



# FEDERAL REGISTER

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### HOW TO FIND U.S. STATUTES and U.S. CODE CITATIONS

This pamphlet contains typical legal reference situations which require further citing. Official published volumes in which the citations may be found are shown alongside each reference—with suggestions as to the logical sequence to follow in using them to make the search. Additional finding aids, some especially useful in citing current material, also have been included. Examples are furnished at pertinent points and a list of reference titles, with descriptions, is carried at the end.

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# Rules and Regulations

## Title 5—ADMINISTRATIVE PERSONNEL

### Chapter I—Civil Service Commission PART 213—EXCEPTED SERVICE

#### Department of Defense

Section 213.3306 is amended to show that in the Office of the Assistant Secretary for International Security Affairs the position of Deputy Assistant Secretary (Planning and NSC) has been changed to Deputy Assistant Secretary (Planning and North Atlantic Affairs). The section is also amended to show that in the same office the position of Deputy Assistant Secretary (Regional Affairs) has been changed to Deputy Assistant Secretary (Far East and Latin American Affairs). Effective upon publication in the FEDERAL REGISTER, subparagraphs (9) and (20) of paragraph (a) of § 213.3306 are amended as set out below.

#### § 213.3306 Department of Defense.

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

(9) One Deputy Assistant Secretary (Planning and North Atlantic Affairs), Office of the Assistant Secretary of Defense for International Security Affairs.

(20) One Deputy Assistant Secretary (Far East and Latin American Affairs), Office of the Assistant Secretary of Defense for International Security Affairs.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633; E.O. 10577, 19 F.R. 7521, 3 CFR, 1954-1958 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,  
[SEAL] MARY V. WENZEL,  
Executive Assistant to  
the Commissioners.

[F.R. Doc. 64-7893; Filed, Aug. 5, 1964; 8:48 a.m.]

## Title 7—AGRICULTURE

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

#### PART 51—FRESH FRUITS, VEGETABLES AND OTHER PRODUCTS (INSPECTION, CERTIFICATION AND STANDARDS)

##### Subpart—United States Standards for Grades of Lemons<sup>1</sup>

On June 25, 1964, a notice of proposed rule making was published in the

<sup>1</sup>Packing of the product in conformity with the requirements of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug and Cosmetic Act or with applicable State laws and regulations.

FEDERAL REGISTER (29 F.R. 8094) regarding a proposed revision of United States Standards for Grades of Lemons (7 CFR, §§ 51.2795-51.2821).

Statement of considerations leading to the revision of the grade standards. The revised standards would incorporate a new U.S. Export No. 1 grade which was developed at the request of representatives of the lemon industry.

The U.S. Export No. 1 grade would designate a quality level that could be acceptable as equivalent to Category I of the Common Market (EEC) Quality Standards for Citrus.

A new definition, "moderately well colored", would require that the area of greenish-yellow color exceed the area of green color on the individual fruit.

The U.S. No. 1 shape requirement would be reworded to make its meaning clearer and conform more closely to shapes of lemons currently being marketed. The minimum shape of U.S. No. 1 would designate "fairly well formed". The designation of minimum shape for U.S. No. 2 would be changed to "reasonably well formed" with no change in the requirement. The requirement for loose or missing buttons in the Condition Standards for Export would be eliminated.

After consideration of all relevant matters presented, including the proposal set forth in the aforesaid notice, the following United States Standards for Grades of Lemons are hereby promulgated pursuant to the Agricultural Marketing Act of 1946 (60 Stat. 1087, as amended; 7 U.S.C. 1621-1627).

#### GRADES

Sec.	
51.2795	U.S. No. 1.
51.2796	U.S. Export No. 1.
51.2797	U.S. Combination.
51.2798	U.S. No. 2.

#### UNCLASSIFIED

51.2799 Unclassified.

#### TOLERANCES

51.2800 Tolerances.

#### JUICE CONTENT

51.2801 Juice content.

#### APPLICATION OF TOLERANCES

51.2802 Application of tolerances.

#### STANDARD PACK

51.2803 Standard pack.

#### STANDARD SIZING AND FILL

51.2804 Standard sizing and fill.

#### CONDITION STANDARDS FOR EXPORT

51.2805 Condition standards for export.

#### DEFINITIONS

51.2806	Firm.
51.2807	Fairly well formed.
51.2808	Well formed.
51.2809	Reasonably smooth.
51.2810	Smooth.
51.2811	Contact spot.
51.2812	Internal evidence of Alternaria development.
51.2813	Membranous stain.

Sec.	
51.2814	Damage.
51.2815	Fairly well colored.
51.2816	Well colored.
51.2817	Fairly firm.
51.2818	Reasonably well formed.
51.2819	Fairly smooth.
51.2820	Serious damage.
51.2821	Moderately well colored.

AUTHORITY: The provisions in this subpart issued under secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended; 7 U.S.C. 1622, 1624.

#### GRADES

##### § 51.2795 U.S. No. 1.

"U.S. No. 1" consists of lemons which are firm, fairly well formed (unless specified as well formed), reasonably smooth (unless specified as smooth), which have stems which are properly clipped, and which are free from decay, contact spot, internal evidence of Alternaria development, unhealed broken skins, hard or dry skins, exanthema, growth cracks, internal decline (endoxerosis), red blotch, membranous stain or other internal discoloration, and free from damage caused by bruises, dryness or mushy condition, scars, oil spots, scale, sunburn, hollow core, peteca, scab, melanose, dirt or other foreign material, other disease, insects or other means.

(a) Color: The lemons are fairly well colored (unless specified as well colored): *Provided*, That any lot of lemons which meets all the requirements of this grade except those relating to color may be designated as "U.S. No. 1 Green" if the lemons are of a full green color, or as "U.S. No. 1 Mixed Color" if the lemons fail to meet the color requirements of either "U.S. No. 1" or "U.S. No. 1 Green". (See § 51.2800.)

(b) Lemons have the juice content specified in § 51.2801.

##### § 51.2796 U.S. Export No. 1.

"U.S. Export No. 1" consists of lemons which are firm, fairly well formed, reasonably smooth and which are free from decay, contact spot, internal evidence of Alternaria development, unhealed broken skins, exanthema, growth cracks, internal discoloration and free from damage caused by bruises and dryness or mushy condition.

(a) At least 50 percent of the lemons are free from damage caused by scars, oil spots, scale, sunburn, peteca, scab, melanose, dirt of other foreign material, other disease, insects or other means, and the remainder of the lemons are free from serious damage by any cause.

(b) Color: Lemons are moderately well colored. (See § 51.2800.)

(c) Lemons have a juice content of not less than 28 percent by volume.

##### § 51.2797 U.S. Combination.

"U.S. Combination" consists of a combination of U.S. No. 1 and U.S. No. 2 lemons: *Provided*, That at least 40 percent, by count, of the lemons meet the requirements of U.S. No. 1 grade.

(a) Color: The lemons are fairly well colored (unless specified as well colored): *Provided*, That any lot of lemons which meets all the requirements of this grade except those relating to color may be designated as "U.S. Combination Green" if the lemons are of a full green color, or as "U.S. Combination Mixed Color" if the lemons fail to meet the color requirements of either "U.S. Combination" or "U.S. Combination Green". (See § 51.2800.)

(b) Lemons have the juice content specified in § 51.2801.

#### § 51.2798 U.S. No. 2.

"U.S. No. 2" consists of lemons which are fairly firm, which are reasonably well formed and fairly smooth, which have stems which are properly clipped, and which are free from decay, contact spot, internal evidence of *Alternaria* development, unhealed broken skins, hard or dry skins, exanthema, internal decline (endoxerosis), and red blotch, and free from serious damage caused by bruises, membranous stain or other internal discoloration, dryness or mushy condition, scars, oil spots, scale, sunburn, hollow core, peteca, growth cracks, scab, melanose, dirt or other foreign material, other disease, insects or other means.

(a) Color: The lemons are fairly well colored (unless specified as well colored): *Provided*, That any lot of lemons which meets all of the above requirements of this grade except those relating to color may be designated as "U.S. No. 2 Green" if the lemons are of a full green color, or as "U.S. No. 2 Mixed Color" if the lemons fail to meet the color requirements of either "U.S. No. 2" or "U.S. No. 2 Green". (See § 51.2800.)

(b) Lemons have the juice content specified in § 51.2801.

#### UNCLASSIFIED

#### § 51.2799 Unclassified.

"Unclassified" consists of lemons which have not been classified in accordance with any of the foregoing grades. The term "unclassified" is not a grade within the meaning of these standards but is provided as a designation to show that no grade has been applied to the lot.

#### TOLERANCES

#### § 51.2800 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, are provided as specified:

(a) *U.S. No. 1 grade*—(1) *For defects*. Not more than 10 percent of the lemons in any lot may fail to meet the requirements of this grade, but not more than one-half of this tolerance, or 5 percent, shall be allowed for decay, contact spot, internal evidence of *Alternaria* development, internal decline (endoxerosis), unhealed broken skins, growth cracks, and other defects causing serious damage, including not more than one-tenth of this latter amount, or one-half of 1 percent, for lemons affected by decay at shipping point: *Provided*, That an additional tolerance of 2½ percent, or a

total of not more than 3 percent, shall be allowed for lemons affected by decay en route or at destination.

(2) *For color*. Not more than 10 percent of the lemons in any lot may fail to meet the requirements relating to color.

(b) *U.S. No. 2 and U.S. Combination grades*—(1) *For defects*. Not more than 10 percent of the lemons in any lot may fail to meet the requirements of the U.S. No. 2 grade, but not more than one-half of this tolerance, or 5 percent, shall be allowed for decay, contact spot, internal evidence of *Alternaria* development, and internal decline (endoxerosis), including not more than one-fifth of this latter amount, or 1 percent, for lemons affected by decay at shipping point: *Provided*, That an additional tolerance of 2 percent, or a total of not more than 3 percent, shall be allowed for lemons affected by decay en route or at destination.

(2) *For color*. Not more than 10 percent of the lemons in any lot may fail to meet the requirements relating to color.

(3) When applying the tolerance for U.S. Combination grade individual packages may have not more than 10 percent less than the percentage of U.S. No. 1 required: *Provided*, That the entire lot averages within the required percentage.

(c) *U.S. Export No. 1*. (1) *For defects*: 10 percent for lemons which fail to meet the requirements of the grade: *Provided*, That not more than the following percentages of the defects enumerated shall be allowed:

- 1 percent for decay;
- 3 percent for contact spot;
- 3 percent for broken skins which are not healed;
- 3 percent for growth cracks;
- 3 percent for internal evidence of *Alternaria* development;
- 3 percent for internal discoloration;
- 5 percent for soft; and,
- 5 percent for damage by dryness or mushy condition.

(2) *For color*: 10 percent for lemons which fail to meet the requirements relating to color.

(3) The contents of individual containers may have not more than 10 percentage points less than the percentage specified to meet the requirements in § 51.2796(a): *Provided*, That no container shall have more than double the percentage specified for any one of the defects enumerated in sub-paragraph (c) (1) of this section.

#### JUICE CONTENT

#### § 51.2801 Juice content.

Lemons in the U.S. No. 1, U.S. Combination and U.S. No. 2 grades shall have a juice content of not less than 30 percent, by volume, except when designated as "U.S. No. 1 Green for Export", "U.S. Combination Green for Export" or "U.S. No. 2 Green for Export". When so designated, the lemons shall have a juice content of not less than 28 percent, by volume.

#### APPLICATION OF TOLERANCES

#### § 51.2802 Application of tolerances.

(a) Except when applying the tolerances for "Condition Standards for Ex-

port", and the tolerances set forth in sub-paragraph (c) (1) of § 51.2800, the contents of individual packages in the lot, based on sample inspection, are subject to the following limitations: *Provided*, That the averages for the entire lot are within the tolerances specified for the grade:

(1) For packages which contain more than 10 pounds, and a tolerance of 10 percent or more is provided, individual packages in any lot shall have not more than one and one-half times the tolerance specified. For packages which contain more than 10 pounds and a tolerance of less than 10 percent is provided, individual packages in any lot shall have not more than double the tolerance specified, except that at least one decayed lemon may be permitted in any package.

(2) For packages which contain 10 pounds or less, individual packages in any lot are not restricted as to the percentage of defects: *Provided*, That not more than one lemon which is seriously damaged by dryness or mushy condition may be permitted in any package and, in addition, en route or at destination not more than 10 percent of the packages may have more than one decayed lemon.

#### STANDARD PACK

#### § 51.2803 Standard pack.

(a) Lemons shall be fairly uniform in size and shall be packed in boxes or cartons and arranged according to the approved and recognized methods. Each wrapped fruit shall be fairly well enclosed by its individual wrapper.

(b) All such containers shall be tightly packed and well filled but the contents shall not show excessive or unnecessary bruising because of overfilled containers. When lemons are packed in standard nailed boxes, each box shall have a minimum bulge of 1¼ inches; when packed in cartons or in wire-bound boxes, each container shall be at least level full at time of packing.

(c) "Fairly uniform in size" means that when lemons are packed for 165 carton count or smaller size, or equivalent sizes when packed in other containers, not less than 90 percent, by count, of the lemons in any container shall be within a diameter range of four-sixteenths inch; when packed for sizes larger than 165 carton count, or equivalent sizes packed in other containers, not less than 90 percent, by count, of the lemons in any container shall be within a diameter range of six-sixteenths inch. (1) "Diameter" means the greatest dimension measured at right angles to a line from stem to blossom end of the fruit.

(d) In order to allow for variations incident to proper packing the following tolerances are provided:

(1) 10 percent for wrapped fruit in any container which fails to meet the requirement pertaining to wrapping; and,

(2) 5 percent for containers in any lot which fail to meet the requirements for standard pack.

#### STANDARD SIZING AND FILL

#### § 51.2804 Standard sizing and fill.

(a) Boxes or cartons in which lemons are not packed according to a definite pattern do not meet the requirements of

## RULES AND REGULATIONS

standard pack, but may be certified as meeting the requirements of standard sizing and fill: *Provided*, That the lemons in the containers are fairly uniform in size as defined in § 51.2803: *And provided further*, That the contents have been properly shaken down and the container is at least level full at time of packing.

(b) In order to allow for variations incident to proper packing, not more than 5 percent of the containers in any lot may fail to meet the requirements of standard sizing and fill.

## CONDITION STANDARDS FOR EXPORT

## § 51.2805 Condition standards for export.

(a) Not more than a total of 10 percent, by count, of the lemons in any container may be soft, affected by decay or contact spot, or have broken skins which are not healed, growth cracks, internal evidence of *Alternaria* development, internal decline (endoxerosis), or serious damage by membranous stain or other internal discoloration, or dryness or mushy condition, except that not more than the following percentages of the defects enumerated shall be allowed:

- (1) One-half of 1 percent for decay;
- (2) 3 percent for contact spot;
- (3) 3 percent for broken skins which are not healed;
- (4) 3 percent for growth cracks;
- (5) 3 percent for internal evidence of *Alternaria* development;
- (6) 3 percent for internal decline (endoxerosis);
- (7) 5 percent for soft;
- (8) 5 percent for serious damage by membranous stain or other internal discoloration; and,
- (9) 5 percent for serious damage by dryness or mushy condition.

(b) Any lot of lemons shall be considered as meeting the condition standards for export if not more than a total of 10 percent, by count, of the lemons in any container have defects enumerated in the condition standards for export: *Provided*, That no sample shall have more than double the percentage specified for any one of the defects enumerated.

## DEFINITIONS

## § 51.2806 Firm.

"Firm" means that the fruit does not yield more than slightly to moderate pressure.

## § 51.2807 Fairly well formed.

"Fairly well formed" means that the fruit shows normal characteristic lemon shape and is not materially flattened on one side. Lemons having moderately thickened necks at the stem end shall be considered as fairly well formed unless the appearance is materially affected.

## § 51.2808 Well formed.

"Well formed" means that the fruit is typically normal in shape with well centered stem and styler ends.

## § 51.2809 Reasonably smooth.

"Reasonably smooth" means that the appearance of the lemon is not materi-

ally affected by protrusions or lumpiness of the skin or by grooves or furrows. Coarse pebbling is an indication of good keeping quality and is not objectionable.

## § 51.2810 Smooth.

"Smooth" means that the skin is of fairly fine grain and that there are no more than slight furrows radiating from the stem end.

## § 51.2811 Contact spot.

"Contact spot" means an area on the lemon which bears evidence of having been in contact with decay or mold.

§ 51.2812 Internal evidence of *Alternaria* development.

"Internal evidence of *Alternaria* development" includes red or brown staining of the tissue under the button in the core, or in the fibro-vascular bundles.

## § 51.2813 Membranous stain.

"Membranous stain" is a brown or dark discoloration of the walls of the fruit segment.

## § 51.2814 Damage.

"Damage" means any specific defect described in this section; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance, or edible or shipping quality of the fruit. The following specific defects shall be considered as damage:

(a) Dryness or mushy condition when affecting all segments of the fruit more than one-fourth inch at the stem end, or more than the equivalent of this amount, by volume, when occurring in other portions of the fruit;

(b) Scars (including sprayburn and fumigation injury) which exceed the following aggregate areas of different types of scars, or a combination of two or more types of scars the seriousness of which exceeds the maximum allowed for any one type:

(1) Scars which are very dark and which have an aggregate area exceeding that of a circle one-fourth inch in diameter;

(2) Scars which are dark, rough or deep and which have an aggregate area exceeding that of a circle one-half inch in diameter;

(3) Scars which are fairly light in color, slightly rough, or with slight depth and which have an aggregate area exceeding that of a circle 1 inch in diameter; and,

(4) Scars which are light in color, fairly smooth, with no depth and which have an aggregate area of more than 20 percent of the fruit surface;

(c) Oil spots (Oleocellosis or similar injuries) which are more than slightly depressed, soft, or which have an aggregate area exceeding that of a circle one-half inch in diameter;

(d) Scale when more than ten medium to large California red or purple scale adjacent to button at stem end or scattered over fruit or any scale which affects the appearance of the fruit to a greater extent;

(e) Sunburn which causes appreciable flattening of the fruit, drying of the skin,

material change in the color of the skin, appreciable drying of the flesh underneath the affected area or affects more than 25 percent of the fruit surface;

(f) Hollow core which causes the fruit to feel distinctly spongy; and,

(g) Peteca when more than two spots or when having an aggregate area exceeding that of a circle one-fourth inch in diameter.

## § 51.2815 Fairly well colored.

"Fairly well colored" means that the area of yellow color exceeds the area of green color on the fruit.

## § 51.2816 Well colored.

"Well colored" means that the fruit is yellow in color with not more than a trace of green color. Fruit of a decided bronze color shall not be considered well colored.

## § 51.2817 Fairly firm.

"Fairly firm" means that the fruit may yield to moderate pressure but is not soft.

## § 51.2818 Reasonably well formed.

"Reasonably well formed" means that the fruit is not decidedly flattened, does not have a very long or large neck and is not otherwise decidedly misshapen.

## § 51.2819 Fairly smooth.

"Fairly smooth" means that the skin is not badly folded, badly ridged, or very decidedly lumpy.

## § 51.2820 Serious damage.

"Serious damage" means any specific defect described in this section; or an equally objectionable variation of any of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance, or the edible or shipping quality of the fruit. The following specific defects shall be considered as serious damage:

(a) Membranous stain, or other internal discoloration which seriously affects the appearance of the cut fruit;

(b) Dryness or mushy condition when affecting all segments of the fruit more than one-half inch at the stem end or more than the equivalent of this amount, by volume, when occurring in other portions of the fruit;

(c) Scars (including sprayburn and fumigation injury) which exceed the following aggregate area of different types of scars, or a combination of two or more types of scars the seriousness of which exceeds the maximum allowed for any one type:

(1) Scars which are very dark and which have an aggregate area of more than 5 percent of the fruit surface;

(2) Scars which are dark, rough or deep, and which have an aggregate area of more than 10 percent of the fruit surface;

(3) Scars which are fairly light in color, slightly rough or of slight depth, and which have an aggregate area of more than 25 percent of the fruit surface; and,

(4) Scars which are light in color, fairly smooth, with no depth, and which have an aggregate area of more than 50 percent of the fruit surface;

(d) Oil spots (Oleocellosis or similar injuries) which are soft, or which have an aggregate area exceeding that of a circle 1 inch in diameter;

(e) Scale when California red or purple scale is concentrated as a ring or blotch, or more than thinly scattered over the fruit surface, or any scale which affects the appearance of the fruit to a greater extent;

(f) Sunburn which causes decided flattening of the fruit, marked drying or dark discoloration of the skin, material drying of the flesh underneath the affected area, or which affects more than one-third of the fruit surface;

(g) Hollow core which causes the fruit to feel excessively spongy;

(h) Peteca when more than five small spots, or when having an aggregate area exceeding that of a circle three-fourths inch in diameter; and

(i) Growth cracks that are leaking, gummy or not well healed.

**§ 51.2821 Moderately well colored.**

"Moderately well colored" means that the area of greenish-yellow or yellow color exceeds the area of green color on the fruit.

The United States Standards for Grades of Lemons contained in this subpart shall become effective September 1, 1964, and will thereupon supersede the United States Standards for Lemons which have been in effect since March 15, 1959, as amended, January 15, 1961 (7 CFR, §§ 51.2795-2819).

Dated: August 3, 1964.

ROY W. LENNARTSON,  
Associate Administrator.

[F.R. Doc. 64-7915; Filed, Aug. 5, 1964; 8:51 a.m.]

**PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS**

**Subpart—United States Standards for Grades of Canned Tomatoes**

*Correction*

In F.R. Doc. 64-6229, appearing at page 7909 of the issue for Tuesday, June 23, 1964, the equation following § 52.5166(a) should read as follows:

Drained weight index

$$= \frac{\text{Weight of drained tomatoes}}{\text{Capacity of container}} \times 100$$

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

**PART 1138—MILK IN RIO GRANDE VALLEY MARKETING AREA**

**Computation of Net Pool Obligation of Each Pool Handler**

*Correction*

In F.R. Doc. 64-7439, appearing at page 10990 of the issue for Thursday, July 30, 1964, § 1138.70(e) should read as follows:

**§ 1138.70 Computation of the net pool obligation of each pool handler.**

\* \* \* \* \*

(e) Add an amount equal to the value at the Class I price, adjusted for location of the nearest nonpool plant(s) from which an equivalent weight was received, with respect to skim milk and butterfat subtracted from Class I pursuant to § 1138.46(a)(7) and the corresponding step of § 1138.46(b).

**Chapter XIV—Commodity Credit Corporation, Department of Agriculture**

**SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS**

[Announcement PS-CN-2, Amdt. 1]

**PART 1427—COTTON**

**Subpart—1964-66 Cotton Equalization Program—Payment-In-Kind Regulations**

**MISCELLANEOUS AMENDMENTS**

In order to clarify or correct certain provisions of the program, the 1964-66 Cotton Equalization Program—Payment-In-Kind Regulations (Announcement PS-CN-2), dated July 1, 1964 (29 F.R. 8465), are amended as follows:

1. Paragraph (d) of § 1427.1956 is revised to read as follows:

**§ 1427.1956 Application for Cotton Equalization Payment-In-Kind Certificate.**

\* \* \* \* \*

(d) *Adjustment payments.* If, at any time, CCC determines that a cotton handler has satisfied his outstanding domestic consumption or export obligations under this subpart and that there is a domestic consumption or export credit remaining in the account established for the cotton handler's obligations under § 1427.1959, CCC will make a payment to the cotton handler on the quantity of eligible cotton represented by such credit upon submission by the cotton handler of an acceptable Form 854.

2. Section 1427.1957 is revised to read as follows:

**§ 1427.1957 Inventory requirement.**

Each cotton handler shall at all times keep a quantity of eligible cotton in his inventory which, together with the quantity of eligible cotton specified in paragraphs (a), (b), and (c) of this section will be equal to or in excess of his outstanding domestic consumption or export obligations, as determined under § 1427.1959:

(a) If he is a domestic cotton user, the quantity of eligible cotton he has used in domestic consumption during the performance period, as specified in paragraph (b) of § 1427.1956, which may be but has not yet been credited to his account by CCC in accordance with § 1427.1959;

(b) If he is an exporter, the quantity of eligible cotton he has exported during the performance period which may be but has not yet been credited to his account by CCC in accordance

with § 1427.1959 and for which he has not transferred evidence of exportation to another cotton handler, and

(c) If the cotton handler has transferred title to a quantity of cotton to another cotton handler, and if he and the other cotton handler have executed a Form 855 in connection with such transaction transferring his domestic consumption or export obligation as to an equal or lesser quantity of cotton to the other cotton handler, the quantity of cotton shown on such Form 855 until such Form 855 is approved or disapproved by the New Orleans office or until 15 days after the date of Form 855, whichever is earlier.

Such total quantity of cotton is referred to in this subpart as the cotton handler's "inventory requirement." Accordingly, a cotton handler shall not apply for or receive a payment under this subpart or assume a domestic consumption or export obligation, as provided in § 1427.1966, if the receipt of the payment or assumption of the obligation would cause him to be in violation of his inventory requirement. Moreover, no cotton handler shall sell eligible cotton (except to another cotton handler who assumes the domestic consumption or export obligation with respect to such quantity of cotton) if such sale would cause him to be in violation of his inventory requirement.

3. Section 1427.1966 is revised to read as follows:

**§ 1427.1966 Transfer of obligations.**

A cotton handler who desires to transfer to another cotton handler his domestic consumption or export obligations as to a quantity of cotton shall submit a properly executed Transfer of Obligation, Form CCC 855 (referred to in this subpart as "Form 855") to the New Orleans office. Form 855 must be submitted in triplicate. The last two copies of the executed Form 855 should be retained by the transferor and transferee until the approved or rejected copies of Form 855 are received from the New Orleans office. Such transfer may be made only to another cotton handler who agrees to assume such obligation and who has furnished CCC with performance security as required in § 1427.1958. If the transfer is approved by the New Orleans office, the approval will be noted on all copies by the New Orleans office, which will mail one copy to the transferor and one copy to the transferee. If the transfer is not approved by the New Orleans office, the reason will be noted on all copies of Form 855 by the New Orleans office, which will mail one copy to the transferor and one copy to the transferee.

4. Paragraph (a)(3) of § 1427.1967 is revised to read as follows:

**§ 1427.1967 Satisfactory evidence of domestic consumption or exportation.**

(a) *Domestic consumption.*

\* \* \* \* \*

(3) The domestic cotton user shall certify on the Form 856 that, to the best of his knowledge and belief, the official classification assigned to the cotton by

a board of cotton examiner does not (and for any of the cotton for which he has not obtained a classification memorandum, an official classification would not) describe the cotton as either shorter than  $\frac{3}{16}$ -inch in staple length or below grade, that he has classification memorandums for all such cotton for which he is required under paragraph (a) of § 1427.1952 to obtain such memorandums, and that such memorandums show the cotton to be  $\frac{3}{16}$ -inch or longer in staple length and of grades named in the Universal Standards for American Upland Cotton.

5. The last two sentences of § 1427.1969 are revised to correct typographical errors, as follows:

**§ 1427.1969 Failure to comply.**

\* \* \* It is agreed by the cotton handler and CCC that the foregoing rates are reasonable estimates of the probable actual damages that would be incurred by CCC. Failure of the cotton handler to furnish satisfactory evidence of domestic consumption or exportation in fulfillment of his domestic consumption or export obligations or Forms 855 evidencing the transfer of such obligations, as provided in §§ 1427.1966 and 1427.1967, not later than 60 days after the final date for domestic consumption or exportation, determined in accordance with § 1427.1956, shall constitute prima facie evidence of failure to consume domestically or export cotton in fulfillment of such domestic consumption or export obligations or to transfer such obligations.

(Secs. 4, 5, 62 Stat. 1070, as amended, sec. 101, Pub. Law 88-297; sec. 203, 70 Stat. 188; 15 U.S.C. 714b, 714c, 7 U.S.C. 1853)

Effective date: This amendment shall be effective upon filing with the Office of the Federal Register.

Signed at Washington, D.C., on July 31, 1964.

H. D. GODFREY,  
*Executive Vice President,*  
*Commodity Credit Corporation.*

[F.R. Doc. 64-7890; Filed, Aug. 5, 1964;  
8:48 a.m.]

## Title 9—ANIMALS AND ANIMAL PRODUCTS

### Chapter I—Agricultural Research Service, Department of Agriculture

#### SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY

#### PART 74—SCABIES IN SHEEP

#### Designation of Free, Infected, and Eradicated Areas

Pursuant to the provisions of sections 4 through 7 of the Act of May 29, 1884, as amended, sections 1 and 2 of the Act of February 2, 1903, as amended, and sections 1 through 4 of the Act of March 3, 1905, as amended (21 U.S.C. 111-113, 115, 117, 120, 121, 123-126), §§ 74.2 and

74.3 of Part 74, Subchapter C, Chapter I, Title 9, Code of Federal Regulations, as amended (29 F.R. 5313, 6150, 7236, 7921, 8470), are hereby further amended in the following respects:

1. Subparagraph (1) of § 74.2(a) is hereby amended to read:

**§ 74.2 Designation of free and infected areas.**

(a) \* \* \*

(1) Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Puerto Rico, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virgin Islands of the United States, Virginia, Washington, Wisconsin, and Wyoming;

2. Subparagraph (1) of § 74.3(a) is hereby amended to read:

**§ 74.3 Designation of eradication areas.**

(a) \* \* \*

(1) Iowa, Ohio, Tennessee, and West Virginia;

(Secs. 4-7, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791-792, as amended, secs. 1-4, 33 Stat. 1264, as amended, 1265, as amended; 21 U.S.C. 111-113, 115, 117, 120, 121, 123-126; 19 F.R. 74, as amended)

*Effective date.* The foregoing amendments shall become effective upon issuance.

The amendments add the State of Kentucky to the list of free areas and delete such State from the infected and eradication areas as sheep scabies is no longer known to exist in such State. Hereafter, the restrictions pertaining to the interstate movement of sheep from or into infected and eradication areas, as contained in 9 CFR Part 74, as amended, will not apply to Kentucky. However, the restrictions in said Part 74 pertaining to the interstate movement of sheep from or into free areas will apply to such State.

The amendments relieve certain restrictions presently imposed and must be made effective immediately to be of maximum benefit to persons subject to the restrictions which are relieved. 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 amendments are impracticable and contrary to the public interest, and the amendments may be made effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C. this 31st day of July 1964.

B. T. SHAW,  
*Administrator,*  
*Agricultural Research Service.*

[F.R. Doc. 64-7891; Filed, Aug. 5, 1964;  
8:48 a.m.]

#### SUBCHAPTER D—EXPORTATION AND IMPORTATION OF ANIMALS AND ANIMAL PRODUCTS

#### PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AND AFRICAN SWINE FEVER; PROHIBITED AND RESTRICTED IMPORTATIONS

#### Designation of Infected Countries

On July 25, 1963, the Department of Agriculture issued an amendment of § 94.1(a) of the regulations (9 CFR 94.1(a)) under section 306 of the Act of June 17, 1930, as amended (19 U.S.C. 1306) and section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111), excepting Japan from the list of countries in which it has been determined that rinderpest or foot-and-mouth disease exists. This amendment became effective upon its publication in the FEDERAL REGISTER (28 F.R. 7728) on July 30, 1963.

On July 26, 1963, the Department issued another amendment of § 94.1(a) of said regulations with respect to another country (28 F.R. 7823). This amendment became effective upon its issuance on July 26, 1963, and it did not reflect the amendment which became effective four days later with respect to Japan.

In order to clarify the matter, paragraph (a) of § 94.1 of said regulations is reissued to read as follows:

**§ 94.1 Designation of countries where rinderpest or foot-and-mouth disease exists; importations prohibited.**

(a) Notice is hereby given that, in accordance with section 306 of the Act of June 17, 1930, as amended (19 U.S.C. 1306), it has been determined, and official notice has been given to the Secretary of the Treasury, that rinderpest or foot-and-mouth disease exists in the following designated countries:

(1) All countries east of the 30th meridian west longitude and west of the International Date Line, except Australia, the Channel Islands, Greenland, Iceland, Japan, New Zealand, Northern Ireland, Norway, and the Republic of Ireland;

(2) All countries of South America;

(3) Curacao (the leeward islands of the Netherlands Antilles);

(4) Martinique;

(5) Cuba.

*Effective date.* The foregoing reissued provision of § 94.1 of the regulations shall become effective upon issuance.

The purpose of this document is to clarify the status of certain countries named in § 94.1(a) of Title 9, Code of Federal Regulations, with reference to the determinations regarding the existence of foot-and-mouth disease or rinderpest. The document is not intended to change such status with respect to any country. 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 matter are unnecessary, and the reissued provision

of § 94.1 of the regulations may be made effective less than 30 days after publication in the FEDERAL REGISTER.

(Sec. 306, 46 Stat. 689, as amended, sec. 2, 32 Stat. 792, as amended, 19 U.S.C. 1306, 21 U.S.C. 111; 19 F.R. 74, as amended)

Done at Washington, D.C., this 31st day of July 1964.

B. T. SHAW,  
Administrator,  
Agricultural Research Service.

[F.R. Doc. 64-7888; Filed, Aug. 5, 1964;  
8:48 a.m.]

## Title 12—BANKS AND BANKING

### Chapter I—Bureau of the Comptroller of the Currency, Department of the Treasury

#### PART 15—INTERNATIONAL OPERATIONS REGULATION

This amendment, issued pursuant to the authority contained in the national banking laws, 12 U.S.C. 1, et seq., adds a new Part 15 relating to the international financial operations of national banks. Notice of the proposed amendment was published in the FEDERAL REGISTER on December 20, 1963 (28 F.R. 13868). This amendment takes into account comments received in response to that publication.

Chapter I, Title 12 of the Code of Federal Regulations of the United States of America is hereby amended by adding a new Part 15 as follows:

- Sec.  
15.1 Authority and policy.  
15.2 Definitions and terms.  
15.3 Prior notification of international operations.  
15.4 Reporting of international operations.  
15.5 Effective date.

**AUTHORITY:** The provisions of this Part 15 issued under the authority of the national banking laws, 12 U.S.C. 1, et seq.

#### § 15.1 Authority and policy.

(a) *Authority.* This part is issued under the authority of the national banking laws, 12 U.S.C. 1, et seq.

(b) *Policy.* (1) In furtherance of the effort to pursue the overall improvement of supervisory methods and tools, this Office has undertaken a stepped-up program of examination and supervision of the international operations of national banks. A special corps of national bank examiners has been assigned to a newly-established Department of International Banking under a Deputy Comptroller of the Currency. These examiners will be based in Washington, and will make periodic on-the-spot examinations in foreign countries of the international operations of national banks. This Office is also expanding its economic research in the international field to lay the groundwork for more intensive supervision in this area.

(2) Two developments in recent years have prompted these expanded activities in this Office. National banks which are long-established in the international field have been extending their foreign activ-

ities. Some national banks are undertaking, or are planning to undertake, their first foreign ventures. The expansion of international financial activities enhances their importance to the sound condition of a bank. These are matters which fall within the supervisory responsibilities of the Comptroller of the Currency for national banks.

(3) Prior notification will be required of the intention of a national bank to establish a branch in a foreign country, to acquire directly a controlling interest in an Edge Act corporation, agreement corporation or foreign bank, to establish offices of such controlled corporations or foreign banks, or to acquire a controlling interest in banks or other enterprises through such corporations or foreign banks. Actions of this nature, which may involve substantial risk, are not easily reversed, and hence, there is a need for advance knowledge by the Comptroller of the Currency. In addition, certain other international operations, such as the acquisition of less than a controlling interest in a foreign bank, must be reported to the Comptroller within 30 days of the event. The required notifications and reports will provide the basis, where needed, for special examinations by this Office, and for the issuance of appropriate instructions to a bank wherever such instructions are required in the exercise of the Comptroller's supervisory responsibilities.

(4) The prior notification and reporting procedure was chosen as the least burdensome means of supervising these important activities of national banks, considering the licensing authority over foreign branches and Edge Act corporations which rests with the Federal Reserve Board. This aspect of bank regulation would be greatly simplified if the licensing authority were lodged with the supervisory agency, rather than separated as it is at present. Pending such a transfer of authority, however, this Office will rely on the prior notification and reporting procedure, together with instructions issued under its supervisory authority, to provide the required supervision of the international financial activities of national banks.

#### § 15.2 Definitions and terms.

For the purposes of this part:

(a) "Edge Act corporation" means a corporation organized under the provisions of 12 U.S.C. 611-632.

(b) "Agreement corporation" means a corporation which has entered into an agreement or undertaking in accordance with the provisions of 12 U.S.C. 603.

(c) "Foreign bank" means a corporation or other association organized under the laws of a foreign country, or of a dependency or insular possession of the United States or a foreign country, which is principally engaged in a commercial banking business.

(d) "Control" of a bank or corporation by a national bank or by an Edge Act corporation or an agreement corporation shall be presumed where a national bank, an Edge Act corporation or an agreement corporation has acquired 25 percent or more of the voting shares of the bank or corporation.

#### § 15.3 Prior notification of international operations.

On and after the effective date hereof: (a) *Prior notification.* Prior notification to the Comptroller of the Currency shall be required before a national bank may engage in any of the following international operations:

(1) The establishment of a branch of a national bank in a foreign country, or in a dependency or insular possession of the United States or a foreign country.

(2) The establishment in the United States, in a foreign country, or in a dependency or insular possession of the United States or a foreign country, of an office, branch or agency of an Edge Act corporation, agreement corporation or foreign bank which is controlled by a national bank.

(3) The direct acquisition by a national bank of a controlling interest in an Edge Act corporation, agreement corporation or foreign bank.

(4) The acquisition by a national bank, through an Edge Act corporation, agreement corporation or foreign bank which is controlled by it, of a controlling interest in a foreign bank or in any other corporation or association organized under the laws of a foreign country, or under the laws of a dependency or insular possession of the United States or a foreign country.

(b) *Forms.* Prior notification shall be made on forms provided by the Comptroller of the Currency.

#### § 15.4 Reporting of international operations.

On and after the effective date hereof:

(a) *Reports.* A report shall be made to the Comptroller of the Currency within 30 days of the occurrence of any of the following international operations:

(1) The relocation of a branch of a national bank in a foreign country, or in a dependency or insular possession of the United States or a foreign country.

(2) The relocation in the United States, in a foreign country, or in a dependency or insular possession of the United States or a foreign country, of an office, branch, or agency of an Edge Act corporation, agreement corporation or foreign bank which is controlled by a national bank.

(3) The direct acquisition by a national bank of an interest in an Edge Act corporation, agreement corporation or foreign bank, where the acquisition does not result in control of the Edge Act corporation, agreement corporation or foreign bank.

(4) The acquisition by a national bank, through an Edge Act corporation, agreement corporation or foreign bank which is controlled by it, of an interest in a foreign bank or in any other corporation or association organized under the laws of a foreign country, or under the laws of a dependency or insular possession of the United States or a foreign country, where the acquisition does not result in control of the foreign bank or other corporation or association.

(b) *Forms.* Reports shall be made on forms provided by the Comptroller of the Currency.

## § 15.5 Effective date.

This regulation supersedes the requirements set forth in the letter of the Comptroller of the Currency to the presidents of all national banks dated May 1, 1964.

This regulation shall be effective on and after September 7, 1964.

Dated: July 31, 1964.

[SEAL] JAMES J. SAXON,  
Comptroller of the Currency.

[F.R. Doc. 64-7905; Filed, Aug. 5, 1964;  
8:50 a.m.]

## Chapter V—Federal Home Loan Bank Board

### SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

[No. FSLIC-1,864]

## PART 570—BOARD RULINGS

### Net Worth

JULY 31, 1964.

Resolved that the Federal Home Loan Bank Board, upon the basis of consideration by it of the advisability of the amendment of Part 570 of the rules and regulations for Insurance of Accounts (12 CFR Part 570) by the addition of a new section thereto, as hereinafter set forth, and for the purpose of effecting such amendment, hereby amends said part as follows, effective August 6, 1964.

(1) Amend Part 570 by the addition of a new section to read as follows:

#### § 570.4 Net worth.

(a) The term "net worth" is defined in § 561.13 of this chapter to mean the sum of all reserve accounts (except specific or valuation reserves), undivided profits, surplus, capital stock and any other nonwithdrawable accounts.

(b) Specific loss reserves required by the California Savings and Loan Commissioner under section 7255 of the California Savings and Loan Association Law are not specific reserves within the meaning of the foregoing exception clause unless established in respect of loans whose outstanding balance is in excess of the appraised value of the security property as determined by the Commissioner.

Resolved further that since the aforesaid amendment contains only statements of general policy or interpretations of substantive rules adopted or formulated by the Board for the guidance of the public, the requirements of notice and public procedures set out in § 508.12 of the general regulations of the Federal Home Loan Bank Board (12 CFR 508.12) and section 4(a) of the Administrative Procedure Act do not apply, and for the same reasons, deferment of the effective date is not required under section 4(c) of the Administrative Procedure Act.

By the Federal Home Loan Bank Board.

[SEAL] HARRY W. CAULSEN,  
Secretary.

[F.R. Doc. 64-7913; Filed, Aug. 5, 1964;  
8:51 a.m.]

[No. FSLIC-1,865]

## PART 570—BOARD RULINGS

### Credits to Designated Reserve

JULY 31, 1964.

Resolved that the Federal Home Loan Bank Board, upon the basis of consideration by it of the advisability of the amendment of Part 570 of the rules and regulations for Insurance of Accounts (12 CFR Part 570) by the addition of a new section thereto, as hereinafter set forth, and for the purpose of effecting such amendment, hereby amends said part as follows, effective August 6, 1964.

(1) Amend Part 570 by the addition of a new section to read as follows:

#### § 570.5 Credits to designated reserve.

(a) Section 563.11 of this chapter provides that, with the prior written approval of the Insurance Corporation, any reserve account, which by specific and adequate corporate action of an insured institution is made subject to charges for losses only, may be designated as the institution's Federal insurance reserve account.

(b) Specific loss reserves required by the California Savings and Loan Commissioner under section 7255 of the California Savings and Loan Association Law may be designated as a part of the Federal insurance reserve account unless established in respect of loans whose outstanding balance is in excess of the appraised value of the security property as determined by the Commissioner. When so designated, credits to such reserves would be considered as credits to the Federal insurance reserve account under § 563.13 of this chapter.

Resolved further that since the aforesaid amendment contains only statements of general policy or interpretations of substantive rules adopted or formulated by the Board for the guidance of the public, the requirements of notice and public procedures set out in § 508.12 of the general regulations of the Federal Home Loan Bank Board (12 CFR 508.12) and section 4(a) of the Administrative Procedure Act do not apply, and for the same reasons, deferment of the effective date is not required under section 4(c) of the Administrative Procedure Act.

By the Federal Home Loan Bank Board.

[SEAL] HARRY W. CAULSEN,  
Secretary.

[F.R. Doc. 64-7914; Filed, Aug. 5, 1964;  
8:51 a.m.]

## Title 14—AERONAUTICS AND SPACE

### Chapter I—Federal Aviation Agency

#### SUBCHAPTER E—AIRSPACE [NEW]

[Airspace Docket No. 64-CE-32]

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE AND REPORTING POINTS [NEW]

### Alteration of Control Area Extension

The purpose of this amendment to Part 71 [New] of the Federal Aviation

Regulations is to alter the control area extension at La Crosse, Wis.

The La Crosse control area extension is designated in part with reference to Green Federal Airway No. 2. Since this airway has been revoked it is necessary to redescribe the control area extension to reflect the revocation. No controlled airspace boundary locations are changed by this action.

Since this amendment imposes no additional burden on any person, notice and public procedure hereon are unnecessary, and it may be made effective without regard to the 30 day statutory period.

In consideration of the foregoing, Part 71 [New] of the Federal Aviation Regulations is amended, effective upon publication in the FEDERAL REGISTER, as hereinafter set forth.

In § 71.165 (29 F.R. 1073), the La Crosse, Wis., control area extension is amended to read:

#### La Crosse, Wis.

Within a 25-mile radius of the La Crosse Airport (latitude 43°52'40" N, longitude 91°15'20" W), extending clockwise from V-2 SE of La Crosse to V-82 W of La Crosse, and within a 15-mile radius of the La Crosse VOR.

(Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348))

Issued in Washington, D.C., on July 30, 1964.

DANIEL E. BARROW,  
Chief, Airspace Regulations  
and Procedures Division.

[F.R. Doc. 64-7863; Filed, Aug. 5, 1964;  
8:46 a.m.]

[Airspace Docket No. 64-LAX-3]

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS [NEW]

### Alteration of Federal Airways, Revocation of a Reporting Point, and Destination of a Reporting Point

On June 11, 1964, a notice of proposed rule making was published in the FEDERAL REGISTER (29 F.R. 7516) stating that the Federal Aviation Agency proposed to realine VOR Federal airways Nos. 16, 117, 137 and 264S via a new VORTAC navigational facility to be commissioned in the vicinity of Palm Springs, Calif.

Interested persons were afforded an opportunity to participate in the rule making through submission of comments, but no comments were received.

Although not mentioned in the Notice, the Palm Springs, Calif., Intersection reporting point would no longer be required with the commissioning of the Palm Springs VORTAC. Accordingly, action is taken herein to revoke the Palm Springs Intersection reporting point and to designate the Palm Springs VORTAC as a Domestic low altitude reporting point.

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

The substance of the proposed amendments having been published and for the reasons stated herein and in the Notice, the following actions are taken, effective 0001 e.s.t., October 15, 1964:

1. Section 71.123 (28 F.R. 14420, 29 F.R. 1009, 5786, 6437, 6530, 8165, 9529) is amended as follows:

a. In V-16 "INT Ontario 091° and Blythe, Calif., 284° radials; Blythe;" is deleted and "Palm Springs, Calif.; Blythe, Calif.;" is substituted therefor.

b. In V-117 "to INT of Thermal 340° and Twentynine Palms, Calif., 244° radials." is deleted and "to Palm Springs, Calif." is substituted therefor.

c. In V-137 "From Thermal, Calif.," is deleted and "From Palm Springs, Calif.," is substituted therefor.

d. In V-264 "including an S alternate from Los Angeles to Twentynine Palms via Ontario, Calif., INT of Ontario 091° and Twentynine Palms 244° radials;" is deleted and "including an S alternate from Los Angeles to Twentynine Palms via Ontario, Calif., Palm Springs, Calif.;" is substituted therefor.

2. Section 71.203 (29 F.R. 1211) is amended as follows:

a. "Palm Springs INT: INT Twentynine Palms, Calif., 244°, Thermal, Calif., 340° radials; V-16." is deleted.

b. "Palm Springs, Calif.; V-16 West-bound." is added.

(Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348))

Issued in Washington, D.C., on July 30, 1964.

DANIEL E. BARROW,  
Chief, Airspace Regulations  
and Procedures Division.

[F.R. Doc. 64-7864; Filed, Aug. 5, 1964;  
8:46 a.m.]

[Airspace Docket No. 64-LAX-4]

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS [NEW]

### Alteration of Federal Airway; Postponement of Effective Date

On July 17, 1964, there was published in the FEDERAL REGISTER (29 F.R. 9663) an amendment to the Federal Aviation Regulations which realigned VOR Federal airway No. 21 west alternate from the intersection of the Hector, Calif., 226° and the Daggett, Calif., 187° True radials to Daggett.

Because of a delay in relocating the Ontario, Calif., VOR as announced in Airspace Docket No. 64-LAX-4, it is necessary to postpone the effective date of the above mentioned amendment until December 10, 1964, the first aeronautical charting date after the relocated facility is scheduled to be commissioned.

Since thirty days will elapse from the time of publication of the rule as initially adopted to this effective date, this change is made in compliance with section 4 of the Administrative Procedure Act.

In consideration of the foregoing, effective immediately, Airspace Docket No. 64-LAX-4 is amended as follows: "effective 0001 e.s.t., September 17, 1964." is deleted and "effective 0001 e.s.t., December 10, 1964." is substituted therefor. (Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on July 30, 1964.

DANIEL E. BARROW,  
Chief, Airspace Regulations  
and Procedures Division.

[F.R. Doc. 64-7865; Filed, Aug. 5, 1964;  
8:46 a.m.]

## SUBCHAPTER I—AIRPORTS [NEW]

[Reg. Docket No. 6120; Amdt. 151-4]

### PART 151—FEDERAL AID TO AIRPORTS [NEW]

#### Miscellaneous Amendments

By rule-making action dated January 3, 1964 the Secretary of Labor amended Parts 1, 3, and 5 of Title 29 of the Code of Federal Regulations. These amendments were published in the FEDERAL REGISTER of January 4, 1964 (29 F.R. 95, et seq.).

Part 151 [New] of the Federal Aviation Regulations (FAR) incorporates provisions of 29 CFR Part 5, and hence must be amended to reflect those changes made by the Secretary of Labor which are pertinent to airport project contracts. Provisions of Part 5, in turn, incorporate provisions of Part 3 of Title 29 which were also amended.

The Secretary of Labor amended the wage determination provisions, 29 CFR 5.3 and 5.4. Section 151.47 (c) and (d) of the FAR which reflects these provisions is being amended accordingly.

The required contract provisions of 29 CFR 5.5 are reflected in § 151.49 of the FAR. Amended 29 CFR 5.5(a) requires that the contract provisions which it contains be inserted in full in the contracts to which § 151.49 applies. The amendments in this section of the Department of Labor Regulations require corresponding amendments in the introductory paragraph of § 151.49(a) and in § 151.49 (a) (5), (6), (8), (9), (10), (11), (12), (13), (15), and (16).

Section 151.49(b) is amended to reflect the amended exemption provisions, 29 CFR 5.14(a) (3) and (4). Amended § 151.49(c) reflects the changes in the provisions respecting adjustment of liquidated damages, 29 CFR 5.8 (a), (b), (c) and 5.14(c) (3).

Section 151.57(b) is amended to reflect a change in 29 CFR 5.6(a) (1).

For clarity and ease of cross-reference the subparagraph headlines provided in the Department of Labor Regulations are being added to the corresponding provisions of Part 151.

The procedural and effective date requirements of section 4 of the Administrative Procedure Act do not apply to this amendment because it is within the exception to section 4 relating to public loans, grants, benefits and contracts.

In consideration of the foregoing, effective September 7, 1964, Part 151 [New] of Title 14, Chapter I, Code of Federal Regulations, is amended in the following respects:

A. Section 151.47 is hereby amended by revising paragraphs (c) and (d) to read as follows:

§ 151.47 Performance of construction work: Letting of contracts.

\* \* \* \* \*

(c) Procedure for wage determinations by the Secretary of Labor. At least 60 days before the intended date of advertising or negotiating, as described in paragraph (b) of this section, the sponsor shall send to the District Airport Engineer of FAA, completed Department of Labor Form DB-11 or DB-11(a), whichever is appropriate. Only those classifications which will be needed in the performance of the work shall be checked. Entries such as "entire schedule" or "all applicable classifications" are not permissible. Additional classifications needed which are not on the form may be typed in the blank spaces or on an attached separate list. Classifications which can be fitted into classifications on the form, or classifications which are not generally recognized in the area or in the industry, shall not be listed. Except in areas where the wage patterns are clearly established, the Form shall be accompanied by any pertinent wage payment information which may be available (29 CFR 5.3(a) (1) and (3), and (c)).

(d) Use and effectiveness of wage determinations of the Secretary of Labor. (1) Wage determinations remain effective for 120 calendar days from the date of the determination, and thereafter are void. If it appears that a determination may expire between bid opening and award, the sponsor shall so advise the FAA at the earliest possible time. If he wishes a new request for wage determination to be made and if any pertinent circumstances have changed, he shall submit a new Form DB-11 or DB-11(a) and accompanying information. If he claims that the determination expires before award and after bid opening due to unavoidable circumstances, he shall submit proof of the facts which he claims support a finding to that effect. (29 CFR 5.4(a))

(2) Any wage determination made by the Secretary of Labor may be modified by him prior to the award of the contract or contracts for which it was sought, but if the proposed contract is awarded on the basis of public advertisement and open competitive bidding, modifications received by the FAA later than 10 days before the opening of bids are not effective. A modification in no case will continue in effect beyond the effective period of the wage determination to which it relates. The Administrator sends any modification to the sponsor as soon as possible. If it is effective, it must be incorporated in the invitation for bids, by issuing an addendum to the specifications or otherwise. (29 CFR 5.4(b))

\* \* \* \* \*

B. Paragraph (a) of § 151.49 is hereby amended—

1. By amending the introductory paragraph to read:

§ 151.49 Performance of construction work: Contract Requirements.

(a) Contract provisions. Each sponsor entering into a construction contract

for a project shall, in addition to any other provisions necessary to insure completion of the work in accordance with the grant agreement, insert in full the following provisions (or modifications thereof approved by the Administrator in advance) in the contract (29 CFR 5.5(a), 5.6(a) (1) :

2. By amending subparagraph (5) by inserting "Minimum wages. (i)" after the designation "(5)" and adding a subdivision reading as follows:

(ii) The sponsor shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination, and a report of the action taken shall be sent by the sponsor to the FAA for approval and transmittal to the Secretary of Labor. In the event that the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question accompanied by the recommendation of the FAA shall be referred to the Secretary of Labor for final determination. (29 CFR 5.5(a) (1) )

3. By amending subparagraph (6) by inserting "Withholding" after the designation "(6)".

4. By amending subparagraph (8) by inserting "Payrolls and payroll records. (i)" after the designation "(8)" and amending the second paragraph of subparagraph (8) to read:

(ii) The contractor will submit weekly a copy of all payrolls to the sponsor for transmission to the FAA. The copy shall be accompanied by a statement indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classifications set forth for each laborer or mechanic conform with the work he performed. A submission of a "Weekly Statement of Compliance" which is required under this contract and the Copeland regulations of the Secretary of Labor (29 CFR, Part 3) shall satisfy this requirement. The contractor will make his employment records available for inspection by authorized representatives of the sponsor, the FAA and the Department of Labor, and will permit such representatives to interview employees during working hours on the job. (29 CFR 5.5(a) (3) )

5. By amending subparagraph (9) to read as follows:

(9) Apprentices. Apprentices will be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, United States Department of Labor; or, if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, United States Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish written evidence of the registration of his program and apprentices as well as of the appropriate ratios and wage rates, prior to using any

apprentices on the contract work. (29 CFR 5.5(a) (4) )

6. By amending subparagraph (10) to read as follows:

(10) Compliance with Copeland Regulations (29 CFR Part 3). The contractor shall comply with the Copeland Regulations (29 CFR Part 3) of the Secretary of Labor which are herein incorporated by reference. (29 CFR 5.5(a) (5) )

7. By amending subparagraph (11) to read as follows:

(11) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, as the case may be. (29 CFR 5.5(c) (1) )

8. By amending subparagraph (12) by changing the citation at the end from "(29 CFR 5.5(b) (2) )" to "(29 CFR 5.5 (c) (2) )".

9. By amending subparagraph (13) by changing the citation at the end from "(29 CFR 5.5(b) (3) )" to "(29 CFR 5.5 (c) (3) )".

10. By amending subparagraph (15) to read as follows:

(15) Subcontracts. The contractor will insert in each of his subcontracts the clauses contained in paragraphs [insert designations of 14 paragraphs of contract corresponding to subparagraphs (1), (3) through (14), and (16) hereof], and also a clause requiring the subcontracts to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made. (29 CFR 5.5 (a) (6), 5.5(c) (4) )

11. By amending subparagraph (16) to read as follows:

(16) Contract termination; debarment. A breach of paragraphs [insert designations of paragraphs of contract corresponding to subparagraphs (5) through (15) hereof] may be grounds for termination of the contract. A breach of paragraphs [insert designations of paragraphs of contract corresponding to subparagraphs (5), (6), (8), (10), and (15) hereof] may also be grounds for debarment as provided in 29 CFR 5.6 of the Regulations of the Secretary of Labor. (29 CFR 5.5 (a) (7) )

C. By amending paragraph (b) of § 151.49 to read as follows:

(b) Exemption of certain contracts. Subparagraphs (5) through (15) of paragraph (a) of this section do not apply to prime contracts of \$2000 or less (29 CFR 5.14(b) (3) ) .

D. By amending paragraph (c) of § 151.49 to read as follows:

(c) Adjustment in liquidated damages. A contractor or subcontractor who has become liable for liquidated damages under subparagraph (12) of paragraph (a) of this section and who claims that the amount administratively determined as liquidated damages under sec. 104(a) of the Contract Work Hours Standards Act is incorrect or that he vi-

olated inadvertently the provisions of the Contract Work Hours Standards Act notwithstanding the exercise of due care, may—

(1) If the sum determined is in excess of \$100, apply to the Administrator for a recommendation to the Secretary of Labor that an appropriate adjustment be made or that he be relieved of liability for such liquidated damages (29 CFR 5.8 (a) and (b) ) ; or

(2) If the sum determined is \$100 or less, apply to the Administrator for an appropriate adjustment in such liquidated damages or for release from liability for such liquidated damages. (29 CFR 5.8(c), 5.14(c) (3) )

E. By amending paragraph (b) of § 151.57 to read as follows:

§ 151.57 Grant payments: General.

(b) Contractor's certifications. Each application that involves work performed by a contractor must contain, in the contractor's certification in the periodic cost estimate, a statement that "there has been full compliance with all labor provisions included in the contract identified above and in all subcontracts made under that contract", and, in the case of a substantial dispute as to the nature of the contractor's or a subcontractor's obligation under the labor provisions of the contract or a subcontract, and additional phrase "except insofar as a substantial dispute exists with respect to these provisions". (29 CFR 5.6(a) (1) )

(Federal Airport Act, 49 U.S.C. 1101 through 1119, and 29 CFR Part 5, as amended)

Issued in Washington, D.C., on July 31, 1964.

N. E. HALABY, Administrator.

[F.R. Doc. 64-7866; Filed, Aug. 5, 1964; 8:46 a.m.]

SUBCHAPTER J—NAVIGATIONAL FACILITIES [NEW] [Reg. Docket No. 5034]

PART 171—NON-FEDERAL NAVIGATION FACILITIES [NEW]

This amendment adds Part 171 [New] to the Federal Aviation Regulations to replace Part 407 of the regulations of the Administrator and is a part of the Agency recodification program announced in Draft Release 61-25, published in the FEDERAL REGISTER on November 15, 1961 (26 F.R. 10698).

Part 171 [New] was published as a notice of proposed rule making in the FEDERAL REGISTER on May 7, 1964 (29 F.R. 6017), and given further distribution as Notice No. 64-24.

Many of the comments received recommended specific substantive changes to the regulations. Although many of the recommendations appear to be meritorious, they cannot be adopted as a part of the recodification program. The purpose of the program is simply to streamline and clarify present regulatory language and delete obsolete or redundant provisions. To attempt substantive changes, other than relaxatory ones that are completely noncontroversial, would

delay the project and be contrary to the ground rules specified for it in Draft Release 61-25. However, as stated in Notice No. 64-24, it is recognized that the substantive contents of this regulation are in need of updating and revision, and the Agency is now in process of preparing a substantive revision to be published as a separate notice of proposed rule making. The substantive comments received as a result of the circulation of the notice will be considered in the substantive revision.

Apart from comments of the nature described above, very few comments were received on the notice. Two comments suggested deletion of the rule that requires the owner to obtain the permission of the FAA before shutting down a facility. The comments indicate some misunderstanding of the purpose of the provision, which is simply to allow the FAA an opportunity to notify the public of the shutting down of the facility concerned and to provide substitute service, if possible under the circumstances. It should be understood that this entire regulation applies only to facilities that have a public use aspect and the permission of the FAA is therefore required in the interest of protecting public use of the facility. In no case would permission to close the facilities be arbitrarily denied. It would be delayed only until the FAA's published procedures were appropriately modified.

Two of the comments suggested that § 171.31(b) (10) be changed to delete the requirement of monitoring each MH facility on a one-half hour basis. Deletion of this language might have the adverse effect of requiring the facility to be continuously monitored. In some cases this could thereby increase the burden and, under the ground rules explained above, such a change could not be accomplished in the recodification program.

One comment suggested that sections of the regulation that make reference to other documents, such as ICAO standards, also give information on how to obtain copies of them. This comment has merit and therefore language has been added to show where copies of these documents may be obtained.

The definitions, abbreviations, and rules of construction contained in Part 1 [New] of the Federal Aviation Regulations apply to Part 171 [New]. This amendment, as the first rule to be published in Subchapter J "Navigational Facilities", adds that subchapter to the Federal Aviation Regulations.

Interested persons have been afforded an opportunity to participate in the making of this regulation, and due consideration has been given to all relevant matter presented. The Agency appreciates the cooperative spirit in which the public's comments were submitted.

In consideration of the foregoing, effective October 1, 1964, Chapter I of Title 14 is amended by adding a new Subchapter J reading as follows, and Chapter III of Title 14 is amended by deleting Part 407.

Issued in Washington, D.C. on July 31, 1964.

N. E. HALABY,  
Administrator.

**PART 171—NON-FEDERAL NAVIGATION FACILITIES**

**Subpart A—VOR Facilities**

- Sec. 171.1 Scope.
- 171.3 Requests for IFR procedure.
- 171.5 Minimum requirements for approval.
- 171.7 Performance requirements.
- 171.9 Installation requirements.
- 171.11 Maintenance and operations requirements.
- 171.13 Reports.

**Subpart B—Nondirectional Radio Beacon Facilities**

- 171.21 Scope.
- 171.23 Requests for IFR procedure.
- 171.25 Minimum requirements for approval.
- 171.27 Performance requirements.
- 171.29 Installation requirements.
- 171.31 Maintenance and operations requirements.
- 171.33 Reports.

**Subpart C—Instrument Landing System (ILS) Facilities**

- 171.41 Scope.
- 171.43 Requests for IFR procedure.
- 171.45 Minimum requirements for approval.
- 171.47 Performance requirements.
- 171.49 Installation requirements.
- 171.51 Maintenance and operations requirements.
- 171.53 Reports.

**Subpart D—General**

- 171.61 Materials incorporated by reference.

**AUTHORITY:** The provisions of this Part 171 [New] issued under secs. 305, 307, 313 (a), 601 and 606 of the Federal Aviation Act of 1958, as amended; 49 U.S.C. 1346, 1354 (a), 1421, 1426.

**SUBPART A—VOR FACILITIES**

**§ 171.1 Scope.**

This subpart sets forth minimum requirements for the operation of non-Federal VOR public use facilities that are to be involved in the approval of instrument flight rules and air traffic control procedures related to those facilities.

**§ 171.3 Requests for IFR procedure.**

(a) Each person who requests an IFR procedure based on a VOR facility that he owns must submit the following information with that request:

- (1) A description of the facility and evidence that the equipment meets the performance requirements of § 171.7 and is installed in accordance with § 171.9.
- (2) A proposed procedure for operating the facility.
- (3) A proposed maintenance organization and maintenance manual that meets the requirements of § 171.11.
- (4) A statement of intention to meet the requirements of this subpart.

(b) After the FAA inspects and evaluates the facility, it advises the owner of the results and of any required changes in the facility or the maintenance manual or maintenance organization. The owner must then correct the deficiencies, if any, and operate the facility for an in-service evaluation by the FAA.

(c) Requests for deviations from the requirements of this section must be submitted to the Regional Director of the Region in which the facility is located.

**§ 171.5 Minimum requirements for approval.**

(a) The following are the minimum requirements that must be met before the FAA will approve an IFR procedure for a non-Federal VOR:

- (1) The facility's performance, as determined by air and ground inspection, must meet the requirements of § 171.7.
- (2) The installation of the equipment must meet the requirements of § 171.9.
- (3) The owner must agree to operate and maintain the facility in accordance with § 171.11.

(4) The owner must agree to furnish periodic reports, as set forth in § 171.13, and must agree to allow the FAA to inspect the facility and its operation whenever necessary.

(5) The owner must assure the FAA that he will not withdraw the facility from service without the permission of the FAA.

(6) The owner must bear all costs of meeting the requirements of this section and of any flight or ground inspections made before the facility is commissioned.

(b) If the applicant for approval meets the requirements of paragraph (a) of this section, the FAA commissions the facility as a prerequisite to its approval for use in an IFR procedure. The approval is withdrawn at any time the facility does not continue to meet those requirements.

**§ 171.7 Performance requirements.**

(a) The VOR must perform in accordance with the "International Standards and Recommended Practices, Aeronautical Telecommunications, Part I, Paragraph 3.4" (Annex 10 to the Convention on International Civil Aviation) except that part of paragraph 3.4.7 requiring removal of only the bearing information. In place of that removal, all radiation must be removed during the specified deviations from established conditions and during periods of monitor failure.

(b) Ground inspection consists of an examination of the design features of the equipment to determine that there will not be conditions that will allow unsafe operations because of component failure or deterioration.

(c) The monitor is checked periodically, during the in-service test evaluation period, for calibration and stability. The tests are made with a standard "Reference and variable phase signal generator" and associated test equipment, including an oscilloscope and portable field detector. In general, the ground check is conducted in accordance with section 8.4 of FAA Handbook AF P 6790.9 "Maintenance Instruction for VHF Omiranges", adapted for the facility concerned.

(d) Flight tests to determine the facility's adequacy for operational requirements and compliance with applicable "Standards and Recommended Practices" are conducted in accordance with the "U.S. Standard Flight Inspection Manual", particularly section 201.

**§ 171.9 Installation requirements.**

(a) The facility must be of permanent construction, built and installed according to accepted good engineering prac-

tices and applicable electric and safety codes.

(b) The facility must have a reliable source of suitable primary power, either from a power distribution system or locally generated, with a supplemental standby system, if needed.

(c) Dual transmitting equipment with automatic changeover is preferred and may be required to support certain IFR procedures.

(d) There must be a means for determining, from the ground, the performance of the equipment, including the antenna, initially and periodically.

(e) A facility intended for use as an instrument approach aid for an airport must have or be supplemented by (depending on circumstances) the following ground-air or landline communications services:

(1) At facilities outside of and not immediately adjacent to air traffic control areas, there must be ground-air communications from the airport served by the facility. Separate communications channels are acceptable.

(2) At facilities within or immediately adjacent to air traffic control areas, there must be the ground-air communications required by subparagraph (1) of this paragraph and reliable communications (at least a landline telephone) from the airport to the nearest FAA air traffic control or communication facility.

Subparagraphs (1) and (2) of this paragraph are not mandatory at airports where an adjacent FAA facility can communicate with aircraft on the ground at the airport and during the entire proposed instrument approach procedure. In addition at low traffic density airports within or immediately adjacent to air traffic control areas, and where extensive delays are not a factor, the requirements of subparagraphs (1) and (2) of this paragraph may be reduced to reliable communications (at least a landline telephone) from the airport to the nearest FAA air traffic control or communication facility, if an adjacent FAA facility can communicate with aircraft during the proposed instrument approach procedure, at least down to the minimum en route altitude of the controlled area.

#### § 171.11 Maintenance and operations requirements.

(a) The owner of the facility must establish an adequate maintenance system and provide qualified maintenance personnel to maintain the facility at the level attained at the time it was commissioned. The maintenance personnel must meet at least the Federal Communications Commission licensing requirements and show that they have the special knowledge and skills needed to maintain the facility.

(b) The owner must prepare, and obtain FAA approval of, an operations and maintenance manual that sets forth mandatory procedures for operations, preventive maintenance, and emergency maintenance, including instructions on each of the following:

- (1) Physical security of the facility.
- (2) Maintenance and operations by authorized persons only.

(3) FCC licensing requirements for operating and maintenance personnel.

(4) Posting of licenses and signs.

(5) Relations between the facility and FAA air traffic control facilities, with a description of the boundaries of controlled airspace over or near the facility, instructions for relaying air traffic control instructions and information (if applicable), and instructions for the operation of an air traffic advisory service if the VOR is located outside of controlled airspace.

(6) Notice to the Administrator of any suspension of service.

(7) Detailed and specific maintenance procedures and servicing guides stating the frequency of servicing.

(8) Air-ground communications, if provided, expressly written or incorporating appropriate sections of FAA manuals by reference.

(9) Keeping of station logs and other technical reports, and the submission of reports required by § 171.13.

(10) Monitoring of the facility.

(11) Inspections by United States personnel.

(12) Names, addresses, and telephone numbers of persons to be notified in an emergency.

(13) Shutdowns for routine maintenance and issue of "Notices to Airmen" for routine or emergency shutdowns.

(14) An explanation of the kinds of activity (such as construction or grading) in the vicinity of the facility that may require shutdown or recertification of the facility by FAA flight check.

(15) Procedures for conducting a ground check of course accuracy.

(16) Commissioning of the facility.

(17) An acceptable procedure for amending or revising the manual.

(18) The following information concerning the facility:

(i) Location by latitude and longitude to the nearest second, and its position with respect to airport layouts.

(ii) The type, make, and model of the basic radio equipment that will provide the service.

(iii) The station power emission and frequency.

(iv) The hours of operation.

(v) Station identification call letters and method of station identification, whether by Morse Code or recorded voice announcement, and the time spacing of the identification.

(vi) A description of the critical parts that may not be changed, adjusted, or repaired without an FAA flight check to confirm published operations.

(c) The owner shall make a ground check of course accuracy each month in accordance with procedures approved by the FAA at the time of commissioning, and shall report the results of the checks as provided in § 171.13.

(d) If the owner desires to modify the facility, he must submit the proposal to the FAA and may not allow any modifications to be made without specific approval.

(e) The owner's maintenance personnel shall participate in inspections made by the FAA and shall show that they are proficient in maintenance procedures and using specialized test equipment.

(f) Whenever it is required by the FAA, the owner shall incorporate improvements in VOR maintenance brought about by progress in the state of the art. In addition, he shall provide a stock of spare parts, including vacuum tubes, of such a quantity to make possible the prompt replacement of components that fail or deteriorate in service.

(g) The owner shall provide all approved test instruments needed for maintenance of the facility.

(h) The owner shall close the facility upon receiving two successive pilot reports of its malfunctioning.

#### § 171.13 Reports.

The owner of each facility to which this subpart applies shall make the following reports on forms furnished by the FAA, at the times indicated, to the FAA Regional office for the area in which the facility is located:

(a) *Record of meter readings and adjustments (Form FAA-198)*. To be filled out by the owner with the equipment adjustments and meter readings as of the time of commissioning, with one copy to be kept in the permanent records of the facility and two copies to the appropriate Regional office of the FAA. The owner shall revise the form after any major repair, modernization, or retuning, to reflect an accurate record of facility operation and adjustment.

(b) *Facility maintenance log (Form FAA-406c)*. This form is a permanent record of all equipment malfunctioning met in maintaining the facility, including information on the kind of work and adjustments made, equipment failures, causes (if determined), and corrective action taken. The owner shall keep the original of each report at the facility and send a copy to the appropriate Regional office of the FAA at the end of the month in which it is prepared.

(c) *Radio equipment operation record (Form FAA-418)*. To contain a complete record of meter readings, recorded on each scheduled visit to the facility. The owner shall keep the original of each month's record at the facility and send a copy of it to the appropriate Regional office of the FAA.

(d) *Facility outage and failure report (Form FAA-3092)*. To contain a record of each equipment failure that removes the facility from service. The owner shall record each failure on a separate report and send all reports for each month, at the end of that month, to the appropriate Regional office of the FAA.

(e) *VOR ground check error data (Forms FAA-2396 and 2397)*. To contain results of the monthly course accuracy ground check in accordance with FAA Handbook AF P 6790.9 "Maintenance Instructions for VHF Omnis" ranges". The owner shall keep the originals in the facility and send a copy of each form to the appropriate Regional office of the FAA on a monthly basis.

#### Subpart B—Nondirectional Radio Beacon Facilities

##### § 171.21 Scope.

(a) This subpart sets forth minimum requirements for the operation of non-Federal, nondirectional public use radio

beacon facilities that are to be involved in the approval of instrument flight rules and air traffic control procedures related to those facilities.

(b) A nondirectional radio beacon ("H" facilities domestically—NDB facilities internationally) radiates a continuous carrier of approximately equal intensity at all azimuths. The carrier is modulated at 1020 cycles per second for station identification purposes.

[Revision note: Based on § 407.10 (less last sentence)]

NOTE: § 407.10 (2d and 5th sentence) is omitted as internal FAA information only.

#### § 171.23 Requests for IFR procedure.

(a) Each person who requests an IFR procedure based on a nondirectional radio beacon facility that he owns must submit the following information with that request:

(1) A description of the facility and evidence that the equipment meets the performance requirements of § 171.27 and is installed in accordance with § 171.29.

(2) A proposed procedure for operating the facility.

(3) A proposed maintenance arrangement and a maintenance manual that meets the requirements of § 171.31.

(4) A statement of intention to meet the requirements of this subpart.

(b) After the FAA inspects and evaluates the facility, it advises the owner of the results and of any required changes in the facility or the maintenance manual or maintenance organization. The owner must then correct the deficiencies, if any, and operate the facility for an in-service evaluation by the FAA.

(c) Requests for deviations from the requirements of this section must be submitted to the Regional Director of the Region in which the facility is located.

#### § 171.25 Minimum requirements for approval.

(a) The following are the minimum requirements that must be met before the FAA will approve an IFR procedure for a non-Federal, nondirectional radio beacon facility under this subpart:

(1) The facility's performances, as determined by air and ground inspection, must meet the requirements of § 171.27.

(2) The installation of the equipment must meet the requirements of § 171.29.

(3) The owner must agree to operate and maintain the facility in accordance with § 171.31.

(4) The owner must agree to furnish periodic reports, as set forth in § 171.33, and agree to allow the FAA to inspect the facility and its operation whenever necessary.

(5) The owner must assure the FAA that he will not withdraw the facility from service without the permission of the FAA.

(6) The owner must bear all costs of meeting the requirements of this section and of any flight or ground inspections made before the facility is commissioned.

(b) If the applicant for approval meets the requirements of paragraph (a) of this section, the FAA commissions the facility as a prerequisite to its approval for use in an IFR procedure. The approval is withdrawn at any time the facility does not continue to meet those requirements. In addition, the facility may be de-commissioned whenever the frequency channel is needed for higher priority common system service.

#### § 171.27 Performance requirements.

(a) The facility must radiate a continuous wave carrier and be identified by on-off keying of an amplitude modulating tone of 1020 cycles per second plus or minus 50 cycles. The depth of modulation must be between the limits of 40 and 95 percent. There must be a two or three letter identification transmitted at a rate of approximately seven words per minute, preferably eight to ten times per minute, unless voice modulation is used, but in any event at intervals of not more than 30 seconds. The identification may be suppressed when voice transmissions are made.

(b) The facility must perform in accordance with recognized and accepted good electronic engineering practices for the desired service.

(c) Ground inspection consists of an examination of the design features of the equipment to determine (based on recognized and accepted good engineering practices) that there will not be conditions that will allow unsafe operations because of component failure or deterioration.

(d) Flight tests to determine the facility's adequacy for operational requirements and compliance with applicable "Standards and Recommended Practices" are conducted in accordance with the "U.S. Standard Flight Inspection Manual", particularly section 207. The original test is made by the FAA and later tests shall be made under arrangements, satisfactory to the FAA, that are made by the owner.

#### § 171.29 Installation requirements.

(a) The facility must be installed according to accepted good engineering practices, applicable electric and safety codes, and FCC licensing requirements.

(b) The facility must have a reliable source of suitable primary power.

(c) Dual transmitting equipment may be required to support some IFR procedures.

(d) A facility intended for use as an instrument approach aid for an airport must have or be supplemented by (depending on the circumstances) the following ground-air or landline communications services:

(1) At facilities outside of and not immediately adjacent to air traffic control areas, there must be ground-air communications from the airport served by the facility. Voice on the aid controlled from the airport is acceptable.

(2) At facilities within or immediately adjacent to air traffic control areas, there must be the ground-air communications required by subparagraph (1) of this paragraph and reliable communications (at least a landline telephone)

from the airport to the nearest FAA air traffic control or communication facility.

Subparagraphs (1) and (2) of this paragraph are not mandatory at airports where an adjacent FAA facility can communicate with aircraft on the ground at the airport and during the entire proposed instrument approach procedure. In addition, at low traffic density airports within or immediately adjacent to air traffic control areas, and where extensive delays are not a factor, the requirements of subparagraphs (1) and (2) of this paragraph may be reduced to reliable communications (at least a landline telephone) from the airport to the nearest FAA air traffic control or communications facility, if an adjacent FAA facility can communicate with aircraft during the proposed instrument approach procedure, at least down to the minimum en route altitude of the controlled area.

#### § 171.31 Maintenance and operations requirements.

(a) The owner of the facility must establish an adequate maintenance system and provide qualified maintenance personnel to maintain the facility at the level attained at the time it was commissioned. The maintenance personnel must meet at least the Federal Communications Commission licensing requirements.

(b) The owner must prepare, and obtain approval of, an operations and maintenance manual that sets forth mandatory procedures for operations, preventive maintenance, and emergency maintenance, including instructions on each of the following:

(1) Physical security of the facility.  
(2) Maintenance and operations by authorized persons only.

(3) FCC licensing requirements for operating and maintenance personnel.

(4) Posting of licenses and signs.

(5) Relations between the facility and FAA air traffic control facilities, with a description of the boundaries of controlled airspace over or near the facility, instructions for relaying air traffic control instructions and information (if applicable), and instructions for the operation of an air traffic advisory service if the facility is located outside of controlled airspace.

(6) Notice to the Administrator of any suspension of service.

(7) Detailed arrangements for maintenance flight inspection and servicing stating the frequency of servicing.

(8) Air-ground communications, if provided, expressly written or incorporating appropriate sections of FAA manuals by reference.

(9) Keeping of station logs and other technical reports, and the submission of reports required by § 171.33.

(10) Monitoring of the facility, at least once each half hour, to assure continuous operation.

(11) Inspections by United States personnel.

(12) Names, addresses, and telephone numbers of persons to be notified in an emergency.

## RULES AND REGULATIONS

(13) Shutdowns for routine maintenance and issue of "Notices to Airmen" for routine or emergency shutdowns.

(14) Commissioning of the facility.

(15) An acceptable procedure for amending or revising the manual.

(16) The following information concerning the facility:

(i) Location by latitude and longitude to the nearest second, and its position with respect to airport layouts.

(ii) The type, make, and model of the basic radio equipment that will provide the service.

(iii) The station power emission and frequency.

(iv) The hours of operation.

(v) Station identification call letters and method of station identification, whether by Morse code or recorded voice announcement, and the time spacing of the identification.

(c) If the owner desires to modify the facility, he must submit the proposal to the FAA and meet applicable requirements of the FCC.

(d) The owner's maintenance personnel shall participate in inspections performed by the FAA and shall show that they are proficient in maintenance procedures and using specialized test equipment.

(e) The owner shall provide a stock of spare parts, including vacuum tubes, of such a quantity to make possible the prompt replacement of components that fail or deteriorate in service.

(f) The owner shall close the facility upon receiving two successive pilot reports of its malfunctioning.

#### § 171.33 Reports.

The owner of each facility to which this subpart applies shall make the following reports, at the times indicated, to the FAA Regional office for the area in which the facility is located:

(a) *Record of meter readings and adjustments (Form FAA-198)*. To be filled out by the owner or his maintenance representative with the equipment adjustments and meter readings as of the time of commissioning, with one copy to be kept in the permanent records of the facility and two copies to the appropriate Regional Office of the FAA. The owner shall revise the form after any major repair, modernization, or retuning, to reflect an accurate record of facility operation and adjustment.

(b) *Facility maintenance log (Form FAA-406c)*. This form is a permanent record of all equipment malfunctioning met in maintaining the facility, including information on the kind of work and adjustments made, equipment failures, causes (if determined), and corrective action taken. The owner shall keep the original of each report at the facility and send a copy to the appropriate Regional Office of the FAA at the end of the month in which it is prepared.

(c) *Radio equipment operation record (Form FAA-418)*. To contain a complete record of meter readings, recorded on each scheduled visit to the facility. The owner shall keep the original of each month's record at the facility and send a copy of it to the appropriate Regional Office of the FAA.

### Subpart C—Instrument Landing System (ILS) Facilities

#### § 171.41 Scope.

This subpart sets forth minimum requirements for the operation of non-Federal public use Instrument Landing System (ILS) Facilities that are to be involved in the approval of instrument flight rules and air traffic control procedures related to those facilities.

#### § 171.43 Requests for IFR procedure.

(a) Each person who requests an IFR procedure based on an ILS facility that he owns must submit the following information with that request:

(1) A description of the facility and evidence that the equipment meets the performance requirements of § 171.47 and is installed in accordance with § 171.49.

(2) A proposed procedure for operating the facility.

(3) A proposed maintenance organization and a maintenance manual that meets the requirements of § 171.51.

(4) A statement of intent to meet the requirements of this subpart.

(b) After the FAA inspects and evaluates the facility, it advises the owner of the results and of any required changes in the facility or the maintenance manual or maintenance organization. The owner must then correct the deficiencies, if any, and operate the facility for an in-service evaluation by the FAA.

(c) Requests for deviations from the requirements of this section must be submitted to the Regional Director of the Region in which the facility is located.

#### § 171.45 Minimum requirements for approval.

(a) The following are the minimum requirements that must be met before the FAA will approve an IFR procedure for a non-Federal Instrument Landing System:

(1) The facility's performance, as determined by air and ground inspection, must meet the requirements of § 171.47.

(2) The installation of the equipment must meet the requirements of § 171.49.

(3) The owner must agree to operate and maintain the facility in accordance with § 171.51.

(4) The owner must agree to furnish periodic reports, as set forth in § 171.53 and agree to allow the FAA to inspect the facility and its operation whenever necessary.

(5) The owner must assure the FAA that he will not withdraw the facility from service without the permission of the FAA.

(6) The owner must bear all costs of meeting the requirements of this section and of any flight or ground inspections made before the facility is commissioned.

(b) If the applicant for approval meets the requirements of paragraph (a) of this section, the FAA commissions the facility as a prerequisite to its approval for use in an IFR procedure. The approval is withdrawn at any time the facility does not continue to meet those requirements. In addition, the facility may be de-commissioned whenever the

frequency channel is needed for higher priority common system service.

#### § 171.47 Performance requirements.

(a) The Instrument Landing System must perform in accordance with the "International Standards and Recommended Practices, Aeronautical Telecommunications, Part I, Paragraph 3.1" (Annex 10 to the Convention on International Civil Aviation) except as follows:

(1) The first part of paragraph 3.1.3, relating to suppression of radiation wholly or in part in any or all directions outside the 20-degree sector centered on the course line to reduce localizer does not apply.

(2) Radiation patterns must conform to limits specified in 3.1.3.3 and 3.1.3.4, but this does not mean that suppression of radiation to the rear of the antenna array to satisfy difficult siting positions (as per 3.1.3.1.4) is not allowed. For example, if a reflector screen for the antenna array is required to overcome a siting problem, the area to the rear of the localizer may be made unusable and should be so advertised.

(3) A third marker beacon (inner marker) is not required.

(b) Ground inspection consists of an examination of the design features of the equipment to determine that there will not be conditions that will allow unsafe operations because of component failure or deterioration.

(c) The monitor is checked periodically, during the in-service test evaluation period, for calibration and stability. These tests, and ground checks of glide slope and localizer radiation characteristics, are conducted in accordance with FAA Handbooks AF P 6750.1 and AF P 6750.2 "Maintenance Instructions for ILS Localizer Equipment" and "Maintenance Instructions for ILS Glide Slope Equipment".

(d) Flight tests to determine the facility's adequacy for operational requirements and compliance with applicable "Standards and Recommended Practices" are conducted in accordance with the "U.S. Standard Flight Inspection Manual", particularly section 217.

#### § 171.49 Installation requirements.

(a) The facility must be of a permanent nature, located, constructed, and installed according to ICAO Standards (Annex 10), accepted good engineering practices, applicable electric and safety codes, and FCC licensing requirements.

(b) The facility must have a reliable source of suitable primary power, either from a power distribution system or locally generated. A standby system is required for localizer, glider slope and monitor accessories to supplement the primary system, unless primary power is supplied from at least two independent sources.

(c) The localizer and glide slope components must have dual transmitting equipment with automatic changeover.

(d) There must be a means for determining, from the ground, the performance of the equipment (including antennae), initially and periodically.

(e) The facility must have, or be supplemented by (depending on the circumstances) the following ground-air or landline communications services:

(1) At facilities outside of and not immediately adjacent to air traffic control zones or area, there must be ground-air communications from the airport served by the facility. Voice on the localizer controlled from the airport is encouraged to reduce channel interference and minimize airborne equipment requirements. However, separate channels are acceptable.

(2) At facilities within or immediately adjacent to air traffic control zones or areas, there must be the ground-air communications required by subparagraph (1) of this paragraph and reliable communications (at least a landline telephone) from the airport to the nearest FAA air traffic control or communication facility.

Subparagraphs (1) and (2) of this paragraph are not mandatory at airports where an adjacent FAA facility can communicate with aircraft on the ground at the airport and during the entire proposed instrument approach procedure. In addition, at low traffic density airports within or immediately adjacent to air traffic control zones or areas, and where extensive delays are not a factor, the requirements of subparagraphs (1) and (2) of this paragraph may be reduced to reliable communications (at least a landline telephone) from the airport to the nearest FAA air traffic control or communications facility, if an adjacent FAA facility can communicate with aircraft during the proposed instrument approach procedure down to the airport surface or at least to the minimum approach altitude.

**§ 171.51 Maintenance and operations requirements.**

(a) The owner of the facility must establish an adequate maintenance system and provide qualified maintenance personnel to maintain the facility at the level attained at the time it was commissioned. The maintenance personnel must, as a minimum, meet the Federal Communications Commission licensing requirements and must show that they have the special knowledge and skills needed to maintain the facility.

(b) The owner must prepare, and obtain approval of, an operations and maintenance manual that sets forth mandatory procedures for operations, preventive maintenance, and emergency maintenance, including instructions on each of the following:

- (1) Physical security of the facility.
- (2) Maintenance and operations by authorized persons only.
- (3) FCC licensing requirements for operating and maintenance personnel.
- (4) Posting of licenses and signs.
- (5) Relation between the facility and FAA air traffic control facilities, with a description of the boundaries of controlled airspace over or near the facility, instructions for relaying air traffic control instructions and information (if applicable), and instructions for the operations of an air traffic advisory serv-

ice if the facility is located outside of controlled airspace.

(6) Notice to the Administrator of any suspension of service.

(7) Detailed and specific maintenance procedures and servicing guides stating the frequency of servicing.

(8) Air-ground communications, if provided, expressly written or incorporating appropriate sections of FAA manuals by reference.

(9) Keeping of station logs and other technical reports, and the submission of reports required by § 171.53.

(10) Monitoring of the facility.

(11) Inspections by United States personnel.

(12) Names, addresses, and telephone numbers of persons to be notified in an emergency.

(13) Shutdowns for routine maintenance and issue of "Notices to Airmen" for routine or emergency shutdowns.

(14) Commissioning of the facility.

(15) An acceptable procedure for amending or revising the manual.

(16) An explanation of the kinds of activities (such as construction or grading) in the vicinity of the facility that may require shutdown or recertification of the facility by FAA flight check.

(17) Procedures for conducting a ground check or localizer course alignment width, and clearance, and glide slope elevation angle and width.

(18) The following information concerning the facility:

(i) Facility component locations with respect to airport layout, instrument runway, and similar areas.

(ii) The type, make, and model of the basic radio equipment that will provide the service.

(iii) The station power emission and frequencies of the localizer, glide slope, markers, and associated compass locators, if any.

(iv) The hours of operation.

(v) Station identification call letters and method of station identification and the time spacing of the identification.

(vi) A description of the critical parts that may not be changed, adjusted, or repaired without an FAA flight check to confirm published operations.

(c) The owner shall make a ground check of the facility each month in accordance with procedures approved by the FAA at the time of commissioning, and shall report the results of the checks as provided in § 171.53.

(d) If the owner desires to modify the facility, he must submit the proposal to the FAA and may not allow any modifications to be made without specific approval.

(e) The owner's maintenance personnel shall participate in inspections made by the FAA and shall show that they are proficient in maintenance procedures and using specialized test equipment.

(f) Whenever it is required by the FAA, the owner shall incorporate improvements in ILS maintenance brought about by progress in the state of the art. In addition, he shall provide a stock of spare parts, including vacuum tubes, of such a quantity to make possible the prompt replacement of components that fail or deteriorate in service.

(g) The owner shall provide FAA approved test instruments needed for maintenance of the facility.

(h) The owner shall close the facility upon receiving two successive pilot reports of its malfunctioning.

**§ 171.53 Reports.**

The owner of each facility to which this subpart applies shall make the following reports, at the times indicated, to the FAA Regional Office for the area in which the facility is located:

(a) *Record of meter readings and adjustments (Form FAA 198)*. To be filed out by the owner or his maintenance representative with the equipment adjustments and meter readings as of the time of commissioning, with one copy to be kept in the permanent records of the facility and two copies to the appropriate Regional Office of the FAA. The owner shall revise the form after any major repair, modernization, or retuning, to reflect an accurate record of facility operation and adjustment.

(b) *Facility maintenance log (Form FAA 406c)*. This form is a permanent record of all equipment malfunctioning met in maintaining the facility, including information on the kind of work and adjustments made, equipment failures, causes (if determined), and corrective action taken. The owner shall keep the original of each report at the facility and send a copy to the appropriate Regional Office of the FAA at the end of each month in which it is prepared.

(c) *Radio equipment operation record (Form FAA-418)*. To contain a complete record of meter readings, recorded on each scheduled visit to the facility. The owner shall keep the original of each month's record at the facility and send a copy of it to the appropriate Regional Office of the FAA.

(d) *Facility outage and failure report (Form FAA-3092)*. To contain a record of each equipment failure that removes the facility from service. The owner shall record each failure on a separate report and send all reports for each month, at the end of that month, to the appropriate Regional Office of the FAA.

**Subpart D—General**

**§ 171.61 Materials incorporated by reference.**

Copies of documents incorporated by reference in this part are available for the use of interested persons at any FAA Regional Office.

PART 171—DISTRIBUTION TABLE

Present section	Revised section
407.1 (less last sentence) -----	171.1
407.1 (last sentence) -----	171.3
407.2 -----	171.5
407.3 -----	171.3
407.4 -----	( <sup>1</sup> )
407.5 -----	171.7
407.6 -----	171.9
407.7 -----	171.11
407.8 -----	171.13
407.10 (less last sentence) -----	171.21
407.10 (last sentence) -----	171.23
407.11 -----	171.25
407.12 -----	171.23
407.13 -----	( <sup>1</sup> )
407.14 -----	171.27
407.15 -----	171.29

<sup>1</sup> Surplusage.

## PART 171—DISTRIBUTION TABLE—CON.

Present section	Revised section
407.16	171.31
407.17	171.33
407.20 (less last sentence)	171.41
407.20 (last sentence)	171.43
407.21	171.45
407.22	171.43
407.23	(1)
407.24	171.47
407.25	171.49
407.26	171.51
407.27	171.53

<sup>1</sup> Surplusage.

[F.R. Doc. 64-7867; Filed, Aug. 5, 1964; 8:46 a.m.]

## Chapter III—Federal Aviation Agency

## SUBCHAPTER A—PROCEDURAL REGULATIONS

## PART 407—PROCEDURE FOR USE OF DOMESTIC NON-FEDERAL NAVIGATION FACILITIES FOR FAA APPROVED OPERATIONS

## Supersedure

CROSS REFERENCE: For supersedure of 14 CFR Part 407, see Chapter I of Title 14, F.R. Doc. 64-7867, *supra*.

## Title 21—FOOD AND DRUGS

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

## SUBCHAPTER B—FOOD AND FOOD PRODUCTS

## PART 121—FOOD ADDITIVES

## Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

## RELEASE AGENTS

The Commissioner of Food and Drugs, having evaluated the data in a petition (FAP 1165) submitted by Fine Organics, Inc., 205 Main Street, Lodi, New Jersey, and other relevant material, has concluded that § 121.2509 of the food additive regulations should be amended to provide for the use of stearyl erucamide as a release agent in polymeric resins that contact food. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (21 CFR 2.90; 29 F.R. 471), paragraph (b) of § 121.2509 *Release agents* is amended by adding, alphabetically, to the "List of substances" contained therein the following:

List of substances	Limitations
Stearyl erucamide	

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW.,

Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

**Effective date.** This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: July 30, 1964.

GEO. P. LARRICK,  
Commissioner of Food and Drugs.

[F.R. Doc. 64-7901; Filed, Aug. 5, 1964; 8:49 a.m.]

## SUBCHAPTER C—DRUGS

## MISCELLANEOUS AMENDMENTS

Effective on date of publication of this order in the FEDERAL REGISTER, the following changes and corrections are made in the documents concerning antibiotic drugs published in the FEDERAL REGISTER of June 13, 1964 (29 F.R. 7625, 7642), and June 19, 1964 (29 F.R. 7840).

## PART 148—ANTIBIOTIC DRUGS SUBJECT TO CERTIFICATION UNDER THE DRUG AMENDMENTS OF 1962

In § 148.3(b)(1), change "grams of kilograms" to read "grams or kilograms".

## PART 148a—AMPHOMYCIN

In § 148a.1(b)(1)(iii) change the word "*micrococcus*" in the first sentence to "*Micrococcus*", and change "0.5 millimeter" in the last sentence to read "0.5 milliliter".

## PART 148b—AMPHOTERICIN

In § 148b.1(b)(1), make the following corrections: In subdivision (i)(g), thirteenth sentence, insert a comma following "per milliliter concentration"; change "c=Average" following the equation to "c=Average"; and change "2.0 microgram" to "2.0 micrograms".

## PART 148c—COLISTIN

- 1a. In § 148c.1(a)(3), delete the comma after "§ 148.4".
- b. In § 148c.1(b)(1)(vi), tenth sentence, change "18.0 milliliters" to read "18.0 millimeters".
2. In § 148c.2(a)(3)(ii)(c)(2), change "Sterility" to "sterility".
3. In § 148c.3, make the following changes:
  - a. In paragraph (a)(2), delete the comma following "§ 148.3".
  - b. In paragraph (a)(3)(ii)(c), delete the phrase "not less than".

c. In paragraph (b)(3), change "§ 141a5" to "§ 141a.5(b)".

4. In § 148c.4(a)(1)(vii), change "contains" to "containing".

## PART 148d—CYCLOSERINE

1. Under the table of contents to Part 148d, change the authority citation from "59 Stat. 468" to "59 Stat. 463".

2. In § 148d.1(b), make the following changes:

a. In subparagraph (1)(ii)(b), insert the words, "if any," preceding the word "prescribed".

b. In subparagraph (1)(ii)(f), following the equation, change "78.1 microgram" to "78.1 micrograms".

c. In the heading to subparagraph (1)(ii)(g), change "*Sample*" to "*sample*".

d. Change the designation of (b)(7) to (b)(7).

3. In § 148d3(a), make the following changes:

a. In subparagraph (1), delete the comma following "with or without".

b. In subparagraph (4), change "package in the sample" in the first sentence to read "package in the samples".

## PART 148e—ERYTHROMYCIN

1. In Part 148e, table of contents, change "polymyxin  $\beta$ " to "polymyxin B" in §§ 148e.16, 148e.20, and 148e.21.

2. In § 148e.1(b) make the following changes:

a. In the heading to subparagraph (1), insert a dash after the word "*Potency*".

b. In subparagraph (I)(vii), eleventh sentence, change "microgram per millimeter" to "microgram per milliliter".

3. In § 148e.5(b)(1), first sentence, change "in § 148e.1(b)(1)" to "in § 148e.1(b)(1)".

4. In § 148e.10(a)(1), in the fifth sentence, change "§ 148e.7(a)(1), (iii)," to "§ 148e.7(a)(1)(i), (iii)".

5. In § 148e.13 make the following changes:

a. In paragraph (a)(3)(i)(a), change "residues" to "residue".

b. In paragraph (b)(1), first sentence, change "manner: by means" to "manner: By means".

6. In § 148e.18(a)(3)(i)(a), change "reduce" to "residue".

7. In § 148e.20(a)(1), the last sentence, change "therefore" to "therefor".

8. In § 148e.21(a)(3), change the designation of subdivision (i)(b) to (i)(b).

9. In § 148e.26 make the following changes:

a. In paragraph (a)(3)(ii)(c), change "package, of each, containing" to "package of each containing".

b. In paragraph (b)(1), last sentence, change "erythromycin base content" to "erythromycin content".

## PART 148h—KANAMYCIN SULFATE

1. In § 148h.1(b), make the following changes:

a. In subparagraph (9)(ii), insert in the list following the fourth item, a new item reading:

Distilled water, q.s.----- 1,000.00 ml.  
 b. In subparagraph (9) (iii), change "reference standard," to "working standard,".

2. In § 148h.2, make the following changes:

a. In paragraph (a) (3) (i) (b), delete the word "histamine".

b. In paragraph (b) (1), second sentence, change "make to proper" to "make proper".

**PART 148j—NOVOBIOCIN**

1. In § 148j.1(b) (1), make the following changes:

a. In subdivision (vii), ninth sentence, change "19.8 milliliters" to "19.8 millimeters".

b. Also in subdivision (vii), eleventh sentence, change "logarithmic" to "logarithmic".

2. In § 148j.3(a) (3) (ii) (b) (2), change "disintegration-time" by deleting the hyphen.

**PART 148k—NYSTATIN**

1. § 148k.1(b) (5), last sentence, change "absorbances" to "absorbancies".

2. In § 148k.5(a), make the following changes:

a. In subparagraph (1), fourth sentence, change "§ 418k.1" to "§ 148k.1".

b. In subparagraph (3) (i) (b), change "PH" to "pH".

3. In § 148k.7(b) (1), last sentence, change "units that" to "units of nystatin that".

4. In § 148k.10(a) (1), seventh sentence, change "They nystatin" to "The nystatin".

**PART 148m—OLEANDOMYCIN**

In § 148m.1, make the following changes:

a. In paragraph (a) (3), change "§ 148.3(b) of" to "§ 148.3 of".

b. In paragraph (b) (1) (iii), last sentence, change "30 days" to "3 days".

**PART 148o—PAROMOMYCIN**

1. In § 148o.1, make the following changes:

a. In paragraph (a) (1) (iv), change "aqueous" to "aqueous".

b. In paragraph (b) (1) (i) (c), change the heading "Working standard" to "Working standard."

c. Also in paragraph (b) (1), change the designation of subdivision (i) (e) to (i) (e).

d. In paragraph (b) (6), first sentence, change "procelain" to "porcelain".

2. In § 148o.3(a) (4), change "(3) (iii) of" to "(3) (ii) of".

**PART 148p—POLYMYXIN**

1. In § 148p.1, make the following changes:

a. In paragraph (a) (3), change "Caution: this" to "Caution: This".

b. In paragraph (b) (1) (ii), second sentence, change "median" to "media" in two places; third sentence, change "median" to "media" in two places; also in third sentence, change "possesses" to "possess".

c. In paragraph (b) (1) (vi), third sentence, change "and the proper" to "add the proper".

2. In § 148p.4(a) (1), sixth sentence, change "§ 148.1(a) (1) (i)" to "§ 148p.1(a) (1) (i)".

3. In § 148p.6(a) (1), fourth sentence, change "§ 148p.1(i)" to "§ 148p.1(a) (1) (i)".

**PART 148r—TYROTHRINIC**

In § 148r.1(b) (3), change "of a 0.1M" to "of 0.1M".

**PART 148t—VIOMYCIN**

In § 148t.1, make the following corrections:

a. In paragraph (a) (4), in the subparagraph heading, change "sample" to "samples."

b. In paragraph (a) (5), change "the sample" to "the samples".

c. In paragraph (b) (1) (i) (h), third sentence, insert a comma after "curve".

d. In paragraph (b) (1) (ii) (a), second sentence, change "ingredient specified" to "ingredients specified".

e. In paragraph (b) (4), delete the comma following "solution".

(Sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357)

Dated: July 30, 1964.

GEO. P. LARRICK,  
 Commissioner of Food and Drugs.

[F.R. Doc. 64-7902; Filed, Aug. 5, 1964; 8:49 a.m.]

**PART 148n—OXYTETRACYCLINE**

**PART 148s—VANCOMYCIN**

**Tests and Methods of Assay and Certification of Antibiotic Drugs Subject to Drug Amendments of 1962**

The Commissioner of Food and Drugs has evaluated the views and comments received in response to the notices of proposed rule making published in the FEDERAL REGISTER of April 18, 1963 (28 F.R. 3830, 3835), and has concluded that the following regulations should issue for the certification of certain antibiotic drugs subject to the Drug Amendments of 1962 (76 Stat. 785-787; Public Law 87-781). Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357), and under the authority delegated to him by the Secretary of Health, Education, and Welfare (21 CFR 2.90; 29 F.R. 471), Title 21 is amended by adding thereto the following new parts:

**PART 148n—OXYTETRACYCLINE**

- Sec. 148n.1 Oxytetracycline.
- 148n.2 Oxytetracycline hydrochloride.
- 148n.3 Calcium oxytetracycline.
- 148n.4 Oxytetracycline capsules; oxytetracycline hydrochloride capsules.
- 148n.5 Oxytetracycline intramuscular solution.
- 148n.6 Oxytetracycline tablets.
- 148n.7 [Reserved]

- Sec. 148n.8 Oxytetracycline for oral suspension.
- 148n.9 Oxytetracycline-nystatin for oral suspension.
- 148n.10 Oxytetracycline-nystatin capsules.
- 148n.11 Oxytetracycline hydrochloride for injection.
- 148n.12 Oxytetracycline hydrochloride soluble tablets.
- 148n.13 Oxytetracycline hydrochloride-tetracaine hydrochloride dental cones.
- 148n.14 Oxytetracycline hydrochloride dental paste.
- 148n.15 Oxytetracycline hydrochloride for inhalation.
- 148n.16 Oxytetracycline hydrochloride-methamphetamine hydrochloride for nasal solution.
- 148n.17 Ophthalmic oxytetracycline hydrochloride.
- 148n.18 Oxytetracycline hydrochloride ophthalmic ointment.
- 148n.19 Oxytetracycline hydrochloride-hydrocortisone topical ointment.
- 148n.20 Oxytetracycline hydrochloride-polymyxin B sulfate topical ointment.
- 148n.21 Oxytetracycline hydrochloride-polymyxin B sulfate eye and ear ointment.
- 148n.22 Oxytetracycline hydrochloride ophthalmic oil suspension.
- 148n.23 Oxytetracycline hydrochloride-hydrocortisone acetate ophthalmic and otic suspension.
- 148n.24 Calcium oxytetracycline sirup.

**AUTHORITY:** The provisions of this Part 148n issued under sec. 507, 59 Stat. 463 as amended; 21 U.S.C. 357.

**§ 148n.1 Oxytetracycline.**

(a) *Requirements for certification—*

(1) *Standards of identity, strength, quality, and purity.* Oxytetracycline is the hydrated or anhydrous crystalline compound of a kind of oxytetracycline, or a mixture of two or more such compounds. It is so purified and dried that:

- (i) Its potency is not less than 900 micrograms of oxytetracycline per milligram on an anhydrous basis.
- (ii) It is sterile.
- (iii) It is nontoxic.
- (iv) It is nonpyrogenic.
- (v) It contains no histamine nor histamine-like substance.

(vi) Its moisture content is not more than 7.5 percent.

(vii) Its pH in an aqueous suspension containing 10 milligrams per milliliter is not less than 4.5 and not more than 7.0.

(viii) When calculated on the anhydrous basis, its absorptivity at 353 millimicrons is 100 ± 4 percent of the oxytetracycline standard similarly treated.

(ix) It gives a positive result to an identity test for oxytetracycline.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3(b) of this chapter. Its expiration date is 12 months.

(3) *Request for certification.* In addition to the requirements of § 148.4 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, sterility, toxicity, pyrogens, histamine, moisture, pH, absorptivity, crystallinity, and identity.

(ii) Samples required:

(a) For all tests except sterility: 10 packages, each containing approximately 300 milligrams.

## RULES AND REGULATIONS

(b) For sterility testing: 10 packages, each containing approximately 40 milligrams.

(4) Fees. \$5.00 for each package in the sample submitted in accordance with subparagraph (3) (i) (a) of this paragraph; \$10.00 for all packages in the sample submitted in accordance with paragraph (3) (i) (b) of this paragraph.

(b) Tests and methods of assay—(1) Potency—(i) Plate assay—(a) Cylinders (cups). Use cylinders described in § 141a.1(a) of this chapter.

(b) Culture media. Use ingredients that conform to the standards prescribed by the U.S.P. or N.F.

(1) Make nutrient agar for maintaining the test organism as follows:

Peptone	6.0 gm.
Pancreatic digest of casein	4.0 gm.
Yeast extract	3.0 gm.
Beef extract	1.5 gm.
Dextrose	1.0 gm.
Agar	15.0 gm.
Distilled water, q.s.	1,000.0 ml.
pH 6.5 to 6.6 after sterilization.	

(2) Make nutrient agar for the seed layer and for the base layer as follows:

Peptone	6.0 gm.
Yeast extract	3.0 gm.
Beef extract	1.5 gm.
Agar	15.0 gm.
Distilled water, q.s.	1,000.0 ml.
pH 5.8 to 6.0 after sterilization.	

In lieu of preparing the media from the individual ingredients specified in this subsection, the media may be made from a dehydrated mixture which, when reconstituted with distilled water, has the same composition as such media. Minor modifications of the individual ingredients specified are permissible if the resulting medium possesses growth-promoting properties at least equal to the medium described.

(c) Working standard. Accurately weigh a suitable quantity of the oxytetracycline working standard and dissolve in 0.1N hydrochloric acid to make an appropriate stock solution. Keep in a glass-stoppered flask and store in the refrigerator for not more than 3 days.

(d) Preparation of sample. Dissolve the sample to be tested in 0.1N hydrochloric acid to make an appropriate stock solution. Make the final dilution in 0.1M potassium phosphate buffer, pH 4.5, to contain 1.0 microgram per milliliter (estimated).

(e) Preparation of suspension. The test organism is *Bacillus cereus* var. *mycoides* (ATCC 11778), which is maintained on slants of agar described in subdivision (i) (b) (1) of this subparagraph. Wash the organism from the agar slant with 3 milliliters of sterile U.S.P. saline T.S. onto a large agar surface such as that provided by a Roux bottle containing 300 milliliters of the agar described in subdivision (i) (b) (1) of this subparagraph. Spread the suspension of organism over the entire agar surface with the aid of sterile glass beads. Incubate for 1 week at 37° C. Using 50 milliliters of sterile U.S.P. saline T.S., wash the growth from the agar surface into a glass-stoppered Erlenmeyer flask. Heat-shock this suspension for 30 minutes at 70° C. Wash three times with sterile U.S.P. saline T.S., centrifuging between each

washing, and then heat-shock for 30 minutes at 70° C. Resuspend in 50 milliliters of sterile U.S.P. saline T.S. and maintain in a refrigerator. This spore suspension may be kept for 1 month. Run test plates to determine the quantity of spore suspension (usually 0.1 milliliter) that should be added to each 100 milliliters of agar to give clear, sharp zones of inhibition of appropriate size.

(f) Preparation of plates. Add 21 milliliters of the agar prepared as described in subdivision (i) (b) (2) of this subparagraph to each Petri dish (20 millimeters x 100 millimeters). Distribute the agar evenly in the plates, and allow it to harden. Use the plates the same day they are prepared. Melt a sufficient amount of the agar described in subdivision (i) (b) (2) of this subparagraph, cool to 48° C., add the proper amount of the test organism as described in subdivision (i) (d) of this subparagraph, and mix thoroughly. Add 4 milliliters of this inoculated agar to each Petri dish. Distribute the agar evenly in the plates, cover with porcelain covers glazed on the outside, and allow to harden. Place 6 cylinders on the agar surface so that they are at approximately 60° intervals on a 2.8-centimeter radius.

(g) Standard curve. Prepare the daily standard curve by further diluting the stock working standard solution in 0.1M potassium phosphate buffer, pH 4.5, to obtain concentrations of 0.64, 0.80, 1.0, 1.25, and 1.56 micrograms per milliliter. Use three plates for the determination of each point on the curve, except the 1.0 microgram per milliliter concentration, a total of 12 plates. On each of three plates fill three cylinders with the 1.0 micrograms per milliliter standard, and the other three cylinders with the concentration under test. Thus, there will be thirty-six 1-microgram determinations and 9 determinations for each of the other points on the curve. After incubation, read the diameters of the circles of inhibition of the plates. Average the readings of the 1.0 microgram per milliliter concentration and the readings of the point tested for each set of three plates and average also all 36 readings of the 1.0 microgram per milliliter concentration. The average of the 36 readings of the 1.0 microgram per milliliter concentration is the correction point for the curve. Correct the average value obtained for each point to the figure it would be if the 1.0 microgram per milliliter reading for that set of three plates were the same as the correction point. Thus, if in correcting the 0.8 microgram per milliliter concentration, the average of the 36 readings of the 1.0 microgram concentration were 20.0 millimeters, and the average of the 1.0 microgram concentration of this set of three plates were 19.8 millimeters, the correction would be +0.2 millimeter. If the average reading of the 0.8-microgram concentration of these same three plates were 19.0 millimeters, the corrected value would be 19.2 millimeters. Plot these corrected values, including the average of the 1.0 microgram per milliliter concentration, on 2-cycle semilog

paper, using the concentration in micrograms per milliliter as the ordinate (the logarithmic scale) and the diameter of the zone of inhibition as the abscissa. Draw the standard curve through these points, either by inspection or by means of the following equations:

$$L = \frac{3a + 2b + c - e}{5}$$

$$H = \frac{3e + 2d + c - a}{5}$$

where:

L = Calculated zone diameter for the lowest concentration of the standard curve;

H = Calculated zone diameter for the highest concentration of the standard curve;

c = Average zone diameter of 36 readings of the 1.0 microgram per milliliter standard;

a, b, d, e = Corrected average values for the 0.64, 0.80, 1.25, and 1.56 micrograms per milliliter standard solutions, respectively.

Plot the values obtained for L and H and connect with a straight line.

(h) Assay. Use three plates for each sample. Fill three cylinders on each plate with the standard 1.0 microgram per milliliter solution and three cylinders with the 1.0 microgram per milliliter (estimated) sample, alternating standard and sample. Incubate all plates, including those containing the standard curve, at 30° C. overnight, and measure the diameter of each circle of inhibition. To estimate the potency of the sample, average the zone readings of the standard and the zone readings of the sample on the three plates used. If the sample gives a larger zone size than the average of the standard, add the difference between them to the 1.0 microgram per milliliter zone on the standard curve. If the average sample value is lower than the standard value, subtract the difference between them from the 1.0 microgram per milliliter value on the curve. From the standard curve, read the potencies corresponding to these corrected values of zone sizes.

(i) Turbidimetric assay. In lieu of the plate assay method described in subdivision (i) (h) of this subparagraph, the sample may be assayed for potency by the following turbidimetric method:

(a) Nutrient broth: Make nutrient broth for preparing an inoculum of the test organism as follows:

Peptone	5.0 gm.
Yeast extract	1.5 gm.
Beef extract	1.5 gm.
Sodium chloride	3.5 gm.
Dextrose	1.0 gm.
Dipotassium phosphate	3.68 gm.
Potassium dihydrogen phosphate	1.32 gm.
Distilled water, q.s.	1,000.0 ml.
pH 7.0 after sterilization.	

In lieu of preparing the medium from the individual ingredients specified in this subsection, the medium may be made from a dehydrated mixture which, when reconstituted with distilled water, has the same composition as such medium. Minor modifications of the individual ingredients specified are permissible if the resulting medium possesses growth-promoting properties at least equal to the medium described.

(b) Working standard. Accurately weigh a suitable quantity of the oxy-

tetracycline working standard and dissolve in 0.1N hydrochloric acid to make an appropriate stock solution. Keep in a glass-stoppered flask and store in the refrigerator for not more than 3 days.

(c) *Preparation of sample.* Dissolve an appropriate quantity of the sample in a volume of 0.1N hydrochloric acid to obtain a convenient stock solution. Make other dilutions volumetrically in 0.1M potassium phosphate buffer, pH 4.5, to a final concentration of 0.24 microgram of oxytetracycline base per milliliter (estimated).

(d) *Preparation of test organism.* The test organism is *Staphylococcus aureus* (ATCC 6538P), which is maintained on agar described in subdivision (i) (b) (1) of this subparagraph. From a stock slant, inoculate a Roux bottle containing the same agar and incubate for 24 hours at 32° C. to 35° C. Wash the growth from the agar surface with 50 milliliters of sterile U.S.P. saline T.S. Standardize the resulting bulk suspension so that a 1:20 dilution in U.S.P. saline T.S. will give 25 percent light transmission, using a suitable photoelectric colorimeter with a 580-millimicron filter and a 13-millimeter diameter test tube as an absorption cell. For the daily inoculum, use approximately 3.0 milliliters of the bulk suspension for each 1,000 milliliters of nutrient broth needed in the assay.

(e) *Procedure.* Prepare solutions for the daily standard curve by diluting an aliquot of the stock working standard solution prepared as described in subdivision (ii) (b) of this subparagraph in 0.1M potassium phosphate buffer, pH 4.5, to the following concentrations: 0.146, 0.187, 0.240, 0.308, and 0.395 microgram per milliliter. Place 1.0 milliliter of each concentration of the standard curve and of the sample solution prepared as described in subdivision (ii) (c) of this subparagraph in each of three replicate test tubes (16 millimeters x 125 millimeters). To each tube add 9 milliliters of the inoculated broth described in subdivision (ii) (d) of this subparagraph, and place immediately in a water bath at 37° C. for 3 to 4 hours. Remove the tubes and add 0.5 milliliter of a 12 percent solution of formaldehyde to each tube. Read the absorbance values of each tube in a suitable photoelectric colorimeter, using a wavelength of 530 millimicrons. Set the instrument at zero absorbance with clear, uninoculated broth prepared as described in subdivision (ii) (a) of this subparagraph.

(f) *Estimation of potency.* Plot the average absorbance values for each concentration of the standard on semi-logarithmic graph paper with absorbance values on the arithmetic scale and concentrations on the logarithmic scale. Construct the best straight line through the points either by inspection or by means of the following equations:

$$L = \frac{3a + 2b + c - e}{5}$$

$$H = \frac{3e + 2d + c - a}{5}$$

where:

L=Calculated absorbance value for the lowest concentration of the standard curve;

H=Calculated absorbance value for the highest concentration of the standard curve;

a, b, c, d, e=Average absorbance values for each concentration of the standard curve.

Plot the values obtained for L and H and connect the points with a straight line. Average the absorbance value for the sample and read the oxytetracycline concentration from the standard curve. Multiply the concentration by appropriate dilution factors to obtain the oxytetracycline content of the sample.

(iii) *Chemical assay.* In lieu of the biological assay methods described in this paragraph, the sample may be assayed for potency by the following chemical assay method:

- (a) *Reagents.* (1) 1N hydrochloric acid.
- (2) 0.01N hydrochloric acid.
- (3) Ferric chloride stock solution.

Quickly weigh (very hygroscopic) 5.0 grams of FeCl<sub>3</sub>·6H<sub>2</sub>O into a 100-milliliter beaker. Add approximately 10 milliliters of 1N hydrochloric acid, and stir to dissolve. Quantitatively transfer to a 50-milliliter, glass-stoppered, amber volumetric flask, and make up to volume with water.

$$\text{Micrograms of oxytetracycline per milligram} = \frac{\text{Absorbance of sample}}{\text{Absorbance of standard}} \times \frac{\text{Milligrams of standard}}{\text{Milligrams of sample}} \times \text{Potency of standard in micrograms per milligram} \times \frac{100}{(100 - m)}$$

where m=percent moisture in the sample.

(2) *Sterility.* Using 40 milligrams from each container tested, proceed as directed in § 141a.2 of this chapter, except that neither penicillinase nor the control tube is used in the test for bacteria.

(3) *Toxicity.* Proceed as directed in § 141a.4 of this chapter, using as a test dose 0.5 milliliter of an aqueous solution containing 2.0 milligrams per milliliter prepared by dissolving 40 milligrams in 2.0 milliliters of 0.1N hydrochloric acid and diluting with the required amount of sterile distilled water.

(4) *Pyrogens.* Proceed as directed in § 141a.3 of this chapter, using as a test dose 1.0 milliliter per kilogram of an aqueous solution containing 500 micrograms per milliliter, prepared by dissolving 40 milligrams in 2.0 milliliters of 0.1N hydrochloric acid and diluting with the required amount of pyrogen-free, sterile distilled water.

(5) *Histamine.* Proceed as directed in § 141b.105 of this chapter, using as a test dose 0.6 milliliter per kilogram of a sterile distilled water solution containing 5 mil-

(4) Ferric chloride working reagent.

Pipette 10.0 milliliters of ferric chloride stock solution to a 2-liter volumetric flask, add 20.0 milliliters 1N hydrochloric acid and bring to volume with water. Check the pH; it should be between 2.0 and 2.1.

(b) *Standard solution.* Accurately weigh approximately 50 milligrams of the oxytetracycline working standard and dissolve with 25 milliliters of 0.1N hydrochloric acid. Quantitatively transfer to a 250-milliliter volumetric flask and dilute to volume with distilled water. This solution may be used for 3 days if stored in the refrigerator.

(c) *Sample solution.* Prepare the sample solution as directed in subdivision (i) (b) of this subparagraph.

(d) *Procedure.* Pipette exactly 10.0 milliliters of the standard solution and of the sample solution into separate test tubes. To each tube add exactly 10.0 milliliters of ferric chloride working reagent, mix and allow to stand 15 minutes. Determine the absorbance of each solution at 490 millimicrons in a suitable spectrophotometer against a blank prepared from 10 milliliters of 0.01N hydrochloric acid and 10 milliliters of ferric chloride working reagent.

(e) *Estimation of potency.* Calculate the potency as follows:

$$\text{Micrograms of oxytetracycline per milligram} = \frac{\text{Absorbance of sample}}{\text{Absorbance of standard}} \times \frac{\text{Milligrams of standard}}{\text{Milligrams of sample}} \times \text{Potency of standard in micrograms per milligram} \times \frac{100}{(100 - m)}$$

ligrams per milliliter, prepared by dissolving 40 milligrams in 2.0 milliliters of 0.1N hydrochloric acid and diluting with the required amount of sterile distilled water.

(6) *Moisture.* Proceed as directed in § 141a.26(e) of this chapter.

(7) *pH.* Proceed as directed in § 141 a.5(b) of this chapter, using an aqueous suspension containing 10 milligrams per milliliter.

(8) *Absorptivity.* Determine the absorbance of the sample and standard solutions in the following manner: Dissolve approximately 50 milligrams each of the sample and standard in 250 milliliters of 0.1N hydrochloric acid. Transfer a 10-milliliter aliquot to a 100-milliliter volumetric flask, and dilute to volume with 0.1N hydrochloric acid. Using a suitable spectrophotometer and 0.1N hydrochloric acid as the blank, determine the absorbance of each solution at 353 millimicrons. Determine the percent absorptivity of the sample relative to the absorptivity of the standard using the following calculations:

$$\text{Percent relative absorptivity} = \frac{\text{Absorbance of sample} \times \text{milligrams standard} \times \text{potency of standard in micrograms per milligram} \times 10}{\text{Absorbance of standard} \times \text{milligrams sample} \times (100 - m)}$$

where m=percent moisture in the sample.

(9) *Crystallinity.* Proceed as directed in § 141a.5(c) of this chapter.

(10) *Identity.* To about 1 milligram of sample, add 2 milliliters of sulfuric acid; a light-red color is produced when oxytetracycline is present.

§ 148n.2 Oxytetracycline hydrochloride.

(a) *Requirements for certification—*  
 (1) *Standards of identity, strength, quality, and purity.* Oxytetracycline hydrochloride is the crystalline hydrochloride

salt of a kind of oxytetracycline or a mixture of two or more such salts. It is so purified and dried that:

(i) Its potency is not less than 835 micrograms of oxytetracycline per milligram on an anhydrous basis.

(ii) It is sterile.

(iii) It is nontoxic.

(iv) It is nonpyrogenic.

(v) It contains no histamine nor histamine-like substance.

(vi) Its moisture content is not more than 1.5 percent.

(vii) Its pH in an aqueous solution containing 10 milligrams per milliliter is not less than 2.0 and not more than 3.0.

(viii) When calculated on the anhydrous basis, its absorptivity at 353 millimicrons is  $92.5 \pm 4.3$  percent of the oxytetracycline working standard similarly treated.

(ix) It gives a positive result to an identity test for oxytetracycline.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3(b) of this chapter. Its expiration date is 12 months.

(3) *Request for certification.* In addition to the requirements of § 148.4 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, sterility, toxicity, pyrogens, histamine, moisture, pH, absorptivity, crystallinity, and identity.

(ii) Samples of the batch:

(a) For all tests except sterility: 10 packages, each containing approximately 300 milligrams.

(b) For sterility testing: 10 packages, each containing approximately 40 milligrams.

(4) *Fees.* \$5.00 for each package in the sample submitted in accordance with subparagraph (3) (ii) (a) of this paragraph; \$10.00 for all packages in the sample submitted in accordance with subparagraph (3) (ii) (b) of this paragraph.

(b) *Tests and methods of assay—(1) Potency.* Proceed as directed in § 148n.1 (b) (1).

(2) *Sterility.* Proceed as directed in § 148n.1 (b) (2).

(3) *Toxicity.* Proceed as directed in § 141a.4 of this chapter, using as a test dose 0.5 milliliter of a solution in sterile distilled water containing 2.0 milligrams of oxytetracycline per milliliter.

(4) *Pyrogens.* Proceed as directed in § 141a.3 of this chapter, using as a test dose 1.0 milliliter per kilogram of a solution in sterile, pyrogen-free distilled water containing 5 milligrams of oxytetracycline per milliliter.

(5) *Histamine.* Proceed as directed in § 141b.105 of this chapter, using as a test dose 0.6 milliliter per kilogram of a sodium chloride solution containing 5 milligrams of oxytetracycline per milliliter.

(6) *Moisture.* Proceed as directed in § 141a.5(a) of this chapter.

(7) *pH.* Proceed as directed in § 141a.5(b) of this chapter, using an aqueous solution containing 10 milligrams per milliliter.

(8) *Absorptivity.* Proceed as directed in § 148n.1 (b) (8).

(9) *Crystallinity.* Proceed as directed in § 141a.5(c) of this chapter.

(10) *Identity.* Proceed as directed in § 148n.1 (b) (10).

### § 148n.3 Calcium oxytetracycline.

(a) *Requirements for certification—*

(1) *Standards of identity, strength, quality, and purity.* Calcium oxytetracycline is the crystalline calcium salt of a kind of oxytetracycline or a mixture of two or more such salts. It is so purified and dried that:

(i) Its potency is equivalent to not less than 865 micrograms of oxytetracycline per milligram on an anhydrous basis.

(ii) It is nontoxic.

(iii) Its moisture content is not less than 8 percent and not more than 14 percent.

(iv) Its pH in an aqueous suspension containing 25 milligrams per milliliter is not less than 6.0 and not more than 8.0.

(v) Its calcium content as the sulfated ash is not less than 3.85 percent and not more than 4.35 percent on an anhydrous basis.

(vi) It gives a positive identity test.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3 (b) of this chapter. Its expiration date is 12 months.

(3) *Request for certification.* In addition to the requirements of § 148.4 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, toxicity, moisture, pH, calcium content, identity, and crystallinity.

$$\text{Percent calcium} = \frac{\text{Weight of residue} \times 0.29435}{\text{Weight of sample}} \times 100.$$

(6) *Crystallinity.* Proceed as directed in § 141a.5(c) of this chapter.

(7) *Identity.* Proceed as directed in § 148n.1 (b) (10).

### § 148n.4 Oxytetracycline capsules; oxytetracycline hydrochloride capsules.

(a) *Requirements for certification—*

(1) *Standards of identity, strength, quality, and purity.* Oxytetracycline capsules and oxytetracycline hydrochloride capsules are gelatin capsules containing oxytetracycline or oxytetracycline hydrochloride, with or without one or more suitable sulfonamides, analgesics, and antihistamines, and with or without one or more suitable and harmless vegetable oils, buffers, preservatives, diluents, binders, and lubricants. They may contain glucosamine hydrochloride. The potency of each capsule is 50 milligrams, 100 milligrams, 125 milligrams or 250 milligrams of oxytetracycline. The moisture content is not more than 5.0 percent if it contains oxytetracycline hydrochloride and not more than 7.5 percent if it contains oxytetracycline. The oxytetracycline used conforms to the standards prescribed by § 148n.1 (a) (1) (i), (iii), (vi), (vii), (viii), and (ix). The oxytetracycline hydrochloride used conforms to the standards prescribed by § 148n.2 (a) (1) (i), (iii), (vi), (vii), (viii), and (ix). Each other substance used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

(ii) Samples required: 10 packages, each containing approximately 300 milligrams.

(4) *Fees.* \$4.00 for each package in the sample submitted in accordance with subparagraph (3) (ii) of this paragraph.

(b) *Tests and methods of assay—(1) Potency.* Proceed as directed in § 148n.1 (b) (1).

(2) *Toxicity.* Proceed as directed in 141d.305(b) of this chapter, using as a test dose 0.5 milliliter of a suspension containing 25 milligrams of oxytetracycline in a 10 percent aqueous acacia suspension.

(3) *Moisture.* Proceed as directed in § 141a.26(e) of this chapter.

(4) *pH.* Proceed as directed in § 141a.5(b) of this chapter, using a saturated aqueous suspension containing 25 milligrams per milliliter.

(5) *Calcium content.* Place approximately 1 gram of the sample, accurately weighed, in a tared porcelain crucible, and carefully ignite at a low temperature until thoroughly charred. The crucible may be loosely covered with a porcelain lid during the charring. Add to the contents of the crucible 2.0 milliliters of sulfuric acid, and cautiously heat until white fumes are evolved, then ignite, preferably in a muffle furnace, at 500° C. to 600° C. until the carbon is all burned off. Cool the crucible in a desiccator and weigh. From the weight of residue obtained, calculate the calcium content as follows:

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3 of this chapter. Its expiration date is 12 months.

(3) *Request for certification.* In addition to the requirements of § 148.4 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(a) The oxytetracycline or oxytetracycline hydrochloride used in making the batch for potency, toxicity, moisture, pH, absorptivity, identity, and crystallinity.

(b) The batch for potency and moisture.

(ii) Samples required:

(a) Oxytetracycline or oxytetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 300 milligrams.

(b) The batch: Minimum 30 capsules.

(c) In case of an initial request for certification, each other ingredient used in making the batch: One package of each containing approximately 5 grams.

(4) *Fees.* \$0.75 for each capsule in the sample submitted in accordance with subparagraph (3) (ii) (b) of this paragraph; \$4.00 for each immediate container submitted in accordance with subparagraph (3) (ii) (a) and (c) of this paragraph.

(b) *Tests and methods of assay—(1) Potency.* Using a representative number of capsules (usually 5 to 12) and 500 milliliters of 0.1N hydrochloric acid in a blender, proceed as directed in § 148n.1

(b)(1). The potency of the drug is satisfactory if it contains not less than 90 percent and not more than 120 percent of the number of milligrams of oxytetracycline that it is represented to contain.

(2) *Moisture*. If it contains oxytetracycline hydrochloride, proceed as directed in § 141a.5(a) of this chapter, and if it contains oxytetracycline proceed as directed in § 141a.26(e) of this chapter.

#### § 148n.5 Oxytetracycline intramuscular solution.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity*. Oxytetracycline intramuscular solution is oxytetracycline, with or without one or more suitable and harmless buffer substances, anesthetics, preservatives, antioxidants, complexing agents, and solvents. Its potency is 50 milligrams or 125 milligrams of oxytetracycline per milliliter. It is sterile. It is nontoxic. It is nonpyrogenic. It contains no histamine nor histamine-like substances. Its pH is not less than 8.0 and not more than 9.0. The oxytetracycline used conforms to the standards prescribed by § 148n.1(a)(1) (i), (vi), (vii), (viii), and (ix). Each other ingredient used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

(2) *Labeling*. It shall be labeled in accordance with the requirements of § 148.3 of this chapter. Its expiration date is 12 months.

(3) *Request for certification*. In addition to the requirements of § 148.4 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(a) The oxytetracycline used in making the batch for potency, moisture, pH, absorptivity, crystallinity, and identity.

(b) The batch for potency, sterility, toxicity, pyrogens, histamine, and pH.

(ii) *Samples required*:

(a) Oxytetracycline used in making the batch: 10 packages, each containing approximately 300 milligrams.

(b) The batch:

(1) For all tests except sterility: A minimum of 10 immediate containers.

(2) For sterility testing: 10 immediate containers.

(c) In case of an initial request for certification, each other ingredient used in making the batch: One package of each containing approximately 5 grams.

(4) *Fees*. \$10.00 for each immediate container in the sample submitted in accordance with subparagraph (3) (ii) (b) (1) of this paragraph; \$4.00 for each container in the samples submitted in accordance with subparagraph (3) (ii) (a) and (c) of this paragraph; \$10.00 for all containers in the sample submitted in accordance with subparagraph (3) (ii) (b) (2) of this paragraph.

(b) *Tests and methods of assay*—(1) *Potency*. Proceed as directed in § 148n.1(b)(1) (i) or (ii), except prepare the sample as follows: Transfer a representative quantity of the sample equivalent to one dose to a 100-milliliter volumetric flask. Make to mark with 0.1N hydrochloric acid. Further dilute in pH 4.5

buffer solution to the prescribed reference concentration. Its potency is satisfactory if it contains not less than 90 percent and not more than 120 percent of the number of milligrams of oxytetracycline per milliliter that it is represented to contain.

(2) *Sterility*. Use the entire contents of single-dose containers or the equivalent of approximately 40 milligrams of oxytetracycline from each multiple-dose container, and proceed as directed in § 141a.2 of this chapter, except that neither penicillinase nor the control tube is used in the test for bacteria.

(3) *Toxicity*. Proceed as directed in § 141a.4 of this chapter, except use sterile distilled water as the diluent, and inject intraperitoneally 0.5 milliliter of a solution containing 2 milligrams of oxytetracycline per milliliter.

(4) *Pyrogens*. Proceed as directed in § 141a.3 of this chapter, using as a test dose 1.0 milliliter per kilogram of a solution containing 500 micrograms of oxytetracycline per milliliter in sterile, pyrogen-free distilled water.

(5) *Histamine*. Proceed as directed in § 141b.105 of this chapter, using as a test dose 0.6 milliliter per kilogram of a solution containing 5 milligrams of oxytetracycline per milliliter in sterile distilled water.

(6) *pH*. Using the undiluted solution, proceed as directed in § 141a.5(b) of this chapter.

#### § 148n.6 Oxytetracycline tablets.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity*. Oxytetracycline tablets are tablets composed of oxytetracycline, and one or more suitable and harmless diluents, binders, lubricants, colorings, and coating substances. The potency of each tablet is 250 milligrams of oxytetracycline. The moisture content is not more than 7.5 percent. They shall disintegrate within 1 hour. The oxytetracycline used conforms to the standards prescribed by § 148n.1(a)(1) (i), (iii), (vi), (vii), (viii), and (ix). Each other substance used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

(2) *Labeling*. It shall be labeled in accordance with the requirements of § 148.3 of this chapter. Its expiration date is 12 months.

(3) *Request for certification*. In addition to the requirements of § 148.4 of this chapter, each such request shall contain:

(i) Results of tests and assays on:  
(a) The oxytetracycline used in making the batch for potency, toxicity, moisture, pH, absorptivity, crystallinity, and identity.

(b) The batch for potency, moisture, and disintegration time.

(ii) *Samples required*:

(a) The oxytetracycline used in making the batch: 10 packages, each containing approximately 300 milligrams.

(b) The batch:

(1) For all tests except disintegration time: A minimum of 30 tablets.

(2) For disintegration time: Six tablets.

(c) In case of an initial request for certification, each other ingredient used in making the batch: One package of each containing approximately 5 grams.

(4) *Fees*. \$0.75 for each tablet in the sample submitted in accordance with subparagraph (3) (ii) (b) (1) of this paragraph; \$3.00 for all tablets in the sample submitted in accordance with subparagraph (3) (ii) (b) (2) of this paragraph; \$4.00 for each package in the samples submitted in accordance with subparagraph (3) (ii) (a) and (c) of this paragraph.

(b) *Tests and methods of assay*—(1) *Potency*. Proceed as directed in § 148n.1(b)(1) (i) or (ii), except prepare the sample as follows: Place a representative number of tablets in a glass blending jar containing 500 milliliters of 0.1N hydrochloric acid. Using a high-speed blender, blend for at least 5 minutes and then make the proper estimated dilutions in 0.1M potassium phosphate buffer, pH 4.5, to the prescribed reference concentration. Its potency is satisfactory if it contains not less than 90 percent and not more than 120 percent of the number of milligrams of oxytetracycline that it is represented to contain.

(2) *Moisture*. Proceed as directed in § 141a.26(e) of this chapter.

(3) *Disintegration time*. Proceed as directed in § 141a.9(c) of this chapter.

#### § 148n.7 [Reserved]

#### § 148n.8 Oxytetracycline for oral suspension.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity*. Oxytetracycline for oral suspension is oxytetracycline, with one or more suitable and harmless buffer substances, preservatives, diluents, colorings, and flavorings. When prepared as directed in the labeling, each milliliter contains 50 milligrams of oxytetracycline. Its moisture content is not more than 2 percent. When reconstituted as directed in its labeling, its pH is not less than 5.5 and not more than 7.5. The oxytetracycline used conforms to the standards prescribed by § 148n.1(a)(1) (i), (iii), (vi), (vii), (viii), and (ix). Each other substance used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

(2) *Labeling*. It shall be labeled in accordance with the requirements of § 148.3 of this chapter. Its expiration date is 12 months.

(3) *Request for certification*. In addition to the requirements of § 148.4 of this chapter, each such request shall contain:

(i) Results of tests and assays on:  
(a) The oxytetracycline used in making the batch for potency, toxicity, moisture, pH, absorptivity, crystallinity, and identity.

(b) The batch for potency, moisture and pH.

(ii) *Samples required*:

(a) Oxytetracycline used in making the batch: 10 packages, each containing approximately 300 milligrams.

(b) The batch: A minimum of 6 immediate containers.

(c) In case of an initial request for certification, each other ingredient used

in making the batch: One package of each containing approximately 5 grams.

(4) *Fees.* \$4.00 for each container in the samples submitted in accordance with subparagraph (3) (ii) of this paragraph.

(b) *Tests and methods of assay—*

(1) *Potency.* Proceed as directed in § 148n.1(b) (1) (i) or (ii), except prepare the sample as follows: Reconstitute as directed in the labeling. Transfer an appropriate aliquot (usually from 1.0 milliliter to 5.0 milliliters) to a 100-milliliter volumetric flask, and make to mark with 0.1N hydrochloric acid. Withdraw an aliquot from the volumetric flask, and using pH 4.5 buffer solution dilute to the prescribed reference concentration. Its content of oxytetracycline is satisfactory if it contains not less than 90 percent and not more than 115 percent of the number of milligrams of oxytetracycline that it is represented to contain.

(2) *Moisture.* Proceed as directed in § 141a.5(a) of this chapter.

(3) *pH.* Reconstitute as directed in the labeling and proceed as directed in § 141a.5(b) of this chapter.

#### § 148n.9 Oxytetracycline-nystatin for oral suspension.

(a) *Requirements for certification—*

(1) *Standards of identity, strength, quality, and purity.* Oxytetracycline-nystatin for oral suspension is oxytetracycline and nystatin, with glucosamine hydrochloride and one or more suitable and harmless buffer substances, preservatives, diluents, colorings, and flavorings. When reconstituted as directed in the labeling, each milliliter shall contain 25 milligrams of oxytetracycline and 25,000 units of nystatin. Its moisture content is not more than 2 percent. When reconstituted as directed in the labeling, its pH is not less than 4.5 and not more than 7.5. The oxytetracycline used conforms to the standards prescribed by § 148n.1(a) (1) (i), (iii), (vi), (viii), and (ix). The nystatin used conforms to the standards prescribed by § 148k.1(a) (1) of this chapter. Each other substance used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3 of this chapter. Its expiration date is 12 months.

(3) *Request for certification.* In addition to the requirements of § 148.4 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(a) The oxytetracycline used in making the batch for potency, toxicity, moisture, pH, absorptivity, crystallinity, and identity.

(b) The nystatin used in making the batch for potency, toxicity, moisture, pH, and identity.

(c) The batch for oxytetracycline content, nystatin content, moisture, and pH.

(ii) Samples required:

(a) The oxytetracycline used in making the batch: 10 packages, each containing approximately 300 milligrams.

(b) The nystatin used in making the batch: 10 packages, each containing 300 milligrams.

(c) The batch: A minimum of 7 immediate containers.

(d) In case of an initial request for certification, each other ingredient used in making the batch: One package of each containing approximately 5 grams.

(4) *Fees.* \$5.00 for each immediate container in the sample submitted in accordance with subparagraph (3) (ii) (c) of this paragraph; \$4.00 for each package in the samples submitted in accordance with subparagraph (3) (ii) (a), (b), and (d) of this paragraph.

(b) *Tests and methods of assay—*(1)

*Potency—*(i) *Oxytetracycline content.* Proceed as directed in § 148n.1(b) (1) (i) or (ii), except prepare the sample as follows: Reconstitute the powder as directed in the labeling of the drug. Transfer an appropriate aliquot (usually from 1.0 milliliter to 5.0 milliliters) to a 100-milliliter volumetric flask, and make to mark with 0.1N hydrochloric acid. Withdraw an aliquot from the volumetric flask and, using pH 4.5 buffer, dilute to the prescribed reference concentration. Its content of oxytetracycline is satisfactory if it contains not less than 90 percent and not more than 120 percent of the number of milligrams of oxytetracycline that it is represented to contain.

(ii) *Nystatin content.* Proceed as directed in § 148k.1(b) (1) of this chapter, except prepare the sample as follows: Reconstitute the powder as directed in the labeling of the drug. Transfer an appropriate aliquot (usually from 1.0 milliliter to 5.0 milliliters) to a blending jar containing 150 milliliters of dimethyl formamide. Blend for 2 minutes in a high-speed blender and then dilute an aliquot with sufficient dimethyl formamide to give a nystatin concentration of 400 units per milliliter (estimated) if the plate assay method is used, or 160 units per milliliter (estimated) if the turbidimetric assay method is used. Further dilute with 10 percent potassium phosphate buffer, pH 6.0, to 20 units per milliliter (estimated) if the plate assay method is used, or with distilled water to 16 units per milliliter (estimated) if the turbidimetric assay method is used. Its content of nystatin is satisfactory if it contains not less than 90 percent and not more than 135 percent of the number of units it is represented to contain.

(2) *Moisture.* Proceed as directed in § 141a.26(e) of this chapter.

(3) *pH.* Reconstitute as directed in the labeling and proceed as directed in § 141a.5(b) of this chapter.

#### § 148n.10 Oxytetracycline-nystatin capsules.

(a) *Requirements for certification—*

(1) *Standards of identity, strength, quality, and purity.* Oxytetracycline-nystatin capsules are gelatin capsules containing oxytetracycline and nystatin with glucosamine hydrochloride and one or more suitable and harmless buffer substances, preservatives, binders, lubricants, and surfactants. Each capsule contains 250 milligrams of oxytetracycline and 250,000 units of nystatin. Its moisture content is not more than 7.5 percent. The oxytetracycline used conforms to the standards prescribed by § 148n.1(a) (1) (i), (iii), (vi), (vii),

(viii), and (ix). The nystatin used conforms to the standards prescribed by § 148k.1(a) (1) of this chapter. Each other substance used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3 of this chapter. Its expiration date is 12 months.

(3) *Request for certification.* In addition to the requirements of § 148.4 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(a) The oxytetracycline used in making the batch for potency, toxicity, moisture, pH, absorptivity, crystallinity, and identity.

(b) The nystatin used in making the batch for potency, toxicity, moisture, pH, and identity.

(c) The batch for oxytetracycline content, nystatin content, and moisture.

(ii) Samples required:

(a) The oxytetracycline used in making the batch: 10 packages, each containing approximately 300 milligrams.

(b) Nystatin used in making the batch: 10 packages, each containing approximately 300 milligrams.

(c) The batch: A minimum of 30 capsules.

(d) In case of an initial request for certification, each other ingredient used in making the batch: One package of each containing approximately 5 grams.

(4) *Fees.* \$1.00 for each capsule in the sample submitted in accordance with subparagraph (3) (ii) (c) of this paragraph; \$4.00 for each package in the samples submitted in accordance with subparagraph (3) (ii) (a), (b), and (d) of this paragraph.

(b) *Tests and methods of assay—*(1)

*Potency—*(i) *Oxytetracycline content.*

Proceed as directed in § 148n.1(b) (1) (i) or (ii), except prepare the sample as follows: Place a representative number of capsules in a glass blending jar containing 500 milliliters of 0.1N hydrochloric acid. Using a high-speed blender, blend for 3 to 5 minutes, and then make the proper estimated dilutions to the prescribed reference concentration in pH 4.5 buffer. Its potency is satisfactory if it contains not less than 90 percent and not more than 120 percent of the number of milligrams of oxytetracycline that it is represented to contain.

(ii) *Nystatin content.* Proceed as directed in § 148k.1(b) (1) of this chapter, except prepare the sample as follows: Place a representative number of capsules in a blending jar with sufficient dimethyl formamide to give a stock solution of convenient concentration. Blend for 2 minutes in a high-speed blender. Dilute an aliquot of the blended solution in sufficient dimethyl formamide to give a nystatin concentration of 400 units per milliliter (estimated) if the plate assay method is used, or 160 units per milliliter (estimated) if the turbidimetric assay method is used. Further dilute with 10 percent potassium phosphate buffer, pH 6.0, to 20 units per milliliter (estimated) if the plate assay method is used, or with distilled water to 16 units per milliliter (estimated) if

the turbidimetric assay method is used. Its content of nystatin is satisfactory if it contains not less than 90 percent and not more than 135 percent of the number of units of nystatin it is represented to contain.

(2) *Moisture*. Proceed as directed in § 141a.26(e) of this chapter.

#### § 148n.11 Oxytetracycline hydrochloride for injection.

(a) *Requirements for certification—*

(1) *Standards of identity, strength, quality, and purity*. Oxytetracycline hydrochloride for injection is a dry mixture of oxytetracycline hydrochloride and a suitable buffer substance. Each vial contains 250 milligrams, 500 milligrams, 1.0 gram, or 2.5 grams of oxytetracycline. It is sterile. It is nontoxic. It is nonpyrogenic. It contains no histamine nor histamine-like substances. Its moisture content is not more than 3.0 percent. The pH of an aqueous solution containing 25 milligrams of oxytetracycline per milliliter is not less than 1.8 and not more than 2.8. The oxytetracycline hydrochloride used conforms to the standards prescribed by § 148n.2(a)(1) (i), (vi), (vii), (viii), and (ix). Each other substance used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

(2) *Labeling*. It shall be labeled in accordance with the requirements of § 148.3 of this chapter. Its expiration date is 12 months.

(3) *Request for certification*. In addition to the requirements of § 148.4 of this chapter, each such request shall contain:

(i) Results of tests and assays:

(a) The oxytetracycline hydrochloride used in making the batch for potency, moisture, pH, absorptivity, crystallinity, and identity.

(b) The batch for potency, sterility, toxicity, pyrogens, histamine, moisture, and pH.

(ii) Samples required:

(a) Oxytetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 300 milligrams.

(b) The batch:

(1) For all tests except sterility: A minimum of 10 immediate containers.

(2) For sterility testing: 10 immediate containers.

(c) In case of an initial request for certification, each other ingredient used in making the batch: One package of each containing approximately 5 grams.

(4) *Fees*. \$10.00 for each immediate container in the sample submitted in accordance with subparagraph (3) (ii) (b)

(1) of this paragraph; \$10.00 for all immediate containers in the sample submitted in accordance with subparagraph (3) (ii) (b) (2) of this paragraph; \$4.00 for each package in the samples submitted in accordance with subparagraph (3) (ii) (a) and (c) of this paragraph.

(b) *Tests and methods of assay—*(1) *Potency*. Proceed as directed in § 148n.1 (b) (1) (i) or (ii), except prepare the sample as follows: Prepare an appropriate stock solution of the sample in 0.1N hydrochloric acid. Dilute further in 0.1M potassium phosphate buffer, pH

4.5, to the prescribed reference concentration. The potency is satisfactory if it is not less than 90 percent and not more than 115 percent of the number of milligrams of oxytetracycline that it is represented to contain.

(2) *Sterility*. Using 40 milligrams from each container tested, proceed as directed in § 141a.2 of this chapter, except that neither penicillinase nor the control tube is used in the test for bacteria.

(3) *Toxicity*. Proceed as directed in § 141a.4 of this chapter, using as a test dose 0.5 milliliter of sterile distilled water solution containing 2.0 milligrams per milliliter.

(4) *Pyrogens*. Proceed as directed in § 141a.3 of this chapter, using as a test dose 1.0 milliliter per kilogram of a sterile, pyrogen-free, distilled water solution containing 5.0 milligrams per milliliter.

(5) *Histamine*. Proceed as directed in § 141b.105 of this chapter, using as a test dose 0.6 milliliter per kilogram of a solution containing 5 milligrams per milliliter prepared with the diluent recommended by the manufacturer in the labeling for the drug.

(6) *Moisture*. Proceed as directed in § 141a.5(a) of this chapter.

(7) *pH*. Proceed as directed in § 141a.5(b) of this chapter, using an aqueous solution containing 25 milligrams of oxytetracycline per milliliter.

#### § 148n.12 Oxytetracycline hydrochloride soluble tablets.

(a) *Requirements for certification—*

(1) *Standards of identity, strength, quality, and purity*. Oxytetracycline hydrochloride soluble tablets are composed of oxytetracycline hydrochloride with one or more suitable and harmless diluents and binders. Each tablet contains 50 milligrams of oxytetracycline. The moisture content is not more than 2.0 percent. The oxytetracycline hydrochloride used conforms to the standards prescribed by § 148n.2(a)(1) (i), (iii), (vi), (vii), (viii), and (ix). Each other substance used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

(2) *Labeling*. It shall be labeled in accordance with the requirements of § 148.3 of this chapter. Its expiration date is 12 months.

(3) *Request for certification: samples*. In addition to the requirements of § 148.4 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(a) The oxytetracycline hydrochloride used in making the batch for potency, toxicity, moisture, pH, absorptivity, crystallinity, and identity.

(b) The batch for potency and moisture.

(ii) Samples required:

(a) The oxytetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 300 milligrams.

(b) The batch: A minimum of 30 tablets.

(c) In case of an initial request for certification, each other ingredient used in making the batch: One package of each containing approximately 5 grams.

(4) *Fees*. \$0.75 for each tablet in the sample submitted in accordance with subparagraph (3) (ii) (b) of this paragraph; \$4.00 for each package in the samples submitted in accordance with subparagraph (3) (ii) (a) and (c) of this paragraph.

(b) *Tests and methods of assay—*(1) *Potency*. Proceed as directed in § 148n.1 (b) (1) (i) or (ii), except prepare the sample as follows: Place a representative number of tablets in a glass blending jar containing 500 milliliters of 0.1N hydrochloric acid. Using a high-speed blender, blend for 3 minutes and then make the proper estimated dilutions in 0.1M potassium phosphate buffer, pH 4.5. The potency is satisfactory if the tablets contain not less than 90 percent and not more than 115 percent of the number of milligrams of oxytetracycline they are represented to contain.

(2) *Moisture*. Proceed as directed in § 141a.5(a) of this chapter.

#### § 148n.13 Oxytetracycline hydrochloride-tetracaine hydrochloride dental cones.

(a) *Requirements for certification—*

(1) *Standards of identity, strength, quality, and purity*. Oxytetracycline hydrochloride-tetracaine hydrochloride dental cones are dental cones composed of oxytetracycline hydrochloride and tetracaine hydrochloride and one or more suitable and harmless diluents, binders, lubricants, and flavorings. The potency of each dental cone is 5 milligrams of oxytetracycline. The moisture content is not more than 3.0 percent. The oxytetracycline hydrochloride used conforms to the standards prescribed by § 148n.2 (a) (1) (i), (iii), (vi), (vii), (viii), and (ix). Each other substance used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

(2) *Labeling*. It shall be labeled in accordance with the requirements of § 148.3 of this chapter. Its expiration date is 12 months.

(3) *Request for certification*. In addition to the requirements of § 148.4 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(a) The oxytetracycline hydrochloride used in making the batch for potency, toxicity, moisture, pH, absorptivity, crystallinity, and identity.

(b) The batch for potency and moisture.

(ii) Samples required:

(a) Oxytetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 300 milligrams.

(b) The batch: A minimum of 30 dental cones.

(c) In case of an initial request for certification, each other ingredient used in making the batch: One package of each containing approximately 5 grams.

(4) *Fees*. \$0.75 for each dental cone in the sample submitted in accordance with subparagraph (3) (ii) (b) of this paragraph; \$4.00 for each package in the samples submitted in accordance with subparagraphs (3) (ii) (a) and (c) of this paragraph.

(b) *Tests and methods of assay*—(1) *Potency*. Proceed as directed in § 148n.1 (b)(1) (i) or (ii), except prepare the sample as follows: Place a representative number of dental cones in a glass blending jar containing an appropriate volume of 0.1N hydrochloric acid. Using a high-speed blender, blend 3 to 5 minutes and then make the proper estimated dilutions to the prescribed reference concentration in 0.1M potassium phosphate buffer, pH 4.5. The potency is satisfactory if the dental cones contain not less than 90 percent and not more than 115 percent of the number of milligrams of oxytetracycline they are represented to contain.

(2) *Moisture*. Proceed as directed in § 141a.5(a) of this chapter.

§ 148n.14 Oxytetracycline hydrochloride dental paste.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity*. Oxytetracycline hydrochloride dental paste is oxytetracycline hydrochloride in a suitable base, with or without one or more suitable and harmless binders, colorings, and flavorings. Its potency is 30 milligrams of oxytetracycline per gram. Its moisture content is not more than 1.0 percent. The oxytetracycline hydrochloride used conforms to the standards prescribed by § 148n.2(a) (1) (i), (iii), (vi), (vii), (viii), and (ix). Each other ingredient used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

(2) *Labeling*. It shall be labeled in accordance with the requirements of § 148.3 of this chapter. Its expiration date is 12 months.

(3) *Request for certification*. In addition to the requirements of § 148.4 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(a) The oxytetracycline hydrochloride used in making the batch for potency, toxicity, moisture, pH, absorptivity, crystallinity, and identity.

(b) The batch for potency and moisture.

(ii) Samples required:

(a) Oxytetracycline hydrochloride used in making the batch: 10 packages each containing approximately 300 milligrams.

(b) The batch: A minimum of 5 immediate containers.

(c) In case of an initial request for certification, each other ingredient used in making the batch: One package of each containing approximately 5 grams.

(4) *Fees*. \$4.00 for each immediate container or package in the samples submitted in accordance with subparagraph (3) (ii) (a), (b), and (c) of this paragraph.

(b) *Tests and methods of assay*—(1) *Potency*. Proceed as directed in § 148n.1 (b)(1) (i) or (ii), except prepare the sample as follows: Place a representative portion of the sample (usually 2.0 grams, accurately weighed) in a glass blending jar containing 1.0 milliliter of polysorbate 80 and 199 milliliters of 0.1N hydrochloric acid. Using a high-speed blender, blend the mixture for approximately 3 minutes and make proper estimated dilutions to the prescribed refer-

ence concentration in 0.1M potassium phosphate buffer, pH 4.5. The potency is satisfactory if it contains not less than 90 percent and not more than 115 percent of the number of milligrams of oxytetracycline that it is represented to contain.

(2) *Moisture*. Proceed as directed in § 141a.8(b) of this chapter.

§ 148n.15 Oxytetracycline hydrochloride for inhalation.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity*. Oxytetracycline hydrochloride for inhalation is dry oxytetracycline hydrochloride packaged in combination with a suitable diluent. Its moisture content is not more than 1.5 percent. When reconstituted as directed in the labeling, each milliliter contains 50 milligrams of oxytetracycline. Its pH is not less than 2.0 and not more than 3.0. The oxytetracycline hydrochloride used in making the batch conforms to the standards prescribed by § 148n.2(a) (1) (i), (iii), (vi), (vii), (viii), and (ix). Each other substance used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

(2) *Labeling*. It shall be labeled in accordance with the requirements of § 148.3 of this chapter. Its expiration date is 12 months.

(3) *Request for certification*. In addition to the requirements of § 148.4 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(a) Oxytetracycline hydrochloride used in making the batch for potency, toxicity, moisture, pH, absorptivity, crystallinity, and identity.

(b) The batch for potency, moisture, and pH.

(ii) Samples required:

(a) Oxytetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 300 milligrams.

(b) The batch: A minimum of 6 immediate containers.

(c) In case of an initial request for certification, each other ingredient used in making the batch: One package of each containing approximately 5 grams.

(4) *Fees*. \$4.00 for each immediate container or package in the samples submitted in accordance with subparagraph (3) (ii) of this paragraph.

(b) *Tests and methods of assay*—(1) *Potency*. Proceed as directed in § 148n.1(b)(1) (i) or (ii), except prepare the samples as follows: Reconstitute the sample as directed in the labeling. Dilute a representative aliquot in 0.1N hydrochloric acid to give a convenient stock solution. Dilute further in 0.1M potassium phosphate buffer, pH 4.5, to the prescribed reference concentration. The potency is satisfactory if it contains not less than 90 percent and not more than 120 percent of the number of milligrams of oxytetracycline it is represented to contain.

(2) *Moisture*. Proceed as directed in § 141a.5(a) of this chapter.

(3) *pH*. Proceed as directed in § 141a.5(b) of this chapter, using the sample after reconstituting as directed in the labeling.

§ 148n.16 Oxytetracycline hydrochloride-methamphetamine hydrochloride for nasal solution.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity*. Oxytetracycline hydrochloride-methamphetamine hydrochloride for nasal solution is oxytetracycline hydrochloride and methamphetamine hydrochloride with one or more mild astringents, aromatics, preservatives, buffers, and flavorings. When dissolved as directed in the labeling each milliliter contains 5 milligrams of oxytetracycline and 2.5 milligrams of methamphetamine hydrochloride. Such a solution has a pH of not less than 7.5 and not more than 8.5. The moisture content of the dry mixture is not more than 5.0 percent. The oxytetracycline hydrochloride used conforms to the standards prescribed by § 148n.2(a) (1) (i), (iii), (vi), (vii), (viii), and (ix). Each other substance used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

(2) *Labeling*. In addition to the labeling prescribed by § 148.3 of this chapter, each package shall bear on the outside wrapper or container a statement giving the method of dissolving the dry mixture and the statement "After reconstitution, the solution is stable for 48 hours under refrigeration." The expiration date is 12 months.

(3) *Request for certification*. In addition to the requirements of § 148.4 of this chapter, each such request shall contain:

(i) Results of tests and assays:

(a) The oxytetracycline hydrochloride used in making the batch for potency, toxicity, moisture, pH, absorptivity, crystallinity, and identity.

(b) The batch for potency, moisture, pH.

(ii) Samples required:

(a) The oxytetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 300 milligrams.

(b) The batch: A minimum of 6 immediate containers.

(c) In case of an initial request for certification, each other ingredient used in making the batch: One package of each containing approximately 5 grams.

(4) *Fees*. \$4.00 for each immediate container or package in the samples submitted in accordance with subparagraph (3) (ii) of this paragraph.

(b) *Tests and methods of assay*—(1) *Potency*. Proceed as directed in § 148n.1(b)(1) (i) or (ii), except prepare the sample as follows: Reconstitute the sample as directed on the label or in the labeling. Withdraw a 1-milliliter aliquot and place in a 100-milliliter volumetric flask. Make to mark with 0.1N hydrochloric acid. Further dilute with 0.1M potassium phosphate buffer, pH 4.5, to the prescribed reference concentration. Its potency is satisfactory if it contains not less than 90 percent

and not more than 120 percent of the number of milligrams of oxytetracycline that it is represented to contain.

(2) *Moisture*. Proceed as directed in § 141a.5(a) of this chapter.

(3) *pH*. Using the solution obtained when prepared as directed in the labeling, proceed as directed in § 141a.5(b) of this chapter.

§ 148n.17 Ophthalmic oxytetracycline hydrochloride.

(a) *Requirements for certification—*

(1) *Standards of identity, strength, quality and purity*. Ophthalmic oxytetracycline hydrochloride is a dry mixture of oxytetracycline hydrochloride, a mild astringent agent, and a buffer substance. It is sterile. Its moisture content is not more than 5.0 percent. The oxytetracycline hydrochloride is of such quantity that when dissolved as directed in the labeling the potency of such solution is 5.0 milligrams of oxytetracycline per milliliter. Such solution has a pH of not less than 7.0 and not more than 8.5. The oxytetracycline hydrochloride used conforms to the standards prescribed by § 148n.2(a) (1) (i), (iii), (vi), (vii), (viii), and (ix). Each other substance used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

(2) *Labeling*. In addition to the labeling prescribed by § 148.3 of this chapter, each package shall bear on the outside wrapper or container a statement giving the method of dissolving the dry mixture and the statement "After reconstitution, the solution is stable for 48 hours under refrigeration." The expiration date is 12 months.

(3) *Request for certification*. In addition to the requirements of § 148.4 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(a) The oxytetracycline hydrochloride used in making the batch for potency, toxicity, moisture, pH, absorptivity, crystallinity, and identity.

(b) The batch for potency, sterility, moisture, and pH.

(ii) Samples required:

(a) The oxytetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 300 milligrams.

(b) The batch:

(1) For all tests except sterility: A minimum of 6 immediate containers.

(2) For sterility testing: 10 immediate containers.

(c) In case of an initial request for certification, each other ingredient used in making the batch: One package of each containing approximately 5 grams.

(4) *Fees*. \$4.00 for each immediate container or package in the samples submitted in accordance with subparagraph (3) (i) (a), (b) (1), and (c) of this paragraph; \$10.00 for all immediate containers in the samples submitted in accordance with subparagraph (3) (ii) (b) (2) of this paragraph.

(b) *Tests and methods of assay—*(1) *Potency*. Proceed as directed in § 148n.1 (b) (1) (i) or (ii), except prepare the sample as follows: Reconstitute the sample as directed in the labeling. Di-

lute a representative aliquot in 0.1N hydrochloric acid to give a convenient stock solution. Dilute further in 0.1M potassium phosphate buffer, pH 4.5, to the prescribed reference concentration. The potency is satisfactory if it contains not less than 90 percent and not more than 120 percent of the number of milligrams of oxytetracycline it is represented to contain.

(2) *Sterility*. Using the entire contents from each container tested, proceed as directed in § 141a.2 of this chapter, except that neither penicillinase nor the control tube is used in the test for bacteria.

(3) *Moisture*. Proceed as directed in § 141a.5(a) of this chapter.

(4) *pH*. Proceed as directed in § 141a.5(b) of this chapter, using the solution obtained when prepared as directed in the labeling of the drug.

§ 148n.18 Oxytetracycline hydrochloride ophthalmic ointment.

(a) *Requirements for certification—*

(1) *Standards of identity, strength, quality, and purity*. Oxytetracycline hydrochloride ophthalmic ointment is oxytetracycline hydrochloride in a suitable and harmless ointment base. Its potency is 10 milligrams of oxytetracycline per gram. Its moisture content is not more than 1 percent. The oxytetracycline hydrochloride used conforms to the standards prescribed by § 148n.2(a) (1) (i), (iii), (vi), (vii), (viii), and (ix). Each other ingredient used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

(2) *Labeling*. It shall be labeled in accordance with the requirements of § 148.3 of this chapter. Its expiration date is 12 months.

(3) *Request for certification*. In addition to the requirements of § 148.4 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(a) The oxytetracycline hydrochloride used in making the batch for potency, toxicity, moisture, pH, absorptivity, crystallinity, and identity.

(b) The batch for potency and moisture.

(ii) Samples required:

(a) The oxytetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 300 milligrams.

(b) The batch: A minimum of 5 immediate containers.

(c) In case of an initial request for certification, each other ingredient used in making the batch: One package of each containing approximately 5 grams.

(4) *Fees*. \$4.00 for each immediate container or package in the samples submitted in accordance with subparagraph (3) (ii) of this paragraph.

(b) *Tests and methods of assay—*(1)

*Potency*. Proceed as directed in § 148n.1 (b) (1) (i) or (ii), except prepare the sample as follows: Place an accurately weighed representative portion of the sample in a separatory funnel containing approximately 50 milliliters of peroxide-free ether. Shake ointment and ether until homogeneous. Shake with 25 milliliters of 0.1N hydrochloric acid. Re-

move the acid layer and repeat the extraction with each of three more 25-milliliter quantities of 0.1N hydrochloric acid. Combine the acid extractives, and make the proper estimated dilutions to the prescribed reference concentration in 0.1M potassium phosphate buffer, pH 4.5. The weighed sample may also be prepared by placing it in a glass blending jar containing 1.0 milliliter of polysorbate 80 and 199 milliliters of 0.1N hydrochloric acid. Using a high-speed blender, blend the mixture for approximately 3 minutes and make proper estimated dilutions to the prescribed reference concentration in 0.1M potassium phosphate buffer, pH 4.5. The potency is satisfactory if it contains not less than 90 percent and not more than 115 percent of the number of milligrams of oxytetracycline that it is represented to contain.

(2) *Moisture*. Proceed as directed in § 141a.8(b) of this chapter.

§ 148n.19 Oxytetracycline hydrochloride-hydrocortisone topical ointment.

(a) *Requirements for certification—*

(1) *Standards of identity, strength, quality, and purity*. Oxytetracycline hydrochloride-hydrocortisone topical ointment is oxytetracycline hydrochloride and hydrocortisone in a suitable and harmless ointment base. Its potency is 30 milligrams of oxytetracycline per gram. It contains 10 milligrams of hydrocortisone per gram. Its moisture content is not more than 1 percent. The oxytetracycline hydrochloride used conforms to the standards prescribed by § 148n.2(a) (1) (i), (vi), (vii), (viii), and (ix). Each other ingredient used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

(2) *Labeling*. It shall be labeled in accordance with the requirements of § 148.3 of this chapter. Its expiration date is 12 months.

(3) *Request for certification*. In addition to the requirements of § 148.4 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(a) The oxytetracycline hydrochloride used in making the batch for potency, moisture, pH, absorptivity, crystallinity, and identity.

(b) The batch for potency and moisture.

(ii) Samples required:

(a) The oxytetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 500 milligrams.

(b) The batch: A minimum of 5 immediate containers.

(c) In case of an initial request for certification, each other ingredient used in making the batch: One package of each containing approximately 5 grams.

(4) *Fees*. \$4.00 for each immediate container or package in the samples submitted in accordance with subparagraph (3) (ii) of this paragraph.

(b) *Tests and methods of assay—*(1)

*Potency*. Proceed as directed in § 148n.1 (b) (1) (i) or (ii), except prepare the sample as follows: Place an accurately weighed representative portion of the

sample in a separatory funnel containing approximately 50 milliliters of peroxide-free ether. Shake ointment and ether until homogeneous. Shake with 25 milliliters of 0.1N hydrochloric acid. Remove the acid layer, and repeat the extraction with each of three more 25-milliliter quantities of 0.1N hydrochloric acid. Combine the extractives, and make the proper estimated dilutions to the prescribed reference concentration in 0.1M potassium phosphate buffer, pH 4.5. The weighed sample may also be prepared by placing it in a glass blending jar containing 1.0 milliliter of polysorbate 80 and 199 milliliters of 0.1N hydrochloric acid. Using a high-speed blender, blend the mixture for approximately 3 minutes and make proper estimated dilutions to the prescribed reference concentration in 0.1M potassium phosphate buffer, pH 4.5. The potency is satisfactory if it contains not less than 90 percent and not more than 115 percent of the number of milligrams of oxytetracycline that it is represented to contain.

(2) *Moisture*. Proceed as directed in § 141a.8(b) of this chapter.

**§ 148n.20 Oxytetracycline hydrochloride-polymyxin B sulfate topical ointment.**

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity*. Oxytetracycline hydrochloride-polymyxin B sulfate topical ointment is oxytetracycline hydrochloride and polymyxin B sulfate in a suitable and harmless ointment base. Each gram of topical ointment contains 30 milligrams of oxytetracycline and 10,000 units of polymyxin B. Its moisture content is not more than 1 percent. The oxytetracycline hydrochloride used conforms to the standards prescribed by § 148n.2(a) (1) (i), (vi), (vii), (viii), and (ix). The polymyxin B sulfate conforms to the standards prescribed by § 148p.1 (a) (1) (i), (v), (vi), (vii), and (ix) of this chapter. Each other ingredient used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

(2) *Labeling*. Each package shall bear, on its label or labeling, as hereinafter indicated, the following:

(i) On the label of the immediate container and on the outside wrapper or container, if any:

(a) The batch mark.

(b) The name and quantity of each active ingredient contained in the drug.

(c) An expiration date which is 12 months after the month during which the batch was certified.

(ii) On the label of the immediate container or other labeling attached to or within the package: Adequate directions under which the layman can use the drug safely and efficaciously.

(3) *Request for certification; samples*. In addition to the requirements of § 148.4 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(a) The oxytetracycline hydrochloride used in making the batch for potency, moisture, pH, absorptivity, crystallinity, and identity.

(b) The polymyxin B sulfate used in making the batch for potency, moisture, pH, residue on ignition, and identity.

(c) The batch for oxytetracycline content, polymyxin B content, and moisture.

(ii) *Samples required*:

(a) The oxytetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 300 milligrams.

(b) The polymyxin B sulfate used in making the batch: 10 packages, each containing approximately 300 milligrams.

(c) The batch: A minimum of 6 immediate containers.

(d) In case of an initial request for certification, each other ingredient used in making the batch: One package of each containing approximately 5 grams.

(4) *Fees*. \$5.00 for each immediate container in the sample submitted in accordance with subparagraph (3) (ii) (c) of this paragraph; \$4.00 for each package in the samples submitted in accordance with subparagraph (3) (ii) (a), (b), and (d) of this paragraph.

(b) *Tests and methods of assay*—(1) *Potency*—(i) *Oxytetracycline content*. Proceed as directed in § 148n.19(b) (1). The oxytetracycline content is satisfactory if it contains not less than 90 percent and not more than 120 percent of the number of milligrams of oxytetracycline that it is represented to contain.

(ii) *Polymyxin B content*. Proceed as directed in § 148p.3(b) (1) of this chapter, except prepare the sample by either of the following methods:

(a) Weigh accurately about 1 gram of the ointment and place in a 50-milliliter centrifuge tube. Add 15 milliliters of ethyl ether. Stir until contents are homogeneous. Add 25 milliliters of ethyl ether, stir, and centrifuge for 10 minutes at 3000 revolutions per minute. Decant the supernatant ether. Add 20 milliliters of acetone and stir until contents are homogenous. Add 25 milliliters of acetone and centrifuge for 10 minutes at 3000 revolutions per minute. Decant the supernatant acetone and repeat acetone extraction twice more, discarding the acetone supernatant each time. Wash the residue into a 100-milliliter volumetric flask with 10 percent potassium phosphate buffer, pH 6.0, and dilute with this same buffer to a final estimated concentration of 10 units of polymyxin B per milliliter.

(b) Weigh accurately about 1 gram of the ointment and place in a filter-funnel using a solvent-resistant membrane filter of 1.5 micron porosity. Wash with five 20-milliliter portions of warm benzene. Wash residue with five 20-milliliter portions of acetone or until yellow color has disappeared. Remove the filter and soak in about 50 milliliters of 10 percent potassium phosphate buffer, pH 6.0, for one-half hour to one hour. Transfer the solution quantitatively to a 100-milliliter volumetric flask and bring to mark with 10 percent potassium phosphate buffer, pH 6.0. Make appropriate dilutions with 10 percent potassium phosphate buffer, pH 6.0, to the prescribed reference concentration.

Its polymyxin B content is satisfactory if it contains not less than 90 percent and

not more than 125 percent of the number of units of polymyxin B that it is represented to contain.

(2) *Moisture*. Proceed as directed in § 141a.8(b) of this chapter.

**§ 148n.21 Oxytetracycline hydrochloride-polymyxin B sulfate eye and ear ointment.**

(a) *Requirements for certification*—

(1) *Standards of identity, strength, quality, and purity*. Oxytetracycline hydrochloride-polymyxin B sulfate eye and ear ointment is oxytetracycline hydrochloride and polymyxin B sulfate in a suitable and harmless ointment base. Each gram of ointment contains 5 milligrams of oxytetracycline and 10,000 units of polymyxin B. Its moisture content is not more than 1 percent. The oxytetracycline hydrochloride used conforms to the standards prescribed by § 148n.2(a) (1) (i), (iii), (vi), (vii), (viii), and (ix). The polymyxin B sulfate used conforms to the standards prescribed by § 148p.1 (a) (1) (i), (iv), (v), (vi), (vii), and (ix) of this chapter. Each other ingredient used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

(2) *Labeling*. It shall be labeled in accordance with the requirements of § 148.3 of this chapter. Its expiration date is 12 months.

(3) *Request for certification*. In addition to the requirements of § 148.4 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(a) The oxytetracycline hydrochloride used in making the batch for potency, toxicity, moisture, pH, absorptivity, crystallinity, and identity.

(b) The polymyxin B sulfate used in making the batch for potency, toxicity, pH, moisture, residue on ignition, and identity.

(c) The batch for oxytetracycline content, polymyxin B content, and moisture.

(ii) *Samples required*:

(a) The oxytetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 300 milligrams.

(b) Polymyxin B sulfate used in making the batch: 10 packages, each containing approximately 300 milligrams.

(c) The batch: A minimum of 6 immediate containers.

(d) In case of an initial request for certification, each other ingredient used in making the batch: One package of each containing approximately 5 grams.

(4) *Fees*. \$5.00 for each immediate container in the sample submitted in accordance with subparagraph (3) (ii) (c) of this paragraph; \$4.00 for each package in the samples submitted in accordance with subparagraph (3) (ii) (a), (b), and (d) of this paragraph.

(b) *Tests and methods of assay*—(1) *Potency*—(i) *Oxytetracycline content*. Proceed as directed in § 148n.19(b) (1). Its oxytetracycline content is satisfactory if it contains not less than 90 percent and not more than 120 percent of the number of milligrams of oxytetracycline that it is represented to contain.

(ii) *Polymyxin B content.* Proceed as directed in § 148n.20(b)(1)(ii). Its polymyxin B content is satisfactory if it contains not less than 90 percent and not more than 125 percent of the number of units of polymyxin B that it is represented to contain.

(2) *Moisture.* Proceed as directed in § 141a.8(b) of this chapter.

§ 148n.22 Oxytetracycline hydrochloride ophthalmic oil suspension.

(a) *Requirements for certification—*

(1) *Standards of identity, strength, quality, and purity.* Oxytetracycline hydrochloride ophthalmic oil suspension is oxytetracycline hydrochloride in a suitable and harmless oil base. It may contain one or more suitable and harmless preservatives and stabilizing agents. Its potency is 10 milligrams of oxytetracycline per milliliter. Its moisture content is not more than 1.0 percent. The oxytetracycline hydrochloride used conforms to the standards prescribed by § 148n.2(a)(1)(i), (iii), (vi), (vii), (viii), and (ix). Each other ingredient used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3 of this chapter. Its expiration date is 12 months.

(3) *Requests for certification.* In addition to the requirements of § 148.4 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(a) The oxytetracycline hydrochloride used in making the batch for potency, toxicity, moisture, pH, absorptivity, crystallinity, and identity.

(b) The batch for potency and moisture.

(ii) Samples required:

(a) The oxytetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 300 milligrams.

(b) The batch: A minimum of 5 immediate containers.

(c) In case of an initial request for certification, each other ingredient used in making the batch: One package of each containing approximately 5 grams.

(4) *Fees.* \$4.00 for each immediate container or package in the samples submitted in accordance with subparagraph (3)(ii) of this paragraph.

(b) *Tests and methods of assay—*(1)

*Potency.* Proceed as directed in § 148n.1(b)(1)(i) or (ii), except prepare the sample as follows: Place a representative portion of the sample (usually 1.0 milliliter, accurately measured) in a glass blending jar containing 1.0 milliliter of polysorbate 80 and 199 milliliters of 0.1N hydrochloric acid. Using a high-speed blender, blend the mixture for approximately 3 minutes and make proper estimated dilutions to the prescribed reference concentration in 0.1M potassium phosphate buffer, pH 4.5. Its potency is satisfactory if it contains not less than 90 percent and not more than 115 percent of the number of milligrams of oxytetracycline that it is represented to contain.

(2) *Moisture.* Proceed as directed in § 141a.8(b) of this chapter.

§ 148n.23 Oxytetracycline hydrochloride-hydrocortisone acetate ophthalmic and otic suspension.

(a) *Requirements for certification; (1) Standards of identity, strength, quality, and purity.* Oxytetracycline hydrochloride-hydrocortisone acetate ophthalmic and otic suspension is oxytetracycline hydrochloride and hydrocortisone acetate in a suitable and harmless oil base containing aluminum tristearate. Its potency is 5 milligrams of oxytetracycline per milliliter. It contains 15 milligrams of hydrocortisone acetate per milliliter. Its moisture content is not more than 1 percent. The oxytetracycline hydrochloride used conforms to the standards prescribed by § 148n.2(a)(1)(i), (iii), (vi), (vii), (viii), and (ix). Each other ingredient used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3 of this chapter. Its expiration date is 12 months.

(3) *Request for certification.* In addition to the requirements of § 148.4 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(a) Oxytetracycline hydrochloride used in making the batch for potency, toxicity, moisture, pH, absorptivity, crystallinity, and identity.

(b) The batch for potency and moisture.

(ii) Samples required:

(a) Oxytetracycline hydrochloride used in making the batch: 10 packages, each containing approximately 300 milligrams.

(b) The batch: A minimum of 5 immediate containers.

(c) In case of an initial request for certification, each other ingredient used in making the batch: One package of each containing approximately 5 grams.

(4) *Fees.* \$4.00 for each immediate container or package in the samples submitted in accordance with subparagraph (3)(ii) of this paragraph.

(b) *Tests and methods of assay—*(1)

*Potency.* Proceed as directed in § 148n.1(b)(1)(i) or (ii), except prepare the sample as follows: Place a representative portion of the sample (usually 1.0 milliliter, accurately measured) in a glass blending jar containing 1.0 milliliter of polysorbate 80 and 199 milliliters of 0.1N hydrochloric acid. Using a high-speed blender, blend the mixture for approximately 3 minutes and make proper estimated dilutions to the prescribed reference concentration in 0.1M potassium phosphate buffer, pH 4.5. The potency is satisfactory if it is not less than 90 percent and not more than 115 percent of the number of milligrams of oxytetracycline that the suspension is represented to contain.

(2) *Moisture.* Proceed as directed in § 141a.8(b) of this chapter.

§ 148n.24 Calcium oxytetracycline sirup.

(a) *Requirements for certification—*

(1) *Standards of identity, strength, quality, and purity.* Calcium oxytetracycline sirup is sirup that contains calcium oxytetracycline, with one or more suitable and harmless buffer substances,

suspending and stabilizing agents, flavorings, colorings, solvents, and preservatives, suspended in a suitable and harmless vehicle. It contains *N*-acetyl glucosamine. Each milliliter contains a quantity of calcium oxytetracycline equivalent to either 25 milligrams or 100 milligrams of oxytetracycline. Its pH is not less than 5.0 and not more than 8.0. The calcium oxytetracycline used conforms to the standards prescribed by § 148n.3(a)(1)(i), (ii), (iv), (v), and (vi). Each other substance used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3 of this chapter. Its expiration date is 12 months.

(3) *Request for certification.* In addition to the requirements of § 148.4 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(a) Calcium oxytetracycline used in making the batch for potency, toxicity, pH, calcium content, identity, and crystallinity.

(b) The batch for potency and pH.

(ii) Samples required:

(a) The calcium oxytetracycline used in making the batch: 10 packages, each containing approximately 300 milligrams.

(b) The batch: A minimum of 5 immediate containers.

(c) In case of an initial request for certification, each other ingredient used in making the batch: One package of each containing approximately 5 grams.

(4) *Fees.* \$4.00 for each immediate container or package in the samples submitted in accordance with subparagraph (3)(ii) of this paragraph.

(b) *Tests and methods of assay—*(1)

*Potency.* Proceed as directed in § 148n.1(b)(1)(i) or (ii), except prepare the sample as follows: Transfer 1 milliliter of the sample to a 500-milliliter volumetric flask containing 100 milliliters of 0.1N hydrochloric acid. Dilute to volume with water and mix well. Transfer the suspension to a glass blending jar and blend for 5 minutes in a high-speed blender. Dilute an aliquot to the prescribed reference concentration, using 0.1M potassium phosphate buffer, pH 4.5. Its potency is satisfactory if it contains not less than 90 percent and not more than 120 percent of the number of milligrams of oxytetracycline that it is represented to contain.

(2) *pH.* Using the undiluted sample, proceed as directed in § 141a.5(b) of this chapter.

PART 148s—VANCOMYCIN

§ 148s.1 Vancomycin hydrochloride.

(a) *Requirements for certification—*

(1) *Standards of identity, strength, quality, and purity.* Vancomycin hydrochloride is the crystalline hydrochloride salt of a kind of vancomycin or a mixture of two or more such salts. It is soluble in water and moderately soluble in dilute methyl alcohol. It is insoluble in higher alcohols, acetone, and ether. It is so purified and dried that:

(i) It contains not less than 900 micrograms of vancomycin per milligram, calculated on an anhydrous basis.

(ii) It is sterile.

(iii) It is nontoxic.

(iv) It is nonpyrogenic.

(v) Its moisture content is not more than 5 percent.

(vi) Its pH in an aqueous solution containing 50 milligrams per milliliter is not less than 2.5 and not more than 4.5.

(vii) Its heavy metals content is not more than 30 parts per million.

(viii) It contains not more than 15 percent of factor A.

(ix) It gives a positive identity test for vancomycin.

(2) *Packaging.* In addition to the requirements of § 148.2 of this chapter, if it is packaged for dispensing, the vancomycin content of each immediate container is 500 milligrams of vancomycin.

(3) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3 of this chapter. Its expiration date is 12 months.

(4) *Request for certification; samples.* In addition to the requirements of § 148.4 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, sterility, toxicity, pyrogens, moisture, pH, heavy metals, crystallinity, factor A content, and identity.

(ii) Samples required:

(a) If the batch is packaged for repackaging or for use as an ingredient in the manufacture of another drug:

(1) For all tests except sterility: 10 packages, each containing approximately 500 milligrams.

(2) For sterility testing: 10 packages, each containing approximately 500 milligrams.

(b) If the batch is packaged for dispensing:

(1) For all tests except sterility: A minimum of 10 immediate containers.

(2) For sterility: 10 immediate containers.

(5) *Fees.* \$5.00 for each container submitted in accordance with subparagraph (4) (i) (a) (1) or (b) (1) of this paragraph; \$10.00 for all samples submitted in accordance with subparagraph (4) (i) (a) (2) or (b) (2) of this paragraph.

(b) *Tests and methods of assay—(1) Potency—(i) Cylinders (cups).* Use cylinders described in § 141a.1(a) of this chapter.

(ii) *Culture media.* Make nutrient agar as follows:

(a) For the base and seed layers:

Peptone .....	6.0 gm.
Yeast extract.....	3.0 gm.
Beef extract.....	1.5 gm.
Agar .....	15.0 gm.
Distilled water, q.s.....	1,000.0 ml.
pH 5.9 after sterilization.	

(b) For carrying the test organism:

Peptone .....	6.0 gm.
Pancreatic digest of casein.....	4.0 gm.
Yeast extract.....	3.0 gm.
Beef extract.....	1.5 gm.
Dextrose .....	1.0 gm.
Agar .....	15.0 gm.
Distilled water, q.s.....	1,000.0 ml.
pH 6.5 to 6.6 after sterilization.	

In lieu of preparing the media from the individual ingredients specified in this subdivision, they may be made from a dehydrated mixture which, when reconstituted with distilled water, has the same composition as such media. Minor modifications of the individual ingredients specified in this subdivision are permissible if the resulting media possess growth-promoting properties at least equal to the media described.

(iii) *Working standard.* Dry approximately 30 milligrams of the working standard for three hours at 60° C. and a pressure of 5 millimeters or less. Determine the dry weight, dissolve in sufficient 0.1N sodium hydroxide to give a solution of 10,000 micrograms per milliliter, and then further dilute with sufficient sterile distilled water to give a stock solution of 1,000 micrograms per milliliter. This stock solution may be used for at least 1 week when stored under refrigeration (15° C. or less).

(iv) *Preparation of sample.* Dissolve an accurately weighed sample of approximately 30 milligrams in sufficient distilled water to make a stock solution of 1 milligram per milliliter. Further dilute in 0.1M potassium phosphate buffer, pH 4.5, to the reference concentration of 10 micrograms per milliliter. In addition, if it is packaged for dispensing, reconstitute the sample as directed in the labeling and further dilute in 0.1M potassium phosphate buffer, pH 4.5, to the reference concentration.

(v) *Preparation of test organism.* The test organism is *Bacillus cereus* var. *mycoides* (ATCC 11778). Maintain the test organism on the nutrient agar medium described in subdivision (ii) (b) of this subparagraph, and transfer to a fresh slant every month. Inoculate a fresh slant with the test organism and incubate at 30° C. for 16 hours to 24 hours. Wash the culture from the slant with sterile U.S.P. saline T.S. onto the surface of a Roux bottle containing 300 milliliters of the nutrient agar medium described in subdivision (ii) (b) of this subparagraph. Incubate at 30° C. for 1 week. Wash the resulting growth from the agar surface with about 30 milliliters of sterile U.S.P. saline T.S. and heat for 30 minutes at 70° C. Wash the spore suspension three times with sterile U.S.P. saline T.S., heat again for 30 minutes at 70° C., and resuspend in sterile U.S.P. saline T.S. Determine, by use of test plates, the quantity of the spore suspension to be added to each 100 milliliters of the agar described in subdivision (ii) (a) of this subparagraph (melted and cooled to 48° C.) for the seed layer, which will give sharp, clear zones of inhibition. This spore suspension will keep for months.

(vi) *Preparation of plates.* Add 10 milliliters of the melted agar described in subdivision (ii) (a) of this subparagraph to each Petri dish (20 millimeters x 100 millimeters). Distribute the agar evenly in the plates, cover with porcelain covers glazed only on the outside, and allow to harden. Use the plates the same day they are prepared. Add 4 milliliters of the seeded agar prepared as described in subdivision (v) of this subparagraph to each plate, tilting the plates back and forth to spread the inoculated

agar evenly over the surface. After the seed layer has hardened, place 6 cylinders on the inoculated agar surface so that they are at approximately 60° intervals on a 2.8-centimeter radius.

(vii) *Standard curve.* Prepare concentrations for the standard curve by diluting aliquots of the standard stock solution with 0.1M potassium phosphate buffer, pH 4.5, to give final concentrations of 6.4, 8.0, 10.0, 12.5, and 15.6 micrograms of vancomycin per milliliter. Use three plates for each concentration, except the 10.0 micrograms per milliliter concentration. Thus, there will be a total of 12 plates. The 10.0-microgram concentration is the reference point and is included on each plate. On each of three plates fill three cylinders with the 10.0 micrograms per milliliter standard and the other three cylinders with the concentration of the standard under test. Thus, there will be thirty-six 10.0 micrograms per milliliter determinations and nine determinations for each of the other concentrations on the curve. Incubate the plates for 16 hours to 18 hours at 30° C., and measure the diameter of each circle of inhibition. Average the readings of 10.0 micrograms per milliliter concentration and the readings of the concentration tested on each set of three plates, and average also all 36 readings of the 10.0 micrograms per milliliter concentration. The average of the 36 readings of the 10.0 micrograms per milliliter concentration is the correction point for the curve. Correct the average value obtained for each concentration to the figure it would be if the 10.0 micrograms per milliliter reading for that set of three plates were the same as the correction point. Thus, if in correcting the 8.0 micrograms per milliliter concentration the average of the 36 readings of the 10.0 micrograms per milliliter concentration is 18 millimeters and the average of the 10.0 micrograms per milliliter concentration on this set of three plates is 17.8 millimeters, the correction is plus 0.2 millimeter. If the average reading of the 8.0 micrograms per milliliter concentration of these same three plates is 15.0 millimeters, the corrected value is then 15.2 millimeters. Plot these corrected values, including the average of the thirty-six 10.0 micrograms per milliliter concentrations, on 2-cycle semilog paper, using the concentrations in micrograms per milliliter as the ordinate (logarithmic scale) and the diameter of the zone of inhibition as the abscissa. Draw the standard curve through these points, either by inspection or by means of the following equations:

$$L = \frac{3a + 2b + c - e}{5}$$

$$H = \frac{3e + 2d + c - a}{5}$$

where:

L = Calculated zone diameter for the lowest concentration of the standard curve;

H = Calculated zone diameter for the highest concentration of the standard curve;

c = Average zone diameter of 36 readings of the 10.0 milligrams per milliliter standard;

a, b, d, e = Corrected average values for the 6.4, 8.0, 12.5, and 15.6 micrograms per milliliter standard solutions, respectively.

Plot the values obtained for *L* and *H*, and connect with a straight line.

(viii) *Assay procedure.* Use three plates for each sample, and fill three cylinders on each plate with the 10.0 micrograms per milliliter standard and three cylinders with the sample diluted to an estimated 10.0 micrograms per milliliter with 0.1M potassium phosphate buffer, pH 4.5, alternating standard and sample. Incubate the plates for 16 hours to 18 hours at 30° C. and measure the diameter of each circle of inhibition. Average the zone readings of the standard, and average the zone readings of the sample on the plates used. If the sample gives a larger average zone size than the average of the standard, add the difference between them to the 10.0 micrograms per milliliter zone size of the standard curve. If the average sample zone size is smaller than the standard value, subtract the difference between them from the 10.0 micrograms per milliliter zone size of the standard curve. From the curve, read the concentration corresponding to these corrected values of zone sizes.

When packaged for dispensing, its potency is satisfactory if it contains not less than 90 percent and not more than 115 percent of the number of milligrams of vancomycin that it is represented to contain.

(2) *Sterility.* Use approximately 500 milligrams of vancomycin, and proceed as directed in § 141a.2 of this chapter, except that neither penicillinase nor the control tube is used in the test for bacteria, and 50 milligrams of vancomycin is used in the tests for molds and yeasts.

(3) *Toxicity.* Proceed as directed in § 141a.4 of this chapter, using as a test dose 0.5 milliliter of sterile U.S.P. saline T.S., containing 4 milligrams of vancomycin per milliliter.

(4) *Pyrogens.* Proceed as directed in § 141a.3 of this chapter, using a test dose of 1.0 milliliter per kilogram of a solution in sterile, pyrogen-free U.S.P. saline T.S., containing 5 milligrams of vancomycin per milliliter.

(5) *Moisture.* Proceed as directed in § 141a.26(e) of this chapter.

(6) *pH.* Proceed as directed in § 141a.5(b) of this chapter, using a solution containing 50 milligrams per milliliter.

(7) *Identity and factor A content—*

(i) *Preparation of the chromatogram—*  
(a) *Equipment.* (1) Chromatographic paper (Whatman No. 1 untreated filter paper).

(2) Equipment for descending paper chromatography (Mitchell Tank).

(b) *Preparations of solutions—*(1) *Factor A.* Prepare a solution in distilled water to contain 1.33 milligrams of factor A per milliliter, and further dilute with distilled water to prepare solutions containing 0.1 and 0.2 milligram of factor A per milliliter.

(2) *Vancomycin working standard solution.* Prepare a solution in distilled water to contain 1.33 milligrams of vancomycin per milliliter.

(3) *Known mixture of factor A and vancomycin.* Prepare a solution in distilled water to contain 0.2 milligram of

factor A and 1.13 milligrams of vancomycin per milliliter.

(4) *Sample.* Prepare two solutions of the sample in distilled water, each to contain 1.33 milligrams of vancomycin (estimated) per milliliter.

(5) *Solvent mixture.* Mix 300 milliliters of butyl alcohol, 150 milliliters of pyridine, and 200 milliliters of water in a large separatory funnel and shake well for 3 minutes. Let stand at room temperature. There should be no separation of layers.

(c) *Procedure.* Saturate the atmosphere in the tank with vapors of the solvent mixture by placing 10 milliliters of the mixture in a trough in the bottom of the tank and closing tightly for 15 minutes. Prepare a sheet of chromatographic paper (8 inches x 8 inches) by carefully drawing a line of origin with a pencil 2 inches from one of the edges. Fold the paper along a straight line 1½ inches from the same edge of the paper. Starting 1 inch from the left-hand edge, establish points at 1-inch intervals along the line of origin on which to apply the solutions. Using a micropipette, apply the factor A solutions, the vancomycin solution, the known mixture solution, and the sample solutions by placing 5 microliters of each on separate spots. Properly identify the locations of the spots but avoid unnecessary handling of the paper. Allow the spots to dry spontaneously. Suspend the paper in the chamber so that the edge nearest the fold can be conveniently immersed in the solvent mixture contained in the top trough. Immerse the paper across its entire width to a depth sufficient to assure contact with the solvent mixture during the entire development time. Close the chamber tightly and allow the chromatograph to develop at room temperature for 6½ to 7 hours. Remove the paper and allow it to dry completely.

(ii) *Development by bioautograph—*

(a) *Culture media.* Use ingredients that conform to the standards prescribed by the U.S.P. or N.F.

(1) Make nutrient agar for carrying the test organisms as follows:

Peptone .....	6.0 gm.
Pancreatic digest of casein.....	4.0 gm.
Yeast extract.....	3.0 gm.
Beef extract.....	1.5 gm.
Dextrose .....	1.0 gm.
MnSO <sub>4</sub> ·H <sub>2</sub> O.....	300.0 mg.
Agar .....	15.0 gm.
Distilled water q.s.....	1,000.0 ml.
pH 6.5 to 6.6 after sterilization.	

(2) Make nutrient agar for preparing the inoculated plates as follows:

Beef extract.....	1.5 gm.
Yeast extract.....	3.0 gm.
Peptone .....	6.0 gm.
Agar .....	15.0 gm.
Distilled water q.s.....	1,000.0 ml.
pH 7.8 to 8.0 after sterilization.	

In lieu of preparing the media from the individual ingredients specified in this subdivision, they may be made from a dehydrated mixture which, when reconstituted with distilled water, has the same composition as such media. Minor modifications of the individual ingredients specified in this subdivision are permissible if the resulting media possess

growth-promoting properties at least equal to the media described.

(b) *Preparation of test organism (spore suspension).* The test organism is *Bacillus subtilis* (ATCC 6633). Maintain the test organism on nutrient agar prepared as described in (a) (1) of this subdivision. Prepare a spore suspension by the following method: Grow the organism for 5 days at 37° C. in a Roux bottle containing 300 milliliters of agar medium described in (a) (1) of this subdivision. Harvest the growth with the aid of sterile distilled water and glass beads. Suspend the growth in 50 milliliters of sterile distilled water, centrifuge, and decant the supernatant liquid. Reconstitute the sediment with sterile distilled water and heat-shock for 30 minutes at 70° C. Maintain the spore suspension at approximately 15° C. Determine by appropriate tests the quantity of spore suspension to be added to each 100 milliliters of agar (usually 2.0 milliliters) for the seed layer that will give clear, sharp zones of inhibition.

(c) *Preparation of plates—*(1) *Base layer.* Add 42 milliliters of the medium described in (a) (2) of this subdivision to each Petri dish (25 millimeters x 150 millimeters) and allow to harden on a flat, level surface. To prevent condensation of excess moisture, raise the tops slightly while the agar hardens.

(2) *Seed layer.* Melt nutrient agar described in (a) (2) of this subdivision. Accurately measure a sufficient quantity of the melted agar, cool to 48° C. and add the appropriate quantity of the spore suspension prepared as described in (b) of this subdivision. Swirl the flask of inoculated agar to obtain a homogeneous suspension. Add 8 milliliters of this inoculated agar to each plate, spread evenly, and allow to harden on a flat, level surface. For accurate results, it is necessary to obtain uniform distribution of the agar over the entire surface of the plates.

(d) *Assay.* For each spot on the paper described in subdivision (i) (c) of this subparagraph, cut a strip 1.5 centimeters by approximately 14 centimeters with the center of each strip centered about the line of descent of the spot. Place all strips on plates with the aid of forceps within as short a period of time as possible. Use maximum spacing between strips. Insure complete contact so that the entire strip becomes uniformly moistened. Allow to stand for 30 minutes. Remove the strips and identify each strip location on the Petri dish. Incubate the plates for 16-18 hours at 37° C. Any zone of inhibition corresponding to factor A in the sample must not be greater than that of the 0.2 milligram per milliliter factor A standard. Also, the two areas of inhibition for the sample due to the presence of factor A and vancomycin must compare to the corresponding two areas of inhibition of the known mixture in their respective distances from their origins.

(3) *Crystallinity.* Proceed as directed in § 141a.5(c) of this chapter.

(Sec. 507, 59 Stat. 463 as amended; 76 Stat. 785, 786, 787; 21 U.S.C. 357(c))

*Effective date.* This order shall become effective 60 days from the date of its publication in the FEDERAL REGISTER.

Dated: July 28, 1964.

GEO. P. LARRICK,  
Commissioner of Food and Drugs.

[F.R. Doc. 64-7735; Filed, Aug. 5, 1964;  
8:45 a.m.]

## Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs,  
Department of the Treasury

[T.D. 56232]

### PART 3—DOCUMENTATION OF VESSELS

#### Authorization of Deputy Collectors To Waive Certain Requirements

In order to improve and facilitate administration in the approvals of designations of home ports, collectors of customs may authorize deputy collectors to waive the requirements for production of recordable instruments of conveyance and approve the designation of home port.

Accordingly, the last sentence of § 3.17(f) is amended to read as follows:

\* \* \* \* \*

§ 3.17 Home port; definition; change of.

(f) \* \* \* After favorable recommendation by the Bureau if required, the collector, or assistant collector, and the deputy collector in charge of marine work for the port at which a designation is filed when authorized by the collector, may waive the requirements for production of recordable instruments of conveyances and may approve that designation if he is satisfied that it is impracticable to furnish any such instrument and that the owner has legal title to the vessel.

(R.S. 161 as amended, sec. 2, 23 Stat. 118, as amended, R.S. 4141, sec. 1, 43 Stat. 947, as amended; 5 U.S.C. 22, 46 U.S.C. 2, 17, 18)

[SEAL] PHILIP NICHOLS, Jr.,  
Commissioner of Customs.

Approved: July 29, 1964.

JAMES A. REED,  
Assistant Secretary of the  
Treasury.

[F.R. Doc. 64-7906; Filed, Aug. 5, 1964;  
8:50 a.m.]

## Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service,  
Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 6761]

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

#### Exchanges of Property for Property by Corporations

In order to eliminate the requirement that a duplicate of Form 982A be filed

upon consenting to have the basis of property adjusted under section 1082 (a) (2) (relating to transfers of property made in obedience to an order of the Securities and Exchange Commission), paragraph (g) of § 1.1081-4 is amended to read as follows:

§ 1.1081-4 Exchanges of property for property by corporations.

(g) *Consent to regulations under section 1082(a) (2).* To be entitled to the benefits of the provisions of section 1081(b), a corporation must file with its return for the taxable year in which the transfer occurs a consent to have the basis of its property adjusted under section 1082(a) (2) (see § 1.1082-3), in accordance with the provisions of the regulations in effect at the time of filing of the return for the taxable year in which the transfer occurs. Such consent shall be made on Form 982A in accordance with these regulations and instructions on the form or issued therewith.

Because this Treasury decision amends existing regulations merely by eliminating the requirement to file a duplicate copy of Form 982A, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under section 9(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act.

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

[SEAL] BERTRAND M. HARDING,  
Acting Commissioner  
of Internal Revenue.

Approved: July 31, 1964.

STANLEY S. SURREY,  
Assistant Secretary of the  
Treasury.

[F.R. Doc. 64-7907; Filed, Aug. 5, 1964;  
8:50 a.m.]

## Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of  
Defense

SUBCHAPTER N—COMMERCIAL INSURANCE

### PART 276—SOLICITATION OF LIFE INSURANCE ON MILITARY INSTAL- LATIONS

The Deputy Secretary of Defense approved the following revision to Part 276 on March 3, 1964:

Sec.  
276.1 Purpose.  
276.2 Applicability and scope.  
276.3 Responsibility.  
276.4 General policy statements.  
276.5 Supervision of solicitation.  
276.6 Use of the allotment system.  
276.7 Requirements for insurers and agents for Department of Defense accreditation in the United States, its territories and the Commonwealth of Puerto Rico.  
276.8 Requirements for insurers and agents soliciting on United States military installations in foreign areas.

Sec.  
276.9 Policy requirements.  
276.10 Suspension or withdrawal of the solicitation and accreditation privilege.  
276.11 Reports.

AUTHORITY: The provisions of this Part 276 issued under sec. 161, R.S., 5 U.S.C. 22.

#### § 276.1 Purpose.

This part assigns responsibility and establishes uniform DoD policies governing the solicitation and purchase of life insurance.

#### § 276.2 Applicability and scope.

The provisions of this part apply to all DoD components and covers (a) insurers and agents electing to request the privilege of soliciting and selling life insurance on United States military installations worldwide and (b) the use of military allotments in payment of life insurance policy premiums.

#### § 276.3 Responsibility.

(a) *Overall administration of the program.* The Assistant Secretary of Defense (Manpower) (ASD(M)) shall be responsible for the administration of the provisions of this part and assure its effective implementation throughout the DoD.

(b) *Military departmental representation.* Each Military Department will appoint a representative to advise and assist, as requested from time to time, on all matters pertaining to the DoD insurance programs.

#### § 276.4 General policy statements.

(a) *Solicitation on base.* The conduct of a private business including the solicitation and sale of insurance on a military installation is a privilege, as distinguished from a right, the control of which is a responsibility vested in the installation commander subject to compliance with this part.

(b) *Sound life insurance underwriting and programming encouraged.* A sound life insurance program suitably underwritten to meet the varying requirements of the individual is encouraged by the DoD. Accordingly, the conduct of such personal business on base is permitted where feasible, with disinterested third party counseling provided, interviewing hours set aside, and facilities supplied. However, the privilege of solicitation on military installations is conditioned upon the clear understanding that such permission in no wise constitutes endorsement of the insurer or the policies offered for sale. The DoD as a matter of continuing policy abstains from endorsing any seller or product.

#### § 276.5 Supervision of solicitation.

(a) *Command supervision.* The Secretaries of the Military Departments will issue regulations to ensure that solicitation on military installations is properly supervised and controlled.

(1) Regulations will include prohibitions against:

(i) The solicitation of recruits or trainees and "mass" or "captive" audiences;

(ii) Practices involving rebates or elimination of competition;

(iii) Military personnel on active duty representing insurers in any capacity, officially or unofficially, with or without compensation;

(iv) The use of official identification cards to gain entrance to a military installation to solicit the sale of life insurance.

(2) Solicitation will be on an individual basis, preferably by appointment, in (i) specific location(s), and (ii) at hours designated by the installation commander.

(b) *Actions required of agents.* (1) Before being permitted to solicit, the agent will be required to examine a copy of the applicable insurance regulations and to indicate in writing that he understands them and that any violation of the regulations could result in the withdrawal of the privilege of solicitation for himself or the insurer he represents.

(2) For each proposed sale to enlisted personnel in the grades of E-1, E-2, and E-3, the agent must provide the applicant and the installation commander the following information in writing.

(i) Name and address of the insurer;  
(ii) Name and address of the agent;  
(iii) Type of policy (straight life, endowment, term, other);

(iv) Amount of life insurance;

(v) Premium;

(vi) Full name of person(s) to be insured and relationship;

(vii) Death benefit, guaranteed cash value, extended insurance, pure endowment (if any) at the end of the first to the fifth years inclusive and the tenth, fifteenth and twentieth years;

(viii) A statement that the policy will contain no restrictions by reason of military service or military occupational specialty of the insured unless such restrictions are clearly indicated on the face of the policy (see § 276.9(b)); and

(ix) A clear statement that dividends are not guaranteed if the presentation refers to dividends.

(c) *Counseling.* (1) Commanders will provide counseling for personnel under their command concerning the purchase of life insurance; counseling is mandatory for personnel of pay grades E-1, E-2, and E-3, and is encouraged for all others.

(2) Counseling will be accomplished, preferably by an officer; it is not expected that the counselor become a technical expert but he will have available, as a minimum, the information developed under paragraph (b)(2) of this section, and possess copies and be familiar with, the contents of the "Armed Forces Life Insurance Handbook" (DoD Pam 6-9, DA Pam 355-118, NAVPERS 15917, AFP 34-1-7, NAVMC 1195), as prepared and published in cooperation with the Institute of Life Insurance.

(d) *Installation regulations.* When there is a need to prescribe more restrictive requirements than may be contained in the implementing service regulations issued by the Military Departments, such additional requirements or restrictions must first be reviewed and confirmed by the cognizant Military Department.

### § 276.8 Use of the allotment system.

(a) Allotments of military pay will be made in accordance with DoD Directive 7330.1, subject: "Voluntary Military Pay Allotments," dated December 12, 1956, and the requirements of this section.

(b) Allotment forms may not be issued to agents. The possession of allotment forms by agents is cause for withdrawal of the privilege of solicitation.

(c) Applications for allotments will be authorized in payment of premiums for life insurance only under the following conditions:

(1) For life insurance solicited on-base both the insurer and its agents must be licensed in the state in which the installation is located.

(2) For life insurance solicited in foreign areas both the insurer and its agents must be accredited for on-base solicitation as prescribed in § 276.8.

(3) For life insurance solicited by mail the insurer must be licensed in the state in which the allotter is stationed.

The requirements of this paragraph (c) are waived for life insurance purchased prior to entry into service or as additional insurance coverage in a company which is receiving an allotment from the allotter.

(d) The following requirements must be strictly complied with before allotments of military pay may be authorized for personnel in pay grades E-1, E-2, and E-3:

(1) At least seven (7) days must elapse between the signing of an insurance application and the certification of an allotment unless the first full monthly insurance premium has been paid for in cash.

(2) Allotments will not be authorized in payment of premiums for life insurance purchased while in military service until the prospective buyer has been fully counseled as required by § 276.5(c).

### § 276.7 Requirements for insurers and agents for Department of Defense accreditation in the United States, its territories and the Commonwealth of Puerto Rico

(a) *License requirements.* Solicitation on-base by the representative of any insurer will not be authorized unless both the insurer and its agents are licensed in the state in which the installation is located. (Hereafter, throughout this part use of the word "state" as it pertains to political jurisdictions is defined to include the United States, its territories and the Commonwealth of Puerto Rico.)

(b) *Insurers.* Before an insurer may be accredited to solicit on a military installation a letter of application must be submitted to the commanding officer (with the understanding that a knowing and willful false statement is punishable by fine or imprisonment (18 U.S.C. 1001)) and signed by its President or Vice President:

(1) Reporting the states in which the insurer is qualified and licensed to sell insurance;

(2) Listing all policies, together with their form numbers, to be offered on the military installation;

(3) Assuring that only the policies listed are to be so offered and that such policies meet the requirements listed in § 276.9; and

(4) Including the name and complete address and telephone number of each agent who will solicit on the installation if approval is granted, state(s) in which licensed, the date(s) of licensing, expiration date(s) and a statement of agreement to report all future accessions and separations of agents employed for solicitation on the installation; further that the insurer assumes full responsibility for the acts of its agent(s) with respect to the solicitation and sale of life insurance to military personnel.

(c) *Agents.* Agents may be accredited for the on-base solicitation of life insurance by the installation commander providing the application to solicit is made by an accredited insurer as defined in paragraph (b) of this section.

### § 276.8 Requirements for insurers and agents soliciting on United States military installations in foreign areas.

(a) *Insurers.*—(1) *Applications filed annually.* During the months of February and March of each year only, insurers may apply for solicitation privileges on U.S. military installations in foreign areas for the fiscal year beginning the following July 1.

(2) *Application instructions.* Before an insurer may be accredited to solicit on a U.S. military installation in foreign areas the President or Vice President thereof must file a letter of application (with the understanding that a knowing and willful false statement is punishable by fine or imprisonment (18 U.S.C. 1001)) during the months of February or March, under the corporate seal of the insurer, to the Director for Civil Affairs, Office of the Assistant Secretary of Defense (Manpower), the Pentagon, Washington, D.C., 20301, containing information submitted in the following order:

(i) Foreign countries and the commands (e.g. European Command, Pacific Command, etc.) where it is desired to solicit on U.S. military installations.

(ii) Management plan for the supervision and control of sales personnel, limited in numbers to one general agent (or company manager or director) and no more than 30 agents for each overseas area. If warranted, the number of agents may be further limited by the overseas command concerned.

(iii) List of states and other jurisdictions in which the insurer is licensed and the effective and terminal dates of such licensing.

(iv) A statement that the insurer has complied with or will comply with the applicable laws of the country or countries wherein it proposes to solicit (by "laws of the country" is meant all national, provincial, city or country laws or ordinances of any country, as applicable). Upon being authorized to do business in such country or countries, copies of such authorization(s) will be submitted to the Director for Civil Affairs, address as shown in this subparagraph.

(v) An authenticated copy of the current annual statement as filed with

the insurance department of the state of domicile.

(vi) An authenticated copy of the most recently completed convention or "association type" report of examination if the insurer is licensed by more than one state, otherwise, a current report of one insurance department.

(vii) A statement that the policies to be offered for sale:

(a) Conform to the standards prescribed in § 276.9;

(b) Do not contain other than standard provisions such as those prescribed by the Life Insurance Act of the District of Columbia (Chapters 3-8, title 35, District of Columbia Code).

(viii) The amount of unassigned surplus and paid-up capital or only surplus if a nonstock company. In computing the amount of unassigned surplus, include as liabilities all debts due or to become due, contingent or otherwise, as provided in the Act and a statement that the amount of unassigned surplus and paid-up capital has been computed by the method also prescribed in the Act.

(ix) A statement that none of its officers, directors, or principal stockholders, or any member of their immediate families, receives or has any contract to receive commissions, directly or indirectly, from business currently transacted by the insurer, or if the insurer cannot so state, a disclosure and justification for such contracts. (For the purposes of this part, a stockholder who owns directly or beneficially, in excess of five percent of the total stock issued and outstanding shall be considered a principal stockholder.)

(x) A statement that the insurer has not made any loan, secured or otherwise, (except policy loans), to any director, officer or principal stockholder, or to any member of their immediate families within the last year, and that there is not currently outstanding any loan to such person made prior to that period.

(xi) A statement that the insurer will:

(a) Be responsible for the acts of its agents with respect to the solicitation and sale of insurance to military personnel;

(b) Not utilize agents to solicit Defense personnel who do not possess official credentials authorizing solicitation privileges on U.S. military installations in the applicable overseas area(s);

(c) Not accept applications for life insurance on the lives of military personnel from agents overseas, directly or indirectly (viz., by brokerage, sale, etc.) who do not possess official credentials authorizing solicitation privileges on U.S. military installations in the applicable overseas area(s); and

(d) Require the general agent (or company manager or director) to make frequent checks to insure the strict enforcement of this requirement.

(xii) A statement that the insurer will, upon receipt of notification of accreditation, supply the applicable major component commander(s) with the name, age, legal residence, citizenship and present address of each agent who will solicit overseas, the state or states in which such agent(s) are licensed, the date of licensing, expira-

tion dates, and the area in which each agent will solicit; except that the requirement for a state license will be waived, upon request made by the insurer to the appropriate overseas commander, for the accredited agent who has been continuously in foreign areas successfully selling life insurance and forfeits his eligibility for a state license because of no fault of his own but due, instead, to the operation of State law or regulation governing residence or domicile requirements. The request should contain the name of the state or jurisdiction which would not renew the agent's license.

(xiii) The following formats,<sup>1</sup> except Format F, which will be supplied to all applicants for overseas accreditation, must be completed and attached as inclosures to the application:

(a) Format A, entitled "Analysis of Assests".

(b) Format B, entitled "Lapse Ratio and Military Business Statement".

(c) Format C, entitled "Operations Statement".

(d) Format D, entitled "Insurance Inforce".

(e) Format E, entitled "Selected Financial Information".

(f) Format F, entitled "Experience Ratios and Analysis—Ordinary," (to be submitted to DoD only when requested).

(xiv) The inclosure of a check for \$125.00 payable to the Treasurer of the United States in payment of the required application fee.

(xv) Any explanatory or supplemental comments that will assist in evaluating applications.

(3) *Financial and operational criteria.*

(i) The insurer must have demonstrated continuous successful operation in the life insurance business for a period of not less than five years on December 31 of the year immediately preceding the date of filing the application; provided, however, that an insurer or a division of an existing insurer organized to write life insurance and affiliated or connected with an insurer already writing the same and/or other lines of insurance may be granted a waiver of the otherwise mandatory five-year requirement if the insurer to which it is affiliated or connected has been in business for a minimum of twenty years and has a record of financial stability and sound management. In the event of a merger the operating result and all other financial data of both the surviving and the absorbed company will be evaluated within the terms and intent of this part.

(ii) "Continuous successful operation" in the absence of information to the contrary is assumed provided:

(a) The aggregate adjusted net gain from operations is positive for the five-year period defined above, after dividends to policyholders. The adjusted net gain, for each full calendar year of such five-year period, is the net gain from operations after dividends to policyholders as reported in the annual statements of the company; such gain may

<sup>1</sup> Filed as part of original document. Copies are available through the office of the Director for Civil Affairs, ASD(M), Washington, D.C., 20301.

be increased by an expense credit unit, to be determined by the DoD, and applied to the net increase of the amount of insurance in force in the event of an unusual, sound and bona-fide increase in new business. Group insurance shall be excluded in determining such expense credit units.

(b) The insurer's ethical standards and stability in management control are satisfactory as evidenced by: cooperation with the DoD which includes the commanders in the field and compliance with solicitation regulations; the absence of substantiated complaints: (1) on operations and sales techniques; (2) of unwarranted discrimination in underwriting practices by reason of military service, rank or grade or military occupational specialty, and (3) other relevant and evidential material.

(iii) Hereafter, for original accreditation applications, the insurer must be licensed to do business in one or more of the states, a territory or the District of Columbia; meet the minimum standards for initial licensing under current laws where domiciled even though doing business under statutes previously enacted; and (a) if a capital stock company possess paid-up capital of \$500,000 and unassigned paid-up surplus (the excess of admitted assets over liabilities and capital) of \$250,000; or (b) if a non-stock company, an unassigned surplus (the excess of admitted assets over liabilities) of \$750,000; but (c) if the amounts currently required by the state of domicile are larger than (a) or (b) such amounts will govern.

(4) *Announcement of findings.* (i) Advice of action taken by the DoD upon annual applications for accreditation will be announced as soon as practicable by letters dispatched to each insurer.

(ii) In the event accreditation is denied for failure to meet the financial and operational criteria stated above, specific reasons for such findings shall be submitted to the insurer.

(a) Upon receipt of notification of an unfavorable finding, the insurer shall have thirty (30) days from the receipt of such notification (forwarded certified mail, return receipt requested) in which to request reconsideration of the original decision. Such requests must be accompanied by substantiating data or information in rebuttal of the specific reasons upon which the adverse findings are based.

(b) Action by the ASD(M) on appeal is final.

(c) If the insurer is presently accredited, up to ninety (90) days from final action will be granted in which to close out overseas operations pertaining to the DoD.

(5) *Change in status.* Material changes affecting the status of the insurer which may occur during the fiscal year of accreditation must be reported at the time of occurrence. Accreditation may be terminated for failure to report material changes.

(b) *Agents.* (1) An agent may solicit business on U.S. military installations in foreign areas if:

(i) The insurer he represents has been accredited under the terms of this part;

(ii) The insurer he represents has obtained clearance for him from the appropriate overseas command commanders (separate letter instructions will be issued by the DoD to accredited insurers on accreditation procedures, security clearance procedures for agents, commanders addresses, etc.);

(iii) His name appears on the official list of accredited agents maintained by the applicable major component commander(s), and

(iv) He has been granted permission by the commanding officer(s) of the military installation(s) on which he desires to solicit.

(2) Agents must have at least one (1) year of successful life insurance underwriting in the United States or its territories, generally within the five years preceding the date of application, in order to be initially employed for overseas solicitation and designated as an accredited agent.

(3) Agents may not solicit for more than one insurer.

(4) General agents (or company managers or directors) may not represent more than one insurer in any capacity. (The formation of a sales management agency or corporation with more than one general agent and his insurer comprising the agency or corporation is in violation of the foregoing and prohibited.)

(5) Insurers requesting accreditation of an agent (see subparagraph (6) of this paragraph) formerly representing another accredited insurer will include a statement that a report has been received from the former insurer advising that his separation was voluntary or involuntary, with or without prejudice.

(6) Upon receiving the annual letter of accreditation, each insurer will send to the applicable major component commander(s) named therein a verified list of agents currently accredited and soliciting in the overseas area concerned. Where applicable, the insurer will also include the names of new agents for whom original accreditation and permission to solicit on-base is requested. Proposed agent changes (accessions and separations) must be reported but not more frequently than once a month. Information copies of each of the foregoing mailings will be supplied the Director for Civil Affairs, OASD(M), Washington, D.C., 20301.

**§ 276.9 Policy requirements.**

Insurance policies offered and sold on U.S. military installations must:

(a) Comply with the insurance laws of the states in which the installations are located where policies are offered and sold; such compliance to be determined by the applicable state insurance commissioner in the event of a dispute or complaint.

(b) Contain no restrictions by reason of military service or military occupational specialty of the insured unless such restrictions are clearly indicated on the face of the policy.

(c) Plainly indicate any extra premium charges imposed by reason of military service or military occupational specialty.

(d) Not provide for a variation in the amount of death benefit or premium depending upon the length of time the policy has been in force unless any such variations are clearly described therein.

**§ 276.10 Suspension or withdrawal of the solicitation and accreditation privilege.**

(a) The suspension or withdrawal, for cause, of the on-base solicitation or accreditation privilege should only be invoked for good and sufficient reasons, such as, but not limited to:

- (1) Violation of DoD regulations.
- (2) Substantiated adverse reports from state insurance commissioners, other authorities, state or Federal, or recognized financial or insurance advisory services.
- (3) The use of any manipulative, deceptive, or fraudulent device, scheme, or artifice, including misleading advertising or other misleading sales literature.
- (4) The solicitation (by mail or otherwise) urging the purchase of insurance when such communications or presentations are composed or delivered in any manner which gives rise to any appearance that the offer is sponsored or has the endorsement of the DoD or any element thereof.

(5) The offering for sale of any insurance policy or rider which fails to meet the requirements of this part.

(b) Installation commanders may suspend indefinitely the privilege of on-base solicitation or accreditation granted to insurers or agents for cause, or withhold the privilege of solicitation when classified operations are in progress or when such action is determined to be in the best interest of national security or in conflict with the military mission of the installation. When suspension occurs for the reasons enumerated in paragraph (a) of this section such reasons will be included in prompt notifications to the insurer; agent; insurance commissioner of the state in which the insurer is domiciled and the agent is licensed; insurance commissioner of the state in which the installation is located; and the Secretary of the Military Department concerned, including a recommendation as to whether the suspension should be extended throughout the Department.

(c) The Secretary of a Military Department may extend the suspension action of an installation commander (see paragraph (b) of this section) throughout the Department concerned, or order such a suspension without the recommendation of an installation commander. When the Secretary of a Military Department directs service-wide suspension he will notify promptly the other addressees listed in paragraph (b) of this section; the Secretaries of the other Military Departments, who will order the extension of the same actions throughout their Departments without delay; and the ASD(M).

(d) The Assistant Secretary of Defense (Manpower) may (1) direct the suspension of the privilege of solicitation or the withdrawal of accreditation for agents and insurers throughout the DoD and (2) the restoration thereof.

**§ 276.11 Reports.**

(a) The Military Departments will report to the ASD(M) violations or suspension actions in duplicate immediately after such violations or suspensions occur. As a minimum, the agent's name, the insurer's name, and a description of the violation will be reported. Violations by agents or insurers resulting in suspension of the solicitation privilege will be processed as required by § 276.10. Report Control Symbol DD-N(AR) 374 is assigned to this reporting requirement.

(b) The public reporting requirements contained in this part have been approved by the Bureau of the Budget. Bureau of the Budget approval number 22-R188 may be cited.

MAURICE W. ROCHE,  
Administrative Secretary.

[F.R. Doc. 64-7882; Filed, Aug. 5, 1964; 8:47 a.m.]

**Title 32A—NATIONAL DEFENSE, APPENDIX**

**Chapter VIII—Transport Mobilization Staff, Interstate Commerce Commission**

**CONTROL OF RAILROAD TANK CARS AND LIQUID TRANSPORT VESSELS**

NOTE: In the FEDERAL REGISTER of July 21, 1964 (29 F.R. 9793, 9794), there were published General Orders ICC TM-6 and TM-13. These orders are emergency readiness documents and were not intended to be published in the regular FEDERAL REGISTER. The documents are therefore withdrawn from the Federal Register System.

**Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF**

**Chapter I—Veterans Administration PART 3—ADJUDICATION**

**Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation**

**READJUSTMENT PAY AND DISABILITY SEVERANCE PAY**

1. In § 3.700(a), subparagraphs (2) and (3) are amended to read as follows:

**§ 3.700 General.**

\* \* \* \* \*

(a) *Veterans.* \* \* \*

(2) *Lump-sum readjustment pay.* (i) A veteran who has received a lump-sum readjustment payment may receive disability compensation for disability incurred in or aggravated by service prior to the date of receipt of lump-sum readjustment payment subject to deduction of an amount equal to 75 percent of the amount received as readjustment payment. Compensation for such disability may not be authorized for any period prior to June 28, 1962, for a veteran who was separated from service prior to June 29, 1962, or prior to June

29, 1962, for a veteran who was separated from service on or after that date.

(ii) The receipt of readjustment pay does not affect the payment of disability compensation based on a subsequent period of service. Compensation payable for service-connected disability incurred or aggravated in a subsequent period of service will not be reduced for the purpose of offsetting readjustment pay based on a prior period of service. (50 U.S.C. 1016(b) (6))

(3) *Severance pay.* Where the disability or disabilities found to be service connected are the same as those upon which disability severance pay is granted, an award of compensation will be made subject to recoupment of the disability severance pay. There is no prohibition against payment of compensation where the veteran received nondisability severance pay or where disability severance pay was based upon some other disability. Compensation payable for service-connected disability other than the disability for which disability severance pay was granted will not be reduced for the purpose of recouping disability severance pay.

2. Section 3.1569 is revoked.

§ 3.1569 Payment of disability compensation with deduction of lump-sum readjustment pay.

[Revoked]

(72 Stat. 1114; 38 U.S.C. 210)

These VA Regulations are effective the date of approval.

Approved: July 31, 1964.

By direction of the Administrator.

[SEAL] W. J. DRIVER,  
Deputy Administrator.

[F.R. Doc. 64-7844; Filed, Aug. 5, 1964;  
8:45 a.m.]

## Title 47—TELECOMMUNICATION

### Chapter I—Federal Communications Commission

[FCC 64-766]

#### PART 1—PRACTICE AND PROCEDURE

##### Applications for Frequencies Adjacent to Class I-A Channels

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 29th day of July 1964;

The Commission has under consideration § 1.569 (formerly 1.351) of its rules, which sets forth special criteria governing the handling of and action on AM applications for facilities (new or major changes) on frequencies within 30 kc/s of the Class I-A clear channels mentioned in § 73.25. These criteria are necessary in order to avoid prejudicing possible future uses of the I-A channels. Paragraphs (b) and (c) of § 1.569 relate to frequencies which are within 30 kc/s of the 12 "unduplicated" clear chan-

nels. At the time this section of the rules was adopted following the Clear Channel decision (Docket 6741) in 1961, it was anticipated that final determination of the best use of these 12 I-A channels would be made within three years, and accordingly these paragraphs begin with the language: "Until September 1, 1964, or such earlier date as may be announced \* \* \*"

Because of a number of factors, the ultimate disposition of these channels has not yet been determined. Several applications have been tendered by I-A stations thereon requesting developmental authority for "higher power" operations (up to 750 kilowatts). It has not been determined which of these, if any, should be granted, and if any such grants are made for experimental purposes it will take some time for the facilities to be installed and operate for a sufficient time to provide meaningful data. Therefore, it is necessary to continue such criteria in effect beyond the September 1, 1964 date mentioned. Accordingly, we are amending these paragraphs, as set forth below, by eliminating reference to that date.

Because the rule changes adopted herein are procedural, prior notice and public proceedings are not required under the Administrative Procedure Act, nor does the effective date provision of section 4(c) of that statute apply. The changes in the rules are effective August 31, 1964.

Authority for the adoption of the rule amendment herein is contained in sections 4 (i) and (j) and 303 of the Communications Act of 1934, as amended.

In view of the foregoing: *It is ordered*, That, effective August 31, 1964, section 1.569 of the Commission's rules is amended, as set forth below.

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

Released: July 31, 1964.

#### FEDERAL COMMUNICATIONS COMMISSION,<sup>1</sup>

[SEAL] BEN F. WAPLE,  
Secretary.

Paragraphs (b) (1) and (c) (1) of § 1.569 of the Commission's rules are amended so as to eliminate the reference therein to September 1, 1964, and as amended read as follows:

§ 1.569 Applications for frequencies adjacent to Class I-A channels.

(b) (1) The provisions of this paragraph apply to all applications for the following frequencies: 680, 690, 710, 730, 790, 800, 810, 850, 860, 900, 1010, 1050, 1060, 1070, 1130, 1140, 1150, 1170, 1190, and 1220 kc/s.

(c) (1) The provisions of this paragraph apply to all applications for the following frequencies: 610, 620, 630 kc/s.

[F.R. Doc. 64-7833; Filed, Aug. 5, 1964;  
8:45 a.m.]

<sup>1</sup>Dissenting statement of Commissioner Loevinger filed as part of the original document.

## PART 21—DOMESTIC PUBLIC RADIO SERVICES (OTHER THAN MARITIME MOBILE)

### Dispatch Stations; Report and Order

1. The Commission issued a notice of proposed rule making in the above-entitled matter which was duly published in the FEDERAL REGISTER (29 F.R. 3204, March 10, 1964). Comments were invited concerning the proposal set forth therein. The dates for filing such comments and reply comments have passed and all those which were submitted<sup>1</sup> have been considered by the Commission in arriving at the determinations hereinafter set forth.

2. This proceeding was prompted by that portion of a Petition for Rule Making, filed September 11, 1962 by the National Mobile Radio System (NMRS), which, inter alia, requested a rule change to provide for blanket authorization of dispatch station facilities. Although the aforesaid petition did not specify a particular procedure or a definite proposed rule, it is clear that the NMRS seeks the broadest possible authorization for the establishment of dispatch stations with a minimum of restrictions. Recognizing certain meritorious aspects of a blanket authorization, the Commission proposed a rule which would provide for the grant of blanket authorizations to establish dispatch stations within the calculated reliable service area of a base station, subject to certain restrictions and requirements for notification.

3. In commenting on the proposed rule change NMRS reviewed the pertinent portions of its aforesaid petition and again described the scope of its request as follows: "Such blanket authority would be similar to existing mobile unit authority and would follow (but on a permanent basis) existing Commission procedures which permit blanket authority to establish temporary rural radio (subscriber) stations at temporary locations for a period up to six months." Although NMRS commends the Commission for proposing "to accord a measure of relief to the industry with respect to dispatch station authorization and establishment", the limitations

<sup>1</sup>Comments and supporting statements have been filed by Radio Broadcasters, Inc.; Mobilfone of Boston; Communications Industries, Inc.; Tydings Electronics, Inc.; Victor E. Duane, d/b as Central Mobile Radio Phone Service; General Communications Service, Inc.; Business Communications, Inc.; National Mobile Radio System; Fresno Mobile Radio, Inc.; Two-Way Radio Company; Chattanooga Venetian Blind Co., Inc.; Atlanta Radio Contact, Inc.; Allied Telephone Companies Association; Industrial Communications Systems, Inc.; Francis H. Drake; Keller and Heckman, Esqs.; August F. Gabriel; Sierra Communications, Inc.; E. M. McLeod; E. B. Brownell; Othal D. Vrana; Business Communications, Inc.; Robert J. Stipp; Franklin T. Wilson, d/b as Wilson Radio Dispatch; Salinas Valley Radio Dispatch Company; North Shore Radio Telephone, Inc.; Radio Communications, Inc.; Don W. Daymon, d/b as Daymon Radio Service.

on the proposed blanket authorization have generated critical comments by NMRS and others. To facilitate our discussion of the several objections to the proposed rule change, we shall deal with them on a subject basis without specifically identifying the proponents thereof.

4. The most critical comments were directed at the limitation of the blanket authority to installations within the reliable service area, and continuation of the former procedure of requiring individual applications for installations outside of such area.<sup>2</sup> NMRS argues that the Commission's concern for possible claims of economic injury and potential electrical interference are matters that involve radio common carriers only; that the results of a poll of its members reveals that they "do not want nor do they seek the economic protection the Commission offers"; and that the reliable service area (determined on the basis of Commission standards) is an unrealistic and unsound approach to any limitation on service. Reference is made to the establishment of many temporary fixed rural subscriber stations, at locations far from the associated base stations, without reports of interference. In short, the commentators argue that the Commission has not proven the need for a limitation on the location of such facilities and that the industry can be trusted to comply with the requirements of the rules currently in effect even though an individual application for each installation would be no longer required. Inasmuch as a licensee in the Domestic Public Land Mobile Radio Service is granted economic and electrical protection<sup>3</sup> within his reliable service area only, and since the proposed rule provides for the establishment of certain dispatch stations whose only limitation as to time of operation is controlled by the base station license (three year maximum), we do not believe that the unlimited establishment of remote fixed stations would be consistent with our obligation to protect the mobile service from potential interference and possible degradation. In this connection, we find that

<sup>2</sup> Section 21.504(a) of our rules provides as follows:

"(a) The limits of reliable service area of a base station are considered to be described by a field strength contour of 37 decibels above one microvolt per meter for stations engaged in two-way communication service with mobile stations and 43 decibels above one microvolt per meter for stations engaged in one-way signaling service. Service within that area is generally expected to have an average reliability of not less than 90 percent."

However, we recognize the fact that adequate and useful service may be rendered to fixed locations outside of the "reliable service area."

<sup>3</sup> Section 21.504(b) of our rules provides as follows:

"(b) The field strength contours described in paragraph (a) of this section shall be regarded as determining the limits of the reliable service area of the related base stations for the purpose of providing protection to such stations from co-channel electrical harmful interference and defining the area within which consideration will be accorded claims of economic competitive injury."

remote dispatch stations should not be established on a "permanent" basis to the exclusion of present or future mobile services for which the pertinent frequencies have been allocated. The attempt to analogize between the proposed blanket authority for dispatch stations (established for indefinite periods) and current blanket authorization for temporary fixed rural subscriber stations is meaningful only when it is understood that authorizations in the latter category may be revoked or terminated without a hearing.

5. It has also been charged by NMRS that "there is an outright inconsistency between the Commission's restriction in the instant docket and the restriction proposed in Docket No. 15015". The alleged inconsistency is apparently based on a misunderstanding of the two proposals. The fact is that the notice of proposed rule making issued on March 27, 1963, 27 F.R. 2992 (Docket No. 15015), proposes restrictions on the location of dispatch stations and rural subscriber stations generally and such proposal is wholly consistent with the action to be taken herein which relates to the administrative handling of certain proposed dispatch station authorizations only. Any modification of our rules based on Docket 15015 will not affect the blanket authority procedures established herein.

6. Nearly all of the commentators contend that restricting the blanket authorizations to dispatch stations located within the reliable service area of their associated base stations will minimize the administrative benefits associated with applications for blanket authority, that is, the elimination of the tasks of filing and processing an individual application for each dispatch station. It is alleged that the need for dispatch stations, economically speaking, increases as the distance from the base station increases. In other words, it is alleged that the establishment of a dispatch point utilizing wire-line connections becomes prohibitive, on a cost basis, at distances above eight (8) miles due to the fact that such wire-line charges are generally made on a mileage basis. Moreover, our experience with blanket authorizations of mobile stations and temporary fixed rural subscriber stations has been quite satisfactory and resulted in very few problems.

7. Considering all the facts and circumstances that have been brought to our attention, we conclude that there is no need to restrict blanket dispatch station authorizations to stations located within the reliable service area of their associated base stations. Further, we are satisfied that any restriction imposed on the location of dispatch stations generally in Docket No. 15015 will meet our obligation to afford a measure of economic protection to established carriers in the service. However, in relaxing that restriction we find it necessary from an interference point of view and in order to protect the primary purpose of the allocation of frequencies in the Domestic Public Land Mobile Radio Service to retain certain authority over installations made under blanket authorizations, to wit: Authority for operation of such installations, if found to

be causing interference to any mobile service established before or after the dispatch station installation was completed, may be terminated by the Commission without a hearing upon notice being given to the station licensee. In order to enable us to more completely and promptly consider possible interference complaints we have altered the notice provisions by requiring licensees to submit additional information regarding the dispatch station transmitter make and model number and the transmitting antenna make and model number.

8. In view of our decision to modify the restrictions on the location of dispatch stations installed under the proposed blanket authorization, we find it unnecessary to deal with arguments against our previously expressed concern for economic conflict among carriers or proposals to dispose of such economic conflict problems by reliance on the increasing interest of the various states in assuming jurisdiction over miscellaneous common carriers' operations in this service or to rely on the ability of licensees to obtain consent from their competitors.

9. Several comments were directed to the proposed limitation of ten watts rated power output for dispatch station transmitters to be operated under blanket authority. In addition to the fact that our rules would continue to impose a limit on the effective radiated power of 100 watts, it is pointed out that at the present time there are very few transmitters which are type-accepted for 10 watts output power under Part 21 of the rules. In view of our removal of the strict reliable service area limitation on the establishment of these stations we are not inclined to eliminate the 10 watt limitation placed on the transmitter output (several manufacturers produce suitable transmitters). Such limitation combined with the directional antenna requirement which has always applied to dispatch stations are deemed necessary to minimize interference to other mobile systems. The argument that directional antennae for installations which are near the base station may tend to increase potential electric interference is inapt in view of the general prohibition against the use of radiated power in excess of that which is necessary to accomplish the purpose of the facility. (We also note that there are a substantial number of transmitters rated for 1 watt or less). We do find, however, that the request to reduce the advance notification period to two days is reasonable.

10. By reason of the foregoing, we conclude that the proposed rules herein should be modified and promulgated to comply with the findings hereinabove stated. Accordingly, it is ordered, Pursuant to the authority contained in section 303(c), (f), (g) and (r) of the Communications Act of 1934, as amended, That effective September 15, 1964, § 21.515 and § 21.509 are amended and § 21.520 is added to the Commission's rules as set forth below: *And it is further ordered*, That the proceedings in this Docket are terminated.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303)

Adopted: July 29, 1964.

Released: August 4, 1964.

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

In Part 21—Domestic Public Radio Services (Other Than Maritime Mobile):

1. Section 21.515(a) is amended to read as follows:

**§ 21.515 Control points, dispatch points and dispatch stations.**

(a) Dispatch stations, other than those installed pursuant to § 21.519(a), may be installed only with specific authorization from the Commission. Upon removal of a specifically licensed dispatch station, the licensee must within 30 days thereafter submit to the Commission in Washington, D.C., the dispatch station license for cancellation. Dispatch points may be installed or removed without authorization. Dispatch point circuit facilities shall be installed in conformance with the requirements of paragraph (c) (2) of this section.

2. Section 21.519 is amended to read as follows:

**§ 21.519 Use of mobile station frequency for dispatch stations.**

A base station licensee may be authorized to install, for a mobile station subscriber or a group of mobile station subscribers, a dispatch station using the mobile station frequency paired with the associated base station frequency. Authorization for the establishment and operation of any dispatch station will be on the express condition that such station will not cause harmful interference to the mobile or rural radio services and will not inhibit use by the mobile radio service of the frequencies assigned to the dispatch station or degrade the mobile communication service rendered by the base station. No dispatch station shall be installed at any site or under conditions whereby it will be capable of overriding the control functions of a control station using the same frequency.

(a) A licensee may install a dispatch station without authorization for the specific location if the antenna height employed at any such location does not exceed the criteria set forth in § 17.3 of this chapter, the rated power output of the transmitter does not exceed 10 watts and each such installation otherwise complies with the requirements of §§ 21.107, 21.108, 21.110, 21.506, 21.520 and all other pertinent provisions of Part 21 of this chapter. The number of such dispatch station installations shall not exceed the number stated on the base station license. The operation of any such installation shall be subject to termination by the Commission without a hearing upon notice to the licensee.

(b) Any proposal for the installation of a dispatch station which does not comply with the limitations and require-

ments of paragraph (a) of this section shall be submitted to the Commission, upon proper application (FCC Form 401) for a construction permit.

3. A new § 21.520 is added to read as follows:

**§ 21.520 Notification of operation of dispatch station without specific authorization.**

(a) The licensee of a base station who proposes to establish a dispatch station pursuant to the provisions of § 21.519(a) shall notify the Commission at Washington, D.C., 20554, and its Engineer-in-Charge of the radio district wherein operation is to be conducted, at least two days prior to the installation of the facilities. This notification shall include:

(1) The name(s) and address(es) of subscriber(s) and the number of mobile stations assigned to each subscriber.

(2) A description of the transmitting location, including the geographic coordinates to the nearest second of latitude and longitude, and also by conventional reference to street number, landmark, etc.

(3) The name of the manufacturer, model number and rated power output of transmitter to be installed.

(4) The transmitting antenna make, model number and power gain in decibels with respect to a reference half-wave dipole antenna.

(5) The over-all height, in feet above ground level, of the transmitting antenna.

(6) The location of the transmitter control point.

(7) The exact frequency or frequencies to be used.

(8) The identity and location of the base station through which it will communicate.

(9) The commencement date of operation.

(b) A copy of the foregoing notification shall be posted with the base station license.

(c) Upon termination of the operation of a dispatch station for which notification was given pursuant to paragraph (a) of this section or, in the event any of the facts alleged in such notification will be changed, written notice thereof shall be given to the Commission and its Engineer-in-Charge, at least two days prior to the execution of the change.

[F.R. Doc. 64-7918; Filed, Aug. 5, 1964; 8:51 a.m.]

[Docket Nos. 14185, 15142; FCC 64-767]

**PART 73—RADIO BROADCAST SERVICES**

**Particularly as to Allocation and Technical Standards**

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 29th day of July 1964;

The Commission has under consideration its third report, memorandum opinion and order (FCC 63-735) issued in Docket No. 14185 on August 1, 1963, particularly paragraph 29, and its order to show cause (FCC 63-736) issued to

Mount Pleasant Broadcasting Co. (station KIMP-FM, Mount Pleasant, Tex.), Docket No. 15142, issued the same day; and the responses thereto.

In the third report the Commission concluded that the public interest would be served by the assignment of Channel 264 to Mount Pleasant, Tex., instead of Channel 241 and by the assignment of Channel 240A to Kilgore, Tex. It stated however, that before this could be done, the license of station KIMP-FM would have to be modified to specify operation on channel 264 in lieu of channel 241 and issued the subject order to show cause to Mount Pleasant. The reason for the proposed shift in assignment at Mount Pleasant from channel 241 to 264 and the modification of the license of KIMP-FM is the removal of a short spacing between KIMP-FM and WBAP-FM on adjacent channel 242 at Fort Worth, Tex.

In a letter filed July 16, 1964 KIMP-FM consents to the modification of its license, withdraws its previously filed opposition to the show cause order issued in this proceeding, and withdraws its pending "Petition to Dismiss or Deny" of April 27, 1964, directed against the pending application of WBAP-FM for a construction permit to improve its facilities (BPH-4412). KIMP-FM also encloses a copy of an agreement between the attorneys for the parties involved herein concerning costs involved in the changeover to channel 264 by KIMP-FM. In view of our findings in Docket No. 14185 that the public interest would be served by the substitution of channel 264 for 241 in Mount Pleasant (and the assignment of channel 240A in Kilgore), and the consent of KIMP-FM to the modification of its license to achieve the desired result, we are finalizing the proposed changes in the FM table of assignments herein. Carter Publications, Inc., licensee of station WBAP-FM, has agreed to pay Mount Pleasant B/g. Co. the sum of \$2,500 plus engineering fees to cover the expenses involved in the frequency change, an amount which we think is reasonable.

Authority for the actions taken herein is contained in sections 4(i), 303, 307(b), and 316 of the Communications Act of 1934, as amended.

In view of the foregoing: *It is ordered*, That effective September 8, 1964, the FM table of assignments contained in § 73.202 of the Commission's rules and regulations is amended, insofar as the communities named are concerned, to read as follows:

(a) Amend the following entry to read:

City	Channel No.
Mount Pleasant, Tex.....	264

(b) Add the following entry:

City	Channel No.
Kilgore, Tex.....	240A

*It is further ordered*, That effective September 8, 1964, the outstanding license of Mount Pleasant Broadcasting Co. for radio station KIMP-FM is modified to specify operation on channel 264 in lieu of channel 241 subject to the following conditions:

(a) The licensee shall submit to the Commission by August 20, 1964, all tech-

nical information normally required for the issuance of a construction permit for operation on channel 264, including any changes in antenna and transmission line.

(b) The licensee may continue to operate on channel 241 until, upon its request, the Commission authorizes interim operation on channel 264, following which the licensee shall submit (within 30 days) the measurement data normally required of an applicant for an FM broadcast station license.

It is further ordered, That the proceeding in Docket No. 15142 is terminated.

(Secs. 4, 303, 307, 48 Stat. 1066, as amended, 1082, as amended, 1083, Sec. 12, 66 Stat. 717; 47 U.S.C. 154, 303, 307, and 316)

Released: July 31, 1964.

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

[F.R. Doc. 64-7919; Filed, Aug. 5, 1964; 8:51 a.m.]

[Docket No. 15403; FCC 64-768]

**PART 73—RADIO BROADCAST SERVICES**

**Table of Assignments; Television Broadcast Stations, Jacksonville and Palatka, Florida; Report and Order**

1. The Commission has before it for consideration its notice of proposed rule making released in this proceeding on April 3, 1964 (FCC 64-297), and comments and reply comments filed in response thereto,<sup>1</sup> on the following proposal to change the Table of Assignments, Television Broadcast Stations, § 73.606 of the rules:

City	Channel No.	
	Present	Proposed
Jacksonville, Fla.....	4+, *7, 12-, 30+, 36-, *17, 62+	4+, *7, 12-, 17, 30+, *36-, 62+
Palatka, Fla.....		

Petitioner in this proceeding, Rust Craft Broadcasting Company, was granted a construction permit for Station WJKS-TV (formerly WRSK) on Channel 36 at Jacksonville on September 11, 1963. As explained in the notice, the petitioner now feels that the use of a lower channel—Channel 17 instead of Channel 36—would facilitate the fullest and best possible use of the UHF band in the Jacksonville area at this time.

2. In Docket No. 14229, the Commission is considering the assignment of numerous UHF channels throughout the United States for the purpose of fostering expanded use of UHF television channels. In a further notice of pro-

<sup>1</sup>In addition to comments and reply comments filed by petitioner, comments were filed by the Florida Educational Television Commission (Florida Commission), American Broadcasting Company (ABC), and the National Association of Educational Broadcasters (NAEB).

posed rule making (FCC 63-975) in that proceeding, we invited comments on a proposed amended Table of Assignments (§ 73.606 of the rules) reflecting such expanded use of UHF. We stated in that document that petitions for rule making (involving proposed UHF assignments) which were filed during the time for filing initial comments in that proceeding would be treated as comments therein. The instant Rust Craft petition falls within that category.

3. Rust Craft urged that we initiate a separate proceeding with regard to its petition in order to bring about an earlier inauguration of UHF service to the Jacksonville area, if the proposal is adopted, and thus further the Commission's announced policy to foster an expanded use of UHF channels. For numerous reasons, including the fact that it appeared that the proceeding in Docket No. 14229 would take a longer time to conclude than anticipated, the fact that the proposal of petitioner would have no significant impact on the ultimate outcome in Docket No. 14229, and the fact that petitioner indicated that it would proceed with diligence to construction of a station on Channel 17 if it is assigned to Jacksonville, we decided that the petition merited separate treatment and instituted the present proceeding.

4. There are presently no applications pending for either of the UHF channels currently assigned to Palatka or for Channel 30 at Jacksonville. On the air at the present time in Jacksonville are commercial Stations WFGA-TV, Channel 12, and WJXT-TV, Channel 4, licensed to Florida-Georgia Television Company, Inc. and Washington Post Company, respectively; also noncommercial educational Station WJCT, Channel \*7, licensed to Community Television, Inc.

5. In its initial comments, Rust Craft refers to the status of its construction (negotiations for equipment, but no actual construction), and to two assumptions on which its application was filed—availability of ABC and NBC programs not now presented on the two Jacksonville VHF stations (which are primary CBS and NBC affiliates), and maintenance of the status quo with respect to VHF assignments there (i.e., no "drop-in" of a third VHF channel). It urges that it is the only party interested in using a UHF assignment in either of the cities involved here; and that assignment of a low-band UHF channel would afford that the fullest and best use of available UHF channels. It states that if Channel 17 is assigned to Jacksonville it will "consistent with this position" (the two assumptions mentioned above) "proceed diligently toward the early establishment of UHF service in Jacksonville." It also states that (subject to resolution of the two matters mentioned) it "is ready to go forward with construction and to spend substantial sums \* \* \* to operate on Channel 36 or 17."

6. The two educational groups commenting both refer to their comments in Docket No. 14229, in which Florida Commission urged the desirability of a low-band UHF assignment at Palatka for education, and NAEB advanced a com-

plete new assignment plan which it considers preferable to that proposed by the Commission. Florida Commission recognizes our desire to improve opportunities for "pioneer" UHF stations, and asserts that, since certain advantages may accrue to Rust Craft from having a lower UHF channel, it does not oppose (though it does not support) our proposal. It also states, however, that its non-objection is limited to the circumstances of this case—particularly Rust Craft's stated intention to proceed diligently—and does not extend to other changes in the Florida educational channel pattern. NAEB likewise recognizes our desire to speed the development of UHF by making early grants where it can be done without prejudice to the ultimate result of the overall proceeding, though it vigorously opposes any actions which would have that effect. It strongly urges that in making any channel assignments or authorizations we reserve the right to change the channel assigned, without hearing, if it later develops in the overall proceeding that assignment of a different channel (such as that proposed by NAEB) would better serve the public interest. On this basis, it does not oppose the present proposal.<sup>2</sup>

7. ABC's comments expressed general support for the proposal in view of its belief that lower UHF channels have certain advantages. Most of its filing, however, related to matters not at issue in the present proceeding, in substance doubting the viability of any UHF operation (which, it was asserted, ABC could not affiliate with and which would get, at best, only the less popular network programs which the two VHF stations do not clear). ABC urged a "drop-in" of Channel 10 for a dual VHF-UHF operation (for the period until UHF conversion becomes prevalent) unless one of the networks is willing to enter into a primary affiliation with the UHF station. We decided the Jacksonville Channel 10 and other "drop-in" proceedings last year. Such matters are not related to the present proceeding, and this point (and Rust Craft's arguments in reply) will not be discussed further.<sup>3</sup>

8. In reply comments, Rust Craft (in addition to replying to ABC's arguments) opposes NAEB's request that any UHF channel assignment be conditioned on possible change as a result of the overall UHF proceeding, urging that this would "render the Commission's interim procedure for severing and granting allocation changes pending the outcome of Docket No. 14229 a complete nullity."

9. The Commission has carefully considered the petitioner's request for the exchange of channel assignments

<sup>2</sup>In Docket 14229 the Commission proposed for Jacksonville UHF channels 30, 36 and 52 (none reserved). The NAEB proposed 14, \*23, 36 and \*52.

<sup>3</sup>Report and Order in Dockets 14231-14238 (FCC 63-501) adopted May 29, 1963; Memorandum Opinion and Order on reconsideration in the same proceedings (FCC 63-1168) adopted December 18, 1963. "Drop-in" of Channel 10 is also sought in a petition filed by New Horizons Telecasting Corporation (one of the earlier petitioners for the same thing) on May 22, 1964. This petition (RM-605) is pending.

together with all comments filed herein. As we stated in the notice in this proceeding, we feel that the technical differences between higher and lower UHF channels are largely "state-of-the-art" and not of great significance (especially as between UHF channels in the lower half of the band. Nevertheless, since the position of petitioner's UHF station may be improved by assigning a lower UHF channel to Jacksonville, possibly resulting in earlier and of UHF television service there; since this may be done without extensive alteration of the assignment plan (Docket No. 14229); and since this would further the announced policy of the Commission to foster an expanded use of the UHF television broadcast channels, we believe that it is in the public interest to make the requested assignment.

10. With respect to NAEB's request that we condition this and other new assignments and authorizations on whatever change in channel number might be appropriate as a result of the overall proceeding, as we mentioned in the notice in this case we do not believe that the interchange of Channels 17 and 36 between Palatka and Jacksonville is likely to have any substantial impact on the ultimate result in Docket 14229. But the possibility does exist, if only in small degree, that ultimately a different pattern would prove to be more in the public interest. Therefore, we believe NAEB's request is appropriate, and we reserve the right to change the assignment and are conditioning Rust Craft's construction permit accordingly. However, we are also mindful of the problem that this presents, and of Rust Craft's argument that "while it realizes that it would acquire no vested rights in any frequency or channel assigned to it, it would nevertheless be foolhardy to proceed with construction and the early institution of service on one channel \* \* \* if it may soon thereafter be required to shift channels as a result of the final decision in Docket No. 14229." Accordingly every effort will be made by the Commission—here and elsewhere—to avoid changing channel assignments of authorized stations, where construction has advanced to a point where a change in channel assignment would require expenditure of substantial additional funds by the permittee.

11. We also emphasize that our separate treatment of this case, and grant of the requested change in assignments, is based in large part on Rust Craft's statements, noted above, that it will proceed diligently to bring UHF service to Jacksonville as quickly as possible.

12. The requested assignments comply with all mileage separation requirements both with respect to the current Table of Assignments and the revised Table of Assignments proposed in outstanding Docket 14229. As to petitioner's request for an order to show cause why its permit should not be modified to specify operation on Channel 17 in lieu of Channel 36 in Jacksonville, it is unnecessary

to issue such an order inasmuch as petitioner has, in making its request, consented to such modification.<sup>4</sup>

13. In view of the foregoing: *It is ordered*, That, effective September 8, 1964, the Commission's rules and regulations are amended, with respect to Jacksonville and Palatka, Florida, by reassigning Channel 17 from Palatka to Jacksonville without a reservation for educational use, and by reassigning Channel 36 from Jacksonville to Palatka and reserving it for noncommercial educational use there, so that the Table of Assignments contained in § 73.606 of the Commission's rules and regulations as to these two cities will read as follows:

<i>City</i>	<i>Channel No.</i>
Jacksonville, Florida_ 4+, *7, 12—, 17, 30+	
Palatka, Florida----- *36—, 62+	

14. *It is further ordered*, That, effective September 8, 1964, the outstanding authorization held by Rust Craft Broadcasting Company for Station WJKS-TV, Jacksonville, Florida, is modified to specify operation on Channel 17 there instead of Channel 36, subject to the following conditions:

(a) That Rust Craft Broadcasting Company shall advise the Commission in writing by August 20, 1964, of its acceptance of the modification of its authorization for operation of Station WJKS-TV;

(b) That Rust Craft Broadcasting Company shall submit to the Commission by August 20, 1964, all necessary information for the preparation of modify authorization to construct and operate on Channel 17 with transmitting facilities meeting all requirements of the Commission's rules and regulations for operation on Channel 17; and

(c) That this authorization is subject to the condition that the Commission may, without further proceedings, specify operation by the permittee on such other commercial channel as may be assigned to Jacksonville, Florida, in lieu of Channel 17, by decision in the rule making proceeding Docket No. 14229.

15. The action herein is taken pursuant to authority found in sections 4(i), 303, 307(b) and 316 of the Communications Act of 1934, as amended. (Secs. 4, 303, 307, 48 Stat. 1066, as amended, 1082, as amended, 1083, Sec. 12, 66 Stat. 717; 47 U.S.C. 154, 303, 307, and 316)

Adopted: July 29, 1964.

Released: July 31, 1964.

FEDERAL COMMUNICATIONS  
COMMISSION,<sup>5</sup>  
BEN F. WAPLE,  
Secretary.

[F.R. Doc. 64-7920; Filed, Aug. 5, 1964;  
8:51 a.m.]

<sup>4</sup>The expiration date of petitioner's construction permit on Channel 36 was May 11, 1964; on April 9, 1964 it filed an application for extension of time.

<sup>5</sup>Commissioner Cox dissenting; Commissioner Loevinger absent.

## Title 50—WILDLIFE AND FISHERIES

### Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

#### PART 32—HUNTING

##### Desert Game Range, Nevada

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

#### § 32.32 Special regulations; big game for individual wildlife refuge areas.

##### NEVADA

##### DESERT GAME RANGE

Public hunting of big game on the Desert Game Range, Nevada, is permitted only on the area designated by signs as open to hunting. This open area, comprising 1,350,000 acres, is delineated on a map available at the refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 1002 Northeast Holladay, Portland, Oregon.

Hunting of big game is permitted in accordance with all applicable State regulations, subject to the following special conditions:

(a) Species permitted to be taken: Mule deer, elk, and bighorn sheep.

(b) Open season:

Deer: Archery season—August 29 through September 13, 1964; Firearms season—October 17 through November 15, 1964.

Elk: October 17 through November 15, 1964.

Bighorn sheep: Area 27A—December 24, 1964, through January 3, 1965; Area 27B—February 27, 1965, through March 14, 1965; Area 27C—February 27, 1965, through March 14, 1965.

Shooting hours—Sunrise to sunset.

(c) Other provisions:

1. The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32.

2. A Federal permit is not required to enter the public hunting area, but elk and sheep hunters are required to check in and out of designated checking stations.

3. The provisions of this special regulation are effective to March 15, 1965.

PAUL T. QUICK,  
Regional Director, Bureau of  
Sport Fisheries and Wildlife.

JULY 24, 1964.

[F.R. Doc. 64-7884; Filed, Aug. 5, 1964;  
8:47 a.m.]

#### PART 32—HUNTING

##### Charles Sheldon Antelope Range, Nevada

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

**§ 32.32 Special regulations; big game for individual wildlife refuge areas.**

NEVADA

**CHARLES SHELDON ANTELOPE RANGE**

Public hunting of big game on the Charles Sheldon Antelope Range, Nevada, is permitted only on the area designated by signs as open to hunting. This open area, comprising 365,000 acres, is delineated on a map available at the refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 1002 Northeast Holladay, Portland, Oregon.

Hunting of big game is permitted in accordance with all applicable State regulations, subject to the following special conditions:

(a) Species permitted to be taken: Deer.

(b) Open season: October 3 through November 8, 1964. Shooting hours—sunrise to sunset.

(c) Other provisions:

1. The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32.

2. Camping: Permitted at designated areas only.

3. A Federal permit is not required to enter the public hunting area.

4. The provisions of this special regulation are effective to November 9, 1964.

PAUL T. QUICK,  
*Regional Director, Bureau of Sport Fisheries and Wildlife.*

JULY 24, 1964.

[F.R. Doc. 64-7885; Filed, Aug. 5, 1964; 8:47 a.m.]

**PART 32—HUNTING**

**Hart Mountain National Antelope Refuge, Oregon**

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

No. 153—6

**§ 32.32 Special regulations; big game for individual wildlife refuge areas.**

OREGON

**HART MOUNTAIN NATIONAL ANTELOPE REFUGE**

Public hunting of big game on the Hart Mountain National Antelope Refuge, Oregon, is permitted only on the area designated by signs as open to hunting. This open area, comprising 151,000 acres, is delineated on a map available at the refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 1002 Northeast Holladay, Portland, Oregon.

Hunting of big game is permitted in accordance with all applicable State regulations, subject to the following special conditions:

(a) Species permitted to be taken: Deer.

(b) Open season: September 12 through 16, 1964.

(c) Weapons: Bow and arrow only may be used.

(d) Other provisions:

1. The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32.

2. Camping permitted in designated areas only.

3. A Federal permit is not required to enter the public hunting area.

4. The provisions of this special regulation are effective to September 17, 1964.

PAUL T. QUICK,  
*Regional Director, Bureau of Sport Fisheries and Wildlife.*

JULY 24, 1964.

[F.R. Doc. 64-7886; Filed, Aug. 5, 1964; 8:47 a.m.]

**PART 32—HUNTING**

**Malheur National Wildlife Refuge, Oregon**

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

**§ 32.32 Special regulations; big game for individual wildlife refuge areas.**

OREGON

**MALHEUR NATIONAL WILDLIFE REFUGE**

Public hunting of big game on the Malheur National Wildlife Refuge, Oregon, is permitted only on the area designated by signs as open to hunting. This open area, comprising 19,700 acres, is delineated on a map available at the refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 1002 Northeast Holladay, Portland, Oregon.

Hunting of big game is permitted in accordance with all applicable State regulations, subject to the following special conditions:

(a) Species permitted to be taken: Deer.

(b) Open season: September 12 and 13, 1964.

(c) Weapons: Bow and arrow only may be used.

(d) Other provisions:

1. The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32.

2. No fires allowed except at designated campgrounds.

3. No smoking allowed except at designated campgrounds.

4. Camping permitted at designated campgrounds only.

5. Travel by any method other than on foot prohibited except on designated roads.

6. A Federal permit is not required to enter the public hunting area, but hunters must report at such checking stations as may be established when entering or leaving the area.

7. The provisions of this special regulation are effective to September 14, 1964.

PAUL T. QUICK,  
*Regional Director, Bureau of Sport Fisheries and Wildlife.*

JULY 24, 1964.

[F.R. Doc. 64-7887; Filed, Aug. 5, 1964; 8:48 a.m.]

# Proposed Rule Making

## DEPARTMENT OF THE TREASURY

Internal Revenue Service

[ 26 CFR Part 1 ]

INCOME TAXES

### Gain From Dispositions of Certain Depreciable Property

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: CC:LR, Washington, D.C., 20224, within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] BERTRAND M. HARDING,  
Acting Commissioner  
of Internal Revenue.

In order to conform the Income Tax Regulations (26 CFR Part 1) to certain provisions of section 13 of the Revenue Act of 1962 (76 Stat. 1032) and section 203(d) of the Revenue Act of 1964 (78 Stat. 35), such regulations are amended as follows:

PARAGRAPH 1. Section 1.167(e) is amended to read as follows:

§ 1.167(e) Statutory provisions; depreciation; change in method.

Sec. 167. Depreciation. \* \* \*

(e) *Change in method*—(1) *Change from declining balance method*. In the absence of an agreement under subsection (d) containing a provision to the contrary, a taxpayer may at any time elect in accordance with regulations prescribed by the Secretary or his delegate to change from the method of depreciation described in subsection (b) (2) to the method described in subsection (b) (1).

(2) *Change with respect to section 1245 property*. A taxpayer may, on or before the last day prescribed by law (including extensions thereof) for filing his return for his first taxable year beginning after December 31, 1962, and in such manner as the Secretary or his delegate shall by regulations prescribe, elect to change his method of

depreciation in respect of section 1245 property (as defined in section 1245(a)(3)) from any declining balance or sum of the years-digits method to the straight line method. An election may be made under this paragraph notwithstanding any provision to the contrary in an agreement under subsection (d).

[Sec. 167(e) as amended by sec. 13(b), Rev. Act 1962 (76 Stat. 1034)]

PAR. 2. Section 1.167(e)-1 is amended by revising paragraph (a) and by adding new paragraph (c). These revised and added provisions read as follows:

§ 1.167(e)-1 Change in method.

(a) *In general*. Any change in the method of computing the depreciation allowances with respect to a particular account is a change in method of accounting, and such a change will be permitted only with the consent of the Commissioner, except that certain changes to the straight line method shall be permitted without consent as provided in section 167(e)(1) and paragraph (b) of this section and as provided in section 167(e)(2) and paragraph (c) of this section. Except as provided in paragraph (c) of this section, a change in method of computing depreciation will be permitted only with respect to all the assets contained in a particular account as defined in § 1.167(a)-7. Any change in the percentage of the current straight line rate under the declining balance method, as for example, from 200 percent of the straight line rate to any other percent of the straight line rate, or any change in the interest factor used in connection with a compound interest or sinking fund method will constitute a change in method of depreciation and will require the consent of the Commissioner. Any request for a change in method of depreciation shall be made in accordance with section 446 and the regulations thereunder and shall state the character and location of the property, method of depreciation being used and the method proposed, the date of acquisition, the cost or other basis and adjustments thereto, amounts recovered through depreciation and other allowances, the estimated salvage value, the estimated remaining life of the property, and such other information as may be required. For rules covering the use of depreciation methods by acquiring corporations in the case of certain corporate acquisitions, see section 381(c)(6) and the regulations thereunder.

(c) *Change with respect to section 1245 property*. (1) In respect of his first taxable year beginning after December 31, 1962, a taxpayer may elect, without the consent of the Commissioner, to change the method of depreciation of section 1245 property (as defined in section 1245(a)(3)) from any declining balance method or sum of the years-digits method to the straight line method. With respect to any account

(as defined in § 1.167(a)-7), this change may be made notwithstanding any provision to the contrary in an agreement under section 167(d), but such change shall constitute (as of the first day of such taxable year) a termination of such agreement as to all property in such account. With respect to any account, this change will be permitted only if applied to all the section 1245 property in the account. The election shall be made by a statement on, or attached to, the return for such taxable year filed on or before the last day prescribed by law, including any extensions thereof, for filing such return.

(2) When an election under this paragraph is made in respect of section 1245 property in an account, the unrecovered cost or other basis (less a reasonable estimate for salvage) of all the section 1245 property in the account shall be recovered through annual allowances over the estimated remaining useful life determined in accordance with the circumstances existing at that time. If there is other property in such account, the other property shall be placed in a separate account and depreciated by using the same method as was used before the change permitted by this paragraph, but the estimated useful life of such property shall be redetermined in accordance with § 1.167(b)-2 or 1.167(b)-3, whichever is applicable. The taxpayer shall maintain records which permit specific identification of the section 1245 property in the account with respect to which the election is made, and any other property in such account. The records shall also show for all the property in the account the date of acquisition, cost or other basis, amounts recovered through depreciation and other allowances, the estimated salvage value, the character of the property, and the remaining useful life of the property. A change to the straight line method under this paragraph must be adhered to for the entire taxable year of the change and for all subsequent taxable years unless, with the consent of the Commissioner, a change to another method is permitted.

PAR. 3. Paragraph (c) of § 1.170-1 is amended by adding new subparagraph (3). This added provision reads as follows:

§ 1.170-1 Charitable, etc., contributions and gifts; allowance of deduction.

(c) *Contribution in property*. \* \* \*  
(3) *Reduction for section 1245 property*. (1) With respect to a charitable contribution of section 1245 property (as defined in section 1245(a)(3)), section 170(e) requires that the amount of the charitable contribution taken into account under section 170 shall be reduced by the amount which would have been treated (but was not actually treated) as gain to which section 1245(a)(1) (relat-

ing to gain from dispositions of certain depreciable property) applies if the property contributed had been sold at its fair market value (determined at the time of such contribution).

(ii) Section 170(e) applies to charitable contributions of section 1245 property in taxable years beginning after December 31, 1962, except that in respect of section 1245 property which is an elevator or escalator section 170(e) applies to charitable contributions after December 31, 1963.

(iii) The provisions of this subparagraph may be illustrated by the following example:

*Example.* Jones contributes to a charitable organization section 1245 property which has an adjusted basis of \$10,000, a recomputed basis (as defined in section 1245(a)(2)) of \$14,000, and a fair market value of \$17,000. If Jones had instead sold the property at its fair market value, he would have recognized gain under section 1245(a)(1) of \$4,000. See paragraph (b) of § 1.1245-1. Under section 170(e), the amount of the charitable contribution taken into account under section 170 is reduced by \$4,000. Accordingly, the amount of the charitable contribution is \$13,000 (\$17,000 minus \$4,000).

PAR. 4. Section 1.312 is amended by revising section 312(c)(3) and by adding a historical note. These amended and added provisions read as follows:

**§ 1.312 Statutory provisions; effect on earnings and profits.**

Sec. 312. *Effect on earnings and profits.* \* \* \*

(c) *Adjustments for liabilities, etc.* \* \* \*  
(3) Any gain to the corporation recognized under subsection (b) or (c) of section 311 or under section 1245(a).

[Sec. 312 as amended by sec. 13(f)(3), Rev. Act 1962 (76 Stat. 1035)]

PAR. 5. Section 1.312-3 is amended to read as follows:

**§ 1.312-3 Liabilities.**

The amount of any reductions in earnings and profits described in section 312(a) or (b) shall be (a) reduced by the amount of any liability to which the property distributed was subject and by the amount of any other liability of the corporation assumed by the shareholder in connection with such distribution, and (b) increased by the amount of gain recognized to the corporation under section 311(b) or (c) or under section 1245(a).

PAR. 6. Section 1.453 is amended by revising section 453(d)(4) and the historical note to read as follows:

**§ 1.453 Statutory provisions; installment method.**

Sec. 453. *Installment method.* \* \* \*

(d) *Gain or loss on disposition of installment obligations.* \* \* \*

(4) *Effect of distribution in certain liquidations—(A) Liquidations to which section 332 applies.* If—

(i) An installment obligation is distributed by one corporation to another corporation in the course of a liquidation, and

(ii) Under section 332 (relating to complete liquidations of subsidiaries) no gain or loss with respect to the receipt of such obligation is recognized in the case of the recipient corporation, then no gain or loss with respect to the distribution of such obligation shall be recognized in the case of the

distributing corporation. If the basis of the property of the liquidating corporation in the hands of the distributee is determined under section 334(b)(2) then the preceding sentence shall not apply to the extent that under paragraph (1) gain to the distributing corporation would be considered as gain to which section 1245(a) applies.

(B) *Liquidations to which section 337 applies.* If—

(i) An installment obligation is distributed by a corporation in the course of a liquidation, and

(ii) Under section 337 (relating to gain or loss on sales or exchanges in connection with certain liquidations) no gain or loss would have been recognized to the corporation if the corporation had sold or exchanged such installment obligation on the day of such distribution, then no gain or loss shall be recognized to such corporation by reason of such distribution. The preceding sentence shall not apply to the extent that under paragraph (1) gain to the distributing corporation would be considered as gain to which section 1245(a) applies.

[Sec. 453 as amended by sec. 27, Technical Amendments Act 1958 (72 Stat. 1624); sec. 13(f)(5), Rev. Act 1962 (76 Stat. 1035)]

PAR. 7. Paragraph (c)(1) of § 1.453-9 is amended to read as follows:

**§ 1.453-9 Gain or loss on disposition of installment obligations.**

(c) *Disposition from which no gain or loss is recognized.* (1) (i) Under section 453(d)(4)(A), no gain or loss shall be recognized to a distributing corporation with respect to the distribution of installment obligations if the distribution is made, pursuant to a plan for the complete liquidation of a subsidiary meeting the requirements of section 332, to a corporation in the hands of which no gain or loss is recognized with respect to such distribution. However, if the basis of the property of the liquidating corporation in the hands of the distributee is determined under section 334(b)(2), then the preceding sentence shall not apply to the extent that under section 453(d)(1) gain to the distributing corporation would be considered as gain to which section 1245(a)(1) (relating to gain from dispositions of certain depreciable property) applies, computed under the principles of paragraph (d) of § 1.1245-6.

(ii) Under section 453(d)(4)(B), no gain or loss shall be recognized to a distributing corporation with respect to the distribution of installment obligations if the distribution is made, pursuant to a plan for the complete liquidation of a corporation which meets the requirements of section 337, under conditions whereby no gain or loss would have been recognized to the corporation had such installment obligations been sold or exchanged on the day of the distribution. The preceding sentence shall not apply to the extent that under section 453(d)(1) gain to the distributing corporation would be considered as gain to which section 1245(a)(1) applies, computed under the principles of paragraph (d) of § 1.1245-6.

(iii) Under section 453(d)(4)(C), no gain or loss shall be recognized to a distributing corporation with respect to the distribution of installment obligations if the distribution is made, pursuant to a plan for the complete liquidation of a corporation which meets the requirements of section 337, under conditions whereby no gain or loss would have been recognized to the corporation had such installment obligations been sold or exchanged on the day of the distribution. The preceding sentence shall not apply to the extent that under section 453(d)(1) gain to the distributing corporation would be considered as gain to which section 1245(a)(1) applies, computed under the principles of paragraph (d) of § 1.1245-6.

PAR. 8. Paragraph (a)(1) of § 1.735-1 is amended to read as follows:

**§ 1.735-1 Character of gain or loss on disposition of distributed property.**

(a) *Sale or exchange of distributed property—(1) Unrealized receivables.* Any gain realized or loss sustained by a partner on a sale or exchange or other disposition of unrealized receivables (as defined in paragraph (c)(1) of § 1.751-1) received by him in a distribution from a partnership shall be considered gain or loss from the sale or exchange of property other than a capital asset.

PAR. 9. Paragraph (b)(7) of § 1.736-1 is amended by adding example (4). The amended provision reads as follows:

**§ 1.736-1 Payments to a retiring partner or a deceased partner's successor in interest.**

(b) *Payments for interest in partnership.* (7) \* \* \*

*Example (4).* Assume the same facts as in example (1) of this subparagraph except that the capital and section 1231 assets consist of an item of section 1245 property (as defined in section 1245(a)(3)). Assume further that under paragraph (c)(4) of § 1.751-1 the section 1245 property is an unrealized receivable to the extent of \$2,000. Therefore, the value of A's interest in section 736(b) partnership property is only \$11,333 (one-third of \$34,000, the sum of \$13,000 cash and \$21,000, the fair market value of section 1245 property to the extent not an unrealized receivable). From the disposition of his interest in partnership property, A will realize a capital gain of \$333 (\$11,333 minus \$11,000, the basis of his interest). The remaining \$18,667 (\$30,000 minus \$11,333) will constitute payments under section 736(a)(2) which are taxable to A as guaranteed payments under section 707(c).

PAR. 10. Section 1.751 is amended by revising section 751(c) and by adding a historical note. These amended and added provisions read as follows:

**§ 1.751 Statutory provisions; unrealized receivables and inventory items.**

Sec. 751. *Unrealized receivables and inventory items.* \* \* \*

(c) *Unrealized receivables.* For purposes of this subchapter, the term "unrealized receivables" includes, to the extent not previously includible in income under the method of accounting used by the partnership, any rights (contractual or otherwise) to payment for—

- (1) Goods delivered, or to be delivered, to the extent the proceeds therefrom would be treated as amounts received from the sale or exchange of property other than a capital asset, or
- (2) Services rendered, or to be rendered.

For purposes of this section and sections 731, 736, and 741, such term also includes section 1245 property (as defined in section 1245(a)(3)), but only to the extent of the amount which would be treated as gain to which section 1245(a) would apply if (at the time of the transaction described in this section or section 731, 736, or 741, as the case may be) such property had been sold by the partnership at its fair market value.

[Sec. 751 as amended by sec. 13(f)(1), Rev. Act 1962 (76 Stat. 1035)]

## PROPOSED RULE MAKING

PAR. 11. Section 1.751-1 is amended by revising subparagraph (3) of paragraph (c), by adding new subparagraphs (4), (5), and (6) to paragraph (c), and by adding a new example (6) to paragraph (g). These amended and added provisions read as follows:

**§ 1.751-1 Unrealized receivables and inventory items.**

**(c) Unrealized receivables.** \* \* \*

(3) In determining the amount of the sale price attributable to such unrealized receivables, or their value in a distribution treated as a sale or exchange, any arm's length agreement between the buyer and the seller, or between the partnership and the distributee partner, will generally establish the amount or value. In the absence of such an agreement, full account shall be taken not only of the estimated cost of completing performance of the contract or agreement, but also of the time between the sale or distribution and the time of payment.

(4) With respect to any taxable year of a partnership beginning after December 31, 1962, the term "unrealized receivables", for purposes of this section and sections 731, 736, 741, and 751, also includes "potential section 1245 income". With respect to each item of partnership section 1245 property (as defined in section 1245(a)(3)), "potential section 1245 income" is the amount which would be treated as gain to which section 1245(a)(1) would apply if (at the time of the transaction described in sections 731, 736, 741, or 751, as the case may be) the item of section 1245 property were sold by the partnership at its fair market value. See paragraph (e)(1) of § 1.1245-1. For example, if a partnership would recognize under section 1245(a)(1) gain of \$600 upon a sale of one item of section 1245 property and gain of \$300 upon a sale of its only other item of such property, the potential section 1245 income of the partnership would be \$900. For purposes of determining potential section 1245 income, any arm's length agreement between the buyer and seller, or between the partnership and distributee partner, will generally establish the fair market value of section 1245 property.

(5) For purposes of subtitle A of the Code, the basis of potential section 1245 income is zero.

(6) If upon a current distribution of an item of section 1245 property the basis of the property in the hands of the distributee partner under section 732 would reflect a special basis adjustment under section 732(d) or 743(b), then (regardless of whether a distribution occurs) the partner's share of the potential section 1245 income of the partnership in respect of the property shall be that amount of gain which the partner would recognize under paragraph (e)(3) of § 1.1245-1 upon a sale of the property by the partnership, except that, for purposes of this subparagraph, (i) the items specified in paragraph (e)(3)(i) of § 1.1245-1 shall be allocated to the partner in the same manner as his share of partnership property is determined, and (ii) the amount of a special basis ad-

justment under section 732(d) shall be treated as if it were the amount of a special basis adjustment under section 743(b).

**(g) Examples.** \* \* \*

**Example (6).** (a) *Facts.* Partnership ABC distributes to partner C, in liquidation of his entire one-third interest in the partnership, a machine which is section 1245 property with a recomputed basis (as defined in section 1245(a)(2)) of \$18,000. At the time of the distribution, the balance sheet of the partnership is as follows:

ASSETS		
	Adjusted basis per books	Market value
Cash.....	\$3,000	\$3,000
Machine (section 1245 property).....	9,000	15,000
Land.....	18,000	27,000
<b>Total.....</b>	<b>30,000</b>	<b>45,000</b>

  

LIABILITIES AND CAPITAL		
	Per books	Value
Liabilities.....	\$0	\$0
Capital:		
A.....	10,000	15,000
B.....	10,000	15,000
C.....	10,000	15,000
<b>Total.....</b>	<b>30,000</b>	<b>45,000</b>

(b) *Presence of section 751 property.* The section 1245 property is an unrealized receivable of the partnership to the extent of the potential section 1245 income in respect of the property. Since the fair market value of the property (\$15,000) is lower than its recomputed basis (\$18,000) the excess of the fair market value over its adjusted basis (\$9,000) or \$6,000, is the potential section 1245 income of the partnership in respect of the property. The partnership has no other section 751 property.

(c) *The properties exchanged.* In the distribution C received his share of section 751 property (potential section 1245 income of \$2,000, i.e.,  $\frac{1}{3}$  of \$6,000) and his share of section 1245 property (other than potential section 1245 income) with a fair market value of \$3,000, i.e.,  $\frac{1}{3}$  of (\$15,000 minus \$6,000), and an adjusted basis of \$3,000, i.e.,  $\frac{1}{3}$  of \$9,000. In addition he received \$4,000 of section 751 property (consisting of \$4,000 (\$6,000 minus \$2,000) of potential section 1245 income) and section 1245 property (other than potential section 1245 income) with a fair market value of \$6,000 (\$9,000 minus \$3,000) and an adjusted basis of \$6,000 (\$9,000 minus \$3,000). C relinquished his interest in \$1,000 of cash and \$9,000 of land. Assume that the partners agree that the \$4,000 of section 751 property in excess of C's share was received by him in exchange for \$4,000 of land.

(d) *Distributee partner's tax consequences.* C's tax consequences on the distributions are as follows:

(1) *The section 751(b) sale or exchange.* C is treated as if he received in a current distribution  $\frac{4}{9}$ ths of his share of the land with a basis of \$2,667 ( $18,000/27,000 \times \$4,000$ ). Then C is considered as having sold his  $\frac{4}{9}$ ths share of the land to the partnership for \$4,000, realizing a gain of \$1,333. C's basis for the remainder of his partnership interest after the current distribution is \$7,333, i.e., the basis of his partnership interest before the current distribution (\$10,000) minus the basis of the land treated as distributed to him (\$2,667).

(2) *The part of the distribution not under section 751(b).* Of the \$15,000 total distribution to C, \$11,000 (\$2,000 of potential section 1245 income and \$9,000 section 1245 property other than potential section 1245 income) is not within section 751(b). Under section 732 (b) and (c), C's basis for his share of potential section 1245 income is zero (see paragraph (c)(5) of this section) and his basis for \$9,000 of section 1245 property (other than potential section 1245 income) is \$7,333, i.e., the amount of the remaining basis for his partnership interest (\$7,333) reduced by the basis for his share of potential section 1245 income (zero). Thus C's total aggregate basis for the section 1245 property (fair market value of \$15,000) distributed to him is \$11,333 (\$4,000 plus \$7,333). For an illustration of the computation of his recomputed basis for the section 1245 property immediately after the distribution, see example (2) of paragraph (f)(3) of § 1.1245-4.

(e) *Partnerships' tax consequences.* The tax consequences to the partnership on the distribution are as follows:

(1) *The section 751(b) sale or exchange.* Upon the sale of \$4,000 potential section 1245 income, with a basis of zero, for  $\frac{4}{9}$ ths of C's interest in the land, the partnership consisting of the remaining members has \$4,000 ordinary income under sections 751(b) and 1245(a)(1). See section 1245(b)(3) and (6)(A). The partnership's new basis for the land is \$19,333, i.e., \$18,000, less the basis of the  $\frac{4}{9}$ ths share considered as distributed to C (\$2,667), plus the partnership purchase price for this share (\$4,000).

(2) *The part of the distribution not under section 751(b).* The analysis under this subparagraph should be made in accordance with the principles illustrated in paragraph (e)(2) of examples (3), (4), and (5) of this paragraph.

PAR. 12. There are inserted immediately after § 1.1244(e)-1 the following new sections:

**§ 1.1245 Statutory provisions; gain from dispositions of certain depreciable property.**

**Sec. 1245. Gain from dispositions of certain depreciable property—(a) General rule—(1) Ordinary income.** Except as otherwise provided in this section, if section 1245 property is disposed of during a taxable year beginning after December 31, 1962, the amount by which the lower of—

(A) The recomputed basis of the property, or

(B) (i) In the case of a sale, exchange, or involuntary conversion, the amount realized, or

(ii) In the case of any other disposition, the fair market value of such property,

exceeds the adjusted basis of such property shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(2) *Recomputed basis.* For purposes of this section, the term "recomputed basis" means—

(A) With respect to any property referred to in paragraph (3) (A) or (B), its adjusted basis recomputed by adding thereto all adjustments, attributable to periods after December 31, 1961, or

(B) With respect to any property referred to in paragraph (3) (C), its adjusted basis recomputed by adding thereto all adjustments, attributable to periods after June 30, 1963, reflected in such adjusted basis on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for depreciation, or for amortization under section 168. For purposes of the preceding sentence, if the taxpayer can establish by adequate records or other sufficient

evidence that the amount allowed for depreciation, or for amortization under section 168, for any period was less than the amount allowable, the amount added for such period shall be the amount allowed.

(3) Section 1245 property. For purposes of this section, the term "section 1245 property" means any property (other than livestock) which is or has been property of a character subject to the allowance for depreciation provided in section 167 and is either—

(A) Personal property, or

(B) Other property (not including a building or its structural components) but only if such other property is tangible and has an adjusted basis in which there are reflected adjustments described in paragraph (2) for a period in which such property (or other property)—

(i) Was used as an integral part of manufacturing, production, or extraction or of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services, or

(ii) Constituted research or storage facilities used in connection with any of the activities referred to in clause (i), or

(C) An elevator or an escalator.

(b) *Exceptions and limitations*—(1) *Gifts*. Subsection (a) shall not apply to a disposition by gift.

(2) *Transfers at death*. Except as provided in section 691 (relating to income in respect of a decedent), subsection (a) shall not apply to a transfer at death.

(3) *Certain tax-free transactions*. If the basis of property in the hands of a transferee is determined by reference to its basis in the hands of the transferor by reason of the application of section 332, 351, 361, 371(a), 374(a), 721, or 731, then the amount of gain taken into account by the transferor under subsection (a) (1) shall not exceed the amount of gain recognized to the transferor on the transfer of such property (determined without regard to this section). This paragraph shall not apply to a disposition to an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter.

(4) *Like kind exchanges; involuntary conversions, etc.* If property is disposed of and gain (determined without regard to this section) is not recognized in whole or in part under section 1031 or 1033, then the amount of gain taken into account by the transferor under subsection (a) (1) shall not exceed the sum of—

(A) The amount of gain recognized on such disposition (determined without regard to this section), plus

(B) The fair market value of property acquired which is not section 1245 property and which is not taken into account under subparagraph (A).

(5) *Section 1071 and 1081 transactions*. Under regulations prescribed by the Secretary or his delegate, rules consistent with paragraphs (3) and (4) of this subsection shall apply in the case of transactions described in section 1071 (relating to gain from sale or exchange to effectuate policies of FCC) or section 1081 (relating to exchanges in obedience to SEC orders).

(6) *Property distributed by a partnership to a partner*—(A) *In general*. For purposes of this section, the basis of section 1245 property distributed by a partnership to a partner shall be deemed to be determined by reference to the adjusted basis of such property to the partnership.

(B) *Adjustments added back*. In the case of any property described in subparagraph (A), for purposes of computing the recomputed basis of such property the amount of the adjustments added back for periods before the distribution by the partnership shall be—

(1) The amount of the gain to which subsection (a) would have applied if such property had been sold by the partnership immediately before the distribution at its fair market value at such time, reduced by

(i) The amount of such gain to which section 751(b) applied.

(c) *Adjustments to basis*. The Secretary or his delegate shall prescribe such regulations as he may deem necessary to provide for adjustments to the basis of property to reflect gain recognized under subsection (a).

(d) *Application of section*. This section shall apply notwithstanding any other provision of this subtitle.

[Sec. 1245 as added by sec. 13(a), Rev. Act 1962 (76 Stat. 1032); amended by section 203(d), Rev. Act 1964 (78 Stat. 35)]

### § 1.1245-1 General rule for treatment of gain from dispositions of certain depreciable property.

(a) *General*. (1) In general, section 1245(a) (1) provides that, upon a disposition of an item of section 1245 property, the amount by which the lower of (i) the "recomputed basis" of the property, or (ii) the amount realized on a sale, exchange, or involuntary conversion (or the fair market value of the property on any other disposition), exceeds the adjusted basis of the property shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231 (that is, shall be recognized as ordinary income). The amount of such gain shall be determined separately for each item of section 1245 property. In general, the term "recomputed basis" means the adjusted basis of property plus all adjustments reflected in such adjusted basis on account of depreciation allowed or allowable for all periods after December 31, 1961. See section 1245(a) (2) and § 1.1245-2. Generally, the ordinary income treatment applies even though in the absence of section 1245 no gain would be recognized under the Code. For example, if a corporation distributes section 1245 property as a dividend, gain may be recognized as ordinary income to the corporation even though, in the absence of section 1245, section 311(a) would preclude any recognition of gain to the corporation. For the definition of "section 1245 property", see section 1245(a) (3) and § 1.1245-3. For exceptions and limitations to the application of section 1245(a) (1), see section 1245(b) and § 1.1245-4.

(2) Section 1245(a) (1) applies to dispositions of section 1245 property in taxable years beginning after December 31, 1962, except that in respect of section 1245 property which is an elevator or escalator, section 1245(a) (1) applies to dispositions after December 31, 1963.

(3) For purposes of this section and §§ 1.1245-2 through 1.1245-6, the term "disposition" includes a sale in a sale-and-leaseback transaction and a transfer upon the foreclosure of a security interest, but such term does not include a mere transfer of title to a creditor upon creation of a security interest or to a debtor upon termination of a security interest. Thus, for example, a disposition occurs upon a sale of property pursuant to a conditional sales contract even though the seller retains legal title to the property for purposes of security

but a disposition does not occur when the seller ultimately gives up his security interest following payment by the purchaser.

(b) *Sale, exchange, or involuntary conversion*. (1) In the case of a sale, exchange, or involuntary conversion of section 1245 property, the gain to which section 1245(a) (1) applies is the amount by which (i) the lower of the amount realized upon the disposition of the property or the recomputed basis of the property, exceeds (ii) the adjusted basis of the property.

(2) The provisions of this paragraph may be illustrated by the following examples:

*Example (1)*. On January 1, 1964, Brown purchases section 1245 property for use in his manufacturing business. The property has a basis for depreciation of \$3,300. After taking depreciation deductions of \$1,300 (the amount allowable), Brown realizes after selling expenses the amount of \$2,900 upon sale of the property on January 1, 1969. Brown's gain is \$900 (\$2,900 amount realized minus \$2,000 adjusted basis). Since the amount realized upon disposition of the property (\$2,900) is lower than its recomputed basis (\$3,300, i.e., \$2,000 adjusted basis plus \$1,300 in depreciation deductions), the entire gain is treated as ordinary income under section 1245(a) (1) and not as gain from the sale or exchange of property described in section 1231.

*Example (2)*. Assume the same facts as in example (1) except that Brown exchanges the section 1245 property for land which has a fair market value of \$3,700, thereby realizing a gain of \$1,700 (\$3,700 amount realized minus \$2,000 adjusted basis). Since the recomputed basis of the property (\$3,300) is lower than the amount realized upon its disposition (\$3,700), the excess of recomputed basis over adjusted basis, or \$1,300, is treated as ordinary income under section 1245(a) (1). The remaining \$400 of the gain may be treated as gain from the sale or exchange of property described in section 1231.

(c) *Other dispositions*. (1) In the case of a disposition of section 1245 property other than by way of a sale, exchange, or involuntary conversion, the gain to which section 1245(a) (1) applies is the amount by which (i) the lower of the fair market value of the property on the date of disposition or the recomputed basis of the property, exceeds (ii) the adjusted basis of the property.

(2) The provisions of this paragraph may be illustrated by the following examples:

*Example (1)*. X Corporation distributes section 1245 property to its shareholders as a dividend. The property has an adjusted basis of \$2,000 to the corporation, a recomputed basis of \$3,300, and a fair market value of \$3,100. Since the fair market value of the property (\$3,100) is lower than its recomputed basis (\$3,300), the excess of fair market value over adjusted basis, or \$1,100, is treated under section 1245(a) (1) as ordinary income to the corporation even though, in the absence of section 1245, section 311(a) would preclude recognition of gain to the corporation.

*Example (2)*. Assume the same facts as in example (1) except that X Corporation distributes the section 1245 property to its shareholders in complete liquidation of the corporation. Assume further that section 1245(b) (3) does not apply and that the fair market value of the property is \$3,800 at the time of the distribution. Since the recomputed basis of the property (\$3,300) is lower than its fair market value (\$3,800), the

excess of recomputed basis over adjusted basis, or \$1,300, is treated under section 1245(a)(1) as ordinary income to the corporation even though, in the absence of section 1245, section 336 would preclude recognition of gain to the corporation.

(d) *Losses.* Section 1245(a)(1) does not apply to losses. Thus, section 1245(a)(1) does not apply if a loss is realized upon a sale, exchange, or involuntary conversion of property, all of which is considered section 1245 property, nor does the section apply to a disposition of such property other than by way of sale, exchange, or involuntary conversion if at the time of the disposition the fair market value of such property is not greater than its adjusted basis.

(e) *Treatment of partnership and partners.* (1) The manner of determining the amount of gain recognized under section 1245(a)(1) to a partnership may be illustrated by the following example:

*Example.* A partnership sells for \$63 section 1245 property which has an adjusted basis to the partnership of \$30 and a recomputed basis to the partnership of \$60. The partnership recognizes under section 1245(a)(1) gain of \$30, i.e., the lower of the amount realized (\$63) or recomputed basis (\$60), minus adjusted basis (\$30). This result would not be changed if one or more partners had, in respect of the property, a special basis adjustment described in section 743(b) or had taken depreciation deductions in respect of such special basis adjustment.

(2) Unless subparagraph (3) of this paragraph applies, each partner's distributive share of gain recognized under section 1245(a)(1) by the partnership shall be determined in accordance with the provisions of section 704. For limitation on the amount of gain recognized under section 1245(a)(1) in respect of a partnership, see section 1245(b)(3) and (6). For treatment of section 1245 property as an unrealized receivable, see section 751(c).

(3) If a partnership disposes of section 1245 property for which a special basis adjustment under section 743(b) was made in respect of a partner, the manner of determining gain recognized under section 1245(a)(1) by the partner shall be as follows:

(i) There shall be allocated to the partner, in the same proportion as the partnership's gain under section 1245(a)(1) is allocated to the partner under subparagraph (2) of this paragraph, a portion of (a) the common partnership adjusted basis for the property, (b) the common partnership recomputed basis for the property, and (c) the amount realized by the partnership upon the disposition, or, if nothing is realized, the fair market value of the property.

(ii) The partner's adjusted basis in respect of the property shall be deemed to be the sum of (a) the portion of the partnership's adjusted basis for the property allocated to the partner under subdivision (i) of this subparagraph, plus (b) the amount of any special basis adjustment described in section 743(b) which the partner may have in respect of the property on the date the partnership disposed of the property.

(iii) The partner's recomputed basis in respect of the property shall be deemed to be the sum of (a) the partner's adjusted basis for the property, as determined in subdivision (ii) of this subparagraph, (b) the excess of the portion of the partnership's recomputed basis for the property allocated to the partner under subdivision (i) of this subparagraph, over the portion of the partnership's adjusted basis for the property allocated to the partner under subdivision (ii) of this subparagraph, plus (c) the excess of the amount of the special basis adjustment under section 743(b) in respect of the partner, determined as of the date the partner acquired his interest in the partnership, over the amount of such special basis adjustment, determined as of the date the partnership disposed of the property.

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

*Example.* A, B, and C each hold a one-third interest in calendar year partnership ABC. The firm holds section 1245 property which has an adjusted basis of \$30,000. On January 1, 1962, when D purchases C's partnership interest, the election under section 754 is in effect and a \$5,000 special basis adjustment is made in respect of D to his one-third share of the common partnership adjusted basis for the property. For 1962 and 1963 the partnership deducts \$6,000 as depreciation in respect of the property, thereby reducing its adjusted basis to \$24,000. D deducts \$3,000, i.e., his distributive share of partnership depreciation (\$2,000) plus depreciation in respect of his special basis adjustment (\$1,000). On December 31, 1963, the partnership sells the property for \$48,000. Since the partnership's recomputed basis for the property (\$30,000, i.e., \$24,000 adjusted basis plus \$6,000 in depreciation deductions) is lower than the amount realized upon the sale (\$48,000), the excess of recomputed basis over adjusted basis, or \$6,000, is treated as partnership gain under section 1245(a)(1). D's distributive share of such gain is \$2,000 ( $\frac{1}{3}$  of \$6,000). The amount of gain recognized under section 1245(a)(1) by D is determined according to the following schedule:

(1) Adjusted basis:	
D's portion of partnership adjusted basis ( $\frac{1}{3}$ of \$24,000).....	\$8,000
D's special basis adjustment as of December 31, 1963 (\$5,000 minus \$1,000) .....	4,000
D's adjusted basis.....	\$12,000
(2) Recomputed basis:	
D's adjusted basis.....	12,000
D's portion of partnership recomputed basis, i.e., \$10,000 ( $\frac{1}{3}$ of \$30,000), minus D's portion of partnership adjusted basis, \$8,000.....	2,000
D's special basis adjustment as of January 1, 1962, i.e., \$5,000, minus D's special basis adjustment as of December 31, 1963, \$4,000 .....	1,000
D's recomputed basis.....	15,000
(3) D's portion of amount realized by partnership ( $\frac{1}{3}$ of \$48,000) .....	16,000

(4) Gain recognized to D under section 1245(a)(1), i.e., the lower of (2) or (3), minus (1)..... \$3,000

#### § 1.1245-2 Definition of recomputed basis.

(a) *General rule*—(1) *Recomputed basis defined.* The term "recomputed basis" means, with respect to any property, an amount equal to the sum of—

(i) The adjusted basis of the property, as defined in section 1011, plus

(ii) The amount of the adjustments reflected in the adjusted basis.

(2) *Definition of adjustments reflected in adjusted basis.* The term "adjustments reflected in the adjusted basis" means—

(i) With respect to any property other than an elevator or escalator, the amount of the adjustments attributable to periods after December 31, 1961, or

(ii) With respect to an elevator or escalator, the amount of the adjustments attributable to periods after June 30, 1963, which are reflected in the adjusted basis of such property on account of deductions allowed or allowable for depreciation or amortization (within the meaning of subparagraph (3) of this paragraph). For cases where the taxpayer can establish that the amount allowed for any period was less than the amount allowable, see subparagraph (7) of this paragraph. For determination of adjusted basis of property in a multiple asset account, see paragraph (c) (3) of § 1.167(a)-8.

(3) *Meaning of "depreciation or amortization".* (i) For purposes of subparagraph (2) of this paragraph, the term "depreciation or amortization" includes allowances (and amounts treated as allowances) for depreciation (or amortization in lieu thereof), and deductions for amortization of emergency facilities under section 168. Thus, for example, such term includes a reasonable allowance for exhaustion, wear and tear (including a reasonable allowance for obsolescence) under section 167, an additional first-year depreciation allowance for small business under section 179, an expenditure treated as an amount allowed under section 167 by reason of the application of section 182(d)(2)(B) (relating to expenditures by farmers for clearing land), and a deduction for depreciation of improvements under section 611 (relating to depletion). For further examples, the term "depreciation or amortization" includes periodic deductions referred to in § 1.162-11 in respect of a specified sum paid for the acquisition of a leasehold and in respect of the cost to a lessee of improvements on property of which he is the lessee. However, such term does not include deductions for the periodic payment of rent.

(ii) The provisions of this subparagraph may be illustrated by the following example:

*Example.* On January 1, 1966, Smith purchases for \$1,000, and places in service, an item of property described in section 1245(a)(3)(A). Smith deducts an additional first-year allowance for depreciation under section 179 of \$200. Accordingly, the basis of

the property for purposes of depreciation is \$800 on January 1, 1966. Between that date and January 1, 1974, Smith deducts \$640 in depreciation (the amount allowable) with respect to the property, thereby reducing its adjusted basis to \$160. Since this adjusted basis reflects deductions for depreciation and amortization (within the meaning of this subparagraph) amounting to \$840 (\$200 plus \$640), the recomputed basis of the property is \$1,000 (\$160 plus \$840).

(4) *Adjustments of other taxpayers or in respect of other property.* (i) For purposes of subparagraph (2) of this paragraph, the adjustments reflected in adjusted basis on account of depreciation or amortization which must be taken into account in determining recomputed basis are not limited to those adjustments on account of depreciation or amortization with respect to the property disposed of, nor are such adjustments limited to those on account of depreciation or amortization allowed or allowable to the taxpayer disposing of such property. Except as provided in subparagraph (7) of this paragraph, all such adjustments are taken into account, whether the deductions were allowed or allowable in respect of the same or other property and whether to the taxpayer or to any other person. For manner of determining the amount of adjustments reflected in the adjusted basis of property immediately after certain dispositions, see paragraph (c) of this section.

(ii) The provisions of this subparagraph may be illustrated by the following example:

*Example.* On January 1, 1966, Jones purchases machine X for use in his trade or business. The machine, which is section 1245 property, has a basis for depreciation of \$10,000. After taking depreciation deductions of \$2,000 (the amount allowable), Jones transfers the machine to his son as a gift on January 1, 1968. Since the exception for gifts in section 1245(b)(1) applies, Jones does not recognize gain under section 1245(a)(1). The son's adjusted basis for the machine is \$8,000. On January 1, 1969, after taking a depreciation deduction of \$1,000 (the amount allowable), the son exchanges machine X for machine Y in a like kind exchange described in section 1031. Since the exception for like kind exchanges in section 1245(b)(4) applies, the son does not recognize gain under section 1245(a)(1). The son's adjusted basis for machine Y is \$7,000. In 1969, the son takes a depreciation deduction of \$1,000 (the amount allowable) in respect of machine Y. The son sells machine Y on June 30, 1970. No depreciation was allowed or allowable for 1970, the year of the sale. The recomputed basis of machine Y on June 30, 1970, is determined in the following manner:

Adjusted basis.....	\$6,000
Adjustments reflected in the adjusted basis:	
Depreciation deducted by Jones for 1966 and 1967 on machine X.....	\$2,000
Depreciation deducted by son for 1968 on machine X.....	1,000
Depreciation deducted by son for 1969 on machine Y.....	1,000
<b>Total adjustments reflected in the adjusted basis.....</b>	<b>4,000</b>
Recomputed basis.....	\$10,000

(5) *Adjustments reflected in adjusted basis of property described in section 1245(a)(3)(B).* For purposes of subparagraph (2) of this paragraph, the adjustments reflected in the adjusted basis of property described in section 1245(a)(3)(B), on account of depreciation or amortization which must be taken into account in determining recomputed basis, may include deductions attributable to periods during which the property is not used as an integral part of an activity, or does not constitute a facility, specified in section 1245(a)(3)(B)(i) or (ii). Thus, for example, if depreciation deductions taken with respect to such property after December 31, 1961, amount to \$10,000 (the amount allowable), of which \$6,000 is attributable to periods during which the property is used as an integral part of a specified activity or constitutes a specified facility, then the entire \$10,000 of depreciation deductions are adjustments reflected in the adjusted basis for purposes of determining recomputed basis. Moreover, if the property was never so used but was acquired in a transaction to which section 1245(b)(4) (relating to like kind exchanges and involuntary conversions) applies, and if by reason of the application of paragraph (d)(3) of § 1.1245-4 the property is considered as section 1245 property described in section 1245(a)(3)(B), then the entire \$10,000 of depreciation deductions would also be adjustments reflected in the adjusted basis for purposes of determining recomputed basis.

(6) *Allocation of adjustments attributable to periods after December 31, 1961, or after June 30, 1963.* (i) For purposes of determining recomputed basis, the amount of adjustments reflected in the adjusted basis of property other than an elevator or escalator are limited to adjustments attributable to periods after December 31, 1961. Accordingly, if depreciation deducted with respect to such property of a calendar year taxpayer is \$1,000 a year (the amount allowable) for each of 10 years beginning with 1956, only the depreciation deducted in 1962 and succeeding years shall be treated as reflected in the adjusted basis for purposes of determining recomputed basis. With respect to a taxable year beginning in 1961 and ending in 1962, the deduction for depreciation or amortization shall be ascertained by applying the principles stated in paragraph (c)(3) of § 1.167(a)-8 (relating to determination of adjusted basis of retired asset). The amount of the deduction, determined in such manner, shall be allocated on a daily basis in order to determine the portion thereof which is attributable to a period after December 31, 1961. Thus, for example, if a taxpayer, whose fiscal year ends on May 31, 1962, acquires section 1245 property on November 12, 1961, and the deduction for depreciation attributable to the property for such fiscal year is ascertained (under the principles of paragraph (c)(3) of § 1.167(a)-8) to be \$400, then the portion thereof attributable to a period after December 31, 1961, is \$302 (151/200 of \$400). If, however, the property were acquired by such taxpayer after December 31, 1961, the

entire deduction for depreciation attributable to the property for such fiscal year would be allocable to a period after December 31, 1961. For treatment of certain normal retirements described in paragraph (e)(2) of § 1.167(a)-8, see paragraph (c) of § 1.1245-6.

(ii) For purposes of determining recomputed basis, the amount of adjustments reflected in the adjusted basis of an elevator or escalator are limited to adjustments attributable to periods after June 30, 1963.

(7) *Depreciation or amortization allowed or allowable.* For purposes of determining recomputed basis, generally all adjustments (for periods after December 31, 1961, or June 30, 1963, as the case may be) attributable to allowed or allowable depreciation or amortization must be taken into account. See section 1016(a)(2) and the regulations thereunder for the meaning of "allowed" and "allowable". However, if a taxpayer can establish by adequate records or other sufficient evidence that the amount allowed for depreciation or amortization for any period was less than the amount allowable for such period, the amount to be taken into account for such period shall be the amount allowed. See paragraph (b) of this section (relating to records to be kept and information to be filed). For example, assume that in the year 1967 it becomes necessary to determine the recomputed basis of property, the \$500 adjusted basis of which reflects adjustments of \$1,000 with respect to depreciation deductions allowable for periods after December 31, 1961. If the taxpayer can establish by adequate records or other sufficient evidence that he had been allowed deductions amounting to only \$800 for the period, then in determining recomputed basis the amount added to adjusted basis with respect to the \$1,000 adjustments to basis for the period will be only \$800.

(b) *Records to be kept and information to be filed—(1) Records to be kept.* Every taxpayer who owns section 1245 property shall keep permanent records of all the facts necessary to determine the amount of the recomputed basis of the property, including—

(i) The date, and the manner in which, the property was acquired,

(ii) The taxpayer's basis on the date the property was acquired and the manner in which the basis was determined,

(iii) The amount and date of all adjustments to the basis of the property allowed or allowable to the taxpayer for depreciation or amortization and the amount and date of any other adjustments by the taxpayer to the basis of the property,

(iv) In the case of section 1245 property which has an adjusted basis reflecting adjustments for depreciation or amortization taken by the taxpayer with respect to other property, or by another taxpayer with respect to the same or other property, the information described in subdivision (i), (ii), and (iii) of this subparagraph with respect to such other property or such other taxpayer.

(2) *Information to be filed.* If a taxpayer acquires in a transaction (other

than a like kind exchange or involuntary conversion described in section 1245 (b) (4) section 1245 property which has a basis reflecting adjustments for depreciation or amortization allowed or allowable to another taxpayer, then the taxpayer shall file with its income tax return or information return for the taxable year in which the property is acquired a statement showing all information described in subparagraph (1) of this paragraph. See section 6012 (relating to persons required to make returns of income) and part III, subchapter A, chapter 61 of the Code (relating to information returns).

(c) *Adjustments reflected in adjusted basis immediately after certain acquisitions—(1) Zero.* (i) If on the date a person acquires property his basis for the property is determined solely by reference to its cost (within the meaning of section 1012), then on such date the amount of the adjustments reflected in his adjusted basis for the property is zero.

(ii) If on the date a person acquires property his basis for the property is determined solely by reason of the application of section 301(d) (relating to basis of property received in corporate distribution) or section 334(a) (relating to basis of property received in a liquidation in which gain or loss is recognized), then on such date the amount of the adjustments reflected in his adjusted basis for the property is zero.

(iii) If on the date a person acquires property his basis for the property is determined solely under the rules of section 334 (b) (2) or (c) relating to basis of property received in certain corporate liquidations), then on such date the amount of the adjustments reflected in his adjusted basis for the property is zero.

(iv) If as of the date a person acquires property from a decedent such person's basis is determined, by reason of the application of section 1014(a), solely by reference to the fair market value of the property on the date of the decedent's death or on the applicable date provided in section 2032 (relating to alternate valuation date), then on such date the amount of the adjustments reflected in his adjusted basis for the property is zero.

(2) *Gifts and certain tax-free transactions.* (i) If property is disposed of in a transaction described in subdivision (ii) of this subparagraph, then the amount of the adjustments reflected in the adjusted basis of the property in the hands of a transferee immediately after the disposition shall be an amount equal to—

(a) The amount of the adjustments reflected in the adjusted basis of the property in the hands of the transferor immediately before the disposition, minus

(b) The amount of any gain taken into account under section 1245(a) (1) by the transferor upon the disposition.

(ii) The transactions referred to in subdivision (i) of this subparagraph are—

(a) A disposition which is in part a sale or exchange and in part a

gift (see paragraph (a) (3) of § 1.1245-4),

(b) A disposition (other than a disposition to which section 1245(b) (6) (A) applies) which is described in section 1245(b) (3) (relating to certain tax-free transactions), or

(c) An exchange described in paragraph (e) (2) of § 1.1245-4 (relating to transfers described in section 1081(d) (1) (A)).

(iii) The provisions of this subparagraph may be illustrated by the following example:

*Example.* Jones transfers section 1245 property to a corporation in exchange for stock of the corporation and \$1,000 cash in a transaction which qualifies under section 351 (relating to transfer to a corporation controlled by transferor). Before the exchange the amount of the adjustments reflected in the adjusted basis of the property is \$3,000. Upon the exchange \$1,000 gain is recognized under section 1245(a) (1). Immediately after the exchange, the amount of the adjustments reflected in the adjusted basis of the property in the hands of the corporation is \$2,000 (that is, \$3,000 minus \$1,000).

(3) *Certain transfers at death.* (i) If property is acquired in a transfer at death to which section 1245(b) (2) applies, the amount of the adjustments reflected in the adjusted basis of property in the hands of the transferee immediately after the transfer shall be the amount (if any) of depreciation or amortization deductions allowed the transferee before the decedent's death, to the extent that the basis of the property (determined under section 1014(a)) is required to be reduced under the second sentence of section 1014(b) (9) (relating to adjustments to basis where property is acquired from a decedent prior to his death).

(ii) The provisions of this subparagraph may be illustrated by the following example:

*Example.* H purchases section 1245 property in 1965 which he immediately conveys to himself and W, his wife, as tenants by the entirety. Under local law each spouse is entitled to one-half the income from the property. H and W file joint income tax returns for calendar years 1965, 1966, and 1967. Over the 3 years, depreciation deductions amounting to \$4,000 (the amount allowable) are allowed in respect of the property of which one-half thereof, or \$2,000, is allocable to W. On January 1, 1968, H dies and the entire value of the property at the date of death is included in H's gross estate. Since W's basis for the property (determined under section 1014(a)) is reduced (under the second sentence of section 1014(b) (9)) by the \$2,000 depreciation deductions allowed W before H's death, the adjustments reflected in the adjusted basis of the property in the hands of W immediately after H's death amount to \$2,000.

(4) *Property received in a like kind exchange, involuntary conversion, or F.C.C. transaction.* (i) If property is acquired in a transaction described in subdivision (ii) of this subparagraph, then immediately after the acquisition (and before applying subparagraph (5) of this paragraph, if applicable) the amount of the adjustments reflected in the adjusted basis of the property acquired shall be an amount equal to—

(a) The amount of the adjustments reflected in the adjusted basis of the property disposed of immediately before the disposition, minus

(b) The sum of (1) the amount of any gain recognized under section 1245 (a) (1) upon the disposition, plus (2) the amount of gain (if any) referred to in subparagraph (5) (ii) of this paragraph.

(ii) The transactions referred to in subdivision (i) of this subparagraph are—

(a) A disposition which is a like kind exchange or an involuntary conversion to which section 1245(b) (4) applies, or

(b) A disposition to which the provisions of section 1071 and paragraph (e) (1) of § 1.1245-4 apply.

(iii) The provisions of subdivisions (i) and (ii) of this subparagraph may be illustrated by the following examples:

*Example (1).* Smith exchanges machine A for machine B and \$1,000 cash in a like kind exchange. Gain of \$1,000 is recognized under section 1245(a) (1). If before the exchange the amount of the adjustments reflected in the adjusted basis of machine A was \$5,000, the amount of adjustments reflected in the adjusted basis of machine B after the exchange is \$4,000 (that is, \$5,000 minus \$1,000).

*Example (2).* Assume the same facts as in example (1) except that machine A is destroyed by fire, that \$5,000 in insurance proceeds are received of which \$4,000 is used to purchase machine B, and that Smith properly elects under section 1033(a) (3) (A) to limit recognition of gain. The result is the same as in example (1), that is, the amount of adjustments reflected in the adjusted basis of machine B is \$4,000 (\$5,000 minus \$1,000).

(iv) If more than one item of section 1245 property is acquired in a transaction referred to in subdivision (i) of this subparagraph, the total amount of the adjustments reflected in the adjusted bases of the items acquired shall be allocated to such items in proportion to their respective adjusted bases.

(5) *Property after a reduction in basis pursuant to election under section 1071 or application of section 1082(a) (2).* If the basis of section 1245 property is reduced pursuant to an election under section 1071 (relating to gain from sale or exchange to effectuate policies of F.C.C.), or the application of section 1082(a) (2) (relating to sale or exchange in obedience to order of S.E.C.), then immediately after the basis reduction the amount of the adjustments reflected in the adjusted basis of the property shall be the sum of—

(i) The amount of the adjustments reflected in the adjusted basis of the property immediately before the basis reduction (but after applying subparagraph (4) of this paragraph, if applicable), plus

(ii) The amount of gain which was not recognized under section 1245(a) (1) by reason of the reduction in the basis of the property. See paragraph (e) (1) of § 1.1245-4.

(6) *Partnership property after certain distributions.* For the amount of adjustments reflected in the adjusted basis of property immediately after certain distributions of the property by a partnership to a partner, see section 1245(b) (6) (B).

**§ 1.1245-3 Definition of section 1245 property.**

(a) *In general.* (1) The term "section 1245 property" means any property (other than livestock) which is or has been property of a character subject to the allowance for depreciation provided in section 167 and which is either—

(i) Personal property (within the meaning of paragraph (b) of this section),

(ii) Property described in section 1245 (a)(3)(B) (see paragraph (c) of this section), or

(iii) An elevator or an escalator within the meaning of subparagraph (C) of section 48(a)(1) (relating to the definition of "section 38 property" for purposes of the investment credit), but without regard to the limitations in such subparagraph (C).

(2) If property is section 1245 property under a subdivision of subparagraph (1) of this paragraph, a leasehold of such property is also section 1245 property under such subdivision. Thus, for example, if A owns personal property which is section 1245 property under subparagraph (1)(i) of this paragraph, and if A leases the personal property to B, B's leasehold is also section 1245 property under such provision. For a further example, if C owns and leases to D for a single lump-sum payment of \$100,000 property consisting of land and a fully equipped factory building thereon, and if 40 percent of the fair market value of such property is properly allocable to section 1245 property, then 40 percent of D's leasehold is also section 1245 property. A leasehold of land is not section 1245 property.

(3) Even though property may not be of a character subject to the allowance for depreciation in the hands of the taxpayer, such property may nevertheless be section 1245 property if the taxpayer's basis for the property is determined by reference to its basis in the hands of a prior owner of the property and such property was of a character subject to the allowance for depreciation in the hands of such prior owner, or if the taxpayer's basis for the property is determined by reference to the basis of other property which in the hands of the taxpayer was property of a character subject to the allowance for depreciation. Thus, for example, if a father uses an automobile in his trade or business during a period after December 31, 1961, and then gives the automobile to his son as a gift for the son's personal use, the automobile is section 1245 property in the hands of the son.

(4) For purposes of subparagraph (1) of this paragraph, the term "livestock" includes horses, cattle, hogs, sheep, goats, and mink and other furbearing animals, irrespective of the use to which they are put or the purpose for which they are held.

(b) *Personal property defined.* The term "personal property" means—

(1) Tangible personal property (as defined in paragraph (c) of § 1.48-1, relating to the definition of "section 38 property" for purposes of the investment credit), and

(2) Intangible personal property.

(c) *Property described in section 1245 (a)(3)(B).* (1) The term "property described in section 1245(a)(3)(B)" means tangible property other than personal property (and other than a building and its structural components), but only if there are adjustments reflected in the adjusted basis of the property (within the meaning of paragraph (a)(2) of § 1.1245-2) for a period during which such property (or other property)—

(i) Was used as an integral part of manufacturing, production, or extraction, or as an integral part of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services by a person engaged in a trade or business of furnishing any such service, or

(ii) Constituted a research or storage facility used in connection with any of the foregoing activities.

Thus, even though during the period immediately preceding its disposition the property is not used as an integral part of an activity specified in subdivision (i) of this subparagraph and does not constitute a facility specified in subdivision (ii) of this subparagraph, such property is nevertheless property described in section 1245(a)(3)(B) if, for example, there are adjustments reflected in the adjusted basis of the property for a period during which the property was used as an integral part of manufacturing by the taxpayer or another taxpayer, or for a period during which other property (which was involuntarily converted into, or exchanged in a like kind exchange for, the property) was so used by the taxpayer or another taxpayer. For rules applicable to involuntary conversions and like kind exchanges, see paragraph (d)(3) of § 1.1245-4.

(2) The language used in subparagraph (1)(i) and (ii) of this paragraph shall have the same meaning as when used in paragraph (a) of § 1.48-1, and the terms "building" and "structural components" shall have the meanings assigned to those terms in paragraph (e) of § 1.48-1.

**§ 1.1245-4 Exceptions and limitations.**

(a) *Exception for gifts.*—(1) *General rule.* Section 1245(b)(1) provides that no gain shall be recognized under section 1245(a)(1) upon a disposition by gift. For purposes of this paragraph, the term "gift" means, except to the extent that subparagraph (3) of this paragraph applies, a transfer of property which, in the hands of the transferee, has a basis determined under the provisions of section 1015 (a) or (d) (relating to basis of property acquired by gifts). For reduction in amount of charitable contribution in case of a gift of section 1245 property, see section 170(e) and paragraph (c)(3) of § 1.170-1.

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

*Example (1).* A places section 1245 property in trust to pay the income from the property to B for his life, and after B's death to distribute the property to C. If the basis of the property to the fiduciary and to C is

determined under the uniform basis rules prescribed in paragraph (b) of § 1.1015-1, and under paragraph (c) of § 1.1015-1 the time the fiduciary and C acquire their interests in the property is the time the donor relinquished dominion over the property, then section 1245(a)(1) does not apply to the transfer by A to the trust or to the distribution to C.

*Example (2).* Assume the same facts as in example (1), except that the fiduciary sells the section 1245 property and reinvests the proceeds in other section 1245 property which is distributed to C upon B's death. Assume further that under paragraph (f) of § 1.1015-1 C's basis for the distributed property is the cost or other basis to the fiduciary. Section 1245(a)(1) applies to the sale but not to the distribution.

(3) *Disposition in part a sale or exchange and in part a gift.* Where a disposition of property is in part a sale or exchange and in part a gift, the gain to which section 1245(a)(1) applies is the amount by which (i) the lower of the amount realized upon the disposition of the property or the recomputed basis of the property, exceeds (ii) the adjusted basis of the property. For determination of the recomputed basis of the property in the hands of the transferee, see paragraph (c)(2) of § 1.1245-2.

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

*Example.* (1) Smith transfers section 1245 property, which he has held in excess of 6 months, to his son for \$60,000. Immediately before the transfer the property in the hands of Smith has an adjusted basis of \$30,000, a fair market value of \$90,000, and a recomputed basis of \$110,000. Since the amount realized upon disposition of the property (\$60,000) is lower than its recomputed basis (\$110,000), the excess of the amount realized over adjusted basis, or \$30,000, is treated as ordinary income under section 1245(a)(1) and not as gain from the sale or exchange of property described in section 1231. Smith has made a gift of \$30,000 (\$90,000 fair market value minus \$60,000 amount realized) to which section 1245(a)(1) does not apply.

(i) Immediately before the transfer, the amount of adjustments reflected in the adjusted basis of the property was \$80,000. Under paragraph (c)(2) of § 1.1245-2, \$50,000 of adjustments are reflected in the adjusted basis of the property immediately after the transfer, that is, \$80,000 of such adjustments immediately before the transfer, minus \$30,000 gain taken into account under section 1245(a)(1) upon the transfer. Thus, the recomputed basis of the property in the hands of the son is \$110,000.

(b) *Exception for transfers at death.*—(1) *General rule.* Section 1245(b)(2) provides that, except as provided in section 691 (relating to income in respect of a decedent), no gain shall be recognized under section 1245(a)(1) upon a transfer at death. For purposes of this paragraph, the term "transfer at death" means a transfer of property which, in the hands of the transferee, has a basis determined under the provisions of section 1014(a) (relating to basis of property acquired from a decedent) because of the death of the transferor. For recomputed basis of property acquired in a transfer at death, see paragraph (c)(1)(iv) of § 1.1245-2.

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

*Example (1).* Smith owns section 1245 property which, upon Smith's death, is inherited by his son. Since the property is described in section 1014(b)(1), its basis in the hands of the son is determined under the provisions of section 1014(a). Therefore, section 1245(a)(1) does not apply to the transfer at Smith's death.

*Example (2).* H purchases section 1245 property which he conveys to himself and W, his wife, as tenants by the entirety. Upon H's death in 1970 the property (including W's share) is included in his gross estate. Since the entire property is described in section 1014(b)(1) and (9), its basis in the hands of W is determined under the provisions of section 1014(a). Therefore, section 1245(a)(1) does not apply to the transfer at H's death. For determination of the recomputed basis of the property in the hands of W, see paragraph (c)(3) of § 1.1245-2.

*Example (3).* Green's will provides for the bequest of section 1245 property to trustees to pay the income from the property to his wife for her lifetime, and upon her death to distribute the property to his son. If under paragraph (a)(2) of § 1.1014-4 the son's unadjusted basis for the property is its fair market value at the time the decedent died, section 1245(a)(1) does not apply to the distribution of the property to the son.

*Example (4).* The trustee of a trust created by will transfers section 1245 property to a beneficiary in satisfaction of a specific bequest of \$10,000. If under the principles of paragraph (a)(3) of § 1.1014-4 the trust realizes a taxable gain upon the transfer, section 1245(a)(1) applies to the transfer.

(c) *Limitation for certain tax-free transactions*—(1) *Limitation on amount of gain.* Section 1245(b)(3) provides that upon a transfer of property described in subparagraph (2) of this paragraph, the amount of gain taken into account by the transferor under section 1245(a)(1) shall not exceed the amount of gain recognized to the transferor on the transfer (determined without regard to section 1245). For purposes of this subparagraph, in case of a transfer of both section 1245 property and non-section 1245 property in one transaction, the amount of gain recognized to the transferor (determined without regard to section 1245) shall be allocated between the section 1245 property and the non-section 1245 property in proportion to their respective fair market values. For determination of the recomputed basis of the section 1245 property in the hands of the transferee, see paragraph (c)(2) of § 1.1245-2. Section 1245(b)(3) does not apply to a disposition of property to an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by chapter 1 of the Code.

(2) *Transfers covered.* The transfers referred to in subparagraph (1) of this paragraph are transfers of property in which the basis of the property in the hands of the transferee is determined by reference to its basis in the hands of the transferor by reason of the application of any of the following provisions:

(i) Section 332 (relating to distributions in complete liquidation of an 80-percent-or-more controlled subsidiary corporation). See subparagraph (3) of this paragraph.

(ii) Section 351 (relating to transfer to a corporation controlled by transferor).

(iii) Section 361 (relating to exchanges pursuant to certain corporate reorganizations).

(iv) Section 371(a) (relating to exchanges pursuant to certain receivership and bankruptcy proceedings).

(v) Section 374(a) (relating to exchanges pursuant to certain railroad reorganizations).

(vi) Section 721 (relating to transfers to a partnership in exchange for a partnership interest).

(vii) Section 731 (relating to distributions by a partnership to a partner). For special carryover basis rule, see section 1245(b)(6)(A) and paragraph (f)(1) of this section.

(3) *Complete liquidation of subsidiary.* In the case of a distribution in complete liquidation of an 80-percent-or-more controlled subsidiary to which section 332 applies, the limitation provided in section 1245(b)(3) is confined to instances in which the basis of the property in the hands of the transferee is determined, under section 334(b)(1), by reference to its basis in the hands of the transferor. Thus, for example, the limitation of section 1245(b)(3) may apply in respect of a liquidating distribution of section 1245 property by an 80-percent-or-more controlled corporation to the parent corporation, but does not apply in respect of a liquidating distribution of section 1245 property to a minority shareholder. Section 1245(b)(3) does not apply to a liquidating distribution of property by an 80-percent-or-more controlled subsidiary to its parent if the parent's basis for the property is determined, under section 334(b)(2), by reference to its basis for the stock of the subsidiary.

(4) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

*Example (1).* Section 1245 property, which is owned by Smith, has a fair market value of \$10,000, a recomputed basis of \$8,000, and an adjusted basis of \$4,000. Smith transfers the property to a corporation in exchange for stock in the corporation worth \$9,000 plus \$1,000 in cash in a transaction qualifying under section 351. Without regard to section 1245, Smith would recognize \$1,000 gain under section 351(b), and the corporation's basis for the property would be determined under section 362(a) by reference to its basis in the hands of Smith. Since the recomputed basis of the property disposed of (\$8,000) is lower than the amount realized (\$10,000), the excess of recomputed basis over adjusted basis (\$4,000), or \$4,000, would be treated as ordinary income under section 1245(a)(1) if the provisions of section 1245(b)(3) did not apply. However, section 1245(b)(3) limits the gain taken into account by Smith under section 1245(a)(1) to \$1,000. If, instead, Smith transferred the property to the corporation solely in exchange for stock of the corporation worth \$10,000, then, because of the application of section 1245(b)(3), Smith would not take any gain into account under section 1245(a)(1). If, however, Smith transferred the property to the corporation for stock worth \$5,000 and \$5,000 cash, only \$4,000 of the \$5,000 gain under section 351(b) would be treated as ordinary income under section 1245(a)(1).

*Example (2).* Assume the same facts as in example (1) except that Smith contributes the property to a new partnership in which he has a one-half interest. Since, without

regard to section 1245, no gain would be recognized to Smith under section 721, and by reason of the application of section 721 the partnership's basis for the property would be determined under section 723 by reference to its basis in the hands of Smith, the application of section 1245(b)(3) results in no gain being taken into account by Smith under section 1245(a)(1).

*Example (3).* Assume the same facts as in example (2) except that the property is subject to a \$9,000 mortgage. Since under section 752(b) (relating to decrease in partner's liabilities) Smith is treated as receiving a distribution in money of \$4,500 (one-half of liability assumed by partnership), and since the basis of Smith's partnership interest is \$4,000 (the adjusted basis of the contributed property), the \$4,500 distribution results in his realizing \$500 gain under section 731(a) (relating to distributions by a partnership), determined without regard to section 1245. Accordingly, the application of section 1245(b)(3) limits the gain taken into account by Smith under section 1245(a)(1) to \$500.

(d) *Limitation for like kind exchanges and involuntary conversions*—(1) *General rule.* Section 1245(b)(4) provides that if property is disposed of and gain (determined without regard to section 1245) is not recognized in whole or in part under section 1031 (relating to like kind exchanges) or section 1033 (relating to involuntary conversions), then the amount of gain taken into account by the transferor under section 1245(a)(1) shall not exceed the sum of—

(i) The amount of gain recognized on such disposition (determined without regard to section 1245), plus

(ii) The fair market value of property acquired which is not section 1245 property and which is not taken into account under subdivision (i) of this subparagraph (that is, the fair market value of non-section 1245 property acquired which is qualifying property under section 1031 or 1033, as the case may be).

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

*Example (1).* Smith exchanges machine A for machine B in a like kind exchange as to which no gain is recognized under section 1031(a). Both machines are section 1245 property. No gain is recognized under section 1245(a)(1) because of the limitation contained in section 1245(b)(4). The result would be the same if machine A were involuntarily converted into machine B in a transaction as to which no gain is recognized under section 1033(a)(1).

*Example (2).* Jones owns property A, which is section 1245 property, with an adjusted basis of \$100,000 and a recomputed basis of \$116,000. The property is destroyed by fire and Jones receives \$117,000 of insurance proceeds. Thus, the amount of gain under section 1245(a)(1), determined without regard to section 1245(b)(4), would be \$16,000. He uses \$105,000 of the proceeds to purchase section 1245 property similar or related in service or use to property A, and \$9,000 of the proceeds to purchase stock in the acquisition of control of a corporation owning property similar or related in service or use to property A. Both acquisitions qualify under section 1033(a)(3)(A). Jones properly elects under section 1033(a)(3)(A) and the regulations thereunder to limit recognition of gain to the amount by which the amount realized from the conversion exceeds the cost of the stock and other property acquired to replace the converted property. Since \$3,000 of the gain is recog-

nized (without regard to section 1245) under section 1033(a) (3) (that is, \$117,000 minus \$114,000), and since the stock purchased for \$9,000 is not section 1245 property and was not taken into account in determining the gain under section 1033, section 1245 (b) (4) limits the amount of the gain taken into account under section 1245(a) (1) to \$12,000 (that is, \$3,000 plus \$9,000). If, instead of purchasing \$9,000 in stock, Jones purchases \$9,000 worth of property which is section 1245 property similar or related in use to the destroyed property, section 1245(b) (4) would limit the amount of gain taken into account under section 1245(a) (1) to \$3,000.

(3) *Certain tangible property.* If—

(i) A person disposes of section 1245 property in a transaction to which section 1245(b) (4) applies,

(ii) Adjustments are reflected in the adjusted basis (within the meaning of paragraph (a) (2) of § 1.1245-2) of such property which are attributable to the use of such property (or other property) as an integral part of an activity, or as a facility, specified in section 1245(a) (3) (B) (i) or (ii), and

(iii) Property is acquired in the transaction which would be considered as section 1245 property described in section 1245(a) (3) (B) if such person used the acquired property as an integral part of such an activity, or as such a facility,

then (regardless of the use of the acquired property) the acquired property shall be considered as section 1245 property described in section 1245(a) (3) (B). For definition of property described in section 1245(a) (3) (B), see paragraph (c) of § 1.1245-3. Thus, for example, if a person's section 1245 property (which is personal property) is involuntarily converted into property A which would qualify as section 1245 property only if it were devoted to a specified use, and if the person had so devoted the section 1245 property disposed of, then the acquired property is considered as section 1245 property described in section 1245(a) (3) (B) and therefore its fair market value is not taken into account under subparagraph (1) (ii) of this paragraph. For recomputed basis of property A, see paragraph (a) (5) of § 1.1245-2. Moreover, if property A is not devoted to a specified use and is subsequently involuntarily converted into property B which would qualify as section 1245 property only if it were so devoted, then property B is also considered as section 1245 property described in section 1245(a) (3) (B).

(4) *Application to disposition of section 1245 property and non-section 1245 property in one transaction.* For purposes of this paragraph, if both section 1245 property and non-section 1245 property are acquired as the result of one disposition in which both section 1245 property and non-section 1245 property are disposed of—

(i) The total amount realized upon the disposition shall be allocated between the section 1245 property and the non-section 1245 property disposed of in proportion to their respective fair market values,

(ii) The amount realized upon the disposition of the section 1245 property shall be deemed to consist of so much

of the fair market value of the section 1245 property acquired as is not in excess of the amount realized from the section 1245 property disposed of, and the remaining portion (if any) of the amount realized upon the disposition of the section 1245 property shall be deemed to consist of so much of the fair market value of the non-section 1245 property acquired as is not in excess of the amount of such remaining portion, and

(iii) The amount realized upon the disposition of the non-section 1245 property shall be deemed to consist of so much of the fair market value of all the property acquired which was not taken into account in subdivision (ii) of this subparagraph.

(5) *Example.* The provisions of subparagraph (4) of this paragraph may be illustrated by the following example:

*Example.* (1) Smith owns section 1245 property A with a fair market value of \$30,000, and non-section 1245 property X with a fair market value of \$20,000. Properties A and X are destroyed by fire and Smith receives insurance proceeds of \$40,000. He uses all the proceeds, plus additional cash of \$10,000, to purchase in a single transaction properties B and Y which qualify under section 1033(a) (3) (A), and he properly elects under section 1033(a) (3) (A) and the regulations thereunder to limit recognition of gain to the excess of the amount realized from the conversion over the costs of the qualifying properties acquired. Thus no gain would be recognized (without regard to section 1245) under section 1033(a) (3) (A). Property B is section 1245 property with a fair market value of \$15,000, and property Y is non-section 1245 property with a fair market value of \$35,000.

(ii) The amount realized upon the disposition of A and X (\$40,000) is allocated between A and X in proportion to their respective fair market values. Thus, the amount considered realized in respect of A is \$24,000 (that is, 30/50 of \$40,000). (The amount considered realized in respect of X is \$16,000 (that is, 20/50 of \$40,000).)

(iii) The \$24,000 realized upon the disposition of A is deemed to consist of the fair market value of B (\$15,000) and \$9,000 of the fair market value of Y. (The \$16,000 realized upon the disposition of X is deemed to consist of \$16,000 of the fair market value of Y. Also, \$10,000 of the fair market value of Y is attributable to the additional cash of \$10,000.)

(iv) Assume that A has an adjusted basis of \$5,000, and a recomputed basis of \$40,000. Since the amount considered realized upon the disposition of A (\$24,000) is lower than its recomputed basis (\$40,000), the amount of gain which would be recognized under section 1245(a) (1), determined without regard to section 1245(b) (4), is \$19,000, that is, the amount realized (\$24,000), minus the adjusted basis (\$5,000). Since no gain is recognized (without regard to section 1245) under section 1033(a) (3), and since \$9,000 of the property acquired in exchange for section 1245 property A is non-section 1245 property Y, section 1245(b) (4) limits the amount of gain taken into account under section 1245(a) (1) to \$9,000.

(6) *Cross references.* For the manner of determining the recomputed basis of property acquired in a transaction to which section 1245(b) (4) applies, see paragraph (c) (4) of § 1.1245-2. For the manner of determining the basis of such property, see paragraph (a) of § 1.1245-5.

(e) *Limitation for section 1071 and 1081 transactions.*—(1) *Section 1071 and 1081(b) transactions.* If property is disposed of and gain (determined without regard to section 1245) is not recognized in whole or in part because of the application of section 1071 (relating to gain from sale or exchange to effectuate policies of F.C.C.) or section 1081(b) (relating to gain from sale or exchange in obedience to order of S.E.C.), then the amount of gain taken into account by the transferor under section 1245(a) (1) shall not exceed the sum of—

(i) The amount of gain recognized on such disposition (determined without regard to section 1245),

(ii) In the case of a transaction to which section 1071 applies, the fair market value of property acquired which is not section 1245 property and which is not taken into account under subdivision (i) of this subparagraph, plus

(iii) The amount by which the basis of property, other than section 1245 property, is reduced (pursuant to an election under section 1071 or pursuant to the application of section 1082(a) (2)), and which is not taken into account under subdivision (i) or (ii) of this subparagraph.

(2) *Section 1081(d) (1) (A) transaction.* No gain shall be recognized under section 1245(a) (1) upon an exchange of property as to which gain would not be recognized (without regard to section 1245) because of the application of section 1081(d) (1) (A) (relating to transfers within system group). For recomputed basis of property acquired in a transaction referred to in this subparagraph, see paragraph (c) (2) of § 1.1245-2.

(3) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

*Example (1).* Corporation X elects under section 1071 to treat a sale of section 1245 property for \$100,000 as an involuntary conversion subject to the provisions of section 1033, but does not elect to reduce the basis of depreciable property pursuant to an election under section 1071. The corporation uses \$35,000 of the proceeds to purchase section 1245 property and \$40,000 to purchase other property. Both properties qualify as replacement property under section 1033. Assuming that the amount of gain under section 1245(a) (1) (determined without regard to this paragraph) would be \$70,000, and that \$25,000 of gain would be recognized (without regard to section 1245) upon the application of section 1071, the amount of gain taken into account under section 1245(a) (1) is \$65,000 (\$25,000 plus \$40,000).

*Example (2).* (1) Assume the same facts as in example (1) except that the corporation elects under section 1071 to reduce its basis for property of a character subject to the allowance for depreciation under section 167 by the amount of gain which would be recognized without regard to the application of section 1245, that is, by \$25,000. Assume further that under section 1071 the corporation may reduce the basis of depreciable property consisting of property A, which is section 1245 property with an adjusted basis of \$30,000, and property B, which is property other than section 1245 property with an adjusted basis of \$20,000. Under paragraph (a) (2) of § 1.1071-3, the \$25,000 of unrecognized gain is applied to reduce the basis of property A by \$15,000 (30,000/50,000 of \$25,000) and the basis of property B by \$10,000 (20,000/50,000 of \$25,000).

(ii) The amount of gain which would be recognized (determined without regard to section 1245) under section 1071 is zero, i.e., the amount determined in example (1) (\$25,000), minus the amount of the reduction in basis of depreciable property pursuant to the election (\$25,000). The amount of gain taken into account under section 1245 (a) (1) is \$50,000, i.e., the sum of (a) the gain which would be recognized without regard to section 1245 (zero), (b) the cost of property acquired which is not section 1245 property (\$40,000), plus (c) the amount by which the basis of property B is reduced (\$10,000). For method of increasing basis of property B, see paragraph (b) (2) of § 1.1245-5, and for recomputed basis of property A, see paragraph (c) (5) of § 1.1245-2.

(f) *Limitation for property distributed by a partnership*—(1) *In general.* For purposes of section 1245(b) (3) (relating to certain tax-free transactions), the basis of section 1245 property distributed by a partnership to partner shall be deemed to be determined by reference to the adjusted basis of such property to the partnership.

(2) *Adjustments reflected in the adjusted basis.* If section 1245 property is distributed by a partnership to a partner, then, for purposes of determining the recomputed basis of the property in the hands of the distributee, the amount of the adjustments reflected in the adjusted basis of the property immediately after the distribution shall be an amount equal to—

(i) The potential section 1245 income (as defined in paragraph (c) (4) of § 1.751-1) of the partnership in respect of the property immediately before the distribution, reduced by

(ii) The portion of such potential section 1245 income which is recognized as ordinary income to the partnership under paragraph (b) (2) (ii) of § 1.751-1.

(3) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

*Example (1).* (1) A machine, which is section 1245 property owned by partnership ABC, has an adjusted basis of \$9,000, a recomputed basis of \$18,000, and a fair market value of \$15,000. Since the fair market value of the machine is lower than its recomputed basis, the potential section 1245 income in respect of the machine is the excess of fair market value over adjusted basis, or \$6,000. The partnership distributes the machine to C in a complete liquidation of his partnership interest to which section 736(a) does not apply. C, who had originally contributed the machine to the partnership, has a basis for his partnership interest of \$10,000. Since section 751(b) (2) (A) provides that section 751(b) (1) does not apply to a distribution of property to the partner who contributed the property, no gain would be recognized to the partnership under section 731(b) (without regard to the application of section 1245). By reason of the application of section 731, C's basis for the property would, under section 732(b), be equal to his basis for his interest in the partnership, or \$10,000.

(ii) Since section 731 applies to the distribution, and since subparagraph (1) of this paragraph provides that, for purposes of section 1245(b) (3), C's basis for the property is deemed to be determined by reference to the adjusted basis of the property to the partnership, the gain taken into account under section 1245(a) (1) by the partnership is limited by section 1245(b) (3) so as not

to exceed the amount of gain which would be recognized to the partnership if section 1245 did not apply. Accordingly, the partnership does not recognize any gain under section 1245(a) (1) upon the distribution.

(iii) Immediately after the distribution, the amount of the adjustments reflected in the adjusted basis of the property is equal to \$6,000 (that is, the potential section 1245 income of the partnership in respect of the property before the distribution, \$6,000, minus the gain recognized by the partnership under section 751(b), zero). Accordingly, C's recomputed basis for the property is \$16,000 (that is, adjusted basis, \$10,000, plus adjustments reflected in the adjusted basis, \$6,000).

*Example (2).* Assume the same facts as in example (1) except that the machine had been purchased by the partnership. Assume further that upon the distribution, the partnership recognizes \$4,000 gain as ordinary income under section 751(b). Under section 1245(b) (3), gain to be taken into account under section 1245(a) (1) by the partnership is limited to \$4,000. Immediately after the distribution, the amount of adjustments reflected in the adjusted basis of the property is \$2,000 (that is, potential section 1245 income of the partnership, \$6,000, minus gain recognized to the partnership under section 751(b), \$4,000). Thus, if the adjusted basis of the machine in the hands of C were \$11,333 (see, for example, the computation in paragraph (d) (2) of example (6) of paragraph (g) of § 1.751-1), the recomputed basis of the machine would be \$13,333 (\$11,333 plus \$2,000).

#### § 1.1245-5 Adjustments to basis.

In order to reflect gain recognized under section 1245(a) (1), the following adjustments to the basis of property shall be made:

(a) *Property acquired in like kind exchange or involuntary conversion.* (1) If property is acquired in a transaction to which section 1245(b) (4) applies, its basis shall be determined under the rules of section 1031(d) or 1033(c).

(2) The provisions of this paragraph may be illustrated by the following example:

*Example.* Jones exchanges property A, which is section 1245 property with an adjusted basis of \$10,000, for property B, which has a fair market value of \$9,000, and property C, which has a fair market value of \$3,500, in a like kind exchange as to which no gain would be recognized under section 1031(a). Upon the exchange \$2,500 gain is recognized under section 1245(a) (1), since property C is not section 1245 property. See section 1245(b) (4). Under the rules of section 1031(d), the basis of the properties received in the exchange is \$12,500 (i.e., the basis of property transferred, \$10,000, plus the amount of gain recognized, \$2,500), of which the amount allocated to property C is \$3,500 (the fair market value thereof), and the residue, \$9,000, is allocated to property B.

(b) *Section 1071 and 1081 transactions.* (1) If property is acquired in a transaction to which section 1071 and paragraph (e) (1) of § 1.1245-4 (relating to limitation for section 1071 transactions, etc.) apply, its basis shall be determined in accordance with the principles of paragraph (a) of this section.

(2) If the basis of property, other than section 1245 property, is reduced pursuant to either an election under section 1071 or the application of section 1082(a) (2), then the basis of the property shall be increased to the extent of the gain recognized under sec-

tion 1245(a) (1) by reason of the application of paragraph (e) (1) (iii) of § 1.1245-4.

#### § 1.1245-6 Relation of section 1245 to other sections.

(a) *General.* The provisions of section 1245 apply notwithstanding any other provision of subtitle A of the Code. Thus, unless an exception or limitation under section 1245(b) applies, gain under section 1245(a) (1) is recognized notwithstanding any contrary nonrecognition provision or income characterizing provision. For example, since section 1245 overrides section 1231 (relating to property used in the trade or business), the gain recognized under section 1245(a) (1) upon a disposition will be treated as ordinary income and only the remaining gain, if any, from the disposition may be considered as gain from the sale or exchange of a capital asset if section 1231 is applicable. See example (2) of paragraph (b) (2) of § 1.1245-1. For effect of section 1245 on basis provisions of the Code, see § 1.1245-5.

(b) *Nonrecognition sections overridden.* The nonrecognition provisions of subtitle A of the Code which section 1245 overrides include, but are not limited to, sections 267(d), 311(a), 336, 337, and 512(b) (5). See section 1245(b) for the extent to which section 1245(a) (1) overrides sections 332, 351, 361, 371(a), 374(a), 721, 731, 1031, 1033, 1071, and 1081 (b) (1) and (d) (1) (A).

(c) *Normal retirement of asset in multiple asset account.* Section 1245(a) (1) does not require recognition of gain upon normal retirements of section 1245 property in a multiple asset account as long as the taxpayer's method of accounting, as described in paragraph (e) (2) of § 1.167(a)-8 (relating to accounting treatment of asset retirements), does not require recognition of such gain.

(d) *Installment method.* (1) Gain from a disposition to which section 1245(a) (1) applies may be reported under the installment method if such method is otherwise available under section 453 of the Code. In such case, the income (other than interest) on each installment payment shall be deemed to consist of gain to which section 1245(a) (1) applies until all such gain has been reported, and the remaining portion (if any) of such income shall be deemed to consist of gain to which section 1245(a) (1) does not apply. For treatment of amounts as interest on certain deferred payments, see section 483.

(2) The provisions of this paragraph may be illustrated by the following example:

*Example.* Jones contracts to sell an item of section 1245 property for \$10,000 to be paid in 10 equal payments of \$1,000 each, plus a sufficient amount of interest so that section 483 does not apply. He properly elects under section 453 to report under the installment method gain of \$2,000 to which section 1245(a) (1) applies and gain of \$1,000 to which section 1231 applies. Accordingly, \$300 of each of the first 6 installment payments and \$200 of the seventh installment payment is ordinary income under section 1245(a) (1), and \$100 of the seventh installment payment and \$300 of each of the last 3 installment payments is gain under section 1231.

(e) *Exempt income.* The fact that section 1245 provides for recognition of gain as ordinary income does not change into taxable income any income which is exempt, for example, under section 115 (relating to income of states, etc.), 892 (relating to income of foreign governments), or 894 (relating to income exempt under treaties), or under subchapter F, chapter 1 of the Code (relating to exempt organizations).

(f) *Treatment of gain not recognized under section 1245.* Section 1245 does not prevent gain which is not recognized under section 1245 from being considered as gain under another provision of the Code, such as, for example, section 1238 (relating to amortization in excess of depreciation) or section 1239 (relating to gain from sale of depreciable property between certain related persons). Thus, for example, if section 1245 property, which has an adjusted basis of \$1,000 and a recomputed basis of \$1,500, is sold for \$1,750 in a transaction to which section 1239 applies, \$500 of the gain would be recognized under section 1245(a) (1) and the remaining \$250 of the gain would be treated as ordinary income under section 1239.

[F.R. Doc. 64-7908; Filed, Aug. 5, 1964; 8:50 a.m.]

**126 CFR Part 270 I**

**MANUFACTURE OF TOBACCO PRODUCTS**

**Notice of Proposed Rule Making**

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington, D.C., 20224, within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Director within the 30-day period. In such a case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] **BERTRAND M. HARDING,**  
*Acting Commissioner  
of Internal Revenue.*

In order to (1) improve and clarify certain provisions relating to the marking of packages of tobacco products, the furnishing of tax-exempt tobacco products to employees for personal consumption,

and the treatment of tax determined tobacco products returned to the factory; (2) incorporate provisions relating to the keeping of records in support of transfers of tobacco products in bond, repackaging of tobacco products, and the treatment of shortages and overages of tobacco products disclosed by a physical inventory; (3) liberalize present requirements relating to records maintained by manufacturers of tobacco products; (4) delete obsolete provisions relating to the redemption of stamps; and (5) make other miscellaneous clarifying and conforming changes of a minor nature, the regulations in 26 CFR Part 270 are amended as follows:

1. Section 270.11 is amended by adding, in alphabetical sequence, the definition as follows:

**§ 270.11 Meaning of terms.**

\* \* \* \* \*  
*Permit number.* The combination of (1) the letters indicating the kind of permit, (2) the identifying number, and (3) the name or abbreviation of the State (or the District of Columbia) in which the factory is located, as assigned to the permit by the assistant regional commissioner; for example, "TP"999-Utah".

\* \* \* \* \*  
2. Section 270.47 is amended to include the procedure for submitting applications for authorization to engage in another business within the factory. As amended, § 270.47 reads as follows:

**§ 270.47 Other businesses within factory.**

The Director may authorize such other businesses within the factory as he finds will not jeopardize the revenue, will not hinder the effective administration of this part, and will not be contrary to law. Where a manufacturer desires to engage in another business within the factory he shall submit a written application to do so, in triplicate, to the assistant regional commissioner for the region in which the factory is located, for his transmittal to the Director. A manufacturer shall not engage in such other business until the application is approved by the Director. The manufacturer shall retain, as part of his records, any authorization of the Director under this section.

3. Section 270.63 is amended to include provisions, formerly in § 270.68, relating to authority of corporate officials to represent a corporate manufacturer. As amended, § 270.63 reads as follows:

**§ 270.63 Corporate documents.**

Every corporation, before commencing business as a manufacturer of tobacco products, shall furnish with its application for permit, required by § 270.62, a true copy of the corporate charter or a certificate of corporate existence or incorporation executed by the appropriate officer of the State in which incorporated. The corporation shall likewise furnish duly authenticated extracts of the stockholders' meetings, bylaws, or directors' meetings, listing the offices the incumbents of which are authorized

to sign documents or otherwise act in behalf of the corporation in matters relating to Chapter 52, I.R.C., and regulations issued thereunder. The corporation shall also furnish evidence, in duplicate, of the identity of the officers and directors and each person who holds more than ten percent of the stock of such corporation. Where any of the information required by this section has previously been filed with the same assistant regional commissioner and such information is currently complete and accurate, a written statement to that effect, in duplicate, will be sufficient for the purpose of this section.

(72 Stat. 1421; 26 U.S.C. 5712)

4. Section 270.68 is amended to clarify the requirements relating to the filing of a power of attorney and to eliminate provisions concerning corporate documents which are now included in § 270.63. As amended, § 270.68 reads as follows:

**§ 270.68 Power of attorney.**

If the application for permit or any report, return, notice, schedule, or other document required to be executed is to be signed by an individual (including one of the partners for a partnership or one of the members of an association) as an attorney in fact for any person, or if an individual is to otherwise officially represent such person, power of attorney on Form 1534 shall be furnished to the assistant regional commissioner. (For power of attorney in connection with conference and practice requirements see Subpart E, Part 601 of this chapter.) Such power of attorney is not required for persons whose authority is furnished with the corporate documents as required by § 270.63. Form 1534 does not have to be filed again with an assistant regional commissioner where such form has previously been submitted to that assistant regional commissioner and is still in effect.

5. Section 270.69 is amended to require a factory diagram under certain circumstances in addition to those previously required. As amended, § 270.69 reads as follows:

**§ 270.69 Factory premises.**

The premises to be used by a manufacturer of tobacco products as his factory may consist of more than one building, or portions of buildings, which need not be contiguous but must be located in the same city, town, or village. Except that, where the assistant regional commissioner determines that a building or portion of a building which is not within the city, town, or village, is so conveniently and closely situated to the general factory premises as to present no jeopardy to the revenue and as to offer no hindrance to the administration of this part, he may authorize the inclusion of such building or portion of building as part of the factory. The buildings or portions of buildings shall be described in the application for permit and the bond by number, street, and city, town, or village, and State. If any of the following conditions exist a diagram shall also be furnished, in duplicate, showing the information indicated:

## PROPOSED RULE MAKING

(a) Where the factory is in more than one building, and each building is not identifiable by a separate street address—identify each building by a letter, number, or similar designation;

(b) Where the factory consists of a portion of a building or where portions of buildings are part of the factory—show the particular floor or floors, or room or rooms, comprising the factory;

(c) Where there is an adjoining retail store operated by the manufacturer in which tobacco products are sold—identify the factory and the retail store including any doors or other openings between the premises.

(72 Stat. 1421; 26 U.S.C. 5712)

6. Section 270.92 is amended to provide for the addition or discontinuance of a trade name. As amended, § 270.92 reads as follows:

**§ 270.92 Change in trade name.**

Where there is a change in, or an addition or discontinuance of, a trade name used by a manufacturer of tobacco products in connection with operations authorized by his permit the manufacturer shall, within 30 days of such change, addition, or discontinuance, make application on Form 2098 for an amended permit to reflect such change. The manufacturer shall also furnish a true copy of any new trade name certificate or document issued to him, or statement in lieu thereof, required by § 270.65.

(72 Stat. 1421; 26 U.S.C. 5712)

7. Section 270.103 is amended to require notification when there is a change in authority of officers to act in behalf of a corporation furnished under § 270.63. As amended § 270.103 reads as follows:

**§ 270.103 Change in officers, directors, or stockholders of a corporation.**

Upon election or appointment (excluding successive reelection or reappointment) of any officer or director of a corporation operating the business of a manufacturer of tobacco products, or upon any occurrence which results in a person acquiring ownership or control of more than ten percent in aggregate of the outstanding stock of such corporation, the manufacturer shall, within 30 days of such action, so notify the assistant regional commissioner in writing, giving the identity of such person. When there is any change in the authority furnished under § 270.63 for officers to act in behalf of the corporation the manufacturer shall immediately so notify the assistant regional commissioner in writing.

(72 Stat. 1421; 26 U.S.C. 5712)

8. Section 270.131 is amended to change the statement concerning the filing of powers of attorney for agents of surety companies, to conform with changed procedures in Subpart D of Part 296 of this chapter. As amended § 270.131 reads as follows:

**§ 270.131 Corporate surety.**

Surety bonds required under the provisions of this part may be given only with corporate sureties holding certificates of authority from the Secretary

of the Treasury as acceptable sureties on Federal bonds. Power of attorney and other evidence of appointment of agents and officers to execute bonds on behalf of such corporate sureties shall be filed with the assistant regional commissioner with whom any bond executed by such agent or officer is filed. Limitations concerning corporate sureties are prescribed by the Secretary in Treasury Department Circular No. 570, as revised. The surety shall have no interest whatever in the business covered by the bond.

(61 Stat. 648, 72 Stat. 1421; 6 U.S.C. 6, 26 U.S.C. 5711)

9. Section 270.139 and the heading are amended for clarification. As amended, § 270.139 and the heading read as follows:

**§ 270.139 Termination of bond.**

Any bond required by this part may be terminated by the assistant regional commissioner as to liability for future operations (a) pursuant to application by the surety as provided in the bond, (b) on approval of a superseding bond, or (c) when operations by the manufacturer are permanently discontinued in accordance with Subpart J. After a bond is terminated the surety shall remain bound with respect to any liability for unpaid taxes, penalties, and interest, not in excess of the amount of the bond, incurred by the manufacturer prior to the termination date.

(72 Stat. 1421; 26 U.S.C. 5711)

10. Section 270.164 is amended to provide for inclusion in the tax return and taxpayment of shortages in inventory. As amended, § 270.164 reads as follows:

**§ 270.164 Adjustments in the semi-monthly return.**

A manufacturer may make adjustments in Schedules A and B of his semi-monthly tax return, Form 3071, as provided in this section. Schedule A of the return will be used where an error resulted in an underpayment of tax or where a shortage in inventory is disclosed as set forth in § 270.255. Schedule B of the return will be used where prepayment of tax has been made during the return period, or where notice has been received from the assistant regional commissioner that a claim for allowance of tax has been approved. Schedule B may also be used as provided in § 270.286 where a computational error resulted in an overpayment of tax. In the case of an adjustment based on prepayment of tax, the serial number(s) of the prepayment return(s), Form 2617, shall be shown. Any adjustments made in a return must be fully explained in the appropriate schedule or in a statement attached to and made a part of the return in which such adjustment is made.

(68A Stat. 791, 72 Stat. 1417; 26 U.S.C. 6402, 5703)

11. Section 270.181 is amended to include reference to new § 270.186. As amended, § 270.181 reads as follows:

**§ 270.181 General.**

Every manufacturer of tobacco products shall keep records of his operations

and transactions which shall reflect, for each day, the information specified in §§ 270.182 and 270.183. For the aforesaid purpose "day" shall mean calendar day, except that the assistant regional commissioner may, upon application of the manufacturer by letter, in duplicate, authorize as such day for a factory a 24-hour cycle of operation other than the calendar day. A day once so established as other than the calendar day may be changed only by like application approved by the assistant regional commissioner. A manufacturer who maintains commercial records from which the required information may be readily ascertained may utilize such records for this purpose. Where a manufacturer does not maintain commercial records which adequately reflect the information required by this part, he shall keep a record on Form 3063 with respect to tobacco materials, on Form 3065 with respect to large cigars, on Form 3066 with respect to small cigars and large and small cigarettes, and on Form 3064 with respect to manufactured tobacco. The manufacturer shall keep the auxiliary and supplemental records from which such records are compiled, and shall keep supporting records, as specified in §§ 270.184 and 270.186, of tobacco products removed subject to tax and transferred in bond. Except as provided in §§ 270.184 and 270.186 the entries in the commercial or form records so maintained or kept shall be made not later than the close of the business day next following that on which the transactions occur. As used in this section the term "business day" shall mean any day other than Saturday, Sunday, a legal holiday in the District of Columbia, or a state-wide legal holiday in the State wherein the factory to which the records relate is located.

(72 Stat. 1423; 26 U.S.C. 5741)

12. Section 270.183 is amended to provide for the rounding off of fractions of pounds of manufactured tobacco. As amended, undesignated text has been added at the end of § 270.183 to read as follows:

**§ 270.183 Record of tobacco products.**

\* \* \* \* \*

In recording the daily totals with respect to manufactured tobacco as required by this section, a manufacturer may disregard fractions of less than one-half pound and increase fractions of one-half pound or more to the next whole pound. Such daily total shall be determined before the fraction of pound is disregarded or increased.

(72 Stat. 1423; 26 U.S.C. 5741)

13. Section 270.184 is amended to provide for the acceptance under certain conditions of supporting records which do not specifically show the tax classification of cigars and cigarettes. As amended, § 270.184 reads as follows:

**§ 270.184 Record in support of removals subject to tax.**

Every manufacturer of tobacco products shall keep a supporting record of tobacco products removed from his factory subject to tax and shall make the entries therein at the time of removal.

Such supporting record shall show, with respect to each removal, the date of removal, the name and address of the person to whom shipped or delivered, the kind and quantity of cigars, cigarettes, or manufactured tobacco, and in the case of large cigars the class: *Provided*, That where the tobacco products are delivered within the factory directly to the consumer the name and address of the person to whom delivered need not be shown. Where the manufacturer keeps, at the factory, copies of invoices or other commercial records containing the information required as to each removal, in such orderly manner that the information may be readily ascertained therefrom, such copies will be considered the supporting record required by this section. Such invoices or other commercial records which do not show specifically the tax classification of cigars or cigarettes will be acceptable if they contain adequate information to readily enable an internal revenue officer to ascertain therefrom the appropriate tax rate.

(72 Stat. 1423; 26 U.S.C. 5741)

14. A new section, designated § 270.186, is added to read as follows:

**§ 270.186 Record in support of transfers in bond.**

Every manufacturer of tobacco products shall keep a supporting record of tobacco products transferred in bond to or received in bond from other factories, and shall make the entries therein at the time of each receipt or removal of such products. Such supporting record shall show the date of receipt or removal, the name of the manufacturer and address of the factory from which received or to which removed or the permit number of such factory, and the kind and quantity of cigars, cigarettes, or manufactured tobacco. Where the manufacturer keeps, at the factory, copies of invoices or other commercial records containing the information required as to each receipt and removal, in such orderly manner that the information may be readily ascertained therefrom, such copies will be considered the supporting record required by this section.

(72 Stat. 1423; 26 U.S.C. 5741)

15. Section 270.202 is amended to prescribe for the separate reporting of shortages and overages disclosed by physical inventory. As amended, paragraphs (d) through (i) of § 270.202 read as follows:

**§ 270.202 Reports.**

\* \* \* \* \*

- (d) Disclosed by inventory as an overage,
- (e) Removed subject to tax,
- (f) Removed in bond,
- (g) Otherwise disposed of without determination of tax,
- (h) Disclosed by inventory as a shortage, and
- (i) On hand, in bond, beginning of and end of month.

(72 Stat. 1422; 26 U.S.C. 5722)

16. Section 270.212 is amended to eliminate, under certain conditions, the requirement that the manufacturer show

in the mark the location of his factory. As amended, § 270.212 reads as follows:

**§ 270.212 Mark.**

Every package of tobacco products packaged in a domestic factory shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, a mark as specified in this section. The mark may consist of the name of the manufacturer removing the product subject to tax and the location (by city and State) of the factory from which the products are to be so removed, or may consist of the permit number of the factory from which the products are to be so removed. (Any trade name of the manufacturer approved as provided in § 270.65 may be used in the mark as the name of the manufacturer.) As an alternative, where tobacco products are both packaged and removed subject to tax by the same manufacturer, either at the same or different factories, the mark may consist of the name of such manufacturer if the factory where packaged is identified on or in the package by a means approved by the Director. Before using the alternative, the manufacturer shall notify the Director in writing of the name to be used as the name of the manufacturer and the means to be used for identifying the factory where packaged. If approved by him the Director shall return approved copies of the notice to the manufacturer. A copy of the approved notice shall be retained as part of the factory records at each of the factories operated by the manufacturer.

(72 Stat. 1422; 26 U.S.C. 5723)

17. A new section, designated § 270.216, is added to read as follows:

**§ 270.216 Fill of packages of manufactured tobacco.**

Packages of manufactured tobacco must be so filled that the weight at the time of removal agrees with that stated on the package, except for such variations in weight as may occur when the filling is conducted in compliance with good commercial practices which result in substantially the same number of underweight and overweight packages.

18. A new section, designated § 270.217, is added to read as follows:

**§ 270.217 Repackaging.**

Where a manufacturer of tobacco products desires to repackage, outside the factory, tobacco products on which the tax has been determined or which were removed for a tax-exempt purpose or transferred in bond to an export warehouse, or to repackage tax determined tobacco products in the factory, he shall make application for authorization to do so, in duplicate, to the assistant regional commissioner for the region in which the products are to be repackaged. The application shall set forth the location and the number of packages, a description of the contents, the tax status of the tobacco products, the reason for wanting to repackage the products (e.g., packages soiled, damaged, or otherwise in a condition making the product unsalable), and a description of

the package to be used for repackaging. The packages to be used must comply with the package, mark, and notice provisions of this chapter applicable to the tobacco products being repackaged. The operations authorized under this section are limited solely to repackaging for good cause by a manufacturer, pursuant to an approved application, of the specified tobacco products in the described packages, and do not include any manufacturing processes. If the assistant regional commissioner approves the application, he may assign an internal revenue officer to supervise the repackaging or he may authorize the manufacturer to repackage the products without supervision by so stating on a copy of the application returned to the manufacturer. Where the manufacturer is authorized to repackage he shall record the date of repackaging on the approved application and retain it as part of his records.

(72 Stat. 1422; 26 U.S.C. 5723)

19. Section 270.231 is amended by redefining the term "employee". As amended, § 270.231 reads as follows:

**§ 270.231 Consumption by employees.**

A manufacturer of tobacco products may gratuitously furnish tobacco products, without determination and payment of tax, for personal consumption by employees in the factory in such quantities as desired. Each employee may also be gratuitously furnished by the manufacturer, for off-factory personal consumption, not more than 5 large cigars or cigarettes, 20 small cigars or cigarettes, 2 ounces of manufactured tobacco, or a proportionate quantity of each, without determination and payment of tax, on each day the employee is at work. For the purpose of this section, the term "employee" shall mean those persons whose duties require their presence in the factory and who receive compensation from the manufacturer, or a parent, subsidiary, or auxiliary company or corporation of the manufacturer. Such products furnished for off-factory consumption shall be taken from the factory by the employee on the day for which furnished. Employees shall not sell, offer for sale, or give away products so furnished to them.

(72 Stat. 1418; 26 U.S.C. 5704)

20. Section 270.254 is amended to clarify the requirements relating to tobacco products returned to the factory. As amended, § 270.254 reads as follows:

**§ 270.254 Receipt into factory.**

A manufacturer of tobacco products may receive in bond into his factory any tobacco products which he is authorized under his permit to produce in that factory, and may also receive into his factory any tobacco products on which the tax has been determined (including products on which the tax has been paid). Tobacco products on which the tax has been determined which are so received shall be segregated and identified as products on which the tax has been determined. If tax determined products received into the factory are so handled that they cannot be identified both

physically and in the records as tax determined products they shall be accounted for as returned to bond and upon subsequent removal shall be tax determined. Where returned tax determined tobacco products are to be repackaged without being returned to bond the manufacturer shall make application for authorization to do so to the assistant regional commissioner in accordance with § 270.217. Where the manufacturer intends to file claim for allowance or refund of tax on tax determined products he shall comply with the provisions of §§ 270.311 and 270.313.

21. A new section, designated § 270.255, is added to read as follows:

**§ 270.255 Shortages and overages in inventory.**

Whenever a manufacturer of tobacco products makes a physical inventory of packaged tobacco products in bond, either as part of normal operations or when required by an internal revenue officer, and such inventory discloses a shortage or overage in such products, the manufacturer shall enter such shortage or overage in the records required by § 270.183. A shortage or an overage may not be used to offset the other, but shall be recorded and reported separately. Unless the manufacturer establishes that a shortage was not caused by a removal subject to tax the manufacturer shall determine the tax on any shortage, make an adjustment in Schedule A of his next semimonthly tax return, and pay the tax thereon. If, after paying the tax on a shortage, the manufacturer satisfactorily establishes that the shortage was not caused by a removal subject to tax, then such payment would be an overpayment of tax which the manufacturer may recover as provided in § 270.286. Where the manufacturer can establish, prior to paying the tax on a shortage, that the shortage was not the result of a removal subject to tax he shall submit an explanation of such shortage with his report for the month in which the shortage was disclosed and, if appropriate, he may file claim for remission of tax liability as provided in § 270.287. When an overage is disclosed which the manufacturer can explain, he shall include such explanation in his monthly report and refund of any overpayment may be recovered as provided in § 270.286. Whenever a physical inventory discloses a shortage or overage of tobacco products which have not been packaged the manufacturer shall appropriately enter such shortage or overage in his records and shall, at the time required by the assistant regional commissioner, either pay the tax on such shortage or furnish an explanation in the form of a claim for remission of tax liability as provided in § 270.287.

(68A Stat. 791, 72 Stat. 1417, 1419, 1423; 26 U.S.C. 6402, 5703, 5705, 5741)

22. Section 270.262 is amended to provide for delivery of tobacco materials to a Federal institution and to set out the conditions of use by Federal and

State institutions. As amended, paragraph (c) of § 270.262 reads as follows:

**§ 270.262 Shipment or delivery.**

\* \* \* (c) a Federal or State institution for use in the manufacture of tobacco products within the institution for gratuitous or non-profit distribution to inmates of such institution and to inmates of other institutions operated by the same governmental entity; \* \* \*

(72 Stat. 1418; 26 U.S.C. 5704)

23. Section 270.285 is deleted to remove outdated provisions relating to the redemption of tobacco products tax stamps.

24. A new section, designated § 270.286, is added to read as follows:

**§ 270.286 Refund of overpayment.**

Where an error in computation of the quantity of tobacco products or in computation of the amount of tax due results in an overpayment and such error is specifically identified and supported by records, the manufacturer may file claim for refund or may make an adjustment in his semimonthly tax return as provided in § 270.164. (Section 6511, I.R.C., provides that, in most cases, any adjustment or claim for refund of an overpayment of tax on tobacco products must be made or filed within 3 years after the tax was paid.) Any claim for refund of an overpayment resulting from such a computational error shall be prepared on Form 843, in duplicate, the original filed with the assistant regional commissioner for the region in which the tax was paid, and the duplicate retained by the manufacturer. Where an overpayment of tax on tobacco products results from other than a computational error any claim for refund or credit shall be made in accordance with Subpart A of Part 296 of this chapter.

(68A Stat. 791, 72 Stat. 9; 26 U.S.C. 6402, 6423)

25. A new section, designated § 270.287, is added to read as follows:

**§ 270.287 Remission of tax liability on shortage.**

Whenever a manufacturer of tobacco products desires to submit a claim for remission of tax liability on shortages of tobacco products in bond, disclosed by physical inventory as set forth in § 270.255, he shall prepare such claim on Form 2635, in triplicate. All copies of the claim shall be filed with the assistant regional commissioner for the region in which the factory is located. The claim shall specify the quantities of tobacco products on which claim is made and the tax liability in respect thereof, and shall set forth the circumstances surrounding the shortage and the reason the manufacturer believes tax is not due or payable. The assistant regional commissioner will, after such investigation as he deems appropriate, allow the claim to the extent that he is satisfied the shortage was due to operating losses such as damage during grading, sorting, or packaging, and was not caused by theft or other unlawful or improper removal. Upon action on the claim by the assistant regional commissioner he will return a copy of the Form 2635 to the manu-

facturer as notice of such action, which copy shall be retained by the manufacturer.

(72 Stat. 1414, 1417, 1419; 26 U.S.C. 5701, 5703, 5705)

[F.R. Doc. 64-7909; Filed, Aug. 5, 1964; 8:50 a.m.]

## FEDERAL AVIATION AGENCY

### [ 14 CFR Part 71 [New] ]

[Airspace Docket No. 63-CE-54]

## CONTROL ZONE AND TRANSITION AREAS

### Proposed Alteration and Designation

The Federal Aviation Agency is considering amendments to Part 71 [New] of the Federal Aviation Regulations which would alter the control zone at Columbia, Mo., and designate transition areas at Columbia and Jefferson City, Mo.

The Columbia, Mo., control zone is presently described as that area within a 5-mile radius of the Columbia Municipal Airport.

The Federal Aviation Agency, having completed a comprehensive review of the terminal airspace structure requirements in the Columbia and Jefferson City, Mo., terminal areas, including studies attendant to the implementation of the provisions of CAR Amendments 60-21/60-29, proposes the following airspace actions:

1. In § 71.171 (29 F.R. 1101) the Columbia, Mo., control zone would be re-described as that area within a 5-mile radius of the Columbia Municipal Airport (latitude 38°58'25" N., longitude 92°21'50" W.); and within 2 miles each side of the Columbia VOR 003° True radial, extending from the 5-mile radius zone to 8 miles north of the VOR.

2. In § 71.181 (29 F.R. 1160), the Columbia, Mo., transition area would be added and described as that airspace extending upward from 700 feet above the surface, bounded on the north by latitude 39°09'00" N., on the west by longitude 92°31'00" W., on the south by latitude 38°53'30" N., on the east by longitude 92°14'00" W.; within 2 miles each side of the Columbia VOR 176° True radial, extending from the VOR to 13 miles south of the VOR; and that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at latitude 38°39'00" N., longitude 92°31'00" W., thence north along longitude 92°31'00" W., to latitude 38°53'30" N., thence east along latitude 38°53'30" N., to longitude 92°14'00" W., thence south along longitude 92°14'00" W., to latitude 38°43'30" N., longitude 92°14'00" W., thence southeast to latitude 38°32'40" N., longitude 91°55'35" W., thence southwest to latitude 38°23'35" N., longitude 92°03'40" W., thence northwest to the point of beginning.

3. In § 71.181 (29 F.R. 1160), the Jefferson City, Mo., transition area would be added and described as that airspace extending upward from 700 feet above the surface, within a 6-mile radius of the Jefferson City Memorial Airport

(latitude 38°35'30" N., longitude 92°09'30" W.), and within 2 miles each side of the 307° True bearing from the Jefferson City Memorial Airport, extending from the 6-mile radius area to 8 miles northwest of the airport.

The floors of the airways which traverse the transition area proposed herein would automatically coincide with the floors of the transition area.

The Columbia control zone is required to contain aircraft executing departures and missed approach procedures until reaching 700 feet above the ground. The extension to the north is required to protect single VOR equipped aircraft executing the VOR approach to Runway 17. The proposed 1,200-foot and 700-foot transition areas at Columbia and Jefferson City are necessary to contain all holding, departure, missed approach, and transition procedures at both airports.

Certain minor revisions to prescribed instrument procedures would be effected in conjunction with the actions proposed herein, but operational complexities would not be increased nor would aircraft performance characteristics or present landing minimums be adversely affected.

Specific details of the changes to procedures and minimum instrument flight rules altitudes that would be required may be examined by contacting the Chief, Airspace Utilization Branch, Air Traffic Division, Central Region, Federal Aviation Agency, 4825 Troost Ave., Kansas City, Mo., 64110.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, 4825 Troost Avenue, Kansas City, Mo., 64110. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief, or the Chief, Airspace Regulations and Procedures Division, Federal Aviation Agency, Washington, D.C., 20553. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Federal Aviation Agency, Office of the General Counsel: Attention Rules Docket, 800 Independence Avenue SW., Washington, D.C. An informal docket will also be available for examination at the office of the Regional Air Traffic Division Chief.

(Sec. 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348))

No. 153—8

Issued in Washington, D.C., on July 30, 1964.

DANIEL E. BARROW,  
Chief, Airspace Regulations and  
Procedures Division.

[F.R. Doc. 64-7869; Filed, Aug. 5, 1964;  
8:46 a.m.]

### I 14 CFR Part 71 [New] I

[Airspace Docket No. 63-SO-20]

## CONTROL ZONE, TRANSITION AREA AND CONTROL AREA EXTENSION

### Proposed Alteration and Revocation

The Federal Aviation Agency is considering amendments to Part 71 [New] of the Federal Aviation Regulations which would revoke the control area extension and alter the control zone and transition area at Albany, Ga.

The Albany, Ga., control area extension is presently described as within 5 miles each side of the 272° bearing from latitude 31°32'00" N., longitude 84°06'43" W., extending from latitude 31°32'00" N., longitude 84°06'43" W., to 25 miles W.; within 5 miles either side of the Albany VOR 335° radial extending from the VOR to 20 miles northwest, and within 12 miles southwest and 8 miles northeast of the Albany VOR 294° radial extending from the VOR to 40 miles northwest.

The Albany, Ga., control zone is presently designated as that area within a 5-mile radius of Albany Municipal Airport; within 2 miles either side of the Albany VOR 155° and 335° radials extending from the 5-mile radius zone to 10 miles northwest of the VOR; within a 5-mile radius of Turner AFB, and within 2 miles each side of the Turner AFB VOR 223° radial, extending from the 5-mile radius zone to the VOR.

The Albany, Ga., transition area is presently designated as that airspace extending upward from 1,200 feet above the surface bounded on the north by the Albany control area extension, on the east by V-35, on the southeast by a line extending through latitude 31°20'12" N., longitude 84°17'40" W., and latitude 31°11'00" N., longitude 84°29'00" W., and on the west by the arc of a 30-mile radius circle centered at the Albany Municipal Airport (latitude 31°32'00" N., longitude 84°11'35" W.); and that airspace extending upward from 3,000 feet above the surface bounded on the north by a line 12 miles southwest of and parallel to the Albany VOR 294° radial, on the east by the arc of a 30-mile radius circle centered at the Albany Municipal Airport, on the southeast by a line extending through latitude 31°11'00" N., longitude 84°29'00" W., and latitude 30°57'15" N., longitude 84°45'45" W., on the southwest by the northeast boundary of V-7, and on the west by a line extending from the northeast boundary of V-7 counterclockwise along the arc of a 35-mile radius circle centered at latitude 31°14'55" N., longitude 85°46'20" W., to its intersection with a line 5 miles north of and parallel to the Dothan,

Ala., VOR 093° radial, thence east along this line to longitude 84°55'00" W., thence north along this meridian to a line 12 miles southwest of and parallel to the Albany VOR 294° radial.

The Federal Aviation Agency, having completed a comprehensive review of the terminal airspace structure requirements in the Albany, Ga., terminal area, including studies attendant to the implementation of the provisions of CAR Amendments 60-21/60-29, proposes the airspace actions hereinafter set forth.

1. The Albany, Ga., control area extension would be revoked.

2. The Albany, Ga., control zone would be redescribed as that area within a 5-mile radius of Turner AFB (Lat. 31°35'50" N., Long. 84°05'05" W.); within 2 miles each side of the 224° True radial of the Turner VOR extending from the 5-mile radius zone to 1 mile southwest of the VOR; within 2 miles each side of the 038° True radial of the Turner, Tacan, extending from the 5-mile radius zone to 8 miles northeast of the Albany Municipal Airport; within 2 miles each side of the 155° True radial of the Albany VOR extending from the 5-mile radius zone to the VOR; and within 2 miles each side of the 093° True radial of the Albany VOR extending from the Turner 5-mile radius zone to the Albany VOR.

3. The Albany, Ga., transition area would be redescribed as that airspace extending upward from 700 feet above the surface within an 8-mile radius of Turner AFB; that airspace extending upward from 1,200 feet above the surface bounded on the north by VOR Federal airway No. 70, on the east by the arc of a 40-mile radius circle centered on Turner AFB, on the south by a line extending along latitude 31°35'30" N. from the Turner AFB 40-mile radius circle to the arc of a 30-mile radius circle centered on Albany Municipal Airport; thence clockwise along the Albany 30-mile radius circle to intercept a line 12 miles south of and parallel to the Albany VOR 295° True radial, thence along this line to latitude 31°41'20" N., longitude 84°56'55" W., on the west along a line extending from latitude 31°41'20" N., longitude 84°56'55" W., to the intersection of the centerline of VOR Federal airway No. 159 and the southern boundary of V-70, including that airspace from the west boundary of VOR Federal airway No. 97 to a line 10 miles west of and parallel to the centerline of V-97, extending from the north boundary of VOR Federal airway No. 22 to the 30-mile radius circle centered on Albany Airport; that airspace extending upward from 3,700 feet above mean sea level bounded on the north by a line 12 miles south of and parallel to the Albany VOR 295° True radial extending from latitude 31°37'30" N., longitude 84°46'00" W. to intercept a 30-mile radius circle centered on Albany Airport, thence counterclockwise along an arc of such circle, on the east by a line 10 miles west of and parallel to the centerline of V-97, on the south and southwest by Victor

airways Nos. 22 and 7 and on the west by the arc of a 35-mile radius circle centered on latitude 31°14'55" N., longitude 85°46'20" W., and a line beginning at latitude 31°14'35" N., longitude 85°10'45" W., thence to latitude 31°16'30" N., longitude 84°51'30" W., thence to latitude 31°37'30" N., longitude 84°46'00" W.

The proposed control zone and control zone extensions are necessary to protect prescribed instrument approach and departure procedures. The proposed transition area is necessary for radar vectoring and to protect prescribed holding patterns as well as procedure-turn maneuvering areas. The southeast 700-foot transition area extension at Turner AFB is required to protect the procedure-turn maneuvering area at an altitude less than 1,500 feet above the terrain. The 700-foot transition area extension northeast of Turner AFB is required to protect the JAL-9-VOR/ILS RWY 22 procedure. The 700-foot transition area east of Albany airport is required to protect aircraft executing the AL-8-RNG procedure.

The airspace southwest and west of Albany requires a floor of 3,700 feet to protect prescribed standard instrument departures.

The floors of airways which traverse the altered transition area proposed herein would automatically coincide with the floors of the transition area.

Certain minor revisions to prescribed instrument procedures would be effected in conjunction with the actions proposed herein, but operational complexities would not be increased nor would aircraft performance characteristics or present landing minimums be adversely affected.

Specific details of the changes to procedures and minimum instrument flight rules altitudes that would be required may be examined by contacting the Chief, Airspace Utilization Branch, Air Traffic Division, Southern Region, Federal Aviation Agency, Post Office Box 20636, Atlanta, Ga., 30320.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Southern Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, Post Office Box 20636, Atlanta, Ga., 30320. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief, or the Chief, Airspace Regulations and Procedures Division, Federal Aviation Agency, Washington, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Federal Aviation Agency, Office of the General Counsel: Attention Rules Docket, 800 Independence Avenue SW., Washington, D.C., 20553. An informal docket will also be available for examination at the office of the Regional Air Traffic Division Chief.

(Sec. 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1343))

Issued in Washington, D.C., on July 30, 1964.

DANIEL E. BARROW,  
Chief, Airspace Regulations  
and Procedures Division.

[F.R. Doc. 64-7870; Filed, Aug. 5, 1964;  
8:46 a.m.]

## I 14 CFR Part 71 [New] I

[Airspace Docket No. 63-SW-53]

### CONTROL AREA EXTENSION, CONTROL ZONES AND TRANSITION AREA

#### Proposed Revocation, Alteration, and Designation

The Federal Aviation Agency is considering amendments to Part 71 [New] of the Federal Aviation Regulations which would revoke the control area extension, alter the control zones and designate a transition area in the Austin, Tex., terminal area.

The Austin, Tex., control area extension is presently described as that airspace within a 40-mile radius of latitude 30°22'36" N., longitude 97°40'10" W.

The Austin, Tex., control zone is presently described as that airspace within a 10-mile radius of Mueller Municipal Airport, within a 5-mile radius of Bergstrom AFB, within 2 miles either side of the Austin VORTAC 004° radial extending from the 5-mile radius zone to 10 miles north of the VORTAC, and within 2 miles either side of the centerline of the Bergstrom AFB north-south runway extending from the Bergstrom 5-mile radius zone to 3 miles south of the Bergstrom radio beacon.

The Federal Aviation Agency, having completed a comprehensive review of the terminal airspace structure requirements in the Austin, Tex., terminal area, including studies attendant to the implementation of the provisions of CAR Amendments 60-21/60-29, proposes the airspace actions hereinafter set forth.

1. The Austin, Tex., control zone would be altered to read:

*Austin, Tex. (Robert Mueller Municipal Airport).*

Within a 5-mile radius of Robert Mueller Municipal Airport (latitude 30°17'55" N., longitude 97°42'00" W.), within 2 miles each side of the Austin ILS localizer northwest course, extending from the 5-mile radius zone to 1 mile southeast of the intersection of the northwest course and the Austin VORTAC 269° True radial, and within 2 miles each side of the Austin VORTAC 184° True radial, extending from the 5-mile radius zone to the VORTAC.

*Austin, Tex. (Bergstrom AFB).*

Within a 5-mile radius of Bergstrom AFB (latitude 30°11'45" N., longitude 97°40'35" W.), within 2 miles each side of the Berg-

strom VOR 002° True radial, extending from the 5-mile radius zone to 3.5 miles north of the VOR; within 2 miles each side of the Bergstrom ILS localizer south course, extending from the 5-mile radius zone to the LOM, excluding that portion within the Austin, Tex. (Robert Mueller Municipal Airport) control zone.

2. The Austin, Tex., transition area would be designated as that airspace extending upward from 700 feet above the surface within a 12-mile radius of latitude 30°23'25" N., longitude 97°43'35" W., within a 7-mile radius of Bergstrom AFB, within 2 miles each side of the Bergstrom ILS south localizer extending from the 7-mile radius zone to 12 miles south of the LOM, within 2 miles each side of the Bergstrom VOR 002° and 182° True radials extending from the 7-mile radius zone to 12 miles south of the VOR, and within 2 miles each side of the Austin localizer southeast course extending from the 7-mile radius zone to 8 miles southeast of the Austin LOM; and that airspace extending upward from 1,200 feet above the surface within an area beginning at latitude 30°33'30" N., longitude 98°31'30" W., to latitude 30°48'00" N., longitude 98°03'00" W., to latitude 30°48'00" N., longitude 97°39'00" W., to latitude 30°57'00" N., longitude 97°36'00" W., to latitude 30°55'00" N., longitude 97°26'00" W., to latitude 30°48'00" N., longitude 97°14'00" W., to latitude 30°48'00" N., longitude 97°05'20" W., to latitude 29°54'00" N., longitude 96°49'00" W., to latitude 29°45'30" N., longitude 98°06'00" W., thence to point of beginning; that airspace extending upward from 4,500 feet MSL within an area beginning at latitude 30°48'00" N., longitude 97°05'20" W., to latitude 30°51'00" N., longitude 96°56'00" W., to latitude 30°39'15" N., longitude 96°38'00" W., to latitude 30°33'00" N., longitude 96°40'00" W., to latitude 30°30'30" N., longitude 96°32'00" W., to latitude 30°26'00" N., longitude 96°58'30" W., thence to point of beginning.

The floors of the airways which traverse the transition area proposed herein would automatically coincide with the floors of the transition area.

The basic control zones are necessary to protect aircraft executing prescribed approach procedures. The north extension to the Austin control zone is required to contain the AL-30-VOR-1 and AL-556-VOR approach procedures. The Northwest extension to the Austin control zone is required for the AL-30-ILS RWY 12R approach procedures. The south extension of the Austin, Tex. (Bergstrom AFB) control zone is required to protect the AL-556-ADF and JAL-556-VOR-2 approach procedures.

The 700-foot transition area would provide controlled airspace where descent below 1,500 feet above the surface is authorized for aircraft executing prescribed approach procedures. It is also required for radar vectoring. The 1,200-foot transition area would provide controlled airspace for aircraft holding at designated fixes, penetration turn areas for prescribed approach procedures and radar vectoring. The 4,500 foot transition area would provide controlled airspace for the completion of the College Station-2 SID and would also provide

required airspace to the northeast and east of Austin, thereby permitting the San Antonio Center to allow en route penetrations for military jet aircraft.

Certain minor revisions to prescribed instrument procedures would be effected in conjunction with the actions proposed herein, but operational complexities would not be increased nor would aircraft performance characteristics or present landing minimums be adversely affected.

Specific details of the changes to procedures and minimum instrument flight rules altitudes that would be required may be examined by contacting the Chief, Airspace Utilization Branch, Air Traffic Division, Southwest Region, Federal Aviation Agency, Post Office Box 1689, Fort Worth 1, Tex.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Southwest Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, Post Office Box 1689, Fort Worth, Tex., 76101. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief, or the Chief, Airspace Regulations and Procedures Division, Federal Aviation Agency, Washington, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Federal Aviation Agency, Office of the General Counsel: Attention Rules Docket, 800 Independence Avenue SW., Washington, D.C., 20553. An informal docket will also be available for examination at the office of the Regional Air Traffic Division Chief.

(Sec. 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348))

Issued in Washington, D.C., on July 30, 1964.

DANIEL E. BARROW,  
Chief, Airspace Regulations  
and Procedures Division.

[F.R. Doc. 64-7871; Filed, Aug. 5, 1964; 8:46 a.m.]

**[ 14 CFR Part 71 [New] ]**

[Airspace Docket No. 64-WE-14]

**CONTROL ZONE**

**Proposed Designation**

The Federal Aviation Agency is considering amendments to Part 71 [New] of the Federal Aviation Regulations which would designate a part-time control zone at Lake Tahoe, Calif.

The proposed control zone at Lake Tahoe would be effective from 0700 to 2300 hours, local time, daily, within a

5-mile radius of Lake Tahoe Airport (latitude 38°53'30" N., longitude 119°-59'50" W.).

Communications and weather reporting service would be provided by an FAA airport traffic control tower scheduled to be commissioned on or about October 20, 1964. The control zone is necessary to protect aircraft operating at the Lake Tahoe Airport.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Western Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, 5651 West Manchester Avenue, Post Office Box 90007, Airport Station, Los Angeles, Calif., 90009. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief, or the Chief, Airspace Regulations and Procedures Division, Federal Aviation Agency, Washington, D.C., 20553. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Federal Aviation Agency, Office of the General Counsel: Attention Rules Docket, 800 Independence Avenue SW., Washington, D.C., 20553. An informal docket will also be available for examination at the office of the Regional Air Traffic Division Chief.

(Sec. 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348))

Issued in Washington, D.C., on July 30, 1964.

DANIEL E. BARROW,  
Chief, Airspace Regulations  
and Procedures Division.

[F.R. Doc. 64-7872; Filed, Aug. 5, 1964; 8:47 a.m.]

**[ 14 CFR Part 71 [New] ]**

[Airspace Docket No. 64-AL-9]

**FEDERAL AIRWAY SEGMENT, REPORTING POINTS AND TRANSITION AREA**

**Proposed Designation and Alteration**

Notice is hereby given that the Federal Aviation Agency is considering amendments to Part 71 [New] of the Federal Aviation Regulations, the substance of which is stated below.

The Federal Aviation Agency is considering the designation of a VOR Federal airway from the Annette Island, Alaska, VOR (latitude 55°03' N., longitude 131°34' W.) to the intersection of the Annette Island VOR 330° True radial and the southwest course of the Petersburg, Alaska, radio range. This would establish a route for VOR equipped air-

craft operating between these points. Also, it is proposed to designate the Indian Point Intersection (intersection of the Annette Island 330° True radial and the southwest course of the Petersburg radio range) as a low altitude and a high altitude reporting point. Concurrently, it is proposed to alter the Annette Island transition area to include the airspace extending upward from 1,200 feet above the surface and within 5 miles southwest of the Annette Island VOR 315° True radial, extending from the VOR to 56 miles northwest. This additional control area would provide protection to IFR traffic transitioning from the Annette Island airport to intersect Red Federal airway No. 1 northwest of the Guard Island, Alaska, radio beacon.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Alaskan Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, 632 Sixth Avenue, Anchorage, Alaska, 99501. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief, or the Chief, Airspace Regulations and Procedures Division, Federal Aviation Agency, Washington, D.C., 20553. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Federal Aviation Agency, Office of the General Counsel: Attention Rules Docket, 800 Independence Avenue SW., Washington, D.C. An informal docket will also be available for examination at the office of the Regional Air Traffic Division Chief.

(Sec. 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348))

Issued in Washington, D.C., on July 30, 1964.

DANIEL E. BARROW,  
Chief, Airspace Regulations  
and Procedures Division.

[F.R. Doc. 64-7873; Filed, Aug. 5, 1964; 8:47 a.m.]

**FEDERAL COMMUNICATIONS COMMISSION**

**[ 47 CFR Part 73 ]**

[Docket No. 15543]

**FM BROADCAST STATIONS**

**Jackson, Lima, Kenton and Bellefontaine, Ohio; Order Extending Time for Filing Comments**

1. Ohio Radio, Incorporated, licensee of Station WKTN-FM, Kenton, Ohio, has

on July 22, 1964 requested an extension of time for filing comments in this proceeding from August 3, 1964 to September 30, 1964, and for filing reply comments from August 17, 1964 to October 14, 1964. Petitioner states that the additional time is necessary for it to make a careful study of the engineering, coverage, and practical business effects of the proposed shift in channels, and also the possible cost thereof; also the role of Station WRFD-FM, Columbus-Worthington, Ohio, in the Ohio Emergency Network System, as well as other problems to which it plans to address itself. Petitioner further states that this matter has been forced upon it during a period when persons instrumental to decisions in these questions are vacationing, and that the extension requested is the minimum time considered reasonable under the circumstances cited.

2. In view of the foregoing, and the Commission's desire to benefit from the best possible information that may be made available, it is believed that there is good cause for an extension of time. However, we believe, that in view of the time already elapsed and the interests of the parties, that the time requested is excessive and that an extension of approximately six weeks instead of two months should be allowed.

3. Accordingly, it is ordered, This 28th day of July 1964, that the request of Ohio Radio, Incorporated for an extension of time is granted, and that the time for filing comments in this proceeding is extended from August 3, 1964 to September 15, 1964, and that the time for filing of reply comments is extended from August 17, 1964 to September 30, 1964.

4. This action is taken pursuant to authority found in sections 4(i), 5(d) (1), and 303(r) of the Communications Act of 1934, as amended, and § 2.81(d) (8) of the Commission's rules.

Released: July 29, 1964.

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

[F.R. Doc. 64-7922; Filed, Aug. 5, 1964;  
8:52 a.m.]

## FEDERAL MARITIME COMMISSION

[ 46 CFR Part 537 ]

[Docket No. 1194]

### CONFERENCE AGREEMENT PROVISIONS RELATING TO CONCERTED ACTIVITIES

#### Notice of Proposed Rule Making

In accordance with the provisions of section 4, Administrative Procedure Act (5 U.S.C. 1003) and sections 15 and 43 of the Shipping Act, 1916, notice is hereby given that the Federal Maritime Commission is considering the promulgation of certain rules and regulations requiring the incorporation in all section 15 agreements of provisions: (1) Specifying the manner in which the concerted activities of the parties will be carried out, and (2) requiring that the Commission be furnished copies of meeting minutes or other records of concerted activities. Title 46 CFR would be amended by adding a new Part 537 as follows:

fyng the manner in which the concerted activities of the parties will be carried out, and (2) requiring that the Commission be furnished copies of meeting minutes or other records of concerted activities. Title 46 CFR would be amended by adding a new Part 537 as follows:

#### PART 537—CONFERENCE AGREEMENT PROVISIONS RELATING TO CONCERTED ACTIVITIES

##### Subpart A—Agreement Provisions

###### § 537.1 Statement of policy.

It is the responsibility of the Commission to insure that parties to agreements approved under section 15, Shipping Act, 1916 (hereinafter the "Act"), are at all times complying with the requirements of the Act and their agreements, and that their operations under such agreements are not detrimental to the commerce of the United States, contrary to the public interest or otherwise in violation of the Act. In order to discharge this responsibility, the Commission must be fully apprised of the manner in which operations under such agreements are being and will be carried out and must therefore require that full reports on such activities be furnished the Commission.

###### § 537.2 Provisions of agreements.

In effectuation of the policy set forth in § 537.1, all agreements between carriers, or between carriers and other persons subject to the Act, or between other persons subject to the Act, shall contain the following:

(a) A provision stating the exact manner in which the joint business of the parties may be carried out, i.e., full conference meeting, agents' meeting, principals' meeting, owners' meeting, through committees or subcommittees, telephone or oral polls, or through any other procedure by which the business of the joint parties may be conducted. This provision shall also include quorum requirements, and the types of vote necessary to take various actions, i.e., majority, two-thirds, three-fourths, majority plus one, unanimous, etc., and shall also include a requirement that all votes be fully reported, but not necessarily that the vote of each party be indicated.

(b) A provision stating that no action can be taken except in strict accordance with the terms of the agreement as filed and approved.

(c) A provision stating that there shall be filed with the Commission a full and complete report of all meetings of the conference or parties to the agreement. These reports shall describe in complete detail all matters discussed or taken up at any such meeting, and shall include in complete detail the action taken with respect to each such matter. For the purpose of this Subpart, the term "meeting" shall include any meeting of parties to the agreement, their agents, principals, owners, committees or subcommittees of the parties, telephonic or personal polls of the membership, or any other procedure by which the parties

carry out activities permitted by the agreement.

(d) A provision that, in the event any draft or other record of meetings is maintained or circulated which is in any manner different from the reports furnished to the Commission pursuant to paragraph (c) of this section, an exact copy of such draft or additional record shall be filed with the Commission.

(e) A provision that the reports referred to in paragraph (c) of this section, shall be filed with the Commission within 10 days after such meeting with respect to conferences or parties located within the United States, and within 20 days after such meeting as to conferences or parties located outside the United States and that the records referred to in paragraph (d) of this section, shall be filed with the Commission simultaneously with the submission of the reports referred to in paragraph (c) of this section.

(f) A provision requiring that the Conference Chairman, Secretary, or other designated official shall certify as to the accuracy and completeness of all the foregoing material filed with the Commission.

##### Subpart B—Current Agreements

###### § 537.10 Resubmission of current agreements.

(a) All agreements which do not contain provisions in conformity with Subpart A, shall on or before November 1, 1964, be modified to so conform and be filed with the Commission on or before that date.

(b) Filing under this section may be accomplished by mailing to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, a signed original and three (3) copies of the agreed modification, together with an original and three (3) copies of a letter of transmittal and request for approval of the matter submitted.

##### Subpart C—Proposed New Agreements

###### § 537.20 Agreement provisions.

All new agreements between carriers, or between carriers and other persons subject to the Act, or between other persons subject to the Act, entered into subsequent to the effective date of this part, shall contain the provisions set forth in § 537.2 before approval by the Commission under section 15 of the Act.

Interested parties may participate in this proposed rule-making proceeding by submitting an original and 15 copies of written statements, data, views, or arguments pertaining thereto and any requests for oral argument to the Secretary, Federal Maritime Commission not later than 30 days from the date of publication of this notice in the FEDERAL REGISTER.

By the Commission.

THOMAS LISI,  
Secretary.

[F.R. Doc. 64-7895; Filed, Aug. 5, 1964;  
8:48 a.m.]

# Notices

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

[Dept. Circular, Public Debt Series—No. 11-64]

### 3 $\frac{7}{8}$ PERCENT TREASURY NOTES OF SERIES C-1966

JULY 30, 1964.

**I. Offering of notes.** 1. The Secretary of the Treasury, pursuant to the authority of the Second Liberty Bond Act, as amended, invites subscriptions, subject to allotment, at par and accrued interest, from the people of the United States for notes of the United States, designated 3 $\frac{7}{8}$  percent Treasury Notes of Series C-1966. The amount of the offering under this circular is \$4,000,000,000, or thereabouts. The following securities maturing August 15, 1964, will be accepted at par in payment or exchange, in whole or in part, for the notes subscribed for, to the extent such subscriptions are allotted by the Treasury: 5 percent Treasury Notes of Series B-1964; or 3 $\frac{3}{4}$  percent Treasury Notes of Series E-1964. The books will be open only on August 3, 1964, for the receipt of subscriptions for this issue.

**II. Description of notes.** 1. The notes will be dated August 15, 1964, and will bear interest from that date at the rate of 3 $\frac{7}{8}$  percent per annum, payable semi-annually on February 15 and August 15, 1965, and on February 15, 1966. They will mature February 15, 1966, and will not be subject to call for redemption prior to maturity.

2. The income derived from the notes is subject to all taxes imposed under the Internal Revenue Code of 1954. The notes are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, or any of the possessions of the United States, or by any local taxing authority.

3. The notes will be acceptable to secure deposits of public moneys. They will not be acceptable in payment of taxes.

4. Bearer notes with interest coupons attached, and notes registered as to principal and interest, will be issued in denominations of \$1,000, \$5,000, \$10,000, \$100,000, \$1,000,000, \$100,000,000 and \$500,000,000. Provision will be made for the interchange of notes of different denominations and of coupon and registered notes, and for the transfer of registered notes, under rules and regulations prescribed by the Secretary of the Treasury.

5. The notes will be subject to the general regulations of the Treasury Department, now or hereafter prescribed, governing United States notes.

**III. Subscription and allotment.** 1. Subscriptions will be received at the

Federal Reserve Banks and Branches and at the Office of the Treasurer of the United States, Washington, D.C., 20220. Only the Federal Reserve Banks and the Treasury Department are authorized to act as official agencies. Commercial banks, which for this purpose are defined as banks accepting demand deposits, may submit subscriptions for account of customers provided the names of the customers are set forth in such subscriptions. Others than commercial banks will not be permitted to enter subscriptions except for their own account. Subscriptions from commercial banks for their own account will be restricted in each case to an amount not exceeding 50 percent of the combined capital (not including capital notes or debentures), surplus and undivided profits of the subscribing bank. Subscriptions will be received without deposit from banking institutions for their own account, Federally-insured savings and loan associations, States, political subdivisions or instrumentalities thereof, public pension and retirement and other public funds, international organizations in which the United States holds membership, foreign central banks and foreign States, dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions with respect to Government securities and borrowings thereon, Federal Reserve Banks and Government Investment Accounts. Subscriptions from all others must be accompanied by payment (in cash or in securities of the two issues enumerated in paragraph 1 of section I hereof, which will be accepted at par) of 2 percent of the amount of notes applied for, not subject to withdrawal until after allotment. Registered notes submitted as deposits should be assigned as provided in section V hereof. Following allotment, any portion of the 2 percent payment in excess of 2 percent of the amount of notes allotted may be released upon the request of the subscribers.

2. All subscribers requesting registered notes will be required to furnish appropriate identifying numbers as required on tax returns and other documents submitted to the Internal Revenue Service, i.e., an individual's social security number or an employer identification number.

3. All subscribers are required to agree not to purchase or to sell, or to make any agreements with respect to the purchase or sale or other disposition of any notes of this issue at a specific rate or price, until after midnight August 3, 1964.

4. Commercial banks in submitting subscriptions will be required to certify that they have no beneficial interest in any of the subscriptions they enter for the account of their customers, and that their customers have no beneficial interest in the banks' subscriptions for their own account.

5. The Secretary of the Treasury reserves the right to reject or reduce any subscription, to allot less than the amount of notes applied for, and to make different percentage allotments to various classes of subscribers; and any action he may take in these respects shall be final. Subject to these reservations, all subscriptions from States, political subdivisions or instrumentalities thereof, public pension and retirement and other public funds, international organizations, in which the United States holds membership, foreign central banks and foreign States, Federal Reserve Banks and Government Investment Accounts will be allotted in full if the subscriber certifies in writing that at 4 p.m., eastern daylight saving time, July 29, 1964, it owned or had contracted to purchase for value securities of the two issues enumerated in paragraph 1 of section I hereof in an aggregate amount equal to or greater than the amount of its subscription. If the certification is not made none of such subscriber's subscription shall be subject to a preferred full allotment. The basis of the allotment will be publicly announced, and allotment notices will be sent out promptly upon allotment.

**IV. Payment.** 1. Payment at par and accrued interest,<sup>1</sup> if any, for notes allotted hereunder must be made or completed on or before August 17, 1964, or on later allotment. Payment will not be deemed to have been completed where registered notes are requested if the appropriate identifying number, as required by paragraph 2 of section III hereof, has not been furnished; provided, however, if a subscriber has applied for but is unable to furnish the identifying number by the payment date only because it has not been issued, he may elect to receive, pending the furnishing of the identifying number, interim receipts and in this case payment will be deemed to have been completed. In every case where full payment is not completed, the payment with application up to 2 percent of the amount of notes allotted shall, upon declaration made by the Secretary of the Treasury in his discretion, be forfeited to the United States. Payment may be made for any notes allotted hereunder in cash or by exchange of securities of the two issues enumerated in paragraph 1 of section I hereof, which will be accepted at par. Where payment is made with notes in bearer form, coupons dated August 15, 1964, should be detached and cashed when due. In the case of registered notes, the final interest due on August 15, 1964, will be paid by check drawn in accordance with the assignments of the notes surrendered, or by credit in any account maintained by a banking institution with the Federal Reserve Bank of its District.

**V. Assignment of registered notes.** 1. Treasury Notes of Series B-1964 and

<sup>1</sup> Accrued interest from August 15 to August 17, 1964, will not be collected.

Series E-1964 in registered form tendered as deposits and in payment for notes allotted hereunder should be assigned by the registered payees or assignees thereof, in accordance with the general regulations of the Treasury Department, in one of the forms hereafter set forth. Notes tendered in payment should be surrendered to a Federal Reserve Bank or Branch or to the Office of the Treasurer of the United States, Washington, D.C., 20220. The maturing notes must be delivered at the expense and risk of the holder. If the new notes are desired registered in the same name as the notes surrendered, the assignment should be to "The Secretary of the Treasury for 3 7/8 percent Treasury Notes of Series C-1966"; if the new notes are desired registered in another name, the assignment should be to "The Secretary of the Treasury for 3 7/8 percent Treasury Notes of Series C-1966 in the name of \_\_\_\_\_"; if new notes in coupon form are desired, the assignment should be to "The Secretary of the Treasury for 3 7/8 percent Treasury Notes of Series C-1966 in coupon form to be delivered to \_\_\_\_\_".

VI. *General provisions.* 1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive subscriptions, to make allotments on the basis and up to the amounts indicated by the Secretary of the Treasury to the Federal Reserve Banks of the respective Districts, to issue allotment notices, to receive payment for notes allotted, to make delivery of notes on full-paid subscriptions allotted, and they may issue interim receipts pending delivery of the definitive notes.

2. The Secretary of the Treasury may at any time, or from time to time, prescribe supplemental or amendatory rules and regulations governing the offering, which will be communicated promptly to the Federal Reserve Banks.

[SEAL] DOUGLAS DILLON,  
Secretary of the Treasury.

[F.R. Doc. 64-7910; Filed, Aug. 5, 1964;  
8:51 a.m.]

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management NEVADA

#### Notice of Proposed Withdrawal and Reservation of Lands

JULY 30, 1964.

The Bureau of Land Management has filed an application Serial Number Nevada 064768 for the withdrawal of the land described below, from all forms of appropriation under the public land laws, including the mining laws but not the mineral leasing laws or the disposals of materials under the Act of July 31, 1947 (61 Stat. 681; 30 U.S.C. 601-604) as amended. The applicant desires the land for use as an administrative site.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with

the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, P.O. Box 1551, Reno, Nev.

The authorized officer of the Bureau of Land Management will prepare a report for consideration by the Secretary of the Interior who will determine whether or not the land will be withdrawn as requested.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The land involved in the application is:

MOUNT DIABLO MERIDIAN, NEVADA

T. 34 N., R. 55 E.,  
Sec. 2, NE 1/4 SE 1/4, SE 1/4 NE 1/4.

The area described contains 80 acres.

DANIEL P. BAKER,  
Chief, Division of Lands and  
Minerals Management.

[F.R. Doc. 64-7894; Filed, Aug. 5, 1964;  
8:48 a.m.]

[Classification No. C3-15]

### CALIFORNIA

#### Private Exchange Classification and Opening Order

JULY 28, 1964.

1. Pursuant to the authority delegated to me by the California State Director, Bureau of Land Management, under Part 1, Redelegation of Authority, dated March 27, 1962 (27 F.R. 3297), I hereby classify the following described lands as suitable for private exchange under section 8 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1272), as amended by section 3 of the Act of June 26, 1936 (49 Stat. 1976):

MOUNT DIABLO MERIDIAN

T. 36 N., R. 5 E.,  
Sec. 6, Lots 7, 8 and 9

The above-described lands aggregate 126.93 acres of public land, situated in Shasta County at a distance of approximately one mile southwest of Fall River Mills.

2. Subject lands were withdrawn from application under the nonmineral public land laws and from disposition under the homestead, desert land and scrip selection laws by Public Land Order 2460, dated August 11, 1961, as part of the Cinder Cone National Cooperative Land and Wildlife Management Area. Subject lands are hereby relieved of the segregative effect of said withdrawal for the purpose of allowing filing of applications for private exchange.

These lands are offered in exchange for lands of equal value, for the purpose of acquiring private lands that lend themselves toward better consolidation of Federal holdings within the area and gaining of access to portions of neighboring public lands.

3. Subject to any valid existing rights, the requirements of applicable law, and

the provisions of any existing withdrawals, the lands described in paragraph 1, above, are hereby opened to filing of applications for private exchange under the purview of section 8, Taylor Grazing Act, supra. Regulations governing such applications are found in 43 CFR 2244.1 (formerly 43 CFR Part 146). All valid applications for private exchange presented at or prior to 10:00 a.m. on August 19, 1964 will be considered as simultaneously filed at that hour. Rights under such applications filed after that hour will be governed by the time of filing.

4. Classification of the above described lands by this order segregates them from all other appropriations, including locations under the mining laws, and to applications under the mineral leasing laws.

5. Only inquiries concerning the lands should be addressed to the Manager, Land Office, Bureau of Land Management, Sacramento, Calif.

RICHARD H. BAUMAN,  
Acting District Manager, Redding  
District Office, Redding,  
Calif.

[F.R. Doc. 64-7883; Filed, Aug. 5, 1964;  
8:47 a.m.]

## DEPARTMENT OF COMMERCE

### Office of the Secretary

[Dept. Order No. 185; Organization and  
Function Supp.]

#### SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

#### Organization and Assignment of Functions

JULY 16, 1964.

SECTION 1. *Purpose.* The purpose of this Organization and Function Supplement is to prescribe the organization and to assign functions within the Saint Lawrence Seaway Development Corporation.

SEC. 2. *Organization.* The Saint Lawrence Seaway Development Corporation consists of the following organization units:

- 1 Office of the Administrator, Assistant Administrator.
- 2 Traffic and Statistical Services Officer.
- 3 Public Information Officer.
- 4 Office of Counsel.
- 5 Administrative Office.
- 6 Office of the Comptroller-Treasurer.
- 7 Operations and Maintenance Division.

SEC. 3. *Functions of the Office of the Administrator.*

.01 The Administrator, as the President's designee, exercises the powers and authorities of his office as delegated under the provisions of Public Law 358, 83rd Congress (68 Stat. 92) approved May 13, 1954. In carrying out these delegations, he speaks for the Corporation and exercises authority in:

- 1 Consummating certain arrangements with the Saint Lawrence Seaway Authority of Canada relative to con-

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**EUDORA LIVESTOCK AUCTION CO. ET AL.**

**Notice of Changes in Names of Posted Stockyards**

It has been ascertained, and notice is hereby given, that the names of the livestock markets referred to herein, which were posted on the respective dates specified below as being subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), have been changed as indicated below.

<i>Original name of stockyard, location, and date of posting</i>	<i>Current name of stockyard and date of change in name</i>
<b>ARKANSAS</b>	
Eudora Livestock Auction Co., Eudora, Aug. 15, 1958.	Eudora Livestock Auction Co., Inc., Mar. 9, 1964.
<b>GEORGIA</b>	
People's Livestock Market, Inc., Cuthbert, May 20, 1959.	Peoples Stockyard, June 2, 1964.
<b>ILLINOIS</b>	
Charleston Livestock Auction, Charleston, Oct. 20, 1959.	Charleston Livestock Auction, Inc., Mar. 21, 1964.
<b>IOWA</b>	
Creston Livestock Auction, Creston, May 22, 1959...	Creston Sales Company, June 4, 1964.
O'Neill Livestock Auction, Eldora, Dec. 8, 1959....	Farmers Auction Market, July 1, 1964.
<b>LOUISIANA</b>	
Lum Brothers Stockyards, Vidalia, Aug. 22, 1958...	Lum Bros. Stockyards, Inc., June 15, 1964.
<b>NEBRASKA</b>	
Crete Sale Pavilion, Crete, Apr. 22, 1959.....	Crete Livestock Market, Aug. 1, 1964.
<b>TEXAS</b>	
Parker County Livestock Commission Co., Weatherford, Aug. 12, 1960.	Parker County Livestock Commission Co., Mar. 27, 1964.
<b>WISCONSIN</b>	
Palace Sale Barn, Plain, Feb. 18, 1961.....	Plain Sale Barn, June 26, 1964.

Done at Washington, D.C., this 3d day of August 1964.

H. L. JONES,  
Chief, Rates and Registrations Branch, Packers  
and Stockyards Division, Agricultural Marketing Service.

[F.R. Doc. 64-7916; Filed, Aug. 5, 1964; 8:51 a.m.]

**DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE**

**Food and Drug Administration  
CHUN KING CORP.**

**Issuance of Temporary Permit To Cover Market Testing of Canned Bean Sprouts Deviating From Identity Standard**

Pursuant to § 10.5(j) of Title 21, Code of Federal Regulations, concerning temporary permits to facilitate market testing foods varying from the requirements of the standards of identity promulgated pursuant to section 401 of the Federal Food, Drug, and Cosmetic Act, notice is given that a temporary permit has been issued to the Chun King Corp., 5020 Roosevelt Street, Duluth, Minn. This permit covers interstate shipments to enable the firm to carry out a market testing program with canned bean sprouts to which a trace of calcium salt, in the form of calcium lactate, is to be added to impart firmness and crispness to the bean sprouts. Calcium lactate is not included among the optional ingredients listed in the applicable food standard (21 CFR 51.990). The labels on the cans covered by this permit are to show the statement "Trace of calcium

salt added" on the principal display panel.

This permit expires August 1, 1965.  
Dated: July 30, 1964.

GEO. P. LARRICK,  
Commissioner of Food and Drugs.

[F.R. Doc. 64-7903; Filed, Aug. 5, 1964; 8:50 a.m.]

**ATOMIC ENERGY COMMISSION**

[Docket No. 50-207]

**UNITED NUCLEAR CORP.**

**Notice of Termination of Construction Permits**

Please take notice that United Nuclear Corporation, having requested withdrawal of its applications for two construction permits and Class 104 licenses, the Atomic Energy Commission has granted the request and terminated Construction Permit No. CPCX-22 for a Split Bed Critical Assembly, and Construction Permit No. CPRR-76 for a Shield Mock-Up Reactor (SMR), without prejudice to the filing of new applications. Further details may be obtained by examination of Docket No. 50-207 on file at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

structive to construction of the Saint Lawrence Seaway between Lake Erie and Montreal;

2 Constructing, maintaining, and operating the U.S. Seaway facilities;

3 Financing the U.S. share of the Seaway costs on a self-liquidating basis by the issuance of revenue bonds to the U.S. Treasury;

4 Establishing with the Canadian Authority mutually satisfactory arrangements for the coordinated control and operation of the Seaway;

5 Negotiating agreements on tolls and ship measurements with the Canadian Authority; and

6 Coordinating the Corporation's activities with those connected with the correlated power development.

.02 The Assistant Administrator is responsible to the Administrator for management of the day-to-day operations at Massena, New York, and such other functions and activities as may be assigned.

Sec. 4. *Functions of the traffic and Statistical Services Officer.* The Traffic and Statistical Services Officer analyzes ocean-going as well as lake traffic movement, prepares studies on commodity sources and potential traffic for such commodities, and makes statistical compilations and computations of shipping information.

Sec. 5. *Functions of the Public Information Officer.* The Public Information Officer provides information to the public and public interest groups.

Sec. 6. *Functions of the Office of Counsel.* The Counsel serves as legal adviser to the Corporation.

Sec. 7. *Functions of the Administrative Office.* The Administrative Office provides administrative services for the Corporation, including personnel, organization and methods, office services, safety and security, procurement, property management, and supervision of the visitors' program.

Sec. 8. *Functions of the Office of the Comptroller-Treasurer.* The Comptroller-Treasurer directs budgeting, accounting and reporting activities, and the financial improvement program; establishes fund expenditure controls and accounts for all revenues; manages debt service; directs audits and investigations; collaborates closely with Canadian authorities and the Executive and Legislative Departments of the U.S. Government.

Sec. 9. *Functions of the Operations and Maintenance Division.* The Operations and Maintenance Division is responsible for the operation and maintenance of the locks, canals, roads, buildings and grounds, landbased and floating plant equipment, as well as navigational aids for the U.S. segment of the Seaway, and for the design and construction of features necessary to complete the U.S. segment of the Seaway.

HERBERT W. KLOTZ,  
Assistant Secretary for  
Administration.

[F.R. Doc. 64-7874; Filed, Aug. 5, 1964; 8:47 a.m.]

Dated at Bethesda, Md., this 29th day of July 1964.

For the Atomic Energy Commission.

R. L. DOAN,  
Director,

Division of Reactor Licensing.

[F.R. Doc. 64-7889; Filed, Aug. 5, 1964; 8:48 a.m.]

## STATE OF KANSAS

### Proposed Agreement for Assumption of Certain AEC Regulatory Authority

Notice is hereby given that the U.S. Atomic Energy Commission is publishing for public comment, prior to action thereon, a proposed agreement received from the Governor of the State of Kansas for the assumption of certain of the Commission's regulatory authority pursuant to section 274 of the Atomic Energy Act of 1954, as amended.

A résumé, prepared by the State of Kansas and summarizing the State's proposed program, was also submitted to the Commission and is set forth below as an appendix to this notice. Attachments referenced in the appendix are included in the complete text of the program. A copy of the program, including proposed Kansas regulations, is available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., or may be obtained by writing to the Director, Division of State and Licensee Relations, U.S. Atomic Energy Commission, Washington, D.C., 20545. All interested persons desiring to submit comments and suggestions for the consideration of the Commission in connection with the proposed agreement should send them, in triplicate, to the Secretary, U.S. Atomic Energy Commission, Washington, D.C., 20545, within 30 days after initial publication in the FEDERAL REGISTER.

Exemptions from the Commission's regulatory authority which would implement this proposed agreement, as well as other agreements which may be entered into under section 274 of the Atomic Energy Act, as amended, were published as Part 150 of the Commission's regulations in FEDERAL REGISTER issuance of February 14, 1962; 27 F.R. 1351. In reviewing this proposed agreement, interested persons should also consider the aforementioned exemptions.

Dated at Washington, D.C., this 4th day of August 1964.

For the Atomic Energy Commission.

F. T. HOBBS,  
Acting Secretary to the Commission.

PROPOSED AGREEMENT BETWEEN THE UNITED STATES ATOMIC ENERGY COMMISSION AND THE STATE OF KANSAS FOR DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY AUTHORITY AND RESPONSIBILITY WITHIN THE STATE PURSUANT TO SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

Whereas, The United States Atomic Energy Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act) to enter into agreements with the Governor of any State providing for discontinuance of

the regulatory authority of the Commission within the State under Chapters 6, 7, and 8 and Section 161 of the Act with respect to byproduct materials, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

Whereas, The Governor of the State of Kansas is authorized under Chapter 290 of the 1963 Session Laws of the State of Kansas to enter into this Agreement with the Commission; and

Whereas, The Governor of the State of Kansas certified on July 24, 1964, that the State of Kansas (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and

Whereas, The Commission found on ----- that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and

Whereas, The State recognizes the desirability and importance of maintaining continuing compatibility between its program and the program of the Commission for the control of radiation hazards in the interest of public health and safety; and

Whereas, The Commission and the State recognize the desirability of reciprocal recognition of licenses and exemption from licensing of those materials subject to this Agreement; and

Whereas, This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, therefore, It is hereby agreed between the Commission and the Governor of the State, acting in behalf of the State, as follows:

**Article I.** Subject to the exceptions provided in Articles II, III, and IV, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

- A. Byproduct materials;
- B. Source materials; and
- C. Special nuclear materials in quantities not sufficient to form a critical mass.

**Article II.** This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:

- A. The construction and operation of any production or utilization facility;
- B. The export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;
- C. The disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

- D. The disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission.

**Article III.** Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

**Article IV.** This Agreement shall not affect the authority of the Commission under

subsection 161 b. or l. of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material.

**Article V.** The Commission will use its best efforts to cooperate with the State and other agreement states in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible. The State will use its best efforts to cooperate with the Commission and other agreement states in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of like materials. The State and the Commission will use their best efforts to keep each other informed of proposed changes in their respective rules and regulations and licensing, inspection and enforcement policies and criteria, and to obtain the comments and assistance of the other party thereon.

**Article VI.** The Commission and the State agree that it is desirable to provide for reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any agreement State. Accordingly, the Commission and the State agree to use their best efforts to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

**Article VII.** The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that such termination or suspension is required to protect the public health and safety.

**Article VIII.** This Agreement shall become effective on January 1, 1965, and shall remain in effect unless, and until such time as it is terminated pursuant to Article VII.

#### POLICIES AND PROCEDURES

##### Introduction

**Foreword.** The following narrative presents a brief description of the history, practices, capabilities and proposed activities of the Industrial, Radiation and Air Hygiene Program of Environmental Health Services, Kansas State Department of Health, particularly as they relate to the assumption of certain regulatory functions of the United States Atomic Energy Commission.

Section 274b of the Atomic Energy Act of 1954, as amended, authorizes the Atomic Energy Commission to enter into an agreement with the Governor of a State whereby the Commission may transfer to the State certain licensing and regulatory control of byproduct, source and special nuclear materials in quantities not sufficient to form a critical mass. Discontinuance of the Federal government's responsibilities with respect to these sources of ionizing radiation and assumption thereof by the State is made when the Atomic Energy Commission has evaluated and accepted the competency of the State to administer licensing and regulatory authority of such sources.

The Nuclear Energy Development and Radiation Control Act, Chapter 290, 1963 Legislature, State of Kansas, authorizes the Governor of Kansas to enter into agreements with the Federal government, to appoint from among the residents of the State a Nuclear Energy Advisory Council; and designates the Kansas State Board of Health as the official agency responsible for radiation control. Further, the Act: Instructs the Board, (a) to develop programs for evalua-

tion of hazards associated with the use of radiation, (b) develop programs, with due regard for compatibility with Federal programs, for regulation and inspection of by-product, source and special nuclear materials; and authorizes the Board, (a) to require licensing or registration of all sources of ionizing radiation, (b) to provide for recognition of other State or Federal licenses, and (c) to enter into, subject to the approval of the Governor, an agreement or agreements with the Federal government, other States or intrastate agencies, for inspections or other functions relating to the control of ionizing radiation. The Act provides that the State regulatory program will be maintained so as to provide for compatibility with the regulatory programs of the Federal government and, insofar as possible, with the regulatory programs of other States.

Attached to this narrative are copies of the Proposed Agreement, the Nuclear Energy Development and Radiation Control Act, the Kansas Radiation Protection Regulations, various forms and résumés, and a statement of the policies and procedures to be utilized by the Radiological Health Section of the Industrial, Radiation and Air Hygiene Program of Environmental Health Services, Kansas State Department of Health pursuant to an agreement between the United States Atomic Energy Commission and the State of Kansas.

**History.** The Kansas State Department of Health has been involved in radiological health activities since the mid-1940's through the industrial hygiene, (or occupational health) programs where occupational radiation exposures were encountered. Problems at that time included radiation exposures in radium dial painting, industrial radiography, and the use of thorium in the manufacture of lamp and lantern mantles.

In 1949 the State Board of Health was designated by the Governor as the State agency to receive and be responsible for keeping data and information from the Atomic Energy Commission concerning those persons and organizations in Kansas who were issued authorizations to acquire and use radioactive isotopes produced in the atomic energy program. Since that time, personnel of the Department of Health have made joint inspections with the representatives of the Atomic Energy Commission of those holders of authorizations; and since 1957 when the authorization program was changed to a licensing program, of those licensees of the Atomic Energy Commission who are licensed to possess and use byproduct, source and special nuclear materials.

In 1950 the State Board of Health adopted a regulation requiring the placarding of all shoe fitting fluoroscopes in the State with appropriate warning signs. In connection with this regulation, Department personnel conducted a radiation survey of all the shoe fitting fluoroscopes in the State.

In October of 1956 a Radiological Health Advisory Committee to the State Board of Health was assembled for the purpose of advising the staff of the Department on technical matters relating to radiation problems and to recommend to the Board such action as the Committee might deem desirable. The membership of the Committee included individuals especially qualified to represent the various fields of endeavor where radiation is utilized such as: medicine, dentistry, industry, agriculture, research, and teaching. This Committee worked with the staff in all important phases of the program, particularly in the formulation of radiation protection regulations and proposed legislation. The State Board of Health adopted a regulation prohibiting shoe fitting fluoroscopes, and requiring registration of radiation sources, and the Board supported a radiation protection act which was adopted by the 1959 Legislature.

The Radiation Protection Act of the 1959 Legislature gave the State Board of Health broad responsibility and authority for radiation protection, required registration of all radiation sources in the State, and required adoption of necessary regulations by the Board. This legislative session also produced an Atomic Energy Development Act which empowered the Governor to appoint a Governor's Atomic Energy Advisory Council and a Coordinator of Atomic Energy Development Activities. The Council was charged with the responsibility of advising the Governor and Coordinator concerning the development, utilization and regulation of atomic energy and other forms of radiation.

After two years of study and development by the Department staff and the Radiological Health Advisory Committee to the State Board of Health, a comprehensive set of Radiation Protection Regulations was completed. These regulations were approved by the Governor's Atomic Energy Advisory Council, and after a public hearing, adopted by the Board, becoming effective September 1, 1961.

The 1961 regulations provided for the registration of all sources of ionizing radiation with the Department of Health and for appropriate control of these sources. The Department developed a comprehensive radiation control program designed to govern and ensure safeguards for the various aspects of use, transfer, storage and disposal of radiation sources and machines. This program expanded with the increasing use of radioactive sources, X-ray machines and other radiation producing equipment.

The primary emphasis in the radiation control program has been placed on those radiation sources not regulated or otherwise under the jurisdiction of the Atomic Energy Commission such as X-ray machines and radium sources. As of January 1, 1964, there were approximately 2500 X-ray machines and 65 radium users in the State. Periodic, routine inspectional surveys are conducted to determine and correct radiological health hazards associated with the use of medical, dental, and industrial radiographic X-ray installations, and radium users. As of January, 1964, approximately 50 percent of the X-ray installations have been surveyed, and approximately 75 percent of the radium installations have been surveyed. This survey work is increasing rapidly as the Department staff grows, allowing a sufficient number of manhours to be devoted to the inspection program.

Additional program areas were developed in order to provide a complete and comprehensive radiation control program. These activities included a program of environmental monitoring for air, surface water, and milk; vehicle registration and identification for those vehicles transporting sources of ionizing radiation within the State; radioactivity countermeasures evaluations and planning; and an emergency plan for handling incidents involving transport of radioactive materials.

Current inspections of installations include a complete review by the inspector of the user's equipment and facilities; the method and equipment for handling and storage of radioactive materials; interviews with the personnel responsible for both radiation safety and actual operations using the radioactive material; survey methods and results; posting and labeling of the sources and areas with the proper signs and labels; methods and effectiveness of maintaining control of individuals in restricted areas; records of receipts, transfers, inventories, and disposal of radioactive materials or machines; and disposal of radioactive materials to the sewer system or the soil. Inspection procedures of this general type will be used in the future for inspections of all installations using radioactive material and/or radiation producing machines.

#### Program Description

The Radiation Control Program proposed under an agreement will be conducted by the Radiological Health Section of the Industrial, Radiation and Air Hygiene Program, Environmental Health Services, Kansas State Department of Health.

**Licensing and registration.** The State program will control all sources of ionizing radiation, other than those sources for which regulatory authority has been retained by the Atomic Energy Commission. Provisions have been made for the issuance of general and specific licenses for radioactive materials. Such licenses are required for the receipt, use, possession, transfer or disposal of all radioactive materials regardless of the form of such materials. Allowances have been made for exemptions of certain items which contain less than specified amounts of radioactive material of particular types. Examples of such exemptions are those for certain luminous timepieces, automobile lock illuminators, and thorium lamp and lantern mantles. Under the provisions of the regulations:

1. General licenses are effective without the filing of applications with the Department or the issuance of licensing documents to particular persons. The State will issue general licenses under specified circumstances when more stringent control by specific licenses is found to be unnecessary to protect public health and safety.

2. Specific licenses are issued by the State of Kansas to named persons upon applications filed pursuant to the regulations. Basically the regulations regarding specific licenses require that:

(a) The applicant is qualified by reason of training and experience to use the material in question for the purpose requested;

(b) The applicant's proposed location, equipment, facilities, and procedures are adequate to protect health and minimize danger to life and property;

(c) The issuance of the license will not be inimical to the health and safety of the public;

(d) The material may be used only for the purpose authorized in the license;

(e) The material may not be transferred except to a person or persons authorized to receive it.

Every person not already registered who possesses a registrable item (any radiation machine capable of producing radiation), on the effective date of the regulations is required to re-register with the Department within 60 days of the effective date. Persons who acquire possession of a registrable item subsequent to the effective date are required to register within 30 days of the acquisition of such item or items.

A Medical Advisory Committee to the Radiological Health Section, consisting of three radiologists, one internist, one hematologist and one surgeon, which has a thorough knowledge and working experience with the use of radioactive materials in the practice of medicine, will be used for consultations and recommendation concerning license applications for the human use of radioactive materials. As general guides in the evaluation of license applications, the Radiological Health Section and the Medical Advisory Committee will utilize applicable criteria as presented by Atomic Energy Commission publications including: "Licensing Requirements for Teletherapy Programs," "Licensing Requirements for Broad Licenses for Research and Development" "Licensing Requirements for Broad Medical Use," and "Medical Use of Radioisotopes." The Radiological Health Section and the Medical Advisory Committee will also maintain knowledge of current developments, techniques, and procedures for medical uses by contact

and correspondence with the Atomic Energy Commission, and other agreement States.

**Inspection.** Periodic inspections will be conducted to determine a licensee's or registrant's degree of compliance with regulations and license conditions. These inspections will be performed by personnel of the Radiological Health Section who are qualified to evaluate radiological health hazards and are conversant with the regulations.

The majority of the inspections will be unannounced. The following frequency is planned, but may be either increased or decreased depending upon individual circumstances:

Industrial radiographers—once each 6 months.  
Operations involving waste disposal—once each 6 months.  
Broad licenses—Industrial, medical, academic—once each 12 months.  
Specific licenses—Industrial, medical, academic—once each 24 months.  
Other—Time available basis.

It is expected that all licensed activities will be inspected at least once in every two-year period.

Inspection visits will usually include a comprehensive review by the inspector of the licensee's equipment, facilities and handling or storage of radioactive material; the procedures in effect, including actual operation; and interviewing of personnel directly involved. The inspectors will review the licensee's survey methods and results, personnel monitoring practices and results, posting and labeling used, the instructions to personnel and the methods and apparent effectiveness of maintaining control of individuals in the controlled area. The inspector will also review the licensee's record of receipts, transfers, and inventory of licensed material. He will examine records concerning any disposals which might have been made. He may make measurements of radiation levels. Before the termination of each inspection, the inspector will meet with the management to discuss the results of his inspection. At this time he will present tentative oral recommendations or suggestions, and will attempt to answer questions concerning the regulatory program.

The inspector will prepare a detailed report to inform his supervisor of all the facts and circumstances observed during the inspection. The report will enumerate violations, if any, and include recommendations for corrective action. Recommendations made by field personnel will be subject to critical review by senior members of the Industrial, Radiation and Air Hygiene Program and the Director of Environmental Health Services.

Licensees and registrants will be informed of the results of all inspections, first orally at the time of the inspection, and finally, furnished with a written report or notice from the Department.

In addition there will be investigations of all incidents and reasonable complaints involving licensed or registered sources of radiation to determine the cause, the measures taken by the licensee or registrant to cope with the incident, whether or not there was noncompliance with the regulations, and steps taken by the licensee to avoid a recurrence of the incident.

**Compliance and enforcement.** Reports of inspections of licensee's and/or registrant's activities will be evaluated to determine the degree of compliance of the licensees and registrants with the Board's regulations, and registration or license conditions. If no items of noncompliance are observed, the person will be so informed. For minor items of noncompliance, which the licensee agrees to correct at the time of the inspection, the licensee will be informed by letter. This notification will inform the licensee of the

items of noncompliance, and that corrective action taken by the licensee will be reviewed during the next inspection.

If the inspection reveals items of noncompliance of a more serious nature, the licensee will be informed by letter of the items of noncompliance and required to reply, usually within 15-30 days, as to the corrective action taken and the date completed. The Department will then conduct a followup inspection or the matter will be reviewed during the next regular inspection to ensure that the corrective action has in fact been accomplished.

Whenever, in the judgment of the Board, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of the Act or any rule, regulation or order issued thereunder, the Attorney General is empowered to make application for a court order enjoining such acts or practices, or for a court order directing compliance.

Whenever the Executive Secretary of the Board finds that an emergency exists requiring immediate action to protect public health and safety, he may without notice issue an emergency order reciting that an emergency exists and requiring that such action be taken as is necessary to meet the emergency.

The full legal procedures will normally be employed only in those instances where there is continued and repeated noncompliance, existence of a state of emergency, willful negligence on the part of the licensee, or where a serious potential hazard exists.

Section 9 of the Act empowers the Board or its duly authorized representatives to enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with or violation of the provisions of the Act, and rules and regulations of the Board issued under the Act.

**Administrative procedure and judicial review.** Section 8 of the Nuclear Energy Development and Radiation Control Act provides for a hearing, at the written request of any person whose interest may be affected by the proceeding, when the Board issues or modifies rules or regulations, grants, suspends, revokes or amends any license.

Whenever the Executive Secretary of the Board finds that an emergency exists, he may without notice issue an emergency order. Such order may be issued orally, and confirmed by written order mailed within twenty-four (24) hours after issuance of the oral order. This emergency order is effective immediately and the person(s) to whom the order is directed shall comply therewith immediately. Any person aggrieved by the issuance of such an emergency order has the right to request a hearing within fifteen (15) days of the issuance of the order. If a hearing is requested, the hearing must be held within thirty (30) days. Upon the basis of the decision reached at the hearing, the Board shall issue an order containing the determination of its findings to the alleged violator within thirty (30) days after the conclusion of the hearing.

An appeal may be taken from any final order or final determination of the Board by any person adversely affected thereby. Jurisdiction for all such appeals is vested solely in the District Court of Shawnee County, Kans.

**Organization, procedures and staffing.** The authority of the State Health Officer includes delegation of pertinent responsibilities subject to approval by the State Board of Health. This is accomplished by delegation of administrative direction to the service directors of the Department, and through them to specified staff members and certain personnel involved in full-time and part-time direction and implementation of specific departmental programs.

The Radiation Control Program is conducted by the Chief of the Radiological Health Section. The planning and direction of this program is the responsibility of the Director of the Industrial, Radiation and Air Hygiene program and the Director of Environmental Health Services, together with the Chief of the Radiological Health Section. Implementation of the specific responsibilities included in radiation control is accomplished by the Supervisors of Licensing and Registration, Environmental Surveillance, and Field Inspection and Surveys. Laboratory support services for these responsibilities are conducted by the Industrial, Radiation and Air Hygiene Laboratory which is under the direction of the Supervisor of Environmental Surveillance. Organizational charts are provided in the attachments to the narrative for further references.

Authority and responsibility for administering Kansas Radiation Protection Regulations, covering the statutory licensing of byproduct, source, special nuclear materials, or devices or equipment utilizing such materials, has been assigned to the Chief of the Radiological Health Section. Under his direction, applications for licenses will be approved or disapproved. He will issue denials for cause or denials without prejudice. He may terminate a license, after opportunity has been afforded the licensee for a hearing before the State Board of Health, a hearing officer designated by the Board, or the State Health Officer, due to failure to correct items of noncompliance, or for other justified causes. Under his administrative control the Supervisors of Licensing and Registration, Environmental Surveillance, and Field Inspection and Survey activities will provide technical assistance and consultation as required in the discharge of their separate and collective responsibilities regarding the State radiation control program.

Qualifications and training of the present staff members reflect the necessary education, training and experience to ensure competent administration and implementation of the program in radiation control. Individual resumes of training and experience are provided in the attachment to this narrative. All future replacements of present staff as required by vacancies will be evaluated to assure that their training and experience are at least equal to those presently employed. Job descriptions and training and experience requirements are outlined in an attachment. These requirements will be used as a basis for evaluating qualifications of applicants for staff positions.

**Reciprocity.** Regulations of the Board provide for the recognition of licenses issued by the U.S. Atomic Energy Commission or other agreement States.

**Continuing compatibility.** It is the policy of the State of Kansas to institute and maintain a regulatory program for sources of ionizing radiation so as to provide for compatibility with the standards and regulatory program of the Federal government and a system consonant insofar as possible with those of other States.

[F.R. Doc. 64-7944; Filed, Aug. 5, 1964; 8:53 a.m.]

## CIVIL AERONAUTICS BOARD

[Docket 15383]

AERO LINEAS FLECHA AUSTRAL  
LIMITADA

Notice of Hearing Relating to Foreign  
Air Carrier Permit

Notice is hereby given, pursuant to the provisions of the Federal Aviation

Act of 1958, as amended, that hearing in the above-entitled proceeding is assigned to be held on August 12, 1964, at 10 a.m. (e.d.s.t.) in Room 911, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before the undersigned Examiner.

Dated at Washington, D.C., August 3, 1964.

[SEAL] WALTER W. BRYAN,  
Hearing Examiner.

[F.R. Doc. 64-7911; Filed, Aug. 5, 1964; 8:51 a.m.]

[Docket 15417]

**SERVICIO AEREO DE HONDURAS S.A. (SAHSA)**

**Notice of Postponement of Prehearing Conference**

Notice is hereby given that the prehearing conference in the above-entitled matter, now scheduled for August 11, 1964, is postponed to August 18, 1964, at 10:00 a.m., e.d.s.t., in Room 911, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Barron Fredricks.

Dated at Washington, D.C., August 3, 1964.

[SEAL] FRANCIS W. BROWN,  
Chief Examiner.

[F.R. Doc. 64-7912; Filed, Aug. 5, 1964; 8:51 a.m.]

**FEDERAL COMMUNICATIONS COMMISSION**

[Docket Nos. 14154, 15011; FCC 64M-732]

**AMERICAN TELEPHONE AND TELEGRAPH CO.**

**Order Continuing Hearing**

In the matter of American Telephone and Telegraph Company, Docket No. 14154, regulations and charges for developmental line switched service; American Telephone and Telegraph Company, Docket No. 15011, Charges, practices, classifications, and regulations for and in connection with teletypewriter exchange service.

The Hearing Examiner having for consideration a Joint Motion for Continuance, filed on July 30, 1964, by AT&T and Western Union, and an informal conference having been held on July 30, 1964, relative to the requested continuance;

It appearing, that counsel for all other parties hereto have authorized the petitioners to state that they interpose no objection to a grant of the requested relief;

It further appearing, that the grounds for the requested relief are substantially the same as those found adequate for similar relief in the Commission's order released herein on May 11, 1964;

It is ordered, This 30th day of July 1964, that the subject motion is granted; that the date for exchange of AT&T's direct written case is continued to November 16, 1964; and the date for commencement of hearing is continued to December 14, 1964.

Released: July 31, 1964.

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

[F.R. Doc. 64-7923; Filed, Aug. 5, 1964; 8:52 a.m.]

[Docket No. 15520; FCC 64M-738]

**CONANT BROADCASTING CO., INC. (WHIL)**

**Order Continuing Hearing**

In re application of Conant Broadcasting Company, Inc. (WHIL), Medford, Massachusetts, Docket No. 15520, File No. BP-15030; for construction permit.

Pursuant to agreement of counsel arrived at during the prehearing conference in the above-styled proceeding held on this date: It is ordered, This 31st day of July 1964, that the hearing presently scheduled to commence on September 16, 1964, be and the same is hereby continued to December 7, 1964, at 10 a.m., in Washington, D.C.

Released: August 3, 1964.

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

[F.R. Doc. 64-7924; Filed, Aug. 5, 1964; 8:52 a.m.]

[Docket Nos. 15540, 15541; FCC 64M-737]

**LAKELAND FM BROADCASTING, INC., AND SENTINEL BROADCASTING CO.**

**Order re Procedural Dates**

In re applications of Lakeland FM Broadcasting, Inc., Lakeland, Florida, Docket No. 15540, File No. BPH-4159; Sentinel Broadcasting Company, Lakeland, Florida, Docket No. 15541, File No. BPH-4287; for construction permits.

A prehearing conference in the above-entitled matter having been held on July 31, 1964, and it appearing from the record made therein that certain agreements were reached which properly should be formalized by order:

It is ordered, This 31st day of July 1964, that:

(1) All exhibits to be offered in evidence in the presentation of the direct affirmative cases shall be exchanged among the parties and copies thereof supplied the Hearing Examiner on September 24, 1964;

(2) Notification of witnesses to be called for cross-examination shall be given on or before October 3, 1964:

It is further ordered, That the hearing in this matter presently scheduled to commence on September 23, 1964, is continued to October 19, 1964, commencing

at 10:00 a.m. in the offices of the Commission at Washington, D.C.

Released: August 3, 1964.

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

[F.R. Doc. 64-7925; Filed, Aug. 5, 1964; 8:52 a.m.]

[Docket No. 14198; FCC 64-712]

**PAN AMERICAN UNION ET AL.**

**Order Designating Matter for Hearing on Stated Issues**

In the matter of the Pan American Union and the Pan American Sanitary Bureau v. All America Cables and Radio, Inc., the Commercial Cable Company, Mackay Radio and Telegraph Company, Inc., RCA Communications, Inc., Tropical Radio Telegraph Company, and the Western Union Telegraph Company, Docket No. 14198.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 29th day of July 1964;

The Commission, having under consideration:

a. Our Decision of May 6, 1964, in this proceeding (36 FCC 1269) wherein we ordered, inter alia, that The Pan American Union and The Pan American Sanitary Bureau are entitled to government-rate treatment for their official telegrams sent from the United States to foreign countries;

b. A motion filed on June 18, 1964, by The Pan American Union and The Pan American Sanitary Bureau requesting that the Commission reopen the proceeding and set the case for hearing to resolve the question of damages;

c. Oppositions to the above-mentioned motion filed by RCA Communications, Inc. on June 30, 1964, by The Western Union Telegraph Company on July 2, 1964, and by All America Cables and Radio, Inc., The Commercial Cable Company, and Mackay Radio and Telegraph Company, Inc. on July 2, 1964;

d. A reply to the above oppositions filed on July 10, 1964, by The Pan American Union and The Pan American Sanitary Bureau;

It appearing, that in our decision of May 6, 1964, we stated that in the event the parties to this proceeding are unable to resolve the question of damages among themselves, complainants may invoke our process and move to reopen the proceeding;

It further appearing, that the parties to this proceeding are unable to resolve the question of damages among themselves;

It further appearing, that complainants have not made their allegations of damages with the degree of specificity required by § 1.723(a) of the Commission's rules and regulations, but that, this defect could be corrected by the filing of a supplemental complaint;

It further appearing, that the opposition comments of the defendants do not

persuade us that complainants should be denied an opportunity to show that they have been damaged or that recovery of damages is precluded as a matter of law;

It further appearing, that the pleadings herein raise issues which should be resolved by public hearing:

*It is ordered*, That, in view of all of the foregoing and pursuant to our decision of May 6, 1964 in this proceeding, and pursuant to sections 206, 207, 208, and 209 of the Communications Act of 1934, as amended, the motion of The Pan American Union and The Pan American Sanitary Bureau to reopen this proceeding to resolve the question of damages, is granted, and that a hearing on the issues raised by the pleadings shall be held at the Commission's offices in Washington, D.C., before a hearing examiner, at a time to be specified by subsequent order:

*It is further ordered*, That, without in any way limiting the scope of the proceeding, it shall include inquiry into the following:

1. To what extent, if any, have the complainants incurred compensable damages by reason of the defendants' failure to implement the International Organizations Immunities Act?

2. If such damages have been incurred, to what extent is each of the defendants liable therefor?

*It is further ordered*, That, within 20 days after the release of this Order, The Pan American Union and The Pan American Sanitary Bureau shall file with the Commission and serve on all parties to this proceeding a supplemental complaint alleging damages with the degree of specificity required by § 1.723(a) of the Commission's rules and regulations, and that the defendants shall have 10 days from the date of service of said amended complaint to file and serve an answer thereto, and that complainants shall have 5 days from date of service of the last answer to file and serve a reply.

Released: August 3, 1964.

FEDERAL COMMUNICATIONS  
COMMISSION,  
BEN F. WAPLE,  
Secretary.

[F.R. Doc. 64-7926; Filed, Aug. 5, 1964;  
8:52 a.m.]

[Docket Nos. 15212 etc., FCC 64 M-722]

#### TVUE ASSOCIATES, INC., ET AL.

##### Order re Procedural Dates

In re applications of Tvue Associates, Inc., Houston, Texas, Docket No. 15212, File No. BPCT-3161; United Artists Broadcasting, Inc., Houston, Texas, Docket No. 15213, File No. BPCT-3166; for construction permits for new television broadcast stations. In re applications of Integrated Communication Systems, Inc. of Massachusetts, Boston, Massachusetts, Docket No. 15323, File No. BPCT-3167; United Artists Broadcasting, Inc., Boston, Massachusetts, Docket

No. 15324, File No. BPCT-3169; WGBH Educational Foundation, Boston, Massachusetts, Docket No. 15325, File No. BPCT-3277; for construction permits for new television broadcast stations.

At a further prehearing conference held today in the Boston proceeding and which was attended by the participants in the Houston case, discussions were held on the question of continuing the hearing and procedural dates in both proceedings because of the pendency of a number of interlocutory matters including those flowing from the announcement of the Commission's recent decision to alter UHF channel assignments in Boston (FCC 64-635, released July 10, 1964 in Docket No. 14229). The matters developed at the conference indicate that good cause is present for again putting off hearings in these proceedings.

*Accordingly, it is ordered*, This 30th day of July, 1964, that the commencement date for the hearing in the Houston proceeding beginning with the consolidated issue going to the qualifications of United Artists is postponed from September 14 to October 14, 1964, that the commencement date for the hearing on the issues in the Boston case apart from the consolidated issue is postponed until October 30, 1964, and that the other procedural dates are rescheduled as follows: October 1 for the exchange among the competing parties in these proceedings of the direct written material and for United Artists to furnish all the parties in these two proceedings such written material as will be relied upon in support of the United Artists showing on the consolidated issue; October 14 for filing with the Commission any depositions expected to support a direct case in the Houston proceeding; October 7 for the notification to United Artists to produce witnesses for cross-examination on the consolidated issue or on any of the issues in the Houston proceeding.

Released: July 31, 1964.

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

[F.R. Doc. 64-7927; Filed, August 5, 1964;  
8:52 a.m.]

[Docket No. 15544; FCC 64 M-723]

#### WHAS, INC. (WHAS-TV)

##### Order Continuing Prehearing Conference

In re application of WHAS, Inc. (WHAS-TV), Louisville, Kentucky, Docket No. 15544, File No. BPCT-3187; for construction permit.

There being no objection by any other party to grant of the relief sought and cause for the request, under the circumstances being adequate (absence of counsel from the city): *It is ordered*, This 30th day of July 1964, that a motion for continuance filed by WLEX-TV, Inc., on July 24, 1964, and orally amended on July 30, 1964, is granted, and the prehearing conference in this proceeding

now scheduled for July 31, 1964, is continued to 9:00 a.m., September 1, 1964.

Released: July 31, 1964.

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

[F.R. Doc. 64-7928; Filed, Aug. 5, 1964;  
8:52 a.m.]

[Docket Nos. 15176 etc.; FCC 64M-736]

#### WTIF, INC., ET AL.

##### Order Scheduling Hearing

In the matter of revocation of license of radio station WTIF, Inc., Docket No. 15176, for standard broadcast station WTIF, Tifton, Georgia. In re applications of WDMG, Inc., Docket No. 15177, File No. BR-1709, for renewal of license of standard broadcast station WDMG, Douglas, Georgia. WMEN, Inc., Docket No. 15274, File No. BR-3030, for renewal of license of standard broadcast station WMEN, Tallahassee, Florida. B. F. J. Timm, Jacksonville, Florida, Docket No. 15275, File No. BP-13649, for construction permit.

*It is ordered*, This 31st day of July 1964, that the return dates for a certain subpoena duces tecum in the above-entitled matter and further hearing therein are reset (after having been continued without date by the Hearing Examiner's Order of July 30, 1964) to September 24, 1964 and September 29, 1964, respectively, the aforesaid further hearing to commence at 10:00 a.m. in the Commission's Offices in Washington, D.C.

Released: August 3, 1964.

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

[F.R. Doc. 64-7929; Filed, Aug. 5, 1964;  
8:53 a.m.]

[Docket Nos. 15176 etc.; FCC 64M-731]

#### WTIF, INC. ET AL.

##### Order Re Procedural Dates

In the matter of revocation of license of radio station WTIF, Inc., Docket No. 15176, for standard broadcast station WTIF, Tifton, Georgia. In re applications of WDMG, Inc., Docket No. 15177, File No. BR-1709, for renewal of license of standard broadcast station WDMG, Douglas, Georgia. WMEN, Inc., Docket No. 15274, File No. BR-3030, for renewal of license of standard broadcast station WMEN, Tallahassee, Florida. B. F. J. Timm, Jacksonville, Florida, Docket No. 15275, File No. BP-13649, for construction permit.

The Hearing Examiner having under consideration a motion for rescheduling certain procedural dates in the above-entitled matter, said motion having been filed this date by B. F. J. Timm and WDMG, Inc.; and

It appearing, that the general relief requested should be granted but that the

motion is filed so near the time of the now scheduled hearing (July 31, 1964) that the Hearing Examiner is not now able to establish dates certain for the procedural steps in question:

*It is ordered*, This 30th day of July 1964, that the motion is granted insofar as it requests a continuance of the hearing scheduled for July 31, 1964, and a change in the return date for a certain subpoena duces tacum, new dates for which shall be set in a future order of the Hearing Examiner; and

*It is further ordered*, That the motion is denied in all other respects.

Released: July 31, 1964.

FEDERAL COMMUNICATIONS  
COMMISSION,

[SEAL] BEN F. WAPLE,  
Secretary.

[F.R. Doc. 64-7930; Filed, Aug. 5, 1964;  
8:53 a.m.]

## FEDERAL MARITIME COMMISSION

CITY OF LONG BEACH AND  
CITY TRANSFER, INC.

### Notice of Agreements Filed for Approval

Notice is hereby given that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement(s) at the Washington office of the Federal Maritime Commission, 1321 H Street NW., Room 301; or may inspect agreements at the offices of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter), and the comments should indicate that this has been done.

Notice of agreement filed for approval by City of Long Beach, Harbor Administration Building, P.O. Box 570, Long Beach, Calif., 90801.

Agreement No. T-615, between the City of Long Beach (Port), and City Transfer, Inc. (Company), provides for a one year exclusive lease of certain terminal property and warehouses on the Port's property to be used by Company for the storage of commodities and for other matters incidental to a general warehouse operation. The agreement provides that Company's storage charges will be as published in applicable tariffs presently on file with the California Public Utilities Commission. The agreement also provides that Company's storage charges shall be subject to the prior approval in writing by the Port. As compensation for the lease Company

agrees to pay an amount as specified in the agreement.

Dated: August 3, 1964.

By Order of the Federal Maritime  
Commission.

THOMAS LIST,  
Secretary.

[F.R. Doc. 64-7896; Filed, Aug. 5, 1964;  
8:48 a.m.]

## DUAL RATE CASES

### Order Granting Deletion of Certain Clauses

Various respondents in these proceedings have petitioned the Commission to permit certain modifications in their dual rate contracts as approved by the Commission in its report and orders in The Dual Rate Cases dated March 27, 1964, and served March 30, 1964. Notices of these petitions were published at various times in the FEDERAL REGISTER and by notice dated June 17, 1964, published in the FEDERAL REGISTER on June 18, 1964, the Commission indicated that it was considering modifying the aforesaid report and orders so as to permit all respondents the option of deleting certain contract provisions relating to the applicability of the Shipping Act, 1916, and the rules of the Commission.

Interested persons were invited to comment on these proposals and the only comments filed objected to permitting the deletion of:

(a) That part of the "Disclosure" clause approved by the Commission in its report at page 33 which reads: "and there shall be no disclosure of any information in violation of section 20 of the Shipping Act, 1916, as amended."; and

(b) The provision required to be included in all "Arbitration" clauses approved by the Commission in its report at page 37 of its report which reads: "nothing herein shall deprive the Federal Maritime Commission of its jurisdiction."

It was suggested that as to (a), above, the specific mention of section 20 of the Shipping Act, 1916, might be dropped from the contracts but that the contracts nevertheless prohibit the disclosure of information. Inasmuch as the purpose of the disclosure provision in the contracts is merely to make it possible for the conferences to investigate suspected breaches of the contracts, it is only proper that limits be placed upon the use of such information. We are therefore approving the optional deletion of the reference to section 20 of the Shipping Act provided the language set out below is used.

As to (b), above, it was argued that to drop the mention of the jurisdiction of the Commission would be to risk depriving contract shippers of their right to file complaints with the Commission under section 22 of the Shipping Act, 1916. It was suggested that the following language be permitted in lieu of the provision quoted above:

Nothing herein shall be construed as preventing either party hereto from resorting, either before arbitration has been initiated by the other party hereto or within 30 days after such initiation, to any other forum which would, but for this agreement to arbitrate, have jurisdiction to decide the dispute.

As was the case in *Swift & Co. v. Federal Maritime Commission*, 306 F. 2d 277 (D.C. Cir., 1962), arbitration may sometimes present the question of whether a particular construction of a dual rate contract is lawful under the Shipping Act, 1916—a question which ordinarily would not be a proper matter for arbitration. And, as we stated in our Report of March 27, 1964, herein, the terms of dual rate contracts should not, nor cannot, relieve us of our duties and responsibilities under the Shipping Act. None of this is to say, however, that disputes under dual rate contracts could not be properly and finally resolved through arbitration where there is no substantial question of violation of the Shipping Act involved.

The problem presented by the proposed language is that it appears to be so broad as to effectively bar arbitration of any dispute except where both parties desire to arbitrate.

In view of the holding in the *Swift* case, supra, that the Commission may upset the decision of the arbitrators where their decision is not in conformity with the Shipping Act, notwithstanding the absence of any provision to that effect in the contract, it would appear that the deletion of the language in (b) above would not change in any fashion the exercise of jurisdiction by the Commission in the proper case. We are therefore authorizing the deletion of such language.

As no comment was received as to the deletion of other references to the Shipping Act and as it appears that the deletion of these references can have no effect upon the applicability of the Shipping Act, we are permitting certain deletions as set out below.

Now, therefore, it is ordered, That the aforesaid Report and Orders are amended by making the following contract provisions optional rather than mandatory:

1. That part of paragraph (a) of the "Rate Increases" clause approved by the Commission in its report at pages 15-17 which reads:

The Carriers shall make no change in rates, charges, classifications, rules or regulations, which results in an increase or decrease in cost to the Merchant, except as provided by section 18(b)(2) of the Shipping Act, 1916, and the Rules of the Federal Maritime Commission: *Provided, however,*

2. That part of paragraph (c) of the "Rate Increases" clause approved by the Commission in its report at pages 15-17 which reads:

through filing with the Federal Maritime Commission

3. That part of the "Disclosure" clause approved by the Commission in its report at page 33 which reads:

and there shall be no disclosure of any information in violation of section 20 of the Shipping Act, 1916, as amended.

*Provided, however,* That where this language is deleted the following language must be inserted:

and there shall be no disclosure of such information without the consent of the merchant except that nothing herein shall be construed to prevent the giving of such information (1) in response to any legal process issued under the authority of any court, or (2) to any officer or agent of any government in the exercise of his powers, or (3) to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crime, or (4) to another carrier, or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers, or (5) to arbitrators appointed pursuant to this agreement.

4. The provision required to be included in all "Arbitration" clauses approved by the Commission in its report at page 37 of its report which reads:

nothing herein shall deprive the Federal Maritime Commission of its jurisdiction.

5. The "Amendments" and "Applicability of the Shipping Act" clauses discussed by the Commission in its report at pages 37-38.

Respondents desiring to make any or all of these changes in their contracts may do so without further permission from the Commission: *Provided, however,* That full copies of the contract form as so amended must be filed with the Commission within thirty days following such amendments.

*It is further ordered,* That requests for the deletion of contract provisions not herein granted are denied.

By order of the Federal Maritime Commission.

[SEAL]

THOMAS LIST,  
Secretary.

[F.R. Doc. 64-7897; Filed, Aug. 5, 1964;  
8:48 a.m.]

**PORT OF NEW ORLEANS AND  
UNITED FRUIT CO.  
Notice of Agreements Filed for  
Approval**

Notice is hereby given that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement(s) at the Washington office of the Federal Maritime Commission, 1321 H Street NW., Room 301; or may inspect agreements at the offices of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated

hereinafter), and the comments should indicate that this has been done.

Notice of agreement filed for approval by Kominers & Fort, Tower Building, 1401 K Street, Washington, D.C.

Agreement No. T-466, between the Port of New Orleans (Port), and United Fruit Company (Company), provides that Company loan Port a specified amount for the extension and repair by the Port of certain terminal facilities at New Orleans at which Company is granted a first call on berth privilege. The Port agrees to repay the loan to Company by refunding 80 percent of all the dockage, sheddage and tollage charges (according to the Port's published tariff rate) collected from the Company and other vessels. The agreement provides that all vessels calling at the facility including those belonging to Company will be subject to all charges and regulations established by the Port. The Company agrees to make available its banana unloaders, which it installed at the facility, for the unloading of any other vessels which Port may assign to berth at the facility. The charges to be assessed and retained by Company for the use of such banana unloaders must be in accordance with the Port's tariff rate applicable at other piers where the Port maintains and operates such banana unloaders.

Dated August 3, 1964.

By Order of the Federal Maritime Commission.

THOMAS LIST,  
Secretary.

[F.R. Doc. 64-7898; Filed, Aug. 5, 1964;  
8:48 a.m.]

[Docket No. 1195]

**PUGET SOUND-ALASKA VAN LINES  
DIVISION OF PUGET SOUND TUG &  
BARGE CO. AND ALASKA STEAM-  
SHIP CO.**

**Agreement; Order of Investigation**

On April 22, 1964, Agreement DC-11 was filed with the Federal Maritime Commission by Puget Sound-Alaska Van Lines Division of Puget Sound Tug & Barge Company (Puget) and Alaska Steamship Company (Steam), for approval under Section 15 (46 U.S.C. 814) of the Shipping Act, 1916.

Agreement DC-11 proposes to establish a working arrangement between Puget and Steam for the transportation of cargoes in vans or on pallet vans and shipping platforms between Seattle, Washington and Seward or Anchorage or Whittier, Alaska. Under the terms of the Agreement each carrier will carry cargo for the other whenever there is space available in their respective regular services. Each carrier assumes the obligation of returning the other's empty vans or pallets without charge. The gross freight revenues from traffic transported by one for the other will be distributed in accordance with division sheets to be filed with the Federal Maritime Commission.

Sea-Land Service, Inc. (Sea-Land), a common carrier by water which inaugu-

rated services from and to Alaska in May 1964, filed a timely protest against the agreement alleging, among other things, that if Agreement DC-11 was approved it would result in a creation of a monopoly by the two major carriers serving the trade; would "blanket" its own sailings; and permit pooling of freight between the parties disadvantaging unfairly Sea-Land's competitive position. These allegations have been considered and found, in some respects, sufficient grounds for investigation. There are, however, other aspects of the agreement and related issues which it presents which also warrant investigation. There are no joint rates contemplated by the agreement yet it proposes to apportion each carrier's filed local port-to-port rate through a "division of rates" device. Whether a division of rates by two carriers, one of whom merely books the cargo, would violate section 2, Intercoastal Shipping Act, 1933, should also be investigated in this proceeding. Moreover, the agreement, by its terms, would become effective retroactively if and when approved by the Commission. Section 15 is explicit in prohibiting the carrying out of an agreement before approval.

*Therefore it is ordered,* That an investigation be, and it is hereby instituted, pursuant to section 15 (46 U.S.C. 814) and section 22 (46 U.S.C. 821), of the Shipping Act, 1916, and sections 2 and 3, Intercoastal Shipping Act, 1933 (46 U.S.C. 844; 845) to determine (1) whether approval of Agreement DC-11 would be unjustly discriminatory or unfair as between carriers, shippers, or ports, or operate to the detriment of the commerce of the United States, or be contrary to the public interest, or otherwise be in violation of the Shipping Act, 1916, or the Intercoastal Shipping Act, 1933; (2) whether any agreement with respect to carryings or sailings, or to the distribution of revenues, or to rates, has been carried out by the parties without prior approval of the Commission with respect thereto; (3) whether two or more carriers, serving identical points, each separately maintaining "local" rates to these points may enter into arrangements under section 15, to divide their local rates, one with the other, with a view of making such findings and orders in the premises as the facts and circumstances shall warrant.

*It is further ordered,* That (I) the investigation herein ordered be assigned for public hearing by the Chief Examiner, before an examiner of the Commission's Office of Hearing Examiners, at a date and place to be announced; (II) Puget Sound-Alaska Van Lines Division of Puget Sound Tug & Barge Company and Alaska Steamship Company be and they are hereby made respondents in this proceeding; (III) a copy of this order shall forthwith be served upon said respondents; (IV) the said respondents be duly notified of the time and place of the hearing herein ordered; and (V) this order and notice of the said hearing be published in the FEDERAL REGISTER.

All persons (including individuals, corporations, associations, firms, part-

nerships, and public bodies) having an interest in this proceeding and desiring to intervene therein, should notify the Secretary of the Commission promptly and file petitions for leave to intervene in accordance with Rule 5(n) (46 CFR 502.73) of the Commission's Rules of Practice and Procedure.

By the Commission.

[SEAL] THOMAS LISI,  
Secretary.

[F.R. Doc. 64-7899; Filed, Aug. 5, 1964;  
8:49 a.m.]

**FEDERAL POWER COMMISSION**

[Docket No. CP64-287]

**CENTRAL INDIANA GAS CO.**

**Notice of Application**

JULY 30, 1964.

Take notice that on June 3, 1964, Central Indiana Gas Company (Applicant), an Indiana corporation with its principal place of business at 300 East Main Street, Muncie, Indiana, filed in Docket No. CP64-287 an application pursuant to section 7(a) of the Natural Gas Act for an order directing Panhandle Eastern Pipe Line Company (Panhandle) to establish physical connection of its natural gas transmission facilities proposed to be constructed by the Applicant consisting of approximately 4.15 miles of lateral pipeline and distribution facilities in the city of Montpelier, Blackford County, Ind., and to sell and deliver to Applicant its daily and annual requirements of natural gas in Mcf at 14.73 psia as follows:

Year	Peak day demand		Annual requirements	
	Mcf	Mcf	Mcf	Mcf
1	652	174, 125	218, 456	231, 915
2	819			
3	888			

Applicant states that it can provide the service to Montpelier from its presently authorized contract demand and therefore no request for an increased supply of gas from Panhandle is being requested.

The estimated cost of Applicant's proposed facilities is \$268,541, to be financed from funds internally generated.

The estimated cost of Panhandle's facilities required to make the necessary connection and to meter the gas is \$29,500.

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 preliminary staff analysis has indicated that there are no problems which would warrant a recommendation that the Commission designate this application for formal hearing before an examiner and 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 may be

held without further notice before the Commission on this application provided no protest or petition to intervene is filed within the time required herein. Where a protest or petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before August 21, 1964.

JOSEPH H. GUTRIDE,  
Secretary.

[F.R. Doc. 64-7876; Filed, Aug. 5, 1964;  
8:47 a.m.]

[Docket No. CP65-3]

**KANSAS-COLORADO UTILITIES, INC.**

**Notice of Application**

JULY 31, 1964.

Take notice that on July 2, 1964, Kansas-Colorado Utilities, Inc. (Applicant), Colorado Springs, Colorado, filed in Docket No. CP65-3 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of transmission pipeline facilities and metering stations to enable Applicant to connect a new supply of gas to its Hugoton field, Kansas-Springfield, Colo., transmission pipeline for markets presently served by the line in Colorado, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant proposes to construct and operate approximately 5.4 miles of 4-inch lateral pipeline, together with two metering stations to connect a new source of natural gas supply for its Springfield, Colo., market area. Applicant proposes to purchase approximately 588 Mcf of natural gas per day from three producers in the West Sparks Field, Kansas.

The cost of the proposed facilities is estimated to be \$30,652, which will be defrayed from cash on hand.

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 preliminary staff analysis has indicated that there are no problems which would warrant a recommendation that the Commission designate this application for formal hearing before an examiner and 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 may be held without further notice before the Commission on this application provided no protest or petition to intervene is filed within the time required herein. Where a protest or petition for leave to intervene is timely filed, or where the Commission

on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before August 21, 1964.

JOSEPH H. GUTRIDE,  
Secretary.

[F.R. Doc. 64-7878; Filed, Aug. 5, 1964;  
8:47 a.m.]

[Docket Nos. RI65-91, etc.]

**GIBRALTAR OIL CO. ET AL.**

**Order Providing for Hearing on and Suspension of Proposed Changes in Rates, and Allowing Rate Changes To Become Effective Subject to Refund<sup>1</sup>**

JULY 30, 1964.

The Respondents named herein have filed proposed changes in rates and charges of currently effective rate schedules for sales of natural gas under Commission jurisdiction, as set forth below.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders: (A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR Ch. I), and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until late shown in the "Date Suspended Until" column, and thereafter until made effective as prescribed by the Natural Gas Act: *Provided, however*, That the supplements to the rate schedules filed by Respondents, as set forth herein, shall become effective subject to refund on the date and in the manner herein prescribed if within 20 days from the date of the issuance of this order Respondents shall each execute and file under its above-designated docket number with the Secretary of the Commission its agreement and undertaking to comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder, accompanied by a certificate showing service of copies thereof upon all purchasers under the rate schedule in-

<sup>1</sup> Does not consolidate for hearing or dispose of the several matters herein.

involved. Unless Respondents are advised to the contrary within 15 days after the filing of their respective agreements and undertakings, such agreements and undertakings shall be deemed to have been accepted.

(C) Until otherwise ordered by the Commission, neither the suspended sup-

plements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the rules

of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before September 16, 1964.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,  
Secretary.

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date <sup>2</sup> unless suspended	Date suspended until—	Cents per Mcf		Rate in effect subject to refund in docket Nos.
									Rate in effect	Proposed increased rate	
RI65-91	Gibraltar Oil Co., c/o Miller, Vandegriff, Middleton & Sackin, 3255 Beverly Boulevard Los Angeles 48, Calif. Attn: Mr. R. M. Vandegriff.	3	2	El Paso Natural Gas Co. (Blanco-Mesa Verde Field, San Juan County, N. Mex.) (San Juan Basin Area).	\$1,440	7-2-64	* 8-2-64	* 8-3-64	* 13.0	** 14.0	
RI65-92	Brannon, M. J., Jr., 4225 Glenwood Drive, Fort Worth 9, Tex., 76109.	1	2	El Paso Natural Gas Co. (Undesignated Dakota, San Juan County, N. Mex.) (San Juan Basin Area).	530	7-2-64	* 8-2-64	* 8-3-64	* 13.0	** 14.0	
RI65-93	J. M. Huber Corp., 2401 East Second Avenue, Denver, Colo., 80206.	54	1	Cities Service Gas Co. (Northwest Lovedale Field, Harper County, Okla.) (Panhandle Area).	702	7-6-64	* 9-1-64	* 9-2-64	* 16.0	** 17.0	

<sup>2</sup> The stated effective date is the first day after expiration of the required statutory notice.

<sup>3</sup> The suspension period is limited to one day.

<sup>4</sup> Periodic rate increase.

<sup>5</sup> Pressure base is 15.025 psia.

<sup>6</sup> Includes 1.0 cents per Mcf added to reflect minimum guarantee for liquids.

<sup>7</sup> The stated effective date is the effective date requested by Respondent.

<sup>8</sup> Pressure base is 14.65 psia.

<sup>9</sup> Subject to downward Btu adjustment.

Gibraltar Oil Company (Gibraltar) requests an effective date of January 1, 1964, the contractually provided effective date, for its proposed rate increase. Good cause has not been shown for waiving the 30-day notice requirement provided in section 4(d) of the Natural Gas Act to permit an earlier effective date for Gibraltar's rate filing and such request is denied.

Gibraltar and M. J. Brannon, Jr. (Brannon), did not include as part of their proposed rates the contractually provided for 1.0 cent per Mcf minimum guarantee for liquids. The addition of this minimum guarantee of 1.0 cent per Mcf to the base rate results in a total rate in excess of the 13.0 cents per Mcf area ceiling for increased rates in the San Juan Basin Area (18 CFR Ch. I, Part 2, § 2.56). Under the circumstances, we conclude that Gibraltar and Brannon's rate filings should be suspended for one day from the date shown in the foregoing "Effective Date" column of this appendix.

J. M. Huber Corporation's (Huber) related contract was executed subsequent to September 28, 1960, the date of issuance of the Commission's Statement of General Policy No. 61-1, as amended, and the proposed rate is above the applicable area ceiling for increased rates but does not exceed the applicable ceiling price for initial rates in the area involved. We believe, in this situation, that Huber's rate filing should be suspended for one day from September 1, 1964, the proposed effective date.

[F.R. Doc. 64-7877; Filed, Aug. 5, 1964; 8:47 a.m.]

[Docket No. CP64-284]

## NATURAL GAS PIPELINE COMPANY OF AMERICA

### Notice of Application

JULY 31, 1964.

Take notice that on May 28, 1964, as amended on June 12, 1964, Natural Gas Pipeline Company of America (Applicant), 122 South Michigan Avenue, Chicago, Ill., 60603, filed in Docket No. CP64-284 an application pursuant to sec-

tion 7 of the Natural Gas Act for authority to abandon certain facilities and for a certificate of public convenience and necessity authorizing the construction and operation of certain other facilities, replacing in part the facilities to be abandoned, to enable Applicant to increase deliveries of natural gas to Northern Illinois Gas Company (Northern) at Belvidere, Illinois, all as more fully set forth in the application, as amended, on file with the Commission and open to public inspection.

Specifically, Applicant proposes to:

(1) Construct and operate approximately 3.6 miles of 24-inch pipeline partially looping Applicant's Illinois 20-inch line;

(2) Construct and operate 2.9 miles of 10- to 12-inch pipeline replacing that length of Applicant's existing 3-inch Belvidere sales lateral;

(3) Install an additional tap on the Illinois transmission line and construct a new meter and regulator station;

(4) Abandon in place approximately 0.81 miles of 3- and 4-inch lateral line, and

(5) Reclaim and retire approximately 2.3 miles of 3-inch lateral line and the existing Belvidere meter and regulator station.

Applicant states that the proposed project is required to enable it to meet the increased delivery requirements of Northern, an existing customer of Applicant, for the winter of 1964-65. The application indicates that the Chrysler Corp. is building an industrial plant at Belvidere, Illinois, and that said plant will be a customer of Northern; thus, Northern will require an increase of peak-day deliveries at Belvidere.

Applicant states further that the increased deliveries to Northern will be part of the gas Applicant is now authorized to sell and deliver to said company.

The application shows the total estimated cost of the proposed project to be \$447,910, including allowance for salvage of reclaimed material. Said estimated cost will be financed from funds on hand.

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 preliminary staff analysis has indicated that there are no problems which would warrant a recommendation that the Commission designate this application for formal hearing before an examiner and 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 may be held without further notice before the Commission on this application provided no protest or petition to intervene is filed within the time required herein. Where a protest or petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before August 21, 1964.

JOSEPH H. GUTRIDE,  
Secretary.

[F.R. Doc. 64-7879; Filed, Aug. 5, 1964; 8:47 a.m.]

[Docket No. G-17486]

**NORTHERN NATURAL GAS CO.**

**Notice of Application To Amend**

JULY 31, 1964.

Take notice that on June 12, 1964, Northern Natural Gas Co. (Applicant), 2223 Dodge Street, Omaha, Nebraska, filed in Docket No. G-17486, an application to amend the order of the Commission issued July 31, 1959, in Docket No. G-17486 which order authorized among other things the construction and operation of facilities to provide initial service to 342 communities, including Emmetsburg, Iowa, and provided for increasing amounts of contract demand to supply the first three years' requirements. The application to amend seeks authorization to reduce the contract demand to the city of Emmetsburg, Iowa, from 1415 Mcf per day to 1134 Mcf per day, all as more fully set forth in the application to amend on file with the Commission and open to public inspection.

The application to amend states that Applicant was authorized in Docket No. G-17486 to render service to Emmetsburg with the first, second and third year contract demand volumes being 756, 1134 and 1415 Mcf per day, respectively. The present (third year) contract demand became effective October 27, 1963, but due to failure to attach customers at the anticipated rate the City is facing an economic hardship.

Protests, petitions to intervene or requests for hearing in this proceeding may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before August 21, 1964.

JOSEPH H. GUTRIDE,  
*Secretary.*

[F.R. Doc. 64-7880; Filed, Aug. 5, 1964; 8:47 a.m.]

[Docket No. CP64-316]

**NATURAL GAS PIPELINE COMPANY OF AMERICA**

**Notice of Application**

*Correction*

In F.R. Doc. 64-7724, appearing at page 11200 of the issue for Tuesday, August 4, 1964, the bracket in the heading should read as set forth above.

**SECURITIES AND EXCHANGE COMMISSION**

[File No. 811-1168]

**AMERICAN FIDELITY CORP.**

**Notice of Filing of Application for an Order Declaring That Company Has Ceased To Be an Investment Company**

JULY 31, 1964.

Notice is hereby given that an application has been filed pursuant to section

No. 163—10

8(f) of the Investment Company Act of 1940 ("Act") for an order of the Commission declaring that American Fidelity Corporation, 423 East Market Street, Indianapolis, Indiana ("applicant"), a management closed-end nondiversified investment company, has ceased to be an investment company by reason of the exception contained in section 3(c)(1) of the Act. Applicant is licensed as a small business investment company under the Small Business Investment Act of 1958.

Applicant states that its securities are beneficially owned by less than 100 persons and that it does not presently propose to make a public offering of its securities. Section 3(c)(1) of the Act excepts from the definition of an investment company any issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than one hundred persons and which is not making and does not presently propose to make a public offering of its securities. Although applicant proposed to make a public offering of its securities at the time of filing its notification of registration on Form N-8A as well as at the time of the filing of its registration statement on Form N-5, the proposed public offering of securities contemplated by the registration statement has been abandoned and applicant does not presently propose to make a public offering of any of its securities.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission upon application finds that a registered investment company has ceased to be an investment company, it shall so declare by order and upon the taking effect of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than August 21, 1964, at 5:30 p.m. submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C., 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. At any time after such date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the showing contained in said application unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

It is ordered, That the Secretary of the Commission shall send a copy of this notice by registered mail to the Director, Office of Investment Assistance, Small Business Administration, Washington, D.C., 20416.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS,  
*Secretary.*

[F.R. Doc. 64-7875; Filed, Aug. 5, 1964; 8:47 a.m.]

**SMALL BUSINESS ADMINISTRATION**

[Delegation of Authority No. 30-I (Amdt. 5)]

**BOSTON REGIONAL OFFICE**

**Delegation of Authority To Conduct Program Activities**

Pursuant to the authority delegated to the Regional Director by Delegation of Authority No. 30 (Revision 8), as amended, 28 F.R. 3228, 7204, 8179; 29 F.R. 4842, 5489 and 7571; Delegation of Authority No. 30-I, as amended, 28 F.R. 4952, 8230; 29 F.R. 5652, 6104, and 7900, is hereby amended by deleting Subitem I.F.2, a and b, and substituting the following in lieu thereof:

- I. \* \* \*
- F. \* \* \*

2. To decline business and disaster loans of any amount.

Effective date: July 10, 1964.

THOMAS J. NOONAN,  
*Regional Director,*  
*Boston Regional Office.*

[F.R. Doc. 64-7850; Filed, Aug. 5, 1964; 8:45 a.m.]

[Delegation of Authority No. 30-II, (Amdt. 5)]

**NEW YORK REGIONAL OFFICE**

**Delegation of Authority To Conduct Program Activities**

Pursuant to the authority delegated to the Regional Director by Delegation of Authority No. 30 (Revision 8), as amended, 28 F.R. 3228, 7204, 8179; 29 F.R. 4842, 5489 and 7571; Delegation of Authority No. 30-II, as amended, 28 F.R. 4687, 9036; 29 F.R. 5652, 6105, and 7900 is hereby amended by deleting Subitem I.F. 2, a and b, and substituting the following in lieu thereof:

- I. \* \* \*
- F. \* \* \*

2. To decline business and disaster loans of any amount.

Effective date: July 10, 1964.

CHARLES H. KRIGER,  
*Regional Director,*  
*New York Regional Office.*

[F.R. Doc. 64-7851; Filed, Aug. 5, 1964; 8:45 a.m.]

[Delegation of Authority No. 30-III  
(Amend. 6)]

**PHILADELPHIA REGIONAL OFFICE**  
**Delegation of Authority To Conduct**  
**Program Activities**

Pursuant to the authority delegated to the Regional Director by Delegation of Authority No. 30 (Revision 8), as amended, 28 F.R. 3228, 7204, 8179; 29 F.R. 4842, 5489 and 7571; Delegation of Authority No. 30-III, as amended, 28 F.R. 4688, 8052; 29 F.R. 5652, 6291, 7900; and Amendment 5, dated June 29, 1964, is hereby amended by deleting Subitem I.F. 2, a and b, and substituting the following in lieu thereof:

I \* \* \*  
F. \* \* \*

2. To decline business and disaster loans of any amount.

Effective date: July 10, 1964.

EDWARD N. ROSA,  
*Regional Director,*  
*Philadelphia Regional Office.*

[F.R. Doc. 64-7852; Filed, Aug. 5, 1964;  
8:45 a.m.]

[Delegation of Authority No. 30-IV,  
(Amdt. 7)]

**RICHMOND REGIONAL OFFICE**  
**Delegation of Authority To Conduct**  
**Program Activities**

Pursuant to the authority delegated to the Regional Director by Delegation of Authority No. 30 (Revision 8), as amended, 28 F.R. 3228, 7204, 8179; 29 F.R. 4842, 5489 and 7571; Delegation of Authority No. 30-IV, as amended, 28 F.R. 4936, 6204, 8303; 29 F.R. 5821, 6291, 7900 and 8505, is hereby amended by deleting Subitem I.F. 2, a and b, and substituting the following in lieu thereof:

I \* \* \*  
F. \* \* \*

2. To decline business and disaster loans of any amount.

Effective date: July 10, 1964.

CLARENCE P. MOORE,  
*Regional Director,*  
*Richmond Regional Office.*

[F.R. Doc. 64-7853; Filed, Aug. 5, 1964;  
8:45 a.m.]

[Delegation of Authority No. 30-V (Amdt.  
No. 5)]

**ATLANTA REGIONAL OFFICE**  
**Delegation of Authority To Conduct**  
**Program Activities**

Pursuant to the authority delegated to the Regional Director by Delegation of Authority No. 30 (Revision 8), as amended, 28 F.R. 3228, 7204, 8179; 29 F.R. 4842, 5489 and 7571; Delegation of Authority No. 30-V, as amended, 28 F.R. 4930, 8180; 29 F.R. 5822, 6292 and 7901 is hereby amended by deleting Subitem I.F. 2, a and b, and substituting the following in lieu thereof:

I \* \* \*  
F. \* \* \*

2. To decline business and disaster loans of any amount.

Effective date: July 10, 1964.

JAMES F. HOLLINGSWORTH,  
*Regional Director,*  
*Atlanta Regional Office.*

[F.R. Doc. 64-7854; Filed, Aug. 5, 1964;  
8:45 a.m.]

[Delegation of Authority No. 30-VI  
(Amdt. 5)]

**CLEVELAND REGIONAL OFFICE**  
**Delegation of Authority To Conduct**  
**Program Activities**

Pursuant to the authority delegated to the Regional Director by Delegation of Authority No. 30 (Revision 8), as amended, 28 F.R. 3228, 7204, 8179, 29 F.R. 4842, 5489 and 7571; Delegation of Authority No. 30-VI, as amended, 28 F.R. 4933, 8179; 29 F.R. 5652, 6105 and 7901 is hereby amended by deleting Subitem I.F. 2, a and b, and substituting the following in lieu thereof:

I \* \* \*  
F. \* \* \*

2. To decline business and disaster loans of any amount.

Effective date: July 10, 1964.

JAMES G. GARWICK,  
*Regional Director,*  
*Cleveland Regional Office.*

[F.R. Doc. 64-7855; Filed, Aug. 5, 1964;  
8:45 a.m.]

[Delegation of Authority No. 30-VII,  
(Amdt. 5)]

**CHICAGO REGIONAL OFFICE**  
**Delegation of Authority To Conduct**  
**Program Activities**

Pursuant to the authority delegated to the Regional Director by Delegation of Authority No. 30 (Revision 8), as amended, 28 F.R. 3228, 7204, 8179; 29 F.R. 4842, 5489 and 7571; Delegation of Authority No. 30-VII, as amended, 28 F.R. 5038, 8230; 29 F.R. 5652, 6368, and 7901 is hereby amended by deleting Subitem I.F. 2, a and b, and substituting the following in lieu thereof:

I \* \* \*  
F. \* \* \*

2. To decline business and disaster loans of any amount.

Effective date: July 10, 1964.

RICHARD E. LASSAR,  
*Regional Director,*  
*Chicago Regional Office.*

[F.R. Doc. 64-7856; Filed, Aug. 5, 1964;  
8:45 a.m.]

[Delegation of Authority No. 30-VIII  
(Amdt. 5)]

**MINNEAPOLIS REGIONAL OFFICE**  
**Delegation of Authority To Conduct**  
**Program Activities**

Pursuant to the authority delegated to the Regional Director by Delegation

of Authority No. 30 (Revision 8), as amended, 28 F.R. 3228, 7204, 8179; 29 F.R. 4842, 5489 and 7571; Delegation of Authority No. 30-VIII, as amended, 28 F.R. 4533, 8303; 29 F.R. 5652, 6292, and 7901 is hereby amended by deleting Subitem I.F. 2, a and b, and substituting the following in lieu thereof:

I \* \* \*  
F. \* \* \*

2. To decline business and disaster loans of any amount.

Effective date: July 10, 1964.

HARRY A. SIEBEN,  
*Regional Director,*  
*Minneapolis Regional Office.*

[F.R. Doc. 64-7857; Filed, Aug. 5, 1964;  
8:45 a.m.]

[Delegation of Authority No. 30-IX  
(Amdt. 5)]

**KANSAS CITY REGIONAL OFFICE**  
**Delegation of Authority To Conduct**  
**Program Activities**

Pursuant to the authority delegated to the Regional Director by Delegation of Authority No. 30 (Revision 8), as amended, 28 F.R. 3228, 7204, 8179; 29 F.R. 4842, 5489, and 7571; Delegation of Authority No. 30-IX, as amended, 28 F.R. 5243, 8303, 29 F.R. 6657, 6656, and 7901 is hereby amended by deleting Subitem I.F. 2, a and b, and substituting the following in lieu thereof:

I \* \* \*  
F. \* \* \*

2. To decline business and disaster loans of any amount.

Effective date: July 10, 1964.

C. I. MOYER,  
*Regional Director,*  
*Kansas City Regional Office.*

[F.R. Doc. 64-7858; Filed, Aug. 5, 1964;  
8:45 a.m.]

[Delegation of Authority No. 30-XI,  
(Amdt. 5)]

**DENVER REGIONAL OFFICE**  
**Delegation of Authority To Conduct**  
**Program Activities**

Pursuant to the authority delegated to the Regional Director by Delegation of Authority No. 30 (Revision 8), as amended, 28 F.R. 3228, 7204, 8179; 29 F.R. 4842, 5489, and 7571; Delegation of Authority No. 30-XI, as amended, 28 F.R. 5223, 8231; 29 F.R. 5653, 6105, and 7902 is hereby amended by deleting Subitem I.F. 2, a and b, and substituting the following in lieu thereof:

I \* \* \*  
F. \* \* \*

2. To decline business and disaster loans of any amount.

Effective date: July 10, 1964.

GEORGE E. SAUNDERS,  
*Regional Director,*  
*Denver Regional Office.*

[F.R. Doc. 64-7859; Filed, Aug. 5, 1964;  
8:45 a.m.]

[Delegation of Authority No. 30-XII, Revision 1 (Amdt. 1)]

**LOS ANGELES REGIONAL OFFICE**

**Delegation of Authority To Conduct Program Activities**

Pursuant to the authority delegated to the Regional Director by Delegation of Authority No. 30 (Revision 8), as amended, 28 F.R. 3228, 7204, 8179; 29 F.R. 4842, 5489, and 7571; Delegation of Authority No. 30-XII, Revision 1, 29 F.R. 9581 is hereby amended by deleting Subitem I.F. 2, a and b, and substituting the following in lieu thereof:

I. \* \* \*  
F. \* \* \*

2. To decline business and disaster loans of any amount.

Effective date: July 10, 1964.

ALVIN P. MEYERS,  
Regional Director,  
Los Angeles Regional Office.

[F.R. Doc. 64-7860; Filed, Aug. 5, 1964; 8:46 a.m.]

[Delegation of Authority No. 30-XIII (Amdt. 8)]

**SEATTLE REGIONAL OFFICE**

**Delegation of Authority To Conduct Program Activities**

Pursuant to the authority delegated to the Regional Director by Delegation of Authority No. 30 (Revision 8), as amended, 28 F.R. 3228, 7204, 8179; 29 F.R. 4842, 5489 and 7571; Delegation of Authority No. 30-XIII, as amended, 28 F.R. 4938, 8231, 10593; 29 F.R. 3253, 5653, 6291, 7571, and 7902, is hereby amended by deleting Subitem I.F. 2, a and b, and substituting the following in lieu thereof:

I. \* \* \*  
F. \* \* \*

2. To decline business and disaster loans of any amount.

Effective date: July 10, 1964.

E. D. PETERSON,  
Acting Regional Director,  
Seattle Regional Office.

[F.R. Doc. 64-7861; Filed, Aug. 5, 1964; 8:46 a.m.]

[Delegation of Authority No. 30-XV, (Amdt. 5)]

**DETROIT REGIONAL OFFICE**

**Delegation of Authority To Conduct Program Activities**

Pursuant to the authority delegated to the Regional Director by Delegation of Authority No. 30 (Revision 8), as amended, 28 F.R. 3228, 7204, 9179; 29 F.R. 4842, 5489 and 7571; Delegation of Authority No. 30-XV, as amended, 28 F.R. 4789, 8180; 29 F.R. 5653, 6105 and 7902 is hereby amended by deleting Subitem I.F. 2, a and b, and substituting the following in lieu thereof:

I. \* \* \*  
F. \* \* \*

2. To decline business and disaster loans of any amount.

Effective date: July 10, 1964.

ROBERT F. PHILLIPS,  
Regional Director,  
Detroit Regional Office.

[F.R. Doc. 64-7862; Filed, Aug. 5, 1964; 8:46 a.m.]

**TARIFF COMMISSION**

[TEA-I-8]

**MUSHROOMS PREPARED OR PRESERVED**

**Notice of Investigation and Hearing**

*Investigation instituted.* Following receipt on July 27, 1964, of a petition from the Mushroom Cannery Committee of the Pennsylvania Cannery and Food Processors Association, the United States Tariff Commission, on the 31st day of July 1964, instituted an investigation under section 301(b)(1) of the Trade Expansion Act of 1962 to determine whether mushrooms prepared or preserved (not including dried), provided for in item 144.20 of the Tariff Schedules of the United States are, as a result in major part of concessions granted thereon under trade agreements, being imported into the United States in such increased quantities as to cause, or threaten to cause, serious injury to the domestic industry or industries producing like or directly competitive products.

*Public hearing ordered.* A public hearing in connection with this investigation will be held beginning at 10 a.m., e.d.s.t., on October 20, 1964, in the Hearing Room, Tariff Commission Building, Eighth and E Streets NW., Washington, D.C. Appearances at the hearing should be entered in accordance with § 201.13 of the Tariff Commission's rules of practice and procedure.

*Inspection of petition.* The petition filed in this case is available for inspection by persons concerned at the office of the Secretary, United States Tariff Commission, Eighth and E Streets NW., Washington, D.C., and at the New York office of the Tariff Commission located in Room 437 of the Customhouse.

By order of the Commission.

Issued: July 31, 1964.

[SEAL] DONN N. BENT,  
Secretary.

[F.R. Doc. 64-7881; Filed, Aug. 5, 1964; 8:47 a.m.]

**INTERSTATE COMMERCE COMMISSION**

**FOURTH SECTION APPLICATIONS FOR RELIEF**

JULY 31, 1964.

Protests to the granting of an application must be prepared in accordance with Rule 1.40 of the general rules of practice (49 CFR 1.40) and filed within

15 days from the date of publication of this notice in the FEDERAL REGISTER.

**LONG-AND-SHORT HAUL**

FSA No. 39172: *Liquefied chlorine gas to Cantonment, Fla.* Filed by O. W. South, Jr., agent (No. A4547), for and on behalf of Louisville and Nashville Railroad Co. Rates on liquefied chlorine gas, in tank carloads, from Redstone Arsenal, Ala., to Cantonment, Fla.

Grounds for relief: Market competition.

Tariff: Supplement 138 to Southern Freight Association, agent, tariff I.C.C. S-194.

FSA No. 39173: *Liquid caustic soda to Jeffersonville, Ind.* Filed by O. W. South, Jr., agent (No. A4548), for interested rail carriers. Rates on liquid caustic soda, in tank carloads, from Anniston, Ala., to Jeffersonville, Ind.

Grounds for relief: Market competition.

Tariff: Supplement 138 to Southern Freight Association, agent, tariff I.C.C. S-194.

FSA No. 39174: *Citrus pomace final syrup from points in Florida.* Filed by O. W. South, Jr., agent (No. A4545), for interested rail carriers. Rates on citrus pomace final syrup, in carloads, from points in Florida, to points in official territory.

Grounds for relief: Short-line distance formula and grouping.

Tariff: Southern Freight Association, agent, tariff I.C.C. S-407.

FSA No. 39175: *Bituminous coal to points in Indiana.* Filed by Illinois Freight Association, agent (No. 260), for interested rail carriers. Rates on bituminous coal, subject to minimum weight of 1,000 tons of 2,000 pounds per shipment, from mine origins in Indiana in Boonville-1 district, to points in Indiana in Chicago, Ill., district located on EJ&E Ry.

Grounds for relief: Barge and barge-rail competition.

Tariff: Supplement 26 to Illinois Freight Association, agent, tariff I.C.C. 999.

By the Commission.

[SEAL] HAROLD D. MCCOY,  
Secretary.

[F.R. Doc. 64-7813; Filed, Aug. 5, 1964; 8:45 a.m.]

[Notice 314]

**MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES**

JULY 31, 1964.

The following letter-notices of proposals to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission, under the Commission's Deviation Rules Revised, 1957 (49 CFR 211.1(c)(8)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 211.1(d)(4)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and

form provided in such rules (49 CFR 211.1(e)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Deviation Rules Revised, 1957, will be numbered consecutively for convenience in identification and protests if any should refer to such letter-notices by number.

#### MOTOR CARRIERS OF PROPERTY

No. MC 2153 (Deviation No. 3), MIDWEST MOTOR EXPRESS, INC., 12th Street and Front Avenue, Bismarck, N. Dak. Carrier's attorney: F. J. Smith, 200 Professional Building, Post Office Box 1436, Bismarck, N. Dak., filed July 2, 1964. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities* with certain exceptions, over a deviation route as follows: from Jamestown, N. Dak., over U.S. Highways 52 and 281 to Carrington, N. Dak., thence over U.S. Highway 52 to junction North Dakota Highway 7, thence over North Dakota Highway 7 to junction U.S. Highway 83, and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: from Jamestown over U.S. Highway 10 to Bismarck, N. Dak., thence over U.S. Highway 83 to junction North Dakota Highway 7, and return over the same route.

No. MC 2153 (Deviation No. 4), MIDWEST MOTOR EXPRESS, INC., 12th Street and Front Avenue Bismarck, N. Dak. Carrier's attorney: F. J. Smith, 200 Professional Building, Post Office Box 1436, Bismarck, N. Dak., filed July 2, 1964. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: from Steele, N. Dak. over North Dakota Highway 3 to Harvey, N. Dak., thence over U.S. Highway 52 to Minot, N. Dak., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: from Steele over U.S. Highway 10 to Bismarck, N. Dak., thence over U.S. Highway 83 to Minot, and return over the same route.

No. MC 3379 (Deviation No. 4), SNYDER BROS. MOTOR FREIGHT, INC., 363 Stanton Avenue, Post Office Box 830, Akron, Ohio, filed July 24, 1964. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: from junction U.S. Highway 21 and Ohio Turnpike (Cleveland Interchange) near Brecksville, Ohio over the Ohio Turnpike (Interstate Highway 80) to junction Interstate Highway 80S near Youngstown, Ohio, thence over Interstate Highway 80S to the Ohio-Pennsylvania State line, and return over the same route, for operating convenience only. The notice

indicates the carrier is presently authorized to transport the same commodities over pertinent service routes as follows: from Akron, Ohio, over U.S. Highway 224 to Deerfield, Ohio, thence over Alternate Ohio Highway 14 to junction Ohio Highway 14, thence over Ohio Highway 14 to the Ohio-Pennsylvania State line; from Akron over Ohio Highway 8 to Cleveland, Ohio, thence over Ohio Highway 14 to Deerfield, thence over Alternate Ohio 14 to junction Ohio Highway 14, thence over Ohio Highway 14 to the Ohio-Pennsylvania State line; and, from Akron over Ohio Highway 176 to junction U.S. Highway 21, thence over U.S. Highway 21 to Cleveland, and return over the same routes.

No. MC 30204 (Deviation No. 8), HEMINGWAY TRANSPORT, INC., 438 Dartmouth Street, New Bedford, Mass., 02740, filed July 19, 1964. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: from junction U.S. Highway 1 and Interstate Highway 95 at Richmond, Va., over Interstate Highway 95 to junction Interstate Highway 95 and U.S. Highway 1 just south of Fredericksburg, Va., and return over the same route, for operating convenience only. The notice indicates that the carrier is authorized to transport the same commodities over a pertinent service route as follows: from Richmond over U.S. Highway 1 via Baltimore, Md., to New York, N.Y., and return over the same route.

#### MOTOR CARRIERS OF PASSENGERS

No. MC 1515 (Deviation No. 183), GREYHOUND LINES, INC. (Southern Greyhound Lines Division), 219 East Short Street, Lexington, Ky., filed July 22, 1964. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage*, over a deviation route as follows: from Gainesville, Va., over Interstate Highway 66 to the junction Interstate Highway 66 and Interstate Highway 495, thence over Interstate Highway 495 to junction U.S. Highway 50, thence, over U.S. Highway 50 to Washington, D.C., and return over the same route, for operating convenience only. The notice indicates that the carrier is authorized to transport passengers and their baggage over pertinent service routes as follows: from Washington over U.S. Highway 1 to Alexandria, Va., thence over Virginia Highway 236 to junction U.S. Highway 50, thence over U.S. Highway 50 to Winchester, Va., thence over U.S. Highway 11 to Lexington, Va.; from junction U.S. Highway 1 and Virginia Highway 350 over Virginia Highway 350 to junction Virginia Highway 236, and from junction U.S. Highway 211 and 50 over U.S. Highway 211 to New Market, and return over the same routes.

By the Commission.

HAROLD D. McCoy,  
Secretary.

[F.R. Doc. 64-7815; Filed, Aug. 5, 1964;  
8:45 a.m.]

[Notice 15]

### APPLICATIONS FOR MOTOR CARRIER "GRANDFATHER" CERTIFICATE OF REGISTRATION

JULY 31, 1964.

The following applications are filed under section 206(a)(7) of the Interstate Commerce Act, as amended October 15, 1962. These applications are governed by Special Rule 1.244, of the Commission's rules of practice published in the FEDERAL REGISTER, issue of December 8, 1962, page 12188, which provides, among other things, that protests to the granting of an application may be filed with the Commission within 30 days after the date of notice of filing of the application is published in the FEDERAL REGISTER. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. Protests shall set forth specifically the grounds upon which they are made and contain a concise statement of the interest of the protestant in the proceeding. Protests containing general allegations may be rejected. A protest filed under these special rules shall be served upon applicant's representative (or applicant, if no practitioner representing him is named). The original and six copies of the protests shall be filed with the Commission.

The Special Rules do not provide for publication of the operating authority, but the applications are available at the Commission's office in Washington, D.C., and the field offices.

Applications not included in this publication will be published at a later date.

#### CALIFORNIA

No. MC 97710 (Sub-No. 5) (REPUBLICATION), filed February 1, 1963, published in FEDERAL REGISTER issue of June 12, 1963, and republished this issue. Applicant: WALTER F. PETERS AND MYRON D. PETERS, a partnership, doing business as PETERS TRUCK LINES, 905 South Main Street, Yreka, Calif., and WALTER F. PETERS, doing business as PETERS TRUCK LINES, 905 South Main Street, Yreka, Calif., joint applicants. Applicant's attorney: Frank Loughran, 100 Bush Street, San Francisco 4, Calif.

NOTE: The purpose of this republication is to show Walter F. Peters, doing business as Peters Truck Lines, as joint applicant.

No. MC 120617 (Sub-No. 1) (REPUBLICATION), filed January 25, 1963, published in FEDERAL REGISTER issue of June 12, 1963, and republished this issue. Applicant: KLING CARTAGE CO., 10197 Cherry Avenue, Fontana, Calif., and ROZAY'S TRANSFER, 2167 East 25th Street, Los Angeles, Calif., 90058, joint applicants. Applicant's attorney: Carl H. Fritze, 1010 Wilshire Boulevard, Los Angeles 17, Calif.

NOTE: The purpose of this republication is to show Rozay's Transfer, as joint applicant.

#### ILLINOIS

No. MC 121141 (Sub-No. 1) (REPUBLICATION), filed January 7, 1963, published in FEDERAL REGISTER of June 12,

1963, and republished this issue. Applicant: PHILIP KLIMAN, doing business as LEAD-WAY MOTOR SERVICE, 2512 West Huron Street, Chicago, Ill., and LEAD-WAY MOTOR SERVICE, INC., 2512 West Huron Street, Chicago, Ill., joint applicants.

NOTE: The purpose of this republication to show Lead Way Motor Service, Inc., as joint applicant.

## NEW YORK

No. MC 9727 (Sub-No. 2) (REPUBLICATION), filed January 7, 1963, published in FEDERAL REGISTER issue of June 12, 1963, and republished this issue. Applicant: GREENE'S MOTOR EXPRESS, INC., 16-20 East End Avenue, Oneonta, N.Y., and FRANK'S-VAN NAMEE'S EXPRESS CORP., 147 North Genesee Street, Utica, N.Y., joint applicants. Applicant's attorney: Herbert M. Canter, Weiler Building, 407 South Warren Street, Syracuse 2, N.Y.

NOTE: The purpose of this republication is to show Frank's-Van Namee's Express Corp., as joint applicant.

No. MC 109308 (Sub-No. 3) (REPUBLICATION), filed January 2, 1963, published in FEDERAL REGISTER issue of June 12, 1963, and republished this issue. Applicant: VAN NAMEE'S EXPRESS, INC., 147 North Genesee Street, Utica, N.Y., and FRANK'S-VAN NAMEE'S EXPRESS CORP., 147 North Genesee Street, Utica, N.Y., joint applicants.

NOTE: The purpose of this republication is to show Frank's-Van Namee's Express Corp., as joint applicant.

No. MC 117452 (Sub-No. 3) (REPUBLICATION), filed January 7, 1963, published in FEDERAL REGISTER issue of June 12, 1963, and republished this issue. Applicant: FRANK'S-SOUTHERN EXPRESS, INC., 16-20 East End Avenue, Oneonta, N.Y., and FRANK'S-VAN NAMEE'S EXPRESS CORP., 147 North Genesee Street, Utica, N.Y., joint applicants.

NOTE: The purpose of this republication is to show Frank's-Van Namee's Express Corp., as joint applicant.

## OKLAHOMA

No. MC 121090 (Sub-No. 1) (REPUBLICATION), filed January 25, 1963, published in FEDERAL REGISTER issue of June 12, 1963, and republished this issue. Applicant: J. LEE SHULER, doing business as SHULER FREIGHT LINE, 23 North Clegern, Oklahoma City, Okla., and SHULER FREIGHT LINES, INC., 23 North Clegern, Oklahoma City, Okla., joint applicants. Applicant's attorney: Charles D. Dudley, 419 Northwest Sixth Street, Oklahoma City 3, Okla.

NOTE: The purpose of this republication is to show Shuler Freight Lines, Inc., as joint applicant.

## TENNESSEE

No. MC 28607 (Sub-No. 1) (REPUBLICATION), filed December 26, 1962, published in FEDERAL REGISTER issue of June 12, 1963, and republished this issue. Applicant: MARION HASKINS, doing business as CENTERVILLE TRUCK LINE, 107 Church Street, Centerville, Tenn., and BILLY J. BUTLER, doing

business as CENTERVILLE TRUCK LINE, 457 Rochelle Drive, Nashville, Tenn., joint applicants.

NOTE: The purpose of this republication is to show Billy J. Butler, doing business as Centerville Truck Line, as joint applicant.

By the Commission.

[SEAL] HAROLD D. McCoy,  
Secretary.

[F.R. Doc. 64-7816; Filed, Aug. 5, 1964;  
8:45 a.m.]

## ORGANIZATION

## Assignment to Boards

JULY 30, 1964.

The Interstate Commerce Commission has amended its Organization Minutes, being assignment of work, business and functions pursuant to section 17 of the Interstate Commerce Act, as amended, issue of March 7, 1961, revised to May 1, 1961 (26 F.R. 4773, 5167, 8434, 10991 and 12789; 27 F.R. 1234, 1747, 2500, 3830 and 9997; and 28 F.R. 198, 896 and 8185, 29 F.R. 3027 and 4935) as follows:

Under the heading *Assignment to Boards*, Item 7.11(a) (1) has been amended by deleting "(other than Joint Board matters)". Item 7.11(a) (1) as amended reads as follows:

Determination of applications under Sections 204(a) (4a), 206, 207, 208, 209, 210, 211, 303(1), 309, 310, 410 (a) to (f), inclusive, and 410 (h) and (i), relating to the issuance of certificates of public convenience and necessity and permits to motor and water carriers, permits to freight forwarders, certificates of exemption to single-state motor carriers, licenses to brokers, and dual operation matters which have not involved the taking of testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

[SEAL] HAROLD D. McCoy,  
Secretary.

[F.R. Doc. 64-7819; Filed, Aug. 5, 1964;  
8:45 a.m.]

[No. MC-C-4483]

HOUSEHOLD GOODS FORWARDERS  
ASSOCIATION OF AMERICA, INC.

## Petition for Declaratory Order

JULY 31, 1964.

Petitioner: Household Goods Forwarders Association of America, Inc.; petitioner's attorney: Alan F. Wohlstetter, One Farragut Square, South, Washington, D.C., 20006.

By petition filed June 18, 1964, petitioner, an association of some forty members, engaged in the forwarding of used household goods in containerized service pursuant to section 402(b) of the Interstate Commerce Act, and on behalf of its members and under section 5(b) of the Administrative Procedure Act, seeks a declaratory order, that will terminate a controversy and remove uncertainty arising from the engagement by certificated household goods carriers in the unregulated transportation of household goods apparently performed

pursuant to the exemption set forth in section 402(b) of the Act. By the instant petition petitioner requests the Commission initiate a proceeding to resolve the following questions: (1) Can a vanline lawfully hold itself out under the terms of its certificate of public convenience and necessity to forward containerized shipments of household goods by rail carrier or general commodities carrier? If so, under what terms and conditions? (2) Can a vanline holding a certificate of public convenience and necessity issued under Part II of the Interstate Commerce Act be accorded the status of an exempt freight forwarder under the definition contained in Part IV of the Interstate Commerce Act, which defines a freight forwarder as any person who performs certain stated functions "otherwise than as a carrier subject to Part II of the Act?" (3) Was it within the contemplation of the Interstate Commerce Commission when it granted national vanline certificates to take from local movers or agents the right to perform limited pickup and delivery of household goods shipments to move in containerized service when there is no prior or subsequent line-haul movement by a vanline?

(4) Can a vanline lawfully transport containerized shipments of household goods under the terms of its operating authority when the accessorial services and stowage of the household goods into the container has been performed by someone other than the vanline or its agent? (5) Can a vanline certificated for the transportation of loose household goods lawfully transport household goods in lift-vans or containers? (6) When a local mover performs local pickup, accessorial services and delivery of containerized household goods shipments, using his own trucks, facilities, and personnel, and where there is no prior or subsequent line-haul movement by a household goods carrier, is the local motor carrier operation that of the local mover or that of the vanline holding nationwide operating authority? (7) If it be concluded that the above-described operation constitutes that of the national vanline, would the local mover's local-based equipment have to be under lease to the national vanline and what degree of control would have to be exercised by the national vanline over the leased equipment; how would compliance be effected with safety and insurance regulations? (8) Can a person whose principal business is that of a local mover and warehouseman, and who does not hold any I.C.C. operating authority, lawfully perform the incidental pickup and delivery of household goods within terminal areas in conjunction with the packing and crating of such shipments when the shipments are to move in interstate or foreign commerce via an exempt freight forwarder or shipper? (9) Can the service above described be performed at negotiated rates as either private carriage or local service? (10) Can a vanline lawfully transport shipments tendered and accepted for freight forwarder service on the same vehicle and on the same trip as shipments tendered and accepted for regulated household goods service? (11) If

I.C.C. operating authority is required to perform the local pickup and delivery of containerized household goods shipments moving interstate and foreign commerce via rail, I.C.C. general commodities carriers and/or ocean carriers subject to the jurisdiction of the Federal Maritime Commission, should this authority now be granted to the local movers who have been performing this service? (12) If it be determined that the public interest warrants the continued performance of the above-described service by the local movers, does the Commission presently have statutory authority to permit the continuance of these operations without onerous and expensive administrative proceedings or is legislative action permitting the "grandfathering" of these local operations required and in the public interest?

(13) Is it lawful or consistent within the public interest and the national transportation policy for a vanline to solicit household goods shipments moving between the same points, both as a vanline and as an unregulated freight forwarder, thus being able to quote two levels of rates for competitive services; one regulated and one unregulated? (14) Can a vanline, operating as an unregulated forwarder engaged in the transportation of containerized used household goods, perform motor carrier origin and destination services in connection with such shipments at less than I.C.C. tariff rates? If the answer to the foregoing question is "No," can the vanline, by any device or means, rebate or take any action which would result in a net payment of less than tariff rates on the unregulated freight forwarder shipments? (15) Can a vanline lawfully prefer its affiliate or subsidiary company engaged in the forwarding of containerized household goods shipments by reason of rates, agency arrangement service or otherwise? (16) Can a vanline lawfully turn over household goods shipments accepted for movement under the terms of its certificate to an exempt freight forwarder for consolidation with shipments of competitive vanlines and for onward movement at volume rates by rail or general commodities carriers? (17) Is the joint carriage of the shipments described in the previous question and the joint ownership by commercial vanlines of the exempt freight forwarder employed contrary to the public interest, inconsistent with the national transportation policy, otherwise in violation of the Interstate Commerce Act, or beyond the scope of the vanlines' antitrust immunity? (18) Is it contrary to the public interest, inconsistent with the national transportation policy, otherwise in violation of the Interstate Commerce Act, or beyond the scope of the vanlines' antitrust immunity to act in concert by publishing rates for the containerized movement of household goods at levels calculated to destroy freight forwarders performing these services?

(19) Is it contrary to the public interest, inconsistent with the national transportation policy, otherwise in violation of the Interstate Commerce Act, or beyond the scope of the vanlines' antitrust

immunity to exert pressure on their agents not to handle shipments of competing exempt freight forwarders (shippers, or in the alternative, to handle this business on such terms as would destroy the use of the freight forwarders' containerized service? (20) Can a certificated household goods carrier quote single factor rates for the transportation of household goods moving between points in the United States, on the one hand, and, points in foreign countries, on the other, either for the U.S. Government or for commercial accounts, which rates do not correspond with any tariff rates on file with the I.C.C.? (21) Can a certificated household goods carrier file section 22 quotations with the U.S. Government which are not related to any full tariff commercial charges on file with the I.C.C.? Any person or persons desiring to participate in this proceeding may, within 30 days from the date of this publication, become a party to this proceeding by filing representation supporting or opposing the relief sought by petitioner.

By the Commission.

[SEAL] HAROLD D. McCoy,  
Secretary.

[F.R. Doc. 64-7820; Filed, Aug. 5, 1964;  
8:45 a.m.]

[Notice 1025]

### MOTOR CARRIER TRANSFER PROCEEDINGS

August 3, 1964.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

Finance Docket No. 23207. By order of July 30, 1964, the Transfer Board approved the transfer to Star Forwarders, Inc., Omaha, Nebr., of the operating rights in Permit No. FF-201, issued September 1, 1950, to Inland Shipping Co., Chicago, Ill., authorizing the transportation in interstate commerce, as a freight forwarder of commodities generally, from points in Michigan, Ohio, Kentucky, Indiana, Illinois, Wisconsin, Minnesota, Iowa, Missouri, and Omaha, Nebr., to Baltimore, Md., for export. Edward G. Bazelon, 39 South La Salle Street, Chicago, Ill., 60603, attorney for applicants.

No. MC-FC 66290. By order of July 30, 1964, the Transfer Board approved the transfer to Pacific Air Freight, Inc., doing business as Wings and Trucks Transportation Co., 2601 Spenard Road,

Anchorage, Alaska, of the "grandfather" operating rights claimed to have been performed by Edward H. Hanby, doing business as Wing's & Truck's Transportation Co., 2601 Spenard Road, Anchorage, Alaska, and the substitution of transferee as applicant in the proceeding assigned No. MC 123343, seeking the issuance of a certificate authorizing the transportation of: General commodities, excluding commodities in bulk and other specified commodities, between points in Alaska within a 25 mile radius of Anchorage, including Anchorage.

No. MC-FC 67002. By order of July 30, 1964, the Transfer Board approved the transfer to Wilely M. Whittaker, Inc., Portland, Oreg., of the operating rights in Certificate No. MC 114095, issued May 27, 1960, to Wilely M. Whittaker, Portland, Oreg., authorizing the transportation, over irregular routes, of: Shingles and shakes, wood, from points in specified counties in Oregon to points in California. Seymour L. Coblenz, 614 Corbett Building, Portland, Oreg., attorney for applicants.

No. MC-FC 67036. By order of July 30, 1964, the Transfer Board approved the transfer to Jones Transfer Co., a corporation, Rockford, Ill., of Certificate No. MC 337, issued April 10, 1943, to Ray Jones, doing business as Jones Transfer, Rockford, Ill., authorizing the transportation of general commodities, excluding household goods and commodities in bulk, over regular routes, between Freeport, Ill., and Chicago, Ill., and return, with service authorized to and from intermediate and off-route points in Illinois, within the Chicago, Ill., commercial zone; between Rockford, Ill., and DeKalb, Ill.; between Rockford, Ill., and Madison, Wis., with service authorized to and from all intermediate points on the above-specified routes. Edward G. Bazelon, 39 South La Salle Street, Chicago 3, Ill., attorney for applicants.

No. MC-FC 67041. By order of July 30, 1964, the Transfer Board approved the transfer to Harry D. Stewart, doing business as Stewart Trucking, Mars, Pa., of the operating rights issued by the Commission February 23, 1964, under Certificate No. MC 13026, to Herbert E. Brooks, doing business as Planet Trucking, Mars, Pa., authorizing the transportation, over irregular routes, of building supplies and construction materials between 9 counties in Pennsylvania, on the one hand, and, on the other, points in Hancock, Brooke, Ohio, Marshall, Wetzel, Monongalia, Marion, and Preston Counties, W. Va., and those in Columbiana, Jefferson, Belmont, Harrison, Carroll, Stark, and Tuscarawas Counties, Ohio; and scrap metals, burlap, and rope, between Carnegie and Pittsburgh, Pa., on the one hand, and, on the other, Wellsburg, and Wheeling, W. Va., and Warren, Youngstown, and Steubenville, Ohio. Arthur J. Diskin, 302 Frick Building, Pittsburgh, Pa., attorney for applicants.

No. MC-FC 67094. By order of July 30, 1964, the Transfer Board approved the transfer to Stanley B. Ranch, doing business as Stanley Ranch Produce, Denver, Colo., of the operating rights in Certifi-

cate No. MC 117990, issued December 22, 1960, to Bill Matoba Trucking Co., Inc., Denver, Colo., authorizing the transportation, over irregular routes, of: Bananas, from New Orleans, La., to Denver, Colo. Herbert M. Boyle, 946 Metropolitan Building, Denver, Colo., 80202, attorney for applicants.

No. MC-FC 67104. By order of July 30, 1964, the Transfer Board approved the

transfer to Air-Freight Trucking Service, Inc., Newark, N.J., of the operating rights in Certificate No. MC 55429, issued February 27, 1963, to Peter Kupselaitis, doing business as G & R Enterprise Trucking, Newark, N.J., authorizing the transportation, over irregular routes, of: General commodities, excluding household goods, commodities, in bulk, and certain specified commodities, between

points in named counties in New Jersey, on the one hand, and, on the other, New York, N.Y. James J. Farrell, 201 Montague Place, South Orange, N.J., practitioner for applicants.

[SEAL] HAROLD D. MCCOY,  
Secretary.

[F.R. Doc. 64-7892; Filed, Aug. 5, 1964; 8:48 a.m.]

CUMULATIVE CODIFICATION GUIDE—AUGUST

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