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PART I

(Part II begins on page 21929)

(Part III begins on page 21951)

HIGHLIGHTS OF THIS ISSUE

This listing does not affect the legal status of any document published in this issue. Detailed table of contents appears inside.

ECONOMIC STABILIZATION—Cost of Living Council, Pay Board, and Price Commission implementation of President's economic stabilization program (3 documents) 21952, 21953

CHILD NUTRITION PROGRAMS—USDA amendments on National School Lunch and Nonfood Assistance Programs; effective 7–1–71 21867

COTTON—USDA establishment of State reserves and county allotments for 1972 crop; effective 11–12–71 21870

SUGAR—Agr. Dept. establishment of 1972 U.S. quotas and requirements; effective 11–16–71 and 1–1–72 21871

TOBACCO—USDA regulation on advance rates for 1971 crop of fire, dark air, and Virginia sun cured; effective 11–16–71 21875

HOUSING LOAN PROGRAMS—FHA-USDA regulations regarding disclosure statements and right to rescind 21877

MAGNETIZED MATERIALS—FAA regulation removing weight limitation; effective 11–17–71 21878

ANTIBIOTIC COMBINATION DRUGS—FDA regulation revoking certification of certain drugs for oral use 21879

FLOOD INSURANCE—HUD additions to insurance eligibility and hazard areas lists (2 documents) 21882

(Continued inside)

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RELOCATION ASSISTANCE—Navy Dept. revision of regulations relating to land acquisition policies; effective 1–2–72 21883

NAVY CONTROLLED AREAS—Navy Dept. regulations relating to entry 21889

CASTOR BEANS—USDA proposal regarding price support program for 1972; comments within 30 days 21894

SOCIAL SECURITY—HEW proposal relating to execution of applications; comments within 30 days 21895

MEDICARE—HEW proposal relating to extension of time for reopening determinations; comments within 30 days 21895

BANK HOLDING COMPANIES—FRS proposal regarding armored car and courier services; hearing 12–10–71 21897

SECURITIES DOCUMENTS—SEC proposal requiring larger type; comments by 11–30–71 21897

LABOR-MANAGEMENT RELATIONS—Labor Dept. proposal to amend regulations; comments within 30 days 21930

HAZARDOUS MATERIAL—Navy Dept. notice of issuance of new standard relating to symbols for packages and containers 21899

ENVIRONMENTAL EDUCATION—HEW notice of closing date for submission of application for financial assistance 21900

AIRPORT FACILITIES—FAA notice of policy statement on funding relocation costs occasioned by construction 21902

AIRFARE AND RATES—CAB notice on IATA agreements 21904

PESTICIDES—EPA notices of filing of petitions for certain pesticide chemicals (3 documents) 21905, 21906

ENVIRONMENT—International Boundary and Water Comm. notices of availability relating to Rio Grande projects (2 documents) 21914, 21915

Contents

AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE

Rules and Regulations

Cotton; State reserves and county allotments 21870
Sugar; requirements and quotas for 1972 continental sugar 21871

AGRICULTURE DEPARTMENT

See also Agricultural Stabilization and Conservation Service; Commodity Credit Corporation; Consumer and Marketing Service; Farmers Home Administration; Food and Nutrition Service.

Rules and Regulations

Affirmative action compliance program; bid conditions for all nonexempt Federal and federally assisted construction contracts 21891

ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS OFFICE

Proposed Rule Making

Labor relations; implementation of Executive Order 11491 21930

ATOMIC ENERGY COMMISSION

Notices

Duke Power Co.; reconstitution of board 21902

CIVIL AERONAUTICS BOARD

Notices

Hearings, etc.:
Allegheny-Mohawk Merger 21903
Delta-Northeast Merger 21903
International Air Transport Association 21904
La Belle Air Freight, Inc. and La Belle International, Inc 21905
Piedmont Aviation, Inc. (2 documents) 21903
Western Air Lines, Inc 21903

COAST GUARD

Rules and Regulations

Drawbridge operation regulations:
Fort Point Channel, Boston, Mass 21890
Passaic River, N.J 21890

COMMERCE DEPARTMENT

See Maritime Administration; National Oceanic and Atmospheric Administration.

COMMODITY CREDIT CORPORATION

Rules and Regulations

Tobacco; loan program advance rates for 1971 crop of fire, dark air, and Virginia sun cured 21875

Proposed Rule Making

Castor beans; price support program for 1972 crop 21894

CONSUMER AND MARKETING SERVICE

Rules and Regulations

Navel oranges grown in Arizona and designated part of California; handling limitation 21874
Olives grown in California; reestablishment of size requirements for 1970–71 olives 21874
Onions grown in south Texas; expenses and rate of assessment 21875

Proposed Rule Making

Avocados grown in Florida; handling limitations 21894
Navel oranges grown in Arizona and designated part of California; proposed size regulation 21894

COST OF LIVING COUNCIL

Rules and Regulations

Coverage, exemptions and classification of economic units 21952

DEFENSE DEPARTMENT

See Navy Department.

EDUCATION OFFICE

Notices

Environmental education program; closing date for submission of applications 21900

(*Continued on next page*)

ENVIRONMENTAL PROTECTION AGENCY

Notices

Pesticide chemicals; filing of petitions:
- BP Chemicals International Ltd ---- 21905
- Mobil Chemical Co ---- 21905
- Shell Chemical Co ---- 21906

FARMERS HOME ADMINISTRATION

Rules and Regulations

Housing loan programs; disclosure statements and right to rescind ---- 21877

FEDERAL AVIATION ADMINISTRATION

Rules and Regulations

Control zones; alteration (2 documents) ---- 21878
Magnetized materials; weight limitations ---- 21878
Transition areas; alteration ---- 21878

Notices

Air traffic control tower at Benedum Airport, Clarksburg, W. Va.; notice of commissioning ---- 21901
Facility relocations occasioned by airport improvements or changes; statement of policy ---- 21902

FEDERAL INSURANCE ADMINISTRATION

Rules and Regulations

Flood insurance; additions to hazard areas and issuance of eligibility lists (2 documents) ---- 21882

FEDERAL POWER COMMISSION

Notices

Hearings, etc.:
- Crum, Lloyd V., Jr ---- 21906
- El Paso Natural Gas Co. (2 documents) ---- 21906, 21907
- Gulf Oil Corp ---- 21907
- Lawrenceburg Gas Transmission Corp ---- 21909
- Mountain Fuel Supply Co ---- 21909
- Tennessee Gas Pipeline Co. and Trunkline Gas Co ---- 21910
- Texas Gas Transmission Corp ---- 21910
- Transwestern Pipeline Co ---- 21910
- United Gas Pipe Line Co ---- 21911
- United Natural Gas Co ---- 21911

FEDERAL RESERVE SYSTEM

Proposed Rule Making

Bank holding companies; interests in nonbanking activities ---- 21897

Notices

Acquisition of bank stock by bank holding company; approvals:
- Exchange Bancorporation, Inc ---- 21911
- First Bancshares of Florida, Inc ---- 21912
- First Security Corp ---- 21912
- Shorebank, Inc ---- 21913
- United Tennessee Bancshares Corp ---- 21914

FISH AND WILDLIFE SERVICE

Rules and Regulations

Prime Hook National Wildlife Refuge, Del.; sport fishing regulations ---- 21893

FOOD AND DRUG ADMINISTRATION

Rules and Regulations

Antibiotic combination drugs; revocation of certification of certain drugs for oral use ---- 21879

FOOD AND NUTRITION SERVICE

Rules and Regulations

Child nutrition programs; National School Lunch Program ---- 21867

GENERAL SERVICES ADMINISTRATION

Rules and Regulations

Regular purchase programs other than Federal supply schedule; miscellaneous amendments ---- 21891

HAZARDOUS MATERIALS REGULATIONS BOARD

Rules and Regulations

Tank cars; specifications; correction ---- 21893

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

See also Education Office; Food and Drug Administration; Social Security Administration.

Notices

Under Secretary et al.; order of succession to act as Secretary ---- 21901

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

See Federal Insurance Administration.

INTERIOR DEPARTMENT

See Fish and Wildlife Service; National Park Service.

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

Notices

Environmental statements; completion and availability:
- Modified Hackney Floodway and closure of Mission Floodway ---- 21914
- Proposed international retamal diversion dam on Rio Grande ---- 21915

INTERNAL REVENUE SERVICE

Proposed Rule Making

Income tax; capital losses; correction ---- 21894

INTERSTATE COMMERCE COMMISSION

Notices

Motor carriers:
- Alternate route deviation notices ---- 21922
- Applications and certain other proceedings ---- 21922
- Transfer proceedings ---- 21924

LABOR DEPARTMENT

See also Assistant Secretary for Labor-Management Relations Office.

Notices

Bibb Manufacturing Co.; investigation regarding certification of eligibility of workers to apply for adjustment assistance ---- 21921
Idaho; termination of extended unemployment compensation ---- 21922

MARITIME ADMINISTRATION

Rules and Regulations

Vessel utilization and performance reports ---- 21892

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Notices

Reddy, Douglas J.; notice of loan application ---- 21899

NATIONAL PARK SERVICE

Rules and Regulations

Lake Mead National Recreation Area, Ariz.-Nev.; aircraft, designated airstrips ---- 21881

Notices

Black Canyon, Gunnison National Monument; notice of intention to issue concession permit ---- 21899
Lake Mead National Recreation Area, Ariz.-Nev.; notice of intention to negotiate concession contract ---- 21899

NAVY DEPARTMENT

Rules and Regulations

Navy controlled areas; regulation of entry ---- 21880
Relocation assistance; revision of land acquisition policies ---- 21883

Notices

Hazardous material control; publication of new standard ---- 21899

PAY BOARD

Rules and Regulations

Stabilization of wages and salaries ---- 21952

PRICE COMMISSION

Rules and Regulations

Price and rent stabilization ---- 21953

SECURITIES AND EXCHANGE COMMISSION

Proposed Rule Making

Registration statements under the Investment Company Act of 1940; proposal requiring larger type ---- 21897

Notices

Hearings, etc.:

Amerada Hess Corp ---- 21915
American General Insurance Co., et al ---- 21915
Asamera Oil Corp. Ltd., et al ---- 21915
Bank of New York Co., Inc., et al ---- 21916
British Petroleum Co. Ltd ---- 21916
Continental Vending Machine Corp ---- 21916
Dolphin's Locker, Inc ---- 21916
Heublein, Inc., et al ---- 21917
Maine Yankee Atomic Power Co., et al ---- 21917
Narragansett Capital Corp ---- 21918
Pennzoil United, Inc., et al ---- 21919
Securities Pacific Overseas Investment Corp ---- 21919
United Farmers and Ranchers, Inc ---- 21920

SOCIAL SECURITY ADMINISTRATION

Proposed Rule Making

Federal health insurance for the aged; extension of time for reopening determinations ---- 21895
Federal old-age, survivors, and disability insurance; execution of applications ---- 21895

TARIFF COMMISSION

Notices

Utica Cutlery Co.; workers' petition for determination of eligibility to apply for adjustment assistance; notice of investigation ---- 21921

TRANSPORTATION DEPARTMENT

See Coast Guard; Federal Aviation Administration; Hazardous Materials Regulations Board.

TREASURY DEPARTMENT

See Internal Revenue Service.

List of CFR Parts Affected

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears following the Notices section of each issue beginning with the second issue of the month.

A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1971, and specifies how they are affected.

6 CFR

101 ---- 21952
201 ---- 21952
300 ---- 21953

7 CFR

210 ---- 21867
220 ---- 21870
245 ---- 21870
722 ---- 21870
811 ---- 21871
907 ---- 21874
932 ---- 21874
959 ---- 21875
1464 ---- 21875
1808 ---- 21877

PROPOSED RULES:

907 ---- 21894
915 ---- 21894
1443 ---- 21894

12 CFR

PROPOSED RULES:

222 ---- 21897

14 CFR

71 (3 documents) ---- 21878
103 ---- 21878

17 CFR

PROPOSED RULES:

270 ---- 21897

20 CFR

PROPOSED RULES:

404 ---- 21895
405 ---- 21895

21 CFR

146a ---- 21879
146c ---- 21879
148m ---- 21879
148n ---- 21879

24 CFR

1914 ---- 21882
1915 ---- 21882

26 CFR

PROPOSED RULES:

1 ---- 21894

29 CFR

PROPOSED RULES:

201 ---- 21930
202 ---- 21930
203 ---- 21930
204 ---- 21930
205 ---- 21930
206 ---- 21930

32 CFR

742 ---- 21883
761 ---- 21889

33 CFR

117 (2 documents) ---- 21890

36 CFR

7 ---- 21881

41 CFR

4-12 ---- 21891
5A-72 ---- 21891
5A-73 ---- 21891
5A-74 ---- 21891

46 CFR

222 ---- 21892

49 CFR

179 ---- 21893

50 CFR

33 ---- 21893

Rules and Regulations

Title 7—AGRICULTURE

Chapter II—Food and Nutrition Service, Department of Agriculture

CHILD NUTRITION PROGRAMS

National School Lunch Program

On August 13, 1971, there was published in the FEDERAL REGISTER (36 F.R. 15125) a notice of proposed rule making to amend the regulations governing the operation of the National School Lunch Program (7 CFR Part 210), the regulations governing the operation of the Nonfood Assistance Program (7 CFR Part 220), and the regulations on Determining Eligibility for Free and Reduced Price Lunches (7 CFR Part 245). Responses to the proposed regulations were received from 295 individuals and organizations. In addition, comments were expressed by members of the Congress and by others in hearings before Congressional Committees. Following such hearings Public Law 92–153 was enacted by the Congress and approved by the President on November 5, 1971. Among other things, Public Law 92–153 authorizes increased Federal funding in fiscal year 1972 to carryout the purposes of sections 4 (general cash-for-food assistance) and 11 (special cash assistance) of the National School Lunch Act and establishes minimum rates of reimbursement under section 11 of the Act. It also provies that, during fiscal year 1972, the Secretary shall reimburse State agencies and local school authorities for free and reduced price lunches served pursuant to eligibility standards established by State educational agencies prior to October 1, 1971.

Set forth below are the principal comments, recommendations, and suggestions submitted and the changes made from the proposed amendments published on August 13. These changes are based on the provisions of Public Law 92–153 to the extent such provisions are relevant.

1. Section 210.2 *Definitions*. The new definition, "Lunches eligible for special cash assistance" is responsive to the provisions of section 5 of Public Law 92–153. It did not appear in the proposed August 13 version.

2. Section 210.4 *Apportionment of funds to States*. Eighty-three respondents indicated dissatisfaction with the method proposed of allocating among the States and advancing section 32 funds. Most of the reasons for such dissatisfaction would seem to be satisfied by the additional funds and increased minimum reimbursement rates provided for in Public Law 92–153. The method of distributing section 32 funds to States for general cash-for-food assistance under paragraph (f) and the method of distributing section 32 funds to States for special cash assistance under paragraph (g) have been modified to the extent required by Public Law 92–153. The average section 4 payment to be provided for Type A lunches served in 1972 is increased from 5 cents to an average of at least 6 cents in accordance with Public Law 92–153. Clarifying changes have been made in paragraphs (a), (d), and (f).

3. Section 210.5 *Payments to States*. Paragraph (a) has been revised to eliminate the monthly limitations in Letters of Credit for funds made available to States under paragraph (a) of § 210.4. In response to comments on the proposed regulations, the method of advancing section 32 funds made available to States under paragraphs (f) and (g) of § 210.4 has been modified.

4. Section 210.11 *Reimbursement payments*. The language of paragraph (b–1) has been changed on the basis of responses received to the proposed regulations. In paragraph (b–2), in response to 37 comments, the month specified was changed from January to November to provide State Agencies more time to effect the first adjustments in assigned rates of reimbursement. It provides that additional adjustments in assigned rates of reimbursement should be made as the year progresses, if additional adjustments are necessary to limit section 4 obligations for the fiscal year to the section 4 funds available for such year. The remaining revisions in this section implement those provisions of Public Law 92–153 which prescribe the minimum rates of special cash assistance reimbursement to be paid for free and reduced price lunches served to children eligible for such lunches. Paragraphs (c), (d), and (d–1) set forth the minimum special cash assistance reimbursement rates authorized by Public Law 92–153 and prescribe the criteria to be used to establish to the satisfaction of the State Agency that a school is an especially needy school and is financially unable to support the service of free and reduced price lunches within the minimum authorized rates of special cash assistance. Paragraphs (c) and (d–1) provide that the per-lunch amount of total reimbursement to a school from general cash-for-food assistance and special cash assistance funds shall not exceed the per-lunch cost of providing a Type A lunch in the school less, in the case of a reduced price lunch, the highest price charged for such a lunch in the school. This provision is based on and is consistent with the provisions of sections 8 and 11(e) of the National School Lunch Act.

5. Section 210.13 *Reimbursement procedure*. Language changes have been made in subparagraph (2) of paragraph (b) to conform to the new definition, "lunches eligible for special cash assistance."

6. Section 210.14 *Special responsibilities of State agencies*. Revised paragraph (g) of the regulations requires State agencies to include information on the number of schools approved as especially needy schools in its monthly report on program operations.

7. Section 220.16 *Requirements for participation*. Fifty-four respondents objected to the proposed 8-month (July through February) reserve of Nonfood Assistance Funds. Many of the respondents apparently overlooked the provision which authorized exceptions to this requirement when approved by FNS. The intent of this regulation is to provide some assurance that sufficient Nonfood Assistance Funds will be available for a reasonable period of time for needy "no program" schools and to preclude committing all available funds to ongoing programs early in the school year. The reserve period was changed to July through January in the final regulations thus reducing the period from 8 to 7 months.

9. Section 245.6 *Applications for free and reduced price lunches*. Seventeen respondents stated that the proposed revision would cause certification delays and increase paperwork. The intent of this amendment is to insure that special cash assistance reimbursement is not provided for lunches served to children who do not meet the school's eligibility standards for free and reduced price lunches. The amendment is not intended to require a reduction in the number of eligible children served free or reduced price lunches. It is intended to clarify a provision in the existing regulations which some schools interpreted as permitting them to disregard eligibility requirements in serving free and reduced price lunches.

Accordingly, the National School Lunch Program regulations, the Nonfood Assistance Program regulations, and the regulations Determining Eligibility for Free and Reduced Price Lunches are amended as follows:

[Amdt. 6]

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. In § 210.2, a new paragraph (h–2) is added as follows:

§ 210.2 Definitions.

* * * * *

(h–2) "Lunches eligible for special cash assistance" means: (1) With respect to fiscal year 1972, free or reduced price lunches served in a participating school under the eligibility criteria of the School Food Authority which had been approved by the State agency, or FNSRO where applicable, prior to October 1, 1971, or, if the School Food Authority is approved for participation in the Program after October 1, 1971, under eligibility criteria approved by the

State agency, or FNSRO where applicable, pursuant to the latest eligibility standards established prior to October 1, 1971, by the State agency, or FNSRO where applicable; and (2) after fiscal year 1972, free or reduced price lunches served in a participating school under the eligibility criteria of the School Food Authority approved by the State agency, or FNSRO where applicable.

* * * * *

2. In § 210.4, the first sentence in paragraph (a) and the first sentence in paragraph (d) are amended and new paragraphs (f) and (g) are added as follows:

§ 210.4 Apportionment of funds to States.

(a) Except as provided in paragraph (f) of this section, any Federal funds made available for general cash-for-food assistance for any fiscal year shall be apportioned among the States in accordance with section 4 of the Act on the basis of two factors: (1) The participation rate for the State, and (2) the assistance need rate for the State. * * *

* * * * *

(d) Except as provided in paragraph (g) of this section, any Federal funds made available for special cash assistance for any fiscal year shall be apportioned among the States in accordance with section 11 of the Act. * * *

* * * * *

(f) Any section 32 funds made available for general cash-for-food assistance during the fiscal year 1972 shall be distributed to State agencies and to FNSRO where applicable, in the amount of 6 cents for each Type A lunch served during such fiscal year in participating schools within the State which is in excess of the number of Type A lunches which can be financed at an average rate of 6 cents for the fiscal year 1972 from the general cash-for-food assistance funds made available to the State agencies, or FNSRO where applicable, under the provisions of paragraphs (a) and (c) of this section.

(g) Any section 32 funds made available for special cash assistance in the fiscal year 1972 shall be distributed to State agencies, and FNSRO where applicable, needing funds in addition to those made available for such fiscal year under paragraphs (d) and (e) of this section to finance special cash assistance reimbursement rates assigned in accordance with the provisions of paragraphs (c), (d), and (d-1) of § 210.11.

3. In § 210.5, paragraph (a) is revised and new paragraphs (c) and (c-1) are added, as follows:

§ 210.5 Payments to States.

(a) The general cash-for-food assistance funds apportioned to any State shall be made available by means of letters of credit issued by FNS to appropriate Federal Reserve Banks in favor of the State agency. Such letters of credit shall be designed to provide funds for the State agency for the operation of the Program in such amounts and at such times as the funds are needed to reimburse school food authorities. As soon as practicable after funds are made available to FNS, FNS shall prepare a letter of credit for each State with which it has an approved agreement and an approved State plan of child nutrition operations. If funds have been authorized by Congress for the operation of the Program under a continuing resolution, letters of credit shall reflect only the amounts authorized for the effective period of the resolution. The State agency shall obtain funds needed to reimburse school food authorities through presentation by designated State officials of a payment voucher on letter of credit (Form FNS 218) to a local commercial bank for transmission to the appropriate Federal Reserve Bank, in accordance with procedures prescribed by FNS and approved by the U.S. Treasury Department. The State agency shall draw only such funds as are needed to pay claims for reimbursement certified for payment and shall use such funds without delay to pay such claims. State agencies shall report information on the status of program funds on a monthly basis to FNS on a form provided by FNS. Program funds shall be made available to the State agency in the District of Columbia by means of Treasury Department checks on the same basis as is prescribed for payments made by letters of credit.

* * * * *

(c) Any section 32 funds for general cash-for-food assistance to which a State agency is entitled under paragraph (f) of § 210.4 shall be made available by means of letters of credit issued by FNS to appropriate Federal Reserve Banks in favor of the State agency. In the case of the District of Columbia, such funds shall be made available by means of Treasury Department checks. No such section 32 funds made available shall be expended by a State agency, or FNSRO where applicable, until the funds made available to it under the provisions of paragraphs (a) and (c) of § 210.4 have been expended.

(c-1) Any section 32 funds for special cash assistance to which a State agency is entitled under paragraph (g) of § 210.4 shall be made available by means of letters of credit issued by FNS to appropriate Federal Reserve Banks in favor of the State agency. In the case of the District of Columbia, such funds shall be made available by means of Treasury Department checks. No such section 32 funds made available shall be expended by the State agency, or FNSRO where applicable, until the funds made available to it under paragraphs (d) and (e) of § 210.4 have been expended.

4. In § 210.11, new paragraphs (b-1) and (b-2) are added, paragraphs (c) and (d) are revised, new paragraphs (d-1) and (e-1) are added; the first sentence of paragraph (f) is amended, and paragraph (g) is revised as follows:

§ 210.11 Reimbursement payments.

* * * * *

(b-1) Within the maximum rate of reimbursement set forth in paragraph (b) of this section, in each fiscal year, the State agency, or FNSRO where applicable, shall initially assign rates of reimbursement at levels which will permit reimbursement from the general cash-for-food assistance funds available under paragraphs (a), (c), and (f) of § 210.4 to the State agency, or FNSRO where applicable, for the total number of Type A and Type C lunches it is estimated will be served in participating schools in the State in such fiscal year. At a minimum, the estimate of the number of Type A and Type C lunches to be served in a fiscal year shall take into account the estimated number of such lunches to be served in schools which are expected to apply and be approved for participation in the Program during such fiscal year and the estimated number of such lunches to be served in schools which participated in the preceding fiscal year.

(b-2) Each fiscal year, promptly following the receipt of claims for reimbursement covering operations for the month of November and for such later months as is necessary, each State agency, or FNSRO where applicable, shall revise its estimates of the total number of Type A and Type C lunches to be served in participating schools in such fiscal year. Based upon such revised estimates, each State agency, or FNSRO where applicable, shall make such adjustments in assigned rates of reimbursement from available general cash-for-food assistance funds as are necessary to permit reimbursement from such funds for the total number of Type A and Type C lunches it is estimated will be served in participating schools in the State in such fiscal year.

(c) A school participating in the Program may be reimbursed from special cash assistance funds for lunches eligible for special cash assistance. Except as provided in this paragraph (c) and in paragraphs (d) and (d-1) of this section, the rate of reimbursement for a free lunch eligible for special cash assistance shall be the lesser of the following: (1) 40 cents or (2) the per-lunch cost of providing a Type A lunch in the school. Except as provided in this paragraph (c) and in paragraphs (d) and (d-1) of this section, the rate of reimbursement for a reduced price lunch eligible for special cash assistance shall be the lesser of the following: (1) 40 cents less the highest price charged for such a reduced price lunch in the school or (2) the per-lunch cost of providing a Type A lunch in the school less the highest price charged for such a reduced price lunch in the school. In no event, however, shall the per-lunch amount of total reimbursement to a school from general cash-for-food assistance funds and special cash assistance funds exceed the per-lunch cost of providing a Type A lunch in the school less, in the case of a reduced price lunch, the highest price charged for such reduced price lunch in the school.

(d) A school participating in the Program may be considered for rates of

reimbursement from special cash assistance funds which are in excess of the rates set forth in paragraph (c) of this section if it is an especially needy school. An especially needy school is one which establishes to the satisfaction of the State agency, or FNSRO where applicable, that it would be financially unable to support the service of lunches eligible for special cash assistance without an increase in the amount of special cash assistance provided for in paragraph (c) of this section because of: (1) The need to serve an especially high percentage of free and reduced price lunches; or (2) unusual costs required to provide a Type A lunch in the school in spite of the observance of good management practices; or (3) other unusual factors indicative of a special financial need. The State Agency, or FNSRO where applicable, shall determine that the impact of such factors on the per-lunch cost of providing a Type A lunch in the school is such that it is financially unable to support the service of lunches eligible for special cash assistance after taking into consideration the per-lunch revenues available for such eligible lunches from general cash-for-food assistance, from special cash assistance provided for in paragraph (c) of this section, from State and local revenues including revenues from the sale of reduced price lunches eligible for special cash assistance, and from the effective utilization of commodities available under Part 250 of this chapter. The State agency, or FNSRO where applicable, shall also determine to its satisfaction that revenues available to support the service of Type A lunches sold at regular prices in the school is sufficient to cover the cost of such service. The State agency, or FNSRO where applicable, shall maintain on file for review the data to support its determination that a school is an especially needy school.

(d-1) The maximum rate of reimbursement to be provided for free lunches eligible for special cash assistance served in an especially needy school shall be the lesser of the following: (1) 60 cents or (2) the per-lunch cost of providing a Type A lunch in the school. The maximum rate of reimbursement to be provided for a reduced price lunch eligible for special cash assistance shall be the lesser of the following: (1) 60 cents less the highest price charged for such a reduced price lunch in a school or (2) the per-lunch cost of providing a Type A lunch in the school less the highest price charged for such a reduced price lunch in the school. In no event, however, shall the per-lunch amount of total reimbursement to an especially needy school from general cash-for-food assistance funds and special cash assistance funds exceed the per-lunch cost of providing a Type A lunch in the school less, in the case of a reduced price lunch, the highest price charged for such a reduced price lunch in the school.

* * * * *

(e-1) At the election of the State agency, or FNSRO where applicable, claims for reimbursement submitted by each School Food Authority for lunches eligible for special cash assistance served in the 5-month period beginning July 1, 1971, and ending November 30, 1971, may be paid at rates of reimbursement from special cash assistance funds authorized under the regulations under this part in effect prior to the issuance of this Amendment No. 6 or at rates of reimbursement from special cash assistance funds authorized under the regulations under this part as amended by Amendment No. 6. In the event that the State agency, or FNSRO where applicable, elects to pay for lunches eligible for special cash assistance served during such 5-month period at the rates of reimbursement from special cash assistance authorized under such regulations in effect prior to the issuance of Amendment No. 6, the provisions of paragraph (g) of this section shall be applicable only for the 7-month period beginning December 1, 1971, and ending June 30, 1972.

(f) Within the funds made available for general cash-for-food assistance under paragraphs (a), (c), and (f) of § 210.4, the last claim of each fiscal year for general cash-for-food assistance submitted by a School Food Authority for a school may be paid at a rate in excess of the assigned rate for that school or in excess of the maximum rate of 12 cents: *Provided, however,* * * *.

(g) Except as provided in paragraph (e-1) of this section, the last claim of each fiscal year for special cash assistance submitted by a School Food Authority for a school which is not an especially needy school may be paid at a rate in excess of the rate authorized in paragraph (c) of this section: *Provided, however,* That the total special cash assistance reimbursement to such school during such fiscal year shall not exceed the lesser of: (1) 40 cents times the number of lunches eligible for special cash assistance served during such fiscal year, less an amount equal to the highest price charged in the school for a reduced price lunch eligible for special cash assistance times the number of reduced price lunches eligible for special cash assistance served in the school during such fiscal year, or (2) the per-lunch cost of providing a Type A lunch in the school times the number of lunches eligible for special cash assistance served in the school during such fiscal year, less an amount determined by adding the total amount of general cash-for-food assistance provided to such school during such fiscal year for such eligible lunches to an amount equal to the highest price charged in the school for a reduced price lunch eligible for special cash assistance times the number of such reduced price lunches served in the school in such fiscal year. Except as provided in paragraph (e-1) of this section, the last claim of each fiscal year for special cash assistance submitted by a School Food Authority for an especially needy school may be paid at a rate in excess of the maximum rate authorized in paragraph (d-1) of this section: *Provided, however,* That the total special cash assistance reimbursement to such school during such fiscal year shall not exceed the lesser of: (1) 60 cents times the number of lunches eligible for special cash assistance served during such fiscal year, less an amount equal to the highest price charged for a reduced price lunch in the school times the number of reduced price lunches eligible for special cash assistance served in the school during such fiscal year, or (2) the per-lunch cost of providing a Type A lunch in the school times the number of lunches eligible for special cash assistance served in the school during such fiscal year, less an amount determined by adding the total amount of general cash-for-food assistance provided to such school during such fiscal year for such eligible lunches to an amount equal to the highest price charged in the school for a reduced price lunch eligible for special cash assistance times the number of such reduced price lunches served in the school in such fiscal year.

5. In § 210.13, subdivisions (iv) and (v) of subparagraph (2) of paragraph (b) are amended as follows:

§ 210.13 Reimbursement procedure.

* * * * *

(b) * * * As a minimum, the claim for reimbursement shall include the following information: * * * (2) the name and address of the School Food Authority and of each school in which the Program was operated, and the following information with respect to each such school: * * * (iv) the total number of reduced price lunches eligible for special cash assistance; (v) the total number of free lunches eligible for special cash assistance; * * *.

6. In § 210.14, paragraphs (g) (2) and (g) (3) are amended as follows:

§ 210.14 Special responsibilities of State Agencies.

* * * * *

(g) Records and reports (1) * * *.

(2) The monthly report required in subparagraph (1) of this paragraph shall for Program schools contain the following information: (i) the month and year being reported, (ii) the number of schools approved for participation in the Program, (iii) the number of participating schools included in the report, (iv) the average daily attendance in such participating schools included in the report, (v) the average daily participation, (vi) the total number of lunches sold to children at regular prices, (vii) the total number of reduced price lunches eligible for special cash assistance, (viii) the total number of free lunches eligible for special cash assistance, (ix) the amount of general cash-for-food assistance obligated from funds made available under § 210.4(a) and from funds made available under § 210.4 (f), (x) the amount of special cash assistance obligated from funds made available under § 210.4(d) and from funds made available under § 210.4(g), and (xi) the number of schools and the average daily attendance in schools approved as especially needy schools under the provisions of § 210.11(d).

(3) The monthly reports covering operations for October and March of each year submitted in accordance with subparagraph (1) of this paragraph shall be accompanied by an estimate of the total number of children in schools participating in the Program who are eligible for a free or reduced price lunch, compiled from the estimates submitted by School Food Authorities with their claims for reimbursement covering operations for October and March of each fiscal year.

§ 210.19 [Amended]

7. In § 210.19, paragraph (b) is amended by adding the following phrase before the period at the end thereof "except when such changes are required by law."

[Amdt. 8]

PART 220—SCHOOL BREAKFAST AND NONFOOD ASSISTANCE PROGRAMS AND STATE ADMINISTRATIVE EXPENSES

In § 220.16, paragraph (b) is revised to read as follows:

§ 220.16 Requirements for participation.

* * * * *

(b) Schools drawing attendance from areas in which poor economic conditions exist that have no equipment or grossly inadequate equipment to operate an adequate feeding program under the National School Lunch Program or the School Breakfast Program shall be selected for participation in the Nonfood Assistance Program on the basis of: (1) The relative need of such schools for assistance in acquiring such equipment, and (2) the amount of funds available to the State agency, or FNSRO where applicable. State agencies, or FNSRO where applicable, have a positive obligation to inform the School Food Authorities having jurisdiction over such schools of the Nonfood Assistance Program and, within available funds, to work with such School Food Authorities to plan for the acquisition of any equipment they need to operate an adequate feeding program in such schools under the National School Lunch Program or the School Breakfast Program. The Nonfood Assistance Program funds made available to the State agency, or FNSRO where applicable, may be obligated at any time during the fiscal year: *Provided, however,* That except when prior approval is obtained from FNS, the State agency, or FNSRO where applicable, shall not obligate before February 1 of each fiscal year more than 50 per centum of such funds for use by schools already participating in the National School Lunch Program or the School Breakfast Program.

* * * * *

[Amdt. 1]

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE LUNCHES

§ 245.6 [Amended]

In § 245.6, paragraph (c) is amended by adding the following three sentences at the end thereof: "Nothing in this paragraph shall be deemed to authorize the State Agency, or FNSRO where applicable, to make reimbursement from special cash assistance funds for all Type A lunches served in a school unless a reasonable basis exists for finding that all such lunches are lunches eligible for special cash assistance. The State Agency, or FNSRO where applicable, shall maintain on file, or cause to be maintained on file, the data used to make such a finding. Such data shall be maintained on file for 3 years after the end of the fiscal year to which they pertain."

Effective date. These amendments shall be effective July 1, 1971.

The reporting and/or recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Dated: November 11, 1971.

RICHARD LYNG,
Assistant Secretary.

[FR Doc.71-16733 Filed 11-16-71;8:49 am]

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

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

PART 722—COTTON

Subpart—1972 Crop of Extra Long Staple Cotton; Acreage Allotments and Marketing Quotas

STATE RESERVES AND COUNTY ALLOTMENTS

Section 722.562 is issued pursuant to the Agricultural Adjustment Act of 1938, as amended (52 Stat. 31, as amended; 7 U.S.C. 1281 et seq.). This section establishes the State reserves and allocation thereof among uses for the 1972 crop of extra long staple cotton. It also establishes the county allotments. Such determinations were made initially by the respective State committees and are hereby approved and made effective by the Administrator, ASCS, pursuant to delegated authority (35 F.R. 19798, 36 F.R. 6907).

Notice that the Secretary was preparing to establish State and county allotments was published in the FEDERAL REGISTER on September 14, 1971 (36 F.R. 18412) in accordance with 5 U.S.C. 553. The views and recommendations received in response to such notice have been duly considered.

In order that farmers may be informed as soon as possible of 1972 farm allotments so that they may make plans accordingly, it is essential that this section be made effective as soon as possible. Accordingly, it is hereby found and determined that compliance with the 30-day effective date requirement of 5 U.S.C. 553 is impracticable and contrary to the public interest, and § 722.562 shall be effective upon filing this document with the Director, Office of the Federal Register.

§ 722.562 State reserves and county allotments for the 1972 crop of extra long staple cotton.

(a) *State reserves.* The State reserves for each State shall be established and allocated among uses for the 1972 crop of extra long staple cotton pursuant to § 722.508 of the regulations for acreage allotments for 1966 and succeeding crops of extra long staple cotton (31 F.R. 6247, 13530, 32 F.R. 5416, 33 F.R. 8427, 16066, 16435, 34 F.R. 5, 808). It is hereby determined that no State reserve is required for trends, abnormal conditions, or small farms. The following table sets forth the State reserve for each State. The table also sets forth the allotment in the State productivity pool which shall not be allocated to counties and farms, as required under § 722.509(a) of the regulations for acreage allotments for 1966 and succeeding crops of extra long staple cotton.

State	State productivity pool	Total State reserve	Allocation from State reserve for: Inequities and hardship cases	New farms and corrections of errors
Arizona	449	13		13
California				
Florida		4		4
Georgia				
New Mexico	25	13	2	11
Texas	59			
U.S. total	533	29	2	27

(b) *County allotments.* County allotments are established for the 1972 crop of extra long staple cotton in accordance with § 722.509 of the regulations for acreage allotments for 1966 and succeeding crops of extra long staple cotton. The following table sets forth the county allotments:

ARIZONA

County	County allotment	Allocation from State reserve for inequity and hardship cases
	Acres	
Cochise	1,301	
Gila	19	
Graham	14,065	
Maricopa	19,491	
Pima	3,086	
Pinal	11,280	
Yuma	1,406	
State	50,648	

CALIFORNIA

County	County allotment	Allocation from State reserve for inequity and hardship cases
Imperial	148	
Riverside	634	
State	782	

FLORIDA

Alachua	64	
Hamilton	6	
Jefferson	2	
Madison	30	
Marion	30	
Suwannee	3	
Union	55	
State	190	

GEORGIA

Berrien	125	
Cook	34	
State	159	

NEW MEXICO

Chaves	65	
Dona Ana	22,440	
Eddy	191	
Hidalgo	31	1
Luna	842	
Otero	51	1
Sierra	256	
State	23,876	2

TEXAS

Brewster	17	
Culberson	410	
El Paso	28,461	
Hudspeth	3,569	
Loving	14	
Pecos	1,188	
Presidio	146	
Reeves	7,127	
Ward	614	
State	41,546	

(Secs. 344, 347, 375, 63 Stat. 670, as amended, 675, as amended, 52 Stat. 66, as amended; 7 U.S.C. 1344, 1347, 1375)

Effective date: Date of filing this document with the Director, Office of the Federal Register.

Signed at Washington, D.C., on November 11, 1971.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.71-16692 Filed 11-12-71;10:13 am]

Chapter VIII—Agricultural Stabilization and Conservation Service (Sugar), Department of Agriculture

SUBCHAPTER B—SUGAR REQUIREMENTS AND QUOTAS

PART 811—CONTINENTAL SUGAR REQUIREMENTS AND AREA QUOTAS

Requirements and Quotas for 1972

Basis and purpose and bases and considerations. This regulation is issued pursuant to the authority vested in the Secretary of Agriculture by the Sugar Act of 1948, as amended (61 Stat. 922, as amended), hereinafter referred to as the "Act". The purpose of Sugar Regulation 811 is to determine pursuant to section 201 of the Act the amount of sugar needed to meet the requirements of consumers in the continental United States for the calendar year 1972, and to establish sugar quotas for the supplying areas in terms of short tons or sugar, raw value, equal to the amount determined to be needed in 1972. Furthermore, this regulation determines and prorates and allocates a deficit in a quota, establishes quantities of certain quotas that may be filled by direct-consumption sugar and establishes a liquid sugar quota.

In accordance with the rule making requirements in 5 U.S.C. 553 there was published in the FEDERAL REGISTER (36 F.R. 20437) a notice of proposed rule making for the issuance of a regulation determining sugar requirements for the continental United States and establishing quotas for the calendar year 1972. Written data, views, or arguments for consideration in connection with the proposed regulation were to be submitted by interested persons prior to November 2, 1971. Thorough consideration has been given to all data, views, and comments received relative to the proposed regulation which are briefly summarized at the end of this statement of bases and considerations.

Subsection 201(a) of the Act requires a determination for each calendar year of the amount of sugar needed to meet the requirements of consumers in the continental United States and a revision of such determination during the calendar year whenever necessary to attain the price objective set forth in subsection 201(b) of the Act.

The price objective is a price for raw sugar which will maintain the same ratio between such price and the average of the parity index (1967=100) and the wholesale price index (1967=100) as the ratio that existed between (1) the simple average of the monthly price objective calculated for the period September 1, 1970, through August 31, 1971, under this section as in effect immediately prior to the date of enactment of the Sugar Act Amendments of 1971 (8.54 cents per pound), and (2) the simple average of such two indexes for the same period (115.4). Adjustments shall be made in the determination of requirements during the period November through February whenever the simple average price for raw sugar over 7 consecutive market days is 3 percent or more above or below the average price objective for the previous 2 calendar months. The percentage is increased to 4 percent for the March through October period.

The distribution of quota sugar in the United States during the 12 months ended August 31, 1971, amounted to 11,220,000 short tons, raw value. That quantity was about 60,000 tons more than the quantity distributed in the preceding 12-month period.

Population is growing at an annual rate of about 1.1 percent. Accordingly population during calendar year 1972 should be about 1.45 percent greater than in the 12-month period ended August 31, 1971. At a constant per capita rate, distribution in 1972 might be expected to approximate 11,390,000 tons. It should be noted, however, that the per capita rate of distribution declined very slightly during the base period.

The cane sugar refining industry customarily has refining losses of about 65,000 tons annually. Therefore, it would appear that new quota supplies of 11,450,000 could have the effect of maintaining refiners' inventories of quota sugar at year end 1972 at the same level as at the beginning of the year.

At this time it is impossible to accurately estimate such inventories at the beginning of 1972 to say nothing of what they might amount to at the end of that year. A number of considerations could affect refiners' inventory investment policies and incidentally those of the manufacturers of sugar-containing products. The actual variation in the inventories of quota sugar during the year could have a significant effect on the quantity of quota sugar supplies needed during 1972.

During the first 10 months of 1971, the domestic price of raw sugar fluctuated from a low 8.29 cents per pound as an average for April to a high of 8.66 cents per pound as an average for August. The average for the 9-month period was 8.48 cents per pound or 4.8 percent more than the 8.09 cents per pound average for the first 9 months of 1970. The price on November 4 was 8.60 cents per pound, or 98.7 percent of the price objective determined pursuant to section 201 of the Act. In developing this determination, consideration has been given to maintaining prices in 1972 that will carry out the price objective set forth in section 201 (b) of the Act.

In consideration of these matters, it is determined that 11.2 million short tons, raw value, is the quantity of sugar needed to meet the requirements of consumers in the continental United States and to attain the price objective of the Act.

A quota of 1,160,000 short tons, raw value, is established herein for Hawaii pursuant to section 202(a)(3) of the Act. Such quota is subject to adjustment pending final data on the production and marketing of sugar by Hawaii in 1971.

The quota for Southern Rhodesia has been withheld pursuant to Executive Order 11322 issued on January 5, 1967, and is prorated herein to Western Hemisphere countries pursuant to section 202(d)(1)(B) of the Act.

The quotas established for all countries except the Republic of the Philippines and Ireland are based on the assumption that each such country will give assurance to the Secretary by letter on or before December 31, 1971 that such country will fill the quota as established for it under section 202 (c)(3) and (d)(1) of the Act for 1972, 1973, and 1974.

The quota for Haiti is based on the assumption that additional information will be submitted which will substantiate its claim that its 1971 quota shortfall was due to force majeure.

It is also determined on the basis of information currently available to the

Department that no reduction is required at this time pursuant to section 202(d)(3) and (4) of the Act in the quotas established herein for other foreign countries. This action is based on the tentative assumption that each such country either will fill its 1971 quota within a reasonable tolerance or that facts will be submitted which will support a finding that the shortfall in the country's 1971 quota was due to force majeure.

In general, sugar production in countries with U.S. sugar quotas is heaviest in the first 5 months of the year while consumption in the United States is greatest in the following 4 months—June through September. Because of storage limitations, many producers in foreign countries are inclined to ship in large quantities of raw sugar during the production season. The desire to minimize carrying costs, especially at this time when interest rates are high, and the need for operating funds during the production season have a similar effect. Furthermore, the raw sugar produced in the mainland cane area is marketed heavily just before and after the turn of the year.

In view of these circumstances and to relate the importation of raw sugar to the needs of the market in an orderly fashion, it is hereby determined that the importation of foreign sugar within the quotas before April 1 will be limited to 1 million short tons, raw value (compared to 950,000 tons in the proposed determination), plus the quantity of sugar imported this year for refining and storage under bond for charge to 1972 quotas. The first quarter limitation on the imports of foreign raw sugar was increased 50,000 tons in recognition of the likelihood that refiners will have greater last quarter deliveries of sugar and less 1971 yearend quota stocks than previously anticipated since some Atlantic and Gulf refiners are now operating.

To recognize the seasonality of production and movement of sugar from the foreign countries, quota allocations to foreign countries for the importation of raw sugar during the first quarter of 1972 will be based primarily on average imports of raw sugar, within quotas, from such foreign countries during the first quarter of the 3-year period 1969 through 1971 and to provide for minimum allocations of 5,000 tons or the quantity applied for whichever is less.

Production of sugar in Puerto Rico is not expected to exceed 435,000 short tons, raw value, while requirements for consumption in Puerto Rico are expected to be of the order of 130,000 tons. It would appear that the quantity of sugar available for shipment to the continental United States would not be more than 305,000 tons. Accordingly a deficit of 550,000 tons in the 855,000 ton quota for Puerto Rico is declared herein and made available to foreign countries by allocating 165,440 tons to the Republic of the Philippines and prorating the balance of 384,560 tons to foreign countries of the Western Hemisphere in proportion to their quotas determined pursuant to section 202.

The following views were received with respect to the proposed determination of sugar requirements and quotas for 1972:

All of the sugarcane and sugar beet producing and processing industries of the United States agreed that initial 1972 sugar requirements should not be established at a level any higher than 11.2 million tons since the Act contemplates that adjustments in the level of sugar requirements be a primary tool to achieve the price objective of the Act and the raw price is currently only 97.1 percent of the price consideration referred to in section 201 of the Act. They supported the limitation of imports during the first quarter of 1972 but were of the opinion that the quantity of 950,000 tons proposed by the Department was too high.

The Sugar Users Group, representing food processing concerns, did not object to the proposed initial requirement level of 11.2 million tons and considered the allocation of part of the anticipated Puerto Rican deficit to be appropriate. The group also believed that the 950,000-ton limitation on raw sugar imports during the first quarter would probably be sufficient to provide consumers with adequate supplies of sugar while achieving the price objective of the Act under normal circumstances, but because of uncertainty regarding the duration of the maritime strike they suggested that first quarter liimtations not be imposed at this time but the need for such limitations be considered later should the maritime strike be terminated during 1971.

Amstar Corp., the largest domestic raw sugar refiner, approved the proposed initial level of requirements as reasonably likely to achieve the objectives of the Sugar Act. The company, however, objected to any limitation on the imports of raw sugar during the first quarter of 1972 because they felt it would interfere with the orderly development of the market conditions contemplated in the recently amended section 202(g) of the Act.

Sec.
811.10 Sugar requirements 1972.
811.11 Quotas for domestic areas.
811.12 Proration and allocation of deficits in quotas.
811.13 Quotas for foreign countries.
811.14 Applicability of quotas.
811.15 Restrictions on importations and marketings within quotas.

AUTHORITY: The provisions of §§ 811.10 through 811.15 under section 403, 61 Stat. 932, 7 U.S.C. 1153; sections 201, 202, 204, 207, 208, 209, 210; 61 Stat. 923, as amended, 924, as amended, 925, as amended, 927, as amended, and 928, as amended; 7 U.S.C. 1111, 1112, 1114, 1117, 1118, 1119, 1120, and Public Law 92-138 approved October 14, 1971.

§ 811.10 Sugar requirements 1972.

The amount of sugar needed to meet the requirements of consumers in the continental United States for the calendar year 1972 is hereby determined to be 11,200,000 short tons, raw value.

§ 811.11 Quotas for domestic areas.

(a) (1) For the calendar year 1972, domestic area quotas limiting the quantities of sugar which may be brought into or marketed for consumption in the continental United States are established, pursuant to section 202(a) of the Act in column (1), and the amounts of such quotas for offshore areas that may be filled by direct-consumption sugar are established, pursuant to section 207 of the Act in column (2), as follows:

Area	Quotas	Direct-consumption Limits
	(Short tons, raw value)	
	(1)	(2)
Domestic beet sugar	3,406,000	No limit
Mainland cane sugar	1,539,000	No limit
Hawaii	1,160,000	38,646
Puerto Rico	855,000	100,000

(2) It is hereby determined pursuant to section 204(a) of the Act that for the calendar year 1972 Puerto Rico will be unable by 550,000 short tons, raw value, to fill its quota established in subparagraph (1) of this paragraph. Pursuant to section 204(b) of the Act for determination of such deficits shall not affect the quotas established in subparagraph (1) of this paragraph.

(b) Of the quantity established in paragraph (a) of this section for Puerto Rico which may be filled by direct-consumption sugar, 126,033 short tons, raw value, may be filled only by sugar principally of crystalline structure.

§ 811.12 Proration and allocation of deficits in quotas.

The deficit in the Puerto Rican quota determined in paragraph (a)(2) of § 811.11 of 550,000 short tons, raw value, is hereby prorated and allocated pursuant to section 204(a) of the Act, by allocating 30.08 percent or 165,440 short tons, raw value to the Republic of the Philippines and by prorating the remaining 384,560 short tons, raw value, to Western Hemisphere countries on the basis of quotas determined herein pursuant to section 202.

§ 811.13 Quotas for foreign countries.

(a) The quotas or prorations for foreign countries limiting the quantities of sugar which may be imported into the continental United States during the calendar year 1972 for consumption therein and the amounts of such quotas and prorations that may be filled by direct-consumption sugar are hereby established as set forth in the following paragraphs (b), (c), (d), and (e) of this section.

(b) For the calendar year 1972, the quota for the Republic of the Philippines is 1,291,460 short tons, raw value, representing 1,126,020 short tons, established pursuant to section 202 of the Act and 165,440 short tons established pursuant to section 204 of the Act. Of the quantity of 1,126,020 short tons established pursuant to section 202 of the Act, only 59,920 short tons, raw value, may be filled by direct-consumption sugar pursuant to section 207(d) of the Act.

(c) For the calendar year 1972, the prorations to individual foreign countries other than the Republic of the Philippines pursuant to section 202 of the Act

are shown in columns (1) and (2) of the following table. In column (3) a portion of the deficit proration in the quota of Puerto Rico amounting to 384,560 short tons, raw value, is herein prorated to Western Hemisphere countries listed in section 202(c)(3)(A) of the Act, on the basis of quotas determined herein pursuant to section 202. Total quotas and prorations are shown in column (4).

Production area	Basic quotas	Temporary quotas and prorations pursuant to Sec. 202 (d) [1]	Deficits and deficits prorations	Total quotas and prorations
	(Short tons, raw value)			
Dominican Republic	401,154	133,424	80,920	615,498
Mexico	354,771	117,906	71,654	544,331
Brazil	345,995	115,078	69,733	530,806
Peru	247,587	82,348	49,943	379,878
West Indies	129,121	42,945	26,046	198,112
Ecuador	51,084	16,991	10,305	78,380
Argentina	47,950	15,948	9,672	73,570
Costa Rica	43,249	14,385	8,724	66,358
Colombia	42,623	14,176	8,598	65,397
Panama	26,639	8,860	5,374	40,873
Nicaragua	40,429	13,447	8,155	62,031
Venezuela	38,548	12,821	7,776	59,145
Guatemala	36,981	12,300	7,460	56,741
El Salvador	26,953	8,965	5,437	41,355
British Honduras	21,311	7,089	4,299	32,699
Haiti	19,431	6,462	3,919	29,812
Bahamas	16,924	5,628	3,414	25,966
Honduras	7,522	2,502	1,517	11,541
Bolivia	4,074	1,356	822	6,252
Paraguay	4,074	1,356	822	6,252
Australia	157,328	42,814		200,142
Republic of China	65,501	17,825		83,326
India	62,994	17,143		80,137
South Africa	44,503	12,111		56,614
Fiji Islands	34,474	9,381		43,855
Mauritius	23,192	6,311		29,503
Swaziland	23,192	6,311		29,503
Thailand	14,416	3,923		18,339
Uganda	11,596	3,156		14,752
Malagasy Republic	9,402	2,559		11,961
Ireland	5,351			5,351
Total	2,358,369	755,011	384,560	3,498,540

[1] Proration of the quotas withheld from Cuba and Southern Rhodesia.

(d) (1) Of the total quotas and prorations for foreign countries established in paragraphs (b) and (c) of this section, an amount not to exceed 1 million short tons, raw value of raw sugar, plus the quantity imported in late 1971 under bond for refining and storage, may be charged against such 1972 quotas and authorized for importation or release from bond from all such foreign countries in accordance with Part 817 of this chapter during the first quarter of 1972. The quantity imported in late 1971 under bond for refining and storage will be released from bond and charged to quotas on January 1, 1972. The quantity, 1 million short tons, raw value, will be authorized for importation and charged to quotas during the first quarter of 1972 as set forth in subparagraphs (2) and (3) of this paragraph (d).

(2) (i) The importation of raw sugar within the annual quotas and the quarterly limitation specified in subparagraph (1) of this paragraph (d) will be authorized on the basis of applications for "Set Aside of Quota" on Form SU-8A or "Sugar Quota Clearance" on Form SU-3 in accordance with the provisions of Part 817 of this chapter, subject to the priorities for countries as provided in subparagraph (3) of this paragraph and the limitations as provided in subdivision (ii) of this subparagraph. Applications to import raw sugar from the Republic of the Philippines must, before final approval within the quantity reserved for the Republic of the Philippines pursuant to subparagraph (3) of this paragraph, be supplemented by certification from the Sugar Quota Administrator for the Government of the Philippines granting the applicant the permission to export sugar to the U.S. market.

(ii) Applications for the importation of sugar during the first quarter received on or before November 19, 1971, will be considered as having been received at the same time.

(3) (i) Allocations of first quarter importations among countries will be made in the following manner but not to exceed as to each country the quantity applied for.

(ii) First priority shall be given to countries by establishing allocations equal to the average of each country's first quarter importations during 1969, 1970, and 1971 as set forth in subparagraph (4) of this paragraph or 5,000 short tons, raw value, whichever is larger: *Provided*, That if the quantity of sugar which may be imported during the first quarter is less than the quantity needed to approve all applications under this first priority, an allocation of the lesser of the amount applied for or 5,000 short tons, raw value, shall be made to each country having less than 5,000 short tons, raw value, average first quarter importations as set forth in subparagraph (4) of this paragraph; and the balance of the quantity of sugar which may be imported during the first quarter under this first priority shall be prorated among the other countries on the basis of average first quarter importations as set forth in subparagraph (4) of this paragraph.

(iii) Second priority shall be given to those countries whose respective accumulated allocations for the first quarter under the first priority as provided in subdivision (ii) of this subparagraph is less than 20 percent of the country's annual quota by making additional allocations to any such country which shall be so limited that the total of the allocations under priorities in subdivisions (ii) and (iii) of this subparagraph during the first quarter for such country as a percentage of its annual quota will not exceed the percentage similarly calculated for any other such country and shall be further limited so that the total quantity which may be imported from such country during the first quarter shall not exceed 20 percent of the country's annual quota.

(iv) Any quantity not allocated under subdivisions (ii) and (iii) of this subparagraph shall be prorated among countries that received allocations less than the full amount applied for, and such additional proration shall be made on the basis of the average imports of sugar from the countries during the first quarter as set forth in subparagraph (4) of this paragraph.

(4) Average importations into the continental United States within quotas, during the first quarter of the years 1969, 1970, and 1971 are as follows:

Country:	*First quarter Short tons, raw value*
Philippines	161,635
Dominican Republic	167,628
Mexico	158,048
Brazil	168,503
Peru	87,213
West Indies	26,602
Ecuador	8,622
Argentina	35,778
Costa Rica	17,855
Colombia	15,700
Panama	6,682
Nicaragua	16,612
Venezuela	12,185
Guatemala	34,499
El Salvador	23,697
British Honduras	4,543
Haiti	0
Bahamas	4,690
Honduras	5,492
Bolivia	73
Paraguay	0
Australia	1,606
Republic of China	3,699
India	2,162
South Africa	31,604
Fiji	1,218
Mauritius	207
Swaziland	288
Thailand	282
Uganda	0
Malagasy Republic	82
Total	997,205

(e) For the calendar year 1972, the quantity of each proration established in paragraph (c) of this section that may be filled by direct-consumption sugar pursuant to section 207(e) of the Act is as follows:

Country	Short tons, raw value
Ireland	5,351
Panama	3,817

(f) For the calendar year 1972, the quota for liquid sugar for foreign countries as a group is 2 million gallons of sirup of cane juice of the type of Barbados molasses, limited to liquid sugar containing soluble nonsugar solids (excluding any foreign substance that may have been added or developed in the product) of more than 5 percent of the total soluble solids, which is not to be used as a component of any direct-consumption sugar but is to be used as molasses without substantial modification of its characteristics after importation.

§ 811.14 Applicability of quotas.

(a) All sugar and liquid sugar marketed or imported into the continental United States is subject to the provisions of Part 816 or Part 817 of this chapter which prescribe the time, manner, and conditions under which quotas and prorations are filled by the marketing and importation of sugar or liquid sugar.

(b) The quantitative limitations established by §§ 811.11 to 811.13, inclusive, do not apply to sugar or liquid sugar marketed or imported pursuant to section 211 and 212 of the Act in accordance with the provisions of Part 816 or Part 817 of this chapter.

§ 811.15 Restrictions on importations and marketings within quotas.

Subject to the provisions of Parts 816 and 817 of this chapter all persons are prohibited from bringing or importing into or marketing in the continental United States, (a) any sugar or liquid sugar from any country for which no quota is established or in excess of or after the applicable quota or quantity set forth in §§ 811.11 to 811.13 inclusive has been filled, or (b) any sugar or liquid sugar as direct-consumption sugar from any country for which no direct-consumption sugar limitation is established or after the direct-consumption portion of the applicable quota has been filled.

Effective date. Parts of this regulation provide for contractual agreements between importers of sugar and the Department which must be finalized in ample time to insure orderly marketing of sugar early in 1972. The regulation not only applies to sugar imported or marketed beginning January 1, 1972, but also to any sugar imported prior thereto for refining, storage and subsequent release within 1972 quotas as may be provided for by regulation. Accordingly, it is hereby found to be impracticable and not in the public interest to comply with the 30-day effective date requirements in 5 U.S.C. 553. The aspects of § 811.13 relating to the submission and approval or acceptance of applications shall be effective when filed with the FEDERAL REGISTER and all other provisions of this regulation shall become effective January 1, 1972.

Signed at Washington, D.C., on November 12, 1971.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.71-16757 Filed 11-16-71;8:51 am]

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

[Navel Orange Reg. 238]

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

Limitation of Handling

§ 907.538 Navel Orange Regulation 238.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907, 35 F.R. 16359), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The recommendations by the Navel Orange Administrative Committee reflect its appraisal of the crop and current and prospective marketing conditions. The committee estimates the 1971-72 season crop of Navel oranges at 41,700 carlots. It further estimates that the demand in regulated market channels will require about 72 percent of this volume, and the remaining 28 percent will be available for utilization in export, processing, and other outlets. The volume and size composition of the crop are such that ample supplies of the more desirable sizes are available to satisfy the demand in regulated channels. Therefore, the smaller sizes of oranges should be eliminated from regulated market channels so as to assure consumers of desirable sizes of fruit and to improve returns to growers consistent with declared policy of the act.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held two open meetings during the past week, after giving due notice thereof, to consider supply and market conditions for Navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at these meetings; the recommendations and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meetings were held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this regulation will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meetings were held on October 26, and October 29, 1971.

(b) *Order.* (1) During the period November 17, 1971, through December 16, 1971, no handler shall handle any Navel oranges grown in District 1 or District 3, which are of a size smaller than 2.20 inches in diameter, which shall be the largest measurement at a right angle to a straight line running from the stem to the blossom end of the fruit: *Provided,* That not to exceed 5 percent, by count, of the Navel oranges contained in any type of container may measure smaller than 2.20 inches in diameter.

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

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

Dated: November 11, 1971.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[FR Doc.71-16734 Filed 11-16-71;8:49 am]

PART 932—OLIVES GROWN IN CALIFORNIA

Reestablishment of Size Requirements for 1970-71 Olives for Limited Use

Notice is hereby given of the approval of amendment, as hereinafter set forth, of the rules and regulations (Subpart—Rules and Regulations; 7 CFR 932.108-932.161; 36 F.R. 16185, 19113, 20217) currently effective pursuant to the applicable provisions of the marketing agreement, as amended, and Order No. 932, as amended (7 CFR Part 932, 36 F.R. 20355), regulating the handling of olives grown in California, hereinafter

referred to collectively as the "order." This is a regulatory program effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The amendment of said rules and regulations was unanimously recommended by the members of the Olive Administrative Committee, established under said marketing agreement and order as the agency to administer the terms and provisions thereof.

The amendment involves processed 1970–71 crop olives that have been carried over for utilization in the production of the limited use (halved, sliced, quartered, or chopped or minced) styles of canned ripe olives. Such olives are hereby excepted from the current more stringent size requirements for processed olives for limited use if they (1) were processed prior to September 1, 1971, and are identified and segregated from any olives processed after August 31, 1971, (2) meet the size requirements hereinafter specified which are the same as the requirements that expired on August 31, 1971, and (3) are utilized in the production of limited use styles (halved, sliced, quartered, or chopped or minced) of canned ripe olives during the period November 15, 1971, through August 31, 1972. The current grade requirements of the order, as modified by § 932.149 for the chopped or minced style, will apply to the olives involved.

Certain handlers are holding a relatively small tonnage of processed 1970–71 crop olives which they wish to utilize in the production of limited use styles of canned ripe olives. Said processed olives are of sizes required by the expired § 932.153 for 1970–71 processed olives for limited use. Current requirements specify larger minimum sizes for processed olives for limited use—the same sizes as are applicable for whole or pitted styles. This amendment reflects a desire, by the committee, to provide a period during which handlers will be permitted to retrieve the maximum economic value of 1970–71 limited use size processed olives by converting them into limited use styles of canned ripe olives under the same grade and size requirements that were in effect when they were processed. The size requirements provided herein will provide consumers with limited use styles of canned ripe olives consistent with (1) the overall quality of the 1970–71 crop, and (2) improving returns to producers pursuant to the declared policy of the act.

It is hereby found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in public rule making procedure because (1) the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, (2) this amendment reestablishes the same size requirements for 1970–71 processed olives for limited use as were in effect during 1970–71, and (3) this amendment relieves restrictions currently applicable to the handling of processed 1970–71 California olives for limited use.

Therefore, the rules and regulations are hereby amended by adding a new § 932.153a *Reestablishment of 1970–71 size requirements for 1970–71 olives for limited use* reading as follows:

§ 932.153a Reestablishment of 1970–71 size requirements for 1970–71 olives for limited use.

(a) During the period November 15, 1971, through August 31, 1972, any handler may use processed olives of the respective variety groups in the production of halved, sliced, quartered, or chopped or minced styles of canned ripe olives if such processed olives meet the grade requirements specified in § 932.52(a)(1), as modified by § 932.149 (36 F.R. 20217), and the following requirements:

(1) The olives shall have been processed prior to September 1, 1971;

(2) The olives shall be identified and kept separate and apart from any olives processed after August 31, 1971;

(3) Variety group 1 olives, except the Ascolano, Barouni, and St. Agostino varieties shall be of a size which individually weigh 1/88th pound: *Provided,* That not to exceed 15 percent of the olives in any lot or sublot may be smaller than 1/88th pound;

(4) Variety group 1 olives of the Ascolano, Barouni, or St. Agostino varieties shall be of a size which individually weigh 1/105th pound: *Provided,* That not to exceed 35 percent of the olives in any lot or sublot may be smaller than 1/105th pound;

(5) Variety group 2 olives, except the Obliza variety, shall be of a size which individually weigh 1/150th pound: *Provided,* That not to exceed 30 percent of the olives in any lot or sublot may be smaller than 1/150th pound;

(6) Variety group 2 olives of the Obliza variety shall be of a size which individually weigh 1/140th pound: *Provided,* That not to exceed 10 percent of the olives in any lot or sublot may be smaller than 1/140th pound.

It is hereby found that good cause exists for not postponing the effective date hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) the handling of olives is now in progress and to be of maximum benefit the provisions of this amendment should become effective on the date specified herein, (2) the effective date hereof will not require of handlers any preparation that cannot be completed prior thereto, (3) this amendment was unanimously recommended by members of the Olive Administrative Committee, and (4) this amendment relieves restrictions, during the period November 15, 1971, through August 31, 1972, on the handling of California olives processed prior to September 1, 1971.

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

Dated: November 12, 1971.

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

[FR Doc.71-16786 Filed 11-16-71;8:52 am]

PART 959—ONIONS GROWN IN SOUTH TEXAS

Expenses and Rate of Assessment

Notice of rule making regarding the proposed expenses and rate of assessment, to be effective under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR Part 959; 34 F.R. 6439) regulating the handling of onions grown in designated counties in South Texas, was published in the September 30, 1971, FEDERAL REGISTER (36 F.R. 19170). This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.). The notice afforded interested persons an opportunity to submit written data, views, or arguments pertaining thereto not later than 30 days following publication in the FEDERAL REGISTER. None was filed.

After consideration of all relevant matters, including the proposals set forth in the aforesaid notice, which were recommended by the South Texas Onion Committee, established pursuant to the said marketing agreement and this part, it is hereby found and determined that:

§ 959.212 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred during the fiscal period ending July 31, 1972, by the South Texas Onion Committee for its maintenance and functioning, and for such purposes as the Secretary determines to be appropriate, will amount to $54,000.

(b) The rate of assessment to be paid by each handler in accordance with the marketing agreement and this part shall be one-half cent ($0.005) per 50-pound container of onions, or equivalent quantity, handled by him as the first handler thereof during said fiscal period.

(c) Unexpended income in excess of expenses for the fiscal period ending July 31, 1972, may be carried over as a reserve.

(d) Terms used in this section have the same meaning as when used in the said marketing agreement and this part.

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

Dated: November 11, 1971.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[FR Doc.71-16731 Filed 11-16-71;8:49 am]

Chapter XIV—Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

PART 1464—TOBACCO

Subpart A—Tobacco Loan Program

ADVANCE GRADE RATES FOR PRICE SUPPORT OF 1971 CROPS

On October 5, 1971, there was published in the FEDERAL REGISTER (36 F.R. 19389) a notice of proposed rule making

setting forth the proposed price support advance rates for 1971 crop Fire-cured, Dark air-cured, and Virginia sun-cured tobacco. Interested parties were given the opportunity to submit within 30 days data, views, and recommendations with regard to the proposed loan rates.

No unfavorable comments have been received, and the proposed advance rates are hereby adopted without change and are set forth below. The material previously appearing under the section numbers shown below remains applicable to the crop to which each refers.

Effective date: Date of filing with the Office of the Federal Register.

Signed at Washington, D.C., on November 12, 1971.

KENNETH E. FRICK,
Executive Vice President,
Commodity Credit Corporation.

Sec.
1464.17 1971 crop—Virginia Fire-cured tobacco, type 21, advance schedule.
1464.18 1971 crop—Kentucky-Tennessee, Fire-cured tobacco, types 22 and 23, advance schedule.
1464.19 1971 crop—Dark air-cured tobacco, types 35 and 36, advance schedule.
1464.20 1971 crop—Virginia sun-cured, type 37 tobacco, advance schedule.

AUTHORITY: The provisions of §§ 1464.17–1464.20 issued under sec. 4, 62 Stat. 1070, as amended, sec. 5, 62 Stat. 1072, secs. 101, 106, 401, 403, 63 Stat. 1051, as amended, 1054, sec. 125, 70 Stat. 198, 74 Stat. 6; 7 U.S.C. 1441, 1445, 1421, 1423, 7 U.S.C. 1813, 15 U.S.C. 714b, 714c.

§ 1464.17 1971 crop—Virginia Fire-cured tobacco, type 21—advance schedule.[1]

[Dollars per hundred pounds, farm sales weight]

Grade	Length 46	Length 45	Length 44	Length 43
A1F	66.25	66.25		
A2F	62.25	63.25		
A1D	66.25	66.25		
A2D	62.25	63.25		
B1F	64.25	64.25		
B2F	60.25	60.25	53.25	
B3F	52.25	53.25	51.25	41.25
B4F	47.25	49.25	47.25	41.25
B5F	41.25	42.25	41.25	36.25
B1D	64.25	64.25		
B2D	59.25	60.25	53.25	
B3D	50.25	52.25	49.25	42.25
B4D	44.25	47.25	44.25	40.25
B5D	41.25	42.25	41.25	39.25
B3M	46.25	48.25	45.25	41.25
B4M	43.25	46.25	44.25	39.25
B5M	39.25	41.25	40.25	34.25
B3G	44.25	45.25	44.25	38.25
B4G	42.25	43.25	42.25	39.25
B5G	39.25	40.25	39.25	33.25
C1L	70.25	70.25		
C2L	66.25	66.25	57.25	
C3L	57.25	58.25	54.25	
C4L	49.25	51.25	49.25	
C5L	43.25	44.25	43.25	
C1F	70.25	70.25		
C2F	66.25	66.25	57.25	
C3F	56.25	59.25	52.25	
C4F	51.25	53.25	51.25	
C5F	45.25	48.25	46.25	
C2D	43.25	45.25	42.25	
C5D	34.25	35.25	34.25	
C3M	46.25	48.25	48.25	
C4M	43.25	46.25	44.25	
C5M	40.25	41.25	40.25	
C3G	40.25	43.25	40.25	
C4G	38.25	41.25	39.25	
C5G	36.25	39.25	37.25	
C3D	42.25	42.25	41.25	
C4D	39.25	40.25	39.25	

Grade		Grade	
X1L	51.25	X3M 45	43.25
X2L	50.25	X4M	45.25
X3L	49.25	X4M 45	40.25
X4L	46.25	X5M	41.25
X5L	43.25	X5M 45	37.25
X1F	52.25	X3G	44.25
X2F	50.25	X3G 45	41.25
X3F	49.25	X4G	41.25
X4F	47.25	X4G 45	38.25
X5F	44.25	X5G	36.25
X1D	47.25	X5G 45	34.25
X2D	44.25	N1L	33.25
X3D	43.25	N1D	32.25
X4D	41.25	N1G	32.25
X5D	37.25	N2	23.25
X3M	47.25		

[1] Only the original producer is eligible to receive advances. Tobacco graded "W" (doubtful keeping order), "No-G" (no grade), "U" (unsound), "D" (damaged), or scrap will not be accepted. The advance rate for grades of 47 length shall be the same as those for such grades in 46 length. The association is authorized to deduct 25 cents per 100 pounds to apply against overhead cost.

§ 1464.18 1971 crop—Kentucky-Tennessee Fire-cured tobacco, types 22 and 23—advance schedule.[1]

[Dollars per hundred pounds, farm sales weight]

Grade	Length 46	Length 45	Length 44	Length 43
A1F	69	69		
A2F	64	64		
A3F	56	56		
A1D	69	69		
A2D	64	64		
A3D	56	56		
B1F	60	60	55	
B2F	57	57	53	
B3F	53	53	50	44
B4F	50	50	47	40
B5F	46	46	43	37
B1D	59	59	54	
B2D	56	56	52	
B3D	55	55	52	45
B4D	49	49	46	39
B5D	45	45	41	35
B3M	51	51	47	42
B4M	47	47	43	36
B5M	41	41	36	31
B3VF	50	50	46	39
B4VF	48	48	45	38
B5VF	44	44	41	34
B3G	51	51	48	39
B4G	46	46	42	34
B5G	42	42	37	32
C1L	60	60	56	
C2L	57	57	54	
C3L	56	56	52	46
C4L	53	53	50	44
C5L	50	50	48	41
C1F	60	60	56	
C2F	57	57	54	
C3F	56	56	53	46
C4F	53	53	50	43
C5F	51	51	47	40
C1D	60	60	55	
C2D	52	52	48	
C3D	49	49	46	40
C4D	44	44	42	36
C5D	43	43	41	34
C3M	51	51	48	42
C4M	47	47	46	40
C5M	45	45	43	35
C3VF	52	52	49	43
C4VF	49	49	47	41
C5VF	47	47	45	36
C3G	47	47	44	39
C4G	44	44	40	35
C5G	40	40	37	34

[1] Only the original producer is eligible to receive advances. Tobacco graded "No-G" (no grade), "U" (unsound), "D" (damaged), or scrap will not be accepted. Tobacco graded "W" (doubtful keeping order) will be accepted at advance rates 20 percent below the advance rates otherwise applicable. The advance rate for grades of 47 length shall be the same as those for such grades in 46 length.

Grade	Proposed price	Grade	Proposed price
X1L	52	X5D	40
X2L	50	X3M	46
X3L	49	X4M	43
X4L	46	X5M	40
X5L	44	X3VF	47
X1F	51	X4VF	46
X2F	49	X5VF	42
X3F	48	X3G	44
X4F	46	X4G	40
X5F	44	X5G	37
X1D	50	N1L	30
X2D	48	N1D	36
X3D	45	N1G	34
X4D	43	N2	30

§ 1464.19 1971 crop—Dark air-cured tobacco, types 35 and 36—advance schedule.[1]

[Dollars per hundred pounds, farm sales weight]

Grade	Length 46	Length 45	Length 44
A1F	60	60	
A1R	60	60	
A2F	56	56	
A2R	56	56	
A3F	51	51	
A3R	51	51	
B1F	60	60	53
B1R	55	55	53
B1D	55	55	53
B2F	52	52	51
B2R	51	51	50
B2D	51	51	50
B3F	50	50	48
B3R	48	48	47
B3D	48	48	47
B3M	47	47	46
B3G	46	46	45
B4F	47	47	46
B4R	46	46	45
B4D	47	47	46
B4M	43	43	43
B4G	43	43	43
B5F	43	43	43
B5R	43	43	43
B5D	42	42	41
B5M	39	39	38
B5G	39	39	38
C1L	56	56	55
C1F	56	56	55
C1R	54	54	53
C2L	55	55	54
C2F	54	54	53
C2R	52	52	51
C3L	53	53	52
C3F	52	52	50
C3R	49	49	47
C3M	47	47	46
C3G	48	48	46
C4L	49	49	48
C4F	49	49	48
C4R	44	44	43
C4M	41	41	40
C4G	42	42	41
C5L	42	42	40
C5F	43	43	43
C5R	39	39	38
C5M	38	38	37
C5G	38	38	37

[1] Only the original producer is eligible to receive advances. Tobacco graded "No-G" (no grade), "U" (unsound), "D" (damaged) or scrap will not be accepted. Tobacco graded "W" (doubtful keeping order) will be accepted at advance rates 20 percent below the advance rates otherwise applicable. Grades marked with the special factor "BH" shall have an advance rate 20 percent below the advance rate otherwise applicable without such special factor. Type 35 grades marked with the special factor "BL" shall have an advance rate 20 percent below the advance rate otherwise applicable without such special factor. The advance rate for grades of 47 length shall be the same as those for such grades in 46 length.

Grade	Proposed loan rate prices	Grade	Proposed loan rate prices
T3F	43	X3R	45
T3R	43	X3D	46
T3D	43	X3M	43
T3M	42	X3G	42
T3G	41	X4L	47
T4F	38	X4F	46
T4R	39	X4R	41
T4D	39	X4D	41
T4M	37	X4M	40
T4G	36	X4G	38
T5F	31	X5L	44
T5R	31	X5F	44
T5D	31	X5R	39
T5M	30	X5D	39
T5G	30	X5M	39
X1L	52	X5G	35
X1F	52	N1L	38
X1R	52	N2L	32
X2L	50	N1R	33
X2F	50	N2R	30
X2R	49	N1G	32
X3L	49	N2G	30
X3F	47		

§ 1464.20 1971 crop—Virginia sun-cured tobacco, type 37—advance schedule.[2]

[Dollars per hundred pounds, farm sales weight]

Grade	Length 46	Length 45	Length 44
A1F	64.25	64.25	62.25
A2F	60.25	60.25	57.25
A3F	57.25	57.25	54.25
A1R	65.25	65.25	62.25
A2R	61.25	61.25	58.25
A3R	58.25	58.25	55.25
B1F	64.25	65.25	57.25
B2F	61.25	63.25	58.25
B3F	54.25	57.25	54.25
B4F	48.25	52.25	50.25
B5F	42.25	43.25	42.25
B1R	64.25	65.25	58.25
B2R	61.25	63.25	58.25
B3R	55.25	57.25	54.25
B4R	48.25	51.25	49.25
B5R	44.25	45.25	43.25
B1D	63.25	63.25	58.25
B2D	62.25	62.25	57.25
B3D	52.25	53.25	51.25
B4D	46.25	47.25	46.25
B5D	41.25	43.25	41.25
B3M	46.25	48.25	45.25
B4M	45.25	48.25	45.25
B5M	39.25	42.25	41.25
B3G	45.25	49.25	46.25
B4G	43.25	46.25	45.25
B5G	40.25	41.25	40.25
C1L	62.25	63.25	55.25
C2L	56.25	57.25	52.25
C3L	54.25	55.25	52.25
C4L	46.25	49.25	47.25
C5L	40.25	41.25	40.25
C1F	62.25	63.25	55.25
C2F	56.25	58.25	54.25
C3F	52.25	55.25	52.25
C4F	46.25	51.25	48.25
C5F	39.25	42.25	41.25
C1R	59.25	59.25	53.25
C2R	53.25	53.25	49.25
C3R	47.25	47.25	45.25
C4R	41.25	43.25	41.25
C5R	38.25	37.25	38.25
C3M	42.25	45.25	44.25
C4M	39.25	43.25	41.25
C5M	37.25	41.25	39.25
C3G	37.25	40.25	37.25
C4G	35.25	39.25	37.25
C5G	30.25	32.25	31.25

[2] Only the original producer is eligible to receive advances. Tobacco graded "W" (doubtful keeping order), "No-G" (no grade), "U" (unsound), "D" (damaged), or scrap will not be accepted. The association is authorized to deduct 25 cents per 100 pounds to apply against overhead cost.

Grade	Loan rate	Grade	Loan rate
T3F	43.25	X4F	44.25
T4F	41.25	X5F	39.25
T5F	35.25	X1R	48.25
T3R	43.25	X2R	45.25
T4R	41.25	X3R	41.25
T5R	36.25	X4R	40.25
T3D	41.25	X5R	32.25
T4D	39.25	X3D	37.25
T5D	33.25	X4D	35.25
T3M	41.25	X5D	29.25
T4M	38.25	X3M	43.25
T5M	32.25	X4M	40.25
T3G	43.25	X5M	38.25
T4G	41.25	X3G	41.25
T5G	35.25	X4G	38.25
X1L	50.25	X5G	34.25
X2L	48.25	N1L	25.25
X3L	45.25	N2L	18.25
X4L	43.25	N1R	27.25
X5L	38.25	N2R	19.25
X1F	50.25	N1G	27.25
X2F	49.25	N2G	19.25
X3F	46.25		

[FR Doc.71-16785 Filed 11-16-71;8:53 am]

Chapter XVIII—Farmers Home Administration, Department of Agriculture

SUBCHAPTER A—GENERAL REGULATIONS

[FHA Instruction 440.6]

PART 1808—NONDISCRIMINATION IN MULTIPLE-UNIT HOUSING

PART 1808—TRUTH-IN-LENDING-DISCLOSURE STATEMENTS AND NOTICE OF RIGHT TO RESCIND

Subchapter A, Chapter XVIII, Title 7, Code of Federal Regulations is amended by deleting Part 1808, "Nondiscrimination in Multiple-Unit Housing." (31 F.R. 14127, November 4, 1966.) Part 1808 is hereby vacated.

Subchapter A, General Regulations is amended by adding a new Part 1808 Truth-in-Lending—Disclosure Statements and Notice of Right to Rescind.

The new Part 1808 reads as follows:

Sec.
1808.1 General.
1808.2 Scope.
1808.3 Loan disclosure statement.
1808.4 Credit sale disclosure statement.
1808.5 Notice of right to rescind.

AUTHORITY: The provisions of this Part 1808 issued under section 108, 82 Stat. 150, 15 U.S.C. 1607, sec. 339, 75 Stat. 318, 7 U.S.C. 1989, sec. 510, 63 Stat. 437, 42 U.S.C. 1480, sec. 4, 64 Stat. 100, 40 U.S.C. 442, sec. 602, 78 Stat. 528, 42 U.S.C. 2942, sec. 301, 80 Stat. 379, 5 U.S.C. 301; Order of Act. Sec. of Agr. 36 F.R. 21529, Order of Asst. Sec. of Agr. for Rural Development and Conservation 36 F.R. 21529; Order of Dir., OEO, 29 F.R. 14764.

§ 1808.1 General.

This part is issued to comply with the Truth-in-Lending Act and Regulation Z of the Federal Reserve System. The purpose is to assure that individuals are informed of the cost of credit, and their right to rescind certain real estate transactions within a period of 3 business days following the date of consummation of the transaction or disclosure of the information hereinafter specified, whichever is later.

§ 1808.2 Scope.

This part applies to all natural persons (individuals) who apply for loans, assumptions, or credit sales, except Rural Rental Housing (RRH) loans to individuals. This part does not apply to applicants which are corporations, associations, cooperatives, public bodies, partnerships, or other organizations.

(a) *Loans and assumptions.* Disclosure is required of the amount of the loan or assumption, amount of finance charge (interest and any mortgage or loan insurance charge), other charges included in the loan or assumption, annual percentage rate of finance charge, number and amounts and due dates of periodic payments, description of required or retained security instruments and security property, and rescission rights where applicable.

(b) *Credit sales.* Disclosure is required of the sale price, cash downpayment, finance charge, amount financed, annual percentage rate of finance charge, number and amounts and due dates of periodic payments, description of security instruments and property, and rescission rights where applicable.

§ 1808.3 Loan disclosure statement.

Form FHA 440-41, "Loan Disclosure Statement," will be used to give required information in loan and assumption cases, as indicated in the Form.

§ 1808.4 Credit sale disclosure statement.

Form FHA 440-42, "Credit Sale Disclosure Statement," will be used to give required information in credit sale cases, as indicated in the Form.

§ 1808.5 Notice of right to rescind.

Form FHA 440-43, "Notice of Right to Rescind," will be used in loan, assumption, and credit sale cases in which a mortgage or other lien is taken or retained on the real property on which the borrower resides or expects to reside except as provided in the next sentence. Form FHA 440-43 will not be used when a first mortgage or other first lien is taken or retained as security in the purchase or construction of the borrower's residence. This Form also will be used in all Delaware and Pennsylvania cases in which the promissory note contains a confession of judgment provision. Two copies of Form FHA 440-43 will be delivered or mailed to the persons as indicated in the Form.

Dated: November 8, 1971.

JOSEPH HASPRAY,
Deputy Administrator,
Farmers Home Administration.

[FR Doc.71-16732 Filed 11-16-71;8:49 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airspace Docket No. 71-GL-12]

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

Alteration of Control Zone

The purpose of this amendment to Part 71 of the Federal Aviation regulations is to alter the Cleveland, Ohio (Cuyahoga County Airport), control zone so the hours of operation may vary with the operating hours of the tower.

The Cuyahoga County Airport control zone is based on communications provided by the control tower at this airport. Thus, if the hours of the tower operations change, the zone should also be changed. At present, the zone is designated on specific times and does not allow any change. The alteration of the control zone designation is minor and in the public interest, therefore notice and public procedure hereon are unnecessary.

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

In § 71.171 (36 F.R. 2055), the following control zone is amended to read:

CLEVELAND, OHIO (CUYAHOGA COUNTY AIRPORT)

Within a 5-mile radius of the Cuyahoga County Airport (latitude 41°34'00" N., longitude 81°29'30" W.); within 2½ miles each side of the 050° bearing from the Cuyahoga County RBN extending from the 5-mile radius zone to 5 miles northeast of the RBN, excluding the portion within the Cleveland, Ohio (Burke-Lakefront Airport) control zone. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will, thereafter, be continuously published in the Airman's Information Manual.

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

Issued in Des Plaines, Ill., on October 29, 1971.

R. O. ZIEGLER,
Acting Director, Great Lakes Region.

[FR Doc.71-16724 Filed 11-16-71;8:49 am]

[Airspace Docket No. 71-GL-15]

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

Alteration of Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation regulations is to alter the Newberry, Mich., transition area.

The VOR Runway 11 instrument approach procedure to the Luce County Airport has been revised by changing the procedure turn from the south to the north side of the inbound course. This requires the revision of the 1200-foot transition area. This action will decrease the amount of controlled airspace substantially, imposing no additional burden on any person, therefore notice and public procedure hereon are unnecessary.

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

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

NEWBERRY, MICH.

That airspace extending upward from 700 feet above the surface within a 6½-mile radius of the Luce County Airport (latitude 46°18'30" N., longitude 85°27'00" W.); within 3 miles each side of the 301° bearing from Luce County Airport, extending from the 6½-mile radius to 8 miles northwest of the airport; and within 3 miles each side of the 103° bearing from Luce County Airport, extending from the 6½-mile-radius area to 8 miles east of the airport; and that airspace extending upward from 1,200 feet above the surface within 9½ miles northeast and 4½ miles southwest of the 301° bearing from Luce County Airport, extending from the airport to 18½ miles northwest of the airport; and within 4½ miles north and 9½ miles south of the 103° bearing from Luce County Airport, extending from the airport 18½ miles east of the airport, excluding the portion which overlies the Sault Ste. Marie, Mich. transition area.

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

Issued in Des Plaines, Ill., on October 29, 1971.

R. O. ZIEGLER,
Acting Director, Great Lakes Region.

[FR Doc.71-16726 Filed 11-16-71;8:49 am]

[Airspace Docket No. 71-GL-13]

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

Alteration of Control Zone

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the Willoughby, Ohio, control zone so the hours of operation may vary with the operating hours of the tower.

The Lost Nation Airport control zone is based on the communications provided by the control tower at this airport. Thus, if the hours of the tower operations change, the zone should also be changed. At present, the zone is designated on specific times and does not allow any change. The alteration of the control zone designation is minor and in the public interests, therefore notice and public procedure hereon are unnecessary.

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

In § 71.171 (36 F.R. 2055), the following control zone is amended to read:

WILLOUGHBY, OHIO

Within a 5-mile radius of the Lost Nation Airport (latitude 41°40'45" N., longitude 81°23'45" W.); within 4 miles each side of the 088° bearing from the Lost Nation RBN extending from the 5-mile radius zone to 12 miles east of the RBN; within 3 miles each side of the 268° bearing from the RBN extending from the 5-mile radius zone to 8.5 miles west of the RBN; excluding the portion within the Cleveland, Ohio (Cuyahoga County Airport) control zone. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will, thereafter, be continuously published in the Airman's Information Manual.

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

Issued in Des Plaines, Ill., on October 29, 1971.

R. O. ZIEGLER,
Acting Director, Great Lakes Region.

[FR Doc.71-16725 Filed 11-16-71;8:49 am]

[Docket No. 11416; Amdt. No. 103-11]

PART 103—TRANSPORTATION OF DANGEROUS ARTICLES AND MAGNETIZED MATERIALS QUANTITY LIMITATIONS

Quantity Limitations

The purpose of this amendment to Part 103 of the Federal Aviation Regulations is to permit magnetized materials to be transported in weights in excess of 50 pounds when such material is carried in inaccessible cargo pits or bins on an aircraft subject to that part.

Section 103.19(c) of the Federal Aviation Regulations prohibits the carriage of more than 50 pounds net weight of any article subject to Part 103 (other than an article specified in paragraphs (a) and (b) of that section) in any inaccessible cargo pit or bin on an aircraft.

The Air Transport Association (ATA) has petitioned the FAA to amend § 103.19(c) and specifically exempt magnetized materials from the weight limitation imposed by paragraph (c) of that section.

Sections 103.29 and 103.31(d) prescribe requirements for the shipment by air of magnetized materials to insure that they are properly marked and packaged, and that their affect upon the magnetic compass or compass master unit of the instrument equipment is taken into account. We agree with the petitioner that §§ 103.29 and 103.31(d) are adequate to insure the safe operation of an aircraft carrying magnetized materials, since they are not hazardous materials and are not inherently dangerous.

Part 103 does not impose any net weight limitation on magnetized materials when carried in an accessible location in an aircraft and safety considerations do not justify imposing such a limitation when they are carried in an inaccessible cargo pit or bin. In our opinion, therefore, the applicability of the weight limitation of § 103.19(c) to

magnetized materials is unnecessary and contrary to the intent of that regulation.

Accordingly, the FAA has determined that an amendment to § 103.19(c) excluding magnetized materials from its applicability is appropriate and will not adversely affect safety.

Since this amendment removes an unnecessary and unintended restriction, I find that notice and public procedure hereon are unnecessary and good cause exists for making this amendment effective on less than 30 days' notice.

In consideration of the foregoing, § 103.19(c) of the Federal Aviation regulations is amended to read as follows, effective November 17, 1971:

§ 103.19 Quantity limitations.

* * * * *

(c) No person may carry more than 50 pounds net weight of any article that is subject to this part (other than an article specified in paragraph (a) or (b) of this section and magnetized materials) in any inaccessible cargo pit or bin of any aircraft.

(Secs. 313(a), 601, 604, Federal Aviation Act of 1958, 72 Stat. 752, 775, 778; 49 U.S.C. 1354, 1421, and 1424; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on November 9, 1971.

K. M. SMITH,
Acting Administrator.

[FR Doc.71-16723 Filed 11-16-71;8:48 am]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER C—DRUGS

PART 146a—CERTIFICATION OF PENICILLIN AND PENICILLIN-CONTAINING DRUGS

PART 146c—CERTIFICATION OF CHLORTETRACYCLINE (OR TETRACYCLINE) AND CHLORTETRACYCLINE- (OR TETRACYCLINE-) CONTAINING DRUGS

PART 148m—OLEANDOMYCIN

PART 148n—OXYTETRACYCLINE

Certain Antibiotic Combinations; Final Order Ruling on Objections and Requests

An order was published in the FEDERAL REGISTER of September 12, 1970 (35 F.R. 14392), to become effective in 40 days, amending Parts 146a, 146c, 148m, and 148n of the antibiotic drug regulations by repealing provisions for certification of drugs for oral use in man containing antibiotics in combination with antihistamines and/or analgesics and/or decongestants. Thirty days were allowed for filing proper objections to the order, and a showing of reasonable grounds for a hearing.

Objections and a request for a hearing were submitted by Lederle Laboratories Division, American Cyanamid Co., and Bristol Laboratories, Inc., Division Bristol-Myers Co. No other objections or request for a hearing were filed.

The medical presentations of Lederle and Bristol have been considered, and the Commissioner of Food and Drugs concludes that there is no genuine and substantial issue of fact requiring a hearing and that the legal arguments are insubstantial, all as explained in detail below.

I. *Drugs.* The drugs involved all contain an antibiotic in combination with an antihistamine and/or an analgesic and/or a decongestant and/or an antipyretic and/or a stimulant.

A. No objections were received with respect to the following drugs:

1a. Tain Tablets containing triacetyloleandomycin equivalent to 125 milligrams oleandomycin, 12.5 milligrams phenylpropanolamine hydrochloride, 6.25 milligrams pheniramine maleate, 6.25 milligrams pyrilamine maleate, and carbaspirin calcium equivalent to 300 milligrams aspirin per tablet; and

1b. Tain Oral Suspension containing triacetyloleandomycin equivalent to 125 milligrams oleandomycin, 12.5 milligrams phenylpropanolamine hydrochloride, 6.25 milligrams pheniramine maleate, 6.25 milligrams pyrilamine maleate, and 150 milligrams acetaminophen per 5 milliliters; both marketed by Dorsey Laboratories, Division of The Wander Co., Northeast U.S. 6 and Interstate 80, Lincoln, Nebr. 68501.

2. Novahistine with Penicillin Capsules containing 200,000 units potassium penicillin G, 12.5 milligrams pheniramine maleate, and 10 milligrams phenylephrine hydrochloride per capsule; marketed by Pitman-Moore, Division of Dow Chemical Co., Post Office Box 1656, Indianapolis, Ind. 46206.

3a. Tao-AC capsules containing triacetyloleandomycin equivalent to 125 milligrams oleandomycin, 120 milligrams phenacetin, 30 milligrams caffeine, and 150 milligrams salicylamide per capsule;

3b. Tao-AC capsules containing triacetyloleandomycin equivalent to 125 milligrams oleandomycin, 120 milligrams phenacetin, 30 milligrams caffeine, 150 milligrams salicylamide, and 15 milligrams buclizine hydrochloride per capsule; and

3c. Tetracydin Capsules containing 125 milligrams tetracycline hydrochloride, 120 milligrams phenacetin, 30 milligrams caffeine, and 150 milligrams salicylamide per capsule; all three marketed by J. B. Roerig, Division Chas. Pfizer & Co., Inc., 235 East 42d Street, New York, N.Y. 10017.

4. V-Kor tablets containing potassium phenoxymethyl penicillin equivalent to 62.5 milligrams phenoxymethyl penicillin; pyrrobutamine, as the naphthalene disulfonate, 7.5 milligrams; methapyrilene hydrochloride, as the hydroxybenzoyl benzoate, 12.5 milligrams; cyclopentamine hydrochloride, as the hydroxybenzoyl benzoate, 6.25 milligrams; aspirin 114 milligrams; phenacetin 80 milligrams; and caffeine 16 milligrams; marketed by Eli Lilly & Co., Box 618, Indianapolis, Ind. 42605.

5. Pen-Vee-cidin Capsules containing phenoxymethyl penicillin 62.5 milligrams, salicylamide 194 milligrams, promethazine hydrochloride 6.25 milligrams, phenacetin 130 milligrams, and mephentermine sulfate 3 milligrams; marketed by Wyeth Laboratories, Post Office Box 8299, Philadelphia, Pa. 19101.

6. Terracydin Capsules containing oxytetracycline hydrochloride equivalent to 125 milligrams oxytetracycline, 120 milligrams phenacetin, 150 milligrams salicylamide, and 30 milligrams caffeine; marketed by Pfizer Laboratories, Division of Chas. Pfizer & Co., Inc., 235 East 42d Street, New York, N.Y. 10017.

B. Objections were received with respect to the following drugs:

1a. Achrocidin Compound Syrup containing tetracycline equivalent to 125 milligrams tetracycline hydrochloride, 120 milligrams phenacetin, 150 milligrams salicylamide, 25 milligrams ascorbic acid, and 15 milligrams pyrilamine maleate per 5 milliliters; and

1b. Achrocidin Compound Tablets containing 125 milligrams tetracycline hydrochloride, 120 milligrams phenacetin, 30 milligrams caffeine, 150 milligrams salicylamide, and 25 milligrams chlorothen citrate per tablet; both marketed by Lederle Laboratories, Division of American Cyanamid Co., Post Office Box 500, Pearl River, N.Y. 10965.

2a. Tetrex-APC with Bristamin Capsules containing tetracycline phosphate complex equivalent to 125 milligrams tetracycline hydrochloride, 25 milligrams phenyltoloxamine citrate, 150 milligrams aspirin, 120 milligrams phenacetin, and 30 milligrams caffeine per capsule; and

2b. Tetrex-AP Syrup containing tetracycline equivalent to 125 milligrams tetracycline hydrochloride, 120 milligrams acetaminophen, and 12.5 milligrams phenyltoloxamine citrate per 5 milliliters; both marketed by Bristol Laboratories, Inc., Division of Bristol-Myers Co., Post Office Box 657, Syracuse, N.Y. 13201.

3a. Syndecon Tablets containing potassium phenethicillin equivalent to 62.5 milligrams phenethicillin, phenylephrine hydrochloride 2.5 milligrams, phenylpropanolamine hydrochloride 10 milligrams, chlorpheniramine maleate 1.25 milligrams, and acetaminophen 120 milligrams; and

3b. Syndecon for Oral Solution, containing in 5 milliliters, potassium phenethicillin equivalent to 62.5 milligrams phenethicillin, phenylephrine hydrochloride 2.5 milligrams, phenylpropanolamine hydrochloride 10 milligrams, phenyltoloxamine citrate 3.75 milligrams, chlorpheniramine maleate 1.25 milligrams, and acetaminophen 120 milligrams; both drugs marketed by Bristol Laboratories, Division of Bristol-Myers Co., Thompson Road, Post Office Box 657, Syracuse, N.Y. 13201.

II. *Recommended uses.* All these products were introduced and gained popularity as preparations for the relief of symptoms and prevention of complications of the common cold. In 1962, an expert panel chaired by Harry F. Dowling, M.D., met to consider the use of these drugs for these conditions.

The panel concluded that there is no acceptable evidence that any antimicrobial agents are of value in the treatment of the common cold or any other upper respiratory viral infection in preventing bacterial complications in patients with common colds who are otherwise healthy; that such antimicrobial agents should not be used; that when prophylactic therapy of respiratory infections is justified, the antimicrobial agent must be one that is relatively free of inherent toxicity, that the antibiotic in such drugs will have no effect on the cold itself; and there is insufficient clinical evidence to show that the antibiotic would be of value in the prevention of complicating infections of a cold. August 17, 1963, 28 F.R. 8471)

These products were relabeled as a result of the Dowling Committee findings and are now recommended for use in the prophylaxis or control of infections caused by organisms sensitive to the antibiotic component, together with concomitant relief of symptoms for which analgesic, antipyretic, mild cerebral and respiratory stimulant, or antihistamine activity is indicated or for symptomatic relief of the common cold.

The recommended treatment schedule for the products for which objections were filed are as follows:

Product	*Treatment Schedule*
Achrocidin Compound Syrup	Adults—2 capsules or teaspoonsful at onset of symptoms, then 2 capsules or teaspoonsful 3 to 4 times daily for 3 to 5 days.
Achrocidin Compound Tablets	Children—Total daily dose equivalent to 10–20 mg. per lb. of body weight.
Tetrex-APC with Bristamin Capsules	Adults—2 capsules at onset of symptoms, then 2 capsules 4 times a day. Children, Ages 6–12—one-half adult dose.
Tetrex-AP Syrup	Adults—2 teaspoonsful four times a day. Children, Ages 6–12—one-half adult dose.
Syndecon Tablets Syndecon for Oral Solution	2 tablets or teaspoonsful 3 or 4 times daily.

III. *The data to support claims of effectiveness.* In response to the notice, Lederle Laboratories Division submitted a few affidavits; a survey of physician specialists who use and prescribe Achrocidin; and documents relating to the publication in the FEDERAL REGISTER of August 17, 1963 (28 F.R. 84711), of the proposal to delete from the list of oral drugs acceptable for certification antibiotics in combination with analgesic substances, antihistamines, and caffeine as a result of the Dowling committee recommendations. Bristol Laboratories, Inc., submitted blood-level studies purporting to show the bioavailability of the antibiotic component in Tetrex-AP Syrup and Tetrex-APC with Bristamin Capsules in comparison to the antibiotic component alone. No other data was submitted.

A. *The affidavits.* Drs. Anderson, Busby, and Chancey are physicians who have prescribed Achrocidin for tetracycline-sensitive bacterial respiratory infections and have found the drug to be safe and effective for such infections and the relief of symptoms of allergy, etc. These opinions are based on observation of their patients and comparison with untreated similar cases and with patients treated with tetracycline or other antibiotics alone. No reference is made to any adequate and well-controlled clinical investigations to support these opinions.

Those affidavits agree with that of Dr. Latiolais, which suggests that Achrocidin is beneficial because it combines several drugs for several uses in one dosage form and, thus, reduces the possibility of patient misuse or error. It is recognized by the Food and Drug Administration that combination drugs have a place in the medical armamentarium. However, reduction in the possibility of patient misuse or error, standing alone, does not insure that place. Various other factors must also obtain, such as added usefulness over one component alone, and a showing that each drug in the combination provides an advantage, as combined, for all doses, for the duration suggested, and for a significant patient population. (Statement of General Policy and Interpretation, § 3.86 "Fixed-Combination Prescription Drugs for Humans" (36 F.R. 20037, October 15, 1971.))

Dr. Lasagna's affidavit states that a combination of drugs, each of which is known to be efficacious, can be presumed to be as effective as if each of the component drugs were administered separately, providing biological availability is established. This presumes too much. Bioavailability studies are pertinent when considering the efficacy of a second drug of generic equivalency to one shown to be effective by adequate and well-controlled clinical investigations. However, there is no basis to presume that antagonistic, synergistic, or other reactions between the components of the fixed-ratio combination drugs here involved will not occur in the absence of adequate and well controlled clinical investigations to support the presumption. In addition, there is no showing that these fixed ratio combination drugs provide an added usefulness over one component alone, nor has it been shown that each drug in the combination provides an advantage, as combined, for all doses, for the duration suggested, and for a significant patient population. In the absence of such a showing, biological availability is irrelevant.

B. *The survey.* Lederle submitted a "survey" of 274 physicians, qualified as Specialists, most of whom find Achrocidin safe and effective. None of these physicians state that their opinion is based on adequate and well controlled clinical investigations. In addition, 6.9 percent of those surveyed were pediatricians; none of their comments mentions the well known fact that it is inappropriate to use tetracycline in children. Also, 11.6 percent of those surveyed are obstetricians, none of whom mention the hazard to the fetus of using tetracycline in the latter part of pregnancy. Some of the comments refer to the effectiveness of Achrocidin for influenza and colds, despite the fact that both are caused by viruses for which tetracycline is ineffective. Several of the physicians comment that the availability of Achrocidin saves them the bother of having to write more than one prescription. Physician convenience, in the absence of adequate data, does not constitute proof of efficacy.

C. *The bioavailability data.* Bristol Laboratories, Inc. submitted blood-level studies to show that the tetracycline in Tetrex-AP Syrup and in Tetrex-APC with Bristamin Capsules is as bioavailable as in Tetrex Syrup and Capsules, both of which consist of tetracycline alone. This data does not relate to the bioavailability of the other ingredients in addition to tetracycline. Biocomparability may be accepted in lieu of clinical studies only for a product identical to one which has previously been established as efficacious by adequate clinical studies. No adequate clinical studies exist establishing the efficacy of any of these combination drugs.

IV. *The requirement of adequate and well controlled clinical investigations.* No reports of adequate and well controlled clinical investigations were submitted. Both Lederle Laboratories Division and Bristol Laboratories, Inc., state that the requirements of adequate and well controlled clinical investigations to support claims of efficacy for a drug specified in 21 CFR 130.12 should be abandoned as inapplicable to these fixed-ratio combination drugs. They contend that, because of the dissimilar conditions for which these drugs are recommended and the variables involved with such multiple-component drugs, studies to determine the efficacy of these drugs cannot be devised within the guidelines of the regulations.

It is precisely because of the variables involved that presumptions of efficacy based on efficacy of the components when administered singly and/or use of the product for a number of years cannot be made, and that adequate and well controlled clinical investigations are required.

As a general rule, diseases are often accompanied by uncomfortable symptoms and side effects of the disease. Upper respiratory infections are no exception. Many people suffering from upper respiratory infection also experience varying degrees of headache, stuffy and runny nose, difficult and painful swallowing, swollen glands, throbbing sinus pain, fever, sensation of pressure, insomnia, etc. These signs and symptoms are variable with the patient and condition, transitory in nature, and may be treated, as needed, when the symptoms

appear with such drugs as antihistamines, antipyretics, analgesics, and decongestants for symptomatic relief. The patient is able to tell when the symptom reappears and to take appropriate medication then. Absent symptoms, no medication is required.

The infection, however, is treated with an antiinfective drug, to which the bacteria causing the infection are susceptible. Antibiotics do not relieve symptoms as such, do not act upon the patient but on the microorganisms, and are effective only if sufficiently high blood levels are provided to affect the bacteria. In order to attain consistently high blood levels, the antibiotics must be given at spaced intervals of time and there is no reappearance of or lack of symptom by which a patient can tell whether the antibiotic is being effective.

These observations are particularly pertinent here.

The dosage schedules recommended for these products for adults is two capsules or teaspoonsful three or four times a day, generally every 6 hours, based on the antibiotic content. This results in daily dosages of the antibiotics in these products in the ranges generally recommended as effective for the types of bacterial infections of the upper respiratory tract due to sensitive organisms for which these products are recommended.

However, there is no showing that the recommended dosage schedule results in effective dosages of the other components in these fixed-ratio combination drugs.

For example, the time interval between recommended doses for these products, while appropriate for the antibiotic constituents, is too long for the analgesic and antipyretic components, which must be given every 3 to 4 hours to produce an adequately sustained analgesic response. These products are recommended for three or four times a day, which is approximately every 6 hours.

In addition, the analgesic and antipyretic constituents are employed in inadequate amounts to produce the claimed effect. For example, the amount of phenacetin provided by the recommended dosages for Achrocidin Compound Tablets and Syrup and Tetrex-APC with Bristamin Capsules is 240 milligrams. This is an ineffective dose compared to the 600 milligram effective dose.

Similarly, while there is evidence that even in doses of 600 milligrams, salicylamide has no useful analgesic effect in mild to moderate pain, Achrocidin Compound Tablets and Syrup employ a recommended dose of 300 milligrams of salicylamide.

The usual therepeutic dose of acetaminophen is 650 milligrams. The recommended dose for Tetrex-AP Syrup and Syndecon Tablets and Syndecon for Oral Solution results in 240 milligrams. And, while the average cup of coffee contains 100–150 milligrams of caffeine, Achrocidin Compound Tablets and Tetrex-APC with Bristamin Capsules only provide 60 milligrams of caffeine per recommended dose. There is no evidence that 60 milligrams of caffeine exerts any analgesic activity or potentiates the action of analgesics or has any effect as a bronchodilator to provide relief from tightness of chest or to ease difficult breathing which may be associated with upper respiratory infections.

V. *Legal objections.* The legal objections raised to the proposed order have been resolved in Upjohn Co. v. Finch, 422 F. 2d 944 (C.A. 6, 1970); Ciba-Geigy Corp. v. Richardson, _____ F. 2d _____ (No. 35614, C.A. 2, July 16, 1971); Pfizer Inc. v. Richardson, 434 F. 2d 536 (C.A. 2, 1970); and Pharmaceutical Manufacturers Association v. Richardson, 318 F. Supp. 301 (D. Del., 1970).

The contention that the final decision in the 1963 proceeding (Aug. 17, 1963, 28 F.R. 8471) represents a prior determination of the very same issues as here involved is insubstantial. The statements in the letters written by Dr. Sadusk and Dr. Dowling were never formalized in a final regulation and do not constitute final action of the Food and Drug Administration. Moreover, even if those letters be construed as final agency action, that action in 1966 is not binding today in the light of the NAS-NRC reports and the Administration's reevaluation. This was made clear in Upjohn and in Bell v. Goddard, 366 F. 2d 177 (C.A. 7, 1966).

VI. *Findings.* The Commissioner, based on the review of the medical documentations offered to support the claims of efficacy for these fixed-ratio combination products, finds that Lederle Laboratories Division and Bristol Laboratories, Inc., have failed to present substantial evidence of effectiveness for these products. No objections or documentation were presented by any other firms and, in accordance with the provisions of 21 CFR 130.15 and 146.15, this failure is construed as an election by the following firms not to avail themselves of the opportunity for the hearing:

1. Dorsey Laboratories, Division of Wander Co.;
2. Pitman-Moore, Division of Dow Chemical Co.;
3. J. B. Roerig Division, Chas. Pfizer & Co., Inc.;
4. Eli Lilly & Co.;
5. Wyeth Laboratories;
6. Pfizer Laboratories, Division of Chas. Pfizer & Co., Inc.

The Commissioner further finds that the certificates of safety and effectiveness heretofore issued for these drugs for oral use in man containing antibiotics in combination with antihistamines and/or analgesics and/or decongestants should be revoked on the basis of a lack of substantial evidence of effectiveness.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 507, 52 Stat. 1050–51, as amended, 59 Stat. 463, as amended; 21 U.S.C. 352, 357) and under authority delegated to the Commissioner (21 CFR 2.120), notice is given that the order of September 12, 1970 (35 F.R. 14392), the effective date having been extended by the Food and Drug Administration pursuant to that order's provision pertaining to time necessary to rule on objections, will become effective 30 days after the date of publication of this order in the FEDERAL REGISTER to allow time for recall of all outstanding stocks of the affected drugs. Certificates of safety and effectiveness previously issued for such drugs for human use under these regulations are revoked. No new certificates will be issued.

(Secs. 502, 507, 52 Stat. 1050–51, as amended, 59 Stat. 463, as amended; 21 U.S.C. 352, 357)

Dated: November 9, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71-16776 Filed 11-16-71;8:52 am]

Title 36—PARKS, FORESTS, AND MEMORIALS

Chapter I—National Park Service, Department of the Interior

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

Lake Mead National Recreation Area, Ariz. and Nev.; Aircraft, Designated Airstrips

A proposal was published at page 14137 of the FEDERAL REGISTER of July 30, 1971, to amend paragraph (a) subparagraph (5) of § 7.48 of Title 36 of the Code of Federal Regulations. The effect of the amendment is to delete the Callville Bay airstrip as an authorized facility in the Code of Federal Regulations.

Interested persons were given 30 days within which to submit written comments, suggestions, or objections with respect to the proposed amendment. No comments, suggestions, or objections have been received and the proposed amendment is hereby adopted without change and set forth below. This amendment shall take effect 30 days following the date of publication in the FEDERAL REGISTER.

(5 U.S.C. 553; 39 Stat. 535; 16 U.S.C.; 78 Stat. 1040; U.S.C. 460n-5)

Paragraph (a) is amended to revoke subparagraph (5) as follows:

§ 7.48 Lake Mead National Recreation Area.

(a) *Aircraft, designated airstrips* * * *
(5) [Deleted]

* * * * *

GLEN T. BEAN,
Superintendent, Lake Mead National Recreation Area.

[FR Doc.71-16778 Filed 11-16-71;8:52 am]

Title 24—HOUSING AND HOUSING CREDIT

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

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

List of Eligible Communities

Section 1914.4 is amended by adding in alphabetical sequence a new entry to the table, which entry reads as follows:

§ 1914.4 List of eligible communities.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
* * *	* * *	* * *	* * *	* * *	* * *	* * *
Connecticut	Fairfield	Danbury				Nov. 10, 1971.
Delaware	Sussex	Fenwick Island				Do.
Florida	Duval	Atlantic Beach				Do.
Do	do	Baldwin				Do.
Do	do	Jacksonville				Do.
Do	do	Jacksonville Beach.				Do.
Do	do	Neptune Beach				Do.
Mississippi	Lauderdale	Meridian				Do.
Missouri	Lewis	La Grange				Do.
New Jersey	Burlington	Cinnaminson Township.				Do.
Do	Bergen	Hillsdale Borough				Do.
North Carolina	Carteret	Unincorporated areas.				Do.
North Dakota	Ward	Minot-Remainder	I 38 101 2170 03 through I 38 101 2170 13	State Water Commission, Bismarck, N. Dak. 58501. North Dakota Insurance Department, State Capitol, Bismarck, N. Dak. 58501.	Office of the City Auditor, Civic Center, Minot, N. Dak. 58701.	Do.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan 28, 1969 (33 F.R. 17804, Nov. 28, 1968), as amended (secs. 408–410, Public Law 91–152, Dec. 24, 1969), 42 U.S.C. 4001–4127; Secretary's delegation of authority to Federal Insurance Administrator, 34 F.R. 2680, Feb. 27, 1969; and designation of Acting Federal Insurance Administrator effective Aug. 13, 1971, 36 F.R. 16701, Aug. 25, 1971)

Issued: November 10, 1971.

CHARLES W. WIECKING,
Acting Federal Insurance Administrator.

[FR Doc.71-16680 Filed 11-16-71;8:45 am]

PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

List of Communities With Special Hazard Areas

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

§ 1915.3 List of communities with special hazard areas.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
* * *	* * *	* * *	* * *	* * *	* * *	* * *
Connecticut	Fairfield	Danbury				Nov. 10, 1971.
Delaware	Sussex	Fenwick Island				Do.
Florida	Duval	Altantic Beach				Do.
Do	do	Baldwin				Do.
Do	do	Jacksonville				Do.
Do	do	Jacksonville Beach				Do.
Do	do	Neptune Beach				Do.
Mississippi	Lauderdale	Meridian				Do.
Missouri	Lewis	La Grange				Do.
New Jersey	Burlington	Cinnaminson Township.				Do.
Do	Bergen	Hillsdale Borough				Do.
North Carolina	Carteret	Unincorporated areas.				Do.
North Dakota	Ward	Minot-Remainder	H 38 101 2170 03 through H 38 101 2170 13	State Water Commission, Bismarck, N. Dak. 58501. North Dakota Insurance Department, State Capitol, Bismarck, N. Dak. 58501.	Office of the City Auditor, Civic Center, Minot, N. Dak. 58701.	Mar. 11, 1970.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan 28, 1969 (33 F.R. 17804, Nov. 28, 1968), as amended (secs. 408–410, Public Law 91–152, Dec. 24, 1969), 42 U.S.C. 4001–4127; Secretary's delegation of authority to Federal Insurance Administrator, 34 F.R. 2680, Feb. 27, 1969; and designation of Acting Federal Insurance Administrator effective Aug. 13, 1971, 36 F.R. 16701, Aug. 25, 1971)

Issued: November 10, 1971.

CHARLES W. WIECKING,
Acting Federal Insurance Administrator.

[FR Doc.71-16681 Filed 11-16-71;8:45 am]

Title 32—NATIONAL DEFENSE

Chapter VI—Department of the Navy

PART 742—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

The regulations issued herein are resuired by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, effective January 2, 1971, and revise the regulations currently appearing at Part 742 of this title (32 CFR Part 742). The regulations in this part shall be effective on and after January 2, 1971.

Subpart A—Policies

Sec.
742.101 Purpose.
742.102 Displacement notice—Application for relocation assistance.
742.103 Appeal rights.
742.104 Assurance of replacement dwelling prior to displacement.
742.105 Adjustments.
742.106 Waiver.

Subpart B—Definitions

742.201 Agency head.
742.202 Business.
742.203 Decent, safe and sanitary dwelling.
742.204 Department.
742.205 Displaced person.
742.206 Dwelling.
742.207 Economic rent.
742.208 Family.
742.209 Farm operation.
742.210 Initiation of negotiations.
742.211 Mortgage.
742.212 Owner.
742.213 Person.
742.214 Rental rate.
742.215 Replacement dwelling.
742.216 Tenant.

Subpart C—Moving and Related Expenses

742.301 Recipient eligibility.
742.302 Extent of eligibility.
742.303 Actual expenses payment.
742.304 Fixed payment.
742.305 Actual reasonable expenses in moving.
742.306 Actual direct losses, business or farm operations.
742.307 Actual reasonable expenses in searching, business and farm operation.
742.308 Determination of average annual net income.

Subpart D—Replacement Housing Payments for Homeowners (Over 180 Days)

742.401 Eligibility.
742.402 Certification of eligibility.
742.403 Selecting a method for determining purchase price for a replacement dwelling.
724.404 Coordination among displacing agencies.
742.405 Costs eligible for payment by agency head.
742.406 Replacement housing payment in condemnation cases.
742.407 General.

Subpart E—Replacement Housing for Tenants anh Certain Others

742.501 Eligibility.
742.502 Maximum payment.
742.503 Selecting a method for determining rental rate for a replacement dwelling.
742.504 Coordination among displacing agencies.
742.505 Computing rental payments for displaced tenants renting replacement housing.
742.506 Computing rental payments for displaced owner-occupants renting replacement housing.
742.507 Making payment to a displaced person who rents replacement housing.
742.508 Purchase of a replacement dwelling.
742.509 Mobile-home site.

Subpart F—Relocation Assistance Advisory Services

742.601 Policy.
742.602 Cooperation with other Federal and State agencies.
742.603 Advisory services.

Subpart G—Real Property Acquisition

742.701 Acquisition by agreement.
742.702 Appraisal.
742.703 Establishing just compensation.
742.704 Initiation of negotiations.
742.705 Condemnation.
742.706 Expenses incidental to transfer of title.
742.707 Improvements owned by tenants.
742.708 Lease to former owner or occupant.
742.709 Requirement to move.

AUTHORITY: The provisions of this Part 742 issued under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646 (84 Stat. 1894).

Subpart A—Policies

§ 742.101 Purpose.

The regulations in this part prescribe policies and procedures for the Department of the Navy in implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970—Public Law 91-646 (84 Stat. 1894) herein called the Act. The Act provides for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal programs and establishes uniform and equitable land acquisition policies.

§ 742.102 Displacement notice—Application for relocation assistance.

Written notice of displacement served personally or by first-class mail will be given to each person, family, business, or farm. A displaced person, business, or farm operation must make proper application to the displacing agency for relocation assistance payments. A displaced person, business, or farm operation making proper application will be paid promptly after a move. If the agency head, or his designee, determines that delaying payment until after the move will create a hardship, he will authorize an advance payment.

§ 742.103 Appeal rights.

Any person aggrieved by a determination as to eligibility for relocation payment, or the amount of a payment, in a Department of the Navy project may have his application reviewed by the Secretary of the Navy or his designee.

§ 742.104 Assurance of replacement dwelling prior to displacement.

No phase of any project will be initiated or continued if that phase will cause the displacement of any person from a dwelling until the agency has determined on the basis of a current survey and analysis of available replacement housing that prior to displacement there will be available for each displaced person a decent, safe, and sanitary replacement dwelling.

§ 742.105 Adjustments.

The agency head, or his designee, may make adjustments in the requirement for a decent, safe, and sanitary dwelling only in cases of unusual circumstances.

§ 742.106 Waiver.

In emergencies or other extraordinary situations where immediate possession of real property is crucial, the agency head, or his designee, may waive the requirements of § 742.105. Each such waiver must be reported through administrative channels to the Director, Office of Management and Budget.

Subpart B—Definitions

§ 742.201 Agency head.

The Secretary of the Navy, or his designee, authorized to act for him in implementing these regulations.

§ 742.202 Business.

(a) Any lawful activity, excepting a farm operation, conducted primarily:

(1) For the purchase, sale, lease, or rental of personal or real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(2) For the sale of services to the public;

(3) By a nonprofit organization; or

(4) Solely for the purposes of section 202(a) of the Act, for assisting in the purchase, sale, resale, manufacture, processing or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(5) Part-time occupations which do not contribute materially to the total yearly income of the displaced person are not considered to come within the definition of a business.

§ 742.203 Decent, safe, and sanitary dwelling.

A dwelling which is in good repair and in sound and weathertight condition, which meets local housing codes, if any, and also meets the following requirements:

(a) Housekeeping unit: A housekeeping unit must include a kitchen with fully usable sink; a stove, or connections for same; a separate complete bathroom; hot and cold running water in both the bath and the kitchen; an adequate and safe wiring system for lighting and other

electrical services; and heating as required by climatic conditions and local codes.

(b) Nonhousekeeping unit: A nonhousekeeping unit is one which meets local code standards for boardinghouses, hotels, or other congregate living.

(c) Occupancy standards: The occupancy standards comply with local codes.

(d) Facilities: A dwelling unit meeting the above physical and occupancy standards is reasonably convenient to such community facilities and schools, stores, and public transportation.

(e) Where there is no local housing code or code standards are inadequate, a decent, safe, and sanitary dwelling is one which: Is in a sound, clean, and weathertight condition, has a kitchen with fully usable sink, a stove or connection for same, a separate complete bathroom, hot and cold running water in kitchen and bath, an adequate and safe wiring system for lighting and other electrical services, and heating as required by climatic conditions.

§ 742.204 Department.

The Department of the Navy.

§ 742.205 Displaced person.

Any person who, on or after January 2, 1971, moves from real property, or moves his personal property from real property, as a result of the actual acquisition of such real property, in whole or in part, or as a result of a written order of the acquiring agency to vacate real property for a program or project undertaken by the Department or with Federal financial assistance provided by the Department. If a person moves as the result of such a notice, it makes no difference whether or not the real property is acquired.

§ 742.206 Dwelling.

The place of permanent or customary and usual abode of a person. It includes a single-family building; a one-family unit in a multifamily building; a unit of a condominium or cooperative housing project; any other residential unit, including a mobile home which is either considered to be real property under State law or cannot be moved without substantial damage or unreasonable cost. It does not include seasonal or part-time dwelling units, such as beach houses, mountain or other vacation cabins.

§ 742.207 Economic rent.

Economic rent is the amount of rent the displaced person would have to pay for a similar dwelling unit located in an area not generally less desirable than the location of the dwelling to be acquired.

§ 742.208 Family.

Two or more individuals living together in the same dwelling as a single family unit and who are related to each other by blood, marriage, adoption, or legal guardianship.

§ 742.209 Farm operation.

Any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

§ 742.210 Initiation of negotiations.

The date the authorized designee of the Secretary makes the first contact with the owner or his representative and discusses a price for the real property to be acquired.

§ 742.211 Mortgage.

Such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

§ 742.212 Owner.

A person who holds fee title, a life estate, a 99-year lease, or a lease with not less than 50 years to run from the date of acquisition of the property or has an interest in a cooperative housing project which includes a proprietary right of occupancy of a dwelling unit, excluding lease, or is the contract purchaser of any such estates or interests.

§ 742.213 Person.

Any individual, partnership, corporation, or association.

§ 742.214 Rental rate.

The amount of rent paid or determined to be appropriate for the acquired dwelling.

§ 742.215 Replacement dwelling.

A dwelling which is comparable to the acquired dwelling and is:

(a) Decent, safe, and sanitary.

(b) Functionally equivalent and substantially the same as the acquired dwelling with respect to number of rooms, areas of living space, age, and state of repair.

(c) Open to all persons regardless of race, color, religion, sex, or national origin and consistent with the requirements of title VIII of the Civil Rights Act of 1968.

(d) In areas not generally less desirable than the dwelling to be acquired in regard to public utilities and public, commercial, and community facilities.

(e) Reasonably accessible to the displaced person's place of employment.

(f) Adequate to accommodate the displaced person.

(g) Available on the market to the displaced person at rents or prices within the financial means of the displaced person including the supplemental payment provided for by these Regulations.

§ 742.216 Tenant.

A person who leases, rents, lawfully occupies, or temporarily possesses real or personal property of another by any kind of right.

Subpart C—Moving and Related Expenses

§ 742.301 Recipient eligibility.

A displaced person, business, or farm operation may be eligible to receive payments for moving and related expenses, as hereinafter set out.

§ 742.302 Extent of eligibility.

(a) Each owner-occupant, tenant-occupant, or family displaced from a dwelling may elect to receive either the payment described in § 742.303(a) or the fixed payment described in § 742.304(a) except:

(1) Two or more persons, not a family, living together in a single family dwelling displaced from the dwelling will be regarded as one displaced person with respect to eligibility for receiving the fixed payment for moving expenses described in § 742.304(a). Each individual in such group is eligible to receive actual moving and related expenses described in § 742.303(a) if the group does not elect to receive the fixed payment.

(2) No member of a displaced person's family living in the same dwelling unit is eligible for separate payment for moving expenses.

(3) Any person other than a member of the family who is renting a room within the dwelling unit is eligible for moving expenses under § 742.303(a), but is not eligible to elect to receive the fixed payment in § 742.304(a).

(b) Any displaced business of farm operation may elect to receive either the payment described in § 742.303 or the payment described in § 742.304.

(c) Any displaced owner-occupant of a dwelling who earns income from such dwelling is eligible for payments for actually moving and related expenses for both dwelling and business described in § 742.303 or may elect to receive the fixed payments for both dwelling and business described in § 742.304, or he may elect to receive payment for the dwelling under one alternate and payment for the business under the other alternate.

(d) A person who lives on his business or farm property and is displaced from both his dwelling and business or farm property may elect to receive either the payment described in § 742.303 or the fixed payment described in § 742.304 for the dwelling and business or farm operation; or he may elect to receive payment for the dwelling under one alternate and payment for the business or farm operation under the other alternate.

(e) A person who is displaced from a business or farm operation which results in such person moving from a nearby dwelling may elect to receive for moving from the dwelling either the payment described in § 742.303(a) or the fixed payment described in § 742.304(a).

§ 742.303 Actual expenses payment.

(a) Actual reasonable expenses specified in § 742.305 in moving himself, his family, business, farm operation, or other personal property;

(b) Actual direct losses specified in § 742.306 of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the displacing agency; and

(c) Actual reasonable expense specified in § 742.307 in searching for a replacement business or farm.

§ 742.304 Fixed payment.

(a) A displaced person who must vacate a dwelling may elect to receive, in lieu of reimbursement for actual expenses described in § 742.303(a), a moving expense allowance not in excess of $300 based on schedules maintained by State highway departments, plus a dislocation payment of $200.

(b) A displaced person who is displaced from his place of business, whether he discontinues or reestablishes operations, may elect to receive, in lieu of reimbursement for actual expense, specified in § 742.303, a fixed relocation payment equal to the average annual net earnings of the business as determined in accordance with § 742.308 provided:

(1) The business cannot be relocated without a substantial loss of its existing patronage. The agency head will consider all pertinent circumstances in determining whether the business meets this requirement, including the type of business, the nature of the clientele, and the relative importance of the present and proposed locations to the displaced business.

(2) The business is not a part of a commercial enterprise having at least one other establishment that is not being acquired which is engaged in the same or similar business. The business must contribute materially to the income of the displaced owner.

(c) A displaced person who is displaced from his farm operation, whether he discontinues or reestablishes operations, may elect to receive, in lieu of reimbursement for actual expenses, specified in § 742.303, a fixed relocation payment equal to the average annual net earnings of the farm operation as defined in § 742.308.

(d) The payment provided in paragraphs (b) and (c) of this section shall be not less than $2,500 nor more than $10,000.

§ 742.305 Actual reasonable expenses in moving.

(a) *Items to be included in determining reasonable expenses.* (1) Transportation of individuals, families, and property from acquired site to the replacement site, not to exceed a distance of 50 miles, except where the Secretary's designee determines that relocation cannot be accomplished within the prescribed area.

(2) Packing and crating of personal property.

(3) Advertising for packing, crating, and transportation when determined by the agency head to be reasonably required.

(4) Storage of personal property for a period generally not exceeding 6 months when determined by the agency head to be necessary in connection with the relocation.

(5) Insurance premiums covering loss and damage of personal property while in storage or transit.

(6) Removal, reinstallation, and reestablishment of machinery, equipment, appliances, and other items of personal property not acquired, including reconnection of utilities, which do not constitute an improvement to the replacement site.

(7) Property lost, stolen, or damaged (not caused by the fault or negligence of the displaced person, his agents, or employees) in the process of moving, where insurance to cover such loss or damage is not available.

(8) Such other items as the agency head determines to be a reasonable expense.

(b) *Items to be excluded in determining reasonable expenses.* (1) Additional expenses incurred because of living in a new location.

(2) Cost of moving structures, improvements or other real property in which the displaced person reserved ownership.

(3) Improvements to the replacement site.

(4) Interest on loans to cover moving expenses.

(5) Loss of goodwill.

(6) Loss of profits.

(7) Loss of trained employees.

(8) Personal injury.

(9) Cost of preparing the application for moving and related expenses.

(10) Modification of personal property to adapt it to the replacement site.

(11) Such other items as the agency head determines should be excluded.

(c) *Limitations.* (1) If the displaced person moves himself, his family, business, farm operation, or other personal property by other than commercial means, the reimbursement allowance will not exceed the estimated cost of moving commercially based on the prevailing local rates for moving.

(2) If an item of personal property used in connection with a business or farm operation is not moved, but sold and promptly replaced at the new location with a comparable item, reimbursement will not exceed the replacement cost minus the proceeds from the sale, or the estimated cost of moving, whichever is less.

(3) If personal property used in connection with a business or farm operation to be moved is of low value and high bulk, and the cost of removing, moving, reinstallation and reestablishment would be disproportionate in relation to the value, in the judgment of the agency head, the allowable reimbursement for the expense of moving the personal property will not exceed the difference between the amount that would have been received for such item on liquidation and the cost of replacing the same with a comparable item available on the market.

§ 742.306 Actual direct losses, business, or farm operations.

Payments for actual direct losses of tangible personal property are allowed where a person who is displaced from his place of business or farm operation is entitled to relocate his property, but does not do so. Typical items of property that may cause such direct losses include equipment, machinery, or fixtures which are no longer required where the business or farm operation is to be discontinued or the property is not suitable for use at the new location.

(a) If the displaced person does not move the personal property he shall make a bona fide effort to sell it.

(b) If personal property is sold and not replaced and the business or farm operation is reestablished, the displaced person is entitled to the difference between the estimated replacement value of the personal property and the sale's proceeds but not to exceed the estimated cost of moving.

(c) If the business or farm operation is discontinued, the displaced person is entitled to the difference between the estimated replacement value of the personal property and the sale's proceeds, but not to exceed the estimated cost of moving.

(d) If personal property is abandoned, the displaced person is entitled to the difference between the estimated replacement value and the estimated amount that would have been received for the sale of the property, but not to exceed the estimated cost of moving.

(e) If the business or farm operation is discontinued, the distance to be used in estimating the moving cost shall be 50 miles.

§ 742.307 Actual reasonable expenses in searching, business and farm operation.

A displaced person whose business or farm is acquired may be reimbursed for his actual reasonable expenses of searching for a replacement business or farm location. The maximum amount allowable for searching expenses is $500 for each displaced business or farm unless the agency head determines that a greater amount is justified based on the circumstances involved. Payment for these expenses is further limited to:

(a) Travel costs.

(b) Extra costs for meals and lodgings.

(c) Time: Time spent in searching at the rate of the displaced person's salary or earnings, but not to exceed $10 per hour.

(d) Realtor assistance: Broker or realtor fees to locate a replacement business or farm operation only when the circumstances warrant.

§ 742.308 Determination of average annual net income.

The average annual net income will be one-half of any net earnings of the business or farm operation, before Federal, State, and local income taxes for the 2 taxable years immediately preceding the taxable year in which such business or farm operation moves from

the real property acquired, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period. Another period may be approved by the agency head if the business or farm operation was not in operation for the full 2-year period or if an unusually long timelag between public announcement of a project and the displacement results in a material reduction in the earnings of the business for such 2-year period, or under other conditions clearly warranting a different period. The business or farm operation will be required to furnish pertinent returns filed with Internal Revenue Service for the applicable period, or other acceptable evidence of earnings if not required to file returns.

Subpart D—Replacement Housing Payments for Homeowners (Over 180 Days)

§ 742.401 Eligibility.

A displaced owner-occupant of an acquired dwelling is eligible for a replacement housing payment under this subpart of not to exceed $15,000 if he:

(a) Actually owned and occupied the acquired dwelling for not less than 180 days immediately prior to initiation of negotiations for the property; and

(b) Purchases and occupies a replacement dwelling not later than the end of the 1-year period beginning on the date on which he receives final payment of the purchase price or condemnation award for the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date. Purchase of a replacement dwelling shall mean (1) acquisition of an existing dwelling, (2) acquisition and rehabilitation of a substandard dwelling, (3) relocation, or relocation and rehabilitation of an existing dwelling, (4) construction of a new dwelling, (5) contract to purchase a dwelling to be constructed on a site provided by a builder or developer, or (6) contract for the construction of a dwelling on a site which he owns or acquires for this purpose. If construction or rehabilitation is required in the instances cited herein and completion of the construction or rehabilitation is delayed beyond the end of the 1-year period, the agency head may establish the date of occupancy as the date that the displaced person enters into a contract for the construction, rehabilitation, or purchase provided the agency head determines that the delay was for reasons not within the reasonable control of the displaced person, and the displaced person occupies the replacement dwelling when the construction or rehabilitation is completed. Payment by the agency head will not be made until the displaced person has occupied the replacement dwelling.

§ 742.402 Certification of eligibility.

Whenever a displaced person is eligible for a payment under this subpart except that he has not yet purchased a replacement dwelling, the agency head shall, at the request of the displaced person, provide a written statement to any interested person, financial institution, or lending agency as to:

(a) The eligibility of the displaced person for a payment.

(b) The requirements that must be satisfied before such payment can be made.

(c) The amount of the payment to be made by the agency head, provided the proposed replacement dwelling has been selected, or plans and specifications for the construction or rehabilitation of a proposed replacement dwelling are available, and the displacing agency has inspected and approved the selected dwelling or has reviewed and approved the plans and specifications for construction or rehabilitation.

§ 742.403 Selecting a method for determining purchase price for a replacement dwelling.

The agency head may determine the amount necessary to purchase a replacement dwelling by: (a) A scheduled method in which the agency head establishes a schedule of reasonable acquisition cost for replacement dwellings that are available on the private market in the various types of dwellings to be acquired. This schedule should be based on current analysis of the market; or by: (b) The comparative method in which the agency head determines the price of a replacement dwelling by selecting one or more dwellings that are most representative of the dwelling unit acquired, and are available to the displaced person. A single dwelling shall only be used when additional comparable dwellings are not available. Asking prices are to be adjusted to reflect market sale experience.

§ 742.404 Coordination among displacing agencies.

When more than one agency, department, or otherwise, is causing the displacement in a community or an area, the head of the displacing agency shall seek the cooperation of the other agency or agencies on the method for computing the replacement housing payment and on the use of uniform schedules of sale housing in the community or area.

§ 742.405 Costs eligible for payment by agency head.

Costs eligible for payment by the agency head under this subpart are:

(a) The amount, if any, which when added to the acquisition cost of the dwelling acquired by the agency head, equals the reasonable cost of a replacement dwelling. If the displaced person, on his own, voluntarily purchases and occupies a decent, safe, and sanitary dwelling at a price less than the reasonable cost determined by the agency head for a replacement dwelling, the agency head shall pay not more under this item than the difference between the acquisition price of the acquired dwelling and the actual purchase price of the replacement dwelling. If the displaced person, on his own, voluntarily purchases and occupies a decent, safe, and sanitary dwelling at a price less than the acquisition price of the acquired dwelling, no payment is allowable under this paragraph (a).

(b) The amount, if any, which will compensate the displaced person for any increased interest cost and points which such person is required to pay for financing the acquisition of the replacement dwelling, provided that the acquired dwelling was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days prior to the initiation of negotiations for the acquisition of such dwelling. This amount shall be computed on the basis of and limited to:

(1) The amount of the unpaid debt at the time of acquisition of the real property;

(2) The length of the remaining term of the mortgage at the time of acquisition;

(3) The prevailing interest rate and points currently charged by mortgage lending institutions in the vicinity; and

(4) The present worth of the future payments of increased interest, computed at the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

(c) Reasonable expenses, as determined by the agency head, incurred by the displaced person for the following purposes except that no fee, cost, charge, or expense is reimbursable which is determined to be a part of the finance charge under the Truth in Lending Act, title I, Public Law 90-321, and regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System, or which is determined to be prepaid expenses:

(1) Legal, closing, and related costs including title search, preparing conveyance contracts, notary fees, surveys, preparing drawings of plats, and charges incident to recordation.

(2) Lenders, FHA, or VA appraisal fee.

(3) FHA application fee.

(4) Certification of structural soundness when required by lender, FHA, or VA.

(5) Credit report.

(6) Title policy, certificate of title, or abstract of title.

(7) Escrow agent's fee.

(8) State revenue stamps, or sale or transfer taxes.

§ 742.406 Replacement housing payment in condemnation cases.

In the event the acquired dwelling is acquired by condemnation, and the replacement housing payment cannot be completed until final judgment, the following arrangement may be made. An advance payment may be made if the displaced person makes an agreement providing for payment computed on the basis of the deposit (appraised value), that payment will be recomputed at the time of final judgment, and that the advance payment shall be applied to the total award. If the amounts paid (advance payment plus the deposit) equal or exceed the award, the agreement will

provide for acceptance of such amounts in satisfaction of the judgment, inclusive of interest. If the amounts paid are less than the award the agreement will provide that the amounts paid will be applied to the award and interest on the deficiency will be paid on the difference between the award and the amounts paid.

§ 742.407 General.

(a) Payment under this subpart to a displaced owner-occupant who moves from a one-family unit of a multifamily building owned by such person will be based on the cost of a comparable one-family unit in a multifamily building or a single-family structure, without regard to the number of units in the acquired multifamily building.

(b) Payment under this subpart will not affect the eligibility of the displaced owner-occupant to receive a payment for business earnings attributable to rental units or other legitimate business activities conducted in portions of the building.

(c) Two or more individuals living together in a single-family dwelling will be regarded as one owner-occupant for the purpose of this subpart.

Subpart E—Replacement Housing for Tenants and Certain Others

§ 742.501 Eligibility.

(a) This subpart is applicable to a displaced person who:

(1) Is a tenant.

(2) Is an owner-occupant who elects to lease or rent rather than purchase a replacement dwelling, or elects to purchase a replacement dwelling but has occupied the acquired dwelling for less than the 180 days required by § 742.401.

(3) Leases and occupies a site for a mobile home when such site is acquired, but only to the extent specified in § 742.509.

(b) A displaced person is eligible for a replacement housing payment under this subpart if he:

(1) Actually and lawfully occupied the acquired dwelling, or site in the case of a mobile home, for not less than 90 days immediately prior to the initiation of negotiations for acquisition of the property.

(2) Rents or purchases and occupies a replacement dwelling not later than the end of the 1-year period, except as specified in § 742.508(a), beginning on the date on which he:

(i) If a tenant, moves from the acquired dwelling.

(ii) If a mobile-home occupant, moves from the acquired site.

(iii) If an owner-occupant, receives from the agency head final payment of the purchase price or condemnation award for the acquired dwelling, or the date on which he moves from the acquired dwelling, whichever is the later date.

(c) Payment under this subpart to a displaced owner-occupant who moves from a one-family unit of a multifamily building owned by such person will be based on the cost of a comparable one-family unit in a multifamily building or a single-family structure without regard to the number of units in the acquired multifamily building.

(d) Payment under this subpart will not affect the eligibility of the displaced person to receive a payment for business earnings attributable to rental units or other legitimate business activities conducted in portions of the building.

(e) Two or more individuals living together in a single family dwelling displaced from the dwelling will be regarded as one displaced person.

§ 742.502 Maximum payment.

The maximum payment which may be made under this subpart is $4,000, except that when the payment is made in connection with the purchase of a replacement dwelling, any amount in excess of $2,000 for the down payment and expenses specified in § 742.508(c) must be matched by the displaced person.

§ 742.503 Selecting a method for determining rental rate for a replacement dwelling.

The displacing agency may determine the amount necessary to rent a replacement dwelling for a displaced tenant by:

(a) A schedule method in which the displacing agency establishes a rental schedule for renting replacement dwellings of the various types of dwellings needed that are available on the private market, this schedule to be based on current analysis of the market; or by

(b) The comparative method in which the displacing agency establishes an average monthly rental rate for a replacement dwelling by selecting one or more dwellings that are available on the private market, available to the displaced person, and are most representative of the dwelling unit acquired.

§ 742.504 Coordination among displacing agencies.

When more than one agency, departmental or otherwise, is causing the displacement in a community or an area, the head of the displacing agency shall seek the cooperation of the other agency or agencies on the method for computing the replacement housing payment and on the use of uniform schedules of rental housing in the community or area.

§ 742.505 Computing rental payments for displaced tenants renting replacement housing.

(a) The displacing agency shall compute the amount of the payment to the tenant as follows:

(1) Multiply the monthly rental rate of the replacement dwelling by 48.

(2) Determine the average monthly rental rate paid by the displaced tenant for the acquired dwelling in the last 3 months prior to initiation of negotiations, provided such rent was reasonable. If such average rent paid was not reasonable, the agency head may use an economic rent amount for the acquired dwelling. If the displacing agency deems it advisable, more than 3 months may be used as a base for determining the average rental rate.

(3) Multiply the average monthly rental rate for the acquired dwelling, as determined in subparagraph (2) of this paragraph, by 48.

(4) Subtract from the amount for the replacement dwelling, as determined in subparagraph (1) of this paragraph, the amount for the acquired dwelling as determined in subparagraph (3) of this paragraph.

§ 742.506 Computing rental payments for displaced owner-occupants renting replacement housing.

The agency head shall compute the amount of the payment to the displaced owner-occupant in the same manner as prescribed in § 742.505, except that economic rent shall be used in making the determination required by § 742.505 (a)(2); however, the amount paid shall not exceed that which would have been paid to the displaced owner-occupant had he been eligible for and elected to purchase a replacement dwelling under the provisions of §§ 742.401 to 742.406.

§ 742.507 Making payment to a displaced person who rents replacement housing.

(a) If the total rental payment to be made to the displaced person is in excess of $500, payment will be made in four equal annual installments at the beginning of each annual period, provided that the agency head determines that the tenant is continuing to occupy decent, safe, and sanitary housing at the beginning of each annual period.

(b) If the total rental payment to be made to the displaced person is $500 or less, the payment shall be made in one lump sum at the beginning of occupancy of the replacement dwelling. The agency head need not thereafter determine whether occupancy of decent, safe and sanitary housing is continued.

§ 742.508 Purchase of a replacement dwelling.

(a) If a displaced person eligible under this subpart elects to purchase rather than rent a replacement dwelling, purchase of a replacement dwelling shall mean: (1) Acquisition of an existing dwelling, (2) acquisition and rehabilitation of a substandard dwelling, (3) relocation, or relocation and rehabilitation, of an existing dwelling, (4) construction of a new dwelling, (5) contract to purchase a dwelling to be constructed on a site provided by a builder or developer, or (6) contract for the construction of a dwelling on a site which he owns or acquires for this purpose. If construction or rehabilitation is required in the instances cited herein and completion of the construction or rehabilitation is delayed beyond the end of the 1-year period, the agency head may establish the date of occupancy as the date that the displaced person enters into a contract for the construction, rehabilitation, or purchase provided the agency head determines that the delay was for reasons not within the reasonable control of the displaced person, and the displaced person occupied the replacement dwelling when the construction or rehabilitation

is completed. Payment by the agency head will not be made until the displaced person has occupied the replacement dwelling.

(b) Whenever a displaced person is eligible for a payment under this section except that he has not yet purchased a replacement dwelling, the agency head shall, at the request of the displaced person, provide a written statement to any interested person, financial institution, or lending agency as to:

(1) The eligibility of the displaced person for a payment.

(2) The requirements that must be satisfied before such payment can be made.

(3) The amount of the payment to be made by the agency head, provided the proposed replacement dwelling has been selected, or plans and specifications for the construction or rehabilitation of a proposed replacement dwelling are available; and the agency head has inspected and approved the selected dwelling or has reviewed and approved the plans and specifications for construction or rehabilitation.

(c) The amount of the payment shall be computed by determining the amount necessary to enable the displaced person to make a down payment and to cover expenses on the purchase of the replacement housing.

(1) The amount necessary for the down payment shall be based on the amount required for a conventional loan.

(2) Reasonable expenses, as determined by the agency head, incurred by the displaced person for the following purposes except that no fee, cost, charge, or expense is reimbursable which is determined to be a part of the finance charge under the Truth in Lending Act, title I, Public Law 90-321, and regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System, or which is determined to be prepaid expenses:

(i) Legal, closing, and related costs including title search, preparing conveyance contracts, notary fees, surveys, preparing drawings of plats, and charges incident to recordation.

(ii) Lenders, FHA, or VA appraisal fee.

(iii) FHA application fee.

(iv) Certification of structural soundness when required by lender, FHA, or VA.

(v) Credit report.

(vi) Title policy, certificate of title, or abstract of title.

(vii) Escrow agent's fee.

(viii) State revenue stamps, or sale or transfer taxes.

(d) The full amount of the payment must be applied as follows:

(1) The amount allowed for the down payment must be applied to the purchase price.

(2) The amount allowed for incidental costs must be applied to the incidental costs.

(3) The down payment and incidental costs must be shown separately on the closing statement.

§ 742.509 Mobile home site.

If real property is acquired on which a displaced person leases and occupies a site for a mobile home, the following reasonable costs as determined by the displacing agency are allowable and payable in a lump sum:

(a) Moving the mobile home to a replacement site located not more than 50 miles from the acquired site.

(b) Detaching and reattaching fixtures and appurtenances, where applicable.

Subpart F—Relocation Assistance Advisory Services

§ 742.601 Policy.

Whenever the acquisition of real property for a Federal or Federal financially-assisted program or project will result in the displacement of any person, the agency head shall provide a relocation assistance advisory program for displaced persons. If it is determined that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, the agency head shall offer such person relocation advisory services.

§ 742.602 Cooperation with other Federal and State agencies.

When more than one agency, departmental or otherwise, is administering a relocation assistance advisory program which may be of assistance in the community or area to persons displaced under other programs, the agency head shall offer to cooperate to the maximum extent feasible with the other Federal or State agency causing displacements to assure that all displaced persons receive the maximum assistance available to them. The agency head may, by contract or otherwise, secure relocation assistance advisory services from any Federal, State, or local governmental agency or from any person or organization.

§ 742.603 Advisory services.

Each relocation assistance advisory program shall include such measures, facilities, or services as may be necessary or appropriate in order to:

(a) Determine the need, if any, of displaced persons for relocation assistance.

(b) Provide current and continuing information on the availability, prices, and rentals of comparable decent, safe, and sanitary sale and rental housing and of comparable commercial properties and locations for displaced businesses and farm operations.

(c) Assure that, within a reasonable period of time prior to displacement, replacement dwellings will be available.

(d) Assist a displaced person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location.

(e) Supply information concerning housing programs, disaster loan programs, and other Federal or State programs offering assistance to displaced persons.

(f) Provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

(g) Advise displaced persons that they should notify the agency head before they move, and

(h) At time of initiation of negotiations for acquisition inform the parties in interest of the advisory service to which they may be entitled.

Subpart G—Real Property Acquisition

§ 742.701 Acquisition by agreement.

(a) Every reasonable effort will be made to: (1) Acquire real property by agreement with owners based on negotiations, (2) assure consistent treatment of owners, and (3) accomplish negotiations expeditiously. In no event shall negotiations be deferred nor any other action coercive in nature taken in order to compel an agreement.

§ 742.702 Appraisal.

(a) Prior to initiation of negotiations, an appraisal of the fair market value of the real property interest to be acquired will be made by a qualified appraiser.

(b) The owner or his designated representative will be given a reasonable opportunity to accompany the appraiser during his inspection of the property.

(c) Any decrease or increase in the fair market value of the property prior to the date of the appraisal which is caused by the public improvement for which the property is acquired or by the likelihood that the property would be acquired for such improvement, other than due to physical deterioration within the reasonable control of the owner, will be disregarded in appraising the property.

(d) Where appropriate the estimate of the fair market value of the property to be acquired and the estimate of damages or offsetting benefits to the remaining property will be separately stated.

§ 742.703 Establishing just compensation.

(a) Prior to negotiations the agency head shall establish an amount believed to be just compensation which in no event shall be less than the amount of the approved appraisal.

(b) If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the agency head shall offer to acquire the entire property.

§ 742.704 Initiation of negotiations.

(a) When the just compensation has been established, a prompt offer will be made to acquire the real property for the full amount of the just compensation so established.

(b) When the offer is made, the owner of the real property will be provided with a written statement of (1) identification of the real property and the estate or interest therein to be acquired including the buildings, structures and other improvements considered to be a part of the real property, (2) the amount of the estimated just compensation as determined by the acquiring agency and a summary statement of the basis therefor, and (3) if only a portion of the property is to be acquired, a separate statement of the estimated just compensation for the real property interest to be acquired and, where appropriate, damages and benefits to the remaining real property.

(c) The offer of just compensation does not preclude further negotiations with respect to the purchase price.

(d) Tenants occupying the property shall be advised when negotiations for the property are initiated with the owner thereof.

(e) Contracts or options to purchase real property shall not include any payments for relocation costs or any reference to such payments.

§ 742.705 Condemnation.

(a) The time of condemnation will neither be advanced, nor negotiations, condemnation and the deposit of funds in court be deferred, nor any other action coercive in nature taken in order to compel an agreement on price.

(b) If real property is to be acquired by condemnation, proceedings will be instituted promptly. No action will be taken intentionally which will make it necessary for an owner to institute legal proceedings to prove the taking of his real property.

(c) If the final judgment of the court in a condemnation case is that the acquiring agency cannot acquire the real property by condemnation, or if the proceeding in condemnation is abandoned by the acquiring agency, the acquiring agency must pay the owner of the property such sum as will reimburse the owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal and engineering fees actually incurred because of the condemnation proceedings. If these costs are not covered by a court order, reimbursement shall nevertheless be made by the agency head.

§ 742.706 Expenses incidental to transfer of title.

As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award in a condemnation proceeding to acquire real property, the owner will be reimbursed, to the extent the head of the agency determines fair and reasonable, for expenses the owner necessarily incurred for:

(a) Recording fees, transfer taxes, and similar expenses incident to conveying the real property to the acquiring agency,

(b) Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property, and

(c) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the acquiring agency, or the effective date of possession of such real property by the acquiring agency, whichever is earlier, to the extent payable under State law in an acquisition of real property by the United States.

§ 742.707 Improvements owned by tenants.

(a) Whenever any interest in real property is acquired, the agency head will acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property which such acquiring agency requires to be removed from the real property, or which the acquiring agency determines will be adversely affected by the use to which such real property will be put.

(b) The following will apply in determining the just compensation for any such buildings, structures, or other improvements: (1) They will be deemed to be part of the real property to be acquired, notwithstanding the right or obligation of the tenant as against the owner of any other interest in the real property to remove them at the expiration of his term, and (2) the fair market value which such structures, buildings, or other improvements contribute to the fair market value of the real property to be acquired, or the fair market value of such buildings, structures, or other improvements for removal from the real property, whichever is greater, will be paid the tenant therefor, provided the tenant shall assign, transfer and release to the acquiring agency all his rights, title and interest in and to such improvements.

(c) Payments under this § 742.707 will not be made unless the owner of the land involved disclaims all interest in such buildings, structures, or other improvements of the tenant. Nor shall such payments be made which result in duplication of any payments otherwise authorized by law.

(d) The tenant may reject payment under this § 742.707 and obtain payment for the buildings, structures, or other improvements in accordance with any other applicable law.

§ 742.708 Lease to former owner or occupant.

If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term, or for a period subject to termination by the acquiring agency on short notice, the amount of rent required will not exceed the fair rental value of the property to a short-term occupier.

§ 742.709 Requirement to move.

(a) The construction or development of a project will be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property will be required to move from a dwelling (assuming a replacement dwelling will be available), or to move his business or farm operation, without at least 90 days' written notice prior to the date on which such move is required. A notice of less than 90 days may be given only in an emergency or other extraordinary situations. When it is proposed to give an advance notice of less than 90 days the prior approval of the agency head will be obtained:

(b) No owner will be required to surrender possession of real property before he has been paid the agreed purchase price or a deposit has been made with the court for the benefit of the owner in an amount not less than the approved appraisal of the real property being acquired.

[SEAL] MERLIN H. STARING,
Rear Admiral, JAGC, U.S. Navy, Acting Judge Advocate General.

NOVEMBER 5, 1971.

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PART 761—NAVAL DEFENSIVE SEA AREAS; NAVAL AIRSPACE RESERVATIONS, AREAS UNDER NAVY ADMINISTRATION, AND THE TRUST TERRITORY OF THE PACIFIC ISLANDS

Entry Authorization

Part 761 of Chapter VI of Title 32 of the Code of Federal Regulations is amended as follows:

Section 761.3 is amended by amending paragraph (c) and paragraph (c)(3):

§ 761.3 Authority.

* * * * *

(c) *Trust Territory of the Pacific Islands.* The Trust Territory of the Pacific Islands is a strategic area administered by the United States under the provisions of a trusteeship agreement with the United Nations. By Executive Order 11021 of May 7, 1962 (27 F.R. 4409; 3 CFR, 1959–1963 Comp., p. 600), the Secretary of the Interior has been charged with the administrative responsibility for all of the Trust Territory of the Pacific Islands. Under an agreement between the Department of the Navy and the Department of the Interior effective July 1, 1963, the entry of individuals, ships, and aircraft into the Trust Territory is subject to control. Entry into the Trust Territory of the Pacific Islands (other than areas under military control of the Department of the Army (Kwajalein Atoll) and the Department of the Air Force (Eniwetok Atoll) (see § 761.4)) shall be exercised by the High Commissioner of the Trust Territory and the Department of the Navy as follows:

* * * * *

(3) Ships and aircraft: (i) The entry of ships and aircraft, other than U.S. public ships and aircraft, documented under either the laws of the United States or the laws of the Trust Territory into areas of the Trust Territory, excepting those areas under military jurisdiction where entry is controlled by the Department of the Army (Kwajalein Atoll) and the Department of the Air Force (Eniwetok Atoll), shall be controlled solely by the High Commissioner.

* * * * *

Section 761.4 is amended by revising paragraphs (b) and (c) to read as follows:

§ 761.4 Special Provisions.

* * * * *

(b) Entry into islands in the Kwajalein Atoll under military jurisdiction is

controlled by the Department of the Army. Inquiries concerning entries into islands under military control in the Kwajalein Atoll should be directed to: National Range Commander, U.S. Army SAFEGUARD System Command, Attention: SSC-R, Post Office Box 1500, Huntsville, AL 35807.

(c) Entry into Eniwetok Atoll is controlled by the Department of the Air Force. Inquiries concerning entries into Eniwetok Atoll should be directed to: Commander, Air Force Space and Missile Test Center, Vandenburg Air Force Base, CA 93437.

* * * * *

Section 761.6 is amended by changing footnote 1 to read as follows:

§ 761.6 Criteria.

* * * * *

[1] The criteria so marked are applicable only to those applications concerning entry into areas under military cognizance.

Section 761.7 is amended by amending paragraph (d) as follows:

§ 761.7 Basic Controls.

* * * * *

(d) *Trust Territory.* An authorization from the High Commissioner is required for all persons desiring to enter the Trust Territory, except for those areas under military jurisdiction where entry is controlled by the Department of the Army (Kwajalein Atoll) and the Department of the Air Force (Eniwetok Atoll).

* * * * *

Section 761.9 is amended by revising paragraph (g) to read as follows:

§ 761.9 Entry Control Commanders.

* * * * *

(g) *Commander, Hawaiian Sea Frontier.* Authorization for U.S. registered private vessels to enter Johnston Island, Midway Island, Kingman Reef, Kaneohe Bay Naval Defensive Sea Area, and Pearl Harbor Naval Defensive Sea Area, and for Filipino workers employed by U.S. contractors to enter Wake Island (see also paragraph (j) of this section); authorization for all persons and U.S. registered private and Canadian public vessels to enter Kodiak Naval Defensive Sea Area, Kiska Island Naval Defensive Sea Area, and Unalaska (Dutch Harbor) Naval Defensive Sea Area.

* * * * *

§ 761.10 [Amended]

Section 761.10, paragraph (f) is deleted and reserved.

Section 761.12, paragraph (b) is revised and paragraph (c) is deleted and reserved. Paragraph (b) as revised reads as follows:

§ 761.12 Ships: group authorizations.

* * * * *

(b) U.S. private vessels which are: (1) Under charter to the Department of Defense (including the Military Sealift Command), or (2) operating under a contract or charter with the Department of Defense providing for the employment of such vessels, or (3) routed by a Naval Control of Shipping Office, or (4) employed exclusively in support of and in connection with a Department of Defense construction, maintenance, or repair contract and whose crews carry individual entry clearances, to enter defense areas as authorized by controlling Defense Department agency.

(c) [Reserved]

* * * * *

[SEAL] MERLIN H. STARING,
Rear Admiral, JAGC, U.S. Navy, Acting Judge Advocate General.

NOVEMBER 8, 1971.

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Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation

SUBCHAPTER J—BRIDGES

[CGFR 70-140a]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Fort Point Channel, Boston, Mass.

This amendment changes the regulations for the city of Boston highway bridges across Fort Point Channel to provide that the Summer and Congress Street bridges need not be opened for the passage of vessels and to increase the period when the Northern Street bridge draw need not be opened. This amendment was circulated as a public notice dated May 21, 1971 by the Commander, First Coast Guard District and was published in the FEDERAL REGISTER as a notice of proposed rule making (CGFR 70-140) on May 22, 1971 (36 F.R. 9328). In response to the proposals, seven favorable endorsements were received, four statements of no objection or no comment were received and one objection to the change in opening periods for the Northern Avenue bridge was received. The objection has been withdrawn however, on assurances from the city of Boston that the draw will open as soon as possible in emergency situations.

Accordingly, Part 117 of Title 33 of the Code of Federal Regulations is amended by revising § 117.75(i) to read as follows:

§ 117.75 Boston Harbor, Mass., and adjacent waters; bridges.

* * * * *

(i) *Fort Point Channel, city of Boston highway bridges.* (1) The draw of the Summer and Congress Street bridges need not open for the passage of vessels and paragraphs (b) through (e) of this section do not apply to these bridges. However, the draws shall be returned to an operable condition within 6 months after notification from the Commandant to take such action.

(2) From 6 a.m. to 8 p.m. the Northern Street bridge draw shall open on signal, except that it need not open from 7 a.m. to 9 a.m. and from 4:30 p.m. to 6:30 p.m., Monday through Friday, excluding legal holidays for the passage of vessels whose draft is less than 18 feet. From 8 p.m. to 6 a.m. the draw need not open for the passage of vessels.

* * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05-1(c)(4))

Effective date. This revision shall become effective on December 17, 1971.

Dated: November 9, 1971.

W. M. BEINKERT,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.71-16738 Filed 11-16-71;8:50 am]

[CGFR 71-44a]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Passaic River, N.J.

This amendment changes the regulations for the Erie Lackawanna railroad bridge across the Passaic River at Lyndhurst to require at least 6 hours' notice for the draw to open for the passage of vessels from 12 midnight to 8 a.m. The draw will continue to open on signal from 8 a.m. to 12 midnight.

This amendment was circulated as a public notice dated June 3, 1971, by the Commander, Third Coast Guard District and was published in the FEDERAL REGISTER as a notice of proposed rule making (CGFR 71-44) on June 8, 1971 (36 F.R. 11045).

A total of 14 responses were received. One offered no comment and one no objection. One suggested a trial period of 1 year. Six objected on the grounds that to leave the draw unattended might lead to vandalism. One objected for several reasons, namely that to leave the draws unattended would invite vandalism; that the narrow channel in this reach of the Passaic River could cause serious problems to vessels if the draw was not opened at the time requested, and that fires were occasionally started from locomotive sparks that required immediate attention in order to be contained. One objected in the belief that this change would be in violation of the Code of Federal Regulations. Two suggested that the draw be left in the open position from 12 midnight to 8 a.m. One objected because of possible delay.

While vandalism may be a problem, this point is not specifically related to the use of the draw by vessels. This is also true of the potential fire hazard. This change would not violate but would be within the guidelines set forth for changes in the Code of Federal Regulations. Scheduled train crossings from 12 midnight to 8 a.m. preclude leaving the draw open during this period. Delays could be avoided if 6 hours' notice is given of the exact time required.

In view of the comments received the Coast Guard feels that the proposed

regulations will not impose an unreasonable restriction on navigation. The use of this waterway by vessels will be closely monitored and if a change in these regulations appears desirable the public will be asked to comment on any change proposed.

Accordingly, Part 117 of Title 33 of the Code of Federal Regulations is amended by adding §117.225(f)(2–c) to read as follows:

§ 117.225 Navigable waters in the State of New Jersey; bridges where constant attendance of drawtenders is not required.

* * * * *

(f) * * *

(2–c) Passaic River, Erie Lackawanna railroad bridge at Lyndhurst. From 8 a.m. to 12 midnight the draw shall open on signal. From 12 midnight to 8 a.m. the draw shall open on signal if at least 6 hours notice has been given.

* * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05–1(c)(4))

Effective date. This revision shall become effective on December 17, 1971.

Dated: November 9, 1971.

W. M. BENKERT,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.71–16737 Filed 11–16–71;8:50 am]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 4—Department of Agriculture

PART 4–12—LABOR

Affirmative Action Compliance Program

These amendments involve matters relating to agency management and to contracts and include rules interpreting and implementing existing regulations of other Federal agencies which are not subject to the notice and public procedure requirements for rule making under 5 U.S.C. 553. It is in the public interest that these provisions be made effective immediately. Accordingly, in accordance with the Secretary's Statement of Policy (36 F.R. 13804) it is found upon good cause that notice and other public procedure with respect to the amendments are impracticable, unnecessary, and contrary to the public interest.

(E.O. 11246; 41 CFR Part 60)

1. Section 4–12.810 is revised by adding a new paragraph (d) as follows:

§ 4–12.810 Affirmative action compliance program.

* * * * *

(d) *Bid conditions for all nonexempt Federal and Federally assisted construction contracts.* Contracting agencies shall require that the bid conditions setting forth affirmative action and equal employment opportunity requirements are to be included in all bid documents for use in connection with nonexempt Federal and federally assisted construction contracts. These requirements shall be applicable to the following "Hometown" plans:

(1) *Denver.* Adams, Boulder, Jefferson, Arapahoe, and Denver Counties, Colo.

(2) *Detroit.* Wayne, Oakland, and Macomb Counties, Mich.

(3) *Kansas City.* Clay, Platte, Jackson, Bates, Carroll, Lafayette, Ray, Johnson, Henry, and Cass Counties, Missouri; and Wyandotte, Johnson, and Miami Counties, Kans.

(4) *New Orleans.* Area of jurisdiction of the Southeast Louisiana Building and Construction Trades Council in the city of New Orleans and Southeast La.

(5) *Pittsburgh.* Allegheny County, Pa.

(6) *Rochester.* Area of jurisdiction of the Allied Building Trades Council of Rochester, N.Y. and vicinity in Monroe, Livingston, Wayne, and Ontario Counties.

(7) *Seattle.* King County, Wash.

(i) All bidders must comply with the bid conditions contained in the invitation to be considered responsive bidders and hence eligible for the award. Part I of the bid conditions applies to those trades covered by the applicable "Hometown" plan. Part II of the bid conditions contains the affirmative action plan for those trades not covered by the "Hometown" plan.

(ii) Agencies should request copies of the bid conditions for the listed "Hometown" plans, as needed, from the Contracts and Supply Management Staff, Office of Plant and Operations, Washington, D.C. 20250.

Effective date: Upon publication in the FEDERAL REGISTER (11–17–71).

Done at Washington, D.C., this 12th day of November 1971.

T. M. BALDAUF,
Acting Director of Plant and Operations.

[FR Doc.71–16787 Filed 11–16–71;8:53 am]

Chapter 5A—Federal Supply Service, General Services Administration

MISCELLANEOUS AMENDMENTS TO CHAPTER

Chapter 5A is amended as set forth below:

PART 5A–72—REGULAR PURCHASE PROGRAMS OTHER THAN FEDERAL SUPPLY SCHEDULE

The table of contents for Part 5A–72 is amended to delete §§ 5A–72.107–7, 5A–72.107–8, and 5A–72.107–9 and to revise the following entries:

Sec.	
5A–72.107	Direct delivery of stock items.
5A–72.107–1	General.
5A–72.107–2	Direct delivery of stock items under consolidated stock replenishment program.
5A–72.107–3	Direct delivery of stock items not under term contract or the consolidated stock replenishment program.
5A–72.107–4	Payment for deliveries—f.o.b. shipping point.
5A–72.107–5	Payment for deliveries—f.o.b. destination.
5A–72.107–6	Inspection.

1. Section 5A–72.106–7(e) is amended and §§ 5A–72.106–7(d) and 5A–72.106–7(f) are revised as follows:

§ 5A–72.106–7 Procurement of paints, dopes, varnishes and related products (FSC Group 80).

* * * * *

(d) *Availability for inspection and testing and delivery clause.* When the clause prescribed in § 5A–7.101–77 is used, 60 days and 30 days normally will be specified in the first paragraph thereof. However, any appropriate number of days may be specified.

(e) *Contractor responsibility clause.*

CONTRACTOR RESPONSIBILITY

* * * * *

(f) *Batch numbers.* Batch numbers shall be assigned so that each batch number represents a distinct production quantity produced under identical conditions at one time. This batch number will be marked on all containers and will be annotated on Contractor's inspection and test reports.

* * * * *

(i) *Warranty of supplies (Aerosols) clause (for use with Class 8010 (Aerosols) items).* When this clause is used for Class 8030 and 8040 items, delete "(Aerosols)," add "mixing and stirring" after "shaking," and substitute "date of manufacture" for "date of acceptance."

WARRANTY OF SUPPLIES (AEROSOLS)

(a) Unless otherwise specified in the Schedule, material furnished under this contract shall have a 1-year unqualified guaranteed shelf life beginning with the date of acceptance and must be guaranteed usable after normal shaking. Where a shelf life of less than 1 year applies, the Government's warranty requirements are expressed in terms of required number of months of unqualified guaranteed shelf life from the date of acceptance of the material from the Contractor.

(b) When material is determined unusable, Contractor must either (1) replace all defective quantities at no charge, or (2) reimburse the Government for full replacement value in an amount equal to the contract price, plus transportation charges to the destination(s) in the contract if paid by the Government, whichever is ordered by the Contracting Officer. Replacement of unusable material or reimbursement will include any transportation costs included in the contract price. This is in addition to the rights reserved to the Government under Article 5(d), General Provisions, Standard Form 32.

* * * * *

2. Subpart 5A–72.1 is amended to revise §§ 5A–72.107 through 5A–72.107–3.

§ 5A-72.107 Direct delivery of stock items.

§ 5A-72.107-1 General.

(a) This section contains procedures for the placement of orders for stock items for direct delivery from vendor to consignee. The direct delivery concept and detailed related procedures are contained in the HB, Supply Operations, ch. 9 (FSS P 2900.3).

(b) Direct delivery of stock items is the shipping of required items directly from a vendor to a consignee, bypassing a GSA supply distribution facility to which these items would normally be shipped for storage and reshipment. The direct delivery method is usually used where requirements for stock items are large, where this method will satisfy customer agency requirements for time of delivery, and where this method can be expected to produce savings to the Government through a more economical and expedient shipping method. The direct delivery method should not be used where excessive stock inventories exist and where there is no prospect of reducing them in the near future. For details see the HB, Supply Operations, ch. 9 (FSS P 2900.3).

§ 5A-72.107-2 Direct delivery of stock items under consolidated stock replenishment program.

(a) On items under the consolidated stock replenishment program, the region shall forward the agency requisition, or extract thereof, appropriately identified as a stock item requirement for direct delivery, to the purchasing activity having the consolidated assignment. Such purchasing activity shall forward acknowledgment of receipt of purchase authority to the GSA regional office originally receiving the order, and include a provision in the resultant contract that the delivery order will be placed by that region. The original and one copy of the contract shall be transmitted, by letter, to the region for preparation of GSA Form 1430, GSA Stores Direct Delivery Order (Worksheet). (See the HB, Supply Operations, ch. 9 (FSS P 2900.3).)

(b) When a region is authorized to make a local direct delivery purchase of a requirement for an item under the consolidated stock replenishment program, the transaction shall be documented as prescribed in § 5A-72.107-3 (a) and (b).

§ 5A-72.107-3 Direct delivery of stock items not under term contract or the consolidated stock replenishment program.

Generally, it is more difficult to arrange for direct delivery of an item when established sources are not available, due to possible delay in obtaining delivery for the customer. However, if the customer agency is agreeable, direct delivery of large quantities of items not covered by established sources should be made when practical and economical.

(a) In cases where such purchases are negotiated under section 302(c)(3) of the Federal Property and Administrative Services Act of 1949, GSA Form 1430 shall be used both as the purchase order (contract) and the delivery order. In such cases, it will be necessary to incorporate the terms and conditions contained on the reverse of the current edition of GSA Form 300, Purchase Order. A locally reproduced form containing those clauses shall be attached only to the original of the order sent to the vendor. Also, a statement substantially as follows shall be inserted in the body of the order:

This order is issued pursuant to your quotation (insert appropriate reference), and is subject to the terms and conditions of the attached Form _____, dated _____.

(b) Purchases other than under section 302(c)(3) of the Federal Property and Administrative Services Act of 1949 shall be documented as formal contracts and GSA Form 1430 issued pursuant thereto as delivery orders.

(c) See the HB, Supply Operations, ch. 9 (FSS P 2900.3).

3. Sections 5A-72.107-7, 5A-72.107-8, and 5A-72.107-9 are renumbered as §§ 5A-72.107-4, 5A-72.107-5, and 5A-72.107-6 without change in text, and §§ 5A-72.107-7, 5A-72.107-8, and 5A-72.107-9 are deleted.

PART 5A-73 FEDERAL SUPPLY SCHEDULE PROGRAM

Section 5A-73.112(e) is amended to read as follows:

§ 5A-73.112 Maximum order limitations.

* * * * *

(e) * * *

CONSOLIDATION OF REQUIREMENTS

For the information of offerors, the following provision will be included in the resulting Schedules:

In accordance with FPMR 101-26.106, whenever feasible, agencies should consolidate their requirements so as to take advantage of price savings available through separate procurement of quantities which exceed the maximum order limitation.

* * * * *

PART 5A-74—SPECIAL PURCHASE PROGRAMS

The table of contents for Part 5A-74 is amended to add the following entry:

5A-74.410 Special provisons for export orders.

Section 5A-74.410 is added as follows:

§ 5A-74.410 Special provisions for export orders.

In addition to the requirements in connection with special applicable export provisions to be cited on orders for shipments to foreign destinations, a provision substantially as follows shall also be shown on these orders:

PACKING LISTS FOR EXPORT SHIPMENTS

In addition to the packing lists required by paragraph 33 of GSA Form 1246 to accompany each shipment, Contractor must furnish the following number of copies of applicable packing lists with his submission of GSA Form 489 (Application for Shipping Instructions): number of copies _____[1].

NOTE: GSA Form 1227, Contractor's Report of Orders Received and Shipments Made, illustrated in § 5A-16.950-1227, is replaced by the July 1971 edition of the same number and title. Copies may be obtained from General Services Administration (3BRD), Washington, DC 20407. GSA Form 1227 filed as part of original document.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); and 41 CFR 5-1.101(c))

Effective date. These regulations are effective 30 days after the date shown below.

Dated: November 5, 1971.

L. E. SPANGLER,
Acting Commissioner,
Federal Supply Service.

[FR Doc.71-16740 Filed 11-16-71;8:50 am]

Title 46—SHIPPING

Chapter II—Maritime Administration, Department of Commerce

SUBCHAPTER B—REGULATIONS AFFECTING MARITIME CARRIERS AND RELATED ACTIVITIES

[General Order 39, 3d Rev., Amdt. 7]

PART 222—STATEMENTS, REPORTS, AND AGREEMENTS REQUIRED TO BE FILED

Vessel Utilization and Performance Reports

Effective December 1, 1971, subparagraph (1) of § 222.2(a) is hereby amended by changing the words "vessel of 1,000 or more net registered tons" to read "vessel of 1,000 or more gross registered tons."

NOTE: Existing supplies of report forms referred to in § 222.2 of this part shall continue to be used but shall be completed in accordance with this amendment.

(Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114)

By order of the Assistant Secretary of Commerce for Maritime Affairs.

Dated: November 10, 1971.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.71-16758 Filed 11-16-71;8:51 am]

[1] Order issuing offices shall insert the required number of export packing lists in the blank space in the above provision. Generally this number shall be the number of required packing lists shown on AID Form 11-94 plus two copies, but never less than five.

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 33—SPORT FISHING

Prime Hook National Wildlife Refuge, Del.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (11-17-71).

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

DELAWARE

PRIME HOOK NATIONAL WILDLIFE REFUGE

Sport fishing is permitted on the Prime Hook National Wildlife Refuge, Milton, Del. The refuge is delineated on maps available at refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, U.S. Post Office and Courthouse, Boston, Mass. 02109. Sport fishing shall be in accordance with all applicable State regulations and the following special condition: Boats, with or without motors, are permitted for fishing freshwater streams and ponds. Boats may be launched from designated access points or public roads.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 33 and are effective through December 31, 1972.

NORMAN E. HOLGERSEN,
Acting Refuge Manager, Prime Hook National Wildlife Refuge.

NOVEMBER 11, 1971.

[FR Doc.71-16777 Filed 11-16-71;8:52 am]

Title 49—TRANSPORTATION

Chapter I—Hazardous Materials Regulations Board, Department of Transportation

[Docket No. HM-80; Amdts. Nos. 173-59, 179-10]

PART 179—SPECIFICATIONS FOR TANK CARS

Miscellaneous Amendments

Correction

In F.R. Doc. 71-16130 appearing at page 21343 in the issue of Saturday, November 6, 1971, the material following the second table in § 179.200-7(d) should read as follows:

Type 304L and Type 316L test specimens must be given a sensitizing treatment prior to testing. (A typical sensitizing treatment is 1 hour at 1,250° F.)

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Capital Losses; Correction

In F.R. Doc. 71-15378 appearing at page 20517 in the issue of Saturday, October 23, 1971, the following changes should be made:

1. On the 20th line of the flush material following the computation in example (7) of § 1.1211-1(b)(8), the term "loss" should read "gain".

2. On the 2d line of the 3d paragraph of example (5) of § 1.1212-1(b)(5), the term "short-term" should read "long-term".

JAMES F. DRING,
Director, Legislation and Regulations Division.

[FR Doc.71-16739 Filed 11-16-71;8:50 am]

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

[7 CFR Part 1443]

CASTOR BEANS

Price Support Program For 1972 Crop

Pursuant to sections 301 and 401 of the Agricultural Act of 1949, as amended (63 Stat. 1051, as amended; 7 U.S.C. 1447, 1421), and sections 4 and 5 of the Commodity Credit Charter Act, as amended (62 Stat. 1070, as amended; 15 U.S.C. 714b, 714c), the Secretary is considering a price support program for 1972 crop castor beans.

Section 301 of the 1949 Act authorizes the Secretary to make available through loans, purchases, or other operations price support to producers for any nonbasic commodity for which price support is not mandatory at a level not in excess of 90 per centum of the parity price for the commodity.

Section 401 of the Act requires that the following factors shall be taken into consideration in determining, in the case of any commodity for which price support is discretionary, whether a price-support operation shall be undertaken and the level of such support:

(1) The supply of the commodity in relation to the demand therefor,

(2) The price levels at which other commodities are being supported,

(3) The availability of funds,

(4) The perishability of the commodity,

(5) The importance of the commodity to agriculture and the national economy,

(6) The ability to dispose of stocks acquired through a price-support operation,

(7) The need for offsetting temporary losses of export markets, and

(8) The ability and willingness of producers to keep supplies in line with demand.

Consideration will be given to data, views, and recommendations pertaining to the determinations to be made under this notice which are submitted in writing to the Director, Oilseeds and Special Crops Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250.

All written submissions made pursuant to this notice will be made available for public inspection at the office of the Director during regular business hours (8:15 a.m. to 4:45 p.m.) (7 CFR 1.27(b)). In order to be sure of consideration, all submissions must be received by the Director not later than 30 days from the date of publication of this notice in the FEDERAL REGISTER.

Signed at Washington, D.C., on November 12, 1971.

KENNETH E. FRICK,
Executive Vice President, Commodity Credit Corporation.

[FR Doc.71-16784 Filed 11-16-71;8:52 am]

Consumer and Marketing Service

[7 CFR Part 907]

NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Proposed Size Regulation

Notice is hereby given that the Department is considering a proposed size regulation for navel oranges grown in Arizona and designated part of California, pursuant to the applicable provisions of the marketing agreement, as amended, and Order No. 907, as amended (7 CFR 907, 35 F.R. 16359), regulating the handling of navel oranges grown in Arizona and designated part of California. This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The proposed regulation was proposed by the Navel Orange Administrative Committee, established under said amended marketing agreement and order as the agency to administer the terms and provisions thereof. The proposed regulation would limit the handling of navel oranges grown in District 1, and District 3 to navel oranges measuring 2.20 inches or larger.

The proposed regulation is as follows:

§ 907.544 Navel Orange Regulation 241.

(a) *Order.* From December 17, 1971, through July 31, 1972, no handler shall handle any navel oranges, grown in District 1, or District 3, which are of a size smaller than 2.20 inches in diameter, which shall be the largest measurement at a right angle to a straight line running from stem to the blossom end of the fruit: *Provided,* That not to exceed 5 percent, by count, of the oranges in any type of container may measure smaller than 2.20 inches in diameter.

(b) As used in this section "handle," "handler," and "District 1," and "District 3" each shall have the same meaning as when used in the said amended marketing agreement and order.

All persons who desire to submit written data, views, or arguments for consideration in connection with the proposed regulation shall file same, in quadruplicate, with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than the seventh day after publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Dated: November 12, 1971.

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

[FR Doc.71-16736 Filed 11-16-71;8:49 am]

[7 CFR Part 915]

AVOCADOS GROWN IN FLORIDA

Notice of Proposed Rule Making

Notice is hereby given that the Department is giving consideration to a proposal, as hereinafter set forth, which would limit the handling of avocados grown in Florida by amending the container requirements of § 915.305 *Avocado Order 5* (36 F.R. 20670), the pack requirements of § 915.306 *Avocado Regulation 6* (36 F.R. 20670), and the size, quality, and maturity requirements of § 915.313 *Avocado Regulation 13* (36 F.R. 11509, 20670). The proposal was recommended by the Avocado Administrative Committee, established pursuant to the amended marketing agreement and Order No. 915, as amended (7 CFR Part 915; 36 F.R. 14126), regulating the handling of avocados grown in south Florida. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The proposal reflects the committee's current appraisal of present and prospective marketing conditions for avocados. Seasonally heavy shipments of avocados are now in progress. On October 25, 1971, the aforementioned regulations were amended to permit the handling within the production area of avocados which would have failed to meet the container, pack, and grade requirements in effect just prior thereto. Industry experience since that date has shown that, under present circumstances, current regulations have not had desired results. Lower quality avocados sold in urban markets within the production area have adversely affected sales of avocados meeting container, pack, and grade requirements. Additionally, the markets for avocados of all levels of quality are reported to have been depressed. Consequently, the committee has recommended reestablishment of the regulation requirements in effect just prior to October 25, 1971.

The proposals are as follows:

1. The provisions of paragraph (a) (1) of § 915.305 (Avocado Order 5; 36 F.R. 20670) are amended to read as follows:

§ 915.305 Avocado Order 5.

(a) *Order.* (1) On and after November 29, 1971, no handler shall handle any variety of avocados in containers having a capacity of more than 4 pounds of avocados, unless such avocados are handled in containers meeting the following specifications and conform to all other applicable requirements of this section:

* * * * *

2. The provisions of paragraph (a) (2) of § 915.306 (Avocado Regulation 6; 36 F.R. 20670) are amended to read as follows:

§ 915.306 Avocado Regulation 6.

(a) *Order.* (1) * * *

(2) On and after November 29, 1971, no handler shall handle any container of avocados, grown in the production area, unless the avocados in such container meet the requirements of standard pack and one of the pack specifications established in subparagraph (1) of this paragraph, and each container in each lot is marked or stamped to show the U.S. grade applicable to such lot: *Provided,* That, in lieu of such marking requirement, any handler may affix to the container a label, brand or trademark, registered with the Avocado Administrative Committee in accordance with the following, which appropriately identifies the grade of such avocados:

* * * * *

3. The provisions of paragraph (a) (1) of § 915.313 (Avocado Regulation 13; 36 F.R. 11509, 20670) are amended to read as follows:

§ 915.313 Avocado Regulation 13.

(a) *Order.* (1) During the period November 29, 1971, through April 30, 1972, no handler shall handle any avocados unless such avocados grade at least U.S. No. 3 grade;

* * * * *

All persons who desire to submit written data, views, or arguments in connection with the proposal should file the same with the Hearing Clerk, Room 112A, U.S. Department of Agriculture, Washington, D.C. 20250, not later than the seventh day after the publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Dated: November 12, 1971.

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

[FR Doc.71-16735 Filed 11-16-71;8:49 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Part 404]

[Reg. No. 4]

FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

Execution of Applications

Notice is hereby given pursuant to the Administrative Procedure Act (5 U.S.C. 552 et seq.) that the amendment set forth in tentative form below is proposed by the Commissioner of Social Security, with the approval of the Secretary of Health, Education, and Welfare. The proposed amendment to § 404.603(g) would permit the acceptance, for good cause shown, of an application for benefits executed on behalf of a mentally competent, physically capable adult by another person. This amendment will permit the Administration, for good cause shown, to establish an application filing date on the basis of a telephone call expressing an intent to file an application.

Prior to final adoption of the proposed amendment, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing in triplicate to the Commissioner of Social Security, Department of Health, Education, and Welfare Building, Fourth and Independence Avenue SW., Washington, D.C. 20201, within a period of 30 days from the date of publication of this notice in the FEDERAL REGISTER.

Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Public Affairs, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 3193, 330 Independence Avenue SW., Washington, DC 20201.

The proposed regulation is to be issued under the authority contained in sections 202, 205, 216, 223, and 1102 of the Social Security Act, as amended, 49 Stat. 623, as amended, 53 Stat. 1368, as amended, 68 Stat. 1080, as amended, 70 Stat. 815, as amended, 49 Stat. 647, as amended; section 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 18, 631; 42 U.S.C. 402, 405, 416, 423, and 1302.

Dated: October 22, 1971.

ROBERT M. BALL,
Commissioner of Social Security.

Approved: November 10, 1971.

ELLIOT L. RICHARDSON,
Secretary of Health, Education, and Welfare.

Subpart G of Regulations No. 4 of the Social Security Administration (20 CFR 404.601 et seq.) is amended as follows:

Paragraph (g) of § 404.603 is revised to read as follows:

§ 404.603 Execution of applications.

The Administration determines who is the proper party to execute an application for benefits in accordance with the following rules:

* * * * *

(g) For good cause shown, the Administration may accept an application executed by a person other than one described in paragraphs (a) through (f) of this section.

[FR Doc.71-16745 Filed 11-16-71;8:50 am]

[20 CFR Part 405]

[Reg. No. 5]

FEDERAL HEALTH INSURANCE FOR THE AGED

Review and Hearing Under the Supplementary Medical Insurance Program

Notice is hereby given, pursuant to the Administrative Procedure Act (5 U.S.C. 552 et seq.) that the regulations set forth in tentative form below are proposed by the Commissioner of Social Security, with the approval of the Secretary of Health, Education, and Welfare. The proposed amendments extend the time, in certain instances, during which an initial or review determination of a carrier or a decision of a hearing officer may be reopened; and make editorial and other clarifying or interpretive changes in §§ 405.801–405.803, 405.805–405.812, and 405.820–405.823 inclusive.

Prior to the final adoption of the proposed regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing in triplicate to the Commissioner of Social Security, Department of Health, Education, and Welfare Building, Fourth and Independence Avenue SW., Washington, DC 20201, within a period of 30 days from the date of publication of this notice in the FEDERAL REGISTER.

Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Public Affairs, Social Security Administration, Department of Health, Education, and Welfare, North

Building, Room 3193, 330 Independence Avenue SW., Washington, DC 20201.

The proposed regulations are to be issued under the authority contained in sections 1102, 1831–1843, 1871; 49 Stat. 647, as amended; 79 Stat. 301–313; 79 Stat. 331; 42 U.S.C. 1302, 1395 et seq.

Dated: October 20, 1971.

ROBERT M. BALL,
Commissioner of Social Security.

Approved: November 10, 1971.

ELLIOT L. RICHARDSON,
Secretary of Health, Education, and Welfare.

Subpart H of Part 405 is amended as follows:

1. Section 405.801 is revised to read as follows:

§ 405.801 Title XVIII, Part B—General.

(a) Section 1842(b)(3)(C) of the Act provides that a carrier shall establish and maintain procedures under which an individual enrolled in the supplementary medical insurance plan (see Subpart B of this part) is provided with the opportunity for a hearing by the carrier when he is dissatisfied with the carrier's determination denying a request for payment, or with the amount of payment under the supplementary medical insurance plan or when he believes that the request for payment is not being acted upon with reasonable promptness.

(b) As used in this section, the term "with reasonable promptness" shall mean a period of 60 consecutive days after the receipt by the carrier of a request for payment.

2. Paragraphs (b) through (f) inclusive of § 405.802 are revised to read as follows:

§ 405.802 Definitions.

As used in this Subpart H the term:

* * * * *

(b) "Party" means a person enrolled under Part B of XVIII, his assignee, or other entity having standing in the initial or appellate proceedings.

(c) "Assignor" means a person meeting the enrollment requirements under Part B of title XVIII for payment of the claim being assigned.

(d) "Assignee" means a physician or other person who furnished covered services to an assignor under the supplementary medical insurance plan and who has accepted a valid assignment executed by such assignor.

(e) "Assignment" means the transfer by the assignor (defined in paragraph (c) of this section) of his claim for payment to the assignee (defined in paragraph (d) of this section) in return for the latter's promise not to charge more for his services than the carrier finds to be the reasonable charges.

(f) "Representative" means an individual meeting the conditions described in §§ 405.870–405.871.

3. Section 405.803 is revised to read as follows:

§ 405.803 Initial determination.

(a) The carrier (or the hearing officer where a claim is "not acted upon with reasonable promptness" (see § 405.801)) shall, on the basis of all of the evidence, make an initial determination with respect to an applicant's claim for benefits under Part B of title XVIII.

(b) An initial determination for purposes of this subpart is a decision by a carrier, an intermediary authorized to adjudicate Part B claims, a hearing officer where a claim is not acted upon with reasonable promptness (see § 405.801), or other authorized entity which, in the absence of an appeal or review as provided for in this subpart, is or becomes the final decision to pay or to disallow a claim for benefits under Part B. It contemplates, for this purpose, resolution of all relevant subordinate issues (except as provided in paragraph (c) of this section), including, among others, decisions as to whether items and services furnished are covered; whether the deductible has been met; whether the receipted bill or other evidence of payment is acceptable; whether the charges for items or services furnished are reasonable; application of the coinsurance feature; the number of home health visits utilized; the medical necessity of services and supplies; and the amount of benefit payable and to whom it should be paid.

(c) For purposes of this subpart, a carrier (or hearing officer where a claim is not acted upon with reasonable promptness (see § 405.801)) may not make an initial determination with respect to any issue or factor for which the Social Security Administration has sole responsibility (for example, whether or not an individual is entitled to coverage under the supplementary medical insurance plan; whether an independent laboratory meets the conditions for coverage of services; etc.), or which relates to hospital insurance benefits under Part A of title XVIII of the Act.

4. Sections 405.805 through 405.823 inclusive are revised to read as follows:

§ 405.805 Parties to the initial determination.

The parties to the initial determination (see § 405.803) may be any party described in § 405.802(b).

§ 405.806 Effect of initial determination.

The initial determination shall be final and binding upon the party or parties to such determination unless it is reviewed in accordance with §§ 405.810–405.812, or is revised in accordance with § 405.841 by the carrier (or by the hearing officer presiding where a claim is not acted upon with reasonable promptness (see § 405.801)).

§ 405.807 Review of initial determination.

(a) *General.* A party to an initial determination by a carrier, who is dissatisfied with such initial determination, may request that the carrier review such determination. If a review is requested, such action shall not constitute a waiver of the right to hearing (see § 405.820) subsequent to such review.

(b) *Place of filing request.* A request for a carrier to review the initial determination is to be made in writing and filed at an office of the carrier or at an office of the Social Security Administration.

(c) *Time of filing request.* The carrier shall provide a period of 6 months after the date of the notice of its initial determination within which a party to the initial determination may request review. The carrier may, upon request by the party affected, extend the period for requesting the review.

(d) *Request for review.* Any clear expression in writing by a party to an initial determination which indicates, in effect, that he is dissatisfied with such determination by the carrier and wants to appeal the matter further constitutes a request for review.

§ 405.808 Parties to the review.

The parties to the review (as provided for in § 405.807(a)) shall be the persons who were parties to the carrier's initial determination as described in § 405.805, and any other party whose rights with respect to the particular claim being reviewed may be affected by such review.

§ 405.809 Opportunity to submit evidence.

The parties to the review (as provided for in § 405.807(a)) shall have a reasonable opportunity to submit written evidence and contentions as to fact or law relative to the claim at issue.

§ 405.810 Review determination.

Subject to the provisions of §§ 405.807–405.809, the carrier shall review the claim in dispute and, upon the basis of the evidence of record, shall make a separate determination affirming or revising in whole or in part the findings and determination in question.

§ 405.811 Notice of review determination.

Written notice of the determination after review shall be mailed to the parties thereto at their last known addresses. The review determination shall state the basis therefor and advise the parties of their right to a hearing, the place and manner of requesting a hearing, and the time limit during which a hearing must be requested (see §§ 405.820 and 405.821).

§ 405.812 Effect of review determination.

The review determination shall be final and binding upon all parties to such review unless a hearing determination is rendered pursuant to a request made in accordance with § 405.821 or is revised in accordance with § 405.841.

§ 405.820 Right to hearing.

(a) *General.* Any party designated in § 405.822 shall be entitled to a hearing after a review determination has been

made by the carrier, if such party files a written request.

(b) *Place of filing request.* The hearing request must be filed at an office of the carrier or at an office of the Social Security Administration.

(c) *Time of filing request.* Except where the initial determination has been made at a hearing (where a claim is not acted upon with reasonable promptness (see § 405.801)), there shall be provided a period of 6 months after the date of the notice of the review determination within which a party to the initial or review determination may request a hearing. The carrier may, upon request by the party affected, extend the period for filing the request for hearing.

§ 405.821 Request for hearing.

A request for a hearing is any clear expression in writing by a claimant asking for a hearing to adjudicate his claim when not acted upon with reasonable promptness, or by a party to a review determination which states, in effect, that he is dissatisfied with the carrier's review determination and wants further opportunity to appeal the matter to the carrier.

§ 405.822 Parties to a hearing.

The parties to a hearing shall be the persons who were parties to the carrier's review determination (§ 405.808) which is in rights with respect to supplementary medical insurance benefits may be prejudiced by the decision.

§ 405.823 Hearing officer.

Any hearing provided for in this subpart shall be conducted by a hearing officer designated by the appropriate official of the carrier.

5. Section 405.841 is revised to read as follows:

§ 405.841 Reopening initial or review determination of the carrier, and decision of a hearing officer.

An initial or review determination of a carrier or a decision of a hearing officer may be reopened by such carrier or hearing officer:

(a) Within 12 months from the date of the notice of such initial or review determination or decision to the party to such determination or decision; or

(b) After such 12-month period, but within 4 years from the date of the notice of the initial determination to the party to such determination, upon establishment of good cause for reopening such determination or decision (see § 404.958 of Part 404); or

(c) At any time, when:

(1) Such initial or review determination or decision was procured by fraud or similar fault of the beneficiary or some other person, or

(2) Such initial or review determination or decision is unfavorable, in whole or in part, to the party thereto, but only for the purpose of correcting a clerical error or error on the face of the evidence on which such determination or decision was based.

[FR Doc.71-16744 Filed 11-16-71;8:50 am]

FEDERAL RESERVE SYSTEM

[12 CFR Part 222]

[Reg. Y]

BANK HOLDING COMPANIES

Interests in Nonbanking Activities

The Board of Governors proposes to permit bank holding companies, subject to established regulatory procedures, to engage in providing armored car and courier services, following a determination by the Board that such activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto" within the meaning of section 4(c)(8) of the Bank Holding Company Act.

The Board understands that armored car service involves the use of armed personnel, specially designed armored vehicles, and elaborate security measures. The service is intended primarily for the transportation of items of great value whose misplacement or theft would result in great economic loss. Major items requiring such precautions are cash and other instruments that may be negotiated without additional endorsement—that is, bearer-type negotiable instruments.

The Board understands that courier (or messenger) service involves the transportation of important items having critical time schedules. The items involved are generally not bearer-type negotiable instruments and, accordingly, require only the ordinary security measures accorded any confidential business papers. Among the most common documents and related items carried by messenger services are checks, drafts, money orders, travelers checks, commercial papers, written instruments, and data processing material.

To implement the Board's proposal, § 222.4(a) of Regulation Y would be amended by adding subparagraph (11), to read as follows:

§ 222.4 Nonbanking activities.

(a) *Activities closely related to banking or managing or controlling banks.* * * * The following activities have been determined by the Board to be so closely related to banking or managing or controlling banks as to be a proper incident thereto:

* * * * *

(11) Performing or carrying on armored car or courier services.

* * * * *

A hearing on this matter will be conducted by available members of the Board in the Board Room of its building at 20th Street and Constitution Avenue, Washington, D.C., on Friday, December 10, 1971, beginning at 10 a.m. Interested persons are invited to participate, but they need not participate by presenting material orally at the hearing to have their views considered.

Among the issues that will be explored at the hearing are the questions of the extent to which and by what measure a bank holding company should be limited in the armored car or courier service it performs for persons other than itself its subsidiaries, correspondents of its subsidiary banks, or other financial institutions.

All views expressed in written comments on the proposal that are received before December 31, 1971, will be given consideration. Such material will be made available for inspection and copying upon request, except as provided in § 261.6(a) of the Board's rules regarding availability of information.

Persons interested in participating in the hearing by presenting material orally should inform the Secretary of the Board in writing not later than November 29, 1971. Each person admitted as a party to the proceeding will be given up to 30 minutes to present his views.

By order of the Board of Governors, November 9, 1971.

[SEAL] TYNAN SMITH, *Secretary of the Board.*

[FR Doc.71-16775 Filed 11-16-71;8:52 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 270]

[Release No. IC-6785]

REGISTRATION STATEMENTS UNDER INVESTMENT COMPANY ACT OF 1940

Notice of Proposed Rule Making

Notice is hereby given that the Securities and Exchange Commission has under consideration the amendment of Rule 8b-12 [17 CFR 270.8b-12] under the Investment Company Act of 1940 (Act) (15 U.S.C. 80a-1 et seq.), as more particularly described below. The proposed amendment would conform the type size requirements for registration statements and reports filed pursuant to the Act with those required to be filed pursuant to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.). Adoption of the proposed amendment would be made pursuant to the authority granted the Commission in Section 38(a) of the Act (15 U.S.C. 80a-37(a)).

Section 38(a) of the Act authorizes the Commission to make, issue, and amend such rules as are necessary or appropriate to the exercise of the powers conferred upon the Commission, including rules prescribing the form or forms in which information required in registration statements and reports to the Commission shall be set forth.

Paragraph (c) of Rule 8b-12 presently requires that the body of all printed registration statements and reports be in roman type at least as large as 10-point modern type. The rule contains an exception for financial statements and other statistical or tabular data and the notes thereto which, to the extent necessary for convenient presentation, are

permitted to be in roman type at least as large as 8-point modern type.

On April 30, 1971, the Commission adopted amendments to rules under the Securities Act of 1933 and the Securities Exchange Act of 1934 to require that notes to financial statements shall be set forth in 10-point type. (Securities Act Release No. 5145, Exchange Act Release No. 9151) (36 F.R. 8935). The proposed amendments of paragraph (c) of Rule 8b-12 would make this requirement applicable as well to registration statements and reports filed under the Investment Company Act.

Commission action. Part 270 of Chapter II of Title 17 of the Code of Federal Regulations would be amended as indicated below:

As amended, paragraph (c) of § 270.-8b-12 would read as follows:

§ 270.8b-12 Requirements as to paper, printing, and language.

* * * * *

(c) The body of all printed registration statements and reports and all notes to financial statements and other tabular data shall be in roman type at least as large as 10-point modern type. However, to the extent necessary for convenient presentation, financial statements and other statistical or tabular data, including tabular data in notes, may be set in type at least as large and as legible as 8-point modern type. All type shall be leaded at least 2 points.

* * * * *

All interested persons are invited to submit their views and comments on the proposed amendment, in writing to Ronald F. Hunt, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, on or before November 30, 1971. All such communications will be available for public inspection.

(Sec. 38, 54 Stat. 841, 15 U.S.C. 80a-37)

By the Commission, October 29, 1971.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.71-16707 Filed 11-16-71;8:47 am]

Notices

DEPARTMENT OF DEFENSE

Department of the Navy

HAZARDOUS MATERIAL CONTROL

Publication of New Standard

Federal Standard No. 313, Symbols for Packages and Containers for Hazardous Industrial Chemicals and Materials, was coordinated with all Government departments for publication on July 23, 1971.

Invitations for bid and requests for quotation issued on or after November 1, 1971, will incorporate this Standard which requires application of new symbols depicting hazardous characteristics, and submission of a Material Safety Data Sheet to designated Department of Defense activities. The Standard is available to Government contractors on request from the Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120. Single copies are also available without charge at the Business Service Centers at the General Services Administration Regional Offices in Boston, New York, Washington, D.C., Atlanta, Chicago, Kansas City, Mo., Fort Worth, San Francisco, Los Angeles, and Seattle, Wash. Additional copies may be purchased for 25 cents each from the General Services Administration, Specification Sales, Self Services Stores and Fuels Division, Building 197, Washington Navy Yard, Washington, D.C. 20407.

The Standard incorporates two industry standards by reference. The first industry standard is the NFPA Fire Protection Guide on Hazardous Materials which includes NFPA Standards Nos. 325A, 325M, 49, 491M and 704M. It is available from the National Fire Protection Association International, 60 Batterymarch Street, Boston, MA 02110.

The second industry standard is the MCA Guide to Precautionary Labeling of Hazardous Chemicals Manual L-1. It is available from the Manufacturing Chemists Association, Inc., 1825 Connecticut Avenue NW., Washington, DC 20009.

Federal Standard No. 313 supersedes Interim Federal Standard No. 00281 of February 15, 1968, and includes requirements previously published in Military Standard MIL-STD-1341A of August 18, 1969. Further information on Federal Standard No. 313 may be obtained from the Commander, Naval Supply Systems Command (Attn: SUP 056), Washington, D.C. 20390.

MERLIN H. STARING,
Rear Admiral, JAGC, U.S. Navy,
Acting Judge Advocate General.

NOVEMBER 5, 1971.

[FR Doc.71-16683 Filed 11-16-71;8:45 am]

DEPARTMENT OF THE INTERIOR

National Park Service

BLACK CANYON OF THE GUNNISON NATIONAL MONUMENT

Notice of Intention To Issue a Concession Permit

Pursuant to the provisions of section 5, of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that thirty (30) days after the date of publication of this notice, the Department of the Interior, through the Superintendent, Curecanti National Recreation Area, proposes to issue a concession permit to Rim House, Inc., authorizing it to provide concession facilities and services for the public at Black Canyon of the Gunnison National Monument for a period of 5 years from January 1, 1972, through December 31, 1976. The foregoing concessioner has performed its obligations under a prior permit to the satisfaction of the National Park Service and, therefore, pursuant to the Act cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit. However, under the Act cited above, the National Park Service is also required to consider and evaluate all proposals received as a result of this notice. Any proposal to be considered and evaluated must be submitted within thirty (30) days after the publication date of this notice. Interested parties should contact the Superintendent, Curecanti National Recreation Area, 334 South 10th, Montrose, CO 81401, for information as to the requirements of the proposed permit.

Dated: October 20, 1971.

KARL T. GILBERT,
Superintendent, Curecanti
National Recreation Area.

[FR Doc.71-16780 Filed 11-16-71;8:52 am]

LAKE MEAD NATIONAL RECREATION AREA, ARIZ.-NEV.

Notice of Intention To Negotiate a Concession Contract

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that thirty (30) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Temple Bar Marina, Inc., authorizing it to provide concession facilities and services for the public at Lake Mead National Recreation Area for a period of 15 years from January 1, 1972, through December 31, 1986.

The foregoing concessioner has performed its obligations under the expiring contract to the satisfaction of the National Park Service, and therefore, pursuant to the Act cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract. However, under the Act cited above, the Secretary is also required to consider and evaluate all proposals received as a result of this notice. Any proposal to be considered and evaluated must be submitted within thirty (30) days after the publication date of this notice.

Interested parties should contact the Chief, Division of Concessions Management, National Park Service, Washington, D.C. 20240, for information as to the requirements of the proposed contract.

LAWRENCE C. HADLEY,
Assistant Director,
National Park Service.

NOVEMBER 8, 1971.

[FR Doc.71-16779 Filed 11-16-71;8:52 am]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. G-516]

DOUGLAS J. REDDY

Notice of Loan Application

NOVEMBER 11, 1971.

Douglas J. Reddy, 500 140th Avenue East, Madeira Beach, FL 33708, has applied for a loan from the Fisheries Loan Fund to aid in financing the purchase of a new fiber glass vessel, about 44 feet in length, to engage in the fisheries for snapper and groupers.

Notice is hereby given, pursuant to the provisions of 16 U.S.C. 742c, Fisheries Loan Fund Procedures (50 CFR Part 250, as revised), and Reorganization Plan No. 4 of 1970, that the above-entitled application is being considered by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Interior Building, Washington, D.C. 20235. Any person desiring to submit evidence that the contemplated operation of such vessel will cause economic hardship or injury to efficient vessel operators already operating in that fishery must submit such evidence in writing to the Director, National Marine Fisheries Service, within 30 days from the date of publication of this notice. If such evidence is received it will be evaluated along with such other evidence as may be available before making a determination that the contemplated operation of the vessel will or will

not cause such economic hardship or injury.

ROBERT W. SCHONING,
Acting Director.

[FR Doc.71-16755 Filed 11-16-71;9:51 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

ENVIRONMENTAL EDUCATION PROGRAM

Notice of Closing Date for the Submission of Applications

The Environmental Education Act, Public Law 91-516, authorizes a program of grants to institutions of higher education, State and local educational agencies, regional educational research organizations and other public and private nonprofit agencies, organizations, and institutions to support research, demonstration, and pilot projects designed to educate the public on the problems of environmental quality and ecological balance.

I. From funds appropriated for fiscal year 1972, applications may be submitted for the support of the following listed activities. These activities are divided between two general priority groups. Activities falling within Priority Group I are considered to be of primary importance and applications for their support will generally be preferred to those activities falling within Priority Group II. However, in some cases, where justified by special circumstances such as an exceptionally promising and well formulated proposal or in order more appropriately to supplement other environmental education activities being carried out in the area to be served, an application for an activity falling within Priority Group II may be considered on the same basis as those activities falling within Priority Group I. The activities within each Priority Group are not listed in order of preference. In the exceptional case where a proposal for a comprehensive environmental education model meets the requirements of Paragraph E below, it shall receive special consideration.

Priority Group I—A. *Community environmental education projects.* Pilot and demonstration broadly based community environmental education projects, including those projects which provide for participation of adults, which are designed to promote understanding of the environment and of local environmental problems and to encourage individual participation in resolving such problems;

B. *Special evaluation and dissemination activities.* Research and demonstration projects to be conducted by task forces meeting the criteria set out at Part II-J below and designed to evaluate the effectiveness of environmental education activities, whether or not such activities are otherwise assisted under the Environmental Education Act;

C. *Environmental education centers.* The development and operation of pilot and demonstration environmental education centers designed to provide services and resources to assist students, teachers, and community organizations in their efforts to pursue environmental studies; such centers must be designed to meet specific needs of groups within a broad (generally multicounty) area of a State;

D. *Noneducational personnel development—in-service.* Pilot and demonstration short term, in-service training projects for public service and government employees and business, labor and industrial leaders and employees designed to prepare them to recognize and deal with issues of environmental quality and ecology;

E. *Comprehensive environmental education models.* Demonstration models in comprehensive education activities to be conducted by community organizations and institutions; such projects differ from community environmental education projects described under A above in that they must: (1) Provide for substantial participation of schools; such participation must include out of classroom learning experiences for students; and (2) further a comprehensive community environmental education plan, which (a) has been developed by all major community institutions and groups including local educational agencies, (b) is designed to contribute significantly to the long-term improvement of both the educational process and the quality of life in the community, and (c) serves persons at all educational levels;

Priority Group II—F. *Educational personnel raining-in-service.* Pilot and demonstration training projects designed to prepare teachers and administrators of local educational agencies, community colleges, and technical institutes to carry out environmental education plans formulated by such agencies, colleges and institutes. Such projects shall be carried out by or under the supervision of local educational agencies, community colleges and technical institutes, and shall provide for reinforcement of any formal training made available for at least 6 months following its conclusion;

G. *Curriculum development—supplementary materials.* The development by students and teachers of demonstration instructional materials designed to supplement existing environmental education curricula and/or to introduce environmental studies into traditional curricula. Where an applicant is an educational institution, it must demonstrate a commitment to use materials developed. In the case of projects funded under this part in an amount in excess of 50 per cent of their total cost, preference will be given to the development of materials which can be completed and ready for use within 12 months of receipt of Federal assistance;

H. *Evaluation projects.* Demonstration projects to be conducted by educational organizations, agencies, and institutions designed to evaluate the effectiveness of environmental education activities, whether or not such activities are otherwise assisted under the Environmental Education Act. Such projects must significantly assist planning and program development at Federal, State, and local levels and must employ an evaluation design which contains elements which may be used to evaluate any environmental education program in the United States;

I. *Dissemination.* The dissemination through both print and nonprint media of a broad range of information about environmental education by private agencies, institutions, and organizations to organizations concerned with issues of environmental quality and ecology as well as to the general public;

J. *Curriculum development—new curricula.* Pilot and demonstration projects to be conducted by educational agencies, organizations, and institutions to develop new curricula in the preservation and enhancement of environmental quality and ecological balance; curricula developed under this part shall:

(1) Grow out of an empirical investigation of one or more environmental problems;

(2) Be multidisciplinary or adisciplinary;

(3) Make maximum use of community resources and encourage student exploration of environmental problems;

(4) Make significant use of student experiences and provide for maximum possible student self-direction in the establishment and achievement of educational objectives;

(5) Be an integral part of an environmental education program;

K. *Workshops for government personnel.* Pilot or demonstration in-service training workshops for government employees designed to assist government agencies and instrumentalities in carrying out their functions in an environmentally sound manner and in developing and administering environmental education programs; preference under this part will be given to those workshops serving employees who either administer environmental education programs or administer resources used by or of potential use to such programs. No agency or instrumentality of Federal, State, or local government shall be eligible under this part to receive a grant to conduct a workshop for its own employees. Workshops supported under this part may be made available only to employees of agencies which:

(1) Demonstrate that they are unable to conduct such workshops themselves or, in the case of Federal agencies, through the Civil Service Commission;

(2) Approve the participation of their employees and support such participation through such measures as providing paid leave time and defraying per diem and travel expenses incurred in attending the workshops;

(3) Provide reasonable assurance that they will use the training provided by the workshops;

L. *Elementary and secondary education programs.* Provide for demonstration projects in environmental education

to be conducted by local educational agencies in elementary and secondary schools. Assurance must be given that the project will be able to continue after withdrawal of Federal support either in a self-sustaining fashion or as part of a a community environmental education program;

M. *Noneducational personnel training—Preservice.* Pilot preservice training projects to be conducted by institutions of higher education for persons preparing for professional careers in fields other than education designed to acquaint them with the relationship of environmental issues to their professions;

N. *Educational personnel training—preservice.* Demonstration preservice training projects to be conducted by institutions of higher education designed to prepare teachers, administrators, and other educational personnel of local educational agencies, community colleges, and technical institutes to carry out programs of environmental education;

II. Grants for the activities described in Part I may be made available only upon application to the Commissioner of Education. An application may be approved only if it

A. Meets the criteria set out at section 3(b)(3)(A) of the Environmental Education Act;

B. Provides for submission to the Office of Environmental Education of all materials produced under the project and of the evaluations of project activities undertaken pursuant to section 3(b)(3)(A)(iii) of the Act;

C. Except for projects involving development of new curricula, dissemination of curricular materials and evaluation, provides that at least 20 percent of the cost shall be defrayed by the applicant in the first year and 40 percent in the second year of support; within this general standard, the percentage of project costs to be funded under this program will depend on (1) the extent to which funding from other sources is available to the applicant, and (2) the quality of the project;

D. Provides, in the case of pilot and demonstration projects, a description of the conditions under which the project could be replicated and the obstacles to successful replication;

E. Provides, to the extent possible, for the participation of students in the development and implementation of the project;

F. Assures that reasonable efforts have been made to secure funds from all other likely sources of support for the proposed project;

G. Demonstrates that the project will make maximum use of all relevant resources of the community to be served;

H. Demonstrates that the project will build upon and in no case duplicate previously undertaken activities;

I. In the case of applications by local educational agencies, indicates that the State educational agency has been notified of the application and been given an opportunity to offer recommendations;

J. In the case of applications submitted under Part I-B above, demonstrates that in the State where the project is to be conducted, the applicant task force is engaged in and has as a principal purpose the development of a comprehensive environmental education plan either for the entire State or for a designated area within the State, as a step toward the development of a Statewide plan. A task force should (1) have broad representation from fields such as public and private elementary and secondary education, higher education, conservation, health, environmental protection, journalism, business, and industry, and labor; (2) have enlisted the cooperation of the major environmental and educational institutes, agencies, and resources within the State; and (3) demonstrate that sufficient funds from other than Federal sources will be available to carry out the planning effort.

III. *Small grant programs.* Under this program, grants, in amounts not to exceed $10,000 annually may be made to nonprofit organizations such as citizens groups, volunteer organizations working in the environmental field, and other public and private nonprofit agencies, institutions or organizations for conducting courses, workshops, seminars, symposiums, institutes, and conferences, especially for adults and community groups. Priority of funding will be given to those proposals demonstrating innovative approaches to environmental education except that an application may be approved only if it (a) demonstrates that the applicant organization has been in existence for at least 1 year prior to the submission of its application, (b) provides for submission to the Office of Education of all materials produced under the grant, and (c) provides, in the case of public agencies, that at least 20 percent of the cost of the project shall be defrayed by the applicant in the first year and 40 percent in the second year of support.

IV. In order to be assured of consideration for funding from appropriations for fiscal year 1972, an application for assistance under the Act must be postmarked at a U.S. Post Office by December 17, 1971. Application forms may be obtained from and are to be filed with the Office of Environmental Education, Office of Education, 400 Maryland Avenue SW., Washington, DC 20201.

All grants for the support of activities covered by this notice shall be made subject to standard terms and conditions appropriate thereto. A copy of such terms and conditions shall be made available to prospective applicants together with the grant application procedures.

Assistance made available under the Environmental Education Act is subject to the regulation in 45 CFR Part 80 issued by the Secretary of Health, Education, and Welfare, and approved by the President, to effectuate the provisions of section 601 of the Civil Rights Act of 1964 (20 U.S.C. 4000d).

Except as otherwise provided by law, this notice is effective 30 days after its publication in the FEDERAL REGISTER.

Dated: October 27, 1971.

S. P. MARLAND, Jr.,
U.S. Commissioner of Education.

Approved: November 11, 1971.

ELLIOT L. RICHARDSON,
Secretary of Health, Education, and Welfare.

[FR Doc.71-16742 Filed 11-16-71;8:50 am]

Office of the Secretary

UNDER SECRETARY ET AL.

Order of Succession To Act as Secretary

I hereby order the following order of succession to the position of Secretary of Health, Education, and Welfare:

1. The Under Secretary acts as Secretary during the absence or disability or vacancy in the Office of the Secretary.

2. During the absence or disability of the Secretary and Under Secretary or in the event of a simultaneous vacancy in the Office of the Secretary and Under Secretary, the following officials shall act as Secretary in the order listed below:

Assistant Secretary (Community and Field Services).
Assistant Secretary (Public Affairs).
Assistant Secretary (Legislation).
Assistant Secretary (Health and Scientific Affairs).
Assistant Secretary (Planning and Evaluation).
General Counsel.

Dated: November 3, 1971.

ELLIOT L. RICHARDSON,
Secretary.

[FR Doc.71-16727 Filed 11-16-71;8:49 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

AIR TRAFFIC CONTROL TOWER AT BENEDUM AIRPORT, CLARKSBURG, W. VA.

Notice of Commissioning

Notice is hereby given that a mobile Air Traffic Control Tower will be commissioned at Benedum Airport, Clarksburg, W. Va., on or about December 1, 1971. It will improve operational flow of terminal traffic consisting predominantly of general aviation aircraft. Communications to the Air Traffic Control Tower should be addressed as follows:

Air Traffic Control Tower, Department of Transportation, Federal Aviation Administration, Benedum Airport, Clarksburg, WV 26301.

(Sec. 313(a), 72 Stat. 752; 40 U.S.C. 1354)

Issued in New York, N.Y., on October 27, 1971.

GEORGE M. GARY,
Director, Eastern Region.

[FR Doc.71-16722 Filed 11-16-71;8:48 am]

FACILITY RELOCATIONS OCCASIONED BY AIRPORT IMPROVEMENTS OR CHANGES

Statement of Policy

This statement supersedes the statement of Policy on Facility Relocation Occasioned by Airport Improvements or Changes which was published in the FEDERAL REGISTER on October 31, 1969 (34 F.R. 17670).

1. *Purpose.* To reaffirm to the aviation community the FAA policy governing responsibility for funding relocation, replacement and modification to air traffic control and air navigation facilities that are made necessary by improvements or changes to an airport. The term "airport owner" used herein refers to the political subdivision, military service, or other authority responsible for airport operations and improvements.

2. *Classes of FAA facilities.* FAA facilities located on airports and subject to the funding policy of this circular, are classified as follows:

a. *Class I.* This class includes the facilities and components that are used exclusively in support of the airport or from which primary benefits are derived by the airport since the facility is located thereon. Examples are:

Remote Transmitter/Receiver (Tower).
Airport Traffic Control Tower.
Airport Surveillance Radar.
Airport Surface Detection Equipment.
Precision Approach Radar.
Instrument Landing System and Components.
Approach Lighting Systems and Components.
Visual Landing Aids.
Direction Finding Equipment.
VOR, TVOR, and VORTAC used for Instrument Approach.
Weather Observing and Measuring Equipment (owned and operated by FAA).
Central Standby Power Plant.

b. *Class II.* This class includes the facilities and components that service a wide area and are located on the airport as a matter of convenience. Examples are:

Long Range Radar.
Air Route Traffic Control Centers.
Peripherals (Remote Control Air-Ground Communication Facility).
VOR and VORTAC (enroute only).
Flight Service Station.
Remote Communications Outlet.
Limited Remote Communications Outlet.

3. *Responsibility for funding*—a. *The airport owner.* (1) The airport owner is expected to pay for the relocation, replacement or modification of FAA air traffic control and air navigation facilities or components thereof made necessary by airport improvements or changes, when:

(a) Class I facilities must be relocated, replaced or modified because the airport improvement or change impairs the technical and operational characteristics of the FAA facility.

(b) Class I facilities must be relocated, replaced or modified to permit the extension of runways or construction of new runways and taxiways or other improvements to the existing airport facilities; for example: expansion of parking areas, terminal buildings, and aircraft service areas.

(c) The FAA has a lease, permit, license, or other document covering Class II facilities that gives FAA a legal basis for requesting that the airport owner assume the cost of relocation.

The foregoing are the normal circumstances under which financing responsibility should rest with the airport owner, however, circumstances other than the above will be determined on a case-by-case basis.

(2) Where the airport owner grants other parties the right to construct hangars, other buildings, and/or facilities that impair or interrupt the technical and operational characteristics of air traffic control or navigation facilities, the agency expects the airport owner to pay for the relocation, replacement, or modification of these facilities or components thereof. Payment to FAA may be made either from recovery of costs from the other parties or from other sources available to the airport owners.

(3) The need for uninterrupted service from some Class I facilities is recognized. This will require special methods for accomplishing the work in order to avoid interruptions of service. In such cases, funding for provision of temporary facilities required to maintain continuity of service is expected to be the airport owner's responsibility. However, it is FAA policy to avoid modernizing or upgrading a facility at the airport owner's expense.

b. *The FAA.* It is general FAA policy to fund the following:

(1) Relocation into quarters provided by the airport owner when requested by the FAA.

(2) Relocation of Class II facilities, located on the airport but the presence is not authorized by a document described in 3.a(1)(c) above, or the presence on the airport has been assured by unwritten consent of the airport owner.

(3) Relocation because of technical reasons that are inherent in the site and not caused by airport improvements or changes.

(4) Additional cost for modification of the facility when undertaken concurrent with the relocation. For example, upgrading an ILS/ALS from Cat. I to Cat. II, or adding Direct Altitude and Identification Readout to ASR, concurrent with relocation.

(5) Relocation of Class I facilities to a new or another existing airport meeting the necessary physical and operational requirements to qualify for Class I facilities, when the receiving airport will replace the airport from which the facilities are being relocated.

(6) Relocation of Class I facilities, upon recognition by FAA of the necessity for a new or newly designated instrument runway on the same airport, in order to achieve more effective use of these facilities, except in the case of a new runway covered by 3.a.(1)(b).

(7) Flight inspection required for relocation of facilities where the airport owner is one of the military services (Friendship Agreement).

c. *Other funding.* In the event that relocations, replacements or modifications of facilities are necessitated due to causes not attributable to either FAA or the airport owner, funding responsibility shall be determined by the FAA on a case-by-case basis.

4. *Accomplishment of work*—a. *Responsibility.* FAA shall have exclusive right to determine how all facets of the relocation of an FAA facility will be accomplished. This includes, but is not limited to, the engineering, site selection, procurement of equipment, construction, installation, testing, flight inspection, and recommissioning of the facility.

b. *Reimbursable agreements.* The airport owner and FAA shall negotiate a reimbursable agreement setting forth all essential elements pertinent to the relocation, replacement, or modification of an FAA facility. The agreement shall stipulate that in the event actual cost is less than the estimated cost, the sponsor will pay only the actual costs; similarly, if actual cost exceeds FAA estimated cost, the sponsor will pay the actual cost.

Issued in Washington, D.C., on September 27, 1971.

JOHN H. SHAFFER,
Administrator.

[FR Doc.71-16721 Filed 11-16-71;8:48 am]

ATOMIC ENERGY COMMISSION

[Docket Nos. 50-369; 50-370]

DUKE POWER CO.

Notice of Reconstitution of Board

In the matter of Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), Dockets Nos. 50-369, 50-370.

Mr. Nathaniel H. Goodrich was Chairman of the Board established to consider the above application, but he is now unavailable to serve on this case.

Accordingly, Mr. Edward Diamond, the alternate qualified in the conduct of administrative proceedings, has been constituted a member of the Board. Reconstitution of the Board in this manner is in accordance with § 2.721(b) of the rules of practice.

Dated at Washington, D.C., this 11th day of November 1971.

WILLIAM L. WOODARD,
Assistant Executive Secretary, Atomic Safety and Licensing Board Panel.

[FR Doc.71-16752 Filed 11-16-71;8:51 am]

CIVIL AERONAUTICS BOARD

[Docket No. 23371]

ALLEGHENY-MOHAWK MERGER

Notice of Oral Argument

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in the above-entitled matter is assigned to be held before the Board on December 15, 1971, at 10 a.m., local time, in Room 1027, Universal Building, 1825 Connecticut Avenue NW., Washington, DC.

Dated at Washington, D.C., November 11, 1971.

[SEAL] RALPH L. WISER, *Chief Examiner.*

[FR Doc.71-16746 Filed 11-16-71;8:50 am]

[Docket No. 23315]

DELTA-NORTHEAST MERGER

Notice of Oral Argument

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in the above-entitled matter is assigned to be held before the Board on December 8, 1971, at 10 a.m., local time, in Room 1027, Universal Building, 1825 Connecticut Avenue NW., Washington, DC.

Dated at Washington, D.C., November 10, 1971.

[SEAL] RALPH L. WISER, *Chief Examiner.*

[FR Doc.71-16747 Filed 11-16-71;8:50 am]

[Docket No. 22301]

PIEDMONT AVIATION, INC.

Notice of Oral Argument

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in the matter to delete Southern Pines/Pinehurst/Aberdeen, N.C., is assigned to be held before the Board on December 2, 1971, at 10 a.m., local time, in Room 1027, Universal Building, 1825 Connecticut Avenue NW., Washington, DC.

Dated at Washington, D.C., November 10, 1971.

[SEAL] RALPH L WISER, *Chief Examiner.*

[FR Doc.71-16749 Filed 11-16-71;8:51 am]

[Docket No. 22374]

PIEDMONT AVIATION, INC.

Notice of Oral Argument

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in the matter to delete Elizabeth City, N.C., is assigned to be held before the Board on December 2, 1971, at 2 p.m., local time, in Room 1027, Universal Building, 1825 Connecticut Avenue NW., Washington, DC.

Dated at Washington, D.C., November 10, 1971.

[SEAL] RALPH L. WISER, *Chief Examiner.*

[FR Doc.71-16748 Filed 11-16-71;8:50 am]

[Docket No. 23973; Order 71-11-40]

WESTERN AIR LINES, INC.

Order of Investigation and Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 11th day of November 1971.

By tariff revisions[1] marked to become effective November 12, 1971, Western Air Lines, Inc. (Western) proposes to reduce from 154 to 70 the minimum number of persons required to qualify for the lowest one-way nonaffinity group and round-trip group inclusive tour basing (GIT) fares applicable between Los Angeles, San Francisco, San Diego, Denver, and Minneapolis/St. Paul, on the one hand, and Honolulu and Hilo, on the other hand. The proposal is limited in application to narrow-bodied jet aircraft, and is marked to expire September 30, 1972.

In support of its proposal, Western alleges that because of the low level of fares applicable to groups of 154 or more, group size will be most vigorously promoted by large tour operators, and that because it does not have high capacity, wide-bodied equipment it is at a disadvantage in competing for large-sized groups.[2] Western contends that a group size of 70 permits a reasonable balance between group-fare and regular-fare passengers in relation to the capacity of its aircraft, and will produce more net revenue than filling the entire rear compartment with group-fare passengers.

Complaints requesting investigation and suspension have been filed by Continental Air Lines, Inc. (Continental), United Air Lines, Inc. (United)[3] and a joint complaint by Saturn Airways, Inc., Southern Air Transport, Inc., Overseas National Airways, Inc., Universal Airlines, Inc., and World Airways, Inc. The essential thrust of the complaints is that the Board's decision in "Group Inclusive Tour Basing Fares to Hawaii", Docket 20580, established minimum rates applicable to specific sized groups, based on the relative economies of moving various size groups, and that Western's proposal is inconsistent with the minimums established in that case.

In answer to the complaints, Western acknowledges that its proposed GIT fares are lower than have been previously approved for groups of 70 or more persons, and that its proposal entails a relatively high break-even load factor. However, it contends it must make adjustments to compete on an even footing and is willing to assume the risk involved to protect its position in the market. Western does not believe the Board can properly take a position that would effectively bar it from participating in group movements when it is willing to take the risk.

Upon consideration of all relevant matters, the Board finds that the proposals may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and should be investigated. We further conclude that the proposal relating to group inclusive tour basing fares should be suspended pending investigation.

The Board's decision in the "Group Inclusive Tour Basing Fares to Hawaii" case, Docket 20580, established minimum fares for groups of 40, 88, 105, and 154 persons, respectively. Western's proposed GIT fares for groups of 70 or more are substantially below the fare which would be produced by application of these minimums, and prima facie therefore raise a question of reasonableness.

With respect to the one-way group fares, Western's proposal is sufficiently similar to earlier group-fare tariffs which were recently ordered investigated[4] to also warrant investigation. Like those earlier group-fare proposals, we seriously question the soundness of encouraging discount traffic of the very low yield type here involved to travel during peak periods. By the same token, we are not too concerned with the application of the fares during the forthcoming winter season and we will permit the fares to become effective pending investigation. We would also note that when the fares which were the subject of our "Group Inclusive Tour Basing Fares to Hawaii" were proposed, such fares were investigated, but not suspended. Similar action was taken with respect to other proposals for one-way non-affinity and affinity groups which are currently in effect, pending investigation, and those tariffs provide comparable low fares on narrow-bodied equipment for groups as small as 50 persons. In view of the impact of operations in this market on Western's system results, and the particular importance of group travel in the Hawaiian market, we are reluctant to take action which might hamper Western's efforts to compete effectively for this type of traffic.

Western has indicated its willingness to bear the economic risk of its proposal, and we will expect it and other carriers offering these fares to do so. The Board does not intend to treat any dilution of overall fare yield which may result as furnishing a basis for future increases in the level of basic fares. We will also

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[1] Revisions to Airline Tariff Publishers, Inc., Tariffs C.A.B. Nos. 136 and 142.

[2] Western asserts that it would be forced to split the groups of 154 or more between 2 or more aircraft—a practice which the tour conductors allegedly consider undesirable, and that the problem is further complicated by the fact that in certain markets its flights are 4 hours or more apart.

[3] Pan American and United have filed tariff revisions matching Western insofar as the GIT fares are concerned, and would apply the lower group size to operations with wide-bodied as well as narrow-bodied equipment.

[4] Group Fares Investigation, Docket 23862.

expect the carriers to maintain records of traffic, revenues, and expenses sufficient for a full evaluation of profit impact. Such reports are to be filed within 30 days following expiration of the respective tariffs.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, and 1002 thereof:

It is ordered, That:

1. An investigation be instituted to determine whether the fares and provisions described in appendix A[5] and appendix B,[5] and rules, regulations, or practices affecting such fares and provisions, are, or will be, unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful fares and provisions, and rules, regulations, or practices affecting such fares and provisions;

2. Pending hearing and decision by the Board, the fares and provisions described in appendix A are suspended and their use deferred to and including February 9, 1972, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. Except to the extent granted herein, the complaints in Dockets 23931, 23933, and 23938 are hereby dismissed;

4. The proceeding ordered herein be assigned for hearing before an Examiner of the Board at a time and place hereafter to be designated; and

5. A copy of this order will be filed with the aforesaid tariffs and be served upon Continental Air Lines, Inc., Saturn Airways, Inc., Southern Air Transport, Inc., Overseas National Airways, Inc., United Air Lines, Inc., Universal Airlines, Inc., Western Air Lines, Inc., World Airways, Inc., which are hereby made parties to this proceeding, and the National Air Carrier Association.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[6]

[SEAL] HARRY J. ZINK, *Secretary.*

[FR Doc.71-16751 Filed 11-16-71;8:51 am]

[Docket No. 23486; Order 71-11-44]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Passenger Fare

Agreement adopted by the Traffic Conferences of the International Air Transport Association relating to passenger-fare matters, Docket 23486, Agreement CAB 22663.[1]

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 11th day of November 1971.

There has been filed with the Board, pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations, an agreement among various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of the Traffic Conferences of the International Air Transport Association (IATA) and adopted at the passenger rate conferences at Montreal and Miami in the summer and fall of 1971, respectively.

The agreement, adopted for early effectiveness, embraces passenger rates and related matters for traffic conference application, joint conference application, and worldwide application. The expedited resolutions described herein are subject to varying expiration dates, ranging from 5 months to a 1-year period of time. The principal elements of the agreement are described below.

The special fares for U.S. and Canadian military personnel and their dependents are expanded so as to include new points in Scandinavia. The proposed amendment would include New York/Boston-Copenhagen/Oslo military fares of $222 and $282, round trip, for basic and peak seasons, respectively. These fares are comparable to military fares previously in effect between the United States and other points in Europe.[2]

The predominant number of amendments to the agreement deal totally, or in part, with deleting normal first-class, economy, excursion, and creative fares applicable to Berne, Switzerland, since air service at Berne will be discontinued.

Amendments have been proposed to the IATA machinery so as to render it more responsive to currency fluctuations. Presently, special meetings may be convened when a given currency fluctuates by 5 percent or more, or when deemed appropriate by the Director General. The amendments would, among other things, reduce the fluctuation range from 5 percent to 2 percent.

Provisions are proposed governing the sale of air transportation in Chile for credit or installment plan purchases by Chilean nationals and residents. Moreover, it is proposed that various categories of excursion and promotional fares for travel originating in Japan will be specified in Japanese yen based upon the current conversion rate of 864Y=1 pound sterling.

The Board, acting pursuant to sections 102, 204(a), and 412 of the Act, makes the following findings:

1. It is not found that the following resolutions, incorporated in the agreement as indicated, are adverse to the public interest or in violation of the Act, provided that approval is subject to the conditions hereinafter ordered:

Agreement CAB 22663	IATA No.	Title	Application
R-2	095b	North Atlantic Fares for United States and Canadian Military Personnel and Dependents (Amending).	1/2 (N. Atl.).
R-4	001z	Normal Fares and Add-on Amounts to/from Berne (New)	1/2; 2/3; 1/2/3.
R-5	003	Standard Rescission Resolution	3.
R-6	021c	Conversion Rate Administrative Provisions (Revalidating and Amending).	1; 2; 3.
R-7	021f	Special Conversion Rates (Amending)	1; 2; 3.
R-8	021ff	IATA Currency Index (New)	1; 2; 3.
R-9	021ll	TC3 Fares in Japanese Currency (New)	3.
R-10	200g	Filing of Government Requirements and Authorizations (New)	Worldwide.
R-28	003	Standard Rescission Resolution	1.
R-29	060	Economy Class Conditions of Service (Amending)	1.
R-30	281c	Sale of Air Transportation Under Installment Plans in Local Currency in Chile (New).	1.

2. It is not found that the following resolutions, incorporated in the agreement as indicated, affect air transportation within the meaning of the Act:

Agreement CAB 22663	IATA No.	Title	Application
R-11	092l	TC2 Stand-by Youth Fares—Scandinavia (New)	2
R-13	060	Economy Class Conditions of Service (Amending)	2
R-15	070g	TC2 14-Day Holiday Fares—Switzerland to England (Amending).	2
R-16	070j	TC2 90-Day Excursion Fares—Southern Africa to Europe/Middle East (Amending).	2
R-17	070m	TC2 45-Day Excursion Fares—Europe/Middle East to Mozambique (Amending).	2
R-18	070q	TC2 12-Day Round-Trip Fares—Ireland to United Kingdom (Amending).	2
R-19	070r	TC2 45-Day Excursion Fares—Southern Africa to Europe/Middle East (Amending).	2
R-20	070rr	TC2 45- DayExcursion Fares—Europe/Middle East to Southern Africa (Amending).	2
R-21	070s	TC2 40- and 45-Day Excursion Fares—Africa to Europe/Middle East (Amending).	2
R-22	071h	TC2 65-Day Excursion Fares—East Africa/Mauritius to Europe (Amending).	2
R-23	071k	TC2 50-Day Excurison Fares—Africa to Europe (Amending)	2
R-24	072b	TC2 Creative Fares Except Europe (Amending)	2
R-25	072g	TC2 Creative Fares Board—Europe (Amending)	2
R-26	077g	TC2 Individual Fares for Seamen (Amending)	2
R-27	086	Tour Operators' Package (TOP) Fares to Europe (Amending)	2

[5] Appendices filed as part of the original document.

[6] Concurrence and dissent by Minetti and Murphy, Members, filed as part of the original.

[1] Agreement CAB 22663, R-2, R-4 through R-11, R-13, R-15 through R-30.

[2] E.g., Boston/New York-Frankfurt, $222/$282 and Boston/New York-Paris, $212/$272.

Accordingly, it is ordered, That:

1. Those portions of Agreement CAB 22663, as set forth in finding paragraph 1 above, be and hereby are approved, provided that in the event that action pursuant to resolution R-9, TC-3 fares in Japanese yen, results in revision of a basic specified or constructed fare or rate, such new basic fare or rate shall be filed with the Board as an agreement under section 412 of the Act and approved by the Board prior to being placed in effect; and

2. Jurisdiction is disclaimed with respect to that portion of Agreement CAB 22663 as set forth in finding paragraph 2 above.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK, *Secretary.*

[FR Doc.71-16665 Filed 11-16-71;8:45 am]

[Docket No. 23918]

LA BELLE AIR FREIGHT, INC. AND LA BELLE INTERNATIONAL, INC.

Notice of Proposed Approval

Application of La Belle Air Freight, Inc., and La Belle International, Inc., for approval of control relationships pursuant to section 408 of the Act, Docket 23918.

Notice is hereby given, pursuant to the statutory requirements of section 408(b) of the Federal Aviation Act of 1958, as amended, that the undersigned intends to issue the attached order under delegated authority. Interested persons are hereby afforded a period of 15 days from the date of this notice within which to file comments or request a hearing with respect to the action proposed in the order.

Dated at Washington, D.C., November 11, 1971.

[SEAL] A. M. ANDREWS, *Director, Bureau of Operating Rights.*

ORDER GRANTING APPROVAL

Issued under delegated authority.

By application filed pursuant to Parts 296 and 297 of the Board's economic regulations, La Belle Air Freight, Inc. (Air Freight), has requested authority to act as a domestic and international air freight forwarder.

By a simultaneous application under section 408 of the Federal Aviation Act, as amended (the Act) Air Freight and La Belle International, Inc. (International), have requested approval or exemption of the ownership of International by Air Freight. Applicants have also sought exemption under Part 287 of the Board's economic regulations for various interlocking officerships and directorships between the two companies.

Air Freight is a closely held Minnesota corporation owned by Richard T. La Belle, John van der Hagen, Clarence R. Quigley, and the firm of MacIntosh, Carines & Commers.[1] The company is presently engaged only in corporate organizational activities. Pending favorable disposition of its applications, it intends to offer air freight forwarding services for general commodities.

International is a wholly owned subsidiary of Air Freight. It is authorized and is operating as an IATA cargo sales agency from offices in New York, the Twin Cities, and Los Angeles.

In every instance the officers and directors of the two companies are indentical. They consist of the three individual owners of Air Freight and Mr. Mark S. Plasha. None of these individuals holds any position with or has any interest in any other air carrier, common carrier, person engaged in a phase of aeronautics, or enterprise whose principal business is the holding of interest in any of the above. Outside of the ownership of International by Air Freight, there are no other section 408 corporate relationships.

After consideration of these applications, it is concluded that Air Freight, upon receipt of air freight forwarder authorizations, will become an air carrier within the meaning of section 408 of the Act.[2] It also appears that International is engaged in a phase of aeronautics, and that control of International by Air Freight is subject to section 408(a)(6) of the Act. However, it is concluded that the applications do not affect the control of an air carrier directly engaged in the operation of aircraft in air transportation, do not result in creating a monopoly, and do not tend to restrain competition. Furthermore, no person disclosing a substantial interest in the proceeding is currently requesting a hearing, nor does the public interest require one.[3] The control relationships are similar to others which have been approved by the Board and do not present any new substantive issues.[4] It therefore appears that approval of the control relationships would be consistent with the public interest.

We also find that there are interlocking relationships within the scope of section 409(a) of the Act, in that the individuals named above simultaneously act as officers and directors of an air carrier and a phase of aeronautics. However, we have concluded that such relationships come within the scope of the exemption from the provisions of section 409 afforded by §§ 287.2 and 287.4 of the Board's economic regulations.

Pursuant to authority duly delegated by the Board in the Board's regulations, 14 CFR 385.13 and 385.3, it is found that the foregoing control relationships should be approved without a hearing under the third proviso of section 408(b) of the Act.

Accordingly, it is ordered, That:

The control of La Belle International, Inc., by La Belle Air Freight, Inc., be and it hereby is approved.

Persons entitled to petition the Board for review of this order pursuant to the Board's regulations, 14 CFR 385.50, may file such petitions within 10 days after the date of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless within such period a petition for review is filed, or the Board gives notice that it will review this order on its own motion.

HARRY J. ZINK, *Secretary.*

[FR Doc.71-16750 Filed 11-16-71;8:51 am]

[1] Mr. La Belle is the principal owner, holding 55 percent of the outstanding shares. The other parties each own 14.7 percent of Air Freight.

[2] It appears that the applicant is capable of performing the proposed air transportation and of conforming to the provisions of the Act and all rules and requirements thereunder. Since the basic requirements of Parts 296 and 297 of the Board's economic regulations appear to have been met by Air Freight, authorization to act as a domestic and international air freight forwarder will be issued after fulfillment of the remaining incidental prerequisites.

[3] Notice of intent to dispose of the applications without a hearing has been published in the FEDERAL REGISTER and a copy of such notice has been furnished to the Attorney General in accordance with section 408(b) of the Act.

[4] Furman Air Freight Corp., Order 68-8-53, Aug. 13, 1968; Forwardair, Inc., Order 70-4-86, Apr. 17, 1970; Save On Air Freight, Inc., Order 71-1-70, Jan. 14, 1971.

ENVIRONMENTAL PROTECTION AGENCY

BP CHEMICALS INTERNATIONAL LTD.

Notice of Filing of Petition Regarding Pesticide Chemical

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408 (d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), notice is given that a petition (PP 2F1203) has been filed by BP Chemicals International Ltd., Devonshire House, Piccadilly, London WIX 6AY, England, proposing establishment of a tolerance (21 CFR Part 420) for residues of the fungicide propionic acid in or on the raw agricultural commodities barley, corn, oats, sorghum, and wheat at 20,000 parts per million from postharvest application.

The analytical method proposed in the petition for determining residues of the fungicide is a procedure in which the grain samples are coarsely ground and placed in a distilling flask together with a solution of distilled water, magnesium sulfate heptahydrate, sulfuric acid, and phosphotungstic acid. The propionic acid in the distillate is determined by titration with sodium hydroxide.

Dated: November 10, 1971.

WILLIAM M. UPHOLT, *Deputy Assistant Administrator for Pesticides Programs.*

[FR Doc.71-16769 Filed 11-16-71;8:51 am]

MOBIL CHEMICAL CO.

Notice of Filing of Petition Regarding Pesticide Chemical

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408 (d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), notice is given that a petition (PP 2F1204) has been filed by Mobil Chemical Co., Industrial Chemicals Division, Post Office Box 677, Richmond, VA 23208, proposing establishment of tolerances (21 CFR Part 420) for negligible residues of the insecticide *O*-ethyl *S,S*-dipropyl-phosphorodithioate in or on the raw

agricultural commodities sugarcane and sugarcane fodder and forage at 0.02 part per million.

The analytical method proposed in the petition for determining residues of the insecticide is a gas chromatographic procedure with microcoulometric detection.

Dated: November 10, 1971.

WILLIAM M. UPHOLT,
Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.71-16767 Filed 11-16-71;8:51 am]

SHELL CHEMICAL CO.

Notice of Filing of Petition Regarding Pesticide Chemical

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408 (d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), notice is given that a petition (PP 2F1187) has been filed by Shell Chemical Co., Division of Shell Oil Co., 1700 K Street NW., Washington, DC 20006, proposing establishment of tolerances (21 CFR Part 420) for residues of the insecticide 2-chloro-1-(2,4,5-trichlorophenyl) vinyl dimethyl phosphate in or on the raw agricultural commodities bean forage, forage grasses, and pasture grass at 85 parts per million; beans in succulent form (green, field, and snap) at 5 parts per million; and cottonseed at 0.2 part per million (negligible residue).

The analytical method proposed in the petition for determining residues of the insecticide is a gas-liquid chromatographic procedure using a phosphorous-sensitive thermionic emission detector.

Dated: November 10, 1971.

WILLIAM M. UPHOLT,
Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.71-16768 Filed 11-16-71;8:51 am]

FEDERAL POWER COMMISSION

[Docket No. CP71-321]

LLOYD V. CRUM, JR.

Order Setting Matter for Hearing, Prescribing Procedure, and Granting Intervention

NOVEMBER 8, 1971.

On June 29, 1971, and as later supplemented on August 23, 1971, Lloyd V. Crum, Jr. (Crum) filed an application pursuant to section 7(a) of the Natural Gas Act requesting that the Commission order Northern Natural Gas Co. (Northern) to increase Crum's contract demand level from 350 Mcf per day to 700 Mcf per day, in order to meet customer requirements for the 1971-1972 heating season. No new facilities are proposed herein.

Crum purchases his entire gas supply from Northern and in turn resells and distributes such gas to 363 customers in two small towns, Racine and Grand Meadow, Minn. Applicant states that the additional volumes requested herein are required to meet the demands of residential customers and are not intended for any industrial purpose.

On August 9, 1971, Northern filed a response in opposition to the increased service to Crum. Northern states that its gas supply is inadequate to supply additional gas to Crum or its other utility customers, and requests that the Commission deny Crum's application.

Petitions to intervene were filed by Iowa Public Service Co., Iowa Electric Light and Power Co., Central Telephone and Utilities Corp., North Central Public Service Co., and Minnesota Natural Gas Co. All of the aforementioned petitioners are resale customers of Northern, and all have filed in opposition to Crum's proposal for increased deliveries. Further, all intervenors have requested that the application be set for formal hearing, with the exception of North Central Public Service Co., which asks to be a party in the event a formal hearing is held.

The Commission finds:

(1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing on the matters presented in the 7(a) application of Lloyd V. Crum.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the disposition of this proceeding be expedited in accordance with the procedures set forth below.

(3) Participation of the above-named petitioners may be in the public interest.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 7, 15, and 16 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing shall be held commencing November 29, 1971, at 10 a.m. e.s.t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, DC 20426.

(B) On or before November 22, 1971, Crum shall prepare and file with the Commission and serve on the Presiding Examiner, the Commission's staff, Northern and all intervenors in this proceeding his direct testimony and exhibits in support of the section 7(a) application.

(C) Any party planning to present testimony in opposition to Crum's section 7(a) application shall, on or before November 22, 1971, file and serve on the Presiding Examiner, the Commission's staff, and Crum prepared written testimony in support of their positions.

(D) The above-named parties, who have filed petitions to intervene herein, are hereby permitted to become intervenors in this proceeding subject to the rules and regulations of the Commission: *Provided, however,* That the participation of such intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in their petitions for leave to intervene; and *Provided, further,* That the admission of said intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(E) A Presiding Examiner to be designated by the Chief Examiner for that purpose shall preside at the hearing in this proceeding pursuant to the Commission rules of practice and procedure.

(F) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.71-16691 Filed 11-16-71;8:46 am]

[Docket No. CP72-113]

EL PASO NATURAL GAS CO.

Notice of Application

NOVEMBER 10, 1971.

Take notice that on October 27, 1971, El Paso Natural Gas Co. (applicant), Post Office Box 1492, El Paso, TX 79978, filed in Docket No. CP72-113 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1972, and operation of certain compression facilities in the natural gas production areas in the Permian, Delaware and Val Verde Basin areas (greater Permian Basin), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, applicant proposes to install, as may be required, up to 50,000 compressor brake horsepower on its greater Permian Basin field gathering facilities. Applicant states that these facilities will be utilized to offset declining reservoir pressures by permitting a general reduction in the operating pressures of certain dry gas fields in the greater Permian Basin and thereby to maintain the required daily deliverability necessary to meet its natural gas requirements for the 1972-73 heating season.

The estimated cost of the facilities proposed herein, exclusive of the cost of certain auxiliary facilities within the contemplation of § 2.55(a) of the Commission's General Policy and Interpretations, is $14,400,000. Applicant states that these costs will be financed with working capital supplemented, as necessary, by short-term borrowings.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 6, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed

with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commisson on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.71-16703 Filed 11-16-71;8:47 am]

[Docket No. CP72-107]

EL PASO NATURAL GAS CO.

Notice of Application

NOVEMBER 5, 1971.

Take notice that on October 19, 1971, El Paso Natural Gas Co. (applicant), Post Office Box 1492, El Paso, TX 79978, filed in Docket No. CP72-107 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain compressor facilities and pursuant to section 7(c) of the Act for a certificate of public convenience and necessity authorizing the installation and operation, on a permanent basis, of certain compressor facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The application states that the facilities proposed to be abandoned comprise three compressor stations on applicant's Southern Division System mainline. Such facilities consist of six 800-horsepower compressor units and appurtenances at Compressor Station No. 4 in Luna County, N. Mex.; three 800-horsepower compressor units and appurtenances at Compressor Station No. 5 and three 800-horsepower compressor units and appurtenances installed at Compressor Station No. 6. Stations Nos. 5 and 6 are located in Cochise County, Ariz. The 12 compressor units to be abandoned were installed between 1931 and 1941. Applicant states that because of the age of these units and the difficulty in obtaining replacement parts to provide for operations at the required level of reliability, applicant no longer needs to operate the units proposed to be abandoned at Compressor Stations Nos. 5 and 6 and has installed new compression facilities to replace the existing compressor units at Compressor Station No. 4.

In August of 1969, applicant installed at Compressor Station No. 4 a newly developed 2,710-horsepower gas turbine-driven centrifugal compressor unit on a test basis. Applicant notes that extensive tests over an 18-month period have proven that the unit is acceptable for long-term, continuous pipeline operation and now requests certificate authorization for the operation of the new unit on a permanent basis. This unit is a remote controlled type and will be operated from applicant's Deming Compressor Station which is located in the vicinity of Compressor Station No. 4.

Applicant states that the proposed abandonment and permanent operation of the new compressor unit will not materially affect the present design transport capability of its system, nor will the abandonment terminate or reduce present or future service to any of its customers served from such system.

Upon grant of the requested authorizations, applicant proposes to abandon the subject compressor facilities by removal at an estimated cost of approximately $18,000. The estimated total cost of the compressor facilities to be installed at Compressor Station No. 4 is $953,130.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 23, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

MARY B. KIDD,
Acting Secretary.

[FR Doc.71-16695 Filed 11-16-71;8:46 am]

[Docket No. CI64-26]

GULF OIL CORP.

Order Granting Petitions To Intervene, Setting Dates for Filing Case-in-Chief, and for Pre-Hearing Conference and Hearing

NOVEMBER 8, 1971.

Gulf Oil Corp. (Gulf) filed on August 24, 1971, in Docket No. CI64-26, a petition to amend a Commission order which issued Gulf a certificate of public convenience and necessity in said docket on December 19, 1963 (30 FPC 1559). The requested amendment would authorize the sale of natural gas at rates and under circumstances other than those heretofore authorized and would authorize the sale of additional gas.

Presently, Gulf is authorized in this docket to sell natural gas to Texas Eastern Transmission Corp. (Texas Eastern) pursuant to its FPC Gas Rate Schedule No. 278 for 26 years or until 4,437,675,000 Mcf of gas has been delivered, whichever occurs first. At the time of certification, the major portion of this gas, about 2.7 Tcf, was expected to be produced from areas covered by Gulf's leases in Delta Block 27 Field, Plaquemines Parish, La. Gulf states that a reserve redetermination on October 31, 1968, indicated only 1.006 Tcf would be available to Texas Eastern from that field. Several measures have since been undertaken by Gulf to acquire additional gas for sale to Texas Eastern including the purchase of additional gas reserves from the SLAM group,[1] but that a reserve deficit of 1.225 Tcf, as of January 1, 1971, remained. The maximum daily required deliveries to Texas Eastern of 625,000 Mcf can thus be maintained by Gulf, it says, only through 1973 from fields presently connected to Texas Eastern. Gulf and Texas Eastern therefore amended their Gas Purchase contract on August 2, 1971, all as more fully set out in Gulf's petition to amend its certificate.

Notice of the petition was issued August 30, 1971 (36 F.R. 17672). It set September 15, 1971, as the date by which petitions to intervene or protests were to be filed. Petitions to intervene have been filed by the following:

Algonquin Gas Transmission Co.
Boston Gas Co.:
- Bristol and Warren Gas Co.
- Brockton Taunton Gas Co.
- Buzzards Bay Gas Co.
- Cambridge Gas Co.
- The Connecticut Gas Co.

[1] Signal Oil and Gas Co., Louisiana Land and Exploration Co., Amerada Hess Corp., and Marathon Oil Co.

Boston Gas Co.—Continued
Connecticut Natural Gas Corp.
Fall River Gas Co.
The Hartford Electric Light Co.
Town of Middleborough, Municipal Gas and Electric Department
New Bedford Gas and Edison Light Co.
The Newport Gas Light Co.
North Attleboro Gas Co.
City of Norwich, Department of Public Utilities
Norwood Gas Co.
Pequot Gas Co.
South County Gas Co.
The Southern Connecticut Gas Co.
Tiverton Gas Co.
Worcester Gas Light Co.
Columbia Gas Transmission Corp.
Consolidated Edison Co. of New York, Inc.
Consolidated Gas Supply Corp.
Hoosier Gas Corp.
Long Island Lighting Co.
Louisville Gas and Electric Co.
Memphis Light, Gas and Water Division, city of Memphis, Tenn.
Mississippi Valley Gas Co.
New Jersey Natural Gas Co.
Philadelphia Electric Co.
Philadelphia Gas Works Division of UGI Corp.
Public Service Electric and Gas Co.
S.O.U.P., Inc.
Southern Indiana Gas and Electric Co.
Southern Natural Gas Co.
Terre Haute Gas Corp.
Texas Eastern Transmission Corp.
Texas Gas Transmission Corp.
The Brooklyn Union Gas Co.
Washington Urban League, Inc.
Western Kentucky Gas Co.

A notice of intervention was timely filed by the Public Service Commission of the State of New York.

Untimely petitions were filed by the Hoosier Gas Corp. by telegram received September 16, 1971, by the Long Island Lighting Co. on September 30, 1971, and by Southern Natural Gas Co. on October 7, 1971. Hoosier Gas and Long Island Lighting indicate they obtain gas either directly or indirectly from Texas Eastern. Southern Natural purchases gas from Gulf from the same field—which was found to have less reserves than expected (West Delta Block 27 Field). Southern Natural says its contract with Gulf commits a portion of the gas to Southern Natural. It appears that their intervention at this time would neither interrupt nor delay this proceeding and good cause exists for their intervention. The Washington Urban League, Inc. filed an untimely petition on October 7, 1971, stating it learned of this proceeding on the last day for filing such petitions and that because it is represented by the same counsel as S.O.U.P., Inc., it will not submit any evidence additional to that submitted by S.O.U.P., Inc., and that the granting of this petition would not prejudice any party or delay the proceedings.

The Public Service Commission of the State of New York, Louisville Gas and Electric Co., and Texas Gas Transmission Corp. have specifically requested a formal hearing. Algonquin Gas Co. and Texas Eastern Transmission Corp. have intervened in support of Gulf's petition; S.O.U.P., Inc. opposes Gulf's petition.

S.O.U.P., Inc. (Students Opposing Unfair Practices, Inc.) states in its petition that it is a nonprofit District of Columbia corporation "whose principal purpose is to secure the protection of the consumers' interest in regulatory matters." Its interest as a "nonprofit consumer group having no commercial interest, differs from that of any other potential intervenor * * *" and its intervention "permits a direct consumer voice in administrative decisionmaking."

The Washington Urban League is also a nonprofit corporation with a membership of about 20,000 members, most of whom reside in the Washington metropolitan area, but one-third have low incomes which, it says, differentiates it from S.O.U.P., Inc. It has a program of consumer protection, and one objective is to eliminate conditions that deny equal opportunity to citizens in the Washington metropolitan area. It says if Gulf's petition is granted, "one effect will be to increase the prices paid by these members for natural gas in the District of Columbia." It further relies upon essentially the same reasons as S.O.U.P., Inc. for its intervention here.

Gulf filed an answer on September 24, 1971, opposing the petition of S.O.U.P., Inc. to intervene. Gulf says S.O.U.P., Inc. has not met its affirmative burden to establish its right to intervene, that it has not shown it is a consumer or even that it is authorized to represent any consumer's interest herein. Gulf says S.O.U.P., Inc., has not demonstrated that the existing parties will not adequately represent its interest since its basis for intervention is one to protect consumers when the New York Commission, 33 distributors of gas, and the Staff of this Commission are participating in the proceeding. Gulf also says S.O.U.P., Inc. fails to meet the intervention requirements of § 1.8 of the Commission's rules. Gulf also filed an answer, and an amendment thereto, opposing the intervention of the Washington Urban League on essentially the same grounds that it opposes the intervention of S.O.U.P., Inc.

The granting of interventions is discretionary with this Commission. Section 15(a) of the Natural Gas Act permits intervention when, inter alia, "participation in the proceeding may be in the public interest." Our rules in § 1.8 permit intervention where there is shown either a right to intervene or "an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought." Such interest may be an "interest of such nature that petitioner's participation may be in the public interest." A right of intervention thus need not necessarily be shown, but a showing must be made that the intervention may be in the public interest.

Both S.O.U.P., Inc. and the Washington Urban League, Inc. are responsible organizations dedicated to protecting consumer interests. In this instance, their interventions will not unduly delay these proceedings, and we find that their interest is of such a nature that their participation may be in the public interest. We, therefore, grant their petitions to intervene. We wish to make it clear our ruling here is made solely in the circumstances of this case where several parties have requested hearings in this matter, and should not be construed as having precedential value. We intend to retain our discretionary authority to limit, if necessary, the intervention of consumer-interest groups who, as here, lack any apparent legal right or interest when necessary to maintain the orderly and efficient conduct of our proceedings consistent with due process. See "Firestone Tire & Rubber Co.," 27 Pike and Fischer Administrative Law (2d) 877, Decision issued October 23, 1970, for a discussion by the Federal Trade Commission on this point.

The Commission finds:

(1) It is desirable and in the public interest to allow the above-named petitioners to intervene in this proceeding in order that they may establish the facts and the law from which the nature and validity of their alleged rights and interests may be determined and show what further action may be appropriate under the circumstances in the administration of the Natural Gas Act.

(2) Although the petitions of Hoosier Gas Corp., Long Island Lighting Co., and Southern Natural Gas Co., and the Washington Urban League, Inc. were not timely filed, good cause exists for permitting their intervention.

(3) The expeditious disposition of this proceeding will be furthered by the filing, on or before November 22, 1971, by Gulf Oil Corp., its case-in-chief including the exhibits and prepared testimony upon which it will rely in support of its petition.

(4) The expeditious disposition of this proceeding will be furthered by convening a prehearing conference in this proceeding on December 7, 1971, and by the commencement of hearings in this proceeding immediately upon the conclusion of the prehearing conference.

The Commission orders:

(A) The above-named petitioners are permitted to intervene in this proceeding subject to the rules and regulations of the Commission: *Provided, however,* That the participation of such interveners shall be limited to matters affecting asserted rights and interests as specifically set forth in said petitions for leave to intervene; and *provided, further,* That the admission of such interveners shall not be construed as recognition by the Commission that they or any of them might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(B) Pursuant to the provisions of § 2.62(c) of the Commission's rules of practice and procedure, the petitioner shall serve copies of its filings upon all interveners promptly, unless such service has already been effected pursuant to Part 157 of the regulations of the Natural Gas Act.

(C) Gulf Oil Corp. shall file with the Commission and serve on all parties and the Commission Staff, on or before November 22, 1971, its case-in-chief including the exhibits and prepared testimony upon which it relies in support of its petition.

(D) Pursuant to the provisions of § 1.18 of the Commission's rules of practice and procedure, a prehearing conference before a duly designated Presiding Examiner shall commence at 10 a.m., e.s.t., on December 7, 1971, in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, DC 20426 for the purpose of effectuating the expeditious disposition of this proceeding. The purpose of such conference shall be to consider all matters at issue in the above dockets and to consider any and all matters which might contribute to an expeditious disposition of this proceeding. The petitioner, the Commission Staff, and all persons who have been permitted to intervene by the Commission shall be entitled to participate in that conference.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held immediately following the conclusion of the aforeordered prehearing conference in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, DC, concerning the matters involved in and the issues presented by Gulf Oil Corp.'s petition.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.71-16689 Filed 11-16-71;8:45 am]

[RP 70-6 etc.]

LAWRENCEBURG GAS TRANSMISSION CORP.

Order Suspending Proposed Revised Tariff Sheets Pending Effectiveness of Supplier Rate Increase, Providing for Hearing and Consolidating Proceedings

NOVEMBER 5, 1971.

Lawrenceburg Gas Transmission Corp. (Lawrenceburg), on October 7, 1971, tendered for filing in Docket No. RP72-48 proposed changes in its FPC Gas Tariff, Original Volume No. 1,[1] designed only to track the rate increase filed by its sole supplier, Texas Gas Transmission Corp. (Texas Gas), on October 1, 1971, in Docket No. RP72-45. Lawrenceburg proposes that its increase become effective on November 1, 1971, or in case of suspension of the proposed increase, no later than the date on which Texas Gas' proposed increased rates become effective in Docket No. RP72-45.[2] Lawrenceburg's proposed rate changes would increase charges under its two jurisdictional rate schedules, CDS-1 and EX-1 by approximately $208,986 annually, based on volumes for the 12-month period ended June 30, 1969.

In support of its filing, Lawrenceburg submitted cost of service and other data and incorporated by reference various statements which it submitted in support of its rate increase filings in Docket No. RP70-6 et al.

The proposed rate increases have not been shown to be justified and may be unjust, unreasonable, unduly discriminatory, or preferential or otherwise unlawful.

The fact that the cost and related data relied upon by Lawrenceburg in support of its filings in Dockets Nos. RP72-48 and RP70-6, et al. are substantially the same raises issues of law and fact common to each proceeding. Under these circumstances it is appropriate that Docket No. RP72-48 be consolidated with the latter proceedings for purposes of hearing and decision.

The Commission finds:

It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that:

(1) The proposed tariff sheets listed in footnote 1 above be suspended and the use thereof be deferred as herein provided, and;

(2) Docket No. RP72-48 be consolidated with Docket No. RP70-6, et al. for purposes of hearing and decision.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. 1), a public hearing be held concerning the lawfulness of the rates, charges, classifications, and services contained in Lawrenceburg's FPC Gas Tariff, as proposed to be amended herein.

(B) Pending such hearing and decision thereon, Lawrenceburg's revised tariff sheets, listed in footnote 1 above, are suspended and the use thereof is deferred until April 1, 1972, or such later date as may be authorized under Executive Order No. 11615, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act: *Provided however,* That Lawrenceburg shall not make the increase proposed herein effective prior to the date that the increased rates proposed by Texas Gas in Docket No. RP72-45 become effective.

(C) The proceedings in Dockets Nos. RP72-48 and RP70-6, et al. are hereby consolidated.

(D) This order does not relieve Lawrenceburg Gas Transmission Corp. of any responsibility imposed by, and is expressly subject to, the Commission's statement of policy implementing the Economic Stabilization Act of 1970 (Public Law 91-379, 84 Stat. 799, as amended by Public Law 92-15, 85 Stat. 38), including such amendments as the Commission may require, and Executive Order No. 11615.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.71-16688 Filed 11-16-71;8:45 am]

[1] The proposed revised tariff sheets are Ninth Revised Sheets Nos. 4 and 12.

[2] By order issued on Oct. 29, 1971, Texas Gas' proposed increased rates were suspended until Apr. 1, 1972, or such later date as may be authorized under Executive Order No. 11615.

[Docket No. G-15513]

MOUNTAIN FUEL SUPPLY CO.

Notice of Petition To Amend

NOVEMBER 8, 1971.

Take notice that on October 21, 1971, Mountain Fuel Supply Co. (petitioner), 180 East First South Street, Salt Lake City, UT 84111, filed in Docket No. G-15513 a petition to amend the Commission's order heretofore issued in said docket pursuant to section 7(c) of the Natural Gas Act on February 9, 1959 (21 FPC 200), by authorizing the construction and operation of an additional delivery point for the exchange of natural gas with El Paso Natural Gas Co. (El Paso), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

The order of February 9, 1959, authorized, inter alia, the construction and operation of facilities and the exchange of natural gas between petitioner and El Paso's predecessor in interest, Pacific Northwest Pipeline Corp. The exchange contemplated therein is accomplished by the delivery of certain volumes of natural gas to El Paso by petitioner in Sublette County, Wyo., in exchange for the transportation and redelivery of equivalent volumes by El Paso to petitioner near Green River, Wyo.

Specifically, petitioner proposes the construction and operation of an additional delivery point to be known as the Red Wash Delivery Point in Uintah County, Utah. Petitioner states that this point will provide an alternative means for receiving exchange deliveries from El Paso and that this will assist in the operation and load equation of its system serving Salt Lake City, Utah, and environs. The estimated cost of the facilities proposed herein is $1,350.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 26, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.71-16690 Filed 11-16-71;8:46 am]

[Docket No. CP72-111]

TENNESSEE GAS PIPELINE CO. AND TRUNKLINE GAS CO.

Notice of Application

NOVEMBER 8, 1971.

Take notice that on October 22, 1971, Tennessee Gas Pipeline Co., a division of Tenneco Inc. (Tennessee), Post Office Box 2511, Houston, TX 77001, and Trunkline Gas Co. (Trunkline), Post Office Box 1642, Houston, TX 77001, filed in Docket No. CP72-111, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the delayed exchange of natural gas between the parties, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Tennessee and Trunkline propose the delayed exchange of natural gas in accordance with the provisions of an exchange agreement dated October 11, 1971, which provides that commencing November 1, 1971, and continuing up to and including October 31, 1972, Tennessee shall deliver to Trunkline, on a best efforts basis, at the Kinder Delivery Point located near Kinder, La., or other mutually agreeable delivery points, daily volumes of up to 125,000 Mcf of natural gas per day. Commencing November 1, 1973, and continuing up to and including October 31, 1977, Trunkline shall redeliver to Tennessee at the Kinder Delivery Point, quantities of exchange gas equal in volume to the quantities previously received by Trunkline at a maximum rate not to exceed 31,250 Mcf of natural gas per day.

Applicants state that for each Mcf of delayed exchange gas delivered, the receiving party shall pay 28.25 cents per Mcf received, so there will be an equal exchange of dollars and gas within the life of the delayed exchange. All deliveries and redeliveries involved in the proposed exchange will be through existing facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 26, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.71-16693 Filed 11-16-71;8:46 am]

[Docket No. RP72-64]

TEXAS GAS TRANSMISSION CORP.

Notice of Filing of Proposed Tariff Provisions Relating to Curtailment Procedure

NOVEMBER 5, 1971.

Take notice that on October 29, 1971, Texas Gas Transmission Corp. (Texas Gas) submitted for filing as part of its FPC Gas Tariff, Third Revised Volume No. 1, First Revised Sheets Nos. 90, 91, and 92 and Original Sheets Nos. 92-A, 148, 149, 150, and 151, pertaining to curtailment procedures, elimination of demand charge credit, imposition of an overrun penalty and the clarification of Force Majeure provisions. Texas Gas states that this filing is submitted in compliance with the Commission's Order No. 431 issued in Docket No. R-418.

Texas Gas states in its filing that "Basically, the presently effective steps of curtailment, as set forth in section 10.2 of Texas Gas' presently effective tariff have been retained for 'short-term intervals.' With respect to 'long-term intervals,' Texas Gas proposes that gas available for deliveries will be prorated among its customers in the ratio of each customer's seasonal volume, as specified in an index of quantity entitlements, bears to the total seasonal volumes of all customers. The summer season commences on April 1 and ends on November 1 of any calendar year. The winter season commences on November 1 and ends on the succeeding April 1."

Texas Gas further states that it "is also proposing to eliminate the demand charge credit, in its presently effective tariff, in instances where curtailments are being made during long-term intervals. In addition, a penalty of $5 per Mcf, for volumes in excess of the volumes specified under the curtailment procedures, is proposed which will be in addition to penalties otherwise payable under the rate schedule or schedules involved."

In addition Texas Gas proposes to make modifications of sections 10.1 and 10.2 of its presently effective tariff "in order to eliminate any possible ambiguity and to make it clear that the Force Majeure provisions apply to long-term, as well as short-term, failures of gas supply."

Any person desiring to be heard or make any protest with reference to said filing should on or before November 19, 1971, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.18 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The filing which was made with the Commission is available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.71-16696 Filed 11-16-71;8:46 am]

[Docket No. RP69-27 etc.]

TRANSWESTERN PIPELINE CO.

Notice of Petition To Amend Stipulation and Agreement

NOVEMBER 10, 1971.

Take notice that on October 26, 1971, Transwestern Pipeline Co. (Transwestern), filed a petition to amend its presently effective "Stipulation and Agreement", which was approved by Commission order of November 24, 1970, in Docket No. RP69-27 et al.

Transwestern proposes that the Agreement be amended to provide for an extension of the time from December 31, 1971, until December 31, 1972, during which Transwestern may file increases and shall file decreases in its CDQ rates to track increases and decreases in its cost of purchased gas, as set forth in Article III and further proposes that the agreement be amended to provide a similar extension of time during which Transwestern shall flow-through refunds received from its suppliers in accordance with Article IV.

Transwestern states that the purpose of such proposed amendment is to avoid the necessity of filing a general rate increase well in advance of December 31, 1971, to protect itself against exposure to anticipated increases in its cost of purchased gas.

Copies of this petition were served on Transwestern's customers and interested State commissions.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 22, 1971, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to

make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

Any order or orders issued in this proceeding shall be subject to the Commission's statement of policy implementing the Economic Stabilization Act of 1970 (Public Law 91-379, 84 Stat. 799, as amended by Public Law 92-15, 85 Stat. 38) and Executive Order No. 11615, including such amendments as the Commission may require.

KENNETH F. PLUMB,
Secretary.

[FR Doc.71-16704 Filed 11-16-71;8:47 am]

[Docket No. CP72-110]

UNITED GAS PIPE LINE CO.

Notice of Application

NOVEMBER 5, 1971.

Take notice that on October 20, 1971, United Gas Pipe Line Co. (applicant), 1525 Fairfield Avenue, Shreveport, LA 71102, filed in Docket No. CP72-110 an application pursuant to section 7(b) of the Natural Gas Act for permission for and approval of the abandonment of natural gas service to Pennzoil United, Inc. (Pennzoil), and certain pipeline and measuring facilities employed for the resale and distribution of natural gas in the city of Monroe and environs, Ouachita Parish, La., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that Pennzoil is under order by the Securities and Exchange Commission to dispose of its entire interest in all retail natural gas distribution properties formerly owned by United Gas Corp., including the facilities employed for service to the city of Monroe. Pennzoil has informed Monroe that when its present natural gas distribution franchise for service to Monroe expires on April 27, 1972, it will not seek a new franchise. Applicant states that this advice was given at an early date in order that appropriate arrangements might be made by Monroe for an orderly continuation of natural gas supplies or for alternative fuels.

Applicant states that it presently delivers up to 45,100 Mcf of natural gas per day to Pennzoil for resale, distribution and power generation in the city of Monroe and environs and that the contract for this sale is assignable to Pennzoil's successor. In the event that no successor is found, applicant proposes to abandon the service and the facilities employed therefor and to use these volumes of natural gas to meet the requirements of its other customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 23, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

MARY B. KIDD,
Acting Secretary.

[FR Doc.71-16694 Filed 11-16-71;8:46 am]

[Docket No. RP72-66]

UNITED NATURAL GAS CO.

Notice of Proposed Changes in Rates and Charges

NOVEMBER 10, 1971.

Take notice that on November 3, 1971, United Natural Gas Co. (United Natural) tendered for filing proposed changes to Rate Schedules G-1 and CD-1 in its FPC Gas Tariff, Original Volume No. 1, and requests waiver of the Commission's regulations to permit such changes to be effective as of November 14, 1971. The company states that the proposed rates would increase its jurisdictional revenues by approximately $50,000 per annum.

United Natural states that the tender is made to track the rate increases of its suppliers—Consolidated Gas Supply Corp. (RP71-77 and RP71-126) and Tennessee Gas Pipeline Co. (RP71-6), both proposed to be effective as of November 14, 1971. It also contends that the rates set out in the tendered sheets (27th Revised Sheet No. 4 and 29th Revised Sheet No. 5) are consistent with the stipulation and agreement of April 3, 1970, as approved by Commission order issued May 4, 1970, in Docket No. RP70-24. Copies were served on the company's customers and interested State commissions. The tender is on file with the Commission and available for public inspection.

Any person desiring to be heard or to make protest with respect to said filing should on or before November 19, 1971, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons wishing to become parties or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

Any order or orders issued in this proceeding will be subject to the Commission's statement of policy implementing the Economic Stabilization Act of 1970 (Public Law 91-379, 84 Stat. 799, as amended by Public Law 92-15, 85 Stat. 38) and Executive Order No. 11615, including such amendments as the Commission may require.

KENNETH F. PLUMB,
Secretary.

[FR Doc.71-16705 Filed 11-16-71;8:47 am]

FEDERAL RESERVE SYSTEM

EXCHANGE BANCORPORATION, INC.

Order Approving Acquisition of Bank Stock By Bank Holding Company

In the matter of the application of Exchange Bancorporation, Inc., Tampa, Fla., for approval of acquisition of 51 percent or more of the voting shares of Bank of Osceola, Kissimmee, Fla.

There has come before the Board of Governors, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)) and § 222.3(a) of Federal Reserve Regulation Y (12 CFR 222.3(a)), an application by Exchange Bancorporation, Inc., Tampa, Fla., for the Board's prior approval of acquisition of 51 percent or more of the voting shares of Bank of Osceola, Kissimmee, Florida (Bank).

As required by section 3(b) of the Act, the Board gave written notice of receipt of the application to the Florida Commissioner of Banking and requested his views and recommendation. The Commissioner recommended approval of the application.

Notice of receipt of the application was published in the FEDERAL REGISTER on September 10, 1971 (36 F.R. 18262), providing an opportunity for interested persons to submit comments and views with respect to the proposal. A copy of the application was forwarded to the U.S. Department of Justice for its consideration. Time for filing comments and views has expired and all those received have been considered.

The Board has considered the application in the light of the factors set forth in section 3(c) of the Act, including the

effect of the proposed acquisition on competition, the financial and managerial resources and future prospects of the Applicant and the banks concerned, and the convenience and needs of the communities to be served, and finds that:

Applicant, the 10th largest bank holding company and banking organization in the State, controls six banks with aggregate deposits of approximately $323 million, representing 2.3 percent of the deposits held by commercial banks in Florida. (Banking data are as of December 31, 1970, and reflect holding company formations and acquisitions approved by the Board through September 30, 1971.) Consummation of the proposal would add less than one half of 1 percent to Applicant's percentage share of such deposits and would not change its relative position among the State's banking organizations.

Bank (deposits of $5.9 million) is the smallest of three banks in the Osceola County area controlling about 20.7 percent of area deposits and is the only independent banking organization there. Applicant's closest banking subsidiary to Bank is located about 24 miles south of Bank and has deposits of less than $10 million. There is little exising competition between this subsidiary and Bank and considering the small size of both and the intervening distance, there is little probability of substantial competition developing between the two. Bank's affiliation with Applicant offers the prospect of increased competition in the Osceola County area, since Bank should be able to compete more vigorously with the two larger banks there, both of which are members of bank holding companies that are larger than Applicant. Consummation of the proposed acquisition would not adversely affect competition in any relevant area and would not have an adverse effect on any competing bank.

The financial and managerial resources and future prospects of Applicant and its subsidiary banks are regarded as generally satisfactory. Considerations relating to the banking factors lend weight for approval in that affiliation with Applicant would give Bank greater experience and depth of management. Considerations related to the convenience and needs of the community lend some weight for approval since Bank, through Applicant's assistance, will be able to provide a broader and more sophisticated range of services such as larger loans resulting from the expanded demand developing from the opening of Walt Disney World, in neighboring Orange County. It is the Board's judgment that the proposed transaction is in the public interest and should be approved.

It is hereby ordered, On the basis of the record, that said application be and hereby is approved for the reasons summarized above: *Provided,* That the action so approved shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Atlanta pursuant to delegated authority.

By order of the Board of Governors,[1] November 9, 1971.

[SEAL] TYNAN SMITH, *Secretary of the Board.*

[FR Doc.71-16772 Filed 11-16-71;8:52 am]

[1] Voting for this action: Chairman Burns and Governors Mitchell, Daane, Maisel, Brimmer and Sherrill. Absent and not voting: Governor Robertson.

FIRST BANCSHARES OF FLORIDA, INC.

Order Approving Acquisition of Bank Stock By Bank Holding Company

In the matter of the application of First Bancshares of Florida, Inc., Boca Raton, Fla., for prior approval of the acquisition of 80 percent or more of the voting shares of Jensen Beach Bank, Jensen Beach, Fla.

There has come before the Board of Governors, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)) and § 222.3 (a) of Federal Reserve regulation Y (12 CFR 222.3(a)), an application by First Bancshares of Florida, Inc., Boca Raton, Fla., for the Board's prior approval of the acquisition of 80 percent or more of the voting shares of Jensen Beach Bank, Jensen Beach, Fla. (Bank).

As required by section 3(b) of the Act, the Board gave written notice of receipt of the application to the Florida Commissioner of Banking and requested his views and recommendation. The Commissioner responded that he recommended approval of the application.

Notice of receipt of the application was published in the FEDERAL REGISTER on September 18, 1971 (36 F.R. 18687), providing an opportunity for interested persons to submit comments and views with respect to the proposal. A copy of the application was forwarded to the U.S. Department of Justice for its consideration. Time for filing comments and views has expired and all those received have been considered.

The Board has considered the application in the light of the factors set forth in section 3(c) of the Act, including the effect of the proposed acquisition on competition, the financial and managerial resources and future prospects of the applicant and the banks concerned, and the convenience and needs of the communities to be served, and finds that:

Applicant has five subsidiary banks with aggregate deposits of approximately $128 million, representing 0.9 percent of the commercial bank deposits in Florida. (Banking data are as of December 31, 1970, and reflect holding company formations and acquisitions approved by the Board through September 30, 1971.) Approval of the acquisition of Bank would increase applicant's percentage share of such deposits in Florida by less than one-tenth of 1 percent.

Bank (deposits of $12.9 million) is the third largest of five banks in Martin County, which is approximately 120 miles north of Miami, with about 17.8 percent of deposits in the county. Applicant's closest subsidiary to Bank is some 30 miles to the south and there is little existing competition between the two. Due to the presence of several intervening banks and the Florida branching laws, there appears to be little likelihood of substantial competition developing between Bank and this subsidiary. Considering these factors and others of record, the Board concludes that consummation of the proposed acquisition would not adversely affect competition in any relevant area.

The financial and managerial resources and prospects of applicant, its subsidiary banks and Bank are regarded as satisfactory. However, Bank's president plans to retire shortly and applicant's acquisition of Bank will provide for continuity of management so that these considerations lend some weight for approval of the application. Considerations related to the convenience and needs of the community lend weight for approval of the application in that applicant will be able to provide trust services and increased mortgage financing. Both of these types of services are in increasing demand in Martin County. It is the Board's judgment that the proposed acquisition would be in the public interest and that the application should be approved.

It is hereby ordered, On the basis of the record, that said application be and hereby is approved for the reasons summarized above, provided that the action so approved shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Atlanta pursuant to delegated authority.

By order of the Board of Governors,[1] November 9, 1971.

[SEAL] TYNAN SMITH, *Secretary of the Board.*

[FR Doc.71-16774 Filed 11-16-71;8:52 am]

[1] Voting for this action: Chairman Burns and Governors Mitchell, Daane, Maisel, Brimmer, and Sherrill. Absent and not voting: Governor Robertson.

FIRST SECURITY CORP.

Order Approving Acquisition of Bank Stock by Bank Holding Company

In the matter of the application of First Security Corp., Salt Lake City, Utah, for approval of acquisition of 100 percent of the voting shares (less directors' qualifying shares) of First Security Bank of Bountiful (N.A.), Bountiful, Utah, a proposed new bank.

There has come before the Board of Governors, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)) and § 222.3 (a) of Federal Reserve regulation Y (12 CFR 222.3(a)), an application by First Security Corp., Salt Lake City, Utah, for

the Board's prior approval of the acquisition of 100 percent of the voting shares (less directors' qualifying shares) of First Security Bank of Bountiful (N.A.), Bountiful, Utah (Bank), a proposed new bank.

As required by section 3(b) of the Act, the Board gave written notice of receipt of the application to the Comptroller of the Currency and requested his views and recommendation. The Comptroller recommended approval of the application.

Notice of receipt of the application was published in the FEDERAL REGISTER on September 14, 1971 (36 F.R. 18439), providing an opportunity for interested persons to submit comments and views with respect to the proposal. A copy of the application was forwarded to the U.S. Department of Justice for its consideration. Time for filing comments and views has expired and all those received have been considered.

The Board has considered the application in the light of the factors set forth in section 3(c) of the Act, including the effect of the proposed acquisition on competition, the financial and managerial resources and future prospects of the applicant and the banks concerned, and the convenience and needs of the communities to be served, and finds that:

Applicant controls three banks with aggregate deposits of $544 million, representing 29.6 percent of the total commercial bank deposits in the State, and is the largest banking organization in Utah.[1] (All banking data are as of December 31, 1970, unless otherwise noted, and reflect holding company formations and acquisitions approved through September 30, 1971.) Since Bank is a proposed new bank, no existing competition would be eliminated nor would concentration be increased in any relevant area.

Bank would be located in Bountiful, 12 miles north of Salt Lake City, and would be the fifth bank operating in that area. Bank would be competing in the Salt Lake City banking market, where applicant, with 23.9 percent of market deposits,[2] is the largest of 15 banking organizations. Applicant's two closest subsidiaries to Bank have offices 15 miles south of Bank, in downtown Salt Lake City.

Applicant's status as the largest banking organization in the relevant market could present a competitive problem if it dominated the market and was establishing banks before a need for them existed. Cf., Application of First Wisconsin Bankshares Corp., 1968 Federal Reserve Bulletin 1024. However, two of the four offices in Bank's proposed service area are branches of the second and third largest banks in the banking market, each of which controls approximately 22 percent of market deposits.[2] In addition, applicant presently derives only an insignificant portion of its business from Bank's proposed service area. Accordingly, consummation would not appear to adversely alter the competitive situation in the market.

The financial and managerial resources and the future prospects of applicant and its subsidiary banks are generally satisfactory. Prospects for Bank appear favorable since it would have capable and experienced management and would be adequately capitalized. Bank would be able to provide an additional source of full banking services in an area which has experienced rapid population growth during the last two decades. Considerations relating to the convenience and needs of the area to be served lend slight support to, and are consistent with, approval of the application. It is the Board's judgment that consummation of the proposed acquisition would be in the public interest and that the application should be approved.

It is hereby ordered, On the basis of the record, that said application be and hereby is approved for the reasons summarized above, provided that the action so approved shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order; and provided further that (c) First Security Bank of Bountiful (N.A.) shall be opened for business not later than 6 months after the date of this order. Each of the periods described in (b) and (c) hereof may be extended for good cause by the Board, or by the Federal Reserve Bank of San Francisco pursuant to delegated authority.

By order of the Board of Governors,[3] November 9, 1971.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.71-16770 Filed 11-16-71;8:51 am]

[1] Additionally, applicant controls an Idaho bank ($388 million in deposits) and a Wyoming bank ($10 million in deposits). These banks were owned by applicant at the time of enactment of the Holding Company Act and were "grandfathered."

[2] Market data are as of June 30, 1970.

[3] Voting for this action: Chairman Burns and Governors Mitchell, Daane, Maisel, Brimmer, and Sherrill. Absent and not voting: Governor Robertson.

SHOREBANK, INC.

Order Approving Acquisition of Bank Stock by Bank Holding Company

In the matter of the application of Shorebank, Inc., Quincy, Mass., for approval of acquisition of 80 percent or more of the voting shares of The Falmouth National Bank, Falmouth, Mass.

There has come before the Board of Governors, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)) and § 222.3 (a) of Federal Reserve regulation Y (12 CFR 222.3(a)), an application by Shorebank, Inc., Quincy, Mass., for the Board's prior approval of the acquisition of 80 percent or more of the voting shares of The Falmouth National Bank, Falmouth, Mass. (Bank).

As required by section 3(b) of the Act, the Board gave written notice of receipt of the application to the Comptroller of the Currency and requested his views and recommendation. The Comptroller offered no objection to approval of the application.

Notice of receipt of the application was published in the FEDERAL REGISTER on September 14, 1971 (36 F.R. 18440), providing an opportunity for interested persons to submit comments and views with respect to the proposal. A copy of the application was forwarded to the U.S. Department of Justice for its consideration. Time for filing comments and views has expired and all those received have been considered.

The Board has considered the application in the light of the factors set forth in section 3(c) of the Act, including the effect of the proposed acquisition on competition, the financial and managerial resources and future prospects of the applicant and the banks concerned, and the convenience and needs of the communities to be served, and finds that:

Applicant controls two banks with deposits of $191 million. Bank ($18 million in deposits) is the second largest of eight banks in the Falmouth area (approximated by the towns of Falmouth, Bourne, Sandwich, Mashpee, and Barnstable), controlling 24.7 percent of area deposits. (All banking data are as of December 31, 1970, and reflect a holding company acquisition approved November 4, 1971.[1]) Over 50 miles and numerous intervening banks separate the closest offices of applicant's present subsidiaries and Bank; consequently, no significant existing competition would be eliminated. Consummation of this proposal would foreclose the possibility of applicant entering the area de novo or through acquisition of one of the smaller banks in the area. De novo entry, however, is unlikely because the area's population to banking office ratio is considerably less than that of the State. The potential competition that would be eliminated by consummation of this proposal is not considered significant and is offset by the benefits attributable to the formation of a holding company better able to compete with the larger Boston-based holding companies.

The financial and managerial resources and future prospects of Applicant, Applicant's present subsidiaries, and Bank are generally satisfactory and consistent with approval. Applicant plans to expand the services now offered by Bank to include leasing, international banking services, aircraft financing, accounts receivable financing, and electronic data processing services. Therefore, considerations relating to the convenience and needs of the community to be served lend some weight in favor of approval. It is the Board's judgment that the proposed transaction is in the public interest and that the application should be approved.

It is hereby ordered, On the basis of the record, that said application be, and hereby is, approved for the reasons summarized above, provided that the action so approved shall not be consummated

[1] Banking data relating to banks in the Falmouth area are as of June 30, 1970.

(a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Boston pursuant to delegated authority.

It is further ordered, That upon the consummation of the proposed transaction, Applicant shall not retain or acquire any nonbank shares or engage in any nonbanking activities to a greater extent or for a longer period than would apply in the case of a bank holding company which became such on the date of such consummation, except to the extent otherwise permitted in any regulation of the Board hereafter adopted specifically relating to the effect of the acquisition of an additional bank on the status of nonbank shares and activities of a one bank holding company formed prior to 1971, or unless the Board fails to adopt any such regulation before the expiration of 2 years after the consummation of the proposed acquisition.

By order of the Board of Governors,[2] November 9, 1971.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.71-16771 Filed 11-16-71;8:51 am]

UNITED TENNESSEE BANCSHARES CORP.

Order Approving Acquisition of Bank Stock by Bank Holding Company

In the matter of the application of United Tennessee Bancshares Corporation, Memphis, Tenn., for approval of acquisition of 80 percent or more of the voting shares of Nashville City Bank and Trust Co., Nashville, Tenn.

There has come before the Board of Governors, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)) and § 222.3 (a) of Federal Reserve Regulation Y (12 CFR 222.3(a)), an application by United Tennessee Bancshares Corp., Memphis, Tenn., a bank holding company, for the Board's prior approval of the acquisition of 80 percent or more of the voting shares of Nashville City Bank and Trust Co., Nashville, Tenn. (Bank).

As required by section 3(b) of the Act, the Board gave written notice of receipt of the application to the Superintendent of Banks of the State of Tennessee and requested his views and recommendation. The Superintendent offered no objection to consummation of the proposal.

Notice of receipt of the application was published in the FEDERAL REGISTER on September 14, 1971 (36 F.R. 18440), providing an opportunity for interested persons to submit comments and views with respect to the proposal. A copy of the application was forwarded to the U.S. Department of Justice for its consideration. Time for filing comments and views has expired and all those received have been considered.

The Board has considered the application in the light of the factors set forth in section 3(c) of the Act, including the effect of the proposed acquisition on competition, the financial and managerial resources and future prospects of the Applicant and the banks concerned, and the convenience and needs of the communities to be served, and finds that:

Applicant, the fourth largest bank holding company and seventh largest banking organization in Tennessee, has three subsidiary banks controlling $317.4 million in deposits, representing approximately 4.3 percent of the total commercial bank deposits in the State. (All banking data are as of December 31, 1970, adjusted to reflect holding company formations and acquisitions approved by the Board through September 30, 1971.) Consummation of the proposal herein would increase the percentage of total State deposits controlled by Applicant to 5 percent and would make Applicant the State's sixth largest banking organization.

Bank ($55.9 million deposits), controlling 4.1 percent of the commercial bank deposits in the Davidson County banking market, ranks fourth of the seven banks in that market. Bank's three larger competitors together hold approximately 94 percent of deposits in the market. Applicant's closest subsidiary bank is more than 200 miles from Bank. Due to this distance, as well as Tennessee's restrictive branching law, consummation of this proposal would foreclose neither existing nor potential competition between Bank and any banking subsidiary of Applicant. As a result of its affiliation with Applicant, Bank should be able to compete more effectively with the larger banks in the concentrated Davidson County banking market. Based upon the foregoing, the Board concludes that consummation of the proposal would not have an adverse effect on competition in any relevant area.

The financial and managerial resources and future prospects of Applicant, its subsidiaries, and Bank are considered generally satisfactory and consistent with approval. Considerations relating to the convenience and needs of the communities to be served lend weight in support of approval. Although the convenience and needs of the area are not, to any significant extent, going unserved, consummation of this proposal will strengthen Bank's competitive position in the banking market and enable Bank to offer new and expanded services in the areas of industrial development, business management, and trust services. Furthermore, access to Applicant's specialized computer facilities should provide greater efficiency to Bank's operations, further enhancing its competitive posture in a concentrated banking market. It is the Board's judgment that the proposed transaction would be in the public interest, and that the application should be approved.

It is hereby ordered, On the basis of the record, that said application be and hereby is approved for the reasons summarized above, provided that the action so approved shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Atlanta pursuant to delegated authority.

By order of the Board of Governors,[1] November 9, 1971.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.71-16773 Filed 11-16-71;8:52 am]

[2] Voting for this action: Chairman Burns and Governors Mitchell, Daane, Maisel, Brimmer, and Sherrill. Absent and not voting: Governor Robertson.

[1] Voting for this action: Chairman Burns and Governors Mitchell, Daane, Maisel, Brimmer, and Sherrill. Absent and not voting: Governor Robertson.

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

MODIFIED HACKNEY FLOODWAY AND CLOSURE OF MISSION FLOODWAY

Notice of Completion of and Availability of Environmental Statement

Pursuant to the National Environmental Policy Act of 1969, notice is hereby given that this agency has completed a final statement which discusses environmental considerations relating to the proposed Modified Hackney Floodway and closure of Mission Floodway, both located south of McAllen, Hidalgo County, Tex. A copy of the final statement, along with copies of comments received from other agencies and interested groups, is being placed in the Office of the Country Director for Mexico, Room 3906-A, Department of State, 21st Street and Virginia Avenue NW., Washington, DC, in the office of the Project Superintendent, U.S. Section, International Boundary and Water Commission, 208 South F Street, Harlingen, TX, and in the office of the U.S. Section, Chief of Planning and Reports, 809 Southwest Center, El Paso, TX. The environmental analysis statement was prepared as a part of the study of the necessary improvements to the existing flood control project being undertaken by the United States and Mexico.

Copies of the final statement, dated November 5, 1971, along with copies of comments received from other agencies and interested groups, can be obtained from the U.S. Department of Commerce, National Technical Information Service, Springfield, Va. 22151.

Dated at El Paso, Tex., this 9th day of November 1971.

FRANK FULLERTON,
Executive Assistant.

[FR Doc.71-16699 Filed 11-16-71;8:46 am]

PROPOSED INTERNATIONAL RETAMAL DIVERSION DAM ON RIO GRANDE

Notice of Completion of and Availability of Environmental Statement

Pursuant to the National Environmental Policy Act of 1969, notice is hereby given that this agency has completed a final statement which discusses environmental considerations relating to the proposed U.S. portion of Retamal International Diversion Dam and U.S. Dike on the Rio Grande about 9 miles south of Donna, Hidalgo County, Tex. A copy of the final statement, along with copies of comments received from other agencies and interested groups, is being placed in the Office of the Country Director for Mexico, Room 3906-A, Department of State, 21st Street and Virginia Avenue NW., Washington, DC, in the office of the Project Superintendent, U.S. Section, International Boundary and Water Commission, 208 South F Street, Harlingen, TX, and in the office of the U.S. Section, Chief of Planning and Reports, 809 Southwest Center, El Paso, TX. The environmental analysis statement was prepared as a part of the study of the necessary improvements to the existing flood control project being undertaken by the United States and Mexico.

Copies of the final statement, dated November 5, 1971, along with copies of comments received from other agencies and interested groups, can be obtained from the U.S. Department of Commerce, National Technical Information Service, Springfield, Va. 22151.

Dated at El Paso, Tex., this 9th day of November 1971.

FRANK FULLERTON,
Executive Assistant.

[FR Doc.71-16700 Filed 11-16-71;8:46 am]

SECURITIES AND EXCHANGE COMMISSION

[File No. 7-3864]

AMERADA HESS CORP.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

NOVEMBER 11, 1971.

In the matter of application of the Philadelphia - Baltimore - Washington Stock Exchange for unlisted trading privileges in a certain security.

The above-named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the warrants to purchase common stock of the following company, which security is listed and registered on one or more other national securities exchanges:

Amerada Hess Corp. (warrants to purchase capital stock of The Louisiana Land & Exploration Co., expiring June 15, 1976), File No. 7-3864.

Upon receipt of a request, on or before November 26, 1971, from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.71-16717 Filed 11-16-71;8:48 am]

[Files Nos. 7-3854—7-3860]

AMERICAN GENERAL INSURANCE CO., ET AL.

Notice of Applications for Unlisted Trading Privileges and Opportunity for Hearing

NOVEMBER 11, 1971.

In the matter of applications of the Detroit Stock Exchange for unlisted trading privileges in certain securities.

The above-named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stocks of the following companies, which securities are listed and registered on one or more other national securities exchanges:

	File No.
American General Insurance Co	7-3854
Coastal States Gas Producing Co	7-3855
Continental Corp	7-3856
Continental Telephone Corp	7-3857
Lone Star Gas Co	7-3858
Northern Natural Gas Co	7-3859
Panhandle Eastern Pipeline Co	7-3860

Upon receipt of a request, on or before November 26, 1971, from any interested person, the Commission will determine whether the application with respect to any of the companies named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on any of the said applications by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no one requests a hearing with respect to any particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.71-16708 Filed 11-16-71;8:47 am]

[File Nos. 7-3879—7-3889]

ASAMERA OIL CORPORATION LTD., ET AL.

Notice of Applications for Unlisted Trading Privileges and of Opportunity for Hearing

NOVEMBER 11, 1971.

In the matter of applications of the Pacific Coast Stock Exchange for unlisted trading privileges in certain securities.

The above-named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stocks of the following companies, which securities are listed and registered on one or more other national securities exchanges:

	File No.
Asamera Oil Corp., Ltd	7-3879
Bausch & Lomb, Inc	7-3880
Johnson & Johnson	7-3882
Smith Kline and French Laboratories, Inc	7-3883
University Computing Co	7-3884

Upon receipt of a request, on or before November 26, 1971, from any interested person, the Commission will determine whether the application with respect to any of the companies named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on any of the said applications by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no one requests a hearing with respect to any particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.71-16714 Filed 11-16-71;8:48 am]

[Files Nos. 7-3865—7-3873]

BANK OF NEW YORK CO., INC., ET AL.

Notice of Applications for Unlisted Trading Privileges and of Opportunity for Hearing

NOVEMBER 11, 1971.

In the matter of applications of the Philadelphia - Baltimore - Washington Stock Exchange for unlisted trading privileges in certain securities.

The above-named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stocks of the following companies, which securities are listed and registered on one or more other national securities exchanges:

	File No.
Bank of New York Co., Inc	7-3865
Bankers Trust New York Corp	7-3866
Bio-Dynamics, Inc	7-3867
Carolina Power & Light Co	7-3868
Central Illinois Light Co	7-3869
Central Illinois Public Service Co	7-3870
Charter New York Corp	7-3871
Commodore Corp	7-3872
Delta Corporation of America	7-3873

Upon receipt of a request, on or before November 26, 1971, from any interested person, the Commission will determine whether the application with respect to any of the companies named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on any of the said applications by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no one requests a hearing with respect to any particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.71-16716 Filed 11-16-71;8:48 am]

[File No. 7-3881]

BRITISH PETROLEUM CO., LTD.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

NOVEMBER 11, 1971.

In the matter of application of the Pacific Coast Stock Exchange for unlisted trading privileges in a certain security.

The above-named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchange:

The British Petroleum Co., Ltd. (American depositary receipts for ordinary shares, 1 pound par sterling), File No. 7-3881.

Upon receipt of a request, on or before November 26, 1971, from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.71-16713 Filed 11-16-71;8:47 am]

[File No. 1-3421]

CONTINENTAL VENDING MACHINE CORP.

Order Suspending Trading

NOVEMBER 5, 1971.

In the matter of trading in securities of Continental Vending Machine Corporation, File No. 1-3421.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, 10 cents par value of Continental Vending Machine Corp., and the 6 percent convertible subordinated debentures due September 1, 1976, being traded otherwise on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period November 7, 1971, through November 16, 1971.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.71-16549 Filed 11-16-71;8:45 am]

[File No. 24A-2001]

DOLPHIN'S LOCKER, INC.

Order Permanently Suspending Regulation A Exemption

NOVEMBER 9, 1971.

I. Dolphin's Locker, Inc. (Issuer), 1866 East Fourth Avenue, Hialeah, FL 33010, a Florida corporation, filed with the Commission on April 30, 1970, a notification and offering circular relating to a proposed offering of 200,000 shares of its $0.01 par value common stock at $0.50 per share for an aggregate of $100,000 for the purpose of obtaining an exemption for the registration requirements of the Securities Act of 1933, as amended, pursuant to section 3(b) thereof and Regulation A promulgated thereunder. No amendments have been filed and the offering has not been cleared.

II. The Commission issued an order on September 1, 1971, pursuant to Rule 261(a) of the general rules and regulations under the Securities Act of 1933, as amended, temporarily suspending the exemption. The order alleged that:

A. The notification and the offering circular had failed to meet the requirements of Regulation A as well as the full disclosure requirements of the Securities Act of 1933, as amended, in that:

(1) The issuer had failed to disclose adequately and accurately the transactions in which the issuer acquired its business and assets from two of its officers who are also directors, promoters, and controlling stockholders.

(2) The issuer had failed to disclose the cash cost to such insiders of the business and assets so acquired.

(3) The issuer had failed to state the amount, if any, of liabilities assumed by it in connection with the acquisition of the business and assets.

(4) The issuer had made misleading statements with respect to underwriting arrangements in that no underwriter was involved but that caption appears in the offering circular.

(5) The issuer had failed to state in the offering circular full information concerning the issuer's business operations and financial condition in a manner which would appear reasonably understandable to prospective investors.

B. No reply had yet been received from either the issuer or the attorney for the issuer.

A followup letter had been sent to the attorney on October 30, 1970, with a copy to the issuer's president, advising that unless the issuer was prepared to file the requested amendments, the notification should be withdrawn.

No reply to the followup letter had been received from the issuer, but by letter dated November 5, 1970, the attorney advised that he no longer represented the issuer in connection with its Regulation A filing.

On December 15, 1970, an additional followup letter had been sent to the issuer's president, with a copy to its vice president, again requesting that unless

the issuer was prepared to file the requested amendments, the notification be withdrawn without additional delay.

No reply of any kind to any of the letters had been received.

The notification and offering circular filed by the issuer were at best materially misleading, if not false, and the issuer had shown a lack of cooperation in failing to respond to staff comments, amend the filing or communicate in any way with the Commission concerning the filing.

C. The offering, if made, would have been in violation of sections 5 and 17 of the Securities Act of 1933.

III. No hearing having been requested by the issuer within 30 days after the order temporarily suspending the exemption of the issuer under Regulation A, the Commission finds that it is in the public interest and for the protection of investors that the exemption of the issuer under Regulation A be permanently suspended:

It is ordered, Pursuant to Rule 261(a) of the general rules and regulations under the Securities Act of 1933, as amended, that the exemption of the issuer under Regulation A be, and it hereby is, permanently suspended.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc. 71-16710 Filed 11-16-71;8:47 am]

[Files Nos. 7-3874—7-3878]

HEUBLEIN, INC., ET AL.

Notice of Applications for Unlisted Trading Privileges and of Opportunity for Hearing

NOVEMBER 11, 1971.

In the matter of applications of the Philadelphia-Baltimore-Washington Stock Exchange for unlisted trading privileges in certain securities.

The above-named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stocks of the following companies, which securities are listed and registered on one or more other national securities exchanges:

	File No.
Heublein, Inc	7-3874
Panhandle Eastern Pipe Line Co	7-3875
Scottex Corp	7-3876
Spectro Industries, Inc	7-3877
Viacom International, Inc	7-3878

Upon receipt of a request, on or before November 26, 1971, from any interested person, the Commission will determine whether the application with respect to any of the companies named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on any of the said applications by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, not later than the date specified. If no one requests a hearing with respect to any particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.71-16715 Filed 11-16-71;8:48 am]

[70-5101]

MAINE YANKEE ATOMIC POWER CO., ET AL.

Notice of Proposed Issue and Sale of Notes

NOVEMBER 9, 1971.

Notice is hereby given that Maine Yankee Atomic Power Co. (Maine Yankee), 9 Green Street, Augusta, ME 04330, an electric utility company and a subsidiary company of both Northeast Utilities (Northeast) and New England Electric System (NEES), registered holding companies; New England Power Co. (NEPCO), an electric utility subsidiary company of NEES; Western Massachusetts Electric Co. (WMECO), The Connecticut Light & Power Co. (CL&P), and The Hartford Electric Light Co. (Hartford), three public-utility subsidiary companies of Northeast; Montaup Electric Co. (Montaup), an electric-utility subsidiary company of Eastern Utilities Associates, a registered holding company, and Maine Public Service Co. (MPS) and Bangor Hydro-Electric Co. (Bangor), exempt holding companies (referred to collectively as "applicant-sponsors"), have filed an application-declaration and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6, 7, 9(a), and 10 of the Act as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Maine Yankee is constructing a nuclear-powered electric generating plant with a net expected capacity of approximately 800 megawatts. The total capital cost of the plant, excluding the cost of the initial inventory of nuclear fuel of up to $25 million, is currently estimated at $203 million. The sponsors are committed by capital fund agreements and power contracts to provide Maine Yankee, in accordance with their stock percentages, the capital required by Maine Yankee, and to purchase a like percentage of the capacity and power output of the Maine Yankee plant on a cost-of-service basis, which includes an appropriate return on their investment. Construction of the plant is about 85 percent complete, and it is scheduled to commence operation in 1972. Maine Yankee plans to finance the balance of its capital requirements to construct the plant through the issuance and sale of about $17 million of preferred stock after the plant begins operation. Pending such issue, Maine Yankee plans to satisfy its financing requirements by short-term bank borrowings, or by loans from its sponsors evidenced by capital notes and by other subordinated notes.

In order to maintain the capital ratio required by Maine Yankee's first mortgage indenture, Maine Yankee in the instant filing proposes to issue and sell to its sponsors, and the applicant-sponsors propose to acquire, capital notes in the amount of $5,600,000. Each capital note will bear interest payable quarterly at an annual rate which is 1½ percent in excess of the lowest prime rate for commercial loans in effect at any bank in Boston on the date of issue thereof. The capital notes will have a maturity of less than 12 months and are to be paid from the proceeds of the preferred stock scheduled to be sold after the plant commences commerical operation. The capital notes will be subordinated to the Series A bonds, the Series B bonds, the debentures, and to bank loans of Maine Yankee upon the terms specified therein and will be purchased by the sponsors according to their respective stock percentages; NEPCO 20 percent, CL&P 8 percent, Bangor 7 percent, MPS 5 percent, Hartford 4 percent, Montaup 4 percent, and WMECO, 3 percent.

The fees and expenses to be incurred in connection with the proposed transactions are to be filed by amendment. The Maine Public Utilities Commission has approved the issuance of the capital notes to the sponsors. It is stated that the Massachusetts Department of Public Utilities has jurisdiction over the acquisition of the capital notes by the Massachusetts sponsors and that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than November 30, 1971, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the reqest. At any time after said date, the application-declaration, as

amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.71-16711 Filed 11-16-71;8:47 am]

[812-2997]

NARRAGANSETT CAPITAL CORP.

Notice of Filing of Application

NOVEMBER 11, 1971.

Notice is hereby given that Narragansett Capital Corp. (Narragansett), 10 Dorrance Street, Providence, RI 02903, a Rhode Island corporation, registered as a closed-end, nondiversified, management investment company under the Investment Company Act of 1940 (Act) and licensed as a small business investment company under the Small Business Investment Act of 1958, has filed an application pursuant to section 17(b) of the Act to exempt from section 17(a) of the Act the acquisition by All American Beverages, Inc. (AAB) of the assets, subject to substantially all liabilities, of Piedmont Bottling Co., Inc. (Piedmont), and for an order under Rule 17d-1 of the Act authorizing such transaction.

All interested persons are referred to the application on file with the Commission for a statement of the representations made therein which are summarized below.

Background. On March 31, 1971, the board of directors of AAB and the holders of a substantial majority of the stock of Piedmont reached an agreement in principle calling for the acquisition of Piedmont's business and assets, subject to substantially all of its liabilities, by AAB, in exchange for the issuance to Piedmont of 205,000 shares of AAB common stock (1¼ AAB shares for each share of outstanding Piedmont common stock). The board of directors of Piedmont subsequently approved the transaction, and the terms of the agreement in principle were embodied in an agreement and plan of reorganization between the parties dated July 9, 1971. In addition to providing for the mechanics of the liquidation of Piedmont and providing usual representations, warranties, and conditions generally found in an acquisition agreement, the agreement and plan of reorganization provides that each of the three stockholders of Piedmont must deliver (i) investment letters indicating that the stock they will receive will be taken without a view to sale or distribution and will not be sold in any event within 2 years after closing of the transaction, and (ii) joinder agreements whereby each of the shareholders join in the representations and warranties of Piedmont and agree to indemnify AAB for a period of 3 years as a result of inaccuracies in the representations and warranties of Piedmont, such indemnification being on a pro rata basis. The consummation of the transaction has been approved by the major creditors and franchisors of both AAB and Piedmont and by the Small Business Administration.

AAB is engaged in the production, distribution and sale of soft-drink products (primarily Pepsi-Cola products) in Springfield, Ohio, and Sacramento, Calif. Piedmont is engaged in the production, distribution and sale of soft-drink products in the Winston-Salem and Greensboro areas of north central North Carolina. Its product lines include Pepsi-Cola products, Seven-Up, Dr. Pepper, and True-Ade. On October 13, 1971, the quoted bid price for the stock of AAB was $15.62 per share. The common stock of Piedmont is held by three stockholders who will receive AAB shares representing 31.1 percent of AAB after the proposed transaction.

For the year ended August 31, 1970, AAB had net sales of $6,992,417, income before extraordinary items of $234,362 and net income (after extraordinary items) of $18,628. For the year ended March 31, 1971, Piedmont had net sales of $12,689,000 and a net loss of $334,348. At these dates AAB and Piedmont had total assets of $5,770,719 and $9,929,538, respectively. For the 5 months ended August 31, 1971, unaudited financial statements reveal that AAB and Piedmont had net income before Federal and State taxes and other extraordinary items of $518,857 and $243,455, respectively, representing 68.1 percent and 31.9 percent respectively, of the pro forma combined results of the two companies.

Narragansett is the holder of 24.25 percent of the common stock of AAB, owns 48 percent of the outstanding common stock of Piedmont, and if the acquisition transaction is consummated, will own 31.5 percent of the 659,568 shares of AAB common stock to be outstanding after the acquisition. James B. Somerall, the chairman of the board and chief executive officer of AAB and a director of Piedmont, is the holder of 7.43 percent of the outstanding common stock of AAB and 32 percent of the common stock of Piedmont. Upon consummation of the acquisition transaction, Mr. Somerall would own 15.1 percent of the outstanding shares of AAB common stock. The third stockholder of Piedmont is Industrial Capital Corp., holding 20 percent of the outstanding common stock. Industrial Capital, a licensed small business investment company, is a wholly owned subsidiary of Industrial National Bank of Rhode Island, a creditor of both AAB and Piedmont.

Four of the nine directors of AAB, James B. Somerall, Harvey J. Sarles, L. A. Casler, and Arthur D. Little, are also directors of Piedmont, which has a sixman Board. Messrs. Sarles, Casler, and Little are members of the management of Narragansett. Royal Little, a director of AAB, is chairman of the board and chief executive officer of Narragansett.

Narragansett's dollar investment in AAB is $1,218,309, consisting of $871,000 in a promissory note and $347,309 in 110,219 shares of AAB common stock. Narragansett's dollar investment in Piedmont is $2,562,000, consisting of $2,070,000 in a promissory note and $492,000 in 78,720 shares of Piedmont common stock. Mr. Somerall's dollar investment in AAB common stock is approximately $160,000, and his dollar investment in the common stock of Piedmont is $328,000.

The acquisition transaction is subject to approval by the stockholders of AAB. At a meeting to be called to consider the acquisition, two votes will be taken on resolutions with respect to the acquisition. First, all of the stockholders of AAB will vote, and a majority of those stockholders represented in person and by proxy at the meeting will be required to pass the first resolution. Secondly, all of the AAB stockholders except Narragansett and the officers and directors of Narragansett, AAB and Piedmont (including Mr. Somerall), who together hold 54.68 percent of the common stock of AAB, will vote on the transaction. A majority of these "independent" holders, holding 45.32 percent of the common stock, must vote in favor of the transaction for passage of the second resolution. Both resolutions must pass for the transaction to be consummated.

Commission jurisdiction. Section 17(a) of the Act, as here pertinent, prohibits a company controlled by a registered investment company from selling property to an affiliated person of such registered investment company, and also prohibits any affiliated person of such a registered investment company from purchasing property from a company controlled by such registered investment company. The proposed acquisition, whereby Piedmont would sell assets to AAB, is a prohibited transaction pursuant to section 17(a). Piedmont is controlled by Narragansett within the meaning of the Act, and AAB is an affiliated person of Narragansett within the meaning of the Act. The Commission, upon the filing of an application for an order pursuant to section 17(b), may grant an exemption from the provisions of section 17(a) after finding that the terms of the proposed transaction are consistent with the policy of the registered investment company and the general purposes of the Act, and are fair and reasonable to all parties and do not involve overreaching on the part of any person concerned.

Section 17(d) of the Act and Rule 17d-1 thereunder, taken together, provide, as here pertinent, that it shall be unlawful for an affiliated person of a registered investment company or any affiliated person of such person, acting as principal, to participate in, or to effect any transaction in connection with any joint enterprise or other joint arrangement in which such registered company,

or a company controlled by such registered company, is a participant unless an order regarding such arrangement has been granted by the Commission upon application. In passing upon such application, the Commission must consider whether the participation of such registered company or controlled company in such arrangement is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

Supporting statements. Narragansett alleges that the proposed asset acquisition by AAB is fair and reasonable to all parties involved. The terms of the proposed transaction, it is asserted, were determined in arms length negotiations between the independent management of AAB and the stockholders of Piedmont, represented by G. H. Walker & Co., an investment banking concern. The parties received a report from Walker asserting that the proposed ratio of exchange was fair and reasonable to AAB and Piedmont. The report indicates the greater potential of Piedmont as compared to AAB on the basis of comparative per-capita soft drink consumption in the areas served by the two companies. The report is attached to the application as an exhibit.

The application also states that the proposed transaction does not involve overreaching on the part of any person concerned or any preference or special treatment for any affiliated person of Narragansett or any affiliated person of such an affiliated person. All stockholders of both companies party to the transaction will benefit from the sale in direct proportion to their present holdings of stock in the respective companies.

Narragansett represents that the proposed transaction is consistent with its investment policy, as recited in its registration statement and reports filed under the Act, and is consistent with the general purposes of the Act. It is asserted that the transaction does not favor any particular insiders or special classes of security holders.

With specific reference to Rule 17d-1, the application contends that the participation of Narragansett in the proposed transaction is not on a basis different from or less advantageous than that of any other participant, including the affiliated persons of Narragansett, and affiliated persons of such affiliated persons, and that such affiliated parties would not participate on a different or more advantageous basis than that of any other participant, including Narragansett.

Notice is further given that any interested person may, not later than December 1, 1971, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Narragansett at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

It is ordered, That the Secretary of the Commission shall send a copy of this notice by certified mail to the Director, Office of Investment Assistance, Small Business Administration, Washington, D.C. 20416.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

RONALD F. HUNT,
Secretary.

[FR Doc.71-16712 Filed 11-16-71;8:47 am]

[File Nos. 7-3861—7-3863]

PENNZOIL UNITED, INC., ET AL.

Notice of Applications for Unlisted Trading Privileges and of Opportunity for Hearing

NOVEMBER 11, 1971.

In the matter of applications of the Detroit Stock Exchange for unlisted trading privileges in certain securities.

The above-named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stocks of the following companies, which securities are listed and registered on one or more other national securities exchanges:

	File No.
Pennzoil United, Inc.	7-3861
South Carolina Electric & Gas Co.	7-3862
Texas Gas Transmission Corp.	7-3863

Upon receipt of a request, on or before November 26, 1971, from any interested person, the Commission will determine whether the application with respect to any of the companies named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on any of the said applications by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no one requests a hearing with respect to any particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.71-16709 Filed 11-16-71;8:47 am]

[812-2992]

SECURITY PACIFIC OVERSEAS INVESTMENT CORP.

Notice of Filing of Application

NOVEMBER 10, 1971.

Notice is hereby given that Security Pacific Overseas Investment Corp. (Applicant), 561 South Spring Street, Los Angeles, CA 90014, a Delaware corporation, has filed an application pursuant to section 6(c) of the Investment Company Act of 1940 (Act) for an order exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the material representations therein which are summarized below.

Applicant was incorporated on September 2, 1970, in the State of Delaware. Applicant has paid-in capital of $5 million represented by 10 shares of authorized and outstanding capital stock, no par value, all of which are held by Security Pacific Overseas Corp. (Overseas).

Overseas was incorporated on June 18, 1970, under the laws of the United States pursuant to section 25(a) (the "Edge Act") of the Federal Reserve Act. Overseas has paid-in capital of $6 million represented by 60,000 shares of authorized and outstanding common stock, $100 par value, all of which is held by Security Pacific National Bank (Bank). Bank is a national banking association organized under the laws of the United States of America. Neither Bank nor Overseas are investment companies as defined in the Act since they are banking institutions organized under the laws of the United States, and are thereby exempt from the Act pursuant to sections 2(a)(5)(A) and 3(c)(3) thereof.

Applicant represents that Bank, its domestic subsidiaries, its controlled foreign subsidiaries and its foreign branches are under the supervision of, and subject to examination by, the Comptroller of the Currency of the United States and are subject to the rules and regulations of the Board of Governors of the Federal Reserve System (the "Board") and the Federal Deposit Insurance Corporation. Applicant further represents that Bank's Edge Act subsidiaries, such

as Overseas, and their controlled subsidiaries are under the supervision of, and subject to examination by the Board, as well as being subject to the rules and regulations of the Comptroller of the Currency of the United States. The Board regulates the activities of such Edge Act corporations, particularly their investments, through the provisions of its Regulation K. The Board's consent to Overseas' investment in Applicant was conditioned upon divestiture of such investment by Overseas if Applicant takes any action or undertakes any operation in any manner which at the time would not be permissible to Overseas. Applicant contends, therefore, that it is subject to the same Board restrictions as Overseas. In Regulation K, the Board has granted a general consent for investments which neither exceed $500,000 nor result in the holding of more than 25 percent of the voting shares of the corporation in which the investment is made. All other investments must receive specific Board approval. Pursuant to the provisions of the Edge Act, both Overseas and Applicant are prohibited from making any investment regardless of size in any company doing business in the United States, other than business determined by the Board to be incidental to its international or foreign business.

The Board is responsible for the balance of payments policy relative to domestic banks and other financial institutions, including Edge Act corporations and their domestic subsidiaries. The Voluntary Foreign Credit Restraint Program (the "Program") implements the policy of limiting the amount of total "claims on foreigners" (which include loans to, and investments in foreign branches, corporations, entities, and individuals) which a domestic bank may carry on the books of its domestic offices or which an Edge Act corporation or its domestic subsidiaries may carry on their books. A foreign branch or foreign subsidiary of a domestic bank or Edge Act corporation is considered a foreigner within the context of the Program. Extensions of foreign credit by a foreign branch or foreign subsidiary of a domestic bank or Edge Act corporation are not subject to the Program, except as a result of the restraints on domestic banks and Edge Act corporations with respect to foreign credit to, or foreign investments in, such branches or subsidiaries. In 1970, the Board revised the Program to provide that a domestic subsidiary (such as Applicant) of an Edge Act Corporation (such as Overseas) may offset against the aggregate of its "claims on foreigners" and "other foreign assets" the face amount of its outstanding borrowings from foreigners if the borrowings have an original maturity of 3 years or more. Applicant contends it was formed specifically to take advantage of this offsetting principle and plans to offer abroad its debt securities with maturities of 3 years or more. It should be noted that this offset is not permitted to the bank directly or to any of its Edge Act subsidiaries.

Applicant states that it does not fall within the technical definition of "Bank" set forth in section 2(a)(5)(C) of the Act, which requires that a "bank" receive deposits or exercise fiduciary powers similar to those permitted to national banks. Applicant contends, however, that it clearly fits within the general intent of exemption from the definition of investment company set forth in section 3(c)(3) of the Act. Applicant states that it will serve as an integral element in the international banking operations of Bank, and its only long-term activity will be to hold investments which, absent the Program and the Board's offset policy, Overseas might hold free of the operation of the Act. Applicant represents that it will make equity investments in foreign entities, primarily those engaged in banking and financially related activities abroad, so as to further the international activities of Bank. Any amounts not needed to fund Applicant's foreign equity investments will be used primarily, other than for domestic deposits placed with Bank, to make foreign loans and to acquire participations in Bank's foreign loans. Furthermore, Applicant represents that it is governed by bank regulations similar to those applied to banks exempt from the Act, and Overseas may continue to hold Applicant's stock only if Applicant restricts its activities to those permissible to Overseas. In addition, Applicant states that the Board must approve all of its major foreign equity investments. Accordingly, Applicant requests an exemption from all provisions of the Act pursuant to section 6(c), thereof, subject to the following conditions:

(1) At the time of their issuance, the securities issued by Applicant (except to Security Pacific or to a subsidiary of Security Pacific which is not an investment company) would, if purchased by nationals or resident of the United States, its territories or possessions, be subject to the Interest Equalization Tax or another tax providing a comparable deterrent to the purchase of Applicant's securities by U.S. nationals or residents in the event that the U.S. Interest Equalization Tax expires, is repealed, or the rate thereof is reduced to zero, and such fact will be prominently indicated on such securities;

(2) Applicant will not issue, without an order of the Commission, any securities (except to Security Pacific or to a subsidiary of Security Pacific which is not an investment company) in the event the U.S. Interest Equalization Tax expires, is repealed or the rate thereof is reduced to zero and such tax is not replaced by another comparable tax;

(3) Applicant will forthwith register with the Commission pursuant to section 8 of the Act in the event that Applicant ceases to be regulated by a banking regulatory agency as indicated in the application and in this notice; and

(4) Applicant will register with the Commission pursuant to Section 8 of the Act in the event that all securities of Applicant, with the exception of debt securities, cease to be held by Security Pacific or by a subsidiary of Security Pacific which is not an investment company.

Section 6(c) of the Act, as here pertinent, authorizes the Commission, by order upon application, conditionally or unconditionally to exempt any person or any class or classes of persons from any provision or provisions of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than November 26, 1971, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in case of attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.71-16718 Filed 11-16-71;8:48 am]

[File No. 24D-3065]

UNITED FARMERS AND RANCHERS, INC.

Order Permanently Suspending Regulation A Exemption

NOVEMBER 9, 1971.

I. United Farmers and Ranchers, Inc. (issuer), 4288 Philadelphia Street, Chino, California 91710, a Utah corporation and the general partner, filed with the Commission on March 19, 1971, a notification on Form 1-A and an offering circular relating to a proposed offering of 2,000 units of limited partnership interests at $250 per unit, for an aggregate offering price of $500,000, for the purpose of obtaining an exemption from the registration requirements of the Securities Act of

1933, as amended, pursuant to the provisions of section 3(b) thereof, and Regulation A promulgated thereunder. The officers of the issuer and certain unidentified "NASD members" were designated as persons who would sell the offering. The issuer was to retain 10 percent of the offering price of each unit of limited partnership sold by officers of the issuer as reimbursement for expenses of the offering. The issuer was to pay a commission of 10 percent of the offering price to the participating "NASD members" for each unit of limited partnership sold by them.

II. The Commission issued an order on September 16, 1971, pursuant to Rule 261(a) of the general rules and regulations under the Securities Act of 1933, as amended, temporarily suspending the exemption. The order alleged that:

(A) The terms and conditions of Regulation A had not been complied with in that:

(1) Item 1 of the issuer's Form 1-A failed to set forth accurately the date of incorporation or organization of the issuer;

(2) Item 2 of the issuer's Form 1-A failed to set forth accurately each affiliate of the issuer, the nature of such affiliation, and each person who owns of record, or is known to own beneficially, 10 percent or more of the outstanding securities of any class of the issuer, and the title and amount owned by each such person;

(3) Item 3 of the issuer's Form 1-A failed to set forth accurately the name and residence address of each director, officer, and promoter of the issuer;

(4) Item 4 of the issuer's Form 1-A failed to set forth accurately the name and address of counsel for the issuer in connection with the proposed offering;

(5) A written consent of Ken Chamberlain, who was named as counsel for the issuer in Item 4 of the issuer's Form 1-A, had not been filed as required by subparagraph (g) of Item 11 of Form 1-A;

(6) The issuer's offering circular failed to state accurately the date of the issuer's incorporation or organization, as required by paragraph 2 of Schedule I;

(7) The issuer's offering circular failed to state the order of priority in which the proceeds of the offering would be used for the respective purposes, as required by paragraph 6(a) of Schedule I;

(8) The issuer's offering circular failed to state the name and residence address of all promoters of the issuer, as required by paragraph 9(a) of Schedule I;

(9) The issuer's offering circular failed to state the percentage of outstanding securities of the issuer which would be held by directors, officers and promoters, as a group, and the percentage of such securities which will be held by the public, if all of the securities being offered are sold, and the respective amounts of cash (including cash expended for property transferred to the issuer) paid therefor by such group and by the public as required by paragraph 9(d) of Schedule I;

(10) The issuer's offering circular failed to contain financial statements of the issuer as required by paragraph 11(a) of Schedule I.

(B) The notification and offering circular contained untrue statements of material facts and omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading, particularly with respect to the following:

(1) The notification and offering circular state that the issuer was incorporated in the State of Utah on March 20, 1971, and February 28, 1971, respectively, whereas, in fact, the issuer was not so incorporated on such dates;

(2) The notification stated that Ken Chamberlain, of Richfield, Utah, is secretary, a director, and 10 percent shareholder of, and counsel for, the issuer, and the offering circular stated that Chamberlain was an officer and director of the issuer, whereas, in fact, Ken Chamberlain was not an officer, director, or shareholder of, or counsel for, the issuer;

(3) The failure to disclose the manner in which the profits and losses of the partnership were to be determined;

(4) The failure to disclose the risks and competition in connection with the business in which the issuer proposed to engage in;

(5) The failure to disclose that Ken Chamberlain had not consented to be named as counsel for the issuer in the notification and offering circular.

(C) The offering would have been made in violation of section 17(a) of the Securities Act of 1933, as amended, by reason of the matters described above.

III. No hearing having been requested by the issuer within 30 days after the order temporarily suspending the exemption of the issuer under Regulation A, the Commission finds that it is in the public interest and for the protection of investors that the exemption of the issuer under Regulation A be permanently suspended.

It is ordered, Pursuant to Rule 261(a), subparagraphs (1), (2) and (3), of the general rules and regulations under the Securities Act of 1933, as amended, that the exemption under Regulation A be, and it hereby is, permanently suspended.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary*.

[FR Doc.71-16719 Filed 11-16-71;8:48 am]

TARIFF COMMISSION

[TEA-W-120]

UTICA CUTLERY CO.

Workers' Petition for Determination of Eligibility To Apply for Adjustment Assistance; Notice of Investigation

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of the workers of the Utica Cutlery Co., Utica, N.Y., the U.S. Tariff Commission, on November 11, 1971, instituted an investigation under section 301(c)(2) of the act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with stainless steel table flatware of the type produced by said firm are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such company.

The petitioners have not requested a public hearing. A hearing will be held on request of any other party showing a proper interest in the subject matter of the investigation, provided such request is filed within 10 days after the notice is published in the FEDERAL REGISTER.

The petition filed in this case is available for inspection at the Office of the Secretary, United States Tariff Commission, Eighth and E Streets NW., Washington, DC, and at the New York City office of the Tariff Commission located in Room 437 of the Customhouse.

Issued: November 11, 1971.

By order of the Commission.

[SEAL] KENNETH R. MASON, *Secretary*.

[FR Doc.71-16720 Filed 11-16-71;8:48 am]

DEPARTMENT OF LABOR

Office of the Secretary

BIBB MANUFACTURING CO.

Notice of Investigation Regarding Certification of Eligibility of Workers To Apply for Adustment Assistance

The Department of Labor has received a Tariff Commission report containing an affirmative finding under section 301(c)(2) of the Trade Expansion Act of 1962 with respect to its investigation of a petition for determination of eligibility to apply for adjustment assistance filed on behalf of workers of the Bibb Manufacturing Co., Macon, Ga. (TEA-W-112). In view of the report and the responsibilities delegated to the Secretary of Labor under section 8 of Executive Order 11075 (28 F.R. 473), the Acting Director, Office of Foreign Economic Policy, Bureau of International Labor Affairs, has instituted an investigation, as provided in 29 CFR 90.5 and this notice. The investigation relates to the determination of whether any of the group of workers covered by the Tariff Commission report should be certified as eligible to apply for adjustment assistance, provided for under title III, chapter 3, of the Trade Expansion Act of 1962, including the determination of related subsidiary subjects and matters, such as the date unemployment or underemployment began or threatened to begin and subdivision of the firm involved to be specified in any certification to be made, as more specifically provided in Subpart B of 29 CFR Part 90.

Interested persons should submit written data, views, or arguments relating to the subjects of investigation to the Director, Office of Foreign Economic Policy, U.S. Department of Labor, Washington, D.C., on or before November 19, 1971.

Signed at Washington, D.C., this 9th day of November 1971.

GLORIA G. VERNON,
Acting Director, Office of Foreign Economic Policy.

[FR Doc.71-16698 Filed 11-16-71;8:46 am]

IDAHO

Notice of Termination of Extended Unemployment Compensation

The Federal-State Extended Unemployment Compensation Act of 1970, title II of Public Law 91-373, establishes a program of extended unemployment compensation which provides for payment to unemployed workers who have received all of the regular compensation to which they are entitled, commencing when unemployment is high (according to indicators set forth in the law) and terminating when unemployment ceases to be high (according to indicators set forth in the law). Pursuant to section 203(b)(2) of the Act, notice is hereby given that H. Fred Garrett, Executive Director of the Idaho Department of Employment has determined that there was a State "off" indicator in Idaho for the week ending October 2, 1971, and that an extended benefit period terminated in the State with the week ending October 23, 1971.

Signed at Washington, D.C., this 11th day of November 1971.

J. D. HODGSON,
Secretary of Labor.

[FR Doc.71-16697 Filed 11-16-71;8:46 am]

INTERSTATE COMMERCE COMMISSION

[Notice 36]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

NOVEMBER 12, 1971.

The following letter-notices of proposals to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969 (49 CFR 1042.4(d)(11)) and notice thereof to all interest persons is hereby given as provided in such rules (49 CFR 1042.4(d)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.4(d)(12)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC-89723 (Deviation No. 23), MISSOURI PACIFIC TRUCK LINES, INC., 210 North 13th Street, St. Louis, MO 63103, filed November 2, 1971. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From East St. Louis, Ill., over Interstate Highway 55 (over Poplar Street Bridge) to St. Louis, Mo., thence over Interstate Highway 55 (U.S. Highway 61 where the interstate highway is incomplete) to Cape Girardeau, Mo., 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 East St. Louis, Ill., over Illinois Highway 3 to junction Illinois Highway 146 (east of Cape Girardeau, Mo.), thence over Illinois Highway 146 to the Mississippi River, thence across the Mississippi River to Cape Girardeau, Mo., and return over the same route, limited to service that is auxiliary to or supplemental of, the rail service of the Missouri Pacific Railroad Co.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-16781 Filed 11-16-71;8:52 am]

[Notice 90]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

NOVEMBER 12, 1971.

The following publications are governed by the new Special Rule 247 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of December 3, 1963, which became effective January 1, 1964.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

APPLICATIONS ASSIGNED FOR ORAL HEARING

MOTOR CARRIERS OF PROPERTY

No. MC 130045 (Sub-No. 2) (Republication), filed Novmeber 6, 1970, published in the FEDERAL REGISTER issue of December 3, 1970, and republished this issue. Applicant: WM. A. GROUX TOURS, INC., 15 Maple Hill Road, Clifton, NJ 07013. Applicant's representative: L. C. Major, Jr., Suite 301, Tavern Square, 421 King Street, Alexandria, VA 22314. A decision and order of the Commission, Division 1, dated November 3, 1971, and served November 5, 1971, finds; that operation by applicant, at Clifton, N.J., as a broker in arranging for the transportation by motor vehicle, in interstate or foreign commerce, of passengers and their baggage, in all expense special or charter operations, beginning and ending at New York, N.Y., and points in Nassau, Suffolk, and Westchester Counties, N.Y., and points in Bergen, Hudson, Union, Essex, Morris, and Passaic Counties, N.J., and extending to Washington, D.C., restricted to combination sightseeing and religious tours, will be consistent with the public interest and the national transportation policy. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority granted herein, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a license in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate pleading, setting forth in the precise manner in which it has been prejudiced by the expanded grant of authority in this order.

NOTICE OF FILING OF PETITION

No. MC 12711 and No. MC 12711 (Sub-No. 1) (Notice of Filing of Petition for Reinstatement of Authority Contained in Brokage Licenses) filed September 27, 1971. Petitioner: FRANCES KONKOLEWSKI, 2977 South 11th Street, Milwaukee, WI 53215. Petitioner states she is the surviving partner of Leo Konkolewski and Frances Konkolewski who previously held authority under the above licenses to engage in operations as a broker at Milwaukee, Wis., as follows: (1) Under License No. MC 12711, issued November 23, 1959, "Passengers and their baggage, in special or charter operations, between Milwaukee, Wis., and Chicago, Ill."; and (2) under License No. MC 12711 (Sub-No. 1), issued January 31, 1961, "Passengers and their baggage, in special or charter operations, beginning and ending at Milwaukee, Wis., and extending to points in Illinois (except Chicago, Ill.". The above-described authority was revoked pursuant to order of the Commission, Temporary Authorities Board, dated April 17, 1967, and served April 21, 1967. By the instant petition, petitioner as the surviving partner in the above-described partnership requests reinstatement of the previously held brokerage authority. Any interested person desiring to participate may file an original and six copies of his written representations, views, or arguments, in support of, or against the petition within 30 days from

the date of this publication in the FEDERAL REGISTER.

APPLICATIONS FOR CERTIFICATES OR PERMITS WHICH ARE TO BE PROCESSED CONCURRENTLY WITH APPLICATIONS UNDER SECTIONS 5 GOVERNED BY SPECIAL RULE 240 TO THE EXTENT APPLICABLE

No. MC 57568 (Sub-No. 2), filed October 15, 1971. Applicant: D & M BUS CO., a corporation, 146 Northmont Boulevard, Danville, VA 24541. Applicant's representative: James E. Wilson, 1032 Pennsylvania Building, Pennsylvania Avenue and 13th Street NW., Washington, DC 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage and express and newspapers*, in the same vehicle with passengers, between Danville and Martinsville, Va., over U.S. Highway 58, serving all intermediate points and return over the same route. NOTE: This application is a matter directly related to MC-F-11348, published in the FEDERAL REGISTER issue of October 28, 1971. If a hearing is deemed necessary, applicant does not specify location.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's Special Rules governing notice of filing of applications by motor carriers of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto (49 CFR 1.240).

MOTOR CARRIERS OF PROPERTY

No. MC-F-11344. (Correction) (GILBERT FLEXI-VAN CORP.—Control—GILBERT CARRIER CORP., AND VELTMAN TERMINAL CO.), published in the October 20, 1971, issue of the FEDERAL REGISTER on pages 20322 and 20323. Prior notice should be modified to show NELSON TRUCKING SERVICE, INC., is authorized to transport property in intrastate commerce within the State of Illinois. VELTMAN TERMINAL CO., is a common carrier, pursuant to corected order dated April 28, 1971 and served November 10, 1971.

No. MC-F-11346. (Correction) (BARBER TRANSPORTATION CO.—PURCHASE (Portion)—UNITED BUCKINGHAM FREIGHT LINES, INC.), published in the October 28, 1971 issue of the FEDERAL REGISTER on page 20723. Prior notice should be modified to show general commodities, with exceptions, as a common carrier, over regular routes, between Martin and Winner, S. Dak., serving certain specified intermediate and off-route points in South Dakota, with restriction, between Rushville, Nebr., and Martin, S. Dak., for operating convenience only, serving no intermediate points, between Martin, S. Dak., and Crawford, Nebr., between Pine Ridge, and Hot Springs, S. Dak., serving all intermediate points and certain specified off-route points in South Dakota, between Dickinson and Bowman, N. Dak., serving certain specified intermediate and off-route points in North Dakota, between Reeder and Hettinger, N. Dak., serving the intermediate point of Bucyrus, N. Dak., between Amidon and Regent, N. Dak., serving the intermediate points of New England and Havelock, N. Dak.

No. MC-F-11363. Authority sought for purchase by O.N.C. MOTOR FREIGHT SYSTEM, 2800 West Bayshore Road, Palo Alto, CA 94303, of a portion of the operating rights of AUZA-HOFFMAN, INC., Post Office Box J J, Flagstaff, AZ 86001, and for acquisition by ALTRAN CORPORATION, and, in turn by CARROLL J. ROUSH, DAVID P. ROUSH, AND DIANE G. ROUSH all of Palo Alto, Calif. 94303, of control of such rights through the purchase. Applicants' representative: Clifford J. Boddington, also of Palo Alto, Calif. 94303. Operating rights sought to be transferred: *General commodities*, excepting among others, classes A and B explosives, household goods and commodities in bulk, as a *common carrier* over irregular routes, between Flagstaff, Ariz., on the one hand, and, on the other, points in Arizona within the Navajo and Hopi Indian Reservations. Vendee is authorized to operate as a *common carrier* in California, Arizona, Nevada, Oregon and Washington. Application has been filed for temporary authority under section 210a(b).

No. MC-F-11364. Authority sought for control by SNYDER BROS., MOTOR FREIGHT, INC., 363 Stanton Avenue, Akron, OH 44301, of BUSH VAN LINES, INC., 1888 Brown Street, Akron, OH 44301, and for acquisition by ROWE & ASSOCIATES, INC., and in turn, by FRENCH B. ROWE, both of Akron, Ohio 44301, of control of BUSH VAN LINES, INC., through the acquisition by SNYDER BROS., MOTOR FEIGHT, INC. Applicants' attorney: John P. McMahon, 100 East Broad Street, Columbus, OH 43215. Operating rights sought to be controlled: Under a certificate of registration, in Docket No. MC-120659 Sub-1, covering the transportation of general commodities, as a common carrier, in interstate commerce, within the State of Ohio. SNYDER BROS., MOTOR FREIGHT, INC., is authorized to operate as a *common carrier* in Ohio, Virgina, Maryland, West Virginia, Pennsylvania, and the District of Columbia. Application has been filed for temporary authority under section 210a(b). NOTE: MC-120659 Sub-2, is a directly related matter.

No. MC-F-11365. Authority sought for continuance in control by DEL SHOEMAKER, a noncarrier, 1984 Oakdale Avenue, West St. Paul, Minn. 55118, of (1) FLEETLINE, INC., and (2) POLAR TRANSIT, INC., both of West St. Paul, Minn. 55118. Applicants' attorney: Val M. Higgins, 1000 First National Bank Building, Minneapolis, Minn. 55402. Operating rights sought to be controlled: (1) *Meats, meat products, and meat byproducts, dairy products, and articles distributed by meat packinghouses*, as described in appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, and *materials, supplies, and equipment* used in the manufacture and distribution of the commodities specified above, when moving from, to and between the warehouses, plants, or other facilities of meat packinghouses, as a *common carrier* over irregular routes, from Minneapolis, Minn., to Milwaukee, Wis., and Chicago, Ill., from Chicago, Ill., to Minneapolis, Minn.; *meat, meat products, meat byproducts, dairy products and articles distributed by meat packinghouses*, as described in appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except liquid commodities, in bulk, in tank vehicles), between the plantsite of Swift & Co., at Rochelle, Ill., on the one hand, and, on the other, Newport, South St. Paul, St. Paul, Minneapolis, and Minneapolis Transfer, Minn.; *meat, meat products, and meat byproducts, and articles distributed by meat packinghouses* (except hides and commodities in bulk, in tank vehicles), as described in sections A and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from the plantsite of Armour and Co. near Sterling, Ill., to points in Minnesota, North Dakota, South Dakota, Wisconsin, and the Upper Peninsula of Michigan, from the plantsite of Armour and Co., near Worthington, Minn., to points in Illinois, Iowa, the Upper Peninsula of Michigan, North Dakota, South Dakota, and Wisconsin; *meats, meat products, and meat byproducts, and articles distributed by meat packinghouses*, as described in sections A and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from the plantsite of Wilson & Co., Inc., at Monmouth, Ill., to points in Iowa, Minnesota, North Dakota, South Dakota, Wisconsin, and the Upper Peninsula of Michigan, with restrictions; *dairy products, eggs, poultry, and packinghouse products and supplies*, between Newport, South St. Paul, St. Paul, Minneapolis and Minnesota Transfer, Minn., on the one hand, and, on the other, Fairmount, N. Dak., East Chicago, Ind., points in Minnesota, Wisconsin, the Upper Peninsula of Michigan, and that part of Illinois on and north of U.S. Highway 20;

General commodities, between Newport, Minn., on the one hand, and, on the other, Minneapolis and St. Paul, Minn.; *frozen meats*, from the storage facilities utilized by Armour and Co. at or near Worthington and Mankato, Minn., to points in Wisconsin, Iowa, Minnesota, North Dakota, South Dakota, and the Upper Peninsula of Michigan, with restrictions; *wood charcoal and charcoal briquettes*, from Marquette, Mich., to Chippewa Falls, Eau Claire, and La Crosse, Wis., and to points in Minnesota, and (2) in pending docket No. MC-134513, certificate not yet issued. DEL SHOEMAKER holds no authority from this Commission. However, he is affiliated with BONNY MOTOR EXPRESS, INC., Route 460, Windsor, Va. 23487, which is

authorized to operate as a *common carrier* in North Carolina, New York, Virginia, Pennsylvania, Maryland, South Carolina, Georgia, New Jersey, Delaware, Illinois, Indiana, Iowa, Ohio, Minnesota, Missouri, Nebraska, Wisconsin, Michigan, Kansas, Tennessee, West Virginia, Massachusetts, Rhode Island, Connecticut, Florida, Kentucky, Colorado, North Dakota, South Dakota, Alabama, Texas, Mississippi, Maine, New Hampshire, Arkansas, Vermont, Louisiana, Oklahoma, and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-11366. Authority sought for control by DONALD P. PAFFILE, doing business as PAFFILE TRUCK LINES, 2906 29th Street, Lewiston, ID 83501, of (1) ZIRBEL TRANSPORT, INC., and (2) WOOD BYPRODUCTS, INC., both of 420 28th Street, North Lewiston, ID 83501. Applicants' attorney: George R. LaBissoniere, 1424 Washington Building, Seattle, Wash. 98101. Operating rights sought to be controlled: (1) *Logging, mining, and contractors' materials, supplies, and equipment, petroleum products in containers, agricultural commodities, farm machinery, and tractors,* as a *common carrier* over irregular routes, between points in Idaho within 100 miles of Lewiston, Idaho, including Lewiston, and points in Washington within 40 miles of Lewiston, on the one hand, and, on the other, points in Washington west of the Cascade Mountains and points in Oregon, with restriction, between points in that part of Washington east of the Cascade Mountains, on the one hand, and, on the other, Lewiston, Idaho, and points in Idaho within 150 miles of Lewiston; *household goods* as defined by the Commission, between Lewiston, Idaho, and points in Idaho within 150 miles of Lewiston, on the one hand, and, on the other, points in Idaho, and points in that part of Washington east of the Cascade Mountains; *forest service supplies,* between Lewiston, Idaho, and Spokane, Wash., on the one hand, and, on the other, points in Clearwater and Idaho Counties, Idaho, within 150 miles of Lewiston;

Explosives, between Lewiston, Idaho, on the one hand, and, on the other, points in Idaho and Washington within 150 miles of Lewiston; *wines and liquors,* between Lewiston, Idaho, on the one hand, and, on the other, Boise, Twin Falls, Idaho Falls, and Pocatello, Idaho; *pulpboard,* from Lewiston, Idaho, and points within 1 mile thereof, to Sunnyside, Wash.; *liquid aluminum sulphate* in bulk, in tank vehicles, from North Portland, Oreg., to Lewiston, Idaho, and points within 1 mile thereof; *sawdust briquettes,* from Lewiston, Idaho, to points in Idaho and Washington within 150 miles of Lewiston, other than those within 10 miles of Lewiston, from Lewiston, Idaho, to points in Washington and Oregon; *clay,* from Bovill, Latah County, Idaho, to certain specified points in Oregon, with restriction; *scrap automobiles and parts, and used automobile parts,* from points in Idaho to points in Multnomah and Washington Counties, Oreg., and points in Pierce, King, and Spokane Counties, Wash., from points in Asotin, Garfield, Whitman, Columbia, Walla Walla, Benton, and Franklin Counties, Wash., to points in Multnomah and Washington Counties, Oreg.; and (2) *wood chips* and *sawdust,* between points in certain specified counties in Idaho, Oregon, and Washington. DONALD P. PAFFILE, doing business as PAFFILE TRUCK LINES, is authorized to operate as a *common carrier* in Idaho, Montana, Oregon, and Washington. Application has not been filed for temporary authority under section 210a(b).

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-16782 Filed 11-16-71;8:52 am]

[Notice 783]

MOTOR CARRIER TRANSFER PROCEEDINGS

NOVEMBER 12, 1971.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), 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.

No. MC-FC-73143. By order of November 10, 1971, the Motor Carrier Board approved the transfer to Halberg Construction & Supply, Inc., Cherry, Minn., of certificate No. MC-118569 (Sub-No. 2), issued October 24, 1971, to Dale Kirscher, doing business as Kirscher Bulk Transport, Virginia, Minn., authorizing the transportation of: Cement, from a plantsite at Superior, Wis., to specified points in Minnesota, Robert F. Berger, attorney, 200 First National Bank Building, Virginia, Minn.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-16783 Filed 11-16-71;8:52 am]

CUMULATIVE LIST OF PARTS AFFECTED—NOVEMBER

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during November.

3 CFR — Page

PROCLAMATIONS:
- 3279 (amended by Proc. 4092) — 21397
- 4091 — 21329
- 4092 — 21397
- 4093 — 21401
- 4094 — 21805

EXECUTIVE ORDERS:
- Nov. 9, 1871 (see PLO 5144) — 21036
- July 2, 1910 (revoked in part by PLO 5144) — 21036
- June 16, 1911 (revoked in part by PLO 5144) — 21036
- Mar. 21, 1917 (revoked in part by PLO 5144) — 21036
- Dec. 9, 1926 (see PLO 5144) — 21036
- 11627 (amended by EO 11630) — 21023
- 11630 — 21023
- 11631 — 21575

5 CFR
- 213 — 20931, 21577, 21665
- 230 — 21180

6 CFR
- 101 — 21788
- 201 — 21790
- 300 — 21792

7 CFR
- 20 — 21577
- 210 — 21867
- 220 — 21870
- 245 — 21870
- 601 — 21403
- 722 — 21751, 21870
- 777 — 21256
- 796 — 21277
- 811 — 21871
- 815 — 21277
- 874 — 21449
- 906 — 21403
- 907 — 21119, 21577, 21874
- 908 — 21119, 21578
- 910 — 20932, 21331, 21751, 21817
- 912 — 21331, 21752
- 913 — 21331, 21752
- 926 — 21025
- 932 — 21874
- 959 — 21875
- 966 — 21449
- 1036 — 21578
- 1464 — 21875
- 1808 — 21877
- 1823 — 21666
- 1890p — 21450

PROPOSED RULES:
- 724 — 21208
- 780 — 21291
- 907 — 21894
- 913 — 21522
- 915 — 21894
- 928 — 20980
- 929 — 21411
- 930 — 21818
- 932 — 21059
- 982 — 21411
- 984 — 21291
- 989 — 20981, 21599
- 1030 — 20981, 21413
- 1049 — 20981

7 CFR—Continued — Page

PROPOSED RULES—Continued
- 1124 — 21819
- 1443 — 21894
- 1464 — 21209
- 1701 — 21522

8 CFR
- 214 — 21277

9 CFR
- 75 — 21755
- 76 — 20932, 21181
- 92 — 20932
- 101 — 21579
- 102 — 21579
- 112 — 21579
- 113 — 21579
- 114 — 21579
- 117 — 21579
- 120 — 21579
- 132 — 21579

PROPOSED RULES:
- 11 — 21318
- 76 — 21652
- 113 — 21058
- 201 — 21683
- 309 — 21414
- 318 — 20984

10 CFR
- 50 — 21579
- 140 — 21580

12 CFR
- 11 — 21451
- 210 — 21403
- 222 — 21666
- 225 — 21666, 21807, 21808
- 545 — 21025
- 563 — 21667
- 572 — 21667

PROPOSED RULES:
- 222 — 21897
- 269 — 21212
- 291 — 21212
- 545 — 21363
- 546 — 21066
- 563 — 21067

13 CFR
- 120 — 21332
- 121 — 21183

14 CFR
- 23 — 21278
- 25 — 21278
- 27 — 21278
- 29 — 21278
- 39 — 21729, 21581, 21668, 21752
- 65 — 21280
- 71 — 21029, 21030, 21182, 21280–21282, 21403, 21582–21584, 21670, 21808, 21878
- 75 — 21030, 21584–21586, 21670, 21671
- 95 — 21671
- 97 — 21282, 21673
- 103 — 21183, 21878
- 241 — 20933
- 1204 — 21753

14 CFR—Continued — Page

PROPOSED RULES:
- 39 — 21064, 21210, 21833
- 47 — 21414
- 71 — 21064, 21065, 21211, 21293, 21415, 21416, 21600, 21601, 21696, 21697, 21763
- 225 — 21601
- 245 — 21361
- 1245 — 21068

16 CFR
- 13 — 21586
- 251 — 21517
- 410 — 21518

PROPOSED RULES:
- 436 — 21607

17 CFR
- 240 — 21178
- 249 — 21178

PROPOSED RULES:
- 240 — 21525
- 270 — 21897

19 CFR
- 1 — 21335
- 4 — 21025
- 16 — 21336

20 CFR

PROPOSED RULES:
- 404 — 21360, 21696, 21895
- 405 — 21895

21 CFR
- 3 — 21587
- 121 — 21588
- 130 — 21026
- 135 — 21404
- 135a — 21404
- 135b — 21404, 21405, 21808
- 135c — 21184, 21404, 21452, 21809
- 135e — 20938, 21405
- 135g — 21186
- 146a — 21879
- 146c — 21186, 21879
- 146d — 21188
- 146e — 21188
- 148i — 20938
- 148m — 21879
- 148n — 21879
- 191 — 21809
- 308 — 21336
- 420 — 21189, 21190

PROPOSED RULES:
- 3 — 21688
- 27 — 20985
- 31 — 20985
- 148i — 20985
- 191 — 20985, 20986
- 295 — 21832
- 311 — 21057
- 312 — 21057

22 CFR
- 42 — 20939
- 121 — 20939
- 123 — 20940

22 CFR—Continued

Page

124 — 20940
125 — 20941
126 — 20942
201 — 21190

24 CFR

242 — 21674
1914 — 20942, 21408, 21589, 21882
1915 — 20943, 21409, 21590, 21882

PROPOSED RULES:

1710 — 21043

26 CFR

1 — 20944

PROPOSED RULES:

1 — 20980, 21057, 21206, 21207, 21291, 21894

28 CFR

50 — 21028

29 CFR

55 — 21282, 21337
545 — 21810
681 — 21810
782 — 21778

PROPOSED RULES:

201 — 21930
202 — 21930
203 — 21930
204 — 21930
205 — 21930
206 — 21930
1904 — 21687

30 CFR

75 — 21756
81 — 21405

PROPOSED RULES:

270 — 21610

31 CFR

405 — 21338

32 CFR

1 — 21120
2 — 21128
3 — 21128
4 — 21131
5 — 21133
6 — 21136
7 — 21139
8 — 21152
9 — 21152
10 — 21153
11 — 21153
12 — 21153
13 — 21159
14 — 21160
15 — 21161
16 — 21167
17 — 21168
18 — 21168
19 — 21169
22 — 21169
24 — 21174
25 — 21174
26 — 21174
30 — 21175
45 — 21178
61 — 21339
65 — 21339
78 — 21339
87 — 21178
141 — 21339

32 CFR—Continued

Page

155 — 21815
187 — 21339
275 — 20944
713 — 21519
742 — 21883
761 — 21889
1467 — 21339
1806 — 21178

PROPOSED RULES:

1600 — 21216
1602 — 21072
1603 — 21072
1604 — 21072, 21216
1606 — 21216
1609 — 21216
1611 — 21072
1613 — 21216
1617 — 21072, 21216
1619 — 21216
1621 — 21072, 21216
1622 — 21072
1623 — 21072
1624 — 21072
1625 — 21072
1626 — 21072
1627 — 21072
1628 — 21072
1630 — 21072
1631 — 21072
1632 — 21072
1642 — 21072
1655 — 21072
1660 — 21072, 21294

32A CFR

OEP (Ch. I):

ES Reg. 1 — 21761
Circ. 25 — 21598
Circ. 26 — 21761
Ch. X — 21284

33 CFR

110 — 21756
117 — 21359, 21590, 21890
208 — 21190

PROPOSED RULES:

117 — 21063, 21763
199 — 21523

36 CFR

7 — 20945, 21666, 21881

38 CFR

3 — 20945
17 — 21030
21 — 21406

41 CFR

1-16 — 21453
4-12 — 21815, 21891
5A-1 — 21676
5A-2 — 21406
5A-72 — 21891
5A-73 — 21891
5A-74 — 21891
5B-2 — 21407
5B-18 — 21407
8-2 — 21676
8-4 — 21676
9-4 — 21191
14-1 — 20946
14-2 — 20947
14-3 — 20947
14-6 — 20947
14-7 — 20947
15-1 — 20947

41 CFR—Continued

Page

15-3 — 21192
18-1 — 21454
18-2 — 21469
18-3 — 21472
18-5 — 21485
18-6 — 21485
18-7 — 21486
18-8 — 21492
18-9 — 21496
18-11 — 21498
18-13 — 21499
18-15 — 21500
18-16 — 21501, 21588
18-26 — 21504
18-50 — 21507
18-51 — 21508
18-52 — 21513
101-11 — 21031
101-26 — 21284

PROPOSED RULES:

101-17 — 21059
101-18 — 21059
101-20 — 21059

42 CFR

PROPOSED RULES:

52 — 21202
73 — 21202, 21696
90 — 21833

43 CFR

4 — 21284, 21756
24 — 21034
2780 — 21677
3100 — 21035

PUBLIC LAND ORDERS:

5116 — 21591
5142 — 21195
5143 — 21036
5144 — 21036

PROPOSED RULES:

25 — 21207
3000 — 21610
3045 — 21610
3104 — 21610
3200 — 21610

45 CFR

213 — 21520
249 — 21409, 21591
250 — 21591
801 — 20949

PROPOSED RULES:

170 — 21600

46 CFR

2 — 21196
146 — 21196, 21284
222 — 21892
380 — 21816

PROPOSED RULES:

542 — 21524
546 — 21524

47 CFR

1 — 21677
21 — 21677
73 — 21197, 21592
74 — 21677
81 — 20956
83 — 20970
85 — 20977
89 — 21200, 21677
91 — 21200, 21677

47 CFR—Continued

Page

93 — 21200, 21677
95 — 21677

PROPOSED RULES:

73 — 21066, 21293, 21602
74 — 20988, 21835
81 — 21602
83 — 21602

49 CFR

171 — 21201
172 — 21201, 21287
173 — 21201, 21287, 21339, 21343, 21817
174 — 21201, 21202
175 — 21201

49 CFR—Continued

Page

177 — 21201, 21202
178 — 21202, 21287
179 — 21339, 21343, 21893
566 — 20977
571 — 21355, 21594
1033 — 21203, 21452
1048 — 21452
1056 — 21358
1062 — 21596

PROPOSED RULES:

173 — 21360
192 — 21698, 21834
195 — 21211
566 — 20987

49 CFR—Continued

Page

PROPOSED RULES—Continued

1047 — 21071
1048 — 21524
1115 — 21698
1252 — 21610

50 CFR

28 — 21203
32 — 21203, 21597, 21817
33 — 21407, 21520, 21597, 21598, 21817, 21893
260 — 21037

PROPOSED RULES:

32 — 21411

LIST OF FEDERAL REGISTER PAGES AND DATES—NOVEMBER

Pages	*Date*	*Pages*	*Date*
20925–21016	Nov. 2	21443–21567	Nov. 10
21017–21112	3	21569–21658	11
21113–21270	4	21659–21745	12
21271–21321	5	21747–21799	13
21323–21391	6	21801–21860	16
21393–21442	9	21861–21955	17

federal register

WEDNESDAY, NOVEMBER 17, 1971
WASHINGTON, D.C.

Volume 36 ■ Number 222

PART II

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Labor-Management Relations

■

LABOR RELATIONS

Notice of Proposed Rule Making

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Labor-Management Relations

[29 CFR Parts 201, 202, 203, 204, 205, 206]

LABOR RELATIONS

Notice of Proposed Rule Making

Pursuant to sections 6(d) and 18(d) of Executive Order 11491 (34 F.R. 17605), as amended by Executive Order 11616 (36 F.R. 17319), notice is hereby given that the Assistant Secretary of Labor for Labor-Management Relations proposes to amend Parts 201, 202, 203, 204, and 205 (redesignated as Part 206 herein) of Subtitle A of Title 29 of the Code of Federal Regulations as set forth below. These parts prescribe substance and procedures relating to unfair labor practices, representational matters and standards of conduct for labor organizations. It also is proposed, pursuant to sections 6(d) and 13(d) of Executive Order 11491, as amended, to adopt those rules contained in Part 205 (as designated herein and set forth below) governing the procedures to be followed where a determination by the Assistant Secretary is sought with respect to questions as to the grievability and/or arbitrability of grievances under existing negotiated agreements.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed rule making to Mr. W. J. Usery, Jr., Assistant Secretary for Labor-Management Relations, Department of Labor, Washington, D.C. 20210, within thirty (30) days after publication of this notice in the FEDERAL REGISTER. All written materials or suggestions submitted in response to this notice of proposed rule making will be available for public inspection at the U.S. Department of Labor, 14th Street and Constitution Avenue, Washington, DC, during regular business hours.

1. The table of contents of Chapter II would be revised to read as follows:

Part
201 General.
202 Representation proceedings.
203 Unfair labor practice proceedings.
204 Standards of conduct for labor organizations.
205 Grievability and arbitrability proceedings.
206 Miscellaneous.

2. Part 201 would be revised to read as follows:

PART 201—GENERAL

Subpart A—Purpose and Scope
Sec.
201.1 Purpose and scope.

Subpart B—Meanings of Terms in This Chapter
Sec.
201.10 Order.
201.11 Agency, employee, labor organization, Council, Panel, Assistant Secretary.
201.12 National consultation rights, exclusive recognition, unfair labor practices.
201.13 Standards of conduct for labor organizations.
201.14 Activity and primary national subdivision of an agency.
201.15 Regional Administrator.
201.16 Area Administrator.
201.17 Director.
201.18 Hearing Officer.
201.19 Hearing Examiner.
201.20 Chief Hearing Examiner.
201.21 Party.
201.22 Intervenor.
201.23 Certification.
201.24 Appropriate unit.
201.25 Secret ballot.
201.26 Showing of interest.

AUTHORITY: The provisions of this part 201 issued under secs. 6, 18, E.O. 11491, 34 F.R. 17605, as amended by E.O. 11616, 36 F.R. 17319.

Subpart A—Purpose and Scope

§ 201.1 Purpose and scope.

The regulations contained in this chapter are designated to implement the provisions of sections 6, 9, 10, 13, 18, and 19 of Executive Order 11491 of October 29, 1969, "Labor-Management Relations in the Federal Service," as amended by Executive Order 11616 of August 26, 1971, "Labor-Management Relations in the Federal Service" (36 F.R. 17319). They prescribe procedures and basic principles which the Assistant Secretary of Labor for Labor-Management Relations will utilize in:

(a) Deciding questions as to the appropriate unit for the purpose of exclusive recognition and related issues submitted for his consideration;

(b) Supervising elections to determine whether a labor organization is the choice of a majority of the employees in an appropriate unit as their exclusive representative, and certifying the results;

(c) Deciding questions as to eligibility of labor organizations for national consultation rights under criteria prescribed by the Federal Labor Relations Council;

(d) Effectuating the standards of conduct required of labor organizations by section 18 of the order;

(e) Deciding complaints of alleged unfair labor practices, and alleged violations of the standards of conduct for labor organizations;

(f) Deciding questions as to whether a grievance is subject to a negotiated grievance procedure or subject to arbitration under an agreement.

Subpart B—Meanings of Terms in This Chapter

As used in this chapter:

§ 201.10 Order.

"Order" means Executive Order 11491, entitled "Labor-Management Relations in the Federal Service," as amended by Executive Order 11616.

§ 201.11 Agency, employee, labor organization, Council, Panel, Assistant Secretary.

"Agency," "employee," labor organization," "Council," "Panel," and "Assistant Secretary" have the meanings set forth in section 2 of the order.

§ 201.12 National consultation rights, exclusive recognition, unfair labor practices.

"National consultation rights," "exclusive recognition," and "unfair labor practices" have the meanings as set forth in sections 9, 10, and 19, respectively, of the order.

§ 201.13 Standards of conduct for labor organizations.

"Standards of conduct for labor organizations" shall have the meaning as set forth in section 18 of the order, as amplified in Part 204 of this chapter.

§ 201.14 Activity and primary national subdivision of an agency.

"Activity" means any facility, geographical subdivision, or combination thereof, of any agency as that term is defined in section 2 of the order. "Primary national subdivision" of an agency has the meaning set forth in the Council's regulations.

§ 201.15 Regional Administrator.

"Regional Administrator" means the Administrator of a region of the Labor-Management Services Administration, with geographical boundaries as fixed by the Assistant Secretary.

§ 201.16 Area Administrator.

"Area Administrator" means the Administrator of an area office within a region of the Labor-Management Services Administration, with geographical boundaries as fixed by the Assistant Secretary.

§ 201.17 Director.

"Director" means the Director of the Office of Labor-Management and Welfare-Pension Reports.

§ 201.18 Hearing Officer.

"Hearing Officer" means the individual designated to conduct a hearing involving a question concerning the appropriateness of a unit or such other representation matters as may be assigned.

§ 201.19 Hearing Examiner.

"Hearing Examiner" means the Chief Hearing Examiner or an individual designated by the Chief Hearing Examiner to conduct a hearing in cases under sections 13, 18, and 19 of the order and such other matters as may be assigned.

§ 201.20 Chief Hearing Examiner.

"Chief Hearing Examiner" means the Chief Hearing Examiner, U.S. Department of Labor, Washington, D.C. 20210.

§ 201.21 Party.

"Party" means any person, employee, group of employees, labor organization, agency, or activity: (a) Filing a complaint, petition, request, or application; (b) named in a complaint, petition, request or application; or (c) whose intervention in a proceeding has been permitted or directed by the Assistant Secretary, Regional Administrator, Area Administrator, Director, Hearing Officer, Chief Hearing Examiner, or Hearing Examiner, as the case may be.

§ 201.22 Intervenor.

"Intervenor" means a party in a proceeding whose intervention has been permitted or directed by the Assistant Secretary, Regional Administrator, Area Administrator, Director, Hearing Officer, Chief Hearing Examiner, or Hearing Examiner, as the case may be.

§ 201.23 Certification.

"Certification" means the determination by the Assistant Secretary, Regional Administrator, or Area Administrator of the results of an election held under the order and the regulations in this chapter, including a certification of representative for exclusive recognition under the order.

§ 201.24 Appropriate unit.

"Appropriate unit" means that grouping of employees found to be appropriate for purposes of exclusive recognition consistent with the provisions of sections 10 (b) and (c) of the order.

§ 201.25 Secret ballot.

"Secret ballot" means the expression by ballot, voting machine or otherwise, but in no event by proxy, of a choice with respect to any election or vote taken upon any matter, which is cast in such a manner that the person expressing such choice cannot be identified with the choice expressed, except in that instance in which any determinative challenged ballot is opened.

§ 201.26 Showing of interest.

"Showing of interest" means evidence of membership in a labor organization; employees' written, signed, and dated authorization cards or petitions authorizing a labor organization to represent them for purposes of exclusive recognition; executed allotment of dues forms; current dues records; and existing or recently expired agreement; current exclusive recognition or certification; employees' signed and dated petitions or cards indicating that they no longer desire to be represented for the purposes of exclusive recognition by the currently recognized or certified labor organization, or other evidence approved by the Assistant Secretary.

3. Part 202 would be revised to read as follows:

PART 202—REPRESENTATION PROCEEDINGS

Sec.
202.1 Who may file petitions.
202.2 Contents of petition; procedures for national consultation rights; filing and service of petition; challenges to petition.
202.3 Timeliness of petition.
202.4 Investigation of petition and posting of notice of petition.
202.5 Intervention.
202.6 Withdrawal, dismissal, or deferral of petitions; consolidation of cases; denial of intervention.
202.7 Agreement for consent election.
202.8 Notice of hearing.
202.9 Conduct of hearing.
202.10 Motions.
202.11 Rights of the parties.
202.12 Duties and powers of the Hearing Officer.
202.13 Objections to conduct of hearing.
202.14 Filing of briefs.
202.15 Transfer of case to Assistant Secretary; contents of record.
202.16 Decision.
202.17 Election procedure.
202.18 Challenged ballots.
202.19 Tally of ballots.
202.20 Certifications; objections to election; determination on objections and challenged ballots.
202.21 Runoff elections.
202.22 Inconclusive elections.

AUTHORITY: The provisions of this Part 202 issued under sec. 6, E.O. 11491, 34 F.R. 17605, as amended by E.O. 11616, 36 F.R. 17319.

§ 202.1 Who may file petitions.

(a) A petition for exclusive recognition may be filed by a labor organization requesting an election to determine whether it should be recognized as the exclusive representative of employees of an agency in an appropriate unit or should replace another labor organization as the exclusive representative of employees in an appropriate unit.

(b) A petition for an election to determine if a labor organization should cease to be the exclusive representative because it does not represent a majority of employees in an appropriate unit may be filed by an agency or by any employee(s) or any individual acting on their behalf.

(c) A petition for clarification of an existing unit or amendment of recognition or certification may be filed by an agency or labor organization which is currently recognized by the agency as an exclusive representative.

(d) A petition for a determination as to the eligibility of a labor organization for national consultation rights under criteria prescribed by the Council may be filed by an agency or labor organization.

§ 202.2 Contents of petition; procedures for national consultation rights; filing and service of petition; challenges to petition.

(a) *Petition for exclusive recognition.* A petition by a labor organization for exclusive recognition shall be submitted on a form prescribed by the Assistant Secretary and shall contain the following:

(1) The name of the agency and the activity involved, their addresses, telephone numbers, and the persons to contact and their titles, if known;

(2) A description of the unit appropriate or claimed to be appropriate for purposes of exclusive representation by the petitioner. Such description shall indicate generally the geographic locations and the classifications of employees sought to be included and those sought to be excluded and the approximate number of employees in the unit claimed to be appropriate;

(3) Name, address, and telephone number of the recognized or certified representative, if any, and the date of such recognition or certification and the expiration date of any applicable agreement, if known to the petitioner;

(4) Names, addresses, and telephone numbers of any other interested labor organizations, if known to the petitioners;

(5) Name and affiliation, if any, of the petitioner and its address and telephone number;

(6) A statement that the petitioner has submitted to the activity a current roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives;

(7) A declaration by the person signing the petition, under the penalties of the Criminal Code (18 U.S.C. 1001) that its contents are true and correct to the best of his knowledge and belief;

(8) The signature of the petitioner's representative, including his title and telephone number;

(9) The petition shall be accompanied by a showing of interest of not less than thirty (30 percent) percent of the employees in the unit claimed to be appropriate and an alphabetical list of names constituting such showing;

(10) A statement that the petitioner is in full compliance with the requirements of the order and the regulations under this chapter.

(b) *Petition for an election to determine if a labor organization should cease to be the exclusive representative.* (1) A petition by an agency shall contain the information set forth in paragraph (a) of this section except subparagraphs (6), (9), and (10) thereof, and a statement that the agency or activity has a good faith doubt that the currently recognized or certified labor organization represents a majority of the employees in the unit. Such a statement must contain a detailed explanation of the reasons supporting the good faith doubt;

(2) A petition by employees or an individual acting on behalf of employees shall contain the information set forth in paragraph (a) of this section, except subparagraphs (6), (9), and (10) thereof, and it shall be accompanied by a showing of interest of not less than thirty (30 percent) percent of the employees in the unit indicating that the employees no longer desire to be represented for the purpose of exclusive recognition by the currently recognized or certified labor organization and an alphabetical list of names constituting such showing.

(c) *Petition for clarification of unit or amendment of recognition or certification.* A petition for clarification of unit or amendment of recognition or certification shall contain the information required by paragraph (a) of this section, except subparagraphs (2), (6), (9), and (10), and shall set forth:

(1) A description of the present unit and the date of recognition or certification;

(2) The proposed clarification or amendment of the recognition or certification; and

(3) A statement of reasons why the proposed clarification or amendment is requested.

(d) *Petition and procedures for national consultation rights.* (1) A petition for national consultation rights shall

contain the information required in subparagraphs (4), (5), (7), and (8) of paragraph (a) of this section, and shall set forth:

(i) The name, address, and telephone number of the agency or primary national subdivision in which the petitioner seeks to obtain or retain national consultation rights, and the persons to contact and their titles, if known;

(ii) A showing that petitioner holds adequate exclusive recognition as required in 5 CFR 2412.2;

(iii) A statement that such showing has been made to and rejected by the agency or primary national subdivision, together with a statement of the reasons for rejection, if any, offered by that agency or primary national subdivision.

(2) Notwithstanding any other regulations in this part, the following regulations govern petitions filed under this subsection:

(i) An original and four copies of a petition shall be filed with the Area Administrator for the area wherein the agency headquarters or the headquarters of the agency's primary national subdivision are located, within 30 days following refusal by the agency or primary national subdivision to accord or continue to accord national consultation rights pursuant to a request under 5 CFR 2412.2;

(ii) Within 15 days following the receipt of a copy of the petition, the agency or primary national subdivision shall file a response thereto with the Area Administrator raising any matter which is relevant to the petition.

(iii) The Area Administrator shall make such investigation as he deems necessary and report the essential facts and positions of the parties to the Regional Administrator. If the Regional Administrator determines after an investigation, that a labor organization does not qualify for national consultation rights or the petition is not otherwise actionable, he may request the party filing such a petition to withdraw the petition or in the absence of such withdrawal within a reasonable time, he may dismiss the petition subject to review by the Assistant Secretary pursuant to § 202.6(d). The Regional Administrator, if appropriate, may cause a notice of hearing to issue to all interested parties where substantial factual issues exist warranting a hearing. Hearings shall be conducted by Hearing Examiners in accordance with §§ 203.10 through 203.24 of this chapter with the exception of § 203.14 of this chapter. After considering the Hearing Examiner's report and recommendations, the record, and any exceptions filed thereto, the Assistant Secretary shall issue his decision.

(iv) An agency or primary national subdivision, shall provide notice of its intention to terminate national consultation rights not less than 15 days prior to the intended termination date. A labor organization after receiving such notice, but prior to the intended termination date, may duly file a petition under this section and thereby cause to be stayed further action by the agency or primary national subdivision pending ultimate review and decision by the Assistant Secretary. An agency or primary national subdivision may terminate national consultation rights if no petition has been filed during the notice period prescribed herein.

(e) *Filing and service of petition and copies.* (1) An original and four copies of a petition shall be filed with the Area Administrator for the area in which the unit exists, or, if the claimed unit exists in two or more areas the petition shall be filed with the Area Administrator for the area in which the headquarters of the activity is located.

(2) The petitioner shall supply with its petition two (2) copies of a statement of any other relevant facts and of all correspondence relating to the question concerning representation.

(3) Simultaneously with the filing of a petition, copies of the petition together with the attachments referred to in paragraph (2) above shall be served by the petitioner on all known interested parties, and a written statement of such services shall be filed with the Area Administrator. The showing of interest submitted with the petition shall not be furnished to any of the parties or organizations listed in the petition.

(f) *Adequacy and validity of showing of interest.* The Area Administrator shall determine the adequacy of the showing of interest administratively, and such decision shall be final and not subject to collateral attack at a unit or representation hearing or review by the Assistant Secretary. Any party challenging the validity of showing of interest of the petitioner or of an intervenor must file its challenge with the Area Administrator, with respect to the petitioner, within ten (10) days after the initial date of posting of the notice of petition as provided in § 202.4(b), and with respect to any intervenor, within ten (10) days of service of a copy of the request for intervention, and support the challenge with evidence including signed statements of employees and any other written evidence. The Area Administrator shall investigate the challenge and report his findings to the Regional Administrator who shall take such action as he deems appropriate which shall be final and not subject to review by the Assistant Secretary.

(g) *Challenge to status of a labor organization.* Any party challenging the status of a labor organization under the order must file its challenge with the Area Administrator and support the challenge with evidence. With respect to the petitioner, such a challenge must be filed within ten (10) days after the initial date of posting of the notice of petition as provided in § 202.4(b), and with respect to an intervenor, within ten (10) days of service of a copy of the request for intervention. The Area Administrator shall investigate the challenge and report his findings to the Regional Administrator who shall take such action as he deems appropriate, which shall be final and not subject to review by the Assistant Secretary, unless the petition is dismissed or the intervention is denied.

§ 202.3 Timeliness of petition.

(a) When there is no certified exclusive representative of the employees, a petition will be considered timely filed provided the petition is not for the same unit or subdivision thereof, in which a valid election has been held within the preceding twelve (12) month period.

(b) When there is a certified exclusive representative of the employees, a petition will not be considered timely if filed within twelve (12) months after the certification as the exclusive representative of employees in an appropriate unit, unless a signed agreement covering the claimed unit has been entered into in which case paragraph (c) of this section shall be applicable.

(c) When there is a signed agreement covering a claimed unit, a petition for exclusive recognition or other election petition will not be considered timely if filed during the period within which that agreement is in force or awaiting approval at a higher management level, provided that approval is given within thirty (30) days of the execution of the agreement, but not to exceed an agreement period of two (2) years, unless (1) a petition is filed not more than ninety (90) days and not less than sixty (60) days prior to the terminal date of such agreement or two (2) years, whichever is earlier, or (2) unusual circumstances exist which will substantially affect the unit or the majority representation.

(d) When a challenge to the representation status of an incumbent exclusive representative has been filed not more than ninety (90) days and not less than sixty (60) days prior to the terminal date of an agreement, and such challenge is subsequently dismissed or withdrawn less than sixty (60) days prior to the terminal date of such agreement or any time thereafter, the activity and incumbent exclusive representative shall be afforded a ninety (90) day period free from rival claim within which to consummate an agreement.

(e) When an extension of agreement has been signed more than sixty (60) days before its terminal date, such extension shall not serve as a basis for the denial of a petition submitted in accordance with the time limitations provided herein.

(f) A petitioner who withdraws a petition after the issuance of a notice of hearing and before the close of the hearing, or after the approval of an agreement for a consent election, shall be barred from filing another petition for the same unit or any subdivision thereof for six (6) months.

§ 202.4 Investigation of petition and posting of notice of petition.

(a) Upon the filing of a petition the Area Administrator shall make such investigation as he deems necessary.

(b) Upon the request of the Area Administrator, after the filing of a petition, the activity shall post copies of a notice to all employees in places where notices are normally posted affecting the employees in the unit involved in the proceeding.

(c) Such notice shall set forth: (1) The name of the petitioner, (2) the description of the unit involved, and (3) a statement that all interested parties are to advise the Area Administrator in writing of their interest within ten (10) days from the date of posting such notice.

(d) The notice shall remain posted for a period of ten (10) days. The notice shall be posted conspicuously and shall not be covered by other material, altered or defaced.

(e) The activity shall furnish the Area Administrator and all known interested parties with the following: (1) names, addresses, and telephone numbers of all labor organizations known to represent any of the employees in the claimed unit; (2) copies of all relevant correspondence; (3) copies of existing or recently expired agreements covering any of the employees described in the petition; (4) a current alphabetized list of employees included in the unit described in the petition, together with their job classifications; and (5) a separate, current alphabetized list of employees described in the petition as excluded from the unit, together with their job classifications.

(f) The parties are expected to meet as soon as possible after the expiration of the ten (10) days posting period of the notice of petition as provided in § 202.4(b) and use their best efforts to secure agreement on an appropriate unit, including, where appropriate, consulting with higher authority within the agency and the organizations involved.

(g) Within thirty (30) days following the receipt of a copy of the petition, unless an extension of time has been granted by the Area Administrator, the activity shall file a response thereto with the Area Administrator raising any matter which is relevant to the petition. A copy of such response shall be served simultaneously on the parties and a statement of such service shall be filed with the Area Administrator.

(h) The Area Administrator shall report the essential facts and positions of the parties to the Regional Administrator.

(i) The Regional Administrator shall take appropriate measures which, among other things, may consist of one of the following: (1) The approval of a withdrawal request; (2) the dismissal of the petition; (3) direction of an election in an approved, agreed-upon appropriate unit; or (4) the issuance of a notice of hearing.

(j) The Regional Administrator may issue a clarification of unit decision, or cause the Area Administrator to issue an amendment of recognition or certification. A party may obtain a review of such action of the Regional Administrator by filing a request for review with the Assistant Secretary within ten (10) days of service of the notice of such action. Copies of the request for review shall be served simultaneously on the Regional Administrator and the other parties and a statement of such service shall be filed with the request for review. Requests for an extension of time shall be in writing and received by the Assistant Secretary not later than three (3) days before the date the request for review is due. The request for review shall contain a complete statement setting forth facts and reasons upon which the request is based.

§ 202.5 Intervention.

(a) No labor organization will be permitted to intervene in any proceeding pursuant to this part unless it has submitted a showing of interest of ten (10%) percent or more of the employees in the unit involved in the petition together with an alphabetical list of names constituting such showing, or has submitted a current or recently expired agreement with the activity covering any of the employees involved, or is the currently recognized or certified exclusive representative of any of the employees involved.

(b) A labor organization seeking exclusive recognition in a unit different from the unit petitioned for, and which includes any or all of the employees in the unit petitioned for, must file a petition with the Area Administrator supported by a showing of interest of thirty (30%) percent or more of the employees in the vided in § 202.4(b) unless good cause is unit it claims to be appropriate within ten (10) days after the initial date of posting of the notice of petition as provided in § 202.4(b) unless good cause is shown for extending the period.

(c) No labor organization may participate to any extent in any representation proceeding unless it has notified the Area Administrator in writing, accompanied by its showing of interest as specified in § 202.5(a), of its desire to intervene within ten (10) days after the initial date of posting of the notice of petition as provided in § 202.4(b) unless good cause is shown for extending the period. Simultaneously with the filing of a request for intervention, copies of such request, excluding the showing of interest, shall be served on all known interested parties, and a written statement of such service shall be filed with the Area Administrator.

(d) Any labor organization intervening must supply a statement to the Area Administrator that it is in full compliance with the order and these regulations and that it has submitted to the activity a current roster of its officers and representatives, a copy of its constitution and bylaws and a statement of its objectives.

§ 202.6 Withdrawal, dismissal, or deferral of petitions; consolidation of cases; denial of intervention.

(a) If the Regional Administrator determines after an investigation that the petition has not been timely filed, the claimed unit is not appropriate, the petitioner has not made a sufficient showing of interest, the petition is not otherwise actionable, or an intervention is not appropriate, he may request the petitioner or intervenor to withdraw the petition or the intervention or, in the absence of such withdrawal within a reasonable period of time, he may dismiss the petition or deny the request for intervention.

(b) If the Regional Administrator determines, after investigation, that a valid issue has been raised by a challenge under § 202.2 (f) and (g), he may take such action as he deems appropriate including a request to the petitioner to withdraw the petition, dismissal of the petition, denial of the request for intervention, deferral of action upon the petition or request for intervention until such time as those issues have been resolved pursuant to this part, or consolidation of such issues with the representation matter for resolution of all issues.

(c) If the Regional Administrator dismisses the petition or denies the request for intervention, he shall furnish the petitioner or the party requesting intervention with a written statement of the grounds for the dismissal or the denial, sending a copy of such statement to the activity, and to the petitioner and any intervenors, as appropriate.

(d) The petitioner or party requesting intervention may obtain a review of such dismissal or denial by filing a request for review with the Assistant Secretary within ten (10) days of service of the notice of such action, except as otherwise provided in § 202.2(f). Copies of the request for review shall be served on the Regional Administrator and the other parties, and a statement of service shall be filed with the request for review. Requests for an extension of time shall be in writing and received by the Assistant Secretary not later than three (3) days before the date the request for review is due. The request for review shall contain a complete statement setting forth facts and reasons upon which the request is based.

§ 202.7 Agreement for consent election.

(a) Subsequent to the filing of a petition and after expiration of the ten (10) day posting period of the notice of petition as provided in § 202.4(b), an activity, petitioner and any intervenors who have complied with the requirements set forth in § 202.5 and paragraph (e) of this section may agree that a secret ballot election shall be conducted and such agreement shall be filed with the Area Administrator. Any qualified intervenor who refuses to sign an agreement for a consent election may express his objections to the agreement in writing to the Area Administrator. The Area Administrator, after careful consideration of such objections, may approve the agreement or take such other action as he deems appropriate. If the Area Administrator approves the agreement, the election shall be conducted by the agency or activity, as appropriate, under the supervision of the Area Administrator, in accordance with § 202.17, among the employees in the agreed-upon appropriate unit to determine whether the employees desire to be represented for purposes of exclusive recognition by any or none of the labor organizations involved.

(b) The parties shall agree on the eligibility period for participation in the election, the date(s), hour(s), and place(s) of the election, the designations

on the ballot and other related election procedures.

(c) In the event that the parties cannot agree on the matters contained in paragraph (b) of this section, the Area Administrator, acting on behalf of the Assistant Secretary, shall decide these matters.

(d) An intervenor which has met the requirements of § 202.5 shall be permitted to appear on the ballot and be a party to the election.

(e) All parties desiring to participate in an election being conducted pursuant to this section, or § 202.16, must sign an agreement providing for such an election on a form prescribed by the Assistant Secretary.

§ 202.8 Notice of hearing.

The Regional Administrator may cause a notice of hearing to be issued to resolve issues of appropriateness of unit or related matters. A notice of hearing providing for at least ten (10) days notice, except in unusual circumstances, shall be served on all interested parties and shall include:

(a) A statement of the time, place, and nature of the hearing;

(b) A statement of the unit claimed by the petitioner to be appropriate;

(c) The name of the agency or activity, petitioner and intervenors, if any;

(d) A statement of the authority and jurisdiction under which the hearing is to be held.

§ 202.9 Conduct of hearing.

(a) Hearings shall be conducted by a Hearing Officer and shall be open to the public unless otherwise ordered by the Hearing Officer. At any time another Hearing Officer may be substituted for the Hearing Officer previously presiding. It shall be the duty of the Hearing Officer to inquire fully into all matters in issue and the Hearing Officer shall obtain a full and complete record upon which the Assistant Secretary can make an appropriate decision. An official reporter shall make the only official transcript of such proceedings. Copies of the official transcript will not be provided to the parties but may be purchased by arrangement with the official reporter or may be examined in the Area Office during normal working hours.

(b) Hearings under this section are considered investigatory and not adversary. Their purpose is to develop a full and complete factual record. The rules of relevancy and materiality are paramount; there are no burdens of proof and the technical rules of evidence do not apply.

§ 202.10 Motions.

(a) All motions shall be in writing or, if made at the hearing may be stated orally on the record and shall state briefly the order or relief sought and the grounds for such motion. An original and two copies of written motions shall be filed and a copy thereof simultaneously shall be served on the other parties to the proceedings. Motions made prior to the transfer of the case to the Assistant Secretary shall be filed with the Regional Administrator, with a copy to the Area Administrator, except that motions made during the hearing shall be filed with the Hearing Officer. After the transfer of the case to the Assistant Secretary, except as otherwise provided, all motions shall be filed with the Assistant Secretary. Other parties may file responses to such motions within five (5) days of service. The Regional Administrator may rule upon all motions filed with him, causing a copy of said ruling to be served on the parties, or he may refer the motion to the Hearing Officer: *Provided,* That if the Regional Administrator prior to the close of the hearing grants a motion to dismiss the petition, the petitioner may obtain a review of such rulings in the manner prescribed in § 202.6(d). The Hearing Officer shall rule, either orally on the record or in writing, upon all motions filed at the hearing or referred to him as hereinabove provided, except that all motions to dismiss petitions shall be referred for appropriate action at such time as the record is considered by the Regional Administrator or the Assistant Secretary, as the case may be.

(b) Motions to intervene will not be entertained by the Hearing Officer. Intervention will be permitted only to those who have met the requirements set forth in § 202.5.

(c) All motions, rulings, and orders shall become a part of the record. Rulings by the Regional Administrator or by the Hearing Officer shall be considered by the Assistant Secretary when the case is transferred to him for decision.

(d) The right to make motions or to make objections to rulings on motions shall not be deemed waived by participation in the proceeding.

§ 202.11 Rights of the parties.

(a) Any party shall have the right to appear at any hearing in person, by counsel, or by other representative, and any party shall have power to examine and cross-examine witnesses and to introduce into the record documentary and other evidence. Two (2) copies of documentary evidence shall be submitted and a copy furnished simultaneously to the other parties. Stipulations of fact may be introduced in evidence with respect to any issue.

(b) Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing.

§ 202.12 Duties and powers of the Hearing Officer.

It shall be the duty of the Hearing Officer to inquire fully into the facts as they relate to the matter before him. With respect to cases assigned to him between the time he is designated and the transfer of the case to the Assistant Secretary, the Hearing Officer shall have the authority to:

(a) Grant requests for appearance of witnesses or production of records;

(b) Rule upon offers of proof and receive relevant evidence;

(c) Take or cause depositions to be taken whenever the ends of justice would be served thereby;

(d) Limit lines of questioning or testimony which are immaterial, irrelevant or unduly repetitious;

(e) Regulate the course of the hearing and, if appropriate, exclude from the hearing persons who engage in misconduct;

(f) Strike all related testimony of witnesses refusing to answer any questions ruled to be proper;

(g) Hold conferences for the settlement or simplification of the issues by consent of the parties or upon his own motion;

(h) Dispose of procedural requests, motions, or similar matters which shall be made part of the record of the proceeding, including motions referred to the Hearing Officer by the Regional Administrator and motions to amend petitions;

(i) Examine and cross-examine witnesses and to introduce into the record documentary or other evidence;

(j) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(k) Continue the hearing from day-to-day, or adjourn it to a later date or to a different place, by announcement thereof at the hearing or by other appropriate notice;

(l) Correct or approve proposed corrections of the official transcript, when deemed necessary;

(m) Take any other action necessary under the foregoing and not prohibited by these regulations.

§ 202.13 Objections to conduct of hearing.

Any objection to the introduction of evidence may be stated orally or in writing and shall be accompanied by a short statement of the grounds of such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing. Automatic exception will be allowed to all adverse rulings.

§ 202.14 Filing of briefs.

Any party desiring to file a brief with the Assistant Secretary shall file the original and two (2) copies within seven (7) days after the close of the hearing provided, however, that prior to the close of the hearing and for good cause, the Hearing Officer may allow time not to exceed fourteen (14) additional days for the filing of briefs with the Assistant Secretary. Copies thereof shall be served simultaneously on all other parties to the proceeding. Requests for additional time in which to file a brief under authority of this section not addressed to the Hearing Officer during the hearing shall be made to the Regional Administrator, in writing, and copies thereof shall be served simultaneously on the other parties. Requests for extension of time shall be in writing and received not later than three (3) days before the date such briefs are due. No reply brief

may be filed except by special permission of the Assistant Secretary.

§ 202.15 Transfer of case to Assistant Secretary; contents of record.

Upon the close of the hearing the case is transferred automatically to the Assistant Secretary. The record of the proceeding shall include the petition, notice of hearing, service sheet, motions, rulings, orders, official transcript of the hearing; stipulations, objections, depositions, exhibits, documentary evidence, and any briefs or other documents submitted by the parties.

§ 202.16 Decision.

The Assistant Secretary will issue a decision determining the appropriate unit, directing an election or dismissing the petition, or making disposition of any other matters before him.

§ 202.17 Election procedure.

This section governs all elections conducted under the supervision of an Area Administrator, pursuant to § 202.7 or § 202.16, which shall be conducted in accordance with the Procedural Guide for Conduct of Elections issued by the Assistant Secretary.

(a) Appropriate notices of election shall be posted by the activity. Such notices shall set forth the details and procedures for the election, the appropriate unit, the eligibility period, the date(s), hour(s) and place(s) of the election and shall contain a sample ballot.

(b) The reproduction of any document purporting to be a copy of the official ballot, other than one completely unaltered in form and content and clearly marked "sample" on its face, which suggests either directly or indirectly to employees that the Assistant Secretary endorses a particular choice, may constitute grounds for setting aside an election upon objections properly filed.

(c) All elections shall be by secret ballot. An exclusive representative shall be chosen by a majority of the valid ballots cast.

(d) Whenever two or more labor organizations are included as choices in an election, any intervening labor organization may request, in writing, the Area Administrator to remove its name from the ballot. The request must be received not later than seven (7) days before the date of the election. Such request shall be subject to the approval of the Area Administrator, whose decision shall be final: *Provided, however,* That in a proceeding involving a petition filed under § 202.2(b) an organization currently recognized or certified may not have its name removed from the ballot without giving the aforementioned notice in writing to all parties and the Area Administrator, disclaiming any representation interest among the employees in the unit.

(e) Any party may be represented at the polling place(s) by observers of his own selection, subject to such limitations as the Area Administrator may prescribe.

§ 202.18 Challenged ballots.

Any party or the representative of the Assistant Secretary may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded.

§ 202.19 Tally of ballots.

Upon the conclusion of the election, the Area Administrator shall cause to be furnished to the parties a tally of ballots.

§ 202.20 Certifications; objections to election; determination on objections and challenged ballots.

(a) The Area Administrator shall issue to the parties a certification of the results of the election, or a certification of representative, where appropriate: *Provided,* That no objections are filed within the time limit set forth below; the challenged ballots are insufficient in number to affect the results of the election; and no runoff or rerun election is to be held.

(b) Within five (5) days after the tally of ballots has been furnished, any party may file with the Area Administrator an original and four (4) copies of objections to the procedural conduct of the election, or to conduct which may have improperly affected the results of the election, supported by a clear and concise statement of the reason therefor. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. Within ten (10) days of the filing of the objections, unless an extension of time has been granted by the Area Administrator, the objecting party shall furnish the Area Administrator with evidence, including signed statements, documentary evidence, and other materials supporting the objections. The objecting party shall bear the burden of proof at all stages of the proceedings, regarding all matters alleged in its objections. Simultaneously with the filing of such objections, and with the filing of the evidence supporting the objections, copies of the objections and supporting statement and of the evidence supporting the objections, shall be served on the other parties by the party filing them, and a statement of such service shall be filed with the Area Administrator.

(c) If objections are filed, or if the challenged ballots are sufficient in number to affect the results of the election, the Area Administrator shall investigate the objections or challenges, or both, and report the essential facts and positions of the parties to the Regional Administrator.

(d) When the Regional Administrator determines that no relevant issue of facts exists, he (1) shall find whether improper conduct occurred of such a nature as to warrant the setting aside of the election and, if so, indicate his intention to set aside the election, or (2) shall rule on determinative challenges to ballots, if any, or both. The Regional Administrator shall serve simultaneously and such finding upon all parties to the proceeding and shall state therein any additional pertinent matters such as his intent to rerun the election or count ballots at a specified date, time, and place, and cause to be issued a revised tally of ballots. When the Regional Administrator determines that no relevant question of fact exists, but that a substantial question of interpretation or policy exists, he shall notify the parties and transfer the case to the Assistant Secretary in accordance with § 206.5(b).

(e) Any party aggrieved by findings of a Regional Administrator with respect to objections to an election or challenged ballots, may obtain a review of such action by the Assistant Secretary by following the procedure set forth in § 202.6(d). A determination by the Regional Administrator to issue a notice of hearing shall not be subject to review by the Assistant Secretary.

(f) Where it appears to the Regional Administrator that the objections or challenged ballots raise any relevant question of fact which may have affected the results of the election, the Regional Administrator shall cause to be issued a notice of hearing specifying that a Hearing Examiner, designated by the Chief Hearing Examiner, will take evidence, make factual findings and recommendations with respect to the objections and/or challenged ballots, and report these findings and recommendations to the Assistant Secretary and the parties. Such proceedings shall be conducted in accordance with §§ 203.15 through 203.24.

(g) The Assistant Secretary shall decide whether to adopt or modify the Hearing Examiner's recommendations, whether to grant review of the Regional Administrator's findings, or shall decide any substantial issue of interpretation or policy transferred by the Regional Administrator. In accord with the Assistant Secretary's final determinations, the Regional Administrator shall cause to be issued a certification of the results of the election, certification of representative, or a decision setting aside the election or directing the opening and counting of challenged ballots, whichever is appropriate.

§ 202.21 Runoff elections.

(a) The activity shall conduct a runoff election under supervision of the Area Administrator when an election in which the ballot provided for not less than three (3) choices (i.e., at least two representatives and "neither" or "none") results in no choice receiving a majority of the valid ballots cast, and any objections which had been filed have been disposed of, and any challenged ballots have been disposed of or are not sufficient in number to affect the results of the election, as provided herein. Only one runoff election shall be held pursuant to this section.

(b) Employees who are eligible to vote in the original election and who also are in an eligible category on the date of the runoff election shall be eligible to vote in the runoff election.

(c) The ballot in the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of votes.

§ 202.22 Inconclusive elections.

(a) An inconclusive election is one in which none of the choices on the ballot has received a majority of the valid ballots cast. If there are no challenged ballots that would affect the results of the election, the Area Administrator may declare the election a nullity and may order another election, providing for a selection from among the choices afforded in the previous ballot in the following situations:

(1) The ballot provided for a choice among two or more representenatives and "neither" or "none," and the votes are equally divided among the several choices;

(2) The number of ballots cast for one choice in an election is equal to the number cast for another choice but less than the number cast for the third choice; or

(3) The runoff ballot provides for a choice between two representatives and the votes are equally divided.

(b) Only one further election pursuant to this section may be held.

4. Part 203 would be revised to read as follows:

PART 203—UNFAIR LABOR PRACTICE PROCEEDINGS

Sec.
203.1 Who may file complaints.
203.2 Action to be taken before filing a complaint with the Assistant Secretary.
203.3 Contents of the complaint and supporting documents.
203.4 Filing and service of copies.
203.5 Investigation of the complaint; stipulation of facts.
203.6 Action by Regional Administrator.
203.7 Withdrawal or dismissal of complaint.
203.8 Notice of hearing.
203.9 Contents of the notice of hearing; attachments.
203.10 Conduct of hearing.
203.11 Intervention.
203.12 Rights of parties.
203.13 Rules of evidence.
203.14 Burden of proof.
203.15 Duties and powers of the Hearing Examiner.
203.16 Unavailability of Hearing Examiners.
203.17 Objection to conduct of hearing.
203.18 Motions before or after a hearing.
203.19 Waiver of objections.
203.20 Oral argument at the hearing.
203.21 Decision of Hearing Examiner.
203.22 Submission of the Hearing Examiner's report and recommendations to the Assistant Secretary; exceptions.
203.23 Contents of exceptions to Hearing Examiner's report and recommendations.
203.24 Briefs in support of exceptions.
203.25 Action by the Assistant Secretary.
203.26 Compliance with decisions and orders of the Assistant Secretary.

AUTHORITY: The provisions of this Part 203 issued under sec. 6, E.O. 11491, 34 F.R. 17605, as amended by E.O. 11616, 36 F.R. 17319.

§ 203.1 Who may file complaints.

A complaint that an agency, activity, or labor organization has engaged in any act prohibited under section 19 of the order or has failed to take any action required by the order, may be filed by an employee, an agency, activity, or a labor organization.

§ 203.2 Action to be taken before filing a complaint with the Assistant Secretary.

(a) Any charge of an alleged unfair labor practice must be in writing and shall be filed directly with the party or parties against whom the charge is directed within six (6) months of the occurrence of the alleged unfair labor practice, except as otherwise provided in § 205.13. The charge shall contain a clear and concise statement of the facts constituting the alleged unfair labor practice, including the time and place of occurrence of the particular acts. The alleged unfair labor practice shall be investigated by the parties involved and informal attempts to resolve the matter shall be made by the parties. If informal attempts are unsuccessful in disposing of the matter within thirty (30) days, a party may file a complaint requesting the Assistant Secretary to issue a decision in the matter: *Provided, however,* That if a final decison is served on the charging party, he may file a complaint immediately thereafter but in no event later than thirty (30) days from the date of service of the written final decision on the charging party; *Provided further,* That to be considered timely a complaint to the Assistant Secretary shall be filed within nine (9) months of the occurrence of the alleged unfair labor practice or within thirty (30) days of the service of the written final decision on the charging party, whichever is the shorter period of time.

(b) The thirty (30) day charge period as required under paragraph (a) of this section shall not be applicable to allegations of a violation of section 19(b)(4) of the order. In such a situation, a complaint may be filed immediately with the Area Administrator.

(c) In complaints alleging a violation of section 19(b)(4), the Area Administrator shall conduct a priority investigation and promptly report the essential facts, the positions of the parties and any offers of settlement to the Regional Administrator.

(d) When certain conduct involves matters which may constitute violations of section 19(a) (1), (2) or (4) of the order which occurred prior to November 24, 1971, and is subject to an established grievance or appeals procedure, and the agency alleges a lack of jurisdiction under the order, that procedure shall be the exclusive procedure for resolving the charge.

§ 203.3 Contents of the complaint and supporting documents.

(a) A complaint alleging a violation of section 19 of the order shall be submitted on forms prescribed by the Assistant Secretary and shall contain the following:

(1) The name, address, and telephone number of the employee, agency, or activity or labor organization making the complaint (hereinafter referred to as the complainant);

(2) The name, address, and telephone number of the agency or activity or labor organization against whom the complaint is made (hereinafter referred to as the respondent);

(3) A clear and concise statement of the facts constituting the alleged unfair labor practice, including the time and place of occurrence of the particular acts and a statement of the section and subsection of the order alleged to have been violated;

(4) A statement of any other procedure invoked involving the subject matter of the complaint and the results, if any, including whether the subject matter raised in the complaint has been referred to the Council, Panel, or Federal Mediation and Conciliation Service for consideration or action;

(5) A declaration by the person signing the complaint, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of his knowledge and belief.

(b) The entire report of investigation by the parties, pursuant to § 203.2, including, among other things, the precomplaint charge, copies of relevant correspondence, other written materials, statements of witnesses, summaries of meetings and discussions, offers of settlement by the respondent and settlement proposals advanced by the complainant, shall be filed with the complaint.

§ 203.4 Filing and service of copies.

(a) An original and four copies of a complaint and two (2) copies of the entire report of investigation shall be filed with the Area Administrator for the area in which the alleged unfair labor practice occurred or if it occurred in two or more areas, the complaint shall be filed with the Area Administrator for the area in which the headquarters of the respondent is located.

(b) Simultaneously with the filing of a complaint and the parties' report of investigation, copies of each shall be served by the complainant on the respondent, and a written statement of such service shall be filed with the Area Administrator.

§ 203.5 Investigation of the complaint; stipulation of facts.

(a) Within fifteen (15) days following the service of a copy of the complaint, unless an extension of time has been granted by the Area Administrator, the respondent shall file a response thereto with the Area Administrator raising any matter which is relevant to the complaint. A copy of such response shall be served simultaneously on the other parties. Upon the filing of a complaint the Area Administrator shall cause such additional investigation to be made as he deems necessary, and report the essential facts, the positions of the parties, and any offers of settlement to the Regional Administrator.

(b) The parties may submit to the Area Administrator a stipulation of facts and their request for a decision by

the Assistant Secretary without a hearing. Such stipulation shall be reported to the Regional Administrator.

(c) The complainant shall bear the burden of proof at all stages of the proceedings regarding matters alleged in its complaint.

§ 203.6 Action by Regional Administrator.

(a) The Regional Administrator shall take appropriate measures which may consist of the approval of a withdrawal request or dismissal of the complaint, approval of a satisfactory offer of settlement made any time prior to the close of a hearing, if any, approval of a stipulation of facts pursuant to § 203.5(b), or the issuance of a notice of hearing.

(b) In cases involving complaints alleging a violation of section 19(b)(4) of the order, if the Regional Administrator determines, based upon the evidence adduced, that a reasonable basis for a complaint exists and no satisfactory offer of settlement has been made, he shall issue an expedited notice of hearing. The complainant shall bear the burden of proof at the hearing. Additionally, upon the issuance of the expedited notice of hearing, the Regional Administrator may order the suspension of dues withholding by the activity pending a satisfactory offer of settlement or a decision by the Assistant Secretary. Such suspension of dues withholding may be discontinued by the Assistant Secretary at his discretion.

§ 203.7 Withdrawal or dismissal of complaint.

(a) If the Regional Administrator determines that the complaint has not been timely filed, that a reasonable basis for the complaint has not been established, that a satisfactory offer of settlement has been made, or for other appropriate reasons, he may request the complainant to withdraw the complaint and in the absence of such withdrawal within a reasonable time, he may dismiss the complaint.

(b) If the Regional Administrator dismisses the complaint, he shall furnish the complainant with a written statement of the grounds for dismissal, sending a copy of the statement to the respondent. If the dismissal is based on approval of an offer of settlement which is satisfactory to the Regional Administrator, such statement shall set forth the terms of settlement and the implementation thereof.

(c) The complainant may obtain a review of such action by filing a request for review with the Assistant Secretary within ten (10) days of service of such notice of dismissal. A copy of such request for review shall be served simultaneously on the Regional Administrator and the respondent. Statement of service shall be filed with the Assistant Secretary. The request for review shall contain a complete statement setting forth facts and reasons upon which the request is based. A request for extension of time shall be in writing and received by the Assistant Secretary not later than three (3) days before the date the request for review is due.

§ 203.8 Notice of hearing.

The Regional Administrator may cause a notice of hearing to be issued if, after the filing of a complaint, he finds, based on the allegations and the report of investigation by the parties and any additional investigation by the Area Administrator, that there is a reasonable basis for the complaint and that no satisfactory offer of settlement has been made.

§ 203.9 Contents of the notice of hearing; attachments.

(a) The notice of hearing shall include:

(1) A statement of the time and place of the hearing which shall be not less than ten (10) days after service of the notice of hearing, except in extraordinary circumstances;

(2) A statement of the nature of hearing;

(3) A statement of the authority and jurisdiction under which the hearing is to be held;

(4) A reference to the particular sections of the order and regulations involved.

(b) Attached to the notice of hearing shall be a copy of the complaint and the respondent's answer.

(c) The report of investigation by the parties referred to in § 203.8 shall be furnished to the Hearing Examiner; however, the report of investigation will not be deemed as evidence, and any party wishing to rely upon anything contained therein must make an appropriate submission at the hearing.

§ 203.10 Conduct of hearing.

(a) Hearings shall be conducted by a Hearing Examiner designated by the Chief Hearing Examiner and shall be open to the public unless otherwise ordered by the Hearing Examiner.

(b) An official reporter shall make the only official transcript of such proceedings. Copies of the official transcript will not be provided to the parties but may be purchased by arrangement with the official reporter or may be examined in the Area Office during normal working hours.

§ 203.11 Intervention.

Any person desiring to intervene in any proceeding shall file a motion in writing with the Chief Hearing Examiner or the designated Hearing Examiner, or, if made at the hearing, may move orally on the record, stating the grounds upon which such person claims an interest. Prior to the hearing, such a motion shall be filed with the Regional Administrator issuing the notice of hearing; during the hearing such motion shall be made to the Hearing Examiner. An original and two copies of written motions shall be filed. Simultaneously upon filing such motion, the moving party shall serve a copy thereof on the other parties. The Regional Administrator shall rule upon all such motions filed prior to the hearing, and shall cause a copy of such rulings to be furnished to the other parties, or may refer the motion to the Hearing Examiner for ruling. The Hearing Examiner shall rule upon all such motions made at the hearing or referred to him by the Regional Administrator. When the Hearing Examiner rules, before the hearing, on a motion referred to him by the Regional Administrator, he shall furnish copies of such ruling to the parties. The Regional Administrator or Hearing Examiner, as the case may be, may permit intervention in person or by counsel or other representative to such extent and upon such terms as he may deem proper.

§ 203.12 Rights of parties.

Any party shall have the right to appear at such hearing in person, by counsel, or by other representative, to examine and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence, except that the participation of any party shall be limited to the extent prescribed by the Hearing Examiner. Two copies of documentary evidence shall be submitted and a copy furnished to each of the other parties. Stipulations of fact may be introduced in evidence with respect to any issue.

§ 203.13 Rules of evidence.

The technical rules of evidence do not apply. Any evidence may be received, except that a Hearing Examiner may exclude any evidence or offer of proof which is immaterial, irrelevant, unduly repetitious or customarily privileged. Every party shall have a right to present its case by oral and documentary evidence and to submit rebuttal evidence.

§ 203.14 Burden of proof.

A complainant in asserting a violation of the order shall have the burden of proving the allegations of the complaint by a preponderance of the evidence.

§ 203.15 Duties and powers of the Hearing Examiner.

It shall be the duty of the Hearing Examiner to inquire fully into the facts as they relate to the matter before him. Upon assignment to him and before transfer of the case to the Assistant Secretary, the Hearing Examiner shall have the authority to:

(a) Grant requests for appearance of witnesses or production of documents;

(b) Rule upon offers of proof and receive relevant evidence;

(c) Take or cause deposition to be taken whenever the ends of justice would be served thereby;

(d) Limit lines of questioning or testimony which are immaterial, irrelevant, or unduly repetitious;

(e) Regulate the course of the hearing and, if appropriate, exclude from the hearing persons who engage in misconduct and strike all related testimony of witnesses refusing to answer any questions ruled to be proper;

(f) Hold conferences for the settlement or simplification of the issues by

consent of the parties or upon his own motion and, where appropriate, transmit to the Regional Administrator offers of settlement by the party or parties;

(g) Dispose of procedural requests, motions, or similar matters which shall be made part of the record of the proceeding, including motions referred to the Chief Hearing Examiner or to the designated Hearing Examiner by the Regional Administrator and motions to amend pleadings, also to recommend dismissal of cases or portions thereof, and to order hearings reopened prior to issuance of the Hearing Examiner's report and recommendations;

(h) Examine and cross-examine witnesses and to introduce into the record documentary or other evidence;

(i) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(j) Continue the hearing from day-to-day, or adjourn it to a later date or to a different place, by announcement thereof at the hearing or by other appropriate notice;

(k) Prepare, serve and submit his report and recommendations pursuant to § 203.22;

(l) Take official notice of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice and also concerning which the Department of Labor by reason of its functions is presumed to be expert: *Provided,* That the parties shall be given adequate notice, at the hearing or be reference in the Hearing Examiner's decision of the matters so noticed, and shall be given adequate opportunity to show the contrary;

(m) Correct or approve proposed corrections of the official transcript when deemed necessary;

(n) Take any other action necessary under the foregoing and not prohibited by these regulations.

§ 203.16 Unavailability of Hearing Examiners.

In the event the Hearing Examiner designated to conduct the hearing becomes unavailable, the Chief Hearing Examiner shall designate another Hearing Examiner for the purpose of further hearing or issuance of a report and recommendations on the record as made, or both.

§ 203.17 Objection to conduct of hearing.

(a) Any objection with respect to the conduct of the hearing, including any any objection to the introduction of evidence, may be stated orally or in writing accompanied by a short statement of the grounds for such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing. Such objection shall not stay the conduct of the hearing.

(b) Automatic exceptions will be allowed to all adverse rulings. Rulings by the Hearing Examiner shall not be appealed prior to the transfer of the case to the Assistant Secretary, but shall be considered by the Assistant Secretary only upon the filing of exceptions to the Hearing Examiner's report and recommendations in accordance with § 203.22.

§ 203.18 Motions before or after a hearing.

(a) All motions made before a hearing shall be made in writing to the Regional Administrator. All motions made after the hearing but prior to the transfer of the case to the Assistant Secretary shall be filed with the Hearing Examiner. All motions made after the transfer of the case to the Assistant Secretary, except motions to correct the record under § 203.15(m), shall be made in writing to the Assistant Secretary. The moving party shall serve simultaneously a copy of all motion papers on all other parties. A statement of service shall accompany the motion. Answering affidavits, if any, must be served on all parties and the originals thereof, together with two (2) copies and a statement of service, shall be filed with the Regional Administrator before the hearing, with the Hearing Examiner after the hearing begins and before transfer of the case to the Assistant Secretary and with the Assistant Secretary after transfer of the case to him; within five (5) days after service of the moving papers unless it is otherwise directed.

(b) The Regional Administrator may rule upon all motions filed with him before the hearing, causing a copy of such ruling to be served on the parties, or he may refer such motions to the Chief Hearing Examiner or to the Hearing Examiner if one has been designated by the Chief Hearing Examiner. The Hearing Examiner may rule upon all motions referred to him prior to the hearing by the Regional Administrator or by the Chief Hearing Examiner and may rule upon all motions filed after the beginning of the hearing and before transfer of the case to the Assistant Secretary. Such motions may be ruled upon by the Chief Hearing Examiner in the absence of the Hearing Examiner. Rulings by the Regional Administrator shall not be appealed prior to the transfer of the case to the Assistant Secretary, but shall be considered by the Assistant Secretary when the case is transferred to him for decision.

§ 203.19 Waiver of objections.

Any objection not duly urged before a Hearing Examiner shall be deemed waived.

§ 203.20 Oral argument at the hearing.

Any party shall be entitled, upon request, to a reasonable period prior to the close of the hearing for oral argument, which shall be included in the official transcript of the hearing.

§ 203.21 Filing of brief.

Any party desiring to submit a brief to the Hearing Examiner shall file the original and two (2) copies within seven (7) days after the close of the hearing: *Provided, however,* That prior to the close of the hearing and for good cause, the Hearing Examiner may grant a reasonable extension of time. Copies thereof shall be served simultaneously on all other parties to the proceeding. Requests for additional time in which to file a brief under authority of this section not addressed to the Hearing Examiner during the hearing shall be made to the Chief Hearing Examiner, in writing, and copies thereof shall be served simultaneously on the other parties. A statement of such service shall be furnished. Requests for extension of time shall be received not later than three (3) days before the date such briefs are due. No reply brief may be filed except by special permission of the Hearing Examiner.

§ 203.22 Submission of the Hearing Examiner's report and recommendations to the Assistant Secretary; exceptions.

(a) After the close of the hearing, and the receipt of briefs, if any, the Hearing Examiner shall prepare his report and recommendations expeditiously. The report and recommendations shall contain findings of fact, conclusions, and the reasons or basis therefor including credibility determinations, and recommendations as to the disposition of the case including, where appropriate, the remedial action to be taken and notices to be posted.

(b) The Hearing Examiner shall cause his report and recommendations to be served promptly on all parties to the proceeding. Thereafter, the Hearing Examiner shall transfer the case to the Assistant Secretary including his report and recommendations and the record. The record shall include the complaint, notice of hearing, service sheet, motions, rulings, orders, official transcript of the hearing, stipulations, objections, depositions, exhibits, documentary evidence, and any briefs or other documents submitted by the parties.

(c) An original and two (2) copies of any exceptions to the Hearing Examiner's report and recommendations may be filed by any party with the Assistant Secretary within ten (10) days after service of the report and recommendations: *Provided, however,* That the Assistant Secretary may for good cause shown extend the time for filing such exceptions. Requests for additional time in which to file exceptions shall be in writing, and copies thereof shall be served simultaneously on the other parties. Requests for extension of time must be received no later than three (3) days before the date the exceptions are due. Copies of such exceptions and any supporting briefs shall be served simultaneously on all other parties, and a statement of such service shall be furnished to the Assistant Secretary.

§ 203.23 Contents of exceptions to Hearing Examiner's report and recommendations.

(a) Exceptions to a Hearing Examiner's report and recommendations shall:

(1) Set forth specifically the questions upon which exceptions are taken;

(2) Identify that part of the Hearing Examiner's report and recommendations to which objection is made;

(3) Designate by precise citation of page the portions of the record relied on, state the grounds for the exceptions, and include the citation of authorities unless set forth in a supporting brief.

(b) Any exception to a ruling, finding, conclusion, or recommendation which is not specifically urged shall be deemed to have been waived. Any exception which fails to comply with the foregoing requirements may be disregarded.

§ 203.24 Briefs in support of exceptions.

(a) Any brief in support of exceptions shall contain only matters included within the scope of the exceptions and shall contain, in the order indicated, the following:

(1) A concise statement of the case containing all that is material to the consideration of the questions presented;

(2) A specification of the questions involved and to be argued;

(3) The argument, presenting clearly the points of fact and law relied on in support of the position taken on each question, with specific page reference to the transcript and the legal or other material relied on.

(b) Answering briefs to the exceptions and cross-exceptions and supporting briefs may be filed at the discretion of the Assistant Secretary.

§ 203.25 Action by the Assistant Secretary.

After considering the Hearing Examiner's report and recommendations, the record, and any exceptions filed, the Assistant Secretary shall issue his decision affirming or reversing the Hearing Examiner, in whole or in part, or making such other disposition of the matter as he deems appropriate: *Provided, however,* That if no timely or proper exceptions are filed as herein set forth, the Assistant Secretary may, in his discretion, adopt without decision the report and recommendations of the Hearing Examiner, in which event the findings, conclusions, and recommendations of the Hearing Examiner, as contained in his report and recommendations shall, upon appropriate notice to the parties, automatically become the decision of the Assistant Secretary.

(a) Upon finding a violation of the order the Assistant Secretary may order the respondent to cease and desist from conduct violative of the order and may require the respondent to take such affirmative corrective action as he deems appropriate to effectuate the policies of the order.

(b) Upon finding no violation of the order, the Assistant Secretary shall dismiss the complaint.

(c) The Assistant Secretary may refer cases or any issue(s) therein involving major policy questions to the Council for decision or general ruling in accordance with its regulations.

§ 203.26 Compliance with decisions and orders of the Assistant Secretary.

When remedial action is ordered, the respondent shall report to the Assistant Secretary within a specified period that the required remedial action has been effected. When the Assistant Secretary finds that the required remedial action has not been effected, he may order cancellation of dues deduction, withdrawal of recognition, referral to the Council or take such other action as may be appropriate.

5. Part 204 would be revised to read as follows:

PART 204—STANDARDS OF CONDUCT

Subpart A—Substantive Requirements Concerning Standards of Conduct

Sec.
204.1 General.
204.2 Bill of Rights of members of labor organizations.
204.3 Adoption of constitution and bylaws.
204.4 Filing of labor organization registration report.
204.5 Filing of constitution and bylaws.
204.6 Labor organizations filing under the LMRDA.
204.7 Alternative method of filing constitution and bylaws.
204.8 Amendments to constitution and bylaws.
204.9 Annual reports.
204.10 Labor organizations filing under the LMRDA.
204.11 Labor organizations under trusteeship.
204.12 Small labor organizations.
204.13 Labor organizations filing under the LMRDA.
204.14 Initial trusteeship report.
204.15 Semiannual trusteeship report.
204.16 Annual report.
204.17 Terminal trusteeship information and financial reports.
204.18 Fiscal year.
204.19 Initial annual report.
204.20 Terminal report.
204.21 Effect of acknowledgment and filing by the Office of Labor-Management and Welfare-Pension Reports.
204.22 Personal responsibility of signatories of reports.
204.23 Dissemination and verification of reports.
204.24 Maintenance and retention of records.
204.25 Examination and copying of reports required by this subpart.
204.26 Purposes for which a trusteeship may be established.
204.27 Prohibited acts relating to subordinate body under trusteeship.
204.28 Presumption of validity.
204.29 Election of officers.
204.30 Removal of elected officers.
204.31 Maintenance of fiscal integrity in the conduct of the affairs of labor organizations.
204.32 Provision for accounting and financial controls.
204.33 Prohibition of conflicts of interest.
204.34 Loans to officers or employees.
204.35 Bonding requirements.
204.36 Prohibitions against certain persons holding office or employment.
204.37 Prohibition of certain discipline.
204.38 Deprivation of rights under the order by violence or threat of violence.

Subpart B—Proceedings for Enforcing Standards of Conduct

204.50 Investigations.
204.51 Inspection of records and questioning.
204.52 Report of investigation.
204.53 Filing of complaints.
204.54 Complaints alleging violations of § 204.2, Bill of Rights of members of labor organizations.
204.55 Content of complaint.
204.56 Service on respondent.
204.57 Investigation.
204.58 Dismissal of complaint.
204.59 Review of dismissal.
204.60 Actionable complaint.
204.61 Notice of hearing.
204.62 Hearing procedures.
204.63 Complaints alleging violations of § 204.29, election of officers.
204.64 Investigations; dismissal of complaint.
204.65 Procedures following actionable complaint.
204.66 Procedures for institution of enforcement proceedings.
204.67 Standards complaint; initiation of proceedings.
204.68 Hearing Examiner.
204.69 Answer.
204.70 Procedure upon admission of facts.
204.71 Motions and requests.
204.72 Notice of hearing.
204.73 Prehearing conferences.
204.74 Conduct of hearing.
204.75 Intervention.
204.76 Duties and powers of the Hearing Examiner.
204.77 Rights of parties; representation.
204.78 Rules of evidence.
204.79 Burden of proof.
204.80 Unavailability of Hearing Examiners.
204.81 Objection to conduct of hearing.
204.82 Motions after a hearing.
204.83 Waiver of objections.
204.84 Oral argument at the hearing.
204.85 Transcript.
204.86 Filing of brief.
204.87 Proposed findings and conclusion.
204.88 Submission of the Hearing Examiner's report and recommendations to the Assistant Secretary; exceptions.
204.89 Contents of exceptions to Hearing Examiner's report and recommendations.
204.90 Briefs in support of exceptions.
204.91 Action by the Assistant Secretary.
204.92 Compliance with decisions and orders of the Assistant Secretary.
204.93 Stay of remedial action.

AUTHORITY: The provisions of this Part 204 issued under secs. 6 and 18, E.O. 11491, 34 F.R. 17605, as amended by E.O. 11616, 36 F.R. 17319.

Subpart A—Substantive Requirements Concerning Standards of Conduct

§ 204.1 General.

The term "LMRDA" means the Labor-Management Reporting and Disclosure Act of 1959, as amended (29 U.S.C. 401 et seq.). Unless otherwise provided in this part or in the order, any term in any section of the LMRDA which is incorporated into this part by reference and any term in this part which is also used in the LMRDA, shall have the meaning which that term has under the LMRDA, unless the context in which it is used indicates that such meaning is not applicable. In applying the standards contained in this Subpart the Assistant Secretary will be guided by the interpretations and policies followed by the Department of Labor in applying the provisions of the LMRDA and, where no such interpretations exist, he will be guided, as appropriate, by decisions of the courts.

§ 204.2 Bill of Rights of members of labor organizations.

(a) (1) *Equal rights.* Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(2) *Freedom of speech and assembly.* Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided,* That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

(3) *Dues, initiation fees, and assessments.* Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on the date this section is published shall not be increased, and no general or special assessment shall be levied upon such members, except—

(i) In the case of a local organization, (*a*) by majority vote by secret ballot of the members in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such question, or (*b*) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot; or

(ii) In the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (*a*) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than 30 days' written notice to the principal office of each local or constituent labor organization entitled to such notice, or (*b*) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or (*c*) by majority vote of the members of the executive board or similar governing body of such labor organization, pursuant to express authority contained in the constitution and bylaws of such labor organization: *Provided,* That such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization.

(4) *Protection of the right to sue.* No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided,* That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a 4-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof.

(5) *Safeguards against improper disciplinary action.* No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (i) served with written specified charges; (ii) given a reasonable time to prepare his defense; (iii) afforded a full and fair hearing.

(b) Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall not be a defense to any proceeding instituted against the labor organization under this part or Executive Order 11491.

(c) Nothing contained in this section shall limit the rights and remedies of any member of a labor organization under any State or Federal law or before any court or other tribunal, or under the constitution and bylaws of any labor organization.

(d) It shall be the duty of the secretary or corresponding principal officer of each labor organization, in the case of a local labor organization, to forward a copy of each agreement made by such labor organization with any agency or activity to any employee who requests such a copy and whose rights as such employee are directly affected by such agreement, and in the case of a labor organization other than a local labor organization, to forward a copy of any such agreement to each constituent unit which has members directly affected by such agreement; and such officer shall maintain at the principal office of the labor organization of which he is an officer, copies of any such agreement made or received by such labor organization, which copies shall be available for inspection by any member or by any employee whose rights are affected by such agreement. An employee's rights under this paragraph shall be enforceable in the same manner as the rights of a member.

§ 204.3 Adoption of constitution and bylaws.

Every labor organization shall adopt a constitution and bylaws and file copies thereof pursuant to § 204.5.

§ 204.4 Filing of labor organization registration report.

Every labor organization shall file a registration report, signed by its president and secretary or corresponding principal officers. This registration report shall be filed in duplicate with the Office of Labor-Management and Welfare-Pension Reports, U.S. Department of Labor, Washington, D.C. 20210, on Form G-1 entitled "Federal Labor Organization Registration Report"[1] within 90 days after the date on which the labor organization becomes subject to the order.

§ 204.5 Filing of constitution and bylaws.

Every labor organization shall file two copies of its constitution and bylaws with the Form G-1.

§ 204.6 Labor organizations filing under the LMRDA.

The provisions of §§ 204.4 and 204.5 are not applicable to any labor organization which is required to report and is reporting pursuant to section 201(c) of the LMRDA.

§ 204.7 Alternative method of filing constitution and bylaws.

(a) A labor organization may adopt as its constitution and bylaws (whether by formal action or by virtue of affiliation with a parent organization) the constitution and bylaws of a national or international organization which the national or international organization has filed under section 201(a) of the LMRDA or under § 204.5.

(b) Copies of the constitution and bylaws filed by a national or international organization will be accepted in lieu of the filing of such documents by each subordinate labor organization which adopts and is subject to such constitution and bylaws if (1) the national or international organization so informs the Office of Labor-Management and Welfare-Pension Reports on its registration report (Form G-1), (or otherwise, if that report is not required to be filed) and files as many additional copies as the Office of Labor-Management and Welfare-Pension Reports may request; and (2) the subordinate labor organization indicates in its registration report (Form G-1) that copies of the constitution and bylaws of the national or international organization are being filed on its behalf.

(c) A subordinate labor organization which is governed by the constitution and bylaws of a national or international organization and which also adopts its own bylaws or other supplements to the national constitution must submit two copies of the supplemental documents with its registration report (Form G-1).

§ 204.8 Amendments to constitution and bylaws.

All changes in and amendments to the constitution and bylaws filed pursuant to

[1] Filed as part of the orginal document.

this subpart shall be reported through submission of the required number of copies of the labor organization's revised constitution and bylaws. These revised copies shall be filed with the labor organization's annual report filed pursuant to § 204.9 or § 204.12 for the year in which the revisions are made: *Provided, however,* That if the constitution and bylaws were filed on its behalf pursuant to paragraph (b) of § 204.7, the revised constitution and bylaws may also be filed on its behalf with the annual report of its national or international labor organization and with the same number of copies as were submitted pursuant to paragraph (b) of § 204.7 and both labor organizations shall indicate on their respective annual reports that such filings were made by the national or international labor organization.

ANNUAL REPORTS

§ 204.9 Annual reports.

Every labor organization shall, except as otherwise provided in this subpart, file an annual report in duplicate signed by its president and treasurer or corresponding principal officers within 90 days after the end of its fiscal year with the Office of Labor-Management and Welfare-Pension Reports, U.S. Department of Labor, Washington, D.C. 20210, on Form G-2 entitled "Federal Labor Organization Annual Report"[1] in the detail required by the instructions accompanying such form and constituting a part thereof.

§ 204.10 Labor organizations filing under the LMRDA.

If a labor organization is also subject to the LMRDA, and is filing annual reports pursuant to section 201 of the Act, it is not required to file the report required by § 204.9.

§ 204.11 Labor organizations under trusteeship.

If a labor organization is in trusteeship on the date for filing the annual report, the organization which has assumed the trusteeship shall file the report required in § 204.9.

§ 204.12 Small labor organizations.

(a) If a labor organization, not in trusteeship, has gross annual receipts totaling less than $30,000 but $2,000 or more for its fiscal year, it may file the annual report required by § 204.9 in duplicate on Form G-3 entitled "Federal Labor Organization Simplified Annual Report"[1] in accordance with the instructions accompanying such form and constituting a part thereof.

(b) If a labor organization, not in trusteeship, has gross annual receipts of less than $2,000 for its fiscal year, it may file the annual report required by § 204.9 in duplicate on Form G-4 entitled "Federal Labor Organization Abbreviated Annual Report"[1] in accordance with the instructions accompanying such form and constituting a part thereof.

[1] Filed as part of the original document.

(c) A local labor organization, not in trusteeship, which has no assets, no liabilities, no receipts and no disbursements during the period covered by the annual report of the national organization with which it is affiliated need not file the annual report required by § 204.9 if the following conditions are met:

(1) It is governed by a uniform constitution and bylaws filed on its behalf pursuant to § 204.7(b) and the proviso in § 204.8, does not have governing rules of its own, and is not authorized to adopt such rules;

(2) Its members are subject to uniform fees and dues applicable to all members of the local labor organizations for which exemption is claimed; and

(3) The national organization with which it is affiliated assumes responsibility for the accuracy of, and submits with its annual report, Form G-2, a statement with as many copies as the Office of Labor-Management and Welfare-Pension Reports shall request, that the conditions of the exemption have been met for the specified local organizations for which exemption is claimed. This statement must be signed by the president and treasurer of the national labor organization and must contain the following additional information:

(i) If the national labor organization reports its dues in section B of Item 12 of its annual report, Form G-2, a statement of the required dues and fees of such exempt organizations, set forth in the same manner as prescribed in Item 12 of the Form G-2; and

(ii) With respect to each local labor organization for which exemption is claimed;

(*a*) The name and designation number or other identifying information.

(*b*) The file number (G-number) which the Office of Labor-Management and Welfare Pension Reports has assigned to it.

(*c*) The mailing address.

(*d*) The city, county, and State where it is chartered to operate, if these have changed since last reported to the Office of Labor-Management and Welfare-Pension Reports.

(*e*) The names and titles of the officers as of the end of the reporting period.

REPORTING OF TRUSTEESHIPS

§ 204.13 Labor organizations filing under the LMRDA.

A labor organization subject to the LMRDA which has or assumes trusteeship over any subordinate labor organization subject to that Act as well as the Order is not required to file reports under §§ 204.14–204.17, but must file the reports required under section 301 of the LMRDA and Part 408 of this title.

§ 204.14 Initial trusteeship report.

Except as provided in § 204.13, every labor organization which has or assumes trusteeship over any subordinate labor organization subject to the order shall file with the Office of Labor-Management and Welfare-Pension Reports, U.S. Department of Labor, Washington, D.C. 20210, within 30 days after the imposition of any such trusteeship, a trusteeship report, signed by its president and treasurer or corresponding principal officers, as well as by the trustees of the subordinate labor organization. Such report shall be filed in duplicate on Form G-15 entitled "Federal Labor Organization Trusteeship Report"[1] in the detail required by the instructions accompanying such form and constituting a part thereof.

§ 204.15 Semiannual trusteeship report.

Every labor organization required to file a report under § 204.14 shall thereafter during the continuance of a trusteeship over the subordinate labor organization, file with the Office of Labor-Management and Welfare-Pension Reports a semiannual trusteeship report on Form G-15 in duplicate containing the information required by that form in accordance with the instructions therein relating to the semiannual trusteeship report. If during the period covered by the semiannual trusteeship report there was (a) a convention or other policy determining body to which the subordinate organization under trusteeship sent delegates or would have sent delegates if not in trusteeship, or (b) an election of officers of the labor organization assuming trusteeship, a report on Form G-15A entitled "Federal Labor Organization Schedule on Selection of Delegates and Officers"[1] shall be filed in duplicate with the Form G-15.

§ 204.16 Annual report.

During the continuance of a trusteeship, the organization which has assumed trusteeship over a subordinate labor organization subject to the order shall file with the Office of Labor-Management and Welfare-Pension Reports on behalf of the subordinate labor organization the annual report required by § 204.9 on Form G-2 in duplicate signed by the president and treasurer or corresponding principal officers of the labor organization which has assumed such trusteeship. In addition, such labor organization shall file Form G-6, "Information and Signature Sheet for Financial Report of Federal Labor Organization Under Trusteeship,"[1] in duplicate signed by the trustees of the subordinate labor organization.

§ 204.17 Terminal trusteeship information and financial reports.

Each labor organization which has assumed trusteeship over a subordinate labor organization subject to the order shall file within 90 days after the termination of such trusteeship a report in duplicate on Form G-16 entitled "Federal Labor Organization Terminal Trusteeship Information Report"[1] in the detail required by the instructions accompanying such form and constituting a part thereof. The organization submitting the terminal trusteeship information report must also file at the same time on behalf of the subordinate labor organization a final financial report in duplicate for the organization under trusteeship on Forms G-2 and G-6, in conformance with the requirements of

[1] Filed as part of the original document.

§§ 204.9 and 204.16 covering the period from the beginning of the fiscal year through the termination date of the trusteeship.

MISCELLANEOUS PROVISIONS RELATING TO REPORTING REQUIREMENTS

§ 204.18 Fiscal year.

As used in this subpart the term "fiscal year" means the calendar year, or other period of 12 consecutive calendar months, on the basis of which financial accounts are kept by a labor organization reporting under this subpart. Where a labor organization designates a new fiscal year prior to the expiration of a previously established fiscal year, the resultant period of less than 12 consecutive calendar months, and thereafter the newly established fiscal year, shall in that order each constitute a fiscal year for purposes of the reports required by this subpart.

§ 204.19 Initial annual report.

A labor organization which is subject to the order for only a portion of its fiscal year because the labor organization first becomes subject to the order during such fiscal year, may at its option consider such portion as the entire fiscal year in filing the annual report required under § 204.9 or § 204.12.

§ 204.20 Terminal report.

Any labor organization required to file a report under the provisions of this subpart, which during its fiscal year loses its identity as a reporting labor organization through merger, consolidation, or otherwise, shall within 30 days after such loss, file a terminal report in duplicate with the Office of Labor-Management and Welfare-Pension Reports on Form G-2, Form G-3, or Form G-4, as may be appropriate under § 204.9 or § 204.12, signed by the persons who were the president and treasurer or corresponding principal officers of the labor organization immediately prior to its loss of reporting identity. For the purpose of such terminal report the fiscal year shall be considered to be the period from the beginning of the labor organization's fiscal year to the date of its loss of reporting identity.

§ 204.21 Effect of acknowledgment and filing by the Office of Labor-Management and Welfare-Pension Reports.

Acknowledgment by the Office of Labor-Management and Welfare-Pension Reports of the receipt of the reports and documents submitted for filing under this subpart is intended solely to inform the sender of the receipt thereof. Neither such acknowledgment nor the filing of such reports and documents by the Office of Labor-Management and Welfare-Pension Reports constitutes express or implied approval thereof or in any manner indicates that the content of any such report or document fulfills the reporting or other requirements of the order, or of the regulations in this Subpart applicable thereto.

§ 204.22 Personal responsibility of signatories of reports.

Each individual required to sign any report under this subpart shall be personally responsible for the filing of such report and for any statement contained therein which he knows to be false. Penalties for filing false reports are provided in 18 U.S.C. 1001.

§ 204.23 Dissemination and verification of reports.

Every labor organization required to submit a report under this subpart shall furnish or otherwise make available to all its members the information required to be contained in such report and shall furnish or otherwise make available to every member a copy of its constitution and bylaws. Every labor organization and its officers shall be under a duty to permit any member for just cause to examine any books, records, and accounts necessary to verify such report and constitution and bylaws.

§ 204.24 Maintenance and retention of records.

Every labor organization required to file any report under this subpart shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Office of Labor-Management and Welfare-Pension Reports may be verified, explained or clarified, and checked for accuracy and completeness. This includes vouchers, worksheets, receipts, and applicable resolutions (including any such records in existence on the date the order became effective). Every labor organization shall keep such records available for examination for a period of not less than 5 years after the filing of the report.

§ 204.25 Examination and copying of reports required by this subpart.

Examination of any report or other document filed as required by this subpart, and the furnishing by the Office of Labor-Management and Welfare-Pension Reports of copies thereof to any person requesting them, shall be governed by Part 70 of this title.

TRUSTEESHIPS

§ 204.26 Purposes for which a trusteeship may be established.

Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body and for the purpose of (a) correcting corruption or financial malpractice, (b) assuring the performance of negotiated agreements or other duties of a representative of employees, (c) restoring democratic procedures, or (d) otherwise carrying out the legitimate objects of such labor organization.

§ 204.27 Prohibited acts relating to subordinate body under trusteeship.

During any period when a subordinate body of a labor organization is in trusteeship, (a) the votes of delegates or other representative from such body in any convention or election of officers of the labor organization shall not be counted unless the representatives have been chosen by secret ballot in an election in which all the members in good standing of such subordinate body were eligible to participate; and (b) no current receipts or other funds of the subordinate body except the normal per capita tax and assessments payable by subordinate bodies not in trusteeship shall be transferred directly or indirectly to the labor organization which has imposed the trusteeship: *Provided, however,* That nothing contained in this section shall prevent the distribution of the assets of a labor organization in accordance with its constitution and bylaws upon the bona fide dissolution thereof.

§ 204.28 Presumption of validity.

In any proceeding involving § 204.26, a trusteeship established by a labor organization in conformity with the procedural requirements of its constitution and bylaws and authorized or ratified after a fair hearing either before the executive board or before such other body as may be provided in accordance with its constitution and bylaws shall be presumed valid for a period of 18 months from the date of its establishment and shall not be subject to attack during such period except upon clear and convincing proof that the trusteeship was not established or maintained in good faith for purposes allowable under § 204.26. After the expiration of 18 months the trusteeship shall be presumed invalid in any such proceeding, unless the labor organization shall show by clear and convincing proof that the continuation of the trusteeship is necessary for a purpose allowable under § 204.26.

ELECTIONS

§ 204.29 Election of officers.

Every labor organization subject to the order shall conduct periodic elections of officers in a fair and democratic manner. All elections of officers shall be governed by the standards prescribed in section 401 (a), (b), (c), (d), (e), (f), and (g) of the LMRDA to the extent that such standards are relevant to elections held pursuant to the order.

ADDITIONAL PROVISIONS APPLICABLE

§ 204.30 Removal of elected officers.

When an elected officer of a local labor organization is charged with serious misconduct and the constitution and bylaws of such organization do not provide an adequate procedure meeting the standards of § 417.2(e) of this title for removal of such officer, the labor organization shall follow a procedure which meets those standards. A labor organization which has adequate procedures in its constitution and bylaws shall follow those procedures.

§ 204.31 Maintenance of fiscal integrity in the conduct of the affairs of labor organizations.

The standards of fiduciary responsibility prescribed in section 501(a) of the LMRDA are incorporated into this subpart by reference and made a part hereof.

§ 204.32 Provision for accounting and financial controls.

Every labor organization shall provide accounting and financial controls necessary to assure the maintenance of fiscal integrity.

§ 204.33 Prohibition of conflicts of interest.

(a) No officer or agent of a labor organization shall, directly or indirectly through his spouse, minor child, or otherwise (1) have or acquire any pecuniary or personal interest which would conflict with his fiduciary obligation to such labor organization, or (2) engage in any business or financial transaction which conflicts with his fiduciary obligation.

(b) Actions prohibited by paragraph (a) of this section include, but are not limited to, buying from, selling, or leasing directly or indirectly to, or otherwise dealing with the labor organization, its affiliates, subsidiaries, or trusts in which the labor organization is interested, or having an interest in a business any part of which consists of such dealings, except bona fide investments of the kind exempted from reporting under section 202(b) of the LMRDA. The receipt of salaries and reimbursed expenses for services actually performed or expenses actually incurred in carrying out the duties of the officer or agent is not prohibited.

§ 204.34 Loans to officers or employees.

No labor organization shall directly or indirectly make any loan to any officer or employee of such organization which results in a total indebtedness on the part of such officer or employee to the labor organization in excess of $2,000.

§ 204.35 Bonding requirements.

Every officer, agent, shop steward, or other representative or employee of any labor organization subject to the order (other than a labor organization whose property and annual financial receipts do not exceed $5,000 in value), or of a trust in which a labor organization is interested, who handles funds or other property thereof shall be bonded in accordance with the principles of section 502(a) of the LMRDA. In enforcing this requirement the Assistant Secretary will be guided by the interpretations and policies followed by the Department of Labor in applying the provisions of section 502(a) of the LMRDA.

§ 204.36 Prohibitions against certain persons holding office or employment.

The prohibitions against holding office or employment in a labor organization contained in section 504(a) of the LMRDA are incorporated into this subpart by reference and made a part thereof. The prohibitions shall also be applicable to any person who has been convicted of, or who has served any part of a prison term resulting from his conviction of, violating 18 U.S.C. 1001 by making a false statement in any report required to be filed pursuant to this subpart, or who has been determined by the Assistant Secretary after an appropriate proceeding pursuant to §§ 204.66 through 204.92 to have willfully violated § 204.27: *Provided, however,* That the duties and responsibilities of the Board of Parole of the U.S. Department of Justice under section 504(a) of the LMRDA shall be assumed under this section by the Assistant Secretary or such other person as he may designate for the purpose of determining whether it would not be contrary to the order and this section to permit a person barred from holding office or employment to hold such office or employment.

§ 204.37 Prohibition of certain discipline.

No labor organization or any officer, agent, shop steward, or other representative or any employee thereof shall fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of the order or of this chapter.

§ 204.38 Deprivation of rights under the order by violence or threat of violence.

No labor organization or any officer, agent, shop steward, or other representative or any employee thereof shall use, conspire to use, or threaten to use force or violence to restrain, coerce, or intimidate, or attempt to restrain, coerce, or intimidate any member of a labor organization for the purpose of interfering with or preventing the exercise of any right to which he is entitled under the provisions of the order or this chapter.

Subpart B—Proceedings for Enforcing Standards of Conduct

§ 204.50 Investigations.

When he believes it necessary in order to determine whether any person has violated or is about to violate any provisions of this part (other than § 204.2, Bill of Rights of members of labor organizations) the Director shall cause an investigation to be conducted. The authority to investigate possible violations of this part (other than § 204.2) shall not be contingent upon receipt of a complaint.

§ 204.51 Inspection of records and questioning.

In connection with such investigation an Area Administrator or his representative may inspect such records and question such persons as he may deem necessary to enable him to determine the relevant facts. Every labor organization, its officers, employees, agents or representatives shall cooperate fully in any investigation and shall testify and produce the records or other documents requested in connection with the investigation. This section shall be enforced in accordance with the procedures in §§ 204.66 through 204.92.

§ 204.52 Report of investigation.

The Area Administrator's report of investigation (except those relating to complaints under § 204.2, Bill of Rights of members of labor organizations) shall be submitted through the Regional Administrator to the Director, who may report to interested persons concerning any matter which he deems to be appropriate as a result of such an investigation.

§ 204.53 Filing of complaints.

A complaint alleging violations of this part may be filed with any area office, or any other office of the Labor-Management Services Administration.

PROCEDURES UNDER BILL OF RIGHTS

§ 204.54 Complaints alleging violations of § 204.2, Bill of Rights of members of labor organizations.

Any member of a labor organization whose rights under the provisions of § 204.2 are alleged to have been infringed or violated, may file a complaint in accordance with § 204.53: *Provided, however,* That such member may be required to exhaust reasonable hearing procedure (but not to exceed a 4-month lapse of time) within such organization.

§ 204.55 Content of complaint.

(a) The complaint shall contain appropriate identifying information and a clear and concise statement of the facts constituting the alleged violation.

(b) The complainant shall submit with his complaint a statement setting forth the procedures, if any, invoked to remedy the alleged violation including the dates when such procedures were invoked and copies of any written ruling or decision which he has received.

§ 204.56 Service on respondent.

Simultaneously with the filing of a complaint, a copy of the complaint shall be served upon the respondent, and a written statement of such service shall be furnished to the Area Administrator.

§ 204.57 Investigation.

(a) Upon the filing of a complaint to §§ 204.54–204.56, the Area Administrator shall make such investigation as he deems necessary and shall report the essential facts, the positions of the parties, and any offers of settlement to the Regional Administrator.

(b) An investigation to determine whether any person has violated § 204.2 shall be conducted only after receipt of a complaint filed pursuant to §§ 204.54–204.56 and shall be limited to the allegations of such complaint.

§ 204.58 Dismissal of complaint.

If the Regional Administrator, after receipt of a report of the Area Administrator purusant to § 204.57, determines that a reasonable basis for the complaint has not been established, or that an offer of settlement satisfactory to the complainant has been made, he may dismiss the complaint. If he dismisses the complaint, he shall furnish the complainant with a written statement of the grounds for dismissal, sending a copy of the statement to the respondent.

§ 204.59 Review of dismissal.

The complainant may obtain a review of such action by filing a request for review with the Assistant Secretary within ten (10) days of service of the notice of

dismissal and simultaneously serving a copy of such request on the Regional Administrator and the respondent. A statement of service shall be filed with the Assistant Secretary. The request for review shall contain a complete statement of the facts and reasons upon which a request is based.

§ 204.60 Actionable complaint.

If it appears to the Regional Administrator that there is a reasonable basis for the complaint, and that no satisfactory offer of settlement has been made, he shall cause a notice of hearing to be issued and served on both the complainant and the labor organization.

§ 204.61 Notice of hearing.

The notice of hearing shall include:

(a) A copy of the complaint;

(b) A statement of the time and place of the hearing which shall be not less then 10 days after service of notice of the hearing, except in extraordinary circumstances;

(c) A statement of the nature of the hearing; and

(d) A statement of the authority and jurisdiction under which the hearing is to be held.

§ 204.62 Hearing procedures.

The proceedings following issuance of the notice of hearing shall be as provided in §§ 203.10 through 203.26 of this chapter.

ELECTION OF OFFICERS

§ 204.63 Complaints alleging violations of § 204.29, election of officers.

(a) A member of a labor organization may file a complaint alleging violations of § 204.29 within 1 calendar month after he has (1) exhausted the remedies available under the constitution and bylaws of the labor organization and of any parent body, or (2) invoked such available remedies without obtaining a final decision within 3 calendar months of such invocation.

(b) The complaint shall contain a clear and concise statement of the facts constituting the alleged violation(s) and a statement of what remedies have been invoked under the constitution and bylaws of the labor organization and when such remedies were invoked.

(c) The complainant shall submit with his complaint a copy of any ruling or decision he has received in connection with the subject matter of his complaint.

§ 204.64 Investigations; dismissal of complaint.

(a) If it is determined after preliminary inquiry that a complaint is deficient in any of the following respects, the Area Administrator shall conduct no investigation: (1) The complainant is not a member of the labor organization which conducted the election being challenged; (2) the labor organization is not subject to Executive Order 11491; (3) the election was not a regular periodic election of officers; (4) the allegations, if true, do not constitute a violation or violations of § 204.29; (5) the complainant has not complied with the requirements of § 204.63(a) of this part.

(b) If investigation discloses (1) that there has been no violation or (2) that a violation has occurred but was not of the kind that may have affected the outcome or (3) that a violation has occurred but has been remedied, the Director shall issue a determination dismissing the complaint and stating the reasons for his action.

§ 204.65 Procedures following actionable complaint.

(a) If the Director concludes that there is probable cause to believe that a violation has occurred and has not been remedied and may have affected the outcome of the election, he shall proceed in accordance with §§ 204.66 through 204.92.

(b) The challenged election shall be presumed valid pending a final decision thereon by the Assistant Secretary, and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

OTHER ENFORCEMENT PROCEEDINGS

§ 204.66 Procedures for institution of enforcement proceedings.

Whenever it appears to the Director that a violation of this Part (other than § 204.2, Bill of Rights of members of labor organizations) has occurred and has not been remedied, he shall immediately notify any appropriate person and labor organization. Within ten (10) days following receipt of such notification, any such person or labor organization may request a conference with the Director or his representatives concerning such alleged violation. At any such conference, the Director may enter into an agreement providing for appropriate remedial action. If no person or labor organization requests such a conference, or upon failure to reach agreement following any such conference, the Director shall institute enforcement proceedings by filing a complaint with the Chief Hearing Examiner, U.S. Department of Labor, and shall cause a copy of the complaint to be served on each respondent named therein.

§ 204.67 Standards complaint; initiation of proceedings.

A complaint filed under § 204.66 of this part shall constitute the institution of a formal enforcement proceeding in the name of the Director, who shall be the only complaining party in the proceeding and shall, where he believes it appropriate, refrain from disclosing the identity of any person who called the violation to his attention (except in proceedings involving violations of § 204.29, Election of Officers). The complaint shall include the following:

(a) The name and identity of each respondent.

(b) A clear and concise statement of the facts alleged to constitute violations of the order or of this part.

(c) A statement of the relief requested.

(d) In any complaint filed by the Director on the basis of a complaint received from a member of a labor organization pursuant to § 204.63, a statement setting forth the procedures, if any, followed to invoke available remedies, including the dates when such procedures were invoked, and the substance of any ruling or decision by the complaining member from the labor organization or any parent body.

§ 204.68 Hearing Examiner.

Each enforcement proceeding instituted pursuant to this part shall be conducted before a Hearing Examiner designated by the Chief Hearing Examiner.

§ 204.69 Answer.

(a) Within twenty (20) days from the service of the complaint the respondent shall file an answer thereto with the Chief Hearing Examiner and shall serve a copy on all parties. The answer shall be signed by the respondent or his attorney.

(b) The answer (1) shall contain a statement of the facts which constitute the grounds of defense, and shall specifically admit, explain, or deny each of the allegations of the complaint unless the respondent is without knowledge, in which case the answer shall so state; or (2) shall state that the respondent admits all of the allegations in the complaint. Failure to file an answer to or plead specifically to any allegation in the complaint shall constitute an admission of such allegation.

§ 204.70 Procedure upon admission of facts.

The admission, of all the material allegations of fact in the complaint shall constitute a waiver of hearing. Upon such admission, the Hearing Examiner without further hearing shall prepare his report and recommendation in which he shall adopt as his proposed findings of fact the material facts alleged in the complaint.

§ 204.71 Motions and requests.

(a) Motions and requests made prior to the hearing shall be filed with the Chief Hearing Examiner. An original and two copies of such motions and requests shall be filed and the moving party shall serve simultaneously a copy on all other parties. Motions during the course of the hearing may be stated orally or filed in writing and shall be made part of the record. Each motion shall state the particular order, ruling, or action desired, and the grounds therefor. The Hearing Examiner is authorized to rule upon all motions made prior to the filing of his report.

(b) A party may request the attendance of witnesses and/or the production of documents at a hearing held pursuant to this part, by written application before the hearing or orally during the hearing. Copies of an application filed before the opening of the hearing shall be served simultaneously on the other parties, who may file written objections to the request within five (5) days after such service. The Hearing Examiner, after consideration of any objections,

shall grant the request provided the specified testimony and/or documents appear to be necessary to the matters under investigation. If the Hearing Examiner denies the request he shall set forth the basis for his ruling. Upon the failure of any party or officer or employee of any party to comply with such a request which has been granted by the Hearing Examiner, the Hearing Examiner and the Assistant Secretary may disregard all related evidence offered by the party failing to comply with the request or take such other action as may be appropriate.

§ 204.72 Notice of hearing.

The Chief Hearing Examiner shall issue and cause to be served upon each of the parties a notice of hearing. The notice of hearing shall include the following:

(a) The name and identity of each party and the case number.

(b) A statement of the authority and jurisdiction under which the hearing is to be held.

(c) A statement of the time and place of the hearing which shall be not less than ten (10) days after service of the notice of hearing.

§ 204.73 Prehearing conferences.

(a) Upon his own motion or the motion of the parties, the Hearing Examiner may direct the parties or their counsel to meet with him for a conference to consider:

(1) Simplification of the issues;

(2) Necessity or desirability of amendments to pleadings for purposes of clarification, simplification, or limitations;

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

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

(5) Such other matters as may tend to expedite the disposition of the proceeding.

(b) The record shall show the matters disposed of by order and by agreement in such prehearing conferences. The subsequent course of the proceeding shall be controlled by such action.

HEARING AND RELATED MATTERS

§ 204.74 Conduct of hearing.

Hearings shall be conducted by a Hearing Examiner and shall be open to the public unless otherwise ordered by the Hearing Examiner.

§ 204.75 Intervention.

Any person desiring to intervene in any appropriate proceeding as a party respondent shall file a motion in writing or, if made at the hearing, may move orally on the record, stating the grounds upon which such person claims an interest. Such a motion shall be filed with the Hearing Examiner who shall rule upon such motion.

§ 204.76 Duties and powers of the Hearing Examiner.

It shall be the duty of the Hearing Examiner to inquire fully into the facts as they relate to the matter before him. Upon assignment to him and before transfer of the case to the Assistant Secretary, the Hearing Examiner shall have the authority to:

(a) Grant requests for appearance of witnesses or production of documents;

(b) Rule upon offers of proof and receive relevant evidence;

(c) Take or cause depositions to be taken whenever the ends of justice would be served thereby;

(d) Limit lines of questioning or testimony which are immaterial, irrelevant, or unduly repetitious;

(e) Regulate the course of the hearing, and if appropriate, exclude from the hearing persons who engage in misconduct and strike all related testimony of witnesses refusing to answer any questions ruled to be proper;

(f) Hold conferences for the settlement or simplification of the issues by consent of the parties or upon his own motion;

(g) Dispose of procedural requests, motions, or similar matters which shall be made part of the record of the proceeding, and motions to amend pleadings, also to recommend dismissal of cases or portions thereof, and to order hearings reopened prior to issuance of the Hearing Examiner's report and recommendations;

(h) Examine and cross-examine witnesses and to introduce into the record documentary or other evidence;

(i) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(j) Continue, at his discretion, the hearing from day to day, or adjourn it to a later date or to a different place, by announcement thereof at the hearing or by other appropriate notice;

(k) Prepare, serve, and submit his report and recommendations pursuant to § 204.88.

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

(m) Correct or approve proposed corrections of the official transcript when deemed necessary.

(n) Take any other action necessary under the foregoing and not prohibited by these regulations.

§ 204.77 Rights of parties; representation.

(a) Any party shall have the right to appear at such hearing in person, by counsel, or by other representative, to examine and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence, except that the participation of any party shall be limited to the extent prescribed by the Hearing Examiner. Two (2) copies of documentary evidence shall be submitted and a copy furnished to each of the other parties. Stipulation of fact may be introduced in evidence with respect to any issue.

(b) The parties may appear in person, by counsel, or other representation.

§ 204.78 Rules of evidence.

The technical rules of evidence do not apply. Any evidence may be received, except that a Hearing Examiner may exclude any evidence or offer of proof which is immaterial, irrelevant, unduly repetitious, or customarily privileged. Every party shall have a right to present his case by oral and documentary evidence and to submit rebuttal evidence.

§ 204.79 Burden of proof.

A complainant in asserting a violation of the order shall have the burden of proving the allegations of the complaint by a preponderance of the evidence.

§ 204.80 Unavailability of Hearing Examiners.

In the event the Hearing Examiner designated to conduct the hearing becomes unavailable, the Chief Hearing Examiner shall designate another Hearing Examiner for the purpose of further hearing or issuance of a report and recommendations on the record as made, or both.

§ 204.81 Objection to conduct of hearing.

(a) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing accompanied by a short statement of the grounds for such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing. Such objection shall not stay the conduct of the hearing.

(b) Automatic exceptions will be allowed to all adverse rulings. Rulings by the Hearing Examiner shall not be appealed prior to the transfer of the case to the Assistant Secretary, but shall be considered by the Assistant Secretary only upon the filing of exceptions to the Hearing Examiner's report and recommendations in accordance with § 204.88.

§ 204.82 Motions after a hearing.

All motions made after the transfer of the case to the Assistant Secretary, except motions to correct the record, under § 204.76(m), shall be made in writing to the Assistant Secretary. The moving party shall serve simultaneously a copy of all motion papers on all other parties. A statement of service shall accompany the motion. Answers, if any, must be served on all parties and the original thereof, together with two (2) copies and statement of service, shall be filed with the Assistant Secretary after the hearing, within five (5) days after service of the moving papers unless it is otherwise directed.

§ 204.83 Waiver of objections.

Any objection not duly urged before a Hearing Examiner shall be deemed waived.

§ 204.84 Oral argument at the hearing.

Any party shall be entitled, upon request, to a reasonable period prior to the close of the hearing for oral argument, which shall be included in the official transcript of the hearing.

§ 204.85 Transcript.

An official reporter shall make the only official transcript of such proceedings. Copies of the official transcript will not be provided to the parties but may be purchased by arrangement with the official reporter or may be examined in the Area Office in whose geographic jurisdiction the hearing has been held.

§ 204.86 Filing of brief.

Any party desiring to submit a brief to the Hearing Examiner shall file the original and two (2) copies within seven (7) days after the close of the hearing: *Provided, however,* That prior to the close of the hearing and for good cause, the Hearing Examiner may grant a reasonable extension of time. Copies of such brief shall be served simultaneously on all of the parties to the proceeding. Requests for additional time in which to file a brief under authority of this section made after the hearing shall be made in writing to the Hearing Examiner and copies thereof served simultaneously on the other parties. A statement of such service shall be furnished. A request for extension of time shall be received not later than three (3) days before the date such briefs are due. In the absence of the Hearing Examiner such requests shall be ruled upon by the Chief Hearing Examiner. No reply brief may be filed except by permission of the Hearing Examiner.

§ 204.87 Proposed findings and conclusion.

Within ten (10) days following the close of the hearing, the parties may submit proposed findings and conclusions to the Hearing Examiner, together with supporting reasons therefor, which shall become part of the record.

§ 204.88 Submission of the Hearing Examiner's report and recommendations to the Assistant Secretary; exceptions.

(a) After the close of the hearing, and the receipt of briefs, or findings and conclusions, if any, the Hearing Examiner shall prepare his report and recommendations expeditiously. The report and recommendations shall contain findings of fact, conclusions, and the reasons or basis therefor including credibility determinations, and recommendations as to the disposition of the case including the remedial action to be taken.

(b) The Hearing Examiner shall cause his report and recommendations to be served promptly on all parties to the proceeding. Thereafter, the Hearing Examiner shall transfer the case to the Assistant Secretary including his report and recommendations and the record. The record shall include the members complaint, the standards complaint, notice of hearing, motions, rulings, orders, official transcript of the hearing, stipulations, objections, depositions, exhibits, documentary evidence and any briefs or other documents submitted by the parties.

(c) An original and two (2) copies of any exceptions to the Hearing Examiner's report and recommendations may be filed by any party with the Assistant Secretary within ten (10) days after service of the report and recommendations: *Provided, however,* That the Assistant Secretary may for good cause shown extend the time for filing such exceptions. Requests for additional time in which to file exceptions shall be in writing, and copies thereof shall be served simultaneously on the other parties. Requests for extension of time must be received no later than three (3) days before the date the exceptions are due. Copies of such exceptions and any supporting briefs shall be served simultaneously on all other parties, and a statement of such service shall be furnished to the Assistant Secretary.

§ 204.89 Contents of exceptions to Hearing Examiner's report and recommendations.

(a) Exceptions to a Hearing Examiner's report and recommendations shall:

(1) Set forth specifically the questions upon which exceptions are taken;

(2) Identify that part of the Hearing Examiner's report and recommendations to which objection is made;

(3) Designate by precise citation of page the portions of the record relied on, state the grounds for the exceptions, and include the citation of authorities unless set forth in a supporting brief.

(b) Any exception to a ruling, finding, conclusion, or recommendation which is not specifically urged shall be deemed to have been waived. Any exception which fails to comply with the foregoing requirements may be disregarded.

§ 204.90 Briefs in support of exceptions.

(a) Any brief in support of exceptions shall contain only matters included within the scope of the exceptions and shall contain, in the order indicated, the following:

(1) A concise statement of the case containing all that is material to the consideration of the questions presented;

(2) A specification of the questions involved and to be argued;

(3) The argument, presenting clearly the points of fact and law relied on in support of the position taken on each question, with specific page reference to the transcript and the legal or other material relied on.

(b) Answering briefs to the exceptions and cross-exceptions and supporting briefs may be filed at the discretion of the Assistant Secretary.

§ 204.91 Action by the Assistant Secretary.

After considering the Hearing Examiner's report and recommendations, the record, and any exceptions filed, the Assistant Secretary shall issue his decision affirming or reversing the Hearing Examiner, in whole or in part, or making such other disposition of the matter as he deems appropriate.

(a) Upon finding a violation of the order the Assistant Secretary may order the respondent to cease and desist from conduct violative of the order and may require the respondent to take such affirmative corrective action as he deems appropriate to effectuate the policies of the order.

(b) Upon finding no violation of the order, the Assistant Secretary shall dismiss the complaint.

(c) The Assistant Secretary may refer cases or any issue(s) therein involving major policy questions to the Council for decision or general ruling in accordance with its regulations.

§ 204.92 Compliance with decisions and orders of the Assistant Secretary.

When remedial action is ordered, the respondent shall report to the Assistant Secretary, within a specified period that the required remedial action has been effected. When the Assistant Secretary finds that the required remedial action has not been effected, he may order cancellation of dues deduction, withdrawal of recognition, or referral to the Council as appropriate.

§ 204.93 Stay of remedial action.

In cases involving violations of this part, the Assistant Secretary may direct, subject to such conditions as he deems appropriate, that the remedial action ordered be stayed pending any further appeal that may be available under § 204.91(c) or the regulations of the Council, except that an order directing an election of officers shall not be stayed pending appeal.

6. Part 205 would be revised to read as follows:

PART 205—GRIEVABILITY AND ARBITRABILITY PROCEEDINGS

Sec.
205.1 Who may file an application.
205.2 Action to be taken before filing an application.
205.3 Contents of application and attachments.
205.4 Filing and service of copies.
205.5 Investigation of the application.
205.6 Action by Regional Administrator.
205.7 Notice of hearing.
205.8 Contents of notice of hearing; attachments.
205.9 Hearing procedures under this part.
205.10 Posthearing procedures.
205.11 Action by the Assistant Secretary.
205.12 Compliance with a finding of a Regional Administrator or with a decision of the Assistant Secretary.
205.13 Subsequent unfair labor practice charges.

AUTHORITY: The provisions of this Part 205 issued under sections 6, 18, E.O. 11491, 34 F.R. 17605, as amended by E.O. 11616, 36 F.R. 17319.

§ 205.1 Who may file an application.

An application for a decision by the Assistant Secretary concerning a question as to whether or not a grievance is on a matter subject to the grievance procedure in an existing agreement, or is

subject to arbitration under that agreement, may be filed by any party to that agreement or any employee or group of employees within the unit covered by that agreement: *Provided, however,* That an application for a decision as to whether a matter is subject to arbitration may be filed only by the activity or agency or the exclusive representative which is party to an existing agreement.

§ 205.2 Action to be taken before filing an application with the Assistant Secretary.

Any application for a decision by the Assistant Secretary as to whether or not a grievance is on a matter subject to the grievance procedure in an existing agreement, or is subject to arbitration under that agreement, must be filed within thirty (30) days after service on the applicant of a final rejection, in writing, of the grievance on the grounds that the matter is not subject to the grievance procedure in the existing agreement, or is not subject to arbitration under that agreement: *Provided, however,* That applications under this section may not be filed with respect to any agreement entered into before November 24, 1971.
1971.

§ 205.3 Contents of the application and attachments.

(a) An application filed under this section shall be submitted on a form prescribed by the Assistant Secretary and shall contain the following:

(1) The names of the agency and the activity involved, their addresses, telephone numbers, and the persons to contact and their titles, if known;

(2) The name, address, and telephone number of the labor organization which is a party to the agreement;

(3) The effective date and the terminal date of the existing agreement;

(4) A clear and concise statement of the unresolved question(s) as to whether or not a matter is subject to the grievance procedure in an existing agreement, or is subject to arbitration under that agreement, including the applicable section(s) of the agreement and the date of the final written rejection of the grievance;

(5) A statement of any other procedures invoked involving the subject matter of the grievance and the results, if any, including whether the subject matter raised in the grievance has been referred to the Council, Panel, or Federal Mediation and Conciliation Service for consideration or action;

(6) A declaration by the person signing the application, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of his knowledge and belief, and the signature of the applicant or the applicant's representative, including his title, address, and the telephone number.

(b) The applicant shall furnish with the application, two (2) copies of the following: A statement of any other relevant facts, the written grievance, the agreement, all correspondence relating to the unresolved question(s), and the final rejection.

§ 205.4 Filing and service of copies.

(a) An original and four (4) copies of an application, including two (2) copies of all attachments, shall be filed with the Area Administrator for the area in which the activity is located.

(b) Simultaneously with the filing of an application, a copy of the application and all statements shall be served on the other party or parties to the agreement, and a written statement of such service shall be filed with the Area Administrator.

§ 205.5 Investigation of the application.

(a) If the application has been filed by a party to the agreement, the other party or parties thereto shall file two (2) copies of a response with the Area Administrator within fifteen (15) days following the service of a copy of the application, unless an extension of time has been granted by the Area Administrator.

(b) If the application is filed by an employee or a group of employees in the exclusive unit, each of the parties to the agreement shall file two (2) copies of a response with the Area Administrator within fifteen (15) days following the service of a copy of the application, unless an extension of time has been granted by the Area Administrator.

(c) The response shall cover any matter which is relevant to the application and shall include a statement of position and any supporting evidence on the issue(s) raised by the application and the attachments thereto. A copy of such response shall be served simultaneously on all other parties, and a written statement of such service shall be filed with the Area Administrator.

(d) Upon the filing of an application, the Area Administrator shall cause such additional investigation to be made as he deems necessary, and report the essential facts and positions of the parties to the Regional Administrator.

(e) The parties may submit to the Area Administrator a stipulation of facts together with their request for a decision by the Assistant Secretary without a hearing. Such stipulation and request shall be transmitted to the Regional Administrator by the Area Administrator.

§ 205.6 Action by Regional Administrator.

(a) The Regional Administrator shall take appropriate measures which may consist of one of the following:

(1) Approval of a request for withdrawal of the application; or

(2) Dismissal of the application if he determines that the application has not been timely filed or otherwise is not actionable; or

(3) Approval of a satisfactory stipulation of facts for submission to the Assistant Secretary for decision without a hearing; or

(4) Issuance of a report and findings on the questions involved, provided no relevant question of fact exists; or

(5) Issuance of a notice of hearing.

(b) Any party aggrieved by the action of the Regional Administrator under § 205.6(a) (2) or (4) may obtain a review of such action by the Assistant Secretary pursuant to the procedures set forth in § 202.6(d).

§ 205.7 Notice of hearing.

The Regional Administrator may cause a notice of hearing to be issued providing for a hearing before a Hearing Examiner if, after the filing of an application, he finds that relevant questions of fact exist concerning whether or not the grievance is on a matter subject to the grievance procedure in an existing agreement, or is subject to arbitration under that agreement.

§ 205.8 Contents of notice of hearing; attachments.

(a) The notice of hearing shall include:

(1) A statement of the time and place of the hearing, which shall be not less than ten (10) days after service of the notice of hearing, except in extraordinary circumstances;

(2) A statement of the nature of the hearing;

(3) A statement of the authority and jurisdiction under which the hearing is to be held;

(4) A reference to the particular sections of the Order and regulations involved.

(b) Attached to the notice of hearing shall be a copy of the application and attachments and the response(s) thereto.

(c) The attachments to the application referred to in § 205.3(b) and the responses thereto shall be furnished to the Hearing Examiner, but will not be deemed as evidence, and any party wishing to rely upon anything contained therein must make an appropriate submission at the hearing.

§ 205.9 Hearing procedures under this part.

Hearing procedures shall be in accordance with §§ 203.10 through 203.20 with the exception of § 203.14 of this chapter. There shall be no burden of proof in hearings conducted under this part.

§ 205.10 Posthearing procedures.

The procedures after the close of the hearing shall be in accordance with §§ 203.18 through 203.24 with the exception of §§ 203.19 and 203.20 of this chapter.

§ 205.11 Action by the Assistant Secretary.

(a) After considering the Hearing Examiner's report and recommendations and the record and any exceptions filed thereto, the Assistant Secretary shall issue his decision affirming or reversing the Hearing Examiner, in whole or in part, or make any other disposition of the matter he deems appropriate.

(b) The Assistant Secretary may refer cases or issues therein, involving major policy questions to the Council for decision or general ruling in accordance with its regulations.

§ 205.12 Compliance with a finding of a Regional Administrator or with a decision of the Assistant Secretary.

(a) When a finding is made that a grievance is on a matter subject to the grievance procedure in an existing agreement, or is subject to arbitration under that agreement, by a Regional Administration on which review by the Assistant Secretary has not been requested, or a decision to that effect is made by the Assistant Secretary, the parties shall report to the Regional Administrator, or the Assistant Secretary as appropriate, within a specified period, that the grievance is being processed.

(b) When the Assistant Secretary finds that the processing required pursuant to a finding of a Regional Administrator, or to a decision of the Assistant Secretary has not been effected, the Assistant Secretary may order cancellation of dues deduction, withdrawal of recognition, referral to the Council, or such other action as appropriate.

§ 205.13 Subsequent unfair labor practice charges.

(a) Notwithstanding the time limitation provisions of § 203.2 of this chapter, an applicant who has received a final decision on his application in the form of either of the following: (1) A Regional Administrator's report and finding that the matter covered by the application is not subject to the grievance procedure in an existing agreement, and no request for review has been filed; or (2) a decision by the Assistant Secretary that the matter covered by the application is not subject to the grievance procedure in an existing agreement, may file a charge of an alleged unfair labor practice under section 19 of the order which is based on the same factual situation which gave rise to the grievance covered by the application. Any such charge must be filed within thirty (30) days of the issuance of the final decision referred to above.

(b) The procedures of Part 203 of this chapter shall apply to a charge filed following the issuance of either of the final decisions referred to in paragraph (a) of this section, except that the charging party must file any complaint within thirty (30) days after receipt of a written final decision on the charge by the party against whom the charge is filed, or within sixty (60) days of the date the charge was filed, whichever is the shorter period of time.

7. A new Part 206 would read as follows:

PART 206—MISCELLANEOUS

Sec.
206.1 Computation of time for filing papers.
206.2 Additional time after service by mail.
206.3 Documents in a proceeding.
206.4 Service of pleading and other papers under this chapter.
206.5 Transfer of case to Assistant Secretary.
206.6 Transfer and consolidation of cases.
206.7 Request for appearance of witnesses and production of documents at hearing.
206.8 Rules to be liberally construed.
206.9 Petitions for amendment of regulations.

AUTHORITY: The provisions of this Part 206 issued under secs. 6, 18, E.O. 11491, 34 F.R. 17605, as amended by E.O. 11616, 36 F.R. 17319.

§ 206.1 Computation of time for filing papers.

In computing any period of time prescribed by or allowed by these regulations, other than in agreement bar situations described in § 202.3(c), the day of the act, event, or default after which the designated period of time begins to run, shall not be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or Federal legal holiday in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or a Federal legal holiday. When the period of time prescribed, or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computations. When these regulations require the filing of any paper, such document must be received by the Assistant Secretary or the officer or agent designated to receive such matter before the close of business of the last day of the time limit, if any, for such filing or extension of time that may have been granted. In agreement bar situations, if the sixtieth (60) day prior to the terminal date of an agreement falls on a Saturday, Sunday, or Federal legal holiday, a petition, to be timely, must be received by the close of business of the last official workday preceding the sixtieth (60) day.

§ 206.2 Additional time after service by mail.

Whenever a party has the right or is required to do some act pursuant to these regulations within a prescribed period after service of a notice or other paper upon him and the notice or paper is served on him by mail, three (3) days shall be added to the prescribed period: *Provided, however,* that three (3) days shall not be added if any extension of time may have been granted.

§ 206.3 Documents in a proceeding.

(a) *Title.* Documents in any proceeding under these regulations including correspondence shall show the title of the proceeding and the case number, if any.

(b) *Number of copies; form.* Except as provided in these regulations any documents or papers shall be filed with four (4) copies in addition to the original. All matters filed shall be printed, typed, or otherwise legibly duplicated; carbon copies of typewritten matter will be accepted if they are clearly legible.

(c) *Signature.* The original of each document required to be filed under these regulations shall be signed by the party or by an attorney or representative of record for the party, or by an officer of the party, and shall contain the address and telephone number of the person signing it.

§ 206.4 Service of pleading and other papers under this chapter.

(a) *Method of service.* Notices of hearing, decisions, orders and other papers may be served personally or by registered or certified mail or by telegraph.

(b) *Upon whom served.* All papers, except as herein otherwise provided, shall be served upon all counsel of record and upon parties not represented by counsel or by their agents designated by them or by law and upon the Assistant Secretary, or his designated officer, or agent or examiner, where appropriate. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party.

(c) *Statement of service.* The party or person serving the papers or process shall submit simultaneously to the Assistant Secretary or other designated representative, or to the individual conducting the proceeding, a written statement of such service; failure to file a statement of service shall not affect the validity of the service. Proof of service shall be required only if subsequent to the receipt of a statement of service a question is raised with respect to proper service.

§ 206.5 Transfer of case to Assistant Secretary.

(a) In any case under Parts 202, 203, and 205 in which the Regional Administrator determines that no material issue of fact exists, he may transfer the case to the Assistant Secretary. The Assistant Secretary shall decide the case on the basis of the papers alone after having allowed ten (10) days for the filing of briefs and/or requests for review of the Regional Administrator's action. The Assistant Secretary may remand the case to the Regional Administrator if he determines that material fact questions exist. Orders of transfer and remand shall be served on all parties.

(b) In any case under Parts 202, 203, and 205 in which it appears to the Regional Administrator that the proceedings raise questions which should be decided by the Assistant Secretary, he may, at any time, issue an order transferring the case to the Assistant Secretary for decision or other appropriate action. Such an order shall be served on the parties.

(c) In any case in which a request for review is permitted under this chapter of a Regional Administrator's action, the Assistant Secretary may issue a decision or ruling affirming or reversing the Regional Administrator in whole or in part or making any other disposition of the matter as he deems appropriate.

§ 206.6 Transfer and consolidation of cases.

In any matter arising pursuant to these regulations, whenever it appears necessary in order to effectuate the purposes of the order or to avoid unnecessary costs or delay, the Regional Administrator may consolidate cases within his own region or may transfer such case(s) to

any other region, for the purpose of investigation or consolidation with any proceedings which may have been instituted in, or transferred to, such region.

§ 206.7 Request for appearance of witnesses and production of documents at hearing.

(a) Regional Administrators, Hearing Officers or Hearing Examiners, as appropriate, upon their own motion, or upon motion of any parties to a proceeding, may issue a Request for Appearance of Witnesses or Request for Production of Documents at a hearing held pursuant to Parts 202, 203, and 205.

(b) A party's motion to a Regional Administrator shall be in writing and filed with the Regional Administrator not less than ten (10) days prior to the opening of a hearing or with a Hearing Officer or Hearing Examiner during the hearing, and shall name and identify the witness(es) or document(s) sought, or both, and state the reasons therefor. Simultaneously with the filing of a request with the Regional Administrator, copies shall be served on the other parties and a written statement of such service shall be filed with the Regional Administrator.

(c) Within five (5) days after service of the motion, a party may file its objection to the motion with the Regional Administrator and state its reasons therefor. Simultaneously with the filing of the objection with the Regional Administrator, copies shall be served on the other parties and a written statement of such service shall be filed with the Regional Administrator. The Regional Administrator may rule upon the motion or refer it to the Hearing Officer or Hearing Examiner for an appropriate ruling.

(d) Objections to a motion referred to or filed with a Hearing Officer or Hearing Examiner may be stated orally on the record.

(e) A motion shall be granted by the Regional Administrator, Hearing Officer or Hearing Examiner, after careful consideration of any objections and upon determination that the testimony or documents appear(s) to be necessary to the matters under investigation and describes with sufficient particularity the documents sought. Service of an approved Request for Appearance of Witnesses or Request for Production of Documents is the responsibility of the requesting party. Upon the failure of any party or officer of any party to comply with such Request(s), the Regional Administrator, Hearing Officer, Hearing Examiner, or the Assistant Secretary may disregard all related evidence offered by the party failing to comply or take such other action as may be appropriate.

(f) A denial of a motion shall be explained fully and it shall become a part of the hearing record.

§ 206.8 Rules to be construed liberally.

(a) The regulations in this chapter may be construed liberally to effectuate the purposes and provisions of the order.

(b) When an act is required or allowed to be done at or within a specified time, the Assistant Secretary may at any time order the period altered where it shall be manifest that strict adherence will work surprise or injustice or interfere with the proper effectuation of the order.

§ 206.9 Petitions for amendment of regulations.

Any interested person may petition the Assistant Secretary in writing for amendments to any portion of these regulations. Such petition shall identify the portion of the regulations involved and provide the specific language of the proposed amendment together with a statement of grounds in support of such petition.

Dated at Washington, D.C., this 9th day of November 1971.

W. J. USERY, Jr.,
Assistant Secretary of Labor for Labor-Management Relations.

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PART III

COST OF LIVING COUNCIL

PAY BOARD

PRICE COMMISSION

■

Economic Stabilization

Title 6—ECONOMIC STABILIZATION

Chapter I—Cost of Living Council

PART 101—COVERAGE, EXEMPTIONS AND CLASSIFICATION OF ECONOMIC UNITS

Miscellaneous Amendments

Part 101—Coverage, Exemptions and Classification of Economic Units was added to a new Title 6 and a new Chapter I of the Code of Federal Regulations on November 13, 1971 (36 F.R. 21788).

Part 101 in its published form contained certain provisions which must be changed to carry out the stated purpose of the regulations.

An addendum to Part 101, as set forth below, makes the changes in the provisions which appeared in 36 F.R. 21788 et seq. by amending the text of these regulations as appropriate.

Since the Council found that the publication of Part 101 in accordance with the usual notice and procedural requirements was impracticable because of the need to immediately impelment Executive Order No. 11627, the Council also finds good cause exists for the publication of the change contained in this addendum in less than 30 days. The amendments set forth in this addendum shall be effective as of 12:01 a.m. November 14, 1971.

DONALD RUMSFELD,
Director, Cost of Living Council.

Part 101 of Chapter I of Title 6 of the Code of Federal Regulations is amended as follows:

1. In the authority provision, line 4 is revised as follows: "84 Stat. 799; Public Law 91-558, 84 Stat. 1468;".

2. In § 101.15, paragraph (a) is revised to read as follows:

§ 101.15 Price Category III firms; monitoring and spot checks.

(a) A price category III firm is a firm with annual sales or revenues of less than $50 million.

* * * * *

3. In § 101.27, paragraph (b) is revised to read as follows:

§ 101.27 Reclassification.

* * * * *

(b) If a firm is a price category I firm, the Director of the Cost of Living Council has the authority to classify all pay adjustments of the firm as category I pay adjustments. If a firm is a price category II firm, the Director has the authority to classify all pay adjustments of the firm as category II pay adjustments, unless that firm's pay adjustments are already classified as category I pay adjustments.

4. In § 101.32(h)(2) the reference is changed to read "26 United States Code 163(d)(4)(A)".

5. In § 101.32(i), subparagraphs (1), (3), and (4) are revised to read as follows:

§ 101.32 Exemptions.

* * * * *

(i) *Miscellaneous.* (1) Royalties and other payments from the sale of copyrights, manuscripts, and like materials prepared for publication.

(3) Raw sugar price adjustments which are controlled under the Sugar Act of 1948.

(4) Insurance premiums charged for life insurance policies purchased or renewed after November 13, 1971, including ordinary, term, and group policies, and individual endowments or annuities (fixed or variable), but excluding credit life insurance.

* * * * *

6. In § 101.33, paragraph (b) is revised to read as follows:

§ 101.33 Items not included in coverage.

* * * * *

(b) *Minimum wages.* Wages below the minimum wage rate established by Federal law.

7. In § 101.101, the lead sentence of the section and paragraph (b) are revised to read as follows:

§ 101.101 Special provisions applicable from Nov. 14, 1971–Jan. 1, 1972.

Notwithstanding the provisions of §§ 101.11 and 101.21:

* * * * *

(b) After November 14 and until January 1, 1972, the provisions of § 300.051 (b) of this title establishing special procedures for the approval of proposed price adjustments apply to price category I firms.

[FR Doc.71-16864 Filed 11-15-71;5:20 p.m.]

Chapter II—Pay Board

PART 201—STABILIZATION OF WAGES AND SALARIES

Miscellaneous Amendments

The purpose of these amendments and appendices is to set forth for public information and guidance interpretive and definitional decisions adopted by the Pay Board. Appendix B—Interpretive Decisions Adopted by the Pay Board and Appendix C—Definitional Decisions Adopted by the Pay Board are added to Part 201—Stabilization of Wages and Salaries in order to set forth these daily decisions of the Pay Board until such decisions can be incorporated into the regulations under this part. When a decision is incorporated into the regulations under this part, it will be deleted from its proper appendix.

Pursuant to the authority vested in the Pay Board by the Economic Stabilization Act of 1970, as amended (Public Law 91-379, 84 Stat. 799; Public Law 91-558, 84 Stat. 1468; Public Law 92-8, 85 Stat. 13; Public Law 92-15, 85 Stat. 38), Executive Order No. 11627 (36 F.R. 20139, October 16, 1971), and Cost of Living Council Order No. 3 (36 F.R. 20202, October 16, 1971), the Pay Board hereby adopts the following amendments and appendices.

Because of the need for immediate guidance from the Pay Board with respect to the provisions contained in these amendments and appendices, it is hereby found impracticable to issue such amendments and appendices with notice and public procedure thereon under 5 U.S.C., sec. 553(b), or subject to the effective date limitation of 5 U.S.C., sec. 553(d).

Effective date. These amendments and appendices shall be effective on and after November 14, 1971.

GEORGE H. BOLDT,
Chairman of the Pay Board.

PARAGRAPH 1. Section 201.1 is amended by revising the third sentence and by adding a new sentence. The amended and added provisions read as follows:

§ 201. Purpose.

* * * The policies governing pay adjustments, adopted by the Pay Board on November 8, 1971, are attached as Appendix A to this part. Appendix B and Appendix C are attached to include Interpretive Decisions and Definitional Decisions, respectively, which have been adopted by the Pay Board.

PARA. 2. The center heading following § 201.15 is amended to read as follows:

APPENDIX A

POLICIES GOVERNING PAY ADJUSTMENTS ADOPTED BY THE PAY BOARD NOVEMBER 8, 1971

* * * * *

PARA. 3. Part 201—Stabilization of Wages and Salaries of Chapter II—Pay Board of Title 6—Economic Stabilization is amended by adding a new Appendix B—Interpretive Decisions Adopted by the Pay Board and a new Appendix C—Definitional Decisions Adopted by the Pay Board. These new provisions read as follows:

APPENDIX B

INTERPRETIVE DECISIONS ADOPTED BY THE PAY BOARD

(1) *Longevity and Related Wage Increases (Adopted November 12, 1971).* Allow without regard to the 5.5 percent standard the resumption of longevity increases and automatic progression within a rate range according to the terms of plans or established practices in existence prior to November 14, 1971.

(2) *Existing Contracts (Adopted November 12, 1971).*

Existing regulations of the Pay Board provide that:

"Existing contracts and pay practices previously set forth will be allowed to operate according to their terms except that specific contracts or pay practices are subject to review, when challenged by a party at interest or by five or more members of the Board, to determine whether any increase is unreasonably inconsistent with the criteria established by this Board."

This means that, effective November 14, 1971, all the terms of such contracts and pay practices are fully operative. In the event of a challenge, these terms shall remain in effect unless and until the Pay Board rules otherwise.

The prenotification reporting requirements with respect to such contracts or pay practices are waived for all pay increases thereunder prior to January 1, 1972. However, reports will have to be filed by January 1, 1972, on forms to be developed as to any pay increases in the above categories which are placed in effect prior to January 1, 1972. Such reports are required only in bargaining or pay practice situations involving 1,000 or more employees.

Wage increases under existing or future agreements in the construction industry, however, require prenotification and approval by the Construction Industry Stabilization Committee before they can be put into effect.

APPENDIX C

DEFINITIONAL DECISIONS ADOPTED BY THE PAY BOARD

(1) *Appropriate Employee Unit (Adopted November 12, 1971)*. An appropriate employee unit for the measurement of changes in wage and salary levels is a group composed of all employees in a bargaining unit, recognized employee categories, in a plant or other establishment, or in a department thereof, or in a company, or in an industry, as best adapted to preserve contractual or historical relationships.

(2) *Base Date (Adopted November 12, 1971)*. The base date from which general pay standard increases shall be measured is November 13, 1971.

[FR Doc.71-16913 Filed 11-16-71;12:37 pm]

Chapter III—Price Commission

PART 300—PRICE AND RENT STABILIZATION

Clarification of Regulations

The purpose of the amendment contained in item 1 is to change § 300.012 of Title 6, Chapter III, Code of Federal Regulations, hereinafter referred to as these regulations, to provide that a manufacturer may charge a price in excess of the base price only to reflect allowable costs in effect on November 14, 1971, and cost increases incurred after November 14, 1971, reduced to reflect productivity gains, and subject to the profit margin as a percentage of sales limitation. The purpose of the amendments contained in item 2 is to insert the word "markup" before "base period" in paragraph (a)(1) of § 300.013, to add the word "dollar" before "sales" in paragraph (b)(1)(ii) of § 300.013 and to provide that highest dollar sales volume and percentages of total dollar sales "in the course of a year" are to determine the items to be posted in accordance with § 300.013(b)(1)(ii) of these regulations. The purpose of the amendments contained in item 3 is to refer to "allowable costs" instead of "allowable cost", to refer to "cost increases" instead of "cost increase", and to add the words "over that" before the phrase "which prevailed during the base period."

The purpose of item 4 is to add "or other appropriate legal authority" after "regulatory agency" in paragraphs (a) and (b) of § 300.016 of these regulations and to provide for certain certifications and reports. The purpose of item 5 is to provide more complete guidance as to regulations for prenotification firms in paragraph (a) of § 300.051, and to amend paragraph (b) of § 300.051 to provide certain special provisions. The purpose of item 6 is to add certain reporting requirements to those set forth in § 300.052.

The purpose of item 7 is to amend § 300.203 to provide that, for prenotification firms, the operation of § 300.203 is subject to the requirements of § 300.051 of these regulations. The purpose of item 8 is to change reference to Part 10 to reference to Part 101 in § 300.401. The purpose of item 9 is to change § 301.501 to § 300.501 of these regulations. The purpose of item 10 is to provide that guidance contained in paragraph (b) of § 300.507 of these regulations does not apply to leases of real property exempted in accordance with § 300.401 and to substitute the word "in" for the word "is" and to insert the word "after" before the date "August 14, 1971" in the second sentence of paragraph (b)(1) of § 300.507. Item 10 also clarifies Price Commission regulations as to sales and leases of real property by placing provisions relating to the leasing of real property not previously leased in paragraph (b)(2) of § 300.507 and provisions as to substantial capital improvements in paragraph (b)(3) of § 300.507 instead of in paragraph (b) of § 300.509. Item 10 further provides that property which has undergone a substantial capital improvement shall be treated as property not previously leased for the purpose of computing a base price: *Provided, however,* That the base price may not be increased over the monthly rental charged before the substantial capital improvement was initiated by more than 1½ percent of the cost of such capital improvement. The purpose of item 11 is to delete the word "function" from the second sentence of paragraph (c) of § 300.509 and to renumber paragraphs (c), (d), (e), and (f) of § 300.509 to paragraphs (b), (c), (d), and (e) of § 300.509.

1. Section 300.012 of these regulations is hereby amended to read as follows:

§ 300.012 Manufacturers.

A manufacturer may charge a price in excess of the base price (as determined under Subpart F of this part), only to reflect allowable costs in effect on November 14, 1971, and cost increases incurred after November 14, 1971, reduced to reflect productivity gains: *Provided, however,* That the effect of all of a manufacturer's price changes is not to increase its profit margin as a percentage of sales, before income taxes, over that which prevailed during the base period (as defined in § 300.101).

2. Paragraphs (a)(1) and (2) and (b)(1)(ii) of § 300.013 are hereby amended to read as follows:

§ 300.013 Retailers and wholesalers.

(a) *In general.* * * *

(1) The customary initial percentage markup with respect to the property sold is equal to or less than such person's customary initial percentage markup which prevailed during the markup base period (as defined in § 300.101), provided

(2) The effect of all such person's price changes is not to increase its profit margin as a percentage of sales, before income taxes, over that which prevailed during the base period.

(b) *Posting requirement.* (1) A retailer is required to display prominently at the place of sale, base prices with respect to:

(i) All food products (except those which are exempt under the provisions of § 300.401); and

(ii) Those 40 items in each department which have the highest dollar sales volume in the course of a year, or those items which account for 50 percent of total dollar sales in each department in the course of a year, whichever is less. Such base prices must be posted on or before January 1, 1972. No increase in price is allowable under paragraph (a) of this section until such base prices have been posted.

* * * * *

3. Section 300.014 of these regulations is hereby amended to read as follows:

§ 300.014 Service organizations.

A person which is a service organization may charge a price in excess of the base price with respect to the furnishing of services or the leasing of personal property only to reflect allowable costs in effect on November 14, 1971, and cost increases incurred after November 14, 1971, reduced to reflect productivity gains: *Provided, however,* That such increased price shall not result in an increase in such person's profit margin as a percentage of sales, before income taxes, over that which prevailed during the base period.

4. Paragraphs (a) and (b) of § 300.016 of these regulations are hereby amended to read as follows:

§ 300.016 Regulated public utilities.

(a) *In general.* A person which is a regulated public utility as defined in section 7701(a)(33) of the Internal Revenue Code of 1954 (26 U.S.C. sec. 7701(a)(33)) may charge a price, rate, or tariff in excess of the base price if such increase has been approved by a regulatory agency or other appropriate legal authority. A regulated person who had gross receipts of $100 million or more during its most recent fiscal year shall inform the Price Commission in writing of any agency order or order of other appropriate legal authority granting an increase and of any other authorized increase. A regulated person who had gross receipts between $50 million and $100 million during its most recent fiscal year shall immediately notify the Commission in writing of any agency order or order of other appropriate legal authority granting an increase and of any other authorized increase.

(b) *Special rule.* In the case of rate increases which were approved by a regulatory agency or other appropriate legal authority before November 14, 1971, but which were not permitted to take effect due to Executive Order 11615, such rate increase may take effect with respect to transactions occurring after November 13, 1971. However, before such increases may take effect, such regulatory

agency or other appropriate legal authority shall review such increases with regard to their consistency with the purposes of the Economic Stabilization Act of 1970, as amended, and certify that any such increases or adjusted increases are consistent with such purposes. Such certification, together with a report of the increased rate schedule thus put into effect, showing the amount of such increased rates, shall immediately be supplied to the Commission by any regulated person which receives such certification and which had gross receipts of $50 million or more during its most recent fiscal year.

5. Paragraphs (a) and (b) of § 300.051 of these regulations are hereby amended to read as follows:

§ 300.051 Prenotification firms.

(a) *In general.* (1) A manufacturer or a person which is a service organization which is a prenotification firm (as defined in § 301.101) may not charge a price in excess of the base price or charge an increased price in accordance with price changes resulting from calculation of a base price under Subpart F of this part before the Price Commission has approved such increased price. In the event the Price Commission does not act upon a requested price increase within 30 days after receipt by the Price Commission of the request for such increase, such increase may go into effect.

(2) A retailer or wholesaler which is a prenotification firm may not charge a price in excess of the base price before filing with the Price Commission notification of his customary initial percentage markups in such form and containing such information as may be prescribed by the Price Commission. After such filing and after posting of base prices as required by § 300.013(b), retailers' and wholesalers' prices may be adjusted so long as such adjustments do not operate to increase the customary initial percentage markup above that authorized by § 300.013 and so long as the effect of all such person's price changes is not to increase its profit margin as a percentage of sales, before income taxes, over that which prevailed during the base period.

(b) *Special provisions.* If, after November 13, 1971, and through December 31, 1971, a person which is a prenotification firm submits a prenotification to the Price Commission and the Commission has not challenged the proposed price adjustments within 72 hours after receipt of such prenotification, such price adjustments with respect to the following may be placed in effect:

(1) Price adjustments resulting from calculation of a base price under Subpart F of this part.

(2) Price adjustments resulting from the operation of § 300.203.

(3) Price adjustments which reflect increases in costs of labor pursuant to contracts or pay practices in effect before November 14, 1971, which become effective during the period after November 13, 1971 through December 31, 1971.

(4) Price adjustments which were announced or posted prior to August 15, 1971.

These special prenotification provisions do not authorize price increases not otherwise allowable under the regulations in this part.

* * * * *

6. Paragraph (a) of § 300.052 of these regulations is hereby amended to read as follows:

§ 300.052 Reporting firms.

(a) *In general.* A person which is a reporting firm shall file a quarterly report with the Price Commission in the form provided in paragraph (b) of this section within 15 days after the end of each fiscal quarter commencing with its first fiscal quarter ending after November 13, 1971. In addition, such person shall report to the Commission with respect to price changes resulting from calculation of a base price under Subpart F of this part or from the operation of § 300.203, relating to contracts entered into prior to August 15, 1971.

* * * * *

7. Section 300.203 of these regulations is hereby amended to read as follows:

§ 300.203 Contracts entered into prior to August 15, 1971.

The price specified in any binding contract for the sale of property or services entered into prior to August 15, 1971, with respect to any delivery or performance occurring after November 13, 1971, shall be allowable: *Provided,* That the contract price shall not exceed that amount which would result in an increase in the person's profit margin as a percentage of sales, before income taxes, over that prevailing during the base period: *Provided, however,* That a person which is a prenotification firm must comply with the requirements of § 300.051.

8. Section 300.401 of these regulations is hereby amended to read as follows:

§ 300.401 Exemptions.

The provisions of this Part 300 shall apply to all transactions involving the sale or lease of property and services except those enumerated in Subpart D of Part 101 of this title.

9. Section 301.501 of these regulations is hereby amended to read as follows:

§ 300.501 In general.

* * * * *

10. Section 300.507 of these regulations is hereby amended to read as follows:

§ 300.507 Sales and leases of real property.

(a) *Sales of real property.* This section applies to sales of real property not exempted under § 300.401. The base price with respect to the sale of any interest in real property which is held by the person for sale in the ordinary course of trade or business is the highest price received with respect to the same type of interest in similar real property during the freeze base period. In the case of a sale of an interest in real property which is not held for sale in the ordinary course of a trade or business, such interest shall be deemed to be a new property for purposes of paragraph (c) of § 300.509.

(b) *Leases of real property*—(1) *In general.* This section applies to leases of real property not exempted under § 300.401. The base price for a lease of an interest in real property is the highest price charged by the person with respect to the same or substantially identical rental units in a substantial number of transactions during the freeze base period. A provision in a lease of an interest in real property executed prior to August 15, 1971, which provides for an increased rental to take effect after August 14, 1971, may take effect after November 13, 1971, to the extent such increased rental does not exceed the base price for the rental of such real property.

(2) *Property not previously leased.* In the case of a person offering real property for lease which was never previously leased, the base price shall be determined by a computation based on the average arms-length price received by persons leasing comparable property in the same marketing area. For purposes of determining the average price referred to in the preceding sentence, only a quantity of transactions which is not insubstantial in relation to the total number of such transactions need be taken into consideration.

(3) *Capital improvements.* A property, or part thereof, which undergoes a substantial capital improvement, which property, after completion of the improvement, does not qualify as a rehabilitated dwelling under the standards contained in § 101.32(g)(2)(i)(b) of this title, shall be treated as a property not previously leased under subparagraph (2) of this paragraph: *Provided, however,* That the base price for such improved property, or part thereof, may not be increased over the monthly rental charged before the improvement was initiated by more than 1½ percent of the cost of the substantial capital improvement allocable to the property or part thereof. For purposes of this subparagraph, a substantial capital improvement means a permanent improvement or betterment made to increase the value of the property or to restore the property, or part thereof, the cost of which equals or exceeds at least 3 months' rent and exceeds $250.

(4) *Property vacant during the freeze base period.* If the property had been vacant for more than 1 year prior to the beginning of the lease period the provisions of subparagraph (2) of this paragraph shall apply.

11. Section 300.509 of these regulations is hereby amended to read as follows:

§ 300.509 New property and new services.

(a) *In general.* For purposes of this section, new property or new services

means property or services which the person has not offered for sale (or lease in the case of property) at any time during the 1-year period immediately preceding the date on which the person is offering the property or service for sale.

(b) *Personal property or services.* Personal property or services shall be deemed new if substantially different from other property or services in purpose, function, quality, or technology or if the use of such property or service effects a substantially different result. Property or services that differ from other property or services only in appearance, arrangement, or combination shall not be considered as new. A change in fashion, style, form, or packaging will not ordinarily be deemed to create a new property or service. A property, or part thereof, which undergoes a substantial capital improvement shall be treated as new property for purposes of a lease. For purposes of this paragraph, a substantial capital improvement means a permanent improvement or betterment made to increase the value of the property or to restore the property, the cost of which equals or exceeds at least 3 months' rent and which exceeds $100.

(c) *Base price determination.* In the case of a person offering new property or services, the base price shall be deemed to be, at the election of such person, either—

(1) The price determined under the method prescribed in paragraph (d) of this section, or

(2) The price determined under the method prescribed in paragraph (e) of this section.

(d) *First method.* The method referred to in paragraph (c)(1) of this section is a method by which a person may determine the price with respect to new property or services by a computation based on the unit cost (including direct and indirect costs) of a similar property or service of such person plus a factor for profit (before income taxes) which equals the profit rate actually earned with respect to such similar property or services. The rules in this paragraph shall not be applicable to transactions involving property or services with respect to which the person offers no other property or services which are similar thereto.

(e) *Second method.* The method referred to in paragraph (c)(2) of this section is a method by which a person may determine the price with respect to new property or services by a computation based on the average prices received in a substantial number of arms-length transactions by persons selling or leasing comparable property or services in the same marketing area.

Because the purpose of this Price Commission amendment is to provide immediate guidance as to the price and rent stabilization rules applicable after November 13, 1971, it is hereby found impracticable to issue this Price Commission regulation with notice and public procedure thereon under 5 U.S.C., sec. 533(b), or subject to the effective date limitation of 5 U.S.C., sec. 553(d).

This amendment shall become effective as of November 14, 1971.

Dated: November 15, 1971.

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

[FR Doc.71-16863 Filed 11-15-71;6:10 pm]

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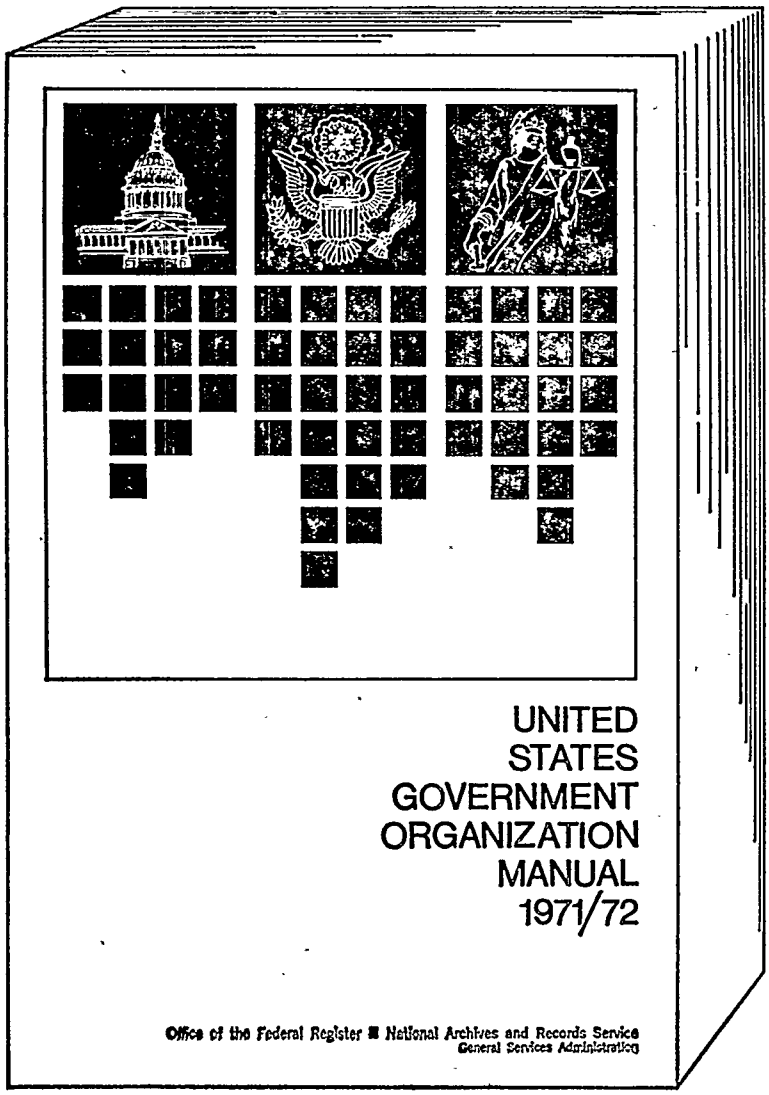

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