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PART I



(Part II begins on page 23855)

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.

- CONTINENTAL SUGAR**—USDA amendment revising requirements and area quotas for 1971; effective 12-10-71..... 23791
- ANIMAL DISEASE**—USDA amendment designating brucellosis areas..... 23793
- CREDIT UNIONS**—National Credit Union Adm. amendments to the definition of risk assets; effective 12-20-71..... 23794
- DECORATIVE WALL PANELING**—FTC guides for the industry..... 23796
- PUBLIC HOUSING**—HUD changes in the prototype per unit cost schedules; effective 12-15-71.. 23799
- VEHICLE FORFEITURE**—Treasury Dept. revision of its policy on mitigation and remission; effective 12-15-71 23800
- MILITARY PERSONNEL PROPERTY HANDLING**—DoD revision of worldwide traffic management policies 23800
- TRANSPORTATION OF EXPLOSIVES**—DoT amendment revoking local law information requirement for motor carrier drivers; effective 12-6-71 23802
- MOTOR VEHICLE SAFETY**—
DoT partial reconsideration of bumper impact standards 23802
DoT proposed criterion for the operation of lights after impact; comments by 1-17-72... 23831

(Continued inside)

Now Available

LIST OF CFR SECTIONS AFFECTED

1949-1963

This volume contains a compilation of the "List of Sections Affected" for all titles of the Code of Federal Regulations for the years 1949 through 1963. All sections of the CFR which have been expressly affected by documents published in the daily Federal Register are enumerated.

Reference to this list will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

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HIGHLIGHTS—Continued

SMOKING ON INTERSTATE BUSES—ICC indefinite effective date postponement of the separate seating order, and time extension to 1-17-72 for petitions	23803	ANTIDUMPING—Treasury Dept. notice of intent to end investigation of BHT from Japan.....	23834
INCOME TAX—IRS proposed regulations concerning accounting for long term contracts, the use of certain absorption methods of inventory valuation, and the 50% maximum rate on earned income; comments by 1-14-72....	23805, 23809, 23814	ENVIRONMENT—EPA notice announcing availability of final statement on the Crystal Dam project in Colorado.....	23835
		PESTICIDES—EPA notices of filing of petitions (3 documents).....	23835, 23836
		SAVINGS BONDS—Treasury Dept. regulations for the Series H exchange; effective 1-1-72.....	23855

Contents

AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE	Proposed Rule Making	FEDERAL HIGHWAY ADMINISTRATION
Rules and Regulations	Milk in Red River Valley and Oklahoma metropolitan marketing areas; recommended decision and opportunity to file written exceptions.....	Rules and Regulations
Continental sugar requirements and area quotas; requirements, quotas and quota deficits for 1971	23821	Transportation of hazardous materials; driving and parking rules; instructions and documents
23791	Navel oranges grown in Arizona and designated part of California; size regulation.....	23802
AGRICULTURE DEPARTMENT	Notices	FEDERAL HOME LOAN BANK BOARD
See Agricultural Stabilization and Conservation Service; Animal and Plant Health Service; Consumer and Marketing Service.	Humanely slaughtered livestock; identification of carcasses; changes in lists of establishments	Notices
ANIMAL AND PLANT HEALTH SERVICE	23834	Federal Home Loan Bank of Atlanta; change of location and name
Rules and Regulations	DEFENSE DEPARTMENT	23836
Brucellosis; designation of modified certified brucellosis areas... 23793	Rules and Regulations	FEDERAL MARITIME COMMISSION
CIVIL SERVICE COMMISSION	Shipment and storage of personal property	Notices
Rules and Regulations	23800	Agreements filed:
Political activity of Federal employees; participation in local elections; correction..... 23791	ENVIRONMENTAL PROTECTION AGENCY	California Association of Port Authorities and Northwest Marine Terminal Association, Inc
Notices	Notices	23836
Department of Justice; notice of grant of authority to make non-career executive assignment..... 23835	Filing of petitions regarding pesticide chemicals:	Japan-Atlantic & Gulf Freight Conference (2 documents).... 23837
COMMERCE DEPARTMENT	Chemagro Corp..... 23835	Trans-Pacific Freight Conference of Japan..... 23837
Maritime Administration; organization and functions..... 23834	NACA Industry Task Force..... 23835	FEDERAL POWER COMMISSION
CONSUMER AND MARKETING SERVICE	Olin Corp..... 23836	Notices
Rules and Regulations	FEDERAL AVIATION ADMINISTRATION	<i>Hearings, etc.:</i>
Domestic dates produced or packed in Riverside County, Calif.; expenses and rate of assessment..... 23793	Rules and Regulations	Columbia Gas Transmission Corp
Navel oranges grown in Arizona and designated part of California; handling limitation..... 23792	Alterations:	23837
	Control area..... 23795	Commonwealth Edison Co. and Central Illinois Light Co..... 23838
	Control zones and transition areas (2 documents).... 2795, 23796	Gulf States Utilities Co..... 23838
	Federal airway segments..... 23794	Michigan Wisconsin Pipe Line Co. (2 documents)..... 23838, 23839
	Restricted area..... 23796	Raton Natural Gas Co..... 23839
	Transition area..... 23795	Southern Natural Gas Co..... 23839
	Proposed Rule Making	United Gas Pipe Line Co. and Transcontinental Gas Pipe Line Corp..... 23839
	Alterations:	(Continued on next page)
	Control zones and transition areas (2 documents)..... 23830	
	Restricted area..... 23831	
	Transition area..... 23829	

FEDERAL RESERVE SYSTEM**Notices**

First Bancorp, Inc.; formation of bank holding company.....	23840
Imperial Bancorp; proposed acquisition of Rayor Realty Company	23840
U.S. Bancorp; proposed retention of shares of U.S. Datacorp.....	23840

FEDERAL TRADE COMMISSION**Rules and Regulations**

Decorative wall paneling industry; guides	23796
---	-------

FISCAL SERVICE**Rules and Regulations**

United States Savings Bonds, Series H; exchange offering....	23856
--	-------

FISH AND WILDLIFE SERVICE**Rules and Regulations**

Sport fishing on J. Clark Salyer National Wildlife Refuge, N. Dak	23804
---	-------

GENERAL SERVICES ADMINISTRATION**Proposed Rule Making**

Conduct on Federal property....	23832
---------------------------------	-------

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

See also Housing Assistance Administration.

Notices

Attesting officers; designation; delegation of authority.....	23835
---	-------

HOUSING ASSISTANCE ADMINISTRATION**Rules and Regulations**

Prototype cost limits for public housing; New Jersey.....	23799
---	-------

INTERIOR DEPARTMENT

See Fish and Wildlife Service; Reclamation Bureau.

INTERNAL REVENUE SERVICE**Proposed Rule Making****Income tax:**

Accounting for long-term contracts	23805
Fifty-percent maximum rate on earned income.....	23814
Use of full absorption or modified full absorption method of inventory valuation.....	23809

INTERSTATE COMMERCE COMMISSION**Rules and Regulations****Car service:**

Distribution directions; appointment of agents.....	23803
Southern Pacific Transportation Co. authorized to operate over tracks of Texas and Pacific Railway Co.....	23803
Smoking by passengers and operating personnel on interstate buses	23803

Smoking by passengers and operating personnel on interstate buses

Proposed Rule Making

Form of offering circular required for public sales of securities; extension of time for filing statements	23833
--	-------

Notices

Assignment of hearings.....	23841
Manhattan Transit Co. et al.; filing of petition for declaratory order	23842

Motor carriers:

Alternate route deviation notices (2 documents).....	23842, 23843
Applications and certain other proceedings	23844
Intrastate applications; notice of filing.....	23848
Temporary authority applications	23847
Transfer proceedings.....	23848

NATIONAL CREDIT UNION ADMINISTRATION**Rules and Regulations**

Definitions; risk assets.....	23794
-------------------------------	-------

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION**Rules and Regulations**

Federal motor vehicle safety standards; exterior protection..	23802
---	-------

Proposed Rule Making

Federal motor vehicle safety standards; exterior protection..	23831
---	-------

RECLAMATION BUREAU**Notices**

Crystal Dam, Reservoir, and Powerplant, Curecanti Unit, Colorado River Storage Project, Colo.; availability of final environmental statement.....	23835
---	-------

SECURITIES AND EXCHANGE COMMISSION**Notices**

Service Fund, Inc.; notice of filing of application for order declaring that company has ceased to be an investment company....	23810
---	-------

TARIFF COMMISSION**Notices**

Morgantown Glassware Guild, Inc.; workers' petition for determination of eligibility to apply for adjustment assistance; investigation	23841
--	-------

TRANSPORTATION DEPARTMENT

See Federal Aviation Administration; Federal Highway Administration; National Highway Traffic Safety Administration.

TREASURY DEPARTMENT

See also Fiscal Service; Internal Revenue Service.

Rules and Regulations

Policy on mitigation and remission of vehicle forfeitures; deletion of inquiry requirement.....	23800
---	-------

Notices

BHT from Japan; intent to discontinue antidumping investigation	23834
---	-------

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.

5 CFR		14 CFR		32 CFR	
733-----	23791	71 (5 documents)-----	23794-23796	173-----	23800
		73-----	23796		
7 CFR		PROPOSED RULES:		41 CFR	
811-----	23791	71 (3 documents)-----	23829, 23830	PROPOSED RULES:	
907-----	23792	73-----	23831	101-19-----	23832
987-----	23793	16 CFR		49 CFR	
PROPOSED RULES:		243-----	23796	397-----	23802
907-----	23821	24 CFR		571-----	23802
1104-----	23821	Ch. III-----	23799	1033 (2 documents)-----	23803
1106-----	23821	26 CFR		1061-----	23803
9 CFR		PROPOSED RULES:		PROPOSED RULES:	
78-----	23793	1 (3 documents)-----	23805-23814	571-----	23831
12 CFR		31 CFR		1115-----	23833
700-----	23794	15-----	23800	50 CFR	
		339-----	23856	33-----	23804

Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission PART 733—POLITICAL ACTIVITY OF FEDERAL EMPLOYEES

Participation in Local Elections; Correction

In the FEDERAL REGISTER (F.R. Doc. 71-16938) of November 19, 1971, on page 22052, the word "Shrewsberry" is incorrectly spelled. It should appear as "Shrewsbury Township, N.J. (July 2, 1968)."

(5 U.S.C. secs. 3301, 3302, E.O. 10577; 3 CFR 1954-58 Comp., p. 218)

UNITED STATES CIVIL SERVICE
COMMISSION,

[SEAL] JAMES C. SPRY,
Executive Assistant to
the Commissioners.

[FR Doc. 71-18277 Filed 12-14-71; 8:45 am]

Title 7—AGRICULTURE

Chapter VIII—Agricultural Stabiliza- tion and Conservation Service (Sugar), Department of Agriculture

SUBCHAPTER B—SUGAR REQUIREMENTS AND QUOTAS

[Sugar Reg. 811, Amdt. 7]

PART 811—CONTINENTAL SUGAR REQUIREMENTS AND AREA QUOTAS

Requirements, Quotas and Quota Deficits for 1971

Basis and purpose and bases and considerations. This amendment 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 this amendment to Sugar Regulation 811 (35 F.R. 18909) as amended, is to revise the determination of sugar requirements for the calendar year 1971 and establish quotas, prorations and direct-consumption limits consistent with such requirements and to determine and prorate or allocate the deficits in quotas established pursuant to the Act.

Section 201 of the Act requires that the Secretary shall revise the determination of sugar requirements at such time during the calendar year as may be necessary.

After an extensive disruption of the unloading of sugar, all ports are again operating. Cane sugar refiners and users will now seek supplies to maximize their inventories to serve their needs in the event of another disruption in the un-

loading of vessels when the Taft-Hartley injunction expires. Additional supplies are needed to bring end-of-year quota stocks of refiners to about the same level as last year.

Accordingly, total sugar requirements for the calendar year 1971 are hereby increased by 100,000 short tons, raw value, to a total of 11.3 million short tons, raw value.

Section 204(a) of the Act provides that the Secretary shall from time to time determine whether any area or country will be unable to fill its quota or proration of a quota. On the basis of the quota established for Puerto Rico for the calendar year 1971 findings were heretofore made (36 F.R. 8773, 14624) that Puerto Rico was unable to fill its quota by 960,000 short tons, raw value, and accordingly quota deficits were determined for Puerto Rico for 960,000 tons. On the basis of the latest available information it is herein found that Puerto Rico will be unable to fill its quota by an additional 30,000 short tons, raw value. Therefore, a total deficit is herein determined in the 1971 quota for Puerto Rico of 990,000 short tons, raw value. On the basis of current inventories, estimated production and projected marketing patterns during the balance of the year for the Domestic Beet Area it appears that the Beet Area will be unable to market sugar in excess of its current effective quota. Due to the fact that the quota for the Domestic Beet Sugar Area is increased herein by 47,667 tons it is hereby found that the Domestic Beet Sugar Area will be unable to fill its quota by 47,667 short tons, raw value. Therefore, a deficit is herein determined in the 1971 quota for the Domestic Beet Sugar Area of 47,667 short tons, raw value. On the basis of a finding heretofore made (36 F.R. 15519) Haiti will be unable to fill any additional quota or deficit proration during 1971. Therefore, the quota increase for Haiti of 349 tons as a result of the sugar requirements increase by this action is herein determined to be an additional deficit in the 1971 quota for Haiti. Accordingly, the additional quota deficits of 30,000 and 349 short tons, raw value, for Puerto Rico and Haiti, respectively, and the quota deficit of 47,667 short tons, raw value, for the Domestic Beet Sugar Area which totals 78,016 tons are herein allocated and prorated to foreign countries pursuant to section 204(a) of the Act.

The marketing opportunities for Puerto Rico and the Domestic Beet Sugar Area will not be limited as a result of the deficit determinations and prorations provided herein.

By virtue of the authority vested in the Secretary of Agriculture by the Act, Part 811 of this chapter is hereby amended by amending §§ 811.90, 811.91, 811.92, and 811.93 as follows:

1. Section 811.90 is amended to read as follows:

§ 811.90 Sugar requirements, 1971.

The amount of sugar needed to meet the requirements of consumers in the continental United States for the calendar year 1971 is hereby determined to be 11,300,000 short tons, raw value.

2. Section 811.91 is amended by amending paragraph (a) to read as follows:

§ 811.91 Quotas for domestic areas.

(a) (1) For the calendar year 1971 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
		(2)
		(Short tons, raw value)
Domestic beet sugar.....	3,454,000	No limit
Mainland cane sugar.....	1,256,000	No limit
Hawaii.....	1,110,000	38,646
Puerto Rico.....	1,140,000	168,000
Virgin Islands.....	15,000	0

(2) It is hereby determined pursuant to section 204(a) of the Act that for the calendar year 1971 the Domestic Beet Sugar Area, Puerto Rico and the Virgin Islands will be unable by 47,667, 990,000 and 15,000 short tons, raw value, respectively, to fill the quotas established for such areas in subparagraph (1) of this paragraph. Pursuant to section 204 (b) of the Act the determination of such deficits shall not affect the quotas established in subparagraph (1) of this paragraph.

* * * * *
3. Section 811.92 is amended by amending paragraph (a) to read as follows:

§ 811.92 Proration and allocation of deficits and quotas in effect.

(a) Of the total deficits determined in paragraph (a) (2) of § 811.91, totaling 1,052,667 short tons, raw value, a quantity of 975,000 tons representing deficits in the quotas of Puerto Rico and the Virgin Islands was previously determined, allocated and prorated in prior amendments to this Part 811 (36 F.R. 8773, 14624). A deficit in the quota for Haiti of 4,908 short tons, raw value, was previously determined, allocated and prorated in prior amendments to this Part 811 (36 F.R. 15519, 17023). Additional deficits are herein determined in the quotas of Puerto Rico and Haiti of

30,000 and 349 tons, respectively. A deficit of 47,667 tons is also determined herein in the Domestic Beet Sugar Area quota. The total deficits herein determined of 78,016 tons are hereby prorated and allocated pursuant to section 204(a) of the Act, by allocating 47.22 percent or 36,839 short tons, raw value, to the Republic of the Philippines and by prorating the remaining 41,177 short tons, raw value, to Western Hemisphere countries, other than Haiti, with quotas in effect as established in Sugar Regulation 811, for 1971 (36 F.R. 17023).

4. Section 811.93 is amended by amending paragraphs (b) and (c) to read as follows:

§ 811.93 Quotas for foreign countries.

(b) For the calendar year 1971, the quota for the Republic of the Philippines is 1,625,572 short tons, raw value, rep-

resenting 1,126,020 short tons, established pursuant to section 202 of the Act and 499,552 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 1971, 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. Deficit prorations previously established in this § 811.93 are shown in column (3). In column (4) a portion of the deficits in quotas declared herein amounting to 41,177 short tons, raw value, is herein prorated to Western Hemisphere countries, excluding Haiti, listed in section 202(c) (3) (A) of the Act, on the basis of published quotas most recently in effect.

Country	Basic quotas	Temporary quotas and prorations pursuant to sec. 202 (d) 1	Previous deficit prorations	New deficit prorations	Total quotas and prorations
	(1)	(2)	(3)	(4)	(5)
Mexico.....	246,005	267,041	90,238	7,918	611,292
Dominican Republic.....	248,683	261,168	138,296	8,408	648,555
Brazil.....	240,683	261,168	88,254	7,744	597,849
Peru.....	191,973	208,313	70,394	6,177	476,857
British West Indies.....	96,146	76,413	31,043	2,687	206,289
Ecuador.....	35,020	38,001	12,841	1,127	86,989
French West Indies.....	30,244	24,038	9,765	845	64,892
Argentina.....	29,608	32,126	10,857	953	73,544
Costa Rica.....	28,334	30,746	10,389	912	70,381
Nicaragua.....	28,334	30,746	10,389	912	70,381
Colombia.....	25,469	27,637	9,340	820	63,266
Guatemala.....	23,877	25,909	8,755	768	59,309
Panama.....	17,828	13,347	6,537	574	44,286
El Salvador.....	17,510	18,999	6,420	563	43,492
Haiti.....	13,371	14,510	-32	-349	27,500
Venezuela.....	12,088	13,127	4,437	389	30,051
British Honduras.....	7,004	5,686	2,262	196	15,028
Bolivia.....	2,865	3,110	1,051	92	7,118
Honduras.....	2,865	3,110	1,051	92	7,118
Australia.....	114,611	90,434	0	0	205,045
Republic of China.....	47,754	37,681	0	0	85,435
India.....	45,844	36,174	0	0	82,018
South Africa.....	33,746	26,628	0	0	60,374
Fiji Islands.....	25,151	19,845	0	0	44,996
Thailand.....	10,506	8,290	0	0	18,796
Mauritius.....	10,506	8,290	0	0	18,796
Malagasy Republic.....	5,412	4,270	0	0	9,682
Swaziland.....	4,139	3,266	0	0	7,405
Ireland.....	5,351	0	0	0	5,351
Bahamas.....	10,000	0	0	0	10,000
Total.....	1,603,027	1,595,953	512,287	40,828	3,752,095

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

(Secs. 201, 202, 204, and 408; 61 Stat. 923, as amended, 924, as amended, 925, as amended, 932; and 7 U.S.C. 1111, 1112, 1114, and 1153)

Effective date. This action increases quotas for the calendar year 1971 by 100,000 tons and allocates and prorates additional deficits of 78,016 tons to the Republic of the Philippines and Western Hemisphere countries. In order to promote orderly marketing, it is essential that this amendment be effective immediately so that all persons selling and purchasing sugar for consumption in the continental United States can promptly plan and market under the changed marketing opportunities. Therefore, it is

hereby determined and found that compliance with the notice, procedure, and effective date requirements of 5 U.S.C. 533 is unnecessary, impracticable, and contrary to the public interest and this amendment shall be effective when filed for public inspection in the Office of the Federal Register.

Signed at Washington, D.C., on December 9, 1971.

KENNETH E. FRICK,
Administrator, Agricultural Sta-
bilization and Conservation
Service.

[FR Doc.71-18318 Filed 12-10-71;2:09 am]

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

[Navel Orange Reg. 245]

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

Limitation of Handling

§ 907.545 Navel Orange Regulation 245.

(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 now estimates the 1971-72 season crop of Navel oranges at 46,850 carlots. It further estimates that the demand in regulated market channels will require about 67 percent of this volume, and the remaining 33 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 an open

meeting, after giving due notice thereof, to consider supply and market conditions for Navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, except its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on November 30, 1971.

(b) *Order.* (1) During the period December 17, 1971, through January 20, 1972, no handler shall handle any Navel oranges grown in District 2, 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, "handler," "handler," and "District 2," 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: December 9, 1971.

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

[FR Doc.71-18303 Filed 12-14-71;8:47 am]

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIF.

Expenses and Rate of Assessment for 1971-72 Crop Year

Notice was published in the December 1, 1971, issue of the FEDERAL REGISTER (36 F.R. 22831) regarding proposed expenses of the California Date Administrative Committee for the 1971-72 crop year and rate of assessment for that crop year. This action approves such expenses and assessment rate, and is pursuant to §§ 987.71 and 987.72 of the marketing agreement, as amended, and Order No. 987, as amended (7 CFR Part 987; 36 F.R. 15036). The amended marketing agreement and order regulate the handling of domestic dates produced or

packed in Riverside County, Calif., and are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The notice afforded interested persons an opportunity to submit written data, views, or arguments on the proposal. None were received within the prescribed time.

After consideration of all relevant matter presented, including that in the notice, the information and recommendations submitted by the California Date Administrative Committee, and other available information, it is found that the expenses of the California Date Administrative Committee and the rate of assessment for the 1971-72 crop year (which began October 1, 1971, and ends September 30, 1972), shall be as follows:

§ 987.316 Expenses of the California Date Administrative.

Committee and rate of assessment for the 1971-72 crop year.

(a) *Expenses.* Expenses in the amount of \$30,808 are reasonable and likely to be incurred by the California Date Administrative Committee during the 1971-72 crop year beginning October 1, 1971, for its maintenance and functioning, and for such other purposes as the Secretary may, pursuant to the applicable provisions of this part, determine to be appropriate.

(b) *Rate of assessment.* The rate of assessment for that crop year which each handler is required, pursuant to § 987.72, to pay to the California Date Administrative Committee as his pro rata share of the expenses is fixed at 10 cents per hundredweight on all assessable dates. Assessable dates are dates which the handler has certified during the crop year as meeting the requirements for marketable dates, including the eligible portion of any field-run dates certified and set aside or disposed of pursuant to § 987.45(f).

It is further found that good cause exists for not postponing the effective time of this action until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that: (1) The relevant provisions of said marketing agreement and this part require that the rate of assessment fixed for a particular crop year shall be applicable to all dates certified during that crop year as meeting the requirements for marketable dates, including the eligible portion of certain field-run dates; and (2) the current crop year began October 1, 1971, and the rate of assessment herein fixed will automatically apply to all such dates beginning with that date.

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

Dated: December 10, 1971.

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

[FR Doc.71-18341 Filed 12-14-71;8:50 am]

Title 9—ANIMALS AND ANIMAL PRODUCTS

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

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY

PART 78—BRUCELLOSIS

Subpart D—Designation of Modified Certified Brucellosis Areas, Public Stockyards, Specifically Approved Stockyards, and Slaughtering Establishments

MODIFIED CERTIFIED BRUCELLOSIS AREAS

Pursuant to § 78.16 of the regulations in Part 78, as amended, Title 9, Code of Federal Regulations, containing restrictions on the interstate movement of animals because of brucellosis, under sections 4, 5, and 13 of the Act of May 29, 1884, as amended; sections 1 and 2 of the Act of February 2, 1903, as amended; and section 3 of the Act of March 3, 1905, as amended (21 U.S.C. 111-113, 114a-1, 120, 121, 125), § 78.13 of said regulations designating Modified Certified Brucellosis Areas is hereby amended to read as follows:

§ 78.13 Modified Certified Brucellosis Areas.

The following States, or specified portions thereof, are hereby designated as Modified Certified Brucellosis Areas:

- Alabama. The entire State;
- Alaska. The entire State;
- Arizona. The entire State;
- Arkansas. The entire State;
- California. The entire State;
- Colorado. The entire State;
- Connecticut. The entire State;
- Delaware. The entire State;
- Florida. The entire State;
- Georgia. The entire State;
- Hawaii. The entire State;
- Idaho. The entire State;
- Illinois. The entire State;
- Indiana. The entire State;
- Iowa. The entire State;
- Kansas. The entire State;
- Kentucky. The entire State;
- Louisiana. The entire State;
- Maine. The entire State;
- Maryland. The entire State;
- Massachusetts. The entire State;
- Michigan. The entire State;
- Minnesota. The entire State;
- Mississippi. Adams, Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, De Soto, Forrest, Franklin, George, Greene, Grenada, Hancock, Harrison, Hinds, Holmes, Humphreys, Issaquena, Itawamba, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lamar, Lauderdale, Lawrence, Leake, Lee, Lincoln, Lowndes, Madison, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Rankin, Scott, Sharkey, Simpson, Stone, Smith, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Walthall, Warren, Washing-

ton, Wayne, Webster, Wilkinson, Winston, Yalobusha, and Yazoo Counties;

Missouri. The entire State;
Montana. The entire State;
Nebraska. The entire State;
Nevada. The entire State;
New Hampshire. The entire State;
New Jersey. The entire State;
New Mexico. The entire State;
New York. The entire State;
North Carolina. The entire State;
North Dakota. The entire State;
Ohio. The entire State;
Oklahoma. The entire State;
Oregon. The entire State;
Pennsylvania. The entire State;
Rhode Island. The entire State;
South Carolina. The entire State;
South Dakota. The entire State;
Tennessee. The entire State;

Texas. Anderson, Andrews, Angelina, Aransas, Archer, Armstrong, Atascosa, Austin, Bailey, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Bowie, Brazoria, Brazos, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Camp, Carson, Cass, Castro, Chambers, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Colorado, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, De Witt, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Franklin, Freestone, Frio, Gaines, Galveston, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grayson, Gregg, Grimes, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Hardin, Harrison, Hartley, Haskell, Hays, Hemphill, Henderson, Hildago, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hudspeth, Hurt, Hutchinson, Irion, Jack, Jackson, Jasper, Jeff Davis, Jefferson, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kendall, Kent, Kerr, Kimble, King, Kinney, Knox, La Salle, Lamar, Lamb, Lampasas, Lavaca, Lee, Leon, Liberty, Limestone, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, McCulloch, McLennan, McMullen, Madison, Marion, Martin, Mason, Maverick, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Moore, Morris, Motley, Nacogdoches, Navarro, Newton, Nolan, Ochiltree, Oldham, Orange, Palo Pinto, Panola, Parker, Parmer, Pecos, Polk, Potter, Presidio, Rains, Randall, Reagan, Red River, Reeves, Refugio, Roberts, Robertson, Real, Rockwall, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, San Saba, Schlielcher, Scurry, Shackelford, Shelby, Sherman, Smith, Somervell, Starr, Stephens, Sterling, Stone-wall, Sutton, Swisher, Tarrant, Taylor, Terrell, Throckmorton, Titus, Tom Green, Travis, Trinity, Terry, Tyler, Upshur, Upton, Uvalde, Val Verde, Van Zandt, Victoria, Walker, Waller, Ward, Washington, Webb, Wheeler, Wharton, Wichita, Wilbarger, Williamson, Wilson, Winkler, Wise, Wood, Yoakum, Young, Zapata, and Zavala Counties;

Utah. The entire State;
Vermont. The entire State;
Virginia. The entire State;
Washington. The entire State;
West Virginia. The entire State;
Wisconsin. The entire State;
Wyoming. The entire State;
Puerto Rico. The entire area; and
Virgin Islands of the United States. The entire area.

(Secs. 4, 5, 23 Stat. 32, as amended; secs. 1, 2, 32 Stat. 791-792, as amended; sec. 3, 33 Stat. 1265, as amended; sec. 2, 65 Stat. 693; 21 U.S.C. 11-113, 114a-1, 120, 121, 125; 21 F.R. 16210, as amended, 9 CFR 78.16)

Effective date. The foregoing amendment shall become effective upon pub-

lication in the FEDERAL REGISTER (12-15-71).

The amendment adds the following additional areas to the list of areas designated as Modified Certified Brucellosis Areas because it has been determined that such areas come within the definition of § 78.1(i): Brazoria, Gonzales, and Waller Counties in Texas.

The amendment imposes certain restrictions necessary to prevent the spread of brucellosis in cattle and relieves certain restrictions presently imposed. It should be made effective promptly in order to accomplish its purpose in the public interest and to be of maximum benefit to persons subject to the restrictions which are relieved. Accordingly, under the administrative procedures provisions of 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect to the amendment are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 9th day of December 1971.

F. J. MULHERN,
Acting Administrator,
Animal and Plant Health Service.

[FR Doc.71-18302 Filed 12-14-71; 8:48 am]

Title 12—BANKS AND BANKING

Chapter VII—National Credit Union Administration

PART 700—DEFINITIONS

Risk Assets

On pages 19041-19042 of the FEDERAL REGISTER of September 25, 1971, there was published a proposed definition of risk assets.

After consideration of all such relevant matter as was presented by interested persons, the regulation as so proposed is hereby adopted subject to the following changes:

1. In § 700.1(j) (2), line 1 is amended to read as set forth below;
2. In § 700.1(j) (3), line 4 is amended to read as set forth below;
3. In § 700.1(j) (4), line 1 is amended as set forth below;
4. Following § 700.1(j) (4), subparagraphs (5)-(12) are added, all to read as set forth below.

Effective date. This regulation is effective December 20, 1971.

HERMAN NICKERSON, JR.,
Administrator.

DECEMBER 7, 1971.

Section 700.1 (12 CFR 700.1) is amended by adding a new paragraph (j) as set forth below.

§ 700.1 Definitions.

* * * * *

(j) For the purpose of establishing the reserves required by section 116 of the Federal Credit Union Act, all assets ex-

cept the following shall be considered risk assets:

- (1) Cash on hand.
- (2) Deposits and/or shares in Federally or State insured banks, savings and loan associations, and credit unions.
- (3) Assets which are insured by, fully guaranteed as to principal and interest by, or due from the U.S. Government, its agencies, the Federal National Mortgage Association, or the Government National Mortgage Association.
- (4) Loans to other credit unions.
- (5) Loans to students insured under the provisions of title IV, part B of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.) or similar State insurance programs.
- (6) Loans insured under title I of the National Housing Act (12 U.S.C. 1703) by the Federal Housing Administration.
- (7) Shares or deposits in central credit unions. A central credit union is defined as a credit union whose membership primarily consists of:
 - (i) Other credit unions organized under State or Federal law,
 - (ii) Officials, committee members, and employees of any credit union organized under State or Federal law, or
 - (iii) Any combination of the categories described in subdivisions (i) and (ii) of this subparagraph.
- (8) Common trust investments which deal in investments authorized by the Federal Credit Union Act.
- (9) Prepaid expenses.
- (10) Accrued interest on nonrisk investments.
- (11) Furniture and equipment.
- (12) Land and buildings.

[FR Doc.71-18275 Filed 12-14-71; 8:45 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airspace Docket No. 71-GL-4]

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

Alteration of Federal Airway Segments

On October 15, 1971, a notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 20050) stating that the Federal Aviation Administration was considering amendments to Part 71 of the Federal Aviation Regulations that would alter segments of VOR Federal airways Nos. 170 and 218.

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

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., March 2, 1972, as hereinafter set forth.

Section 71.123 (36 F.R. 2010) is amended as follows:

a. In V-170 all between "Fairmont, Minn.;" and "Dells, Wis.;" is deleted and "Rochester, Minn.; Nodine, Minn.;" is substituted therefor.

b. In V-218 all before "Waukon, Iowa;" is deleted and "From Minneapolis, Minn.;" is substituted therefor.

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

Issued in Washington, D.C., on December 8, 1971.

T. McCORMACK,
Acting Chief, Airspace and
Air Traffic Rules Division.

[FR Doc.71-18283 Filed 12-14-71;8:46 am]

[Airspace Docket No. 71-SO-95]

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

Alteration of Control Area

On October 15, 1971, a notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 20048) stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would alter Control Area No. 1216.

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

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., February 3, 1972, as hereinafter set forth.

In § 71.163 (36 F.R. 2048) Control 1216 is amended to read:

CONTROL 1216

That airspace extending upward from 2,000 feet MSL bounded on the north and east by a line extending from the Navy New Orleans, La., RBN to lat. 29°42'50" N., long. 88°49'30" W.; to lat. 29°36'10" N., long. 88°01'30" W.; to lat. 29°25'20" N., long. 86°48'00" W.; to lat. 28°41'30" N., long. 86°48'00" W.; to lat. 28°55'00" N., long. 88°00'00" W.; thence south along long. 88°00'00" W., to the north boundary of the Houston Oceanic Control Area; on the south by the Houston Oceanic Control Area, on the west by long. 90°15'00" W.; on the northwest by the Louisiana transition area.

(Sec. 307(a) and 1110, Federal Aviation Act of 1958, 49 U.S.C. 1348(a) and 1510; Executive Order 10854, 24 F.R. 9565; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on December 7, 1971.

T. McCORMACK,
Acting Chief, Airspace and
Air Traffic Rules Division.

[FR Doc.71-18287 Filed 12-14-71;8:46 am]

[Airspace Docket No. 71-SO-94]

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

Alteration of Control Zone and Transition Area

On October 9, 1971, a notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 19704) stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would alter control zones and a transition area at Eglin AFB, Fla.

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

Subsequent to the publication of the notice, HI-NDB(ADF) 2 RWY 30 Instrument Approach Procedure to Eglin AFB was canceled. Therefore, the extension to the Eglin AFB control zone can be reduced from 10-miles wide and 18.5-miles long, as published in the notice, to 6-miles wide and 8.5-miles long. Action is taken herein to show this change. Since this action is less restrictive than that proposed, notice and public procedure thereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., February 3, 1972, as hereinafter set forth.

1. Section 71.171 (36 F.R. 2055) is amended as follows:

a. The Eglin AFB, Fla., control zone is amended to read:

EGLIN AFB, FLA.

Within a 5-mile radius of Eglin AFB (lat. 30°29'07" N., long. 86°31'35" W.); within 3 miles each side of the ILS localizer southeast course, extending from the 5-mile radius zone to 8.5 miles southeast of the LMM; within a 3-mile radius of Destin-Fort Walton Beach Airport (lat. 30°23'57" N., long. 86°28'47" W.); within 2 miles each side of the extended centerline of runway 14/32, extending from the 3-mile-radius zone to 4 miles southeast of the airport.

b. In the Eglin AF Aux No. 3 (Duke Field), Fla., control zone, "(lat. 30°39'00" N., long. 86°31'21" W.)" is deleted and "(lat. 30°39'01" N., long. 86°31'25" W.)" is substituted therefor, and "(lat. 30°46'45" N., long. 86°31'10" W.)" is deleted and "(lat. 30°46'47" N., long. 86°31'21" W.)" is substituted therefor.

c. The Eglin AF Aux No. 9 (Hurlburt Field), Fla., control zone is amended to read:

EGLIN AF AUX NO. 9 (HURLBURT FIELD), FLA.

Within a 5-mile radius of Eglin AF Aux No. 9 (Hurlburt Field) (lat. 30°25'42" N., long. 86°41'05" W.); within 2 miles each side of the Eglin VOR 285° radial, extending from the 5-mile radius zone to 1 mile west of the VOR; excluding the portion within Eglin AFB control zone.

2. In § 71.181 (36 F.R. 2140) the Eglin AFB, Fla., transition area is amended to read as follows:

EGLIN AFB, FLA.

That airspace extending upward from 700 feet above the surface within 9-mile radii of Eglin AFB (lat. 30°29'07" N., long. 86°31'35" W.), Eglin AF Aux No. 3 (Duke Field) (lat. 30°39'01" N., long. 86°31'25" W.) and Eglin AF Aux No. 9 (Hurlburt Field) (lat. 30°25'42" N., long. 86°41'05" W.); within a 5-mile radius of Destin-Fort Walton Beach Airport (lat. 30°23'57" N., long. 86°28'47" W.); excluding the portions within R-2909, W-151, Crestview, Fla., transition area, and a 1.5-mile radius of Fort Walton Beach Airport (lat. 30°24'25" N., long. 86°49'40" W.).

(Secs. 307(a) and 1110, Federal Aviation Act of 1958, 49 U.S.C. 1348(a) and 1510; Executive Order 10854, 24 F.R. 9565; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C. on December 7, 1971.

T. McCORMACK,
Acting Chief, Airspace and
Air Traffic Rules Division.

[FR Doc.71-18286 Filed 12-14-71;8:46 a.m.]

[Airspace Docket No. 71-WE-32]

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

Alteration of Transition Area

On October 9, 1971, a notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 19705) stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Monterey, Calif., transition area.

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

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., February 3, 1972, as hereinafter set forth.

Section 71.181 (36 F.R. 2140) is amended as follows: In the Monterey, Calif., transition area, all between "excluding the portion south of lat. 36°22'00" N.;" and "that airspace extending upward from 5,000 feet MSL" is deleted and "that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 37°05'00" N., long. 122°43'15" W., thence to lat. 37°08'45" N., long. 122°34'45" W., thence southeast via V-27 to lat. 37°00'00" N., thence to lat. 37°00'00" N., long. 121°29'30" W., thence to lat. 36°23'00" N., long. 121°03'20" W., thence to lat. 36°03'30" N., long. 121°29'00" W., thence southeast via V-27 to long. 121°03'00" W., thence to lat. 35°30'00" N., long. 121°03'00" W., thence to lat. 35°30'00" N., long. 121°37'00" W., to point of beginning;" is substituted therefor.

(Secs. 307(a) and 1110, Federal Aviation Act of 1958, 49 U.S.C. 1348(a) and 1510; Executive Order 10854, 24 F.R. 9565; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on December 7, 1971.

T. McCORMACK,
*Acting Chief, Airspace and
Air Traffic Rules Division.*

[FR Doc. 71-18284 Filed 12-14-71; 8:46 am]

[Airspace Docket No. 71-SO-47]

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

Alteration of Control Zone and Transition Areas

On October 13, 1971, a notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 19913) stating that the Federal Aviation Administration (FAA) was considering amendments to Part 71 of the Federal Aviation Regulations that would alter the Daytona Beach, Fla., control zone and transition area and the Florida transition area.

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

The FAA and the Commander, Fleet Air Jacksonville, have negotiated a letter of procedure. This letter of procedure governs the air traffic control usage of the offshore airspace within the affected warning areas.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., March 2, 1972, as hereinafter set forth.

1. Section 71.171 (36 F.R. 216 and 2055) is amended as follows: In the Daytona Beach, Fla., control zone ("lat. 29°11'05" N., long. 81°03'20" W.);" is deleted and ("lat. 29°10'49" N., long. 81°03'23" W.);" is substituted therefor.

2. Section 71.181 (36 F.R. 216, 2140, 15742, 15743, 18192, 19360 and 20418) is amended as follows:

a. The Daytona Beach, Fla., transition area is amended to read:

DAYTONA BEACH, FLA.

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Daytona Beach Regional Airport (lat. 29°10'49" N., long. 81°03'23" W.); within a 6.5-mile radius of Ormond Beach Municipal Airport (lat. 29°18'00" N., long. 81°06'49" W.).

b. In the Florida transition area between the phrases "lat. 29°56'00" N., long. 81°14'50" W.;" and "that airspace east of Melbourne, Fla.;" the phrase "that airspace extending upward from 1,200 feet above the surface to and including 12,000 feet above the surface bounded by a line beginning at the intersection of a line 3-nautical-miles east of and parallel to the shoreline and lat. 29°29'00" N., thence east along lat. 29°29'00" N., to and clockwise along the arc of a 23-nautical-mile radius circle centered on the Daytona Beach Regional Airport (lat. 29°10'49" N., long. 81°03'23" W.), to and north along a line 3-nautical-

miles east of and parallel to the shoreline to point of beginning;" is added.

(Sec. 307(a) and 1110, Federal Aviation Act of 1958, 49 U.S.C. 1348(a) and 1510; Executive Order 10854, 24 F.R. 9565; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on December 8, 1971.

T. McCORMACK,
*Acting Chief, Airspace and
Air Traffic Rules Division.*

[FR Doc. 71-18282 Filed 12-14-71; 8:46 am]

[Airspace Docket No. 71-WA-40]

PART 73—SPECIAL USE AIRSPACE

Alteration of Restricted Area

The purpose of this amendment to Part 73 of the Federal Aviation Regulations is to reduce the designated altitudes of the Savannah River Plant, S.C., Restricted Area R-6004.

The U.S. Atomic Energy Commission has concurred in the reduction of the designated altitudes from "Unlimited" to "18,000 feet MSL" to facilitate the movement of air traffic.

Since this amendment restores airspace to the public use and relieves a restriction, notice and public procedure thereon are unnecessary, and good cause exists for making this amendment effective on less than 30-days notice.

In consideration of the foregoing, Part 73 of the Federal Aviation Regulations is amended, effective upon publication (12-15-71), as hereinafter set forth.

Section 73.60 (36 F.R. 2358, 18725) is amended as follows: In the "Designated Altitudes," of R-6004 Savannah River Plant, S.C., "Unlimited." is deleted and "to 18,000 feet MSL" is substituted therefor.

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

Issued in Washington, D.C., on December 8, 1971.

T. McCORMACK,
*Acting Chief, Airspace and
Air Traffic Rules Division.*

[FR Doc. 71-18285 Filed 12-14-71; 8:46 am]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

SUBCHAPTER B—GUIDES AND TRADE PRACTICE RULES

PART 243—GUIDES FOR THE DECORATIVE WALL PANELING INDUSTRY

Guides for the Decorative Wall Paneling Industry as hereinafter set forth were adopted by the Commission to afford guidance concerning legal requirements applicable to the practices of this industry in the interest of protecting the pub-

lic and effecting more widespread and equitable observance of the laws administered by the Commission. It is the Commission's belief that the more knowledge businessmen have as to the requirements of laws designed to protect the consumer and foster open and fair competition, the greater the likelihood that they will conform to those laws, with attendant benefits to all concerned.

Proceedings to establish these Guides were instituted by the Commission. Proposed Guides were released to afford interested or affected parties an opportunity to present views, suggestions, objections, or other information concerning the proposed Guides, and a public hearing was held on March 12, 1970, at which further information was presented. After full consideration of all comments that were received, and other pertinent information, the Commission adopted the Guides in their present form.

While it is not practicable to give an all inclusive list of situations when affirmative disclosures may be required in advertising and labeling of industry products, and while it is not feasible to give a complete list of unobjectionable references or representations with respect to construction, composition, or appearance of the industry products, an effort has been made to provide the members of the industry with a sufficient number of examples to afford them meaningful guidance in the conduct of their affairs so as to avoid legal difficulties.

Provisions of these Guides which pertain to the use of certain terminology to describe industry products or materials used should not be construed as approval of claims made for any product or material or as an expression or implication of the Commission's opinion respecting the comparative merits of industry products, methods of construction or materials used. These provisions of the Guides are intended to insure that the prospective purchaser is not misled by the appearance of a product, or by descriptions, depictions, designations, or representations concerning it in advertising, labeling or other promotional materials, into thinking that the product is different from that which is actually offered.

While the Guides are interpretive of laws administered by the Commission and thus are advisory in nature, proceedings to enforce the requirements of law as explained in the Guides may be brought under the Federal Trade Commission Act (15 U.S.C. secs. 41-58). Briefly stated, the Federal Trade Commission Act makes it illegal for one to engage in "unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce," as "commerce" is defined therein.

The Guides become effective 1 year from the date of promulgation.

Inquiries and requests for copies of the Guides should be directed to the Division of Rules and Guides, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

- Sec.
- 243.0 Definitions.
- 243.1 Avoiding deception generally.
- 243.2 Describing wood and wood imitations.
- 243.3 Deceptive use of wood names.
- 243.4 Imitations of materials other than wood.
- 243.5 Misleading illustrations.
- 243.6 Deceptive use of trade or corporate names, coined names, trademarks, etc.
- 243.7 Passing off through imitation or simulation of trademarks, trade names, etc.
- 243.8 Disclosure of "seconds", "rejected", or "defective" products, etc.
- 243.9 Representations concerning washability, cleanability, etc.
- 243.10 Size markings and designations.
- 243.11 Removal, obliteration, or alteration of marks or labels.
- 243.12 Misrepresenting products as conforming to standard or specification.
- 243.13 Deception as to origin.
- 243.14 Other parts in this title 16 applicable to this industry.

AUTHORITY: The provisions of this Part 243 issued under 38 Stat. 717, as amended; 15 U.S.C. 41-58.

§ 243.0 Definitions.

For the purpose of this part the following definitions shall apply:

(a) *Industry member.* Any person, firm, corporation, or organization engaged in the manufacture, sale or distribution of industry products as such products are hereinafter defined.

(b) *Industry products.* Industry products include all products, whether of domestic or foreign origin, which are suitable for use as interior decorative wall panels. Industry products may be composed of any material or combinations of materials including, but not limited to, solid wood, plywood, wood products, plastics, metals, etc., and may be textured, prefinished, partially finished, or unfinished.

(c) *Exposed surface, front or face.* An "exposed surface" of a decorative wall panel is the one prominently exposed to view when the product is placed in the generally accepted position for use. The "exposed surface" is often referred to as the "front" or "face", as contrasted to the back of a panel.

(d) *Back.* The back of a decorative wall panel is the surface reverse to the face. The back is not generally intended to provide an esthetically pleasing appearance and, therefore, is not considered an "exposed surface" under the definition immediately above. However, these definitions do not preclude unusual construction giving a panel two exposed surfaces or faces.

(e) *Veneer.* In this part, the term "veneer" is used in the sense most commonly understood by ordinary consumers—namely, to describe a thin layer of more valuable or beautiful wood used on the face of a panel for overlaying an inferior wood or other core material.

§ 243.1 Avoiding deception generally.

(a) *In general.* Industry members should not sell, offer for sale, or distribute industry products by any method, or un-

der any representation, circumstance, or condition which has the capacity and tendency or effect of misleading purchasers or prospective purchasers as to the grade, type, kind, character, content, construction, composition, process, or technique used in preparation or fabrication, origin, size, thickness, quality, quantity, value, price, serviceability, resistance, performance, durability, color, finish, manufacture, or distribution of any product of the industry or component part of such product, or in any other respect.

(b) *Basis for affirmative disclosures of facts.* (1) Many of the following sections set forth specific examples as to when affirmative disclosures should be made in advertising and on labels. In order to prevent deception the Commission may require affirmative disclosure of material facts concerning merchandise which, if known to prospective purchasers, would influence their decisions of whether or not to purchase. The failure to disclose such facts as may be required is an unfair trade practice violative of the Federal Trade Commission Act.

(2) Two of the most prevalent situations in which disclosures should be made are (i) when the appearance of a wall panel could mislead purchasers or potential purchasers as to its true composition, and (ii) when a representation is made in any manner which is susceptible of at least one misleading interpretation unless it is clearly qualified. Representations which cannot be qualified without the qualification amounting to a contradiction should not be used.

(c) *Manner of making disclosures on products and in advertising.* (1) Retail dealers, manufacturers, and other suppliers must all assume the affirmative responsibility to provide detailed information to the public concerning the compositions of wall panels through informative advertising, promotional materials, and properly labeled products and samples thereof.

(2) When disclosures are necessary on industry products, they should appear on each product (except when sold and used for industrial purposes and the industrial purchaser is otherwise fully informed of the material facts involved). Such disclosures should be on the product, or on a tag or label attached thereto, and be of such permanency as to remain on, or attached to, the product until consummation of sale to the ultimate purchaser. Conspicuous disclosures may appear on backs of wall panels, but in instances where such disclosures would not be readily noticeable to casual observers, such as on certain point-of-sale display panels where the backs are not easily viewed, disclosures should be made on the front or face of panels.

(3) When disclosures are necessary in advertising, they should be made in any advertisement relating to an industry product irrespective of the form or media used whenever statements, representations or depictions appear therein which, in the absence of such disclosures, could serve to create a false impression that the product, or any part thereof, is of a certain kind, size, quality or composition.

(4) In all cases, disclosures should be in immediate conjunction with any representation, depiction, illustration, simulation, or display making it necessary, and should be of sufficient clarity and conspicuousness to be noted by prospective purchasers. The number of times a disclosure should be made will depend entirely upon the context in which it appears.

(5) When disclosures are necessary to describe composition, they may be accomplished by stating the true composition (e.g., "mahogany grained hardboard", "walnut grain finish on plastic", "reproduction of wood grain on plastic overlay" or "printed vinyl overlay on plywood"), or by making a disclaimer of composition (e.g., "imitation wood surface", "simulated wood finish" or "simulated grain design"). Of course, a representation concerning the composition of a product should clearly indicate the part to which the representation is properly applicable.

NOTE: For examples of when disclosures should be made, see the following sections.

[Guide 1]

§ 243.2 Describing wood and wood imitations.

In connection with the sale of industry products made of wood, or which are not wood but have an appearance simulating wood, industry members should not use any display, exhibit, sample, sales method, depiction or representation which could have the capacity and tendency directly or indirectly to mislead purchasers or potential purchasers because of: A false statement; a half-truth; or the failure to disclose facts concerning composition when the appearance of a product could convey a misleading impression.¹

(a) Examples of representations considered false include:

(1) Describing an oak panel as "pecan";

(2) Describing as "solid birch" or "genuine birch" a panel made with laminations of all birch plies. Proper descriptions would include "birch plywood" or "birch plies";

(3) Describing a particleboard, flakeboard, hardwood, fiberboard, chipcore or plywood panel as "solid wood";

(4) Describing as "natural wood grain" a simulated grain design which has been printed on, attached to or simulated in any other manner on the surface of an industry product;

(5) Describing a nonlumber product, such as particleboard, hardboard, fiberboard, flakeboard, and products of similar composition, as "wood". Although such products are composed of wood particles or wood fibers, they should not be represented without qualification as "wood" but may be described as "particleboard", "hardboard", "fiberboard", "wood product", or by any applicable nondeceptive word or term.

¹ See paragraphs (b) and (c) of § 243.1.

(b) Examples of representations considered likely to mislead because of a half-truth include:

(1) Describing as "walnut", "in walnut", "genuine walnut", "walnut panel" or "walnut plywood" a panel having only a face veneer of walnut. Proper descriptions would include "walnut veneer face", "walnut veneer surface", "walnut veneer" or "walnut veneered plywood".

Note: Unqualified terms such as "walnut", "genuine walnut" and "in walnut" imply that the product so described is solid walnut. Unqualified terms such as "walnut plywood" imply that all of the plies are walnut;

(2) Describing as "walnut veneer" a panel having a face veneer not entirely of walnut. If a wood name is used to describe a panel having more than one kind of wood in the face veneer then all of the woods in the face veneers should be named or otherwise identified (e.g., "walnut and cherry veneers" or "walnut and other hardwood veneers");

(3) Using unqualified phrases such as "wood-pattern" or "woodgrain finish" to describe a panel having a wood surface which has been stamped, rolled, pressed, or otherwise processed in such manner as to change the natural wood grain design. Proper descriptions would include "simulated woodgrain finish", "imitation grain figure" or "simulated walnut grain finish on birch face veneer";

(4) Describing as "hardwood plywood" a panel made of hardwood plywood but having a vinyl film surface simulating a wood finish. Proper descriptions would include "hardwood plywood with simulated wood grain on vinyl overlay" or "simulated wood surface on plywood".

(c) Examples of failure to disclose facts concerning composition when the appearance of industry products could convey a misleading impression include circumstances such as when a product, or part thereof, is: Wood but has the appearance of a different kind of wood; and Not wood but has an appearance simulating wood. For instance, when necessary to prevent possible deception an affirmative disclosure should be made of the facts concerning composition when an industry product, or part thereof:

(1) Has an exposed surface of plastic, metal, vinyl, hardboard, particle-board or other material not possessing a natural wood grain structure but which has an appearance simulating that of a wood grain. Depending on the composition, proper descriptions would include "simulated walnut finish on plastic face", "vinyl surface with simulated pecan finish", "simulated birch finish on hardboard" "mahogany grained plastic", or other nondeceptive phrases;

(2) Has a wood surface finished by means of staining, decalcomania, printing, paper coating or other process so as to have the appearance of a different kind of wood. Depending on the composition, proper descriptions would include "mahogany finished gum plywood", "walnut stained plywood", "walnut finish on pecan veneer face", or "cherry grain design on hardwood plywood";

(3) Has an appearance which could mislead potential purchasers in any material respect.

(d) Examples of wood names to describe color, grain design, etc.:

(1) When a wood name is used in advertising or labeling to describe the grain and/or color of a stain finish or other type of simulated finish which has been applied to a surface composed of something other than solid wood of the type named, it should be made clear that the wood name used is merely descriptive of the grain design and/or color or other simulated finish.

(2) Under this section, unqualified phrases such as "walnut", "walnut finish", "in walnut", "fruitwood", "oak", "mahogany finish", and other terms of similar import or meaning, will not be adequate. But statements such as "walnut stain", "maple stain finish", "mahogany finish on gum", "photographically reproduced pecan grain", "printed pecan design", "fruitwood finish on selected hardwood veneer", "cherry grain finish on vinyl overlay" and "walnut finish on other hardwoods" (or "softwoods", as the case may be) will satisfy this provision if such statements are factually correct and appear in contexts which are otherwise nondeceptive.²

[Guide 2]

§ 243.3 Deceptive use of wood names.

Industry members should not use any direct or indirect representation concerning the identity of the wood in industry products that is false or likely to mislead purchasers as to the actual wood composition.

(a) *Walnut*. The unqualified term "walnut" should not be used to describe wood other than genuine solid walnut (genus *Juglans*). The term "black walnut" should be applied only to the species *Juglans nigra*.

(b) *Mahogany*. (1) The unqualified term "mahogany" should not be used to describe wood other than genuine solid mahogany (genus *Swietenia* of the *Meliaceae* family). The woods of genus *Swietenia* may be described by the term "mahogany" with or without a prefix designating the country or region of its origin, such as "Honduras mahogany", "Costa Rican mahogany", "Brazilian mahogany" or "Mexican mahogany".

(2) The term "mahogany" may be used to describe solid wood of the genus *Khaya* of the *Meliaceae* family, but only when prefixed by the word "African" (e.g., "African mahogany").

(3) In naming or designating the seven nonmahogany Philippine woods Tanguile, Red Lauan, White Lauan, Tiaong, Almon, Mayapis, and Bagtikan, the term "mahogany" may be used but only when prefixed by the word "Philippine" (e.g., "Philippine mahogany"), due to the long standing usage of that term. Examples of improper use of the term "mahogany" include reference to Red Lauan as "Lauan mahogany" or to White Lauan as "Blond Lauan mahog-

² See paragraphs (b) and (c) of § 243.1.

any". Such woods, however, may be described as "Red Lauan" or "Lauan" or "White Lauan", respectively. The term "Philippine mahogany" will be accepted as a name or designation of the seven woods named above. Such term shall not be applied to any other wood, whether or not grown on the Philippine Islands.

(4) The term "mahogany", with or without qualifications, should not be used to describe any other wood except as provided above. This applies also to any of the woods belonging to the *Meliaceae* family, other than genera *Swietenia* and *Khaya*.

(c) *Maple*. The terms "hard maple", "rock maple", "bird's-eye maple", "Northern maple" or other terms of similar nature should not be used to describe woods other than those known under the lumber trade names of Black Maple (*Acer nigrum*) and Sugar Maple (*Acer saccharum*).

Note: Nothing in this section should be construed as prohibiting the nondeceptive use of wood names to describe the color, stain, simulated finish, or appearance of industry products; *Provided*, That appropriate qualifications are made in accordance with provisions in § 243.2(d).

[Guide 3]

§ 243.4 Imitations of materials other than wood.

Industry members should not misrepresent the composition of any industry product, or part thereof, or fail to disclose any material fact concerning the composition of an industry product when the failure to do so has the capacity and tendency or effect of deceiving purchasers or prospective purchasers.³ For example:

(a) A hardboard panel having an imitation marble finish should not be described without qualification as "marble", "onyx", "travertine" or "travertine marble finish". Proper descriptions would include "simulated marble finish", "imitation marble-textured", "marble pattern on plastic faced hardboard", "simulated travertine on hardboard", "marble pattern on vinyl-faced hardboard" or other nondeceptive terms;

(b) A fiberboard panel having an imitation burlap finish should not be described without qualification as "burlap" or "burlap finish". Proper descriptions would include "imitation burlap weave finish", "simulated burlap design on fiberboard", "simulated burlap finish on fiberboard", "burlap pattern on embossed vinyl surface" or other nondeceptive terms.

[Guide 4]

§ 243.5 Misleading illustrations.

Industry members should not use any picture, illustration, diagram or other depiction, either alone or in conjunction with words or phrases, which would have the capacity and tendency or effect of misleading or deceiving purchasers or

³ See paragraphs (b) and (c) of § 243.1.

prospective purchasers concerning any material fact relating to an industry product. For example, if an advertisement showed installed panels with the color and graining characteristic of walnut, but the paneling being offered was not genuine solid walnut, then the advertisement should contain a clear and conspicuous disclosure of the composition of the product being offered (e.g., "walnut veneer plywood", "engraved walnut grain design on selected hardwood plywood", or "simulated walnut finish on hardboard").⁴

[Guide 5]

§ 243.6 Deceptive use of trade or corporate names, coined names, trademarks, etc.

Industry members should not use any trade name, product name, corporate name, coined name, trademark or other trade designation, which has the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the character, name, nature, composition, or origin of any industry product, or of any material used therein, or which is false or misleading in any other material respect.

[Guide 6]

§ 243.7 Passing off through imitation or simulation of trademarks, trade names, etc.

Industry members should not pass off the products of one industry member as and for those of another through the imitation or simulation of trademarks, trade names, brands, labels or otherwise.

[Guide 7]

§ 243.8 Disclosure of "Seconds", "Rejected" or "Defective" products, etc.

Industry products which are not of first quality should be legibly marked or labeled in a clear and conspicuous manner as "second", "rejected", "defective", or "blemished", as the case may be, or by some other term which clearly and conspicuously makes known to purchasers, or potential purchasers viewing the products, the fact that they are not of first quality. Also, such products should not be advertised in any manner without a clear and conspicuous disclosure that the products are not of first quality. Such disclosures should conform with provisions of paragraphs (b) and (c) of § 243.1.

[Guide 8]

§ 243.9 Representations concerning washability, cleanability, etc.

Industry members should not directly or indirectly misrepresent the manner in which the exposed surfaces of prefinished industry products may be washed, cleaned, or otherwise maintained, or fail to clearly and conspicuously disclose the manner in which exposed surfaces may be washed, cleaned, or otherwise maintained without adverse effects whenever

representations are made concerning such matters.

[Guide 9]

§ 243.10 Size markings and designations.⁵

Industry members should not:

(a) Mark or otherwise represent, directly or by implication, an industry product as being of a certain size unless it has the dimensions represented; or

(b) Fail to disclose in advertising and on industry products the true size thereof when the failure to make such disclosure has the capacity and tendency or effect of deceiving purchasers or prospective purchasers as to the size of such products. For example, consumers generally assume that decorative wall panels are 4' x 8' x 1/4" when advertised without disclosure of dimensions. Therefore, if the dimensions of advertised panels are less than 4' x 8' x 1/4", an affirmative disclosure of the correct size should be made.⁶

[Guide 10]

§ 243.11 Removal, obliteration, or alteration of marks or labels.

Industry members should not:

(a) Remove, obliterate, deface, change, alter, conceal, or make illegible any information this part provides be disclosed on industry products, without replacing the same before sale, resale or distribution for sale with a proper mark or label meeting the provisions of this part; or

(b) Sell, resell, or distribute any industry product without its being marked or labeled and described in accordance with the provisions of this part.

[Guide 11]

§ 243.12 Misrepresenting products as conforming to standard or specification.

Members of the industry should not misrepresent in advertising, labeling, or otherwise, that any product conforms to any applicable standard or specification.

[Guide 12]

§ 243.13 Deception as to origin.

(a) Industry members should not make any direct or indirect representation which is false or likely to mislead prospective purchasers concerning the origin of either domestic or foreign industry products, or any substantial parts thereof.

(b) Industry members should clearly and conspicuously disclose that industry products, or any substantial parts thereof, were produced or manufactured in an identified foreign country when the failure to make such disclosure has the capacity and tendency or effect of de-

⁵ Officially established Commercial Standards and Product Standards concerning the various industry products are recognized as giving proper guidance for determining dimensions of industry products (e.g., CS157-56; CS176-58; CS35-61; CS251-63; CS236-66; and PS1-66; and amendments or revisions thereof).

⁶ See paragraphs (b) and (c) of § 243.1.

ceiving prospective purchasers. Such disclosures should be in the form of a legible mark, stamp or label on the product, and any samples thereof, and should be of such size, conspicuousness and permanency as to remain noticeable and legible upon casual inspection until consumer purchase.

[Guide 13]

§ 243.14 Other parts in this title 16 applicable to this industry.

The Commission has adopted Guides Against Deceptive Pricing, Part 233, Guides Against Deceptive Advertising of Guarantees, Part 239, and Guides Against Bait Advertising, Part 238, all of which have general application and furnish additional guidance for members of the Decorative Wall Paneling Industry. Members of this industry should comply with those parts.

Promulgated by the Federal Trade Commission December 15, 1971.

Effective: December 15, 1972.

[SEAL]

CHARLES A. TOBIN,
Secretary.

[FR Doc.71-18254 Filed 12-14-71;8:45 am]

Title 24—HOUSING AND HOUSING CREDIT

Chapter III—Housing Assistance Administration, Department of Housing and Urban Development

[Docket No. R-71-153]

PROTOTYPE COST LIMITS FOR PUBLIC HOUSING

Miscellaneous Amendments

In the FEDERAL REGISTER issued for Saturday, May 1, 1971 (36 F.R. 8213-8232), prototype per unit cost schedules were published pursuant to section 209(a) of the Housing and Urban Development Act of 1970. While these schedules are currently being evaluated in light of public comments received pursuant to invitation in the issuing order, consideration of subsequent factual project cost data received from the Newark, N.J. Area Office indicates that certain prototype per unit cost schedules should be revised for the State of New Jersey.

Inasmuch as the new prototype cost schedules cannot be utilized until the costs themselves become effective by publication in the FEDERAL REGISTER, continuity of contract approvals requires the immediate publication of this material. Accordingly, it is impracticable to provide notice and public procedure with respect to those cost limits in accordance with the Department's recently adopted Publications Policy (24 CFR Part 10), and good cause exists for making them effective on the date of publication in the FEDERAL REGISTER.

For the foregoing reasons the following changes are made to the schedules as

originally published in Volume 36 of the FEDERAL REGISTER:

1. On page 8215 delete the Newark, Asbury Park, North Bergen, and Freehold, N.J. schedules under Region II and substitute in lieu thereof the revised prototype per unit costs shown on the table set forth hereinafter, entitled Prototype Per Unit Cost Schedules. (Sec. 7(d) of

Department of HUD Act, 42 U.S.C. 3535(d).)

Effective date. This rule is effective upon the date of publication in the FEDERAL REGISTER (12-15-71).

EUGENE A. GULLEDGE,
Assistant Secretary-Commissioner.

PROTOTYPE PER UNIT COST SCHEDULE
REGION II

	Number of bedrooms						
	0	1	2	3	4	5	6
Newark, N.J.:							
Detached and semi-detached.....	10,900	13,000	14,450	17,200	20,700	23,000	24,100
Row dwellings.....	10,450	12,400	13,750	16,350	19,700	21,950	22,950
Walk-up.....	10,350	12,850	14,600	17,300	20,050	22,100	23,250
Elevator-structure.....	14,700	17,100	21,600				
Asbury Park, N.J.:							
Detached and semi-detached.....	10,900	13,000	14,450	17,200	20,700	23,000	24,100
Row dwellings.....	10,450	12,400	13,750	16,350	19,700	21,950	22,950
Walk-up.....	10,350	12,850	14,600	17,300	20,050	22,100	23,250
Elevator-structure.....	14,100	16,400	20,700				
North Bergen, N.J.:							
Detached and semi-detached.....	10,900	13,000	14,450	17,200	20,700	23,000	24,100
Row dwellings.....	10,450	12,400	13,750	16,350	19,700	21,950	22,950
Walk-up.....	10,350	12,850	14,600	17,300	20,050	22,100	23,250
Elevator-structure.....	14,700	17,100	21,600				
Freehold, N.J.:							
Detached and semi-detached.....	10,900	13,000	14,450	17,200	20,700	23,000	24,100
Row dwellings.....	10,450	12,400	13,750	16,350	19,700	21,950	22,950
Walk-up.....	10,350	12,850	14,600	17,300	20,050	22,100	23,250
Elevator-structure.....	14,100	16,400	20,700				

[FR Doc.71-18346 Filed 12-14-71;8:51 am]

Title 31—MONEY AND FINANCE: TREASURY

Subtitle A—Office of the Secretary of the Treasury

PART 15—POLICY WITH RESPECT TO THE REMISSION AND MITIGATION OF FORFEITURES INCURRED BY VEHICLES UNDER VARIOUS STATUTES RELATING TO INTERNAL REVENUE, CUSTOMS, NARCOTICS, AND THE SECRET SERVICE

Deletion of Inquiry Requirements

Notice is hereby given that the Treasury Department has determined to revise its policy relating to mitigation and remission decisions on vehicle forfeitures incurred under various statutes administered by the Treasury Department through the Internal Revenue Service, the Bureau of Customs, and the Secret Service. The Secretary of the Treasury by statute (19 U.S.C. 1618, 26 U.S.C. 7327, and 49 U.S.C. 784), and certain other Treasury officers by delegation, have discretionary authority to mitigate or remit forfeitures of this type.

Guided by the standard in 18 U.S.C. 3617(b), which governs mitigation and remission by courts of forfeitures in connection with violations of the liquor laws, the Treasury Department has denied relief to the claimant of a security or other interest in a seized vehicle if at the time the interest was acquired the violator whose activities led to the seizure had a criminal record or reputation, unless it

appears that such claimant prior to financing or otherwise making the vehicle available to the violator, was informed in answer to his inquiry to a principal local or Federal law enforcement officer, that such person had no such record or reputation.

Part 15 of Title 31 of the Code of Federal Regulations, which contains the requirement to make inquiry, is deleted.

Relief will continue to be denied to one who made the vehicle available to the person involved in a violation with actual knowledge that such person had a criminal record or reputation.

Effective date. This revision is effective upon publication in the FEDERAL REGISTER (12-15-71).

Dated: December 10, 1971.

[SEAL] EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[FR Doc.71-18343 Filed 12-14-71;8:50 am]

Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER F—TRANSPORTATION

PART 173—SHIPMENT AND STORAGE OF PERSONAL PROPERTY

The Deputy Secretary of Defense approved the following:

- Sec.
173.1 Purpose.
173.2 Applicability and scope.
173.3 Terms.
173.4 Responsibilities and policies.

AUTHORITY: The provisions of this Part 173 issued under 5 U.S.C. 301 and 37 U.S.C. 406.

§ 173.1 Purpose.

This part establishes traffic management policies governing the worldwide movement, storage and handling of personal property for military and civilian personnel.

§ 173.2 Applicability and scope.

The provisions of this part apply to all DOD components and cover personal property moving, storage, and handling services for DOD personnel, and also those same services for personnel of other Government agencies, either United States or foreign, when arranged by a DOD component with the prior approval of the Assistant Secretary of Defense (Installations and Logistics) or other competent authority.

§ 173.3 Terms.

The terms used in this part have the following meanings:

(a) *Personal property.* Household goods, unaccompanied baggage (personal effects), house trailers (mobile homes), and privately-owned vehicles (POVs) (See Joint Travel Regulations).

(b) *Traffic management.* Development, coordination and supervision of DOD-wide programs, procedures, reports, standards, and criteria governing the procurement of services required to move, store, and handle personal property. It does not include policies and procedures of the program in the following areas: Entitlements, budgeting, funding, staffing, accounting, disbursing, and claims settlement.

(c) *Continental United States (CONUS).* The 48 contiguous States and the District of Columbia.

(d) *Satisfactory service.* Performance which meets the moving, handling, and storage standards of the Department of Defense.

(e) *Carrier.* Any carrier or forwarder of personal property that holds an appropriate certificate(s) or permit(s) issued by a Federal or State regulatory agency, or any overseas carrier or forwarder of personal property approved by the Department of Defense.

(f) *Military Traffic Management and Terminal Service (MTMTS).* The single manager operating agency for military traffic, land transportation, and common-user ocean terminals (DOD Directive 5160.53, "Single Manager Assignment for Military Traffic, Land Transportation, and Common-User Ocean Terminals," March 24, 1967 (32 F.R. 6295)).

(g) *Military transportation resources.* Airlift under the control of or arranged by the Military Airlift Command (MAC) and sealift under the control of or arranged by the Military Sealift Command (MSC).

§ 173.4 Responsibilities and policies.

(a) The Assistant Secretary of Defense (Installations and Logistics) is assigned overall policy responsibility for the DOD personal property movement and storage program (hereafter referred

to as the program). This responsibility encompasses program review and evaluation.

(b) MTMTS is responsible, in collaboration with other appropriate DOD components, for the development and periodic review of the program to include its adequacy, standards, efficiency, economy, and cost effectiveness, and consistent with the following:

(1) *Procurement of services.* Services may be procured only from qualified carriers, storage firms, and contractors.

(2) *Qualification of carriers, their agents, storage firms, and contractors.* The qualification of carriers, their agents, storage firms, and contractors will be based upon:

(i) Appropriate authority to provide the required services.

(ii) Evidence of ability to provide satisfactory service.

(iii) Evidence of satisfactory equipment and facilities, including compliance with established fire standards.

(iv) Evidence of appropriate financial responsibility, including a performance bond for those carriers participating in the overseas movement of personal property.

(3) *Carrier performance.* Carrier performance will be evaluated as deemed necessary. Carriers which fail to meet the requirements of subparagraph (2) of this paragraph, or fail to meet the established standards of satisfactory service, or commit unethical acts, shall be excluded as a qualified program participant, in accordance with the criteria and procedures established by the MTMTS. Such carriers shall be provided an opportunity to (i) appeal the exclusion, and (ii) request requalification after correcting the deficiencies causing the exclusion. No carrier may be disqualified at an installation(s) for failing to meet the established standards of service, unless that disqualification is in accordance with procedures established pursuant to this subparagraph.

(4) *Distribution of shipments to qualified carriers.* Shipments of personal property shall be distributed in such a manner as to reward carriers most fully meeting the standards of service established under the provisions of subparagraph (3) of this paragraph, at the lowest overall cost to the DOD.

(5) *Carrier representation by agents.*
 (i) For household goods originating in and destined for delivery within CONUS, only three (3) carriers to a single destination State may be represented in an origin area by the same local agent. Of these three carriers, only one (1) may be a carrier that holds operating authority in all of CONUS. If an agent represents himself as a carrier to serve a specified destination State, such agent may only represent two (2) other carriers serving that State.

(ii) For household goods including unaccompanied baggage originating in the United States and destined overseas, only four (4) carriers may be represented in an origin area by the same local agent. If an agent represents himself as a car-

rier, such agent may only represent three (3) other carriers.

(iii) For household goods originating overseas and destined to a point in the United States or another point overseas, the Commander MTMTS with the advice of his field or designated representative in overseas areas, will take steps to assure that the number of carriers represented by any single overseas agent does not exceed the capability of that agent during any period.

(iv) For household goods originating at, and destined to points within a given State (intrastate), an agent may represent only one (1) carrier offering service to, from, or between points within that State. When an agent represents himself as a carrier performing such intrastate service, he may represent no other carriers performing the same service.

(v) For unaccompanied baggage not originating in CONUS, only one (1) carrier to a single destination State or foreign country may be represented in an origin area by the same local agent. If an agent represents himself as a carrier to serve a specified destination State(s) or foreign country, such agent may represent no other carrier serving that State or country.

(vi) The Commander, MTMTS may in subdivisions (ii) and (v) of this subparagraph grant an exception to these numerical limitations in those instances where (a) such an exception would not be inconsistent with the program's effective management and, (b) the agent (1) has the capability to represent a greater number of carriers during all periods or (2) lacks the capability to represent the specified number of carriers during any period.

(6) *Use of storage facilities.* The use of storage facilities will be in accordance with the following provisions:

(i) *Temporary storage (storage in transit).* Qualified commercial storage facilities will be used by the carrier.

(ii) *Nontemporary storage.* Qualified commercial storage facilities will be used whenever they are available at less cost than available DOD storage facilities.

(7) *Use of military transportation resources.* Military transportation resources will be used to the maximum practicable extent for the movement of personal property.

(c) In addition, MTMTS is assigned responsibility for the technical direction, supervision, and evaluation of the traffic management aspects of the program on a worldwide basis, subject to the overall guidance, policies, and programs established by ASD (I&L). In carrying out this function, MTMTS will:

(1) Maintain in a current status a list of qualified carriers.

(2) Publish and maintain in a current status a DOD Personal Property Traffic Management Regulation (4500.34-R)¹ for DOD-wide use by transportation officers in arranging for the movement, storage and handling of personal property.

¹ Copies available from The Adjutant General, Department of the Army.

(3) Develop and prescribe personal property shipping container specifications as may be required to assure adequate protection of the property being shipped and compatibility with transportation capabilities.

(4) Determine the effectiveness of the performance of traffic management functions assigned to and performed at DOD installations.

(5) Furnish technical guidance and assistance including information concerning traffic management cost data and statistics, to DOD components as required.

(6) In collaboration with the military services, recommend to the ASD (I&L) changes in programs and policies governing the management and operation of the DOD program including, but not limited to, such matters as the establishment of joint (multi-DOD component) personal property shipping offices and the assignment of procurement responsibility for personal property services.

(7) Establish and maintain a continuing program for developing improved methods of transportation, packaging (containerization), packing and warehousing.

(8) Collect and maintain statistical and other data as required for information, analysis and effective traffic management of the overall program.

(9) Be the sole negotiator, worldwide, with U.S. household goods carriers and storage firms on rates and all other matters incidental to the transportation and storage of personal property.

(10) Analyze and determine the reasonableness of rates for transportation and related services which are submitted voluntarily or by bid.

(11) Establish and convene, in conjunction with appropriate DOD components, such joint committees or working groups as are required to assure effective operation of the program.

(12) Consult with the Small Business Administration and appropriate representatives of the moving and storage industries on those portions of DOD-wide procedures, standards, criteria, and regulations developed under this part which directly affect them.

(13) In coordination with the DOD components concerned, establish CONUS and overseas field offices or designate representatives in overseas areas to provide effective support to shipping and receiving installations of the military services to carry out assigned responsibilities.

(d) In addition, MTMTS field or designated representatives in overseas areas will:

(1) Exercise traffic management responsibility for the personal property moving and storage program in overseas areas.

(2) Coordinate the traffic management aspects of the personal property moving and storage program of their assigned areas with MTMTS.

(3) Make recommendations to MTMTS with respect to the issuance or modification of policies, the ratio of carrier/agent representation, and limitations as to

numbers of carriers necessary to satisfy requirements.

(4) Provide traffic management information and data to MTMTS, as required.

(5) Receive, accept, and negotiate rates for intratheater movements of personal property as required by the MTMTS.

(6) Communicate directly with MTMTS on personal property traffic management aspects of the program.

(e) The Secretaries of the military departments, through the headquarters, military services, will:

(1) Establish, operate, staff, support, and supervise their personal property shipping offices, worldwide.

(2) Take timely and appropriate action to correct program deficiencies and discrepancies as reported by MTMTS.

(3) Furnish such information, including cost and claims data, as may be required by MTMTS, concerning services related to the DOD personal property moving and storage program.

(4) Provide representation on such committees or working groups as may be convened by MTMTS.

MAURICE W. ROCHE,
Director, Correspondence and
Directives Division, OASD
(Comptroller).

[FR Doc.71-18293 Filed 12-14-71;8:48 am]

Title 49—TRANSPORTATION

Chapter III—Federal Highway Administration, Department of Transportation

SUBCHAPTER B—MOTOR CARRIER SAFETY REGULATIONS

[Docket No. MC-16; Notice 71-32]

PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES

Instructions and Documents

The Director of the Bureau of Motor Carrier Safety is revoking § 397.19(a) (2) of the Motor Carrier Safety Regulations.

Section 397.19(a) (2) is part of a general revision of the rules pertaining to the driving and parking of commercial motor vehicles transporting hazardous materials that the Director issued, after notice and public procedures, on March 5, 1971 (36 F.R. 4874). In its original form, it requires each motor carrier who transports class A or class B explosives to supply the driver of the vehicle in which the explosives are transported with

A document containing summary information about the laws, ordinances, and regulations pertaining to the transportation of explosives in each State (including the District of Columbia) in which the vehicle will be operated.

Paragraph (c) of § 397.19 requires the vehicle's driver to be familiar with the summary information and to carry it with him on the vehicle.

On May 25, 1971, in response to a petition for reconsideration, the effective date of § 397.19(a) (2) was extended to

November 1, 1971, and the word "ordinances" was deleted (36 F.R. 9779). These changes were made because it became apparent that it was quite difficult to assemble the required summaries and to have them printed and distributed by the scheduled June 1, 1971 effective date of the revised Part 397.

Upon further consideration of the issues, the Director has been convinced that the objectives of § 397.19(a) (2) cannot practically be achieved under present circumstances. Contrary to the Bureau's initial assumption, there is no convenient single reference point from which State and local rules pertaining to the transportation of explosives can be secured. Nor is there any agency, State, Federal, or private, which keeps up to date on changes in those rules. The rules themselves display wide variations, with some States having a logical set of safety-related statutes and administrative regulations, while others have rules that are difficult to locate and that appear to be only tangentially related to safety on the highways. The only common trend is towards adoption of the Department of Transportation's Hazardous Materials Regulations by the States for application to intrastate transportation of hazardous materials. Existing Federal regulations require all drivers to be instructed in, and familiar with, the Hazardous Materials Regulations if they transport hazardous materials.

The Director believes that the subject of providing a manual or other document that could be carried by drivers of vehicles transporting hazardous materials and serve as a handy reference to pertinent safety laws should receive further study.

In consideration of the foregoing, paragraph (a) (2) of § 397.19 in Part 397 of the Motor Carrier Safety Regulations (Subchapter B of Chapter III in Title 49 CFR) is revoked. As so amended, paragraph (a) of § 397.19 reads as follows:

§ 397.19 Instructions and documents.

(a) A motor carrier that transports class A or class B explosives must furnish the driver of each motor vehicle in which the explosives are transported with the following documents:

(1) A copy of the rules in this part; and

(2) [Revoked]

(3) A document containing instructions on procedures to be followed in the event of accident or delay. The documents must include the names and telephone numbers of persons (including representatives of carriers or shippers) to be contacted, the nature of the explosives being transported, and the precautions to be taken in emergencies such as fires, accidents, or leakages.

* * * * *
Since this amendment is made in the course of a rulemaking proceeding in which notice and public procedures have been had and because it relieves a restriction, separate notice and public procedure thereon are unnecessary, and it is

effective on the date of issuance set forth below.

(Sec. 204, Interstate Commerce Act, 49 U.S.C. 304, 18 U.S.C. 834; sec. 6, Department of Transportation Act; delegations of authority at 49 CFR 1.48, 389.4, and 389.37)

Issued on December 6, 1971.

KENNETH L. PIERSON,
Acting Director,
Bureau of Motor Carrier Safety.

[FR Doc.71-18274 Filed 12-14-71;8:45 am]

Chapter V—National Highway Traffic Safety Administration, Department of Transportation

[Dockets Nos. 1-9 and 1-10; Notice 8]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Standard No. 215—Exterior Protection

The purpose of this notice is to respond to petitions requesting reconsideration of certain amendments to Federal Motor Vehicle Safety Standard No. 215, Exterior Protection, 49 CFR 571.215, issued on October 18, 1971 (36 F.R. 20369, October 21, 1971). After issuance of the amendments, petitions were filed pursuant to 49 CFR 553.35 by American Motors, Ford, General Motors, and Chrysler. The petitions are granted in part and denied in part.

Each of the petitioners objected to the amendment of section S5.3.1. The section had formerly provided that, after impact, the vehicle's lamps and reflectors had to meet the visibility requirements of S4.3.1.1 of the Standard No. 108. Upon closer review of S5.3.1, the NHTSA concluded that the breadth of the protection that the section was intended to require might not be adequately conveyed by referring only to Standard No. 108's visibility requirements. It was therefore decided to broaden the reference to Standard No. 108, to refer to "the applicable requirements" of that standard.

The broadening of the reference to Standard No. 108 appears to have had a greater impact on manufacturers than was expected. After review of the petitions, the NHTSA has concluded that opportunity should be given for additional comment on the subject of lighting. The language of S5.3.1 is therefore changed to its original form. In a notice of proposed rule making published today in the FEDERAL REGISTER (36 F.R. 23831) amendments are proposed to S5.1 and S5.3.1 that will require vehicles manufactured after September 1, 1973, to meet the photometric requirements of Standard No. 108, as well as the visibility requirements.

The Ford Motor Co. stated that the requirement of S5.3.4 that "the vehicle's exhaust system shall have no leaks or constrictions," would preclude the use of drip holes to remove condensation and, in addition, would not allow constrictions where tubing must be bent for proper routing. Standard No. 215 is not intended to prohibit such design features,

but only to prohibit damage resulting from the impacts specified in the standard. Accordingly, design drip holes are not considered to be "leaks," and "constrictions" does not include the normal design configuration of the exhaust system. The amendment requested by Ford is considered unnecessary, and the petition is therefore denied.

General Motors objected to the requirement of S5.3.5 that specified vehicle systems shall "suffer no damage." The company stated that the phrase was not objective and was therefore inappropriate for a standard. On reconsideration, the NHTSA has concluded that the other protective requirements of S5.3.1 afford adequate protection and that the benefits resulting from the no-damage requirement are not significant enough to justify its continuance as part of the standard. S5.3.5 is therefore amended by deleting the phrase "suffer no damage."

In its petition, General Motors repeated its objection to the requirement for corner impacts at heights below 20 inches (S7.2.2). As in its previous comments on the subject, the company requested an amendment to permit contact with Plane A of the test device in such impacts. The NHTSA has previously rejected this request, and on reconsideration finds no sufficient cause to alter its position. A primary effect of requiring impacts below 20 inches is to establish a fairly broad and nonhostile surface at the vehicle's corners. The shape of the impact ridge is such that if the no-contact requirement applied only at the 20-inch height, the standard would not prevent the manufacture of bumpers with blade type corners. The NHTSA considers that the extension of time previously granted for conformity with S7.2.2 (to September 1, 1975) is adequate for the redesign of sheet metal, if this is necessary, and declines to amend the standard further with respect to corner impacts.

In consideration of the foregoing, Motor Vehicle Safety Standard No. 215, Exterior Protection, § 571.215 of Title 49, Code of Federal Regulations, is amended to read as follows:

1. S5.3.1 is amended to read:

S5.3.1 Each lamp or reflective device, except license plate lamps, shall be free of cracks and shall comply with the applicable visibility requirements of S4.3.1.1 of Motor Vehicles Safety Standard No. 108. The aim of each head lamp shall be adjustable in accordance with the applicable requirements of Standard No. 108.

2. S5.3.5 is amended to read:

S5.3.5 The vehicle's propulsion, suspension, steering, and braking systems shall remain in adjustment and shall operate in the normal manner.

(Secs. 103 and 119, National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1392, 1407; delegation of authority at 49 CFR 1.51)

Issued on December 9, 1971.

CHARLES H. HARTMAN,
Acting Administrator.

[FR Doc.71-18348 Filed 12-14-71;8:51 am]

Chapter X—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Rev. S.O. No. 1002, Amdt. 2]

PART 1033—CAR SERVICE

Car Distribution Directions; Appointment of Agents

At a session of the Interstate Commerce Commission, Division 3, held in Washington, D.C., on the 3d day of December 1971.

Upon further consideration of Revised Service Order No. 1002 (35 F.R. 7016), as amended, and good cause appearing therefor:

It is ordered, That:

Section 1033.1002 *Service Order No. 1002*, be, and it is hereby amended, by substituting the following paragraph (d) for paragraph (d) thereof:

§ 1033.1002 *Service Order No. 1002.*

(d) *Expiration date.* This order shall expire at 11:59 p.m., December 31, 1972, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., December 31, 1971.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2))

It is further ordered, That copies of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Division 3.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-18333 Filed 12-14-71;8:49 am]

[S.O. No. 1083, Amdt. 1]

PART 1033—CAR SERVICE

Southern Pacific Transportation Co. Authorized To Operate Over Tracks of Texas and Pacific Railway Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 6th day of December 1971.

Upon further consideration of Service Order No. 1083 (36 F.R. 21203), and good cause appearing therefor:

It is ordered, That:

Section 1033.1083 *Service Order No. 1083*, be, and it is hereby, amended by

substituting the following paragraph (e) for paragraph (e) thereof:

§ 1033.1083 *Service Order No. 1083.*

(e) *Expiration date.* This order shall expire at 11:59 p.m., June 30, 1972, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., December 15, 1971.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2))

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-18332 Filed 12-14-71;8:49 am]

[No. MC-C-6748]

PART 1061—LIMITATION OF SMOKING ON INTERSTATE PASSENGER CARRIER VEHICLES

Smoking by Passengers and Operating Personnel on Interstate Buses

Upon consideration of the record in the above-entitled proceeding, and of petition of National Association of Motor Bus Owners (NAMBO), filed December 3, 1971, for extension of petition date until January 16, 1972, and for postponement of the effective date of the order of November 8, 1971 (36 F.R. 22579); and good cause appearing therefor:

It is ordered, That the time for filing of petitions be, and it is hereby, extended to January 17, 1972.

It is further ordered, That in view of the action in the first ordering paragraph, the effective date of the regulations described in the report and order of November 8, 1971, reported at 114 M.C.C. 256 be, and it is hereby, indefinitely postponed.

It is further ordered, That notice of this order shall be given to the general public by depositing a copy thereof in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy thereof with the Director, Office of the Federal Register.

Dated at Washington, D.C., this 8th day of December 1971.

By the Commission, Chairman
Stafford.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-18334 Filed 12-14-71;8:51 am]

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

**J. Clark Salyer National Wildlife
Refuge, N. Dak.**

The following special regulation is
issued and is effective on date of publica-
tion in the FEDERAL REGISTER (12-15-71).

§ 33.5 Special regulations; sport fish-
ing; for individual wildlife refuge
areas.

NORTH DAKOTA

**J. CLARK SALYER NATIONAL WILDLIFE
REFUGE**

Sport fishing on the J. Clark Salyer
National Wildlife Refuge, N. Dak., is per-

mitted only on the areas designated by
signs as open to fishing. These open
areas, comprising 11,430 acres or 100 per-
cent of the total water area of the refuge,
are delineated on maps available at
refuge headquarters and from the Office
of the Regional Director, Bureau of
Sport Fisheries and Wildlife, Federal
Building, Fort Snelling, Twin Cities,
Minn. 55111. Sport fishing shall be in
accordance with all applicable State
regulations subject to the following spe-
cial conditions:

(1) The open season for sport fishing
on the refuge extends from December 15,
1971 through March 26, 1972, daylight
hours only. The provisions of this special
regulation supplement the regulations
which govern fishing on wildlife refuge
areas generally which are set forth in
Title 50, Part 33, and are effective
through March 26, 1972.

ROBERT C. FIELDS,
*Refuge Manager, J. Clark Salyer
National Wildlife Refuge, Up-
ham, N. Dak.*

DECEMBER 8, 1971.

[FR Doc.71-18335 Filed 12-14-71;8:49 am]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

I 26 CFR Part 1

INCOME TAX

Accounting for Long-Term Contracts

Notice is hereby given that the regulations with respect to accounting for long-term contracts proposed to be prescribed under section 451 of the Internal Revenue Code of 1954 which were published in tentative form with a notice of proposed rule making in the FEDERAL REGISTER for March 24, 1971 (36 F.R. 5509) are withdrawn and that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, preferably in quintuplicate, to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by January 14, 1972. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.601(b) may be inspected by any person upon written request. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

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

In order to clarify the Income Tax Regulations (26 CFR Part 1) under sections 451 and 471 of the Internal Revenue Code of 1954, such regulations are amended as follows:

PARAGRAPH 1. Section 1.451-3 is amended to read as follows:

§ 1.451-3 Long-term contracts.

(a) *In general.* (1) Income from a long-term contract (as defined in paragraph (b)(1) of this section) may be included in gross income in accordance with one of the two long-term contract methods, namely, the percentage of completion method (as described in paragraph (c) of this section) or the completed contract method (as described in paragraph (d) of this section), if—

(i) The method chosen clearly reflects income consistent with the requirements of paragraph (e) of this section, and

(ii) The taxpayer complies with the requirements of subparagraphs (2), (3), and (4) of this paragraph.

(2) (i) Except as provided in subdivision (ii) of this subparagraph, if a taxpayer reports income from a long-term

contract in accordance with one of the long-term contract methods, such taxpayer must use a long-term contract method (but, except as otherwise provided in this section, not necessarily the same long-term contract method) for each long-term contract within the same trade or business. Once a method of reporting income from a long-term contract has been used, such method must be used consistently with respect to such contract. Similarly, once a method of determining percentage of completion is used with respect to a long-term contract, such method must be used consistently with respect to such contract.

(ii) Notwithstanding the provisions of subdivision (i) of this subparagraph, a taxpayer who has long-term contracts of substantial duration and long-term contracts of less than substantial duration in the same trade or business may report the income from the contracts of substantial duration on the percentage of completion method or the completed contract method and report the income from the contracts of less than substantial duration pursuant to another proper method of accounting. For example, if a manufacturer of heavy machinery has contracts of a type that generally take 9 months to complete and also has contracts of a type that generally take 3 months to complete, the manufacturer may use a long-term contract method for the 9-month contracts and use a proper inventory method pursuant to section 471 and the regulations thereunder for the 3-month contracts.

(3) Except for a taxpayer who is using the completed contract method pursuant to paragraph (e)(1)(ii) of this section, a taxpayer who uses the completed contract method for any long-term contract must attach to his income tax return for the taxable year in which such contract is entered into a statement setting forth facts and circumstances sufficient to establish the unavailability of reasonably dependable estimates of the costs to complete or of the extent of progress toward completion.

(4) The percentage of completion method and the completed contract method apply only to the accounting for income and expenses attributable to long-term contracts. Other income and expense items, such as investment income or expenses not attributable to such contracts, shall be accounted for under a proper method of accounting. See section 446(c) and § 1.446-1(c).

(b) *Definitions.* (1) The term "long-term contract" means a building, installation, construction or manufacturing contract which is not completed within the taxable year in which it is entered into.

(2) The term "completed" means finished at least to the point where—

(i) The remaining costs required to entirely finish the contract are insignificant in comparison with the amounts already expended with respect to such contract;

(ii) No substantial dispute exists as to the acceptability of the work performed on the portion finished; and

(iii) The contract has been completed in all respects which are essential for the basic utility of the subject matter of the contract.

(3) "Costs which are properly associated with a long-term contract" shall be determined by applying the principles of § 1.471-11 (a), (b) and (c) (as proposed in 36 F.R. 23809).

(c) *Percentage of completion method.*

(1) Under the percentage of completion method, the portion of the gross contract price which corresponds to the percentage of the entire contract which has been completed during the taxable year must be included in gross income for such taxable year.

(2) The determination of the percentage of completion of a contract generally may be made on either of the following methods:

(i) By comparing the costs incurred with respect to the contract as of the end of the taxable year with the estimated total costs, or

(ii) By comparing the work performed on the contract as of the end of the taxable year with the estimated total work to be performed.

In determining the percentage of completion pursuant to subdivision (i) of this subparagraph with respect to a long-term contract, a taxpayer may use any method of cost comparisons (such as comparisons of total direct and indirect costs incurred to date to estimated total direct and indirect costs, of total direct costs incurred to date to estimated total direct costs, or of direct labor costs incurred to date to estimated total direct labor costs) so long as such method is used consistently with respect to such contract and such method clearly reflects income. In determining the percentage of completion pursuant to subdivision (ii) of this subparagraph, the criteria used to compare the work performed on a contract as of the end of the taxable year with the estimated total work to be performed must clearly reflect the earning of income with respect to the contract. Thus, for example, in the case of a roadbuilder, a standard of completion based solely upon miles of roadway completed in a case where the terrain is substantially different with respect to roadway completed during one taxable year as compared with roadway completed during another taxable year may not clearly reflect the earning of income with respect to the contract. If the method described in subdivision (ii) of

this subparagraph is used, certificates of architects or engineers or other appropriate documentation showing the percentage of completion of each contract during the taxable year must be available at the principal place of business of the taxpayer for inspection in connection with an examination of the income tax return.

(3) Under the percentage of completion method, all costs which are properly associated with a long-term contract (determined pursuant to paragraph (b) (3) of this section) incurred during the taxable year in connection with the contract (account being taken of the material and supplies on hand at the beginning and the end of the taxable year for use in the contract) must be deducted. Any estimated costs necessary to entirely finish the contract (other than costs relating to matters then in dispute between the taxpayer and other parties to the contract) must be deducted in the taxable year in which the contract is completed (as defined in paragraph (b) (2) of this section). Such deduction, however, may not include the estimated costs to be incurred with respect to any guarantee, warranty, maintenance, or other service agreement relating to the subject matter of the long-term contract. Any variance between the estimated and actual expenses should be taken into account as an item of income or deduction in the taxable year in which such variance is determined.

(d) *Completed contract method.* (1) Under the completed contract method gross income derived from long-term contracts must be reported by including the gross contract price (except any portion of such gross contract price as may be the subject of a substantial dispute at the end of the taxable year in which the contract is completed) in gross income for the taxable year in which the contract is completed (as defined in paragraph (b) (2) of this section). If a portion of the gross contract price is not included in gross income for the taxable year in which the contract is completed because such portion of the gross contract price is the subject of a substantial dispute at the end of such taxable year, such portion of the gross contract price must be included in gross income in the year in which such dispute is resolved.

(2) Under the completed contract method, all costs which are properly associated with a long-term contract (determined pursuant to paragraph (b) (3) of this section) must be deducted from gross income for the taxable year in which the contract is completed (rather than in a prior year). In addition, account must be taken of any material and supplies charged to the contract but remaining on hand at the time of completion. Any estimated costs, necessary to entirely finish the contract (other than costs relating to matters then in dispute between the taxpayer and other parties to the contract) must also be deducted in the taxable year in which the contract is completed. Such deduction, however, may not include the estimated costs to be in-

curring with respect to any guarantee, warranty, maintenance, or other service agreement relating to the subject matter of the long-term contract. Any variance between the estimated and actual expenses should be taken into account, as an item of income or deduction, in the taxable year in which such variance is determined.

(e) *Exceptions.* (1) (i) For taxable years beginning after [the date of adoption of these regulations] the completed contract method will be treated as clearly reflecting income with respect to a long-term contract (as provided in paragraph (a) (1) (i) of this section) only if estimates of the costs to complete such contract or of the extent of progress toward completion of such contract are not reasonably dependable. Lack of dependable estimates may exist where the business is subject to significant inherent hazards as, for example, unforeseeable subsoil conditions in the construction industry for which a taxpayer does not have adequate price protection in his contract. The question whether such dependable estimates exist will be determined by reference to all relevant facts and circumstances in the taxpayer's business. The existence of substantial losses on a significant number of similar contracts in the taxpayer's business will constitute evidence that estimates of the costs to complete his long-term contracts are not reasonably dependable. The fact that a taxpayer determines income from long-term contracts on the completed contract method in financial reports (including consolidated financial statements) to shareholders, partners, beneficiaries, or other proprietors will constitute evidence that estimates of the costs to complete and of the extent of progress toward completion are not reasonably dependable. The fact that a taxpayer determines income from contracts on the percentage of completion method in financial reports (including consolidated financial statements) to shareholders, partners, beneficiaries, or other proprietors will constitute evidence that estimates of the costs to complete and of the extent of progress toward completion are reasonably dependable. If the taxpayer is a partner in a partnership having long-term contracts, the fact that one or more of the partnership's partners determine income from the partnership's long-term contracts on a percentage of completion method in financial reports (including consolidated financial statements) to shareholders, partners, beneficiaries, or other proprietors will constitute evidence that estimates of the costs to complete and of the extent of progress toward completion are reasonably dependable. Such evidence in either case may be rebutted by reference to other facts and circumstances indicating that estimates of the costs to complete and of the extent of progress toward completion are not reasonably dependable. The fact that a taxpayer uses the percentage of completion method for purposes of reports to potential or existing creditors, bonding companies, sureties, government agencies or third parties generally will be disre-

garded because such reports are normally required to be prepared on such method even though in some cases estimates of costs to complete or of the extent of progress toward completion are not reasonably dependable.

(ii) Notwithstanding subdivision (i) of this subparagraph, in the case of a taxpayer using the completed contract method on March 24, 1971, such method will generally be treated as clearly reflecting income for any taxable year if such taxpayer has consistently used such method for similar contracts prior to such date and there has been no significant increase in the average annual level of gross receipts from long-term contracts of such taxpayer for a taxable year ending after March 24, 1971. For purposes of the preceding sentence, gross receipts from long-term contracts received by a partnership shall be deemed to be received by the partners in the same proportion as their shares of the net profits of the partnership with respect to long-term contracts. There will be no such significant increase in the average level of gross receipts of a taxpayer for any taxable year if the average annual gross receipts of such taxpayer for the taxable year and the four taxable years preceding such taxable year from long-term contracts are not more than 150 percent of the average annual gross receipts from long-term contracts for the 5-year period consisting of such taxpayer's last taxable year ending before March 24, 1971, and the 4 years preceding such taxable year, or, if shorter, for such taxpayer's period of existence prior to March 24, 1971. The determinations provided for in the preceding sentence shall be made with reference to the gross receipts of a predecessor corporation or corporations to the extent a taxpayer has acquired assets of such predecessor corporation or corporations in a transaction to which section 381(a) applies. In the case of a partnership, the completed contract method will generally be treated as clearly reflecting income for any taxable year if either the partnership or partners entitled to more than 80 percent of the profits of such partnership meet the tests set forth in the first sentence of this subparagraph. In the case of a corporation more than 80 percent of the outstanding stock of which is owned by another corporation, the completed contract method will generally be treated as clearly reflecting income for any taxable year if either such corporation meets the tests set forth in the first sentence of this subparagraph, but in such case the gross receipts of both such corporations shall be combined in determining whether there has been a significant increase in the average annual level of gross receipts from long-term contracts of such taxpayer for a taxable year ending after March 24, 1971.

(2) (i) Income from a cost-plus contract must be reported on the percentage of completion method (rather than the completed contract method) if, under the terms of such contract and without regard to collectibility, a taxpayer is assured of a profit on such contract. A taxpayer shall not be considered assured of

a profit on a contract if under all the facts and circumstances, such taxpayer is bearing a substantial risk of loss with respect to such contract.

(ii) In determining the amounts to be reported under a cost-plus contract which are reported under the percentage of completion method, a taxpayer may ordinarily determine the percentage of completion—

(a) Pursuant to one of the methods described in paragraph (c) (2) of this section, or

(b) On the basis of amounts billable under the contract unless such determination is not reasonably related to the proportionate performance of the total work or services to be performed by the taxpayer from inception to completion, and only if such determination is made in a similar manner in financial reports (including consolidated financial statements) to shareholders, partners, beneficiaries, or other proprietors.

However, in any case where subdivision

(i) of this subparagraph applies and the taxpayer's profit is based on a percentage of costs incurred, the taxpayer must determine the percentage of completion pursuant to the method described in paragraph (c) (2) (i) of this section.

(iii) Costs properly associated with a cost-plus contract must be deducted in accordance with the rules prescribed in paragraph (c) (3) or (d) (2) of this section, whichever is applicable.

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

Example (1). On July 1, 1972, X, a calendar year taxpayer engaged in the manufacture of geophysical instruments and using a long-term contract method of accounting, enters into a contract with M company to build a new type of geophysical instrument. Since the terms of the contract provide that the total contract price is to equal all of the direct and indirect costs allocable to the development of the geophysical instrument plus a fee equal to 10 percent of such costs, X is assured of a profit on the contract. It is estimated that the geophysical instrument will not be completed for at least 18 months. Under these circumstances X must report the income from this contract on the percentage of completion method and must determine the percentage of completion pursuant to the method described in paragraph (c) (2) (i) of this section.

Example (2). Assume the facts as stated in Example (1) except that the contract further provides that the total contract price is in no event to exceed \$500,000. X estimates that the total costs required to perform the contract will be between \$425,000 and \$450,000. However, the possibility exists that if certain contingencies occur, such as labor disputes or inclement weather (which might greatly increase costs of testing the instrument and which, though unlikely, could reasonably occur under the circumstances), the total costs required to perform the contract might well be as much as \$550,000. Under these circumstances, this subparagraph does not foreclose X from reporting the income from this contract on the completed contract method.

(f) *Severing and aggregating contracts.* (1) For the purpose of clearly reflecting income, it may be necessary in some instances either to treat one agree-

ment as several contracts or to treat several agreements as one contract. Whether an agreement should be so severed or several agreements so aggregated will depend on all the facts and circumstances. Generally, one agreement will not be treated as several contracts unless such agreement contemplates separate delivery or separate acceptance of portions of the subject matter of the contract or unless there is no business purpose for entering into one agreement rather than several agreements. Several agreements will not generally be aggregated unless the several agreements would be treated as one contract under customary commercial practice in a taxpayer's trade or business or unless there is no business purpose for entering into several agreements rather than one agreement. An example of a factor which is evidence that two contracts entered into between the same parties should be aggregated is that one of the contracts would not have been entered into containing the terms agreed upon but for the entering into of the other contract.

(2) The application of this paragraph may be illustrated by the following examples:

Example (1). X, a calendar year taxpayer engaged in the construction business and using a long-term contract method, enters into one contract in 1970 with A, a real estate developer to build three houses of different designs in three suburbs of a large city. The houses are to be completed, accepted, and put into service in 1971, 1972, and 1973. The portion of the total contract price attributable to each house can reasonably be determined. In these circumstances, the contract should be severed and treated as if the agreement to build each house were a separate contract for purposes of applying X's long-term contract method.

Example (2). Y, a calendar year shipbuilder using a long-term contract method, enters into two contracts at about the same time during 1970 with M. These contracts are the product of a single negotiation. Under each contract, the taxpayer is to construct for M a submarine of the same class. Although the specifications for each submarine are similar, it is anticipated that, since the taxpayer has never constructed this class of submarine before, the costs incurred in constructing the first submarine (to be delivered in 1971) will be substantially greater than the costs incurred in constructing the second submarine (to be delivered in 1972). If the contracts are treated as separate contracts, it is estimated that the first contract would result in little or no gain, while the second contract would result in substantial profits. It is unlikely that Y would have entered into the contract to construct the first submarine for the price specified without entering into the contract to construct the second submarine. In these circumstances, the two contracts must be treated as one contract for purposes of applying Y's long-term contract method.

Example (3). Z, a calendar year manufacturer using the completed contract method for his long-term contracts, enters into a contract with N company in June of 1973. This contract provides that Z will ship 1,000 folding chairs per month to N for 36 months beginning in July 1973 and ending in June 1976. Under these circumstances the contract should be severed and treated as 36 separate contracts, one for each separate shipment.

(g) *Changing to or from a long-term method of accounting.* (1) A taxpayer may change to or from the percentage of completion method or the completed contract method only with the consent of the Commissioner. See section 446(e) and § 1.446-1(e).

(2) A taxpayer who has used the completed contract method of accounting for long-term contracts entered into in taxable years ending on or before (the date of adoption of these regulations) may change to the percentage of completion method for all long-term contracts entered into in his first taxable year for which he makes the election described in this subparagraph and subsequent taxable years (except for long-term contracts with respect to which the costs to complete or the extent of progress toward completion cannot reasonably be estimated), and may continue to use the completed contract method for long-term contracts entered into in prior taxable years. Because adoption of the percentage of completion method pursuant to this subparagraph will result in neither a duplication nor an omission of income or deductions, no section 481 adjustments shall be made. In the case of a taxpayer who wishes to change to the percentage of completion method pursuant to this subparagraph, the Commissioner shall consent to such change if the taxpayer's application for such change is filed on Form 3115 with the Commissioner of Internal Revenue, Washington, D.C. 20224, within the first 180 days of any taxable year beginning on or after (the date of adoption of these regulations) and before (2 years after the adoption of these regulations). In such a case, the Commissioner's consent will be evidenced by an acknowledgement of the application, which will be sent to the taxpayer.

(3) (i) A taxpayer who—

(a) Has used the completed contract method of accounting for long-term contracts in taxable years ending on or before (the date of adoption of these regulations), and

(b) Wishes to change to the percentage of completion method of accounting for all his long-term contracts (other than the long-term contracts with respect to which the costs to complete or the extent of progress toward completion cannot reasonably be estimated), including those uncompleted long-term contracts entered into prior to (the date of adoption of these regulations),

may elect to do so pursuant to the following procedural rules and transition methods, provided he files a Form 3115 during the first 180 days of any taxable year beginning on or after (the date of adoption of these regulations) and before (2 years after the date of adoption of these regulations). Such Form 3115 must be filed with the Commissioner of Internal Revenue, Washington, D.C. 20224.

(ii) If a taxpayer elects to change his method of accounting pursuant to this subparagraph he must also elect at the same time to have any adjustments required by section 481 because of such

change treated under subdivision (iii), (iv), or (v) of this subparagraph. If a taxpayer elects to change his method of accounting pursuant to this subparagraph, such change shall be considered to be a change other than a change initiated by the taxpayer, notwithstanding the provisions of § 1.481-1(c)(5). Thus, any "pre-1954 balance" with respect to such taxpayer's long-term contracts shall not be taken into account as an adjustment under section 481. For purposes of this paragraph, a "pre-1954 balance" is the net amount of the adjustments which would have been required if such taxpayer had made such change in his method of accounting in his first taxable year which began after December 31, 1953, and ended after August 16, 1954. See section 481(a)(2) and § 1.481-3.

(iii) If a taxpayer elects to apply the transitional rules of this subdivision (rather than those described in subdivision (iv) or (v) of this subparagraph), he must take into account any adjustments required by section 481 due to such change of method of accounting in the taxable year he makes such election, the "year of the change."

(iv) If a taxpayer elects to apply the transitional rules of this subdivision (rather than those described in subdivision (iii) or (v) of this subparagraph), he must take into account any adjustments required by section 481 due to such change of method of accounting ratably over a period designated by the taxpayer at the time of such election not to exceed the lesser of 20 taxable years commencing with the year of the change or the number of years such taxpayer has been on the completed contract method. If a taxpayer dies or otherwise ceases to exist in a transaction other than one to which section 381(a) applies, the entire amount of the adjustment not previously taken into account shall be taken into gross income in the taxable year in which such taxpayer ceases to exist.

(v) If a taxpayer elects to apply the transition rules of this subdivision (rather than those described in subdivision (iii) or (iv) of this subparagraph), he must establish a "suspense" account for any adjustments required by section 481 with respect to long-term contracts. The amount in such suspense account shall equal the total of such adjustments required by section 481. In any taxable year in which—

(a) The taxable income determined (without regard to the deductions allowed by sections 170(d), 172, 243(a)(1), 244(a), 245, and 247, and without regard to any capital loss carryback to the taxable year under section 1212(a)(1)) as if such taxpayer had continued to use the completed contract method, exceeds

(b) Such taxable income determined (without regard to the deductions allowed by sections 170(d), 172, 243(a)(1), 244(a), 245, and 247, and without regard to any capital loss carryback to the taxable year under section 1212(a)(1)) under the percentage of completion method,

such taxpayer shall, subject to the 20 percent limitation hereinafter provided, reduce the suspense account by an amount equal to such excess and take such reduction into income until the entire amount of such suspense account has been reduced to zero. Any reduction from the suspense account and inclusion in gross income for any taxable year shall not exceed an amount equal to 20 percent of the total amount originally placed into such suspense account, unless the taxpayer dies or otherwise ceases to exist in a transaction other than one to which section 381(a) of the Code applies. If the taxpayer so ceases to exist, the entire amount remaining in such suspense account shall be taken into income without regard to the 20 percent limitation for the taxable year in which such taxpayer ceases to exist. The net effect of this subdivision is that the taxpayer will recognize amounts from the suspense account (limited, except as provided above, in any one taxable year to 20 percent of the original amount in the account) as gross income only in those taxable years in which such amounts (or a greater amount) would have been recognized had the taxpayer not changed his method of accounting for long-term contracts from the completed contract method to the percentage of completion method. For purposes of this subparagraph, the suspense account shall not be adjusted by any amount which did not enter into the computation of the taxpayer's taxable income for any taxable year for which assessment, collection, payment, abatement, refund, or credit is barred by the operation of any law or rule of law, including compromises or any closing agreement.

(vi) If a taxpayer makes an election pursuant to subdivisions (i) and (ii) of this subparagraph to change from the completed contract method to the percentage of completion method of accounting for long-term contracts, the Commissioner shall consent to the change. In such a case, the Commissioner's consent will be evidenced by a letter of consent to such taxpayer, setting forth the amount of the adjustments (if any) required to be taken into account by section 481 and the treatment to be accorded any such adjustments. The taxpayer's factual representations used to establish the amount of such adjustments shall be subject to verification on examination by the District Director. The taxpayer shall preserve, at his principal place of business, all records, data and other evidence relating to such adjustments.

(vii) If a taxpayer fails to make a proper election to change his method of accounting for long-term contracts pursuant to this paragraph, the provisions of this paragraph shall not apply and a change of method shall be made under the provisions of sections 446 and 481 and the regulations thereunder.

(h) *Elective rules for certain accrual method taxpayers.* (1) A taxpayer who, for taxable years ending before (the date of adoption of these regulations), was using an accrual method of accounting (under which income is accrued when,

and costs are accumulated until, the subject matter of the contract is shipped or delivered or until title passes) for his long-term contracts for tax purposes and a percentage of completion method for purposes of his financial reports (as described in § 1.451-5(b)) will be treated as having used the completed contract method of accounting on such date for purposes of paragraph (e)(1)(ii) of this section and § 1.451-5(b), but only if he elects to change his method of accounting for long-term contracts to the completed contract method. An election described in this subparagraph must be made for any taxable year beginning on or after (the date of adoption of these regulations) and before (2 years after the date of adoption of these regulations) and must be filed on Form 3115 with the Commissioner of Internal Revenue, Washington, D.C. 20224 within the first 180 days of such taxable year. A taxpayer wishing to make such an election may make such an election and use the completed contract method only if and so long as he is eligible to use the completed contract method pursuant to the provisions of paragraphs (a)(3) and (e) of this section applied as if he had used the completed contract method on March 24, 1971.

(2) If a taxpayer described in subparagraph (1) of this paragraph elects to change his method of accounting for tax purposes for long-term contracts to the percentage of completion method (rather than to the completed contract method), he may make such election pursuant to (and within the time limits prescribed in) paragraph (g)(2) or (g)(3) of this section. In applying the provisions of paragraph (g)(2) or (g)(3) of this section to a taxpayer making an election pursuant to the preceding sentence, the words "an accrual method" shall be substituted for the term "the completed contract method" in each place such term appears in such paragraph.

(3) The provisions of this paragraph may be illustrated by the following examples:

Example (1). X Company, a calendar year taxpayer, receives advance payments with respect to items manufactured pursuant to long-term contracts. For 1971 and all prior years, X has reported the income from long-term contracts in its manufacturing business on an accrual method (under which income is accrued when, and costs are accumulated until, the subject matter of the contract is shipped or delivered or until title passes) for tax purposes and on the percentage of completion method for purposes of his financial reports (referred to in § 1.451-5(b)). As of the end of 1973, X's first full taxable year after [the date of adoption of these regulations], the average level of X's gross receipts from long-term contracts, computed in the manner provided in paragraph (e)(1)(ii) of this section, has not significantly increased since March 24, 1971. Under these circumstances, X may elect to change his method of accounting for long-term contracts to the completed contract method for 1973 if he files an election to make such a change in his method of accounting pursuant to the provisions of subparagraph (1) of this paragraph. If X makes such an election, X may include such advance payments in income in the taxable year in which properly

includible under the completed contract method of accounting. X may then continue to use the completed contract method so long as X meets the requirements of paragraphs (a) (3) and (e) of this section. Instead of electing to change to the completed contract method, X may elect to change to the percentage of completion method pursuant to subparagraph (2) of this paragraph. In making such an election, X must specify whether the provisions of paragraph (g) (2) of this section or the provisions of paragraph (g) (3) of this section are to apply. If X elects to change to the percentage of completion method, X may include such advance payments in income in the taxable year in which properly includible under the percentage of completion method of accounting.

Example (2). Assume the same facts as stated in example (1), except that in 1973 X anticipates that as of the end of 1973 its average annual gross receipts from long-term contracts will have significantly increased. In addition, X anticipates that it will not be able to meet the requirements of paragraph (e) (1) (i) of this section at such time. As in example (1), X may elect to change to the percentage of completion method pursuant to subparagraph (2) of this paragraph. In making such an election, X must specify whether the provisions of paragraph (g) (2) of this section or the provisions of paragraph (g) (3) of this section are to apply. If X makes such an election, X may include such advance payments in income in the taxable year in which properly includible under the percentage of completion method of accounting.

PAR. 2. There is inserted immediately after § 1.471-9 the following new section:

§ 1.471-10 Applicability of long-term contract methods.

For optional rules providing for application of the long-term contract methods to certain manufacturing contracts, see § 1.451-3.

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[26 CFR Part 1]

INCOME TAX

Use of the Full Absorption or Modified Full Absorption Method of Inventory Valuation

Notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, preferably in quintuplicate, to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by January 14, 1972. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.-601(b) may be inspected by any person upon written request. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner by January 14, 1972. In such case, a public hearing will be held, and notice of the

time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER, unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the Federal Register. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

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

In order to provide rules for the use of the full absorption or modified full absorption method of inventory valuation, the Income Tax Regulations (26 CFR Part 1) under sections 61, 446, and 471 of the Internal Revenue Code of 1954, relating to gross income, methods of accounting and inventory valuation are amended as follows:

PARAGRAPH 1. Paragraph (a) section 1.61-3 is amended to read as follows:

§ 1.61-3 Gross income derived from business.

(a) *In general.* In a manufacturing, merchandising, or mining business, "gross income" means the total sales, less the cost of goods sold, plus any income from investments and from incidental or outside operations or sources. Gross income is determined without subtraction of depletion allowances based on a percentage of income, except as provided in § 1.471-11(b) (2) (iii) (b) of the regulations, and without subtraction of selling expenses, losses, or other items not ordinarily used in computing the cost of goods sold. With respect to the determination of the cost of inventory to be used in calculating costs of goods sold, see §§ 1.471-1 through 1.471-11 of the regulations.

PAR. 2. Section 1.446-1(c) (1) (ii) is amended to read as follows:

§ 1.446-1 General rule for methods of accounting.

(c) *Permissible methods.* * * *

(1) *In general.* * * *

(ii) *Accrual method.* Generally, under an accrual method, income is to be included for the taxable year when all the events have occurred which fix the right to receive such income and the amount thereof can be determined with reasonable accuracy. Under such a method, deductions are allowable for the taxable year in which all the events have occurred which establish the fact of the liability giving rise to such deduction and the amount thereof can be determined with reasonable accuracy. The method used by the taxpayer in determining when income is to be accounted for will be acceptable if it accords with generally accepted accounting principles and is consistently used by the taxpayer from year to year. For example, a taxpayer engaged in a manufacturing business may account for sales of his product when the goods are shipped, when the product

is delivered or accepted, or when title to the goods passes to the customer, whether or not billed, depending upon the method regularly employed in keeping his books.

PAR. 3. Section 1.471-2 is amended, by revising the cross references in paragraph (b), deleting the last sentence in paragraph (b), and by adding subparagraphs (6) and (7) to paragraph (f), to read as follows:

§ 1.471-2 Valuation of inventories.

(b) It follows, therefore, that inventory rules cannot be uniform but must give effect to trade customs which come within the scope of the best accounting practice in the particular trade or business. In order to clearly reflect income, the inventory practice of a taxpayer should be consistent from year to year, and greater weight is to be given to consistency than to any particular method of inventorying or basis of valuation so long as the method or basis used is in accord with §§ 1.471-1 through 1.471-11.

(f) * * *
(6) Segregating indirect production costs into fixed and variable production cost classifications (as defined in § 1.471-11(b) (2) (ii)) and allocating only the variable costs to the cost of goods while treating fixed costs as period costs which are currently deductible. This method is commonly referred to as the "direct cost" method.

(7) Treating all or substantially all indirect production costs (whether classified as fixed or variable) as period costs which are currently deductible. This method is generally referred to as the "prime cost" method.

PAR. 4. Paragraph (c) of § 1.471-3 is amended to read as follows:

§ 1.471-3 Inventories at cost.

(c) In the case of merchandise produced by the taxpayer since the beginning of the taxable year, (1) the cost of raw materials and supplies entering into or consumed in connection with the product, (2) expenditures for direct labor, and (3) indirect production costs incident to and necessary for the production of the particular article, including in such indirect production costs a reasonable proportion of management expenses, but not including any cost of selling or return on capital, whether by way of interest or profit. See § 1.471-11 for more specific rules regarding the treatment of indirect production costs.

PAR. 5. Section 1.471-11 is added immediately following § 1.471-10 to read as follows:

§ 1.471-11 Inventories of manufacturers.

(a) *In general.*—(1) *Permissible methods of inventory valuation.* In order to conform as nearly as may be possible to the best accounting practices and to

clearly reflect income (as required by section 471 of the Code), both direct and indirect production costs must be included in the cost of goods in accordance with either the "full absorption" method of inventory valuation described in subparagraph (2) of this paragraph or the "modified full absorption" method of inventory valuation described in subparagraph (3) of this paragraph.

(2) *Full absorption method.* Under the "full absorption" method of inventory valuation, production costs must be allocated to goods produced during the taxable year, whether sold during the taxable year or in inventory at the close of the taxable year. The taxpayer must include in his cost of goods all direct production costs and, to the extent provided by paragraph (c) of this section, all indirect production costs (determined under paragraph (b) (2) of this section).

(3) *Modified full absorption method—*

(i) *In general.* Under the "modified full absorption" method of inventory valuation, the taxpayer must include in his cost of goods all production costs includible under the full absorption method (described in subparagraph (2) of this paragraph), except that, if he meets the requirements of subdivision (ii) of this subparagraph, the taxpayer may exclude any one or more of the following costs:

(a) State, local, and foreign taxes (described in paragraph (b) (2) (iii) (a) of this section),

(b) Depreciation and depletion (described in paragraph (b) (2) (iii) (b) of this section),

(c) Pension and profit-sharing contributions representing current service costs, and other employee benefits (described in paragraph (b) (2) (iii) (c) of this section),

(d) Officer's salaries, and

(e) General and administrative expenses.

A taxpayer who has changed to the full or modified full absorption method and has received the benefits of the special rules prescribed in paragraph (d) (1) and (3) of this section generally may not change to the modified full absorption method or a modified full absorption method which is less inclusive of indirect production costs than the method from which he is changing for any subsequent taxable year or years unless the taxpayer can show to the satisfaction of the Commissioner the existence of compelling facts and circumstances which require the change to the new method.

(ii) *Requirements.* Under the modified full absorption method of inventory valuation, any one or more of the costs described in subdivision (i) of this subparagraph may be excluded by the taxpayer from his cost of goods only if:

(a) Such items are not included in cost of goods by the taxpayer for purposes of financial reports (including consolidated financial statements) to shareholders, partners, beneficiaries, or other proprietors and for credit purposes, and

(b) The taxpayer's method of accounting for his indirect production

costs does not constitute, in substance, either the prime or direct cost method of inventory valuation and is not inconsistent with generally accepted accounting principles. In the absence of clear and convincing evidence to the contrary, a taxpayer's method of accounting for his indirect production costs will constitute, in substance, either the prime or direct cost method if as of the close of any taxable year the amount of his fixed and variable indirect production costs allocated to the cost of goods under his present method or the method to which he is changing, whichever is applicable, is less than 35 percent of his total fixed and variable indirect production costs.

(b) *Production costs—*(1) *Direct production costs.* Costs classified as "direct production costs" are generally those costs which can be identified or associated with particular units of a specific product. Direct production costs include direct materials, which are those materials which become an integral part of the finished product and those which are consumed in the ordinary course of manufacturing and can be identified or associated with particular units of that product. Direct production costs also include direct labor, which is that labor which can be identified or associated with particular units of a specific product. A taxpayer who does not include 100 percent of his direct production costs in cost of goods is using an incorrect method of inventory valuation and may not receive the benefit of the special rules provided in paragraph (d) (1) through (3) of this section.

(2) *Indirect production costs—*(i) *In general.* The term "indirect production costs" includes all costs which are associated with production or manufacturing operations or processes other than direct production costs (as defined in subparagraph (1) of this paragraph). Indirect production costs may be classified as to kind or type in accordance with generally accepted accounting principles so as to enable convenient identification with various production or manufacturing activities or functions and to facilitate reasonable groupings of such costs for purposes of determining unit product costs.

(ii) *Fixed and variable classifications.* For purposes of this section, fixed indirect production costs are generally those costs which remain relatively constant in amount at any given production capacity regardless of the actual level of production. Fixed costs may include, among other costs, rent, depreciation, and property taxes on buildings and machinery associated with manufacturing operations. On the other hand, variable costs are those costs, among other costs, which generally vary with different levels of production regardless of the production capacity. Variable costs would normally include such costs as indirect materials (factory janitorial supplies and other items) and indirect labor (factory supervisory wages, janitorial wages, and similar items).

(iii) *Certain indirect production costs.* The indirect production costs referred to

in subdivision (i) of this subparagraph include, among other costs, management expenses (but not including any cost of selling or any return on capital), repair expenses, maintenance, utilities, and rent on buildings and machinery to the extent such costs are associated with production or manufacturing operations or processes. Where a particular item of cost is not clearly associated with a production or manufacturing operation or process, the method the taxpayer uses in accounting for such cost for financial reports (including consolidated financial statements) to shareholders, partners, beneficiaries, or other proprietors, and for credit purposes shall be given great weight in determining whether such cost is to be included in indirect production costs. In addition, the term "indirect production costs" specifically includes, but is not limited to, the following costs to the extent they are associated with production or manufacturing operations or processes:

(a) *Taxes.* Taxes otherwise allowable as a deduction under section 164 (other than State and local and foreign income taxes). Thus, for example, the cost of State and local property taxes imposed on a factory or other production facility and any State and local taxes imposed on inventory would be included in indirect production costs. On the other hand, income taxes attributable to income received on the sale of inventory would not be included in indirect production costs.

(b) *Depreciation and depletion.* Depreciation on buildings and machinery and depletion of depletable assets. For any taxable year in which an inventory valuation is made, the taxpayer must include as an indirect production cost for such taxable year an amount which is not less than the amount of the straight line depreciation on depreciable assets and an amount equal to the cost depletion (other than raw material costs) on depletable assets. Depreciation (such as double declining balance and sum of the years digits) in excess of straight line depreciation or depletion in excess of cost depletion need not be included in such indirect production costs if such amounts are not included in such costs by the taxpayer for purposes of financial reports (including consolidated financial statements) to shareholders, partners, beneficiaries, or other proprietors and for credit purposes.

(c) *Employee benefits.* Pension and profit-sharing contributions representing current service costs, otherwise allowable as a deduction under section 404, made on behalf of production workers and their supervisors. Pension and profit-sharing contributions, to the extent they represent past service costs, need not be included in such indirect production costs if such amounts are not included in such costs by the taxpayer for purposes of financial reports (including consolidated financial statements) to shareholders, partners, beneficiaries, or other proprietors and for credit purposes. Other employee benefits paid or

incurred on behalf of employees associated with the production of goods must be included in the cost of such goods. These other costs include other employee benefits (such as vacation pay and premiums on life and health insurance) which are specifically allowable as deductions under chapter 1 of the Code.

Indirect production costs do not include marketing, advertising, distribution, or other costs not associated with production or manufacturing operations or processes. Such costs do not include research and experimental expenditures (see section 174 and the regulations thereunder) except that such costs may be included if the taxpayer includes such costs for purposes of financial reports (including consolidated financial statements) to shareholders, partners, beneficiaries, or other proprietors and for credit purposes. Indirect production costs need not include the amount of any losses allowable as a deduction under section 165 or costs which are so abnormal or extraordinary that they more properly are considered current period charges rather than a portion of the cost of goods. See § 1.61-3(a). Factors which are to be taken into account in determining whether a cost is so abnormal or extraordinary as to be excluded from indirect production costs include, among others, the taxpayer's previous production cost experience, the extent to which the actual production costs are greater than such experience factor, the cause and nature of such increased costs, and the manner in which the taxpayer treats such costs for purposes of financial reports (including consolidated financial statements) to shareholders, partners, beneficiaries, or other proprietors and for credit purposes.

(c) *Allocation methods*—(1) *In general.* Indirect production costs determined under the full absorption method or the modified full absorption method (described in paragraphs (a) (2) and (3) of this section) must be included in the taxpayer's cost of goods by the use of a method of allocation which fairly allocates such costs incurred during the taxable year to cost of goods. Such methods include the application of manufacturing burden rates as described in subparagraph (2) of this paragraph or other similar methods. The practical capacity method described in subparagraph (3) of this paragraph is also an acceptable method for allocating fixed indirect production costs to the cost of goods.

(2) *Manufacturing burden rate method*—(i) *In general.* Manufacturing burden rates may be developed in accordance with any generally accepted accounting principles. In developing any manufacturing burden rate, the factors described in subdivision (ii) of this subparagraph may be taken into account. If the taxpayer chooses, he may allocate his indirect production costs on the basis of different manufacturing burden rates. Thus, for example, the taxpayer may use one burden rate for allocating rent and another burden rate for allocating utilities. The method used by the taxpayer

in allocating such costs for financial reports (including consolidated financial statements) to shareholders, partners, beneficiaries, or other proprietors and for credit purposes shall be given great weight in determining whether the taxpayer's method fairly allocates indirect production costs to cost of goods. Any change in a manufacturing burden rate which is merely a periodic adjustment to reflect current operating conditions, such as increases in automation or changes in operation, does not constitute a change in method of accounting under section 446. However, a change in concept upon which such rates are developed does constitute a change in method of accounting requiring the consent of the Commissioner. The taxpayer shall maintain adequate records and working papers to support all manufacturing burden rate calculations.

(ii) *Development of manufacturing burden rate.* The following factors may be taken into account in developing any manufacturing burden rate:

(a) The selection of an appropriate level of activity and period of time upon which to base the calculation of rates which will reflect operating conditions for purposes of the unit costs being determined;

(b) The selection of an appropriate statistical base such as direct labor hours, or machine hours, or a combination thereof, upon which to apply the overhead rate to determine production costs; and,

(c) The appropriate budgeting, classification and analysis of expenses (for example, the analysis of fixed and variable costs).

(3) *Practical capacity method*—(i) *In general.* Under the practical capacity method, the percentage of practical capacity represented by actual production (not greater than 100 percent), as calculated under subdivision (ii) of this subparagraph, is used to allocate fixed indirect production costs to the cost of goods. The difference (if any) between the amount of all fixed indirect production costs and the fixed indirect production costs which are allocated to production under the practical capacity method is allowable as a deduction for the taxable year in which such difference occurs. The portion of the indirect production costs to be allocated to cost of goods under the practical capacity method is then combined with variable indirect production costs and both are assigned to the cost of goods on a per unit basis. See the example in subdivision (ii) (d) of this subparagraph.

(ii) *Calculation of practical capacity*—(a) *In general.* Practical capacity and theoretical capacity (as described in (c) of this subdivision) may be computed in terms of tons, pounds, yards, labor hours, machine hours, or any other unit of production appropriate to the cost accounting system used by a particular taxpayer. The determination of practical capacity and theoretical capacity should be modified from time to time to reflect a change in underlying facts and conditions, such as increased

output due to automation or other changes in plant operation.

(b) *Based upon taxpayer's experience.* In selecting an appropriate level of production activity upon which to base the calculation of practical capacity, the taxpayer shall establish the production operating conditions expected during the period for which the costs are being determined, assuming that the utilization of production facilities during operations will be approximately at capacity. This level of production activity is frequently described as practical capacity for the period and is ordinarily based upon the historical experience of the taxpayer. For example, a taxpayer operating on a 5-day, 8-hour basis may have a "normal" production of 100,000 units a year based upon 3 years of experience.

(c) *Based upon theoretical capacity.* Practical capacity may also be established by the use of "theoretical" capacity, adjusted for allowances for estimated inability to achieve maximum production, such as machine breakdown, idle time, and other normal work stoppages. Theoretical capacity is the level of production the manufacturer could reach if all machines and departments were operated continuously at peak efficiency.

(d) *Example.* The provisions of (c) of this subdivision may be illustrated by the following example:

Example. Corporation X operates a stamping plant with a theoretical capacity of 8,400 units per week if the plant operates on a 52-week, 7-day, 24-hour basis. However, the plant actually operates on an 8-hour day, 5-day week basis and is shut down completely for five annual holidays and 2 weeks each summer for vacations. A reasonable allowance for downtime (the time allowed for ordinary and necessary repairs and maintenance) is 5 percent of practical capacity before reduction for downtime. Assuming no loss of production during starting up, closing down, or employee work breaks, under these facts and circumstances X may properly make a practical capacity computation as follows:

	<i>Units</i>
Theoretical capacity per year is computed as follows:	
The number of units to be produced at theoretical capacity (8,400 units per week × 52 weeks)	436,800
Practical capacity per year based upon theoretical capacity is computed as follows:	
(a) Reduction of number of units at theoretical capacity to reflect the actual portion of a day during which the plant is in operation, since the theoretical capacity is computed on a 24-hour basis and actual operation is 8 hours (436,800 units × 1/3)	145,600
(b) Reduction of (a) to reflect the actual portion of a week during which the plant is in operation, since theoretical capacity is computed on a 7-day week but the plant is operated on only a 5-day week (145,600 units × 5/7)	104,000

(c) Reduction of (b) to reflect: Vacation—2 weeks annu- ally 104,000 units × 1/2 ----- 4,000 Holidays—5 work days (1 work week) (104,000 units × 1/2) ----- 2,000	6,000
(d) Practical capacity before allowance for downtime-----	98,000
(e) Less allowance for down- time (98,000 units × 5 per- cent) ----- 4,900	
Practical capacity-----	93,100

The 93,100 unit level of activity (i.e., practical capacity) would, therefore, constitute an appropriate base for calculating the amount of fixed indirect production costs allocable to the production of this plant for the period under review. On this basis if only 76,000 units were produced for the period, the effect would be that approximately 81.6 percent (76,000, the actual number of units produced, divided by 93,100, the maximum number of units producible at practical capacity) of the fixed indirect production costs would be considered allocable to the cost of goods produced during the year. The portion of the fixed indirect production costs not allocated to production would be deductible in the year in which paid or incurred. Assume further that 7,600 units were on hand at the end of the taxable year. Thus, 10 percent (7,600 units in inventory at the end of the taxable year, divided by 76,000, the actual number of units produced) of the allocable fixed indirect production costs (the above-mentioned 81.6 percent) and 10 percent of the variable indirect production costs would be included in the cost of the ending inventory.

(d) *Transition to full absorption method of inventory valuation*—(1) *In general*—(i) *Mandatory requirement*. Except as provided in the last sentence of this subdivision, a taxpayer not using a method of inventory valuation prescribed by paragraph (a) (1) of this section must change to one of such methods. A taxpayer on the direct cost method of inventory valuation or a method which is more inclusive of indirect production costs is not required to change to a method of inventory valuation prescribed by paragraph (a) (1) of this section for taxable years beginning on or before (the date of adoption of these regulations as a Treasury decision). A taxpayer who satisfies the requirements of subdivision (iii) of this subparagraph and who makes the special election provided in subdivision (ii) of this subparagraph need not change to a method of inventory valuation prescribed by paragraph (a) (1) of this section for taxable years prior to the year for which such election is made. The rules otherwise prescribed in sections 446 and 481 and the regulations thereunder shall apply to any taxpayer who fails to satisfy the requirements stated in subdivision (iii) of this subparagraph or who fails to make the special election in subdivision (ii) of this subparagraph. A taxpayer changing to a method of inventory valuation which is less inclusive of indirect production costs than the method from which he is changing must secure the consent of the Commissioner prior to making such change, notwithstanding the provisions of this paragraph.

(ii) *Special election during 2-year transition period*. If a taxpayer to which subdivision (i) of this subparagraph applies satisfies the requirements stated in subdivision (iii) of this subparagraph, he may elect on Form 3115 either (a) to change to the full absorption method of inventory valuation (as described in paragraph (a) (2) of this section) and in so doing to employ the transition procedures and adopt any of the transition methods prescribed in subparagraph (3) of this paragraph, or (b) to change to the modified full absorption method of inventory valuation (as described in paragraph (a) (3) of this section) and in so doing to adopt the transition method prescribed in subparagraph (3) (i) of this paragraph. However, after having made an election under the provisions of this paragraph during the transition period, a taxpayer may not change to a method of inventory valuation which is less inclusive of indirect production costs for any subsequent taxable year in the absence of a showing to the satisfaction of the Commissioner of compelling facts and circumstances which require such a change. Such election shall be made during the first 180 days of any taxable year beginning on or after [the date of adoption of these regulations as a Treasury decision] and before (2 years after the date of adoption of these regulations as a Treasury decision) (i.e., the "transition period") and the change in inventory valuation method shall be made for the taxable year in which the election is made.

(iii) *Requirements for special transition procedures and methods*. A taxpayer who includes all direct production costs in cost of goods may elect to use the special transition procedures and methods prescribed under this paragraph if—

(a) The taxpayer uses the direct cost method of inventory valuation (see paragraph (f) (6) of § 1.471-2 and paragraph (a) (3) (ii) (b) of this section) both for tax purposes and for purposes of financial reports (including consolidated financial statements) to shareholders, partners, beneficiaries, or other proprietors and for credit purposes, except that the taxpayer need not use the same method for tax purposes and for purposes of the taxpayer's financial reports in the case of any or all of the five items listed in paragraph (a) (3) (i) of this section; or,

(b) The amount of the taxpayer's closing inventory balance for the taxable year preceding the year of transition is not less than an amount equal to 80 percent of his opening inventory balance determined under the full absorption method (as prescribed by paragraph (a) (2) of this section) for the year of transition, and the taxpayer employed the method used in determining the inventory balance for the taxable year preceding the year of transition both for tax purposes and for purposes of financial reports (including consolidated financial statements) to shareholders, partners, beneficiaries, or other proprietors and for credit purposes.

(iv) *Change initiated by the Commissioner*. A taxpayer who properly makes an election under subdivision (ii) of this subparagraph shall be considered to have made a change in method of accounting not initiated by the taxpayer, notwithstanding the provisions of § 1.481-1(c) (5). Thus, any of the taxpayer's "pre-1954 inventory balances" with respect to such inventory shall not be taken into account as an adjustment under section 481. For purposes of this paragraph, a "pre-1954 inventory balance" is the net amount of the adjustments which would have been required if the taxpayer had made such change in his method of accounting with respect to his inventory in his first taxable year which began after December 31, 1953, and ended after August 16, 1954. See section 481(a) (2) and § 1.481-3.

(2) *Procedural rules for change*. If a taxpayer makes an election pursuant to subparagraph (1) (ii) of this paragraph, the Commissioner's consent will be evidenced by a letter of consent to the taxpayer, setting forth the values of inventory, as provided by the taxpayer, determined under the full absorption or modified full absorption method (described in paragraphs (a) (2) and (a) (3) of this section), except to the extent that postponement of the determination of such values is permitted under subparagraph (3) (iv) (a) (2) of this paragraph, the amount of the adjustments (if any) required to be taken into account by section 481, and the treatment to be accorded to any such adjustments. Such values shall be subject to verification on examination by the District Director. The taxpayer shall preserve at his principal place of business, all records, data, and other evidence relating to the full absorption values of inventory.

(3) *Transition methods*. A taxpayer who properly makes an election under subparagraph (1) (ii) of this paragraph may elect to—

(i) *Current adjustment*. Take any adjustment required by section 481 into account in the year he makes such election.

(ii) *Suspense account*. Establish a "suspense" account for any adjustments required by section 481 with respect to any inventory which is being revalued under the full absorption method (described in paragraph (a) (2) of this section). The amount required to be placed in such suspense account shall equal the total of such adjustments required by section 481. In any taxable year occurring after the year of transition in which—

(a) The taxable income, determined (without regard to the deductions allowed by sections 170(d), 172, 243(a) (1), 244(a), 245, and 247, and without regard to any capital loss carryback to the taxable year under section 1212(a) (1) as if the taxpayer had not changed to the full absorption method, exceeds

(b) Such taxable income determined (without regard to the deductions allowed by sections 170(d), 172, 243(a) (1), 244(a), 245, and 247, and without regard to any capital loss carryover to

the taxable year under section 1212(a) (1) for such year under the full absorption method,

the taxpayer shall, subject to the 20 percent limitation hereinafter provided, reduce the suspense account by an amount equal to such excess and shall take such reduction into income until the entire amount of such suspense account has been reduced to zero. Any reduction in the suspense account and inclusion in gross income for any taxable year shall not, however, exceed an amount equal to 20 percent of the total amount originally placed in such suspense account unless the taxpayer dies or ceases to exist in a transaction other than one to which section 381(a) of the Code applies or unless the taxpayer's inventory (determined under the full absorption method) on the last day of any taxable year is reduced by more than an amount equal to 33 1/3 percent of the taxpayer's inventory (determined under the full absorption method) as of the end of the year of change. If the taxpayer so ceases to exist, the entire amount remaining in such suspense account shall be taken into income for the taxable year in which such taxpayer ceases to exist, without regard to the 20 percent limitation. If the taxpayer does not cease to exist but the taxpayer's inventory is reduced by more than 33 1/3 percent of the taxpayer's inventory (determined under the full absorption method) as of the beginning of the year of change, the entire amount remaining in such suspense account shall be taken into income for the taxable year in which such inventory is so reduced, without regard to the 20 percent limitation. The net effect of this subdivision is that the taxpayer will recognize amounts from the suspense account (limited, except as provided above, in any one taxable year to 20 percent of the original amount of the account) as gross income only in those taxable years in which such amounts (or a greater amount) would have been recognized had the taxpayer not changed his method of inventory valuation to the full absorption method. For purposes of this subdivision, the suspense account shall not be adjusted by any amount which did not enter into the computation of the taxpayer's taxable income for any taxable year for which assessment, collection, payment, abatement, refund, or credit is barred by the operation of any law or rule of law, including compromises or any closing agreement.

(iii) *Twenty-year adjustment period.* Take any adjustment required by section 481 with respect to any inventory being revalued under the full absorption method (as described by paragraph (a) (2) of this section) into account ratably over a period designated by the taxpayer at the time of such election, not to exceed the lesser of 20 taxable years commencing with the year of transition or the number of years the taxpayer has been on the inventory method from which he is changing. If the taxpayer dies or

ceases to exist in a transaction other than one to which section 381(a) of the Code applies or if the taxpayer's inventory (determined under the full absorption method) on the last day of any taxable year is reduced by more than an amount equal to 33 1/3 percent of the taxpayer's inventory (determined under the full absorption method) as of the beginning of the year of change, the entire amount of the adjustment not previously taken into account in computing income shall be taken into account in computing income for the taxable year in which such taxpayer so ceases to exist or such taxpayer's inventory is so reduced.

(iv) *Additional rules for LIFO taxpayers.* (a) A taxpayer who uses the LIFO method of inventory identification may either—

(1) Revalue under the full absorption method all units in all pre-1954 Code year layers of his opening inventory in the year of change, continue to use the values determined under the method from which he is changing for layers of inventory acquired during the 1954 Code years before the year of change, and use the new method of valuation for inventory acquired during the year of change and all subsequent taxable years, or

(2) Employ the method prescribed in (1) of this subdivision but postpone determination of the full absorption values of inventory present in the taxpayer's opening inventory for its first 1954 Code year until the taxable year in which such revaluation shall affect the taxpayer's cost of goods sold through operation of the rules prescribed in this subdivision.

(b) Where a taxpayer using the LIFO method of inventory identification had an opening inventory for its first 1954 Code year containing a layer or layers which have been wholly or partially liquidated prior to the taxable year in which such taxpayer is changing to the full absorption method of inventory valuation, the taxpayer may determine the amount by which such liquidated inventory would, if present in the taxpayer's opening inventory for the year of change, be revalued under the full absorption method. To the extent of such amount, the taxpayer may revalue to their full absorption values layers of inventory acquired during 1954 Code years which are present in the opening inventory for the year of change, starting by revaluing the earliest such layer, and then revaluing later layers in chronological order, until existing 1954 Code year layers have been revalued in an aggregate amount equal to the amount by which the liquidated pre-1954 Code year layers of inventory would have been revalued if present in opening inventory for the year of change. To the extent that the revaluation to their full absorption values of all existing layers of inventory for the 1954 Code years results in an amount of revaluation which is less than the amount by which the liquidated pre-1954 Code year layers would have been revalued, no additional revaluation shall result from such excess.

See Examples (3) and (4) in subdivision (v) of this subparagraph.

(v) *Examples.* The provisions of this paragraph may be illustrated by the fol-
 (v) of this subparagraph.

Example (1). (1) Y, a calendar year taxpayer using the LIFO method of inventory identification, has an opening inventory of \$400 (400 units at \$1 per unit) in 1972 which he had determined under the direct cost method of inventory valuation. In April 1972 (in the first 180 days of Y's first taxable year beginning after (the date of adoption of these regulations as a Treasury decision)), Y files his Form 3115 requesting permission to change to the full absorption method of valuation. Pursuant to subparagraph (2) of this paragraph, Y calculates a section 481 adjustment to inventory of \$200 (and no pre-1954 inventory balance). Y places this \$200 adjustment in a suspense account to be recognized at such time as he would have recognized it had he not changed to the full absorption method of inventory valuation. Consent to change is granted by the Commissioner subject to the terms of the application. On audit, the District Director accepts the amount of the adjustment as \$200. During 1972 Y produces and sells 1,000 units in the ordinary course of business. Consequently, closing inventory still contains 400 units. For 1972, Y's sales income is \$2,250 (1,000 units @ \$2.25 per unit); fixed indirect production costs are \$500 (1,000 units @ \$0.50 per unit); variable indirect production costs are zero; and direct production costs (direct materials and labor) are \$1,000 (1,000 units @ \$1 per unit). Y determines his taxable income for 1972 pursuant to subdivision (ii) of this subparagraph under both inventory valuation methods as follows:

		1972	
		Direct Cost (Inventory valuation— \$1 per unit)	Full absorption (Inventory valuation—\$1.50 per unit)
Gross receipts.....		\$2,250	\$2,250
Cost of goods sold.....			
Opening inventory.....	\$400		\$600
Inventory costs.....	1,000		1,500
Cost of goods available for sale.....	1,400		2,100
Less closing inventory.....	400	1,000	600
Gross income.....		1,250	750
Indirect cost of goods not included in inventory costs.....		500	0
Taxable income.....		750	750

Since Y's taxable income for 1972 would not have been any greater if Y had remained on the direct cost method of inventory valuation, Y recognizes no income from his suspense account.

(ii) Assume the facts stated in (1), except that in 1973 Y produces 1,200 units and sells 1,300 units in the ordinary course of business. Y's sales income is \$2,925 (1,300 units @ \$2.25 per unit); fixed indirect production costs are \$720 (1,200 units @ \$0.60 per unit); variable indirect production costs are zero; and direct production costs are \$1,200 (1,200 units @ \$1 per unit). Y determines his taxable income for 1973 pursuant to subdivision (ii) of this subparagraph under both inventory valuation methods as follows:

	1973	
	Direct cost	Full absorption
Receipts.....	\$2,925	\$2,925
Cost of goods sold		
Opening inventory.....	400	600
Inventory costs.....	1,200	1,920
Cost of goods available for sale.....	1,600	2,520
Less closing inventory.....	300	450
Gross income.....	1,625	885
Indirect costs of goods not included in inventory costs.....	720	0
Taxable income.....	905	885

Since Y's taxable income for 1973 determined under the direct cost method (\$905) exceeds his taxable income determined under the full absorption method (\$885), Y recognizes as an item of income \$20 (\$905 under the direct cost method less \$885 under the full absorption method) of the suspense account amount. In addition, Y reduces his suspense account amount to \$180 (\$200 less \$20). If, however, such difference had exceeded \$40 (20 percent of \$200) only \$40 would be recognized as income and as a reduction of the suspense account, unless Y's inventory had been reduced by more than 33 1/2 percent, in which case the entire amount remaining in the suspense account (\$200) would have been recognized as income.

Example (2). X, a calendar year taxpayer employing the LIFO method of inventory identification, began business in 1950. X has inventory layers attributable to taxable years 1950, 1951, 1953, and later years. No items which were present in X's opening 1954 inventory have been liquidated. In January, 1972 (in the first 180 days of X's first taxable year beginning after (the date of adoption of these regulations as a Treasury decision)), X files his Form 3115 and changes from the direct cost to the full absorption method of inventory valuation, electing the transition method prescribed in subdivision (iv) (a) (2) of this subparagraph, thereby postponing the computation of the full absorption values of such layers until the years in which such layers are partially or completely liquidated. In 1977 X liquidates the 1950, 1951, and 1953 layers, determining at that time their full absorption values. X uses such full absorption values in determining his cost of goods sold and is prepared to verify them to the District Director on the basis of adequate books and records. Thus, X will have the benefit of the pre-1954 inventory balances attributable to the pre-1954 Code year layers of inventory when he sells or otherwise liquidates the goods in such layers.

Example (3). A, a calendar year taxpayer employing the LIFO method of inventory identification, files a Form 3115 in April, 1972 (in the first 180 days of A's first taxable year beginning after (the date of adoption of these regulations as a Treasury decision)), electing to change from the direct cost method to the full absorption method of inventory valuation, using the transition method prescribed in subdivision (iv) (a) (1) of this subparagraph. A has inventory layers attributable to 1951, 1952, 1953, 1962, and 1963. On December 31, 1953, the 1953 layer contained 700 units valued at \$1 per unit under the direct cost method. A sold 250 of these units in 1961, leaving 450 units in the 1953 layer. A proposes to revalue all of the pre-1954 Code year units at \$1.50 per unit under the full absorption method pursuant to subdivision (iv) (a) (1) of this subparagraph. A will revalue the remaining 450 units of the 1953 layer at \$675 (450 units at

\$1.50 per unit), and the 1952 and 1951 layers on the full absorption basis. Layers for the years 1962 and 1963 will continue to be valued on the direct cost basis, except as provided below. Layers for 1972 and subsequent years, if any, will be valued on the full absorption basis. The 250 units of the 1953 layer which were liquidated in 1961, if present in the opening inventory for 1972, would have been revalued by the amount of \$125 (250 units at \$0.50). The 1962 layer in A's 1972 opening inventory has a value of \$200 on the direct cost basis and \$300 on the full absorption basis. A accordingly revalues this layer to \$300, leaving \$25 of the \$125 of revaluation attributable to the liquidated portion of the 1953 layer. The 1963 layer in A's 1972 opening inventory has a value of \$180 on the direct cost basis and \$270 on the full absorption basis. A accordingly revalues this layer to \$205 for tax purposes and for purposes of his financial reports (including consolidated financial statements) to shareholders, partners, beneficiaries, or other proprietors and for credit purposes, thus exhausting the revaluation attributable to the portion of the pre-1954 layer previously liquidated.

Example (4). Assume the facts stated in Example (3), except that A has no 1963 layer or any other subsequently acquired layer in his 1973 opening inventory. After revaluing his 1962 layer to \$300, A may make no additional revaluation, despite the fact that he has not "used" \$25 of the \$125 revaluation attributable to the liquidated portion of the pre-1954 layer. The benefit of the \$25 portion of the revaluation is lost to the taxpayer.

[FR Doc.71-18321 Filed 12-14-71;8:48 am]

[26 CFR Part 1] INCOME TAX

50-Percent Maximum Rate on Earned Income

Notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, preferably in quintuplicate, to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by January 14, 1972. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.-601(b) may be inspected by any person upon written request. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner by January 14, 1972. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER, unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the Federal Register. The proposed regulations are to be issued under the authority contained in section 7805

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

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

In order to prescribe regulations under section 1348 of the Internal Revenue Code of 1954, as enacted by section 804 of the Tax Reform Act of 1969 (83 Stat. 685), the Income Tax Regulations (26 CFR Part 1) are amended by adding the following sections immediately after § 1.1347-1:

§ 1.1348 Statutory provisions; fifty-percent maximum rate on earned income.

SEC. 1348. *Fifty-percent maximum rate on earned income*—(a) *General rule.* If for any taxable year an individual has earned taxable income which exceeds the amount of taxable income specified in paragraph (1), the tax imposed by section 1 for such year shall, unless the taxpayer chooses the benefits of part I (relating to income averaging), be the sum of—

(1) The tax imposed by section 1 on the lowest amount of taxable income on which the rate of tax under section 1 exceeds 50 percent,

(2) 50 percent of the amount by which his earned taxable income exceeds the lowest amount of taxable income on which the rate of tax under section 1 exceeds 50 percent, and

(3) The excess of the tax computed under section 1 without regard to this section over the tax so computed with reference solely to his earned taxable income.

In applying this subsection to a taxable year beginning after December 31, 1970, and before January 1, 1972, "60 percent" shall be substituted for "50 percent" each place it appears in paragraphs (1) and (2).

(b) *Definitions.* For purposes of this section—

(1) *Earned income.* The term "earned income" means any income which is earned income within the meaning of section 401 (c) (2) (C) or section 911(b), except that such term does not include any distribution to which section 72(m) (5), 72(n), 402(a) (2), or 403(a) (2) (A) applies or any deferred compensation within the meaning of section 404. For purposes of this paragraph, deferred compensation does not include any amount received before the end of the taxable year following the first taxable year of the recipient in which his right to receive such amount is not subject to a substantial risk of forfeiture (within the meaning of section 83(c) (1)).

(2) *Earned taxable income.* The earned taxable income of an individual is the excess of—

(A) The amount which bears the same ratio (but not in excess of 100 percent) to his taxable income as his earned net income bears to his adjusted gross income, over

(B) The amount by which the greater of—

(i) One-fifth of the sum of the taxpayer's items of tax preference referred to in section 57 for the taxable year and the 4 preceding taxable years, or

(ii) The sum of the items of tax preference for the taxable year, exceeds \$30,000.

For purposes of subparagraph (A), the term "earned net income" means earned income reduced by any deductions allowable under section 62 which are properly allocable to or chargeable against such earned income.

(c) *Married individuals.* This section shall apply to a married individual only if such

individual and his spouse make a single return jointly for the taxable year.

[Sec. 1348 as added by sec. 804(a), Tax Reform Act 1969 (83 Stat. 685)]

§ 1.1348-1 Fifty-percent maximum tax on earned income.

Section 1348 provides generally that for taxable years beginning after December 31, 1971, the maximum tax rate applicable to the earned taxable income of an individual, estate, or trust is not to exceed 50 percent. In the case of an estate or trust, earned income includes only amounts which constitute income in respect of a decedent within § 1.1348-3(a)(4). For taxable years beginning after December 31, 1970, and before January 1, 1972, the maximum rate is 60 percent. Section 1348 does not apply if the taxpayer chooses the benefits of income averaging under sections 1301 through 1305. Section 1348 does not apply to a married individual who does not file a joint return with his spouse for the taxable year. For purposes of section 1348, an individual's marital status shall be determined under section 153 and the regulations thereunder.

§ 1.1348-2 Computation of the fifty-percent maximum tax on earned income.

(a) *Computation of tax for taxable years beginning after 1971.* If, for a taxable year beginning after December 31, 1971, an individual has earned taxable income (as defined in paragraph (d) of this section) which exceeds the applicable amount in column (1) of Table A, the tax imposed by section 1 for such year shall be the sum of—

- (1) The applicable amount in column (2) of Table A,
- (2) 50 percent of the amount by which earned taxable income exceeds the applicable amount in column (1) of Table A, and
- (3) The amount by which the tax imposed by section 1 (or section 1201, if applicable) on the entire taxable income exceeds a tax under such section on earned taxable income, such computations to be made without regard to section 1348.

TABLE A

Status	(1)	(2)
Married individuals filing joint returns and surviving spouses.....	\$52,000	\$18,060
Heads of households.....	38,000	12,240
Unmarried individuals other than surviving spouses and heads of households.....	38,000	13,290
Trusts and estates.....	20,000	9,030

(b) *Computation of tax for taxable years beginning in 1971.* If, for a taxable year beginning after December 31, 1970, and before January 1, 1972, an individual has earned taxable income (as defined in paragraph (d) of this section) which exceeds the applicable amount in column (1) of Table B, the tax imposed by section 1 for such year shall be the sum of—

- (1) The applicable amount in column (2) of Table B,
- (2) 60 percent of the amount by which earned taxable income exceeds the appli-

cable amount in column (1) of Table B, and

(3) The amount by which the tax imposed by section 1 (or section 1201, if applicable) on the entire taxable income exceeds a tax under such section on earned taxable income, such computations to be made without regard to section 1348.

TABLE B

Status	(1)	(2)
Married individuals filing joint returns and surviving spouses.....	\$100,000	\$45,180
Heads of households.....	70,000	30,260
Unmarried individuals other than surviving spouses and heads of households.....	50,000	20,190
Trusts and estates.....	50,000	22,590

(c) *Short taxable periods.* If a taxpayer is required under section 443(a)(1) to make a return for a period of less than 12 months, the tax under section 1348 and this section shall be determined by placing his taxable income, earned net income, adjusted gross income, and items of tax preference on an annual basis in accordance with section 443 and the regulations thereunder. If a taxable year referred to in paragraph (d)(3)(i)(a) of this section is a period of less than 12 months for which a return is required under section 443(a)(4), the average described in such paragraph shall also be determined by placing the items of tax preference for such period on an annual basis in accordance with section 443 and the regulations thereunder. If a return for a period of less than 12 months is required under section 443(a)(3) for any taxable year referred to in paragraph (d)(3)(i)(a) of this section, section 1348 and this section shall not apply unless such period is reopened by the taxpayer as provided by section 6851(b).

(d) *Earned taxable income.*—(1) *In general.* For purposes of section 1348 and this section, the term "earned taxable income" means the excess of (i) the portion of taxable income which, under subparagraph (2) of this paragraph, is attributable to earned net income over (ii) the tax preference offset (as defined in subparagraph (3) of this paragraph). Earned taxable income shall not exceed the excess of taxable income over 50 percent of the net section 1201 gain.

(2) *Taxable income attributable to earned net income.* The portion of taxable income which is attributable to earned net income shall be determined by multiplying taxable income by a fraction (not exceeding one), the numerator of which is earned net income, and the denominator of which is adjusted gross income. For purposes of this subparagraph, the term "earned net income" means the excess of earned income (as defined in § 1.1348-3(a)) over any deductions which are required to be taken into account under section 62 in determining adjusted gross income and are properly allocable to or chargeable against earned income. Deductions are properly allocable to or chargeable against earned income if, and to the extent that, they are

allowable in respect of expenses paid or incurred in connection with the production of earned income. Such deductions include—

- (i) Deductions attributable to a trade or business from which earned income is or may be derived,
- (ii) Deductions consisting of expenses paid or incurred in connection with the performance of services as an employee,
- (iii) The deductions allowable by sections 404 and 405(c),
- (iv) The deduction allowable by section 217,
- (v) The deduction allowable by section 1379(b)(3), and
- (vi) A net operating loss deduction to the extent that the net operating losses carried to the taxable year are properly allocable to or chargeable against earned income.

A net operating loss is properly allocable to or chargeable against earned income to the extent of the excess (if any) of the deductions for the loss year which are properly allocable to or chargeable against earned income and which are allowable under section 172(d) in determining a net operating loss, over the earned income for the loss year. If the excess described in the preceding sentence is less than the entire net operating loss, such excess and the balance of such loss shall be deemed to reduce taxable income ratably for any taxable year to which such loss may be carried. See Example (3) in subparagraph (4) of this paragraph. If less than all of the gross income from a trade or business would constitute earned income, only a ratable portion of the deductions attributable to such trade or business is allowable in respect of expenses paid or incurred in connection with the production of earned income.

(3) *Tax preference offset.* (i) For purposes of subparagraph (1) of this paragraph, the "tax preference offset" is the amount by which the greater of—

- (a) The average of the taxpayer's items of tax preference for the taxable year and the 4 preceding taxable years, or
- (b) The taxpayer's items of tax preference for the taxable year,

exceeds \$30,000.

(ii) The items of tax preference to be taken into account under subdivision (i) of this subparagraph shall be all of the items specified in section 57(a) and the regulations thereunder, except that for taxable years beginning after December 31, 1971, excess investment interest (as defined in section 57(b) and the regulations thereunder) shall be determined without regard to the amount of investment interest in excess of the limitation provided by section 163(d). Items of tax preference for a preceding taxable year referred to in subdivision (i)(a) of this subparagraph shall be taken into account without regard to the limitation provided by § 1.57-4. Items of tax preference attributable to sources without the United States shall be taken into account without regard to the limitations provided in section 58(g) and §§ 1.58-7 and 1.58-8. The items of tax

PROPOSED RULE MAKING

preference to be taken into account by a nonresident alien individual shall not include items of tax preference which are not derived from the conduct of a trade or business within the United States.

(iii) Taxable years ending before January 1, 1970, shall not be included in computing the average described in subdivision (i) (a) of this subparagraph. Thus, for example, the tax preference offset for a taxable year ending on December 31, 1973, is the amount by which the average of the taxpayer's items of tax preference for 1970, 1971, 1972, and 1973, or the taxpayer's items of tax preference for 1973, whichever is greater, exceeds \$30,000. Taxable years during which the taxpayer was not in existence shall not be included in computing the average described in subdivision (i) (a) of this subparagraph which is treated as a taxable year under sections 441(b) and 7701 (a) (23) shall be treated as a taxable year for purposes of this subparagraph. See paragraph (c) of this section for special rules if a taxable year referred to in subdivision (i) (a) of this subparagraph is a period of less than 12 months for which a return is required under section 443(a) (1).

(iv) If for the current taxable year the taxpayer and his spouse (or the estate of such spouse) file a joint return together, the items of tax preference for a preceding taxable year taken into account under subdivision (i) (a) of this subparagraph shall be the sum of the items of tax preference of the taxpayer and his spouse for such preceding year even though a joint return was not, or could not have been, filed by the taxpayer and such spouse for such preceding taxable year. If for the current taxable year the taxpayer (a) is no longer married to a spouse to whom he was married for a preceding taxable year taken into account under subdivision (i) (a) of this subparagraph and files a separate return for such current taxable year, or (b) is married to a spouse other than the spouse to whom he was married for a preceding taxable year taken into account under subdivision (i) (a) of this subparagraph, his items of tax preference shall be computed as if he were not married during such preceding taxable year.

(v) The sum of the items of tax preference of an estate or trust shall, for purposes of this paragraph, be apportioned between the estate or trust and the beneficiary in the manner and to the extent provided by section 58(c) (1) and § 1.58-3.

(vi) If an item of gross income in respect of a decedent is includible in the gross income of a taxpayer and is treated as earned income in the hands of the taxpayer by reason of § 1.1348-3(a) (4), the decedent's items of tax preference shall, for purposes of subdivision (i) of this subparagraph, be treated as items of tax preference of the taxpayer, provided, however, that the increase, if any, in the taxpayer's tax preference offset so computed shall not exceed the amount by which the taxpayer's taxable income attributable to earned net income, computed as provided in § 1.1348-2

(d) (2) and including the item of gross income in respect of a decedent, exceeds the taxpayer's taxable income attributable to earned net income computed without regard to such item of gross income. For purposes of computing the average pursuant to subdivision (i) (a) of this subparagraph, a short taxable year of the decedent described in section 441(b) (3) and full taxable years of the decedent described in section 441(b) (1) (regardless of whether such taxable years correspond to the taxpayer's annual accounting period) shall be treated as taxable years of the taxpayer.

(4) Illustrations. The provisions of this section may be illustrated by the following examples:

Example (1). (i) H and W, married calendar-year taxpayers filing a joint return, have the following items of income, deductions, and tax preference for 1976:

(a) Salary	\$155,000
(b) Dividends and interest	60,000
	<hr/>
	215,000
(c) Deductible travel expenses of employee allocable to earned income	5,000
	<hr/>
(d) Adjusted gross income.....	\$210,000
(e) Exemptions and itemized deductions	38,000
	<hr/>
(f) Taxable income.....	172,000

In addition, the taxpayers have tax preference items for 1976 of \$80,000 attributable to the exercise of a qualified stock option and total tax preference items of \$300,000 for the years 1972 through 1975. Since the items of tax preference for 1976 exceed the average of the items of tax preference for the years 1972 through 1976, the tax preference offset for 1976 is \$50,000 (\$80,000 - \$30,000).

(ii) H and W have earned taxable income of \$72,222, determined in the following manner:

(a) Earned income.....	\$155,000
(b) Earned net income (\$155,000 - \$5,000)	150,000
(c) Taxable income	172,000
(d) Adjusted gross income.....	210,000
(e) Taxable income attributable to earned net income:	
	$172,000(c) \times \frac{\$150,000(b)}{\$210,000(d)} = \$122,222$

(f) Tax preference offset.. \$50,000

(g) Earned taxable income..... 72,222

(iii) The tax imposed by section 1 is \$90,969, determined pursuant to section 1348 in the following manner:

(a) Applicable amount from column (2) of Table A, § 1.1348-2(b)	\$18,060
(b) 50 percent of amount by which \$72,222 (earned taxable income) exceeds \$52,000 (applicable amount from column (1) of Table A, § 1.1348-2(b))	10,111
(c) Tax computed under section 1 on \$172,000 (taxable income)	\$91,740
(d) Tax computed under section 1 on \$72,222 (earned taxable income)	28,942
(e) Item (c) - Item (d)	62,798

(f) Tax (total of Items (a), (b), and (e))..... 90,969

Example (2). (i) H and W, married calendar-year taxpayers filing a joint return, have the following items of income, deductions, and tax preference for 1976:

(a) Salary	\$210,000
(b) Dividends and interest.....	20,000
(c) Net long-term capital gains.....	100,000
	<hr/>
	\$330,000
(d) Section 1202 deduction (one-half of net long-term capital gains)	50,000
	<hr/>
(e) Adjusted gross income.....	\$280,000
(f) Exemptions and itemized deductions	40,000
	<hr/>
(g) Taxable income.....	\$240,000

The taxpayers' tax preference item for 1976 is one-half of the net long-term capital gains of \$100,000, or \$50,000. The taxpayers have no items of tax preference for the years 1972 through 1975. Accordingly, their tax preference offset for 1976 is \$20,000 (\$50,000 - \$30,000).

(ii) H and W have earned taxable income of \$160,000, determined in the following manner:

(a) Earned net income.....	\$210,000
(b) Taxable income.....	240,000
(c) Adjusted gross income.....	280,000
(d) Taxable income attributable to earned net income:	
	$240,000(b) \times \frac{\$210,000(a)}{\$280,000(c)} = \$180,000$

(e) Tax preference offset

(f) Earned taxable income..... 160,000

(iii) The tax imposed by section 1 is \$122,560, determined pursuant to section 1348 in the following manner:

(a) Applicable amount from column (2) of Table A, § 1.1348-2(b)	\$18,060
(b) 50% of amount by which \$160,000 (earned taxable income) exceeds \$52,000 (applicable amount from column (1) of Table A, § 1.1348-2(b))	54,000
(c) Tax computed under section 1201(b) on \$240,000 (taxable income):	

(i) Tax under section 1201(b) (1) (tax under section 1 on \$190,000 (taxable income excluding capital gains))

(2) Tax under section 1201(b) (2) (25 percent of subsection (d) gain of \$50,000)

(3) Tax under section 1201(b) (3) (tax under section 1 on \$240,000 (taxable income) less tax under section 1 on \$215,000 (amount subject to tax under section 1201(b) (1) plus 50 percent of subsection (d) gain)) (\$138,980 - \$121,480)

(d) Tax computed under section 1 on \$160,000 (earned taxable income)-----	83,580
(e) Item (c) -Item (d) -----	50,500
(f) Tax (total of Items (d), (b), and (e))-----	\$122,580

Example (3). (i) A, an unmarried calendar year taxpayer engaged in the practice of law, has the following items of income and deductions for 1977 and 1980:

	1977	1980
Gross income from law practice -----	\$240,000	\$100,000
Dividends -----	80,000	20,000
Expenses paid in law practice -----	50,000	160,000
Investment interest-----	30,000	10,000
Casualty loss on personal residence-----		50,000

(ii) For 1980, A's deductions exceed his gross income, and his taxable income is therefore zero. In addition, A has a net operating loss of \$100,000 (i.e., the excess of his deductions of \$220,000 over his gross income of \$120,000), which may be carried back to 1977. In computing his taxable income and earned taxable income for 1977, \$60,000 (i.e., the excess of the expenses paid in A's law practice of \$160,000 over his gross income from his law practice of \$100,000) of the net operating loss deduction is properly allocable to or chargeable against earned income.

(iii) A's recomputed taxable income and earned taxable income for 1977 are \$119,250 and \$103,350 respectively, determined in the following manner:

Gross income (\$240,000 + \$60,000) -	\$300,000
Adjusted gross income (\$300,000 - \$50,000 - 100,000) -----	150,000
Taxable income (\$150,000 - \$30,000 - \$750) -----	119,250
Earned net income (\$240,000 - \$50,000 - \$60,000) -----	130,000
Earned taxable income \$130,000	
(-----) × \$119,250 -----	103,350
\$150,000	

Example (4). The facts are the same as in example (3) except that A's gross income from his law practice for 1977 is \$40,000. Thus for 1977, A's deductions (including the net operating loss deduction) exceed his gross income, and his recomputed taxable income is therefore zero. The taxable income subtracted from the net operating loss to determine the carryback to 1978 is \$20,000 (i.e., \$40,000 + \$60,000 - \$50,000 - \$30,000), and thus the net operating loss carryback from 1980 to 1978 is \$80,000 (i.e., \$100,000 - \$20,000). Of this amount, \$48,000 (\$80,000 × [\$60,000 (the excess of the expenses paid in 1980 in A's law practice over his gross income from his law practice) ÷ \$100,000 (A's net operating loss for 1980)]) is properly allocable to or chargeable against earned income, and must be taken into account in recomputing A's taxable income and earned taxable income for 1978.

§ 1.1348-3 Definitions.

(a) *Earned income*—(1) *In general.* (i) For purposes of this section, the term "earned income" means, except as otherwise provided in this paragraph, any item of gross income which is earned income within the meaning of section 401 (c) (2) (C) or section 911(b). Thus, the term means, generally, wages, salaries, professional fees, bonuses, commissions

on sales or on insurance premiums, tips, and other amounts received, actually or constructively, as compensation for, or in connection with, personal services actually rendered regardless of the medium or basis of payment. It also includes prizes and awards (other than gambling gains) in recognition of personal services includible in gross income under section 74, and amounts includible in gross income under section 79 (relating to group-term life insurance purchased for employees). The term does not include such income as dividends (including an amount treated as a dividend by reason of section 1373(b) and § 1.1373-1), other distributions of corporate earnings and profits, gambling gains, or gains which are treated as capital gains under any provision of chapter 1. If an individual performs personal services for a corporation, "earned income" means only such portion of any income received from the corporation which represents a reasonable allowance for salaries and other compensation for the personal services actually rendered within the meaning of section 162. The term also includes gains (other than gain which is treated as a capital gain under any provision of chapter 1) and net earnings derived from the sale or other disposition of, the transfer of any interest in, or the licensing of the use of property (other than good will) by an individual whose personal efforts created such property.

(ii) In the case of a nonresident alien individual, earned income includes only earned income from sources within the United States which is effectively connected with the conduct of a trade or business within the United States.

(2) *Earned income and employed assistants.* The entire amount received by an individual for the performance of personal services, such as services performed by a doctor, dentist, lawyer, architect, or accountant, shall be treated as earned income if the individual is himself individually and personally responsible for the services performed, even though he employs assistants to perform part or all of such services.

(3) *Earned income from business in which capital is material.* (i) If an individual is engaged in a trade or business (other than in corporate form) in which both personal services and capital are material income-producing factors, a reasonable allowance as compensation for the personal services actually rendered by the individual shall be considered earned income, but the total amount which shall be treated as the earned income of the individual from such a trade or business shall not exceed 30 percent of his share of the net profits of such trade or business, including a guaranteed payment (as defined by § 1.707-1(c)) received from a partnership. For purposes of the preceding sentence, the term "net profits of the trade or business" means the excess of gross income from such trade or business over the deductions attributable to such trade or business.

(ii) Whether capital is a material income-producing factor must be determined by reference to all the facts of

each case. Capital is a material income-producing factor if a substantial portion of the gross income of the business is attributable to the employment of capital in the business, as reflected, for example, by a substantial investment in inventories, plant, machinery, or other equipment. Capital is not a material income-producing factor where gross income of the business consists principally of fees, commissions, or other compensation for personal services performed by an individual, and the individual is himself individually and personally responsible for the personal services performed. Thus, the practice of his profession by a doctor, dentist, lawyer, architect, or accountant will not, as such, be treated as a trade of business in which capital is a material income-producing factor even though the practitioner may have a substantial capital investment in professional equipment or in the physical plant constituting the office from which he conducts his practice since his capital investment is regarded as only incidental to his professional practice.

(iii) This subparagraph does not apply to gains and net earnings derived from the sale or other disposition of, the transfer of any interest in, or the licensing of the use of property by an individual whose personal efforts created such property which are, by reason of subparagraph (1) (i) of this paragraph, treated as earned income. Thus, for example, a research chemist's substantial capital investment in laboratory facilities which he uses to produce patentable chemical processes from which he derives gains within the meaning of this subdivision would not be considered a material income-producing factor.

(4) *Income in respect of a decedent.* An item of gross income in respect of a decedent includible in the gross income of a person described in section 691(a) (1) shall be treated as earned income in the hands of such person for purposes of subparagraph (1) of this paragraph if such item of gross income would have constituted earned income of the decedent had he lived and received such amount. See § 1.1348-2(d) (3) (vi) for rules relating to attribution of tax preferences by reason of an item of income in respect of a decedent.

(5) *Exceptions to definition of earned income.* For purposes of section 1348 and the regulations thereunder, the term "earned income" does not include:

(i) Any distribution to which section 72(m) (5), relating to certain amounts received by owner-employees from a trust described in section 401(a) or under a plan described in section 403(a), applies,

(ii) Any distribution to which section 72(n), relating to the treatment of certain total distributions from a trust described in section 401(a) or under a plan described in section 403(a), applies.

(iii) Any distribution to which section 402(a) (2), relating to capital gains treatment of certain total distributions from a trust described in section 401(a), applies,

(iv) Any distribution to which section 403(a)(2)(A), relating to capital gains treatment for certain distributions under a plan described in section 404(a)(2), applies, or

(v) Any deferred compensation within the meaning of paragraph (b) of this section.

(6) *Examples.* The application of this paragraph may be illustrated by the following examples, in each of which it is assumed that any amounts paid as described therein constitute a reasonable allowance for salaries or other compensation for personal services actually rendered within the meaning of section 162:

Example (1). A owns and operates an unincorporated laundering and dry cleaning business. A, assisted by his employees, devotes his entire time and attention to this business. Substantial capital is invested in the plant and equipment utilized in the laundering and dry cleaning of clothing for A's customers. Although personal services performed by A and his employees are a material income-producing factor in A's business, the capital investment in plant and equipment is not merely incidental to the performance of such services but is, as such, material to the production of business income. Therefore, A's laundering and dry cleaning business is one, in which both personal services and capital are material income-producing factors within the meaning of paragraph (a)(3) of this section. A may treat as earned income for a taxable year a reasonable allowance as compensation for the personal services rendered by him in his business, but the amount so treated shall not exceed 30 percent of the net profits of his business for such year.

Example (2). In his unincorporated business as a real estate broker, which he conducts on a full-time basis, A performs substantial personal services, including solicitation of home buyers and sellers, escorting prospective buyers on house visits, arranging appraisal, financing, and legal services, and other related tasks. In the course of conducting such business, A often finances sales of real estate with his own capital, makes all the necessary arrangements incident to such financing, and receives a substantial amount of interest income from such financing. Under these facts and circumstances, both personal services and capital are material income-producing factors in A's real estate business within the meaning of paragraph (a)(3) of this section since the financing of real estate sales is an integral part of the entire business. Accordingly, A's earned income from his real estate business is limited to a reasonable allowance as compensation for the personal services A actually renders, but not in excess of 30 percent of the net profits from the business, including the interest income derived from financing sales of real estate.

Example (3). For his taxable year ending on December 31, 1973, A, a radiologist, reports fees of \$100x for professional services rendered to his own patients during 1973. Since 1970, A has maintained his own office in a small building that he purchased for \$60x. In addition, A owns X-ray equipment with an original cost of \$300x which he uses in his professional practice. The entire \$100x of professional fees earned by A during 1972 is treated as earned income, notwithstanding that A has a substantial capital investment in professional equipment and the office from which he conducts his medical practice, because such capital investment is only inci-

dental to the rendition of personal services in A's professional practice.

(b) *Deferred compensation.*—(1) *In general.* For purposes of section 1348 and the regulations thereunder, the term "deferred compensation" means, except as otherwise provided in subparagraph (2) of this paragraph, any deferred compensation to which the provisions of section 404 and the regulations thereunder apply and any other compensation taxation of which is deferred in a manner similar to the treatment applicable to deferred compensation to which such provisions apply. Thus, the term includes any compensatory payment for personal services pursuant to a plan, or method having the effect of such payment to a taxable year later than that in which such personal services were rendered. For purposes of section 1348, the term "deferred compensation" is not limited to payments to common-law employees but also includes payments to self-employed individuals; nor is it material that no deduction is allowable in respect of all or part of such payments or that a deduction in respect thereof is allowable under some provision of the Code other than section 404. For example, amounts received by a retired partner pursuant to a written plan of the partnership of the kind described in section 1402(a)(10) constitute deferred compensation except as otherwise provided in subparagraph (2) of this paragraph. The term "deferred compensation," as defined in this paragraph, shall have no application to a determination of the deductibility of any amount under section 162, section 404, or any other provision of the Code.

(2) *Amounts not treated as deferred compensation.* Notwithstanding the provisions of subparagraph (1) of this paragraph, any amount received before the end of the taxable year following the first taxable year of the recipient in which his right to receive such amount is not subject to any requirement or condition which would be treated as resulting in a substantial risk of forfeiture for purposes of section 83 and the regulations thereunder does not constitute deferred compensation for purposes of section 1348 and the regulations thereunder. See paragraph (c) of § 1.83-3 for rules for determining whether a requirement or condition results in a substantial risk of forfeiture for purposes of section 83 and the regulations thereunder. For purposes of this subparagraph, a fractional part of a year which is a taxable year under sections 441(b) and 7701(a)(23) shall be treated as a taxable year.

(3) *Application to certain compensation.*—(i) *In general.* This subparagraph provides rules for the application of the principles of subparagraphs (1) and (2) of this paragraph to certain types of compensation.

(ii) *Pension, etc., plans.* (a) In accordance with subparagraph (1) of this paragraph, distributions under a pension, annuity, profit-sharing, or stock bonus plan, whether or not such plan meets the requirements of section 401(a), or pursuant

to a method having the effect of such a plan, generally constitute deferred compensation. However, under subparagraph (2) of this paragraph, such a distribution constitutes earned income if paid or made available before the end of the taxable year following the first taxable year of the recipient in which his right to receive such amount is not subject to a substantial risk of forfeiture. In the case of a distribution under a contributory plan, the preceding sentence applies only to that portion of the distribution which is attributable to employer contributions to the plan. For purposes of the preceding sentence, the portion of a distribution which is attributable to employer contributions is the amount of such distribution, multiplied by a fraction, the numerator of which is the employer contributions to the plan on behalf of the employee (determined in accordance with the principles of § 1.402(a)-2), and the denominator of which is the sum of such employer contributions and the net employee contributions to the plan (as defined in paragraph (a)(2) of § 1.402(a)-2). Thus, if the employer does not contribute to the plan, no part of any distribution thereunder constitutes earned income. Amounts included in gross income under section 402(b), 403(c), or 1379(b)(1) in respect of employer contributions to a plan described in this subdivision do not constitute deferred compensation.

(b) If a recipient's rights to receive amounts pursuant to a plan cease to be subject to a substantial risk of forfeiture in more than one of his taxable years, each payment pursuant to such plan shall be considered to consist of a ratable portion of all of the amounts which are not subject to a substantial risk of forfeiture at the time of such payment. Thus, for example, if an employment contract provides in part that an employee or his estate is to receive in each of the 15 years after he attains or would have attained age 65 an amount equal to \$2,000 times his years of service with the employer and if he had 18 years of service with the employer, each \$36,000 payment would be considered to consist of 18 payments of \$2,000, his right to receive one of which ceased to be subject to a substantial risk of forfeiture upon completing his first year of service with the employer, his right to receive another of which ceased to be subject to a substantial risk of forfeiture upon completing his second year of service with the employer, etc. Therefore, if the employee's last year of service with the employer was completed in the year in which he attained age 65, \$2,000 of the first payment would not be deferred compensation under subparagraph (2) of this paragraph, and the remaining \$34,000 of that payment and all of the other 14 payments of \$36,000 would be deferred compensation. If the employee's last year of service was completed in an earlier year, all 15 payments would constitute deferred compensation in full.

(iii) *Income attributable to options.*

(a) Ordinary income realized by a taxpayer upon a disqualifying disposition of

stock acquired pursuant to the exercise of a statutory option (as defined in § 1.421-7(b)) is not deferred compensation for purposes of subparagraph (1) of this paragraph, and, therefore, constitutes earned income.

(b) Ordinary income realized by a taxpayer upon the transfer of property pursuant to the exercise of an option which is not a statutory option (as defined in § 1.421-7(b)) constitutes earned income rather than deferred compensation if such option cannot, by its terms, be exercised more than 3 months after termination (for any reason other than death) of the grantee's employment by the grantor of the option. If the terms of such an option permit the exercise of the option more than 3 months after termination (for any reason other than death) of the grantee's employment by a taxpayer upon the transfer of property pursuant to exercise of the option constitutes earned income rather than deferred compensation only if such income is realized in a taxable year no later than the taxable year following the taxable year in which the option was granted.

(c) For purposes of (b) of this subdivision, if an option described therein is exercisable only following completion of a specified period of employment, the taxable year in which such period of employment is completed shall be treated as the taxable year in which the option was granted. Further, if the terms of an option described in (b) of this subdivision are modified, such modification shall not be considered as the granting of a new option for purposes of (b) of this subdivision.

(4) *Examples.* The application of this paragraph may be illustrated by the following examples, in each of which it is assumed that any amounts paid as described therein constitute a reasonable allowance for salaries or other compensation for personal services actually rendered within the meaning of section 162:

Example (1). (i) On January 3, 1972, Corporation X and E, an individual, execute an employment contract under which E is to be employed by X for a period of 10 years. Under the contract, E is entitled to a stated annual salary and to additional compensation of \$10x for each year. This additional compensation is to be credited as of December 31 of each year to a bookkeeping reserve account and will be deferred, accumulated, and paid only upon termination of the employment contract, E's becoming a part-time employee of X, or E's becoming partially or totally incapacitated. Under the terms of the contract, X is merely under a contractual obligation to make the payments when due, and neither X nor E intends that the amounts in the reserve be held by X in trust for E. The contract provides that if E shall fail or refuse to perform his duties, X will be relieved of any obligation to make further credits to the reserve but not of the obligation to distribute amounts previously credited to the reserve. In the event E should die prior to his receipt in full of the balance in the account, the remaining balance is distributed to his personal representative.

(ii) Having completed the terms of his employment contract, E retires from the employment of X on December 31, 1981, and on

January 15, 1982, receives a total distribution of \$100x from his reserve account. Of this distribution of \$100x to E, only \$10x, representing the credit made to E's reserve account in 1981, constitutes earned income. No other credits to E's reserve account are taken into account for this purpose because they were made to the reserve account and became nonforfeitable earlier than the year preceding the year in which the \$100x distribution was made to E.

Example (2). (i) Corporation X follows a policy of permitting employees to elect before the beginning of any calendar year to defer the receipt of either 5 percent or 10 percent of their stated annual salary to be earned in that year. E, an employee, elects for each of 10 years of employment to defer receipt of \$5x of his stated annual salary. The total so deferred, or \$50x, is paid to E on January 15, 1982.

(ii) Since the salary which E elects to defer is includible in his gross income only in the taxable year in which actually received by him, then to the extent E receives any such deferred salary payment after the end of the taxable year following the taxable year from which such payment was deferred, such payment does not constitute earned income since such payment is deferred compensation under paragraph (b) of this section. Accordingly, of the \$50x distribution to E, only \$5x, representing the salary deferral from 1981, constitutes earned income.

Example (3). (i) E is an officer of Corporation X, which has a plan for making future payments of additional compensation for current services to certain employees. The plan provides that a fixed percentage of the annual net earnings in excess of \$400x is to be designated for division among the participants. This amount is not currently paid to the participants; but X has set up on its books a separate account for each participant, including E, and each year it credits thereto the dollar amount of his participation for the year. Distributions are to be made from the account when the employee reaches the age of 60, is no longer employed by X, including cessation of employment due to death, or becomes totally unable to perform his duties, whichever occurs first. X's liability to make these distributions is contingent upon the employee's refraining from engaging in any business competitive to that of X, making himself available to X for consultation and advice after retirement or termination of his services, unless disabled, and retaining unencumbered any interest or benefit under the plan. In the event of his death, either before or after the beginning of payments, amounts in an employee's account are distributable to his designated beneficiaries or heirs-at-law. Under the facts and circumstances, E's rights to distributions from his account pursuant to the terms of the plan are not subject to a substantial risk of forfeiture within the meaning of section 83(c)(1). Under the terms of the compensation plan, X is under a merely contractual obligation to make the payments when due, and the parties did not intend that the amounts in each account be held by X in trust for the participants.

(ii) Cash or property received by E which is attributable to a credit to his account in a taxable year earlier than the year immediately preceding the year of receipt does not constitute earned income since it is deferred compensation within the meaning of paragraph (b) of this section. See subparagraph (3) of paragraph (b) for rules for determining that portion of distributions from E's account which are attributable to credits to his account in a taxable year earlier than the year immediately preceding the year in which such distributions are made.

Example (4). (i) Corporation X has an annual incentive bonus plan for its employees. Under this plan, X has the sole discretion to defer all or any part of any employee's incentive bonus award. In addition, no employee has any right to receive any incentive bonus for any year (whether to be paid currently or to be deferred) until such time, if any, as X makes an award to him. No employee has any election as to the amount or time of payment of his award for any year. Furthermore, the last of any payments under an award must be paid no later than 10 years from the normal retirement date of the employee. In addition, the obligations of X under the plan are merely contractual and are not funded or secured. The awards are nonassignable. However, in the case of death the awards are payable to the employee's designated beneficiary. Once made, a bonus award under the plan is not subject to any substantial risk of forfeiture.

(ii) In each of the years 1971, 1972, 1973, and 1974, X awards E a deferred bonus of \$100x. E retires on June 30, 1975. Beginning in 1975, X pays to E the total of \$400x of deferred bonus awards in 10 annual installments of \$40x each. With respect to the \$40x payment made to E in 1975, \$10x, representing the ratable portion of the payment ($\$100x/\$400x \times \$40x$) allocable to the 1974 bonus award, is earned income because it was received no later than the year following the year (1974) in which E's right to receive such amount was no longer subject to a substantial risk of forfeiture. The balance of the \$40x payment made in 1975 and all payments made subsequently constitute deferred compensation.

Example (5). (i) Under the terms of a nonqualified bonus plan for its executive employees, Corporation M contributes each year to a bonus reserve, a given percentage of its net earnings for the year. M makes bonus awards each year from the reserve in cash or stock of M, or a combination of both, to such executive employees, and in such amounts, as M may determine. The bonus award so determined to be made to a beneficiary is paid to him in installments: 20 percent of the award at the time that the award is made and the remaining installments in January of each succeeding year (until the full amount of the award is paid). Such amounts are payable in succeeding years but only if earned out by the employee by continuing service to M, at the rate of 1/12th of the amount of the first installment for each complete month of service beginning with the year of determination. If the beneficiary voluntarily terminates his employment, is discharged for cause, or conducts himself in a manner inimical to the best interests of M, he forfeits the rights to receive any portion of his bonus award previously earned out but undelivered to him and to continue earning out his bonus award. Upon retirement a beneficiary retains the right to earn out an unearned bonus award but forfeits the right to continue earning out the award if he conducts himself in a manner inimical to M's best interests or engages in an activity which is in competition with an activity of M. If a beneficiary dies while earning out a bonus award, any unpaid and undelivered portion of his award is paid and delivered to his estate or heirs at such time and in such manner as if the beneficiary were living.

(ii) On January 1, 1971, M makes a cash bonus award to A of \$100x. On January 15, 1971, \$20x, representing the first installment of the award is paid to A. On January 15, 1972, \$20x, representing the portion of the award earned out by A during the calendar year 1971 is paid to him. On January 1, 1972, A retires from employment with M and, having satisfied the conditions to continue earning out his bonus award, receives \$20x on

January 15, 1973, \$20x on January 15, 1974, and \$20x on January 15, 1975.

(iii) Under the facts and circumstances, the conditions that A not conduct himself in a manner inimical to the best interests of M and refrain from activity competitive to that of M are not considered to result in a substantial risk of forfeiture of the bonus award. The total installments of \$40x paid to A in 1971 and 1972 constitute earned income. The installment of \$20x earned out by A in 1972 and paid to him in 1973 also constitutes earned income for the taxable year 1973 because, although deferred compensation, it was received by A before the end of the taxable year of A following the first taxable year (the year of his retirement, i.e., 1972) in which his right to receive the installment was not subject to a substantial risk of forfeiture. The installments paid to A in 1974 and 1975, however, do not constitute earned income because they were paid later than one year following the year of A's retirement. Had the conditions that A not conduct himself in a manner inimical to the best interests of M and refrain from activity competitive to that of M constituted a substantial risk of forfeiture, the installment paid to A in 1974 and 1975 would have constituted earned income.

Example (6). On January 15, 1971, Corporation M, under the terms of a non-qualified bonus plan for its employees, grants to A, an employee, 5,000 "dividend units", which entitle A to receive, for the period during which the award remains in effect, a cash payment equal to the dividends declared and paid by M on the equivalent of 5,000 shares of its capital stock. The award remains in effect for A's lifetime but is subject to forfeiture if A is dismissed or leaves the service of M for any reason other than his death or retirement, or if A, following his retirement, engages in any activity which is harmful to the interests of M. Under the particular facts and circumstances, the condition that A not engage in any harmful activity is not considered to amount to a substantial risk of forfeiture within the meaning of section 83(c)(1). A retires on January 1, 1975, having received total cash payments under his bonus award of \$50x as of such date. In each of the calendar years 1975, 1976, 1977, and 1978, A receives further cash payments of \$5x under his bonus award. The total cash payments of \$50x received by A prior to his retirement constitute earned income. The payments totaling \$10x to A in the years 1975 and 1976 also constitute earned income because A received them before the end of the taxable year following the first taxable year (i.e., 1975, the year in which A retired) in which his right to receive such payments was not subject to a substantial risk of forfeiture. Payments totaling \$10x to A in 1977 and 1978, however, constitute deferred compensation under paragraph (b) of this section.

Example (7). Corporation M maintains an employees' profit sharing trust which is not exempt from tax under section 501(a). Under the terms of the trust agreement, the interest of the trust beneficiaries in each contribution made to the trust by M is subject to a substantial risk of forfeiture for a period of 5 years from the date on which the particular contribution is made, except that upon a beneficiary's retirement, his entire interest in the trust vests immediately. Contributions are made on December 30 of each year. As of August 1, 1969, the total interest, forfeitable and nonforfeitable, of A, an employee of M, in the trust is \$320x. On December 30 in each of the years 1969, 1970, 1971, 1972, 1973, and 1974, M makes a further contribution to the trust allocable to A's account equal to \$30x. A retires on December 31, 1974, and becomes entitled to a total distribution from the trust of \$500x, of

which \$320x represents M's contributions made prior to August 1, 1969, and \$180x represents contributions made subsequent to such date. Beginning in 1975, the trust distributes to A \$500x in 10 equal annual installments. Because M's contributions to A's account for the years subsequent to 1969 totaling \$180x vested as of his retirement date, such contributions constitute earned income of A for the year 1974 by reason of § 1.402(b)-1(b)(1). That portion of each annual installment of \$50x which is includible in A's gross income does not constitute earned income since it is attributable to the \$320x, in all of which A's rights became nonforfeitable no later than December 30, 1973.

Example (8). Corporation M maintains a qualified noncontributory pension plan for the benefit of its employees. Under the terms of the plan, no employee has a vested right to receive any distribution under the plan prior to his retirement from the employment of M upon reaching the age of 65. A, an employee of M, reaches age 65 on June 15, 1972, and retires on June 30, 1972. Under the terms of the pension plan, A becomes entitled to receive a monthly pension of \$5x, beginning on July 1, 1972. A receives pension payments totaling \$30x in 1972, \$60x in 1973, and \$60x in 1974. The pension payments received by A in 1972 and 1973 constitute earned income within paragraph (b)(3)(ii) of this section. The pension payments received by A in 1974 and subsequent years constitute deferred compensation.

Example (9). (1) A is a participant in X Corporation's noncontributory qualified pension plan. The plan provides an annual benefit upon attaining age 65 of 2 percent of average compensation for each calendar year of participation in the plan. Average compensation is defined as the average of an employee's annual compensation over the last 5 calendar years of service. The plan provides that an employee's rights in his accrued benefit are nonforfeitable after 15 years of participation in the plan. A attains age 65 on June 20, 1978, and begins to receive a pension on July 1, 1978. A's pension is based upon 30 years of participation in the plan. A's annual compensation for the period 1972 through 1977 is as follows:

Year:	Annual compensation
1972	\$75,000
1973	80,000
1974	80,000
1975	85,000
1976	85,000
1977	90,000

(ii) Under the terms of the plan, A's accrued benefit as of December 31, 1977, and his pension are \$50,400 ($0.02 \times 30 \times \frac{1}{2} (\$80,000 + \$80,000 + \$85,000 + \$85,000 + \$90,000)$). A's accrued benefit as of December 31, 1976, is \$46,980 ($0.02 \times 29 \times \frac{1}{2} (\$75,000 + \$80,000 + \$80,000 + \$85,000 + \$85,000)$). Since A's rights in his accrued benefit had ceased to be subject to a substantial risk of forfeiture before 1976, only \$285 ($\frac{1}{2} \times (\$50,400 - \$46,980)$) of each payment received during 1978 does not constitute deferred compensation. The balance of the amounts received during 1978 and all amounts received thereafter constitute deferred compensation since they are paid after the end of the taxable year following A's first taxable year in which his right to receive any such amount was not subject to a substantial risk of forfeiture.

Example (10). On January 15, 1971, Corporation M grants to A, an employee, an option to purchase 100 shares of stock of M at a price of \$10x per share. Such option constitutes a qualified stock option as defined in section 422(b). On August 1, 1971, A exercises his option, at which time the fair market value of the 100 shares of M stock is \$15x per share. On April 24, 1972, A sells the 100 shares of

M stock acquired pursuant to exercise of his option at a price of \$25x per share. Because the sale constitutes a disqualifying disposition within the meaning of section 421(b), A realizes ordinary income of \$500x and a capital gain of \$1,000x in the taxable year 1972. The \$500x of ordinary income so realized by A constitutes earned income.

Example (11). On November 30, 1972, Corporation M grants to A, an employee, a non-qualified stock option to which section 421 does not apply and which has no readily ascertainable fair market value on that date. The option may, by its terms, be exercised by A at any time during, or following termination of, his employment. On March 30, 1974, A, while still employed by M, exercises his option and realizes compensation income at that time. Such compensation does not constitute earned income because the option is exercisable within a period that may extend beyond 3 months after A's termination of employment (other than by reason of death). See paragraph (b)(3)(iii)(b) of this section. Had A exercised his option at any time prior to January 1, 1974, the compensation realized by him by reason of such exercise would have constituted earned income.

Example (12). On November 30, 1972, Corporation N grants to B, an employee, a non-qualified stock option to which section 421 does not apply and which has no readily ascertainable fair market value on that date. The option may, by its terms, be exercised only within the period during which B is employed by N or within 3 months thereafter. On March 30, 1974, B exercises his option and realizes compensation at that time. Such compensation so realized by B constitutes earned income. See paragraph (b)(3)(iii)(b) of this section.

Example (13). On May 9, 1973, and in connection with the performance of services by E, an employee, Corporation X transfers to E 100 shares of X stock. Under the terms of the transfer, E is subject to a binding commitment to return the stock to X if E leaves X's employment for any reason prior to the expiration of a 5-year period beginning on the date of transfer. Since E must perform substantial services for X before he may keep the X stock, E's rights in the stock are subject to a substantial risk of forfeiture under section 83(c)(1). Consequently, if and when such restriction lapses, the compensation realized at such time constitutes earned income.

Example (14). On October 1, 1971, A, an author, and Corporation M, a publisher, executed an agreement under which A granted to M the exclusive right to print, publish, and sell a book he had written. The agreement provides that M will pay to A specified royalties based on the actual cash received from the sale of the published work, render semiannual statements of the sales; and at the time of rendering each statement make settlement for the amount due. On the same day, another agreement was signed by A and M, mutually agreeing that, in consideration of, and notwithstanding, any contrary provisions contained in the first contract, M shall not pay A more than \$100x in any one calendar year. Under this supplemental contract, sums in excess of \$100x accruing in any one calendar year are to be carried over by M into succeeding years. For the calendar year 1971, royalties payable to A under the basic agreement amount to \$100x and this sum is paid to A. For the calendar year 1972, royalties of \$120x are payable to A under the basic agreement, but by reason of the supplemental agreement, only \$100x of this sum is actually paid to A. For each of the calendar years 1973 and 1974, royalties of \$100x are payable to A under the basic agreement, and this sum is paid to A. For the calendar year 1975, royalties of \$80x are payable to A under the basic agreement,

and this sum, plus \$20x carried over from 1972, or \$100x, is paid to A. The \$100x paid to A in each of the years 1971, 1972, 1973, and 1974, and \$80x of the \$100x paid to A in 1975 constitute earned income. The additional \$20x carried over from 1972 and paid to A in 1975 constitutes deferred compensation under paragraph (b) of this section because it was paid to A later than the end of the year following the year (i.e., 1971) in which A's right to receive the amount was not subject to a substantial risk of forfeiture.

Example (15). Corporation M is the producer and owner of a feature length motion picture which is distributed to exhibitors by Corporation N pursuant to a distribution agreement between M and N providing for current payments to M of a given percentage of the current net profits derived by N from the exhibition and exploitation of the picture. A was employed by M as the leading actor in the picture for fixed compensation payable at the rate of \$10x per week during the production period plus additional compensation equal to a given percentage of the net profits derived from the exhibition and exploitation of the picture. A's additional compensation is payable at the time that M receives payments from N under the terms of the distribution agreement. The additional compensation paid to A does not constitute deferred compensation since it is attributable to and measured by current net profits derived from the use of property created in part by A's efforts.

Example (16). A, a boxer, entered into an agreement with M boxing club to fight a particular opponent on June 19, 1971. The agreement provided, in part, that for his performance A was to receive 16 percent of the gross receipts derived from the match. Simultaneously, A and M executed a separate agreement providing for payment of A's share of the receipts from the match as follows: 25 percent thereof not later than August 15, 1971, and 25 percent thereof during each of the years 1972, 1973, and 1974 in equal semiannual installments. A's share of the gross receipts derived from the match was \$100x, of which 25 percent was paid to him in 1971 and a total of \$25x in each of the years 1972, 1973, and 1974. Under the particular facts and circumstances, A and M are not acting as partners or joint venturers. Thus, A is taxable upon his share of such gross receipts only in the years in which such share is actually paid to him under the terms of the separate agreement. The payments of \$25x in each of the years 1971 and 1972 constitute earned income. The payments of \$25x in each of the years 1973 and 1974 would not constitute earned income because they constitute deferred compensation received later than the end of the first taxable year (i.e., 1972) following the year in which A's right to receive such amounts was not subject to a substantial risk of forfeiture.

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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 2 to Navel oranges measuring 2.20 inches or larger.

The proposed regulation is as follows:
§ 907.551 Navel Orange Regulation 251.

(a) Order: From January 21, 1972 through July 31, 1972, no handler shall handle any Navel oranges, grown in District 2, 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 2", 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: December 9, 1971.

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

[FR Doc.71-18304 Filed 12-14-71;8:47 am]

[7 CFR Parts 1104, 1106]

[Dockets Nos. AO-298-A18, AO-210-A30]

MILK IN THE RED RIVER VALLEY AND OKLAHOMA METROPOLITAN MARKETING AREAS

Notice of Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

Notice is hereby given of the filing with the Hearing Clerk of this recommended

decision with respect to proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in the Red River Valley and Oklahoma Metropolitan marketing areas.

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 15th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The above notice of filing of the decision and of opportunity to file exceptions thereto is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

PRELIMINARY STATEMENT

The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreements and to the orders as amended, were formulated, was conducted at Oklahoma City, Okla., August 24 and 25, 1971, pursuant to notice thereof which was issued August 11, 1971 (36 F.R. 15450).

A primary purpose of this hearing was to consider the marketing conditions described in the suspension action issued May 28, 1971 (36 F.R. 10775) affecting certain provisions of the two orders that are the subject of this hearing. The suspension order entitled *Milk in Chattanooga, Tenn., and Certain Other Marketing Areas, Order Suspending Certain Provisions*, issued May 28, 1971 (36 F.R. 10775) suspended effective June 15, 1971, provisions in the Oklahoma Metropolitan and Red River Valley orders that price diverted milk at the plant from which diverted. Certain other actions pursuant to such suspension order were deferred, in particular: (1) Suspension of the provision of the Oklahoma Metropolitan order under which a cooperative association may designate for pool status a plant it operates without requirement to ship milk therefrom to the market was deferred until January 1, 1972; (2) Suspension to limit diversion under the Red River Valley order in months other than September-December in the same manner as in September through December was deferred until September 1, 1971.

In the suspension order it was stated that a hearing would be held to consider modifying the subject orders on a permanent basis with respect to problems that were dealt with on an emergency basis in the suspension order. This hearing deals generally with the problem of appropriate standards of performance by which dairy farmers qualify as producers, what milk of such dairy farmers may be pooled as producer milk, and how plants may appropriately qualify for pooling.

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 907]

NAVEL ORANGES GROWN IN ARIZONA AND 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

The material issues on the record of the hearing for both orders (except as otherwise stated) relate to:

1. Milk to be priced and pooled.
 - (a) Definition of pool distributing plant.
 - (b) Definition of pool supply plant.
 - (c) Definition of cooperative reserve handling plant (Oklahoma Metropolitan order only).
 - (d) Definitions of "producer" and "producer milk."
2. Location adjustments applicable to producer milk diverted to nonpool plants.
3. Miscellaneous order changes.
4. Need for emergency action.

FINDINGS AND CONCLUSIONS

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. In both orders the definitions of the several types of pool plants, definitions of "producer" and "producer milk" should be revised.

Background. A principal reason for the suspension action previously described was the rapid increase in the number of producers and the quantity of milk pooled under each order during 1970 and early 1971 without relation to fluid market needs, thereby resulting in depressed levels of Class I utilization and uniform prices. It is necessary in these circumstances to reexamine the various methods by which milk supplies qualify for pooling under the orders.

There are several methods under these orders by which dairy farmers may qualify as producers without their milk substantially serving the fluid market. In the Oklahoma Metropolitan order market a dairy farmer may qualify as a producer by delivery of his milk to a pool plant for only 1 day, and thereafter his milk may be pooled continuously even though diverted to a nonpool plant. In this order there is no limit on the quantity of milk which may be so diverted by a handler. Under the Red River Valley order a producer's milk may be diverted as much as 29 days of the month in the September-December period. Otherwise, no limit applies to the diversion of an individual producer's milk or to the total quantity of milk a handler may divert.

A second means by which milk can be pooled under the Red River Valley order without substantial delivery performance is through the pool distributing plant definition. The present disposition requirement for pooling a distributing plant under this order is minimal, only 600 pounds per day of route disposition in the marketing area.

The Oklahoma Metropolitan order permits another method by which milk can be pooled readily without substantial delivery performance. Producer milk can be pooled without limit by a cooperative association at a plant operated by the association, if any members of the cooperative are producers delivering milk to other plants qualified as pool plants. The original purpose of this provision and the diversion privileges heretofore described were to enable the pooling of

all milk regularly serving the market and needed to assure the fluid market an adequate supply at all times. These provisions were adopted in an earlier period when the cooperative was essentially a local organization handling primarily milk used by local fluid processors and the associated normal reserve of milk of producers regularly identified with this market.

The described methods by which milk may be pooled under these orders has resulted in recent months, however, in wide changes in numbers of producers and quantities of milk pooled under both orders.

In the Red River Valley market during 1968 and 1969 the average number of producers was 410 and 389, respectively. Subsequently the number increased substantially reaching a high of 778 in December 1970 and 866 in January 1971. In the Oklahoma Metropolitan market the number of producers in 1968 and 1969 averaged 1,838 and 1,597, respectively. During this period there was a decline from 2,152 in April 1968 to 1,311 in October 1969. During 1970 the number of producers again increased, however, and reached 2,761 in December.

The quantity of milk pooled under each order increased substantially as a result of the greater number of producers. In the Red River Valley market, May producer milk receipts for the 4 years 1968-1971 were, respectively, 19.9, 22.1, 27.7, and 38.3 million pounds. In the Oklahoma Metropolitan order market producer milk receipts in May of the 4 years 1968-1971 were 74.3, 70.4, 66.1, and 107.4 million pounds, respectively.

Class I disposition of regulated handlers in these order markets did not increase in the same proportion as producer receipts. Consequently, a substantially reduced percentage of producer milk utilized in Class I resulted. The Class I utilization percentage normally is highest in the winter months because of low seasonal milk production. Class I utilization of producer milk in the Red River Valley market in January 1971 was 31.1 percent compared to 65.2 percent, 69.4 percent, and 73.8 percent, in the same month of the 3 preceding years, respectively. By May 1971 a flush production month, utilization declined to 23.0 percent in Class I.

In the Oklahoma Metropolitan market, Class I utilization of producer milk in January 1971 was 49.3 percent compared to 81.4 percent in the preceding January.

The relationship of the uniform price to the Class I price obviously widened as a result of the lower utilization. In January 1971 the Red River Valley uniform price was \$1.55 per hundredweight under the Class I price compared to a difference of 61 cents a year earlier. In the Oklahoma Metropolitan order market the January 1971 uniform price was \$1.08 less than the Class I price compared to a difference of 41 cents in January 1970.

In developing order provisions to pool those milk supplies that serve the fluid market regularly, it therefore is necessary to adopt provisions that will not also pool supplies that do not so serve

the market. Such distinction is necessary otherwise the proceeds of the higher Class I price would be dissipated by including in the market pool additional quantities of milk acquired by handlers primarily for manufacturing purposes. Such dissipated proceeds would accrue to the benefit of dairy farmers who do not regularly or dependably furnish the fluid milk needs of consumers in the marketing area. Unless adequate standards of marketing performance are provided to determine which milk and plants should participate fully in the market pool funds on the basis of service to the fluid market, the uniform price of the market can be depressed to the point that it affects adversely many producers regularly serving the fluid market. This inhibits the price function as the principal means of attracting an adequate supply of milk for the fluid market in an economical manner.

It was the contention of a cooperative association that any provisions that designate the plants or producers to be pooled on a given market must provide any cooperative association that operates on a regional basis reasonable flexibility for moving milk within the cooperative's system. It was indicated that regional operations not only have the purpose of supplying individual markets with adequate supplies of milk, but also of enhancing returns of members to the greatest degree legally possible.

While the provisions adopted should afford needed flexibility and choice for a cooperative or any other handler in achieving efficient milk handling, it nevertheless is necessary to define those supplies of milk to which the prices and pooling provisions of each of these orders should apply. While merging of marketing areas, or otherwise enlarging existing marketing areas sometimes is an answer to pooling problems occasioned by broadened activity in milk handling, modification of marketing areas was not a subject of this hearing. Consequently, under present circumstances the prices and pooling should apply only to milk that is a part of the regular supply for the fluid market (Oklahoma Metropolitan or Red River Valley) to which the particular order applies.

Provisions modified. The Oklahoma Metropolitan order provides for three types of pool plants: distributing plants, supply plants that meet certain delivery performance standards, and cooperative "reserve balancing" plants. Under the Red River Valley order only distributing plants and supply plants that meet certain performance standards in the market may qualify for pooling.

The definitions of the several types of pool plants mentioned should be revised to assure that milk pooled through these plants under the separate orders serves a bona fide supply function for the respective fluid markets. As previously indicated, minimum performance standards should distinguish between those plants substantially engaged in serving the fluid needs of the order market and those plants that do not serve in a way, or to a degree, that warrants their sharing (by

being included in the market pool) in the market average utilization of Class I milk.

(a) *Pool distributing plant.* The standards for pool distributing plants should be the same in both these orders. Similarity of definitions in the two orders is appropriate because of the geographical proximity of the two marketing areas and the desirability of uniform application in the presence of overlapping supply areas and, to some extent, route dispositions.

A pool distributing plant under each order should be defined as one that disposes of in the marketing area at least 15 percent of its total route disposition of fluid milk products (except filled milk). In addition, such plant should dispose of on routes in or out of the marketing area fluid milk products (except filled milk) amounting to 50 percent or more of the fluid milk products (except filled milk) received by the plant.

Under the Red River Valley order at present the performance standard for pooling a distributing plant is that it dispose of an average of 600 pounds per day of Class I milk on routes in the marketing area during the month. Such minimum quantity (about 18,000 pounds per month) is very small relative to the normal disposition of an efficient sized fluid milk operation and is less than one percent of the Class I disposition by the average handler in this market.¹

A better measure of association with the market is needed. The standard of performance should distinguish between plants that are disposing of a substantial part of their milk supply on routes in the marketing area and other plants that have only a minor disposition in the area. Plants with minor disposition in the market will be subject to partial regulation and thus, even though not pooled, will not be a threat to the orderly marketing of producer milk by fully regulated handlers.

Full regulation should apply to a plant that disposes of in the marketing area 15 percent of its total route disposition of fluid milk products (except filled milk) provided, the plant also meets other standards specified herein. Such in-area disposition is a substantial proportion of the total Class I disposition of the plant and is an appropriate basis for full regulation and sharing in returns of the market pool. As indicated above, plants with less than 15 percent of total route disposition in the marketing area will be subject to partial regulation.

A further appropriate criterion for a pool distributing plant is that plant utilization be basically for fluid disposition. The definition should specify that 50 percent or more of the fluid milk products (except filled milk) received by the distributing plant be disposed of on routes in or out of the marketing area as fluid milk products (except filled milk).

The definition of a pool distributing plant in the Oklahoma Metropolitan or-

der already specifies that to be pooled 50 percent of the milk received by the distributing plant from producers and other pool plants must be disposed as Class I milk in the form of fluid milk products (except filled milk). This needs to be modified only to apply the 50 percent to all receipts of fluid milk products except filled milk. The standard for route disposition in the marketing area should be changed from the present 5 percent of receipts to 15 percent of total route disposition (except filled milk). Such slightly higher standard for disposition in the marketing area is justified for reasons previously stated.

In these markets most handlers receive their milk supply from the major cooperative association, which delivers quantities in accordance with the immediate needs of the handlers. In such circumstance there is little need for the proprietary handler to receive more than a minimum of reserve milk over the quantity he actually puts into fluid disposition and, possibly, cottage cheese and ice cream operations. These handlers should easily meet the 50 percent utilization standard.

For other operators, who may rely on a different type of supply, the utilization standard adopted here again allows sufficient margin between Class I utilization and receipts so that a handler who has acquired a milk supply to meet his fluid requirements during the months of seasonally short production may continue to qualify such plant during the months of seasonally high production. The utilization standard adopted is, for practical purposes, the same as has applied for some time under the Oklahoma Metropolitan order without apparent strain on regular handlers.

A cooperative association supplying pool distributing plants under both orders supported a standard of 15 percent of plant Class I disposition in the marketing area, but proposed that the total Class I disposition needed for qualification be reduced to 40 percent of plant receipts. No specific basis was given for pooling in these markets plants with less than half of their receipts utilized in Class I, except the cooperative's lack of specific information on the operations of particular handlers.

A group of Red River Valley producers first proposed that the pool distributing plant definition in each order specify that 15 percent of the plant's Class I disposition be in the marketing area. In their testimony, however, they changed the proposed standard to 15 percent of plant receipts to be so disposed of, but without presenting any case for the requested change. Accordingly, the latter proposal is denied.

This producer group also proposed that, to qualify, the plant should utilize in Class I at least 50 percent of the milk actually received plus any milk diverted from the plant by the operator or by a cooperative. This proposal is denied since the operator of a pool plant has no control over the volume of milk that may be diverted from his plant by a cooperative association.

No testimony on the distributing plant requirements was offered by proprietary handlers.

(b) *Pool supply plants.* The standards for pooling supply plants in each order should be revised.

A group of Red River Valley order producers proposed modifying the provisions in each order for pooling supply plants. Their proposal differs from existing provisions of both orders only in naming certain additional months (August, January, and February) for which a plant would need to qualify by shipment of 50 percent of specified plant receipts to pool distributing plants in order that it might continue as a pool plant in March-July without shipments. The specified plant receipts on which the standard is based is the quantity of milk received from dairy farmers who would be producers if the plant qualified as a pool plant.

Under each order a plant meeting the 50 percent shipping standard each month of September through December now can continue as a pool plant under that order for the following January-August period. This provision for pooling the plant in the January-August period recognizes that during these months milk production is at a higher level than during the September-December period, whereas the volumes of milk supplies needed by distributing plants are relatively more constant throughout the year. Therefore, shipments from supply plants to pool distributing plants during January-August normally are relatively small and less frequent as compared to the fall period.

It would not be appropriate to specify, as proposed by such Red River Valley producers, that a supply plant in these markets meet the 50 percent shipping standard in the additional months of January, February, and August. Because of the seasonal increase in production previously mentioned, a supply plant that had met the stated standard in the September-December period very likely would be unable to meet the same level of shipment in other specified months.

Nevertheless, the present automatic pooling in other months of supply plants supplying milk in the fall provides another means by which producers may be pooled under either of these orders without necessarily meeting a market need. In order to assure during the January-August period that the dairy farmers who qualify as producers at the pool supply plant are serving as a functional part of the market supply, there also should be, in each order, a provision that a supply plant will continue in pool status after the September-December period only if shipments to pool distributing plants in each month of the January-August period meet a minimum of 20 percent of the total of producer milk received at the supply plant or diverted therefrom by the plant operator. If such 20 percent minimum were not met in any month of the January-August period, the plant would not qualify in that month but could qualify in any remaining month of such period by shipment of at

¹ Official notice is taken of the list of regulated handlers issued by the market administrator July 15, 1971.

least 50 percent of the total of its producer milk receipts and diversions.

(c) *Cooperative reserve balancing plant.* The Oklahoma Metropolitan order should provide that under specified circumstances a cooperative association may qualify its supply-type plant(s) for pooling based on both the quantity of member milk delivered directly from farms to pool distributing plants and shipments from such cooperative plant(s) to pool distributing plants. At least 50 percent of member milk eligible for pooling under the order should be so delivered, however, to pool distributing plants to qualify such a cooperative plant for pooling under this provision.

Section 1106.9(c) of the Oklahoma Metropolitan order currently provides that a cooperative association may pool a supply-type plant it operates if any member-producer milk is received at pool distributing plants. The order does not now specify that some proportion of the milk pooled at the cooperative plant must be delivered to other pool plants. Also, the present provision does not place any limit on the quantity of milk that may be pooled through the cooperative's plant.

The cooperative reserve plant provision currently in the Oklahoma Metropolitan order is the same as that adopted as part of the former Oklahoma City order effective October 1, 1955 (20 F.R. 7133). As previously explained, the purpose of the provision was to allow the local cooperative to handle at such plant milk that was a normal reserve for fluid milk processors. A specific performance standard for pooling the plant was considered unnecessary since the milk handling operation was primarily for the local market. The provision was later incorporated in the succeeding Oklahoma Metropolitan order.

The Red River Valley order has no provision at this time for pooling a plant operated by a cooperative association except as a distributing plant or supply plant as previously described. No such provision for pooling a cooperative reserve balancing plant was proposed for this hearing and no provision is adopted.

In the Oklahoma Metropolitan marketing area there are two such plants operated by a cooperative association, at Oklahoma City and Tulsa, that have qualified for pooling on the basis that milk of member producers is received at pool distributing plants. These plants receive during each month some milk of dairy farmers whose production otherwise is delivered directly from their farms to pool distributing plants. The manufacturing facilities of these cooperative plants serve as principal outlets for the seasonal surplus of the Oklahoma Metropolitan order market and the day-to-day excess of milk supplies resulting from variations in handlers' needs. These plants also furnish some milk to other handlers as interplant transfers, although such handlers are supplied mostly by milk delivered to them directly from farms. Further, these cooperative plants receive the bulk of the reserve milk of the Red River Valley market for proc-

essing. This milk is diverted from Red River Valley pool distributing plants. The cooperative's plants continue to be needed to absorb the normal reserve supplies regularly associated with both markets, which, for reasons previously stated, are not taken at all times by proprietary handlers.

Providing pool status for such plants will allow the cooperative to achieve efficient handling of reserve milk. When milk of some dairy farmers who regularly supply the market is temporarily not needed by fluid processors, their milk can be pooled by delivery to the cooperative plant. The plant thus is an assured outlet for reserve milk without involving arrangements under which the producers' milk would need to be diverted from fluid processors in order to maintain pool status. This is an appropriate method of carrying reserve milk in the market pool provided reasonable standards are established to assure that the milk is truly a reserve associated with the fluid market.

Another consideration is the fact that milk sometimes must be transferred from the cooperative association plant to a pool distributing plant(s). In instances where pool distributing plants have limited milk holding facilities, the cooperative association plant can provide supplemental milk when needed. If the cooperative association plant were not pooled, such interplant transfers would be treated at the pool distributing plant as other source milk although the milk received at the cooperative plants normally will be largely from producers regularly serving the market. This would be costly to the purchasing handler and inequitable to the producers.

The cooperative association operating the two plants requested continuance of pool status for the plants under a proposed modification of the existing provision. Such proposed modification would permit qualification of a supply plant operated by a cooperative association in any month of the September-December period if 30 percent of member producer milk were received at any other pool plant during the month. A plant qualifying in the September-December period would qualify automatically in the subsequent 8 months.

It is concluded for reasons stated below that at least half of the member producer milk of the cooperative should be delivered to pool distributing plants (either from the cooperative plant or member's farms) to qualify the cooperative plant(s) for pooling. This will assure a substantial association of producer member milk as a regular supply for pool distributing plants as a basis for pooling the cooperative plant(s). In addition, other provisions (described hereinbelow) limiting diversions from pool plants will assure further that milk pooled at such cooperative pool plants will be primarily milk available as a regular supply for the fluid market. Such a pooling standard is in accord with the function of the cooperative as a supplier for the full needs of most of the pool distributing plants.

This method of qualifying a cooperative reserve balancing plant for pooling

should apply only to those plants located within 50 miles from Oklahoma City or Tulsa, Oklahoma. Only plants so located can reasonably be expected to handle the reserve milk of dairy farmers whose milk normally is delivered directly from farms to pool distributing plants.

The principal part of the milk supply needed for pool distributing plants in this market is obtained within the area from which direct delivery from farms to distributing plants is practiced. Ninety-three percent of the producer milk for the Oklahoma Metropolitan market was produced within the State of Oklahoma in December 1969. Five percent of the supply was received from dairy farms in Arkansas. While milk from other production areas may qualify for pooling by shipment, nevertheless for economic reasons, such as the cost of transportation, it is normal for the market to rely upon the nearby direct-shipped milk supply.

There is no reason to conclude that the nearby sources of milk are less adequate to the needs of pool distributing plants in this market than in December 1969. The general level of milk production in Oklahoma and adjoining States and the volume of Class I disposition of regulated handlers under the Oklahoma Metropolitan order are at about the same levels as in 1969. Although some milk recently pooled under the Oklahoma Metropolitan order was produced in distant areas, such milk was not shown to be a supply regularly delivered to pool distributing plants where milk is processed for fluid disposition.

Milk produced on farms within the State of Oklahoma generally is available to milk plants in the Oklahoma Metropolitan marketing area on a direct-delivery basis. The plants the cooperative operates and proposes to pool, therefore, are within an area where they can handle the volume of reserve milk associated with milk supplies actually delivered to pool distributing plants.

(d) *Definitions of "producer" and "producer milk"*—(1) *Definition of "producer"*. The producer definition in both orders should be revised. Each order should provide that a "producer" means any person, other than a producer-handler, who produces milk approved by a duly constituted health authority for fluid consumption that is received at a pool plant, or is diverted by a handler for his account to a nonpool plant subject to certain limitations.

In the Red River Valley order a provision should be added to the producer definition to exclude any person with respect to milk produced by him that is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and the handler diverting such milk under the other order and the operator of the pool plant each have requested a Class II classification for such milk. Such provision permits milk not needed for fluid use in one order market to be diverted directly from the farm to a plant regulated under the other order for manufacturing use. The Oklahoma

Metropolitan order already contains such a provision.

The producer definition of the Red River Valley order should exclude also any person with respect to milk produced by him that is diverted to an other order plant if under the other order such person is designated as a producer with respect to such milk. Such provision, similar to that now in the Oklahoma Metropolitan order, will serve to avoid conflict in case a handler reports milk of a dairy farmer diverted to a plant regulated by another order and such other order does not exempt such dairy farmer from producer status thereunder on the basis that his milk was diverted from another order.

(ii) *Definition of "producer milk"*. The producer milk definition in the two orders should be revised to limit the proportion of a handler's milk supply that may be diverted from a pool plant to a nonpool plant. A handler operating a pool plant should be allowed to divert 50 percent of his total receipts of milk from producers (including both milk received at the pool plant and diverted from the plant, but excluding any milk of members of a cooperative diverting milk under a similar provision). A cooperative should be able to divert 50 percent of the milk of member-producers.

Both of these orders currently provide that the milk of a producer may be diverted to a nonpool plant. Diverted milk normally is moved directly from the dairy farm to the nonpool plant. At present there is no limit under the Oklahoma Metropolitan order on the quantity of producer milk that a handler may divert in any month. Under the Red River Valley order unlimited diversion by a handler is confined to the months of January through August. However, during the remaining months of the year diversion is only slightly less limited since diversion of up to 29 days' production of such producer may take place in such months.

Diversion is a method by which a handler may dispose of in an efficient manner the reserve milk that is a necessary part of his regular supply. In order to be assured of an adequate supply every day, a handler procuring his own milk supply must arrange to purchase regularly sufficient milk to allow for variations in production and in his daily needs for fluid processing. Production varies seasonally and, accordingly, producers furnishing a sufficient supply for the low production season will produce more than an adequate supply in high production months. Handlers' daily requirements also vary, principally because packaging is not carried on all days of the week.

Some limitation on the quantity of milk a handler may divert is necessary to prevent dilution of the market pool with milk intended solely for manufacturing purposes. Otherwise a pool plant operator who also operates a nonpool manufacturing plant could include milk supplies for the manufacturing operation in the market pool. A reasonable limit on the quantity of milk a handler

may divert therefore serves to limit dissipation of market pool funds for support of a manufacturing milk operation.

Since it is possible for milk of a dairy farmer to be pooled as producer milk more or less continuously after one actual delivery to a pool plant, there is need, in both markets, to establish some limits on the quantities of milk that can be diverted.

At the hearing a cooperative association advocated that it be permitted under the Oklahoma Metropolitan order to divert up to 30 percent of the producer milk pooled by the cooperative association during the months of flush production and a lesser percentage during other months of the year. The cooperative requested that unlimited diversions be permitted in all months under the Red River Valley order.

In its brief, however, the cooperative requested, for both orders, that diversion be allowed on 21 days' production of a producer in each month of the September-December period, and that unlimited diversions be permitted in other months.

Another proposal, made by 57 Red River Valley producers, would limit the total quantity of producer milk diverted by a cooperative association to 25 percent of the member-producer milk of such cooperative physically received at pool plants. The proposal also would require that at least 10 days' production of any producer be physically received at a pool plant during the month to be eligible for diversion to a nonpool plant at other times in the month. Further, if milk of a producer were diverted for more days of production than it was physically received at the pool plant, none of the diverted milk would be considered to be producer milk for the month. These provisions were proposed for both orders.

A proposal submitted for the hearing by a group of producers under the Oklahoma Metropolitan order would limit diversion by a handler to 30 percent of the handler's receipts from producers. One producer testified in support of such proposal at the hearing.

It is concluded that a handler should be able to divert up to 50 percent of the milk of producers accounted for by the handler as either received at pool plants or diverted. Similarly, a cooperative association should be able to divert 50 percent of its member-producer milk. A proprietary handler obviously would not need to divert any milk of cooperative association members if the cooperative were diverting it from his plant.

Such provisions, included in each order, would provide needed flexibility in handling for both proprietary handlers and cooperative associations. At the same time they would mitigate the pooling of milk not serving as part of the regular supply for the fluid market.

To further assure that producers whose milk is diverted are regularly supplying the market, it should be specified under each order, that during the month at least 15 percent of a producer's milk must be received at pool plants. If less than 15 percent of a producer's milk is received at pool plants, then only that

part of his milk actually received at pool plants should be considered producer milk eligible for pooling. Since every other day delivery is usual in these markets, three deliveries for each producer normally would assure that such producer's milk is eligible for diversion during the month.

It is not necessary that the diversion of the milk of a producer be limited to the same number of days that his milk is received at pool plants, as proposed by one producer group. Such a provision could work against efficiency in handling in these markets. The type of provision adopted herein for both markets enables the handlers or cooperative association under each order to arrange for the diversion of milk in the most efficient manner. Such provision will enable a proprietary handler or cooperative association to divert milk from those farms located nearest to the plant where it will be manufactured, and to use the milk of producers located nearest to pool distributing plants to be delivered there to meet fluid needs.

It is possible that a handler (whether proprietary or cooperative association) will divert during a month more milk than is allowed under the proposed limitation. In such case the handler should be required to designate the dairy farmers whose diverted milk is not to be included as producer milk. Such option permits a handler to retain as producers most of the dairy farmers whose milk he chooses to divert. Accordingly, if the handler fails to designate certain dairy farmers whose milk was over-diverted, the entire quantity of milk diverted by the handler should be excluded from producer milk status since there would be no practical basis for distinguishing those producers to retain producer status.

Application of location adjustments to diverted milk. Under each order the uniform price for milk diverted to a nonpool plant should be adjusted for the location of the plant where physically received.

Diversion of producer milk, as described previously, is a method of handling reserve milk of the respective market by delivery to a nonpool plant. In the Oklahoma Metropolitan market most of the reserve milk originating within Oklahoma is expected to be handled by a cooperative association in the plants it operates at Oklahoma City and Tulsa. Since provision has been made to qualify these plants as pool plants, no diversion is involved in handling Oklahoma Metropolitan producer milk at these plants. More distant supplies have been handled by diversion to nonpool plants near to the source of supply.

Under the Red River Valley order, milk of producers is diverted to the plant of the cooperative at Oklahoma City or to its plant at Tulsa. The Muenster, Tex., plant of the cooperative also is a potential outlet for diverted milk of Red River Valley producers. An additional facility of a proprietary operator at Sulphur, Okla., receives some milk diverted from

Red River Valley pool plants but does not have capacity to serve as a main outlet for reserve milk of this market.

Prior to a suspension order effective June 15, 1971, the uniform price for milk diverted from a pool plant to a nonpool plant was that applicable at the location of the pool plant from which the milk was diverted. Currently, however, under the suspension order, the uniform price is adjusted for the location of the nonpool plant physically receiving the diverted milk.

The location adjustments under each of the two orders were established to reflect the relative values of milk at various locations based on distance of the plant of receipt from a central point in the respective marketing area.

Under the Oklahoma Metropolitan order the location adjustments reduce the applicable price in relation to the distance of the plant of receipt from the city hall in Oklahoma City. The adjustments apply at plants that are 50 miles or more from the city hall and outside the State of Texas and certain Oklahoma counties. Under the Red River Valley order similar minus location adjustments based on the distance from the city hall at Wichita Falls, Tex., apply at plants outside the State of Texas and more than 40 miles from such city hall.

With respect to milk received at pool plants, the location adjustments apply to the Class I price paid by handlers and to the uniform price paid to producers. With respect to milk diverted to a nonpool plant, the suspension order cited above requires that the uniform price to producers be based on the location of the nonpool plant where the milk is received.

It is concluded that such location adjustments under both orders appropriately reflect the relative location values of diverted producer milk in the same manner as for producer milk received at pool plants variously located. The price for milk diverted to a nonpool plant is the same as that applying to milk received at a pool plant at a similar location. The diverted milk does not have a higher value than milk received at a pool plant at such location.

For example, if dairy farmers relatively distant from the market were to have their milk diverted to a nonpool plant near their farms and yet receive a uniform price based on the location of a pool plant in the marketing area, such farmers would be compensated as if their milk had incurred the expense of delivery all the way to the market center. Milk that is actually delivered to the market has been made available to regulated fluid processors only at the cost of delivery to the market center. The milk received at a distant location, however, is not similarly available, and could not be made available unless the cost of transportation to the market were incurred. For this reason milk received in the central marketing area is of higher value at least by the amount of transportation cost compared to the milk received at distant pool or nonpool plants.

This principle applies whether the diverted milk originates from a source near to the market or at a distance.

The cooperative association that is the principal supplier for the Red River Valley market nevertheless proposed that under the Red River Valley order milk diverted to any nonpool plant within 150 miles of the boundary of the marketing area be priced at the pool plant from which diverted. This pricing was intended to apply to milk diverted from pool plants at Ardmore and Lawton, Okla., and Wichita Falls, Tex., to the cooperative manufacturing plants at Oklahoma City and Tulsa. Under the location differential provision of the order the uniform price as adjusted to the Oklahoma City and Tulsa locations would be less than at the plants from which diverted.

The cooperative's proposal is denied for the reasons previously cited requiring that the uniform price for the diverted milk reflect the value of such milk at the plant where it is received.

3. *Miscellaneous order changes.* (a) The definition of "handler" as applied to a cooperative association delivering tank truck loads of milk to pool plants should be modified by deletion of the reference to operation of a pool plant by the cooperative association. Inasmuch as a cooperative may be performing the function of making tank truck deliveries to pool plants whether or not it operates a pool plant, its designation as handler should not depend on the incidental fact that it operates a pool plant.

(b) At present each of the two orders, in defining "producer" and "distributing plant", provides that the health authority governing each must be a duly constituted State or municipal health authority, or an agency of the Federal Government located in the marketing area.

These provisions should be modified. For purposes of the order regulation it is sufficient that the approval be that of any duly constituted health authority. Such term would include not only a state or municipal health authority but also an agency of the Federal Government when such agency approves a milk source as acceptable to supply milk to a reservation, facility or installation operated by such agency. The definitions of "producer" and "distributing plant" should be modified accordingly in each order.

The supply plant definitions of both orders currently make no provision with respect to approval of the plant by a health authority. For the purpose of defining a pool supply plant, the essential consideration is the shipment to the market of a specified proportion of the plant receipts eligible as producer milk. It is not necessary that the pool qualification depend on a specific health approval for the supply plant. Absence of such a requirement in the definition in no way affects the quality of milk received in the market from a supply plant. A fluid distributing plant in the marketing area receiving milk from a supply plant would need to comply under applicable health

regulations with respect to all milk receipts. Such regulations rather than any provision of the order would govern the quality of milk received.

(c) A section entitled "diverted milk" in the Red River Valley order, § 1104.63, should be revoked. Provisions dealing with the same subject matter have been added to the definitions of "producer milk."

(d) The transfer section of the Red River Valley order dealing with transfers to other order plants should be revised to permit diversion to other order plants of milk for which Class II usage (or comparable utilization under such other order) is requested.

This change will have no effect on milk diverted to an other order plant unless the other order has a complementary provision excluding such diverted milk from producer milk status under the receiving order. The Oklahoma Metropolitan order is one of the orders that has such complementary provision. Handlers regulated by the Red River Valley order should be in position to divert milk for Class II use to pool plants of the nearby Oklahoma Metropolitan order market. This will provide additional outlets through which reserve milk of the Red River Valley handlers may be channeled.

(e) The current transfer section of the Oklahoma Metropolitan order provides for diversions to other order plants in the introductory text of such section. Paragraph (e) (2) within such section, however, refers only to transfers of milk and should be clarified by adding the phrase "or diverted."

(f) There is no need in either order to provide for diversion of producer milk from one pool plant to another pool plant under the same order. Cooperative associations acting as the handler of bulk tank milk deliveries to pool plants may, when such milk is not needed at any pool plant, redirect its delivery to either another pool plant or a nonpool plant. Accordingly, the transfer provisions of each order should be revised deleting any reference to diversions to pool plants.

4. *Need for emergency action.* A proposal that a recommended decision in these matters be omitted is denied. One group of producers favored the omission of a recommended decision in order that the order might be amended promptly while another group asked that a recommended decision be issued.

Issues such as pooling standards for plants and the quantity of producer milk that may be diverted are complex issues that require the issuance of a recommended decision in order that the groups of producers with widely divergent views on these issues may have opportunity to except to the findings and conclusions therein.

Moreover, the pricing of diverted milk at the plant to which diverted, one of the amendments favored by the group requesting omission of the recommended decision, is currently in effect as the result of a suspension order and will continue to be effective until the order is amended as a result of this hearing.

RULINGS ON PROPOSED FINDINGS AND CONCLUSIONS

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

GENERAL FINDINGS

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

The following findings are hereby made with respect to each of the aforesaid tentative marketing agreements and orders:

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held;

RECOMMENDED MARKETING AGREEMENT AND ORDER AMENDING THE ORDER

The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following order amending the orders, as amended, regulating the handling of milk in the Red River Valley and Oklahoma Metropolitan marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

PART 1104—MILK IN THE RED RIVER VALLEY MARKETING AREA

1. Section 1104.6 is revised to read as follows:

§ 1104.6 Producer.

(a) "Producer" means any person, other than a producer-handler as defined in any order (including this part) issued pursuant to the Act or a person described pursuant to paragraph (b) of this section, who produces milk approved for fluid consumption by a duly constituted health authority, which milk is:

(1) Received at a pool plant; or
(2) Diverted by a handler for his account from a pool plant to a nonpool plant, subject to the provisions of § 1104.14.

(b) This definition shall not include:

(1) Any person with respect to milk produced by him that is diverted to a pool plant from another order plant if the other order designates such person as a producer under that order and the handler under the other order diverting such milk and the operator of the pool plant each have requested Class II classification of such milk in their reports of receipts and utilization filed with the respective market administrator; or

(2) Any person with respect to milk produced by him that is diverted to another order plant if such person is designated as a producer under the other order with respect to such milk.

2. Section 1104.7 is revised to read as follows:

§ 1104.7 Distributing plant.

"Distributing plant" means all the buildings, premises, and facilities of a plant:

(a) Approved by a duly constituted health authority for the handling of milk approved for fluid consumption;

(b) In which fluid milk products are processed or packaged; and

(c) From which fluid milk products are disposed of on routes.

3. Section 1104.8 is revised to read as follows:

§ 1104.8 Supply plant.

"Supply plant" means a plant from which fluid milk products are transferred to a distributing plant(s) during the month.

4. Section 1104.9 is revised to read as follows:

§ 1104.9 Pool plant.

"Pool plant" means any plant (other than a plant operated by a producer-handler or one exempt pursuant to § 1104.61) described in paragraph (a) or (b) of this section:

(a) A distributing plant from which during the month:

(1) Fluid milk products (except filled milk) are disposed of on routes in an amount not less than 50 percent of the total quantity of fluid milk products (except filled milk) received at the plant or diverted to a nonpool plant by the plant operated under the limitations of § 1104.14; and

(2) Fluid milk products (except filled milk) are disposed of on routes in the marketing area in an amount not less than 15 percent of the total route disposition of the plant.

(b) A supply plant from which fluid milk products (except filled milk) are transferred during the month to a plant(s) described in paragraph (a) of this section in an amount not less than 50 percent of milk received at the supply plant from dairy farmers who would be eligible as producers under § 1104.14 if such plant qualifies pursuant to this paragraph and milk of such dairy farmers diverted from such plant by the plant operator. Any plant that qualifies under this paragraph during each of the months of September through December shall continue so qualified in each of the following months of January through August until any month of such period in which less than 20 percent of the plant receipts specified previously herein is transferred to plants described in paragraph (a) of this section. A plant not meeting such 20 percent requirement in any month of such January-August period shall be qualified under this paragraph in any remaining month of the year only if transfers of fluid milk products (except filled milk) from the plant during the month to plant(s) described in paragraph (a) of this section are at least 50 percent of the plant receipts specified previously herein.

§ 1104.11 [Amended]

5. In § 1104.11(c) change "\$ 1104.63" to read "\$ 1104.14."

6. Section 1104.14 is revised to read as follows:

§ 1104.14 Producer milk.

"Producer milk" means skim milk and butterfat in milk from producers that is:

(a) Received by the operator of a pool plant at such pool plant from producers;

(b) Received by the operator of a pool plant at such pool plant from a cooperative association handler pursuant to § 1104.11(e);

(c) Diverted by the operator of a pool plant from such pool plant to a nonpool plant subject to the conditions of paragraph (f) of this section;

(d) Received from producers by a cooperative association handler pursuant to § 1104.11(e) in an amount in excess of the quantity delivered by such cooperative association to pool plants pursuant to paragraph (b) of this section; or

(e) Diverted by a cooperative association for its account from the pool plant of another handler to a nonpool plant subject to the conditions of paragraph (f) of this section;

(f) Milk diverted from a pool plant to a nonpool plant shall be subject to the following conditions:

(1) A cooperative association may divert from pool plants to nonpool plants for its account, subject to the conditions of subparagraph (3) of this paragraph, a total quantity of milk not in excess of total milk of its member-producers received at all pool plants during the month. Diversions in excess of such

PROPOSED RULE MAKING

quantity shall not be eligible under this section and the diverting cooperative shall specify the dairy farmers whose diverted milk is not so eligible. If the cooperative association fails to designate such persons, status under this section shall be forfeited with respect to all milk diverted by such cooperative association;

(2) The operator of a pool plant other than a cooperative association may divert from his pool plant to a nonpool plant for his account, subject to the conditions of subparagraph (3) of this paragraph, milk of producers not members of a cooperative association diverting milk pursuant to subparagraph (1) of this paragraph, in a total quantity not in excess of the milk of producers not members of such cooperative association received at such pool plant(s) during the month. Milk diverted in excess of such quantity shall not be eligible under this section and the diverting handler shall specify the dairy farmers whose diverted milk is not so eligible. If a handler fails to designate such person, status under this section shall be forfeited with respect to all milk diverted by such handler;

(3) Milk of a producer shall not be eligible for diversion from a pool plant under this section if during the month less than 15 percent of the total milk of such person as a producer is received at a pool plant.

§ 1104.32 [Amended]

7. In § 1104.32(b) the phrase "to another pool plant or" is deleted.

8. Revise § 1104.41(b) (6) (i) to read as follows:

§ 1104.41 Classes of utilization.

* * * * *

(b) * * *

(6) * * *

(i) Two percent of milk received directly from producers at a pool plant or diverted from such pool plant by the plant operator; and

§ 1104.43 [Amended]

9. In § 1104.43(a) "§ 1104.14(a) (2)" to read "§ 1104.14(b)."

10. In § 1104.44 revise the text of paragraph (a) preceding subparagraph (1) of such paragraph, the text of paragraph (e) preceding subparagraph (1) of such paragraph, and subparagraph (2) and (3) of paragraph (e) to read as follows:

§ 1104.44 Transfers.

* * * * *

(a) At the utilization mutually indicated in writing to the market administrator by the operators of both plants on or before the seventh day after the end of the month in which the transaction occurred, otherwise as Class I milk, if transferred from a pool plant to the pool plant of another handler, subject in either event to the following conditions:

* * * * *

(e) As follows, if transferred or diverted to another order plant in excess of receipts from such plant in the same

category as described in subparagraph (1), (2), or (3) of this paragraph:

* * * * *

(2) If transferred or diverted in bulk form, classification shall be in the classes to which allocated as a fluid milk product under the other order (including allocation under the conditions set forth in subparagraph (3) of this paragraph);

(3) If the operators of both the transferor and transferee plants so request in the reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II to the extent of the Class II utilization (or comparable utilization under such other order) available for such assignment pursuant to the allocation provisions of the transferee order;

* * * * *

§ 1104.52 [Amended]

11. In § 1104.52(a) the word "pool" preceding the word "plant" is deleted.

§ 1104.61 [Amended]

12. In § 1104.61(c) the provision "except during the months of January through August if such plant retains automatic pooling status under this part" is deleted.

§ 1104.62 [Amended]

13. In § 1104.62(a) (1) (ii) change "§ 1104.8" to read "§ 1104.9(b)."

§ 1104.63 [Revoked]

14. Section 1104.63 is revoked in its entirety.

15. Section 1104.74 is revised to read as follows:

§ 1104.74 Location differentials to producers and on nonpool milk.

(a) In making payments to producers pursuant to § 1104.80 for producer milk received at a pool plant, the uniform price computed pursuant to § 1104.71 shall be reduced according to the location of the pool plant at the rate set forth in § 1104.52(a);

(b) For the purpose of computations pursuant to §§ 1104.82 and 1104.83, the weighted average price shall be adjusted at the rate set forth in § 1104.52(a) applicable at the location of the nonpool plant from which the milk was received; and

(c) In making payments to producers pursuant to § 1104.80 for producer milk diverted from a pool plant to a nonpool plant, the uniform price computed pursuant to § 1104.71 shall be reduced according to the location of the nonpool plant at which the milk is received at the rate set forth in § 1104.52(a).

§ 1104.86 [Amended]

16. In § 1104.86(a) change "§ 1104.14 (a) (2)" to read "§ 1104.14(b)."

PART 1106—MILK IN OKLAHOMA METROPOLITAN MARKETING AREA

1. Section 1106.7 is revised to read as follows:

§ 1106.7 Distributing plant.

"Distributing plant" means all the buildings, premises, and facilities of a plant:

(a) Approved by a duly constituted health authority for the handling of milk approved for fluid consumption;

(b) In which fluid milk products are processed or packaged; and

(c) From which fluid milk products are disposed of on routes.

2. Section 1106.8 is revised to read as follows:

§ 1106.8 Supply plant.

"Supply plant" means a plant from which fluid milk products are transferred to a distributing plant(s) during the month.

3. Section 1106.9 is revised to read as follows:

§ 1106.9 Pool plant.

"Pool plant" means any plant (other than a plant operated by a producer-handler or one exempt pursuant to § 1106.61) described in paragraph (a), (b), or (c) of this section;

(a) A distributing plant from which during the month:

(1) Fluid milk products (except filled milk) are disposed of on routes in an amount not less than 50 percent of the total quantity of fluid milk products (except filled milk) received at the plant or diverted to a nonpool plant by the plant operator under the limitations of § 1106.13; and

(2) Fluid milk products (except filled milk) are disposed of on routes in the marketing area in an amount not less than 15 percent of the total route disposition of the plant.

(b) A supply plant from which fluid milk products (except filled milk) are transferred during the month to a plant(s) described in paragraph (a) of this section in an amount not less than 50 percent of milk received at the supply plant from dairy farmers who would be eligible as producers under § 1106.12 if such plant qualifies pursuant to this paragraph, and milk of such dairy farmers diverted from such plant by the plant operator. Any plant that qualifies under this paragraph during each of the months of September through December shall continue so qualified in each of the following months of January through August until any month of such period in which less than 20 percent of the plant receipts specified previously herein is transferred to plants described in paragraph (a) of this section. A plant not meeting such 20 percent requirement in any month of such January-August period shall be qualified under this paragraph in any remaining month of the year only if transfers of fluid milk products (except filled milk) from the plant during the month to plant(s) described in paragraph (a) of this section are at least 50 percent of the plant receipts specified previously herein.

(c) A plant(s) operated by a cooperative association and located not more than 50 miles from the City Hall of Tulsa

or Oklahoma City, Okla., at which milk is received from dairy farmers producing milk approved by a duly constituted health authority for fluid consumption if the total of fluid milk products described in subparagraphs (1) and (2) of this paragraph received at plants described pursuant to paragraph (a) of this section is not less than 50 percent of total milk of member producers during the month:

(1) Fluid milk products (except filled milk) transferred from such cooperative association plant(s); and

(2) Milk of member producers received from such producers.

§ 1106.11 [Amended]

4. In § 1106.11 paragraph (c) is revised to read as follows:

(c) A cooperative association with respect to the milk of its member producers delivered to the pool plant of another handler in a tank truck owned or operated by such cooperative association for the account of such cooperative association. Such milk shall be considered to have been received by such cooperative association at the location of the plant to which it is delivered; or

5. Section 1106.12 is revised to read as follows:

§ 1106.12 Producer.

(a) "Producer" means any person, other than a producer-handler as defined in any order (including this part) issued pursuant to the Act or a person described pursuant to paragraph (b) of this section, who produces milk approved for fluid consumption by a duly constituted health authority, which is:

(1) Received at a pool plant; or

(2) Diverted by a handler for his account from a pool plant to a nonpool plant subject to the provisions of § 1106.13.

(b) This definition shall not include:

(1) Any person with respect to milk produced by him that is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and the handler under the other order diverting such milk and the operator of the pool plant each request Class II classification of such milk in their reports of receipts and utilization filed with the respective market administrator; or

(2) Any person with respect to milk produced by him that is diverted to an other order plant if such person is designated as a producer under the other order with respect to such milk.

6. Section 1106.13 is revised to read as follows:

§ 1106.13 Producer milk.

"Producer milk" means skim milk and butterfat in milk from producers that is:

(a) Received by the operator of a pool plant at such pool plant from producers;

(b) Diverted by the operator of a pool plant from such pool plant to a nonpool plant subject to the conditions of paragraph (e) of this section;

(c) Received from producers by a cooperative association handler pursuant to § 1106.11(c); or

(d) Diverted by a cooperative association for its account from the pool plant of another handler to a nonpool plant subject to the conditions of paragraph (e) of this section.

(e) Milk diverted from a pool plant to a nonpool plant shall be subject to the following conditions:

(1) A cooperative association may divert from pool plants to nonpool plants for its account, subject to the conditions of subparagraph (3) of this paragraph, a total quantity of milk not in excess of total milk of its member-producers received at all pool plants during the month. Diversions in excess of such quantity shall not be eligible under this section and the diverting cooperative shall specify the dairy farmers whose diverted milk is not so eligible. If the cooperative association fails to designate such persons, status under this section shall be forfeited with respect to all milk diverted by such cooperative association;

(2) The operator of a pool plant other than a cooperative association may divert from his pool plant to a nonpool plant for his account, subject to the conditions of subparagraph (3) of this paragraph, milk of producers not members of a cooperative association diverting milk pursuant to subparagraph (1) of this paragraph, in a total quantity not in excess of the milk of producers not members of such cooperative association received at such pool plant(s) during the month. Milk diverted in excess of such quantity shall not be eligible under this section and the diverting handler shall specify the dairy farmers whose diverted milk is not so eligible. If a handler fails to designate such persons, status under this section shall be forfeited with respect to all milk diverted by such handler;

(3) Milk of a producer shall not be eligible for diversion from a pool plant under this section if during the month less than 15 percent of the total milk of such person as a producer is received at a pool plant.

7. In § 1106.44 revise the text of paragraph (a) preceding subparagraph (1) of such paragraph and subparagraph (2) of paragraph (e) to read as follows:

§ 1106.44 Transfers.

(a) At the utilization mutually indicated in writing to the market administrator by both handlers on or before the seventh day after the end of the month in which the transaction occurred, otherwise as Class I milk, if transferred from a pool plant to the pool plant of another handler, subject in either event to the following conditions:

(e) * * *

(2) If transferred or diverted in bulk form, classification shall be in the classes to which allocated as a fluid milk product under the other order (including allocation under the conditions set forth in subparagraph (3) of this paragraph);

§ 1106.53 [Amended]

8. In § 1106.53(a) the word "pool" preceding the word "plant" is deleted.

§ 1106.61 [Amended]

9. In § 1106.61(c) the provision "except during the months of January through August if such plant retains automatic pooling status under this part" is deleted.

§ 1106.62 [Amended]

10. In § 1106.62(a) (1) (ii) change "\$ 1106.8" to read "\$ 1106.9(b)."

11. Section 1106.81 is revised to read as follows:

§ 1106.81 Location differential to producers and on nonpool milk.

(a) In making payments to producers pursuant to § 1106.80 for producer milk received at a pool plant, the uniform price computed pursuant to § 1106.72 shall be reduced according to the location of the pool plant at the rate set forth in § 1106.53(a);

(b) For the purpose of computations pursuant to §§ 1106.84 and 1106.85, the uniform price shall be adjusted at the rate set forth in § 1106.53(a) applicable at the location of the nonpool plant from which the milk was received; and

(c) In making payments to producers pursuant to § 1106.80 for producer milk diverted from a pool plant to a nonpool plant, the uniform price computed pursuant to § 1106.72 shall be reduced according to the location of the nonpool plant at which the milk is received at the rate set forth in § 1106.53(a).

Signed at Washington, D.C., on December 10, 1971.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[FR Doc.71-18340 Filed 12-14-71;8:50 am]

**DEPARTMENT OF
TRANSPORTATION**

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 71-NW-23]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the description of the Boise, Idaho Transition Area.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Operations, Procedures, and Airspace Branch, Northwest Region, Federal Aviation Administration, FAA Building, Boeing Field, Seattle, Wash. 98108. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action

is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in light of comments received.

A public docket will be available for examination by interested persons in the office of the Regional Counsel, Northwest Region, Federal Aviation Administration, FAA Building, Boeing Field, Seattle, Wash. 98108.

The proposed change in the Transition Area would provide additional controlled airspace for radar vectoring of traffic to/from Boise, Idaho.

In consideration of the foregoing, the FAA proposes the following airspace action.

In § 71.181 (36 F.R. 2140) the description of the Boise, Idaho Transition Area is amended as follows:

Add " * * *"; that airspace northeast of Boise extending upward from 11,500 feet MSL, bounded on the northeast by the southwest edge of V-283, on the south by the north edge of V-500, on the southwest by the 25-mile-radius area and on the west by the east edge of V-253."

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Seattle, Wash., on December 6, 1971.

J. H. TANNER,
Acting Director.

[FR Doc.71-18279 Filed 12-14-71; 8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 71-WE-57]

CONTROL ZONE AND TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the description of the Fort Huachuca, Ariz. control zone and transition area.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Airspace and Procedures Branch, Federal Aviation Administration, 5651 West Manchester Boulevard, Post Office Box 92007, Worldway Postal Center, Los Angeles, CA 90009. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendments. No public hearing is contemplated at this time, but

arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposals contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 5651 West Manchester Boulevard, Los Angeles, CA 90045.

Two new instrument approach procedures (NDB and VOR) have been developed for Libby AAF, Ariz. The airspace requirements have been reviewed in accordance with the U.S. Standard for terminal instrument procedures (TERPs) and it has been determined that the descriptions of the Fort Huachuca, Ariz. control zone and transition area require amending.

The 1,200-foot portion northeast of Libby AAF will provide controlled airspace for terminal radar vectoring and aircraft transitioning to/from Cochise VORTAC and Libby AAF. The 700-foot portion will provide controlled airspace protection for aircraft operating between 1,500 feet and 1,000 feet above the surface. The control zone will provide controlled airspace protection for aircraft executing prescribed instrument procedures below 1,000 feet above the surface.

The current NDB (ADF)-1 and VOR Rwy 29 instrument approach procedures will be canceled concurrent with the effective date of the new procedures.

In consideration of the foregoing, the FAA proposes the following airspace actions:

In § 71.171 (36 F.R. 2055) the description of the Fort Huachuca control zone is amended to read as follows:

FORT HUACHUCA, ARIZ.

Within a 5-mile radius of Libby AAF, Fort Huachuca, Ariz. (latitude 31°35'00" N., longitude 110°20'30" W.), within 5 miles each side of the Libby AAF VOR 093° radial, extending from the VOR to 12 miles east of the VOR. This control zone will be 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.

In § 71.181 (36 F.R. 2140) the description of the Fort Huachuca, Ariz., transition area is amended to read as follows:

FORT HUACHUCA, ARIZ.

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Libby AAF, Fort Huachuca, Ariz. (latitude 31°35'00" N., longitude 110°20'30" W.), that airspace within an arc of a 22-mile radius circle centered on the Libby AAF VOR, extending clockwise from a line 5 miles northwest of and parallel to the 033° radial of the Libby AAF VOR to a line 5 miles south of and parallel to the Libby AAF VOR 093° radial; that airspace extending upward from 1,200 feet above the surface bounded on the north by the Tucson, Ariz., transition area, on the northeast by the southwest edge of V-86, on the east by longitude 109°44'00" W., on the

south by latitude 31°25'00" N., on the west by longitude 110°30'00" W., and that airspace northeast of Libby AAF bounded on the north by the south edge of V-168, on the east by a line 5 miles west of and parallel to the Douglas, Ariz., VORTAC 347° radial, on the southwest by the northeast edge of V-86 and on the west by longitude 110°00'00" W.

These amendments are proposed under the authority of section 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Los Angeles, Calif., on December 6, 1971.

ROBERT O. BLANCHARD,
Acting Director.
Western Region.

[FR Doc.71-18280 Filed 12-14-71; 8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 71-SO-79]

CONTROL ZONES AND TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration (FAA) is considering amendments to Part 71 of the Federal Aviation Regulations that would alter the control zones and transition area of the Melbourne, Fla., Cape Kennedy Regional Airport and Patrick Air Force Base, Cocoa, Fla.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southern Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Post Office Box 20636, Atlanta, GA 30320. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendments. The proposals contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, DC 20590. An informal docket also will be available for examination at the Office of the Regional Air Traffic Division Chief.

As parts of these proposals relate to the navigable airspace outside the United States, this notice is submitted in consonance with the ICAO International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by article 12 of and annex 11 to the convention on International Civil Aviation, which pertain to the establishment of air navigation facilities and services necessary to promoting the safe, orderly and expeditious flow of

civil air traffic. Their purpose is to insure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in annex 11 apply in those parts of the airspace under the jurisdiction of a contracting State, derived from ICAO, wherein air traffic services are provided and also whenever a contracting State accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting State accepting such responsibility may apply the International Standards and Recommended Practices to civil aircraft in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with article 3 of the convention on International Civil Aviation, Chicago, 1944, State aircraft are exempt from the provisions of annex 11 and its Standards and Recommended Practices. As a contracting State, the United States agreed by article 3(d) that its State aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since these actions involve, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

The airspace actions proposed in this docket would:

1. Amend the Melbourne, Fla., Cape Kennedy Regional Airport control zone to read as follows:

Within a 5-mile radius of the Cape Kennedy Regional Airport (lat. 28°06'01" N., long. 80°38'00" W.); within 3 miles each side of the Melbourne VOR 100° and 262° radials, extending from the 5-mile radius zone to 8.5 miles east and west of the VOR; within 3 miles each side of the 267° bearing from the Satellite RBN, extending from the 5-mile radius zone to 8.5 miles west of the RBN; excluding the portion within the Cocoa (Patrick AFB), Fla., control zone.

2. Amend the Cocoa (Patrick AFB), Fla., control zone to read as follows:

Within a 5-mile radius of Patrick AFB (lat. 28°14'21" N., long. 80°36'28" W.).

3. Amend the Melbourne, Fla., transition area as follows:

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Cape Kennedy Regional Airport (lat. 28°06'01" N., long. 80°38'00" W.); within an 8.5-mile radius of Patrick AFB (lat. 28°14'21" N., long. 80°36'28" W.); within 3 miles each side of Patrick AFB TACAN 030° radial, extending from the 8.5-mile radius area to 9.5 miles northeast of the TACAN.

The alterations of the control zone and transition area proposed herein are necessary to provide controlled airspace, specified by existing criteria, for aircraft executing instrument approach and departure procedures at Melbourne, Fla., Cape Kennedy Regional Airport and Cocoa (Patrick AFB), Fla.

These amendments are proposed under the authority of section 307(a) and 1110 of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1510), Executive Order 10854 (24 F.R. 9565) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on December 7, 1971.

T. McCORMACK,
Acting Chief, Airspace and
Air Traffic Rules Division.

[FR Doc.71-18281 Filed 12-14-71;8:45 am]

[14 CFR Part 73]

[Airspace Docket No. 71-SW-68]

RESTRICTED AREA

Proposed Alteration

The Federal Aviation Administration (FAA) is considering an amendment to Part 73 of the Federal Aviation Regulations which would increase the time of designation of Restricted Area R-2403A and R-2403B, Little Rock, Ark.

Interested persons are invited to participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southwest Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Post Office Box 1689, Fort Worth, TX 76101. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, DC 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The Department of the Army has requested a change in the time of designation of the subject restricted areas to provide for the conduct of artillery service practice and mortar firing during the weekdays for annual summer training.

If these actions are taken, the time of designation would be modified as follows:

R-2403A

Time of designation: Daily 0700 to 2100 1 May through 1 September, to be activated by NOTAM 48 hours in advance stating period of activation. Other times 0700 Saturday to 1700 Sunday 30 April through 31 August.

R-2403B

Time of designation: Daily 0700 to 2100 1 May through 1 September, to be activated by NOTAM 48 hours in advance stating the period of activation. Other time 0700 Saturday to 1700 Sunday 30 April through 31 August, to be activated by NOTAM 24 hours in advance.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on December 8, 1971.

T. McCORMACK,
Acting Chief, Airspace and
Air Traffic Rules Division.

[FR Doc.71-18278 Filed 12-14-71;8:45 am]

National Highway Traffic Safety
Administration

[49 CFR Part 571]

[Dockets Nos. 1-9 and 1-10; Notice 9]

EXTERIOR PROTECTION

Proposed Standards

The purpose of this notice is to propose an amendment to S5.3.1 of Motor Vehicle Safety Standard No. 215 that will require a vehicle's lamps to conform to the photometric requirements of Standard No. 108 after the series of impacts required by Standard No. 215. The requirement proposed by this notice was originally issued as part of the standard by notice of October 18, 1971 (36 F.R. 20369, Oct. 21, 1971). In a notice in today's edition of the FEDERAL REGISTER (36 F.R. 23802) the requirement is withdrawn and is hereby issued as a proposal for rule making.

The intent of the protective criterion of S5.3.1 is to insure that the vehicle's lights will be operating after impact and that they will provide the level of safety that is established by Standard No. 108. As pointed out in the petitions for reconsideration of the rule of October 18, however, a complete Standard No. 108 test is not conducted on a single lamp. Rather than give rise to an unduly complicated test procedure, it is proposed to add only the photometric requirements of Standard No. 108 to the requirements presently contained in S5.3.1. The photometric output of the lamps would be measured with the lamps in the position relative to the test screen that they occupy on the vehicle after the series of impacts. Blockage of light within the test area by a part of the vehicle, excessive reorientation of the lamps due to sheet metal deformation, and filament breakage would each be a potential source of failure.

It is therefore proposed that the following amendments be made to Standard No. 215, 49 CFR 571.215:

1. S5.1 would be amended to read as follows:

S5.1 *Vehicles manufactured on or after September 1, 1972.* Each vehicle manufactured on or after September 1, 1972, shall meet the protective criteria of S5.3.1 through S5.3.4, except for the photometric requirements of S5.3.1, when it impacts a fixed collision barrier that is perpendicular to the line of travel of the vehicle, while traveling longitudinally forward at 5 m.p.h. and while traveling longitudinally rearward at 2½ m.p.h., under the conditions of S6.1.

2. S5.3.1 would be amended to read as follows:

S5.3.1 Each lamp or reflective device, except license plate lamps, shall be operable, shall be free of cracks, and shall comply with the applicable visibility and photometric requirements of Motor Vehicle Safety Standard No. 108. The aim of each headlamp shall be adjustable in accordance with the applicable requirements of Standard No. 108.

Proposed effective date: September 1, 1972.

Interested persons are invited to submit written data, views, and arguments concerning the proposed amendment. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5221, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on January 17, 1972 will be considered, and will be available for examination in the docket at the above address both before and after the closing date. To the extent possible, comments filed after the above date will also be considered by the Administration. However, the rule making action may proceed at any time after that date, and comments filed after the above date and too late for consideration in regard to the action will be treated as suggestions for future rule making. The Administration will continue to file relevant material, as it becomes available, in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

This notice of proposed rule making is issued under the authority of sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392, 1407), and the delegation of authority at 49 CFR 1.51 and 501.8.

Issued on December 9, 1971.

ROBERT L. CARTER,
Acting Associate Administrator,
Motor Vehicle Programs.

[FR Doc.71-18349 Filed 12-14-71;8:51 am]

GENERAL SERVICES ADMINISTRATION

[41 CFR Part 101-19]

CONDUCT ON FEDERAL PROPERTY

Notice of Proposed Rule Making

Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553 that pursuant to the Federal Property and Administrative Services Act of 1949, as amended, and Public Law 566, 80th Congress, approved June 1, 1948 (40 U.S.C. 318), the General Services Administration is consider-

ing an amendment to 41 CFR 101-19.3 *Conduct on Federal Property*. The revisions involve substantive changes in several building rules and regulations to clarify responsibilities and eliminate ambiguities.

Any person who wishes to submit written data, views, or objections pertaining to the proposed amendment may do so by filing them in duplicate with the Commissioner, Public Buildings Service, General Services Administration, Room 6340, General Services Building, 19th and F Street NW., Washington, DC 20405, within 30 calendar days following publication of this notice in the FEDERAL REGISTER.

Dated: December 13, 1971.

A. F. SAMPSON,
Commissioner,
Public Buildings Service.

As proposed, the amendments to the regulations would read as follows:

These amendments provide for: (1) Revision of § 101-19.301 to establish emergency building closing procedures, and provide that the designated official under the Facilities Self-Protection Plan shall be responsible for making the decision to close the building; (2) revision of § 101-19.304 to place responsibility for observance of the rule on the designated official under the Facilities Self-Protection Plan; (3) revision of § 101-19.306 to prohibit use of hallucinogens, marijuana, barbiturates, and amphetamines; (4) revision of § 101-19.307 to establish the Manual on Fund Raising Within the Federal Service as issued by the Civil Service Commission under Executive Order No. 10927 as a standard for permissible welfare collections; (5) revision of § 101-19.307a to prohibit distributing materials such as pamphlets, handbills, and/or flyers or displaying placards or posting materials on bulletin boards or elsewhere, except by Federal agencies and officially recognized employee and labor organizations of Federal agencies; and (6) minor editorial changes.

Subpart 101-19.3—Conduct on Federal Property

Section 101-19.301 is revised to read as follows:

§ 101-19.301 Recording presence.

Except as otherwise ordered, property shall be closed to the public after normal working hours. Properties shall also be closed to the public in emergency situations and at such other times as may be reasonably necessary to assure the orderly conduct of Government business. The decision to close the property shall be made by the designated official under the Facilities Self-Protection Plan. The designated official is the highest ranking official of the primary occupant agency or an alternate high ranking official designated in advance by agreement of occupant agency officials. Admission to properties during periods when such

properties are closed to the public will be limited to authorized individuals who may be required to sign the register and/or display identification documents when requested by the guard, watchman, or other authorized individual.

Section 101-19.303 is revised to read as follows:

§ 101-19.303 Conformity with signs and emergency directions.

Persons in and on property shall comply with official signs of a prohibitory or directory nature and, during emergencies, with the direction of police authorities and other authorized officials.

Section 101-19.304 is revised to read as follows:

§ 101-19.304 Disturbances.

Conduct on property which creates loud and unusual noise, or which unreasonably obstructs the usual use of entrances, foyers, corridors, offices, elevators, stairways, and parking lots or which otherwise impedes or disturbs the public employees in the performance of their duties, or prevents the general public from obtaining the administrative services provided on property in a timely manner, is prohibited. The occupant agency involved in a disturbance shall have the initial responsibility for coordinating the observance of this rule by the public. This responsibility shall be carried out by the designated official under the Facilities Self-Protection Plan.

Section 101-19.306 is revised to read as follows:

§ 101-19.306 Alcoholic beverages and narcotics.

The entering on property or the operating of a motor vehicle on property by a person under the influence of alcoholic beverage, narcotic drug, hallucinogen, marijuana, barbiturate, or amphetamine (unless prescribed by a physician) is prohibited. The use of any narcotic drug, hallucinogen, marijuana, barbiturate, or amphetamine (unless prescribed by a physician) is prohibited. The use of alcoholic beverage on property is prohibited except on occasions and on property upon which the Administrator of General Services has for appropriate official uses granted an exemption permit in writing.

Section 101-19.307 is revised to read as follows:

§ 101-19.307 Soliciting, vending, and debt collecting.

The soliciting of alms and contributions, commercial soliciting and vending of all kinds, the displaying or distributing of commercial advertising or the collecting of private debts, in or on property, is prohibited. This rule does not apply to national or local drives for funds for welfare, health, or other purposes as authorized by the "Manual on Fund Raising Within the Federal Service", as issued by the Civil Service Commission under Executive Order No. 10927

of March 18, 1961, and sponsored or approved by the occupant agencies; concessions, or personal notices posted by employees on authorized bulletin boards.

Section 101-19.307a is revised to read as follows:

§ 101-19.307a Distributing handbills and displaying placards.

The distributing of materials such as pamphlets, handbills, and/or flyers, or the displaying of placards, or the posting of materials on bulletin boards or elsewhere is prohibited, except by Federal agencies and officially recognized employee and labor organizations of Federal agencies.

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

[FR Doc.71-18395 Filed 12-14-71;8:52 am]

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1115]

[Ex Parte No. 279]

ISSUANCE OF SECURITIES, ASSUMPTION OF OBLIGATIONS, AND FILING OF CERTIFICATES AND REPORTS

Proposed Form of Offering Circular Required for Public Sales of Securities; Extension of Time for Filing Statements

DECEMBER 8, 1971.

In accordance with the Commission's notice of proposed rule making and

order dated October 29, 1971, and published in the November 12, 1971, issue of the FEDERAL REGISTER (36 F.R. 21698), the date on or before which statements are due is now December 11, 1971.

At the request of the Association of American Railroads, the date for filing statements is hereby extended to January 10, 1972. An original and 15 copies of data, views, or arguments should be filed with the Commission. Additionally, a copy must be served upon each of the Commission's regional headquarters.

[SEAL]

ROBERT L. OSWALD,
Secretary.

[FR Doc.71-18330 Filed 12-14-71;8:49 am]

Notices

DEPARTMENT OF THE TREASURY

Office of the Secretary

BHT (BUTYLATED HYDROXYTOLUENE) FROM JAPAN

Notice of Intent To Discontinue Antidumping Investigation

DECEMBER 8, 1971.

Information was received on June 17, 1971, that BHT (butylated hydroxytoluene) (2,6-di-tert-butyl-para-cresol), including technical (nonfood) grade and nontechnical (food) grade, from Japan was being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). This information was the subject of an "Antidumping Proceeding Notice" which was published in the FEDERAL REGISTER of August 17, 1971, on page 15672.

I hereby announce an intent to discontinue the antidumping investigation on BHT (butylated hydroxytoluene) from Japan.

Statement of reasons on which this notice of intent to discontinue antidumping investigation is based. Formal assurances have been received from the manufacturers responsible for all exports of BHT (butylated hydroxytoluene) from Japan to the United States that they will make no future sales or shipments of BHT and no future sales or shipments of other antioxidants having as their main component BHT for exportation to and importation into the United States.

The facts recited above constitute evidence warranting the discontinuance of the investigation.

Interested parties may present written views or arguments, or request in writing that the Secretary of the Treasury afford an opportunity to present oral views.

Any request that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to the Commissioner of Customs, 2100 K Street NW., Washington, DC 20226, in time to be received by his office not later than 10 calendar days from the date of publication of this notice in the FEDERAL REGISTER.

Any written views or arguments should likewise be addressed to the Commissioner of Customs in time to be received by his office not later than 30 days from the date of publication of this notice in the FEDERAL REGISTER.

Unless persuasive evidence or argument to the contrary is presented pursuant to the preceding paragraphs, a final

notice will be published discontinuing the investigation.

This notice of intent to discontinue an antidumping investigation is published pursuant to § 153.15(b) of the Customs Regulations (19 CFR 153.15(b)).

[SEAL] EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.
[FR Doc.71-18305 Filed 12-14-71;8:47 am]

DEPARTMENT OF COMMERCE

Office of the Secretary

[Dept. Organization Order 25-2]

MARITIME ADMINISTRATION

Organization and Functions

This material amends the material appearing at 36 F.R. 20123 of October 15, 1971.

Department Organization Order 25-2, dated September 28, 1971, is hereby amended as follows:

1. In section 14. *Office of the Assistant Administrator for Maritime Aids*, the last sentence of paragraph .01 is amended to read:

"The Office of Subsidy Administration shall have the following divisions: Division of Subsidy Contracts, Division of Mortgage-Insurance Contracts, Division of Subsidy Rates, and Division of Trade Studies and Statistics."

2. The organization chart of September 28, 1971, attached as Exhibit 1 to DOO 25-2, under the Office of Subsidy

Administration, should be changed as follows:

- a. Delete: "Division of Statistics."
- b. Change: "Division of Trade Studies" to read "Division of Trade Studies and Statistics." (A copy of the organization chart is on file with the original of this document with the Office of the Federal Register.)

Effective date: November 23, 1971.

LARRY A. JOBE,
Assistant Secretary
for Administration.

[FR Doc.71-17800 Filed 12-14-71;8:51 am]

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

HUMANELY SLAUGHTERED LIVESTOCK

Identification of Carcasses; Changes in Lists of Establishments

Pursuant to section 4 of the Act of August 27, 1958 (7 U.S.C. 1904), and the statement of policy thereunder in 9 CFR 381.1, the lists (36 F.R. 17451, 19270, 20538, and 22691) of establishments which are operated under Federal inspection pursuant to the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) and which use humane methods of slaughter and incidental handling of livestock are hereby amended as indicated in the following table listing species at additional establishments that have been reported as being slaughtered and handled humanely.

ESTABLISHMENTS SLAUGHTERING HUMANELY

Name of establishment	Establishment No.	Cattle	Calves	Sheep	Goats	Swine	Equines
Monroe Packing Co., Inc.	755	(*)					
Tama Meat Packing Corp.	5569	(*)					
Allied Packing Co.	5572	(*)					
Harman the German Slaughterhouse	5004	(*)	(*)			(*)	
Arthur Locker	5027	(*)		(*)		(*)	
Lohr's Lockers	5028	(*)				(*)	
Braver Packing Co.	5030	(*)	(*)			(*)	
Clay Center Meat Co.	5037	(*)		(*)		(*)	
Otto Packing	5038	(*)				(*)	
Curtis Packing Co.	5043	(*)				(*)	
Tatum's Processing Plant	5049	(*)	(*)	(*)		(*)	
Verling Locker	5053	(*)				(*)	
Butler's Beef Acres	5060	(*)				(*)	
North Platte Packing Co., Inc.	5063	(*)				(*)	
Six Street Processing Plant, Inc.	5064	(*)				(*)	
Dale's Locker	5066	(*)	(*)			(*)	
Petersburg Locker	5068	(*)				(*)	
Hollstein Packing Co.	5073	(*)	(*)			(*)	
Hastings Meat Supply, Inc.	5074	(*)				(*)	
Flicker Packing Co.	5076	(*)				(*)	
Deersons Meat Plant, Inc.	5090	(*)				(*)	
Hatch Packing Co., Inc.	7021	(*)	(*)	(*)		(*)	

Done at Washington, D.C., on December 9, 1971.

KENNETH M. McENROE,
Deputy Administrator,
Meat and Poultry Inspection Program.

[FR Doc.71-18342 Filed 12-14-71;8:50 am]

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[INT FES 71-21]

CRYSTAL DAM, RESERVOIR, AND POWERPLANT, CURECANTI UNIT, COLORADO RIVER STORAGE PROJECT, COLORADO

Notice of Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a final environmental statement for the authorized Crystal Dam, Reservoir, and Powerplant, Curecanti Unit, Colorado River Storage Project, Colorado.

The environmental statement concerns construction of a re-regulatory reservoir with hydroelectric powerplant on the Gunnison River, 15 miles east of Montrose, Colo., for the purpose of maximizing power production at an existing upstream powerplant below Morrow Point Dam and to stabilize flows in the river below the dam.

Copies are available for inspection at the following locations:

Office of Communications, Room 7220, Department of the Interior, Washington, D.C. 20240, Telephone (202) 343-9247.

Office of Ecology, Room 7620, Bureau of Reclamation, Department of the Interior, Washington, D.C. 20240, Telephone (202) 343-4991.

Office of the Regional Director, Bureau of Reclamation, Post Office Box 11568, Salt Lake City, Utah 84111, Telephone (801) 524-5592.

Grand Junction Projects Office, Bureau of Reclamation, Post Office Box 1728, Grand Junction, Colo. 81501, Telephone (303) 242-8621

Single copies of the final environmental statement may be obtained on request to the Commissioner of Reclamation or Regional Director. In addition copies are available from the National Technical Information Service, Department of Commerce, Springfield, Va. 22151 for \$3 each. Please refer to the statement number above.

Dated: December 6, 1971.

JOHN W. LARSON,

Assistant Secretary of the Interior.

[FR Doc.71-18300 Filed 12-14-71;8:47 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D-71-136]

ATTESTING OFFICERS

Designation; Delegation of Authority To Cause Department Seal To Be Affixed and To Authenticate Copies of Documents

Each of the following employees of the Department of Housing and Urban De-

velopment is designated an attesting officer and is authorized to cause the seal of the Department of Housing and Urban Development to be affixed to such documents as may require its application and to certify that a copy of any book, record, paper, or other document is a true copy of that in the files of the Department:

1. Secretary to Assistant General Counsel for Research and Administrative Law, Office of General Counsel.

2. Secretary to Chief, Research and Administrative Law Section, Office of General Counsel.

3. Director, Governmental Liaison Division, Office of New Communities Development, Office of Assistant Secretary for Community Planning and Management.

4. Supervisory Financial Analyst, Project Financing Staff, Office of Assistant Secretary for Housing Management.

5. Deputy Director, Examination Division, Office of Interstate Land Sales Registration, Federal Housing Administration.

6. Administrator, Office of Interstate Land Sales Registration, Federal Housing Administration.

7. Assistant Commissioner-Comptroller, Federal Housing Administration.

8. Deputy Assistant Commissioner-Comptroller, Federal Housing Administration.

9. Mortgage Approval Officer, Federal Housing Administration.

10. Chief, Liquidation Branch, Office of Assistant Commissioner for Property Improvement, Federal Housing Administration.

11. Deputy Chief, Liquidation Branch, Office of Assistant Commissioner for Property Improvement, Federal Housing Administration.

12. The Secretary to each Regional Administrator, and the Secretary to each Regional Counsel.

13. The Secretary to each Area Director, and the Secretary to each Area Counsel.

Supersedeure. This designation and delegation of authority supersedes those published at 35 F.R. 5429, 35 F.R. 15860, and 36 F.R. 2938.

(Sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d))

Effective date. This delegation of authority is effective December 10, 1971.

GEORGE ROMNEY,

Secretary of Housing and

Urban Development.

[FR Doc.71-18345 Filed 12-14-71;8:51 am]

CIVIL SERVICE COMMISSION

DEPARTMENT OF JUSTICE

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Justice to fill by noncareer executive assignment in the excepted service the position of Special Assistant for Na-

tional Litigation, Internal Security Division.

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL]

JAMES C. SPRY,

Executive Assistant to the Commissioners.

[FR Doc.71-18276 Filed 12-14-71;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

CHEMAGRO CORP.

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 2F1209) has been filed by Chemagro Corp., Post Office Box 4913, Kansas City, MO 64120, proposing establishment of tolerances (40 CFR Part 180) for residues of the pesticide O,O-diethyl O[p-(methylsulfinyl)phenyl] phosphorothioate in or on the raw agricultural commodities soybean forage at 0.1 part per million and cottonseed and soybeans at 0.01 part per million.

The analytical method proposed in the petition for determining residues of the pesticide is gas chromatography with flame ionization detection.

Dated: December 7, 1971.

WILLIAM M. UPHOLT,

Deputy Assistant Administrator

for Pesticides Programs.

[FR Doc.71-18294 Filed 12-14-71;8:46 am]

NACA INDUSTRY TASK FORCE

Notice of Amended Filing of Petition Regarding Pesticide Chemical

Notice was given in the FEDERAL REGISTER of October 23, 1968 (33 F.R. 15678), that a petition (PP 9F0761) had been filed by the National Agricultural Chemicals Association's Task Force on Phenoxy Herbicide Tolerances, 1155 15th Street NW., Washington, DC 20005, proposing establishment of tolerances for negligible residues of the herbicide MCPA (2-methyl-4-chlorophenoxyacetic acid) in or on the raw agricultural commodities alfalfa, barley, beans, clover, corn, flaxseed, oats, peas, rice, rye, sorghum, soybeans, and wheat at 0.2 part per million from the application of the herbicide in the acid form or in the form of one or more of the following salts or esters:

1. Inorganic salt: Sodium.

2. Amine salts: Ethanalamine, diethanolamine, triethanolamine, isopropanolamine, diisopropanolamine triisopropanolamine, and dimethylamine.

3. Esters: Isooctyl and butoxyethyl.

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 said petition has been amended by:

a. Withdrawing the request for tolerances regarding beans, corn, peas, sorghum, and soybeans.

b. Adding the commodities grass at 300 parts per million; forage of barley, oats, rye, and wheat at 20 parts per million; straw of barley, oats, rice, rye, and wheat at 2 parts per million; grain of barley, oats, rye, and wheat at 0.2 part per million (negligible residue); meat and meat byproducts of cattle, goats, and sheep at 0.1 part per million (negligible residue); and milk at 0.05 part per million (negligible residue).

c. Reducing the proposed 0.2 part per million tolerance on flaxseed and rice to 0.1 part per million (negligible residue).

d. Increasing the proposed 0.2 part per million tolerance on alfalfa and clover (fresh) to 75 parts per million.

Dated: December 7, 1971.

WILLIAM M. UPHOLT,
Deputy Assistant Administrator
for Pesticides Programs.

[FR Doc.71-18295 Filed 12-14-71;8:46 am]

OLIN CORP.

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 1F1083) has been filed by Olin Corp., 120 Long Ridge Road, Stamford, CT 06904, proposing establishment of tolerances (40 CFR Part 180) for residues of the fungicide pentachloronitrobenzene in or on the raw agricultural commodities peanuts at 1 part per million and in or on bananas, beans, broccoli, brussels sprouts, cabbage, cauliflower, garlic, peppers, potatoes, and tomatoes at 0.1 part per million (negligible residue).

The analytical methods proposed in the petition for determining residues of the fungicide are:

1. The method of Herry J. Ackermann et al. published in "Agricultural and Food Chemistry," Vol. 6, pp. 747-50 (October 1958).

2. The method of Thomas P. Meth-ratta et al. published in "Agricultural and Food Chemistry," Vol. 15, pp. 648-50 (July/August 1967).

Dated: December 7, 1971.

WILLIAM M. UPHOLT,
Deputy Assistant Administrator
for Pesticides Programs.

[FR Doc.71-18296 Filed 12-14-71;8:46 am]

FEDERAL HOME LOAN BANK BOARD

[No. 71-1304]

FEDERAL HOME LOAN BANK OF ATLANTA

Change of Location and Name

DECEMBER 8, 1971.

Whereas, the Federal Home Loan Bank Board has carefully considered relocat-

ing the Fourth District Federal Home Loan Bank from Greensboro, N.C., to Atlanta, Ga.; and

Whereas, individual members of the Bank and their local industry groups have continued to express their desire to have the Bank relocated to a city in which the Bank can better serve the District and the Bank's member institutions and where communication and transportation facilities permit frequent personal discussion and visitations between Bank officers and members on a routine basis; and

Whereas, it is also desirable that the Bank be situated where its staff has full access to other government agencies performing related functions within the area; and

Whereas, the Atlanta metropolitan area is the largest in the Southeast, and offers superior accessibility both to member associations and to related governmental activities, being the communications center of the South, and having the Nation's second ranking airport in passenger enplanements, with nonstop service or through-plane connections to numerous cities within said district and throughout the Nation, and being in addition the site of a Federal Reserve Bank and of regional headquarters of the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Department of Housing and Urban Development, the Government National Mortgage Association, and the Federal National Mortgage Association; and

Whereas, it has been determined that the present facilities of the Bank require expansion to accommodate the current level of member activity, and that adequate facilities are not available for the newly established Federal Home Loan Mortgage Corporation, so that it is timely to change the location of the Bank; and

Whereas, it appears that the relocation will promote the best interests of the Bank and of its member institutions and will be in the public interest:

Now, therefore, be it resolved, that, effective immediately, the Fourth District Federal Home Loan Bank, located at Greensboro, N.C., is hereby moved to and relocated at the city of Atlanta, Ga., and its name is hereby changed from Federal Home Loan Bank of Greensboro to Federal Home Loan Bank of Atlanta.

Be it further resolved, that, subject to § 524.6 of the Regulations for the Federal Home Loan Bank System, said Federal Home Loan Bank is hereby authorized and directed, and invested with the required powers, to accomplish the transfer to Atlanta of the facilities and personnel of said Bank now at Greensboro as rapidly as possible, making allowance for the equitable and fair treatment of all employees of the Bank.

Be it further resolved, that articles 1, 2, and 3 of the Organization Certificate of the Federal Home Loan Bank of Greensboro, only insofar as said articles refer to the name, location, and establishment of said Bank, are hereby amended by changing the name, location of the principal office of the Bank,

and the place where the Bank is to be established, from Greensboro to Atlanta.

By the Federal Home Loan Bank Board.

[SEAL]

EUGENE M. HERRIN,
Assistant Secretary.

[FR Doc.71-18317 Filed 12-14-71;8 48 am]

FEDERAL MARITIME COMMISSION

CALIFORNIA ASSOCIATION OF PORT AUTHORITIES AND NORTHWEST MARINE TERMINAL ASSOCIATION, INC.

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 15 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Mr. R. L. Henry, Executive Secretary, Northwest Marine Terminal Association, Inc., Post Office Box 20394, Portland, OR 97220.

Agreement No. T-2206, between the California Association of Port Authorities and the Northwest Marine Terminal Association, Inc., was originally approved by the Commission by order issued January 15, 1969, for a 3-year term. The parties to the agreement have now requested the Commission to issue an order removing the expiration date or extending such date for an additional 3 years. The agreement provides for the formation of a joint conference, known as The Joint Pacific Coast Port Committee, whereby members discuss and make recommendations concerning rates, practices, and other tariff matters and matters of concern to the marine terminal

industry. Actions taken pursuant to the agreement are not binding upon the members.

Dated: December 10, 1971.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-18336 Filed 12-14-71;8:50 am]

JAPAN-ATLANTIC & GULF FREIGHT CONFERENCE

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Mr. C. A. Cole, Jr., Chairman, Japan-Atlantic and Gulf Freight Conference, Sumitomo Seimei Yaesu Building, 3, Yaesu 4-Chome, Chuo-Ku, Tokyo 104, Japan.

Agreement No. 3103-47 modifies the Japan-Atlantic & Gulf Freight Conference's basic agreement by expanding its geographic scope to include "from ports or inland points" in Japan, Korea, and Okinawa to U.S. Atlantic and gulf ports "or to inland points in the United States of America, via such ports."

Dated: December 10, 1971.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-18338 Filed 12-14-71;8:50 am]

TRANS-PACIFIC FREIGHT CONFERENCE OF JAPAN

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

James E. Mazure, Chairman, Trans-Pacific Freight Conference of Japan, Second Floor, Sumitomo Seimei Yaesu Building, 3, Yaesu 4-Chome, Chuo-Ku, Tokyo 104, Japan.

Agreement No. 150-53 proposes to shift all of the administrative matters from the basic agreement into an appendix section so that in the future, modifications of administrative matters in the appendix will not need the Commission's approval.

Dated: December 10, 1971.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-18339 Filed 12-14-71;8:50 am]

FEDERAL POWER COMMISSION

[Docket No. RP72-76]

COLUMBIA GAS TRANSMISSION CORP.

Notice of Proposed Change in Tariff Provisions

DECEMBER 7, 1971.

Take notice that on December 1, 1971, Columbia Gas Transmission Corp. filed in Docket No. RP72-76 a proposed change in its FPC Gas Tariff, Original Volume No. 1. The company's letter of transmittal appears below.¹

¹ Filed as part of the original.

NOTICES

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 441 G Street NW., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 22, 1971. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. The company's application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.71-18316 Filed 12-14-71;8:48 am]

[Docket No. E-7681]

**COMMONWEALTH EDISON CO. AND
CENTRAL ILLINOIS LIGHT CO.**

Notice of Application

DECEMBER 8, 1971.

Take notice that on November 18, 1971, Commonwealth Edison Co. (Commonwealth) of Chicago, Ill., and Central Illinois Light Co. (CILCO) of Peoria, Ill., filed a joint application seeking an order pursuant to section 203 of the Federal Power Commission authorizing the sale by Commonwealth and the purchase by CILCO of Commonwealth's electric facilities in the Lincoln, Homer, Bement, and Albion areas located principally in central and downstate Illinois, for twenty-four million dollars (\$24,000,000) plus the amount of capital additions made to the properties from June 30, 1971, to the closing date less depreciation accrued on such additions, all in accordance with a "Purchase and Sale Agreement" dated October 20, 1971, which is attached to the application.

The disposition by Commonwealth of the Lincoln, Homer, Bement, and Albion electric facilities is in accordance with the order in Docket No. E-7275 issued on December 2, 1966, 36 FPC 927 directing that Commonwealth shall show why it should continue to own and operate the noncontiguous electric properties located in the Lincoln, Homer, Bement, and Albion areas. Commonwealth filed a final report in Docket No. E-7275 on July 15, 1971 stating that it had entered into a "Memorandum of Agreement" to sell the noncontiguous electric properties to CILCO.

Any person desiring to be heard or to make any protest with reference to such application should on or before January 4, 1972, file with the Commission, Washington, D.C. 20426, petitions to intervene or protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in deter-

mining 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 herein 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc.71-18307 Filed 12-14-71;8:47 am]

[Docket No. E-7682]

GULF STATES UTILITIES CO.

Notice of Application

DECEMBER 8, 1971.

Take notice that on November 22, 1971, Gulf States Utilities Co. (applicant) filed an application seeking an order pursuant to section 204 of the Federal Power Act authorizing the issuance of \$125 million principal amount of unsecured short-term promissory notes.

Applicant is incorporated under the laws of Texas with its principal business office at Beaumont, Tex., and is engaged in the electric utility business in portions of Louisiana and Texas. Natural gas is purchased at wholesale and distributed at retail in the city of Baton Rouge, La., and vicinity.

Applicant proposes to issue the notes to commercial banks and to commercial paper dealers. Notes issued to commercial banks and to commercial paper dealers will be issued on various dates beginning December 31, 1971, for varying periods of time, but no note issued to a commercial bank will have a maturity of more than 1 year from the date of its issuance and no note issued to commercial paper dealers will have a maturity of more than 9 months from the date of its issuance. In no event shall any such notes have a maturity after December 31, 1974.

The proceeds from the notes will be added to the general funds of the applicant and will be used, among other things, to provide part of the funds for construction expenditures made and to be made. The preliminary estimated total for 1971-4 construction is \$513,100,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 23, 1971, file with the Federal Power Commission, Washington, D.C. 20426, petitions 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc.71-18308 Filed 12-14-71;8:47 am]

[Dockets Nos. CP70-21, CP71-184,
and CP71-236]

MICHIGAN WISCONSIN PIPE LINE CO.

Notice of Petition To Amend

DECEMBER 8, 1971.

Take notice that on November 22, 1971, Michigan Wisconsin Pipe Line Co. (petitioner), 1 Woodward Avenue, Detroit, MI 48226, filed in Dockets Nos. CP70-21, CP71-184, and CP71-236 a petition to amend the orders of the Commission heretofore issued in said dockets pursuant to section 7(c) of the Natural Gas Act on January 6, 1970 (43 FPC 11), as amended, April 12, 1970 (45 FPC —), and August 30, 1971 (46 FPC —), respectively, by authorizing the installation and operation of certain natural gas compressor units in lieu of presently authorized units, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Specifically, petitioner seeks authorization for the installation and operation of one 12,000 horsepower compressor unit at its Hamilton Compressor Station in lieu of the 3,000-, 5,000-, and 4,000-horsepower units previously authorized in Dockets Nos. CP70-21, CP71-184, and CP71-236, respectively. Petitioner seeks authorization for the installation and operation of two 1,500-horsepower reciprocating compressor units at its Coldwater Compressor Station in lieu of the two 1,100-horsepower centrifugal compressor units previously authorized in Docket No. CP70-21. Petitioner seeks authorization for the installation and operation of a 1,500-horsepower compressor unit at its Winfield Compressor Station in lieu of the 1,600-horsepower compressor unit previously authorized in Docket No. CP70-21. Petitioner seeks authorization for the installation and operation of two 2,970-horsepower compressor units in lieu of the four units aggregating 6,000 horsepower previously authorized in Docket No. CP70-21. Petitioner also requests that the Commission waive the requirement of the order issued on January 6, 1970, in Docket No. CP70-21 that authorized facilities should be completed and in operation within 1 year from the date of the order.

Petitioner states that investment costs can be reduced and operating economies can be realized by the substitutions proposed herein.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before December 27, 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

[Docket No. RP72-72]

RATON NATURAL GAS CO.**Notice of Petition To Permit Filing of Tracking Rate Increases**

DECEMBER 7, 1971.

Take notice that on November 8, 1971, Raton Natural Gas Co. filed in Docket No. RP72-72 a petition for permission to file track increases in its cost of gas purchased from Colorado Interstate Gas Co., its sole supplier. The company's letter of transmittal appears below.¹

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 441 G Street NW., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 22, 1971. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. The company's application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.71-18313 Filed 12-14-71;8:48 am]

[Dockets Nos. RP70-5, RP70-16, RP71-4]

SOUTHERN NATURAL GAS CO.**Notice of Motion for Approval of Settlement**

DECEMBER 8, 1971.

Take notice that on November 24, 1971, Southern Natural Gas Co. (Southern Natural) filed with the Commission a motion for approval of a stipulation and agreement in Dockets Nos. RP70-5, RP70-16, and RP71-4.

The stipulation and agreement, among other things, provides for a reduction in rates below those which are presently in effect subject to refund in the above-captioned proceedings; sets forth proposed reduced rates for the period March 1, 1970 through December 31, 1970; requires refunds by Southern Natural for the excess which has been collected above the rates set forth in the stipulation and agreement and requires Southern Natural to flow-through to its customers the appropriate portion of all refunds, together with interest received from its suppliers which are applicable to purchases by Southern Natural from such suppliers during the period March 1, 1970, through December 31, 1970.

Copies of the stipulation and agreement, together with a motion for approval of the agreement were served upon all parties to the above-captioned proceedings.

¹ Filed as part of the original.

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.71-18309 Filed 12-14-71;8:47 am]

[Docket No. CP71-161]

MICHIGAN WISCONSIN PIPE LINE CO.**Notice of Petition To Amend**

DECEMBER 8, 1971.

Take notice that on October 26, 1971, Michigan Wisconsin Pipe Line Co. (petitioner), 1 Woodward Avenue, Detroit, MI 48226, filed in Docket No. CP71-161 a petition to amend the order of the Commission issued pursuant to section 7(c) of the Natural Gas Act in said docket on May 19, 1971 (45 FPC _____), by authorizing the construction and operation of two 3,000-horsepower compressor units in lieu of one 4,500-horsepower unit at its Buttermilk Compressor Station in Comanche County, Okla., 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 granting the certificate in the subject docket authorizes Petitioner to install the single 4,500-horsepower compressor unit at the Buttermilk Compressor Station at a cost of \$1,981,350. Petitioner states that the lowest bid it has received for installation of the compression facilities is \$2,018,938 for two 3,000-horsepower turbine units. Petitioner states further that installation of two, rather than one, units will provide increased operating flexibility and greater assurance of continuity of service.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before December 28, 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.71-18310 Filed 12-14-71;8:47 am]

Answers or comments relating to the stipulation and agreement may be filed with the Federal Power Commission, Washington, D.C. 20426, on or before December 17, 1971.

KENNETH F. PLUMB,
Secretary.

[FR Doc.71-18311 Filed 12-14-71;8:47 am]

[Docket No. CP72-140]

UNITED GAS PIPE LINE CO. AND TRANSCONTINENTAL GAS PIPE LINE CORP.**Notice of Application**

DECEMBER 8, 1971.

Take notice that on November 22, 1971, United Gas Pipe Line Co. (United), 1500 Southwest Tower, Houston, TX 77002, and Transcontinental Gas Pipe Line Corp. (Transco), Post Office Box 1396, Houston, TX 77001, filed in Docket No. CP72-140 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the exchange of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that it has entered into a natural gas purchase and transportation agreement with Sun Oil Co. (Sun), whereby Sun will deliver natural gas to Transco in the Chacahoula Field, Lafourche Parish, La., and Transco will redeliver this gas to Sun in the Fordoche Field, Pointe Coupee Parish, La. In order to avoid the necessity for the construction by Transco of facilities to receive the gas delivered by Sun in the Chacahoula Field, Transco and United have entered into an agreement for the exchange of natural gas. Pursuant to the terms of this agreement, Transco will construct, own, operate, and maintain certain measuring facilities at the point where Sun will deliver up to 15,300 Mcf of natural gas per day to United in the Chacahoula Field. The estimated cost of these facilities is \$32,690. United will redeliver equivalent volumes of natural gas to Transco at an interconnection between their facilities near Gibson in Terrebonne Parish, La.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 28, 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 applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.71-18312 Filed 12-14-71;8:48 am]

FEDERAL RESERVE SYSTEM FIRST BANCORP, INC.

Formation of Bank Holding Company

First Bancorp, Inc., Cincinnati, Ohio, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 100 percent of the voting shares (less directors' qualifying shares) of The Athens National Bank, Athens; The Security Bank, Athens; and The New Richmond National Bank, New Richmond, all in the State of Ohio. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Cleveland. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than January 10, 1972.

Board of Governors of the Federal Reserve System, December 8, 1971.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.71-18297 Filed 12-14-71;8:46 am]

IMPERIAL BANCORP

Proposed Acquisition of Rayor Realty Co.

Imperial Bancorp, Los Angeles, Calif., has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y, for permission

to acquire voting shares of Rayor Realty Co., Los Angeles, Calif. Notice of the application was published on September 24, 1971, in the Metropolitan News, a newspaper circulated in Los Angeles, Calif.

Applicant states that the proposed subsidiary would engage in the activities of making for its own account and others loans and other extensions of credit and the servicing for any person of the same. Applicant has notified the Board of its intent to republish its notice in order to clarify its intention to engage in the activity of mortgage lending. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than January 10, 1972.

Board of Governors of the Federal Reserve System, December 8, 1971.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.71-18298 Filed 12-14-71;8:46 am]

U.S. BANCORP

Proposed Retention of Shares of U.S. Datacorp

U.S. Bancorp, Portland, Ore., has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y for permission to retain voting shares of U.S. Datacorp, Portland, Ore. Notice of the application was published on October 13, 1971, in The Daily Journal of Commerce, a newspaper circulated in Portland, Ore., and on October 13, 1971, in The Daily Journal of Commerce, a newspaper circulated in Seattle, Wash.

Applicant states that the proposed subsidiary performs the activities of providing bookkeeping on data processing

services for the internal operations of the holding company and its subsidiaries and storing and processing other banking, financial or related economic data, such as performing payroll, accounts receivable or payable, or billing services for customers and incidental activities necessary thereto. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than January 10, 1972.

Board of Governors of the Federal Reserve System, December 8, 1971.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc. 71-18299 Filed 12-14-71;8:46 am]

SECURITIES AND EXCHANGE COMMISSION

[811-1852]

SERVICE FUND, INC.

Notice of Filing of Application for Order Declaring That Company Has Ceased To Be an Investment Company

DECEMBER 8, 1971.

Notice is hereby given that Service Fund, Inc. (Applicant), 1801 South Church Street, Smithfield, VA 23430, an open-end diversified management investment company registered under the Investment Company Act of 1940 (Act), has filed an application pursuant to section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement

of the representations contained therein, which are summarized below.

Applicant represents that the Board of Directors has determined to abandon any further offering of Applicant's securities; that a pending updating post-effective amendment filed under the Securities Act of 1933 was withdrawn on July 29, 1971; that the Board of Directors has determined that Applicant should be liquidated and dissolved; and that as of November 15, 1971, Applicant had only 14 shareholders.

Section 3(c)(1) of the Act excepts from the definition of an investment company any issuer whose outstanding securities are beneficially owned by not more than 100 persons and which is not making and does not presently propose to make a public offering of its securities.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the taking effect of such order, the registration of such company shall cease to be in effect.

Notice if further given that any interested person may, not later than December 30, 1971, 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, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. At any time after 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 a hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.71-18301 Filed 12-14-71; 8:47 am]

TARIFF COMMISSION

[TEA-W-126]

MORGANTOWN GLASSWARE GUILD, INC.

Workers' Petition for Determination of Eligibility To Apply for Adjustment Assistance; Notice of Investigation

Upon petition under section 301(a)(2) of the Trade Expansion Act of 1962 filed on behalf of the workers of the Morgantown Glassware Guild, Inc., Morgantown, W.Va., a wholly-owned subsidiary of Fostoria Glass Co., Moundsville, W.Va., the U.S. Tariff Commission on December 10, 1971, instituted an investigation under section 301(c)(2) of the said act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with glassware (of the types provided for in items 546.52-59 of the Tariff Schedules of the United States) produced by the Morgantown establishment 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 establishment.

The petitioner has 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, U.S. Tariff Commission, 8th 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: December 10, 1971.

By order of the Commission.

[SEAL] KENNETH R. MASON,
Secretary.

[FR Doc.71-18344 Filed 12-14-71; 8:50 am]

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF HEARINGS

DECEMBER 10, 1971.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

No. 35481, Public Service Co., of Indiana, Inc. v. Penn Central Transportation Co., et al., now being assigned hearing January 26, 1972, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 16682 Sub 81, Mural Transport, Inc., now assigned December 6, 1971, canceled and application dismissed.

MC 73165 Subs 290, 291, Eagle Motor Lines, Inc., now assigned January 21, 1972, at Columbus, Ohio, is postponed indefinitely.

MC 121597 Sub 2, Chickasaw Motor Line, Inc., now assigned January 24, 1972, at Nashville, Tenn., is postponed to February 14, 1972, in room 202 State Library and Archives Building, 403 Seventh Avenue, North, Nashville, Tenn.

MC 70451 Sub 252, Watson-Wilson Transportation System, Inc., application dismissed.

MC 135419 Container Carrier Corp., continued to February 7, 1972, at the Texas State Hotel, Fannin Street at Rusk, Houston, Tex.

MC 151 Sub 45, Lovelace Truck Service, Inc., assigned January 10, 1972, will be held in room 1011 Public Service Commission, 100 North Senate Avenue, Indianapolis, Ind.

MC 107295 Sub 544, Fre-Fab Transit Co., now being assigned January 19, 1972, in Room 107 Federal Building, 85 Marconi Boulevard, Columbus, OH.

MC 123685 Sub 11, Peoples Cartage, Inc., now being assigned January 21, 1972, in Room 107 Federal Building, 85 Marconi Boulevard, Columbus, OH.

MC 135701 Sub 1, Motor Service Co., Inc., now being assigned January 17, 1972, in Room 2 State Office Building, 65 South Front Street, Columbus, OH.

MC 135529 Sub 2, Cook Transports, Inc., assigned January 24, 1972, will be held in Room 1011 Public Service Commission, 100 North Senate Avenue, Indianapolis, IN.

MC 107456 Sub 19, Harry L. Young & Sons, Inc., assigned January 31, 1972, will be held in Room 314 Federal Annex Building, 135 South State Street, Salt Lake City, UT, on February 7, 1972, in Room 1540 U.S. Courthouse, 312 North Spring Street, Los Angeles, CA, and on February 14, 1972, in Room 13025 Federal Building, 450 Golden Gate Avenue, San Francisco, CA.

MC 124306 Sub 11, Kenan Transport Co., Inc., assigned January 10, 1972, will be held in Conference Room 1035 Federal Office Building, Richmond, VA.

MC 32882 Sub 62, Mitchell Bros. Truck Lines, MC 33641 Sub 96, IML Freight Line, MC 83539 Sub 310 and 311, C & H Transportation Co., MC 107227 Sub 121, Insured Transporters, MC 125433 Sub 23, F-B Truck Line, now assigned January 10 through January 28, 1972, at San Francisco, Calif., will be held in Room 13025, Federal Building, 450 Golden Gate Avenue on January 10, through January 14, 1972, and at the Muyako Hotel, Post and Laguna Streets, on January 17, through January 28.

MC 110144 Sub 11, Jack C. Robinson, doing business as Robinson Freight Lines, assigned for continued hearing on January 4, 1972, at the Ramada Inn, 7621 Kingston Pike, Knoxville, TN.

MC 55889 Sub 38, Cooper Transfer Co., Inc., now assigned January 10, 1972, at Jacksonville, Fla., will be held in Room 714, Federal Office Building, 400 West Bay Street.

FD 26785, Chicago, Milwaukee, St. Paul & Pacific RR. Co. Abandonment between Madison and Woonsocket in Lake, Miner, and Sanborn Counties, S. Dak., now assigned January 31, 1972, at Madison, S. Dak., will be held on the 2d floor, Community Room Courthouse.

MC-C-7180, Charles Wesley Collins, Edwin Don Ford, Lloyd E. Ford, James Owen, Longacre, Dean Edward Patterson, William R. Patterson, Charles John Potter, Earl Rife, Individually, and Mico Mobile Sales & Leasing, Inc., a corporation, Investigation of Operations and Practices, MC-C-7239, Elmo Ford—Investigation of Certificate, now assigned February 3, through February 4, 1972, at Boise, Idaho, will be held in Room 429, Federal Post Office and U.S. Courthouse, 550 West Fourth Street.

MC 32882 Sub 50, Mitchell Bros. Truck Lines, MC 83539 Sub 282, C & H Transportation, now assigned February 14, through February 18, 1972, at Seattle, Wash., will be held in Room 1057, Federal Office Building, 909 First Avenue.

MC 115826 Sub 220, W. J. Digby, MC 129449 Sub 7, Lumber Transport, now assigned February 7, through February 11, 1972, at Portland, Oreg., will be held in Room 401, Multnomah Building, 319 Southwest Pine Street.

MC 123968 Sub 1, J & J Motor Service, Inc., now assigned January 17, 1972, at Chicago, Ill., is postponed indefinitely.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-18329 Filed 12-14-71;8:49 am]

[No. MC-C-7499]

MANHATTAN TRANSIT CO. ET AL.

Notice of Filing of Petition for Declaratory Order

DECEMBER 11, 1971.

Petitioners: Manhattan Transit Co., Consolidated Terminal and Travel Bureau, Inc., and National Tour Brokers Association.

Petitioners' representatives: Robert E. Goldstein, 8 West 40th Street, New York, NY 10018, attorney for Manhattan Transit Co. and Consolidated Terminal and Travel Bureau, Inc.; Charles J. Williams, 47 Lincoln Park, Newark, NJ 07102, attorney for National Tour Brokers Association.

By petitions filed jointly October 5, 1971, by Manhattan Transit Co. and Consolidated Terminal and Travel Bureau, Inc., and separately October 18, 1971, by National Tour Brokers Association, said petitioners seek a declaratory order interpreting license No. MC-130062, issued to Trails West, Inc., of Great Neck, N.Y., April 22, 1970, authorizing operations as a broker in arranging for transportation by motor vehicle, in interstate or foreign commerce, of passengers and their baggage, restricted to students accompanied by tour directors or chaperones and their baggage, in all-expense tours, (a) beginning and ending at New York, N.Y., and extending to points in the United States (except points in Alaska, Connecticut, Delaware, Hawaii, Maryland, New Jersey, New York, Pennsylvania, Virginia, and the District of Columbia); and (b) beginning and ending at points in Nassau County, N.Y., and extending to points in the United States (except points in Alaska, Hawaii, New Jersey, New York, and Pennsylvania). Applicant is authorized to engage in the above-specified operations as a broker at Great Neck, N.Y., and New York, N.Y.

Petitioners seek to clarify, in light of the examiner's recommended report as adopted by the Commission, Division 1, Acting as an Appellate Division, by order of August 12, 1971, in Trails West, Inc., Extension—Broker, No. MC-130062 (Sub-No. 1), to what extent applicant, under its license in No. MC-130062, may (1) originate tours by air at the origin points authorized above, and (2) augment tours enroute with persons who do not join or separate from the tour at the authorized beginning and ending points.

Petitioners pray that the Interstate Commerce Commission issue an order finding that the above stated authority does not permit (1) the arrangement of tours which originate by air at the specified origin points and (2) the augmentation of tours with passengers joining or departing from said tours at other than the authorized beginning and ending points.

Any interested party desiring to participate may file an original and seven copies of his written representations, views, or arguments, in support of, or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-18331 Filed 12-14-71;8:49 am]

[Notice 33]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

DECEMBER 10, 1971.

The following letter-notices of proposals to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules—Motor Carriers of Passengers, 1969 (49 CFR 1042.2(c)(9)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.2(c)(9)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.2(c)(9)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PASSENGERS

No. MC 1515 (Deviation No. 598) (Cancels Deviation No. 375), GREY-HOUND LINES, INC. (Eastern Division), 1400 West Third Street, Cleveland, OH 44113, filed November 28, 1971. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their*

baggage, and express and newspapers in the same vehicle with passengers, over a deviation route as follows: From Decatur, Ala., over Alabama Highway 67 to junction Interstate Highway 65, thence over Interstate Highway 65 to junction U.S. Highway 31 near Kimberly, Ala., with the following access road: From Cullman, Ala., over U.S. Highway 278 to junction Interstate Highway 65, and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over pertinent service routes as follows: (1) from Nashville, Tenn., over U.S. Highway 31 via Columbia, Tenn., and Calera, Jemison, and Mountain Creek, Ala., to Montgomery, Ala., and (2) from Vinemont, Ala., over relocated U.S. Highway 31 to Lacon, Ala., and return over the same routes.

No. MC 1515 (Deviation No. 599) (Cancels Deviation No. 518), GREY-HOUND LINES, INC. (Eastern Division), 1400 West Third Street, Cleveland, OH 44113, filed November 30, 1971. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, over a deviation route as follows: From Detroit, Mich., over Interstate Highway 75 to junction Michigan Highway 61 (approximately 3 miles west of Standish, Mich.), thence over Michigan Highway 61 to Standish, Mich., with the following access routes: (1) From Royal Oak, Mich., over 11 Mile Road to junction Interstate Highway 75, (2) from Pontiac, Mich., over Michigan Highway 59 to junction Interstate Highway 75, (3) from Pontiac, Mich., over U.S. Highway 10 to junction Interstate Highway 75, (4) from Grand Blanc, Mich., over Michigan Highway 54 to junction Interstate Highway 75, (5) from Flint, Mich., over Michigan Highway 78 to junction Interstate Highway 75, (6) from Flint, Mich., over Pierson Road to junction Interstate Highway 75, (7) from Saginaw, Mich., over Interstate Highway 675 to junction Interstate Highway 75 just southeast of Saginaw, (8) from Saginaw, Mich., over Michigan Highway 46 to junction Interstate Highway 675 to junction Interstate Highway 75 north of Saginaw, (10) from Bay City, Mich., over Michigan Highway 13 to junction Interstate Highway 75, (11) from Bay City, Mich., over Michigan Highway 25 to junction Interstate Highway 75, and (12) from junction access highway and U.S. Highway 23 3 miles south of Standish, Mich., over access highway to junction Interstate Highway 75, and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over a pertinent service route as follows: From Detroit, Mich., over U.S. Highway 10 to junction Michigan Highway 54, thence over Michigan Highway 54 via Grand Blanc and Flint to junction Dixie Highway, thence over Dixie Highway and Genessee Avenue (formerly U.S. Highway 10) to junction Michigan Highway

13 in Saginaw, Mich., thence over Michigan Highway 13 via Bay City to junction U.S. Highway 23, thence over U.S. Highway 23 to Standish, Mich., and return over the same route.

No. MC-41638 (Deviation No. 4), DE-LUXE TRAILWAYS, INC., 1718 South Clark Street, Chicago, IL 60616, filed December 2, 1971. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, over a deviation route as follows: From junction U.S. Highway 54 and Interstate Highway 57 near Onarga, Ill., over Interstate Highway 57 to junction Interstate Highway 72, thence over Interstate Highway 72 to junction Illinois Highway 47, thence over Illinois Highway 47 to junction Illinois Highway 48 near Cisco, Ill., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over pertinent service routes as follows: (1) From Chicago, Ill., over city streets to Hammond, Ind., thence over Sibley Boulevard to junction Alternate U.S. Highway 30, thence over Alternate U.S. Highway 30 to junction U.S. Highway 30 to junction U.S. Highway 6, thence over U.S. Highway 6 to junction U.S. Highway 54, thence over U.S. Highway 54 via Kankakee and Onarga, Ill., to Fullerton, Ill., thence over Illinois Highway 48 to junction U.S. Highway 66, thence over U.S. Highway 66 to junction City U.S. Highway 66, thence over City U.S. Highway 66 to East St. Louis, Ill., thence over the Eads Bridge to St. Louis, Mo., and (2) from Decatur, Ill., over U.S. Highway 51 to Pana, Ill., thence over Illinois Highway 18 to Litchfield, Ill., and return over the same routes.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-18324 Filed 12-14-71;8:48 am]

[Notice 39]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

DECEMBER 10, 1971.

The following letter-notices of proposals to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969 (49 CFR 1042.4(d)(11)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.4(d)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.4(d)(12)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

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 33641 (Deviation No. 27), IML FREIGHT, INC., 2175 South 3270 West, Post Office Box 2277, Salt Lake City, UT 84110, filed December 1, 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 Salina, Utah, over Utah Highway 63 to junction U.S. Highway 91 (Interstate Highway 15) near Scipio, Utah, 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 Salina, Utah, over U.S. Highway 89 to Gunnison, Utah, thence over Utah Highway 28 to Levan, Utah, thence over U.S. Highway 91 (Interstate Highway 15) to junction Utah Highway 63 near Scipio, Utah, and return over the same route.

No. MC 33641 (Deviation No. 28), IML FREIGHT, INC., 2175 South 3270 West, Post Office Box 2277, Salt Lake City, UT 84110, filed December 1, 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 Cheyenne, Wyo., over Interstate Highway 80 to junction U.S. Highway 220 near Mount Eagle, Pa., 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 Cheyenne, Wyo., over U.S. Highway 85 to Denver, Colo., thence over U.S. Highway 36 to Smith Center, Kans., thence over U.S. Highway 281 to junction U.S. Highway 24, thence over U.S. Highway 24 to Kansas City, Mo., thence over U.S. Highway 50 to junction Missouri Highway 100, near Gray Summit, Mo., thence over Missouri Highway 100 to St. Louis, Mo., thence over U.S. Highway 50 to Cincinnati, Ohio, thence over Ohio Highway 3 to junction Ohio Highway 350, thence over Ohio Highway 350 to Clarksville, Ohio, thence over unnumbered highway (formerly portion Ohio Highway 3) to junction Ohio Highway 3, thence over Ohio Highway 3 to Columbus, Ohio, thence over U.S. Highway 40 to junction Ohio Highway 440, thence over Ohio Highway 440 via Hebron and Jacksontown, Ohio, to junction U.S. Highway 40, thence over U.S. Highway 40 to Cambridge, Ohio, thence over U.S. Highway 22 to junction Pennsylvania Highway 60, thence over Pennsylvania Highway 60 to Pittsburgh, Pa., thence over U.S. Highway 22 to Holidaysburg, Pa., thence over U.S. Highway 220 to junction Interstate Highway 80 near Mount Eagle, Pa., and return over the same route.

No. MC 33641 (Deviation No. 29), IML FREIGHT, INC., 2175 South 3270 West, Post Office Box 2277, Salt Lake City, UT 84110, filed December 1, 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 Cedar City, Utah, over Utah Highway 56 to the Utah-Nevada State line, thence over Nevada Highway 25 to Panaca, Nev., 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 Cedar City, Utah, over U.S. Highway 91 (Interstate Highway 15) to junction U.S. Highway 93, thence over U.S. Highway 93 to Panaca, Nev., and return over the same route.

No. MC 33641 (Deviation No. 30), IML FREIGHT, INC., 2175 South 3270 West, Post Office Box 2277, Salt Lake City, UT 84110, filed December 1, 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 Beaver, Utah, over Utah Highway 21 to the Utah-Nevada State line, near Garrison, Utah, thence over Nevada Highway 73 to junction U.S. Highway 6, 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 Beaver, Utah, over U.S. Highway 91 (Interstate Highway 15) to Santaquin, Utah, thence over U.S. Highway 6 to junction Nevada Highway 73, and return over the same route.

No. MC 33641 (Deviation No. 31), IML FREIGHT, INC., 2175 South 3270 West, Post Office Box 2277, Salt Lake City, UT 84110, filed December 1, 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 Holden, Utah, over Utah Highway 26 to Delta, Utah, 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 Holden, Utah, over U.S. Highway 91 (Interstate Highway 15) to Santaquin, Utah, thence over U.S. Highway 6 to Delta, Utah, and return over the same route.

No. MC 33641 (Deviation No. 32), IML FREIGHT, INC., 2175 South 3270 West, Post Office Box 2277, Salt Lake City, UT 84110, filed December 1, 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 Nephi, Utah, over Utah Highway 132 to Lyndyl, Utah, 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 Nephi, Utah, over U.S. Highway 91 (Interstate Highway 15) to Santaquin, Utah, thence over U.S. Highway 6 to Lyndyl, Utah, and return over the same route.

No. MC 33641 (Deviation No. 33), IML FREIGHT, INC., 2175 South 3270 West, Post Office Box 2277, Salt Lake City, UT 84110, filed December 1, 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 Sacramento, Calif., over U.S. Highway 40 (Interstate Highway 80) to Winnemucca, Nev., thence over U.S. Highway 95 to junction Idaho Highway 55 near Marsing, Idaho, thence over Idaho Highway 55 to junction U.S. Highway 30, near Nampa, Idaho, thence over U.S. Highway 30 to Boise, Idaho, 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 Sacramento, Calif., over U.S. Highway 40 to Salt Lake City, Utah, thence over U.S. Highway 91 to Brigham City, Utah, thence over U.S. Highway 30S to Burley, Idaho, thence over U.S. Highway 30 to Boise, Idaho, and return over the same route.

No. MC 33641 (Deviation No. 34) IML FREIGHT, INC., 2175 South 3270 West, Post Office Box 2277, Salt Lake City, UT 84110, filed December 1, 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 Denver, Colo., over Interstate Highway 70 to junction U.S. Highway 91 (Interstate Highway 15) near Cove Fort, Utah, 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 Denver, Colo., over U.S. Highway 40 to Heber, Utah, thence over U.S. Highway 189 to Provo, Utah, thence over U.S. Highway 91 (Interstate Highway 15) to junction Interstate Highway 70 near Cove Fort, Utah, and return over the same route.

No. MC 33641 (Deviation No. 35), IML FREIGHT, INC., 2175 South 3270 West, Post Office Box 2277, Salt Lake City, UT 84110, filed December 1, 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 Smith Center, Kans., over U.S. Highway 36 to St. Joseph, Mo., thence over Interstate Highway 29 to Kansas City, 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 Smith Center, Kans., over U.S. Highway 281 to junction U.S. Highway 24, thence over U.S. Highway 24 to Kansas City, Mo., and return over the same route.

No. MC 33641 (Deviation No. 36), IML FREIGHT, INC., 2175 South 3270 West,

Post Office Box 2277, Salt Lake City, UT 84110, filed December 1, 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 St. Louis, Mo., over Interstate Highway 70 (U.S. Highway 40) to Indianapolis, Ind., thence over Interstate Highway 65 (U.S. Highway 31) to Louisville, Ky., 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 St. Louis, Mo., over U.S. Highway 50 to Shoals, Ind., thence over U.S. Highway 150 to Louisville, Ky., and return over the same route.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc. 71-18325 Filed 12-14-71; 8:49 am]

[Notice 98]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

DECEMBER 10, 1971.

The following publications are governed by the new Special Rule 1.247 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.

MOTOR CARRIERS OF PROPERTY

No. MC 47142 (Sub-No. 106) (Republication) filed March 12, 1970, published in the FEDERAL REGISTER issue of April 9, 1970, and republished this issue. Applicant: C. I. WHITTEN TRANSFER COMPANY, a corporation, 4417 Earl Court, Huntington, WV 25705. Applicant's representative: George Joline, Suite 117, 2500 North Van Dorn Street, Alexandria, VA 22302. A decision and order of the Commission, Review Board No. 2, decided November 9, 1971, and served November 29, 1971, finds that operation by applicant, in interstate or foreign commerce as a common carrier by motor vehicle, over irregular routes, of commodities bearing a security classification by the U.S. Government between points in Connecticut, Delaware, Florida, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia, restricted against the transportation of shipments weighing in the aggregate more than 5,000 pounds from

one consignor to one consignee on any one day. Because it is possible that other parties, who may have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this decision and order a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for leave to intervene in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 135386 (Republication) filed February 19, 1971, published in the FEDERAL REGISTER issue of April 1, 1971, and republished this issue. Applicant: M. V. MEROLA, INC., 528 Joralemon Street, Belleville, NJ 07109. Applicant's representative: Bert Collins, 140 Cedar Street, New York, NY 10006. A corrected supplemental order of the Commission, Operating Rights Board, dated October 6, 1971, and served November 24, 1971, finds that operation by applicant, in interstate or foreign commerce, as a contract carrier by motor vehicle, over irregular routes, of liquid soap, in bulk, in tank vehicles, between Wellford, S.C., on the one hand, and, on the other, Lyndhurst, N.J., under a continuing contract with Tanatex Chemical Corp. of Lyndhurst, N.J., will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder; because it is possible that other parties who have relied on the notice of the application as published in the FEDERAL REGISTER, may have an interest in and would be prejudiced by the lack of proper notice of the actual authority herein described in findings, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a permit herein 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 petition for leave to intervene herein or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 135187 (Sub-No. 2) (Republication) filed February 11, 1971, published in the FEDERAL REGISTER issue of March 24, 1971, and republished this issue. Applicant: ALLAN L. WHITCOMB, Route 1, Box 1, Deary, ID 83823. An order of the Commission, Operating Rights Board, dated November 4, 1971, and served November 24, 1971, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of scrap automobiles, scrap automobile parts, and used automobile parts, from points in

and west of Flathead, Powell, Deer Lodge, Silver Bow, and Madison Counties, Mont., and points in Idaho, to Spokane, Wash.; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties who have relied upon the notice in the FEDERAL REGISTER of the application as originally published may have an interest in and would be prejudiced by the lack of proper notice of the grant of authority in the findings herein, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of the certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for leave to intervene in the proceeding setting forth in detail the precise manner in which it has been prejudiced.

APPLICATIONS FOR CERTIFICATES OR PERMITS WHICH ARE TO BE PROCESSED CONCURRENTLY WITH APPLICATIONS UNDER SECTION 5 GOVERNED BY SPECIAL RULE 240 TO THE EXTENT APPLICABLE

No. MC 2253 (Sub-No. 48), filed November 18, 1971. Applicant: CAROLINA FREIGHT CARRIERS CORPORATION, Post Office Box 697, Cherryville, NC 28021. Applicant's representative: James E. Wilson, 1032 Pennsylvania Building, Pennsylvania at 13th Street NW., Washington, DC 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment; (1) between points in Onondaga County, N.Y.; (2) between points in Cayuga County, N.Y.; (3) between points in Onondaga County, N.Y., on the one hand, and, on the other, points in Cayuga, Cortland, and Oswego Counties, N.Y. NOTE: Applicant states that the proposed authority could be tacked with applicant's authority at various points in New York State for movement to and from points in various States such as, but not limited to, North Carolina, South Carolina, Georgia, and Florida. This application is a matter directly related to MC-F-11375, published in the FEDERAL REGISTER issue of December 1, 1971. If a hearing is deemed necessary, applicant does not specify a location.

No. MC 60251 (Sub-No. 9), filed November 23, 1971. Applicant: P & D TRANSPORTATION, INC., Connell Highway, Newport, R.I. 02840. Applicant's representative: Frederick T. O'Sullivan, 622 Lowell Street, Peabody, MA 01960. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, livestock, commodities in bulk, in tank vehicles, and those requiring special equipment), between points in Massachusetts.

NOTE: Applicant states that the requested authority can be tacked with its existing authority in southeastern Massachusetts to serve points in Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, and others. This application is a matter directly related to MC-F-11378, published in FEDERAL REGISTER issue of December 1, 1971. If a hearing is deemed necessary, applicant requests it be held at Boston, Mass., or Providence, R.I.

TRANSFER APPLICATION TO BE ASSIGNED FOR ORAL HEARING

No. MC-FC-73158. Authority sought by transferee, SCHOOL BUS SERVICES, INC., 10706 Southwest Capitol Highway, Portland, OR 97219, to acquire the operating rights of transferor, ESTACADA-MOLLALA STAGES, INC., of the same address. Applicants' representative: George G. Fourier, 10706 Southwest Capitol Highway, Portland, OR 97219. The operating rights sought to be transferred authorize the transportation of passengers and their baggage, and express, newspapers, and mail in the same vehicle with passengers, over regular routes, between Portland, Ore., and Colton, Ore., and between Portland, Ore., and Estacada, Ore., service all intermediate points.

The application under section 212(b) of the Interstate Commerce Act will be assigned for hearing at a time and place to be fixed for the purpose of determining whether the proposed transfer conforms with the Rules and Regulations Governing Transfer of Rights To Operate as a Motor Carrier in Interstate or Foreign Commerce, 49 CFR 1132. Such hearing will be conducted on a joint record with No. MC-C-7209, Estacada-Mollala Stages, Inc.—Revocation of Certificate. Interested persons have 30 days from the date of this publication in which to file petitions for leave to intervene. Such petitions should state the reason or reasons for the proposed intervention, the place where petitioner wishes the hearing to be held, the number of witnesses it expects to present, and the estimated time required for presentation of its evidence.

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-11318. (Correction) (SUPERIOR TRUCKING COMPANY, INC.—Purchase (Portion) — DANIEL HAMM DRAYAGE COMPANY, INC.), published in the September 29, 1971, issue of the FEDERAL REGISTER on page 19142. This correction is to delete from the operating rights sought to be transferred authority *between points in Arkansas, Illinois, Indiana, Iowa, Kentucky, Missouri, Ohio, and Tennessee.*

No. MC-F-11381. (Correction) (BEST WAY FROZEN EXPRESS, INC.—Purchase (Portion)—MILK TRANSPORT, INC.), published in the December 1, 1971, issue of the FEDERAL REGISTER on page 22890. Prior notice is being modified to read: *coffee beans*, from New York, N.Y., to Duluth, Minn.; *dairy products* as described in section B of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, in cartons, containers or packages, from Minneapolis, Minn., and Baldwin and Turtle Lake, Wis., to points in New Mexico and Arizona; *butter and powdered milk*, from Mason City, Iowa, and points in Minnesota (except Minneapolis, Minn.), and Wisconsin (except Baldwin and Turtle Lake, Wis.), to points in Arizona and New Mexico.

No. MC-F-11390. Authority sought for purchase by REFINERS TRANSPORT & TERMINAL CORPORATION, 445 Earlwood Avenue, Oregon (Toledo), OH 43616, of the operating rights and property of LESLIE J. STRAWN, INC., 4448 Southway Street SW., Canton, OH 44706, and for acquisition by LEASEWAY TRANSPORTATION CORP., 21111 Chagrin Boulevard, Cleveland, OH 44122, of control of such rights and property through the purchase. Applicants' attorneys: John Andrew Kundtz, 1100 National City Bank Building, Cleveland, OH 44114, and Roland Rice, 618 Perpetual Building, Washington, D.C. 20004. Operating rights sought to be transferred: *Petroleum products*, in bulk, in tank vehicles, and in containers and return with *empty containers*, as a *common carrier* over irregular routes, from Franklin, Oil City, and Titusville, Pa., and points within 15 miles of Franklin, Oil City, and Titusville to certain specified points in Ohio, and Wheeling, W. Va.; *benzol*, in bulk, in tank vehicles, from Follansbee, W. Va., to Steubenville, and Martins Ferry, Ohio; *motor oil*, in drums, from Franklin, Pa., to certain specified points in Ohio and Cumberland, Md.; *oil*, in drums, from Franklin, Pa., to certain specified points in Ohio; *petroleum products*, in bulk, between points in that part of Pennsylvania north and west of a line beginning at the Ohio-Pennsylvania State line and extending along U.S. Highway 22 to certain specified points in Pennsylvania, on the one hand, and, on the other, points in Ohio; *petroleum and petroleum products*, in bulk, in tank vehicles, between Heath, Ohio, on the one hand, and, on the other, certain specified points in West Virginia, from Akron, Canton, and Cleveland, Ohio, to certain specified points in West Virginia, with restriction. Vendee is authorized to operate as a *common carrier* in all of the States in the United States (except Alaska and Hawaii). Application has not been filed for temporary authority under section 210a(b).

No. MC-F-11391. Authority sought for control by DISTRIBUTION SYSTEMS, INC., a noncarrier, 1918 Park Street, Alameda, CA 94501, of IMPERIAL TRUCK LINES, INC., 101 North Avenue 18, Los Angeles, CA 90031, and for purchase by IMPERIAL TRUCK LINES, INC., 101

North Avenue 18, Los Angeles, CA 90013 of the operating rights of SHIPPERS-ENCINAL EXPRESS, INC., of control of such rights through the transaction. Applicants' attorneys: R. Frederic Fisher and Thomas E. Kimball, 311 California Street, San Francisco, CA 94104. Authority sought for control by DISTRIBUTION SYSTEMS, INC., of IMPERIAL TRUCK LINES, INC., under a plan of reorganization, whereby control stock of DISTRIBUTION SYSTEMS, INC., would be acquired by DEL MONTE CORPORATION in exchange for control stock of DEL MONTE. The latter then would transfer the control stock of IMPERIAL TRUCK LINES, INC., to DISTRIBUTION SYSTEMS, INC. IMPERIAL in turn would acquire all of the assets of SHIPPERS-ENCINAL EXPRESS, INC., subject to its liabilities. SHIPPERS-ENCINAL EXPRESS, INC., is controlled by DISTRIBUTION SYSTEMS, INC. Operating rights sought to be controlled and transferred: (1) *General commodities*, except commodities of unusual value, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and motor vehicles, as a *common carrier* over regular routes between Los Angeles, Calif., and San Ysidro, Calif., between San Diego, Calif., and Winterhaven, Calif., between Los Angeles, Calif., and Indio, Calif., between Indio, Calif., and Calexico, Calif., between junction Interstate Highway 10 and California Highway 111 near White Water and Calexico, Calif., between Los Angeles, Calif., and Beaumont, Calif., between Long Beach, Calif., and Riverside, Calif., between San Bernardino, Calif., and Riverside, Calif., between San Bernardino, Calif., and San Diego, Calif., between Oceanside, Calif., and Escondido, Calif., between Los Angeles, Calif., and points in the Los Angeles Harbor commercial zone, serving all intermediate points and all off-route points, with restriction; *bananas*, over irregular routes, from points in the Los Angeles Harbor, Calif., commercial zone, as defined by the Commission, to points in the Los Angeles, Calif., commercial zone, as defined by the Commission, and to San Diego, Calif.; (2) *general commodities*, except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, motor vehicles, and commodities requiring special equipment, as a *common carrier* over regular routes, between San Francisco Bay Territory, Los Angeles Basin-San Diego Territory, and Sacramento Territory, all in California, restricted against service between points in the San Francisco Bay Territory, on the one hand, and, on the other, points in the Sacramento Territory, serving all intermediate points and off-route points in the counties of Santa Clara, with exception, over one alternate route for operating convenience only; *general commodities* (except automobiles, trucks, or buses), classes A and B explosives, commodities of unusual value, household goods as defined by the Commission, petroleum products in bulk, in tank ve-

hicles, metal cans and parts thereof, and fresh fruits and vegetables when moving in mixed loads with the commodities authorized to be transported herein), between certain specified points in California. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-11392. Authority sought for control by SPIEGEL TRUCKING, INC., 504 Essex Street, Harrison, NJ 07029, of TRANSPET, INC., 600 South Fourth Street, Harrison, NJ 07029. Applicants' attorney: A. David Millner, 744 Broad Street, Newark, NJ 07102. Operating rights sought to be controlled: *Live fish, live birds, and related aquarium and pet materials, and supplies*, as a *contract carrier*, over irregular routes, from Allendale, N.J., to New York, N.Y., and from Allendale and New York, N.Y., to points in Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, Rhode Island, Vermont, and certain specified points in New York, Pennsylvania, and Maryland, from Camden, N.J., to points in New Jersey and Delaware and certain specified points in Pennsylvania and Maryland, and from Springfield and Boston, Mass., and Providence, R.I., to points in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont; *pet supplies, pet foods, pet accessories, pet tonics, and insecticides*, between New York, N.Y., and Chicago, Ill., from Harrison and Bloomfield, N.J., to Leeds, Ala., Phoenix, Ariz., Denver, Colo., Tampa and Winter Park, Fla., Hapeville, Ga., Addison and Chicago, Ill., Indianapolis, Ind., Des Moines, Iowa, Wichita, Kans., Lacombe and Houghton, La., Romulus, Mich., Minneapolis, Minn., Bridgeton, Mo., Canandaigua, N.Y., Kernersville, N.C., Independence and Loveland, Ohio, Oklahoma City and Tulsa, Okla., Pittsburgh and Silver Spring, Pa., Chattanooga, Tenn., Dallas, El Paso, Houston, Lubbock, and San Antonio, Tex., and Berlin, Wis., from Harrison and Bloomfield N.J., to Baltimore, Md., points in Connecticut, Delaware, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, certain specified points in New York, Pennsylvania, Maryland, and the District of Columbia; and *returned shipments* of the above-specified commodities, from the above-described destination points, to Harrison and Bloomfield, N.J., with restrictions. SPIEGEL TRUCKING, INC., is authorized to operate as a *contract carrier* in New Jersey, Maryland, Georgia, Ohio, Illinois, Massachusetts, Pennsylvania, and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-11393. Authority sought for control and merger by E. L. MURPHY TRUCKING CO., 3303 Sibley Memorial Highway, St. Paul, MN 55121, of the operating rights and property of DYER TRANSPORT, INC., 332 Eastern Road, Spokane, WA 99206, and for acquisition by RICHARD T. MURPHY, also of St. Paul, Minn. 55121, of control of such rights and property through the transaction. Applicants' attorneys: Donald A.

Morken, 1000 First National Bank Building, Minneapolis, Minn. 55402, Jack Goodman, 39 South La Salle Street, Chicago, IL 60603, and George H. Hart, 1100 I.B.M. Building, Seattle, Wash. 98101. Operating rights sought to be controlled and merged: *Such commodities* as contractors' equipment, heavy and bulky articles, machinery and machinery parts, articles requiring specialized handling or rigging, and *machinery, materials, supplies, and equipment* used or useful in road construction, mining, logging, and sawmill operations, as a *common carrier* over irregular routes, between points in Washington, Idaho, that part of Oregon east of the Cascade Mountains, and in that part of Montana west of a line extending from the boundary of the United States and Canada along U.S. Highway 89 to Livingston, Mont., thence east along U.S. Highway 10 to Laurel, Mont., thence south along U.S. Highway 310 to the Montana-Wyoming State line, including points on the indicated portions of the highways specified; *tractors and agricultural, mining, logging, roadbuilding, and construction machinery*, between certain specified points in Oregon, on the one hand, and, on the other, points in Washington; *machinery*, between points in Idaho, on the one hand, and, on the other, points in Oregon, Washington, and that part of California on, north, and west of U.S. Highway 50; *mine machinery and equipment*, and *mine ores*, including concentrates, between Sumpter, Ore., and points within 50 miles of Sumpter, on the one hand, and, on the other, points in Washington and Idaho;

Machinery equipment, materials, and supplies used in or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and byproducts; *machinery, equipment, materials, and supplies* used in or in connection with the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof, except the stringing or picking up of pipe in connection with main or trunk pipelines; and *machinery and machinery parts* not included above, between points in Montana, on the one hand, and, on the other, points in Minnesota on and west of U.S. Highway 71; *wooden skids, heavy timbers, wood piling, lumber, and wood construction poles*, between points in North Dakota, Montana, and Minnesota; *heavy machinery*, between points in California within 375 miles of Los Angeles, Calif., including Los Angeles; *crude rubber, cork, cork products, asphaltum, asphaltum paints, pipe, lubricating oil* in containers, *granite and marble blocks, and machinery, materials, supplies, and equipment* incidental to, or used in, the construction, development, operation, and maintenance of facilities for the discovery, development, and production of natural gas and petroleum, between Los Angeles Harbor and Long Beach Harbor, Calif., on the one hand, and, on the

other, Los Angeles, Calif.; *machinery, materials, supplies, and equipment* incidental to, or used in, the construction, development, operation, and maintenance of facilities for the discovery, development, and production of natural gas and petroleum, between points within 25 miles of Long Beach, Calif., including Long Beach. E. L. MURPHY TRUCKING CO., is authorized to operate as a *common carrier* in all of the States in the United States (except Alaska and Hawaii). Application has been filed for temporary authority under section 210a (b).

No. MC-F-11394. Authority sought for control by GLOSSON MOTOR LINES, INC., Hargrave Road, Post Office Box 1328, Lexington, NC 27292, of STATE MOTOR LINES, INC., Highway 70, Post Office Drawer 4187, Longview Station, Hickory, NC 28601, and for acquisition by PACEWAY, INC., Hargrave Road, Post Office Box 1328, Lexington, NC 27292, of control of STATE MOTOR LINES, INC., through the acquisition by GLOSSON MOTOR LINES, INC. Applicants' attorney: Edward G. Villalon, 1032 Pennsylvania Building, Pennsylvania Avenue and 13th Street NW., Washington, D.C. 20004. Operating rights sought to be controlled: Under a certificate of registration, in Docket No. MC-120280 Sub-1, covering the transportation of general commodities, as a common carrier over irregular routes, in interstate commerce, within the State of North Carolina. GLOSSON MOTOR LINES, INC., is authorized to operate as a *common carrier* in North Carolina, Maryland, Virginia, New York, New Jersey, Pennsylvania, Georgia, South Carolina, Connecticut, Missouri, Rhode Island, New Hampshire, Vermont, Massachusetts, Delaware, Florida, Alabama, Kentucky, Tennessee, Ohio, Mississippi, Arkansas, Louisiana, Texas, Oklahoma, West Virginia, and the District of Columbia. Application has been filed for temporary authority under section 210a(b). NOTE: No. MC-120280 Sub-2, is a matter directly related.

No. MC-F-11395. Authority sought for purchase by SALT CREEK FREIGHTWAYS, 3333 West Yellowstone, Casper, WY 82644, of a portion of the operating rights of PRATT'S DRAY & STORAGE, INC., 222 West Illinois Street, Spearfish, SD 57783, and for acquisition by WILLIAM UTZINGER, WILLIAM D. UTZINGER and C. E. OGDEN, all also of 3333 West Yellowstone, Casper, WY, of control of such rights through the purchase. Applicants' attorneys: Carl L. Steiner, 39 South La Salle Street, Chicago, IL 60603 and John R. Davidson, Room 805 Midland Bank Building, Billings, Mont. 59101. Operating rights sought to be transferred: *General commodities*, as a *common carrier* over regular routes, between Broadus, Mont., and Billings, Mont., Gillette, Wyo., and Sheridan, Wyo., serving all intermediate points, and the off-route points within 20 miles, with restrictions; *petroleum products*, in bulk or in packages, from Osage, Wyo., to Broadus, Mont., serving

the intermediate point of Biddle, Mont., for delivery only; *coal*, over irregular routes, from mines within 20 miles of Broadus, Mont., to points within 65 miles of Belle Fourche, S. Dak.; *ordinary livestock, building materials, and fence posts*, between points in Carter, Custer, and Powder River Counties, Mont., and Belle Fourche, S. Dak., and points within 30 miles of Belle Fourche; *wool, livestock, feed, groceries, petroleum products, building materials, and agricultural implements and machinery*, over regular and irregular routes, between Belle Fourche, S. Dak., and points in Montana, serving no intermediate points on U.S. Highway 212 between Belle Fourche and the Wyoming-Montana State line; and *wool, ordinary livestock, livestock feed, groceries, building materials, and agricultural implements and machinery*, between Belle Fourche, S. Dak., and points in Montana, serving no intermediate points on U.S. Highway 212 between Belle Fourche and the Wyoming-Montana State line. Vendee is authorized to operate as a *common carrier* in Montana, Wyoming, Colorado, and Nebraska. Application has been filed for temporary authority under section 210a(b).

No. MC-F-11396. Authority sought for control and merger by SHORT FREIGHT LINES, INC., 459 South River Road, Bay City, MI 48706, of the operating rights and certain property of RED LINE EXPRESS, INC., 618 Benore Road, Toledo, OH 43612, and for acquisition by GARY L. SHORT, also of Bay City, Mich., of control of such rights and certain property through the transaction. Applicants' attorneys: John P. McMahon and A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. Operating rights sought to be controlled and merged: *General commodities*, excepting among others, high explosives, household goods, and commodities in bulk, as a common carrier over regular routes, between Elmore, Ohio, and Toledo, Ohio, serving no intermediate points, with restriction; and under a Certificate of Registration, in No. MC-15394 Sub-4, covering the transportation of property, as a common carrier over irregular routes in interstate commerce, within the State of Ohio. SHORT FREIGHT LINES, INC., is authorized to operate as a common carrier in Ohio and Michigan. Application has been filed for temporary authority under section 210a(b). NOTE: No. MC-108382 Sub-13, is a matter directly related.

No. MC-F-11397. Authority sought for purchase by SEAVER'S EXPRESS, INC., 25 East Main Street, Milford, MA 01757, of the operating rights and property of ATHOL MOTOR TRANSPORTATION, INC., 37 North Street, Erving, MA 01344, and for acquisition by THOMAS H. SEAVER, WILLIAM J. SEAVER, ELIZABETH M. SEAVER, and BARBARA A. SEAVER, all also of 25 East Main Street, Milford, MA 01757, of control of such rights and property through the purchase. Applicants' attorney: Mary E. Kelley, 11 Riverside Avenue, Medford, MA 02155. Operating rights and property

sought to be transferred: Under a certificate of registration, in No. MC-98772 Sub-1, covering the transportation of general commodities, as a common carrier over regular routes, in interstate commerce, within the State of Massachusetts. Vendee is authorized to operate as a *common carrier* in Rhode Island, Massachusetts, and Connecticut. Application has been filed for temporary authority under section 210a(b). NOTE: No. MC-2234 Sub-2, is a matter directly related.

No. MC-F-11398. Authority sought for purchase by TOSE, INC., 64 West Fourth Street, Bridgeport, PA 19405, of the operating rights of A & A TRANSPORTATION, INC., 69 Shirley Street, Boston, MA 02119, and for acquisition by LEONARD H. TOSE, also of Bridgeport, Pa., of control of such rights through the purchase. Applicants' attorneys: Anthony C. Vance, 1111 E Street NW., Washington, DC 20004 and Frank J. Weiner, 6 Beacon Street, Boston, MA 02108. Operating rights sought to be transferred: Under a certificate of registration, in Docket No. MC-96928 Sub-1, covering the transportation of general commodities, as a common carrier, over irregular routes, in interstate commerce, within the State of Massachusetts. Vendee is authorized to operate as a *common carrier* in Pennsylvania, New York, Maryland, New Jersey, Delaware, Connecticut, and the District of Columbia. Application has been filed for temporary authority under section 210a(b). NOTE: No. MC-41706 Sub-14, is a matter directly related.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc. 71-18326 Filed 12-14-71; 8:49 am]

[Notice 411]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

DECEMBER 10, 1971.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR Part 1131) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six (6) copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission,

Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 75302 (Sub-No. 10 TA) (correction), filed October 26, 1971, published in the FEDERAL REGISTER issues of November 9, 1971 and November 25, 1971, respectively, corrected and republished in part, as corrected this issue. Applicant: DOUDELL TRUCKING COMPANY, Post Office Box 842, 545 Queens Row, San Jose, CA 95106. Applicant's representative: Raymond A. Greene, Jr., 405 Montgomery Street, San Francisco, CA 94104. NOTE: The purpose of this partial republication is to reflect the correct reading of the tacking note as follows: Applicant intends to tack this authority with its Sub-No. 8 authority. The rest of the application remains the same.

No. MC 107527 (Sub-No. 48 TA), filed December 3, 1971. Applicant: POST TRANSPORTATION COMPANY, Post Office Box 4827, Carson, CA 90745, 3152 East 26th Street, Los Angeles, CA 90023. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Bulk salt*, from Amboy, Calif., and points within a 25-mile radius to points in Clark and Nye Counties, Nev., for 180 days. Supporting shipper: Leslie Salt Co., 4320 Maywood Avenue, Vernon, CA 90058. Send protests to: District Supervisor Philip Yallowitz, Bureau of Operations, Interstate Commerce Commission, Room 7708 Federal Building, 300 Los Angeles Street, Los Angeles, CA 90012.

No. MC 116763 (Sub-No. 214 TA), filed December 2, 1971. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380, 906 Magnolia Avenue, Auburndale, FL 33823. Applicant's representative: H. M. Richters (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and bottled foodstuffs*, from the plantsite of Bruce Foods Corp., at Cade and Lozes, La., to points in Connecticut, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia, for 180 days. Supporting shipper: Bruce Foods Corp., Post Office Drawer 1030, New Iberia, LA 70560. Send protests to: Paul J. Lowry, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5514-B Federal Building, 550 Main Street, Cincinnati, OH 45202.

No. MC 125785 (Sub-No. 11 TA), filed December 3, 1971. Applicant: SATURN EXPRESS, INC., 90th and L Streets, Omaha, NE 68127. Applicant's representative: Patrick E. Quinn, Post Office Box 82028, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Sisal products*, from St. Louis, Mo., and Louisville, Ky., to points in Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Missouri,

Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Wisconsin, and Wyoming, for 180 days. Supporting shipper: Dan H. Shield Cordage Co., Post Office Box 444, Fayette, Mo. 65248. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 711 Federal Office Building, Omaha, Nebr. 68102.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.
[FR Doc.71-18327 Filed 12-14-71;8:49 am]

[Notice 796]

MOTOR CARRIER TRANSFER PROCEEDINGS

DECEMBER 10, 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 general rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 30 days from the date of service of the order. 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-72516. By order of December 6, 1971, Appellate Division 3, approved the transfer to Kramer Trucking Co., Inc., Elizabeth, N.J., of certificate No. MC-133483, issued April 14, 1970, to All Express, Inc., Elizabeth, N.J., authorizing the transportation of: Heavy commodities, requiring special equipment, between specified points and areas in Pennsylvania, West Virginia, and Ohio. Daniel B. Johnson, attorney, 1111 E Street NW., Washington DC 20004.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-18328 Filed 12-14-71;8:49 am]

NOTICE OF FILING OF MOTOR CARRIER INTRASTATE APPLICATIONS

DECEMBER 10, 1971.

The following applications for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a) (6) of the Interstate Commerce Act, as amended October 15, 1962. These applications are governed by Special Rule 1.245 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of April 11, 1963, page 3533, which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or

other proceedings, any subsequent changes therein, any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

State Docket No. 2329, filed October 20, 1971. Applicant: BROWN EXPRESS, INC., 428 South Main Avenue, San Antonio, TX 78285. Applicant's representative: Phillip Robinson, The 904 Lavaca Building, Austin, Tex. 78701. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *General commodities* over the following alternate routes: Between Laredo, Tex., and Fort Worth, Tex., as follows: From Laredo, Tex., to junction of Interstate Highway 35 and Interstate Highway 35W over Interstate Highway 35; and from junction of Interstate Highway 35 and Interstate Highway 35W to Fort Worth, Tex., over Interstate Highway 35W, serving only intermediate points to which service is presently authorized, and coordinating such service with that rendered under its existing authority. Restriction: Neither the whole nor any portion of such additional operating rights may be transferred apart from corresponding existing authority contained in Common Carrier Certificate No. 2329. Between Laredo, Tex., and Dallas, Tex., as follows: From Laredo, Tex., to junction of Interstate Highway 35 and Interstate Highway 35E over Interstate Highway 35 and from junction of Interstate Highway 35 and Interstate Highway 35E to Dallas, Tex., over Interstate Highway 35E, serving only intermediate points to which service is presently authorized, and coordinating such service with that rendered under its existing authority. Restriction: Neither the whole nor any portion of such additional operating rights may be transferred apart from corresponding existing authority contained in Common Carrier Certificate No. 2329. Between Dallas, Tex., and Houston, Tex., as follows: From Dallas, Tex., to Houston, Tex., over Interstate Highway 45, serving only intermediate points to which service is presently authorized, and coordinating such service with that rendered under its existing authority.

Restriction: Neither the whole nor any portion of such additional operating rights may be transferred apart from corresponding existing authority contained in Common Carrier Certificate No. 2329. Between San Antonio, Tex., and Houston, Tex., as follows: From San Antonio, Tex., to Houston, Tex., over Interstate Highway 10, serving only intermediate points to which service is presently authorized, and coordinating such service with that rendered under its existing authority. Restriction: Neither the whole nor any portion of such additional operating rights may be transferred apart from corresponding existing authority contained in Common Carrier Certificate No. 2329. Between San Antonio, Tex., and Corpus Christi, Tex., as follows: From San Antonio, Tex., to Corpus Christi, Tex., over Interstate

Highway 37, serving only intermediate points to which service is presently authorized, and coordinating such service with that rendered under its existing authority. Restriction: Neither the whole nor any portion of such additional operating rights may be transferred apart from corresponding existing authority contained in Common Carrier Certificate No. 2329. Both intrastate and interstate authority sought.

HEARING: Approximately 30 days after being published in the FEDERAL REGISTER, place not shown. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Railroad Commission of Texas, Capitol Station, Post Office Drawer 12967, Austin, TX 78711, and should not be directed to the Interstate Commerce Commission.

State Docket No. 2339, filed October 20, 1971. Applicant: ALAMO EXPRESS, INC., 51 Essex Street, San Antonio, TX. Applicant's representative: Phillip Robinson, The 904 Lavaca Building, Austin, Tex. 78701. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of General commodities over the following alternate routes: Between Laredo, Tex., and San Antonio, Tex., as follows: From Laredo, Tex., and San Antonio, Tex., over Interstate Highway 35, serving only intermediate points to which service is presently authorized, and coordinating such service with that rendered under its existing authority. Restriction: Neither the whole nor any portion of such additional operating rights may be transferred apart from corresponding existing authority contained in Common Carrier Certificate No. 2339. Between San Antonio, Tex., and Houston, Tex., as follows: From San Antonio, Tex., to Houston, Tex., over Interstate Highway 10, serving only intermediate points to which service is presently authorized, and coordinating such service with that rendered under its existing authority. Restriction: Neither the whole nor any portion of such additional operating rights may be transferred apart from corresponding existing authority contained in Common Carrier Certificate No. 2339. Between San Antonio, Tex., and Corpus Christi, Tex., as follows:

From San Antonio, Tex., to Corpus Christi, Tex., over Interstate Highway 37, serving only intermediate points to which service is presently authorized, and coordinating such service with that rendered under its existing authority. Restriction: Neither the whole nor any portion of such additional operating rights may be transferred apart from corresponding existing authority contained in Common Carrier Certificate No. 2339. Between Houston, Tex., and Galveston, Tex., as follows: From Houston, Tex., to Galveston, Tex., over Interstate Highway 45, serving only intermediate points to which service is presently authorized, and coordinating such service with that rendered under its existing authority. Restriction: Neither the whole nor any portion of such additional operating rights may be transferred apart

from corresponding existing authority contained in Common Carrier Certificate No. 239. Both intrastate and interstate authority sought.

HEARING: Approximately 30 days after being published in the FEDERAL REGISTER, time and place not shown. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Railroad Commission of Texas, Capitol Station, Post Office Drawer 12967, Austin, TX 78711, and should not be directed to the Interstate Commerce Commission.

State Docket No. 2600, filed October 20, 1971. Applicant: RED ARROW FREIGHT LINES, INC., 390 Seguin Road, Box 1897, San Antonio, TX 78206. Applicant's representative: Phillip Robinson, The 904 Lavaca Building, Austin, Tex. 78701. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of general commodities over the following alternate routes: Between San Antonio, Tex., and Fort Worth, Tex., as follows: From San Antonio, Tex., to junction of Interstate Highway 35 and Interstate Highway 35W over Interstate Highway 35, and from junction of Interstate Highway 35 and Interstate Highway 35W to Fort Worth, Tex., over Interstate Highway 35W, serving only intermediate points to which service is presently authorized, and coordinating such service with that rendered under its existing authority. Restriction: Neither the whole nor any portion of such additional operating rights may be transferred apart from corresponding existing authority contained in Common Carrier Certificate No. 2600. Between San Antonio, Tex., and Dallas, Tex., as follows: From San Antonio, Tex., to junction of Interstate Highway 35 and Interstate Highway 35E over Interstate Highway 35, and from junction of Interstate Highway 35 and Interstate Highway 35E to Dallas, Tex., over Interstate Highway 35E, serving only intermediate points to which service is presently authorized, and coordinating such service with that rendered under its existing authority. Restriction: Neither the whole nor any portion of such additional operating rights may be transferred apart from corresponding existing authority contained in Common Carrier Certificate No. 2600. Between Dallas, Tex., and Houston, Tex., as follows: From Dallas, Tex., to Houston, Tex., over Interstate Highway 45, serving only intermediate points to which service is presently authorized, and coordinating such service with that rendered under its existing authority.

Restriction: Neither the whole nor any portion of such additional operating rights may be transferred apart from corresponding existing authority contained in Common Carrier Certificate No. 2600. Between San Antonio, Tex., and Houston, Tex., as follows: From San Antonio, Tex., to Houston, Tex., over Interstate Highway 10, serving only intermediate points to which service is presently authorized, and coordinating such

service with that rendered under its existing authority contained in Common Carrier Certificate No. 2600. Between San Antonio, Tex., and Corpus Christi, Tex., as follows: From San Antonio, Tex., to Corpus Christi, Tex., over Interstate Highway 37, serving only intermediate points to which service is presently authorized, and coordinating such service with that rendered under its existing authority. Restriction: Neither the whole nor any portion of such additional operating rights may be transferred apart from corresponding existing authority contained in Common Carrier Certificate No. 2600. Both intrastate interstate authority sought.

HEARING: Approximately 30 days after being published in the FEDERAL REGISTER, place and time not shown. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Railroad Commission of Texas, Capitol Station, Post Office Drawer 12967, Austin, TX 78711, and should not be directed to the Interstate Commerce Commission.

State Docket No. 2627, filed October 20, 1971. Applicant: CENTRAL FREIGHT LINES, INC., 303 South 12th Street, Post Office Box 238, Waco, TX 76703. Applicant's representative: Phillip Robinson, The 904 Lavaca Building, Austin, Tex. 78701. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *general commodities* over the following alternate routes: Between San Antonio, Tex., and Fort Worth, Tex., as follows: From San Antonio, Tex., to junction of Interstate Highway 35 and Interstate Highway 35W over Interstate Highway 35, and from junction of Interstate Highway 35 and Interstate Highway 35W to Fort Worth, Tex., over Interstate Highway 35W, serving only intermediate points to which service is presently authorized, and coordinating such service with that rendered under its existing authority. Restriction: Neither the whole nor any portion of such additional operating rights may be transferred apart from corresponding existing authority contained in Common Carrier Certificate No. 2627. Between San Antonio, Tex., and Dallas, Tex., as follows: From San Antonio, Tex., to junction of Interstate Highway 35 and Interstate Highway 35E over Interstate Highway 35, and from junction of Interstate Highway 35 and Interstate Highway 35E to Dallas, Tex., over Interstate Highway 35E, serving only intermediate points to which service is presently authorized, and coordinating such service with that rendered under its existing authority. Restriction: Neither the whole nor any portion of such additional operating rights may be transferred apart from corresponding existing authority contained in Common Carrier Certificate No. 2627. Between Dallas, Tex., and Houston, Tex., as follows: From Dallas, Tex., to Houston, Tex., over Interstate Highway 45, serving only intermediate points to which service is presently authorized, and coordinating such service with that

rendered under its existing authority. Restriction: Neither the whole nor any portion of such additional operating rights may be transferred apart from corresponding existing authority contained in Common Carrier Certificate No. 2627. Between San Antonio, Tex., and Houston, Tex., as follows: From San Antonio, Tex., to Houston, Tex., over Interstate Highway 10, serving only intermediate points to which service is presently authorized, and coordinating such service with that rendered under its existing authority.

Restriction: Neither the whole nor any portion of such additional operating rights may be transferred apart from corresponding existing authority contained in Common Carrier Certificate No. 2627. Between Dallas, Tex., and Denton, Tex., as follows: From Dallas, Tex., to Denton, Tex., over Interstate Highway 35E, serving only intermediate points to which service is presently authorized, and coordinating such service with that rendered under its existing authority. Restriction: Neither the whole nor any portion of such additional operating rights may be transferred apart from corresponding existing authority contained in Common Carrier Certificate No. 2627. Between Fort Worth, Tex., and Denton, Tex., as follows: From Fort Worth, Tex., to Denton, Tex., over Interstate Highway 35W, serving only intermediate points to which service is presently authorized, and coordinating such service with that rendered under its existing authority. Restriction: Neither the whole nor any portion of such additional operating rights may be transferred apart from corresponding existing authority contained in Common Carrier Certificate No. 2627. Between Denton, Tex., and Gainesville, Tex., as follows: From Denton, Tex., to Gainesville, Tex., over Interstate Highway 35, serving only intermediate points to which service is presently authorized, and coordinating such service with that rendered under its existing authority. Restriction: Neither the whole nor any portion of such additional operating rights may be transferred apart from corresponding existing authority contained in Common Carrier Certificate No. 2627. Between Houston, Tex., and Beaumont, Tex., as follows: From Houston, Tex., to Beaumont, Tex., over Interstate Highway 10, serving only intermediate points to which service is presently authorized, and coordinating such service with that rendered under its existing authority. Restriction: Neither the whole nor any portion of such additional operating rights may be transferred apart from corresponding existing authority contained in Common Carrier Certificate No. 2627. Both intrastate and interstate authority sought.

HEARING: Approximately 30 days after being published in the FEDERAL REGISTER, place not shown. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Railroad Commission of Texas, Capitol Station, Post Office Drawer 12967, Aus-

tin, TX 78711 and should not be directed to the Interstate Commerce Commission.

State Docket No. A 53041, filed December 3, 1971. Applicant: BOLAND TRUCKING CO., INC., 24th and Michigan Streets, San Francisco, CA 94107. Applicant's representative: Marvin Handler, 405 Montgomery Street, Suite 1400, San Francisco, CA 94104. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *general commodities*, except petroleum products in bulk, in tank vehicles, livestock, fresh fruits, and vegetables; commodities of unusual value, uncrated used household goods, and commodities requiring mechanically refrigerated equipment: (A) Between all points in the San Francisco-East Bay Cartage Zone, as more particularly described in Item 270-3-C of Minimum Rate Tariff No. 2¹ and places within 5 miles of any point therein; (B) between all points on and within 5 miles of the following routes: (1) U.S. Highway 101 between San Francisco and San Rafael, inclusive; (2) State Highway 17 between El Cerrito and San Rafael, inclusive over the Richmond-San Rafael Bridge; (3) Interstate Highway 80 between El Cerrito and Vallejo, inclusive; (4) Interstate Highway 680 between Vallejo and Martinez inclusive, over the Benicia-Martinez Bridge; (5) unnumbered road and route between Martinez and Pittsburg, inclusive; (6) unnumbered road and route between Pittsburg and Antioch, inclusive; (7) State Highway 4 between Antioch and the Willow Pass Road intersection, inclusive; (8) Willow Pass Road between the intersection of Highway 4 and the intersection of State Highway 24, inclusive;

(9) State Highway 4 between its intersection with Willow Pass Road and its intersection with Port Chicago Highway, inclusive; (10) unnumbered road and route between its intersection with State Highway 4 and its intersection with Interstate Highway 680, inclusive; (11) State Highway 4 between its intersection with Port Chicago Highway and its intersection with State Highway 24, inclusive; (12) State Highway 24 between its intersection with State Highway 4 and its intersection with Interstate Highway 680, inclusive; (13) Interstate Highway 680 between its intersection with State Highway 24 and its intersection with State Highway 238, inclusive; (14) State Highway 84 between Vallecito and its intersection with Interstate Highway 680, inclusive; (15) State Highway 238 between Mission San Jose and Warm Springs, inclusive; (16) unnumbered road and route between Warm Springs and Milpitas, inclusive; (17) unnumbered road and route between Milpitas and Evergreen, inclusive; (18) unnumbered road and route between Evergreen and the Capital Express Way intersection on State Highway 82, inclusive; (19) unnumbered road and route between its intersection with the Capital Express Way and its intersection with

Highway 17, inclusive; (20) State Highway 17 between its intersection at Blossom Hill Road and Los Gatos, inclusive; (21) State Highway 9 between Los Gatos and Saratoga, inclusive; (22) State Highway 85 between Saratoga and its intersection on Interstate Highway 280, inclusive; (23) Interstate 280 between its intersection with State Highway 85 and its intersection with State Highway 35, inclusive;

(24) Interstate Highway 35 between its intersection with Interstate 280 at San Bruno and its intersection with State Highway 1, inclusive; (C) through routes and rates may be established between any and all points specified in paragraphs A and B above, and (D) all intermediate points on said routes and all off-route points within the outer perimeters of the routes designated herein may be served. **SAN FRANCISCO—EAST BAY CARTAGE ZONE:** Beginning at the point where the San Francisco-San Mateo County boundary line meets the Pacific Ocean; thence easterly along said boundary line to Lake Merced Boulevard, thence southerly along said Lake Merced Boulevard and Lynnewood Drive to South Mayfair Avenue; thence westerly along said South Mayfair Avenue to Crestwood Drive; thence southerly along Crestwood Drive to Southgate Avenue; thence westerly along Southgate Avenue to Maddux Drive; thence southerly and easterly along Maddux Drive to a point 1 mile west of U.S. Highway 101; thence southeasterly along an imaginary line 1 mile west of and paralleling U.S. Highway 101 (El Camino Real) to its intersection with the southerly boundary line of the city of San Mateo; thence northeasterly, northwesterly, northerly and easterly along said southerly boundary to Bayshore Highway (U.S. 101 Bypass); thence leaving said boundary line and continuing easterly along the projection of last said course to its intersection with Belmont (or Angelo) Creek;

Thence northeasterly along Belmont (or Angelo) Creek to Seal Creek; thence westerly and northerly to a point 1 mile south of Toll Bridge Road; thence easterly along an imaginary line 1 mile southerly and paralleling Toll Bridge Road and San Mateo Bridge and Mount Eden Road to its intersection with State Sign Route 17; thence continuing easterly and northeasterly along an imaginary line 1 mile south and southeasterly of and paralleling Mount Eden Road and Jackson Road to its intersection with an imaginary line 1 mile easterly of and paralleling State Sign Route 9; thence northerly along said imaginary line 1 mile easterly of and paralleling State Sign Route 9 to its intersection with B Street, Hayward; thence easterly and northerly along B Street to Center Street; thence northerly along Center Street to Castro Valley Boulevard; thence westerly along Castro Valley Boulevard to Redwood Road; thence northerly along Redwood Road to William Street; thence westerly along William Street and 168th Avenue to Foothill Boulevard; northwesterly along Foothill Boulevard to the southerly boundary line of the

¹ Description follows.

city of Oakland; thence easterly and northerly along the Oakland boundary line to its intersection with the Alameda-Contra Costa County boundary line; thence northwesterly along last said line to its intersection with Arlington Avenue (Berkeley); thence northwesterly along Arlington Avenue to a point 1 mile northeasterly of San Pablo Avenue (Highway U.S. 40);

Thence northwesterly along an imaginary line 1 mile easterly of and paralleling San Pablo Avenue (U.S. Highway 40) to its intersection with County Road No. 20 (Contra Costa County); thence westerly along County Road No. 20 to Broadway Avenue (also known as Balboa Road); thence northerly along Broadway Avenue (also known as Balboa Road) to U.S. Highway 40; thence northerly along U.S. Highway 40 to Rivers Street; thence westerly along Rivers Street to 11th Street; thence northerly along 11th Street to Johns Avenue; thence westerly along Johns Avenue to Collins Avenue; thence northerly along Collins Avenue to

Morton Avenue; thence westerly along Morton Avenue to the Southern Pacific Co. right-of-way and continuing westerly along the prolongation of Morton Avenue to the shoreline of San Pablo Bay; thence southerly and westerly along the shoreline and waterfront of San Pablo Bay to Point San Pablo; thence southerly along an imaginary line from Point San Pablo to the San Francisco waterfront at the foot of Market Street; thence westerly along said waterfront and shoreline to the Pacific Ocean; thence southerly along the shoreline of the Pacific Ocean to the point of beginning.

The foregoing description includes the following points or portions thereof: Alameda, Alameda Pier, Albany, Baden, Bay Farm Island, Bayshore, Berkeley, Bernal, Brisbane, Broadway, Burlingame, Camp Knight, Castor Valley, Colma, Dale City, East Oakland, El Cerrito, Elkton, Elmhurst, Emeryville, Ferry Point, Fruitvale, Government Island, Hayward, Lawndale, Lomita Park, Melrose, Millbrae, Mills Field, Mount Eden, Oakland,

Oakland Municipal Airport, Oakland Pier, Ocean View, Piedmont, Point Castro, Point Fleming, Point Isabel, Point Molate, Point Orient, Point Potrero, Point Richmond, Point San Pablo, Richmond, Russell City, San Bruno, San Francisco, San Francisco International Airport, San Leandro, San Lorenzo, San Mateo, San Pablo, South San Francisco, Stege, Tanforan, Treasure Island, Union Park, Visitacion, Westlake, Winehaven, and Yerbe Buena Island. Both intrastate and interstate authority sought.

HEARING: Date, time, and place not shown. Requests for procedural information including the time for filing protests concerning this application should be addressed to the California Public Utilities Commission, State of California, State Building, Civic Center, 455 Golden Gate Avenue, San Francisco, CA 94102 and should not be directed to the Interstate Commerce Commission.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-18323 Filed 12-14-71;8:48 am]

CUMULATIVE LIST OF PARTS AFFECTED—DECEMBER

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 December.

3 CFR	Page	7 CFR—Continued	Page	7 CFR—Continued	Page
PROCLAMATIONS:		987.....	23137, 23793	PROPOSED RULES—Continued	
4095.....	23519	993.....	23355	1046.....	23222
4096.....	23521	1464.....	23355	1049.....	23222
4097.....	23717	PROPOSED RULES:		1050.....	23222
EXECUTIVE ORDERS:		15.....	23448	1060.....	23222
10865 (see EO 11633).....	23197	81.....	23728	1061.....	23222
11248 (amended by EO 11634).....	23287	722.....	23574	1062.....	23222
11359 (amended by EO 11635).....	23615	724.....	23221	1063.....	23222
11633.....	23197	812.....	23574	1064.....	23222
11634.....	23287	818.....	23069	1065.....	23222
11635.....	23615	846.....	23071	1068.....	23222
5 CFR		905.....	23575	1069.....	23222
213.....	22899, 23135, 23526	907.....	23821	1070.....	23222
550.....	23548	928.....	22985	1071.....	23222
733.....	23791	929.....	23072	1073.....	23222
2412.....	23353	932.....	23072, 23222	1075.....	23222
6 CFR		947.....	23728	1076.....	23222
201.....	23219	966.....	22831	1078.....	23222
7 CFR		967.....	23728	1079.....	23222
331.....	23353	971.....	23304	1090.....	23222
500.....	22807	982.....	23304	1094.....	23222
722.....	22966, 23523	987.....	22831	1096.....	23222
811.....	23791	1001.....	23222	1097.....	23222
845.....	23047	1002.....	23222	1098.....	23222
905.....	23353, 23354, 23617	1004.....	22831, 23222	1099.....	23222
906.....	23617	1006.....	23222	1101.....	23222
907.....	22975, 23289, 23354, 23719, 23792	1007.....	23222, 23223	1102.....	23222
910.....	22808, 23135, 23618, 23719	1011.....	23222	1103.....	23222
912.....	23048, 23135	1012.....	23222	1104.....	23222, 23821
913.....	22808	1013.....	23222	1106.....	23222, 23821
929.....	22808	1015.....	23222	1108.....	23222
944.....	23136	1030.....	23222	1120.....	23222
956.....	23719	1032.....	23222	1121.....	23222
971.....	23199	1033.....	23222	1124.....	23222
		1036.....	23222	1125.....	23222
		1040.....	23161, 23222	1126.....	23222
		1043.....	23222	1127.....	23222
		1044.....	23222	1128.....	23222

7 CFR—Continued**PROPOSED RULES—Continued**

1129	23222
1130	23222
1131	23222
1132	23222
1133	23222
1134	23222
1136	23222
1137	23222
1138	23222
1207	23393
1701	23394, 23630
1807	23306

8 CFR

235	23619
238	23619
245	23619
248	23619
316a	23619

9 CFR

76	23139, 23548
78	23199, 23793
97	23356
151	23356
201	23139
316	23720
318	23720
331	23721
445	22810, 23112
446	22810, 23112
447	22810, 23112

PROPOSED RULES:

11	23072
301	23161
307	23393
312	23161
318	23393
320	23393
327	23161

10 CFR

20	23138
----	-------

PROPOSED RULES:

4	23450
30	22848
40	22848
50	22848, 22851
70	22848
115	22848

12 CFR

2	22979
207	23619
220	23619
221	23619
226	22809
524	22979
525	22979
700	23794
701	23140
703	23048

PROPOSED RULES:

207	22855
220	22855
221	22855
222	23256
545	22992

13 CFR**PROPOSED RULES:**

107	23772
112	23452
113	23400
115	23401
120	23402
121	23401

14 CFR

25	23548
39	22809
	23048, 23140, 23200, 23301, 23302, 23357, 23549
71	22809
	22810, 23049, 23201, 23202, 23302, 23357, 23358, 23549, 23550, 23721, 23794-23796
73	23049, 23202, 23358, 23796
75	23202, 23358, 23359
97	23141, 23550
121	23050, 23552
135	23552
212	23141
214	23145
217	23050, 23146, 23721
218	23146
241	23051
243	23051

PROPOSED RULES:

39	23237
71	22846-22848, 23076, 23238, 23312, 23398, 23576-23579, 23633, 23729, 23730, 23829, 23830
73	23831
75	23202, 23358, 23359
93	23633
245	23312
373	23634
378	23634
379	23453
1250	23455

15 CFR

Ch. XI	23620
2001	23620
2002	23620
2003	23621

PROPOSED RULES:

8	23456
---	-------

16 CFR

1	22814
13	22815-22825
243	23796
502	23056
503	23058

17 CFR

1	22810
231	23289
241	23289, 23359
270	22900, 23623

PROPOSED RULES:

239	23256
240	22994
249	22994

18 CFR

35	23523
154	23523
260	23359
304	22901

PROPOSED RULES:

11	22854
101	22855
104	22855
105	22855
141	22855, 23163
154	22855
201	22855
204	22855
205	22855
250	23635
260	22855
302	23463

19 CFR

19	23149
24	23150
153	23360

20 CFR

404	23291, 23361
410	23752
614	22975

PROPOSED RULES:

405	22987
-----	-------

21 CFR

2	22826
8	23552
14	23150
17	23202
121	22827, 22900, 23150, 23202, 23291
125	23553
131	23292
135	22829, 23624
135a	22829
135c	23203
135e	23293, 23624
135g	22827, 23203
141	23204, 23293
141a	22827
144	23293
145	23205
146	23205
146a	22827
146b	22829
146c	22827
146e	22827
147	23205
148k	23152
150g	23205
191	23556, 23722
308	22830
312	23624

PROPOSED RULES:

3	23307
15	23074
17	23074
141	23236, 23307, 23312
141a	23236, 23307
141c	23307
141d	23307
141e	23307
146a	23307
146c	23307
146d	23307
146e	23307
148e	23307
148i	23307
148n	23307
148q	23307
148w	23236
304	23304

22 CFR	Page
PROPOSED RULES:	
141.....	23464
209.....	23466
24 CFR	
Ch. III.....	23799
1914.....	23214
1915.....	23215
PROPOSED RULES:	
1.....	23467
73.....	23631
501.....	23576
25 CFR	
PROPOSED RULES:	
221.....	23221
26 CFR	
25.....	22899
PROPOSED RULES:	
1.....	23163, 23805-23814
28 CFR	
PROPOSED RULES:	
42.....	23473
48.....	23630
29 CFR	
12.....	23361
520.....	22976
541.....	22976
657.....	23626
699.....	23226
1518.....	23207
1910.....	23207
PROPOSED RULES:	
31.....	23474
525.....	23235
30 CFR	
51.....	23366
52.....	23366
53.....	23366
75.....	23370, 23722
PROPOSED RULES:	
57.....	23392
75.....	23392
31 CFR	
15.....	23800
339.....	23856
PROPOSED RULES:	
223.....	22985
32 CFR	
44.....	23209
47.....	23296
67.....	23626
68.....	23627
100.....	23627
173.....	23800
190.....	23371
888e.....	23209
1600.....	23373
1602.....	23374
1603.....	23374
1604.....	23373, 23374
1606.....	23373
1609.....	23373
1611.....	23375
1613.....	23373
1617.....	23373, 23375
1619.....	23373
1621.....	23373, 23376
1622.....	23376

32 CFR—Continued	Page
1623.....	23378
1625.....	23378
1627.....	23379
1628.....	23380
1630.....	23381
1631.....	23381
1632.....	23383
1642.....	23383
1655.....	23383
1660.....	23383
PROPOSED RULES:	
300.....	23476
1704.....	23481
32A CFR	
PROPOSED RULES:	
Ch. X.....	23158
36 CFR	
7.....	23293-23296
272.....	23220
38 CFR	
2.....	23385
17.....	23385
PROPOSED RULES:	
18.....	23485
39 CFR	
134.....	23386, 23629
156.....	23216
601.....	23216
619.....	22811
40 CFR	
2.....	23058
54.....	23386
PROPOSED RULES:	
2.....	23077
61.....	23239
115.....	23398, 23399
41 CFR	
3-1.....	22979
3-16.....	23060
5A-1.....	23723
5A-7.....	23723
5A-16.....	23724
5A-72.....	23724
7-1.....	23556
7-8.....	23556
7-10.....	23557
7-16.....	23557
7-30.....	23561
9-1.....	23562
9-7.....	23562
9-53.....	23562
50-204.....	23217
60-2.....	23152
101-19.....	23302
101-26.....	23387, 23725
101-27.....	23387
114-25.....	22812
114-26.....	22812
114-47.....	22812
PROPOSED RULES:	
101-6.....	23488
101-19.....	23832
42 CFR	
78.....	23523

43 CFR	Page
PUBLIC LAND ORDERS:	
4582:	
Modified by PLO 5145.....	23157
Modified by PLO 5146.....	23338
4962:	
See PLO 5145.....	23157
See PLO 5146.....	23338
5081:	
See PLO 5145.....	23157
See PLO 5146.....	23338
5145.....	23157
5146.....	23338
PROPOSED RULES:	
17.....	23491
45 CFR	
640.....	23388
1068.....	23065
PROPOSED RULES:	
80.....	23494
611.....	23500
1010.....	23502
1110.....	23507
46 CFR	
10.....	23296
12.....	23296
146.....	23218
548.....	23524
PROPOSED RULES:	
281.....	23395
283.....	22839
351.....	23307
390.....	23395
542.....	23069
47 CFR	
0.....	23297
1.....	23390
15.....	23563
73.....	23565
81.....	23566
83.....	23566
89.....	23567, 23571
91.....	23567, 23571
93.....	23390, 23571
97.....	23298
PROPOSED RULES:	
0.....	23313
2.....	23313, 23322
15.....	23322
73.....	23077, 23078, 23322, 23399
49 CFR	
7.....	22812
397.....	23802
567.....	23571
571.....	22902, 23067, 23220, 23299, 23392, 23725, 23802
1033.....	23571, 23726, 23803
1034.....	23726
1061.....	23803
1062.....	23391
1270.....	23068
1271.....	23068
PROPOSED RULES:	
571.....	23831
1115.....	23833
1124.....	23636
1243.....	23078
1322.....	23638

FEDERAL REGISTER

50 CFR	Page
17-----	22813
28-----	23572
32-----	22814
33-----	22814,
	22983, 22984, 23157, 23220, 23300,
	23301, 23573, 23629, 23726, 23727,
	23804
PROPOSED RULES:	
240-----	22841
261-----	22986
276-----	22986
280-----	23630

LIST OF FEDERAL REGISTER PAGES AND DATES—DECEMBER

Pages	Date
22801-22894-----	Dec. 1
22895-23040-----	2
23041-23128-----	3
23129-23189-----	4
23191-23280-----	7
23281-23345-----	8
23347-23512-----	9
23513-23608-----	10
23609-23712-----	11
23713-23784-----	14
23785-23857-----	15

federal register

WEDNESDAY, DECEMBER 15, 1971
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PART II

DEPARTMENT OF THE TREASURY

Fiscal Service



**U.S. SAVINGS BONDS,
SERIES H**

Exchange Offering

Title 31—MONEY AND FINANCE: TREASURY

Chapter II—Fiscal Service, Department of the Treasury

SUBCHAPTER B—BUREAU OF THE PUBLIC DEBT

PART 339—EXCHANGE OFFERING OF U.S. SAVINGS BONDS, SERIES H

The regulations set forth in Treasury Department Circular No. 1036, dated December 31, 1959, as amended (31 CFR Part 339), are hereby further revised and amended, and issued as the first revision, effective January 1, 1972, as follows:

- Sec.
- 339.0 Offering of Series H bonds in exchange for Series E bonds and savings notes.
- 339.1 Definitions of words and terms as used in this circular.
- 339.2 Denominations.
- 339.3 Exchanges with privilege of deferring reporting of interest for Federal income tax purposes.
- 339.4 Exchanges without tax deferral.
- 339.5 Governing regulations.
- 339.6 Fiscal agents.
- 339.7 Preservation of rights.
- 339.8 Reservation as to terms of offer.

AUTHORITY: The provisions of this Part 339 issued under sections 18, 20, and 22 of the Second Liberty Bond Act, as amended (40 Stat. 1309, 48 Stat. 343, 49 Stat. 21, 73 Stat. 621, all as amended; 31 U.S.C. 753, 754b, 757c), and 5 U.S.C. 301.

§ 339.0 Offering of Series H bonds in exchange for Series E bonds and savings notes.

The Secretary of the Treasury, pursuant to the authority of the Second Liberty Bond Act, as amended, hereby offers to the people of the United States, U.S. Savings Bonds of Series H in exchange for outstanding U.S. Savings Bonds of Series E and U.S. Savings Notes (freedom shares) without regard to the annual limitation on holdings for the Series H bonds. The Series H bonds offered hereunder are those described in Department Circular No. 905, current revision, except as otherwise specifically provided herein. This offering will continue until terminated by the Secretary of the Treasury.

§ 339.1 Definitions of words and terms as used in this circular.

Unless the context otherwise requires or indicates:

(a) "Securities" mean outstanding U.S. Savings Bonds of Series E and U.S. Savings Notes (freedom shares).

(b) "Owner" means an owner of securities, except a commercial bank in its own right (as distinguished from a representative or fiduciary capacity) and a nonresident alien who is a resident of an area with respect to which the Treasury Department restricts or regulates delivery of checks drawn against funds of the United States or any agency or instrumentality thereof. The term includes a registered owner, whether or not a

natural person, either coowner (but only the "principal coowner" if Series H bonds are requested in a form of registration different from that on the securities submitted), a surviving beneficiary, or any other person who would be entitled to reissue under the regulation governing U.S. Savings Bonds,¹ such as, but not limited to, any person entitled to succeed to the estate of a deceased owner.

(c) "Commercial bank" means a bank accepting demand deposits.

(d) "Interest" means the increment in value on Series E savings bonds and on savings notes.

(e) "Principal coowner" means a coowner who purchased the securities submitted for exchange with his own funds or received them as a gift, legacy or inheritance or as a result of judicial proceedings and had them reissued in coownership form, provided he has received no contribution in money or money's worth from the other coowner for designating him on the securities.

§ 339.2 Denominations.

Series H bonds, available for use hereunder, are in denominations of \$500, \$1,000, \$5,000 and \$10,000.

§ 339.3 Exchanges with privilege of deferring reporting of interest for Federal income tax purposes.

(a) *Tax-deferred exchanges.* Pursuant to the provisions of section 1037(a) of the Internal Revenue Code of 1954, the Secretary of the Treasury hereby grants to owners who have not been reporting the interest on their securities on an accrual basis for Federal income tax purposes the privilege of exchanging such securities for Series H bonds and of continuing to defer reporting of the interest on the securities exchanged (except interest referred to in paragraph (b) (5) of this section) for Federal income tax purposes to the taxable year in which the Series H bonds received in exchange are disposed of, are redeemed, or have reached final maturity, whichever is earlier.²

(b) *Rules governing the exchange.* (1) Exchange subscription Form PD 3253, completed and executed in accordance with the instructions thereon, the securities, any cash difference (see subparagraph (3) of this paragraph), and any supporting evidence which may be required under the governing regulations³

¹ Department Circular No. 530, current revision (31 CFR Part 315). Copies may be obtained from any Federal Reserve Bank or Branch or the Bureau of the Public Debt, Washington, D.C. 20220.

² The interest paid semiannually by check on all Series H bonds, whether issued in exchange under this or any other section, or otherwise, is subject to the Federal income tax for the taxable year in which it is received.

³ For example, a beneficiary named on Series E bonds would have to submit proof of the death of the registered owner in order to exchange such bonds for Series H bonds.

may be presented or forwarded to any authorized agency.⁴

(2) A Series H bond issued upon exchange will be registered in the name of the owner of the securities submitted in any authorized form of registration. However, the "principal coowner" must be named as owner or coowner.

(3) The total current redemption value of the securities submitted for exchange in any one transaction must amount to \$500 or more. If the total current redemption value is in an even multiple of \$500, Series H bonds must be requested in that exact amount. If the total current redemption value exceeds \$500, but is not in an even multiple of \$500, the owner has the option of furnishing cash necessary to obtain Series H bonds of the next higher \$500 multiple, or of receiving payment of the difference between the total current redemption value and the next lower multiple of \$500. For example, under the rules prescribed in this circular, if the securities submitted for exchange in one transaction total \$4,253.33 current redemption value, the owner may elect to:

(i) Receive \$4,000 in Series H bonds and the amount of the difference, \$253.33, or

(ii) Pay the difference, \$246.67, necessary to obtain \$4,500 in Series H bonds.⁵

(4) Any amount paid to the owner as a cash adjustment (as in subparagraph (3) (i) of this paragraph) must be treated as income for Federal income tax purposes for the year in which it is received up to an amount not in excess of the total interest on the securities exchanged.⁶

(5) Each Series H bond issued under this section will be stamped "EX" or "EXCH" to show that it was issued upon exchange. Each bond also will bear a legend showing how much of its issue price represents interest on the securities exchanged. This interest must be treated

⁴ Agents authorized to pay Series E bonds and savings notes are authorized to accept and handle exchange subscriptions submitted by natural persons whose names are inscribed on the face of the bonds and notes as owners or coowners in their own right. However, as agents of subscribers they may forward any exchange subscription to a Federal Reserve Bank or Branch or the Securities Division, Office of the Treasurer of the United States, Washington, D.C. 20220, for acceptance and handling.

⁵ If a paying agent accepts a subscription solely for the purpose of forwarding it, or if the owner forwards it direct, to a Federal Reserve Bank or Branch or to the Office of the Treasurer of the United States, the remittance for the difference, by check or other form of exchange (which will be accepted subject to collection), must be drawn to the order of the Federal Reserve Bank or the Treasurer of the United States, as the case may be. The remittance must accompany the subscription and the securities to be exchanged.

⁶ The amount, if any, paid to the owner in excess of the interest is a repayment on account of the purchase price of the securities exchanged, not income.

as income for Federal income tax purposes for the year in which the Series H bond is redeemed, is disposed of, or finally matures, whichever is earlier.

(6) The Series H bonds will be dated as of the first day of the month in which the securities, the exchange subscription, any necessary cash difference and supporting evidence, if any, are accepted for exchange by an authorized agency.

§ 339.4 Exchanges without tax deferral.

Exchanges by owners who (a) report the interest on all of their securities annually for Federal income tax purposes, or (b) who elect to report all such interest in the year of the exchange, or (c) who are tax-exempt under the provisions of the Internal Revenue Code of 1954 and the regulations issued thereunder, will be handled in the same manner and will be governed by the rules prescribed for exchanges under § 339.3. However, the Series H bonds will not bear the legend referred to in § 339.3(c)(5). Any part of the cash adjustment received which represents interest previously reported for Federal income tax purposes need not be accounted for. The Series H bonds may be registered in the name of the owner of the securities submitted in

exchange in any authorized form of registration.

§ 339.5 Governing regulations.

All Series H bonds issued under this circular are subject to the regulations, now or hereafter prescribed, contained in Department Circular No. 530, current revision (Part 315 of this chapter).

§ 339.6 Fiscal agents.

Federal Reserve Banks and Branches, as fiscal agents of the United States, are authorized to perform such services as may be requested of them in connection with exchanges under these regulations.

§ 339.7 Preservation of rights.

The provisions of Treasury Department Circulars Nos. 530, 653, and 905, as currently revised, are hereby modified and amended to the extent that they are not in accordance with this circular. However, nothing contained herein shall limit or restrict rights which owners of Series H bonds received in earlier exchanges have heretofore acquired.

§ 339.8 Reservation as to terms of offer.

The Secretary of the Treasury reserves the right to reject any exchange sub-

scription for Series H bonds, in whole or in part, and to refuse to issue or permit to be issued hereunder any such bonds in any case or any class or classes of cases if he deems such action to be in the public interest, and his action in any such respect shall be final.

The foregoing revision and amendment is made for the purpose of granting to owners of savings notes the same privilege afforded owners of Series E savings bonds for exchanging their securities for Series H bonds with or without tax deferral. As good cause exists for making this change, which involves public property and contracts relating to the fiscal and monetary affairs of the United States, I find that notice and public procedures are unnecessary. This action is effected under the provisions of sections 18, 20, and 22 of the Second Liberty Bond Act, as amended (40 Stat. 1309, 48 Stat. 343, 49 Stat. 21, 73 Stat. 621, all as amended; 31 U.S.C. 753, 754b, 757c), and 5 U.S.C. 301.

Dated: December 7, 1971.

[SEAL]

JOHN K. CARLOCK,
Fiscal Assistant Secretary.

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