any party fails to file exceptions within the specified time to an initial decision which proposes to deny its application, such party shall be deemed to have no interest in further prosecution of its application, and its application may be dismissed with prejudice for failure to prosecute.

§ 1.854 *Exceptions; oral arguments.* (a) Each exception to an initial decision or to any part of the record or proceeding in any case, including rules upon motions or objections, shall point out with particularity alleged errors in the decision or ruling and shall contain specific references to the page or pages of the transcript of hearing, exhibit or order on which the exception is based. Any objection not saved by exception, filed pursuant to this section, is waived. The exceptions should be concise and they will not be accepted if they contain argumentative matters or discussions of law. Excerpts of testimony, as may be desired, must not be contained in the exceptions but they may be set forth in an appendix to a brief or memorandum of law filed in accordance with paragraph (c) of this section.

(b) Within the period of time allowed herein for the filing of exceptions any party or the General Counsel of the Commission, may file a statement in support of an initial decision in whole or in part, which shall be similar in form to a statement of exceptions.

(c) Exceptions or supporting statements may be accompanied by a separate brief or memorandum of law in support thereof, and may contain a request for oral argument before the Commission. Except by special permission such brief or memorandum of law will not be accepted if they exceed 50 double spaced typewritten pages in length. After the filing of exceptions to a decision, any other party or the Bureau Counsel, or the General Counsel of the Commission, as the case may be, may file a reply brief for which the same limitation in length applies and a request for oral argument, (1) within 10 days after expiration of the time for filing exceptions, or (2) within 10 days after all parties have filed exceptions whichever period expires earliest. A request by an exceptor for oral argument shall be made within the time allowed for filing exceptions except, if such request has not been so made and a reply brief is filed, an exceptor may request such argument within five days after the filing of the reply brief. If no request for oral argument is filed within the time allowed herein, the parties will be deemed to have waived the right to oral argument.

(d) Within 10 days after any party or the Bureau Counsel or the General Counsel, as the case may be, has filed a request for oral argument, notice of intention to appear and participate therein shall be filed by the other parties and the Bureau Counsel or General Counsel. If the Commission on its initiative designates an initial decision for oral argument, all parties who wish to participate, including the Bureau Counsel or the General Counsel shall, within 5 days thereafter, file written notice of intention to appear and participate in oral argument. Failure to file the written notice shall constitute a waiver of the right to participate in oral argument. The notice of hearing will contain the allotment of time for oral argument before the Commission for each party. The Commission will grant, in its discretion, upon good cause shown, an extension of such time upon petition by a party, which petition must be filed within 5 days after issuance of said notice of hearing.

(e) Within ten days after a transcript of oral argument has been filed in the office of the Secretary of the Commission, any party who participated in the oral argument, and the General Counsel, may file with the Commission a motion requesting correction of the transcript, which motion shall be accompanied by proof of service thereof upon all other parties who participated in the oral argument. Within five days other parties, and the General Counsel, may file a pleading in support of or in opposition to such motion. Thereafter, the Commissioner who presided at the oral argument shall, by order, specify the corrections to be made in the transcript, and a copy of the order shall be served upon all parties to the proceeding. The Commissioner who presided at the oral argument, on his own initiative, may specify corrections to be made in the transcript on five days' notice.

§ 1.855 *Limitation of matters to be reviewed.* Upon review of any initial decision, the Commission may, in its discretion, limit the issues to be reviewed to those findings and conclusions to which exceptions have been filed, or to those findings and conclusions specified in the Commission's order of review issued pursuant to § 1.853 (b)

§ 1.856 *Number of copies.* Fifteen copies of proposed findings of fact and conclusions, exceptions, supporting statements or briefs shall be filed.

§ 1.857 *Final decision of the Commission.* After opportunity has been afforded for the filing of proposed findings of fact and conclusions, exceptions, supporting statements, briefs and for the holding of oral argument as provided in the rules in this part, the Commission will issue a final decision in each case in which an initial decision has not otherwise become final. The final decision shall contain findings of fact and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record; shall contain a ruling on each relevant and material exception filed and the appropriate rule or order and the sanction, relief or denial thereof.

§ 1.858 *Separation of functions.* (a) No hearing examiner shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate; nor shall such officer be responsible to or subject to the supervision or direction of any officer, employee or agent engaged in the performance of investigative or prosecuting functions for the Commission.

(b) Except as provided by section 5 of the Administrative Procedure Act, no officer, employee or agent engaged in the performance of investigative or prosecuting functions for the Commission in any case shall, in that or a factually related case, participate or advise in the decision, recommended decision or Commission review of any decision, except as a witness or counsel in public proceedings.

§ 1.859 *The record.* The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision.

EVIDENCE

§ 1.871 *Rules of evidence.* Except as otherwise provided in this subpart, the rules of evidence governing civil proceedings in matters not involving trial by jury in the courts of the United States shall govern formal hearings. Such rules may be relaxed if the ends of justice will be better served by so doing.

§ 1.872 *Cumulative evidence.* The introduction of cumulative evidence shall be avoided, and the number of witnesses that may be heard in behalf of a party on any issue may be limited.

§ 1.873 *Further evidence during hearing.* At any stage of a hearing, the presiding officer may call for further evidence upon any issue and may require such evidence to be submitted by any party to the proceeding.

§ 1.874 *Documents containing matter not material.* If material and relevant matter offered in evidence is embraced

in a document containing other matter not material or relevant, and not intended to be put in evidence, such document will not be received, but the party offering the same shall present to other counsel, and to the presiding officer, the original document, together with true copies of such material and relevant matter taken therefrom, as it is desired to introduce. Upon presentation of such matter in proper form, it may be received in evidence, and become a part of the record. Other counsel will be afforded an opportunity to introduce in evidence, in like manner, other portions of such document if found to be material and relevant.

§ 1.875 *Documents in foreign language.* Every document, exhibit, or other paper written in a language other than English, which shall be filed in any proceeding, or in response to any order, shall be filed in the language in which it is written together with an English translation thereof duly verified under oath to be a true translation. Each copy of every such document, exhibit, or other paper filed, shall be accompanied by a separate copy of the translation.

§ 1.876 *Copies of exhibits.* No document or exhibit, or part thereof shall be received as, or admitted in, evidence unless offered in duplicate. In addition, when exhibits of a documentary character are to be offered in evidence, copies shall be furnished to other counsel unless the presiding officer otherwise directs.

§ 1.877 *Mechanical reproductions as evidence.* Unless offered for the sole purpose of attempting to prove or demonstrate sound effect, mechanical or physical reproductions of sound waves shall not be admitted in evidence. Any party desiring to offer any matter alleged to be contained therein or thereupon shall have such matter typewritten on paper of the size prescribed by the rules of the Commission, and the same shall be identified and offered in duplicate in the same manner as other exhibits.

§ 1.878 *Tariffs as evidence.* In case any matter contained in a tariff schedule on file with the Commission is offered in evidence, such tariff schedule need not be produced or marked for identification, but the matter so offered shall be specified with particularity (tariff and page number) in such manner as to be readily identified, and may be received in evidence by reference subject to check with the original tariff schedules on file.

§ 1.879 *Proof of official record; authentication of copy.* An official record, or entry therein when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record, or by his deputy, and accompanied with a certificate that such officer has the custody. If the office in which the record is kept is within the United States or within a territory or insular possession subject to the dominion of the United States, the certificate may be made by the judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the United States stationed in the foreign state or country in which the record is kept, and authenticated by the seal of his office.

§ 1.880 *Proof of lack of record.* The absence of an official record or entry of a specified tenor in an official record may be evidenced by a written statement signed by an officer, or by his deputy, who would have custody of the official record, if it existed, that after diligent search no record or entry of a specified tenor is found to exist in the records of his office accompanied by a certificate as provided in §1.879. Such statement and certificate are admissible as evidence that the records of his office contain no such record or entry.

§ 1.881 *Other proof of official record.* Sections 1.879 and 1.880 do not prevent the proof of official records or of entry or lack of entry therein by any method authorized by any applicable statute or by the rules of evidence at common law.

REHEARINGS

§ 1.891 *Cross reference.* Special rules relating to petition for reconsideration or rehearing concerning matters arising under Title III of the Communications Act are set forth in §§ 1.386 and 1.390.

§ 1.892 *Who may file.* A petition for rehearing may be filed by any party to the hearing. Any person not a party to the hearing desiring to file a petition for rehearing shall state his interest in the proceeding and show good reason why it was not possible for him to participate in the hearing.

§ 1.893 *Contents; relief requested.* (a) Petitions for rehearing shall state with particularity in what respect the decision, order, or requirement or any matter determined therein is claimed to be unjust, unwarranted, or erroneous, and with respect to any finding of fact shall specify the pages of record relied on. If the existence of newly discovered evidence is claimed, the petition shall be accompanied by a verified statement of the facts, together with the facts relied on to show that the petitioner, with due diligence, could not have known or discovered such facts at the time of the hearing.

(b) The petition for rehearing may request (1) reconsideration, either in cases decided after hearing or in cases of application granted without hearing under Title III of the act; (2) oral argument; (3) reopening of the proceeding; (4) amendment of any findings, or (5) other relief. Such petition shall be specific as to the form of relief sought and, subject to this requirement, may contain alternative requests.

§ 1.894 *Time for filing.* Petitions for rehearing shall be filed within 30 days after public notice is given of the order or action complained of.

§ 1.895 *Opposition.* An opposition to any petition for rehearing may be filed within 10 days after the filing of such petition.

§ 1.896 *Special calendar when granted.* In case any petition for rehearing is granted, whether the taking of additional testimony is ordered or otherwise, the case shall be placed upon a special calendar and consideration of the same shall be expedited.

APPENDIX 1—APPLICATIONS UNDER THE CABLE LANDING LICENSES ACT[1] AND EXECUTIVE ORDER NO. 10530

APPLICATIONS UNDER "AN ACT RELATING TO THE LANDING AND OPERATION OF SUBMARINE CABLES IN THE UNITED STATES"

These applications should be filed in duplicate with the Secretary of the Federal Communications Commission in accordance with the provisions of Executive Order No. 10530, dated May 10, 1954, and should contain the name and address of the applicant, the corporate structure and citizenship of officers if a corporation; description of submarine cable, including type and number of channels and capacity thereof; location of points on shore of United States and points in foreign countries where cable will land (including map); proposed use, need and desirability of the cable; and any other information as may be necessary to enable the Commission to act thereon. Each application or amendment thereto shall be personally subscribed and verified (or affirmed according to law) (1) By the party filing such application or amendment, or by one of the parties, if there be more than one; (2) by an officer of the party filing the application or amendment if the party be a corporation: *Provided, however,* That subscription and verification may be made by the attorney for the party (1) in case of physical disability of the party, or (2) his absence from the continental United States. If it be made by a person other than the party, he must set forth in the verification the grounds of his belief as to all matters not stated upon his knowledge and the reason why it is not made by the party. Only the original copy need be signed and verified; the copy may be conformed.

These applications are acted upon by the Federal Communications Commission after obtaining the approval of the Secretary of State and such assistance from any executive department or establishment of the Government as it may require. These applications are processed initially by the International Division of the Common Carrier Bureau, which makes a recommendation thereon to the Commission.

Original files relating to submarine cable landing licenses and applications for licenses since June 30, 1934, are kept by the Federal Communications Commission. Such applications for licenses (including all documents and exhibits filed with and made a part thereof, with the exception of any maps showing the exact location of the submarine cable or cables to be licensed) and the licenses issued pursuant thereto, with the exception of such maps, shall, unless otherwise ordered by the Commission, be open to public inspection in the offices of the Commission in Washington, D. C.

Original files relating to licenses and applications for licenses for the landing operation of cables prior to June 30, 1934, were kept by the Department of State and such files prior to 1930 have been transferred to

[1] May 27, 1921, c. 12, 42 Stat. 8 and 9 (47 U. S. C. 34–39).

the Executive and Foreign Affairs Branch of the General Records Office of the National Archives. Requests for inspection of these files should, however, be addressed to the Federal Communications Commission, Washington 25, D. C.; and the Commission will obtain such files for a temporary period in order to permit inspection at the offices of the Commission.

APPENDIX 2—A PLAN OF COOPERATIVE PROCEDURE IN MATTERS AND CASES UNDER THE PROVISIONS OF SECTION 410 OF THE COMMUNICATIONS ACT OF 1934

(Approved by the Federal Communications Commission October 25, 1938, and approved by the National Association of Railroad and Utilities Commissioners on November 17, 1938.)

PRELIMINARY STATEMENT CONCERNING THE PURPOSE AND EFFECT OF THE PLAN

Section 410 of the Communications Act of 1934 authorizes cooperation between the Federal Communications Commission, hereinafter called the Federal Commission, and the State commissions of the several States, in the administration of said act. Subsection (a) authorizes the reference of any matter arising in the administration of said act to a board to be composed of a member or members from each of the States in which the wire, or radio communication affected by or involved in the proceeding takes place, or is proposed. Subsection (b) authorizes conferences by the Federal Commission with State commissions regarding the relationship between rate structures, accounts, charges, practices, classifications, and regulations of carriers subject to the jurisdiction of such State commissions and of said Federal Commission and joint hearings with State commissions in connection with any matter with respect to which the Federal Commission is authorized to act.

Obviously, it is impossible to determine in advance what matters should be the subject of a conference, what matters should be referred to a board, and what matters should be heard at a joint hearing of State commissions and the Federal Commission. It is understood, therefore, that the Federal Commission or any State commission will freely suggest cooperation with respect to any proceedings or matter affecting any carrier subject to the jurisdiction of said Federal Commission and of a State commission, and concerning which it is believed that cooperation will be in the public interest.

To enable this to be done, whenever a proceeding shall be instituted before any commission, Federal or State, in which another commission is believed to be interested, notice should be promptly given each such interested commission by the commission before which the proceeding has been instituted. Inasmuch, however, as failure to give notice as contemplated by the provisions of this plan will sometimes occur purely through inadvertence, any such failure should not operate to deter any commission from suggesting that any such proceeding be made the subject matter of cooperative action, if cooperation therein is deemed desirable.

It is understood that each commission, whether or not represented in the National Association of Railroad and Utilities Commissioners, must determine its own course of action with respect to any proceeding in the light of the law under which, at any given time, it is called upon to act, and must be guided by its own views of public policy; and that no action taken by such Association can in any respect prejudice such freedom of action. The approval by the Association of this plan of cooperative procedure, which was jointly prepared by the Association's standing Committee on Cooperation between Federal and State commissions and said Federal Commission, is accordingly recommendatory only; but such plan is designed to be, and it is believed that it will be, a helpful step in the promotion of cooperative relations between the State commissions and said Federal Commission.

NOTICE OF INSTITUTION OF PROCEEDING

Whenever there shall be instituted before the Federal Commission any proceeding involving the rates of any telephone or telegraph carrier, the State commissions of the States affected thereby will be notified immediately thereof by the Federal Commission, and each notice given a State commission will advise such commission that, if it deems the proceeding one which should be considered under the cooperative provisions of the act, it should either directly or through the National Association of Railroad and Utilities Commissioners, notify the Federal Commission as to the nature of its interest in said matter and request a conference, the creation of a joint board, or a joint hearing as may be desired, indicating its preference and the reasons therefor. Upon receipt of such request the Federal Commission will consider the same and may confer with the commission making the request and with other interested commissions, or with representatives of the National Association of Railroad and Utilities Commissioners, in such manner as may be most suitable; and if cooperation shall appear to be practicable and desirable, shall so advise each interested State commission, directly, when such cooperation will be by joint conference or by reference to a joint board appointed under said section 410 (a), and, as hereinafter provided, when such cooperation will be by a joint hearing under said section 410 (b).

Each State commission should in like manner notify the Federal Commission of any proceeding instituted before it involving the toll telephone rates or the telegraph rates of any carrier subject to the jurisdiction of the Federal Commission.

PROCEDURE GOVERNING JOINT CONFERENCES

The Federal Commission, in accordance with the indicated procedure, will confer with any State commission regarding any matter relating to the regulation of public utilities subject to the jurisdiction of either commission. The commission desiring a conference upon any such matter should notify the other without delay, and thereupon the Federal Commission will promptly arrange for a conference in which all interested State commissions will be invited to be present.

PROCEDURE GOVERNING MATTERS REFERRED TO A BOARD

Whenever the Federal Commission, either upon its own motion or upon the suggestion of a State commission, or at the request of any interested party, shall determine that it is desirable to refer a matter arising in the administration of the Communications Act of 1934 to a board to be composed of a member or members from the State or States affected or to be affected by such matter, the procedure shall be as follows:

The Federal Commission will send a request to each interested State commission to nominate a specified number of members to serve on such board.

The representation of each State concerned shall be equal, unless one or more of the States affected chooses to waive such right of equal representation. When the member or members of any board have been nominated and appointed, in accordance with the provisions of the Communications Act of 1934, the Federal Commission will make an order referring the particular matter to such board, and such order shall fix the time and place of hearing, define the force and effect the action of the board shall have, and the manner in which its proceedings shall be conducted. The rules of practice and procedure, as from time to time adopted or prescribed by the Federal Commission, shall govern such board, as far as applicable.

PROCEDURE GOVERNING JOINT HEARINGS

Whenever the Federal Commission, either upon its own motion or upon suggestions made by or on behalf of any interested State commission or commissions, shall determine that a joint hearing under said section 410 (b) is desirable in connection with any matter pending before said Federal Commission, the procedure shall be as follows:

(a) The Federal Commission will notify the general solicitor of the National Association of Railroad and Utilities Commissioners that said Association, or, if not more than eight States are within the territory affected by the proceeding, the State commissions interested, are invited to name Cooperating Commissioners to sit with the Federal Commission for the hearing and consideration of said proceeding.

(b) Upon receipt of any notice from said Federal Commission inviting cooperation, if not more than eight States are involved, the general solicitor shall at once advise the State commissions of said States, they being represented in the membership of the association, of the receipt of such notice, and shall request each such commission to give advice to him in writing, before a date to be indicated by him in his communication requesting such advice (1) whether such commission will cooperate in said proceeding, (2) if it will, by what commissioner it will be represented therein.

(c) Upon the basis of replies received, the general solicitor shall advise the Federal Commission what States, if any, are desirous of making the proceeding cooperative and by what commissioners they will be represented, and he shall give like advice to each State commission interested therein.

(d) If more than eight States are interested in the proceeding, because within territory for which rates will be under consideration therein, the general solicitor shall advise the president of the association that the association is invited to name a cooperating committee of State commissioners representing the States interested in said proceeding.

The president of the association shall thereupon advise the general solicitor in writing (1) whether the invitation is accepted on behalf of the association, and (2) the names of commissioners selected to sit as a cooperating committee. The president of the association shall have authority to accept or to decline said invitation for the association, and to determine the number of commissioners who shall be named on the cooperating committee, provided that his action shall be concurred in by the chairman of the association's executive committee. In the event of any failure of the president of the association and chairman of its executive committee to agree, the second vice president of the association (or the chairman of its committee on cooperation between State and Federal commissions, if there shall be no second vice president) shall be consulted, and the majority opinion of the three shall prevail. Consultations and expressions of opinion may be by mail or telegraph.

(e) If any proceeding, involving more than eight States, is pending before the Federal Commission, in which cooperation has not been invited by that Commission, which the association's president and the first and second vice presidents, or any two of them, consider should be made a cooperating proceeding, they may instruct the general solicitor to suggest to the Federal Commission that the proceeding be made a cooperative proceeding; and any State commission considering that said proceeding should be made cooperative may request the president of the association or the chairman of its executive committee to make such suggestion after consideration with the executive officers above named. If said Federal Commission shall assent to the suggestion, made as aforesaid, the president of the association shall have the same authority to proceed, and shall

proceed in the appointment of a cooperating committee, as is provided in other cases involving more than eight States, wherein the Federal Commission has invited cooperation, and the invitation has been accepted.

(f) Whenever any case is pending before the Federal Commission involving eight States or less, which a commission of any of said States considers should be made cooperative, such commission, either directly or through the general solicitor of the association, may suggest to the Federal Commission that the proceeding be made cooperative. If said Federal Commission accedes to such suggestion, it will notify the general solicitor of the association to that effect and thereupon the general solicitor shall proceed as is provided in such case when the invitation has been made by the Federal Commission without State commission suggestion.

APPOINTMENT OF COOPERATING COMMISSIONERS BY THE PRESIDENT

In the appointment of any cooperating committee, the president of the association shall make appointments only from commissions of the States interested in the particular proceeding in which the committee is to serve. He shall exercise his best judgment to select cooperating commissioners who are especially qualified to serve upon cooperating committees by reason of their ability and fitness; and in no case shall he appoint a commissioner upon a cooperating committee until he shall have been advised by such commissioner that it will be practicable for him to attend the hearings in the proceeding in which the committee is to serve, including the arguments therein, and the cooperative conferences, which may be held following the submission of the proceeding, to an extent that will reasonably enable him to be informed upon the issues in the proceeding and to form a reasonable judgment in the matters to be determined.

TENURE OF COOPERATORS

(a) No State commissioner shall sit in a cooperative proceeding under this plan except a commissioner who has been selected by his commission to represent it in a proceeding involving eight States or less, or has been selected by the president of the association to sit in a case involving more than eight States, in the manner hereinbefore provided.

(b) A commissioner who has been selected, as hereinbefore provided, to serve as a member of a cooperating committee in any proceeding, shall without further appointment, and without regard to the duration of time involved, continue to serve in said proceeding until the final disposition thereof, including hearings and conferences after any order or reopening, provided that he shall continue to be a State commissioner.

(c) No member of a cooperating committee shall have any right or authority to designate another commissioner to serve in his place at any hearing or conference in any proceeding in which he has been appointed to serve.

(d) Should a vacancy occur upon any cooperating committee, in a proceeding involving more than eight States, by reason of the death of any cooperating commissioner, or of his ceasing to be a State commissioner, or of other inability to serve, it shall be the duty of the president of the association to fill the vacancy by appointment, if, after communication with the chairman of the cooperating committee, it be deemed necessary to fill such vacancy.

(e) In the event of any such vacancy occurring upon a cooperating committee involving not more than eight States, the vacancy shall be filled by the commission from which the vacancy occurs.

COOPERATING COMMITTEE TO DETERMINE RESPECTING ANY REPORT OF STATEMENT OF ITS ATTITUDE

(a) Whenever a cooperating committee shall have concluded its work, or shall deem such course advisable, the committee shall consider whether it is necessary and desirable to make a report to the interested State commissions, and, if it shall determine to make a report, it shall cause the same to be distributed through the secretary of the association, or through the general solicitor to all interested commissions.

(b) If a report of the Federal Commission will accompany any order to be made in said proceeding, the Federal Commission will state therein the concurrence or nonconcurrence of said cooperating committee in the decision or order of said Federal Commission.

CONSTRUCTION HEREOF IN CERTAIN RESPECTS EXPRESSLY PROVIDED

It is understood and provided that no State or States shall be deprived of the right of participation and cooperation as hereinbefore provided because of nonmembership in the association. With respect to any such State or States, all negotiations herein specified to be carried on between the Federal Commission and any officer of such association shall be conducted by the Federal Commission directly with the chairman of the commission of such State or States.

[F. R. Doc. 55-10307; Filed, Dec. 22, 1955; 8:52 a. m.]

TITLE 36—PARKS, FORESTS, AND MEMORIALS

Chapter I—National Park Service, Department of the Interior

PART 20—SPECIAL REGULATIONS

YELLOWSTONE NATIONAL PARK

Section 20.13 *Yellowstone National Park* is amended by the addition of paragraph (f) reading as follows:

(f) *Commercial automobiles and busses.* The prohibition against the admission of commercial automobiles and busses to Yellowstone National Park, contained in § 1.36 of this chapter, shall be subject to the following exceptions: Motor vehicles operated on a general, infrequent, and nonscheduled tour on which the visit to the park is an incident to such tour, carrying only round-trip passengers traveling from the point of origin of the tour, will be accorded admission to the park upon establishing to the satisfaction of the superintendent that the tour originated from such place and in such a manner as not to provide, in effect, a regular and duplicating service conflicting with, or in competition with, the services provided for the public at or outside of the park pursuant to contract authorization with the Secretary. Admission to the park will be accorded such motor vehicles upon payment of a special tour permit fee of $2.00 per passenger-carrying seat in the vehicle.

(Sec. 3, 39 Stat. 535, as amended; 16 U. S. C. 3)

Issued this 6th day of December 1955.

[SEAL] CONRAD L. WIRTH,
Director
National Park Service.

[F R. Doc. 55-10284; Filed, Dec. 22, 1955; 8:46 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 19]

CHEESES; PROCESS CHEESES; CHEESE FOODS; CHEESE SPREADS; AND RELATED FOODS; DEFINITIONS AND STANDARDS OF IDENTITY

NOTICE OF PROPOSALS TO AMEND DEFINITIONS AND STANDARDS OF IDENTITY FOR CERTAIN CHEESES TO PERMIT BLEACHING OF MILK AND TO PERMIT ARTIFICIAL COLORING IN SWISS CHEESE

Notice is hereby given that a petition has been filed by the National Cheese Institute, 110 North Franklin Street, Chicago 6, Illinois, whose members include manufacturers of various cheeses, setting forth proposals to amend the definitions and standards of identity for swiss cheese, provolone cheese, caciocavallo siciliano cheese, parmesan cheese, romano cheese, and asiago fresh cheese to permit bleaching of milk, to require certain label statements as to use of bleached milk, and to permit harmless artificial coloring in swiss cheese.

Notice is also given that the Commissioner of Food and Drugs, pursuant to the authority delegated to him by the Secretary of Health, Education, and Welfare, proposes to amend the definitions and standards of identity for blue cheese and gorgonzola cheese to require label declarations as to use of bleached milk.

Pursuant to the authority of the Federal Food, Drug, and Cosmetic Act (sec. 401, 52 Stat. 1046, 68 Stat. 54; 21 U. S. C. 341), delegated to him by the Secretary of Health, Education, and Welfare (20 F R. 1996) the Commissioner of Food and Drugs invites all interested persons to present their views in writing regarding the proposals published in this notice. Such views and comments should be submitted in quintuplicate, addressed to the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, Health, Education, and Welfare Building, Washington 25, D. C., prior to the thirtieth day following the date of publication of this notice in the FEDERAL REGISTER.

A. The proposals of the National Cheese Institute are as follows:

1. It is proposed to amend § 19.540 *Swiss cheese, emmentaler cheese* * * * by adding thereto the following:

"Harmless artificial coloring may be added."

"Such milk may be bleached by the use of benzoyl peroxide or a mixture of benzoyl peroxide with potassium alum, calcium sulfate, and magnesium carbonate; but the weight of the benzoyl peroxide is not more than 0.002 percent of the weight of the milk bleached, and the weight of potassium alum, calcium sulfate, and magnesium carbonate, singly or combined, is not more than six times the weight of the benzoyl peroxide used. If the milk is bleached in this manner, vitamin A is added to the curd in such quantity as to compensate for the vitamin A or its precursors destroyed in the bleaching process, and artificial coloring is not used."

"If the milk used is bleached, the label shall bear the statement 'Milk bleached with _____, the blank being filled in with the common or usual name of the bleaching agent used."

2. It is proposed to amend § 19.590 *Provolone cheese, pasta filata cheese* * * * by adding thereto the following:

"Such milk may be bleached by the use of benzoyl peroxide or a mixture of benzoyl peroxide with potassium alum, calcium sulfate, and magnesium carbonate; but the weight of the benzoyl peroxide is not more than 0.002 percent of the weight of the milk bleached, and the weight of the potassium alum, calcium sulfate, and magnesium carbonate, singly or combined, is not more than six times the weight of the benzoyl peroxide used. If the milk is bleached in this manner, vitamin A is added to the curd in such quantity as to compensate for the vitamin A or its precursors destroyed in the bleaching process, and artificial coloring is not used."

"If the milk used is bleached, the label shall bear the statement 'Milk bleached with _____, the blank being filled in with the common or usual name of the bleaching agent used."

3. It is proposed to amend § 19.591 *Caciocavallo siciliano cheese* * * * § 19.595 *Parmesan cheese, reggiano cheese* * * * § 19.610 *Romano cheese* * * * § 19.615 *Asiago fresh cheese, asiago soft cheese* * * * by adding thereto the statements quoted under the proposed amendment for provolone cheese, pasta filata cheese, stated in A 2 above.

B. The proposals of the Commissioner of Food and Drugs are as follows:

1. It is proposed to amend § 19.565 *Blue cheese* * * * by adding a new paragraph (d) reading as follows:

(d) (1) If the milk used is bleached, the label shall bear the statement "Milk bleached with benzoyl peroxide."

(2) Wherever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statement specified in subparagraph (1) of this paragraph shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter.

2. It is proposed to amend § 19.567 *Gorgonzola cheese* * * * by adding thereto a new paragraph (d) reading as above under the proposed amendment B 1.

Dated: December 19, 1955.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F. R. Doc. 55-10298; Filed, Dec. 22, 1955; 8:48 a. m.]

[21 CFR Part 120]

TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

NOTICE OF FILING OF PETITION FOR ESTABLISHMENT OF TOLERANCE FOR RESIDUES OF THIRAM

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408 (d) (1), 68 Stat. 512; 21 U. S. C. 346a (d) (1)), the following notice is issued:

A petition has been filed by E. I. du Pont de Nemours and Company, Wilmington, Delaware, proposing the establishment of a tolerance of 3 parts per million for residues of thiram (tetramethylthiuram disulfide) in or on apples.

The analytical method proposed in the petition for determining residues of thiram is the method described by W. K. Lowen in "Determination of Dithiocarbamate Residues on Food Crops," published in Analytical Chemistry, Volume 23, page 1846 (1951), except that boiling with acid should be continued until no further carbon disulfide is evolved, rather than the 30 to 45 minutes prescribed for metallic dithiocarbamates.

Dated: December 16, 1955.

[SEAL] GEO. P LARRICK,
Commissioner of Food and Drugs.

[F. R. Doc. 55-10300; Filed, Dec. 22, 1955; 8:49 a. m.]

[21 CFR Part 130]

DRUGS EXEMPTED FROM PRESCRIPTION-DISPENSING REQUIREMENTS OF SECTION 503 (b) (1) (C) OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT

EXEMPTION FOR CERTAIN DRUGS LIMITED BY NEW-DRUG APPLICATIONS TO PRESCRIPTION SALE

Notice is given that the Commissioner of Food and Drugs, in accordance with the Federal Food, Drug, and Cosmetic Act (secs. 503 (b) (3), 505 (c) 701 (a) 65 Stat. 649, 52 Stat. 1052, 1055; 21 U. S. C. 353 (b) (3), 355 (c), 371 (a)) and the authority delegated to him by the Secretary of Health, Education, and Welfare (21 CFR 1.108 (c)) hereby offers an opportunity to all interested persons to submit their views in writing to the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D. C., within 30 days from the date of publication of this notice in the FEDERAL REGISTER on the proposed amendment set forth below:

It is proposed to amend paragraph (a) of § 130.1 *Exemption for certain drugs limited by new-drug applications to prescription sale* by adding the following new subparagraph (12)

(12) Hexadenol (a mixture of tetracosanes and their oxidation products) preparations meeting all the following conditions:

(i) The hexadenol is prepared and packaged, with or without other drugs, solvents, and propellants, in a form suitable for self-medication by external application to the skin as a spray, and containing no drug limited to prescription sale under the provisions of section 503 (b) (1) of the act.

(ii) The hexadenol and all other components of the preparation meet their professed standards of identity, strength, quality, and purity.

(iii) If the preparation is a new drug, an application pursuant to section 505 (b) of the act is effective for it.

(iv) The preparation contains not more than 5 percent by weight of hexadenol.

(v) The preparation is labeled with adequate directions for use by external application in the treatment of minor burns and minor skin irritations.

(vi) The labeling bears, in juxtaposition with the directions for use, clear warning statements against:

(*a*) Use on serious burns or skin conditions or prolonged use, except as directed by a physician.

(*b*) Spraying the preparation in the vicinity of eyes, mouth, nose, or ears.

The proposed amendment removes the drugs mentioned therein from the prescription-dispensing requirements of the Federal Food, Drug, and Cosmetic Act (sec. 503 (b) (1) (C) 52 Stat. 1052, 65 Stat. 648; 21 U. S. C. 353 (b) (1) (C)) These drugs were previously limited by new-drug application to use under professional supervision, because the scientific data establishing the toxic potential of the drugs and their intended uses showed that they were safe only if used under professional supervision.

Pursuant to the regulations in § 1.108 (c) of this chapter (21 CFR 1.108 (c)), petitions have been submitted to remove the prescription restrictions from these drugs. Evidence now available through investigation and marketing experience shows that the drugs can be safely used by the laity in self-medication if they are used in accordance with the proposed labeling. The restriction to prescription sale is no longer necessary for the protection of the public health.

This action in removing the prior restriction limiting these drugs to prescription sale is taken under the authority of the Federal Food, Drug, and Cosmetic Act (secs. 503 (b) (3) 505 (c) 52 Stat. 1052, 65 Stat. 649; 21 U. S. C. 353 (b) (3) 355 (c)) which provides for and requires the removal of such restrictions if they are not necessary for the protection of the public health.

Dated: December 19, 1955.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F. R. Doc. 55-10299; Filed, Dec. 22, 1955; 8:49 a. m.]

NOTICES

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Eastern States Office Order 3]

MANAGER, RUSSELLVILLE, ARK.

DELEGATION OF AUTHORITY TO PERFORM CERTAIN FUNCTIONS

DECEMBER 19, 1955.

Pursuant to the authority contained in section 4.1 of Bureau Order No. 541 as amended and subject to the limitations contained therein, the Manager of the Bureau of Land Management Office at Russellville, Arkansas, is authorized to perform, in his geographical area of jurisdiction and in accordance with existing policies, regulations and procedures of this Bureau and under the direct supervision of the Supervisor, Eastern States Office, the functions of the Director, Bureau of Land Management, listed below unless specifically limited.

(a) *Cancellations or surrenders of contracts, leases and permits.* Make partial or complete cancellations or accept surrenders of contracts, leases, and permits.

(b) *Copies of records.* On matters in which he is authorized to act, the manager may take all actions on requests for copies of records.

(c) *Government contests.* Initiate Government contests against claims asserted to public lands.

(d) *Bonds.* Take all actions on bonds required in connection with matters pertaining to the lands or the resources thereof under his jurisdiction.

(e) *Trespass.* Determine liability and accept damages for trespass on the public lands, and dispose of resources recovered in trespass cases for not less than the appraised value thereof, under 43 CFR Part 288.

(f) *Classification of lands.* Classify public lands under section 7 of the Taylor Grazing Act of June 28, 1934, as amended (43 U. S. C. sec. 315f) or pursuant to other laws under 43 CFR, Part 296.

(g) *Grazing leases.* Grazing leases of public lands, under section 15 of the act of June 28, 1934, as amended (43 U. S. C. sec. 315m), and the permits or cooperative agreements to construct and maintain improvements on lands so leased, and to determine the value of such improvements.

(h) *Disposition of forest products.* Take all actions relating to the disposal of forest products when authorized by law, under 43 CFR Part 259. This authority shall not include the approval of any sale of timber in excess of 10,000,000 feet, board measure.

(i) *Color-of-title and riparian claims.* Take all actions relating to color-of-title and riparian claims, under 43 CFR Parts 140 and 141.

(j) *Homesteads.* Take all actions on homesteads pursuant to 43 CFR Parts 166 and 170.

(k) *Material other than forest products.* Take all actions relating to any sale or contract for the sale of material other than forest products, or the free use of materials other than forest products, under 43 CFR Part 259.

(l) *Public sales.* Take all actions on public sales pursuant to 43 CFR Part 250, and other sales of land by competitive bidding when authorized by law.

(m) *Small tracts.* Take all actions with respect to small tracts, under the act of June 1, 1938 (52 Stat. 609) as amended by the act of June 8, 1954 (68 Stat. 239; 43 U. S. C. 682a) under 43 CFR Part 257.

(n) *Special land-use permits.* Take all actions in issuing special land-use permits for public lands, pursuant to 43 CFR Part 258.

(o) *Timber and stone.* Take all actions on timber and stone entries pursuant to 43 CFR Part 285.

This order supersedes Eastern States Office Order No. 2, dated June 1, 1955, which is hereby revoked.

LUTHER T. HOFFMAN,
Supervisor
Eastern States Office.

Approved: December 19, 1955.

EDWARD WOOZLEY,
Director
Bureau of Land Management.

[F. R. Doc. 55-10283; Filed, Dec. 22, 1955; 8:46 a. m.]

Bureau of Reclamation

AMERICAN RIVER DIVISION, CENTRAL VALLEY PROJECT, CALIFORNIA

ORDER OF REVOCATION

MARCH 16, 1955.

Pursuant to the authority delegated by Departmental Order No. 2765 of July 30, 1954 (19 F. R. 5004) I hereby revoke Departmental Order of February 19, 1952, insofar as said order affects the following described land: *Provided, however* That such revocation shall not affect the withdrawal of any other lands by said order or affect any other orders withdrawing or reserving the land hereinafter described:

MOUNT DIABLO MERIDIAN, CALIFORNIA

T. 14 N., R. 9 E.,
Sec. 1, Lot 5, SW¼NW¼.

The above area aggregates 86.47 acres.

E. G. NIELSEN,
Assistant Commissioner

[66480]

DECEMBER 19, 1955.

I concur. The records of the Bureau of Land Management will be noted accordingly.

The lands are withdrawn for power purposes and are, therefore, not subject to the provisions of the act of September 27, 1944 (58 Stat. 747; 43 U. S. C. 279-284), as amended, granting preference rights to Veterans of World War II, the Korean Conflict, and others.

EDWARD WOOZLEY,
Director,
Bureau of Land Management.

[F. R. Doc. 55-10285; Filed, Dec. 22, 1955; 8:46 a. m.]

National Park Service

[Region 2 Order 2, Amdt. 1]

SUPERINTENDENTS, REGION 2

DELELGATION OF AUTHORITY WITH RESPECT TO APPEAL

NOVEMBER 23, 1955.

Section 6 of Order No. 2, issued December 1, 1954 (19 F R. 8824), is amended to read as follows:

SEC. 6. *Appeal.* Except in matters relating to contracts for construction, supplies, or services, any party aggrieved by any action or decision of the Superintendent shall have a right of appeal to the Regional Director. Any such appeal shall be in writing and shall be submitted to the Regional Director within thirty days after receipt by the aggrieved party of notice of the action taken or decision made by the Superintendent.

(National Park Service Order No. 14; 39 Stat. 535; 16 U. S. C. 1952 ed., sec 2)

[SEAL] HOWARD W BAKER,
Regional Director, Region Two.

[F. R. Doc. 55-10308; Filed, Dec. 22, 1955; 9:02 a. m.]

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Treasury Department Order 140, Revison 3]

BUREAU HEADS

DELEGATION OF AUTHORITY TO DESIGNATE CERTIFYING OFFICERS

By virtue of the authority vested in me by Reorganization Plan No. 26 of 1950, there are delegated to the head of each bureau, to be exercised with respect to his bureau, the functions of the Secretary of the Treasury (1) of authorizing officers and employees to certify vouchers to disbursing officers and fixing the penal sums of their bonds under sections 1 and 2 of the Act of December 29, 1941, as amended (31 U. S. C. 82b and 82c), and (2) of making certifications and giving notices under regulations of the Treasury Department governing the documentation required for certifyng vouchers to the Division of Disbursement.

The head of each bureau may make provision for the performance by subordinates of any of these functions.

Dated: December 19, 1955.

[SEAL] W. RANDOLPH BURGESS,
Acting Secretary of the Treasury.

[F. R. Doc. 55-10301; Filed, Dec. 22, 1955; 8:50 a. m.]

FEDERAL POWER COMMISSION

[Docket No. G-6191]

ARROW DRILLING CO.

NOTICE OF APPLICATION AND DATE OF HEARING

DECEMBER 19, 1955.

Take notice that Arrow Drilling Company (Applicant), a Delaware corporation whose address is Philtower Building, Tulsa 3, Oklahoma, filed on November 29, 1954, an application for itself and as agent for Stewart Petroleum Company for a certificate of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, authorizing Applicant to render service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the application which is on file with the Commission and open for public inspection.

Applicant sells natural gas produced from the Rhodessa Gas Field, Marion County, Texas, in interstate commerce to the Texas Eastern Transmission Corporation for resale.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations, and to that end:

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 on January 13, 1956, at 9:40 a. m., e. s. t., in a hearing room of the Federal Power Commission, 441 G Street NW., concerning the matters involved in and the issues presented by such application: *Provided, however* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of section 1.30 (c) (1) or (c) (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before January 6, 1956. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 55-10292; Filed, Dec. 22, 1955; 8:47 a. m.]

[Docket No. G-9370]

JAY KORNFELD

NOTICE OF APPLICATION AND DATE OF HEARING

DECEMBER 19, 1955.

Take notice that Jay Kornfeld (Applicant) a sole proprietorship whose address is 623 Union National Bank Building, Wichita 1, Kansas, filed as operator on September 19, 1955, an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing Applicant to render service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the application which is on file with the Commission and open for public inspection.

Applicant proposes to sell natural gas in interstate commerce from production of the 640 acre Garden City No. 1 Unit, Hugoton Field, Finney County, Kansas, to Colorado Interstate Gas Company for resale.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

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 on Tuesday, January 24, 1956 at 9:30 a. m., e. s. t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of section 1.30 (c) (1) or (c) (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before January 4, 1956. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 55-10293; Filed, Dec. 22, 1955; 8:47 a. m.]

[Docket No. G-9437]

NORTH CENTRAL GAS CO.

NOTICE OF APPLICATION AND DATE OF HEARING

DECEMBER 19, 1955.

Take notice that North Central Gas Company (Applicant) a Wyoming corporation with a principal office in Casper, Wyoming, filed an application on October 31, and supplements thereto on October 14, and November 1, 1955, for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing Applicant to acquire facilities by lease, by purchase, and to construct and operate facilities hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the application which is on file with the Commission and open for public inspection.

Applicant proposes to (1) lease and operate approximately 40.35 miles of 12 and 16-inch pipeline extending from Scottsbluff, Nebraska, to Northport, Nebraska, constructed and operated by Service Pipe Line Company, sold to Fred Goodstein, a stockholder of Applicant, and now proposed to be leased by Applicant from said stockholder for $43,000 annual fee; (2) purchase and operate approximately 4,318 feet of 16-inch, 726 feet of 12-inch and 225 feet of 10-inch pipeline extending from a connection with Applicant's existing system at a point near Northport, Nebraska, northeasterly to the terminus of the 10-inch line; now owned by American Pipe and Supply Company for $15,038; and (3) construct and operate facilities consisting of piping, valves and fittings at Mitchell Regulator Station to connect Applicant's existing facilities with the leased line, 4,000 feet of 6-inch pipeline, meters, valves, new compressor cylinders and station piping to connect the leased line into Applicant's existing Scottsbluff, Nebraska, compressor station, and to increase the capacity of said station, 400 feet of 6-inch pipeline meters, valves and piping to connect the purchased line to Applicant's existing system at Northport, Nebraska, at an estimated cost of $46,450.

The application as supplemented recites that Applicant has the option to purchase the pipeline described in (1) above from Mr. Fred Goodstein for $150,000 within a 15-year period, at the end of which time it must purchase.

The application further recites the described facilities are required to take gas from the Northport-Huntsman area; that additional volumes of gas are necessary to enable it to meet its peak requirements in the Northport-Scottsbluff area during the coming winter; and that its proposal heretofore described is the most economic method available to enable it to meet such requirements.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

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 on January 24, 1956, at 9:30 a. m., e. s. t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of section 1.30 (c) (1) or (c) (2) of the Commission's rules of practice and procedure.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with rules of practice and procedure (18 CFR 1.8 or 1.10) on or before January

13, 1956. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

[SEAL] J. H. GUTRIDE, *Acting Secretary.*

[F. R. Doc. 55-10294; Filed, Dec. 22, 1955; 8:47 a. m.]

[Docket No. G-8581]

PETROLEUM, INC.

NOTICE OF APPLICATION AND DATE OF HEARING

DECEMBER 19, 1955.

Take notice that Petroleum, Inc. (Applicant) a Kansas corporation whose address is 311 East Third Street, Wichita, Kansas, filed as operator on March 14, 1955, an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing Applicant to render service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the application which is on file with the Commission and open for public inspection.

Applicant proposes to sell natural gas in interstate commerce from production of the 640 acre Howell Gas Unit, 640 acre Heskamp Gas Unit, 640 McClure Gas Unit and the 640 acre Brown Gas Unit, Hugoton Field, Haskell County, Kansas, to Colorado Interstate Gas Company for resale.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

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 on Tuesday, January 24, 1956, at 9:30 a. m., e. s. t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of section 1.30 (c) (1) or (c) (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before January 4, 1956. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] J. H. GUTRIDE, *Acting Secretary.*

[F. R. Doc. 55-10295; Filed, Dec. 22, 1955; 8:48 a. m.]

[Docket No. G-9141]

MAGNA OIL CORP.

NOTICE OF APPLICATION AND DATE OF HEARING

DECEMBER 19, 1955.

Take notice that Magna Oil Corporation (Applicant), a Delaware corporation whose address is 1610 Life of America Building, Dallas, Texas, filed as operator on July 18, 1955, an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing applicant to render service as hereinafter described subject to the jurisdiction of the Commission, all as more fully represented in the application which is on file with the Commission and open for public inspection.

Applicant proposes to sell natural gas in interstate commerce from production of the Belle Wisdom "A" Lease, Belle Wisdom Lease and Whittenburg Lease, Panhandle Field, Hutchinson County, Texas, to Phillips Petroleum Company for resale.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

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 on Tuesday, January 24, 1956, at 9:30 a. m., e. s. t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of section 1.30 (c) (1) or (c) (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before January 4, 1956. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] J. H. GUTRIDE, *Acting Secretary.*

[F R. Doc. 55-10296; Filed, Dec. 22, 1955; 8:48 a. m.]

GENERAL SERVICES ADMINISTRATION

Public Buildings Service

[Wildlife Order 35]

BARATARIA BAY LIGHT STATION, LOUISIANA

TRANSFER OF PROPERTY

Pursuant to the provisions of Section 2 of Public Law 537, Eightieth Congress, approved May 19, 1948 (16 U. S. C. 667c), notice is hereby given that:

1. By deed from the United States of America, dated October 26, 1955, that property known as Barataria Bay Light Station, Louisiana, and more particularly described in said deed, has been transferred from the United States to the State of Louisiana.

2. The above described property is transferred to the State of Louisiana for wildlife conservation purposes (other than migratory birds) in accordance with the provisions of said Public Law 537.

EDMUND F MANSURE, *Administrator of General Services.*

DECEMBER 19, 1955.

[F. R. Doc. 55-10348; Filed, Dec. 22, 1955; 9:53 a. m.]