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Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 14H—Bureau of Indian Affairs, Department of the Interior

PART 14H-1—GENERAL

Designation of Contracting Officer Positions

DECEMBER 9, 1971.

Chapter 14H of Title 41 of the Code of Federal Regulations was published beginning on page 13659 of the August 26, 1969, issue of the FEDERAL REGISTER (34 F.R. 13659). Chapter 14H contains the Bureau of Indian Affairs' Procurement Regulations (BIAPR). Section 14H-1.451-2 of Chapter 14H was subsequently amended on page 12619 of the July 2, 1971, FEDERAL REGISTER (36 F.R. 12619) and on page 14267 of the August 3, 1971, FEDERAL REGISTER (36 F.R. 14267).

Pursuant to the authority contained in the Act of November 2, 1921, Ch. 115, 42 Stat. 208 (25 U.S.C. 13) and 41 CFR 14-1.008, § 14H-1.451-2(a)(1) of 41 CFR 14H is being amended to reflect a recent reorganization of the Bureau's headquarters office. The position of Associate Commissioner for Support Services has been eliminated and the contracting functions which previously came under the Director of Operating Services are now under the Director of Administrative Services.

Since this amendment involves internal Bureau procedures, advance notice and public procedure thereon have been deemed unnecessary and are dispensed with under the exception provided in subsection (b)(B) of 5 U.S.C. 553 (1970).

Since delay in the amendment becoming effective could delay the internal processing of contracts in the Bureau with resultant delay in providing services to Indian people, the 30-day deferred effective date is dispensed with under the exception provided in subsection (d)(3) of 5 U.S.C. 553 (1970). Accordingly, these regulations will become effective upon the date of publication in the FEDERAL REGISTER (12-16-71).

As amended, § 14H-1.451-2(a)(1) of 41 CFR 14H reads as follows:

§ 14H-1.451-2 Designation of contracting officer positions.

(a) Each of the following organizational titles are designated as contracting officer positions.

(1) Headquarters Office Officials:

(i) Deputy Commissioner.

(ii) Director of Administrative Services.

(iii) Deputy Director of Administrative Services.

(iv) Chief, Division of Contracting Services.

(v) Engineering Contract Adviser.

(vi) Chief, Division of Plant Design and Construction, Albuquerque, N. Mex.

(vii) Chief, Plant Management Engineering Center, Denver, Colo.

(viii) Property and Supply Officer, Albuquerque Property and Supply Office, Albuquerque, N. Mex.

* * * * *

JOHN O. CROW,
Deputy Commissioner.

[FR Doc.71-18352 Filed 12-15-71;8:45 am]

Title 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice

MISCELLANEOUS AMENDMENTS TO CHAPTER

The following amendments to Chapter I of Title 8 of the Code of Federal Regulations are hereby prescribed:

PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

The heading and the first sentence of subparagraph (3) of paragraph (d) *Evidence required to accompany petition for orphan* of § 204.2 *Documents* are amended to read as follows:

* * * * *

§ 204.2 Documents.

* * * * *

(d) * * *

(3) *Beneficiary whose adoption abroad not deemed valid or who is adopted abroad without having been seen and observed.* An orphan whose adoption abroad is determined by the Service to be invalid for benefits under the immigration or nationality laws, or who is adopted abroad without having been personally seen and observed by the petitioning husband and wife prior to or during the adoption proceedings, shall be processed as a child coming to the United States for adoption. * * *

PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

§ 211.1 [Amended]

The first sentence of subparagraph (1) *Form I-151, Alien Registration Receipt Card* of paragraph (b) *Aliens returning to an unrelinquished lawful permanent residence* of § 211.1 *Visas* is amended to read as follows: "In lieu of an immigrant visa, an immigrant alien returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad not exceeding 1 year may present Form I-151, Alien Registration Receipt Card, duly issued to him: *Provided*, That during such absence he did not travel to, in, or through any of the following places: Cuba and Communist portions of Korea or Viet-Nam, and, except for children who have not attained the age of 16 at the time they apply for admission into the United States, Albania, Bulgaria, Czechoslovakia, Estonia, Hungary, Latvia, Lithuania, Outer Mongolia, People's Republic of China, Poland, Romania, the Soviet Zone of Germany ("German Democratic Republic"), the Union of Soviet Socialist Republics, or Yugoslavia."

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

§ 212.1 [Amended]

The second sentence of subparagraph (1) *Transit without visa* of paragraph (e) *Direct transit* of § 212.1 *Documentary requirements for nonimmigrants* is amended to read as follows: "This waiver of visa and passport requirements is not available to an alien who is a citizen of Cuba, North Korea ("Democratic People's Republic of Korea"), North Viet-Nam ("Democratic Republic of Viet-Nam"), or the Soviet Zone of Germany ("German Democratic Republic") and is a resident of one of said countries, and is, on a basis of reciprocity, available to a national of Albania, Bulgaria, Czechoslovakia, Estonia, Hungary, Latvia, Lithuania, Outer Mongolia ("Mongolian People's Republic"), People's Republic of China, Poland, Romania, or the Union of Soviet Socialist Republics resident in one of said countries, only if he is transiting the United States by aircraft of a transportation line signatory to an agreement with the Service on Form I-426 on a direct through flight which will depart directly to a foreign place from the port of arrival."

PART 214—NONIMMIGRANT CLASSES

§ 214.2 [Amended]

Paragraph (e) *Traders and investors* of § 214.2 *Special requirements for admission, extension, and maintenance of*

status is amended by adding at the end thereof the following four sentences: "A trader or investor may change from one employer to another only if his request for permission to do so has first been approved by the district director having jurisdiction over his residence. The request shall be supported by evidence that the requester would still be classifiable as a trader or investor in the new employment. When a request by a treaty trader or investor to transfer to another employer is granted, a Service officer shall make a notation on the reverse of the alien's Form I-94 reading 'Employment by (name of new employer) authorized,' followed by the date of the authorization. Any unauthorized change to a new employer shall constitute a failure to maintain status within the meaning of section 241(a)(9) of the Act."

PART 238—CONTRACTS WITH TRANSPORTATION LINES

§ 238.3 [Amended]

1. The listing of transportation lines in paragraph (b) *Signatory lines* of § 238.3 *Aliens in immediate and continuous transit* is amended by adding the following transportation lines in alphabetical sequence: "Nauru Pacific Line," and "Universal Airlines, Inc."

§ 238.4 [Amended]

2. The listing of transportation lines under "At Montreal" of § 238.4 *Preinspection outside the United States* is amended by adding the following transportation line in alphabetical sequence: "Eastern Provincial Airways (1963) Limited."

3. The listing of transportation lines under "At Toronto" of § 238.4 *Preinspection outside the United States* is amended by adding the following transportation line in alphabetical sequence: "Eastern Provincial Airways (1963) Limited."

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

§ 245.4 [Amended]

The first and second sentences of § 245.4 *Adjustment of status of aliens within the proviso to section 203(a)(7) of the Act* are amended to read as follows: "The provisions of section 245 of the Act or section 1 of the Act of November 2, 1966, and of this part, shall govern the adjustment of status provided for in the proviso to section 203(a)(7) of the Act. An applicant for adjustment of status under section 245 of the Act who claims he is entitled to a preference status pursuant to section 203(a)(7) of the Act shall execute and attach to his application for adjustment a Form I-590A, Application for Classification as a Refugee under the proviso to section 203(a)(7), Immigration and Nationality Act."

(Sec. 103, 66 Stat. 173; 8 U.S.C. 1103)

This order shall be effective on the date of its publication in the FEDERAL REGISTER (12-16-71). Compliance with the provisions of section 553 of title 5 of the United States Code (80 Stat. 383), as to notice of proposed rule making and delayed effective date, is unnecessary in this instance and would serve no useful purpose because the amendments to §§ 204.2(d)(3) and 245.4 relate to agency procedure; the amendments to §§ 211.1(b)(1) and 212.1(e)(1) are editorial in nature and conform to Department of State regulations published November 20, 1971 (36 F.R. 22153); the amendment to § 214.2(e) confers benefits on persons affected thereby and relates to agency procedure; and the amendments to §§ 238.3(b) and 238.4 add transportation lines to the listings.

Dated: December 10, 1971.

RAYMOND F. FARRELL,
Commissioner of Immigration and Naturalization.

[FR Doc.71-18376 Filed 12-15-71;8:47 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 11586; Amdt. 39-1361]

PART 39—AIRWORTHINESS DIRECTIVES

British Aircraft Corp. Model BAC 1-11 200 and 400 Series Airplanes

Amendment 39-1248 (36 F.R. 13370, July 21, 1971), AD 71-15-2 applies to British Aircraft Corporation Model BAC 1-11 200 and 400 series airplanes. It requires the modification of the flight deck roof panel "E" installation and the flight deck panel lighting electrical system in accordance with appropriate sections of the British Aircraft Corp. Service Bulletin No. 33 PM-4477, dated March 30, 1970. The AD requires that the modification be performed within 1,400 hours time in service after its effective date, July 26, 1971. Subsequent to the issuance of the AD, the FAA has been advised that a number of modification kits delivered to the operators of the airplane did not contain the required circuit breakers. The FAA has determined that the manufacturer's delivery date for those circuit breakers is beyond the time period allowed in the AD for compliance, and that an insufficient number of complete kits exist for all operators to comply with the AD within the allowed time period. In view of the foregoing and upon further review, the FAA has determined that extending the compliance time from 1,400 hours to 2,300 hours will not adversely affect safety, and the AD is being amended accordingly.

Since this amendment grants relief by extending the compliance date of a requirement and imposes no additional burden on any person, notice and public procedure thereon are unnecessary and the amendment may be made effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (14 CFR 11.89), § 39.13 of Part 39 of the Federal Aviation Regulations, Amendment 39-1248 (36 F.R. 13370, July 21, 1971), AD 71-15-2, is amended as follows:

By amending the first paragraph by striking out the number "1,400" and inserting the number "2,300" in place thereof.

This amendment becomes effective December 21, 1971.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

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

R. S. SLIFF,
Acting Director, Flight Standards Service.

[FR Doc.71-18357 Filed 12-15-71;8:45 am]

[Airworthiness Docket No. 71-WE-20-AD, Amdt. 39-1359]

PART 39—AIRWORTHINESS DIRECTIVES

Hughes Model 269A, 269A-1, and 269B Helicopters

Amendment 39-1301 (36 F.R. 19114), AD-71-20-5, at paragraph (a), contained an incorrect Part Number for the aluminum idler pulley shaft that is to be removed. The correct Hughes part number is 269A5440.

Since this amendment changes an incorrect part number and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 F.R. 13697), § 39.13 of Part 39 of the Federal Aviation Regulations, Amendment 39-1301 (36 F.R. 19114) AD-71-20-5, is amended as follows:

Amending paragraph (a), at line 3, to reflect the aluminum idler pulley shaft part number as P/N 269A5440.

This amendment becomes effective December 18, 1971.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Los Angeles, Calif., on December 8, 1971.

ROBERT O. BLANCHARD,
Acting Director,
FAA Western Region.

[FR Doc.71-18356 Filed 12-15-71;8:45 am]

[Docket No. 11583; Amdt. No. 787]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Amendments

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

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

SIAPs are available for examination at the Rules Docket and at the National Flight Data Center, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. Copies of SIAPs adopted in a particular region are also available for examination at the headquarters of that region. Individual copies of SIAPs may be purchased from the FAA Public Document Inspection Facility, HQ-405, 800 Independence Avenue SW., Washington, DC, 20591, or from the applicable FAA regional office in accordance with the fee schedule prescribed in 49 CFR 7.85. This fee is payable in advance and may be paid by check, draft, or postal money order payable to the Treasurer of the United States. A weekly transmittal of all SIAP changes and additions may be obtained by subscription at an annual rate of $125 per annum from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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

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

1. Section 97.11 is amended by establishing, revising, or canceling the following L/MF-ADF(NDB)-VOR SIAPs, effective January 13, 1972.

Miles City, Mont.—Miles City Airport; VOR/DME #1, Amdt. 6; Canceled.

2. Section 97.13 is amended by establishing, revising, or canceling the following Ter VOR SIAPs, effective January 13, 1972.

Groton, Conn.—Trumbull Airport; TerVOR (R-216), Amdt. 2; Canceled.

3. Section 97.23 is amended by establishing, revising, or canceling the following VOR-VOR/DME SIAPs, effective January 13, 1972.

Beckley, W. Va.—Raleigh County Memorial Airport; VOR Runway 10, Amdt. 5; Revised.
Bellingham, Wash.—Bellingham Municipal Airport; VOR 1 Runway 16, Amdt. 1; Revised.
Bellingham, Wash.—Bellingham Municipal Airport; VOR 2 Runway 16, Amdt. 1; Revised.
East Hartford, Conn.—Rentschler Airport; VOR Runway 36, Amdt. 3; Revised.
Ephrata, Wash.—Ephrata Municipal Airport; VOR Runway 20, Amdt. 14; Revised.
Eugene, Oreg.—Mahlon-Sweet Field; VOR-A, Amdt. 1; Revised.
Fishers Island, N.Y.—Elizabeth Field; VOR-A, Amdt. 1; Revised.
Groton, Conn.—Trumbull Airport; VOR Runway 5, Original; Established.
Groton, Conn.—Trumbull Airport; VOR Runway 23, Amdt. 2; Revised.
Miles City, Mont.—Miles City Airport; VOR Runway 4, Amdt. 9; Revised.
Ogden, Utah—Ogden Municipal Airport; VOR Runway 7, Amdt. 14; Revised.
Portland, Oreg.—Portland International Airport; VOR A, Amdt. 6; Revised.
Bellingham, Wash.—Bellingham Municipal Airport; VOR/DME A, Amdt. 1; Revised.
Eugene, Oreg.—Mahlon-Sweet Field; VOR/DME Runway 16, Amdt. 2; Revised.
Eugene, Oreg.—Mahlon-Sweet Field; VOR/DME Runway 34, Amdt. 3; Revised.
Klamath Falls, Oreg.—Kingsley Field; VOR TAC Runway 14, Amdt. 1; Revised.
Klamath Falls, Oreg.—Kingsley Field; VOR TAC Runway 32, Amdt. 1; Revised.
Lynchburg, Va.—Lynchburg Municipal Preston Glenn Field; VOR/DME Runway 21, Amdt. 4; Revised.
Miles City, Mont.—Miles City Airport; VOR/DME Runway 22, Amdt. 6; Revised.

4. Section 97.25 is amended by establishing, revising, or canceling the following SDF-LOC-LDA SIAPs effective January 13, 1972.

Denver, Colo.—Stapleton International Airport; LOC (BC) Runway 8R, Amdt. 7; Revised.
Denver, Colo.—Stapleton International Airport; LOC (BC) Runway 17, Amdt. 8; Revised.
DuBois, Pa.—DuBois-Jefferson County Airport; LOC Runway 25, Amdt. 1; Revised.
Klamath Falls, Oreg.—Kingsley Field; LOC/DME Runway 32, Amdt. 1; Revised.

5. Section 97.27 is amended by establishing, revising, or canceling the following NDB/ADF SIAPs, effective January 13, 1972.

Caldwell, N.J.—Caldwell-Wright Airport; NDB Runway 22, Original; Established.
Caldwell, N.J.—Caldwell-Wright Airport; NDB (ADF) Runway 27, Amdt. 1; Canceled.
Denver, Colo.—Stapleton International Airport; NDB Runway 26L, Amdt. 30; Revised.
DuBois, Pa.—DuBois-Jefferson County Airport; NDB Runway 25, Amdt. 1; Revised.
Eugene, Oreg.—Mahlon-Sweet Field; NDB Runway 16, Amdt. 20; Revised.
Klamath Falls, Oreg.—Kingsley Field; NDB-A, Amdt. 2; Revised.
Miles City, Mont.—Miles City Airport; NDB Runway 4, Amdt. 3; Revised.
Natchitoches, La.—Natchitoches Municipal Airport; NDB Runway 34, Original; Established.

6. Section 97.29 is amended by establishing, revising, or canceling the following ILS SIAPs, effective January 13, 1972.

Denver, Colo.—Stapleton International Airport; ILS Runway 26L, Amdt. 33; Revised.
Denver, Colo.—Stapleton International Airport; ILS Runway 35, Amdt. 11; Revised.
Eugene, Oreg.—Mahlon-Sweet Field; ILS Runway 16, Amdt. 24; Revised.
Groton, Conn.—Trumbull Airport; ILS Runway 5, Original; Established.
Klamath Falls, Oreg.—Kingsley Field; ILS Runway 32, Amdt. 12; Revised.
Lexington, Ky.—Blue Grass Airport; ILS Runway 4, Amdt. 2; Revised.
New York, N.Y.—John F. Kennedy International Airport; ILS Runway 31L, Original; Established.
Pittsburgh, Pa.—Greater Pittsburgh Airport; ILS Runway 10L, Amdt. 12; Revised.
Tuscaloosa, Ala.—Van DeGraaff Airport; ILS Runway 4, Original; Established.

7. Section 97.33 is amended by establishing, revising, or canceling the following RNAV SIAPs, effective January 13, 1972.

Albuquerque, N. Mex.—Albuquerque International Airport; RNAV Runway 8, Amdt. 1; Revised.
Amarillo, Tex.—Tradewind Airport; RNAV Runway 35, Amdt. 1; Revised.
Brunswick, Ga.—Malcolm-McKinnon Airport; RNAV Runway 22, Original; Established.
Indianapolis, Ind.—Indianapolis Municipal-Weir Cook Airport; RNAV Runway 4L, Original; Established.
Minneapolis, Minn.—Minneapolis-St. Paul International/Wold Chamberlain Airport; RNAV Runway 29R, Original; Established.
Montgomery, Ala.—Dannelly Field; RNAV Runway 3, Original; Established.
Muskegon, Mich.—Muskegon County Airport; RNAV Runway 14, Amdt. 1; Revised.
Oklahoma City, Okla.—Will Rogers World Airport; RNAV Runway 12, Amdt. 1; Revised.
Oklahoma City, Okla.—Will Rogers World Airport; RNAV Runway 17L, Amdt. 1; Revised.
Philadelphia, Pa.—Philadelphia International Airport; RNAV Runway 35, Amdt. 1; Revised.
Salina, Kans.—Salina Municipal Airport; RNAV Runway 17, Original; Established.
Salisbury, Md.—Salisbury-Wicomico County Airport; RNAV Runway 4, Original; Established.
Salisbury, Md.—Salisbury-Wicomico County Airport; RNAV Runway 22, Original; Established.
White Plains, N.Y.—Westchester County Airport; RNAV Runway 34, Original; Established.

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

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

R. S. SLIFF,
Acting Director,
Flight Standards Service.

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

[FR Doc.71-18289 Filed 12-15-71;8:49 am]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

SUBCHAPTER A—PROCEDURES AND RULES OF PRACTICE

[Dockets Nos. C-2080—C-2093]

PART 13—PROHIBITED TRADE PRACTICES

Brooklyn Art Publishing Co., Inc., et al.

Subpart—Furnishing means and instrumentalities of misrepresentation or deception: § 13.1055-50 *Preticketing merchandise misleadingly.* Subpart—Misrepresenting oneself and goods—Prices: § 13.1811 *Fictitious preticketing.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist orders, Brooklyn Art Publishing Co., Inc., et al., New York, N.Y. Dockets Nos. C-2080—C-2093, Nov. 12, 1971]

In the Matter of Brooklyn Art Publishing Co., Inc., a Corporation, and Milton Goldman, Individually and as an Officer of Said Corporation, and the Other Respondents Named in Appendix A

Consent orders, 14 identical cease and desist orders, requiring producers of greeting cards to cease preticketing their merchandise with fictitious prices or furnishing others the means to mislead the purchasing public as to the retail prices of respondents' products. Respondents named in Appendix A attached hereto, Dockets Nos. C-2080 through C-2093.

The orders to cease and desist, including further order requiring reports of compliance therewith, are as follows:

It is ordered, That each respondent named in Appendix A, a corporation, its officers, agents, representatives, and corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of greeting cards or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Disseminating or distributing any purported retail price or preticketing merchandise with any stated price amount unless (a) it is respondents' bona fide estimate of the actual retail price of the product in the area where respondents do business and (b) it does not appreciably exceed the highest price at which substantial sales of said product are made in said trade area.

2. Misrepresenting, in any manner, the prices at which respondents' merchandise is sold at retail.

3. Furnishing to others any means or instrumentalities whereby the purchasing public may be misled or deceived as to the retail prices of respondents' products.

It is further ordered, That each respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Issued: November 12, 1971.

By the Commission.

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

APPENDIX A

Following is a list of the 14 respondents named in cease and desist orders:

(C-2080) Brooklyn Art Publishing Co., Inc., et al., 43-47 West 23d Street, New York, NY.
(C-2081) Doehla Greeting Cards, Inc., 1 Myrtle Street, Nashua, NH.
(C-2082) Artis Publishers, Inc., et al., 42 Greene Street, New York, NY.
(C-2083) Metropolitan Greetings, Inc., et al., 167 Bow Street, Everett, MA.
(C-2084) Plastichrome Greetings, Inc., 76 Atherton Street, Boston, MA.
(C-2085) Papercraft Corp., Papercraft Park, Pittsburgh, Pa.
(C-2086) Hawthorne-Sommerfield, Inc., et al., Jackson and Center Streets, Freehold, NJ.
(C-2087) George S. Carrington Co. et al., Industrial Road, Leominster, Mass.
(C-2088) White Card Corp., 369 Congress Street, Boston, MA.
(C-2089) Charmcraft Publishers, Inc., et al., 33 35th Street, Brooklyn, NY.
(C-2090) H. S. Crocker Co., Inc., et al., 1000 San Mateo, San Bruno, CA.
(C-2091) Cameo Greeting Cards, Inc., et al., 3431 West Irving Park Road, Chicago, IL.
(C-2092) Manhattan Greeting Card Co., Inc., et al., 657 Broadway, New York, NY.
(C-2093) Artistic Greetings, Inc., et al., 1575 Lake, Elmira, NY.

[FR Doc.71-18403 Filed 12-15-71;8:50 am]

[Docket No. C-2094]

PART 13—PROHIBITED TRADE PRACTICES

George W. Prindle and Allapattah Motors

Subpart—Advertising falsely or misleadingly: § 13.71 *Financing:* 13.71-10 Truth in Lending Act; § 13.73 *Formal regulatory and statutory requirements:* 13.73-92 Truth in Lending Act; § 13.155 *Prices:* 13.155-95 Terms and conditions: 13.155-95(a) Truth in Lending Act. Subpart—Misrepresenting oneself and goods—Goods: § 13.1623 *Formal regulatory and statutory requirements:* 13.1623-95 Truth in Lending Act; Misrepresenting oneself and goods—Prices: § 13.1823 *Terms and conditions:* 13.-1823-20 Truth in Lending Act. Subpart—Neglecting, unfairly, or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* 13.1852-75 Truth in Lending Act; § 13.1905 *Terms and conditions:* 13.1905-60 Truth in Lending Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, 82 Stat. 146, 147; 15 U.S.C. 45, 1601-1605) [Cease and desist order, George W. Prindle et al., Miami, Fla., Docket No. C-2094, Nov. 12, 1971]

In the Matter of George W. Prindle, Individually and Doing Business as Allapattah Motors

Consent order requiring a Miami, Fla., seller and distributor of used automobiles to cease violating the Truth in Lending Act by failing to use the following terms in credit transactions, cash price, cash down payment, total downpayment, unpaid balance of cash price, deferred payment price, annual percentage rate, total of payments and all other disclosures required by Regulation Z of said Act.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That the respondent George W. Prindle, individually and trading as Allapattah Motors or under any other business name or trade style, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with any extension of consumer credit, or any advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR Part 226) of the Truth in Lending Act (Public Law 90-321, 15 U.S.C. 1601, et seq.), do forthwith cease and desist from:

1. Failing to use the term "cash price" to describe the price at which respondent, in the regular course of business, offers to sell for cash the property or services which are the subject of the credit sale, as required by § 226.8(c)(1) of Regulation Z.

2. Failing to disclose the sum of the cash downpayment and the trade-in and to describe that sum as the "total downpayment," as required by § 226.8(c)(2) of Regulation Z.

3. Failing to use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment, as required by § 226.8(c)(3) of Regulation Z.

4. Failing to use the term "amount financed" to describe the amount of credit extended, as required by § 226.8(c)(7) of Regulation Z.

5. Failing to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge and to describe that sum as the "deferred payment price," as required by § 226.8(c)(8)(ii) of Regulation Z.

6. Failing to use the term "annual percentage rate" to describe the rate of the finance charge, in accordance with § 226.5 of Regulation Z, as required by § 226.8(b)(2) of Regulation Z.

7. Failing to print the term "finance charge" and "annual percentage rate" more conspicuously than the other required terminology, as required by § 226.6(a) of Regulation Z.

8. Failing to use the term "total of payments" to describe the sum of payments scheduled to repay the indebtedness, as required by § 226.8(b)(3) of Regulation Z.

9. Failing to identify the method of computing any unearned portion of the

finance charge in the event of prepayment of the obligation and failing to state whether the acquisition fee which respondent will deduct before rebating the unearned portion of the finance charge will be deducted from the finance charge before or after computing the unearned portion thereof, as required by § 226.8(b)(7) of Regulation Z.

10. Failing, in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with §§ 226.4 and 226.5 of Regulation Z, in the manner, form and amount required by §§ 226.6, 226.8, and 226.10 of Regulation Z.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in the consummation of any extension of consumer credit and that respondent secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in respondent's business organization such as dissolution; assignment or sale resulting in the emergence of a successor business, corporate or otherwise; the creation of subsidiaries; any change of business name or trade style; or any change which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

Issued: November 12, 1971.

By the Commission.

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

[FR Doc.71-18404 Filed 12-15-71;8:50 am]

[Docket No. C-2078]

PART 13—PROHIBITED TRADE PRACTICES

George L. Bing Furniture Co. and George L. Bing

Subpart—Advertising falsely or misleadingly: § 13.71 Financing: 13.71-10 Truth in Lending Act; § 13.73 *Formal regulatory and statutory requirements:* 13.73-92 Truth in Lending Act; § 13.155 *Prices:* 13.155-95 Terms and conditions: 13.155-95(a) Truth in Lending Act. Subpart—Misrepresenting oneself and goods—Goods: § 13.1623 *Formal regulatory and statutory requirements:* 13.1623-95 Truth in Lending Act; Misrepresenting oneself and goods—Prices: § 13.1823 *Terms and conditions:* 13.1823-20 Truth in Lending Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* 13.1852-75 Truth in Lending Act; § 13.1905 *Terms and conditions:* 13.1905-60 Truth in Lending Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply Sec. 5, 38 Stat. 719, as amended, 82 Stat. 146, 147; 15 U.S.C. 45, 1601-1605) [Cease and desist order, The George L. Bing Furniture Co. et al., Euclid, Ohio, Docket No. C-2078, Nov. 3, 1971]

In the Matter of The George L. Bing Furniture Co., a Corporation, and George L. Bing, Individually and as an Officer of Said Corporation

Consent order requiring a Euclid, Ohio., seller of furniture, television sets and stereos to cease violating the Truth in Lending Act by failing to make consumer cost disclosures, failing to accurately disclose the annual percentage rate, and failing to make all other credit disclosures required by Regulation Z of said Act; if credit is involved the contract should contain a "NOTICE" that the debit may have to be paid before the contract is fulfilled.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents The George L. Bing Furniture Co., a corporation, and George L. Bing, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with any extension or arrangement for the extension of consumer credit or any advertisement to aid, promote, or assist directly or indirectly any extension of consumer credit as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR Part 226) of the Truth in Lending Act (Public Law 90-321, 15 U.S.C. 1601 et seq.), do forthwith cease and desist from:

1. Failing to make consumer credit cost disclosures required by Regulation Z and furnish the customer a duplicate copy of those disclosures prior to consummation of the transactions, in accordance with § 226.8(a) of the regulation.

2. Failing to disclose the "Annual Percentage Rate" accurately to the nearest quarter of 1 percent, in accordance with § 226.5(b)(1) of Regulation Z.

3. Failing, in any consumer credit transaction or advertisement, to make all disclosures required by §§ 226.4, 226.5, 226.6, 226.7, 226.8, and 226.10 of Regulation Z, in the manner, form, and amount prescribed therein.

It is further ordered, That respondent cease and desist from:

Failing to incorporate the following statement on the face of all sales contracts, all notes or other instruments of indebtedness executed by or on behalf of respondent's customers with such conspicuousness and clarity as is likely to be read and understood by the purchaser:

NOTICE

If you are obtaining credit in connection with this purchase, you will be required to sign a promissory note, a sales contract, or other instrument of indebtedness which may be purchased from the seller by a bank, finance company or any other third party. If such is the case, you will be required to make your payments to someone other than the seller. You should be aware that if this happens you may have to pay the note, contract, or other instrument of indebtedness in full to its new owner even if your purchase contract is not fulfilled.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the consummation of any extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, and that respondent secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That respondents, for purposes of notification only, notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment, or sale, resultant in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained herein.

Issued: November 3, 1971.

By the Commission.

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

[FR Doc.71-18405 Filed 12-15-71;8:50 am]

[Docket No. C-2037]

PART 13—PROHIBITED TRADE PRACTICES

J. B. Williams Co., Inc. and Parkson Advertising Agency

Subpart—Advertising falsely or misleadingly: § 13.170 *Quantities or properties of product or service:* 13.170-64 Nutritive; 13.170-74 Reducing, nonfattening low-calorie, etc.; § 13.210 *Scientific tests.* Subpart—Using deceptive techniques in advertising: § 13.2275 *Using deceptive techniques in advertising:* 13.2275-70 Television depictions. Subpart—Using misleading name—Goods: § 13.2325 *Qualities or properties.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies Sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, The J. B. Williams Co., Inc., et al., New York City, Docket No. C-2037, Nov. 11, 1971]

In the Matter of The J. B. Williams Company, Inc., a Corporation, and Parkson Advertising Agency, Inc., a Corporation

Order modifying an earlier consent order, 36 F.R. 20588, which required a New York City distributor of weight reduction wafers and diet drink mix to cease falsely representing the effectiveness of its products, by stating in greater

detail the advertising and labeling respondent is required to submit each six (6) months to show compliance.

The modified order of compliance, is as follows:

It is further ordered, That respondents submit to the Commission within sixty (60) days after the order becomes final all advertising, labels and labelling, for "Proslim" or "Proslim 7-Day Reducing" wafers, diet drink mix, or any other purported weight reducing or weight control product, and all advertisements for any consumer product which in any manner make reference to scientific or medical tests or studies as allegedly substantiating any representation or claim as to the effectiveness or performance of any such product, to show the manner of compliance with this order, and thereafter will submit samples of all such advertising, labels and labelling each six (6) months to show continued compliance.

Issued: November 11, 1971.

By the Commission.

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

[FR Doc.71-18406 Filed 12-15-71;8:50 am]

[Docket No. C-2079]

PART 13—PROHIBITED TRADE PRACTICES

Tennessee Valley Enterprises, Inc., et al.

Subpart—Furnishing false guaranties: § 13.1053 *Furnishing false guaranties:* 13.1053-80 Textile Fiber Products Identification Act. Subpart—Misbranding or mislabeling: § 13.1185 *Composition:* 13.1185-80 Textile Fiber Products Identification Act; § 13.1212 *Formal regulatory and statutory requirements:* 13.1212-80 Textile Fiber Products Identification Act. Subpart—Misrepresenting oneself and goods—Goods: § 13.1710 *Qualities or properties.* Subpart—Neglecting, unfairly or deceptively, to make material disclosures: § 13.1845 *Composition:* 13.1845-70 Textile Fiber Products Identification Act; § 13.1852 *Formal regulatory and statutory requirements:* 13.1852-70 Textile Fiber Products Identification Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, 72 Stat. 1717; 15 U.S.C. 45, 70) [Cease and desist order, Tennessee Valley Enterprises, Inc., et al., Philadelphia, Tenn., Docket No. C-2076, Nov. 11, 1971]

In the Matter of Tennessee Valley Enterprises, Inc., a Corporation, Doing Business as Bar-Knit Hosiery Mills, and Bar-Knit Hosiery, Inc., and J. Earl Barger, Individually and as an Officer of Said Corporation

Consent order requiring a Philadelphia, Tenn., hosiery manufacturer to cease misbranding and falsely guaranteeing its textile fiber products, and implying that its hosiery will aid in controlling athlete's foot.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Tennessee Valley Enterprises, Inc., a corporation doing business as Bar-Knit Hosiery Mills, and Bar-Knit Hosiery, Inc., or any other name, and its officers, and J. Earl Barger, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising or offering for sale, in commerce, or in the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising, or otherwise identifying such products as to the name or amount of the constituent fibers contained therein.

2. Failing to affix a stamp, tag, label or other means of identification to each such product showing in a clear, legible, and conspicuous manner each element of information required to be disclosed by section 4(b) of the Textile Fiber Products Identification Act.

B. Failing to maintain and preserve records of fiber content of textile fiber products manufactured by them, as required by section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the rules and regulations promulgated thereunder.

It is further ordered, That respondents Tennessee Valley Enterprises, Inc., a corporation, doing business as Bar-Knit Hosiery Mills, and Bar-Knit Hosiery, Inc., or any other name and its officers, and J. Earl Barger, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any textile fiber product is not misbranded or falsely invoiced or advertised under the provisions of the Textile Fiber Products Identification Act.

It is further ordered, That respondents Tennessee Valley Enterprises, Inc., a corporation, doing business as Bar-Knit Hosiery Mills, and Bar-Knit Hosiery, Inc., or any other name, and J. Earl Barger, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of hosiery or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing or implying, in any manner, that respondents' hosiery or other products aids in controlling athlete's foot, or have any therapeutic benefit, unless such is the fact.

It is further ordered, That respondents Tennessee Valley Enterprises, Inc., a corporation, doing business as Bar-Knit Hosiery Mills, and Bar-Knit Hosiery, Inc., or any other name, and J. Earl Barger, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of hosiery or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the expression "One year absolute guarantee" or similar representations unless respondents disclose what, if anything, any one claiming under the guarantee must do before the guarantor will fulfill his obligation under the guarantee; the manner in which the guarantor will perform, and the identity of the guarantor are clearly and conspicuously disclosed.

2. Representing, directly or by implication, that any of respondents' articles of merchandise are guaranteed unless the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

It is further ordered, That respondents notify the Commission at least 30 days prior to any change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondents herein shall within 60 days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Issued: November 11, 1971.

By the Commission.

[SEAL] CHARLES TOBIN, *Secretary.*

[FR Doc.71-18407 Filed 12-15-71;8:50 am]

SUBCHAPTER D—TRADE REGULATION RULES

PART 422—POSTING OF MINIMUM OCTANE NUMBERS ON GASOLINE DISPENSING PUMPS

The Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. 41, et seq., and the provisions of Subpart B, Part 1 of the Commission's procedures and rules of practice, 16 CFR 1.11, et seq., has conducted a proceeding for the promulgation of a Trade Regulation Rule regarding the posting of octane ratings on gasoline dispensing pumps. Notice of this proceeding including a proposed rule, was published in the FEDERAL REGISTER on July 30, 1969 (34 F.R. 12449). Interested parties were thereafter afforded opportunity to participate in the proceeding through the submission of written data, views, and arguments and to appear and orally express their views as to the proposed rule and to suggest amendments, revisions, and additions thereto.

On December 30, 1970, the Commission promulgated a Trade Regulation Rule, including a statement of its basis and purpose entitled The Failure To Post Minimum Research Octane Ratings On Gasoline Dispensing Pumps Constitutes an Unfair Trade Practice and an Unfair Method of Competition. The rule was to become effective on June 28, 1971. The rule and statement were published in the FEDERAL REGISTER on January 12, 1971 (36 F.R. 354).

On April 17, 1971, the Commission published notice in the FEDERAL REGISTER (36 F.R. 7309) of a reopening of the public record for the limited purpose of reconsidering that part of the rule which relates to the method of measuring octane number as a basis for posting. To allow time for receipt of further comments, the effective date of the rule was extended to September 1, 1971.

In response to the invitation to interested parties to comment, a number of suggestions, criticisms, and objections were received. Upon consideration of the comments and other pertinent information submitted the Commission published a proposed revision of the rule which replaced the research octane number with an octane number derived from the sum of the research octane (R) and motor octane (M) numbers divided by two; (R+M)/2. The proposed revised rule; notice that the effective date was postponed indefinitely; and an invitation to interested parties to submit their views in writing was published in the FEDERAL REGISTER on August 19, 1971 (36 F.R. 16120).

The Commission has now considered all matters of fact, law, policy, and discretion, including the data, views, and arguments presented on the record by interested parties in response to the notices, as prescribed by law, and has determined that the revision of the Trade Regulation Rule and its Statement of Basis and Purpose set forth herein is in the public interest.

§ 422.1 The Rule.

In connection with the sale or consignment of motor gasoline for general automotive use, in commerce as "commerce" is defined in the Federal Trade Commission Act, it constitutes an unfair method of competition and an unfair or deceptive act or practice for refiners or others who sell to retailers, when such refiners or other distributors own or lease the pumps through which motor gasoline is dispensed to the consuming public, to fail to disclose clearly and conspicuously in a permanent manner on the pumps the minimum octane number or numbers of the motor gasoline being dispensed. In the case of those refiners or other distributors who lease pumps, the disclosure required by this section should be made as soon as it is legally practical; for example, not later than the end of the current lease period. Nothing in this section should be construed as applying to gasoline sold for aviation purposes.

NOTE: For the purposes of this section, "octane number" shall mean the octane number derived from the sum of research (R) and motor (M) octane numbers divided by 2; (R+M)/2. The research octane (R) and motor octane number (M) shall be as described in the American Society for Testing and Materials (ASTM) "Standard Specifications for Gasoline" D 439–70, and subsequent revisions, and ASTM Test Methods D 2699 and D 2700.

(38 Stat. 717, as amended; 15 U.S.C. 41–58)

Effective: March 15, 1972.

Promulgated: December 16, 1971.

By the Commission.

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

STATEMENT OF BASE AND PURPOSE

I. *Background.* The Commission's affirmative interest in the question of posting octane ratings on gasoline dispensing pumps was indicated by announcement on July 30, 1969, of the initiation of a rule making proceeding. The notice was published in the FEDERAL REGISTER July 30, 1969, 34 F.R. 12449.

The information gathered in the public Record[1] of the recent proceedings does indicate that the absence of posting octane ratings on gasoline pumps by refiners or other marketers of gasoline does have an impact on consumers' ability to select the proper gasoline for their automobiles, both in terms of engine requirements and prices paid for the gasoline.

Before outlining the varied arguments for and against the proposition that octane ratings should be affirmatively disclosed on gasoline pumps, it may be well to review first principles: What is octane? What it is not. And why is octane important?

There is little, if any, disagreement as to what octane is. "The octane number of gasoline is a measure of the antiknock value of the gasoline or its ability to resist knock during combustion in an engine." (Ethyl Technical Notes, Record 174.)

"The octane number of a gasoline is simply a measurement which tells you how well the gasoline will resist knocking in an engine." ("What's Octane?" pamphlet published by Petroleum Chemicals Division, E. I. du Pont de Nemours & Co., Inc., Record 101.) (For other descriptions of octane ratings see Popular Mechanics Product Feature, "Octane," Record 102; Consumer's Report, October 1968, "Buying Gasoline," Record 801; Atlantic Richfield Co., Record 703, Tr. 126; American Petroleum Institute, Western Oil and Gas Association, Record 455, Tr. 207; Mobil Oil Corp., Record 737, Tr. 246; The Standard Oil Co. of Ohio, Record 316; American Oil Co., Record 254; Continental Oil Co., Record 436; and Humble Oil & Refining Co., Record 569.)

Octane should not be confused with other features of gasoline and should not be considered the sole factor contributing to gasoline makeup.

"Octane is not power. Octane is not good mileage. It is not fast starts, or resistance to corrosion, or prevention of vaporlock, or any one of several other significant factors in gasoline quality." (Mobil Oil Corp., Record 737, Tr. 246.)

"Higher octane, in itself, will not improve gasoline mileage." (Ford Motor Co., Record 168.) (See also article entitled "Gasoline—myth vs. fact," Changing Times, The Kiplinger Magazine, Record 143, 145.)

Professor Phillip S. Myers of the University of Wisconsin and national president of the Society of Automotive Engineers describes the phenomenon of "knocking."

"Under normal circumstances combustion in your car engine is the result of smooth progression of the flame front across the combustion chamber of the engine. However, if the air-fuel mixture in the cylinder is subjected to high pressures and temperatures for too long a period of time, the air-fuel mixture will burn in a very short period of time. This excessively rapid combustion is variously called detonation, knock, or ping. The observant consumer is aware of this quality characteristic by the noise caused by this rapid combustion which is transmitted through the engine walls. As a matter of interest, the addition of lead to the gasoline enables it to withstand higher pressures, temperatures, and/or longer times before knocking." (Statement of Professors P. W. Myers and O. A. Uyehara, Record 641, 645, Tr. 334, 340. See also Popular Science Monthly articles "Gas For Your Car," Record 109, for description of knocking, and Statement of Ethyl Corp., Record 422; Standard Oil Co. of Ohio, Tr. 402.)

Knocking has its effects. "Knocking wastes power, lowers the engine's effectiveness and usually sounds like a multitude of light hammer taps on metal * * * Persistent or severe knock can damage your engine—crack pistons, damage valves, and subject engine bearings to too-heavy shock loads." (Consumer Reports, October 1968, article entitled "Buying Gasoline," Record 801, 803. See also Ethyl Technical Notes, "Motor Gasoline Tests and Their Meaning," Record 175; Popular Science Monthly, "Gas For Your Car," Record 109.)

Owners of Chevrolet automobiles for the year 1968 are warned in the owner's manual about the effect of engine knocking. "* * * continuous or excessive knocking may result

[1] As used herein "Record" refers to the written comments and materials in the public record of this proceeding, and "Tr." refers to the transcript of the public hearing of this proceeding.

in engine damage and constitutes misuse of the engine for which the Chevrolet Division is not responsible under the terms of the Manufacturer's New Vehicle Warranty." (Record 179.) Many of the 1970 owner's manuals published by auto maufacturers contain similar language showing their concern with excessive knocking. (See Pontiac, Oldsmobile, Chevrolet, Buick, American Motors, Cadillac, and Lincoln Continental owner's manuals, not included in the Record.)

The fact that "knocking," the beast to be controlled by the proper octane rating for gasoline, can be the agent of damage or the agent for potential damage to automobile engines reveals one of the reasons why the subject of octane rating of gasoline is important to consumers, refiners, and automobile manufacturers.

It is important to the purchaser of gasoline from a standpoint of cost. "Unfortunately, many people buy too much octane. This is a throwback to the late 1950's when approximately half of the cars manufactured needed high octane gas for their high compression engines. In those days, the alternative would have been detonations and millions of knocking engines.

"This is no longer true. Almost 67 percent of today's new cars are designed to run on low octane (regular) gas. Those who use high octane (premium) unnecessarily are spending 4 cents, 5 cents, even 6 cents a gallon more for no reason. The high octane is not giving their engines anything that lower octane gasoline can't give them." (Popular Mechanics Product Feature, "Octane," Record 102.)

"Your engine's octane requirement must be satisfied. There's no way to actually measure the octane number of a gasoline with your car, but the exact number doesn't matter. The important thing is to observe the antiknock performance of the fuel. If other aspects of gasoline performance are satisfactory, there's no reason to pay more for octanes than your car needs. On the other hand, if you want something you can get in a more expensive grade of gas, the extra octanes won't do any harm." ("Gas For Your Car," Popular Science Monthly, Record 114; see also statements of Professor P. W. Myers, supra at Record 649; Continental Oil Co., Record 437.)

The Ford Motor Co. states that, "Studies have shown that a significant percentage of customers will purchase premium grade fuels for a regular grade engine, whether the engine needs it or not." (Record 170.)

Sun Oil Co., in explaining their marketing techniques through the use of a pump that offers eight blends of gasoline, reveals that the octane rating of gasoline is a matter of some importance to the purchaser of gasoline. "This is the basic philosophy of our custom-blending system. It offers a wide range of choices of octane quality with prices varying with the quality. Individual customers are encouraged to locate themselves properly in the system, so that they use octane that is high enough to provide satisfactory performance but does not waste money on more octane than necessary for that performance." ("FTC Industry Conference On Marketing Of Automotive Gasoline," Hearings before Subcommittee No. 4 on Distribution Problems of the Select Committee on Small Business, House of Representatives, 89th Cong., first session, Vol. 2, p. 1906, Record 157.)

The uneconomic choice of a higher octane gasoline than is needed can be costly according to Senator Proxmire of Wisconsin. "* * * the average consumer does not know how to find out the octane ratings of the various gasoline brands and, thus, is liable to be spending much more money for gasoline than he needs to. This is particularly true for poor people who have to spend a large percentage of their income for gasoline in order to get to work. According to the President of Sun Oil Co., Americans who earn less than $3,000 a year spend an average of 6.2 cents of every dollar on gasoline compared to 1.5 cents for the $15,000 plus income group. A savings of $40 or $50 a year is very important to them." (Record 699.)

Mobile Oil Corp. estimates that savings accrued by purchasing regular in lieu of premium, "* * * for the average motorist would run something less than $30 a year." (Tr. 248.)

A word about the method gasoline refiners use to increase the octane levels of the gasolines to meet the ever increasing need for gasoline to resist "knocking" in automobile engines. "One way to raise a gasoline's octane value is to add tetraethyl lead (TEL)—an industry practice for almost 40 years. Another way is to reshape (the petroleum industry says 'reform') certain of the gasoline molecules into compounds that have a higher octane level. As a rult, most refineries use both methods." ("Buying Gasoline," Consumers Report, October 1968, Record 119. See also Popular Science Monthly, "Gas For Your Car," Record 111; Changing Times, "Gasoline—myth vs. fact," Record 144; American Petroleum Institute and Western Auto Gas Association, Tr. 230; Mobile Oil Corp., Tr. 262. For a description of the lead antiknock compounds used in gasoline and the amounts utilized, see Ethyl Technical Notes, supra at Record 177.)

It is the use of lead in gasoline that has led to allegations and concern that the air pollution problem is aggravated by lead emissions, as well as others, from the exhaust pipes of automobiles.

"Fuels which are either too high or too low in octane tend to create excessive emissions. Fuels with an octane rating lower than required by the vehicle often cause heat buildup in the engine. Higher temperatures and pressures are created within the engine causing increased emissions of oxides of nitrogen (pollutants which contribute to photochemical smog and atmospheric discoloration and are of concern because of health considerations).

"A corollary result of higher combustion temperatures is the phenomenon of 'dieseling' or engine run-on after the ignition is shut off. Dieseling, as well as being a nuisance, creates excess emissions of hydrocarbons, a prime ingredient of photochemical smog. We expect the occurrence of dieseling will be reduced as more consumers purchase gasoline of the correct octane.

"Conversely, the use of too high an octane fuel results in excess emissions of lead compounds. This occurs because the average lead content of premium fuels is roughly 25 percent greater than the average lead content of regular fuels. Thus, some reduction in lead emissions is to be expected from a reduction in the unnecessary use of premium fuels." (Statement of William H. Megonnell, Assistant Commissioner for Standards and Compliance, Consumer Protection and Environmental Health Service, Department of Health, Education, and Welfare, Record 565.)

Legislation has been introduced by Congressman John Dingell, H.R. 1649, which would require disclosure "on the pump or other dispensing device * * * the minimum octane rating of the fuel and the additives contained therein." (Record 150.)

American autos, trucks, and other vehicles "guzzle" gasoline in staggering quantities. In 1967 the total consumption of gasoline was 77 billion plus gallons; passenger cars alone consumed 55 billion plus gallons. Passenger cars in 1967 consumed an average of 671 gallons of gasoline per vehicle. (Statistical Abstract of the United States, 1969, p. 547.)

In 1967, in excess of 18 billion dollars was spent on gasoline and oil. (Id. at 314.) As of 1963, there were 211,473 gasoline stations in the country. (Id. at 758.)

The above discussion should serve to answer in part the question why the subject is of any import. Octane ratings, the refining processes that are involved to increase octane ratings, the cost impact that gasoline of varying grades has upon individual consumers, the concern of auto manufacturers with "knocking" in engines, and the increasing concern with automobiles and gasoline, as they relate to the problem of air pollution, indicate that the subject of gasoline and the octane rating of gasoline is worthy of attention. It is for the above reasons that the Commission considered the more precise question as to whether or not gasoline marketers and refiners should be required to post the octane rating of the gasoline on the dispensing pump.

II. *The Trade Regulation Rule proceeding.* The public notice published by the Commission on July 30, 1969, focused upon the need or not to post octane ratings on gasoline pumps. The Commission stated that it had reason to believe:

"(1) Failure by refiners and other marketers of gasoline to identify the gasoline being dispensed through the pumps in terms of research octane ratings may constitute a deception, and an unfair trade practice in that it fails to provide the consumer with a criterion to which he can relate the gasoline with engine requirements of his automobile;

"(2) The failure of refiners and other marketers to disclose the research octane ratings on the gasoline pumps is an unfair practice in that it does not afford to the consumer information with any degree of preciseness as to the range of octane ratings available. In certain instances gasolines are being marketed by the descriptive grade name of 'regular' which are in fact of a lower octane rating than the average acceptable range of 'regular' brands normally marketed with resulting damage to the engines and in some instances the warranties on new cars are not being honored because the car owner unwittingly used a low octane gasoline which he assumed to be a 'regular' blend;

"(3) Refiners and other marketers of gasoline own and/or control the pumps through which gasoline is dispensed at the retail outlet;

"(4) Many consumers are unaware that the engine requirements of their automobile may permit the use of a lower octane gasoline and are paying higher prices needlessly for gasolines of a higher octane rating; and, therefore,

"(5) The practice of failing to disclose the research octane ratings of the gasoline being dispensed from the pump constitutes an unfair method of competition and an unfair or deceptive act or practice, in violation of section 5 of the Federal Trade Commission Act.

"Accordingly, the Commission therefore proposes the following Trade Regulation Rule:

"In connection with the sale of motor gasoline for general automotive use, in commerce as 'commerce' is defined in the Federal Trade Commission Act, it constitutes an unfair method of competition and an unfair or deceptive act or practice for the refiners or other marketers who own and/or control the pumps through which motor gasoline is dispensed at the retail outlet to fail to clearly and conspicuously disclose, in a permanent manner on the pumps, the research octane rating or ratings of the motor gasoline being dispensed. (NOTE: For purposes of this Rule, 'research octane rating'

shall mean the research octane rating as described in The American Society for Testing Materials (ASTM) 'Specifications for Gasoline' (D 439-68T).)"

Interest in the Trade Regulation Rule proceeding was substantial and the response to the invitation for comments on the proposed rule resulted in a public record of written statements, letters, oral testimony, and other materials of three volumes.

Public hearings before a presiding officer appointed by the Commission, Mr. William D. Dixon, Acting Chief, Division of Trade Regulation Rules, began on October 14, 1969, and continued through October 16, 1969. All persons who sought to orally express their views on the proposed rule were able to do so. The 421-page stenographic transcript of the hearings has been made a part of the public record.

III. *In support of the rule.* The information gathered by virtue of these proceedings substantiates most of the "reasons to believe" in the public notice. In addition, the proceedings did divulge other information warranting a conclusion that posting of octane ratings on gasoline pumps is necessary. As an example, the relationship of lead to gasoline and its effect on the air pollution problem surfaced unexpectedly during the proceedings and has been highlighted recently by government as well as industry concern.

(1) Failure by refiners and other marketers of gasoline to identify the gasoline being dispensed through the pumps in terms of research octane ratings may constitute a deception and an unfair trade practice in that it fails to provide the consumer with a criterion to which he can relate the gasoline with engine requirements of his automobile.

The lack of information concerning gasoline capability in relation to the engine needs of a particular automobile is described by the Consumers Union representative.

"Consumers Union's interest in gasoline goes back 33 years to the very first issue of Consumer Reports, when we reached the conclusion that: 'The average automobile owner wastes 2 or 3 cents every time he buys a gallon of gasoline because the gasoline industry forces him to pay for a high antiknock quality which his engine does not need.' Things have changed a little since then, but not much.

"* * * Your proposal will also enable car manufacturers to recommend the proper fuel for their products by octane level rather than by a generalized price level. As a matter of fact, we urge you to supplement your proposal with just such a requirement for these manufacturers." (Statement of William J. Tancig, Chemical Division Head, Consumers Union of U.S., Inc., Record 790, 795.) (For others recognizing expressly or by implication the fact that the automobile owner lacks adequate information necessary to judge what gasoline is best for his particular automobile; see Delaware Valley Dealers Association, Tr. 264; Commonwealth of Virginia, Department of Agriculture and Commerce, Record 563; Department of H.E.W., Public Health Service, Record 565; U.S. Department of Interior, Bureau of Mines, Record 855; Statement of Committee of Students, George Washington University Law School, Record 860, 875; Comments of the U.S. Department of Justice, Record 885, 888; Mrs. Virginia Knauer, Special Assistant to the President for Consumer Affairs, Tr. 21, Record 778; Statement of Honorable John Dingell, House of Representatives, as read by Mr. Gregg Potvin, Tr. 35 and 39; Honorable John A. Ochlogrosso, Commissioner, Office of Consumer Affairs, Nassau County, New York, Tr. 42, 49; Sarah H. Newman, National Consumers League, Tr. 58-60; Honorable Joshea Eilberg, House of Representatives, Tr. 175, 176. See also statement of Kiekhaefer-Mercury Corp. showing the effect that lack of octane posting on marine gasoline pumps has upon marine gasoline engines and their ability to instruct boat owners in the proper use of gasoline, Tr. 69-70, 72.)

One of the industry members, through its own advertising, stresses the need for octane ratings meeting each engine's needs and goes on to advise that an auto owner should: "Select the major brand of gasoline that offers the widest choice of octane ratings. Obviously, you have a better chance of meeting your engine's octane needs if you can choose from several octane ratings rather than from the two or three which most stations offer. Of the major brands, Sunoco offers the widest choice—eight octane levels, about a penny apart in price." After instructing the operator as to the technique of selecting one of the eight selections available on the Sunoco pump, the advertisement concludes, "* * * In any event, what you're doing is carefully customizing gasoline to your engine's needs for peak efficiency and performance at the lowest possible cost." (Popular Mechanics Product Feature, Record 102.)

In documentation submitted to the FTC Conference on Gasoline Marketing, Sun Oil Co., in describing its new gasoline pump which blended various octane levels of gasoline, recognized the need to meet a particular engine's gasoline needs with a particular blend of gasoline.

"This is the basic philosophy of our custom blending system. It offers a wide range of choices octane quality with prices varying with the quality. Individual customers are encouraged to locate themselves properly in the system, so that they use octane that is high enough to provide satisfactory performance but does not waste money on more octane than necessary for that performance." (FTC Industry Conference on Marketing of Automotive Gasoline, Hearings Supra 1906, Record 157; the need to match a particular gasoline with a particular engine, in terms of octane, is further detailed by Sun Oil Co., Id. at 1909, 1910; Record 160, 161.)

Although standing in opposition to the proposed rule on the grounds that the posting of research octane will not provide the consumer with information as to the range of octane ratings available nor provide the consumer with a criterion with which gasoline can be related to the engine requirements of his automobile, Continental Oil Co. does describe its efforts to educate consumers through a program offering four grades of gasoline.

"In recent years, in order to offer consumers a wider choice of gasoline grades, Continental has developed the so-called 'Four Grade Program' whereby motorists are provided a greater selection of gasoline grades. Advertising of the Four Grade Program in television commercials, newspapers, and trade publications, and in explanatory literature furnished dealers for distribution to the public has been devoted to helping the motorist select the grade of gasoline suitable for his car, avoiding his paying an additional charge for a grade carrying an unnecessarily high octane rating. Some of the advertising has been so specific as to name particular makes of automobiles and to specify the least expensive grade of Conoco gasoline which may be expected to perform satisfactorily in the automobile." (Statement of Continental Oil Co., Record 436 and n.2.)

What both Sunoco and Conoco appear to be doing is recognizing that there is a need to inform consumers of the way to purchase gasoline so that the gasoline suits the need of each particular engine without at the same time purchasing gasoline in excess of the automobile's needs and incurring extra cost.

One automobile manufacturer, the Ford Motor Co., does indicate in its owner's manual grades of fuel recommended for use. This recommendation is in terms of the words "regular" and "premium" as well as in terms of fuel octane requirements. For example, for the 240 CID-6 engine Ford recommends "Regular, at least 94 octane." (Record 166.) Volkswagen of America, Inc., in its owner's manual informs the owner of the octane rating of gasolines required (Record 302) and endorses steps to enable consumers to make informed choice of fuel. (Record 302.) Similarly, the National Association of Auto Dealers recognizes the value of posting octane ratings to fill a gap in consumer knowledge of gasolines as it relates to his auto's engine. "We agree that the posting of octane ratings may be of benefit to the conscientious consumer, especially if specific engine requirements were supplied by the manufacturers." (Record 848.)

The U.S. Government's purchase specifications for gasoline point up the importance of octane rating in gasoline. That specification points out in no uncertain terms what the General Services Administration considers as the differentiating factor in grades of gasoline.

"1.1 Scope. This specification covers two grades of commercial gasoline for use in automotive gasoline engines under all climatic conditions.

"1.2 Classification.

"1.2.1 Grades. Automotive gasoline covered by this specification provides for two grades of commercial gasoline known as premium and regular. The major difference between these grades is octane number." (Federal Specifications, Gasoline Automotive VV-G-76a, Jan. 7, 1963, Tr. 325, Record 676.)

The representatives of the petroleum industry and others, while not conceding that failure to post octane ratings is or may be a deception, do acknowledge that the octane rating of gasoline in varying degrees is an important feature of gasoline. The Ethyl Corp. points out that: "Of the many individual properties of gasoline that determine the overall quality of the finished product, antiknock value is one of the most important." (Ethyl Technical Notes, Record 180.) For other statements discussing octane rating as a factor that contributes to gasoline efficiency or cost see Standard Oil Co. of California, Record 308, 309; Atlantic Richfield Co. Record 703; "A Technical Discussion On Research Octane Number As A Measure Of Fuel Antiknock Performance In Cars," Dupont, September 1969, Record 469; Professor P. S. Myers, Record 645; Phillips Petroleum Co., Record 728; Sun Oil Co., Record 102, 412, 413; Continental Oil Co., Record 436 & n.2; Humble Oil & Refining Co., Record 569.

Both the oil industry and the Bureau of Mines recognize the importance of octane ratings. The Bureau of Mines, Department of Interior, biannually publishes the summarized octane ratings of several thousand gasoline samples which is published as an approximate guide for the petroleum industry. (Consumers Union Statement, Record 791.) The Ethyl Corp. publishes a monthly "Gasoline Quality Survey" which reports the research and motor octane numbers of selected samples of gasoline from different service stations in various cities and makes available the results of their laboratory determined octane ratings. (Statement of Phillips Petroleum Co., Tr. 375, Record 728.)

Another survey testing samples of gasoline for their Research Octane, Motor Octane, and Road Octane numbers is performed by the Dupont Co. (See excerpts from Dupont's

"Road Octane Survey, Northeastern U.S. Gasolines, Summer 1969," Record 734; and "Dupont Road Octane Survey, Western U.S. Gasolines, Summer 1969," Record 243.)

The octane rating of gasoline is related to the problem of knock in the engines of the automobile and the possible damage knock can cause. Automobile manufacturers are concerned that the owner use the gasoline in the automobile with an octane rating adequate to prevent knock. The Ford Motor Co. in its owner's manual recommends the grades of fuel to be used in the various size engines that are installed in Ford cars. Ford then recommends not only the grade of gasoline in terms of regular and premium but goes on to specify a recommended octane requirement for each engine. (1970 Ford Owner's Manual, p. 43. See also 1970 Registered Owner's Manual Mercury Montego, p. 61; 1970 Torino, Fairlane, Ranchero Owner's Manual, p. 40; 1970 Maverick Owner's Manual, p. 30. Manuals not included in public record.)

A Ford owner conscientiously attempting to follow Ford's recommendations as to the minimum octane gasoline to be used would find it most difficult to ascertain at the gas station whether or not gasolines coming from these pumps were of the minimum octane recommended by Ford Motor Co. This information, except for a few instances, is not readily available to the automobile owner.

Other major American automobile manufacturers, while not listing recommended octane rating, do express their concern with the use of gasoline which has adequate antiknock capabilities, i.e., octane rating.

American Motors recommends gasoline in terms of regular and premium only. The instructions to owners show the concern over knocking because of improper gasoline. "* * * Persistent knock or detonation, however, may indicate the need for a higher grade of antiknock gasoline. Because heavy engine knocking is damaging and constitutes actual 'misuse' under your warranty, check with your dealer immediately, since he will be anxious to have the reason for such knocks determined, assuming they do exist." (1970 Owner's Manual, American Motors, p. 52. Not entered in public record.)

Similarly, Chevrolet advises its automobile purchasers:

"Use of a fuel which is too low in antiknock quality will result in 'spark knock'. Since the antiknock quality of all regular grade or of all premium grade gasolines is not the same and factors such as altitude, terrain and air temperature affect operating efficiency, knocking may result even though you are using the grade of fuel recommended for your engine. If persistent knocking is encountered, it may be necessary to change to a higher grade of gasoline and, if knocking continues, consult your authorized Chevrolet Dealer.

"In any case, continuous or successive knocking may result in engine damage and constitute misuse of the engine for which the Chevrolet Division is not responsible under the terms of the Manufacturers New Vehicle Warranty." (1968 Chevrolet Owner's Manual, p. 46, Record 179. This caveat is contained also in most of the other General Motors Owner's manuals.)

The unavailability of octane rating in both car owner's manuals and at the point of sale gives rise to a circular sort of argument; the gasoline marketer can plead that there is no point in providing octane information because the owner of the car is not provided with octane rating recommendations by the manufacturer. Similarly, the auto manufacturer pleads the futility of instructing owners as to octane since the information is not available at the point of sale. (See Consumer Reports, "Buying Gasoline," Record 803.)

This argument is not insurmountable. A regulation requiring gasoline marketers to post octane ratings on their pumps may signal a beginning of a gradual educational process of consumers concerning octane ratings and how they relate to the engine performance of their automobiles, which in turn may prompt automobile manufacturers to publish recommendations as to what octane gasoline should be used in the automobiles that they market. The providing of complete information to automobile owners as to the octane rating of gasolines marketed and the recommendations by automobile manufacturers as to what octane gasolines should be used in the cars manufactured by them should give rise to an educated selection by consumers of gasoline that meets the needs of their automobiles.

Popular Science magazine lists antiknock behavior as one of the two basic constituents of fuel quality. "The approach is to shop around among the brands and grades of gasoline available in your area, keeping an eye on two basic aspects of fuel quality: antiknock behavior and driveability properties." ("Gas For Your Car," Record 114.)

Informed members of the public and representatives of consumer groups appearing at the hearings or submitting statements and consumers writing to the Commission indicate an awareness of the importance of octane ratings.

Senator Proxmire sums up by stating, "I realize that there are other important qualities to gasoline, but the octane rating is the single most important criterion in the quality and price of gasoline." (Tr. 16, Record 700.)

"For a consumer to make a judgment as to whether to buy subregular, regular or premium, to buy branded or unbranded, surely knowing the octane rating is the most useful single piece of information that he can be given." (Statement of Representative Dingell as read by Mr. Gregg Potvin, Tr. 35, Record 770.)

For statements from State and Federal agencies outlining the need for the consumer to be provided with octane information as a guide to the educated purchase of gasoline, see the submissions of the Department of Agriculture of the Commonwealth of Virginia, Record 563; U.S. Department of the Interior, Bureau of Mines, Record 855; U.S. Department of Justice, Record 885, 887; National Highway Safety Bureau, Department of Transportation, Record 907; Department of Health, Education, and Welfare, P.H.S., Consumer Protection and Environmental Health Service, Record 565.

In Great Britain, a system of gasoline grading is utilized by gasoline marketers under the impetus of British Standard 4040 which was issued on March 16, 1967, and voluntarily adopted by the major oil companies in the United Kingdom. The grading system, posted on pumps, utilizes "star" designators ranging from "2 star" to "5 star" gasoline. The stars indicate the research octane rating of the gasoline ranging from two star for a minimum of 90 Research Octane Number (RON) to five star for a minimum of 100 Research Octane Number (RON). (Statement of R. H. Wilmot, British Embassy, Record 304.)

Mr. Wilmot illustrates the importance of octane ratings: "In our view the Star grading system has been generally successful. It has afforded the motorist a reliable means of estimating the differences between the grades and offered a close enough guide to the motor manufacturers in recommending grades suitable for their engines. We regard the research octane number as the most useful indicator of gasoline quality yet devised (though admittedly it does not indicate all the characteristics of a motor fuel)." (Id. at 306.)

There are several States which have enacted regulations monitoring in some manner the quality of gasoline marketed in those jurisdictions. While none of them require posting of octanes on the pumps, many of them set out octane as one important feature of quality control. (See State of Louisiana, Department of Revenue Statement, Record 82; Florida Gasoline Inspection Law and Rules and Regulations, Record 186, 191, and Monthly Report of Analyses, Inspections and Calibrations March 1968, Florida Department of Agriculture, Record 208; Virginia Gasoline and Motor Fuels Law, Record 230, and Virginia Department of Agriculture Bulletin, Record 236; Statement of Louisiana Oil Marketers Association, Record 267; and Statement of Honorable Joe D. Waggoner, Jr., Member of Congress, Record 840; Statement of Alabama Department of Agriculture and Industries, Record 275; Statement of North Carolina Department of Agriculture, Record 291; Statement of Motor Vehicle Comptroller, State of Mississippi, Record 825; Statement of Department of Revenue, State of Indiana, Record 911, 912, 913; and Statement of Hawaii Department of Agriculture, Record 25, 29; Regulations and Standards for Petroleum Products, State of Georgia, Record 327.)

For other statements indicating the importance of octane rating to consumers in their selection of gasolines, see statements of Hon. Virginia A. Knauer, Special Assistant to the President for Consumer Affairs, Tr. 20, 25; Hon. John A. Ochiogrosso, supra at Tr. 42, Record 695; National Consumers League, supra at Tr. 60; Kiekhaefer-Mercury, supra at Tr. 72; Delaware Valley Service Station Dealers Association, Record 723; Louisiana Consumers League, Record 83; Consumer Federation of America, Record 320; National Automobile Dealers Association, Record 848; George Washington Law School Student Group, Record 875.

The bulk of the letters received from individuals commenting favorably recognize that posting of octane ratings would provide consumers with information vital to a sound purchase decision of gasoline. Mr. Andrew Stewart writes:

"Octane ratings are clearly the single most significant factor other than price affecting the consumers' choice of which gasoline to purchase. Despite this fact, it is quite difficult for a consumer to obtain any accurate information as to the octane of the gasoline he is purchasing. I have frequently asked gasoline station attendants what the octane rating of gasoline was and have been given both inconsistent answers, and frequently, no answer at all, since this information is not generally provided to gas station attendants * * * the consumer will be enabled to make a more enlightened choice and will obtain better results from his investment in his automobile, if he is advised of the octane rating of the gasoline which he purchases." (Record 13.) For other letters expressing the importance of octane rating see Record 7, 11, 18, 19, 21, 22, 56, 58, 66, 67, 75, 92, 281, 807, 819, 822, 831, 847, 895, 897, 898, 899, 900 and 901. (For letters from individuals opposing posting of octane see Records 9 and 10.)

Some of the letters written express consumer frustration with the fact that when queried most gasoline station attendants do not know the octane rating of the gasoline which they are dispensing. Mr. William C Schmidt in a letter to Senator Proxmire relates his experience:

"With the recent purchase of a new Buick, I decided that it was necessary to determine what the owner's manual meant by the statement, 'Your Buick is designed to operate efficiently on "Regular" or "Premium" grade fuels commonly sold * * *

"From past experience I judged that an octane rating of 95 (Motor Research Method) would be adequate for the compression ratio of my automobile engine. To verify this, I checked with several Service stations and

was astonished to find that of all those contacted, none even knew the octane ratings of the gasolines they were selling, let alone the gasoline required for my automobile!" (Record 6. For other letters complaining of the unavailability of octane information at the pump see Record 13, 20, 58, 79, and 274.)

Many letters were sent in response to an article which appeared in the April 1970 issue of the Popular Science magazine authored by Mr. Ralph Nader. The article was entitled, "Why They Should Tell You The Octane Rating Of The Gasoline You Buy," which supported the concept of posting octane ratings and invited the readers to let the Federal Trade Commission know of their concern for the lack of information as to octane ratings. In the 2 months since the publication of the article the Commission has received 195 letters, and the overwhelming majority of them express support for a regulation requiring the posting of octane ratings of gasoline.

The May 1970 issue of Popular Science carries a rebuttal argument entitled, "There's More To Gasoline Quality Than Octane Rating" authored by Mr. Frank N. Ikard, President, American Petroleum Institute. (Both of these articles and the letters in response are included in the public record.)

The Record shows that the oil industry is intimately familiar with octane ratings: The procurement agencies of the U.S. Government are familiar with octane ratings; the automobile industry is concerned with the very thing octane rating of gasoline is supposed to prevent, i.e., knocking. Consumer periodicals and spokesmen for consumers participating in these proceedings show an awareness of the importance of the octane rating—yet the consumer has no real way of being exposed to this information. The consumer's lack of exposure was neatly put by Consumers Union spokesmen:

"The point needs reiterating. Everybody knows about octane numbers—everybody except the buying public." (Record 800.)

Furthermore, filling this information void would inure to the consumers' advantage.

"Posting octane numbers on the pumps would give drivers a yardstick to measure what they get for their money, other than credit cards, automobile clubs, and restrooms. In short, as your present proposal recognizes, and our data confirm, motorists cannot intelligently shop for gasoline on the basis of price without knowing about antiknock property in the form of octane ratings. We view the petroleum industry's withholding of this fundamental information as deceptive and indefensible." (Id. at 795).

The Record demonstrates the importance of octane ratings to the consumer and the requirements of his automobile and therefore failure of marketers to disclose the octane rating of gasoline is a deception.

(2) The failure of refiners and other marketers to disclose the research octane ratings on the gasoline pumps is an unfair practice in that it does not afford to the consumer information with any degree of preciseness as to the range of octane ratings available.

The Record seems clear enough that there are different ranges of octane ratings available. Many marketers offer a regular (94 octane generally) and a premium (99–100 octane generally). Some offer in addition to regular and premium a middle classification such as Esso which offers in addition to Esso Regular and Esso Extra, Esso Plus. Sunoco offers a variety of eight different selections of gasoline, all varying somewhat in octane rating. Gulf and Sun Oil Co. offer a so-called subregular (Gulftane and Sunoco 190) at about 92–93 octane rating. (Consumers Report supra, Record 806.)

The Bureau of Mines Survey of Motor Gasolines, Summer 1968, speaks in terms of five different ranges of gasoline. They are regular price gasoline at an average of 93.8 research octane number; premium price gasoline at an average of 99.9 research octane number; a third grade gasoline with an average 92.5 research octane number; an intermediate grade gasoline with an average research octane number of 96.4; and finally, a super premium gasoline with an average research octane number of 102.4. (Mineral Industry Surveys, U.S. Department of Interior, Bureau of Mines, Petroleum Products Survey No. 58, "Motor Gasolines, Summer 1968," p. 4, figures 1 and 2, pp. 33, 34, and 35.)

The Atlantic Richfield Co.'s spokesman notes that most gasolines fall within four ranges. "Nearly all gasoline sold in the United States today as 'regular' has a research octane rating of 92 to 95, while that sold as 'premium' gasoline has a research octane rating of 99 to 101. 'Mid-premium' gasoline generally has a research octane rating of 95.1 to 98.9 and 'subregular' a research octane rating of about 89.5 to 91.9." (Record 706.)

Mobile Oil Co. acknowledges a seven point or so spread between their premium and regular gasoline. (Tr. 247.)

Sunoco offers eight different blends of gasoline ranging from an economy gasoline to a super premium. There is a variance in the octane ratings of each grade. "This is the basic philosophy of our custom blending system. It offers a wide range of choices of octane quality with prices varying with the quality. Individual customers are encouraged to locate themselves properly in the system, so that they use octane that is high enough to provide satisfactory performance but does not waste money on more octane than necessary for the performance." (FTC Conference on Automotive Gasoline, House Hearings, supra, Record 157. See also Statement of Theodore A. Burtis, Sun Oil Co., Tr. 297.)

Continental Oil Co. offers a "Four Grade Program" providing motorists with a greater selection of gasoline grades and states that its advertising program "* * * has been devoted to helping the motorist select the grade of gasoline suitable for his car, avoiding his paying an additional charge for a grade carrying an unnecessary high octane rating." (Record 436 and n.2)

Despite the variations in the octane ratings of gasolines marketed by these companies, none of them provide for disclosure of that information to the motorist.

In discussion of the lack of availability of octane information the representative of Cities Service Oil Co. concluded that there is presently no index of octane measurement available to the consumer.

"Mr. Dixon: That brings me back, I think, to the question I was asking Mr. Kane. Without knowing the numbers, octane numbers of gasolines, how does the consumer compare and know what he is comparing? There again, using the apples and pears situation, of comparing Brand A's 94 with Brand B's 96, so that he is essentially comparing different things.

"Mr. Rosen: He has no good index.

"Mr. Dixon: Does he have any index now?

"Mr. Rosen: Not really. The only thing he can rely on and it is a strong reliance, is the tremendous competitive measures of our industry which never allows anyone, really, to get very far ahead of anyone else * * *" (Tr. 108.)

Further discussion by industry representatives and others illustrated the varying ranges of octane available and the possibility that individuals may be purchasing a higher octane gasoline than is needed for their automobiles. (See testimony of representatives of Cities Service Oil Co., Tr. 109; Atlantic Richfield, Tr. 138; Professor Myers, Tr. 360; Popular Science article, "Gas For Your Car," Record 111–113.) Although Mobil Oil Co. and Phillips Petroleum Co. maintain that there is not as much variability in the octane number of gasoline sold as might be thought. (Tr. 248, Record 728.)

Here again, industry is well aware of the range of octane available in gasoline. The automobile industry illustrates its awareness of the available ranges by publication in its owner's manuals of recommendations to use regular or premium, and in the case of Ford Motor Co. to use a grade of not less than a certain research octane number. The automobile owner purchasing gasoline has no effective way of ascertaining what the octane rating is of gasoline being sold at the pump except in a few rare instances where independents may post octane ratings, such as "Scot" and Hess appear to be doing in the Washington area, and some advertising by certain oil companies which alludes to the octane content of their gasoline such as Hess Oil Co. (Record 239 and Sunoco, Record 102.)

The consumer should know the ranges of octane available to meet the operating needs of his car and yet not waste octane by purchasing gasoline with a higher octane rating than is required by his automobile. The consumer should know the ranges of octane available because of the correlation between octane and the price of gasoline. There is no need to pay extra money for extra octanes if the automobile engine does not require high octane gasoline.

Therefore, failure to post octane ratings is unfair because it does not disclose the range of octane ratings available to the consumer.

(2) * * * In certain instances gasolines are being marketed by the descriptive grade name of "regular" which are in fact of a lower octane rating than the average acceptable range of "regular" brands normally marketed with resulting damage to the engines and in some instances the warranties on new cars are not being honored because the car owner unwittingly used a low octane gasoline which he assumed to be a "regular" blend.

There has been little data made available demonstrating any damage to automobile engines by the use of too low an octane gasoline, although there are several sources which have been previously mentioned which note that use of too low an octane gasoline can cause severe damage to an engine such as the article published in the November 1966 edition of Changing Times which stated "There can be risks in trying to 'save' on gas—you can ruin an engine and waste gas in a misdirected attempt to economize." (Record 143.) See also Consumer Reports, supra, Record 803; Ethyl Technical Notes, "Motor Gasoline Tests and Their Meaning," Record 175; the several citations to the various automobile owner's manuals which point out the engine damage possible because of knocking and the automobile manufacturers' assertion that continued use of gasoline which knocks will be construed as misuse under the automobile warranty. The gasoline companies participating in the proceedings deny that there is any engine damage due to the use of their gasoline. (Mobil Oil, Record 746; Standard Oil of Ohio, Record 317; American Oil Co., Record 262; Gulf Oil Co., Record 359; United Refining Co., Record 96.)

None of the automobile manufacturers confirmed that they had knowledge of cases of engine damage due to use of too low an octane gasoline, nor did they state that they had not honored warranty provisions because of engine damage caused by use of too low an octane gasoline. (See statements of Ford Motor Co., Record 278, 836; American Motors Corp., Record 834; General Motors Corp., Record 841; and Chrysler Corp., Record 843.) Volkswagen did state that it is possible to damage an engine by use of a

fuel with too low an octane rating. (Record 302.)

The most that the Record will support is a conclusion that use of fuels of a low octane could cause engine damage if knocking occurs over a consistent period of time. In theory then, as recognized by periodicals, statements of industry representatives and certainly by most of the automobile companies in their owner's manuals, the use of improper grades of gasoline (too low on octane) can cause knocking, and continued use of such gasoline can cause engine damage.

Certainly the automobile industry's concern over the use of gasolines having an octane rating low enough to cause engine knock is manifested by the statements contained in Ford Motor Co.'s owner's manuals specifying the minimum octane rated gasoline recommended for use with each particular engine manufactured by that company; the statement in General Motors' owner's manuals warning that "* * * continuous or excessive knocking may result in engine damage and constitutes misuse of the engine" which would negate the manufacturers' new vehicle warranty; and a similar caveat contained in the owner's manual published by American Motors. This documentation is sufficient to warrant a conclusion by the Commission that automobile manufacturers are sufficiently concerned with the use of too low an octane gasoline by the owners to post in their manuals such dire warnings concerning the consequences of use of low octane gasoline. Thus, if a particular owner's manual stated that the automobile should use a "good grade regular gasoline" and that such gasoline should be purchased from "reputable suppliers" as is set out in the 1970 Plymouth Fury Operator's Manual, this leaves the owner with the problem of determining what is a "good grade of regular" and just who is a "reputable supplier." Certainly, since the octane rating of gasoline is important in the gasoline/engine relationship, the posting of octane ratings should assist the owner in ascertaining what a good grade of gasoline is—even though it may be conceded that there are other elements necessary to quality gasoline.

Therefore, the failure of refiners to post octane ratings is unfair because (a) it does not provide the consumer with knowledge of the range of octanes available, (b) it could conceivably cause the purchase of gasoline of an octane rating so low as to do damage to an engine, and (c) it does not assist consumers in operating their automobiles in accordance with the recommendations of automobile manufacturers concerning the use of gasoline and could prevent an owner from recovering costs of repairs under his new vehicle warranty provisions.

(3) Refiners and other marketers of gasoline own and/or control the pumps through which gasoline is dispensed at the retail outlet.

The larger major brand refiners and marketers own the pumps of the stations. See testimony of Delaware Valley Dealers Association, Tr. 289.

Testifying on behalf of the Society of Independent Gasoline Marketers of America, Mr. Deer stated that in the case of independent marketers "the ownership of the stations, the ownership of the pumps and ownership of the real estate in most cases, resides with the company and not with the operator." (Tr. 119.)

Continental Oil Co. maintains that "With some variation from company to company, only a minority of the stations through which the major oil companies market are operated by the companies. Most stations owned by the supplying companies are leased to independent operators. By operation of law, lease of the service station premises vests the operator with dominion and control of the dispensing pumps. Other operators (so-called 'free dealers') own their stations and equipment, while still others are so-called 'jobber dealers' who typically operate stations owned by the distributors under various forms of contractual arrangements." (Record 441.)

Standard Oil of California states that some of its stations are owned by the company and consequently the pumps are controlled by the company, and some stations are operated under a lease agreement where the lessee dealer has certain contractual rights to the use of the property. In further discussion, the representative of Standard Oil concluded that under lease situations the oil company would be able to post octane numbers on the pumps if so required. "There is no reason why a marketer of gasoline cannot now put on octane rating if you think that is a valuable promotional tool or helpful to the consumer." (Tr. 94.)

(4) Many consumers are unaware that the engine requirements of their automobiles may permit the use of a lower octane gasoline and are paying higher prices needlessly for gasolines of a higher octane rating.

This subject has surfaced tangentially in the discussions of the other premises set out in the public notice; because of its pocket impact it should be highlighted.

There seems to be little doubt that there is a direct relationship between the cost of gasoline and its octane rating. The higher the octane rating of the gasoline the more it costs to refine and the more it costs the consumer.

"As of today what does the car owner know about buying gasoline? * * * One can usually, but not always, assume two things: The 'premium' is higher octane than the 'regular' and has a higher price." (Statement of Consumers Union, Record 790.)

The industry representatives participating in the hearings agree that the cost of gasoline production increases with increase of octane rating. (See testimony of American Petroleum Institute, Tr. 226; Mobile Oil Corp., Tr. 261; Phillips Petroleum Co., Tr. 396; Standard Oil Co. of Ohio, Tr. 412.)

The higher the octane rated the gasoline, the more expensive it is. Does the consuming public know this? Is the consuming public buying more octane than necessary and therefore paying more than necessary? The Record supports an answer in the affirmative.

The Ford Motor Co. states that "Studies have shown that a significant percentage of customers will purchase premium grade fuels for a regular grade engine, whether the engine needs it or not." (Record 170.)

As previously cited, Sun Oil Co. has stated in its advertisements that "Unfortunately many people buy too much octane." (Record 102.) And in a written submission to the FTC Conference on Marketing of Automotive Gasoline, supra, Record 160, it stated "* * * the public traditionally has bought more octane than necessary." In further discussion of the two grade system (premium and regular) Sun Oil Co. concludes that "* * * many automobiles do not need octane as high as that provided by the regular grade. This is particularly true in the east where regular grades are about one octane higher than the nationwide average. A lower octane fuel would be entirely adequate for a sizeable segment of the automobile population. This is actually being done in the southwest and west where the regular grades are significantly lower in octane. Second, automobiles which need higher octane than that provided by the regular grades have to jump to the premium in the two grade system. This results in a sizeable area of excess octane quality and, in our opinion, is a real deficiency of the two grade system." (Record 160.)

Several of the witnesses appearing in opposition to the proposed rule do concede that some customers probably do buy a higher octane gasoline than is required for their automobile, although they do not know just how many purchase or how much extra octanes are purchased. (See Mobil Oil Corp., Tr. 261; Phillips Petroleum, Tr. 395; Cities Service Oil Co. testimony, Tr. 110; Atlantic Richfield testimony, Tr. 137; Sun Oil Co. testimony, Tr. 308; Professor Myers' testimony, Tr. 360.)

Many of the parties supporting the promulgation of a rule requiring octane posting also state that in their opinion many people unknowingly buy higher octane than is necessary. (See statements of Senator Proxmire, Tr. 12; see also Congressman Dingell's statement, Tr. 40; Consumers Union statement, Tr. 197; Delaware Valley Service Station Dealers Association, Tr. 288; Department of Justice statement, Record 890; statement of George Washington Law School students, Record 876.)

Since the higher octane gasolines (premiums) are more expensive and it's quite probable that some or many buy a gasoline with a higher octane rating than their automobiles demand, a proper selection of the correct octane rated gasoline should in most cases result in a savings to the consumer. This is particularly important to the low income user of gasoline.

"* * * the average consumer does not know how to find out the octane ratings of the various gasoline brands and, thus, is liable to be spending much more money for gasoline than he needs to. This is particularly true for poor people who have to spend a large percentage of their income for gasoline in order to get to work. According to the president of Sun Oil Co., Americans who earn less than $3,000 a year spend an average of 6.2 cents of every dollar on gasoline compared to 1.5 cents for the $15,000 plus income group. A savings of $40 or $50 a year is very important to them." (Senator Proxmire, Tr. 14.)

Representative Joshua Eilberg estimates a possible savings in the amount of $50 per year. (Tr. 176.)

The Consumers Union in discussing differences in gasoline prices [even though the octane ratings may be similar] illustrates how savings can be effected through selected price comparisons of gasoline.

"Price, however, is something else. Prices for a given designation of the majors differ from city to city, differ within the same city, differ from the independents' prices and change seasonally. Obviously, you must shop around if you're interested in price. We found that, on the average, buying a major brand at a cut rate station will save you about 1.5 cents per gallon over the price for the same brand at a regular station, regardless of designation. And if you can switch from a branded gasoline sold at a regular price to an independent gasoline sold cut rate you can save about 4 cents per gallon. That adds up to $28 a year for 700 gallons, which is about the national average gas consumption per car." (Record 805) Similar savings could be effected by the auto owner who changes from a premium gasoline to a lower priced regular if he was made aware that his auto needed only the lower octane rated regular gasoline rather than the higher octane rated premium that he is presently paying 3 cents to 4 cents more per gallon.

Mobil Oil Corp. estimates that savings accrued by purchasing regular (low octane) in lieu of premium (high octane) "* * * would run something less than $30 a year." (Tr. 248.)

Any estimates of savings to the individual consumer of gasoline, considering the number of auto owners, the different brands and grades, and the octane ratings that may appear on pumps, is highly speculative. But what is important is the fact that savings can reasonably be predicted to occur simply because it has been established that people buy too high an octane rated gasoline. Once educated to the fact that many cars need not use premiums (high octane) it seems reasonable to conclude that savings through purchases of regulars rather than premiums, or middle ranges rather than premiums, will eventuate. Even if this did not come to pass, the consumer is entitled to have octane information made available to him, regardless of the amount of money saved. The information is useful to the car owner. It is needed in order that he satisfy his engine needs and yet not "overkill" in the use of gasoline. Postings on pumps should prompt automobile manufacturers to educate automobile owners as to gasoline/engine requirements of the cars they produce and market.

The consumers' dilemma is thus: "Gasoline is an anonymous product to the consumer. He knows only that he is buying a petroleum product, that it has been transformed into gasoline at a refinery, that it is the fuel required for his automobile, and that it may be procured at his local gasoline station. The consumer never sees the gasoline he purchases. He has no idea of what is in it. He has no way to objectively distinguish one gasoline from another. He is unable to distinguish one quality claim from another. Finally, he lacks the sophisticated knowledge necessary to determine if his engine's fuel requirements are being satisfied. But he must use gasoline. He accepts the maze." (George Washington Law School student statement, Record 860.)

The first step out of this maze is succinctly described by W. C. Tancig:

"Posting octane numbers on the pumps would give drivers a yardstick to measure what they get for their money, other than credit cards, automobile clubs, and rest rooms. In short, as your present proposal recognizes, and our data confirm, motorists cannot intelligently shop for gasoline on the basis of price without knowing about antiknock property in the form of octane ratings. We view the industry's withholding of this fundamental information as deceptive and indefensible.

"* * * Your proposal will also enable car manufacturers to recommend the proper fuel for their products by octane level rather than by a generalized price level. As a matter of fact, we urge you to supplement your proposal with just such a requirement for these manufacturers." (Consumers Union, Record 795.)

IV. *In opposition to the proposed rule.* 1. Probably the most frequent argument posed by opponents to the proposed rule is that the posting of research octane numbers creates the impression that octane rating is the only quality feature of gasoline and therefore is misleading.

"I believe this testimony will show that posting of research octane numbers could mislead the motorist into buying a product that may lack essential characteristics of a good gasoline. These characteristics include quick starting, dependable acceleration, cleanliness, and good mileage. Undue emphasis on Research Octane ratings could delude the consumer into believing that gasoline with a higher posting would perform better, which may not be the case.

"Aggressive marketing competition among oil companies has produced the high quality gasolines that motorists expect and receive today. The posting of octane numbers would tend to minimize competitive efforts to maintain and improve overall quality, and place undue emphasis on Research Octane rating, in itself an inadequate total performance criterion.

"* * * Even if antiknock performance could be accurately predicted by some yet-to-be devised laboratory octane test, it would not guarantee the consumer top engine performance. There are numerous characteristics essential in judging the quality and performance of a motor fuel.

"(1) *Proper fuel vaporization at low temperature.* This feature insures quick engine starting in cold weather, without vapor locks.

"(2) *The optimum degree of fuel vaporization as the engine warms up and temperatures rise.* This insures fast warm up, smooth acceleration, and uniform fuel distribution among the engines' cylinders.

"(3) *Careful control of high-boiling fuel hydrocarbons.* Good fuel distribution and freedom from excessive crankcase dilution and deposits are insured when the amount of very high-boiling hydrocarbons is kept to a minimum.

"(4) *Proper relationship between vaporization and the altitude and climate where the fuel is to be used.* This feature also prevents vapor lock, the result of fuel boiling in the fuel pump and fuel line.

"(5) *Low gum content.* This prevents valve sticking, carburetor difficulties, and gum deposits in the engine and intake manifold.

"(6) *Low sulphur content.* This minimizes corrosion and reduces atmospheric pollutants.

"(7) *Good storage stability.* This keeps gum from forming.

"All of these characteristics are essential to a high performance fuel; none of them depends on a gasoline Research Octane rating." (Statement of Francis C. Moriarity, American Petroleum Institute and Western Oil and Gas Association, Record 454 and 456–457. For other statements pointing out that octane is not the sole indicia of quality in gasoline and/or posting of octane numbers would mislead, see statements of Standard Oil Co. of California, Record 303; Cities Service Oil Co., Record 354; Society of Independent Gasoline Marketers of America, hereinafter referred to as SIGMA, Record 430; Atlantic Richfield Co., Record 703; National Petroleum Refiners Association, Record 755; Mobil Oil Corp., Record 737; Sun Oil Co., Record 411, 410, and 859; American Petroleum Refiners Association, Record 659 and 661; Professors P. S. Myers and O. A. Uyehara, Record 644, 650; Phillips Petroleum Co., Record 728, 729; Standard Oil Co. of Ohio, Record 313, 314; J & L Oil Co., Inc., Record 57; APCO Oil Corp., Record 62; Sunland Refining Co., Record 72; Louisiana Department of Revenue, Record 82; Plateau, Inc., Record 86a; Kendall Refining Co., Record 87; Council of Safety Supervisors, Vermont Truck & Bus Association, Record 93; United Refining Co., Record 95; Mohawk Petroleum Corp., Inc., Record 240; American Oil Co., Record 258; La Gloria Oil & Gas Co., Record 269; California Department of Agriculture, Record 277; North Carolina Department of Agriculture, Record 291; Union Oil Co., Record 293, 296; Michigan Petroleum Association, Record 300; North Carolina Oil Jobbers Association, Record 349; Gulf Oil Co., Record 357, 360; Shell Oil Co., Record 361, 363; Continental Oil Co., Record 434, 437; Rock Island Refining Corp., Record 447; SYMPA, Record 504; Humble Oil & Refining Co., Record 568; Georgia Association of Petroleum Retailers, Record 325, 330; Kentucky Petroleum Marketers Association, Record 813; Illinois Petroleum Marketers Association, Record 852; Fuel Merchants Association of New Jersey, Record 827; Texaco, Inc., Record 837; George C. Stafford & Sons, Record 839; State of Indiana Department of Revenue, Record 911.)

2. A further refinement of the argument that postings mislead consumers is that the posting of octane ratings on gasoline pumps as a result of a Federal agency regulation "* * * would be tantamount to giving a government stamp of approval to octane as the sole, or primary, index of gasoline quality." (Mobil Oil Corp., Record 745; see also statements of Professors Myers and Uyehara, Record 650; Standard Oil Co. of Ohio, Record 316; and Shell Oil Co., Record 362.)

The Federal Specifications for the purchase of automotive gasoline, VV–G–76a, January 7, 1963, is cited to illustrate that gasoline contains many quality features. "The department of Government responsible for purchasing untold millions of dollars of fuel for engines from jet to diesel learned many years ago that not only is there no single standard for gasoline, but the variables necessary to assure high quality performance were so numerous and intricately related that they issued a specification requirement composed of an unbelievable number of factors which must be met. This specification VV–G–76a * * * and its complexity requirements is proof sufficient that research octane number in no manner is an indice of overall quality." (American Petroleum Refiner's Association, Tr. 325.)

3. It is pointed out that each automobile has different engine characteristics and because of this has different octane needs.

"Any two automobiles of identical make and model may vary as much as six to eight octane numbers in the gasoline characteristics required to prevent knocking. Also, a very high compression engine needs one kind of gasoline. The same gasoline may not be needed in an engine of lower compression which may operate efficiently on a gasoline of different characteristics—not an inferior gasoline, but a different gasoline. The motorist finds out what is right for his car by its performance as he drives it with one gasoline or another in the tank. It is his driving experiences, and not the posting of octanes, that will inform the driver what gasoline his car should use." (Statement of Standard Oil of California, Record 307; see also Cities Service Oil Co., Record 352; SIGMA, Record 431; American Petroleum Institute, Record 459, 470; Mobil Oil Corp., Record 740; William A. Fluhr, Inc., Record 787; Sun Oil Co., Record 412; Professors Myers and Uyehara, Record 648; Standard Oil Co. of Ohio, Record 317; APCO Oil Corp., Record 62; Plateau, Inc., Record 86a; Council of Safety Supervisors, Vermont Truck & Bus Association, Record 93; Mohawk Petroleum Corp., Inc., Record 241; American Oil Co., Record 259; Union Oil Co., Record 295; Michigan Petroleum Association, Record 300; Gulf Oil Co., Record 358; Continental Oil Co., Record 437; Humble Oil & Refining Co., Record 575; Fuel Merchants Association of New Jersey, Record 823.)

4. It is forcefully argued that the research octane number method of evaluating gasolines antiknock capabilities is not an accurate measure, that the motor method is no more effective and that the road method is the best of the three but not in itself a totally accurate gauge.

"Our belief that octane posting would not serve to inform the motorist has a sound technical basis. The technical problems arise from the fact that there are three methods of measuring the octane of automotive gasoline: the Research method and the Motor method, both of which are performed in the laboratory, and the Road rating approach, which is carried out in a multicylinder automobile engine under highway operating conditions. Since the Road method most closely

simulates actual car operation, the Road rating is a better indicator of the gasoline antiknock performance to be expected. The octane numbers derived for the same gasoline by each of the three methods, however, will vary markedly.

"As the American Society for Testing and Materials (ASTM) explains it:

"At the present time, there is no completely satisfactory way of translating Motor and Research octane numbers into terms of a rating for all vehicles on the road. Correlations of laboratory ratings with Road ratings have been developed, but at best such correlations represent only the average result obtained for a limited number of vehicles when operated under prescribed conditions. (1969 ASTM Standard. Part 17, page 172.)

"Research octane, the one proposed for posting in the FTC rule, is least related of all the methods to actual car performance. Research octane is a laboratory test measured on a single cylinder engine which is not like the modern six or eight cylinder automobile engines. The Research method was designed as a successor to the Motor laboratory method to accommodate the higher octane fuels developed in the 1930's. The Research method, in combination with the Motor method, is in use by oil companies as a means of monitoring the octane level of refinery streams and also finished gasoline products. But it is only of value in these instances because the limitations of the data are understood by the people who use them, and the Research number is only one of the many measurements used by refiners. They have also measured the Road octane, and know the relationship between the Research and Motor measurements and actual performance for a particular composition of gasoline. The Research method alone is not a satisfactory method of comparing the road performance of several gasolines." (Sun Oil Co. Statement, Record 413, 414.) For other statements indicating that Research octane rating is an inadequate measure of gasoline quality see Standard Oil Co. of California, Tr. 78; Union Oil Co., Record 294–295; Cities Service Oil Co., Record 352; SIGMA, Record 431; Ethyl Corp., Record 423, 426; American Petroleum Institute, Record 455, 468; Mobil Oil Corp., Record 739; American Petroleum Refiners Association, Record 656; Professors Myers and Uyehara, Record 648; Phillips Petroleum Co., Record 729; Standard Oil Co. of Ohio, Record 319; Department of Agriculture, State of Hawaii, Record 29; Kendall Refining Co., Record 87; Mohawk Petroleum Corp., Record 240; American Oil Co., Record 256, 258; Michigan Petroleum Association, Record 300; North Carolina Oil Jobbers Association, Record 349; Gulf Oil Co., Record 358; Shell Oil Co., Record 362; Continental Oil Co., Record 440; Humble Oil & Refining Co., Record 579; Empire State Petroleum Association, Inc., Record 850; Texaco, Inc., Record 837.)

Similarly this was the thread of the argument presented by the Ethyl Corp. in the demonstration before the Commission of its Crosley engine with four different fuel supply devices which supplied to the engine two different brands of "premium" gasoline and two different brands of "regular" gasoline, all having similar research octane numbers. Ethyl after demonstrating that the four gasolines when burned in the engine have different "knock" propensities maintains that the necessary conclusion that must follow is that gasolines of the same RON will react differently in any given engine and therefore "the use of research octane number alone as the index of fuel quality could be misleading to the motoring public." (Record 426.) (For similar observations concerning the incongruities between the Research Octane Method and the Road Method see Mobil Oil Corp., Record 739; Sun Oil Co., Record 413–414; American Petroleum Refiners Association, Record 663, 664; Standard Oil Co. of Ohio, Tr. 405; Mohawk Petroleum Co., Record 241; Union Oil Co., Record 294; Humble Oil & Refining Co., Record 575, 604.)

5. The result of posting of octane numbers on gasoline pumps will be octane wars. So state industry members in opposition to the proposed rule.

"The proposed Rule will tend to lead the public to believe that a gasoline with a higher research octane rating will in all or almost all cases fill their needs better than a lower research, octane gasoline.

"* * * In addition, by overemphasizing research octane the Rule might upset the widespread practice of selling lower octane gasoline in the Rocky Mountain States than in other parts of the country. Since octane requirements decrease at higher altitudes, this practice does not affect gasoline performance. However, if the proposed Rule with its emphasis on research octane is put into effect, there may well be the tendency to increase the research octane of gasoline sold in the Rocky Mountain States to levels prevailing in other parts of the country.

"Thus by overemphasizing the importance of research octane the proposed Rule may well cause some marketers to add certain components to their gasoline in order to raise research octane levels and thus gain a competitive advantage. Competitive factors could then force other maketers to follow this practice. Most elements of gasoline quality would not be enhanced by this increase in research octane ratings. Thus the Rule may change the buying habits of the public without bringing them any substantial benefit." (Statement of Atlantic Richfield Co., Record 704–705.) Other participants who fear that octane wars will result from posting and the public placing too much emphasis on the value of octane ratings include SIGMA, Record 431; National Petroleum Refiners Association, Record 757; Mobil Oil Corp., Record 742; Sun Oil Co., Record 411; Professors Myers and Uyehara, Record 651; Phillips Petroleum Co., Tr. 386; Standard Oil of Ohio, Tr. 412, Record 316; American Oil Co., Record 263; Gulf Oil Co., Record 360; Shell Oil Co., Record 363; Continental Oil Co., Record 440; Rock Island Refining Corp., Record 448; Humble Oil & Refining Co., Record 577–578; Kentucky Petroleum Marketers Association, Record 814; Fuel Merchants Association of New Jersey, Record 828.

Another member of the petroleum industry believes that with minimum posting requirements, most manufacturers will not race to increase octanes, but rather will tend to produce gasoline with the minimum amount of octane rating possible. (American Petroleum Institute, Tr. 218.)

6. Posting of octane ratings will inhibit research, so states Standard Oil of California.

"As the President of a research company which has a long record of product innovation and improvements over the years, it would be particularly distressing to see this happen. It would arise from the fact that if research octane postings were required, then, of course, the target that would be forced on a manufacturer and on the research group backing them up, would be to try to obtain that research number at the lowest possible cost." (Tr. 81, 82.)

"The emphasis given research octane by the Commission's proposed trade regulation rule could create an artificial barrier to improvement; for gaining public acceptance of some new ingredient might be very difficult if the necessity of posting the research octane rating induced the erroneous impression that this new gasoline was not really any different from other products bearing the same research octane rating." (Standard Oil Co of California, Record 308. For expressions of similar sentiments see Atlantic Richfield, Record 707; Phillips Petroleum Co., Tr. 387; and Standard Oil Co. of Ohio, Record 316; Kentucky Petroleum Marketers Association, Record 815.)

7. Since the octane requirements of automobile engines differ in certain parts of the country, the motorist driving from one area to another will be confused by the different octane ratings appearing on the pumps. This argument is presented as another reason why posting of octane ratings will confuse and therefore should not be required.

"If octane postings were required, a consumer would find that the same brand of premium gasoline with a posting of 100 octane in New York City might have a posting of 97 octane in Denver, Colo., and yet provide equivalent antiknock performance in both areas. However, with octane posting, the motorist would not know that the gasolines—despite such differences in octane ratings—were made to perform properly and satisfactorily under different temperature and altitude conditions. In such instances, posting of octane numbers on gasoline pumps would not only not help the consumer but would in fact, serve to confuse him. And it would certainly not be in the consumer's interest for him to purchase, unnecessarily, a higher octane number gasoline in high-altitude areas." (American Petroleum Institute, Western Oil and Gas Association, Record 458–459. See also Atlantic Richfield Co., Record 704, Tr. 137, 138; American Petroleum Refiners Association, Record 338, 657; APCO Oil Corp., Record 62; Plateau Inc., Record 86a; Motor Transport Association of New Hampshire, Record 91; Mohawk Petroleum Corp., Inc., Record 241; American Oil Co., Record 257; Standard Oil of California, Record 309.)

8. Industry members point out that under the present system of gasoline marketing if an automobile knocks, or the customer is otherwise unhappy with gasoline performance, he will buy another brand or grade of gasoline. (See statement of Standard Oil of California, Tr. 81; Cities Service Oil Co., Tr 109; Mobil Oil Corp., Tr. 247, Record 741; La Gloria Oil & Gas Co., Record 270; Union Oil Co., Record 295; Gulf Oil Co., Record 358–359; Rock Island Refining Corp., Record 447; Humble Oil & Refining Co., Record 576, 577; Empire State Petroleum Association, Record 850; Vermont Petroleum Inc., Record 826; Vermont State Farm Bureau, Record 830; George C. Stafford & Sons, Inc., Record 839.)

As a companion to the above argument is the position that the present system of identifying gasoline qualities and capabilities provides adequate information to the consumer.

"In Atlantic Richfield's view, the maintenance of this basic terminology—'regular' and 'premium'—is more meaningful and more useful to consumers than would be a requirement that gasoline be identified by research octane ratings. Should gasoline marketers be required to post the actual research octane rating at the pump, this, as a matter of consumer psychology, will influence consumers to purchase the highest rated gasolines." (Record 706. See also statements of American Petroleum Institute, and Western Auto Gas Association, Tr. 217; Union Oil Co., Record 293; Continental Oil Co., Record 436 and N.2; Humble Oil & Refining Co., Record 576.)

9. The smaller independent refiners argue that posting of research octane ratings on pumps will work a hardship upon them. It is their insistence that many of the small refiners, because of the crude oil they utilize, are able to refine gasoline that may have an excellent "Road Octane Rating" but have a

relatively unimpressive Research Octane Rating.

"There is no need nor justification for these small refiners to produce a product with an unnecessarily high Research Octane number when they are already making a higher performance gasoline than the high Research Octane number gasoline marketed by intermediate and major refiners. As a documented example, there is attached a specification sheet of Famariss Pool gasoline for September. It shows our premium grade gasoline tests.

"97.9 Research Octane,
"92.6 Motor Octane, and
"101.6 Road Octane.

"Under your proposed regulation of pump posting we would flunk on the Research Octane which is the number the consumers would see.

"What the consumer would not see is that he's passing up the whipping cream to get skim milk because in the same market highly advertised gasolines have been tested at

"99.9 Research,
"92.2 Motor, and
"98.2 Road Octane.

"What is true of Famariss gasoline is typical of the gasoline of most small refiners." (American Petroleum Refiners Association, Record 663–664; see also statements of Mohawk Petroleum Corp., Inc., Record 241; Kendall Refining Co., Record 87.)

This point is corroborated by the Dupont "Technical Discussion On Research Octane Number As A Measure Of Fuel Antiknock Performance In Cars." "Here again, it will be observed that the road antiknock quality of gasoline marketed by these small companies is fully competitive with that of the major companies, despite the fact that the Research Octane Numbers are appreciably lower." (Record 476.)

10. In the view of independent marketers the worrisome feature of mandatory postings is that they have no control over the octane rating of the gasoline that they purchase from refineries or middlemen.

"* * * SIGMA is most seriously concerned with the effect the proposed rule could have upon its efforts to remain competitive in the retailing industry. As already noted, SIGMA members are almost wholly dependent upon major oil companies for product supply. Such dependence means that SIGMA members have no control over the octane ratings of gasoline purchased from the majors, and no means of determining octane ratings except to rely upon rating data furnished by the supplier. The problem is greatly compounded by the fact that an individual independent marketer often must look to various major brand sources for his product supply. If the Commission adopts a rule requiring the posting of octane ratings, which we oppose for reasons already stated, such a rule must contain a provision permitting independent marketers to rely on octane ratings furnished by the refiner * * *" (Society of Independent Gasoline Marketers, Record 432. See also statements of Mohawk Petroleum Corp., Inc., Record 241; and comments of Department of Justice, Record 891–892.)

Conversely, the independent refiners are also concerned over the fact that once the gasoline leaves the refinery it may pass through several parties prior to sale and the refiner may have no control over the ultimate octane number of the gasoline at the point of sale. "Since the independent refiner markets his gasoline through many different channels, a particularly worrisome aspect of the proposed compulsory posting Rule, concerns the amount of control over the exact research octane and the problems involved in maintaining the same octane rating from the refinery to the gasoline pump. The independent refiner can accurately label the octane of the gasoline at his refinery and at his own retail outlets, but would have no way of controlling the quality of the product sold at the refinery after it has left his plant and is subject to subsequent handling which could affect the octane rating. This could be particularly troublesome in cases where the gasoline is handled by different parties, i.e., jobbers, transporters, etc., before reaching the retail marketers." (Statement of National Petroleum Refiners Association, Record 756–757; see also statement of Sunland Refining Corp., Record 72.)

11. It has been suggested by some that the posting of octane ratings of gasoline on pumps will tend to divorce consumer purchase decisions from brand names. Shell Oil Co. asks: "* * * Is the Rule a measure to reduce consumer identification of performance satisfaction with a particular brand? If so, why? There is nothing undesirable about consumer identification of superior performance with a particular brand * * *" (Record 363.)

Similarly, a fear of brand name erosion because of octane posting was voiced by the Georgia Association of Petroleum Retailers, Inc. "* * * The ability of the unbranded dealer to purchase gasoline on a competitive bid basis would be an unfair competitive advantage over branded dealers who are locked-in under short term leases with a landlord-supplier should you adopt the proposed rules which we believe will result in consumers disregard of brand names and other qualities by making selection on octane rating only." (Record 326.) See also comments of the representative of Phillips Petroleum Co., Tr. 392.

12. Opponents point out that gasoline companies presently must adhere to stringent State laws which set out precise specifications for gasoline quality and therefore these State requirements adequately protect the consumer.

"State law provides necessary safeguards for gasoline products as to octane and certain other qualities and thus protects the consumer from deception as to quality meeting the requirement for today's automobiles." (Georgia Association of Petroleum Retailers, Inc., Record 324; see also statement of APCO Oil Corp., Record 62; State of Louisiana, Department of Revenue, Record 82; Louisiana Oil Marketers Association, Record 267; Alabama Department of Agriculture and Industries, Record 275; Crown Central Petroleum Corp., Record 347; Continental Oil Co., Record 441, 444; Mississippi Motor Vehicle Comptroller, Record 825; Hon. Joe D. Waggoner, Jr., Member of Congress, Record 840.)

13. It is pointed out that there is really little variation in the octane ratings of competing gasolines today and therefore the motorist is capable of judging for himself the gasoline he needs under the present grading system. See statement of Atlantic Richfield, Record 706; Phillips Petroleum Co., Record 728; and Humble Oil & Refining Co., Record 576.

V. *Suggested alternatives and modifications to the proposed rule.* 1. Parties appearing in support as well as in opposition to the proposed Rule suggest that the Rule should require the marketers to post minimum octane ratings on the pump, i.e., state that the gasoline being dispensed from the pump is at least 90 octane, rather than requiring a marketer to state that the gasoline is precisely 90 octane at any time it is sold.

"* * * the proposed regulation would appear to impose unnecessarily difficult requirements in its direction that exact octane ratings be posted on dispensing pumps. This, again, would impose considerable burden on independent marketers whose supplies are derived from different manufacturers, in lots of different octane rating, which are inexactly mixed in dispensing tanks. In meeting this situation, or that created by evaporation of the more volatile components with consequential changes in actual rating, we recommend that the proposed regulation be amended to require only specification of the minimum octane rating of the gasolines included in the mix. Absent anticompetitive agreement among retailers or suppliers to maintain uniform octane postings, it would seem inevitable that the pressures of competition would shortly require that the minimum ratings posted be as near as possible to the actual." (Comments of the Department of Justice, Record 892–893; see also Statements of Consumers Union, Record 799; Crown Central Petroleum Corp., Record 347; Department of Transportation, Record 907. The Petroleum Products Division of the Louisiana Department of Revenue recommends the minimum postings of the base stocks of gasoline being dispensed from blend-o-matic pumps. Record 903.)

2. It has been suggested that the proposed rule be enlarged in scope so as to require the automobile industry to specify in their owner's manuals the octane rating of the gasoline that they recommend for their automobiles. See statements of Consumers Union, Record 795; Hon. John A. Ochiogrosso, Record 696.

3. The Commissioner of Consumer Affairs of Nassau County also recommends that Federal financial assistance be afforded to local offices of consumer protection. (Record 696.)

4. The representatives of Kiekhaefer Mercury Co., a builder of motorboat propulsion systems recommends that the rule be expanded to cover all internal combustion engines, and that "all engine builders" as well as marketers be required to post octane information relating to the engines they manufacture. (See Record 685 and Tr. 66.) Their point is that in internal combustion engines used in outboard motors, quite often low octane gasoline (60–65) is sold as Marine White, and when used causes severe damage to such engines. Therefore posting of the octane rating should be required on marine pumps and that manufacturers of engines be required to recommend gasoline for their engines in terms of octane rather than the general terms "regular" or "premium."

5. The George Washington University Student Group requests that "the Federal Trade Commission reexamine the gasoline industry practices of dual distribution and exchange agreements taking into full account the deceptive effects of these practices upon the consumer." (Record 883.)

6. The Atlantic Richfield Co. suggests, "* * * that the appropriate rule should require that gasoline being offered for sale at the retail level be identified by trade name or other means as 'premium,' 'mid-premium,' 'regular,' or 'subregular' and that the rule or guide define each of these grades of gasoline by prescribing its minimum research octane rating. It is our further suggestion that the minimum octane ratings be set at 99 for 'premium,' 92 for 'regular,' 95 for 'mid-premium' and 89.5 for 'subregular.'" (Record p. 709.)

The proposal of Atlantic Richfield would not, however, require that octane ratings be posted on the pump. (Tr. 144–145.)

7. The Sun Oil Co. also suggests as an alternative to posting of octane ratings that "The Trade Regulation Rule should create a graded system registering fuels based on Road octane number, with a minimum of five categories to accommodate the five grades of gasoline most commonly available today:

subregular, regular, intermediate, premium, and super premium.

"* * * We believe that by using categories, rather than specific numbers, the danger of misleading the consumer by playing up insignificant numerical differences, the general confusion over rating methods, and the potential disagreements over the accuracy of posted numbers would be avoided." (Record 416.)

Sun Oil believes that "Posting categories instead of numbers would, of course, protect the motorist from attaching undue importance to small numerical differences." (Record 856.) Sun Oil Co.'s proposal evidently does not contemplate the posting of octane numbers on the pumps, but rather relying on grades as are presently used. Tr. 309.)

The Crown Central Petroleum Corp. suggests as an alternative to posting that refiners file with the FTC a certification that their grades of gasoline meet certain minimum octane ratings. (Record 347, 348.)

8. Dr. Myers of the University of Wisconsin suggests (Record 652) that the Commission "* * * ask some prestigious and qualified body, such as the National Academy of Engineering or the Society of Automotive Engineers—is there a single unique quality criterion for gasoline? If there is, it should be made known to the customer."

Dr. Myers further suggests that the Commission "* * * see that information about the quality characteristics of gasoline (including knock) be prepared by a knowledgeable and impeccable group, such as the National Academy of Engineering or the Society of Automotive Engineers, expressed in simple laymen terms and made available to the general public." (Record 653. See also Sun Oil statement, Record 417.)

9. The Director of The Division of Weights and Measures, Hawaii Department of Agriculture, suggests that the Commission rather than utilize Research Octane Ratings, use a more meaningful criteria that they are presently in the process of developing in the State of Hawaii (Record 26). The "Performance Index" as contemplated by The Hawaiian Department of Weights and Measures would include factors other than Research Octane Numbers above. It is also suggested that if the Commission does promulgate a Trade Regulation Rule such a rule be made inapplicable to States having a "value indicator law." (Record 29.)

VI. *Summary and conclusion.* On the basis of the Record of the Trade Regulation Rule proceeding, including those portions referred to in the preceding paragraphs, the Commission has concluded that the issuance of a Trade Regulation Rule requiring the posting of minimum research octane ratings on gasoline dispensing pumps is required by that Record and is in the public interest.

The public Record has demonstrated:

1. A relationship between the cost of gasoline and its octane rating, and that as a general rule, the higher the octane rating of the gasoline the higher the cost per gallon, and that there is a varying range of gasolines with different octane ratings available;

2. A relationship exists between the octane rating of the gasoline and the requirements of the automobile engine, and that different engines need differing octane rated gasolines;

3. The great majority of marketers of gasoline do not disclose to the consumer the octane rating of the gasoline being sold at the pump in a readily available manner;

4. Consequently, consumers are unaware that octane requirements of their particular automobile may permit the use of a gasoline with a lower octane rating, and as a result are paying higher prices needlessly for gasolines of a higher octane rating. Furthermore, the use of a gasoline which is either too high or too low in octane rating for that particular automobile tends to create excessive emissions which contribute to air pollution;

5. Motorists find it difficult to relate the octane needs of their automobile engines to the octane ratings of the gasolines available for sale. This is particularly true of automobile owners who must follow the requirements set out in their owner's manuals as to gasoline use in order to comply with the "new car" warranty provisions of many automobile manufacturers. In some instances it is possible that through ignorance on the part of a motorist the use of to low an octane gasoline for an extended period of time could cause severe engine damage.

Therefore, on the basis of its accumulated knowledge and experience and the Record in this proceeding, the Commission concludes that the failure on the part of marketers of gasoline for general automotive use to affirmatively disclose the research octane rating of the gasoline to the consumer at the point of sale in a readily accessible manner constitutes an unfair method of competition and an unfair trade practice in violation of section 5 of the Federal Trade Commission Act.

It has been forcefully argued that there are many components to gasoline makeup, in addition to the octane rating, which contribute to the overall quality and efficiency of gasoline, and posting of octane ratings on gasoline pumps will lead the consumer to conclude that the octane rating of gasoline is the only indicia of quality. It is further argued that the requirement by a Federal agency mandating the posting of octane ratings on gasoline pumps would be tantamount to a Government stamp of approval to octane rating as the sole index of gasoline quality. The Commission rejects this view. It is granted that the posting of octane ratings will certainly make the public more aware of such a quality feature than has been the case previously. However, it is too broad a jump to conclude that the consuming public is so gullible as to assume that octane rating is the sole criteria of quality. Certainly purchasers of watches do not base their purchase decision strictly on how many jewels are in the watch. The same is true of clothing. Purchase decisions are not based solely on the fabric alone. Other factors such as style, price, and service play a role in a customer's decision to purchase one watch or one article of clothing in lieu of another. The jewel movements in a watch and the fabric in an article of clothing are but one vital piece of information made available to the consumer. So, too, with the octane rating of gasoline. It is a vital piece of information that should be made available to the consumer to be considered along with price and other factors in the purchase of gasoline.

Whether or not consumers will consider the fact that octane posting is a Federal requirement and therefore constitutes a Government stamp of approval is subject to speculation. Assuming the worst, i.e., that consumers did jump to this conclusion, this would be no justification for not providing to consumers an otherwise essential information factor in their selection of gasolines. Perhaps consumers buy the highest USDA grades of meat available at the meat counter on the assumption that this is a Government stamp of approval—this would be no reason to eliminate grading of meats by the USDA. The information is made available to consumers of meats. If they choose to purchase only the most expensive grades that is their choice. They have been provided with essential information. To what extent they let it influence their purchase decision is a matter for them to decide. The same would be true of the posting of octane information.

The opponents of the proposed rule maintained that since automobiles have differing engine characteristics which will have differing octane needs, the posting of the octane rating on the pump will not inform the motorist what gasoline his car should use.

It is because different autos have different octane requirements that the need to post such information concerning the octane number of the gasolines available becomes critical. The car owner's driving experience tells him which gasoline is best suited for his car. This proposition is granted. The car owner's ability to ascertain the precise gasoline for his particular engine will be enhanced with the added increment of information, the octane rating of the gasoline dispensed at the pump. The variations in autos illustrate the need for posting the octane ratings on gasoline pumps. It does not disprove the merit of the proposed rule.

The Commission recognizes the argument that at present the research octane number of evaluating gasoline antiknock capabilities is not a technically accurate measure, that the motor method is more effective, and that the road method is the best of the three but not in itself a totally accurate gauge.

The question, as the Commission views it, is not whether the Research Octane Method of evaluating gasoline antiknock properties is a technically perfect barometer, or whether the Road Method is technically superior to either the Research or Motor Method. The question that presents itself for consideration is whether the Research Octane Method of grading fuel antiknock properties is sufficient to afford the motoring public a benchmark in the selection of the gasoline which meets the needs of their particular automobile. Granted a given octane rating placed on a pump will not necessarily satisfy a given automobile. That is too much to expect and is, of course, far more than is needed. What is needed is a yardstick made available to the automobile driver, a starting point from which he can begin to evaluate gasoline antiknock values in relation to his automobile. The motorist needs no perfect measuring device, but he does need a yardstick, albeit not technically flawless, which gives him a starting point to compare gasolines. The Research Octane Number Method of rating gasoline antiknock properties is in common use in industry and in Government purchase specifications as a yardstick—it need not be denied the motorist on grounds of nice technical distinctions as to accuracy.

The Commission is not persuaded by the prediction that posting of octane ratings on gasoline pumps will lead to octane wars. The possibility of octane wars eventuating is again a matter of conjecture. The fact remains that the customer is entitled to have that vital piece of information, the octane rating of the gasoline made available, in order to make an educated purchase decision. Nor is the Commission persuaded that a requirement that marketers of gasoline post octane ratings on the dispensing pumps will inhibit research in an industry as large as and as competitive as the petroleum industry.

Opponents of the proposed rule pointed out that since the octane requirements of automobile engines differ in certain parts of the country, the motorist driving from one area to another will be confused by the different octant ratings appearing on the pumps.

Despite the fact that geographic differences may require postings of different ratings, the bulk of gasoline consumed by the car owner is probably used for local driving, and the advantages of posting octane ratings enhance his knowledge of the gasolines available for local driving which represents the greater part of his dollar outlay for gasoline. For the tourists who may be puzzled as they travel from New York with 100 octane to Denver with 96 octane, it would not seem to be an

insurmountable problem for gas station attendants to explain the why of such a variance in octane ratings between Denver and New York.

Industry members and others point out that under the present system a customer unhappy with a gasoline's performance may purchase another brand or grade of gasoline; and further, the existing designations of "regular," "premium," etc., are more meaningful to consumers than octane ratings. The Commission concludes that these arguments overlook certain points. The first is that while a customer may be able to ascertain when he is purchasing too little octane, he has no real way of determining that he is buying too much and consequently paying extra money for unneeded octanes. Secondly, without posting of octane ratings, customers have no really effective way of shopping "brands" or "grades" of gasoline. He is limited to shopping for brands or grades on the basis of price, station cleanliness, and additive claims, which of course may be factors worth considering. The motorist should also be able to consider the quality of gasoline in relation to price and octane ratings of the gasoline purchased. To argue that if one is dissatisfied with X brand, shop around for Y and Z brands really misses the point. Shopping brands or grades without relevant information as to the octane rating/price relationship, or the octane rating/engine requirement relationship is shopping blind.

The Commission recognizes that there is some variation in the research octane numbers of gasolines produced by different refiners and that these variations may be reflected in the posting of minimum octane numbers on the gasoline pumps. However, the posting of research octane numbers is but one bit of information made available to the customer to be considered in his selection of gasolines. The numerical value of the octane rating of the gasoline will be evaluated by the consumer in relation to the price per gallon of the gasoline, in relation to other brands and in relation to the individual octane needs of the consumer's particular automobile. Octane is only one piece of information to be used by the consumer, and slight variations in octane numbers appearing on pumps may be overcome by differences in prices between that gasoline and one with slightly higher minimum posted octane number or other competitive factors.

Independent marketers of gasoline express concern that they have no control over the octane rating of the gasoline they purchase from refineries or middlemen and that the accuracy of their posting of octane ratings depends to a great extent upon the refiners and middlemen who supply them. Conversely, the independent refiners are also concerned with the fact that once the gasoline leaves the refinery it may pass through several parties prior to sale at the pump and the refiner may have no control over the ultimate octane number of the gasoline posted on the pump at the point of sale. The Commission recognizes that a requirement that marketers post minimum octane ratings on gasoline pumps may require greater efforts on the part of independent refiners to assure that the octane rating of the gasoline refined and sold by them is accurately posted. So, too, will independent marketers have to exert efforts to assure that their suppliers deliver the correct octane rated gasoline to them. The extra efforts required are far outweighed by the increased advantage to consumers of having the octane rating of gasoline made available to them through posting on the pump.

Some industry members have suggested the possibility that the posting of octane ratings will tend to divorce consumer purchase decisions from brand names. The Commission concludes that whether or not the posting of research octane numbers on gasoline pumps tends to make the consumer less attached to a certain brand name and more attentive to octane numbers and price is a matter of conjecture. If the Record establishes a need for the posting of octane ratings as an essential bit of consumer information it matters little whether or not brand name significance is diluted or for that matter whether or not it is enhanced.

Opponents point out that gasoline companies presently must adhere to stringent State laws which set out precise specifications for gasoline quality and therefore these State requirements adequately protect the consumer.

Of course the purpose of the rule is not to question the quality of gasoline available or to otherwise improve gasoline specifications. It is rather designed to see that the information concerning one vital aspect of fuel capability is made available to the consumer. Apparently no State has chosen to require gasoline companies to make available to consumers one piece of information they consider essential in order to protect consumers, the octane rating of the gasoline sold in their respective States. The Commission believes this is an essential requirement.

It has been suggested that there is little variation in the octane ratings of competing gasolines of similar grades, i.e., most regulars have a research octane rating of 92 to 95 and most premiums have a research octane of 99 to 101. It is argued, therefore, that since there is little variation in octane ratings there is no need to post them and the motorist will be able to rely on such present descriptions as "regular" and "premium."

The Commission is not persuaded. Granting the accuracy of the above statement would also point up then the large gap that must exist in octanes between regulars and premiums and subregulars and premiums. As the range of octanes for each grade of gasoline narrows, then the gap in octanes between grades must widen—so that he who buys premium when regular will do is paying considerably more for considerably more octanes than necessary. In addition, the fact that some marketers are getting away from the two-grade system and going into subregulars, middle ranges between regular and premiums, super-premiums, CONOCO's four-grade system and even multiple blending pumps which offer as many as eight selections indicates that there may in fact be many variances of octane ratings of gasoline being sold. If this be the case, then the consumer should be informed of the octane rating of the gasoline being dispensed from the pump so that he may weigh the cost, octane ratings and engine requirement variables so as to make a more educated purchase.

Parties submitting statements in support as well as those in opposition to the proposed rule suggest that the rule should be modified so as to require marketers to post minimum octane ratings on the pump, i.e., the posting would then indicate that the gasoline being dispensed from the pump is at least 90 octane, rather than requiring a marketer to state that the gasoline is precisely 90 octane at any time it is sold. The Commission agrees that this modification is desirable. The modification requiring only the posting of the minimum octane rating enables the marketer to post an octane rating which he must always equal or even exceed. The use of a minimum research octane number should obviate any disputes as to how much tolerance should be allowed by the Commission on either side of a posted number when testing is accomplished. The Commission has modified the language of the rule so as to reflect the requirement that minimum research octane numbers be posted.

The Commission has also modified the language of the rule so as to exclude gasoline sold for aviation purposes from the requirements of this regulatory action. Although, as indicated by some witnesses, aviation gasoline is presently rated in terms of octane, the Commission is of the opinion the marketing of aviation gasoline may be a unique area with problems unrelated to a Trade Regulation Rule associated with other gasoline burning vehicles designed primarily to afford information to consumers as to cost and engine requirements vis-a-vis the octane rating of gasoline sold at the retail outlets.

Suggestions were made that the Commission enlarge the scope of the rule so as to require the automobile industry and other engine manufacturers to specify in owner's manuals and instruction documents the octane rating of the gasoline that they recommend for use in those engines. The Commission declines to follow such suggestions at this time. It may well be that once gasoline marketers make octane a matter of readily available information the automobile manufacturers and other marketers of gasoline engines may follow suit and public recommended octane ratings in their manuals without the prodding of regulatory action. This would do much to complete the information circle, i.e., the manual recommends the octane rating of the gasoline to be used and the information as to octane rating is readily available to the car owner at the pump.

The Commission is also of the opinion that the existing language of the rule is broad enough to include within its purview a requirement that gasoline pumps dispensing marine gasoline for craft powered by gasoline engines contain posted octane ratings.

The Commission was urged to reexamine the gasoline industry practices of dual distribution and exchange agreements taking into full account the deceptive practices upon the consumer. The Commission after lengthy hearings into the anticompetitive practices in the marketing of gasoline published its findings in 1967. The Commission has under scrutiny at all times the marketing practices dealt with in that report and Commission policy is one of proceeding against violators on a case-by-case basis looking to the issuance of cease and desist orders.

The Commission rejects suggestions that terms of art be adopted such as "regular," "premium," "mid-premium," "subregular," and that the rule define each of these by prescribing each in terms of minimum research octane rating.

This proposal would require only that gasoline marketers ascribe to certain minimum octane rating requirements in the gasoline they sell. No posting of the octane information is required. The whole rationale for any Commission action is to provide the consumer, not the FTC, with information as to the octane rating of the gasoline. Under the proposed rule there is no reason why gasoline marketers must discontinue the use of the grade names of regular and premium. Their only other requirement would be to state that their regular was a minimum octane rating or that their premium was a minimum octane rating. The rule imposes no restrictions on the use of the commonly accepted terms as regular, premium, super, etc. It merely affords the consumer another piece of information in the selection of his gasoline. The consumer needs the information as to the minimum octane rating of gasolines marketed; the FTC does not need that information stored in some file cabinet away from the eyes of the public.

The alternate suggestion that a Trade Regulation Rule creating a graded system registering fuels based on road octane numbers but requiring no posting of numbers on the pumps, and the suggestion that refiners only be required to file with the Federal Trade Commission certifications that their grades meet certain minimum octane ratings are not considered satisfactory by the Commission.

One would utilize grade labeling but would not require the posting on the pumps of the octane number. The other would simply make the FTC the repository of certifications. Again, under these plans, industry and government would agree that each grade of gasoline had certain numerical minimum octane ratings. The consumer would be effectively denied the same information.

Several have suggested that the Commission consult with other learned sources such as the National Academy of Engineering or the Society of Automotive Engineers for further consideration as to the need for and utility of posting octane ratings on gasoline dispensing pumps. The Commission concludes that the Record which contains informed testimony from both industry members and consumer groups demonstrates the need and feasibility for industry making a simple affirmative disclosure of the research octane rating of gasoline. This Commission is the body to determine whether or not the affirmative disclosure of minimum research octane ratings of gasoline will assist the consumer to effect an educated purchase. We conclude that such postings are necessary.

The suggestion that the Commission utilize a "performance index" which involves several features of gasoline quality in addition to octane ratings is of interest. Ultimately there may be devised an overall quality index that may provide consumers with a complete view of the quality of gasoline. At present there does not appear to be any such sophisticated system in use. Rather than wait for one, the industry has readily available a piece of information that will assist the consumer, the Research Octane Number. This should be utilized now by the industry. If the state of the art progresses to a point where a better index of quality can be developed, then this could be substituted for research octane posting on the pumps.

The Commission is not unaware of the recent developments concerning the relationship between lead and gasoline refining. As a result of the present national concern and governmental action as evidenced by the presidential recommendation for legislation enabling the regulation of fuel composition and additives; the action of the Department of Health, Education, and Welfare in developing emission standards; the interim report of the Department of Commerce's Technical Advisory Board Panel recommending a requirement for the general availability of an unleaded grade of gasoline by July 1974; and by the announcements of the introduction of nonleaded or low lead gasoline by several industry members such as Atlantic Richfield, Shell Oil Co., Union Oil Co., and Humble Oil & Refining Co., the Commission has been urged to forego action. The basis for this recommendation is that the introduction of a new category of gasoline, along with a requirement to post octane ratings for all gasolines, will add to consumer confusion.

The Commission is of the opinion that the unknowns involved in the marketing of unleaded or gasolines with less lead do not militate against the need for posting octane ratings on gasoline pumps. Gasolines without lead or with smaller amounts of lead will continue to have octane ratings. It should work to the advantage of consumers to have octane ratings of all gasolines posted, leaded or unleaded, so as to assist them in deciding which gasoline is best for their car.

VII. *Addendum.* On December 30, 1970, the Commission promulgated a trade regulation rule which would have required refiners, or others who own or lease the pumps and sell gasoline to retailers, to post on the pumps the minimum research octane number of the gasoline being dispensed from each pump. The rule specified that it was an unfair trade practice for such marketers "to fail to disclose clearly and conspicuously in a permanent manner on the pumps the minimum research octane number or numbers of the motor gasoline being dispensed." In addition, the Commission established June 28, 1971, as the effective date for the rule.

Prior to the effective date (June 28, 1971), the Commission received from Texaco, Inc. (March 18, 1971), a communication in which it was asserted that the posting of a research octane number on gasoline pumps as required by the rule would at times mislead motorists into purchasing a higher octane gasoline which did not, in fact, perform as well as some gasolines with lower research octane ratings. Reconsideration of the octane number to be utilized as a benchmark for posting was triggered by the submission of the paper by Texaco, Inc. (Record 1150).

Texaco pointed out what it considered as an inherent defect in relying on research octane numbers as the basis for posting. Due to the vagaries involved in gasoline test methods, it is possible that a motorist experiencing a knock with a gasoline having a research octane value of 100 could "buy up" to a gasoline having a research octane value of 102 and still experience a knock. The anomaly involved is that the 102 research octane gasoline, instead of having a higher road performance (road octane rating) than the 100 research octane gasoline could, in fact, have a lower road octane rating than the 100 research octane gasoline. This would be in contradiction to the general rule that the higher the research octane rating, the higher will be its road octane rating, i.e., the measure of its ability to resist knocking. Texaco concluded that because of this octane reversal phenomena "* * * the proposed posting could at times be a disservice to the consumer" (Record 1151).

In view of the written submission by Texaco, Inc. (Record 1151), questioning the efficacy of research octane as the basis for posting, the Commission extended the effective date of the rule from June 28, 1971, to September 1, 1971. The public record was reopened for the limited purpose of reconsidering only that portion of the rule that relates to the use of the research octane number as the basis for posting. Public notice of this action appeared in the April 17, 1971, edition of the FEDERAL REGISTER (36 F.R. 7309) and in a press release dated April 13, 1971.

In response, the Commission received much additional information and evidence regarding points raised by Texaco, Inc. Estimates as to the magnitude of octane reversal that might occur with the use of research octane numbers as the basis of posting varied widely. (Record 1176, 1186, 1307, 1322, 1378, 1325, 1379, 1181, 1373–1374, 1423.) On the basis of the estimates submitted, it is apparent that the so-called octane reversal phenomena would be present to some extent with the use of research octane rating as the benchmark for posting. The estimates varied as to the magnitude and impact upon the consumer.

Texaco, Inc., saw octane reversal leading to possible consumer deception (Record 1151). Texaco reviewed field data available to them and concluded "* * * that a consumer switching from one Premium Grade fuel to another Premium Grade with a higher posted Research octane would actually receive a fuel of lower road octane quality in nearly 27 percent of the cases where this might be done. The 27 percent is an overall average for the 11 cities; on an individual city basis, the percentage ranged from a low of 3 to a high of 45. For Regular Grade fuels, the average is 18 percent, with a range from 0 to 34 percent" (Record 1176).

Du Pont stated: "We have not made a study of how often a motorist would get a lower road octane number fuel when he buys up to a higher research octane number, but based on the data shown in Figures 12 and 13 of the report, it is safe to say that it would be often enough to eventually make the public realize that research octane number is not a flawless criterion of antiknock performance of a fuel in his car" (Record 1186). The report is contained in the record (Record 1195).

Consumers Union, recognizing the existence of octane reversal in limited situations, argued that the consumer has an ability not to be misled and to recognize that any octane number is a guide, not an infallible index (Record 1373).

The primary question posed by reopening the public record was whether or not the Commission should continue to rely upon the research octane number or, in lieu thereof, what alternate number should be utilized in posting under the rule. Among the recommendations submitted were the following: Retain the octane number derived from use of the research method (Record 1372, 1181, 1182, 1279, 1305, 1307, 1390, and 1405); utilize the number derived from use of the motor method (Record 1391); utilize the number derived from use of the road method (Record 1379) or; post both the road and motor method octane numbers (Record 1400, 1378).

The most frequently suggested octane rating number to be used was that arrived at by dividing the sum of the research and motor methods by 2, (R+M)/2. This is referred to as the averaged laboratory octane number. The reasons given were that this parameter is the simplest, technically precise, and meaningful indicator of road octane performance for premium grade requirement cars on the road and also for the majority of regular grade requirement cars (Record 1311–1312).

The (R+M)/2 method was recommended to the Commission by an impressive array of parties who submitted evidence persuasive to the Commission that the use of (R+M)/2 as the number to be utilized is superior to the research octane number. (Record 1311–1312 and 1314–1315, 1393, 1388, 1186, 1274, 1321, 1324, 1327, 1402, 1366, 1368, 1378.) Although the above-cited recommendations suggest (R+M)/2 as the best of octane number values, not all of the parties advocated that such numbers should be posted on the pumps.

To assist the Commission in its consideration of this matter, the Commission engaged as a consultant, Dr. Scott Samuelsen of the School of Engineering at the University of California. He was asked to evaluate the octane reversal question and to advise the Commission as to the alternatives available for the posting of octane numbers. He advised that the posting of the research octane number alone may lead to frequent occurrence of octane reversal and that it is not adequate as a benchmark (Record 1423). Dr. Samuelsen recommended that the octane number to be posted should be (R+M)/2 and that the posted octane number should be a whole number (Record 1421).

Dr. Samuelsen further recommended that the Commission should encourage the development and early implementation of a posting system using symbols rather than numbers (Record 1425).

Others advocated postponing further the effective date of the rule pending additional study of the development of an improved system of gasoline classification. (Record 1230–1231, 1389, 1327, 1331, 1371, 1402, 1383–1384.)

The Commission determined, however, that further delay pending additional study to develop a system of gasoline classification would not be in the public interest. The public will be better served by requiring the marketers and distributors of gasoline to provide consumers now with the information as to octane number called for by the promulgated rule.

After considering all pertinent comments and views submitted, the Commission proposed a revision of the rule. The proposed revision continued to require the posting of the minimum octane numbers on the pumps. In lieu of use of the minimum research octane number, the proposed revision required the posting of the minimum octane number derived from the sum of Research (R) and Motor (M) octane numbers divided by 2; i.e., (R+M)/2.

In order to afford interested parties an opportunity to comment, notice of the proposed revision to the rule appeared in the Thursday, August 19, 1971 (36 F.R. 16120), edition of the FEDERAL REGISTER and was announced by a press release of the same date. Additionally, the Commission reopened the public record until September 21, 1971, for the receipt of any further comment on the proposed revision and postponed indefinitely the effective date of the rule pending final decision of the Commission in this matter.

Comments regarding the revision to the rule varied from that of urging the posting of an octane number now, either research or (R+M)/2 (Record 1479, 1571, 1549–1550, 1487, 1466, 1428E, 1428G, 1428K, 1430, 1431, 1433, 1435, 1437, 1440, 1443, 1444, 1445, 1459, 1460, 1475, 1477, 1538, 1540, 1541, 1543, 1545, 1560, 1572, and 1573); to return to the rule which would post only the research octane number (Record 1479–1480, 1549, 1490); support of the use of (R+M)/2 as a more suitable number to smaller refiners (Record 1457–1458, 1442 and 1476); and acknowledgment by some large refiners that the use of (R+M)/2 is a better indicator of a gasoline's actual road octane performance than is the research octane number (Record 1449–1450, 1473, 1492, and 1557).

Further postponement of the rule in favor of the use of a gasoline classification system, i.e., grading gasoline in terms of its antiknock values and other components such as lead content, without actually posting an octane number, again was suggested as an alternative by several parties opposing the concept of posting an octane number on the pump. (Record 1565–1566, 1551–1559, 1456, 1522, and 1526). Other alternate suggestions in lieu of octane number posting included classification systems utilizing specific octane values based on (R+M)/2 for each grade or classification but under the suggestions, and contrary to the promulgated rule, the octane number would not have appeared on the pump (Record 1472, 1450, 1464 and 1492).

Summary and conclusion. The Commission reaffirms the numbered conclusions as previously stated pp. 39–40 of this Statement of Basis and Purpose.

By virtue of the Commission's reopening the public record of these proceedings for the reception of further data and comments relating to the proper octane reference number to utilize in the rule, the Commission further concludes that the record demonstrates the desirability of modifying the rule so that it calls for the use of a number other than the research octane number alone.

The use of (R+M)/2 in determining octane is a technically more precise number than the research octane number alone. The fact that the posting of that number will provide more meaningful information to consumers, is supported by the record. Its use in determining the octane number was recommended by Dr. Samuelsen, the Commission consultant (Record 1186, 1311, 1314, 1327, 1369, 1378, 1388, 1421, 1442, 1449, 1457, 1473, 1479, 1492, 1520, 1524, and 1557).

In considering the various methods available for ascertaining octane values (i.e., research, motor, road or averaging of research and motor numbers), the use of an octane number derived from (R+M)/2 is the best to adequately reflect the road octane performance of fuels for the overall car population. It is the simplest, it is technically more precise, and it is a meaningful parameter having applicability to automotive engines (Record 1311, 1423).

The Commission is further persuaded to the use of (R+M)/2 by the fact that both industry representatives and Government agencies dealing with automotive gasoline are shifting or have shifted to the use of (R+M)/2 as the primary benchmark in evaluating gasolines' octane capabilities. The American Society For Testing and Materials has obtained preliminary approval of its members to adopt (R+M)/2 as the governing octane number in the revised Standard Specifications For Gasoline. This specification is universally used by both industry and Government purchase agencies (Record 1536, 1620). The Bureau of Mines now includes in its Petroleum Products Survey the (R+M)/2 octane number as well as the research and motor method octane numbers (Record 1639–1684). Government purchase specifications presently utilize (R+M)/2 as the controlling octane requirement (Record 1311, 1585, 1600).

The recommendations for gasoline classification systems, such as that of The American Petroleum Institute-American Society For Testing and Material—Society of Automotive Engineers Ad Hoc Committee (Record 1568); Texaco, Inc. (Record 1450); Sun Oil Co. (Record 1472); and Atlantic Richfield Co. (Record 1492) also would utilize (R+M)/2 as the number in their systems which would determine the octane values of the different gasoline classifications they recommend.

The Commission has concluded, however, that further delay pending additional study to develop a system of gasoline classification would not be in the public interest. The public will be better served by requiring the marketers and distributors of gasoline to provide consumers now with the information as to octane numbers called for by the promulgated rule.

Future developments in gasoline composition or engine designs may cause the number utilized to be changed. As the octane requirements vary over the years, the consumer is entitled to be made aware of the changing values and, if necessary, the formulation of (R+M)/2 can be modified. However, the posting of an octane number on the pump based on the (R+M)/2 formula, will provide consumers with a uniform numbering system now. This will enable a consumer to evaluate the octane number and price of gasoline in relation to the requirements, or his preferences, for his automobile or other automotive product.

The vast majority of gasoline purchasers have not been exposed to any octane numbers because most marketers do not post an octane number on their pumps. Use of a system of uniform numbers by all marketers will serve the interests of all consumers due to the fact that a retail purchaser of gasoline will be provided with an octane rating number determined in a standard manner industrywide, regardless of the brand of gasoline. Consequently, consumers will be in a better position to make an informed purchase of gasoline.

The temporary inconvenience to those relatively few marketers presently posting research octane ratings is outweighed by the benefit to consumers being provided with an octane rating number uniformly derived by use of the formula (R+M)/2.

The Commission urges the cooperation of automobile manufacturers in publishing in the owner's manual as soon as practicable the recommended gasoline usage in terms of octane numbers based on (R+M)/2.

While a future, improved system of providing consumers with meaningful information regarding the gasoline they buy may develop sooner or later, there is no reason why during the interim period the consumer should not have the benefit of an essential piece of information easily made available through posting the minimum octane rating of the gasoline dispensed from the pump.

Therefore, on the basis of the evidence adduced in the record of this proceeding, the Commission modifies its unnumbered conclusion set out on page 40 of this Statement of Basis and Purpose so as to read that:

"Therefore, on the basis of the Record in this proceeding the Commission concludes that the failure on the part of marketers of gasoline for general automotive use to affirmatively disclose the minimum octane number, derived from the formulation of (R+M)/2, of the gasoline to the consumer at the point of sale (the pump) in a readily accessible manner constitutes an unfair method of competition and an unfair trade practice in violation of section 5 of the Federal Trade Commission Act."

VIII. *The Commission's rule making authority.* The argument was made during the course of this proceeding, as has been done in other Trade Regulation Rule proceedings, that the Commission has no authority to promulgate Trade Regulation Rules. (See Record pp. 307, 359, 361, 364, 434 and n. 1, 578, 626, 702, 1447, 1455, 1483, 1492, 1520, and 1524.)

In its Statement of Basis and Purpose accompanying the Cigarette Rule, the Commission elaborated at length on its trade regulation rulemaking authority and concluded that a Trade Regulation Rule is "* * * within the scope of the general grant of rulemaking authority in section 6(g) (of the Federal Trade Commission Act), and authority to promulgate it is, in any event, implicit in section 5(a)(6) (of the Act) and in the purpose and design of the Trade Commission Act as a whole." (See Trade Regulation Rule for the Prevention of Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to the Health Hazards of Smoking and Accompanying Statement of Basis and Purpose of Rule, pp. 127–150 and 150.) The Commission continues to adhere to that view.

IX. *The effective date of the rule.* The effective date of the Rule will be March 15, 1972.

[FR Doc.71-18255 Filed 12-15-71;8:45 am]

PART 423—CARE LABELING OF TEXTILE WEARING APPAREL

Promulgation of Trade Rule and Statement of Basis and Purpose

The Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. 41, et seq.,

and the provisions of Subpart B, Part 1 of the Commission's Procedures and Rules of Practice, 16 CFR 1.11, et seq., has conducted a proceeding for the promulgation of a trade regulation rule pertaining to the care labeling of textile products. Notice of this proceeding, including proposed rules, was published in the FEDERAL REGISTER on November 4, 1969 (34 F.R. 17776). Interested parties were thereafter afforded opportunity to participate in the proceeding through the submission of written data, views, and arguments, and to appear and express their views orally and to suggest amendments, revisions, and additions to the proposed rules.

The Commission has now considered all matters of fact, law, policy, and discretion, including the data, views, and arguments presented on the record by interested parties in response to the notice, as prescribed by law, and has determined that the adoption of the trade regulation rule and statement of its basis and purpose set forth herein is in the public interest.

§ 423.1 The Rule.

(a) It is an unfair method of competition and an unfair or deceptive act or practice to sell, in commerce, as "commerce" is defined in the Federal Trade Commission Act, any textile product in the form of a finished article of wearing apparel which does not have a label or tag permanently affixed or attached thereto by the person or organization that directed or controlled the manufacture of the finished article, which clearly discloses instructions for the care and maintenance of such article.

(b) It is an unfair method of competition and an unfair or deceptive act or practice to sell, in commerce, as "commerce" is defined in the Federal Trade Commision Act, any textile product in the form of piece goods, made for the purpose of immediate conversion by the ultimate consumer into a finished article of wearing apparel, which is not accompained by a label or tag which:

(1) Clearly discloses instructions for the care and maintenance of such goods, and

(2) Is provided by the person or organization that directed or controlled the manufacture of such goods, and

(3) Can, by normal household methods, be permanently affixed to the finished article by the ultimate consumer.

(c) (1) The Commission shall consider, upon good cause shown and upon written petition to be placed on the public record, addressed to the Secretary of the Commission, any request for exemption of any specific article from the coverage of paragraph (a) of this section. In making this determination, the Commission shall consider the physical characteristics of the article and whether its utility or appearance would be substantially impaired by a permanently attached label. If such request for exemption is granted, the information required by paragraph (a) of this section must accompany such article whenever it is sold in commerce, as "commerce" is defined by the Federal Trade Commission Act, but does not have to be included on a label or tag permanently affixed or attached thereto.

(2) The Commission shall also consider, under the procedure described above, requests for exemption from this section for specific articles intended to be sold at retail for $3 or less and which are completely washable under all normal and reasonably forseeable circumstances.

(d) For the purposes of this section, the following definitions shall obtain:

(1) "Textile product" is any commodity spun, woven, knit, or otherwise made in whole or in part from fibers, yarn or fabric which is intended for sale or resale and which requires care and maintenance in order that ordinary use and enjoyment of the commodity may be obtained by the purchaser;

(2) "Finished article of wearing apparel" is any costume, garment, or article of clothing whose manufacture is complete and which is customarily used to cover or protect any part of the body, including hosiery, but excepting all other footwear, and such articles that are used exclusively to cover or protect the head or the hands;

(3) "Piece goods" are textile products sold on a piece by piece basis from bolts, pieces, or rolls;

(4) "A label or tag permanently affixed or attached hereto" is a label or tag attached or affixed in such a manner that it will not become separated from the product during its useful life;

(5) "Accompanied by a label or tag" means a tag must be included with every individual purchase of piece goods by the ultimate consumer, regardless of the size and shape of such goods.

NOTE: Instructions for the care and maintenance of any article within the scope of paragraphs (a) and (b) of this section are instructions which:

1. Fully inform the purchaser how to effect such regular care and maintenance as is necessary to the ordinary use and enjoyment of the article, e.g., washing, drying, ironing, bleaching, dry cleaning, and any other procedures regularly used to maintain or care for a particular article;

2. Warn the purchaser as to any regular care and maintenance procedures which may usually be considered as applying to such article but which, in fact, if applied, would substantially diminish the ordinary use and enjoyment of such article;

3. Are provided in such a manner that they will remain legible for the useful life of the article;

4. Are made readily accessible to the user.

Examples. The following are examples of instructions which are deemed acceptable under this section:

1. Machine wash in sudsy water at medium temperature, rinse well, tumble dry thoroughly, hang immediately. Garment may be drip dried and steam pressed.

2. Machine wash warm. Gentle cycle. Do not use chlorine bleach.

3. Hand wash cold. Do not twist or wring. Reshape. Dry flat. Do not dry clean.

4. Dry clean only. Do not use petroleum solvents, or the coin operated method of drycleaning.

AUTHORITY: The provisions of this Part 423 issued under 38 Stat. 717, as amended; 15 U.S.C. 41–58.

Effective: July 3, 1972.

Promulgated: December 9, 1971.

By the Commission.

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

STATEMENT OF BASIS AND PURPOSE

I. *Background*—A. *History and notice of hearing.* Care labeling is not a new idea. In 1938, a study sponsored by the National Retail Dry Goods Association (now the National Retail Merchants Association) observed that "* * * informative labeling remains the one big problem manufacturers and retailers must cope with in the very near future."[1] During the 1958 Senate hearings on the Textile Fiber Products Identification Act, several opponents of the legislation argued that consumers need to be advised as to the care and maintenance of textiles rather than fiber content.[2] In March 1967, the Industry Advisory Committee on Textile Information adopted "A Voluntary Industry Guide for Improved and Permanent Care Labeling of Consumer Textile Products".[3] In addition, Congress has considered several bills directed at the problem of care labeling.

(As used herein "Record" refers to the written comments and materials in the public record of this proceeding. "Transcript" refers to the transcript of the public hearing of this proceeding.)

On November 4, 1969, the Commission published in the FEDERAL REGISTER (34 F.R. 17776), three proposed care labeling rules. In addition to the proposed rules, the Commission gave notice to all interested parties of hearings to be held beginning in January 1970. Three days of hearings were held in January and three in March 1970, at which oral testimony was taken and written comments were submitted by interested members of the textile industry and by various individuals and consumer groups. These comments are included in the public record.

The final rule contained herein is grounded mainly upon the extensive testimony given at the hearings and the written statements received.

It is to be emphasized that since this rule has been limited with respect to product coverage, the Commission reserves the right to consider the addition of other products at a later date.

B. *Reasons for the hearing.* The public notice published by the Commission stated that,

[1] Record, Vol. 3, p. 547, Black and Judelle, "Preliminary Report of a Nation-Wide Survey of Informative Labeling in Department Stores," May 1938, National Retail Merchants Association.

[2] U.S. Senate, 85th Congress, second sess., hearings before the Committee on Interstate and Foreign Commerce on H.R. 469, Feb. 24–27, 1958: Statement of W. Gordon McKelvy, Southern Garment Manufacturers Association, Inc., at pp. 220–221; statement of Louis W. Haviland, American Institute of Laundering at p. 249; statement of Arthur R. Wachter, American Viscose Corp., at pp. 253–254.

[3] Industry Advisory Committee on Textile Information Report (IACTI), May 1966, pp. 2–3. The committee (IACTI) was a volunteer group composed of representatives from the textile, apparel and related industries. It was formed in January 1966, in cooperation with the President's Special Assistant on Consumer Affairs.

in the field of textile products, there is a vast array of fibers, fabrics, and finishes. Each of these products has unique care performance characteristics and each requires the application of specific care techniques. However, most manufacturers and marketers of these products do not disclose in a permanent form care instructions to prospective purchasers. When this information is given, it is normally in the form of detachable labels or tags which may easily be lost or destroyed by the consumer shortly after purchase. As a result, consumers are unable to determine with certainty what care procedures or techniques should be used to insure that the utility and appearance of the product will not be impaired and that satisfactory results will be achieved. In addition, they are deprived of the opportunity to make a rational and informed choice among competing textile products because of the absence of care information upon which to base an intelligent comparison. The notice stated further that failure to give adequate care instructions may constitute an unfair method of competition in commerce and an unfair or deceptive act or practice in commerce in violation of section 5 of the Federal Trade Commission Act.

C. *Statement of proposed rule.* Accordingly, the Commission proposed the following trade regulation rules:

"(1) It is an unfair method of competition and an unfair or deceptive act or practice to sell any textile product in commerce, as 'commerce' is defined in the Federal Trade Commission Act, which does not have a label or tag permanently affixed or attached thereto which accurately and clearly discloses proper instructions for the laundering and cleaning of such product, as well as any other instruction material to the proper care and normal use of such product, which, if not followed, may result in the impairment of its utility or appearance.

"(2) It is an unfair method of competition and an unfair or deceptive act or practice to sell any textile product in commerce, as 'commerce' is defined in the Federal Trade Commission Act, which does not contain, either on the label or tag permanently affixed or attached thereto disclosing instructions for the laundering, cleaning, and care of such product, or on a separate permanently affixed or attached label or tag, a certification from the manufacturer of the product to the ultimate consumer-purchaser that the instructions for the laundering, cleaning, and care of such product disclosed on the permanent label or tag are valid and proper, and will not impair the product's utility or appearance.

"(3) No person shall be adjudged in violation of Rule (1) of the rules if he establishes a guaranty received in good faith, signed by and containing the name and address of the person residing in the United States by whom the textile product guaranteed was manufactured or from whom it was received, that said product is not mislabeled under the provisions of the rules. Said guaranty shall be (a) a separate guaranty specifically designating the textile product guaranteed, in which case it may be on the invoice or other paper relating to said product; or (b) a continuing guaranty given by seller to the buyer applicable to all textile products sold to or to be sold to buyer by seller; or (c) a continuing guaranty filed with the Commission applicable to all textile products handled by a guarantor.

"The furnishing of a false guaranty, except in good faith reliance upon a guaranty received from a supplier, is an unfair method of competition and an unfair and deceptive act or practice."

* * * * *

"For purposes of this proceeding, 'textile' product is any commodity, made in whole or in part of fibers, yarn or fabric, which commodity is intended for sale or resale, in the form manufactured, to consumer-purchasers. 'Laundering and cleaning instructions' include information with respect to dry cleaning and pressing; washing, drying, and ironing; or other applicable procedures used to clean a particular textile product."

Interest in the trade regulation rule proceeding was substantial and the response to the invitation for comments resulted in a voluminous public record.

The public hearings on the proposed rules were held before William D. Dixon, Assistant Director, Division of Rules and Guides, a presiding officer appointed by the Commission. All persons who sought to express their views either orally or in writing were able to do so. The stenographic transcript, consisting of 788 pages of testimony, has been made a part of the public record.

II. *The need for a care labeling rule*—A. *Present sources of care information.* The technological advances which have occurred in the apparel and cleaning industries have had a significant effect on the care process.[4] The large number of products on the market, each with different care performance characteristics, has made it almost impossible for consumers to be informed about any one product, much less the entire range of products. As a result, the traditional source of care information, personal experience[5] based on trial and error, no longer meets the needs of consumers.[6]

Information derived from personal experience may indeed be adequate when the fibers and other components of wearing apparel are relatively few, or when the manufacturing processes to which these components are subjected are uncomplicated, or when the care procedures are simple. But personal experience cannot readily be applied to what are basically new products or complex variations of old products.[7] Technological advances in components and manufacturing processes are being made at a rapid rate and variations of familiar textile products are continually appearing only to be replaced by products of more recent development.[8] In

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[4] By far the largest potential for different care performance characteristics lies in the possibilities which exist as a result of the many sophisticated and complex manufacturing processes that components of apparel products can be subjected to. Yarn counts, weaving combinations, dyeing, printing, and finishing combinations all combine to make the total potential for variety in finished apparel components virtually incalculable. One expert described the possible variations as follows:

"If we were to take the largest single use combination such as 65% polyester 35% cotton and eliminate the variations of manufacturer or type within manufacturer, we then arrive at variations of different yarn counts all the way from coarse (6's) in the knitting industry to fine (80's) in the woven goods industry. These can be further varied as to twist multiplier or number of terms per inch in order to obtain specific yarn hardness or performance characteristics.

These variations can then be further permuted on looms or knitting machines from simple plain weaves and stockinette stitches to fancy dobbies and jacquards. It is further complicated by the dyeing and finishing operation which could involve myriad colors and/or print patterns to variations in hand and/or surface and performance characteristics.

If we then take this same simple two-fiber combination, multiply it by a variation of only 10 yarn combinations, which is an extremely small number, furthered by perhaps 10 more variations within each yarn size for the twist multiplier and multiplied by a minimum of 25 weaving combinations complicated still further by an extremely low estimate of 100 dyeing, printing and/or finishing combinations, we can easily see that this one simple fiber combination has a quarter of a million permutations. When we add to this the other fiber blends which are available on the market the resultants, as can be seen, are astronomical and have quite frankly never been calculated. It would appear that there are 10 million or more different kinds of fabrics available on the market at any given instant and daily certain fabrics are being withdrawn and others being added to the list in order to supply industry's need to satisfy consumer demands in both the area of high performance and style." (Record, Vol. 8, pp. 1546–1547.)

[5] "Care problems * * * must continue to be handled as in the past, by general care instructions * * * and by trial and error by consumers." (Record, Vol. 3, p. 503); "Some time in the marketplace is usually required before the new items can really be judged. The so-called guinea pigs in this instance usually pay higher prices to be among the first to get the new items * * *." (Record, Vol. 9, p. 2205.)

[6] Report for the President's Committee on Consumer Interests prepared by Consumers Union of the U.S., Inc., April, 1966: "Problems Consumers Face in the Field of Textiles and Clothing, p. 1.

[7] Record, Vol. 9, p. 2031, American Home Appliance Manufacturers release, dated February 19, 1970, summarizing the results of a laundry study conducted by Dr. Johnson of Southern Illinois University: "[There are] many areas of confusion on the part of today's homemaker concerning the proper use of new products and techniques * * *. A great deal of confusion was revealed concerning the proper treatment of permanent press and wash and wear fabrics." Record, Vol. 6, pp. 834–5, National Consumer League: "Consumers today are constantly being confronted with textiles for whose care nothing in their experience prepares them adequately * * *. It is almost impossible to be sure whether to wash in hot, warm or cold water, whether to drip-dry or spin-dry".

Record, Vol. 8, p. 1652, Pennsylvania League for Consumer Protection. "Shoppers are daily confronted with new garments with new features and nothing they have encountered in their own experiences can prepare them in determining the value of miracle fabrics in terms of style, function, performance or care.

Transcript, p. 24, statement of Mrs. Margaret Dana, Consumers Relations Counsel: "[T]hey have slowly been discovering that along with the wonders of fabric innovation, new services, new fibers, there has also come a loss of traditional knowhow in dealing with them."

[8] Record, Vol. 8, p. 1573, American Apparel Manufacturers Assn., Inc., Exhibit D. See also, Record, Vol. 6, p. 937–8, American Society for Testing and Materials: "With new textile products being introduced at an ever increasing rate, it is impossible for the ultimate consumer to know the technicalities of washing conditions, drycleaning, pressing and ironing. This becomes more complicated when a textile consumer product is a composite of many materials of varying properties that are frequently treated with various chemical finishes and types of dyes." Record, Vol. 8, p. 1651, Pennsylvania League for Consumer Protection: "New fibers, blends, yarns, and finishing processes have come so rapidly and are so endless that the consumer who takes the trouble to learn about a commodity soon finds his knowledge obsolete or that it is almost impossible to keep up to date with change."

sum, the number of different products with different care performance characteristics has become so great as to foreclose any possibility that one person could ever accumulate enough personal information, or be able to recall this information when it is needed.[9]

Sales clerks and other retail store personnel have served in the past as a useful source of care information. These sales personnel deal with the same or similar products over a long period of time and often have occasion to discuss care performance characteristics with their customers. Their advice could be especially valuable because it is given at the point of sale. Many store owners admit, however, that even their most experienced sales personnel are unable to advise consumers properly because of the great diversity of fibers and finishes.[10] The rapid expansion of self-service outlets and the corresponding decline in the need for highly trained sales personnel has further diminished the availability of this traditional source of care information.[11]

Advertising of the textile and apparel industries could conceivably be a source of care information. But mass media advertising tends to supply mainly promotional and uninformative material. And while this advertising may create the impression of ease of maintenance; very little, if any, specific care instruction is provided and there appears to be no real prospect of significant change in this regard.[12]

Nor does it appear that industry-sponsored voluntary labeling programs are likely to be successful.[13] As indicated earlier, an Industry Advisory Committee on Textile Information (IACTI) was established in 1967 in response to a request by the then Special Assistant to the President for Consumer Affairs, Mrs. Esther Peterson. The program included: Participation by industry members on a voluntary basis; a recommendation for care labels for all products which require "special" care; and permanent attachment of the labels to the product.[14] The record evidence indicates that these guidelines have not been successful despite the best efforts of the members of the Advisory Committee. Few manufacturers have implemented the program. Mrs. Virginia Knauer, successor to Mrs. Peterson, observed that: "* * * the evidence at point of sale certainly seems to indicate a rather slow implementation of the good work of the guide—results so far dim the hope that a solution will come in the near future for voluntary action."[15] To the extent the industry does now provide care information, it is in the form of nonpermanent, detachable labels which more often than not are lost after the purchase is made.[16]

Another potential source of care information is consumer education. Most consumer education programs, however, convey only the most general information which is unrelated to specific products, models, or brand names.[17] And while various consumer-oriented publications, such as Consumer Reports, offer an evaluation of specific products by brand and model, the number of textile products requiring such evaluation far exceed the resources of these testing organizations.[18] These private testing facilities cannot even begin to cope with fiber changes made from year to year. Finally, neither the broad consumer education programs nor private testing programs present the information in such a manner that it is available for use by the consumer either at the point of sale or when it is actually needed for care of the product.[19]

B. *Statements in support of a care labeling rule.* One indication of the importance of care information and care labeling is the size of the public record which was developed in response to the Commission's Public Notice. Over 750 letters were received from individuals and over 225 statements and letters were received from the textile industry, trade associations, consumer groups and other interested persons and organizations. Forty-six witnesses presented their views at the hearings.

Of the letters from individuals, all but 36 indicated a general approval of a care labeling program. Only four writers indicated that they did not approve of such a program. The Neighborhood Cleaners Association, representing dry cleaners located in New York, New Jersey, and Connecticut, submitted a petition signed by approximately 47,000 consumers in favor of care labeling.[20]

Two opinion surveys were conducted expressly for this rulemaking proceeding. In the first, conducted by George Washington University Law Center, 169 out of 170 responses approved of the concept of care labeling. There was an indication in 120 of these responses that the consumer had actually experienced damage to a garment because of improper care.[21] In the second survey, conducted by the Bucks County Consumer 100, a consumer organization founded by Margaret Dana of the Consumer Relations Counsel, 29 of 38 replies to a five-part questionnaire indicated a pressing need for care labeling.[22]

Other surveys were conducted by experts at the University of Vermont Extension Services,[23] the New York State College of Human Ecology,[24] Good Housekeeping Maga-

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[9] Supra note 6, 1966 Consumers Report, at p. 1. "At the same time, few would deny that consumers have fallen hopelessly behind in their understanding of modern textiles. The most knowledgeable people have trouble identifying the fabric of which a garment is made, and even when given this information, they cannot adequately predict the garment's performance."

"Products requiring widely different care are developed so rapidly in this highly competitive and inventive market that consumers haven't much opportunity to learn from experience and a lore on proper care procedures does not exist * * *. Information on proper care procedures is essential if the consumer is to obtain satisfactory wear and performance." (Report to the Chairman, President's Committee on Textile Information (hereinafter cited as IACTI Report), May 1966, pp. 2–3.)

[10] Record, Vol. 7, p. 1350 New York State College of Human Ecology (Cornell University); Record, Vol. 8, p. 1632; Record, Vol. 6, p. 1165 (Launderette): "We have found that it is impossible to keep our attendants up on these various products". *Supra* note 6, 1966 Consumers Report, at p. 8: "As a rule, the sales clerk is just as confused as the customer. At best he may parrot the manufacturer's sales literature; at worst, his information may be self-serving or simply unreliable." Their advice could be especially valuable since it is given at the point of sale.

[11] Transcript, p. 174; Record, Vol. 8, p. 1651.

[12] Barnes, The Law of Trade Practice II: False Advertising, 23 Ohio State L.J. 587 (1962): "* * * one may almost say that there is a natural law of advertising rivalry which leads sellers from the realm of fact to the realm of fancy, from truthful and informative advertising to imaginative and deceptive advertising." *Supra* note 6, 1966 Consumers Report, at p. 9; *Supra* note 7, Johnson Study: "Very few [women] felt that they gained any information * * * from television commercials and similar sources."

[13] Supra note 3, IACTI Report, at p. 5: "out of 31,000 textile damage complaints analyzed for cause at the Institute last year, very few had permanently attached care labels. Of other types of care labels seen, some were too complex, some incomplete, some were inaccurate and others were contradictory especially in cases where two or more different tags were on the same item" (Citing the National Institute of Drycleaning report to the Committee.) See also, Consumer Reports, p. 66, Feb. 1968: "To wish for some such textile care labeling system is hardly to dream the impossible dream—industry groups have drafted a number of promising schemes in recent years. But each scheme has been voluntary, and the manufacturers of textile goods by and large have not complied".

[14] Supra note 3, IACTI Report, at p. 10.

[15] Record, Vol. 6, pp. 1005–6; Record, Vol. 6, pp. 982–983; Mrs. Dana, Consumer Relations Counsel; Record, Vol. 3, p. 533, Consumer Federation of America: "Nearly 4 years have elapsed since the committee made its recommendations, and nothing has been done to carry it out." See also, Record, Vol. 8, p. 1580, "Howell, Permanent Care Labeling in Textile Products from the Consumer's Viewpoint"; Record Vol. 8, p. 1632, Menswear Retailers of America; Record, Vol. 8, p. 1653 Pennsylvania League for Consumer Protection: "This committee (IACTI) did not call for permanent labeling of all fabrics but it is notable that industry-wise, these necessary but modest recommendations have been ignored as a matter of practice."

[16] Supra note 3, IACTI Report, at p. 9.

[17] Supra Note 6, 1966 Consumers Report, at p. 9.

[18] Id.

[19] Id.

[20] See, e.g., Record, Vol. 7, pp. 1221–1224. The petition reads as follows: "For my protection, I want clothing manufacturers to tell it like it is. Garments which require special care and cleaning instructions should have a stitched-in label with all vital information." The significance of the word "special" will be discussed later in the statement.

[21] Record, Vol. 8, pp. 1641–1647; pp. 638–648. The questionnaire covered 13 different questions about all aspects of care labeling including product coverage, permanent attachment of labels, experience with damaged garments and dry cleaning.

[22] Record, Vol. 10, pp. 2377–2403. The survey asked five questions:

(1) Do you think permanent labels giving specific directions for care * * * are needed by consumers on all textile products?

(2) Do you think only some items need such labeling?

(3) Do you feel that the majority of fabrics used today are of a conventional type needing no instructions as to care?

(4) Has your experience been that most textile items you have bought perform as expected when washed or drycleaned, according to the labels used on them?

(5) Do you feel that permanent care labels should be required by law, or regulation on all textiles?

[23] Record, Vol. 6, p. 879, Clothing and Textile Specialist, University of Vermont; "Well over 50 percent of the questions that come to the office * * * concern textiles for home or person which have been damaged or spoiled by incorrect care procedures. Invariably the question arises after the damage is done."

[24] Record, Vol. 7, p. 1350.

zine,[26] Macy's, Inc., and Filene's, Inc.[28] In addition, the record contains statements by home economists and teachers of university-level textile and clothing courses which cite the need for a care labeling program.[27] These surveys and statements support such a program on the basis that improper care was found to be a major cause of damage. Cited most often was the fact that as a result of improper care colors run, clothing shrinks, or the material is ruined by heat.[28] These statements also indicate that even if no damage occurs, consumers are not being informed about which care practice is best for overall performance, and that, in the absence of such information, consumers cannot rationally choose between products on the basis of the expense of ordinary maintenance.[29]

Consumer groups and related organizations were not alone in endorsing a rule providing for care labeling.[30] As indicated above, members of the cleaning industry, especially drycleaners, have expressed the most vigorous support for care labeling.[31] Cleaners are increasingly unwilling to accept responsibility for unlabeled garments which are damaged during the cleaning process.[32] These cleaners said that it has been their experience that many garments are submitted for dry cleaning which, in fact, cannot be cleaned without damage.[33]

C. *Technological feasibility of a care labeling rule.* Testing programs and performance standards which would make a care labeling requirement technologically feasible already exist. For example, the testing program of the Apparel Research Foundation has been in effect since 1968. The Foundation has conducted workshops and training courses on the subjects of testing for care characteristics.[34] In April, 1970, the Foundation announced its intention to "establish, implement and publish acceptable performance level standards for all categories of wearing apparel manufactured in the United States."[35]

Since 1936, the American Institute of Laundering has conducted its "Certified Washable Seal" program. This program is based upon established test standards which every product must meet to earn the Seal, standards which "have been exactingly maintained through the years."[36] Like the Apparel Research Foundation's testing program, the Certified Washable program is available to all garment manufacturers. In addition, the American National Standards Institute has published at least two standards which relate to the care performance of textiles.[37]

III. *Opposition to the rule.*—A. *Arguments that a rule is either not necessary or not feasible.* Those who do not agree with the proposition that a mandatory care labeling requirement is necessary do not deny that care information is essential to the ordinary use and enjoyment of textile products. Instead, they contend that consumers already know how to take care of textile products and, therefore, do not need the assistance of a care labeling rule. The only factual support for this contention is contained in several statements by manufacturers to the effect that they have received no complaints about the care performance of their particular products.[38] This argument overlooks the

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[26] Record, Vol. 9, p. 2148. Thirty percent of the respondents "needed more detailed and clearer care instructions" and 86 percent of the respondents looked for and read care labels when they purchased clothing.

[27] Record, Vol. 2, pp. 2–9, Myers, "Textile and Apparel Testing and Labeling," Harvard studies in Marketing Farm Products (1954): "Of the 1,000 complaints examined in Macy's laboratory, 66.6 percent were adjudged not justifiable. Of the 4,657 complaints at Filene's, 57.4 percent did not appear justifiable. This indicates that the larger percentage of textile failures is owing not to garment defects but to the treatment given them by consumers * * * it appears that consumer-induced failures are largely traceable to (1) poor laundering, (2) antiperspirants and deodorants, and (3) accidents * * *. A careful review of laboratory tests reports on returned merchandise suggests that many failures classified as accidental are in fact traceable to improper laundering."

[28] Record, Vol. 3, p. 438, Mr. Stewart Lee, Chairman, Dep't. of Economics and Business Administration, Geneva College; Record, Vol. 3, p 494, Mrs. Mary James, Assistant Professor, Textiles and Clothing Department, University of Rhode Island; Record, Vol. 6, p. 898, Ms. Marjory L. Joseph, Chairman, Home Economics Department, San Fernando Valley State College; Record, Vol. 6, p. 881, Clothing and Textiles Department, Pennsylvania State University; Record, Vol. 6, p. 818, Mrs. Faith Prior, Family Economist, University of Vermont Extension Service; Record, Vol. 6, pp. 941–7, Mr. Robert J. McEwen, Chairman, Department of Economics, Boston College; Record, Vol. 6, p. 1021, Mrs. Russell Gray, Home Economist; Record, Vol. 6, pp. 1174–5, Ms. Victoria Anderson, Assistant Professor of Home Economics, East Los Angeles College; Record, Vol. 8, p. 1589, Textiles and Clothing Department, University of Tennessee; Record, Vol. 8, p. 1590, Miss Phyllis Williams, Home Economists Department, Lompoc High School, Lompoc, Calif., Record, Vol. 8, pp. 1731–5, American Home Economics Association; Record, Vol. 8, pp 1876–8, Mr. Robert F. Johnson, Professor of Textile Engineering, Texas Tech. University; Record, Vol. 8, pp. 1877–8, Mrs. Jane Brunswold, Home Economist, Extension Service Montana State University.

[29] Supra note 26, Myers study.

[30] Record, Vol. 3, p. 409, State of Florida: Consumer Services Coordination; Record, Vol. 3, p. 537, Consumer Federation of America; Record, Vol. 6, pp. 894–7, National Consumer League; Record, Vol. 6, pp. 882–3, Oregon Consumers League; Record, Vol. 6, pp. 938–9, Commonwealth of Massachusetts: State of Consumers Council; Record, Vol. 6, pp. 1013–5, Wisconsin Consumers League; Record, Vol. 6, pp. 1016–7, Illinois Federation of Consumers; Record, Vol. 6, p. 1086, American Hungarian Ladies Aid; Record, Vol. 8, pp. 1649–63, Pennsylvania League for Consumer Protection.

[30] Consumer groups are, however, the strongest proponents of care labeling. Every group encountered (see note 29) voiced full and complete approval of the concept.

[31] Record, Vol. 3, p. 304, Norwood Cleaners; Record, Vol. 3, p. 412, West Town Cleaners; Record, Vol. 3, p. 442, Arnold Cleaners; Record, Vol. 3, p. 441, Riverview Cleaners; Record, Vol. 4, p. 449, Wellington Cleaners; Record, Vol. 3, p. 447, Mercier and Greenwald Cleaners; Record, Vol. 3, p. 479, Fashion Cleaners; Record, Vol. 3, p. 493, Troy Cleaners; Record, Vol. 4, p. 683, Wight Cleaners; Record, Vol. 4, p. 703, Ablitt Cleaners; Record, Vol. 6, p. 1087, Tomaric Cleaners; Record, Vol. 6, p. 1165, Gast Launderette & Dry Cleaners; Record, Vol. 9, p. 2027, Betty Brite Dry Cleaners; Record, Vol. 8, p. 1483, HEG Coin Laundry Co.

[32] The National Institute of Drycleaning publishes an annual bulletin announcing its Damage Analysis Statistics for the previous year. The bulletin contains the following language: "In many cases our laboratory assigns responsibility for damage based on the presence or absence of a permanent sewn-in label on the garment. The manufacturer of the garment and the retailer who sold it can frequently pass the responsibility on to the drycleaner or to the purchaser by the simple device of specifying on a permanent label how the garment should be processed during cleaning * * * Dry cleaners do not have infrared vision. They cannot be expected to distinguish an acrylic fabric from a wool fabric by looking at it." (Record, Vol. 4, pp. 612, et seq.)

[33] Supra note 31. "I have been in dry cleaning for 25 years and I have run into so many different garments which would not clean properly * * *. It isn't fair for customers to lose these clothes * * * nor should the cleaner be held responsible for articles which have no instructions as to idiosyncrasies concerning the particular materials." (Norwood Cleaners.) "I have been actively engaged in the Dry Cleaning and Laundry business since 1935 * * *. Manufacturers and Designers have been notorious for combining fabrics, leathers, synthetics, and other trim, making these items not serviceable by the Fabric Care Industry". (Arnold Cleaners.) Of the 21 statements in the public record from such businessmen, 20 were unreservedly in favor of the proposed rule.

Several dry cleaning and laundry trade associations were also recorded as supporters of the proposed rule. "In behalf of 800 Dry Cleaners and Laundry owners in the Metropolitan Detroit area, I urge that a law be passed to require textile product manufacturers to permanently attach care labels on their products." (Dry Cleaning & Laundry Institute.) "But probably our greatest support for such a regulation comes from the financial loss suffered by those concerned. The consumer buys a product that is unserviceable, improperly labeled, or with no label at all to indicate how it should be cared for". (Nebraska State Drycleaners Association.) (Record, Vol. 3, p. 451; Record, Vol. 4, p. 708.)

[34] Record, Vol. 7, p. 1332, Apparel Research Foundation: "The decade of the consumer demand is upon us * * *. Government enforced care labeling has been proposed * * *. The Apparel manufacturer must prepare—and be prepared—to meet these and all similar demands * * *. The Apparel Research Foundation's 2-year-old" Testing Programs for the Apparel Industry "were designed specifically for this purpose."

[35] Apparel Research Foundation Report, No. 16, Apr. 30, 1970.

[36] Record, Vol. 6, pp. 970–1, American Institute of Laundering. The brochure promoting the program lists seven areas of testing: shrinking; color fastness; chemical reactions; tensile strength; laundering; component testing; specialty tests.

[37] Record, Vol. 10, p. 2462. The two standards contain (1) performance requirements for textile fabrics and (2) performance requirements for Institutional Textiles. Both contain the following language, with respect to textile products that are or may be composed of components other than the particular fabric evaluated: "All textile components and components other than textiles incorporated into this textile shall conform to applicable performance requirements of this standard in order not to cause alteration in appearance of fabrics meeting these requirements after appropriate refreshing tests." There is no indication in the public record that either standard is being used to any appreciable extent by manufacturers.

[38] Transcript, pp. 283–6, statements of Mr. Brebbia and Mr. Meredith, American Apparel Manufacturers Association, Inc.; Transcript, pp. 351–2, statement of Mr. Korzenik, Apparel Industries Inter-Association Committee, et al.; Transcript, p. 383, statement of Mr. McCabe, National Knitwear Manufacturers Association; Record, Vol. 3, pp. 503–6, National Outerwear and Sportswear Association; Record, Vol. 7, pp. 1316–25, Burlington Industries, Inc.; Record, Vol. 7, pp. 1472–7, Futorian Manufacturing Co.

fact that the number of complaints received by manufacturers is largely determined by whether retailers (who do, in fact, receive a substantial number of such complaints) happen to forward these complaints to their suppliers.[39] And while retailers or manufacturers may be told about a garment which is completely ruined, neither retailers nor manufacturers may be informed about less dramatic but nevertheless costly damage—the product that is tumble dried, for example, instead of drip-dried and because of the greater stresses caused by high temperature in the automatic dryer, lasts only one year instead of two. Nor may manufacturers or retailers be informed about yard goods sufficient in length to make a dress when purchased but which shrink after the first washing with the result that the dress no longer fits properly.[40]

Another argument which has been advanced is that while articles of wearing apparel which require "special" care should carry care information, articles requiring "normal" or "regular" care need not be so labeled. Under this approach, however, the consumer would have no way of knowing what significance to attach to the lack of a care label. The absence of a label could mean either that the article does not require "special" care, or that it does require "special" care but the manufacturer simply did not affix a label so stating. Under these circumstances, the consumer might well take the precaution of applying unnecessary "special" care.[41]

Manufacturers also argue that they do not know the care requirements of their products and therefore are reluctant to assume responsibility for providing such information.[42] If it is reasonable for consumers to expect that products can be subjected to ordinary use without incurring economic loss, as the Commission believes, then sellers of these products cannot be heard to say that consumers have the burden of providing this technical information. Manufacturers are in a better position than consumers to determine care performance characteristics, and to translate those characteristics into simple care instructions.[43]

Another argument that has been made is that the present lack of uniformity detracts from the feasibility of issuing a care labeling rule at this time and such a rule should await the development of national standards.[44] The record evidence indicates, however, that with the large number of articles of wearing apparel and varieties within product lines, it is unlikely that any consensus standards could or will ever be developed. For each variety of each product, several care performance characteristics would have to be considered, evaluated and agreed upon. Finally, since the nature of the textile industry is that of "short runs" and frequent changes of components, whatever standards may be agreed upon would soon be obsolete.[45]

B. *Cost objections to a Care Labeling Rule.* Several manufacturers raised cost objections to a care labeling rule.[46] Cost estimates for permanently attached labels vary from "tremendously"[47] to "incalculable".[48] It has been estimated, for example, that the cost will be as high as 8 percent on lower priced garments as compared to one-half of 1 percent on higher priced garments. It is contended that this will operate to prohibit sales of lower priced garments and shift too great a portion of the cost burden to those consumers having a relatively low income.[49] The fact is that lower priced garments often need care labeling instructions as much as higher priced products, and low-income consumers can ill-afford the loss of even inexpensive items which could otherwise be safely maintained if properly labeled.[50] Moreover, low-income consumers could take special advantage of the long-term savings to be derived from a care labeling program by selecting items which do not require expensive cleaning.[51] There are, however, low-priced items of clothing which experience has shown are so completely washable under almost all foreseeable conditions that the advantages of permanent labeling—whether it be in terms of avoiding the risk of improper care or to facilitate comparison shopping—are not commensurate with the possibly disproportionate increase in consumer costs. Accordingly, the rule has been written to allow manufacturers of low-cost items—those intended to sell at retail for $3 or less—to petition for an exception where it can be shown that the product is completely washable.

On the overall question of costs even if it is assumed that most of the costs incurred by the apparel industry in establishing and operating a care labeling program will be passed on to the purchaser, the record indicates consumer willingness to accept this extra burden in exchange for the benefits of care labeling.[52] Consumers believe that elimination of loss resulting from improper care will more than offset the added initial cost, and ultimately, will result in a net saving.[53] Retail stores have expressed their willingness to assume a portion of the cost burden because of the potential improvement in customer relations and corresponding decrease in time spent handling complaints and explaining the care performance characteristics of their merchandise to purchasers.[54] Drycleaners will experience fewer instances of damage to garments and will have fewer customers' claims to pay.[55]

IV. *Power of the Commission to Require Affirmative Disclosure of Care Information.*—A. *Congressional preemption of care labeling.* The Record contains statements to the effect that the legislative history of the Textile Fiber Products Identification Act, 15 U.S.C.

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[39] Record, Vol. 8, pp. 1677–89, Sears, Roebuck & Co., Inc.; Record, Vol. 8, pp. 1597–1611, Montgomery Ward, Inc. See also, Record, Vol. 3, p. 350, Godchaux's: "As a retailer of wearing apparel I wish to express my approval of the intent of this regulation to clear up confusion in the minds of our csutomers concerning the laundering and/or cleaning of garments * * *. As a retailer we will appreciate this as it will mean that customers can properly take care of their garments and therefore have fewer complaints to us."

[40] For additional statements of retailers in support of care labeling, see Record, Vol. 5, pp. 869–71, Parke-Davis; Record, Vol. 7, p. 1384–1407, Linen Trade Association; Record Vol. 6, p. 1166, Editor-in-Chief, Textile World; Record, Vol. 7, pp. 1417–27, American Retail Federation; Record, Vol. 8, pp. 1630–1639, Menswear Retailers of America.

[41] For statements of manufacturers, see transcript, p. 72, statement of Mr. Seitz, Association of General Merchandise Chains; Transcript, p. 78, statement of Mr. Baumgart, Association of Home Appliance Manufacturers; Record, Vol. 7, p. 1363, Man-Made Fiber Producers Association, Inc.; Record, Vol. 8, p. 1497, Apparel Industries Inter-Association Committee.

The adjectives "normal," "routine," "ordinary," and "Special" are all used to describe the relative complexities of refurbishing textile products. The concept of "regular" or "normal" care has been almost entirely dissipated by the number and variety of fabrics which require different care procedures on the market today. "Special" care to one user might be "regular" to another.

[42] Record, Vol. 7, p. 1247, Russell Mills, Inc.; Record, Vol. 8, p. 1551, American Apparel Manufacturers Ass'n., Inc.; supra note 26, Myers study, at p. 3.

[43] Transcript, p. 449, Montgomery Ward Co. This retailer has already recognized this fact. Others (Sears, Penney's) are beginning to follow suit. "We currently ask our manufacturers to take a sampling of every finished garment and wash it or clean it and if it doesn't work do it a different way until they come up with the way in which they recommend to us that we in turn recommend to our customers that that garment be handled." (Montgomery Ward).

[44] Supra note 2, 1958 Senate Hearings, statement of Mr. Kintner at pp. 118–119; "in these circumstances it appears that performance labeling, while desirable, is so far from resolution of the innumerable scientific and practicable questions involved as to make the subject incapable at present of being reduced to reasonably workable legislation without prolonged testing and study, including establishment of necessary standards * * * progress in voluntary labeling for the disclosure of performance data has been limited, largely due it seems to the difficulty of achieving sufficient unanimity among industry groups for evaluating performance factors and creating the necessary scientific standards". See also, 1958 Senate Hearings, statement of Mr. Young, National Cotton Council of America, at p. 42.

[45] Record, Vol. 8, p. 1551, American Apparel Manufacturers Association. "It must be kept in mind that within each item category, performance standards change with price level and the passage of time."

[46] For example, see Record, Vol. 3, p 492; Record, Vol. 7, p 1257.

[47] Record, Vol. 4, p 699.

[48] Record, Vol. 3, p 508.

[49] Record, Vol. 6, p 1156; Record, Vol. 7, p 1247, Russell Mills, Inc.

[50] See Record, Vol. 8, p 1655, for consumer comment on the cost problem. See also statement of the Pennsylvania League for Consumer Protection.

[51] Record, Vol. 3, p 431, National Consumer Law Center. "The rules are particularly important for the low-income consumer, for in most instances these consumers do not have the financial means to have their clothes dry cleaned * * *. If the proposed rule is adopted, low income consumers could select those fabrics which do not require dry cleaning and thus extend the useful life of their clothing. This should free a portion of (their) limited funds for the purchase of other necessities."

[52] Record, Vol. 9, p. 2033. In addition, thirty percent of the letters received by the Commission either in response to the Public Notice for hearings or as general letters of complaint have contained comments on the money lost, wasted or unwisely spent because of the lack of care information.

[53] Record, Vol. 6, p. 1112, Fabric Research Laboratory; supra note 26, Myers Study, at p. 6. See also comment of National Consumers League, Record, Vol. 6, p. 894.

[54] Record, Vol. 9, p. 1979 (retail employee). "A permanent label in all garments would eliminate many of our problems * * * and would save the customer, the store and the manufacturer a great deal of money in the long run."

[55] Record, Vol. 3, p. 1442, Arnold Cleaners. "With the advent of synthetic fabrics we paid hundreds of thousands of dollars to customers for damaging their garments * * * because we were not aware of the problems created by these new materials."

Section 70, and the eventual decision of Congress not to act in the area of "performance" or "care" labeling indicates that Congress intended to preempt the field of care labeling. This argument also suggests that the Commission should at least defer action on a care labeling rule until Congress has acted upon pending legislation.[56]

That Congress has not acted does not justify the conclusion that Congress intended to foreclose the Commission from all aspects of care labeling or to preempt the field until such time as Congress might act. The fact that Congress believed the problem of "performance" or "care" labeling to be enormous, or even insurmountable, does not prevent the Commission from taking action in this area by means of a trade regulation rule.[57] In Helvering v. Hallock, 309 U.S. 106, 120 (1940), the Supreme Court said that to give weight to non-action by Congress was to "venture into speculative unrealities". And in Mary Muffet, Inc., et al. v. FTC, 194 F 2d 504, (2d Cir. 1952), the court of appeals held:

Specific statutory requirements for the labeling of wool products, 15 U.S.C. paragraphs 68–68j, or affirmative disclosure in the advertising of foods, drugs, curative devices and cosmetics, 15 U.S.C. paragraphs 52, 55(a) do not tie the hands of the Commission from acting in the public interest in all other cases.

The failure of Congress to enact legislation respecting "performance" or "care" labeling, therefore, cannot be construed as a bar to action by the Commission.

B. *The Commission's general rule making authority.* The argument was made during the course of the proceeding that the Commission has no authority to promulgate Trade Regulation Rules.

In its Statement of Basis and Purpose accompanying the 1964 Cigarette Rule, the Commission elaborated at length on its trade regulation rulemaking authority and concluded that a Trade Regulation Rule is "* * * within the scope of the general grant of rulemaking authority in section 6(g) (of the Federal Trade Commission Act), and authority to promulgate it is, in any event, implicit in section 5(a)(6) (of the Act) and in the purpose and design of the Trade Commission Act as a whole." (See Trade Regulation Rule for the Prevention of Unfair or Deceptive Advertising or Labeling of Cigarettes in Relation to Health Hazards of Smoking and Accompanying Statement of Basis and Purpose of Rule, pp. 127–150 and 150.) The Commission adheres to that view.

C. *The Commission's authority to require affirmative disclosure of care information.* Many industry members argued that the Commission lacked the authority to require care and maintenance instructions where previously no instructions were furnished. This argument is based on the premise that there can be no deception in remaining silent and the consumer can be misled only where existing labels misinform.

The Commission's powers are not so narrowly circumscribed. The Commission has often required affirmative disclosures where the public assumed from silence that a certain state of facts existed which, in fact, did not. Thus, sellers have been required to disclose the true properties of their products where the appearance of those products, absent disclosure, would mislead—e.g., disclosures were required where paper simulated wood products (Haskelite Manufacturing Corporation v. Federal Trade Commission, 127 F. 2d 765 (7th Cir. 1942)) or where rayon fabrics looked like silk (Mary Muffet, Inc. v. Federal Trade Commission, 194 F. 2d 504 (2d Cir. 1952)) or where oil was used rather than crude (Mohawk Refining Corporation v. Federal Trade Commission, 263 F. 2d 818 (3d Cir. 1959), cert. denied, 361 U.S. 814 (1959)). Similarly, silence respecting the foreign origin of a product has been deemed misleading; in these instances, the public will assume domestic origin absent disclosure (Segal v. Federal Trade Commission, 142 F. 2d 255 (2d Cir. 1944)).[58] By the same token it is deceptive not to reveal care instructions when silence on this subject can either mislead the public into using a care procedure which is harmful, or frustrate a basic assumption inherent in the initial purchase—that no special and costly maintenance will be required, and that the consumer will be able to distinguish between the whole range of possible care procedures and use the procedure which is both most effective and most economical.[59]

In addition to the element of deception, care disclosures are required because it is unduly oppressive and unfair to consumers to withhold information essential to the ordinary use of a product. The record indicates that many consumers do experience substantial economic loss because of erroneous assumptions about care of clothes, assumptions which are quite normal in the absence of contrary instructions from the manufacturer.[60] Still another source of serious consumer loss derives from the fact that, without this essential information, consumers are unable to distinguish between apparel which may cheaply be maintained, and those which are expensive because of the care procedure involved.[61] The courts have recognized the Commission's broad authority to prohibit practices as unfair (even though not deceptive) where the record proof shows substantial economic injury to a significant number of consumers. Federal Trade Commission v. R. F. Keppel & Br. Inc., 291 U.S. 304; Goldberg v. Federal Trade Commission, 283 F. 2d 299 (C.A. 7); Lichtenstein v. Federal Trade Commission, 194 F. 2d 607 (C.A. 9); National Trade Publications Service, Inc. v. Federal Trade Commission, 300 F. 2d 790 (C.A. 8); Norman Co., 40 F.T.C. 296; Federal Trade Commission v. Consumer Home Equipment Co., 164 F. 2d 972 (C.A. 6); Dorfman v. Federal Trade Commission, 144 F. 2d 737, 739–740 (C.A. 8); Federal Trade Commission v. Holland Furnace Co., 295 F. 2d 302 (C.A. 7); Federal Trade Commission v. Grand Rapids Varnish Co., 41 F. 2d 996 (C.A. 6); Bernard Lowe Enterprises, Inc., 59 Federal Trade Commission 1485; Independent Directory Corporation v. Federal Trade Commission, 188 F. 2d 468 (C.A. 2); Hastings Manufacturing Co. v. Federal Trade Commission, 153 F. 2d 253 (C.A. 6); See also Zlotnick the Furrier, Inc., 51 F.T.C. 1068, and Interstate Home Equipment Co., 40 F.T.C. 260.

V. *Conclusion.* Considering the wide variety of textiles used in apparel, consumers must be informed of proper care and maintenance procedures in order (1) to avoid possible damage to the product through improper care; (2) to use the care procedure which will give the best overall performance; and (3) to be able to select apparel on the basis that it can be cared for inexpensively yet effectively. Such information is not available in permanent form on most apparel products commonly used by consumers. For the reasons discussed above, the Commission believes that the absence of such information is deceptive and unfair. The Commission has concluded, therefore, that sufficient need exists for the adoption of a care labeling rule.

VI. *The scope of the rule.*—A. *Product coverage.* The proposed rules applied to all textile products in commerce and contained no limiting provisions. Both consumers and industry members suggested several factors to be used in restricting the applicability of the rule.

The proposed rule did not distinguish between articles which require care and maintenance for ordinary use and enjoyment and those which do not. The final rule makes this distinction. Clearly, no care instructions are needed for articles (such as disposable products) which require no care.[62]

Both the proposed rule and the final rule make no distinction between domestic and imported products and industry members agree that none should be made.[63] Sellers of imported products fall within the rule; therefore, imports should be properly labeled (by the foreign manufacturer) when they enter the country, or the importer should see that a proper label is provided after the product enters the country but before it is sold in commerce.

Several manufacturers argue that the products covered by the rule should be limited to those sold to "consumer purchasers."[64] After due consideration, the

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[56] Record, Vol. 8, p. 1591.

[57] See supplemental statement on H.R. 469, Congressman Smith, Hearings Before Committee on Interstate and Foreign Commerce, U.S. Senate, 85th Cong., Second Sess., p. 283, February 1958. See also Hearings before Subcommittee of Committee on Interstate and Foreign Commerce, House of Representatives, 85th Cong., First Sess., p. 24, April 1957.

[58] See also American Tack Co., Inc. v. FTC, 211 F. 2d 239 (2d Cir. 1954); Royal Oil Corp. v. FTC, 262 F. 2d 741 (4th Cir. 1959); Mohawk Refining Corp. v. FTC, 263 F. 2d 818 (3d Cir. 1959); Kerran v. FTC, 265 F. 2d 246 (10th Cir. 1959); Bantam Books, Inc., v. FTC, 275 F. 2d 680 (2d Cir. 1960).

[59] In addition to many cases which have required material disclosures, this requirement has been also expressed in a number of guides and trade regulation rules. Shoes or slippers, for example, which are composed of nonleather material having the appearance of leather must bear labeling which clearly discloses 1) the general nature of the material or 2) that the material is simulated or imitation leather. Guides for Shoe Content Labeling and Advertising—Guide VII. Similarly, it is deceptive to sell belts which are made of non-leather material unless disclosure is made of the true composition of the product. Trade Regulation Rule Regarding Misbranding and Deception as to Leather Content of Waist Belts—16 C.F.R. 405.4(b). The Commission's rule relating to incandescent lamps (effective Jan. 25, 1971) requires disclosure of facts deemed necessary to properly judge the character of light bulbs (power consumed, light output, laboratory life).

[60] Record, Vol. 8, p. 1586; Record, Vol. 2, pp. 11–12. In addition, see supra notes 27 and 29. Economic loss because of improper care is based upon assumptions which the consumer must make in absence of any care instructions. The product must be cleaned somehow; the consumer must often guess as to how it is to be done.

[61] Supra note 21, Care Labeling Survey. The distinction between washing and drycleaning was mentioned innumerable times. See also, Record, Vol. 6, pp. 1006–1007.

[62] Record, Vol. 8, p. 1586, The Disposables Association; Record, Vol. 2, pp. 11–12, U.S. News and World Report (Sept. 15, 1969).

[63] Record, Vol. 7, p. 1376, American Textile Manufacturers Institute Inc.; Record, Vol. 7, p. 1303, J. C. Penney Co. See also Record, Vol. 7, p. 1367, Man-made Fiber Producers Association.

[64] Record, Vol. 7, p. 1453, Vinyl Fabrics Institute. Most manufacturers, including this group, wanted to limit the applicability of the rule to "consumer-purchasers" in order to exclude intermediate products. Intermediate products have been excluded for other reasons.

Commission has determined that there is no reason for distinguishing, for example, between a "consumer-purchaser" who buys one uniform and a uniform supply company that buys many. Each needs to be informed as to the care and maintenance necessary to be applied to these products. The rule protects those who obtain an article of wearing apparel by purchase without regard to the category into which these purchasers might fall.

The argument has been made that the rule need not apply to intermediate products or component parts of a finished textile product.[65] The Commission agrees for the reason that there is little record proof that manufacturers are seriously handicapped by the absence of care instructions. In the ordinary commercial dealings between businessmen (for example, between manufacturers and raw material suppliers), there are ample pressures which can be applied to get adequate information about care procedures; moreover, there is little record proof that suppliers have either unfairly or deceptively withheld this information.

The Record contains several proposals for limiting the coverage of the rule to wearing apparel.[66] This limitation has been adopted by the Commission for two reasons. In the first place, based upon the number of complaints received by the Commission, it is clear that the most pressing need for care labeling is on articles of wearing apparel.[67] The apparel industry is the largest part of the total textile industry and the major consumer of textile mill products.[68] Secondly, the Commission has decided to proceed in stages in the care labeling field. This apparel rule is only a first stage; others may be forthcoming. This decision is based upon an assessment of the inevitable administrative problems which will arise in enforcing even a first stage rule, and the limited resources available to the Commission for dealing with these problems.

Since "piece goods" comprise an ever-growing portion of the typical consumer's clothing budget, they are included in the rule in paragraph (b). The "home sewing industry" constitutes a significant part of the wearing apparel industry.[69] A rule which covers all appropriate wearing apparel must include "piece goods" which are used by the consumer to make finished articles of wearing apparel.

Several proposals have been made for totally exempting certain products, including certain apparel products, on the grounds that manufacturers believe that the consumer is currently provided with sufficient information about "their" particular products.[70] The fact that a particular manufacturer's voluntary care labeling program may meet or exceed the requirements of the rule is commendable but is not a valid argument for exempting these products.[71]

Other industry members argue that, because their products are cared for by "experts" and not consumer-purchasers, they should be totally exempted from the rule.[72] While "experts" may be aware of proper care procedures, there is evidence that some may ignore any proffered care instructions.[73] An exemption for these products, moreover, would render consumers powerless to challenge an "expert's" responsibility for any damage which may occur.[74] In addition, the consumer should be aware of the kind of care required by an article before he buys, and specifically, whether or not it requires more expensive "expert" treatment.

B. *A permanent label.* It has been suggested that any deception or unfairness which exists as a result of lack of care labeling instructions would be cured by simply making such information available to the purchaser rather than requiring that this information be "permanently attached" to the garment.[75] Even if the care instructions are properly disclosed on a tag at the time of sale, such tags are soon destroyed or misplaced.[76] In order for information separately furnished at the point of sale to be available at the point where care is attempted, it must be saved, stored, located, and then matched with the product it accompanied. Successful implementation of this approach requires an elaborate filing system that most purchasers are unable to maintain.[77] If furnished as part of the package or container in which the product is sold, the information may be inadvertently thrown away or destroyed by the purchaser upon opening the container.[78]

It is realized, however, that the utility and appearance of some articles may not survive a permanently attached label. In this connection, the physical characteristics of the article, its shape, size, fragility, and sheerness, are relevant. It may be physically impossible to attach a permanent label on a very small or oddly shaped article.[79] Other products might be too fragile to support a label of any kind.[80] The difficulty of attaching a permanent label to such products outweighs any additional benefit the user would derive by reason of permanently attached information.[81] In addition, a permanently attached label readily accessible to the user might so impair the appearance of an article so as to significantly diminish its desirability. There is little purpose in insisting on a permanently attached label if, as a result of the attachment, a potential purchaser would either refuse to buy the article or would remove the label, perhaps damaging the article in the process.[82]

Paragraph (c)(1) of the rule provides for exemptions of such articles from the permanent attachment requirement. In these cases the required care information may be in the form of accompanying labels or tags.

C. *Responsibility for compliance.* Paragraph (1) of the proposed rule did not specify who is to be responsible for providing relevant care information. The Commission has concluded that such responsibility should be placed on "the person or organization that directed or controlled the manufacture of the finished article." Various levels and segments of the apparel industry may fall within this area of responsibility,[83] but in most instances responsibility will rest with the finished product manufacturer—the person

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[65] Id. See also Record, Vol. 7, p. 1320, Burlington Industries, Inc. Most of the textile industry adheres to this view.

[66] Statement of Sears, Roebuck & Co., dated May 1, 1970, p. 1 (not in public record); Record, Vol. 7, p. 1373, American Textile Manufacturers Institute, Inc.; Record, Vol. 7, p. 1305–1309, J. P. Stevens and Co., Inc. All of the textile industry desired that the rule be limited in some way. Most proposed wearing apparel as the most obvious choice.

[67] Over 65 percent of the total number of care labeling complaints received by the Commission before and during the hearings pertained to wearing apparel. Ninety percent of the care labeling complaints received in the first half of 1971 concerned wearing apparel.

[68] Priestland, "FOCUS—An Economic Profile of the Apparel Industry," AAMA, Inc., 1969, p. 9.

[69] The number of complaints about the labeling (or nonlabeling) of piece goods has been substantial. Out of 289 letters received in direct response to the public notice of the hearings, 172 pertained to piece goods designed to make an article of wearing apparel. See Record, Vol. 10, pp. 2247–2329, pp. 2406–2461, pp. 2465–2480.

[70] Record, Vol. 7, p. 1386; Record, Vol. 8, pp. 1515–1520; Record, Vol. 8, pp. 1767, 1768–69; Record, Vol. 8, pp. 1861–1865.

[71] The major objection to any voluntary program is the inability to compel compliance. The Commission must be able to exert continuous and uniform enforcement of the rule. Record, Vol. 2, p. 25, Consumers Reports, February 1968. Accord, Supra note 6, 1966 Consumers Reports, at p. 15: "The consumers needs must be met if not voluntarily, then by government regulation." See also, Record, Vol. 7, p. 1419, American Retail Federation. No voluntary plan to date has fulfilled the requirements of this rule, e.g., the plan advanced by the Industry Advisory Committee on Textile Information provides only for "special" care labeling.

[72] See, e.g., Record, Vol. 8, p. 1569, Carpet and Rug Institute. Carpets are one matter; wearing apparel is another. Most consumers must themselves confront the problem of cleaning garments. Fewer "experts" are involved.

[73] See, e.g., Transcript, p. 534, Clothing Manufacturers Association of America.

[74] With required care labeling instructions, if the "expert" does not follow them or follows them incorrectly, the consumer would have some chance of remedy—either against the "expert" or the organization responsible for the label. See also Record, Vol. 6, pp. 1006–1007, Mrs. Virginia Knauer, Special Assistant to the President for Consumer Affairs; supra note 26, Myers study, at p. 6. In addition, one of the most important benefits of care labeling will be an improved ability to make cost comparisons.

[75] See, e.g., Record, Vol. 7, p. 1300 (J. C. Penney Co.) and 1475 (Futorian Manufacturing Co.).

[76] Record, Vol. 9, p. 1894, Mrs. Margaret Dana: "I have found that string attached labels become lost, or even worse, exchanged from one garment to another in the fitting rooms * * * I know one proprietor of a women's dress shop who removes all the hand tags from her garments * * *." Sixty percent of care labeling letters received by the Commission affirmatively requested permanent attachment of labels. Seventy-eight out of eighty responses to the notice, discussing the subject of permanent attachment, indicated that hand tags are not a satisfactory solution.

[77] Record, Vol. 2, p. 24, Consumer Reports (February 1968): "Each tag or label must be annotated so that you will know weeks or months later which article it was originally attached to. On washday, each item in the wash must be reassociated with its instructions which must be read, obeyed, and refiled."

[78] Record, Vol. 6, p. 879, Extension Service, University of Vermont; Record, Vol. 8, p. 1877, Cooperative Extension Service—Montana State University.

[79] Record, Vol. 4, p. 788 (light combinations of yarn); Record, Vol. 7, p. 1466 (thread). Others may be shoelaces or items normally used as clothing which are very small or depend for their popularity upon a certain distinctive shape.

[80] Record, Vol. 4, pp. 646–647, National Association of Hosiery Manufacturers (some kinds of exceptionally sheer hosiery). Items with no body or extremely dainty items might be included.

[81] Record, Vol. 8, pp. 1553–1554, American Apparel Manufacturers Association; Record, Vol. 7, p. 1247, Russell Mills, Inc., The extra cost involved is also a consideration to take into account.

[82] Record, Vol. 7, p. 1769.

[83] Supra Note 68, "FOCUS," at p. 10 (jobbers, for example). Jobbers may determine which components, accessories and finishing processes will be used. The actual implementation of this control may be accomplished by an external factory which works under directions provided by the jobber.

who assembles or controls the assembly of the various components to make the finished article.

The manufacturer has control over the three main factors which will determine care performance: fabric components, accessories, and the final manufacturing process used.[84] As the last person involved in the manufacture of the product, the finished product manufacturer logically should bear the responsibility for determining which care instructions are to be placed on the label and for designing and attaching the labels.[85] While manufacturers will ordinarily be responsible for compliance with the rule, in specific fact situations this responsibility may rest with jobbers or even retailers where it can be shown that they, in fact, directed or controlled the manufacturer or the finished product.

1. *Certification.* Paragraph (2) of the proposed rules required that care instructions be accompanied by a certification from the manufacturer of the product to the ultimate consumer-purchaser warranting the accuracy of the instructions required by the Rule. There is little in the record of this proceeding which indicates that a major problem confronting consumers is inaccurate care labeling. Throughout the record are statements about how consumers suffered economic loss because of the lack of any care labeling instructions rather than improper instructions.[86] In short, the proposed certification rule seemed to go to a problem which may not exist, and, at any rate, one that is not substantiated by the record of these proceedings. If it later develops that some manufacturers are mislabeling their products (in contrast to no label at all), all of the powers of the Commission under section 5 of the Federal Trade Commission Act will be involved in these cases.

2. *Manufacturer's guarantee to the retailer.* Paragraph (3) of the proposed rules, which provided for an exemption for retailers who obtain guarantees from manufacturers, has also been omitted in the final rule since it is superfluous. The person who directed or controlled the manufacture of the finished article will be held responsible, whether it be the manufacturer of the finished article (as is usually the case) or the retailer, wholesaler, or jobber, as may be the case in specific factual situations.

D. *The form and nature of the care instructions.*—1. *Required disclosure.* The words "fully" in subparagraph 1 of the note to the rule and "clearly" in paragraphs (a) and (b)(1) of the rule are intended to preclude certain labeling methods which the Commission considers unacceptable.

The use of promotional language, as part of the care instructions, will not be compliance with the rule. The phrase "never needs ironing" is one example. If a purchaser does decide to iron the product, she needs to know the proper ironing methods for that product. In this example, the purchaser has no way of knowing whether the product can be ironed, or if it can be ironed, the proper temperature for the iron.[87]

The use of a negative term without more (such as "no bleach") does not tell the purchaser what to do with the garment. It contains no positive information, and thus is inadequate standing alone.[88] On the other hand a "positive" instruction, such as "wash by hand," may also require a negative instruction if the article cannot be drycleaned.[89]

To avoid the problem of providing meaningful care information, some manufacturers have used such labels as "Dry Clean Only," (known as "low" labeling)[90] when, in fact, the product could be washed at much less cost to the consumer.[91] Whenever an article of wearing apparel can be easily and safely cleaned, for example, by either washing or drycleaning, the purchaser should be made aware of the availability of a choice.

Instructions must be thorough. The simple instruction "Dryclean" may not be sufficient. Although most drycleaners use chlorinated solvents, some still use petroleum solvents.[92] Some products which can be cleaned in petroleum solvents will not survive chlorinated solvents.[93] Products which survive chlorinated solvents generally survive all solvents. Unless the instruction "Dryclean" is based on a test with a chlorinated solvent, that and other similar instructions must not be used without additional words, e.g., "Dry Clean in Petroleum Solvents."[94]

The care instructions must apply to all components of the product including nondetachable linings, trim and other details. Any exceptions should be indicated on the labeled instruction.[95] An intentionally removable component, such as a zip-out liner is expected to be separately labeled when it requires different care procedure than the main garment itself.

2. *"Regular" care vs. "spot" care.* Generally speaking, there are two kinds of care and maintenance: regular care and maintenance, which is required by mere use of the product, and spot care and maintenance, which is needed when a substance is accidentally spilled on the product.

When a garment is worn, small particles of dust, grime, and soot normally adhere to it. Unless these substances are removed at regular intervals, a gradual but steady diminution of the garment's utility and appearance will occur. By definition, regular care and maintenance instructions must be aimed at the consequences of normal and expected wear. In addition, because the substances usually adhere to different parts of the whole garment, the care instructions must relate to the whole garment. Spot care is another matter. When a foreign substance is accidentally spilled, the care required is usually very specific and suitable only for removing a particular substance from the garment. In addition, the procedure is usually applied only to the area of the product where the substance has made contact.

It is one matter to require a product manufacturer to determine which of the regular

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[84] "Twenty-five years ago the basic component of most apparel products was one of four natural fibers: cotton, wool, silk, linen. Performance characteristics of these fibers largely varied only according to the place the fiber was grown. Today in addition to the natural fibers, there are in production at least 12 man-made fibers (by generic name). Each manufacturer of a man-made fiber may produce several variations of it all with different performance characteristics". (Record, Vol. 8, p. 1546, American Apparel Manufacturers Association, Inc.)

"The potential for different care performance characteristics with respect to apparel products is further increased by the fact that most apparel products have other components in addition to the basic fiber components. Items such as buttons, thread, zippers, etc., affect the care performance of the whole product." (Record, Vol. 8, p. 1549, American Apparel Manufacturers Association, Inc; Record, Vol. 4, pp. 672–5, Association of Home Appliance Manufacturers.) For example, "(m)ost present day dresses are composed of fabric, buttons, trimmings, linings, decorations and thread. Each of these may require a different cleaning method for best care." (Record, Vol. 3, pp. 507–9, Daytime Apparel Institute.) Even the final manufacturing process, which only puts together all of the component parts, can alter the care performance characteristics of the finished product. (Tr. pp. 746–47, statement of Mr. Holtzman, Eve Carver Fashion Corp.; Record, Vol 8, p. 1547, American Apparel Manufacturers Association, Inc.)

[85] Supra note 3, IACTI Report, p. 10: "It is recognized that the application of permanent labels, where appropriate, to convey care instructions to the consumer is the function of the fabricator of the consumer item."

[86] Supra notes 27–29; Record, Vol. 7, p. 1323; Record, Vol. 8, pp. 1785–89 Supra, note 51 and text accompanying. In addition, many asserted that certification would not be appropriate to instructions contemplated by the rule because, by necessity, they would have to be long and detailed. Both industry members and consumers agreed that the information provided should be in the nature of brief general instructions which are related to the kinds of care procedures likely to be attempted by consumers. It would also mean larger labels increasing the label cost. Furthermore, certification might mislead consumers into believing that they can rely on the stated instructions to restore the textile product, regardless of what has happened to it. Consumers could even neglect to take ordinary precautions when accidents occur. A stain which has been permitted to set in a fabric, for example, might not later be removed even though the instructors are adequate for regular cleaning of the product.

[87] Transcript, p. 114–115, statement of Mr. Johnson, National Institute of Drycleaning: "In the interest of efficient communication, labels should be devoid of promotional claims or verbosely or deviously worded instructions". In the text example, the instruction "warm iron" is more appropriate; it is informative and could be validated.

[88] Record, Vol. 6, pp. 978 and 982, Mrs. Margaret Dana, Consumer Relations Counsel. The meaning of such a phrase is ambiguous and confusing to the consumer.

[89] Id. at p. 982. The instructions may be either positive or both positive and negative as the situation demands. In addition, ambiguous instructions, such as "drycleanable" may be unacceptable. The suffix "* * * able" destroys the meaning of the term. The object of the rule is to provide for instructions which are meaningful without an additional interpretive statement.

[90] Transcript, p. 189, Massachusetts Consumer Association.

[91] Record, Vol. 3, p. 487, Home Laundering Consultative Council.

[92] Record, Vol. 3, p. 417, Dixo Co., Inc.

[93] Record, Vol. 3, p. 424, Filter-Mate Corp.

[94] Record, Vol. 4, p. 573, Dixo Co., Inc. There are other examples of misleading "drycleaning" instructions. For example, the instruction "clean by Furrier Method" does not inform the purchaser that the furrier method only removes surface soil. The direction "Use Coin-Op Drycleaning" does not indicate that the use of the moisture to remove water borne stains will remove fabric color. (Record, Vol. 6, p. 951, Neighborhood Cleaners Association.)

[95] For example, see Record, Vol. 3, p. 442; Transcript, p. 603, statement of Mrs. Margaret Dana, Consumer Relations Counsel (white wool dress trimmed with black buttons—dry cleaning melted the buttons staining entire dress. The dress had no care label).

care procedures should be used to refurbish his product, and then to instruct purchasers as to the implementation of that procedure. It is another matter to require him to anticipate all the substances that could be expected to spill on his product, to determine what specific spot care and maintenance procedure should be used for each substance, and finally, to advise purchasers as to the implementation of all those procedures.[96] The Commission has concluded that instructions pertaining to "spot" care should not be required in the Rule.

3. *Symbols vs. words.* The public record contains comments on the desirability of requiring symbols rather than words on care labels. On behalf of symbols, it is argued that symbols would transcend language barriers, reduce the size and cost of labels, facilitate international trade and promote standardized instructions.[97] The best known symbol system in existence is the one adopted by the International Symposium for Care Labeling of Textiles.[98] The system is currently being used in several European countries.[99] Participation is voluntary. The care instructions are based on standards adopted by the International Standards Organization and relate only to color fastness.[100] The ISO has proposed a new set of symbols which are much more detailed, yet still do not encompass all care situations.[101]

Because of the continuing and rapid technological development in the apparel industry, it would be extremely difficult to devise a symbol system that would be flexible enough so that future developments in the care and maintenance area could be indicated without constantly adding new symbols.[102] If a symbol system were adopted, the Commission clearly would have to dictate the use of one particular set of symbols. And while symbols do transcend language barriers, the symbol language itself must be learned. Adoption of a new symbol system would necessitate a significant extra expenditure of time and effort to teach a new language.[103]

The Commission has concluded that the rule should require words and phrases, with the only limitation being that the words and phrases "clearly" and "fully" articulate care and maintenance instructions as determined by the manufacturer or other responsible party.

VII. *Additional comments on the language of the rule.*—A. *Paragraph (a)*—1. *"Textile product".* " 'Textile Product' is any commodity spun, woven, knit or otherwise made in whole or in part from fibers, yarn or fabric which is intended for sale or resale and which requires care and maintenance in order that ordinary use and enjoyment of the commodity may be obtained by whoever purchases it."

While various witnesses expressed different views about product coverage (the proposed Rules covered *all* textile products), there was no substantial disagreement about the Commission's technical definition of a "textile product"—"a commodity, made in whole or in part of fibers, yarn, or fabric." Product coverage has been limited to "any textile product in the form of a finished article of wearing apparel" for reasons explained above. Other limitations placed on the phrase "textile product" are for purposes of clarity. "Spun, woven, and knit" has been added in order to exclude paper and plastics, and it has been made clear that the Rule does not apply to disposable products but rather only to those products "which require care and maintenance".

2. *"Finished article of wearing apparel."* " 'Finished article of wearing apparel' is any costume, garment or article of clothing whose manufacture is complete and which is customarily used to cover or protect any part of the body, including hosiery, but excepting all footwear and such articles that are used exclusively to cover or protect the head or the hands."

A "finished article" is an article "whose manufacture is complete"—i.e., the product is ready to be sold to a purchaser for use as an article of wearing apparel. All hosiery (socks, stockings, and the like) are included. Excluded are gloves, shoes, boots, slippers and rubbers or overshoes—i.e., articles used exclusively to cover or protect the feet or hands. This exclusion is based on the fact that footwear ordinarily does not require the kind of laundering or dry cleaning care and maintenance which is the subject of this rule.[104] Hats and gloves and other articles used exclusively to cover or protect the head or hands are excluded from this first stage rule. The Record developed in this proceeding shows that most adult headwear cannot be maintained or cared for in the sense in which these terms are used in this rule.[105] There is little Record evidence concerning gloves, except for statements that work gloves are in the "disposable" class and are not designed for ordinary care and maintenance.[106] Subsequent review of this rule will consider whether these exemptions should be limited or amended, particularly as they apply to children's hats and gloves.

3. *"Permanently affixed or attached".* " 'A label or tag permanently affixed or attached thereto' is a label or tag attached or affixed in such a manner that it will not become separated from the product during its useful life."

The definition of "permanently affixed or attached" requires that the label be as durable as the product to which it is bound. In addition, the information on the label must be "permanent."[107] Some question has been raised concerning the permissibility of imprinting the instructions directly upon a product.[108] As currently used by industry, imprinted instructions have not been found to meet the "permanency" requirements outlined above nor are the instructions as clearly "visible" as those on a label.[109] The Commission, however, has no objection to the use of imprinted instructions provided they meet the requirements of permanency and legibility in the rule.

4. *"Clear" disclosure.* The note to the rule provides basic criteria for a "clear" disclosure. Paragraph (1) of the proposed rules also provided that the label or tag accurately and clearly disclose " * * * any other instructions material to the proper care and normal use of such product which, if not followed, (would) result in the impairment of its utility or appearance." This provision was intended to require manufacturers to include "warnings" in the information to be included on the label. In response to this proposed language, manufacturers said "that it is impossible to comply with the literal terms of this requirement. Every cleaning process places some strain on a product. There is simply no way in which cleaning cannot impair utility or appearance."[110]

The Commission has concluded on the basis of these objections that the language above is too broad, vague and ambiguous since it would seem to include not only "warnings" and instructions on "spot" maintenance, but also directions on the use of the product.[111] Subparagraph 2 of the note, therefore, has been narrowed and, as with subparagraph 1, warnings as to "spot" maintenance are not required. The words "substantially diminish" should remove the objection that any cleaning will impair the utility of a product. As reworded, subparagraph 2 will alert purchasers to techniques and procedures which may so impair utility and appearance as to substantially diminish the ordinary use and enjoyment of a product.

Subparagraph 3 of the note outlines the legibility requirement. Instructions must be readable to be of use. Instructions, therefore, are required by the rule to be legible for the useful life of the product to which they are permanently attached.[112]

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[96] The descriptions of "regular" and "spot" care were accepted as fact during the hearings without dispute. All participants conceded the impossibility of requiring the inclusion of "spot" care procedures in care instructions.

[97] Record, Vol. 6, p. 951, Neighborhood Cleaners Association; Vol. 6, p. 1112, Fabric Research Laboratories, Inc.; Record, Vol. 7, p. 1440, Spring Mills, Inc.

[98] Transcript, pp. 590–598; Record, Vol. 5, pp. 841–850; Record, Vol. 6, pp. 1176–1181.

[99] Germany, France, Holland, Belgium, Luxembourg, Switzerland, and Austria.

[100] Record, Vol. 5, p. 844, statement of Dr. M. Burer, President of the Symposium. The difference between indicating how certain care and maintenance procedures will affect color fastness and indicating what and how care maintenance should be used is great.

[101] International Organization of Consumer Unions Letter, Apr. 1, 1970, "Care Labeling." For example, their "caution" symbol may signify a variety of different procedures relating to drying, ironing and drycleaning. There is no symbol to specify "tumble dry."

[102] Accord, Transcript, pp. 605–606, Mrs. Dana, Consumer Relations Counsel.

[103] Record, Vol. 3, pp. 486–487. Consider the problem, for example, of devising symbols for the following label: "Machine washable in sudsy water at medium temperature. Rinse well, tumble dry thoroughly, hang immediately to eliminate pressing. Garment may be drip dried or steam pressed." At least nine symbols would be required.

[104] See Record, Vol. 7, p. 1257.

[105] Record, Vol. 4, p. 699 and Vol. 5, p. 837 (men's and boys' hats); Record, Vol. 7, p. 1380 (women's hats). Their use must be "exclusive"; if an article, for example, is customarily used to cover both the head and another part of the body, such as the neck, then it may be included in the rule.

[106] Record, Vol. 8, p. 1586 (disposables).

[107] Transcript, p. 20, statement of Mrs. Dana, Consumer Relations Counsel: "Again, a permanent care label is little real help unless it is literally permanent, in the durability of the fabric making the label and the permanency of the ink in the printed words * * *. [W]omen write me very often, this was a good label to start with, but after the second washing, the words all faded out and I don't know what they said."

[108] Record, Vol. 8, pp. 1560–1561.

[109] Many complained of instructions "fading out" when proper care procedures were applied. Record, paragraph 129, p. 2489, Malony Report.

[110] Record, Vol. 7, p. 1298, J.C. Penney, Co. See also Record, Vol. 4, p. 786, Cannon Mills, Inc. Once raised, this issue was not disputed at the hearings.

[111] Record, Vol. 8, p. 1503, Apparel Industries Inter-Association Committee; Record, Vol. 4, p. 718, Association of General Merchandise Chains. Such is not the purpose of the rule.

[112] Record, Vol. 8, p. 1534, p. 1633. American Apparel Manufacturers Association and Menswear Retailers Association.

Subparagraph 4 of the note is included to ensure that the purchaser, without unreasonable effort, may gain access to the instructions which are permanently attached.[113]

The scope of the disclosure provision in the proposed rule has been broadened by substituting the word "care" for the word "laundering" and by the addition of the word "maintenance" throughout the rule. The phrase "care and maintenance" more accurately reflects the scope of care information required to be disclosed. "Laundering" is only one of the many kinds of care that may be attempted on a particular product.

B. *Paragraph (b).*—1. *"Accompanied by a label or tag."* "'Accompanied by a label or tag' means a tag must be included with every individual purchase of piece goods by the ultimate consumer, regardless of the size and shape of such goods."

The nature of piece goods and the method by which they are sold dictate against a permanently attached label. In addition, the quantity of goods purchased might be too small or the label might interfere with the appearance of the future finished article of wearing apparel.[114] As discussed above, however, the need for information about care and maintenance still persists. The rule, therefore, provides for "accompanying labels or tags." The manufacturer of piece goods will have the responsibility of supplying retailers with enough labels to satisfy individual consumers. The object of the rule is to ensure that each purchaser of piece goods be provided with care information for each type of goods that he buys. The quantity of the purchase is irrelevant.

2. *"Immediate conversion."* The phrase "immediate conversion" is not intended to have any time limitation. If piece goods are sold for the purpose of transforming them to articles of wearing apparel falling within the scope of the definition, the piece goods are included in the rule. The consumer need not perform the transformation within any specified period of time. The consumer's intent to convert the piece goods will be presumed from the original act of purchasing such goods.

3. *"Ultimate consumer."* The person or organization who effects the change(s) mentioned above must be considered the "ultimate consumer." "Ultimate consumer" may be defined as a person or organization obtaining any piece goods by purchase or exchange with no intent to sell or exchange them and with no intent to incorporate or otherwise use them as a component(s) of another product intended for sale or resale.[115] The term has been used in paragraph (b) to exclude from the scope of the rule intermediate textile products and components and to exclude from responsibility under the rule all suppliers of intermediate textile products and components except that the responsibility continues to rest with the manufacturer of the piece goods, intermediate or otherwise, if the fabric is sold directly to the ultimate consumer. If it is sold to a finished product manufacturer for the purpose of resale in any form, then the finished product manufacturer is responsible for its labeling as it is incorporated or otherwise used in the finished product.

4. *"Made for the purpose of."* The piece goods must be "made for the purpose" of a conversion.[116] Piece goods will be deemed made for such purpose under the following circumstances:

(1) they are made to be sold directly to the ultimate consumer, as described above, and

(2) the type of fabric used to make the piece goods can be used in the making of a finished article of wearing apparel. The rule is meant to apply not only to piece goods which are used solely to make articles of wearing apparel, but to goods which can be used to make two or more types of textile articles, as long as one of those types falls in the category of wearing apparel as defined in the rule, for example, piece goods made of linen that can be used to make either tablecloths, draperies, or dresses. Such piece goods fall within the scope of the rule. If they cannot be used to make a finished article of wearing apparel under any circumstances, or, if they can be so used but such a use would be deemed highly unusual or extraordinary in the wearing apparel trade, then the piece goods do not fall within the scope of the rule.

5. *"Normal household methods."* The phrase "normal household methods" may be defined as any method(s) which does not require either an expert in the field of textile adhesion or cohesion, or tools which would not be found in the normal household.[117] Examples of "normal household methods" include sewing, ironing and the like. Use of gummed labels is permissible as long as their adhesive character is made to survive the useful life of the article, including its proper care. A label should possess the same care performance traits as does the piece goods which it describes. In any case, a label provided under paragraph (b) must be one which, when properly attached, will not become separated from the product during its useful life, i.e., a consumer must be able to "permanently attach" it to her garment.[118]

C. *Paragraph (c).* Paragraph (c)(1) of the rule outlines the exemption procedure which may be used. Because the criteria for exemption are based entirely on possible detriment to an article as a result of a permanently attached label, this procedure applies only to paragraph (a) and not to paragraph (b). Other exemptions (such as for articles not requiring care and maintenance) are built into the language of the rule and, as such, are automatic. Paragraph (c)(1) is meant to include those articles which, although included in the rule, have peculiar or special characteristics which make permanent attachment impossible or unreasonable.

The exemption applies only to the standard of permanent attachment outlined in paragraph (a). It does not totally exempt any article from the coverage of the rule. All articles which require care and maintenance and otherwise fall within the scope of paragraph (a) must be provided with an accompanying label if the exemption is granted or a permanently attached label if the exemption is either denied or not requested. Any article which is exempted under paragraph (c)(1) must be accompanied by a label or tag containing the information required by paragraph (a), according to the definition of "accompaniment" stated in the rule.

The criteria stated in paragraph (c)(1) (discussed supra) are the only standards which will be used in considering any request for exemption. They are stated in the rule itself to discourage wholesale applications for exemption from manufacturers merely seeking to avoid the extra expense of a permanently attached label. A permanently attached label must "substantially impair" the appearance or utility of an article. It is recognized that most permanently attached labels will affect the appearance of an article of wearing apparel to some degree.[119] Paragraph (c)(1) is concerned with labels or tags which inordinately interfere with an article's utility or appearance. This standard has been left broad to allow the Commission room for interpretation when considering the facts of each individual case.

Paragraph (c)(2) is included in the rule for reasons discussed supra, page 23.

VIII. *The effective date of the rule.* The Commission has given careful consideration to requests by affected parties that a reasonable length of time be allowed to afford them opportunity to bring their labeling into conformity with the provisions of the rule. The Commission believes that some delay of the effective date of the rule is reasonable. Accordingly, with respect to all forms of labeling for finished articles of wearing apparel and piece goods leaving the manufacturing plant, the rule will become effective on July 3, 1972.

[FR Doc.71-18382 Filed 12-15-71;8:48 am]

[113] Supra note 3, IACTI Report at p. 10.

[114] Record, vol. 7, p. 1269. This possibility applies to all articles where the seller does not know how large the purchase will be i.e., where there are not standard "units" available in which items are normally purchased.

[115] Record, Vol. 7, p. 1453, Vinyl Fabrics Institute. Several manufacturers submitted definitions identical to this.

[116] If they are not "made for the purpose of" a conversion into wearing apparel, then they do not fall within the product coverage of the rule.

[117] Any other requirement would force the consumer to seek commercial aid in attaching her label. The extra trouble and cost involved would partially defeat the purpose of this portion of the rule.

[118] If she cannot "permanently attach" it to her garment, the consumer must cope with what is essentially a separate hang tag, discussed previously. One of the main reasons for the rule is specifically to avoid this problem.

[119] Record, Vol. 7, p. 1298; supra note 110.

Title 7—AGRICULTURE

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

[Navel Orange Reg. 246]

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

Limitation of Handling

§ 907.546 Navel Orange Regulation 246.

(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) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on December 14, 1971.

(b) *Order.* (1) The respective quantities of Navel oranges grown in Arizona and designated part of California which may be handled during the period December 17, 1971, through December 23, 1971, are hereby fixed as follows:

(i) District 1: 600,000 Cartons;

(ii) District 2: 45,771 Cartons;

(iii) District 3: Unlimited.

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

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

Dated: December 15, 1971.

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

[FR Doc.71–18533 Filed 12–15–71;11:29 am]

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

Establishment of Free and Restricted Percentages and Withholding Factors for 1971–72 Crop Year.

Notice was published in the November 30, 1971 issue of the FEDERAL REGISTER (36 F.R. 22753) regarding a proposal to establish, for the 1971–72 crop year, free and restricted percentages and withholding factors applicable to specified varieties of domestic dates. The crop year began October 1, 1971. The establishment of such percentages and withholding factors is pursuant to the relevant provisions 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 with respect to the proposal. None were received within the prescribed time.

The free precentanges, restricted percentages, and withholding factors, for the 1971–72 crop year, applicable to marketable dates are pursuant to §§ 987.44 and 987.45. These percentages and factors are based on California Date Administrative Committee estimates of supply and trade demand, adjusted for handler carryover. With respect to dates of the Deglet Noor variety, the total available supply of marketable dates subject to regulation is estimated at 32.7 million pounds and trade demand requirements are estimated at 25.5 million pounds. For dates of the Zahidi variety, the total available supply of marketable dates subject to regulation is estimated at 2.4 million pounds, and trade demand requirements are estimated at 2.2 million pounds. The total available 1971–72 marketable supply of Halawys and Khadrawys is estimated at 0.8 million pounds, which approximates estimated trade demand requirements. The Committee included no countries other than the Continental United States and Canada in its determination of trade demand.

After consideration of all relevant matter presented, including that in the notice, the information and recommendations submitted by the Committee, and other available information, it is found that to establish free percentages, restricted percentages, and withholding factors, as hereinafter set forth, will tend to effectuate the declared policy of the act.

Therefore, the free percentages, restricted percentages, and withholding factors, for the 1971–72 crop year are established as follows:

§ 987.219 Free and restricted percentages, and withholding factors.[1]

The various free percentages, restricted percentages, and withholding factors applicable to marketable dates of each variety shall be, for the crop year beginning October 1, 1971, and ending September 30, 1972, as follows:

(a) *Deglet Noor variety dates.* Free percentage, 78 percent; restricted percentage, 22 percent; and withholding factor, 28.2 percent;

(b) *Zahidi variety dates.* Free percentage, 90 percent; restricted percentage, 10 percent; and withholding factor, 11.1 percent;

(c) *Halawy variety dates.* Free percentage, 100 percent; restricted percentage, 0 percent; and withholding factor, 0 percent;

(d) *Khadrawy variety dates.* Free percentage, 100 percent; restricted percentage, 0 percent; and withholding factor, 0 percent.

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 (a) free and restricted percentages and withholding factors established for a particular crop year shall be applicable during the entire crop year to all marketable dates, and (b) the withholding obligations based on the continued regulations from the preceding crop year shall be adjusted to the newly established percentages upon their establishment; and (2) the percentages and withholding factors established herein for the current 1971–72 crop year (which began October 1, 1971), will apply, and adjustment thereto of handlers' withholding obligations are required, automatically, with respect to all such dates.

(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.71–18377 Filed 12–15–71;8:47 am]

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

[Milk Order 124; Docket No. AO 368–A4]

PART 1124—MILK IN THE OREGON-WASHINGTON MARKETING AREA

Order Amending Order

FINDINGS AND DETERMINATIONS

The findings and determinations hereinafter set forth are supplementary and

[1] The California Date Administrative Committee included no countries other than the Continental United States and Canada in its determination of trade demand.

in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of the said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Oregon-Washington marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

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

(b) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

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

ORDER RELATIVE TO HANDLING

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Oregon-Washington marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

1. A new § 1124.2 is added as follows:

§ 1124.2 Dairy farmer for other markets.

"Dairy farmer for other markets" means any person who produces milk in compliance with the inspection requirements of a duly constituted health authority and from whose farm milk is received by a pool handler, if such handler caused milk from the same farm that was produced in compliance with the inspection requirements of a duly constituted health authority to be delivered during the month to a nonpool plant (except an other order plant) as other than producer milk.

2. Section 1124.7 is revised as follows:

§ 1124.7 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any person in his capacity as the operator of a partially regulated distributing plant;

(c) A cooperative association with respect to milk of its member producers which is diverted from a pool plant for the account of such cooperative association;

(d) A cooperative association with respect to milk of its member producers which is received from the farm for delivery to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association;

(e) A producer-handler; or

(f) Any person who operates another order plant described in § 1124.61.

3. Section 1124.9 is revised as follows:

§ 1124.9 Pool plant.

"Pool plant" means any plant meeting the conditions of paragraph (a) or (b) of this section except the plant of a handler exempt pursuant to § 1124.60 or § 1124.61: *Provided,* That if a portion of a plant is physically separated from the Grade A portion of such plant, is operated separately and is not approved by any health authority for the receiving, processing, or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section:

(a) A distributing plant which during the month:

(1) Has route disposition (except filled milk) in the marketing area of 15 percent or more of its total receipts of Grade A milk (except packaged fluid milk products from other plants qualified under this paragraph, filled milk, and milk received at such plant as diverted milk from another plant, which milk is classified in Class III under this order and is subject to the pricing and pooling provisions of this or another order issued pursuant to the Act); and

(2) Has total route disposition, except as filled milk, both inside and outside the marketing area, of 30 percent or more of such receipts: *Provided,* That all distributing plants operated by a handler may be considered as one plant for the purpose of meeting the percentage requirements of this subparagraph if the handler submits a written request to the market administrator prior to the delivery period for which such consideration is requested.

(b) A supply plant from which not less than 50 percent in any month of October, January, and February, and not less than 40 percent in any month of September, November, and December, not less than 30 percent in any month of March through August, of the total quantity of milk that is physically received at such plant from dairy farmers eligible to be producers pursuant to § 1124.11 (excluding milk received at such plant as diverted milk from another plant, which milk is classified in class III under this order and is subject to the pricing and pooling provisions of this or another order issued pursuant to the Act) or diverted as producer milk to another plant pursuant to § 1124.13, is shipped in the form of a fluid milk product (except as filled milk) to a pool distributing plant or is a route disposition in the marketing area of fluid milk products (except filled milk) processed and packaged at such plant; *Provided,* That:

(1) With respect to a supply plant operated by a cooperative association, the producer milk of its members which it caused to be delivered directly from their farms to pool distributing plants shall, for the purpose of this paragraph, be considered as a receipt at the cooperative's supply plant and a shipment from the supply plant to pool distributing plants to the extent that the total quantity of the producer milk received at pool distributing plants directly from such producers' farms does not exceed the total quantity of milk shipped during the same month from the cooperative's supply plant to pool distributing plants;

(2) A plant which qualified as a pool plant pursuant to this paragraph in each month of September through February shall be a pool plant in each of the following months of March through August unless a written application is filed with the market administrator prior to the first day of any such month requesting that the plant be designated a nonpool plant for such month and each subsequent month through August during which it would not otherwise qualify as a pool plant; and

(3) For the purpose of this paragraph, the operations of two or more supply plants may be combined and considered as the operation of one plant if so requested in writing to the market administrator by the handler(s) operating such plants prior to the first day of the month for which such consideration is requested.

4. Section 1124.11 is revised as follows:

§ 1124.11 Producer.

"Producer" means any person, except a dairy farmer for other markets or a

producer-handler as defined in any order (including this part) issued pursuant to the Act, who produces milk approved by a duly constituted health authority for fluid consumption, which milk is received at a pool plant or diverted therefrom within the limits set forth in paragraphs (a) and (b) of this section and subject to paragraphs (c), (d), (e) and (f) of this section. The term shall not include such person with respect to milk received at a pool plant from another order plant by diversion if both buyer and seller have requested Class III milk classification in the reports of receipts and utilization filed with the respective market administrators:

(a) A cooperative association may divert for its account to a nonpool plant the milk of any producer whose milk has been received previously at a pool plant and from whom at least three deliveries are received at a pool plant during the month, except that the aggregate quantity diverted may not exceed the aggregate quantity received during the month from all such producers at pool plants. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of milk by their member producers if each association has filed such a request in writing with the market administrator on or before the first day of the month such agreement is effective. This request shall specify the basis for assigning any over-diverted milk to the producer members of each cooperative association according to a method approved by the market administrator;

(b) A handler in his capacity as the operator of a pool plant may divert for his account to a nonpool plant the milk of any producer whose milk has been received previously at a pool plant and from whom at least three deliveries are received during the month at his pool plant(s) and who is not a member of a cooperative association which is diverting milk pursuant to paragraph (a) of this section during the month, except that the aggregate quantity diverted may not exceed the aggregate quantity received during the month from all producers at his pool plant(s);

(c) In the event milk receipts from dairy farmers are diverted in excess of the applicable percentages pursuant to paragraphs (a) and (b) of this section, the diverting handler shall designate the dairy farmers whose milk was over-diverted and such overdiversions shall not be considered producer milk. If the handler fails to make such designation, only the milk of the dairy farmers which is physically received at a pool plant(s) by the diverting handler shall be producer milk for such month;

(d) For the purposes of the requirements of § 1124.9, milk diverted for the account of the operator of a pool distributing plant, except an operator which is also a cooperative association diverting milk in the same month pursuant to paragraph (a) of this section, shall be included in the receipts of the pool plant from which diverted;

(e) For the purposes of location adjustments pursuant to §§ 1124.52 and 1124.83, any milk diverted shall be considered to have been received at the location of the plant to which diverted; and

(f) Milk moved from producers' farms to a nonpool plant may be diverted producer milk only if it is not fully subject to the pricing and pooling provisions of the other order and if both the diverting handler and the operator of the other order plant request Class IIII (or Class II) classification.

5. Section 1124.13(a)(3) is revised as follows:

§ 1124.13 Producer milk.

* * * * *

(a) * * *

(3) Diverted by the operator of such pool plant or by a cooperative association pursuant to § 1124.7(c) to a pool plant if both the diverting handler and the operator of the plant to which the milk is diverted have requested Class III classification on such diverted milk in their reports filed pursuant to § 1124.30;

* * * * *

6. Section 1124.14 is revised as follows:

§ 1124.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Fluid milk products and cream from any source except:

(1) Producer milk; and

(2) Fluid milk products and cream from pool plants;

(b) Products other than fluid milk products and cream from any source (including those produced at the plant) which are reprocessed, converted into, or combined with another product in the plant during the month; and

(c) Any disappearance of any product other than a fluid milk product or cream that is in a form in which it may be converted into a Class I or Class II product and which is not otherwise accounted for under the order.

7. In § 1124.22 paragraphs (l), (m), and (n) are revised as follows:

§ 1124.22 Additional duties of market administrator.

* * * * *

(l) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1124.46(a)(10) and the corresponding step of § 1124.46(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose;

(m) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or cream from an other order plant, the classification to which such receipts are allocated pursuant to § 1124.46 pursuant to such report, and thereafter any change in such allocation required to correct errors disclosed in verification of such report; and

(n) Furnish to each handler operating a pool plant who has shipped fluid milk products or cream to an other order plant the classification to which such shipments were allocated by the market administrator of the other order on the basis of the report of the receiving handler, and, as necessary, any changes in such classification arising from the verification of such report.

8. Section 1124.30(a)(4) is revised as follows:

§ 1124.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(4) The pounds of skim milk and butterfat contained in all fluid milk products and cream on hand, separately in bulk and in packages, at the beginning and at the end of the month;

* * * * *

9. In § 1124.41, a new subparagraph (4) is added in paragraph (b) and subparagraphs (1) through (5) in paragraph (c) are revised as follows:

§ 1124.41 Classes of utilization.

* * * * *

(b) * * *

(4) In packaged cream in inventory at the end of the month; and

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce butter, butteroil, anhydrous butterfat, evaporated milk, condensed milk, or condensed skim milk (either plain or flavored) used to produce another Class III product in a pool plant or in a nonpool plant located within the marketing area, condensed buttermilk, cheese, except cottage cheese, sterilized products in hermetically sealed all-metal containers, nonfat dry milk, dried whole milk, livestock feed and blends of dried milk products;

(2) Contained in products which contain 6 percent or more of nonmilk fat or oil;

(3) In fluid milk products and cream dumped after prior notification to and opportunity for verification by the market administrator;

(4) Represented by the nonfat solids added to a fluid milk product which is in excess of an equivalent volume of such product prior to the addition;

(5) In inventory of bulk fluid milk products and bulk cream on hand at the end of the month;

* * * * *

10. Section 1124.44 is revised as follows:

§ 1124.44 Transfers.

Skim milk or butterfat shall be classified:

(a) At the utilization indicated by the operators of both plants, otherwise as Class I milk if transferred in the form of a fluid milk product or cream from a

pool plant to the pool plant of another handler (or any pool plant if allocations pursuant to § 1124.46 are on an individual plant basis) subject to the following conditions:

(1) The skim milk or butterfat so assigned to each class shall be limited to the amount thereof remaining in such class in the transferee plant after computations pursuant to § 1124.46(a)(10) and the corresponding step of § 1124.46 (b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1124.46(a)(5) and the corresponding step of § 1124.46 (b), the skim milk and butterfat so transferred shall be classified so as to allocate the least possible Class I milk utilization to such other source milk; and

(3) If the transferor handler received during the month other source milk to be allocated pursuant to § 1124.46(a) (9) or (10) and the corresponding steps of § 1124.46(b), the skim milk and butterfat so transferred shall be classified so as to assign to producer milk the greatest possible Class I utilization at both plants;

(b) As Class I milk if transferred as a fluid milk product in packaged form to a nonpool plant which is not an other order plant;

(c) As Class I milk if transferred or diverted in bulk in the form of a fluid milk product or cream to a nonpool plant that is not an other order plant, a producer handler plant or an exempt plant unless the requirements of subparagraphs (1) and (2) of this paragraph are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from subparagarph (3) of this paragraph:

(1) The transferring or diverting handler claims classification in Class II or Class III in his report submitted pursuant to § 1124.30;

(2) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification, and

(3) The skim milk and butterfat so transferred or diverted shall be classified on the basis of the following assignment of utilization from such nonpool plant in excess of receipts of packaged fluid milk products from pool plants and other order plants:

(i) Any Class I milk utilization disposed in the marketing area on routes shall be first assigned to the skim milk and butterfat in the fluid milk products so transferred or diverted from pool plants, next pro rata to receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(ii) Any Class I milk utilization disposed of in the marketing area of another order on routes issued pursuant to the Act shall be first assigned to receipts from plants fully regulated by such order, next pro rata to receipts from pool plants and other order plants not regulated by such order, and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply for such nonpool plant;

(iii) Class I milk utilization in excess of that assigned pursuant to subdivisions (i) and (ii) of this subparagraph shall be assigned first to remaining receipts from dairy farmers who the market administrator determines constitute the regular source of supply for such nonpool plant and Class I milk utilization in excess of such receipts shall be assigned pro rata to unassigned receipts at such nonpool plant from all pool and other order plants;

(iv) To the extent that Class I milk utilization is not so assigned to it, the skim milk and butterfat so transferred or diverted shall be classified as Class III milk to the extent of such uses at the plant and then as Class II milk;

(v) To the extent that Class I or Class III utilization is not assigned to it, the skim milk and butterfat in cream so transferred shall be classified as Class II milk; and

(vi) If any skim milk or butterfat is transferred to a second plant under this paragraph, the same conditions of audit, classification, and allocation shall apply;

(d) As follows, if transferred or diverted in the form of a fluid milk product or cream to an other order plant in excess of receipts from such plant in the same category as described in subparagraph (1), (2), or (3) of this paragraph;

(1) If transferred in packaged form, classification shall be in the classes to which allocated under the other order;

(2) If transferred or diverted in bulk form, classification shall be in Class I milk, if allocated as a fluid milk product under the other order to Class I milk; in Class II milk, if allocated to Class II milk under an order which provides three classes; or in Class III milk, if allocated to Class III milk under the other order or if allocated to Class II milk under an order which provides only two classes (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 III milk to the extent of the Class III milk utilization (or comparable utilization under such other order) available for such assignment pursuant to the allocation provisions of the transferee order;

(4) If information concerning the classification to which allocated under the other order is not available to the market administrator for purposes of establishing classification pursuant to this paragraph, classification shall be as Class I milk subject to adjustment when such information is available;

(5) If the form in which any fluid milk product is transferred to any other order plant is not defined as a fluid milk product under such other order, classification shall be in accordance with the provisions of § 1124.41; and

(e) As Class I, if transferred as a fluid milk product to a producer-handler or to an exempt plant under § 1124.60 (a) or (b).

11. Section 1124.45 is revised as follows:

§ 1124.45 Computation of skim milk and butterfat.

For each month the market administrator shall correct for mathematical and other obvious errors reports of receipts and utilization submitted pursuant to § 1124.30 and shall compute the skim milk and butterfat in each class at all pool plants of such handler and the pounds of skim milk and butterfat in each class which was received from producers by a cooperative association handler pursuant to § 1124.7(d) and was not received at a pool plant.

(a) For the purpose of this section, producer milk for which a cooperative association is the responsible handler pursuant to § 1124.7(d) shall be treated separately from the operations of any pool plant(s) operated by such cooperative association for the purpose of allocation pursuant to § 1124.46 and computation of obligation pursuant to § 1124.70; and

(b) If no fluid milk products to be allocated pursuant to § 1124.46(a) (9) or (10) were received at any pool plant of a handler, the total pounds of skim milk and butterfat, respectively, in each class shall be computed for each pool plant of such handler and allocation pursuant to § 1124.46 and computation of obligation pursuant to § 1124.70 shall be made separately for each pool plant of the handler.

12. Section 1124.46 is revised as follows:

§ 1124.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1124.45, the market administrator shall determine each month the classification of producer milk for each handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk classified as Class III pursuant to § 1124.41(c)(6);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the remaining pounds of skim milk in each class the

pounds of skim milk in fluid products received in packaged form from other order plants as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) With respect to a plant that was fully regulated in the preceding month under this or any other Federal milk order providing for a similar allocation of beginning inventories of packaged fluid milk products:

(i) Subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in packaged fluid milk products in inventory at the beginning of the month; and

(ii) Subtract from the pounds of skim milk in Class II the pounds of skim milk in packaged cream in inventory at the beginning of the month;

(5) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product or cream;

(ii) Receipts of fluid milk products (except filled milk) and cream for which Grade A certification is not established, or which are from unidentified sources;

(iii) Fluid milk products received or acquired for distribution from a producer-handler as defined under this or any other Federal order;

(iv) Receipts of milk from dairy farmers for other markets;

(v) Receipts of fluid milk products from an exempt plant; and

(vi) Receipts of reconstituted skim milk in filled milk from unregulated supply plants;

(6) Subtract, in sequence beginning with Class III milk in the order specified below, from the pounds of skim milk remaining in Class III milk and Class II milk:

(i) The pounds of skim milk in receipts of fluid milk products and cream from unregulated supply plants for which the handler requests Class III utilization, but not in excess of the skim milk remaining in Class III and Class II; and

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraph (5)(vi) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(*a*) Multiply the pounds of skim milk remaining in Class I milk by 1.25; and

(*b*) Subtract from the result the sum of the pounds of skim milk in producer milk, in receipts from pool plants of other handlers (or any pool plant if allocation is on an individual plant basis) and in receipts in bulk from other order plants;

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from another order plant in excess of similar transfers or diversions to such plant, but not in excess of the pounds of skim milk remaining in Class III milk (and Class II milk), if Class III utilization was requested by the transferee handler and the operator of the transferor plant requests the lowest class utilization under the order;

(7) Subtract from the pounds of skim milk remaining in each class in series beginning with Class III milk the pounds of skim milk in inventory of bulk fluid milk products and bulk cream (and for the first month in which a plant becomes a pool plant, the pounds of fluid milk products and cream in packaged form) on hand at the beginning of the month;

(8) Add to the remaining pounds of skim milk in Class III milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(9) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (5)(vi) or (6) (i) or (ii) of this paragraph;

(10) Subtract, beginning with Class III milk, from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, in excess in each case, of similar transfers to the same plant, that were not subtracted pursuant to subparagraph (6)(iii) of this paragraph pursuant to the following procedure:

(i) Such subtraction shall be pro rata to whichever of the following represents the higher proportion of Class III milk and Class II milk combined;

(*a*) The estimated utilization of skim milk in each class, by all handlers, as announced for the month pursuant to § 1124.22(1); or

(*b*) The pounds of skim milk remaining in each class at a pool plant(s) of the handler;

(11) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received from pool plants of other handlers (or any pool plant if allocation is on an individual plant basis) by transfer or diversion according to the classification assigned pursuant to § 1124.44(a); and

(12) If the remaining pounds of skim milk in all classes exceed the pounds of skim milk contained in milk received from producers, and from cooperative associations pursuant to § 1124.7(d), subtract such excess from the remaining pounds of skim milk in series beginning with Class III milk. Any amount so subtracted shall be known as overage:

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class and determine the weighted average butterfat content of producer milk in each class.

13. Section 1124.52 is revised as follows:

§ 1124.52 Location adjustment to handlers.

(a) The Class I price for producer milk and other source milk (for which a location adjustment is applicable) at a plant 100 miles or more from the nearer of the Multnomah County Court House in Portland, Oreg., or the city hall in Eugene, Oreg., by the shortest hard-surfaced highway distance as determined by the market administrator, shall be reduced 15 cents and an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 110 miles: *Provided,* That the location adjustment applicable at a plant located 100 miles or more from the nearer of such basing points but within the Oregon counties of Clatsop, Coos, Douglas, Lane, Lincoln, and Tillamook shall be not more than 10 cents and the location adjustment applicable at a plant located elsewhere in the marketing area or in Grant County, Wash., shall be not more than 20 cents; and

(b) For the purpose of calculating location adjustments, receipts of fluid milk products from pool plants shall be assigned any remainder of Class I milk at the transferee plant that is in excess of the sum of receipts of milk from producers and handlers purusant to § 1124.7 (d) at such plant and that assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment shall be made first to receipts from plants at which no location adjustment is applicable pursuant to this section and then in sequence beginning with the plant with the lowest applicable location adjustment.

14. Section 1124.62(b)(2) is revised as follows:

§ 1124.62 Obligations of handler operating a partially regulated distributing plant.

* * * * *

(b) * * *

(2) Deduct the respective amounts of skim milk and butterfat received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act; and

(ii) From a nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation under this or any other order;

* * * * *

15. Section 1124.65 is revised as follows:

§ 1124.65 Computation of producer bases.

Subject to the rules set forth in § 1124.66, the market administrator shall determine bases for producers in the manner provided in paragraphs (a) and (b) of this section:

(a) The daily base of each producer whose milk was received at a pool plant(s) or diverted as producer milk from a pool plant on not less than 90 days in the 4 months in each January-December period in which the average daily receipts of total producer milk are lowest shall be an amount computed by dividing such producer's total pounds of milk delivered in such base-earning period by the number of days of production represented by his deliveries. The base so computed shall be recomputed each year, shall become effective on the first day of February next following, and shall remain in effect through January of the next succeeding year: *Provided,* That for any dairy farmer:

(1) For whom information concerning deliveries during the base-earning period is available to the market administrator and who becomes a producer as a result of the plant to which his milk was delivered during the base-earning period subsequently being qualified as a pool plant, a daily base shall be computed pursuant to this paragraph; and

(2) Who was a producer-handler during the base-earning period, his base shall be the daily average of his own production of milk for 90 days or more during the base-earning period; and

(b) Any producer who is not eligible to receive a base computed pursuant to paragraph (a) of this section, shall have a monthly base computed by multiplying his deliveries to a pool plant(s) during the month by the appropriate monthly percentage in the following table:

January	70	July	55
February	70	August	60
March	65	September	60
April	55	October	65
May	45	November	70
June	50	December	70

16. Section 1124.66(a)(2) is revised as follows:

§ 1124.66 Base rules.

(a) * * *

(2) If such conveyance takes place after August 1 in 1971 (and after Jan. 1 in subsequent years), all milk delivered to pool plant(s) between August 1 in 1971 (and Jan. 1 in subsequent years) and the last day of the base-earning period specified in § 1124.65(a), inclusive, from the same herd (whether by the transferor or transferee producer) shall be utilized in computing the base of the transferee producer pursuant to § 1124.65(a);

* * * * *

17. Section 1124.70 is amended as follows:

§ 1124.70 Computation of the net pool obligation of each pool handler.

* * * * *

(c) Add the amount obtained from multiplying the Class III price for the preceding month and the Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1124.46(a)(7) and the corresponding step of § 1124.46(b) for the current month.

(d) Add the amount obtained by multiplying the difference between the Class I price for the preceding month and the Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1124.46(a)(4) and the corresponding step of § 1124.46(b). If the Class I price for the current month is less than the Class I price for the preceding month, the result shall be a minus amount;

(e) Add an amount equal to the difference between the Class I and Class III price values at the pool plant of the skim milk and butterfat subtracted from Class I pursuant to § 1124.46(a)(5) and the corresponding step of § 1124.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1124.46(a)(5)(vi) and the corresponding step of § 1124.46(b) the Class I price shall be adjusted to the location of the transferor plant (but the adjusted price not to be less than the Class III price); and

(f) Add the value at the Class I price, adjusted for the location of the nearest nonpool plant(s) from which an equivalent volume was received (but the adjusted price not to be less than the Class III price) of the skim milk and butterfat subtracted from Class I pursuant to § 1124.46(a)(9) and the corresponding step of § 1124.46(b), excluding such skim milk or butterfat in bulk receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk and butterfat disposed of to such plant by handlers under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation under this or any other order.

18. Section 1124.80 is revised as follows:

§ 1124.80 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments into such fund pursuant to §§ 1124.62 and 1124.81 and out of which he shall make all payments from such fund pursuant to § 1124.82: *Provided,* That the market administrator shall offset the payment due to a person from such fund against payments due from such person.

19. Section 1124.87(b) is revised as follows:

§ 1124.87 Expense of administration.

* * * * *

(b) Other source milk allocated to Class I milk pursuant to § 1124.46(a)(5) and (9) and the corresponding steps of § 1124.46(b); and

* * * * *

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

Effective date: February 1, 1972.

Signed at Washington, D.C., on December 10, 1971.

J. PHIL CAMPBELL,
Acting Secretary.

[FR Doc.71-18379 Filed 12-15-71;8:48 am]

Title 10—ATOMIC ENERGY

Chapter I—Atomic Energy Commission

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

PART 2—RULES OF PRACTICE

Chairman and Vice-Chairman, Atomic Safety and Licensing Appeal Board; Separation from Atomic Safety and Licensing Board Panel

Effective immediately, the Atomic Energy Commission is separating the positions of Chairman and Vice Chairman of the Atomic Safety and Licensing Appeal Board from the positions of Chairman and Vice Chairman of the Atomic Safety and Licensing Board Panel (ASLBP) from which individual Atomic Safety and Licensing Boards are selected.

Prior to this change, 10 CFR 1.21 provided that the Chairman and Vice Chairman of the ASLBP would also serve as Chairman and Vice Chairman, respectively, of the Appeal Board. This section has been revised to provide the Appeal Board with its own permanent Chairman and Vice Chairman. The Appeal Board is composed of the permanent Chairman, the Vice Chairman and a third member designated by the Commission for each proceeding, except that in proceedings involving antitrust considerations it is composed of the Chairman and two members designated by the Commission possessing qualifications appropriate to the issues to be decided.

The Commission's action was taken to accommodate an increased appellate workload and to provide further separation of AEC staff members involved in various stages of the reactor licensing process. It also gives recognition to the increased complexity of licensing proceedings and the resulting increased amount of time which must be given to each aspect of the licensing process by all persons concerned therewith.

Pursuant to the Atomic Energy Act of 1954, as amended, and sections 552 and 553 of title 5 of the United States Code, the following revisions to Title 10, Chapter 1, Code of Federal Regulations, Part 1 and Part 2, are published as a document subject to codification to be effective upon publication in the FEDERAL REGISTER (12-16-71).

1. Section 1.21 is revised to read as follows:

§ 1.21 Atomic Safety and Licensing Appeal Board.

The Atomic Safety and Licensing Appeal Board reviews initial decisions of presiding officers including atomic safety and licensing boards, and performs other appellate functions in (a) such licensing proceedings as may be referred to it by the Commission, (b) proceedings on applications for authorizations under Part 115 of this chapter, and

(c) proceedings on applications for licenses under Part 50 of this chapter, for facilities as to which the Commission has made an arrangement for financial assistance under section 31 of the Act, or has waived charges for use of special nuclear material or source material under section 53c(4) or 63c of the Act. In addition, the Appeal Board performs such other regulatory functions as may be delegated to it by the Commission. The Appeal Board's activities are supervised by a permanent chairman and, in his absence, by a permanent vice-chairman.

2. Section 2.787 is revised to read as follows:

§ 2.787 Composition of Atomic Safety and Licensing Appeal Board.

The Atomic Safety and Licensing Appeal Board is composed of the chairman, vice-chairman and a third member designated by the Commission for each proceeding, except that in proceedings involving antitrust considerations it is composed of the chairman and two members designated by the Commission possessing qualifications appropriate to the isues to be decided.

3. In Appendix A to Part 2, the last sentence of section VII(a) is amended to read as follows:

Except for those proceedings covered by section VIII, the Atomic Safety and Licensing Appeal Board is composed of the chairman, vice-chairman, and a third member designated by the Commission for each proceeding.

(Secs. 161, 191, 68 Stat. 948, as amended; 76 Stat. 409, as amended; 42 U.S.C. 2201, 2241.)

Dated at Germantown, Md., this 8th day of December 1971.

By the Commission.

W. B. McCOOL,
Secretary of the Commission.

[FR Doc.71-18401 Filed 12-15-71;8:51 am]

PART 50—LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

Implementations of the National Environmental Policy Act of 1969; Correction

On November 11, 1971, F.R. Doc. 71-16469, amending Appendix D of 10 CFR Part 50, was published in the FEDERAL REGISTER at page 21579. The following correction is made to the amendments to 10 CFR Part 50, Appendix D:

In paragraph 3 in the second column on page 21580, the reference to "§ 50.57 (a)" in the 30th line should read "§ 50.57(c)."

(Sec. 161, 68 Stat. 948; 42 U.S.C. 2201)

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

For the Atomic Energy Commission.

W. B. McCOOL,
Secretary of the Commission.

[FR Doc.71-18402 Filed 12-15-71;8:51 am]

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 213—EXCEPTED SERVICE

National Capital Housing Authority

Section 213.3135 is amended to show that positions of teachers engaged on a part-time or intermittent basis in the instruction of trainees enrolled in training programs on the maintenance and repair of buildings and grounds are excepted under Schedule A.

Effective on publication in the FEDERAL REGISTER, paragraph (b) is added to § 213.3135 as set out below.

§ 213.3135 National Capital Housing Authority.

* * * * *

(b) Positions of teachers engaged on a part-time or intermittent basis in the instruction of trainees enrolled in training programs on the maintenance and repair of buildings and grounds.

(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.71-18420 Filed 12-15-71;8:49 am]

Title 12—BANKS AND BANKING

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

PART 1—INVESTMENT SECURITIES REGULATION

Securities Eligible for Underwriting and Unlimited Holding

The following new sections are added to Part 1 of Title 12:

Sec.
1.318 California Notes.
1.319 Connecticut Mortgage Authority.
1.320 Alaska State Housing Authority State Lease Revenue Bonds.
1.321 Baton Rouge, Louisiana Public Improvement Bonds.
1.322 Federal National Mortgage Association.
1.323 Los Angeles County-Montebello Public Recreation Area Authority Bonds.
1.324 Orange County Department of Education Building Corporation Leasehold Mortgage Bonds.
1.325 Gulf Coast Waste Disposal Authority—City of Houston Sewer System Contract Revenue Bonds.
1.326 Inglewood Fire Training Facility Authority.
1.327 Inglewood-Los Angeles County Civic Center Authority.
1.328 New Jersey Mortgage Finance Agency.
1.329 State of New York Mortgage.
1.330 Parking Authority of the City of San Buenaventura.
1.331 Orange County Civic Center Authority 1971 State Building Revenue Bonds.
1.332 Los Angeles County-Covina Civic Center Authority.

AUTHORITY: The provisions of these §§ 1.318-1.332 issued under R.S. 324 et seq., as amended, paragraph Seventh of R.S. 5136, as amended; 12 U.S.C. 1 et seq., 24(7), unless otherwise noted.

§ 1.318 California Notes.

(a) *Request.* The Comptroller of the Currency has been requested to rule on the eligibility of the $150 million State of California Notes, Series A for purchase, dealing in, underwriting, and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24. These notes are to be issued August 26, 1971, and are payable on November 15, 1971.

(b) *Opinion.* (1) California Notes are short term obligations of the State of California, authorized as a part of a plan of fiscal management intended to enable the State to match the flow of its current receipts with the flow of its current disbursements without resorting to the more costly and cumbersome registered warrant procedure. No notes may be issued in this fiscal year after December 31, 1971, and outstanding notes may not at any time exceed 15 percent of the general fund revenues of the preceding fiscal year. The notes are to be paid from moneys in the general fund in the fiscal year of issuance, but the law specifically authorizes payment from moneys transferred to the general fund from other funds. A number of such "other funds" have a more regular flow of receipts and a different flow of expenditures from that of the general fund. Internal borrowing has long been authorized by California law and the procedure has been consistently used for decades in the administration of the State's fiscal affairs.

(2) With these provisions for issuance and payment, it is inconceivable that the notes would remain unpaid at maturity. However, in that unlikely event, California law still provides for their payment from the proceeds from the issuance and sale of registered warrants.

(c) *Ruling.* It is our conclusion that California Notes are general obligations of a State or political subdivision thereof under paragraph Seventh of 12 U.S.C. 24 and accordingly are eligible for purchase, dealing in, underwriting and unlimited holding by national banks. (Comptroller's letter dated August 13, 1971.)

§ 1.319 Connecticut Mortgage Authority.

(a) *Request.* The Comptroller of the Currency has been requested to rule on the eligibility of the $26,200,000 Housing Mortgage Purchase Program, 1971 Series A, Bonds of the Connecticut Mortgage Authority for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* (1) The Connecticut Mortgage Authority is a body politic and

corporate constituting a public instrumentality and political subdivision of the State of Connecticut created in 1969 by an Act of the General Assembly of the State. The principal purpose of the Authority is to make mortgage loans to finance the construction, rehabilitation, purchase or leasing of housing for low-and-moderate-income families and persons in the State. The Authority is authorized to borrow money for such projects through the issuance of its bonds, notes, and other obligations and is issuing these bonds for that purpose.

(2) The Act requires the Authority to establish and maintain a capital reserve fund sufficient to meet the maximum payments required in the succeeding calendar year for principal and interest on its outstanding bonds, and provides that on or before December 1 of each year there is deemed to be appropriated from the State general fund such sums, as shall be certified by the chairman of the Authority as necessary to restore said fund to an amount equal to the required minimum capital reserve and such amounts shall be allotted and paid to the Authority. The State of Connecticut which possesses general powers of taxation has thus committed its faith and credit in support of these bonds.

(c) *Ruling.* It is our conclusion that the $26,200,000 Housing Mortgage Purchase Program, 1971 Series A, Bonds of the Connecticut Mortgage Authority are general obligations of a State under paragraph Seventh of 12 U.S.C. 24 and accordingly are eligible for purchase, dealing in, underwriting and unlimited holding by national banks. (Comptroller's letter dated August 20, 1971.)

§ 1.320 Alaska State Housing Authority State Lease Revenue Bonds.

(a) *Request.* The Comptroller of the Currency has been requested to rule on the eligibility of the $3,800,000 State Lease Revenue Bonds, 1971 Project, of Alaska State Housing Authority, for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* (1) The Alaska State Housing Authority is a public corporate authority under the laws of the State of Alaska. The Authority is authorized to provide for the acquisition, construction and financing of public building projects for lease to the State. The Authority is issuing its general obligations bonds to finance an extension and enlargement of the Anchorage Court Building.

(2) The State of Alaska which possesses general powers of taxation has promised in the lease rental agreement to pay the Authority, for the right to use and occupy the projects, annual rentals in amounts sufficient to enable the Authority to make the annual principal and interest payments on these bonds and the Authority has pledged these rentals to secure such payments. The bonds of the Authority are thus supported by the faith and credit of the State.

(c) *Ruling.* It is our conclusion that the $3,800,000 State Lease Revenue Bonds, 1971 Project, are general obligations of a State or a political subdivision thereof under paragraph Seventh of 12 U.S.C. 24 and accordingly are eligible for purchase, dealing in, underwriting and unlimited holding by national banks. (Comptroller's letter dated August 23, 1971.)

§ 1.321 Baton Rouge, Public Improvement Bonds.

(a) *Request.* The Comptroller of the Currency has been requested to rule on the eligibility of the $15,050,000 Public Improvement Bonds, Series 1971, of the City of Baton Rouge, Louisiana and the $15,050,000 Public Improvement Bonds, Series 1971, of the Parish of East Baton Rouge for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* (1) Municipal corporations in Louisiana are authorized to fund into bonds of the municipal corporation the avails or residue of their general alimony tax for the purpose of municipal improvements. The estimated residue of this general purpose property tax (after payment of all other municipal expenses) in the year in which the bonds are to be issued must be sufficient for the annual principal and interest payments of the bonds and the proceeds from the collection of that portion of the tax (measured in mills) must be irrevocably pledged for that purpose.

(2) The City and Parish, which operate under a partly consolidated plan of government, are issuing these bonds to finance a portion of a major public improvement program which will include a government complex, convention center, auditorium, coliseum, parking facilities, an airport site, road paving and drainage facilities; and have made the required pledge.

(3) Under the plan of government, the City and the Parish must include their debt service requirements for the ensuing fiscal year in their current expense budget. The plan also requires that total budgeted expenditures shall not exceed total anticipated cash receipts. These bonds are thus payable from the general funds of the City and Parish and are secured by a pledge of a designated portion of a general property tax.

(c) *Ruling.* It is our conclusion that the $15,050,000 Public Improvement Bonds, Series 1971, of the City of Baton Rouge, and the $15,050,000 Public Improvement Bonds, Series 1971, of the Parish of East Baton Rouge, are general obligations of a State or political subdivision thereof under paragraph Seventh of 12 U.S.C. 24 and accordingly are eligible for purchase, dealing in, underwriting and unlimited holding by national banks. (Acting Comptroller's letter dated August 24, 1971.)

§ 1.322 Federal National Mortgage Association.

(a) *Request.* The Comptroller of the Currency has been requested to rule on the eligibility of the convertible subordinated debentures of Federal National Mortgage Association for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* Paragraph Seventh of 12 U.S.C. 24 specifically provides that the limitations and restrictions which it imposes upon national banks as to dealing in and underwriting securities are not applicable to the "obligations, participations, or other instruments of or issued by the Federal National Mortgage Association." Paragraph (e) of 12 U.S.C. 1719 authorizes Federal National Mortgage Association to issue "obligations, which are subordinated to any or all other obligations of the corporation, including subsequent obligations" and provides that any of such obligations may be made convertible into shares of common stock in such manner, at such prices and at such time or times as may be stipulated therein.

(c) *Ruling.* It is our conclusion that the convertible subordinated debentures of Federal National Mortgage Association are eligible for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24. (Acting Comptroller's letter dated August 26, 1971.)

§ 1.323 Los Angeles County-Montebello Public Recreation Area Authority.

(a) *Request.* The Comptroller of the Currency has been requested to rule on the eligibility of the $3,750,000 Los Angeles County-Montebello Public Recreation Area Authority Bonds for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* (1) The Los Angeles County-Montebello Public Recreation Area Authority is a public entity created under the laws of California by an agreement between the City of Montebello and the County of Los Angeles. Under this agreement, the Authority is authorized to construct, reconstruct, maintain, operate and lease to the City a regional public recreation area project, and to issue bonds to finance the project. The Authority is issuing these bonds to finance the construction of a club house, driving range, sprinkler system, access roads, parking facilities and related improvements on the existing City of Montebello Municipal Golf Course.

(2) The City has unconditionally promised in the lease rental agreement to pay annual rentals to the Authority in an amount sufficient to enable the Authority to meet annual interest and principal payments on these bonds as well as other necessary expenses. The City which possesses general powers of taxation has thus committed its faith and credit in support of the bonds.

(c) *Ruling.* It is our conclusion that the $3,750,000 Los Angeles County-Montebello Public Recreation Area Authority Bonds are general obligations of a State or a political subdivision thereof under paragraph Seventh of 12 U.S.C. 24 and accordingly are eligible for purchase, dealing in, underwriting and unlimited holding by national banks under

paragraph Seventh of 12 U.S.C. 24. This ruling is applicable to State member banks under 12 U.S.C. 335. (Comptroller's letter dated September 10, 1971.)

§ 1.324 Orange County Department of Education Building Corporation Leasehold Mortgage Bonds.

(a) *Request.* The Comptroller of the Currency has been requested to rule on the eligibility of the $1,925,000 Orange County Department of Education Building Corporation Leasehold Mortgage Bonds for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* (1) The Orange County Department of Education Building Corporation, a California non-profit corporation acting for Orange County, was created to finance the construction on land leased to it by the County of a Department of Education building to be leased to and operated by the County. The Corporation is issuing these bonds for that purpose.

(2) The County has unconditionally promised in the lease rental agreement to pay annual lease rentals to the Corporation in an amount sufficient to meet annual interest and principal payments on these bonds, as well as other necessary expenses. The County, which possesses general powers of taxation, has thus committed its faith and credit in support of the bonds.

(c) *Ruling.* It is our conclusion that the $1,925,000 Orange County Department of Education Building Corporation Lease-hold Mortgage Bonds are general obligations of a State or a political subdivision thereof under paragraph Seventh of 12 U.S.C. 24 and accordingly are eligible for purchase, dealing in, underwriting and unlimited holding by national banks. (Comptroller's letter dated September 14, 1971.)

§ 1.325 Gulf Coast Waste Disposal Authority—City of Houston Sewer System Contract Revenue Bonds.

(a) *Request.* The Comptroller of the Currency has been requested to rule on the eligibility of the $3,600,000 Gulf Coast Waste Disposal Authority—City of Houston Sewer System Contract Revenue Bonds, Series 1971–A, for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* (1) The Gulf Coast Waste Disposal Authority is a conservation and reclamation district created pursuant to article XVI, section 59 of the Texas Constitution by an act of the legislature of the State of Texas which provides that the Authority shall be a governmental agency and body politic and corporate of the State of Texas. The Authority is authorized to acquire, construct, operate, and sell disposal systems and to issue revenue bonds to carry out its powers. A city is authorized by law to enter into a contract for the purchase of sewer systems from a district so created and to agree to make periodic payments to the district in amounts which together with other income of the district will be sufficient to pay the principal of and interest on the bonds of the district. The law also authorizes a city to provide for the levy of a tax to make such payments.

(2) The Authority has entered into a contract with the City of Houston under which the Authority will pay 25 percent of the cost of acquisition by purchase and construction, and thus acquire for the benefit of the City 25 percent of a sewer project, and the City will pay 75 percent of such cost and thus acquire 75 percent of the project.

(3) The Authority is issuing these bonds to finance its share of this project. Bonds proceeds will be used in part to refund $1,500,000 of outstanding Series 1971 Bonds of the Authority which were issued to finance a part of the cost of the same project. The City will receive a Federal grant in the amount of 55 percent of the estimated cost of the project which it will use along with other available funds to pay for its share of the project.

(4) The contract provides for the City to have exclusive use of the entire project and to purchase the Authority's share of the project and contains an unconditional promise by the City to make periodic payments to the Authority in amounts which will be sufficient to pay the principal of and interest on these bonds as well as other necessary expenses. The contract also provides that the periodic payments shall be payable from a continuing, direct annual ad valorem tax on all taxable property in the City sufficient to make such payments in each year. The City has by ordinance levied such a tax. The City, which possesses general powers of taxation, has thus committed its faith and credit in support of the bonds.

(c) *Ruling.* It is our conclusion, therefore, that the $3,600,000 Gulf Coast Waste Disposal Authority—City of Houston Sewer System Contract Revenue Bonds, Series 1971–A, are general obligations of a State or a political subdivision thereof under paragraph Seventh of 12 U.S.C. 24, and, accordingly, are eligible for purchase, dealing in, underwriting and unlimited holding by national banks. (Comptroller's letter dated September 21, 1971.)

§ 1.326 Inglewood Fire Training Facility Authority.

(a) *Request.* The Comptroller of the Currency has been requested to rule on the eligibility of the $810,000 Inglewood Fire Training Facility Authority Revenue Bonds for purchase, dealing in, underwritting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* (1) The Inglewood Fire Training Facility Authority is a public entity created under the laws of California by an agreement between the City of Inglewood and the Cities of El Segundo, Hermosa Beach, Manhattan Beach, and Redondo Beach. Under this agreement, the Authority is authorized to acquire, construct, and lease public buildings, and to issue bonds to finance such projects. The Authority is issuing these bonds for the purpose of financing the acquisition of a site for and the construction of a fire training facility which will be leased to and operated by the City of Inglewood. The other participating cities will have the right to train their fire personnel at the facility upon payment of fees established in accordance with the agreement.

(2) The City of Inglewood has unconditionally promised in the lease rental agreement to pay annual rentals to the Authority in an amount sufficient to meet annual interest and principal payments on these bonds, as well as other necessary expenses. The City, which possesses general powers of taxation, has thus committed its faith and credit in support of the bonds.

(c) *Ruling.* It is our conclusion that the $810,000 Inglewood Fire Training Facility Authority Revenue Bonds are general obligations of a State or a political subdivision thereof under paragraph Seventh of 12 U.S.C. 24 and accordingly are eligible for purchase, dealing in, underwriting and unlimited holding by national banks. (Comptroller's letter dated October 1, 1971.)

§ 1.327 Inglewood-Los Angeles County Civic Center Authority.

(a) *Request.* The Comptroller of the Currency has been requested to rule on the eligibility of the $6,110,000 City of Inglewood-Los Angeles County Civic Center Authority, Civic Center Revenue Bonds, Series C, for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* (1) The City of Inglewood-Los Angeles County Civic Center Authority is a public entity created under the laws of California by an agreement between the City of Inglewood and the County of Los Angeles. Under this agreement, the Authority is authorized to acquire, construct, and lease public buildings, and to issue bonds to finance such projects. The Authority is issuing these bonds for the purpose of financing the construction of a city library and a garage, shop and warehouse complex, both of which will be leased to the City. The Authority has issued $2,440,000 of Series A bonds and $17,750,000 of Series B bonds to finance the construction of earlier phases of the Civic Center development.

(2) The City has unconditionally promised in the lease rental agreement to pay annual rentals to the Authority in an amount sufficient to meet annual interest and principal payments on these bonds, as well as other necessary expenses. The City, which possesses general powers of taxation, has thus committed its faith and credit in support of the bonds.

(c) *Ruling.* It is our conclusion, in accordance with our rulings of November 13, 1970, and March 29, 1971 (12 CFR 1.281, 1.299), relating to the Series A Bonds and the Series B Bonds respectively, that the $6,110,000 City of Inglewood-Los Angeles County Civic Center Authority, Civic Center Revenue Bonds, Series C, are general obligations of a State or political subdivision thereof under paragraph Seventh of 12 U.S.C. 24 and accordingly are eligible for purchase,

dealing in, underwriting and unlimited holding by national banks. (Comptroller's letter dated October 1, 1971.)

§ 1.328 New Jersey Mortgage Finance Agency.

(a) *Request.* The Comptroller of the Currency has been requested to rule on the eligibility of the approximately $40 million New Jersey Mortgage Finance Agency, General Revenue Bonds, Series A, for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* (1) The New Jersey Mortgage Finance Agency is a public body corporate and politic created by the New Jersey Mortgage Finance Agency Law in May 1970, to promote the expansion of the supply of funds available for residential mortgages and thereby help alleviate the shortage of adequate housing in the State. The law constitutes the Agency an instrumentality exercising public and essential governmental functions and authorizes it to borrow money, to issue its negotiable bonds or notes and to make loans to mortgage lenders so as to furnish funds to them for new residential mortgages.

(2) The Agency is issuing these bonds, which will be general obligations of the Agency, principally to provide funds for such loans to mortgage lenders. The mortgage lenders will be required to assign and pledge to the Agency certain loan collateral, including FHA insured or VA guaranteed mortgages and other obligations having an established national market.

(c) *Ruling.* It is our conclusion that the $40 million New Jersey Mortgage Finance Agency, General Revenue Bonds, Series A, are issued by an agency of the State of New Jersey for housing purposes and are eligible under paragraph Seventh of 12 U.S.C. 24 for purchase, dealing in, underwriting and unlimited holding by national banks within the 10 percent limitation with respect to aggregate holdings of obligations issued by the New Jersey Mortgage Finance Agency. (Comptroller's letter dated October 22, 1971.)

§ 1.329 State of New York Mortgage Agency.

(a) *Request.* The Comptroller of the Currency has been requested to rule on the eligibility of the approximately $49,650,000 State of New York Mortgage Agency, General Revenue Bonds, Series A, 1971, for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* (1) The State of New York Mortgage Agency is a corporate governmental agency of the State, a political subdivision and a public benefit corporation created in 1970 by the State of New York Mortgage Agency Act to alleviate shortages of funds in the private banking system available for residential mortgages within the State. The Agency is authorized to purchase residential mortgages from banks and require the selling banks to make new residential mortgages within the State in an amount equal to the purchase price received from the Agency. It is also authorized to borrow money and to issue negotiable bonds and notes.

(2) The Agency has sold $45 million of its Special Revenue Bonds of 1970 to the New York State Commissioner of Taxation and Finance and has used the proceeds to purchase residential mortgages. The Series A, 1971, Bonds are being sold for the purpose of redeeming the Special Revenue Bonds of 1970.

(3) The Series A, 1971, Bonds will be general obligations of the Agency and will be additionally secured by an Agency trust fund, which will include the mortgage held by the Agency, and by a debt service reserve fund established in an amount not less than the maximum amount of principal and interest maturing and becoming due in the current or any succeeding calendar year on the bonds. In order to assure the maintenance of debt service reserve funds, the Act provides for the annual apportionment and payment from State funds, for deposit to the debt service reserve fund of such sum as is certified to be necessary to restore the fund to an amount equal to the maximum amount of principal and interest maturing and becoming due in any succeeding calendar year on the bonds of the Agency then outstanding which are secured by such reserve fund. The State, which possesses general powers of taxation, has thus committed its faith and credit in support of the bonds.

(c) *Ruling.* It is our conclusion that the $49,650,000 State of New York Mortgage Agency, General Revenue Bonds, Series A, 1971, are general obligations of a State or a political subdivision thereof under paragraph Seventh of 12 U.S.C. 24 and accordingly are eligible for purchase, dealing in, underwriting and unlimited holding by national banks. (Comptroller's letter dated October 26, 1971.)

§ 1.330 Parking Authority of the City of San Buenaventura.

(a) *Request.* The Comptroller of the Currency has been requested to rule on the eligibility of the $1,500,000 1971 Revenue Bonds of the Parking Authority of the City of San Buenaventura for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* (1) The Parking Authority of the City of San Buenaventura is a public body corporate and politic created by the laws of California but authorized to function only upon a finding of need. The City Council has made the appropriate finding and, in accordance with the law, has declared itself to be the Parking Authority. Under the law, a parking authority is authorized to issue revenue bonds to finance public parking facilities and may issue such bonds without obtaining the approval of the electors of the city where the bonds are issued to finance a project which is to be leased to the city and where the principal of and interest on the bonds are to be payable from rentals paid by the city under such lease.

(2) The Authority is issuing these bonds to finance the construction of a four-level parking structure with 569 parking places in the City's beachfront redevelopment area adjacent to the site of a 12-story Holiday Inn. The City has contracted with the developer of the Holiday Inn to lease 155 spaces within the structure for inn patrons.

(c) *Ruling.* It is our conclusion that the $1,500,000 1971 Revenue Bonds of the Parking Authority of the City of San Buenaventura are general obligations of a State or a political subdivision thereof under paragraph Seventh of 12 U.S.C. 24 and accordingly are eligible for purchase, dealing in, underwriting, and unlimited holding by national banks. (Comptroller's letter dated November 17, 1971.)

§ 1.331 Orange County Civic Center Authority 1971 State Building Revenue Bonds.

(a) *Request.* The Comptroller of the Currency has been requested to rule on the eligibility of the $4,600,000 Orange County Civic Center Authority 1971 State Building Revenue Bonds for purchase, dealing in, underwriting, and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* (1) The Orange County Civic Center Authority is a public entity created under the laws of California by an agreement between the City of Santa Ana and the County of Orange. Under this agreement, the Authority is authorized to acquire, construct, and lease public buildings, to issue bonds to finance such projects, and to lease the completed project to the City, the County, or the State of California. The Authority is issuing these bonds for the purpose of financing the construction of an office building and related facilities which will be leased to and operated by the State of California.

(2) The State has unconditionally promised in the lease rental agreement to pay annual rentals to the Authority in an amount sufficient to meet annual interest and principal payments on these bonds, as well as other necessary expenses. The State, which possesses general powers of taxation, has thus committed its faith and credit in support of the bonds.

(c) *Ruling.* It is our conclusion that the $4,600,000 Orange County Civic Center Authority 1971 State Building Revenue Bonds are general obligations of a State or a political subdivision thereof under paragraph Seventh of 12 U.S.C. 24 and are eligible for purchase, dealing in, underwriting and unlimited holding by national banks. (Comptroller's letter dated November 19, 1971.)

§ 1.332 Los Angeles County-Covina Civic Center Authority.

(a) *Request.* The Comptroller of the Currency has been requested to rule on the eligibility of the $6,300,000 Los Angeles County-Covina Civic Center Authority 1971 City Facilities Revenue Bonds

for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* (1) The Los Angeles County-Covina Civic Center Authority is a public entity created under the laws of California by an agreement between the City of Covina and the County of Los Angeles. Under this agreement, the Authority is authorized to acquire, construct and lease public buildings, and to issue revenue bonds to acquire sites and finance such projects. The Authority is issuing these bonds to finance the acquisition of a site for and the construction of a city hall, police headquarters, fire headquarters station, a civic auditorium and related facilities all of which will be leased to the City.

(2) The City has unconditionally promised in the lease rental agreement to pay annual rentals to the Authority in an amount sufficient to meet annual interest and principal payments on these bonds, as well as other necessary expenses. The City, which possesses general powers of taxation, has thus committed its faith and credit in support of the bonds.

(c) *Ruling.* It is our conclusion that the $6,300,000 Los Angeles County-Covina Civic Center Authority 1971 City Facilities Revenue Bonds are general obligations of a State or a political subdivision thereof under paragraph Seventh of 12 U.S.C. 24 and accordingly are eligible for purchase, dealing in, underwriting and unlimited holding by national banks. (Comptroller's letter dated November 19, 1971.)

Dated: December 10, 1971.

[SEAL] WILLIAM B. CAMP,
Comptroller of the Currency.

[FR Doc.71-18366 Filed 12-15-71;8:47 am]

Title 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Power Commission

[Docket No. R-434; Order No. 444]

PART 1—RULES OF PRACTICE AND PROCEDURE

Additional Filing Time After Service by Mail

DECEMBER 7, 1971.

By this order, the Commission amends § 1.13 of its rules to provide that where service is made by mail 5 extra days shall be added to the prescribed time period within which subsequent filings shall be made.

The Commission's rules of practice require participants in Commission proceedings to make certain filings and submittals within a prescribed period after the date of service upon them of a notice, motion, petition, complaint, order, or other pleading or document.[1] Section 1.17 of the rules (18 CFR 1.17) provides that service may be either by mail or in person. When service is made by mail, the rules specify that the date of service shall be the day when the matter served is deposited in the U.S. mail (18 CFR 1.17 (d)). Section 1.13(a) (18 CFR 1.13(a)) specifies how to compute the prescribed period of time from the date of service.

These provisions of the Commission's rules serve the dual objectives of affording participants adequate opportunity to protect their interests and eliminating delay in Commission proceedings. Of late, problems of mail delay have mitigated against the first of these objectives. With increasing frequency pleadings and other documents served by mail do not reach participants or prospective participants to Commission proceedings until several days after the date of service. Participants are thereby deprived of the full time allotted to them under the rules for asserting or protecting their rights. To remedy this problem, the Commission in this order amends § 1.13 of its rules to lengthen the period for responding to certain filings and submittals when service is made by mail.

The Commission finds: (1) The amendment herein adopted is necessary and appropriate for the administration of the Federal Power Act and the Natural Gas Act.

(2) Since the amendment herein adopted relieves a restriction and involves matters of Commission procedure, the notice, hearing, and effective date provisions of 5 U.S.C. 553 are not applicable.

(3) Good cause exists that the amendment herein adopted become effective upon issuance of this order.

The Commission, acting pursuant to the authority granted by the Federal Power Act, particularly section 309 (49 Stat. 858; 16 U.S.C. 825h), and the authority granted by the Natural Gas Act, particularly section 16 (52 Stat. 830; 15 U.S.C. 7170), and in accordance with 5 U.S.C. 552, orders:

(A) Section 1.13, in Subchapter A of Chapter I, Title 18 of the Code of Federal Regulations is amended by adding a new paragraph (g) which reads as follows:

§ 1.13 Time; extensions of time; issuance of orders.

* * * * *

(g) *Additional time after service by mail.* Whenever a participant has the right or is required to make a filing within a prescribed period after the date of service of a notice, motion, petition, complaint, order, or other pleading or document upon him, when such paper is served upon him by mail, 5 days shall be added to the prescribed period. In determining the date of service and computing the time from such date, the provisions of § 1.17(d) and paragraph (a) shall apply.

(B) The amendment adopted herein shall become effective upon issuance of this order.

(C) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.71-18375 Filed 12-15-71;8:47 am]

[1] For example, answers to complaints and certain petitions must be filed within 30 days after the date of service of the complaint or petition (18 CFR 1.6(a)); anwers to amendments of pleadings must be filed within 15 days after the date of service of the amendments (18 CFR 1.9(g)); replies to answers seeking affirmative relief must be filed within 15 days after the date of service of the answer (18 CFR 1.9(f)); answers to petitions appealing from actions of the Commission staff and answers to petitions to intervene must be filed within 10 days after the date of service of the petition (18 CFR 1.7(d), 1.8(e)); answers or objections to motions must be filed within 10 days (18 CFR 1.12(c)); briefs on exceptions must be filed within 30 days after the date of service of a copy of an intermediate decision (18 CFR 1.31(a)); and responses to petitions to reopen hearings must be filed within 10 days following the date of service of the petition to reopen the hearing (18 CFR 1.33(a)(2)).

Title 21—FOOD AND DRUGS

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

SUBCHAPTER C—DRUGS

PART 135—NEW ANIMAL DRUGS

PART 135e—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Application Regarding Safe and Effective Premix Level of Buquinolate in Chicken Feed

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (34-716V) filed by Norwich Agricultural Products, a division of Morton-Norwich Products, Inc., Norwich, N.Y. 13815, proposing the safe and effective use of an additional premix level of buquinolate in chicken feed. The supplemental application is approved.

To facilitate referencing, Norwich Agricultural Products is being assigned a code number and is placed in the list of firms in § 135.501 (21 CFR 135.501).

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), Parts 135 and 135e are amended as follows:

1. Part 135 is amended in § 135.501 by adding a new code No. 067 to paragraph (c), as follows:

§ 135.501 Names, addresses, and code numbers of sponsors of approved applications.

* * * * *

(c) * * *

Code No.	Firm name and address
* * *	* * *
067	Norwich Agricultural Products, a division of Morton-Norwich Products, Inc., Norwich, N.Y. 13815.

2. Part 135e is amended by revising § 135e.34(b) as follows:

§ 135e.34 Buquinolate.

* * * * *

(b) *Approvals.* (1) Premix level 16.5 percent has been granted; for sponsor see code No. 027 in § 135.501(c) of this chapter.

(2) Premix level 22 percent has been granted; for sponsor see code No. 067 in § 135.501(c) of this chapter.

* * * * *

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER (12-16-71).

(Sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i))

Dated: December 6, 1971.

C. D. VAN HOUWELING,
Director,
Bureau of Veterinary Medicine.

[FR Doc.71-18410 Filed 12-15-71;8:50 am]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 7151]

PART 13—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1969

Extension of Time for Compliance by Private Foundations

The following regulations relate to the application of section 508(e) of the Internal Revenue Code of 1954, as added by section 101(a) of the Tax Reform Act of 1969 (83 Stat. 492) with respect to the governing instruments provisions applicable to private foundations.

The regulations set forth herein are temporary and are intended to extend the period of time during which the provisions of section 508(e)(1) shall not apply to various types of organizations in the absence of pertinent final regulations.

In order to provide such temporary regulations under section 508(e) of the Internal Revenue Code of 1954, the following regulations are adopted:

§ 13.16 Extension of time for compliance with section 508(e).

(a) *In general.* Pursuant to section 508(e)(1), a private foundation shall not be exempt from taxation unless its governing instrument includes certain provisions relating to chapter 42. It is, therefore, necessary for an organization (including a charitable trust described in section 4947(a)(1)) to know if it is a private foundation in order to determine whether the provisions of section 508(e) are applicable. In many cases, such determination cannot be made in the absence of final regulations under section 170(b)(1)(A) and 509. Since final regulations under these sections have not been issued, the transitional rules set forth in paragraph (b) of this section shall apply.

(b) *Transitional rules.* (1) Except as provided in subparagraph (2) of this paragraph, section 508(e)(1) shall not apply to any private foundation (regardless of when organized) with respect—

(i) To any taxable year beginning before the transitional date,

(ii) To any period on or after the transitional date during the pendency of any judicial proceeding begun before the transitional date by a private foundation to which this paragraph applies which is necessary to reform, or to excuse such foundation from compliance with, its governing instrument or any other instrument in order to meet the requirements of section 508(e)(1), and

(iii) To any period after the termination of any judicial proceeding described in subdivision (ii) of this subparagraph during which its governing instrument or any other instrument does not permit it to meet the requirements of section 508(e)(1).

(2) Subparagraph (1) of this paragraph shall apply only to gifts or bequests referred to in section 508(d)(2)(A) that are made before the transitional date.

(3) For purposes of this section, the term "transitional date" means the 91st day after the last of the following dates:

(i) The day on which regulations first prescribed under section 509 become final, or

(ii) The day on which corrective and clarifying regulations under section 170(b)(1)(A) (including regulations relating to community trusts) and designated as § 1.170A-9 become final.

(c) *Exception: Private foundations receiving final determinations.* Paragraph (b) of this section shall not apply to any organization which has been issued a final ruling or determination letter holding that it is a private foundation under section 509(a). Such organization must, except as provided in section 508(e)(2), meet the requirements of section 508(e) within 90 days from the issuance of such final ruling or determination letter. If such organization meets the requirements of section 508(e)(1) by the end of the 90-day period, it will be deemed to have met such requirements from the effective date of its being described or treated as being described, under section 501(c)(3). The filing of Forms 990 and 990 AR or equivalent, in and of itself, will not be considered a final ruling or determination (referred to in this subparagraph) that such organization is a private foundation under section 509(a).

(d) *Extension of time in the case of invalid State law.* (1) Under § 13.8(b) of Temporary Income Tax Regulations a private foundation can satisfy the requirements of section 508(e) if valid provisions of State law have been enacted which meet the requirements of § 13.8(b)(1) and (2). Under section 508(e)(2)(B) a private foundation organized before January 1, 1970, must begin judicial proceedings before January 1, 1972, in order for the governing instrument provisions of section 508(e)(1) not to apply during the pendency of such proceedings for the period after December 31, 1971.

(2) In the event that provisions of State law enacted to meet the requirements of § 13.8(b)(1) and (2) are declared invalid by any State or Federal court of competent jurisdiction, the date a private foundation relying on such provisions must begin judicial proceedings under section 508(e)(2)(B) is extended to the 90th day after the time for filing an appeal to the decision or judgment of such court, or any court of intermediate appellate jurisdiction, has expired, or if an appeal has been filed, to the 90th day after the highest appellate court, State or Federal, with which an appeal has been filed has declared the provisions of such State law invalid.

(3) The provisions of this paragraph are intended solely to provide guidance to private foundations organized before January 1, 1970, which must commence judicial proceedings before January 1, 1972 in order to comply with section 508(e)(2)(B). No inference shall be drawn from this paragraph with respect to the status of organizations organized after December 31, 1969, under section 508(d)(2)(A) or (e) in any case where such organizations rely upon the provisions of State law to meet the requirement of section 508(e) and such provisions are declared invalid. Provisions pertaining to such cases will be contained in the notice of proposed rule making under section 508(e).

Because of the need for immediate guidance with respect to the provisions contained in this Treasury decision, it is found impracticable to issue it with notice and public procedure thereon under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitations of subsection (d) of that section.

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

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

Approved: December 10, 1971.

JOHN S. NOLAN,
Acting Assistant Secretary of the Treasury.

[FR Doc.71-18364 Filed 12-15-71;8:47 am]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation

SUBCHAPTER J—BRIDGES

[CGFR 71-159]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

West River, Conn.; Revocation of Regulations for Removed Bridge

1. The Chief, Office of Marine Environment and Systems, U.S. Coast Guard Headquarters has been advised that the drawbridge across West River at Kimberly Avenue between New Haven and West Haven, Conn., has been removed. The operation regulations governing this drawbridge are therefore no longer required.

2. Accordingly, Part 117 of Title 33 of the Code of Federal Regulations is amended by revoking § 117.121.

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

Effective date. This revocation shall become effective upon the date of publication in the FEDERAL REGISTER (12-16-71).

Dated: December 9, 1971.

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

[FR Doc.71-18381 Filed 12-15-71;8:48 am]

[CGFR 71-54a]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Flint River, Ga.

This amendment changes the regulations for the U.S. Highway 84 bridge across the Flint River at Bainbridge to permit the draw to remain closed to the passage of vessels. This amendment was circulated as a public notice dated June 17, 1971, by the Commander, Eighth Coast Guard District and was published in the FEDERAL REGISTER as a notice of proposed rule making (CGFR 71-54) on June 12, 1971 (36 F.R. 11455). Three comments were received. One had no objection to the proposal. Two comments objected, however these objections were subsequently withdrawn when clarifying information was provided that a replacement bridge planned for construction in the near future would provide adequate vertical clearance for future barge transportation.

Accordingly, Part 117 of Title 33, Code of Federal Regulations is amended by revising § 117.245(i) (7a) to read as follows:

§ 117.245 Navigable waters discharging into the Atlantic Ocean south of and including Chesapeake Bay and into the Gulf of Mexico, except the Mississippi River and its tributaries and outlets; bridges where constant attendance of draw tenders is not required.

* * * * *

(i) * * *

(7a) Flint River, Ga., U.S. Highway 84 bridge at Bainbridge. The draw need not open for the passage of vessels and paragraphs (b) through (e) of this section do not apply to this bridge.

* * * * *

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

Effective date. This revision shall become effective on January 17, 1972.

Dated: December 9, 1971.

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

[FR Doc.71-18380 Filed 12-15-71;8:48 am]

Title 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health, Education, and Welfare

SUBCHAPTER B—PERSONNEL

PART 23—NATIONAL HEALTH SERVICE CORPS

Notice of proposed rule making, public rule making procedures and postponement of effective date have been omitted in the issuance of the following Part 23 which relate solely to assignment of members of National Health Service Corps pursuant to section 329 of the Public Health Service Act (42 U.S.C. 248) because, for good cause it has been found, that such notice, public participation, and delay would be contrary to the public interest in light of the need to provide adequate lead time for the development of proposals, the need for the orderly and efficient consideration of such proposals, and the emergent health needs of certain communities in the nation. Written comments concerning the regulations are invited from interested persons. Inquiries may be addressed, and data, views and arguments relating to the regulations may be presented in writing, in triplicate to the Interim Director, National Health Service Corp, Room 6A-09, Health Services and Mental Health Administration, 5600 Fishers Lane, Rockville, MD 20852. All comments received in response to this publication will be available for public inspection in the above-named office on weekdays between 9 a.m. and 5 p.m. All relevant material received not later than 30 days after publication of these regulations in the FEDERAL REGISTER will be considered.

The following regulations shall become effective on the date of publication in the FEDERAL REGISTER (12-16-71).

Dated October 20, 1971.

VERNON E. WILSON,
Administrator, Health Services and Mental Health Administration.

Approved: December 7, 1971

ELLIOT L. RICHARDSON,
Secretary.

Sec.
23.1 Applicability.
23.2 Definitions.
23.3 Eligibility.
23.4 Application for assignment.
23.5 Assignment of personnel.
23.6 Charges for services.
23.7 Supervision of assigned personnel and termination of assignment.
23.8 Agreements with applicants.
23.9 Use of facilities by assigned personnel.

AUTHORITY: The provisions of this Part 23 issued under sec. 215, 58 Stat. 690 as amended; 42 U.S.C. 216; sec. 329, 84 Stat. 1868; 42 U.S.C. 248.

§ 23.1 Applicability.

The regulations in this part are applicable to the assignment of commissioned officers and other personnel of the U.S. Public Health Service to areas with critical health manpower shortages, as provided by section 329 of the Public Health Service Act (42 U.S.C. 248).

§ 23.2 Definitions.

As used in this part

(a) "Act" means the Public Health Service Act.

(b) "State" means any of the several States, the District of Columbia, Puerto Rico, or the Virgin Islands.

(c) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of that Department to whom the authority involved has been delegated.

(d) "Assigned personnel" means health or health related personnel of the U.S. Public Health Service, including, but not limited to, physicians, dentists, pharmacists, nurses, paramedical personnel, medical services administrators or planners, and medical technicians, who are sent, in accordance with section 329 of the Act and the regulations in this part, to an area to provide needed health care or services.

(e) "Nonprofit" private health organization means a private health organization no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(f) "Population" means the population based on the latest figures available from the U.S. Census Bureau or such other source that the Secretary finds acceptable, applicable to the area to be served.

§ 23.3 Eligibility.

(a) *Eligible applicants.*—Application for the assignment of service personnel may be made by

(1) A State or local health agency, or

(2) Any other public or nonprofit private health organization.

(b) *Eligible area.*—Except in cases in which the Secretary is satisfied that extreme hardship exists, no assignment of physicians or dentists will be made to an area having a population of less than 4,000 people. Areas having a population of less than 4,000 people, may, however, be assigned personnel other than physicians or dentists.

§ 23.4 Application for assignment.

(a) An application for the assignment of service personnel under section 329 of the Act shall be submitted to the Secretary in such form and manner and at such time as the Secretary may prescribe.

(b) The application shall set forth:

(1) The population, size, and general geographical description of the area to be served;

(2) The numbers and types of health personnel, services, and facilities in the area to be served;

(3) A description of the need for and planned use and support of assigned personnel;

(4) The organizational structure of the applicant;

(5) Such other information as the Secretary may from time to time require.

(c) The application shall contain the certification of the State and district medical societies (or dental societies, or other appropriate health societies as the case may be) for the area to be served, and of the local government of that area, that such health personnel are needed in the area.

(d) The application shall contain the recommendations of the appropriate State health planning agency established pursuant to section 314(a) of the Act, the appropriate Regional Medical Program established pursuant to title IX of the Act, and where there has been such an agency established, of the appropriate areawide health planning agency established pursuant to section 314(b) of the Act, and of the State medical, dental, and other health associations and from other medical personnel of the area to be served, or establish to the satisfaction of the Secretary that such recommendations were not reasonably obtainable.

(e) Such application shall be executed by an individual authorized to act for the applicant and to assume on behalf of the applicant any obligations imposed by the statute, these regulations, or any additional conditions of assignment imposed pursuant thereto.

§ 23.5 Assignment of personnel.

(a) The Secretary may, on the basis of an application, designate an area as having a critical manpower shortage and assign service personnel to such areas where he finds such designation and assignment will best serve the purposes of section 329 of the Act and the regulations of this part, taking into account:

(1) The need of the area for the health services to be provided;

(2) The willingness of the area and the appropriate governmental agencies therein to assist and cooperate with the Service in providing effective health services to residents of the area;

(3) The recommendations of any agency or organization which may be responsible for the development, under section 314 (a) or (b) of the Act of a comprehensive plan covering all or any part of the area involved;

(4) Recommendations from the State medical, dental, and other health associations and from other medical personnel of the area considered for assistance; and

(5) The extent to which the applicant has utilized Federal and other health resources available to the area involved.

(6) The potential ability of persons within the area to pay the cost of providing health care services in accordance with § 23.6.

(b) In determining whether an area has a critical health manpower shortage, the Secretary will, where applicable, take into account the following factors:

(1) Health resource statistics, such as numbers and ages of primary care physicians and dentists, the range of primary care and other health services available, and the types of health facilities in the area. The ratios of physicians and dentists to the population served, as compared with State and national ratios, will be a significant measure.

(2) Health status indicators, such as infant and maternal mortality rates, accident rates, and other indicators of the existence of special health problems affecting the community's needs for health care services.

(3) The accessibility of health care services in the community and the ability to obtain these services when required on a timely and effective basis. Transportation difficulty, travel times, and the ability of health resources to meet increased demands will be significant measures.

(4) Other socio-economic, demographic, and environmental factors of community life which significantly impair the ability of the community to attract and retain health personnel.

(c) The Secretary may from time to time publish specific measures (e.g., ratio of doctors to population) for the factors set forth in paragraph (b) of this section which will be considered as establishing the level at which a health manpower shortage becomes critical.

(d) The Secretary may withdraw his designation of an area as one having a critical health manpower shortage upon determining that there has been a substantial change in circumstances within the area in relation to the factors set forth in paragraph (b) of this section.

§ 23.6 Charges for services.

(a) Any person receiving services from assigned personnel shall be charged for such services except as otherwise provided in paragraphs (c) or (d) of this section. Such charge shall (except as provided in paragraph (b) of this section) be in accordance with the reasonable charges established pursuant to part B of title XVIII of the Social Security Act. In the case of dental services, such charges shall be in accordance with the fee structure that State dental societies have negotiated with the appropriate State government, if any, and if none, the fee structure utilized by the U.S. Veterans Administration for the area involved. In cases in which a service is rendered for which there is no applicable charge under any of the methods referred to above, the charge shall be that which the Secretary determines is or would be prevailing and reasonable for the area involved. *Provided, however,* In any case in which assigned personnel are providing services in the framework of an established health services delivery system, the charges for such services shall be consistent with the charges made by such system.

(b) In lieu of charging on a "fee for services" basis pursuant to paragraph (a) of this section, persons eligible to receive services from assigned personnel may be charged on a prepaid capitation basis. In such event, the amount of that charge shall be designed to recover the reasonable costs of providing such services.

(c) No charge or a reduced charge shall be made for services provided by assigned personnel under paragraph (a) or (b) of this section to any person from a family which has an annual income below the higher of (1) the State figure for the "medically needy", as determined in accordance with the Aid for Families with Dependent Children figures calculated by the Assistance Payments Administration, Social and Rehabilitation Service, or (2) the current Social Security Administration poverty income level.

(d) If a Federal agency or a State or local government agency or other third party would be responsible for all or part of the cost of the service provided under this section if such service had not been provided under section 329 of the Act, the Secretary shall collect from such agency or third party the portion of such cost for which it would be so responsible.

§ 23.7 Supervision of assigned personnel and termination of assignment.

Personnel assigned in accordance with the provisions of section 329 of the Act and the regulations in this part shall at all times remain under the direct supervision and control of the Secretary. Observance of institutional rules and regulations by assigned personnel are mere incidents of the performance of their Federal function and do not alter their direct professional responsibility to the Secretary. The Secretary may terminate or modify any such assignment if he determines that such assignment is not being performed in accordance with section 329 of the Act, the regulations in this part, or any agreement entered into under § 23.8 of the regulations in this part.

§ 23.8 Agreements with applicants.

The Secretary will, upon determining to assign personnel to an area, and consistent with section 329 of the Act and these regulations, enter into agreements

with applicants setting forth such additional terms and conditions as he deems necessary to assure the furtherance of the purposes of section 329 of the Act, the regulations in this part, the interests of the public health, or the effective utilization of assigned personnel, including but not limited to

(a) Number and type of personnel assigned;

(b) Duration of assignment;

(c) Fees and methods for charging for services of assigned personnel;

(d) Types of facilities or other assistance to be provided by applicant.

§ 23.9 Use of facilities by assigned personnel.

The Secretary, to the extent feasible, may make such arrangements as he determines necessary to enable assigned personnel to utilize the health facilities of the area to be served. If there are no such facilities in such area, the Secretary may arrange to have such care and services provided in the nearest health facilities of the Public Health Service or the Secretary may lease or otherwise provide facilities in such area for the provision of care and services.

[FR Doc.71-18398 Filed 12-15-71;8:49 am]

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

[Circular No. 2318]

PART 2890—MISCELLANEOUS RIGHTS-OF-WAY

Subpart 2893—Acquired Lands in Wildlife Refuges

The purpose of this amendment is to delete those regulations under Title 43 which provide for issuing rights-of-way across acquired lands in wildlife refuges. As stated in 43 CFR 2801.1-9, authorization and procedures for issuing such rights-of-way were transferred to the Bureau of Sport Fisheries and Wildlife under the regulations in 50 CFR Part 29.

It is the policy of the Department of the Interior to give notice of proposed rule making and to invite the public to participate in rule making except where such participation would be impracticable, unnecessary or contrary to the public interest and a specific finding to this effect is published with the rules or regulations (36 F.R. 8336, May 4, 1971). Public participation is unnecessary in this case because it was provided for in the adoption of 43 CFR 2801.1-9.

Part 2890 is amended as follows:

Subpart 2893 is deleted in its entirety.

HARRISON LOESCH,
Assistant Secretary of the Interior.

DECEMBER 10, 1971.

[FR Doc.71-18353 Filed 12-15-71;8:45 am]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 18425; FCC 71-1237]

PART 73—RADIO BROADCAST SERVICES

Remote Control Operation

Memorandum opinion and order. In the matter of amendment of Part 73, Subpart E of the Commission's rules and regulations governing television broadcast stations concerning the operation of VHF and UHF television broadcast stations by remote control. Docket No. 18425, RM-1340.

1. In the above-entitled proceeding the Commission has issued two orders. In a first report and order, adopted March 17, 1971 (FCC 71-285), Part 73 of the rules governing the radio broadcast services was amended so as to permit VHF television broadcast stations to be operated by remote control. UHF television broadcast stations, which had previously enjoyed this privilege, were made subject to the amended rules. These rules are considerably more comprehensive than the rules pursuant to which such stations formerly operated, and impose certain new technical requirements on remotely operated UHF stations. UHF stations, accordingly, were afforded a period of 1 year from the effective date of the rules in which to achieve full compliance therewith.

2. The second report and order, adopted August 18, 1971 (FCC 71-879) promulgates rules governing the transmission, observation, and logging of vertical interval test signals by television broadcast stations operated by remote control.

3. Timely petitions have been filed seeking reconsideration of rules adopted in each report and order. In the instant document we will consider the matters raised in these petitions in connection with the report and order against which they are directed.

4. The following petitions request reconsideration of rules adopted by the first report and order: Petition for Reconsideration by the National Association of Educational Broadcasters (NAEB); Petition for Partial Reconsideration, in behalf of Spanish International Broadcasting Co., licensee of UHF television broadcast stations KMEX-TV, Los Angeles, Calif., and WXTV, Paterson, N.J.; and a Joint Petition for Reconsideration in behalf of UHF stations KCET, Los Angeles, Calif., WGBY-TV, Springfield, Mass., WVPT, Staunton, Va., all noncommercial educational television stations, and WPHL-TV, Philadelphia, Pa., and WXIX-TV, Newport, Ky.-Cincinnati, Ohio.

5. Each petitioner takes exception to the same provisions of the new rules, namely, paragraph (g) of § 73.676, which requires transmitter inspections at least five times each week, with an interval between successive inspections of at least 12 hours, with the proviso that inspections may be conducted at weekly intervals "if the station is equipped with such additional transmitting and/or switching facilities as may be necessary to insure that malfunctioning of the main visual or aural transmitters shall not preclude continued operation at a transmitter power output level of not less than 20 percent of the authorized output power of the malfunctioning transmitter."

6. The relevant rule to which UHF television stations have heretofore been subject requires only weekly transmitter inspections, without conditions. The relief sought by the petitioners is an exemption of all UHF stations from the new inspection requirement, or, at the least, a suspension of its force with respect to UHF stations for a period of 5 years, in lieu of the 1-year period now afforded such stations in which to achieve compliance.

7. The petitioners argue that television stations can operate in accordance with the new rule only at substantial additional expense, which UHF stations can ill afford. They believe that benefits accruing to the public through the implementation of the rule are, at best, speculative, and the need for such frequent inspections has not been demonstrated by the experience of those UHF stations which have operated by remote control in the past.

8. Amplifying these arguments, the petitioners urge that compliance with the 5-day-a-week inspection requirement will entail the expenditure of many hours of additional engineering time, much of it consumed in travel between studio and transmitter. Where a transmitter is distant or not easily accessible from its control point, an extra full-time holder of a radiotelephone first-class license may be required, at an additional cost of $10,000, or more, per year. If a licensee chooses to install additional transmission facilities so that a weekly inspection schedule may be maintained, the cost for such facilities may run between $75,000 and $200,000.

9. Spanish International Broadcasting Co. states that only two independent UHF television stations operated at a profit in 1969, and suggests that the additional costs incurred in meeting the new rule requirements may be reflected in a curtailment of public service programing. NAEB and others emphasize the financial strictures within which noncommercial educational stations must operate, dependent, as they are, almost completely on public fundings, and the special difficulties and delays involved in finding money for other than the most essential purposes.

10. It is further argued that many UHF television stations have operated by remote control for periods as long as 8 years without the more stringent inspection requirement, and the Commission has not found the functioning of these stations to have been unreliable or otherwise unsatisfactory. On the contrary, four of the subscribers to the joint petition allege that their experience with remote control has been long and successful, and such problems as they have encountered would not have been avoided

or alleviated had more frequent transmitter inspections been made.

11. Finally, it is noted that precedent exists for treating UHF and VHF stations differently in this instance. UHF stations were granted remote control privileges 8 years before VHF stations in an attempt to mitigate the financial problems with which the majority of UHF stations are beset. UHF stations alone previously were afforded this privilege, also in recognition of the fact that the remote control of UHF stations involves fewer engineering problems than is the case for VHF stations, since, in the band to which UHF stations are assigned, improper operation poses less hazard of interference to other services than does such operation at VHF frequencies.

12. Viewed purely from an engineering standpoint, there is little justification for excusing UHF stations from compliance with any technical requirement of the remote control rules while continuing to impose it on other television stations. It may be argued that modern UHF transmitters are as stable and reliable as VHF transmitters, but it has not been alleged that they are superior to VHF transmitters in these respects. It is true that a malfunctioning UHF transmitter may be somewhat less likely to cause harmful interference to other services, especially safety services, than would its VHF counterpart. However, we do not think the hazard can be ignored in the first case, and it well may have been overemphasized in the second. In any event, the new rules governing remote control are intended to promote a kind of technical operation which will result not only in the minimum probability of interstation interference, but in the best possible service to the public. While the general use of all channel receivers and the availability of programs attractive to a wide audience are, of course, important contributors to successful operation of UHF television stations, we believe it is perhaps equally important to their success that the reliability and technical quality of the service provided by UHF stations be as nearly equivalent as possible to that available from VHF stations. Thus, we believe that full adherence to the technical requirements of the rules will, in the end, redound only to the benefit of UHF television.

13. The fact that UHF stations have operated by remote control for a number of years, pursuant to rules which are, to say the least, minimal, in a manner which the licensees consider to be satisfactory does not stand for the proposition that more adequate controls are not desirable or necessary. It also should not be concluded that if the technical performance of these stations has not been found seriously wanting by the Commission, the level of this performance must be, perforce, fully acceptable. Lack of adverse Commission action against particular stations may reflect, not so much a lack of reason for such action, as the effects of budget and personnel limitations, which restrict the inspection and monitoring activities of our field engineers so severely as to permit many transgressions of the Commission's rules to go undetected.

14. As we pointed out in our first report and order, all AM and FM stations have long been required by our rules to conduct transmitter inspections five times a week. Such transmitters are, typically, far less complicated than TV transmitters, involve fewer components and require less exacting adjustment for proper operation.

15. There are many aural stations whose finances are in as precarious a condition as those of any UHF television station. Although the cost of conducting a 5-day-a-week inspection program may be somewhat greater for the television station, the expenditure necessary usually represents a far more significant item in the budget of a small aural station than in the case of the more ambitious television operation. We therefore are not convinced that the additional expense involved for UHF stations will affect in any appreciable degree the quality of their programs, much less their chances of survival.

16. While, for the reasons outlined above, we are unwilling to afford UHF stations, in general, relief from any of the new rules beyond the 1-year period provided therein, we believe some justification exists for more lenient treatment of UHF stations operated by educational entities. Such stations have unique financing problems. The larger part of their funds results from State legislative action, or come from Federal grants. The leadtime in obtaining additional amounts is generally long.

17. The method of financing educational facilities, which may make for long delays in the effectuation of projected improvements in facilities, at the same time insulates the educational broadcaster from some of the competitive pressures to which the commercial broadcaster is subject. The continued existence of the educational station does not depend, to the same extent as does the commercial station, on the attraction of a large audience whose continued allegiance is gained, at least in part, by the ability of the station to deliver to its viewers a reliable signal of good technical quality. Finally, we would note that the Commission's rules specify no minimum operating schedule for educational television stations. If such a station experiences downtime as a result of equipment failure it should be of no greater significance to the Commission than if the licensee had chosen not to operate during this period. While, therefore, we remain of the opinion the best overall service to the public will be provided when remotely controlled television stations all operate in full compliance with our amended rules, we find good cause for affording noncommercial educational UHF stations a substantially longer period of time than other stations in which to meet the calibration, test and inspection schedule set forth in these rules.

18. Accordingly, we are hereby amending our rules as indicated: New Note 1 is appended to paragraph (g) of § 73.676 as set forth below.

19. The Note now appended to § 73.676 is amended to read as set forth below.

20. With the exception expressly set forth above, any other relief sought in the above discussed petitions from actions taken in the first report and order in Docket 18425, is denied.

21. Timely petitions for reconsideration of the second report and order have been filed by the following parties:

National Broadcasting Co., Inc. (NBC).
The American Broadcasting Cos.', Inc. (ABC).
Columbia Broadcasting System, Inc. (CBS).
Kaiser Broadcasting Corp. (Kaiser).
Forward Communications Corp. (Forward).

In addition, the Video Signal Transmission Subcommittee of the Institute of Electrical and Electronic Engineers (IEEE) has filed a letter with the Commission which evaluates and criticizes the test signals adopted by the Commission, and suggests that these test signals should be subject to field testing and further evaluation prior to their final adoption. This letter is being incorporated into the record of Docket 18425, and will be considered as a petition for reconsideration.

22. NBC alleges, in essence, that the action taken by the Commission in this matter was procedurally defective in that interested parties were not afforded sufficient opportunity to comment on the specific rules which were adopted in the second report and order. Accordingly, NBC urges the order should be vacated, and the proceeding reopened for further discussion.

23. We believe that in this proceeding we have fully complied with the requirements of our rules and the Administrative Procedure Act (APA), in that the further notice of proposed rule making included "either the terms or substance of the proposed rule, or a description of the subjects or issues involved",[1] and the second report and order satisfies the APA admonition that "after consideration of all relevant matter presented, the agency shall incorporate in any rules adopted a concise general statement of their basis and purpose."[2] Admittedly, the specific text of the test signal rules was not available to interested parties for comment prior to its adoption.[3] However, this fact does not affect the validity of the action taken. In any event, in the petitions for reconsideration which we have now under consideration, parties taking exception to these rules, including NBC, have submitted detailed comments concerning their provisions, to which we are here giving prompt and earnest attention. As a practical matter, therefore, the ends which NBC might hope to achieve in a reopened proceed-

[1] APA, section 4(a).
[2] APA, section 4(b).
[3] All parties, of course, had the opportunity, in reply comments, to criticize the EIA test signal format, which we subsequently adopted. Nevertheless, no reply comments were received.

ing will be accomplished herein. NBC's request, therefore, is denied.

24. CBS reiterates in its petition the position taken in its comments on the further notice, that we should not make mandatory the transmission of the composite signal, since it is intended for use in measuring a variety of parameters for which the Commission's rules set no specifications. Thus, says CBS, "the observation and logging of such parameters would serve no meaningful purpose related to compliance with the Commission's rules."

25. It is well recognized that there are many parameters for which our rules specify no tolerances whose maintenance within close limits is essential for picture transmission of good quality—especially when the picture is in color. It is in the public interest that pictures of such quality be provided, and it is reasonable for the Commission to expect broadcasters to employ such means as will insure that this end will be achieved. There is general agreement that the transmission of appropriate test signals in the vertical interval is an effective method for maintaining detailed surveillance over the performance of the television transmitting system. However, while individual broadcasters might have utilized such signals on a voluntary basis pursuant to § 73.682(a)(21) of the rules, we have no information which would indicate any appreciable number of stations have availed themselves of the privileges which this rule affords. It appears necessary, if the full potentialities of this method of system surveillance are to be adequately exploited that we require the transmission of test signals having such characteristics as to make possible an adequate assessement of overall transmitter performance.

26. With respect to the actual provisions of the test signal rules, three major points are made by the petitioners:

(1) That the requirement of the test signals be observed, and the results of the observations logged at half-hourly intervals is burdensome, and serves no useful purpose.

(2) That the use of as many as four field lines for test signal transmission is unnecessary for their intended purpose, and represents an extravagant use of available vertical interval "real estate" which may restrict the future employment of this portion of the television signal for other, more useful purposes.

(3) That the standardizing of the test signals at this time is premature, ignores certain established industry practices, the efforts of various technical committees to establish definite test signal standards for transmitter testing, and to develop test signals to accompany programs intended for international distribution. Specific criticism is made of the test signals adopted, in relation to each other, the configuration of particular signals, and the levels specified for their transmission.

27. With respect to (1) it is contended that the burden which the broadcaster assumes in meeting the test signal observation and logging requirements of the rules, a burden not imposed on stations which are directly controlled, is so substantial as to negate, at least to a large extent, the more efficient deployment of manpower otherwise made possible by remote control operation. Operating parameters which the rules have traditionally required to be read at half-hourly intervals are logged by automatic methods in many, and perhaps the majority of television stations. There is no system immediately available which can be employed for automatic logging of test signal observations. ABC points out that the multiplicity of the test signals which the rules specify substantially complicates efforts toward developing such a system. It is urged that the observation of test signals at such frequent intervals is unnecessary, in any case—that changes in transmission conditions are unlikely to occur over short periods of time—and ineffective since, unlike input and output power indications, whose deviations may be corrected from the remote control point, departures from normal operation detected by test signal observations usually may be corrected only by adjustments at the transmitter during a maintenance period. Both CBS and Kaiser suggest that two test signal observations per day, one immediatey after sign-on, and one before sign-off, should be sufficient to insure proper operation of the transmitting system.

28. Insofar as the alleged additional burdens assumed by the operator in meeting the test signal observation/logging requirement are concerned, we must conclude either that the magnitude of these burdens will not be as great as the petitioners believe, or that the attention heretofore paid by operators to the technical characteristics of the television signal provided for the public has been inadequate. Section 73.691(a) of the rules governing television station operation, in general, states that "The licensee of each television broadcast station shall have in operation at the transmitter an approved modulation monitor for the aural transmitter. There shall also be employed sufficient monitoring equipment for the visual signal to determine that the signal complies with the requirements of this subpart."

29. Section 73.676, concerning remote control operation, sets forth considerably more detailed requirements for equipment "suitable for continuously and accurately monitoring the waveform and other characteristics of the transmitted visual signal" and "capable of continuously and accurately indicating the peak and quasi-peak percentages of modulation of the aural signal." Section 73.676 (b) reads, "The control point shall be under the immediate supervision and control of one or more operators meeting the requirements of § 73.661 at all times when the station is operating by remote control. Such operators may perform other tasks which do not require absence from the remote control position, and do not otherwise impair necessary supervision of the TV transmitter."

30. No party has objected to these requirements of § 73.676. While there is no specific rule requiring the operator to observe continously the indications of the specified monitoring equipment, we believe it is quite clear the Commission has expected and continues to expect something more of its licensees than that they rely entirely on automatic logging equipment for evidence of proper transmitter operation. If, indeed, an operator exercises any sort of continuing surveillance over the transmitted signal, we fail to perceive how the requirement that he observe test signals at at least half hourly intervals, and log the results of these observations, adds substantially to his workload. We have purposely refrained from requiring a numerical evaluation of the results of test signal observations. Only significant deviations from the normal configuration of these signals, as established at the time of monitor calibration, need be the subject of detailed log entries. If, as the petitioners insist, transmitter conditions change slowly and infrequently, the occasions for such detailed entries would appear to be few. It should be emphasized that the Commission's primary aim in formulating the rules governing remote control operation was to insure that such operation would be conducted with fully adequate safeguards. To the extent station licensees seeking to engage in such operation look toward effecting economies in operating manpower, the objective may be achieved only to the extent that effective transmitting system supervision is not jeopardized.

31. As experience is gained with the use of the test signals, it may appear that less frequent but more detailed logging, with each log entry embodying a numerical evaluation of various specified signal characteristics will insure more effective transmitting system supervision than is provided by the present rules. In such a circumstance, we will entertain a properly documented petition for appropriate rule amendments. At this time, however, we will adhere to our present rules concerning this matter.

32. When the Commission specified lines 18 and 19 for the transmission of locally generated vertical interval test signals, it noted the tentative reservation of line 17 for test signals accompanying programs intended for international distribution, and of line 20 for a vertical interval reference (VIR) signal, which would be added to a color program at its point of origin. Assuming that lines 17 and 20 will be used as anticipated, the employment of lines 18 and 19 in accordance with the rules which we have adopted preempts all of the vertical interval area that can be used pursuant to § 73.682(a)(21) of the rules for the transmission of test signals and other broadcast-related information not directly required for picture transmission. However, it is well recognized that these lines do not represent all, or even most of the vertical interval space which theoretically is available for the transmission of such special signals. We, of course, are generally aware of various studies presently in progress in which vertical interval transmission is being considered for

purposes both related and entirely unrelated to the basic broadcast service. If, when, and as specific proposals are made to us for vertical interval uses which are demonstrated to be technically feasible and in the overall public interest, consideration can then be given to making available, by rule, additional vertical interval lines for their transmission. For this reason, we do not believe that the designation of lines 18 and 19 for locally generated test signal transmission constitutes a bar to the development of other vertical interval uses which the public interest eventually may require.[4]

33. Of course, while the above may be the case, we should nevertheless not be profligate in our use of vertical interval space, and we note the claims of the parties that the dedication of two lines in two fields for locally generated test signal transmission is unnecessary—only one or two field lines are sufficient for the purpose. However, there are differing opinions as to what signals should be transmitted in the more restricted space. CBS suggests that the multiburst and color bar signals should be employed, "two signals which can be directly correlated to existing specifications in the Commission's rules and regulations". ABC, however, sees the color bar signal as "superfluous", and the multiburst signal "of limited usefulness" and favors the use of a composite signal, similar to but differing in several respects from the composite signal adopted by the Commission. If the test signal transmission were to be restricted to two field lines, it seems likely that industry agreement on the use to be made of these lines would be difficult to obtain.[5] However, since four field lines are presently available, a choice between the test signals mentioned need not be made—all may be transmitted.[6]

34. ABC further contends that with three of the field lines occupied by specified test signals inserted at the remote control point, insufficient vertical interval space remains for the transmission of test signals inserted at the transmitter input, which is necessary when a determination is to be made of the performance of the transmitter alone. It appears to believe that three additional field lines should be available for the accomplishment of this purpose. Section 73.676(f)(1)(iv) of the rules permits the insertion of the composite signal at the transmitter input on line 19, field 2, or the insertion of any test signal chosen by the licensee on this line and field at the remote control point or at the transmitter. Thus, under the rule, a licensee might insert on line 19, field 2, at the transmitter input alternatively either the composite signal, color bars, multiburst, or any other suitable signal. Unless ABC considers it necessary to provide for the continuous comparison of all three test signals, as inserted at the remote control point and at the transmitter (as previously noted it apparently sees little utility in the continuous transmission of either color bars or multiburst) we believe that the rules provide the flexibility ABC alleges is lacking.

35. We now turn to the third major point made by the petitioners—that we have acted too hastily in adopting test signals of specific characteristics, and have selected a signal "package" with components whose characteristics differ, in one respect or another, from generally used test signals, or from signals under consideration by various industry or industry/government committees. The petitions for reconsideration contain specific comment on many of those differences.

36. It should be emphasized that the action taken by the Commission in this matter does not in any way determine or limit the characteristics of test signals which may be used for general transmitter testing during maintenance periods, for video network transmission, or for any purpose other than that which the rules prescribe. Test signals best suited for one purpose may not be fully suitable, or even acceptable, for another. The test signal "package" proposed by EIA and adopted in the Commission's rules was specifically designed for simultaneous transmission with program material, radiation over-the-air, and interception and observation at a location which may be distant from the transmitter. The fact that EIA recognized the desirability of tailoring test signals to a format best suited for this purpose is perhaps indirectly attested to by the petitioners in their observation that certain of these signals in some respects fail to meet standards EIA has itself established for transmitter test signals. Signals suitable for remote transmitter surveillance should have the following characteristics, among others:

(1) That they cause no interference to program material.

(2) That they have little potentiality for creating interference to other stations.

(3) That they not be subject to excessive distortion in demodulation.

(4) That they provide the maximum amount of useful and accurate information as to the performance of the transmission system despite some residual quadrature distortion, and despite the fact that the signals normally must be observed with some restriction on the higher video frequencies (i.e., with a sound trap inserted in the video channel of the receiver).

37. The Commission did not repeat in its second report and order the detailed justification and explanation of particular features of the proposed test signals submitted in support of their adoption, which persuaded us that the signal package offered by EIA was peculiarly suited for its intended purpose. Had we done so, perhaps some of the criticisms now made of particular signal characteristics might have been forestalled.

38. The comments submitted by the petitioners on the specific characteristics of the test signals adopted by the Commission cite one major respect in which the prescribed "package" of signals might be deemed inadequate to provide all information desirable as to transmission system performance—the lack of a sine squared 1 T pulse in the composite signal, or, alternatively, the provision for 1 T rise time in the step to the line time bar in that signal. ABC urges that such a signal is useful in assessing the ability of the system to transmit very fine picture details. The wide frequency spectrum of such a pulse, which makes it of value for this purpose, also renders it of somewhat questionable suitability for inclusion in a signal which will be radiated in the television broadcast band. A 1 T bar step, moreover, may result in undesirable "overshoot" beyond the white reference level. Finally, we have some doubt whether, even if the 1 T pulse were transmitted, fully effective use could be made of the additional information it might provide, since it would be observed at the remote control point with monitoring facilities whose band width is necessarily limited to about 4 MHz.

39. There are a number of other instances where the test signals have been specifically tailored, sometimes in a format which departs from "standard", with the limitations and requirements of an off-the-air monitoring system in view. Thus the multiburst signal has been reduced in peak to peak and average levels from the standard configuration. IEEE notes this change with approval, but questions the retention of the white bar at 100 IRE units, a level at which, it

[4] It seems rather obvious that this does not frustrate another immediately contemplated use of lines 18 and 19 by broadcasters. Test signals on these lines, utilized to verify the quality of network circuits, are regularly delivered to affiliated stations. In the usual case, the station, rather than undertaking the burden for deleting the signals, radiates them. Such radiation is essentially wasteful. The many broadcasters who have followed this practice presumably have felt no pressing need to devote the vertical interval to more useful purposes.

[5] Furthermore, it has not been established convincingly that any choice should be made. One of the factors taken into consideration in the selection and line location of the various test signals was the likelihood that quadrature distortion would be experienced, which might adversely affect the accuracy of measurements made in particular ways. Thus, one of the advantages of transmitting the multiburst signal on line 18 simultaneously with the composite signal on line 19 is that the former signal is available for the measurement of chrominance/luminance gain, if distortion of the 12.5T modulated signal makes it unsuitable for this purpose.

[6] Should the demand for vertical interval space eventually become so great that the employment of this number of lines for test signals can no longer be justified, consideration may be given to rule amendments which would permit their transmission on a single field line on a sequential basis (each of the test signals occupying the full line for a period long enough to permit its visual or automatic observation or analysis).

states, the bar cannot be used conveniently as a luminance reference for the signal bursts. It also notes that the signal bursts prescribed at 1.25 MHz and 4.1 MHz differ in frequency from those in more general use, 1.5 and 4.2 MHz. EIA has stated that it chose 1.25 MHz because the former value corresponds to one of the frequencies for transmitter response determination, set forth in § 73.687(a) of the rules. The uppermost frequency was reduced from 4.2 to 4.1 MHz in view of the monitoring system which will be employed, and the high attenuation of the video signal in this region resulting from the sound trap use. We note that even at the lower frequency specified by EIA, it may be necessary to correct for demodulator response in assessing transmitter performance in the 4 MHz region.

40. The inclusion of white bars in the multiburst and color bar signals at a 100 IRE unit level, rather than at lower levels suggested respectively by IEEE and CBS as representing more established practice, appears appropriate for test signal transmission on a continuous basis, since it provides a means by which the depth of modulation can be properly maintained by manual, and perhaps, later, by automatic means. Picture material may have a dearth of information at white levels, and can be unsatisfactory for this purpose. The narrowing of the width of the color bars from the standard configuration, which CBS questions, has made possible the inclusion of a black level reference, which can be employed to evaluate the effective degree of "set up".

41. No peculiarity of the off-the-air monitoring system, of course, requires the employment of a modulated sine squared 12.5 T pulse in lieu of the more generally utilized 20 T pulse for the measurement of chrominance/luminance gain and chrominance to luminance delay. It was offered by EIA as a better signal for the purpose, making possible more accurate and more easily accomplished delay measurements, and, at the same time occupying less line space in the composite signal than the 20 T pulse. ABC suggests that, because of its wide spectrum as compared to the 20 T pulse, the 12.5 T pulse may be subject to excessive base line distortion produced by the sound trap in the monitor receiver. The spectrum of the 12.5 T signal is tailored to correspond closely to the chrominance spectrum of the NTSC signal and thus to provide a means for more thoroughly evaluating transmitting system color performance. We have previously noted that there inevitably will be some distortion introduced in the monitoring system. To the extent that the effect may occur which ABC fears, it appears to be one which should be recognized and provided for in monitoring system calibration, rather than by a limitation in test signal potentiality. NBC opposes specification of the 12.5 T signal mainly on the ground that its practical utility has never been established. Such an argument might carry more weight if a completely new type of test signal had been proposed. However, the 12.5 T signal is but one variant of the subcarrier modulated pulse, a variant designed specifically for NTSC system testing. The more familiar 20 T pulse was originally developed in Europe for use with television systems having more restricted chrominance bandwidths. We believe the 12.5 T pulse is clearly superior for the purpose here contemplated, and we anticipate no problems with its employment. We find support to our conclusions in this matter in the specification of a VITS generator for use on 525 Line International Television Transmission, prepared by the Satellite Technical and Operational Committee—Television (STOC), which contemplates the generation and use of a modulation sine squared 12.5 T signal. Apparently, this Committee considers the utility and practicality of the signal to be sufficiently established.

42. It also might be noted that STOC finds it expedient to base the first step of its staircase signal at zero luminance level, as is the first step in the staircase adopted by the Commission. NBC contends that a step at this level "has no meaning in terms of picture signal performance" and suggests that, under certain circumstances, its presence may cause errors in the measurement of differential gain and phase. The first staircase step is located so as to permit an assessment of phase errors in the color burst caused by clamping or in video processing. The phase comparison is made with burst and picture test signal at the same level. We believe that other measurements made with the staircase signal will not, in the usual case, be adversely affected by the placement of the first step at burst level.

43. We also note that the STOC staircase, like the corresponding signal adopted by the Commission, has luminance tread levels which do not fall on major divisions of the IRE waveform graticule. IEEE suggests this may make the accurate reading of staircase values more difficult. This does not appear to us to be a substantial deficiency. The peak level of the subcarrier staircase modulation of the STOC signal extends to 110 IRE units, a modification which ABC independently recommends for Commission adoption, since "a subcarrier peak white level of 100 IRE [which the rules prescribe] does not measure the impairment that certain saturated colors may suffer". For the specific purposes that the test signals prescribed in the rules were adopted, we believe that test signal amplitudes should be limited to the reference white level; with this restriction the possibility of adverse secondary effects from their transmission is minimized. Also, even with the modern demodulators which the Commission is requiring to be used for test signal monitoring, residual quadrature distortion, which becomes increasingly severe as signal amplitudes become greater, would be likely to nullify any advantages gained by extending the staircase beyond reference white.[6]

[6] We also note that the proposed STOC line time bar is reached by a step with IT rise time. We have heretofore stated our reservations with respect to its use in a signal for off-the-air monitoring.

44. Having given full consideration to the points raised in the petitions for reconsideration, we find no compelling reason to modify the rules adopted by the second report and order. It is possible that after an extensive period of testing and evaluation, which was suggested both in the comments in this proceeding, and again by the petitioners, test signals might have been adopted which vary in some respects from those now prescribed. However, we are convinced that a consensus resulting from such activities would not come easily or soon, and the end result, while perhaps differing in detail from the present rules, would not depart substantially from that which we have already reached. To the extent some redundancy may exist in the prescribed test signal package, we do not see it as imposing a substantial burden on the broadcaster, or, at this time, as resulting in needlessly great occupation of vertical interval space which might otherwise immediately be devoted to other useful purposes. The availability of all signals affords the broadcaster a considerable degree of flexibility in developing effective procedures for the surveillance of transmitting system performance.

45. From the above discussion it should be quite apparent that, as CBS has stated in its petition, the composite signal which we have adopted is "at variance in many significant details" with proposals of STOC and IEEE subcommittee 2.1.4. This, in CBS's opinion, "could become a source of considerable confusion". However, there are obvious differences of comparable significance between the STOC proposals and recommendations made by IEEE herein, which, we assume, reflect its "proposals". This being the case, it seems reasonable to conclude that our test signals do not depart from any established or recommended standards which have industrywide acceptance, and our action in adopting those signals is as likely to reduce confusion as to create it.

46. For the reasons which we have previously set forth, *It is ordered*, That § 73.676 is amended as set forth below effective January 21, 1972. Other relief requested by the petitioners is hereby denied.

47. Authority for the adoption of this rule amendment is found in section 4(i) and 303(r) of the Communications Act of 1934, as amended.

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

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

Adopted: December 8, 1971.

Released: December 13, 1971.

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

Part 73 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. In § 73.676, the note following paragraph (g) is amended and designated as

Note 2 and a new Note 1 is added to read as follows:

§ 73.676 Remote control operation.

* * * * *

(g) * * *

NOTE 1: Until April 30, 1974, noncommercial educational television broadcast stations on channels 14–70 operating by remote control may calibrate, test, and inspect their equipment at successive times not longer than 1 week apart, without having installed those additional transmitting and/or switching facilities whose availability is required in paragraph (g) as a condition precedent to the adoption of such a schedule.

NOTE 2: Subject to the specific exception set forth in Note 1 appended to paragraph (g), all television broadcast stations on channels 14–70 authorized to operate by remote control prior to April 30, 1971, and not meeting all of the requirements of this section, are afforded a period of 1 year in which to achieve full compliance. On or before April 30, 1972, all such stations shall file new remote control applications, FCC Form 301–A, supplying all information required by § 73.677, and upon a grant thereof, operate in accordance with this section.

[FR Doc.71–18388 Filed 12–15–71;8:50 am]

[Docket No. 17586; FCC 71–1231]

PART 87—AVIATION SERVICES

General Operator Requirements

Memorandum opinion and order. In the matter of amendment of Part 87, aviation services, to include operator requirements for those services.

1. The Commission has before it for consideration a Petition for Reconsideration filed by Aerospace and Flight Radio Coordinating Council (AFTRCC) concerning amendment to Part 87 of the Commission's rules, released July 8, 1970 (Docket 17586), which, among other things, provided that aircraft radiotelephone stations operating on frequencies other than those allocated exclusively to the aeronautical mobile service must be operated only by persons holding, as a minimum, a third class operator's permit, either radiotelephone or radiotelegraph. The petitioner objects to the third class operator requirement and requests that the present § 87.133 be amended to limit the third class operator requirement to stations utilizing frequencies below 30 MHz not exclusively assigned to the aeronautical service, and frequencies above 30 MHz assigned for international use.

2. The petitioner agrees with the primary purpose of the report and order in Docket 17586 which was to place operator requirements in Part 87 in order to obviate reference to Part 13 and because of the differing requirements for the various services. The petitioner further agrees that the Commission relied upon Article 23 of the Radio Regulations of the International Telecommunication Union (ITU) and that the Commission's rules should be in compliance with ITU regulations.

3. Presently, § 87.133 provides, in part, that aircraft radiotelephone stations operating on frequencies other than those allocated exclusively to the aeronautical mobile service must be operated only by persons holding, as a minimum, a third-class operator's permit, either radiotelephone or radiotelegraph. This requirement is in compliance with article 23 of the ITU regulations.

4. The petitioner states that its aerospace company members are now performing their radio communications functions with persons holding a restricted permit in compliance with the requirements of Part 13; however, § 87.133 now requires that these same radio communication functions must be operated by a person holding at least a third-class license which petitioner feels in no way serves a useful purpose such as improved communications, safety of life and property, or improved efficiency. In addition, the petitioner estimates that the relicensing involved would cost between $25,000 and $35,000 by the larger aerospace companies with varying lesser amounts for the smaller companies.

5. AFTRCC has recommended minor modifications of § 87.133 which would keep the Commission's operator requirements in compliance with article 23 of the ITU regulations, eliminate the financial burden of relicensing their operators, and in no way impair the safe and efficient operations of the communication systems involved. In support of its recommendations, AFTRCC relies on article 23, paragraphs 851 and 852 of the ITU regulations which read as follows:

851 (4) Nevertheless, in the service of radiotelephone stations operated solely on frequencies above 30 Mc/s, each government shall decide for itself whether a certificate is necessary and, if so, shall define the conditions for obtaining it.

852 (5) The provisions of No. 851 shall not, however, apply to any ship or aircraft station working on frequencies assigned for international use.

AFTRCC states that the Commission has applied paragraph 851 of the ITU regulations in several parts of its rules (specifically Parts 89, 91, and 93) where thousands of stations are in operation daily, serving the public with no burden in time and economics being placed on the individual operators, or on the Commission for radio operator examinations, processing, and renewals.

6. The Commission agrees that the petitioner's recommendations can be implemented in § 87.133 of the rules keeping in compliance with the ITU radio regulations, thereby eliminating a heavy financial burden on the aerospace industry and not impairing the efficient and safe operation of the radio communication systems involved. An appropriate amendment to the rules is set forth in the attached appendix.

7. In view of the foregoing, the Petition for Reconsideration of AFTRCC is granted and: *It is ordered,* Pursuant to the authority contained in sections 303 (e), (f), and (r) of the Commission's rules of 1934, as amended, that effective January 21, 1972, Part 87 of the Commission's rules is amended as set forth below:

It is further ordered, That this proceeding is hereby terminated.

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

Adopted: December 8, 1971.

Released: December 13, 1971.

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

Section 87.133 is amended to read as follows:

§ 87.133 General operator requirements.

Except as provided for in §§ 87.135, 87.139, or as limited on the face of the operator license or permit, all stations in the Aviation Services shall be operated by persons holding any class of commercial radio operator license or permit issued by the Commission: *Provided,* That, only a person holding a third class or higher operator permit shall operate a station (a) utilizing frequencies below 30 MHz not exclusively assigned to the aeronautical service, or (b) utilizing frequencies above 30 MHz assigned for international use. The licensed operator of a land or aeronautical public service station using telephone may permit other persons to transmit or to communicate under his direct supervision and responsibility over the facilities of the station in accordance with the terms of the station license.

[FR Doc.71–18387 Filed 12–15–71;8:50 am]

Title 49—TRANSPORTATION

Chapter X—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

PART 1033—CAR SERVICE

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

Southern Pacific Transportation Co. Authorized To Operate Over Tracks of the 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:

§ 1033.1083 *Service Order No. 1083* (Southern Pacific Transportation Co. authorized to operate over tracks of the Texas and Pacific Railway Co.)

Service Order No. 1083 be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

(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.71-18419 Filed 12-15-71;8:49 am]

Title 50—WILDLIFE AND FISHERIES

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

PART 28—PUBLIC ACCESS, USE, AND RECREATION

Great Meadows National Wildlife Refuge, Mass.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (12-16-71).

§ 28.28 Special regulations; public access, use, and recreation; for individual wildlife refuge areas.

MASSACHUSETTS

GREAT MEADOWS NATIONAL WILDLIFE REFUGE

Entry to the parking area during daylight hours on foot, bicycle, or by motor vehicle is permitted. Entry by foot or bicycle during daylight hours is permitted on designated travel routes for the purpose of nature study, photography, hiking, skating, or cross country skiing. Pets are permitted on a leash not exceeding 10 feet in length.

The refuge, comprising approximately 2,300 acres, is delineated on a map available at refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, U.S. Post Office and Courthouse, Boston, Mass. 02109.

The provisions of this special regulation supplement the regulations which govern recreation on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 28, and are effective through December 31, 1972.

LARRY K. MALONE, *Refuge Manager, Great Meadows National Wildlife Refuge.*

DECEMBER 3, 1971.

[FR Doc.71-18370 Filed 12-15-71;8:46 am]

PART 28—PUBLIC ACCESS, USE, AND RECREATION

Monomoy National Wildlife Refuge, Mass.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (12-16-71).

§ 28.28 Special regulations; public access, use, and recreation; for individual wildlife refuge areas.

MASSACHUSETTS

MONOMOY NATIONAL WILDLIFE REFUGE

Entrance on the refuge and wilderness area is permitted for the purposes of bird watching, photography, nature study, hiking and swimming during daylight hours. Shellfishing is permitted in conformance with regulations prescribed by the town of Chatham. Tidewater fishing is permitted 24 hours a day. Pets are permitted on a leash not exceeding 10 feet in length. Fires are permitted on the beach. Boats may be beached on the refuge.

The refuge, comprising of 2,696 acres, is delineated on a map available from the Refuge Manager, Great Meadows National Wildlife Refuge, 191 Sudbury Road, Concord, MA 01742 and from the Regional Director, Bureau of Sport Fisheries and Wildlife, U.S. Post Office and Courthouse, Boston, MA 02109.

The provisions of this special regulation supplement the regulations which govern recreation on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 28, and are effective through December 31, 1972.

LARRY K. MALONE, *Refuge Manager, Great Meadows National Wildlife Refuge.*

DECEMBER 3, 1971.

[FR Doc.71-18371 Filed 12-15-71;8:46 am]

PART 33—SPORT FISHING

Arapaho National Wildlife Refuge, Colo.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (12-16-71).

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

COLORADO

ARAPAHO NATIONAL WILDLIFE REFUGE

Sport fishing on the Arapaho National Wildlife Refuge, Colo., is permitted from January 1 through May 31 and August 1 through December 31, 1972, inclusive, on the area designated by signs as open to fishing. This open area is delineated on maps available at refuge headquarters, Walden, CO 80480, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office Box 1306, Albuquerque, NM 87103. Sport fishing shall be in accordance with all applicable State regulations. The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1972.

V. CARROL DONNER, *Refuge Manager, Arapaho National Wildlife Refuge, Walden, Colo.*

DECEMBER 6, 1971.

[FR Doc.71-18368 Filed 12-15-71;8:46 am]

PART 33—SPORT FISHING

Great Meadows National Wildlife Refuge, Mass.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (12-16-71).

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

MASSACHUSETTS

GREAT MEADOWS NATIONAL WILDLIFE REFUGE

Sport fishing and entrance on foot for this purpose are permitted on the Great Meadows National Wildlife Refuge, Concord, Mass.

Areas open to fishing are delineated on maps available at refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, U.S. Post Office and Courthouse, Boston, MA 02109. Sport fishing shall be in accordance with all applicable State regulations.

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

LARRY K. MALONE, *Refuge Manager, Great Meadows National Wildlife Refuge.*

DECEMBER 3, 1971.

[FR Doc.71-18372 Filed 12-15-71;8:46 am]

PART 33—SPORT FISHING

Monomoy National Wildlife Refuge, Mass.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (12-16-71).

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

MASSACHUSETTS

MONOMOY NATIONAL WILDLIFE REFUGE

Sport fishing in tidal waters is permitted from the shores of Monomoy National Wildlife Refuge, Chatham, Mass.

A map of the refuge is available from the Refuge Manager, Great Meadows National Wildlife Refuge, 191 Sudbury Road, Concord, MA 01742, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, U.S. Post Office and Courthouse, Boston, MA 02109. Sport fishing shall be in accordance with all applicable State regulations. Boats may

be beached on the refuge and wilderness areas.

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

LARRY K. MALONE,
Refuge Manager, Great Meadows National Wildlife Refuge.

DECEMBER 3, 1971.

[FR Doc. 71-18373 Filed 12-15-71;8:47 am]

PART 33—SPORT FISHING

Pathfinder National Wildlife Refuge, Wyo.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (12-16-71).

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

WYOMING

PATHFINDER NATIONAL WILDLIFE REFUGE

Sport fishing on the Pathfinder National Wildlife Refuge, Wyo., is permitted from January 1 through December 31, 1972, inclusive, on all areas not designated by signs as closed to fishing. These open areas, comprising 16,807 acres, are delineated on maps available at refuge headquarters, Walden, Colo. 80480, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office Box 1306, Albuquerque, NM 87103. Sport fishing shall be in accordance with all applicable State regulations.

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

V. CARROL DONNER,
Refuge Manager, Pathfinder National Wildlife Refuge, Walden, Colo.

DECEMBER 6, 1971.

[FR Doc.71-18369 Filed 12-15-71;8:46 am]

PART 33—SPORT FISHING

Chautauqua National Wildlife Refuge, Ill.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (12-16-71).

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

ILLINOIS

CHAUTAUQUA NATIONAL WILDLIFE REFUGE

Sport fishing on the Chautauqua National Wildlife Refuge, Havana, Ill., is permitted only on the areas designated by signs as open to fishing. These open areas comprising 3,800 acres are delineated on maps available at the refuge headquarters and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, Federal Building, Fort Snelling, Twin Cities, Minn. 55111. Sport fishing shall be in accordance with all applicable State regulations subject to the following conditions:

(1) The open season for sport fishing on the refuge extends from sunrise to sunset each day during the following periods: from December 15, 1971, through October 15, 1972, in all waters of the Chautauqua National Wildlife Refuge; from October 16 through December 14 in posted areas of Chautauqua Lake, Goofy Ridge Ditch and all waters of the Public Hunting Area.

(2) The use of boats, powered by motors of ten (10) horsepower or less, is permitted in the waters of Lake Chautauqua.

(3) No person shall enter upon or fish from any dike, water control structure or shoreline within the refuge except at the Recretation Area, Boatyard No. 3 or along the cross dike.

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 December 31, 1972.

JOHN E. TOLL,
Refuge Manager, Chautauqua National Wildlife Refuge, Havana, Ill.

DECEMBER 7, 1971.

[FR Doc.71-18411 Filed 12-15-71;8:49 am]

PART 33—SPORT FISHING

Long Lake National Wildlife Refuge, N. Dak.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (12-16-71).

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

NORTH DAKOTA

LONG LAKE NATIONAL WILDLIFE REFUGE

Sport fishing on the Long Lake National Wildlife Refuge, Moffit, N. Dak., is permitted on refuge waters. These open areas, comprising 3,625 acres, 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 special conditions:

(1) The open season for winter sport fishing on the refuge extends from December 15, 1971, to March 15, 1972.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuges generally which are set forth in Title 50, Part 33, and are effective through March 15, 1972.

LOUIS S. SWENSON,
Refuge Manager, Long Lake National Wildlife Refuge, Moffit, N. Dak.

DECEMBER 8, 1971.

[FR Doc.71-18412 Filed 12-15-71;8:49 am]

PART 33—SPORT FISHING

Upper Souris National Wildlife Refuge, N. Dak.; Correction

In F.R. Doc. 71-16372, appearing on page 21520 of the issue for Tuesday, November 9, 1971, subparagraph (6) under special conditions should read as follows:

(6) Operation of snowmobiles within the refuge boundaries is prohibited.

DON R. PERKUCHIN,
Refuge Manager, Upper Souris National Wildlife Refuge, Foxholm, N. Dak. 58738.

DECEMBER 8, 1971.

[FR Doc.71-18413 Filed 12-15-71;8:49 am]

Title 4—ACCOUNTS

Chapter III—Cost Accounting Standards Board

ADMINISTRATION

The Cost Accounting Standards Board was created by Public Law 91-379 to establish cost accounting standards, to provide for disclosure of cost accounting practices of contractors, and to make, promulgate, amend, and rescind implementing rules and regulations. The promulgations of the Board are binding upon certain defense contractors and subcontractors and must be used by all relevant Federal agencies.

The accompanying regulations which are hereby codified in Chapter III of Title 4 of the Code of Federal Regulations comprise the initial publication of regulatory material by the Cost Accounting Standards Board. They consist of five parts, as follows:

Part 301—General Information and Organization.
Part 302—Responsibilities and Conduct.
Part 303—Release of Information.
Part 304—Delegations of Authority.
Part 305—Cost Accounting Standards Board Bylaws.

Part 301 sets forth in general terms the organizational and administrative structure of the Cost Accounting Standards Board. Part 302 sets forth the detailed provisions concerning the ethics and standards of conduct for Cost Accounting Standards Board members and employees. Part 303 contains regulations implementing the Public Information Section of the Administrative Procedure Act. Part 304 sets forth continuing delegations of Authority by the Cost Accounting Standards Board of interest to the

general public. Part 305 sets forth the bylaws which govern the conduct of Board meetings. In the near future, the Board will publish its initial rules and regulations relating to disclosure statements and cost accounting standards. It is anticipated that disclosure provisions will begin at Part 351 and Standards at Part 401 or Title 4, Chapter III of the Code of Federal Regulations.

SUBCHAPTER A—ADMINISTRATION

PART 301—GENERAL INFORMATION AND ORGANIZATION

Subpart A—Organization

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301.1 Purpose.
301.2 General statement of the Board's functions.
301.3 Methods.
301.4 Offices.
301.5 Views and comments.
301.6 Public hearings.
301.7 Formal submission.
301.8 Final publication.
301.9 Transmittal to the Congress.
301.10 Organization and delegation of authority.
301.11 Availablity of information and materials.

AUTHORITY: The provisions of this Part 301 are issued under 84 Stat. 796, sec. 103; 50 U.S.C. App. 2168.

Subpart A—Organization

§ 301.1 Purpose.

This part together with Part 303, Release of Information, and Part 304, Delegations, of this chapter is published in compliance with Public Law 90–23, section (a)(1), 5 U.S.C. 552(a)(1), and constitutes a description of the Cost Accounting Standards Board.

§ 301.2 General statement of the Board's functions.

In general, the Board promulgates cost accounting standards designed to achieve uniformity and consistency in the cost accounting practices followed by defense contractors. It also promulgates rules and regulations for the implementation of such standards.

§ 301.3 Methods.

In carrying out its functions, the Cost Accounting Standards Board utilizes the following methods.

(a) The Board employs a staff consisting of various specialists dealing with particular areas of administrative and technical work, who advise the Board and perform duties assigned to them or which have been specifically delegated to them.

(b) Rules are published in the FEDERAL REGISTER and codified in this Title 4 of the Code of Federal Regulations. These rules may be inspected in the Board's offices or purchased from the Superintendent of Documents, Government Printing Office. The published rules include:

(1) Procedural regulations which govern the formal and informal methods whereby persons dealing with the Board can present information to the Board to enable the Broad to promulgate rules, regulations, and cost accounting standards and to perform other duties for which it is responsible under section 719 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2168).

(2) Rules, regulations, and cost accounting standards which prescribe for relevant Federal agencies and for defense contractors and subcontractors various substantive and procedural requirements relating to cost accounting standards for use in connection with defense contracts.

(3) Regulations delegating matters to the Board's staff and describing how the public may deal with the Board in obtaining information.

(4) Board bylaws which govern Board membership, meetings, and formal action by Board vote.

(c) The Board may at its discretion respond to requests for interpretation of its rules, regulations, and cost accounting standards.

§301.4 Offices.

The Cost Accounting Standards Board's offices are located in the General Accounting Office Building, 441 G Street NW., Washington, DC 20548. The hours of business for the Board are 8:30 a.m. to 5 p.m., local time, Monday through Friday, excluding holidays observed by the Federal Government in Washington, D.C.

§ 301.5 Views and comments.

Proposed rules, regulations, or cost accounting standards of the Cost Accounting Standards Board shall be published for comment in the FEDERAL REGISTER. All parties affected thereby shall be afforded a period of not less than 30 days in which to submit to the Board their views and comments on the proposal; but in exceptional cases, the Board may provide for fewer than 30 days for the submission of views and comments. When fewer than 30 days are allowed, the Board notice inviting views and comments shall state the reasons therefor.

§ 301.6 Public hearings.

Public hearings to assist the Board in developing its rules, regulations, and cost accounting standards may be held to the extent the Board in its sole discretion deems desirable. Notices of such hearings shall be given by publication in the FEDERAL REGISTER.

§ 301.7 Formal submission.

All formal submissions required or permitted to be made to the Board under the rules, regulations, or cost accounting standards should be addressed to the Cost Accounting Standards Board, 441 G Street NW., Washington, DC 20548, in an original and two copies, unless otherwise provided by the rule, regulation, or standard under which submission is made. Where no form requirement is there specified, submission in letter or other reasonable form will be accepted.

§ 301.8 Final publication.

Any proposed rule, regulation, or cost accounting standard required to be published under section 719(i)(A) of the Defense Production Act of 1950, as amended, 50 U.S.C. App. 2168(i)(A), shall be published in the FEDERAL REGISTER after the Board has considered views and comments submitted pursuant to § 301.5 and any public hearing held pursuant to § 301.6.

§ 301.9 Transmittal to the Congress.

Transmittal to the Congress of any proposed rule, regulation, or cost accounting standard as required by section 719(h)(3) of the Defense Production Act of 1950, as amended, 50 U.S.C. App. 2168(h)(3), shall be made simultaneously with final publication of the proposed rule, regulation, or cost accounting standard as provided for in § 301.8.

§ 301.10 Organization and delegation of authority.

The Board, consisting of the Comptroller General of the United States who is the Chairman and four Board members appointed by him for terms of 4 years, acts to carry out the duties and responsibilities of the Cost Accounting Standards Board, established by Public Law 91–379, 84 Stat. 796, 50 U.S.C. App. 2166, 2168. The Board's staff of professional, technical, and supporting personnel is directed and supervised by the Executive Secretary. Delegations of authority to the Executive Secretary and other staff members are described in detail in Part 304 of this Title 4.

§ 301.11 Availability of information and materials.

The Board publishes a regulation in 4 CFR Part 303 concerning the availability for inspection and copying of Board records. That regulation states in detail what information is available, and what and where records may be inspected. Generally speaking, the following records are maintained and available.

(a) Minutes of Board meetings.

(b) Substantive regulations of general applicability and general policy and interpretation of general applicability.

(c) Rules, regulations, and cost accounting standards issued pursuant to section 719 of the Defense Production Act of 1950, as amended, 50 U.S.C. App. 2168.

(d) A record of every Board proceeding including the final votes of each member of the Board participating in the proceeding.

PART 302—RESPONSIBILITIES AND CONDUCT

Subpart A—General Provisions

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302.1 Purpose.
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Subpart D—Regulation Governing Ethical and Other Conduct and Responsibilities of Special Government Employees

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Subpart E—Prohibited Activities by Formerr Employees

302.61 Prohibited activities.

Subpart F—Regulation Governing Statements of Employment and Financial Interests

302.71 Form and content of statements.
302.72 Requirement to submit statements.
302.73 Employees not required to submit statements.
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302.81 Confidentiality of statements.
302.82 Review of statements by the Chairman.
302.83 Review of statements by the Executive Secretary.
302.84 Findings of no conflict of interest.
302.85 Findings of conflict of interest.
302.86 Effect of employees' statements on other requirements.
302.87 Specific provisions for special Government employees.
302.88 Waiver of statements from certain special Government employees.
302.89 Time for submission of statements by special Government employees.
302.90 Circumstances requiring statements from special Government employees.

AUTHORITY: The provisions of this Part 302 are issued under 84 Stat. 796, sec. 103; 50 U.S.C. App. 2168.

Subpart A—General Provisions

§ 302.1 Purpose.

The Government service requires the maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by Government employees and special Government employees to assure the proper performance of Government business and the maintenance of confidence by citizens in their Government. This is especially true of service in the Cost Accounting Standards Board because of the unique functions and special trust placed upon the Board as an agent of the Congress. Board members, employees, and special Government employees are, therefore, expected and required to exercise informed judgments to avoid misconduct and conflicts of interest and the appearance of conflicts of interest. In accordance with these concepts, this regulation sets forth the regulations and policies of the Cost Accounting Standards Board which prescribe standards of conduct and responsibilities including guidance on conflict of interest laws and the requirement for reporting employment and financial interests for its Board members, employees, and special Government employees.

§ 302.2 Definitions.

In this regulation:

(a) Board means the Cost Accounting Standards Board, established by section 719 of the Defense Production Act of 1950, as amended, added by section 103 of Public Law 91-379, 84 Stat. 795.

(b) Chairman means the Comptroller General of the United States or, in the event of the absence or incapacity of the Comptroller General or during a vacancy in the office, the official of the General Accounting Office acting as Comptroller General.

(c) Board member means the Chairman and a person appointed by him pursuant to section 719(a) of Public Law 91-379.

(d) Executive Secretary means the employee appointed by the Board as Executive Secretary pursuant to section 719 (b) of Public Law 91-379, or in the event of the absence or incapacity of the Executive Secretary or during a vacancy in that position, the employee delegated or designated to act as Executive Secretary.

(e) Employee means an officer or employee of the Board other than a special Government employee.

(f) Special Government employee means an officer or employee who is retained, designated, appointed, or employed to perform, with or without compensation, for a period not to exceed 130 days during any period of 365 days, temporary duties for the Board either on a full-time or intermittent basis (18 U.S.C. 202).

(g) Person means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

(h) Former employee means a former Board employee or former special Government employee of the Board, as defined in paragraph (f) of this section.

(i) Words importing the masculine gender include the feminine as well, and words importing the plural include the singular.

§ 302.3 Interpretation and advisory service.

The Executive Secretary, with the approval of the Chairman shall designate a Counselor for the Board who shall be responsible for providing counseling services and authoritative advice and guidance to Board members, employees, and special Government employees who seek advice and guidance from him on conflicts of interest questions.

§ 302.4 Compliance.

(a) The Chairman shall be responsible for seeing to it that this regulation is fully compiled with and for issuing whatever supplementary instructions are deemed desirable. Except as otherwise specifically provided for in this regulation, any matter coming within the provisions of this regulation arising in the Board will be referred immediately to the Chairman for appropriate disposition.

(b) Employees of another agency of the Government who are detailed to the Board for a period of time which is anticipated to equal or exceed 1 year shall submit a signed statement to the Executive Secretary that they are conducting themselves in compliance with the standards, rules, or regulations of conduct in force in their own detailing agency. Since their own agency regulations cover similar subject matter, they will not be required to comply with this regulation, except as to the necessity for obtaining consent to certain outside activities including teaching, speaking, and writing for publication (see § 302.38(b)).

§ 302.5 Disciplinary and other remedial actions.

(a) A violation of any part of this regulation by a Board member, employee, or special Government employee may be cause for appropriate disciplinary action which may be in addition to any penalty prescribed by law.

(b) When, after consideration of the explanation of the employee or special Government employee provided by § 302.85, the Chairman decides that remedial action is required, he shall take immediate steps to end the conflict of interest or the appearance of conflict of interest. Remedial action may include one or more of the following, but is not limited to them:

(1) Changes in assigned duties;

(2) Divestment by the employee or special Government employee of his conflicting interest;

(3) Disciplinary action;

(4) Disqualification for a particular assignment.

§ 302.6 Effecting disciplinary and remedial actions.

Remedial action, whether disciplinary or otherwise, shall be effected in accordance with applicable laws and regulations.

§ 302.7 Release of information.

(a) The Board may from time to time publish or release statements of practice and policy, as well as those matters required to be published, or made available to the general public by 5 U.S.C. 552 and those proposed and final standards, rules, and regulations required to be published in the FEDERAL REGISTER by section 719 of Public Law 91-379.

(b) Proposals, working papers, staff papers, and similar writings which have not been so published or made available to the general public shall be considered as privileged internal Board matters, and no publication of them or comments on them shall be made to the general public, and no information relating to them shall be divulged to the general public by any Board member, employee, or special Government employee, without prior approval of the Chairman.

(c) The prohibition contained in this paragraph regarding premature release or discussion of internal Board matters is not intended in any way to prevent or hamper Board members, employees, or special Government employees from correspondence or discussion of Board matters and writings with others in the proper discharge of their duties. It is, however, designed to facilitate confidential discussions within the Board and to prevent disclosure of confidential or nonpublic information. It is in addition to statutory prohibitions and other provisions of this regulation (see §§ 302.32, 302.33, 302.38, 302.52, and 302.53) covering use of information obtained as a result of membership on or employment with the Board.

§ 302.8 Distribution of regulation.

(a) A copy of this regulation shall be furnished each Board member, employee, and special Government employee.

(b) Copies of pertinent laws and instructions relating to ethical and other conduct will be made available in the Office of the General Counsel of the Board, upon request by Board members, employees, and special Government employees.

Subpart B—Regulation Governing Ethical and Other Conduct and Responsibilities of Board Members

§ 302.11 General provisions.

(a) A Board member who is also an officer or employee of an agency or department in the legislative or executive branch of the U.S. Government or of any independent agency of the United States or of the District of Columbia is subject to the laws, regulations, and requirements affecting that office or employment and shall be subject to this regulation only to the extent that it establishes duties or responsibilities relating particularly to service with the Cost Accounting Standards Board.

(b) All other Board members are employees or special Government employees as defined in § 302.2. They are subject to the provisions of this regulation as employees or as special Government employees, except in those cases where a rule or requirement is stated herein as applicable specifically to Board members. (See §§ 302.5(a), 302.72(a), 302.75 (a), and 302.82.)

Subpart C—Regulation Governing Ethical and Other Conduct and Responsibilities of Employees

§ 302.21 General policy on conduct.

The personal demeanor of employees of the Board is subject to the closest public and official scrutiny; and as representatives of the Board, employees are judged by their personal associates and activities as well as by their official actions and conduct. In all their dealings, employees of the Board shall so conduct themselves as to permit no reasonable basis for suspicion of unethical conduct or practices. The obligation to protect fully the interests of the Government as a whole and the Board as an agency of the Congress, demands the avoidance of circumstances which invite conflict between self-interest and the integrity of employment with the Board. Loyalty to the Board and its programs and purposes is a necessary attribute.

§ 302.22 Proscribed actions.

An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving improper preferential treatment to any person;

(c) Impeding Government efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making a Government decision outside official channels; or

(f) Affecting adversely the confidence of the public in the integrity of the Government or its operations.

§ 302.23 Gifts, entertainment, and favors.

Except as provided in §§ 302.24 and 302.27 of this subpart, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

(a) Has, or is seeking to obtain, contractual or other business or financial relations with the Federal Government;

(b) Conducts operations or activities that are subject to audit, investigation, decision, or regulation by the Board;

(c) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

§ 302.24 Permissible gifts, entertainment, and favors.

Despite the limitations established by § 302.23 of this subpart, the following exceptions are made:

(a) A gift, gratuity, favor, entertainment, loan, or other similar favor of monetary value may be accepted by the employee when it or they stem from a family or personal relationship, such as those between the employee and his parents, children, or spouse, and when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors.

(b) Food and refreshments of nominal value may be accepted on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where the employee may properly be in attendance.

(c) Loans from banks and other financial institutions may be accepted on customary terms to finance the proper and usual activities of employees, such as home mortgage loans.

(d) Unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal value may be accepted.

§ 302.25 Gifts to superiors.

An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift presented as a contribution from an employee receiving less pay than himself (5 U.S.C. 7351).

§ 302.26 Gifts from foreign governments.

An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the U.S. Constitution and in Public Law 89-673, 80 Stat. 952.

§ 302.27 Reimbursement of travel and living expenses.

Neither § 302.23 nor § 302.38 of this subpart precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this subpart when not engaged on official business. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits. When traveling on official business, no reimbursement may be accepted from private sources.

NOTE: Notwithstanding this paragraph, the requirements relating to the acceptance of contributions and awards, travel, subsistence and other expenses in section 4111(a), 5 U.S.C. and the regulations thereunder in Subpart G, Part 410, Book III, Supplement 990-1, Federal Personnel Manual, continue to apply.

§ 302.28 Indebtedness of employees.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For the purposes of this paragraph, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, and "in a proper and timely manner" means in a manner which the Board determines does not, in the circumstances, reflect adversely on

the Board as his employer. In the event of a dispute between an employee and an alleged creditor, this paragraph does not require the Board to determine the validity of the disputed debt.

§ 302.29 Reports on indebtedness.

While the Board will not become a collection agency for private creditors of an employee, each complaint of nonpayment of a debt will be referred to the employee concerned and the employee will be requested to report in writing as to what he proposes to do about the debt.

§ 302.30 Gambling, betting, and lotteries.

An employee shall not participate, while on Government owned or leased property or while on duty for the Government, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

§ 302.31 Use of Government property.

An employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to him.

§ 302.32 Misuse of information.

For the purpose of furthering a private interest, an employee shall not, except as provided in section (b) of this subpart, directly or indirectly use, or allow the use of, official information obtained through or in connection with his Government employment which has not been made available to the general public.

§ 302.33 Prohibited financial interests.

An employee shall not:

(a) Have a direct or indirect financial interest that conflicts substantially or appears to conflict substantially with his Government duties and responsibilities.

(b) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his Government employment.

§ 302.34 Bribery, graft, and conflicts of interest.

An employee shall not engage in acts prohibited by chapter 11 of title 18, United States Code, relating to bribery, graft, and conflicts of interest as appropriate to the employee concerned. Three of the more important "conflict of interest" provisions are summarized as follows:

(a) An employee may not, except as provided by law for the proper discharge of his official duties, receive, agree to receive, ask, or seek any compensation for services by him or another in connection with any proceeding, request for a ruling, or other determination before any Government agency or officer in which the United States is a party or has a direct and substantial interest (18 U.S.C. 203).

(b) An employee may not, except in the discharge of his official duties, represent anyone else (with or without compensation) before a court or Government agency in a matter in which the United States is a party or has a direct or substantial interest (18 U.S.C. 205).

(c) An employee shall not receive any salary or anything of monetary value from a private source as compensation for his services to the Government (18 U.S.C. 209).

§ 302.35 Conflicts resulting from assignments.

An employee will not participate in any audit, investigation, survey, examination, ruling, decision or determination, contract, claim, controversy, or other matter before the Board in which he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest, with the following exceptions:

(a) The employee need not disqualify himself if his financial holdings are in shares of widely held diversified mutual funds or regulated investment companies in which he does not serve as director, officer, partner, or advisor. The indirect interest in business entities which the holder of shares in a widely diversified mutual fund or regulated investment company of stocks in business entities is hereby exempted from the provisions of 18 U.S.C. 208(a) in accordance with the provisions of 18 U.S.C. 208(b)(2) as being too remote or inconsequential to affect the integrity of the employee's services.

(b) If the employee first informs the Chairman through the Executive Secretary, in writing, of the nature and circumstances of the audit, investigation, survey, examination, ruling, decision or determination, contract, claim, controversy, or other matter in which he is participating and makes full disclosure of the financial interest and receives in advance a written determination made by the Chairman that the interest is not so substantial as to be deemed likely to affect the integrity of the employee's services, the employee need not consider himself disqualified (18 U.S.C. 208(b)).

§ 302.36 Disqualification procedure.

Where the employee, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person with whom he is negotiating or has an arrangement concerning prospective employment, has a financial interest in any matter in which he is participating as part of his official duties, he will so inform the Chairman through the Executive Secretary, in writing, and he will thereupon be relieved of his duties and responsibilities in that particular matter unless the Executive Secretary, after consultation with and the approval of the Chairman finds that pursuant to § 302.35(b) of this subpart, the interest is too remote or too inconsequential to affect the integrity of the employee's services, in which case the Chairman will so notify the employee in writing. In cases of disqualification of the employee, the assignment of the employee will be changed, or the matter will be reassigned to another employee. A memorandum of disqualification will be made and forwarded by the Chairman to the employee with copies to the Executive Secretary and the Counselor for the Board.

§ 302.37 Nondisqualifying interests.

This subpart does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by applicable law or regulations.

§ 302.38 Outside employment and other activity.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his Government employment. Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, a conflict of interest;

(2) Outside employment which tends to impair his mental or physical capacity to perform his Government duties and responsibilities in an acceptable manner.

(b) Employees may (subject to the provisions of paragraph (c)(3) of this section) engage in teaching, lecturing, and writing that is not prohibited by law or these regulations. An employee shall not, however, either for or without compensation, engage in teaching, lecturing, or writing, including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Civil Service Commission or Board of Examiners for the foreign service, that depends on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the Chairman gives written authorization for the use of nonpublic information on the basis that such use is in the public interest.

(c) This paragraph does not preclude an employee from:

(1) Participation in the activities of national or State political parties not precluded by law;

(2) Participation in the affairs of or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit, educational and recreational, public service, or civic organization;

(3) Outside employment when permission has been granted in advance by the

Executive Secretary or his designee, and the employee has been notified in writing of the approval. This permission will be granted in accordance with the following policies, procedures, and limitations:

(i) In considering requests for outside employment, the following criteria will be applied—the provisions of applicable law, the regulations and policies incorporated in this subpart including the possibility of conflicts of interest, the general attendance record of the employee, the nature of his official duties in relation to the nature of the duties which will comprise the outside employment; the financial need or other justification for such outside employment, and the hours of work required by the outside employment;

(ii) An employee will request permission to engage in outside employment by executing, in full, GAO Form 256 (Rev. 10/67) and forwarding it through his immediate supervisor to the Executive Secretary or his designee;

(iii) The Executive Secretary or his designee will, upon receipt of a fully executed GAO Form 256 (Rev. 10/67), evaluate the request in light of existing law and policies and regulations;

(iv) The Executive Secretary or his designee will officially approve or disapprove the request, and the employee will be notified. If the action taken on the request is not agreed to by the employee, the request and all recommendations will be submitted to the chairman for ultimate determination. The chairman will thereupon consider the entire record, make the final determination, and cause the employee to be notified;

(v) Grants of permission to engage in outside employment will normally expire 3 calendar years from the date of last issue, unless sooner revoked or modified. Permission to engage in outside employment which is about to expire will be considered for renewal upon receipt of a request on GAO Form 256 (Rev. 10/67). Procedures for renewal will be the same as those for original application and should be made, if continuity of permission is desired, from 30 to 60 days before the expiration of current permission;

(vi) Permission to engage in outside employment extends only to the specific employment described in the request considered. New requests must be made in writing in accordance with these procedures to cover any changes or modifications in outside employment;

(vii) An employee with permission to engage in outside employment will not hold himself out to the public as an attorney or accountant by such means as:

(*a*) Placing his name on an office door,

(*b*) Having his name listed in the classified section of the telephone directory, or

(*c*) Using business stationery with his name on letterheads or envelopes.

(viii) Permission to engage in outside employment will not be granted for the purpose of representing clients in court or before Government agencies except in rare cases when permission may be granted for specific appearances;

(ix) An employee may be permitted to engage in income tax work and to sign income tax returns as a preparer, provided:

(*a*) The taxpayer has no Government contracts and has no business with the U.S. Government,

(*b*) The employee does not in any manner intercede with or appear for the taxpayer before the Internal Revenue Service, the courts, or other Government body.

(x) An employee may not use his employment with the Board as a means of soliciting or obtaining outside employment;

(xi) An employee may not engage in outside employment while he is on sick leave from his duties. Deviations from this policy may be permitted in rare instances when prior approval is obtained from the Executive Secretary;

(xii) Employees in grades equivalent to GS-13 and higher will not, normally, be given permission to engage in outside employment. Exceptions will be made for good and sufficient reasons, such as where a critical need exists for additional income by the employee or where the employment is found to be in the public interest in terms of opportunity for valuable experience beneficial both to the employee and to the Board. Each request for an exception under this paragraph shall be in sufficient detail to permit a judgment that it is merited. If an exception is made for employees in grades equivalent to GS-13 and higher, permission will be granted for 1-year intervals.

§ 302.39 Articles and speeches.

Employees who prepare, with or without compensation, articles for publication and speeches for delivery shall submit drafts thereof to the Executive Secretary or his designee prior to publication or delivery when:

(a) Any reference is made or to be made to the employee's employment by the Board.

(b) The subject of the article or speech concerns the work of the Board.

§ 302.40 File of articles and speeches.

The Board Library will maintain a permanent file of all published articles and speeches by employees of the Board. In order that this file be complete and current each employee who has had an article published or has made a speech shall send two copies thereof to the library.

§ 302.41 General conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, immoral, or notorious disgraceful conduct, or other conduct prejudicial to the Government, nor shall he conduct himself in such a manner as to give rise to a reasonable belief that he is engaging in criminal, infamous, immoral, or notorious disgraceful conduct.

§ 302.42 Miscellaneous statutory provisions.

Each employee will acquaint himself with each statute that relates to his ethical and other conduct as an employee of the Board with particular reference to the following:

(a) House Concurrent Resolution 175, 85th Congress, second session, 72 Stat. B12, the "Code of Ethics for Government Service."

(b) Chapter 11 of title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(f) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

(g) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(h) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(i) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(j) The prohibition against interference with civil service examinations (18 U.S.C. 1917).

(k) The prohibition against fraud or false statement in a Government matter (18 U.S.C. 1001).

(l) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(m) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(n) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(o) The prohibition against unauthorized use of documents relating to claims from or by the Government.

(p) The prohibition against proscribed political activities—in subchapter III of chapter 73 of title 5, United States Code, and 18 U.S.C. 602, 603, 607, and 608.

(q) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

Excerpts from the more important statutes of general applicability are quoted in Appendix A to Comptroller General's Order No. 1.21.

Subpart D—Regulation Governing Ethical and Other Conduct and Responsibilities of Special Government Employees

§ 302.51 Use of Government employment.

A special Government employee shall not use his Government employment for

a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he has family, business, or financial ties.

§ 302.52 Use of inside information.

A special Government employee shall not use inside information obtained as a result of his Government employment for private gain for himself or another person either by direct action on his part or by counsel, recommendation, or suggestion to another person, particularly one with whom he has family, business, or financial ties. For the purposes of this paragraph, "inside information" means information obtained by reason of his Government employment which has not been made available to the general public.

§ 302.53 Teaching, lecturing, and writing.

A special Government employee may, without prior approval, teach, lecture, or write in a manner not otherwise inconsistent with §§ 302.32 and 302.38 of Subpart C of this regulation.

§ 302.54 Coercion.

A special Government employee shall not use his Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or another person, particularly one with whom he has family, business, or financial ties.

§ 302.55 Gifts, entertainment, and favors.

Except as provided in § 302.24 of Subpart C of this regulation (as in the case of employees), a special Government employee, while so employed or in connection with his employment, shall not receive or solicit, either for himself or another person, particularly one with whom he has family, business, or financial ties, anything of value as a gift, gratuity, loan, entertainment, or favor from a person who:

(a) Has, or is seeking to obtain, contractual or other business or financial relations with the Board.

(b) Has an interest that may be substantially affected by the performance or nonperformance of his official duties.

§ 302.56 Miscellaneous statutory provisions.

Each special Government employee shall acquaint himself with each statute that relates to his ethical and other conduct as a special Government employee of the Board and the Government with particular reference to the statutes cited in § 302.42 of Subpart C of this regulation and the following:

(a) A special Government employee may not, otherwise than as provided by law for the proper discharge of his official duties, receive or agree to receive, or solicit any compensation for any services by himself or another, and may not, except in the proper discharge of his duties, represent or assist anyone, with or without compensation, before a department, agency, court, court-martial, officer, or any civil, military, or naval commission, in connection with a particular matter in which the United States is a party or has a direct or substantial interest: *Provided, however,* That these restrictions apply to a special Government employee only in relation to a particular matter involving a specific party or parties:

(1) In which he has at any time participated personally and substantially as a Government employee or special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise; or

(2) Which is pending in the department or agency of the Government in which he is serving, except that this provision (§ 302.56(a)(2) of this subpart) shall not apply when he has served in such department or agency no more than 60 days during the immediately preceding period of 365 days. He is bound by the restraint of this provision despite the fact that the matter is not one in which he has ever participated personally and substantially (18 U.S.C. 203, 205).

(b) A special Government employee shall not participate in his governmental capacity in any matter in which to his knowledge he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest (18 U.S.C. 208).

(c) After his Government employment has ended, a special Government employee is subject to the prohibition pertaining to a "former employee" in matters connected with his former duties (18 U.S.C. 202(a), 207).

(d) To the extent that the conflict of interest statutes apply to a special Government employee, they apply to his activities on all days during the period of his appointment to the Board, beginning with the date on which he takes an oath of office as a Government employee, whether he works on a full-time or intermittent basis. Similarly, the ethical standards prescribed in this subpart apply to the special Government employee during the full period of his appointment as an employee, and not merely on the days on which he performs services as an employee.

Subpart E—Prohibited Activities by Former Employees

§ 302.61 Prohibited activities.

A former employee shall not:

(a) At any time after his Government employment has ended, knowingly represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (18 U.S.C. 207(a)).

(b) For 1 year after his Government employment has ended, appear personally before any court or Government agency as agent or attorney for anyone other than the Government in connection with a matter in which the Government is a party or has a substantial interest and which was under his official responsibility as an employee of the Government at any time during the last year of his Government employment (18 U.S.C. 202(b) and 207(b)).

Subpart F—Regulation Governing Statements of Employment and Financial Interests

§ 302.71 Form and content of statements.

(a) The statements of employment and financial interests required to be submitted by this subpart shall contain, as a minimum, the information required by GAO Form 310 (Rev. September 67) and GAO Form 311 (Rev. September 67), respectively.

(b) The submission of a statement of employment and financial interests is not intended to relieve the employee from complying with other applicable provisions of law or this regulation. In particular, the employee is not thereby permitted to participate in a matter where such participation is prohibited by 18 U.S.C. 208.

§ 302.72 Requirement to submit statements.

Except as otherwise provided in this regulation, statements of employment and financial interests (GAO Form 310, Rev. September 67) will be required from the following:

(a) Board members and the Executive Secretary and any staff assistant to a Board member. Any Board member filing equivalent statements of employment and financial interests in connection with his employment at another Federal agency shall not be required to submit this information in connection with employment at the Board.

(b) Employees in positions equivalent to grades GS-14 or above under the Federal Employees Classification Act.

(c) Special Government employees, subject to the provisions of §§ 302.87–302.90, inclusive, of this subpart.

§ 302.73 Employees not required to submit statements.

Employees in positions equivalent to grades GS-13 and below under the Federal Employees Classification Act are excluded from the reporting requirement of § 302.72 of this subpart. The likelihood of their involvement in a conflicts-of-interest situation is remote or the degree of supervision over them and the review of their work is such that the integrity of the Government is protected. This paragraph does not in any way modify or limit any employee's responsibilities under §§ 302.33–302.36, inclusive, of Subpart C of this regulation.

§ 302.74 Employee's complaint on filing requirement.

An employe who feels that his position has been improperly included by this subpart as one requiring the submission of a statement of employment and financial interests may obtain a review of that

requirement by filing a grievance with the Chairman.

§ 302.75 Where to submit statements.

(a) The Chairman will file a statement of employment and financial interests (GAO Form 310) with the Director, Office of Personnel Management, General Accounting Office, who will retain it. The other Board members, the Executive Secretary and staff assistants will file a statement of employment and financial interests (GAO Form 310) with the Chairman.

(b) Employees required to submit a statement of employment and financial interests will submit their statements (GAO Form 310) to the Executive Secretary.

§ 302.76 When to submit statements.

Each employee required to submit a statement of employment and financial interests shall submit that statement to the appropriate officer designated in § 302.75 of this subpart.

(a) Ninety days after the effective date of this regulation, if employed on or before that effective date (unless the employee has already submitted a statement as required by this regulation and that statement continues to be accurate).

(b) Thirty days after his entrance on duty in or after his promotion to a position subject to this subpart.

§ 302.77 Supplementary statements.

Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of June 30 of each year in which the changes occur. If no changes or additions occur, a negative report is required. Notwithstanding the filing of the annual report required by this paragraph, each employee shall at all times avoid acquiring a financial interest that could result in taking an action that would result in a violation of the conflicts-of-interest provisions of section 208 of title 18, United States Code, or Subparts C and D of this regulation.

§ 302.78 Interests of employees' relatives.

The interest of a spouse, minor child, or other member of an employee's immediate household is considered to be an interest of the employee. For the purpose of this paragraph, "member of an employee's immediate household" means those relatives by blood who are residents of the employee's household.

§ 302.79 Information not known by employees.

If any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in his behalf.

§ 302.80 Information not required.

(a) This regulation does not require an employee to submit on a statement of employment and financial interests or supplementary statement any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this paragraph, education and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

(b) An employee need not report on his statement of employment and financial interests shares of widely held, diversified mutual funds or regulated investment companies in which he does not serve as director, officer, partner, or advisor. The indirect interest in business entities which the holder of shares in a widely diversified mutual fund or regulated investment company derives from ownership by the fund of investment company of stocks in business entities is considered too remote or inconsequential to affect the integrity of the employee's services.

§ 302.81 Confidentiality of statements.

Statements of employment and financial interests and supplementary statements shall be retained in a confidential file secured in an appropriate manner by the Chairman or the Executive Secretary. No persons other than the Chairman or the Executive Secretary, as to employees or special Government employees under his direction, or the Counselor for the Board shall have access to such statements and then only to carry out the purposes of this regulation. No disclosure of information shall be made from such statements except as specifically authorized by the Chairman for good cause shown.

§ 302.82 Review of statements by the Chairman.

The Chairman and the Counselor for the Board, if requested to do so by the Chairman, will review each statement of employment and financial interests and each supplementary statement submitted directly to the Chairman by reason of § 302.75(a) of this subpart, as well as all relevant information from other sources incident thereto to determine whether there are any conflicts of interest or apparent conflicts of interest. Where no conflicts of interest or apparent conflicts of interest are found, the cases will be considered resolved unless other pertinent information becomes available. If questions of conflicts of interest or apparent conflicts of interest arise, pertinent procedures established for employees and special Government employees elsewhere in this regulation will be followed.

§ 302.83 Review of statements by the Executive Secretary.

The Executive Secretary, for other employees or special Government employees, together with the Counselor for the Board, will review each statement of employment and financial interests, each supplementary statement, and all relevant information from other sources, if any, to determine whether there are any conflicts of interest or apparent conflicts of interest on the part of the employee or special Government employee submitting the statement. If it is pertinent to a conflict-of-interest decision, the Executive Secretary may request the employee or special Government employee to supplement the information on GAO Form 310 or GAO Form 311 by stating the number or amount of shares, stock options, bonds, and other securities owned by him, his spouse, minor child, or other members of his immediate household.

§ 302.84 Findings of no conflict of interest.

If the Executive Secretary believes that there are no conflicts of interest or apparent conflicts of interest in individual cases, the matter will be considered resolved unless other information on the case becomes available or circumstances change.

§ 302.85 Findings of conflict of interest.

With respect to statements of employment and financial interests reviewed by the Executive Secretary under § 302.83 of this subpart, when the Executive Secretary or the Counselor for the Board believes that the statement or information from other sources discloses a conflict of interest or an apparent conflict of interest, the employee or special Government employee concerned will be asked to explain the conflict or appearance of conflict. If his explanation is satisfactory, the case will be considered closed unless further information or changed circumstances reactiviate it. If there is believed to be a conflict or apparent conflict of interest on the part of the employee or special Government employee, a report will be made of the case to the Chairman for final disposition. This report will contain the views of the Executive Secretary and those of the Counselor for the Board, will point out specifically the areas of conflict or apparent conflict and the reasons why it is felt that a conflict or apparent conflict exists or does not exist, and will be signed by both these officials. The report will also contain a summary of the employee's explanation signed by him. The Chairman will then consider the matter, afford the employee or special Government employee concerned an opportunity to explain the conflict or apparent conflict, make a final decision, and take appropriate action in accordance with §§ 302.5(b) and 302.6 of Subpart A.

§ 302.86 Effect of employees' statements on other requirements.

The statement of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement of employment and financial interests or

supplementary statement by an employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order, or regulation.

§ 302.87 Specific provisions for special Government employees.

Except as provided in § 302.88 of this subpart, each special Government employee, by the use of GAO Form 211 (Rev. September 67), shall submit a statement of employment and financial interests which reports:

(a) All other employment; and

(b) The financial interests of the special Government employee as indicated on GAO Form 311. A special Government employee need not report financial interests in widely held, diversified mutual funds or regulated investment companies in which he does not serve as director, officer, partner, or advisor.

§ 302.88 Waiver of statements from certain special Government employees.

(a) The provisions of § 302.87 of this subpart are waived for special Government employees who are employed for the purpose of rendering advice, counsel, or expert services on recruiting and staff development including CPA review courses, because such employment is of a nature and at such a level of responsibility that any financial interests that they may have would be too remote to affect the integrity of their services to the Board and the submission of statements would be unnecessary.

(b) In addition, the Chairman may waive the requirement of § 302.87 of this subpart for the submission of a statement of employment and financial interests in the case of a special Government employee when he find that the duties performed by that special Government employee are of a nature and at such level of responsibility that the submission of the statement by the special Government employee is not necessary to protect the integrity of the Board.

§ 302.89 Time for submission of statements by special Government employees.

A statement of employment and financial interests required to be submitted under § 302.87 of this subpart shall be submitted not later than the time of employment of the special Government employee. Each special Government employee shall keep his statement current throughout his employment with the Board by submission of supplementary statements contained in his statement of employment and financial interests every 90 days after his appointment until he is no longer subject to § 302-87 of this subpart. Upon reappointment immediately following separation, the special Government employee shall file a new statement or certify that the latest statement on file is currently correct, whichever is proper.

§ 302.90 Circumstances requiring statements from special Government employees.

In all cases where the employment of a special Government employee to work on a specific audit, accounting, legal, or other problem is contemplated, or where a special Government employee already employed to render advice, counsel, or expert services on recruitment and staff development is to be assigned work on a specific audit, legal, or other problem, procedures outlined in §§ 302.83, 302.87, and 302.89 will be followed.

PART 303—RELEASE OF INFORMATION

Sec.
303.1 Purpose.
303.2 Records covered.
303.3 Exempted records.
303.4 Time and place where records may be inspected or copied.
303.5 Fees for copying.
303.6 Procedure for requesting records.
303.7 Production of board records.
303.8 Use of records.
303.9 Refusal to make record available.

AUTHORITY: The provisions of this Part 303 are issued under 84 Stat. 796, sec. 103; 50 U.S.C. App. 2168 and 81 Stat. 54; 5 U.S.C. 552.

§ 303.1 Purpose.

This regulation describes the manner in which records of the Cost Accounting Standards Board shall be available for public inspection and copying.

§ 303.2 Records covered.

(a) As used herein, Board "records" include all interpretations, opinions, orders, manuals, papers, files, letters, memoranda, studies, reports, information, or other documentary materials in being other than documentary materials which are in the possession of the Board but which are records of another Government agency. Not included within Board "records" are objects, equipment, and other nondocumentary materials.

§ 303.3 Exempted records.

As used herein, "exempted records" include those Board records which, pursuant to 5 U.S.C. 552(b) or other applicable law or regulation, are not required to be made available generally for inspection or copying. Notwithstanding the fact that the Board is not required to do so, an exempted record may be made available when the Board in its discretion determines that such action is appropriate.

§ 303.4 Time and place where records may be inspected or copied.

Records may be inspected and copied at the Board's offices, General Accounting Office Building, 441 G Street, NW., Wasihngton, DC, during the Board's normal business hours, 8:30 a.m. to 5 p.m., local time, Monday through Friday, excluding holidays observed by the Federal Government in Washington, D.C.

§ 303.5 Fees for copying.

(a) The fee for copying Board records shall be 25 cents per page for standard-size pages. The fee for copying nonstandard-size pages shall be determined proportionately.

(b) Fees shall be paid in advance to the Cost Accounting Standards Board.

(c) There shall be no charge made for search, retrieval, and handling of records.

§ 303.6 Procedure for requesting records.

(a) A request to inspect or copy, or have copied, the Board's records may be made in person, by telephone, or in writing.

(b) Requests for records shall be specific and must identify the precise records or materials which are desired by name, date, number, or other identifying data sufficient to allow the Board's staff to locate, retrieve, and prepare the record for inspection or copying and to delete exempted matter where appropriate. Blanket or generalized requests need not be honored, and may be returned to the person making the request.

§ 303.7 Production of board records.

Every effort will be made to respond to requests with reasonable dispatch. Requests for the same record will be filled on a first-come, first-served basis, but use of a document by the Board or its staff will be given precedence over any request pursuant to this § 303.7.

§ 303.8 Use of records.

(a) If a person requesting a record cannot view it at the Board's offices during normal business hours, he may ask to have the record copied and mailed to him for which he will be charged the appropriate fee.

(b) Any record which is available for inspection at the Board's offices may be copied.

(c) Under no circumstances may records be removed from the Board's offices.

§ 303.9 Refusal to make record available.

(a) Where the material requested is not in being, is not a record, is an exempted record, or is otherwise unavailable, the request will be denied. The person making the request will be informed of the denial and the reason therefor.

(b) Not more than 7 days after a request for a record is denied pursuant to paragraph (a) of this section, the person making the request may appeal the denial to the Chairman, Cost Accounting Standards Board, who will make determinations on such appeals. The appeal shall be by letter, and shall identify the material requested and denied in the same manner as it was identified in the initial request; shall indicate the dates of the request and denial; and shall indicate the expressed basis for the denial. In addition, the letter of appeal shall state briefly and succinctly the reasons why the record should be made available.

(c) The Chairman may consult with others in making his determination, and shall by letter inform the requester, within 7 business days after receipt of the appeal, whether the requested material will be made available in whole or in part. If the request is denied in whole or in part, the basis for denial will be stated.

PART 304—DELEGATIONS OF AUTHORITY

Sec.
304.1 Purpose.
304.2 Contracting authority.

AUTHORITY: The provisions of this Part 304 are issued under 84 Stat. 796, sec. 103; 50 U.S.C. App. 2168.

§ 304.1 Purpose.

This part publishes all delegations of authority by the Board, except delegations dealing with internal administrative matters which do not affect the public.

§ 304.2 Contracting authority.

(a) The Cost Accounting Standards Board hereby delegates to the Executive Secretary of the Board authority to enter into, administer, and settle contracts in furtherance of the Board's duties and responsibilities and designates the Executive Secretary as Contracting Officer of the Cost Accounting Standards Board.

(b) This authority, including authority to designate successor contracting officers, may be redelegated.

(c) This delegation is effective the date hereof and until revoked.

PART 305—COST ACCOUNTING STANDARDS BOARD BYLAWS

Sec.
305.1 Purpose.
305.2 Membership.
305.3 Quorum.
305.4 Board action.
305.5 Meetings.
305.6 Executive sessions.
305.7 Minutes.
305.8 Amendments to these bylaws.

AUTHORITY: The provisions of this Part 305 are issued under 84 Stat. 796, sec. 103; 50 U.S.C. App. 2168.

§ 305.1 Purpose.

This part publishes the bylaws adopted by the Board to govern Board membership, meetings, and formal actions by Board vote.

§ 305.2 Membership.

The Board is composed of the Comptroller General of the United States and the four members appointed by him. In the event of the absence or incapacity of the Comptroller General or during a vacancy in the office, the official of the General Accounting Office acting as Comptroller General shall serve as Chairman of the Board. In the event of the absence of any of the other four Board members, a representative of that member may attend the Board meeting, but he shall have no vote, and his attendance shall not be counted to establish a quorum.

§ 305.3 Quorum.

Three Board members shall constitute a quorum of the Board.

§ 305.4 Board action.

Board action shall be by majority vote of the members present and voting, except that any vote to publish a proposed standard, rule, or regulation in the FEDERAL REGISTER for comment or any vote to promulgate a standard, rule, or regulation shall require at least three affirmative votes of the five Board members. The Chairman may vote on all matters presented for a vote, not merely to resolve tie votes. The results of final votes shall be reported in the minutes of the meeting, and the vote of a Board member may be recorded at his request.

§ 305.5 Meetings.

The Board shall meet at the call of the Chairman. Agenda for Board meetings shall be proposed by the Chairman, but any Board member may request any item to be placed on the agenda.

§ 305.6 Executive sessions.

Any Board member may request that the Board meet in executive session, and the Chairman shall thereupon order such a session.

§ 305.7 Minutes.

The Executive Secretary of the Board shall be responsible for keeping accurate minutes of Board meetings and for maintaining Board files.

305.8 Amendments to these bylaws.

These bylaws may be supplemented or amended by the Board, but only after notice of the proposal to supplement or amend has been given in the call to the meeting. Any change in § 305.2, *Membership*, of this part must be in accord with the provisions of section 719 of Public Law 91-379, 50 U.S.C. App. 2168.

Effective date. This regulation is effective upon publication in the FEDERAL REGISTER (12-16-71).

ARTHUR SCHOENHAUT,
Executive Secretary.

[FR Doc.71-18417 Filed 12-15-71;8:50 am]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 905]

ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Proposed Limitation of Handling

Consideration is being given to the following proposal submitted by the committees, established under the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposal would extend current grade and size limitations, for the period January 10, 1972, through October 1, 1972, applicable to oranges, including Navel, Temple and Murcott Honey oranges, handled between the production area and any point outside thereof in the continental United States, Canada, or Mexico.

The proposed extension of the period of regulation of certain varieties of oranges is designed to continue in effect the current quality and size requirements for such fruits consistent with (1) the available supply and the demand for such fruits; and (2) improving returns to producers pursuant to the declared policy of the act.

The proposal is as follows:

Order. In § 905.536 (Orange Regulation 69; 36 F.R. 20215, 22054, 22666, 23353, 23617), the provisions of paragraph (a) preceding subparagraph (1) thereof are amended to read as follows:

§ 905.536 Orange Regulation 69.

(a) During the period January 10, 1972, through October 1, 1972, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico.

* * * * *

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposal shall file the same, in quadruplicate, with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than the 7th day after publication of the 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 13, 1971.

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

[FR Doc.71-18414 Filed 12-15-71;8:49 am]

[7 CFR Part 1094]

[Docket No. AO-103-A32]

MILK IN THE NEW ORLEANS, LA., MARKETING AREA

Decision on Proposed Amendments to Marketing Agreement and to Order

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the New Orleans, La., marketing area. The hearing was held, 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 (7 CFR Part 900), at New Orleans, La., pursuant to notice thereof issued on August 5, 1971 (36 F.R. 14390).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Regulatory Programs, on October 22, 1971, filed with the Hearing Clerk, U.S. Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein with the following modifications:

1. Under Issue No. 1(a), "Pooling standards for supply plants and diversion of producer milk," paragraphs 4, 13, 15, 22, 23, and 24 are revised.
2. Under Issue No. 1(b), paragraphs 1, 4 and 12 are revised. Paragraphs 3 and 4 are moved to follow paragraph 11.
3. Issue No. 2, "Pricing point on diverted milk," is completely revised.
4. Under Issue No. 5, "Location differentials to handlers," the word "cents" is inserted after "13.5" in the second paragraph.

The material issues on the record relate to:

1. Pooling standards for supply plants and diversion of producer milk.
2. Pricing point on diverted milk.
3. Fluid milk product definition.
4. Class II price.
5. Location differentials to handlers.

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. *Pooling standards for supply plants and diversion of producer milk.* (a) The order should require, for pooling eligibility, a supply plant to ship 45 percent of its dairy farm receipts to distributing plants; also, the months for which a supply plant must qualify in order to retain pool plant status during the months of flush production without making the required qualifying shipments should be changed to August through November.

At the present time the order contains one provision governing the pool plant qualification standards for a supply plant operated by either a proprietary handler or a cooperative association and another provision specifying the pooling standards for a "balancing plant" operated by a cooperative association.

While a supply plant must ship 50 percent of its eligible milk receipts at such plant to pool distributing plants, the cooperative balancing plant may hold pool status if at least 50 percent of the eligible milk of member producers is delivered from farms to pool distributing plants.

A proprietary handler proposed a reduction in the present 50 percent shipping requirement applicable to a supply plant. He proposed 35 percent as an appropriate figure. The major cooperative on the market proposed that the 50 percent delivery standards necessary to qualify its balancing plant also be reduced to 35 percent.

The cooperative association proposed that milk transferred from its supply balancing plant at Franklinton, La., to distributing plants in New Orleans be added to the volume of member milk delivered directly from the farm to distributing plants, in determining the eligibility of its balancing plant for pooling status. At the present time, the combined total would be slightly in excess of 50 percent of the total receipts from member producers.

The proprietary handler, who also operates a supply plant at Franklinton, La., as well as a bottling plant in New Orleans, testified that his Franklinton plant similarly has difficulty in meeting the present 50 percent shipping standards during the months in which a supply plant must qualify for pool plant status. As producers have increased their production in recent years, this plant now has surplus in excess of 50 percent of producer receipts during the months of September through January. The surplus is transferred or diverted to manufacturing plants 165 miles or more from New Orleans.

This handler testified that he has not taken on a new producer in 6 or 7 years. Despite this fact, the average production per producer has increased to the point where the handler claims he may be unable to accept all of the milk of his

producers and continue to qualify his supply plant.

Although some milk is regularly moved by the cooperative association from its Franklinton plant to several small handlers in New Orleans, the principal function of the plant is to balance the milk supply for a large majority of handlers in the market. Milk not needed for fluid use is received at this plant and manufactured into dairy products. At times receipts may be in excess of the manufacturing capacity of the plant and any such excess is transported to other more distant manufacturing plants.

For the past several months this plant has been unable to meet the pool plant standards, either as a shipping supply plant or as a plant operated by a cooperative association supplying member milk directly to pool distributing plants. The increase in milk production in the New Orleans market has made it impossible in recent months for the cooperative to qualify the plant on the basis of direct shipments of milk from member-producers' farms. Because the volume of milk regularly transferred from the Franklinton plant to distributing plants in New Orleans is only a small percentage of the total receipts at Franklinton, the plant does not meet the pooling standards for a shipping supply plant.

Milk production in this market increased from a monthly average of 41.9 million pounds in 1968 to 44.6 million pounds in 1969, and to 47.8 million pounds in 1970. From January through August of 1971, producer receipts have averaged approximately 52.5 million pounds monthly compared to a monthly average of 46.5 million pounds during the same months of 1970.

Class I utilization in this market has not kept pace with production, causing the percent of Class I utilization to decline from 68.50 percent in 1968 to 63.96 percent in 1970. From January through August of 1971, Class I utilization averaged 54.38 percent monthly compared to a monthly average of 64.49 percent for the same months of 1970. (Official notice is taken of the August 1971 "Statistical summary and Comparison of Milk Receipts and Utilization" for the New Orleans milk marketing area, from which all data set forth in this decision for the months of July and August of 1971 were taken.)

To insure a continuing market for those producers who have been regularly associated with the New Orleans market, the shipping standards for a supply plant should be modestly reduced. The procedure for qualifying a cooperative balancing plant for pooling should be further modified to count shipments from such plant to pool distributing plants in addition to direct receipts of the cooperative's member milk, as presently provided.

Although both the cooperative association and the proprietary handler operating a supply plant proposed that the qualifying shipments for their respective plants be reduced from 50 percent to 35 percent, it is concluded that a reduction to 45 percent will accommodate the requirements of the market at the present time. Reducing the percentage to 35 percent would permit a substantial volume of unneeded additional milk to be added to the market.

These changes in pooling standards in conjunction with the change in the qualifying months discussed below should accommodate the continued pooling of the cooperative's balancing plant and the one shipping supply plant operating in the market.

All shipments of member producer milk from farms directly to pool distributing plants by the cooperative acting as a bulk tank handler will be considered as though transferred from the cooperative's plant to such pool distributing plants for purposes of determining whether such plant has met the performance requirements for a pool supply plant. If a cooperative association operates more than one supply-type plant in the market, all direct deliveries to pool distributing plants by the cooperative acting as a bulk tank handler shall be assigned, for this purpose, to its supply plant nearest New Orleans, La. In any month in which the volume of milk actually moved from the cooperative's plant to pool distributing plants is less than 45 percent of the milk actually received at such plant, the cooperative may withdraw the plant from pool plant status if it notifies the market administrator in writing prior to or during the month of its intention not to qualify the plant as a pool plant during that month.

Additional plants of the cooperative could qualify, of course, for pool supply plant status on the basis of actual shipments from the plant to pool distributing plants.

At present, a supply plant that was a pool plant during each of the months of September through November is automatically qualified as a pool plant during December, unless the operator of the plant notifies the market administrator that he does not wish the plant to retain pool plant status. A supply plant that qualified as a pool plant on the basis of shipments to pool plants during each of the months of September through November, and for either December or January following, likewise is automatically qualified for pooling during the months of January, or February, as the case may be, through August, unless the market administrator is notified by the plant operator that he does not wish such plant to retain pooling status.

The major cooperative testified that under present marketing conditions it is extremely difficult for a supply plant to meet the minimum delivery requirement during the months of December and January. It proposed that the qualifying period for automatic pooling status be changed to the months of August to November, inclusive.

Class I sales relative to production during December and January are normally low due to the closing of school during the Christmas and New Year's holiday season and because consumers tend to drink less milk during the holiday season. In addition, production of milk in the New Orleans market is at or near its peak during the months of December and January.

The percentage of milk utilized in Class I in August in each of the past 3 years has been higher than in either December or the following January. In August 1970, the Class I utilization was 64.54 percent. In December it was only 51.10 percent and in January 1971 it was 49.96 percent. Therefore, the qualifying period for pool supply plants should include the month of August rather than December or January.

The August through November qualification period adopted has a substantially higher utilization than the present period of September through December or January. In the present supply situation to require shipments at the 45 percent rate in December (or January) to maintain automatic qualification in the following flush production months would result in inefficient and uneconomical movements of milk just to meet the delivery standards. Consequently, shipments of milk at the specified rate should be limited to the months of August through November.

The recommended decision denied a proposal for a "pass-through" provision. This provision would treat transfers of milk from a nonpool plant to a pool plant as a transfer between two pool plants to the extent that the nonpool plant had received an equal amount of milk from pool plants.

As stated by a spokesman for the proponent cooperative association, this proposal would assure that even if its supply plant is not a pool plant for the month, shipments of milk from that plant to pool distributing plants nevertheless would be considered a transfer of producer milk if its plant had received an equal volume of milk from other pool plants. He added that if the cooperative's Franklinton plant were assured of pool plant status every month this proposal would not be necessary, but that it would provide "insurance" in the event the plant did not otherwise qualify, as a pool plant.

After a review of the exceptions it has been concluded that such a provision should be incorporated in the order to accommodate situations where the plant of the cooperative association might become a nonpool plant temporarily.

(b) The limitation on diversions to nonpool plants during certain months of the year should be relaxed slightly with respect to both cooperative associations and proprietary handlers. During the months of August through November a cooperative association should be allowed to divert 35 percent of its total member producer milk including that diverted from pool plants during the month. Likewise, during the months of August through November a proprietary handler should be allowed to divert up to 35 percent of the nonmember producer milk physically received at or diverted from his plant(s).

During January, and the period September through November, cooperatives

currently must limit their member producer diversions to 20 percent of the member producer milk physically received at all pool plants. Similarly, a proprietary handler may divert up to 20 percent of his nonmember producer receipts during these months. There is no limitation on diversions during other months.

The cooperative that handles over 80 percent of the market's reserve supply proposed the relaxation in diversion privileges.

As noted above, producer receipts have turned sharply upward in the New Orleans market. With increasing producer receipts, the cooperative is finding it extremely difficult to remain within the 20 percent limit on diversions of member producer milk. The result could be that the milk of producers who have been regularly associated with this market may not be able to qualify as producer milk under the present provision.

In view of the above, it is concluded that the present limitation on diversions in the order should be amended as proposed.

The percentage limits on diversions to nonpool plants now apply to the month of January, and for the period of September through November. There is no limit on diversions during the month of December and for the period of February through August.

Although there was no proposal to change the months for which the limitation applies to such diversions, it is apparent that a conforming change is necessary to achieve consistency among provisions.

A change in the pool plant qualification months for a supply plant is adopted herein. As previously stated, this change will require a supply plant to ship 45 percent or more of its receipts to pool distributing plants during the months of August through November in order to remain automatically qualified as a pool plant for the following months of December through July.

The months of August through November also should be the months in which there should be some limitation on diversions to nonpool plants. These are the months in which the market utilization is highest. The limitation need not apply at this time to the relatively flush production months of December and January. No proposal was made, and no evidence presented, in support of imposing a limitation on diversions to nonpool plants other than during the highest utilization months.

The order now contains a further provision whereby, if the 20 percent limitation is exceeded by a cooperative or proprietary handler, the milk of any cooperative member or nonmember producer, as the case may be, may be diverted for no more than 15 days during the month. Under this provision, if sufficient care were exercised in selecting the loads of milk to be diverted each day, as much as half the producer milk in the market could be diverted in any month.

Since it is most economical to divert to manufacturing plants the milk of producers whose farms are located closest to such plants, the extra transportation costs and the added bookkeeping involved tend to reduce the effectiveness of this provision as an aid in disposing of the market's reserve supply.

Denied is a proposal to permit the milk of individual producers to be so diverted up to 20 days in any month. Increasing the percentage of total producer milk that may be diverted will accommodate the removal of excess milk for the market. There is no need, therefore, to change the daily limitation should milk be diverted on an individual producer basis.

The provisions dealing with diversions to pool and nonpool plants are found under the definition of "producer" as the order is now written. Also included under the producer definition are the conditions governing whether milk of dairy farmers will be considered "producer milk." These conditions state where such milk must be received, by whom it may be handled, how it may be diverted, and where such diverted milk shall be priced.

To improve the organization of this order and to achieve greater uniformity in format with other Federal orders, these provisions, as amended at this hearing, have been moved to the definition of "producer milk."

2. *Pricing point on diverted milk.* Diverted producer milk should be priced at the plant of physical receipt.

As mentioned elsewhere, the cooperative operates a supply plant at Franklinton, La. This plant, located 95 miles from New Orleans by toll-free highway, but less than 75 miles by the shortest highway, has usually been a pool plant in the past. Since February 1971, however, the plant has been a nonpool plant.

When the Franklinton plant was a pool plant, the milk of producers received at that plant was priced at that location. The applicable location differential there is 19.5 cents.

Since February, when the Franklinton plant became a nonpool plant, most of the milk received at that plant has continued to be producer milk by diversion. The cooperative association has arranged for the milk to be received at a New Orleans distributing plant in sufficient amounts to be considered as diverted to Franklinton from the New Orleans pool plant at which it had been received previously. In the latter circumstance, the milk has been priced as if received at New Orleans rather than at Franklinton. Under the order, milk diverted to a nonpool plant currently is priced at the location of the diverting plant. Thus, the uniform price to these producers is 19.5 cents higher when the Franklinton plant is a nonpool plant.

Milk that is actually delivered to the marketing area has been made available to pool distributing plants only at the cost of delivery there. Milk received at distantly located plants, 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 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.

Under the circumstances described above, the cooperative may have its milk priced at Franklinton during some months and at New Orleans during others. When the present provision was adopted, it was not contemplated that the uniform price to producers at a particular plant would differ depending on whether the plant was a pool plant or a nonpool plant.

Milk diverted from a pool plant to a nonpool plant at a particular location should not draw a higher return from the market pool than milk received at a pool plant at the same location. There is no economic justification for pricing milk in this manner. Diversion privileges should accommodate the economic disposal of reserve milk, but should not provide a higher price for milk when the plant of physical receipt is a nonpool plant rather than a pool plant. The utility to the market of the diverted milk cannot be said to be greater than milk received at a pool plant similarly located.

Moreover, when diverted milk is priced at the plant from which diverted, the opportunity exists for associating with the market a substantial amount of distant milk that is not a part of the regular supply for the market. 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.

In their exceptions to the recommended decision, the cooperative and a proprietary handler alleged that pricing diverted milk at the plant to which diverted would create hardship and inequities among producers. The cooperative also charged that the decision to change the point of pricing was not a problem to be dealt with on this record.

While unwarranted pooling of distant milk without delivery to the market has not occurred in the New Orleans market, it has occurred in several other marketing areas with provisions very similar to those in New Orleans. Official notice was taken at the hearing of a suspension order for the Chattanooga, Nashville, Mississippi, Red River Valley, and Oklahoma metropolitan marketing areas. This suspension order was published in the FEDERAL REGISTER, Volume 36, No. 107, on Thursday, June 3, 1971.

This order suspended the provisions in those market orders that allowed diverted milk to be priced f.o.b. the marketing area even though received at distant plants and not delivered to the marketing area. It was found that those provisions provided the means of pooling substantial quantities of milk not shipped to the market with consequent adverse effects on the marketing of milk by producers who are the regular suppliers of the market. Since the possibility of a similar situation exists for the

New Orleans market, the order should be amended to prevent it.

3. *Fluid milk product definition.* The fluid milk product definition should be amended by deleting the word "yogurt." Reclassifying yogurt as a Class II product will enable the only handler making yogurt in the New Orleans market to purchase raw milk for yogurt at a price competitive with the prices paid by other manufacturers of yogurt in the southeastern United States.

At the present time, yogurt is considered to be a fluid milk product in the New Orleans market and, as such, is priced at the Class I price.

Proponent testified that his company distributed yogurt in the States of Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Louisiana. While at one time this handler was virtually alone in the production and sale of yogurt in this part of the country, there are now nine major competitors distributing yogurt in these States. All these competitors are either unregulated or regulated in other Federal orders classifying yogurt as a Class II product.

The general manager of proponent's New Orleans distributing plant testified that 30 percent of its yogurt sales in the New Orleans market has already been lost to a major competitor regulated in the Georgia market. He also stated that this figure likely will increase with the present price disparity, forcing his company to move its yogurt operation to another location not regulated by this order. The record supports the reclassification of yogurt as a Class II product at this time.

4. *The Class II price.* No action should be taken on the several proposals to amend the price of Class II milk used to produce various products or moved to specified types of plants.

Pricing of milk is dependent upon its ultimate use in fluid form or in finished milk products. These provisions in the New Orleans order have ramifications for close-by and even for more distant markets in competition with New Orleans, not only in the purchase of farm supplies of milk, but also in finished products.

Pursuant to requests by proponents here and others, a hearing held for New Orleans and other Federal order marketing areas, is considering the classification and related pricing provisions of these orders. Therefore, proposals to decrease the Class II price for milk disposed of in certain Class II uses or transferred to specified types of plants are denied at this time.

5. *Location differentials to handlers.* A proposal to permit a location differential on Class II milk is denied.

A handler proposed that a location differential of 13.5 cents be applied on all producer milk received at a pool plant more than 50 miles from New Orleans or Houma, La., and classified as Class II milk.

The proponent operates a plant in New Orleans and a receiving station at Franklinton. He regularly hauls some bulk milk from Franklinton to his New Orleans plant for Class II use. His competitors in New Orleans receive most of their milk directly from producer farms. He claims that he is disadvantaged in that he bears the cost of transporting the milk for Class II use from Franklinton to New Orleans, while his competitors have no transportation cost on the milk received from producers at their New Orleans plants and used in Class II products.

It is a handler's own decision whether to haul milk in bulk for Class II use to New Orleans from a supply plant, rather than convert it into Class II products at the supply plant location or to receive it directly in New Orleans, as do competing handlers. This is a business decision. If, in fact, the handler does experience disadvantage because of the decision he has made, it would not be equitable to require producers to subsidize his error in judgment through a location differential on the milk he receives at Franklinton that is ultimately utilized in a Class II product.

Accordingly, the Class II price should continue to apply uniformly throughout the marketing area.

RULINGS

A request was made by the Wisconsin Cheese Makers Association to postpone the hearing for a period of 60 days to allow additional time to evaluate certain proposals dealing with pricing and classification and to prepare testimony. In view of the lateness of this request, made only after the hearing had already begun, it was denied.

As earlier indicated, a decision has been made to defer any action on the proposed changes in classification and pricing, other than with respect to yogurt, until completion of the regional hearing for several marketing areas, including New Orleans. This hearing is providing opportunity to consider a more uniform basis for pricing and classifying milk for a substantial number of markets.

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 the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) 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; and

(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;

RULINGS ON EXCEPTIONS

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

MARKETING AGREEMENT AND ORDER

Annexed hereto and made a part hereof are two documents, a marketing agreement regulating the handling of milk, and an order amending the order regulating the handling of milk in the New Orleans, La., marketing area which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this decision.

DETERMINATION OF PRODUCER APPROVAL AND REPRESENTATIVE PERIOD

September 1971 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the New Orleans, La., marketing area is approved or favored by producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk

for sale within the aforesaid marketing area.

Signed at Washington, D.C., on December 10, 1971.

J. PHIL CAMPBELL,
Acting Secretary.

Order [1] Amending the Order, Regulating the Handling of Milk in the New Orleans, La., Marketing Area

FINDINGS AND DETERMINATIONS

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the New Orleans, La., marketing area. The hearing was held 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 (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

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

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the New Orleans, La., marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, Regulatory Programs, on October 22, 1971, and published in the FEDERAL REGISTER on October 29, 1971 (36 F.R. 20763) shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein with the following modifications:

1. In § 1094.10 paragraphs (b) and (c) are revised.

2. In § 1094.10 paragraph (d) is revoked.

3. In § 1094.15(d)(2) subparagraphs (i) and (ii) are revised.

4. In § 1094.44 paragraph (c) is revised and a new subparagraph (c)(4) is added.

1. In § 1094.10, paragraphs (b) and (c) are revised as follows and paragraph (d) is revoked:

§ 1094.10 Pool plant.

* * * * *

(b) A supply plant from which not less than 45 percent of the Grade A milk received from dairy farmers at such plant during the month is shipped to and received at plants qualifying for the month pursuant to paragraph (a) of this section. Any supply plant meeting such shipping standard for each of the months of August through November shall continue to be a pool plant the following months of December through July unless the operator notifies the market administrator in writing before the first day of any such month of his intent to withdraw such plant as a plant qualified under this paragraph, in which case such plant thereafter shall be a nonpool plant except in any month it meets the above 45 percent shipping standard.

(c) For the purpose of meeting the minimum 45 percent shipping standard of paragraph (b) of this section by a supply plant operated by a cooperative association, all member-dairy farmer milk delivered directly from farms pursuant to § 1094.12(d) to distributing plant(s) qualified under paragraph (a) of this section will be considered to have been first received at that supply plant of the cooperative located nearest New Orleans, La., and then shipped therefrom to such distributing plant(s). The cooperative association may withdraw such supply plant from qualification under this section:

(1) If the cooperative notifies the market administrator in writing prior to or during the month of its intention not to qualify the plant under this section during that month; and

(2) The milk actually shipped during the month from such plant to plant(s) qualified under paragraph (a) of this section is less than 45 percent of the Grade A milk actually received from dairy farmers at such supply plant during the month.

(d) [Revoked]

2. In paragraph (c) of § 1094.12, the reference "in accordance with § 1094.14" is changed to "in accordance with § 1094.15."

3. In § 1094.12, paragraph (d) is revised as follows:

§ 1094.12 Handler.

* * * * *

(d) Any cooperative association with respect to the milk of producers which it causes to be delivered directly from the farm to the pool plant of another person in a tank truck owned and operated by, under contract to, or under the control of such association (unless the association and the person operating the pool plant both notify the market administrator, in writing, prior to the time of delivery that the pool plant operator is to be held responsible to the pool for such milk). For purposes of pricing, such milk shall be deemed to have been received by the association from producers at the location of the pool plant at which such milk is physically received.

* * * * *

4. Section 1094.14 is revised to read as follows:

§ 1094.14 Producer.

"Producer" means any person, except a producer-handler as defined in any order (including this part) issued pursuant to the Act, who produces milk, in compliance with Grade A inspection requirements of a duly constituted health authority, which is received at a pool plant or by a cooperative association in its capacity as a handler pursuant to § 1094.12(d) or is diverted pursuant to § 1094.15(d) from a pool plant to a nonpool plant.

5. Section 1094.15 is revised to read as follows:

§ 1094.15 Producer milk.

"Producer milk" means the skim milk and butterfat contained in Grade A milk:

(a) Received at a pool plant directly from a dairy farmer, except any such milk received by diversion from another order plant at which such milk is fully subject to the pricing provisions of the other order and which is allocated to Class II pursuant to § 1094.46(a)(4)(iii) and the corresponding provision of § 1094.46(b);

(b) Received at a pool plant from a cooperative association in its capacity as a handler pursuant to § 1094.12(d);

(c) Diverted from a pool plant to the pool plant of another handler. Milk so diverted shall be deemed to have been received at the location of the plant to which diverted; and

(d) Diverted by the operator of a pool plant or a cooperative association to a nonpool plant subject to the following conditions:

(1) During December through July such diversions may be made without limit;

(2) During August through November such diversions shall be limited to the

amounts specified in subdivisions (i), (ii), and (iii) of this subparagraph:

(i) A cooperative association may divert the milk of any eligible member-dairy farmer without limit during the month if the total volume of milk so diverted does not exceed 35 percent of the cooperative's total member producer milk during that month;

(ii) The operator of a pool plant may divert from such plant the milk of any eligible nonmember dairy farmer without limit during the month if the total volume of milk so diverted does not exceed 35 percent of his nonmember producer milk during that month; and

(iii) If the 35 percent limitation described in subdivisions (i) and (ii) of this subparagraph is exceeded, the diversion of any eligible dairy farmer's milk shall be limited to 15 days' production during any such month. If this 15-day limitation is exceeded for any such dairy farmer, he shall be eligible for pooling only with respect to that milk physically received at pool plants during the month;

(3) Diverted milk shall be deemed to have been received at the location of the plant to which diverted; and

(4) Diversion to an other order plant shall be limited to Class II use.

6. Section 1094.17 is revised to read as follows:

§ 1094.17 Fluid milk product.

"Fluid milk product" means all skim milk (including reconstituted skim milk) and butterfat in the form of milk, skim milk, buttermilk, filled milk, concentrated milk or skim milk, fortified milk or skim milk, flavored milk, flavored milk drinks (including eggnog), cream (other than frozen storage cream), cultured sour cream, sour cream products labeled Grade A and any mixture of cream and milk or skim milk in fluid form (other than ice cream mixes, other frozen dessert mixes and sterilized products contained in hermetically sealed containers). This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

7. In § 1094.44, the introductory text of paragraph (c) is revised and a new subparagraph (4) is added as follows:

§ 1094.44 Transfers.

* * * * *

(c) Subject to the provisions of subparagraph (4) of this paragraph, as Class I milk if transferred in bulk as milk, filled milk, skim milk or cream, or diverted, to a nonpool plant that is neither an other order plant nor a producer-handler plant, unless the requirements of subparagraphs (1) and (2) of this paragraph are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from subparagraph (3) of this paragraph: * * *

(4) If such nonpool plant transfers skim milk or butterfat as milk, skim milk, or cream in bulk to a pool plant, the amount so transferred that is not in excess of receipts during the month at such nonpool plant from pool plants shall be excluded from the milk transferred within the meaning of subparagraph (3) of this paragraph, and shall be classified pursuant to paragraph (a) of this section as if moved directly to the second pool plant with Class II utilization indicated. If the classification limitations provided in paragraph (a) of this section results in any skim milk or butterfat being classified as Class I from pool plants of two or more handlers such classification shall be shared pro rata between such handlers unless at or before the time of reporting, signed statements by operators of such plants indicate agreement on a different sharing of such Class I classification.

[FR Doc.71-18378 Filed 12-15-71;8:47 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 71-RM-25]

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 Delta, Utah 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, Air Traffic Division, Federal Aviation Administration, Park Hill Station, Post Office Box 7213, Denver, CO 80207. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the office of the Regional Counsel, Federal Aviation Administration, 10255 East 25th Avenue, Aurora, CO 80010.

A new public instrument approach procedure has been developed for the Delta Municipal Airport, Delta, Utah. Accordingly, it is necessary to alter the present Delta, Utah, transition area to protect this approach procedure.

In consideration of the foregoing, the FAA proposes the following airspace action.

In § 71.181 (36 F.R. 2140) the description of the Delta, Utah, transition area is amended to read as follows:

DELTA, UTAH

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Delta Municipal Airport (latitude 39°23'00" N., longitude 112°30'35" W.), and that airspace extending upward from 1,200 feet above the surface within 9 miles southeast and 13.5 miles northwest of the Delta VOR 203° and 023° radials extending from 12 miles northeast to 25.5 miles southwest of the VOR.

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 Aurora, Colo., on December 8, 1971.

M. M. MARTIN,
Director, Rocky Mountain Region.

[FR Doc.71-18354 Filed 12-15-71;8:45 am]

Federal Railroad Administration

[49 CFR Part 232]

[Docket No. PB-5, Notice No. 3]

POWER BRAKE INSPECTION OF UNIT AND RUN-THROUGH TRAINS

Notice of Hearing

On October 13, 1971, the Federal Railroad Administration (FRA) issued a notice of proposed rule making, Docket No. PB-5, Notice No. 2, published in the FEDERAL REGISTER on October 20, 1971 (36 F.R. 20308), proposing to amend Part 232 of Title 49 of the Code of Federal Regulations by amending § 232.12 and adding a new § 232.19. The principal features of the proposed amendments are as follows:

1. Run-through trains must be tested at the points where they are made up (initial terminal) in accordance with the present requirements of § 232.12 (a)-(h) (redesignated § 232.12 (c)-(j)). This test must be repeated at intermediate points not more than every 500 miles thereafter, except that piston travel need not be adjusted unless it exceeds the limits prescribed in proposed § 232.19(e).

2. Unit trains must be tested when they are made up (initial terminal) and during each round trip cycle in accordance with the present requirements of § 232.12 (a)-(h) (redesignated § 232.12 (c)-(j)). This test must also be repeated at intermediate points not more than 500 miles apart, except that piston travel need not be adjusted unless it exceeds the limits prescribed in proposed § 232.19(e).

3. Initial terminal and intermediate point brake tests of unit and run-through trains must be performed by trained and qualified carrier personnel at locations where adequate facilities are available to

make the necessary repairs, and recorded on the prescribed FRA form with a copy thereof placed in the locomotive cab.

4. At points where the crew of one carrier takes over control and operation of a run-through or unit train from the crew of another carrier, the train must be inspected to determine that the locomotive cab contains the prescribed FRA form, brake pipe leakage does not exceed 5 pounds per minute, and that the brakes apply and release on the rear car from a 20-pound service brake pipe pressure reduction. If the locomotive cab does not contain the prescribed FRA form, the train must be tested in accordance with the present requirements of § 232.12 (a)–(h) (redesignated § 232.12 (c)–(j)) before it proceeds.

Since the Association of American Railroads, the United Transportation Union, and the Brotherhood Railway Carmen have requested a hearing, although not the same type, FRA will conduct a public hearing at 10 a.m., on January 10, 1972, in Room 8332, Nassif Building, 400 Seventh Street SW., Washington, DC.

The hearing will be an informal one and will be conducted in accordance with 49 CFR 211.31 by a representative designated by the Administrator. The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The representatives of the Administrator will make an opening statement outlining the scope of the hearing. Oral statements should highlight and summarize topics discussed and written comments filed pursuant to the notice published in the October 20, 1971, issue of the FEDERAL REGISTER, and should focus upon the contents of that notice. After all initial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary, for the conduct of the hearing will be announced at the hearing.

Interested persons are invited to attend the hearing and to present oral statements on the matters involved in this proceeding. These statements will be made a part of the public docket of the notice.

All communications concerning the hearing and notice should be addressed to the Docket Clerk, Office of Hearings and Proceedings, Federal Railroad Administration, Attention: Docket No. PB-5, 400 Seventh Street SW., Washington, DC 20590.

This notice is issued under the authority of section 9, title 45, United States Code, and section 211.31 of the regulations of the Federal Railroad Administration (49 CFR 211.31).

Issued in Washington, D.C., on December 10, 1971.

JOHN W. INGRAM,
Administrator.

[FR Doc.71-18397 Filed 12-15-71;8:48 am]

Hazardous Materials Regulations Board

[49 CFR Part 173]

[Docket No. HM-93; Notice No. 71-28]

TRANSPORTATION OF HAZARDOUS MATERIALS

Class B Propellant Explosives in Fiber Drums; Notice of Extension of Time to File Comments

On November 6, 1971, the Hazardous Materials Regulations Board published Docket No. HM-93; Notice No. 71-28 (36 F.R. 21360), Class B Propellant Explosives in Fiber Drums. In response to a petition filed in accordance with 49 CFR § 170.25, the Board has extended the period for comments on this notice of proposed rule making from January 4, 1972 to February 22, 1972.

This extension is made under the authority of sections 831-835 of title 18, United States Code, and section 9 of the Department of Transportation Act (49 U.S.C. 1657).

Issued in Washington, D.C., on December 13, 1971.

ALAN I. ROBERTS,
Secretary, Hazardous Materials Regulations Board.

[FR Doc.71-18367 Filed 12-15-71;8:47 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 61]

NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

Notice of Public Hearings

Section 112(b)(1)(B) of the Clean Air Act, as amended by Public Law 91-604, directs the Administrator of the Environmental Protection Agency to publish proposed regulations establishing emission standards for hazardous air pollutants together with a notice of public hearing. Such regulations for asbestos, beryllium and mercury were proposed in the December 7, 1971, issue of the FEDERAL REGISTER at page 23239.

Notice is hereby given of public hearings concerning the proposed hazardous emission standards to be held at the following dates, times and places:

January 18, 1972, beginning at 10 a.m., e.s.t., U.S. Customs Court Building, Courtroom No. 2, Room 461, 1 Federal Plaza, New York, NY;

February 1, 1972, beginning at 10 a.m., c.s.t., the Midtown Building, Room 214, 1735 Baltimore Street, Kansas City, MO;

February 15, 1972, beginning at 10 a.m., p.s.t., U.S. Courthouse, Room 1501, 312 North Spring Street, Los Angeles, CA.

These hearings are intended to provide opportunity for interested persons to state their views or arguments or to provide information as to: (1) Whether asbestos, beryllium, or mercury, when emitted to the ambient air, may cause, or contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; and, if so, (2) what standards should be adopted to regulate emissions of such pollutants. The Administrator is required, under section 112, to establish standards at the level which in his judgment provides an ample margin of safety to protect the public health from any hazardous air pollutant, unless, on the basis of information presented at the hearings, he finds that such pollutant clearly is not a hazardous air pollutant. Accordingly, participants in the hearings are requested to identify specifically the portion of their presentations, if any, directed to the issue of whether the pollutant in question is or is not a hazardous pollutant, as defined in section 112(a)(1) of the Act.

Mr. William H. Megonnell hereby is designated Presiding Officer for the hearings. He will have the responsibility for maintaining order; excluding irrelevant or repetitious material; scheduling presentations; and, to the extent possible, notifying participants of the time at which they may appear. The hearings will be conducted informally. Technical rules of evidence will not apply.

Persons wishing to make a statement at a hearing are requested to file a notice of such intention not later than 15 days prior to the appropriate hearing and, not later than 10 days prior to the appropriate hearing, if practicable, to submit five copies of the proposed statement to the Administrator of the Environmental Protection Agency, Attention: Presiding Officer, Hazardous Emission Standards Hearings, Rm. 17-70, 5600 Fishers Lane, Rockville, Md. 20852.

Dated: December 13, 1971.

WILLIAM D. RUCKELSHAUS,
Administrator.

[FR Doc.71-18421 Filed 12-15-71;8:51 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 2, 21, 81, 87, 89, 91, 93]

[Docket No. 19311]

DIGITAL MODULATION TECHNIQUES IN MICROWAVE RADIO

Notice of Inquiry; Extension of Time for Filing Comments

In the matter of inquiry into the use of digital modulation techniques in microwave radio, the desirability of imposing restrictions on the use of such techniques, and the possible amendment of Parts 2, 21, 81, 87, 89, 91, and 93 of the Commission's rules and regulations relative thereto.

Order. 1. On September 15, 1971, the Commission released a notice of inquiry in this proceeding (FCC 71-940) designating November 15 and December 16, 1971, as dates for filing comments and

reply comments respectively. The Commission now has before it a motion filed on December 3, 1971, on behalf of Data Transmission Co. (Datran) requesting that the time for filing reply comments be extended until January 17, 1972.

2. Datran states that some 20 parties have filed comments and that it has endeavored, but failed, to promptly obtain copies. Because of this and the extensive and detailed technical nature of the material contained in the comments, it contends that it needs additional time to review and submit its reply comments.

3. The Commission is not desirous of delaying this proceeding. It is, however, interested in encouraging complete and meaningful response to the comments filed. Therefore, it appears that the requested extension of time would be in the public interest.

4. *Accordingly, it is hereby ordered,* Pursuant to authority of § 0.303(c) of the Commission's rules, that the time for filing reply comments in this proceeding is extended to and including January 17, 1972.

Adopted: December 9, 1971.

Released: December 10, 1971.

[SEAL] BERNARD STRASSBURG,
Chief, Common Carrier Bureau.

[FR Doc.71-18390 Filed 12-15-71;8:50 am]

[47 CFR Part 73]

[Docket No. 19366; FCC 71-1241]

FM BROADCAST STATIONS

Table of Assignments; Rumford, Maine

In the matter of amendment of § 73.202, *Table of Assignments, FM Broadcast Stations* (Rumford, Maine), Docket No. 19366, RM-1630.

1. Notice of proposed rule making is hereby given concerning amendment of the FM Table of Assignments (§ 73.202 (b) of the rules) with respect to the proposal filed by Rumford Broadcasting Co., Inc., Rumford, Maine (RM-1630). All population figures cited are from the 1970 Census.

2. In Docket No. 18801, the Commission proposed in its notice of proposed rule making (FCC 70-176, adopted February 18, 1970) to delete Channel 241 from Berlin, N.H., due to serious short-spacing problems with, inter alia, an existing station at Worcester, Mass., WSRS. Rumford Broadcasting Co., Inc. (Rumford Broadcasting) participated in Docket No. 18801 in order to encourage the deletion of Channel 241 at Berlin. It was petitioner's belief that, in the event of the deletion of Channel 241 from Berlin, that channel could be assigned to Rumford, Maine. On May 12, 1970, Rumford Broadcasting filed the petition presently under consideration requesting the assignment of Channel 241 to Rumford and the deletion of the existing assignment in the community, Channel 292A. On October 28, 1970, the Commission released a second report and order in Docket No. 18801 which deleted Channel 241 from Berlin, N.H., 26 FCC 2d 168, 171-2.

3. Rumford, Maine, with a population of 9,363 is situated in Oxford County, which has 43,457 residents. Its only FM assignment is Channel 292A, which has no applications pending for its use. There is one standard broadcast station located in the community, WRUM, a daytime-only operation. It is licensed to the petitioner.

4. In support of its request for the assignment of Channel 241 to Rumford, Maine, in place of its present assignment of Channel 292A, Rumford Broadcasting asserts that Channel 292A is inadequate to fulfill the need in Rumford and the Rangely Lakes Region, that WRUM (AM) provides the only principal-city signal during the daylight hours to Rumford, and that petitioner is committed to a diverse programing schedule which covers a broad spectrum of audience interests. Petitioner alleges that Channel 241 would greatly benefit the Rumford region, since it would provide a first local nighttime service to the city and a first primary service, from any source, to the Rangely Lakes Region,[1] that the Rangely Lakes region has not enjoyed any broadcast service because the presently assigned Channel 292A at Rumford cannot provide adequate power, and that petitioner's proposal to use 100 kw E.R.P. at 500 feet would be adequate to serve this region.

5. Although there are public interest considerations which favor petitioner's proposal, petitioner, itself, admits that Channel 241 used at Rumford would have short-spacing problems. Its contention, that the short-spacing problems would not be as severe as those of Channel 241 at Berlin, N.H., cannot be given weight. Because of the short separations which would be involved, we must reject petitioner's proposed assignment of Channel 241 to Rumford in lieu of Channel 292A.

[1] The WRUM engineering affidavit indicates that two FM stations provide some services to this area.

6. However, our study of other possible channel assignments to Rumford indicates that Channel 242 could be assigned there, provided the Canadian Government concurs (since Rumford is located within 250 miles of the United States-Canadian border, an assignment there is subject to concurrence by the Canadian authorities). Rumford Broadcasting should also make a showing of the type set out in the Roanoke Rapids-Goldsboro case, 9 FCC 2d 672 (1967), including a preclusion study of assigning Channel 242 to some other community. We believe that the public interest would be served to propose the assignment of a substitute channel at Rumford, Maine.

7. Showing required: Comments are invited upon the proposal discussed above. Petitioner is expected to file comments answering whatever questions are raised in this notice, and, among other things, stating its intention to apply for any channel requested, if assigned, and if authorized, to construct a station thereon promptly. Failure to make these showings may result in denial of the petition.

8. Cutoff procedure: As in other recent FM rule making proceedings, the following procedures will govern:

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered, if advanced in reply comments.

(b) With respect to petitions for rule making which conflict with the proposal in this notice, they will be considered as comments in the proceeding, and public notice to this effect will be given, as long as they are filed before the date for filing initial comments herein. If filed later than that, they will not be considered in connection with the decision herein.

9. In view of the foregoing and pursuant to authority found in section 4(i), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as follows:

CARBARSONE IN COMPLETE TURKEY FEED

Principal ingredient	Grams per ton	Combined with—	Grams per ton	Limitations	Indications for use
* * *	* * *	* * *	* * *	* * *	* * *
3. Carbarsone	227-340.5 (0.025%-0.0375%)	Bacitracin	10	For turkeys; as bacitracin methylene disalicylate; feed continuously beginning 2 weeks before blackhead is expected and continue as long as prevention is needed, withdraw 5 days before slaughter; as sole source of organic arsenic.	For use as an aid in the prevention of blackhead and for increased rate of weight gain.

10. Pursuant to applicable procedures set out in § 1.415 of the Commission's rules, interested persons may file comments on or before January 21, 1972, and reply comments on or before February 1, 1972. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings.

11. In accordance with the provisions of § 1.419 of the Commission's rules, an original and 14 copies of all comments, replies, pleadings, briefs, and other documents shall be furnished the Commission. These documents will be available for public inspection during regular business hours in the Commission's Broadcast and

Docket Reference Room at its headquarters, 1919 M Street NW., Washington, DC.

Adopted: December 8, 1971.

Released: December 13, 1971.

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

[FR Doc.71-18392 Filed 12-15-71;8:50 am]

[47 CFR Part 73]

[Docket No. 19314; RM-1783]

TELEVISION BROADCAST STATIONS

Program Identification Patterns in Visual Transmissions; Order Extending Time for Filing of Comments and Reply Comments

In the matter of amendment of Part 73, § 73.682(a)(22) of the Commission's rules and regulations concerning the inclusion of program identification patterns in the visual transmissions of television broadcast stations.

1. The notice of proposed rule making in the above entitled proceeding, adopted September 8, 1971, and published in the FEDERAL REGISTER on September 18, 1971, 36 F.R. 18657, specified dates of December 8, 1971, and January 7, 1972, as the deadlines for filing comments and reply comments, respectively.

2. In a petition filed November 30, 1971, International Digisonics Corp. (IDC), which presently provides a service to advertisers and others utilizing information obtained from identification patterns transmitted pursuant to § 73.682 (a)(22) of our rules, requests that the time for filing comments be extended until March 8, 1972, and the time for filing reply comments be extended until April 10, 1972.

3. In support of this request, IDC states that the notice in the subject proceeding presented a number of controversial issues concerning various aspects of video program identification which can be commented on usefully only in the light of a comprehensive program of research and statistical sampling. The Commission, notes IDC, suggested that such studies be undertaken.

4. IDC is diligently engaged in studies in several relevant areas, but estimates that an additional 90 days, beyond the present specified deadline, will be required for their completion, and the preparation of comments based on the results of its efforts.

5. We have had several informal inquiries which indicate that a number of persons who intend to file comments in this proceeding would welcome additional time for their preparation. Furthermore, we wish to insure that parties engaged in factual studies of the performance of the video identification system be allowed to complete them in an orderly manner. Accordingly, we will extend the comment and reply comment dates applicable.

6. However, we believe that the additional period of time IDC seeks is unnecessarily long for the purpose requested (certain of the studies it is conducting are only a continuation of programs which had their inception long before this proceeding was initiated), and to grant the full period requested would unduly prolong the resolution of this matter.

7. *Accordingly, it is ordered,* That the time for filing comments in this proceeding is extended to and including February 8, 1972, and the time for filing reply comments is extended to and including March 8, 1972.

8. This action is taken pursuant to authority found in sections 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and § 0.281(d)(8) of the Commission's rules and regulations.

Adopted: December 2, 1971.

Released: December 8, 1971.

[SEAL] WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.71-18391 Filed 12-15-71;8:50 am]

[47 CFR Part 81]

[Docket No. 19360; FCC 71-1232]

PUBLIC AND LIMITED COAST STATIONS

Notice of Proposed Rule Making

In the matter of amendment of Part 81 of the rules concerning the duplication of service by Public Coast stations; to require justification for assignment of more than one working frequency to Public and Limited Coast stations; and to require listening watches by Limited Coast stations on working frequencies, Docket No. 19360.

1. Notice of proposed rule making in the above entitled matter is hereby given.

2. It appears there is a need to include in the Commission's rules the express conditions under which more than one VHF working frequency may be assigned to Public and Limited Coast stations in the Maritime Mobile Service; to require listening watches on working frequencies by Limited Coast stations; and to more clearly specify the circumstances under which public coast stations may be established to provide maximum service possible without unnecessary and wasteful duplication.

3. The rules for public coast stations, which provide public correspondence radio service for ships, contain no limitations on the number of working frequencies that may be assigned a station, but we ordinarily have assigned only one working frequency to VHF public stations. We intend to remedy this rule deficiency by enlarging and better defining § 81.304 of the rules as shown below.

4. Section 81.358 of the Commission's rules provides, essentially, that only one working frequency will be assigned to a VHF (Class III-B) limited coast station, but that additional frequencies may be assigned upon a satisfactory showing of need for more than one working frequency. Limited coast stations provide nonpublic correspondence radio communication service to ships. This provision was intended to apply to situations where the volume of traffic handled by a particular station is too great to be accommodated on a single frequency or where the use by other coast stations in the area of its assigned frequency is so great that it substantially impairs the accessibility or availability of the assigned primary frequency, necessitating assignment of an alternate or secondary, working frequency. Many applicants for both limited and public coast station authorizations apply for more than one working frequency, or all available frequencies, not necessarily because of voluminous radio traffic, or the need for an alternate frequency, but so that the coast station will be able to communicate with all nearby vessels regardless of the channel with which the ship station may be equipped. This conflicts with a basic Commission concept of maritime radiocommunications in that it is the responsibility of a ship station licensee to equip the ship station with channels of the coast or other stations with which communication is desired. It is not the responsibility of the coast station to operate on all assignable frequencies so that it can communicate with any vessel within range. We believe an amendment to § 81.358 of our rules as set forth below is needed in order to clarify further this policy and concept.

5. By better controlling the assignment of working frequencies to coast stations, as described here, we recognize the potential problem that could arise in the case of stations of this class operated by maritime radio servicing firms who may need to operate from time to time on each assignable frequency to conduct radio tests in response to a request from a ship station. To meet this need we are proposing a change in § 81.355 of the rules to allow a limited coast station operated by a servicing firm to conduct equipment tests under specified controlled conditions on frequencies other than the assigned working frequency as well as the assigned working frequency.

6. With respect to the use of the national distress, safety and calling frequency, 156.8 Mc/s, information available to us indicates that this frequency is being heavily used for routine calling, to the extent that it may not be sufficiently available for distress and safety communications. Calling, to the maximum extent possible, should be conducted on working frequencies as provided for in §§ 81.304(b)(25) and 81.356 (b)(11) for coast stations. We believe that more calling to limited coast stations could and should be undertaken on working frequencies, but to achieve this requires that a watch be maintained by the coast station on the particular frequency if a call is to be completed. We have, therefore, included provisions in

the proposed changes to require such watches. Since this ordinarily requires an additional receiver, or receivers, and imposes a slight additional economic burden on the licensee we have also provided that any watches on working frequencies, but not on the distress frequency 156.8 Mc/s, can be by means of an electronic, automatic frequency scanning device. This would necessitate the use of only one additional receiver even if more than one additional working frequency were assigned to a station and would have a minimum adverse economic impact on a licensee.

7. With respect to requests for exemption from the watch requirements of § 81.191(d) of the rules, we propose in this proceeding to include in that rule section the criteria adopted in our Memorandum Opinion and Order released November 24, 1969, on which we currently base our decisions on any requests for exemption and which may be modified by the Commission action in Docket No. 18944.[1]

8. In response to a notice of proposed rule making in Docket No. 18944, GT&E Service Corp. and Marvin L. Miller suggested amendments to § 81.303 concerning duplication of service by Public Coast stations. We did not treat the comments in that docket because they were not sufficiently germane to that proceeding, but we will instead consider their comments here since they closely relate to this proceeding. Both commenters asserted that the section should be amended to specify what degree of overlap of coverage for existing and a proposed station would be acceptable to justify the establishment of additional facilities. GT&E suggested the rule be amended to include essentially the following language:

> Duplication of service coverage may not exceed a 20 percent overlap of computed coverage area determined by the service area new facilities is exceeding a 50 percent busy hour.

We agree that modification of § 81.303 of the rules may be needed and have incorporated the concept proposed by GT&E below and have extended this concept to include overlap between proposed stations. There would be no co-channel duplication of service allowed.

9. The proposed amendments to the rules, as set forth below, is issued pursuant to authority contained in sections 4(i) and 303 (b), (f), and (r) of the Communications Act of 1934, as amended.

10. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before January 24, 1972, and reply comments on or before February 3, 1972. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may take into account other relevant information before it, in addition to the specific comments invited by this notice.

11. In accordance with the provisions of § 1.419 of the Commission's rules, an original and 14 copies of all statements, briefs, or comments filed shall be furnished the Commission. Responses will be available for public inspection during regular business hours in the Commission's docket and rule making proceeding room at its headquarters in Washington, D.C.

Adopted: December 8, 1971.

Released: December 10, 1971.

FEDERAL COMMUNICATIONS COMMISSION,[2]

[SEAL] BEN F. WAPLE,
Secretary.

Part 81 of the rules is amended as indicated below.

1. Section 81.191(d) is amended to read as follows:

§ 81.191 Radiotelephone watch by coast stations.

* * * * *

(d)(1) Each limited coast station, other than marine utility stations operating as limited coast stations, licensed to transmit by telephony in the band 156–162 MHz, shall during its hours of service, maintain an efficient watch for reception of F3 emission on 156.800 MHz, whenever such station is not being used for transmission.

(2) The Commission may exempt any coast station from compliance with subparagraph (1) of this paragraph when it has been demonstrated that the watch on 156.800 MHz is complete over the service area of the coast station by public coast stations or U.S. Government stations having continuous hours of service. An application for exemption must include a chart showing the receiving service area of the limited coast station by the method specified in § 81._____ of the rules.[3] The applicant shall indicate on the same chart the location by coordinates, to the nearest minute, and the receiving service area of the public coast station or government station maintaining the continuous watch on 156.800 MHz. The receiving service area of these stations shall be calculated using the criteria specified in § 81._____ of the rules,[3] or in the absence of such engineering study, the receiving service area of public coast stations will be assumed to be 20 nautical miles, and that of government stations to be either 15 nautical miles or as stated by competent authorities of the agency concerned, i.e. District Commander for the U.S. Coast Guard, District Engineer for the U.S. Army, etc.

(3) If a U.S. Government station is used as a basis for exemption, the filing must include information from the individual responsible for the station operation showing: (i) The coordinates of the receiving station; (ii) the receiving area of service of the government station and; (iii) whether the station maintains a continuous listening watch on 156.8 Mc/s. The receiving area of service of the government station will be plotted by the applicant on the chart referred to in subparagraph (2) of this paragraph.

(4) In addition to the listening watch on 156.8 Mc/s, limited coast stations, other than marine utility stations, after January 1, 1973, shall, during their hours of service, maintain a watch on each assigned working frequency whenever the station is not being used for transmission. If more than one working frequency is assigned, the station may maintain the working frequency listening watch by using a sequential frequency scanning device that monitors all working frequencies in turn and stops on any occupied frequency until reactivated by the station operator.

* * * * *

2. Section 81.303 and headnote are amended to read as follows:

§ 81.303 Duplication of Service.

(a) No duplication of service areas as determined by § 81._____ of the rules,[3] will be permitted by Class III–B Public Coast Stations operating on the same public correspondence channel.

(b) When calculated in accordance with Subpart R of this Part, the service areas of two or more Class III–B Public Coast Stations operating on different public correspondence channels shall not be duplicated in more than 20 percent of the navigable waters within the service area of any station: *Provided, however,* That (1) an authorization may be granted for a station to serve a boating locality in which no station is located and which is at least 25 miles from an existing station serving primarily another locality, or (2) an authorization may be granted for a station having a service area which duplicates more than 20 percent of the service area of an existing station if the existing station exceeds a 50 percent busy period on each of its authorized public correspondence channels. An application proposing duplication of service shall be accompanied by a record of monitoring observations or other satisfactory information sufficient to show that, for at least two 30-day periods during the 6 months prior to the filing of the application, each of the assigned working channels of the existing station were in use each day of the two 30-day periods for at least 50 percent of the time during a 3-hour period of peak activity for that day.

3. In § 81.304, a new paragraph (f) is added to read as follows:

§ 81.304 Frequencies available.

* * * * *

(f) In assignment of frequencies in the band 156–162 MHz to Class III–B public coast stations all initial grants will be limited to one working frequency. An additional frequency may be assigned

[1] In Docket No. 18944, a notice of proposed rule making was released on Aug. 28, 1970, which proposes technical standards for computing the service areas of VHF public coast stations. These standards could apply equally to VHF limited coast stations.

[2] Commissioner Johnson concurring in the result.

[3] Docket No. 18944, 35 F.R. 14096.

upon a showing by a record of monitoring observations or other satisfactory information that for at least two 30-day periods during the 6 months prior to the filing of the application, each of the assigned working channels of the existing station was in use each day of two 30-day periods for at least 40 percent of the time during a 3-hour period of peak activity for that day.

4. Section 81.355 is amended by adding a new paragraph (d) as follows:

§ 81.355 Nature of service.

* * * * *

(d) Limited coast stations authorized to marine radio electronic service firms pursuant to § 81.351(a)(1) of the rules on the basis that they provide service to ships, may use any frequency listed in § 81.356 for ship radio checks, provided (1) that arrangements for the check are made on an assigned coast station working frequency and (2) that the check is made in full compliance with the testing provisions of § 83.365 of the rules.

5. Section 81.358 and headnote are amended to read as follows:

§ 81.358 Conditions imposed upon assignments in the 156–162 MH/z band.

(a) Normally frequencies within the band 156–162 MH/z assigned to limited coast stations shall be in accordance with the applicant's eligibility for a license. Normally, only one port operation, commercial and noncommercial frequency will be assigned. Application for authority to use more than one frequency in any one of these three categories shall include a satisfactory showing of need for the additional frequency, or frequencies.

(b) An application for an additional frequency, or frequencies, by a person who services vessels, shall include (1) a description or identification of the vessel, or vessels, with which communication is planned and (2) a statement that the applicant has personal knowledge that the ship radio station, or stations, is not capable of operating on working frequencies already assigned to the coast station.

(c) An application for an additional frequency, or frequencies, based on an assertion that the volume of traffic is too great to be handled on the assigned frequency, or frequencies, shall include a copy of the station log, or other comparable documents, to show that the assigned frequency has been, for the preceeding 6-month period, in average daily use at least 25 percent of the time during 3 hours of peak activity. If the application for an additional frequency is based on the asserted heavy use of the primary station frequency by other nearby stations, the showing of need will include the call signs and locations of such stations.

[FR Doc.71-18394 Filed 12-15-71;8:51 am]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Changes In Rates During A Taxable Year

Notice is hereby given that the regulations set forth in tentative form in the attached appendix 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 17, 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 17, 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 conform the Income Tax Regulations (26 CFR Part 1) under section 21(d) of the Internal Revenue Code of 1954 to section 132 of the Revenue Act of 1964 (78 Stat. 25, 30) and section 803(e) of the Tax Reform Act of 1969 (83 Stat. 487, 685) such regulations are amended as follows:

PARAGRAPH 1. Section 1.21 is amended by deleting paragraph 1(d) applicable to taxable years beginning before January 1, 1954, and ending after December 31, 1953, and adding paragraph (d) *Changes Made by Revenue Act of 1964* and paragraph (d) *Changes Made by Tax Reform Act of 1969 in Case of Individuals* and by adding a historical note. These amended provisions read as follows:

§ 1.21 Statutory provisions; effect of changes.

(a) *General rule.* * * *

* * * * *

(d) *Changes Made by Revenue Act of 1964*—(1) *Individuals.* In applying subsection (a) to the taxable year of an individual beginning in 1963 and ending in 1964—

(A) The rate of tax for the period on and after Jauary 1, 1964, shall be applied to the taxable income determined as if part IV of subchapter B (relating to standard deduction for individuals), as amended by the Revenue Act of 1964, applied to taxable years ending after December 31, 1963, and

(B) Section 4 (relating to rules for optional tax), as amended by such Act, shall be applied to taxable years ending after December 31, 1963.

In applying subsection (a) to a taxable year of an individual beginning in 1963 and ending in 1964, or beginning in 1964 and ending in 1965, the change in the tax imposed under section 3 shall be treated as a change in a rate of tax.

(2) *Corporations.* In applying subsection (a) to a taxable year of a corporation beginning in 1963 and ending in 1964, if—

(A) The surtax exemption of such corporation for such taxable year is less than $25,000 by reason of the application of section 1561 (relating to surtax exemptions in case of certain controlled corporations), or

(B) An additional tax is imposed on the taxable income of such corporation for such taxable year by section 1562(b) (relating to additional tax in case of component members of controlled groups which elect multiple surtax exemptions),

the change in the surtax exemption, or the imposition of such additional tax, shall be treated as a change in a rate of tax taking effect on January 1, 1964.

(d) *Changes Made by Tax Reform Act of 1969 in Case of Individuals.* In applying subsection (a) to a taxable year of an individual which is not a calendar year, each change made by the Tax Reform Act of 1969 in part I or in the application of part IV or V of subchapter B for purposes of the determination of taxable income, shall be treated as a change in a rate of tax.

[Sec. 21 as amended by sec. 132, Rev. Act 1964 (78 Stat. 31); sec. 803(e), Tax Reform Act, 1969 (83 Stat. 487)]

PAR. 2. Section 1.21–1 is amended by revising paragraphs (a), (c), (d), (h), (k), and (n). These revised provisions read as follows:

§ 1.21–1 Changes in rate during a taxable year.

(a) Section 21 applies to all taxpayers, including individuals and corporations. It provides a general rule applicable in any case where (1) any rate of tax imposed by chapter 1 of the Code upon the taxpayer is increased or decreased, or any such tax is repealed, and (2) the taxable year includes the effective date of the change, except where that date is the first day of the taxable year. For example, the normal tax on corporations under section 11(b) was decreased from 30 percent to 22 percent in the case of a taxable year beginning after December 31, 1963. Accordingly, the tax for a taxable year of a corporation beginning on January 1, 1964, would be computed under section 11(b) at the new rate without regard to section 21. However, for any taxable year beginning before January 1, 1964, and ending on or after that date, the tax would be computed under section 21. For additional circumstances under which section 21 is not applicable, see paragraph (k) of this section.

* * * * *

(c) If the rate of tax is changed for taxable years "beginning after" or "ending after" a certain date, the following day is considered the effective date of the change for purposes of section 21. If the rate is changed for taxable years "beginning on or after" a certain date, that date is considered the effective date of the change for purposes of section 21. This rule may be illustrated by the following examples:

Example (1). Assume that the law provides that a change in a certain rate of tax shall be effective only with respect to taxable years beginning after December 31, 1969. The effective date of change for purposes of section 21 is January 1, 1970, and section 21 must be applied to any taxable year which begins before and ends on or after January 1, 1970.

Example (2). Assume that the law provides that a change in a certain rate of tax shall be applicable only with respect to taxable years ending after December 31, 1970. For purposes of section 21, the effective date of change is January 1, 1971, and section 21 must be applied to any taxable year which begins before and ends on or after January 1, 1971.

Example (3). Assume that the law provides that a change in a certain rate of tax shall be effective only with respect to taxable years beginning on or after January 1, 1971. The effective date of change for purposes of section 21 is January 1, 1971, and section 21 must be applied to any taxable year which begins before and ends on or after January 1, 1971.

(d) If a tax is repealed, the repeal will be treated as a change of rate for purposes of section 21, and the rate for the period after the repeal (for purposes of computing the tentative tax with respect to that period) will be considered zero. For example, the Tax Reform Act of 1969 repealed section 1562, which imposed a 6 percent additional tax on controlled corporations electing multiple surtax exemptions, effective for taxable years beginning after December 31, 1974. For such controlled corporations having taxable years beginning in 1974 and ending in 1975, the rate for the period ending before January 1, 1975, would be 6 percent; the rate for the period beginning after December 31, 1974, would be zero. However, subject to the rules stated in this section, section 21 does not apply to the imposition of a new tax. For example, if a new tax is imposed for taxable years beginning on or after July 1, 1972, a computation under section 21 would not be required with respect to such new tax in the case of taxable years beginning before July 1, 1972, and ending on or after that date. If the effective date of the imposition of a new tax and the effective date of a change in rate of such tax fall in the same taxable year, section 21 is not applicable in computing the taxpayer's liability for such tax for such year unless the new tax is expressly imposed upon the taxpayer for a portion of his taxable year prior to the change in rate.

* * * * *

(h) (1) Section 21 is applicable only if the rate of tax imposed by chapter 1 changes. Sections in which rates of tax are specified or incorporated by reference include the following: 1, 2, 3, 11, 511, 531, 541, 821, 831, 871, 881, 1201, and 1348 (for taxable years beginning after December 31, 1970). Except as provided in subparagraph (3) of this paragraph, section 21 is not applicable with respect to changes in the law relating to deductions from gross income, exclusions from or inclusions in gross income, or other items taken into account in determining the amount or character of income subject to tax. Moreover, section 21 is not applicable with respect to changes in the law relating to credits against the tax or with respect to changes in the law relating to limitations on the amount of tax. Section 21 is applicable, however, to all those computations specified in the section providing the rate of tax which are implicit in determining the rate, for example, if one of the tax brackets in the tax tables under section 3 were to be changed, section 21 would be applicable to that change. Thus, if the bracket relating to "at least $4,200 but not less than $4,250" for heads of households should be changed to increase or decrease the last sum specified, with corresponding changes being made in subsequent brackets, section 21 would be applicable. The enactment of sections 1561 and 1562 is considered a change in section 11(d) which constitutes a change in rate for the period ending after December 31, 1963. The amendment of section 1561 and the repeal of section 1562 by the Tax Reform Act of 1969 is considered a change in section 11(d) which constitutes a change in rate for the period ending after December 31, 1974. The repeal of the 2 percent additional tax imposed under section 1503 on corporations filing consolidated returns constitutes a change in rate for the period ending after December 31, 1963. The addition to the Code of section 1348 (relating to 50 percent maximum rate on earned income) is a change in rate to which section 21(a) is applicable.

(2) Ordinarily, both the old and the new rates are applied to the same amount of taxable income. However, where the rate of tax is itself taken into account in determining taxable income (for example, the special deduction for Western Hemisphere trade corporations under section 922), the taxable income used in determining the tentative tax employing the rate before the effective date of change shall be determined by reference to that rate of tax, and the taxable income for the purpose of determining the tentative tax employing the rate for the period on and after the effective date of the change shall be determined by reference to the new tax rate.

(3) Section 21 is applicable with respect to changes in the law relating to the standard deduction for individuals provided in part IV of subchapter B and to the deduction for personal exemptions for individuals provided in part V of subchapter B.

* * * * *

(k) Section 21 does not apply in the following situations:

(1) The provisions of section 21 do not apply to the imposition of the tax surcharge by section 51. The proration rules of section 51(a) apply in the case of a taxable year ending on or after the effective date of the surcharge and beginning before July 1, 1970.

(2) The provisions of section 21 do not apply to the imposition of the minimum tax for tax preferences by section 56. The proration rules of section 301(c) of the Tax Reform Act of 1969 (83 Stat. 586) apply in the case of a taxable year beginning in 1969 and ending in 1970.

* * * * *

(n) The application of section 21 may be illustrated by the following examples:

Example (1). A, a married taxpayer filing a joint return, reports his income on the basis of a fiscal year ending June 30. For his fiscal year ending June 30, 1970, A reports taxable income (exclusive of capital gains and losses) of $50,000 and net long-term capital gain (section 1201 gain) of $75,000. The rate of tax on capital gains under section 1201(b) relating to the alternative tax has been increased from 25 percent to a maximum rate of 29½ percent with respect to gain in excess of $50,000 and the effective date of the change in rate is January 1, 1970. The income tax for the taxable year ended June 30, 1970, would be computed under section 21 as follows:

TENTATIVE TAX

Taxable income exclusive of capital gains and losses	$50,000
Long-term capital gain	75,000
	125,000
Deduct 50% of long-term capital gain	37,500
Taxable income	87,500
Tax under section 1 (1969 and 1970 rates)	37,690

ALTERNATIVE TAX UNDER SECTION 1201(b) (1969 RATES)

Taxable income ($50,000+50% of $75,000)	$87,500
Less 50% of long-term capital gain	37,500
Taxable income exclusive of capital gains	50,000
Partial tax (tax on $50,000)	17,060
Plus 25% of $75,000	18,750
Alternative tax under section 1201 (b) at 1969 rates	35,810

ALTERNATIVE TAX UNDER SECTION 1201(B) (1970 RATES)

STEP I

Taxable income ($50,000 + 50% of $75,000)	$87,500	
Deduct 50% of net section 1201 gain	37,500	
	50,000	
Tax on $50,000 (taxable income exclusive of capital gains)		$17,060

STEP II

(a) Net section 1201 gain	75,000	
(b) Subsection (d) gain	50,000	
25% of $50,000 (lesser of (a) or (b))		12,500

STEP III

(c) 29½% of $25,000 (excess of (a) over (b))		7,375	
(d) Ordinary income	$50,000		
50% of net section 1201 gain	37,500		
	87,500		
Tax on $87,500		37,690	
Ordinary income	$50,000		
50% of subsection (d) gain	25,000		
	75,000		
Tax on $75,000		30,470	
Difference		7,220	
Lesser of (c) or (d)			7,220
Alternative tax (total of 3 Steps) at rates effective on and after January 1, 1970			36,780

Since the alternative tax is less than the tax imposed under section 1 for both the period in 1969 and the period in 1970, the alternative tax applies for both periods. Thus, since the effective date of the change in the rate of tax on capital gains is January 1, 1970, the old rate of alternative tax is effective for 184 days of the taxable year and the new rate of alternative tax is effective for 181 days of the taxable year. The alternative taxes are apportioned as follows:

1969—184/365 of $35,810	$18,052.16
1970—181/365 of $36,780	18,238.85
	36,291.01
Tax surcharge (See § 1.51-1 (d)(1)(i))	2,729.28
Total tax for the taxable year	39,020.29

Example (2). B, a single individual not a head of a household, has a taxable year ending March 31. For the taxable year ending March 31, 1971, B has adjusted gross income of $18,500. His computation of the tax imposed is as follows:

1970 TENTATIVE TAX

Adjusted gross income		$18,500.00
Less:		
Standard deductiont	$1,000.00	
Personal exemption	625.00	1,625.00
Taxable income under 1970 deduction provisions		$16,875.00
Tax on $16,875 (1970 rates:		
Tax on first $16,000	4,330.00	
42 percent of $875	367.50	
Tentative tax at rates and deduction provisions effective on or after January 1, 1970		4,697.50

1971 TENTATIVE TAX

Adjusted gross income		$18,500.00
Less:		
Standard deduction	$1,500	
Personal exemption	650	2,150.00
Taxable income under 1971 deduction provisions		16,350.00
Tax on $16,350 (1971 rates)		
Tax on first $16,000	3,830	
34 percent of $350	119	
Tentative tax at rates and deduction provisions effective on or after Januray 1, 1971		3,949.00

The 1970 and 1971 tentative taxes are apportioned as follows:

1970—275/365 of $4,697.50	3,539.21
1971—90/365 of $3,949.00	973.73
	4,512.94
Tax surcharge (see § 1.51-1 (d)(1)(i))	56.26
Total tax for the taxable year	4,569.20

Example (3). H and W, husband and wife, have a foster child, C, who qualifies as a dependent under section 152(b)(2) for the period beginning after December 31, 1969. H and W file a joint return on the basis of a taxable year ending August 31. For the taxable year ending August 31, 1970, H and W have adjusted gross income of $12,500. Their computation of the tax imposed is as follows:

1969 TENTATIVE TAX

Ajusted gross income		$12,500.00
Less:		
Standard deduction	$1,000.00	
Personal exemption (2)	1,200.00	2,200.00
Taxable income under 1969 deduction provision		10,300.00
Taxable income reduced by one-half		5,150.00
Tax on $5,150 (1969 rates):		
Tax on first $4,000	$690.00	
22 percent of $1,150	253.00	943.00
Twice the tax on $5,150	1,886.00	
Tentative tax at rates and deduction provision effective on or after January 1, 1969		1,886.00

1970 TENTATIVE TAX

Ajusted gross income		$12,500.00
Less:		
Standard deduction	$1,000.00	
Personal exemption (3)	1,875.00	2,875.00
Taxable income under 1970 deduction provisions		9,625.00
Tax on $9,625 (1970 rates):		
Tax on first $8,000	$1,380.00	
22 percent of $1,625	357.50	
Tentative tax at rates and deduction provision effective on or after January 1, 1970		1,737.50

The 1969 and 1970 tentative taxes are apportioned as follows:

1969—122/365 of $1,886	$630.39
1970—243/365 of $1,737.50	1,156.75
	1,787.14
Tax surcharge (See § 1.51-1(d)(1)(i))	104.05
Total tax for the taxable year	1,891.19

Example (4). B, a single individual with one exemption, reports his income on the basis of a fiscal year ending June 30. For fiscal year ending June 30, 1971, B reports adjusted gross income of $250,000, consisting of earned net income of $240,000 and investment income of $10,000. In addition, on April 24, 1971, stock was transferred to B pursuant to his exercise of a qualified stock option, and the fair market value of such stock at that time exceeded the option price by $175,000. This $175,000 constitutes an item of tax preference described in section 57(a)(6). B claims itemized deductions in the amount of $34,000. By reason of section 1348, the maximum rate of tax on earned taxable income for a taxable year beginning after 1970 but before 1972 is 60 percent. The income tax for the taxable year ending June 30, 1971, would be computed under section 21 as follows:

1970 TENTATIVE TAX

Adjusted gross income		$250,000.00
Less:		
Itemized deductions	$34,000.00	
Personal exemption	625.00	34,625.00
Taxable income under 1970 deduction provisions		215,375.00
Tax on $215,375 (1970 rates):		
Tax on first $100,000	$55,490.00	
70 percent of $115,375	80,762.50	
Tentative tax at rates and deduction provisions effective on or after January 1, 1970		136,252.50
Minimum tax:		
Total tax preference items		175,000.00
Less:		
Exemption	$30,000.00	
Income tax	136,252.50	166,252.50
Subject to 10 percent tax		8,747.50
10 percent tax		874.75
Total tentative tax ($136,252.50+$874.75)		137,127.25

1971 TENTATIVE TAX

Adjusted gross income		$250,000.00
Less:		
Itemized deductions	$34,000.000	
	650.00	34,650.00
Personnel exemption		
Taxable income under 1971 deduction provitions		215,350.00

(a) Tax on highest amount of taxable income on which rate does not exceed 60 percent ($50,000) (1971 rates)		20,190.00
(b) Earned taxable income: ($215,350 × $240,000/$250,000)	206,736.00	
Less: Tax preference offset: ($175,000 −$30,000)	145,000.00	
	$61,736.00	
(c) 60% of the amount by which $61,736 exceeds $50,000		7,041.60
(d) Tax on $215,350 (1971 rates):		
Tax on first $100,000	$53,090.00	
70% of $115,350	80,745.00	
Total	$133,835.00	
(e) Tax on $61,736 (1971 rates):		
Tax on first $60,000	$26,390.00	
64% of $1,736	1,111.04	
Total	$27,501.04	
(f) Excess of $133,835 over $27,501.04		106,333.96
Tentative tax (total of Steps (a), (c), and (f)) at rates and deduction provisions effective on or after January 1, 1971		133,565.56
Minimum tax:		
Total tax preference items		175,000.00
Less:		
Exemption	$30,000.00	
Income tax	133,565.56	163,565.56
Subject to 10 percent tax		11,434.44
10 percent tax		1,143.44
Total tentative tax $133,565.56+$1,143.44)		134,709.00
The 1970 and 1971 tentative taxes are apportioned as follows:		
1970—184/365 of $137,127.25		69,127.16
1971—181/365 of $134,709		66,800.90
Total tax for the taxable year		135,928.06

Example (5). The surtax exemption of corporation M (one of 4 subsidiary corporations of W corporation), which files its income tax returns on the basis of a fiscal year ending March 31, 1964, is less than $25,000, by reason of section 1561 of the Code applicable to taxable years ending after December 31, 1963, and beginning before January 1, 1975. The taxable income of corporation M is $100,000, and the amount of the surtax exemption determined under the new rule for the 1964 taxable year is $5,000 ($25,000÷5). M's income tax liability for the taxable year ending March 31, 1964, is computed as follows:

1963 TENTATIVE TAX

Taxable income		$100,000
Normal tax of $100,000 (1963 rates) 30 percent of $100,000	$30,000	
Surtax on $75,000 (1963 rates and $25,000 surtax exemption) 22 percent of $75,000	16,500	
Total tentative tax at rates and surtax exemption effective before January 1, 1964		46,500

1964 TENTATIVE TAX

Taxable income		$100,000
Normal tax on $100,000 (1964 rates) 22 percent of $100,000	$22,000	
Surtax on $95,000 (1964 rates and a $5,000 surtax exemption) 28 percent of $95,000	26,600	
Total tentative tax at rates and surtax exemption effective after January 1, 1964		48,600

The 1963 and 1964 tentative taxes are apportioned as follows:

1963—275/366 of $46,500	$34,938.52
1964—91/366 of $48,600	12,083.61
Total tax for the taxable year	47,022.13

M has the same amount of taxable income in 1965. Its income tax liability for the fiscal year ending March 31, 1965, is computed as follows:

1964 TENTATIVE TAX

Taxable income		$100,000
Normal tax on $100,000 (1964 rates) 22 percent of $100,000	$22,000	
Surtax on $95,000 (1964 rates and a $5,000 surtax exemption) 28 percent of $95,000	26,600	
Total tentative tax at the 1964 rates		48,600

1965 TENTATIVE TAX

Taxable income		$100,000
Normal tax on $100,000 (1965 rates) 22 percent of $100,000	$22,000	
Surtax on $95,000 (1965 rates and a $5,000 surtax exemption) 26 percent of $95,000	24,700	
Total tentative tax at the 1965 rates		46,700

The 1964 and 1965 tentative taxes are apportioned as follows:

1964—275/365 of $48,600	$36,616.44
1965—90/365 of $46,700	11,515.07
Total tax for the taxable year	48,131.51

Example (6). Assume the same facts as in example (5), except that M elected the additional tax under section 1562 for its fiscal year ending March 31, 1964. M's tax liability is completed as follows:

1963 TENTATIVE TAX

Taxable income		$100,000
Normal tax on $100,000 (1963 rates) 30 percent of $100,000	$30,000	
Surtax on $75,000 (1963 rates and $25,000 surtax exemption) 22 percent of $75,000	16,500	
Total tentative tax at rates and surtax exemption effective before January 1, 1964		46,500

1964 TENTATIVE TAX

Taxable income		$100,000
Normal tax on $100,000 (1964 rates) 22 percent of $100,000	$22,000	
Surtax on $75,000 (1964 rates and $25,000 surtax exemption) 28 percent of $75,000	21,000	
Additional tax on $25,000 6 percent of $25,000	1,500	
Total tentative tax at rates and surtax exemption effective on and after January 1, 1964		44,500

The 1963 and 1964 tentative taxes are apportioned as follows:

1963—275/366 of $46,500	$34,938.52
1964—91/366 of $44,500	11,064.21
Total tax for the taxable year	46,002.73

Example (7). The surtax exemption of corporation M (one of 4 subsidiary corporations of W corporation), which files its income tax returns on the basis of a fiscal year ending March 31, is for its taxable year ending March 31, 1975, $25,000 because M elects the additional tax under section 1562 for the period April 1, 1974, through December 31, 1974. Section 1562 is repealed effective for the period on or after January 1, 1975. The taxable income of corporation M is $100,000. M's tax liability for the taxable year ending March 31, 1975, is computed as follows:

1974 TENTATIVE TAX

Taxable income		$100,000
Normal tax on $100,000 (1974 rates) 22 percent of $100,000	$22,000	
Surtax on $75,000 (1974 rates and $25,000 surtax exemption) 26 percent of $75,000	19,500	
Additional tax on $25,000 6 percent of $25,000	1,500	
Total tentative tax at rates and surtax exemption effective on and after January 1, 1974		43,000

1975 TENTATIVE TAX

Taxable income		$100,000
Normal tax on $100,000 (1975 rates) 22 percent of $100,000	$22,000	
Surtax on $95,000 (1974 rates and $5,000 surtax exemption) 26 percent of $95,000	24,700	
Total tentative tax at rates and surtax exemption effective on and after January 1, 1975		46,700

The 1974 and 1975 tentative taxes are apportioned as follows:

1974—275/365 of $43,000	$32,397.26
1975— 90/365 of $46,700	11,515.07
Total tax for the taxable year	43,912.33

[FR Doc.71-18365 Filed 12-15-71;8:47 am]

Notices

DEPARTMENT OF COMMERCE

Office of Import Programs

UNIVERSITY OF CALIFORNIA

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the office of Import Programs, Department of Commerce, Washington, D.C.

Docket No. 71-00427-00-20700. Applicant: University of California, Lawrence Radiation Laboratory, East End of Hearst Avenue, Berkeley, CA 94720. Article: Glass blocks for Cerenkov counter—12 each. Manufacturer: Ohara Glass, Japan.

Intended use of article: The articles will be used to construct a detector for 100 MeV gamma rays.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a detector which fails to detect 100 million electron volt gamma rays in fewer than 1 in 3000 attempts. We are advised by the National Bureau of Standards (NBS) in its memorandum dated July 28, 1971, that the best obtainable detector efficiency is pertinent to the purposes for which the foreign article is intended to be used. NBS also advises that it knows of no comparable domestic apparatus being manufactured in the United States that can be used for the applicant's purposes.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

SETH M. BODNER,
Director, Office of Import Programs.

[FR Doc.71-18359 Filed 12-15-71;8:46 am]

UNIVERSITY OF CINCINNATI

Notice of Applications for Duty-Free Entry of Scientific Articles; Addition

The notice of application as published in Volume 36, Number 228 (page 22609) of the FEDERAL REGISTER dated Thursday, November 25, 1971, pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) is hereby amended to read Article: Laryngo-Synchronstroboscope KS3 instead of Laryngo-Schronstroboscope KS3.

Docket No. 72-00077-33-43780. Applicant: University of Cincinnati, College of Medicine, Eden and Bethesda Avenues, Cincinnati, OH 45219. Article: Laryngo-Synchronstroboscope KS3. Manufacturer: Rolf Timcke, West Germany.

Intended use of article: The article will be used to teach medical students, interns, and residents the anatomic and physiologic action of the vocal cords and the voice box. Application received by Commissioner of Customs: August 5, 1971.

SETH M. BODNER,
Director, Office of Import Programs.

[FR Doc.71-18358 Filed 12-15-71;8:46 am]

UNIVERSITY OF PITTSBURGH ET AL.

Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles

The following is a consolidated decision on applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

A copy of the record pertaining to this consolidated decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C. 20230.

Decision: Applications denied. Applicants have failed to establish that instruments or apparatus of equivalent scientific value to the foreign articles, for such purposes as the foreign articles are intended to be used, are not being manufactured in the United States.

Reasons: Section 602.5(e) of the regulations provides in pertinent part:

> The applicant shall on or before the 20th day following the date of such notice (of denial without prejudice to resubmission), inform the Administrator whether it intends to resubmit another application for the same article to which the denied application relates. The applicant shall then resubmit the new application on or before the 90th day following the date of the notice of denial without prejudice to resubmission, unless an extension of time is granted by the Administrator in writing prior to the expiration of the 90-day period. * * * If the applicant fails within the applicable time periods specified above, to either (1) inform the Administrator whether it intends to resubmit another application for the same article to which the denial without prejudice to resubmission relates, or (2) resubmit the new application, the prior denial without prejudice to resubmission shall have the effect of a final decision by the Administrator on the application within the context of the paragraph (d) of this section.

The meaning of the section is that should an applicant either fail to notify the Administrator of its intent to resubmit another application for the same article to which the denial without prejudice relates within the 20-day period, or fails to resubmit a new application within the 90-day period, the prior denial without prejudice to resubmission will have the effect of a final denial of the application.

None of the applicants to which this consolidated decision relates has satisfied the requirements set forth above, therefore, the prior denials without prejudice have the effect of a final decision denying their respective applications.

Section 602.5(e) further provides:

> "* * * the Administrator shall submit a summary of the prior denial without prejudice to resubmission to the FEDERAL REGISTER for publication, to the Commissioner of Customs, and to the applicant."

Each of the prior denials without prejudice to resubmission to which this consolidated decision relates was based on the failure of the respective applicants to submit the required documentation, including a completely executed application form, in sufficient detail to allow the issue of "scientific equivalency" to be determined by the Administrator.

Docket No. 70-00048-01-28200. Applicant: University of Pittsburgh, Purchases and Office Services Division (Central Services), Fifth Avenue and Bigelow Boulevard, Pittsburgh, PA 15213. Article: Electron Paramagnetic Resonance Spectrometer, Model B-ER-418S. Date of denial without prejudice to resubmission: June 29, 1970.

Docket No.: 70-00262-01-77040. Applicant: Cornell University, Chemistry Department, 116-R Chemistry Research Building, Ithaca, N.Y. 14850. Article: Mass Spectrometer, RMH-2. Date of denial without prejudice to resubmission: April 20, 1970.

Docket No.: 70-00330-33-28500. Applicant: Sloan-Kettering Inst. for Cancer Research, 410 East 68th Street, New York, NY 10021. Article: Cylindrical Microelectrophoresis Apparatus. Date of denial without prejudice to resubmission: June 29, 1970.

Docket No.: 70-00348-16-61800. Applicant: New Milford School Building Committee, 40 Main Street, New Milford, CT 06776. Article: Planetarium and Auxiliary Projectors, Model Eros. Date of denial without prejudice to resubmission: June 30, 1970.

Docket No.: 70-00376-00-44630. Applicant: U.S. Department of Commerce,

Contract Administration Branch, Procurement Division, Washington Science Center, 11800 Old Georgetown Road, Rockville MD 20852. Article: Parabolic Antenna. Date of denial without prejudice to resubmission: June 17, 1970.

Docket No.: 70-00435-33-46040. Applicant: Albert Einstein College of Medicine, Kennedy Center for Mental Retardation, Department of Pathology, 1300 Morris Park Avenue, Bronx, NY 10461. Article: Electron Microscope, HS-8-1. Date of denial without prejudice to resubmission: June 24, 1970.

Docket No. 70-00443-00-16030. Applicant: Northwestern University, Department of Biological Sciences, 203 Swift Hall, Evanston, Ill. 60201. Article: Snap cap scintillation caps. Date of denial without prejudice to resubmission: June 24, 1970.

Docket No. 70-00449-33-11000. Applicant: Federal Aviation Administration, Civil Aeromedical Institute, 6500 South MacArthur Boulevard, Oklahoma City, OK 73125. Article: Gas Chromatrograph-Mass Spectrometer, Model LKB 9000. Date of denial without prejudice to resubmission: June 29, 1970.

Docket No. 70-00452-33-43780. Applicant: University of Southern California, Allan Hancock Foundation, 107-D, University Park, Los Angeles, Calif. 90007. Article: Medical Apparatus (Physiological). Date of denial without prejudice to resubmission: June 17, 1970.

Docket No. 70-00455-63-46500. Applicant: University of Hawaii, Horticulture Department, 1825 Edmondson Road, Honolulu, HI 96822. Article: Ultramicrotome, Model "Om U2" Date of denial without prejudice to resubmission: June 17, 1970.

Docket No. 70-00456-80-41750. Applicant: Thomas S. Clarkson Memorial College of Technology, Division of Research, Potsdam, N.Y. 13676. Article: Glass Lathe, Model EXE. Date of denial without prejudice to resubmission: June 19, 1970.

Docket No. 70-00473-88-66800. Applicant: Tufts University School of Medicine, Lemuel Shattuck Hospital, 170 Morton Street, Boston, MA 02130. Article: Isotope Localization Monitor, Model 235. Date of denial without prejudice to resubmission: June 15, 1970.

Docket No. 70-00473-88-66800. Applicant: The Johns Hopkins University, 34th and Charles Streets, Baltimore, MD 21218. Article: Measuring Projector. Date of denial without prejudice to resubmission: June 17, 1970.

Docket No. 70-00484-33-46500. Applicant: University of Texas-Southwestern Medical School, 5323 Harry Hines Boulevard, Dallas, TX 75235. Article: Ultramicrotome, LKB 4800A. Date of denial without prejudice to resubmission: June 19, 1970.

Docket No. 70-00495-99-75000. Applicant: University of Wisconsin-Milwaukee, 2150 North Prospect Avenue, Milwaukee, WI 53202. Article: Spectralpyrometer. Date of denial without prejudice to resubmission: June 15, 1970.

Docket No. 70-00495-99-75000. Applicant: Polytechnic Institute of Brooklyn, 333 Jay Street, Brooklyn, NY 11201. Article: 3-Inch Horizontal De-Airing Extruder. Date of denial without prejudice to resubmission: June 29, 1970.

Docket No. 70-00515-92-41300. Applicant: University of Hawaii, Department of Zoology, 2538 The Mall, Snyder Hall, 209, Honolulu, HI 96822. Article: Electric 12 Kymograph and burner. Date of denial without prejudice to resubmission: June 15, 1970.

Docket No. 70-00525-01-77040. Applicant: Montana State University, Department of Chemistry, Bozeman, Mont. 59715. Article: Mass Spectrometer, Model CH-5. Date of denial without prejudice to resubmission: July 22, 1970.

Docket No. 70-00534-55-83500. Applicant: University of Hawaii, Hawaii Institute of Geophysics, 2525 Correa Road, Honolulu, HI 96822. Article: Sea Bottom Thermogradmeter and parts. Date of denial without prejudice to resubmission: June 24, 1970.

Docket No. 70-00535-85-06040. Applicant: University of Hawaii, Oceanography and Geosciences, Hawaii Institute of Geophysics, 2525 Correa Road, Honolulu, HI 96822. Article: Microbarometers with carrying cases. Date of denial without prejudice to resubmission: June 29, 1970.

Docket No. 70-00537-75-40700. Applicant: Battelle-Northwest, Post Office Box 999, Richland, WA 99352. Article: Self Contained Irradiation Source. Date of denial without prejudice to resubmission: June 15, 1970.

Docket No. 70-00545-33-46500. Applicant: University of Louisville, 2301 South Third Street, Louisville, KY 40208. Article: Ultramicrotome, Model LKB 4800A. Date of denial without prejudice to resubmission: June 24, 1970.

Docket No. 70-00557-99-34010. Applicant: University of Hawaii, Department of Art, 2560 Campus Road, Honolulu, HI 96822. Article: Ueoka Vacuum Tugmill. Date of denial without prejudice to resubmission: June 11, 1970.

Docket No. 70-00611-33-43780. Applicant: University of Minnesota Hospitals, 412 Union Street SE., Minneapolis, MN 55455. Article: Therapy Stimulator, IX-4. Date of denial without prejudice to resubmission: June 19, 1970.

Docket No. 70-00679-33-46500. Applicant: University of North Carolina School of Medicine, Laboratories for Reproductive Biology, 111 Swing Building, Chapel Hill, N.C. 27514. Article: Ultramicrotome, Model "Cm U2". Date of denial without prejudice to resubmission: June 29, 1970.

Docket No. 70-00762-33-79300. Applicant: Medical College of Georgia, 1459 Gwinnett Street, Augusta, GA 30902. Article: Multidrawnel Stethoscope, Amplivox Type 16100. Date of denial without prejudice to resubmission: June 19, 1970.

SETH M. BODNER,
Director, Office of Import Programs.

[FR Doc.71-18361 Filed 12-15-71;8:46 am]

UNIVERSITY OF SOUTH ALABAMA

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No.: 71-00584-38-67200. Applicant: University of South Alabama, Mobile, Ala. 36608. Article: Categories tester and aversive conditioning programer. Manufacturer: Barry F. Smith M.A. Sc. Eng., Bio-Medical Engineer, Canada.

Intended use of article: The article will serve primarily as an educational instrument which will include research training and experience. In addition, some members of the faculty of the Department of Psychology will use this apparatus for specific research and possibly for treatment of maladjusted individuals.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used was being manufactured in the United States at the time the foreign article was ordered, January 7, 1970.

Reasons: The article provides flexibility of programing. We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated October 15, 1971, that the above-cited characteristic is pertinent to the purposes for which the foreign article is intended to be used. HEW also advises that it knows of no comparable domestic instrument which was available at the time the foreign article was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which the foreign article is intended to be used, which was being manufactured in the United States at the time the article was ordered.

SETH M. BODNER,
Director, Office of Import Programs.

[FR Doc.71-18360 Filed 12-15-71;8:46 a.m.]

National Oceanic and Atmospheric Administration

ESCAMBIA BAY, FLA.

Determination of Commercial Fishery Failure Due to Resource Disaster

Whereas, many individuals and firms in Florida are engaged in harvesting,

processing, and marketing oysters to meet consumer demand; and

Whereas, oyster reefs along the east bank of Escambia Bay have been an important contributing oyster resource having an area of 110 acres containing approximately 38,000 bushels of harvestable oysters; and

Whereas, 147 oyster fishermen and shuckers utilized the oysters produced by the reefs; and

Whereas, the 110 acres of reefs along the east bank of Escambia Bay are now unproductive of oysters as a result of *Labyrinthomyxa marina*, a naturally occurring oyster parasitic fungus; and

Whereas, it is known that the damaged resource can be effectively and economically restored;

Now, therefore, as authorized representative of the Secretary of Commerce, I hereby determine that the foregoing circumstances constitute a commercial fishery failure due to a resource disaster within the meaning of subsection 4(b) of the Commercial Fisheries Research and Development Act as amended. Pursuant to this determination, I hereby authorize the use of funds appropriated under the aforementioned Act to restore the damaged oyster resource of Escambia Bay, Fla.

ROBERT M. WHITE,
Administrator, National Oceanic and Atmospheric Administration.

[FR Doc.71-18362 Filed 12-15-71;8:46 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-191]

BABCOCK & WILCOX CO.

Notice of Issuance of Facility License Amendment

The Atomic Energy Commission (the Commission) has issued, effective as of the date of issuance, Amendment No. 5 to Facility License No. CX-19, as amended February 5, 1969. The license authorizes the Babcock & Wilcox Co. (B&W) to possess, use and operate a critical experiment facility in B&W's Critical Experiment Laboratory located near Lynchburg, Va., at power levels up to 50 kilowatts (thermal). The amendment extends the expiration date of the license from December 19, 1971 to December 19, 1981, in accordance with B&W's application dated November 11, 1971.

The Commission has found that the application for the amendment dated November 11, 1971, complies with the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations published in 10 CFR Chapter I. The Commission has made the findings required by the Act and the Commission's regulations and has concluded that the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public. The Commission has also found that prior public notice of this amendment is not required since the amendment does not involve significant hazards considerations different from those previously evaluated.

Within 15 days from the date of publication of the notice in the FEDERAL REGISTER, the applicant may file a request for a hearing and any person whose interest may be affected by this proceeding may file a petition for leave to intervene. Requests for a hearing and petitions to intervene shall be filed in accordance with the Commission's "Rules of Practice" in 10 CFR Part 2. If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in this notice, the Commission will issue a notice of hearing or an appropriate order.

For further details with respect to this amendment, see (1) the licensee's application for license amendment dated November 11, 1971, and (2) the amendment to the facility license, both of which are available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, DC. A copy of item (2) above may be obtained upon request sent to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Md., this 7th day of December 1971.

For the Atomic Energy Commission.

DONALD J. SKOVHOLT,
Assistant Director for Reactor Operations, Division of Reactor Licensing.

[FR Doc.71-18399 Filed 12-15-71;8:51 am]

[Docket Nos. 50-369, 50-370]

DUKE POWER CO.

Notice of Availability of Applicant's Environmental Report and Supplemental Environmenal Report

Pursuant to the National Environmental Policy Act of 1969 and the Atomic Energy Commission's regulations in Appendix D to 10 CFR Part 50, notice is hereby given that reports entitled "Applicant's Environmental Report—Construction Permit Stage," and "Supplement No. 1 to Applicant's Environmental Report—Construction Permit Stage," for the William B. McGuire Nuclear Station, Units 1 and 2, submitted by the Duke Power Co., have been placed in the Commission's Public Document Room at 1717 H Street NW., Washington, DC, and in the Public Library of Charlotte, and Mecklenburg County, 310 North Tryon Street, Charlotte, NC 28208. The reports are also being made available to the public at the Clearinghouse and Information Center, Post Office Box 1351, Raleigh, NC 27602, and at the Central Piedmont Regional Council of Local Governments, 509 Cecil Street, Suite 302, Charlotte, NC 28204.

These reports discuss environmental considerations related to the proposed construction of the William B. McGuire Nuclear Station, Units 1 and 2, located on the shore of Lake Norman in Mecklenburg County, N.C.

After the reports have been analyzed by the Commission's Director of Regulation or his designee, a draft detailed statement of environmental considerations related to the proposed action will be prepared. Upon preparation of the draft detailed statement, the Commission will, among other things, cause to be published in the FEDERAL REGISTER a summary notice of availability of the draft detailed statement. The summary notice will request comments from interested persons on the proposed action and on the draft statment. The summary notice will also contain a statement to the effect that the comments of Federal agencies and State and local officials thereon will be available when received.

Dated at Bethesda, Md., this 10th day of December 1971.

For the Atomic Energy Commission.

RICHARD C. DEYOUNG,
Assistant Director for Pressurized Water Reactors, Division of Reactor Licensing.

[FR Doc.71-18400 Filed 12-15-71;8:51 am]

SMALL BUSINESS ADMINISTRATION

[License No. 04/0031]

AMERICAN GROWTH INVESTMENT CO.

Notice of License Surrender

Notice is hereby given that American Growth Investment Co., which was formerly chartered in the District of Columbia, surrendered its license to operate as a small business investment company pursuant to § 107.105 of the regulations governing small business investment companies (13 CFR 107.105 (1971)).

American Growth Investment Co. was licensed as a small business investment company on June 7, 1961, to operate solely under the Small Business Investment Act of 1958 (the Act), as amended

(15 U.S.C. 661 et seq.), and the regulations promulgated thereunder.

Under the authority vested by the Act, and pursuant to the cited regulation, the surrender of the license is hereby accepted and all rights, privileges, and the franchises derived therefrom are canceled.

Dated: December 7, 1971.

A. H. SINGER,
Associate Administrator for Operations and Investment.

[FR Doc.71-18350 Filed 12-15-71;8:45 am]

VANGUARD VENTURE CAPITAL CORP.

Notice of Surrender of License of Small Business Investment Company

Notice is hereby given that Vanguard Venture Capital Corp. (Vanguard), 120 South La Salle Street, Chicago, IL 60603, has, pursuant to § 107.105 of the Regulations Governing Small Business Investment Companies (13 CFR 107.105 (1971)), surrendered its license to operate as a small business investment company.

Vanguard was incorporated December 12, 1961, under the laws of the State of Illinois, and issued License No. 07-0055 by the Small Business Administration on February 20, 1962.

Vanguard was licensed to operate solely under the Small Business Investment Act of 1958, as amended (15 U.S.C. sec. 661 et seq.).

Under the authority vested by the Small Business Investment Act of 1958, as amended, and the regulations promulgated thereunder, the surrender of the license of Vanguard is hereby accepted, and, accordingly, it is no longer licensed to operate as a small business investment company.

Dated: December 7, 1971.

A. H. SINGER,
Associate Administrator for Operations and Investment.

[FR Doc. 71-18351 Filed 12-15-71;8:45 am]

COMMITTEE FOR PURCHASE OF PRODUCTS AND SERVICES OF THE BLIND AND OTHER SEVERELY HANDICAPPED

PROCUREMENT LIST

Proposed Addition to Initial List

Notice is hereby given pursuant to section 2(a)(2) of the Act to Create a Committee on Purchases of Blind-Made Products, as amended, 85 Stat. 79, of the proposed addition of the following commodities and services to the Initial Procurement List published on pages 16982 through 16997 of the FEDERAL REGISTER of August 26, 1971.

Class 4136:
- Filters, Air Conditioning.

Class 4910:
- Creeper, Mechanics.

Class 5975:
- Plate, Wall Electric.

Class 6230:
- Flashlights.

Class 6510:
- Sponge, Surgical.
- Pad, Abdominal.

Class 6515:
- Bag, Tube, Feeding.
- Applicator, Disposable.
- Shaving Kit, Surgical Preparation.

Class 6530:
- Bag, Urine Collection.
- Basin, Emesis.
- Bottles, Snap-on Cap.
- Bottles, Press Lug Lock Cap.
- Cover, Bedpan.
- Enema Administration Set.
- Irrigation Kit, Patient.
- Jar, Screw Cap.
- Pad, Bed Linen Protective.
- Urinary Drainage Set.

Class 6532:
- Cap, Operating, Female.
- Cover, Operating Room, Footwear, Disp.
- Diaper, Adult, Disposable.
- Diaper, Infant, Disposable.
- Mask, Surgical, Disposable.

Class 6545:
- Kits, First Aid.

Class 7110:
- Blackboards.

Class 7195:
- Bulletin Board.

Class 7210:
- Cover, Headrest, Disposable.
- Cover, Pillow, Plastic.
- Cushions, Chair.
- Pillows, Bed, Feather.
- Pillowcase, Disposable.
- Sheets, Bed.
- Towels, Bath.

Class 7230:
- Curtains, Shower, Plastic.

Class 7290:
- Cover, Headrest, Dental Chair.

Class 7510:
- Binder, Note Pad, Springback.
- Binder, Awards Certificate.
- Envelope, Transparent.
- Portfolios.

Class 7520:
- File, Work, Organizer.
- Pencils, Mechanical and Pen Set, Desk.

Class 7530:
- Cards, Index.
- Tape, Teletypewriter.
- Labels, Pressure Sensitive.

Class 8020:
- Covers, Paint Roller.
- Roller Kits, Paint.
- Rollers, Paint.

Class 8105:
- Bag, Sand, Cotton, Osenberg.
- Sand Bag, Burlap.

Class 8345:
- Case, Flag, Interment.
- Signal Pennants.

Class 8405:
- Cover, Service Cap.
- Poncho, Wet Weather.
- Bag, Soiled Clothes.

Class 8415:
- Aprons, Plastic, Laboratory.
- Mask, Cold Weather.
- Strap, Soldier's Steel Helmet Liner.

Class 8460:
- Kit Bag, Flyers.

Class 8465:
- Bags, Soiled Clothes.

Class 9905:
- Kit, Retaining & Numeral, Vehicle Class.
- Letters & Numerals, Sign.
- Plate, Identification.
- Reflector, Taxi Strip and Runway.
- Ribbon, Flagging Surveyors.
- Sign, Kit, Vehicle Class.

SERVICES

- Food Packet, Inflight, Individual, Assembly of
- Food Packet, Abandoned Air-Craft, Individual, Assembly of
- Food Packet, Survival, General Purpose, Assembly of
- Food Packet, Air-Craft, Life Raft, Assembly of
- Furniture Repair and Refinishing
- Meal, Combat, Individual Food Packet, Assembly of
- Meal, Combat, Individual, Final Assembly of
- Micro Filming
- Printing Services
- Ration, Isolated Site, Three Persons, Assembly of
- Ration Supplement, Sundries Pack, Assembly of
- Ration, Individual, Trail, Frigid, Assembly of
- Ration, Long Range Patrol, Assembly of

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed addition may be filed with the Committee. Communications should be addressed to the Executive Director, Committee for Purchase of Products and Services of the Blind and Other Severely Handicapped, 1511 K Street NW., Washington, DC 20005.

By the Committee.

L. F. DONAHUE,
Acting Executive Director.

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INTERSTATE COMMERCE COMMISSION

[Notice 99]

MOTOR CARRIER, BROKER, WATER CARRIER AND FREIGHT FORWARDER APPLICATIONS

DECEMBER 10, 1971.

The following applications are governed by Special Rule 1100.247[1] of the Commission's general rules of practice (49 CFR, as amended), published in the FEDERAL REGISTER issue of April 20, 1966, effective May 20, 1966. These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after date of notice of filing of the application is published in the FEDERAL REGISTER. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with § 1.247(d)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or applicant if no respresentative is named. If the protest includes a request for oral hearing, such requests shall meet the requirements of § 1.247(d)(4) of the special rules, and shall include the certification required therein.

Section 1.247(f) of the Commission's rules of practice further provides that each applicant shall, if protests to its application have been filed, and within 60 days of the date of this publication, notify the Commission in writing (1) that it is ready to proceed and prosecute the application, or (2) that it wishes to withdraw the application, failure in which the application will be dismissed by the Commission.

Further processing steps (whether modified procedure, oral hearing, or other procedures) will be determined generally in accordance with the Commission's General Policy Statement Concerning Motor Carrier Licensing Procedures, published in the FEDERAL REGISTER issue of May 3, 1966. This assignment will be by Commission order which will be served on each party of record.

The publications hereinafter set forth reflect the scope of the applications as filed by applicants, 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.

No. MC 263 (Sub-No. 199), filed November 9, 1971. Applicant: GARRETT FREIGHTLINES, INC., 2055 Garrett Way, Pocatello, ID 83201. Applicant's representative: Wayne G. Green (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment); (1) between junction U.S. Highway 40 and Interstate Highway 505 near Vacaville, Calif., and Portland, Oreg., from junction U.S. Highway 40 and Interstate Highway 50 over Interstate Highway 505 to junction Interstate Highway 5, thence over Interstate Highway 5 to Portland, Oreg., and return over the same route, as an alternate route in connection with applicant's authorized regular route authority, serving no intermediate points; and (2) between Sacramento, Calif., and Portland, Oreg., from Sacramento over California Highway 16 to junction Interstate Highway 5, thence over Interstate Highway 5 to Portland, Oreg., and return over the same route, as an alternate route in connection with applicant's authorized regular route authority, serving no intermediate points. NOTE: If a hearing is deemed necessary, applicant requests it be held at Portland, Oreg.

No. MC 2202 (Sub-No. 401), filed November 19, 1971. Applicant: ROADWAY EXPRESS, INC., 1077 Gorge Boulevard, Post Office Box 471, Akron, OH 44309. Applicant's representative: William O. Turney, 2001 Massachusetts Avenue NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities-in-bulk, and those requiring special equipment), serving points in Caroline, Dorchester, Somerset, Talbot, Wicomico, and Worcester Counties, Md., as intermediate and off-route points in connection with applicant's regular-route authority between Laurel, Md., and South Hill, Va. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Salisbury, Md.

No. MC 2202 (Sub-No. 402), filed November 24, 1971. Applicant: ROADWAY EXPRESS, INC., 1077 Gorge Boulevard, Post Office Box 471, Akron, OH 44309. Applicant's representative: William O. Turney, 2001 Massachusetts Avenue NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), serving the terminal site of Roadway Express, Inc., located at or near Shreveport, La., as an off-route point in connection with applicant's regular-route operations. NOTE: Applicant states that it presently has closed door authority at Shreveport, La., and needs the authority sought in this application so that it may handle freight over the dock of the proposed facility. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Baton Rouge, La.

No. MC 13123 (Sub-No. 63), filed November 15, 1971. Applicant: WILSON FREIGHT COMPANY, a corporation, 3636 Follett Avenue, Cincinnati, OH 45223. Applicant's representative: Milton H. Bortz (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Flat glass;* (1) from the plantsite of PPG Industries, Inc., at Cumberland, Md., to points in the Lower Peninsula of Michigan; (2) from the plantsite of PPG Industries, Inc., at Mount Holly Springs, Pa., to points in the Lower Peninsula of Michigan. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Pittsburgh, Pa., or Washington, D.C.

No. MC 19227 (Sub-No. 160), filed November 18, 1971. Applicant: LEONARD BROS. TRUCKING CO., INC., 2595 Northwest 20th Street, Miami, FL 33152. Applicant's representative: J. Fred Dewhurst (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Material handling equipment and parts for material handling equipment*, from the plantsite of Louden Division Acco located in Fairfield, Iowa, to points in Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 29120 (Sub-No. 130) (Amendment), filed October 4, 1971, published in the FEDERAL REGISTER issue of November 11, 1971, and republished as amended this issue. Applicant: ALL-AMERICAN TRANSPORT, INC., 1500 Industrial Avenue, Sioux Falls, SD 57101. Applicant's representative: Carl L. Steiner (same address as applicant). Authority sought

[1] Copies of Special Rule 1100.247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, livestock, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment); (a) from Chicago, Ill., over Interstate Highway 55 to junction Interstate Highway 80; thence over Interstate Highway 80 to Omaha, Nebr., and return over the same route; and (b) from Chicago, Ill., over Interstate Highway 57 to junction Interstate Highway 80; thence over Interstate Highway 80 to Omaha, Nebr., and return over the same route. NOTE: Common control may be involved. The purpose of this republication is to redescribe the territorial scope of the application. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 29120 (Sub-No. 131), filed November 17, 1971. Applicant: ALL-AMERICAN TRANSPORT INC., 1500 Industrial Avenue, Post Office Box 769, Sioux Falls, SD 57101. Applicant's representative: Mead Bailey (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B exposives, household goods as defined by the Commission, commodities in bulk, and hides and skins), between St. Louis, Mo., and Minneapolis-St. Paul, Minn., from St. Louis over Interstate Highway 70 to junction U.S. Highway 63 at or near Columbia, Mo., thence over U.S. Highway 63 to junction Iowa Highway 163 at or near Oskaloosa, Iowa, thence over Iowa Highway 163 to junction Interstate Highway 235 at Des Moines, Iowa, thence over Interstate Highway 235 to junction Interstate Highways 80 and 35 at or near Des Moines, Iowa, thence over: (a) The complete portions of Interstate Highway 35 and public highways connecting such completed portions to Minneapolis-St. Paul; or (b) Interstate Highway 35 to either (a) its junction with unnumbered Interstate type highway south of U.S. Highway 20 or (b) to its junction with U.S. Highway 20, both of said junctions near Webster City, Iowa; thence over said unnumbered highway or U.S. Highway 20 to their respective junctions with U.S. Highway 69, thence over U.S. Highway 69 to junction U.S. Highway 16 at or near Albert Lea, Minn., thence over U.S. Highway 16 to junction U.S. Highway 65 at or near Albert Lea, Minn., thence over U.S. Highway 65 to Minneapolis-St. Paul, and return over the same route, as an alternate route, for operating convenience only, in connection with applicant's regular route authority Sub-No. 106 (between St. Louis, Mo., and Sioux Falls, S. Dak.) joined with applicant's regular service route authority Route 1 (between Sioux Falls, S. Dak., and Minneapolis, Minn.), being applicant's existing service route between St. Louis and Minneapolis-St. Paul, via Sioux Falls, S. Dak., gateway, serving no intermediate points. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Sioux Falls, S. Dak., Des Moines, Iowa, St. Louis, Mo., Minneapolis-St. Paul, Minn.

No. MC 29120 (Sub-No. 132), filed November 17, 1971. Applicant: ALL-AMERICAN TRANSPORT INC., 1500 Industrial Avenue, Post Office Box 769, Sioux Falls, SD 57101. Applicant's representative: Mead Bailey (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: (1) *Bags, paper, burlap, or plastic;* and (2) *materials and supplies* used in the manufacture, sale, and distribution of the commodities described in (1) above, serving the plantsite and/or storage facilities of the Chase Bag Co. located at or near Sibley, Iowa, as an off-route point in connection with applicant's presently authorized regular route operations. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Sioux Falls, S. Dak.

No. MC 29684 (Sub-No. 5), filed October 28, 1971. Applicant: BURGMEYER BROS., INC., 50 North Fifth Street, Reading, PA 19603. Applicant's representative: Francis W. McInerny, Suite 502, Solar Building, 1000 16th Street, NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities of unusual value, and those requiring special equipment); (1) between junction U.S. Highway 209 and U.S. Highway 611 and Wilkes-Barre, Pa., from junction U.S. Highway 209 and U.S. Highway 611 over U.S. Highway 611 to Scranton, Pa., thence over U.S. Highway 11 to junction Pennsylvania Highway 315, thence over Pennsylvania Highway 315 to Wilkes-Barre, and return over the same route; (2) between Milford, Pa., and Scranton, Pa., from Milford over U.S. Highway 6 to Scranton, and return over the same route; (3) between Easton, Pa., and Harrisburg, Pa., from Easton over U.S. Highway 22 to Harrisburg, and return over the same route; (4) between Morrisville, Pa., and Harrisburg, Pa., from Morrisville over U.S. Highway 1 to Philadelphia, Pa., thence over U.S. Highway 422 to junction U.S. Highway 322, and thence over U.S. Highway 322 to Harrisburg, and return over the same route; (5) between Philadelphia, Pa., and Harrisburg, Pa., from Philadelphia over U.S. Highway 30 to Lancaster, Pa., thence over Pennsylvania Highway 72 to junction U.S. Highway 230, thence over U.S. Highway 230 to Harrisburg, and return over the same route;

(6) Between New Hope, Pa., and Paoli, Pa., from New Hope over U.S. Highway 202 to Paoli, and return over the same route; (7) between Allentown, Pa., and Lancaster, Pa.; from Allentown over U.S. Highway 222 to Lancaster, and return over the same route; (8) betwen junction U.S. Highway 1 and U.S. Highway 13 and Philadelphia, Pa., from junction U.S. Highway 1 and U.S. Highway 13 over U.S. Highway 13 to Philadelphia, and return over the same route; (9) betwen Reading, Pa., and Sunbury, Pa.; from Reading over Pennsylvania Highway 61 to Sunbury, and return over the same route; (10) between junction Pennsylvania Highways 61 and 895 and Wilkes-Barre, Pa., from junction Pennsylvania Highways 61 and 895 over Pennsylvania Highway 895 to New Ringgold, Pa., thence over Pennsylvania 443 to junction U.S. Highway 309, thence over U.S. Highway 309 to Wilkes-Barre, and return over the same route; (11) between Reading, Pa., and Boyertown, Pa., from Reading over unnumbered highway via Oley (Friedensburg) to junction Pennsylvania Highway 73, thence over Pennsylvania Highway 73 to Boyertown, and return over the same route; (12) between junction Pennsylvania Highway 100 and U.S. Highway 22 and West Chester, Pa., from junction Pennsylvania Highway 100 and U.S. Highway 22 over Pennsylvania Highway 100 to West Chester, and return over the same route;

(13) Between Pottstown, Pa., and junction Pennsylvania Highway 363 and U.S. Highway 30, from Pottstown over Pennsylvania Highway 724 to junction Pennsylvania Highway 23, thence over Pennsylvania Highway 23 to Valley Forge, Pa., thence over Pennsylvania Highway 363 to junction U.S. Highway 30, and return over the same route; (14) between Valley Forge, Pa., and Montgomeryville, Pa., from Valley Forge over Pennsylvania Highway 363 to junction unnumbered highway, thence over unnumbered highway to junction Pennsylvania Highway 463, thence over Pennsylvania Highway 463 to Montgomeryville, and return over the same route (15) between Center Valley, Pa., and Stroudsburg, Pa., from Center Valley over Pennsylvania Highway 191 to Stroudsburg, and return over the same route; (16) between Easton, Pa., and Wilkes-Barre, Pa.; from Easton over Pennsylvania Highway 115 via Blakeslee Corners, Pa., to Wilkes-Barre, and return over the same route; (17) between Philadelphia, Pa., and junction U.S. Highway 309 and Pennsylvania Highway 443, from Philadelphia over U.S. Highway 309 to junction Pennsylvania Highway 443, and return over the same route; (18) between West Chester, Pa., and junction Pennsylvania Highways 113 and 100; from West Chester over U.S. Highway 322 to Downingtown, Pa., thence over Pennsylvania Highway 113 to junction Pennsylvania Highway 100, and return over the same route; (19) between Reading, Pa., and Downingtown, Pa., from Reading over Pennsylvania Highway 10 to junction U.S. Highway 322, thence over U.S. Highway 322 to Downingtown, and return over the same route;

(20) Between Lancaster, Pa., and Harrisburg, Pa., from Lancaster over U.S. Highway 30 to Columbia, Pa., thence over Pennsylvania Highway 441 to Harrisburg, and return over the same route; (21) between Pottsville, Pa., and Nesquehoning, Pa., from Pottsville over

U.S. Highway 209 to Nesquehoning, and return over the same route; (22) between Ashland, Pa., and Easton, Pa., from Ashland over Pennsylvania Highway 54 via Jim Thorpe, Pa., thence to junction Pennsylvania Highway 248, thence over Pennsylvania Highway 248 to Easton, and return over the same route; (23) between Allentown, Pa., and junction Pennsylvania Highways 145 and 248, from Allentown over Pennsylvania Highway 145 to junction Pennsylvania Highway 248, and return over the same route; (24) between junction Pennsylvania Highways 145 and 329 and Bath, Pa., from junction Pennsylvania Highways 145 and 329, over Pennsylvania Highway 329 to Bath, and return over the same route; (25) between Bethlehem, Pa., and junction U.S. Highways 209 and 611, from Bethlehem over Pennsylvania Highway 512 to junction Pennsylvania Highway 115, thence over Pennsylvania Highway 115 to junction U.S. Highway 209, thence over U.S. Highway 209 to junction U.S. Highway 611, and return over the same route; (26) between Shimerville, Pa., and Allentown, Pa., from Shimerville over Pennsylvania Highway 29 to Allentown, and return over the same route;

(27) Between Nanticoke, Pa., and Scranton, Pa., from Nanticoke over unnumbered highway to Pittston, Pa., thence over U.S. Highway 11 to Scranton, and return over the same route; (28) between Hazelton, Pa., and Swiftwater, Pa., from Hazleton over Pennsylvania Highway 940 to junction Pennsylvania Highway 314, thence over Pennsylvania Highway 314 to Swiftwater, and return over the same route; (29) between junction U.S. Highway 209 and Pennsylvania Highway 93 and Nescopeck, Pa., from junction U.S. Highway 209 and Pennsylvania Highway 93 over Pennsylvania Highway 93 to Nescopeck, and return over the same route; (30) between Mount Carmel, Pa., and Catawissa, Pa.; from Mount Carmel over Pennsylvania Highway 54–61 to junction Pennsylvania Highway 42, thence over Pennsylvania Highway 42 to Catawissa, and return over the same route; (31) between Philadelphia, Pa., and junction U.S. Highways 611 and 209, from Philadelphia over U.S. Highway 611 to junction U.S. Highway 209, and return over the same route; (32) between Stroudsburg, Pa., and Port Jervis, N.Y.; from Stroudsburg over U.S. Highway 209 to Port Jervis, and return over the same route; (33) between Scranton, Pa., and Port Jervis, N.Y., from Scranton over Interstate Highway 84 to Port Jervis, and return over the same route; (34) between Carbondale, Pa., and Hancock, N.Y., from Carbondale over Pennsylvania Highway 171 to junction Pennsylvania Highway 370, thence over Pennsylvania Highway 370 to junction Pennsylvania Highway 191, thence over Pennsylvania Highway 191 to the Pennsylvania-New York State line, thence over New York Highway 191 to Hancock, and return over the same route;

(35) Between Warwick, N.Y., and the New York-New Jersey State line, from Warwick over New York Highway 94 to the New York-New Jersey State line, and return over the same route; (36) between Catskill, N.Y. and the New York-New Jersey State line, from Catskill over U.S. Highway 9W to the New York-New Jersey State line, and return over the same route; (37) between Catskill, N.Y., and the Holland Tunnel; from Catskill over New York Highway 23 to junction New York Highway 9G and thence over New York Highway 9G to junction U.S. Highway 9, and thence over U.S. Highway 9 to junction New York Highway 9A, thence over New York Highway 9A to the Holland Tunnel, and return over the same route; (38) between Newburgh, N.Y., and the New York-New Jersey State line, from Newburgh over New York Highway 32 to junction New York Highway 17 and thence over New York Highway 17 to the New York-New Jersey State line, and return over the same route; (39) between Hudson, N.Y., and junction New York Highway 9G and U.S. Highway 9, from Hudson over New York Highway 23 to junction U.S. Highway 9, thence over U.S. Highway 9 to junction New York Highway 9G, and return over the same route; (40) between Peekskill, N.Y., and junction New York Highway 9D and U.S. Highway 9, from Peekskill over U.S. Highway 6 across Hudson River to junction New York Highway 9D, thence over New York Highway 9D to junction U.S. Highway 9, and return over the same route;

(41) Between New York, N.Y., and Tarrytown, N.Y., from New York over New York Highway 22 to White Plains, thence over New York Highway 119 to Tarrytown, and return over the same route; (42) between New York, N.Y., and Modena, N.Y., from New York over New York Highway 100 to junction New York Highway 100A, thence over New York Highway 100A to New York Highway 100, thence over New York Highway 100 to junction New York Highway 141, thence over New York Highway 141 to junction New York Highway 117, thence over New York Highway 117 to Katonah, N.Y., thence over New York Highway 35 to junction New York Highway 22, thence over New York Highway 22 to junction New York Highway 55, thence over New York Highway 55 to Poughkeepsie, N.Y., thence over U.S. Highway 44 to Modena, and return over the same route; (43) between New York, N.Y., and Port Chester, N.Y., from New York over U.S. Highway 1 to Port Chester, and return over the same route; (44) between White Plains, N.Y., and junction New York Highway 125 and U.S. Highway 1, from White Plains over New York Highway 125 to junction U.S. Highway 1, and return over the same route; (45) between White Plains, N.Y., and junction New York Highway 127 and U.S. Highway 1; from White Plains over New York Highway 127 to junction U.S. Highway 1, and return over the same route; (46) between Port Jervis, N.Y., and junction U.S. Highway 6 and New York Highway 22, from Port Jervis over U.S. Highway 6 to junction New York Highway 22, and return over the same route;

(47) Between Port Jervis, N.Y., and Red Hook, N.Y.; from Port Jervis over U.S. Highway 209 to junction New York Highway 199, thence over New York Highway 199 to Red Hook, and return over the same route; (48) between Newburgh, N.Y., and Warwick, N.Y., from Newburgh over New York Highway 207 to Goshen, N.Y., thence over New York Highway 17A to Warwick, and return over the same route; (49) between Newburgh, N.Y., and Florida, N.Y., from Newburgh over New York Highway 94 to Florida, and return over the same route; (50) between Newburgh, N.Y., and Monticello, N.Y., from Newburgh over New York Highway 17K to junction New York Highway 17, thence over New York Highway 17 to Monticello, and return over the same route; (51) between Bloomingburg, N.Y., and junction New York Highway 17M and U.S. Highway 6; from Bloomingburg over New York Highway 17M to junction U.S. Highway 6, and return over the same route; (52) between New Paltz, N.Y., and Highland Mills, N.Y., from New Paltz over New York Highway 208 to Highland Mills, and return over the same route; (53) between Newburgh, N.Y., and Ellenville, N.Y.; from Newburgh over New York Highway 52 to Ellenville, and return over the same route; (54) between Beacon, N.Y., and Fishkill, N.Y., from Beacon over New York Highway 82 to Fishkill, and return over the same route; (55) between Port Jervis, N.Y., and the New York-Connecticut State line; from Port Jervis over Interstate Highway 84 to the New York-Connecticut State line, and return over the same route;

(56) Between Port Jervis, N.Y., and Monticello, N.Y., from Port Jervis over New York Highway 97 to junction New York Highway 42, thence over New York Highway 42 to Monticello, and return over the same route; and (57) between Monticello, N.Y, and Hancock, N.Y., from Monticello over New York Highway 17 to Hancock, and return over the same route, serving all intermediate and off-route points in Westchester, Putnam, Dutchess, Rockland, Orange, Ulster, and Sullivan Counties, N.Y., and those in that portion of Columbia County, N.Y., on and south of New York Highway 23; and all intermediate and off-route points in Lancaster, Chester, Delaware, Philadelphia, Montgomery, Bucks, Berks, Lebanon, Dauphin, Schuylkill, Carbon, Lehigh, Lackawanna, Northampton, and Monroe Counties, Pa., in connection with the regular routes described above. NOTE: Applicant states that the purpose of instant application essentially is to shorten routes of movement between points presently authorized to be served. Existing operations are required to be conducted through specified gateway counties in Northern New Jersey. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Philadelphia, Pa.

No. MC 30844 (Sub-No. 380), filed November 5, 1971. Applicant: KROBLIN REFRIGERATED EXPRESS, INC., 2125 Commercial Street, Post Office Box 5000, Waterloo, IA 50704. Applicant's representative: Truman A. Stockton, 1650

Grant Street Building, Denver, Colo. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen meats*, from New York, N.Y.; Philadelphia, Pa.; and Wilmington, Del., to points on and west of U.S. Highway 219 in Pennsylvania and points in Indiana and Ohio. NOTE: Applicant states it does intend to tack but does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or New York, N.Y.

No. MC 30887 (Sub-No. 171), filed November 16, 1971. Applicant: SHIPLEY TRANSFER, INC., 49 Main Street, Post Office Box 55, Reisterstown, MD 21136. Applicant's representative: Theodore Polydoroff, 1140 Connecticut Avenue NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid polypropylene*, in bulk, in tank vehicles; (1) from Neal, W. Va., to Sayreville, N.J.; and (2) from Sayreville, N.J., to Auburn, N.Y. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 30887 (Sub-No. 173), filed November 23, 1971. Applicant: SHIPLEY TRANSFER, INC., 49 Main Street, Post Office Box 55, Reisterstown, MD 21136. Applicant's representative: Theodore Polydoroff, 1140 Connecticut Avenue NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic granules*, in bulk, in pneumatic tank vehicles, from Baltimore, Md., to points in Maryland, restricted to traffic having a prior movement by rail. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 30887 (Sub-No. 174), filed November 26, 1971. Applicant: SHIPLEY TRANSFER, INC., 49 Main Street, Post Office Box 55, Reisterstown, MD 21136. Applicant's representative: Theodore Polydoroff, 1140 Connecticut Avenue NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Crushed limestone*, in bulk, in pneumatic tank vehicles, from Texas, Md., to Acton, Mass. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 40978 (Sub-No. 19), filed November 8, 1971. Applicant: CHAIR CITY MOTOR EXPRESS COMPANY, a corporation, 3321 Highway 141 South, Sheboygan, WI 53081. Applicant's representative: John L. Bruemmer, 121 West Doty Street, Madison, WI 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Institutional, household and office furniture, fixtures, and equipment*, from Two Rivers, Wis., to points in Iowa and Indiana; and (2) *new furniture*, from Muscatine, Iowa, to points in Wisconsin. Returned shipments of the above-specified commodities, from the above-specified destination points to the above-designated origin points in (1) and (2) above. NOTE: Applicant states tacking could take place at Two Rivers, Wis., with lead certificate, Sub 4, or Sub 8, so as to perform service from any point in Wisconsin to any point in Iowa or Indiana; however, applicant can already perform this service by tacking through Sheboygan Falls, Wis. If a hearing is deemed necessary, applicant requests it be held at Milwaukee, Wis., or Chicago, Ill.

No. MC 41365 (Sub-No. 3), filed November 23, 1971. Applicant: ESSEX EXPRESS, INC., 70 State Street, Lawrence, MA 01842. Applicant's representative: John F. Curley, 15 Court Square, Boston, MA 02108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), between points in Middlesex, Essex, Suffolk, Plymouth, and Norfolk Counties, Mass. NOTE: Applicant states it is the holder of a certificate of registration authorizing the transportation of general commodities throughout the entire State of Massachusetts. By the instant application it intends to convert its certificate of registration to a certificate of public convenience and necessity. It also states it is transferee in related transfer application whereby it seeks to acquire general commodity authority less usual exceptions, between Pepperell, Mass., and points within 15 miles of Pepperell and said authorities would overlap. If a hearing is deemed necessary, applicant requests it be held at Boston, Mass.

No. MC 42487 (Sub-No. 778), November 2, 1971. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Drive, Menlo Park, CA 94025. Applicant's representative: John A. Vuono, 2310 Grant Building, Pittsburgh, Pa. 15219. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), serving the plantsite of PPG Industries, Inc., at or near Mount Holly Springs, South Middleton Township, Cumberland County, Pa., as an off-route point in connection with carrier's authorized regular route operations to and from Pittsburgh, Harrisburg, and Philadelphia, Pa., New York, N.Y., Baltimore, Md., and the District of Columbia. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Harrisburg or Pittsburgh, Pa.

No. MC 52709 (Sub-No. 315), filed October 29, 1971. Applicant: RINGSBY TRUCK LINES, INC., 5773 South Prince Street, Post Office Box 192, Littleton, CO 80120. Applicant's representative: Robert P. Tyler (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, in cargo vans and/or containers and empty cargo vans and containers, between ports of entry located in California, Oregon, and Washington, on the one hand, and, on the other, points in the continental United States, restricted to shipments having a prior or subsequent movement by water or air. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Denver, Colo.

No. MC 53965 (Sub-No. 79), filed November 8, 1971. Applicant: GRAVES TRUCK LINE, INC., 739 North 10th, Salina, KS. Applicant's representative: John E. Jandera, 641 Harrison Street, Topeka, KS 66603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts and articles distributed by meat packinghouses*, as described in sections A and C of appendix 1 to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides, commodities in bulk, in tank vehicles), between Raymore, Mo., and points in Arkansas, Colorado, Georgia, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, and Wisconsin. NOTE: Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no present intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Kansas City, Mo.

No. MC 55581 (Sub-No. 25), filed November 3, 1971. Applicant: UTAH PACIFIC TRANSPORT COMPANY, a corporation, 1819 West 2100 South Street, Salt Lake City, UT 84109. Applicant's representative: David J. Lister (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber mill products*, between points in Oregon, Washington, Idaho, and Montana, on the one hand, and, on the other, points in Arizona and

New Mexico. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Portland, Oreg., or San Francisco, Calif.

No. MC 55883 (Sub-No. 18), filed November 10, 1971. Applicant: EXPRESS, INCORPORATED, Post Office Box 15, Stephenson, VA 22656. Applicant's representative: Bill R. Davis, 1208 Gas Light Tower, Atlanta, Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs*, from Biglerville and Gardners, Pa.; and Inwood, W. Va., to points in Alabama, Georgia, Mississippi, South Carolina, and Tennessee. NOTE: Applicant states that one of the purposes of this application is to broaden its commodity description so as to allow applicant to handle certain additional commodities which the shipper is now distributing, and the other, is to regain the right to originate traffic for the supporting shipper herein, to the southern territory involved, which right was forfeited by applicant by virtue of a sale of a portion of its authority to Claremont Motor Lines, Inc. It further states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 57239 (Sub-No. 16), filed November 8, 1971. Applicant: RENNER'S EXPRESS, INC., 1350 South West Street, Indianapolis, IN 46206. Applicant's representative: Rudy Yessin, McClure Building, Frankfort, Ky. 40601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum or copper wire or rod*, from Hopkinsville, Ky., to points in Indiana and the Lower Peninsula of Michigan. NOTE: Applicant states tacking is possible at Hopkinsville, Ky., for service from Nashville, Tenn., and Kentucky points now served by applicant. It further states no duplicate authority is being sought. If a hearing is deemed necessary, applicant requests it be held at Hopkinsville, Ky., Nashville, Tenn., or Louisville, Ky.

No. MC 58549 (Sub-No. 14), filed November 19, 1971. Applicant: CLINE MUNDY, doing business as GENERAL MOTOR LINES, 526 Orange Avenue, Roanoke, VA 24016. Applicant's representative: Francis W. McInerny, 1000 16th Street NW., Washington DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except household goods), between points in Virginia located on and west of a line beginning at the North Carolina-Virginia State line and extending along U.S. Highway 501 to U.S. Highway 60, thence over U.S. Highway 60 to its intersection with U.S. Highway 11, thence over U.S. Highway 11 to its intersection with U.S. Highway 340, thence over U.S. Highway 340 to its intersection with U.S. Highway 250 at or near Waynesboro, Va., and thence over U.S. Highway 250 to the West Virginia-Virginia State line. Restriction: Operations over the foregoing authority is restricted to the transportation of traffic having a prior or subsequent movement by rail or air. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Roanoke, Va.

No. MC 58549 (Sub-No. 15), filed November 19, 1971. Applicant: CLINE MUNDY, doing business as GENERAL MOTOR LINES, 526 Orange Avenue, Roanoke, VA 24016. Applicant's representative: Francis W. McInerny, 1000 16th Street NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Roanoke, Va., and Floyd, Va., over U.S. Highway 221, and return over the same route, serving all intermediate points. NOTE: Applicant states that it is authorized to conduct operations between Roanoke and Independence, Va., over U.S. Highway 221, but on that segment of the route between Roanoke and Floyd, applicant is restricted to the handling of traffic moving to or from points south of Floyd. The purpose of the application is to remove the restriction. If a hearing is deemed necessary, applicant requests it be held at Roanoke, Va.

No. MC 65429 (Sub-No. 6), filed November 4, 1971. Applicant: J & T TRANSPORT, INC., 7990 National Highway, Pennsauken, NJ. Applicant's representative: Edwin L. Scherlis, 1209 Lewis Tower Building, Philadelphia, PA. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal tar resin plastic material powder, linseed oil, dehydrated castor oil, and other chemicals and chemical products* in bags, drums, and pails, from the plantsite of the Polyrez Co., Inc., Bridgeport, N.J., to Philadelphia, Pa., and *empty pails and synthetic resins* in drums, on return. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control and dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Philadelphia, Pa.

No. MC 72243 (Sub-No. 27), filed November 8, 1971. Applicant: THE AETNA FREIGHT LINES, INCORPORATED, Post Office Box 350, 2507 Youngstown Road SE., Warren, OH 44482. Applicant's representative: Fred F. Bradley, Court House, Frankfort, Ky. 40601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron and steel articles*, from Newport, Ark., to points in Missouri, Illinois, Oklahoma, and Texas; and (2) *materials, equipment, and supplies* used in the manufacturing of iron and steel articles, from points in Missouri, Illinois, Oklahoma, and Texas to Newport, Ark. NOTE: Applicant has no present intention to tack but would do so if applicable appropriate authority is received now or in the future. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Little Rock, Ark.; Memphis, Tenn.; or Louisville, Ky.

No. MC 73165 (Sub-No. 307), filed November 19, 1971. Applicant: EAGLE MOTOR LINES, INC., 830 North 33d Street, Post Office Box 11086, Birmingham, AL 35202. Applicant's representative: Robert M. Pearce, Post Office Box E, Bowling Green, KY 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Conduit pipe, tubing, and fittings*, from Gilmer, Tex., to points in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Mississippi, Missouri, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, Wisconsin, and the District of Columbia. NOTE: Applicant states that the requested authority can be tacked with its existing authority, but indicates that it has no present intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex.

No. MC 73165 (Sub-No. 306), filed November 17, 1971. Applicant: EAGLE MOTOR LINES, INC., 830 North 33d Street, Post Office Box 11086, Birmingham, AL 35202. Applicant's representative: Robert M. Pearce, Post Office Box E, Bowling Green, KY 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Conduit, pipe, tubing, and fittings*, from Gilmer, Tex., to points in the United States (except Alabama, Alaska, Arkansas, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Mississippi, Missouri, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, Wisconsin, and the District of Columbia). NOTE: Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no present intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex.

No. MC 73165 (Sub-No. 308), filed November 23, 1971. Applicant: EAGLE MOTOR LINES, INC., 823 North 33d Street, Post Office Box 11086, Birmingham, AL 35202. Applicant's representative: Robert M. Pearce, Post Office Box

E, Bowling Green, KY 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Clay, clay ground or crushed, clay pulverized, and clay products*, between Anniston, Ala.; Louisville, Ky., and Keokuk, Iowa. NOTE: Applicant states that the requested authority can be tacked with its existing authority, but indicates that it has no present intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Birmingham, Ala.

No. MC 78687 (Sub-No. 33), filed November 17, 1971. Applicant: LOTT MOTOR LINES, INC., 118 Monell Street, Penn Yan, NY. Applicant's representative: E. Stephen Heisley, 666 11th Street NW., Washington, DC 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs*, from points in Cattaraugus, Erie, Genesee, Livingston, Monroe, Niagara, Onondaga, Ontario, Orleans, Seneca, Wayne, Wyoming, and Yates Counties, N.Y., to points in New Jersey, Pennsylvania, Ohio, Maryland, Delaware, the District of Columbia, and points in Nassau, Suffolk, and Westchester Counties, N.Y. NOTE: Applicant states it holds some authority which duplicates the instant application but does not seek any duplicate authority. It further states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Buffalo, N.Y., or Washington, D.C.

No. MC 82072 (Sub-No. 7), filed November 15, 1971. Applicant: KELLER MOVING & STORAGE, INC., 2811 West Emaus Avenue, Allentown, PA 18103. Applicant's representative: Thomas R. Kingsley, 1819 H Street NW., Washington, DC 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, from Souderton, Pa., to points in Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Philadelphia, Pa.

No. MC 97068 (Sub-No. 14), filed November 11, 1971. Applicant: H. S. ANDERSON TRUCKING COMPANY, a corporation, 5959 Highway 69, Port Arthur, TX 77640. Applicant's representative: J. G. Dail, Jr., 1111 E Street NW., Suite 501, Washington, DC 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel and iron and steel articles*, between points in Alabama, Arkansas, Kansas, Louisiana, Mississippi, New Mexico, Oklahoma, and Texas. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Houston or Dallas, Tex.

No. MC 100666 (Sub-No. 205), filed November 15, 1971. Applicant: MELTON TRUCK LINES, INC., Post Office Box 7666, 129 Grimmett Drive, Shreveport, LA 71107. Applicant's representative: Wilburn L. Williamson, 280 National Foundation Life Center, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber products and composition board*, between points in Texas. NOTE: Applicant states various tacking possibilities would exist in connection with applicant's existing authority. It could tack with its Subs 66, 95, 99, 100, 106, and 109 at their respective authorized origins and serve to their respective destinations. While these tacking operations are technically possible, it should be noted that in many instances, they would not be feasible, as a practical matter. If a hearing is deemed necessary, applicant requests it be held at Houston or Dallas, Tex.

No. MC 103993 (Sub-No. 678), filed November 1, 1971. Applicant: MORGAN DRIVE-AWAY, INC., 2800 West Lexington Avenue, Elkhart, IN 46514. Applicant's representative: Paul D. Borghesani (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Traliers* designed to be drawn by passenger automobiles, in initial movements, from Chicago, Ill., to points in the United States (except Alaska and Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 104104 (Sub-No. 11), filed November 9, 1971. Applicant: GEORGE A. FETZER, INC., Newton-Sussex Road, Augusta, NJ 07822. Applicant's representative: Edward F. Bowes, 744 Broad Street, Newark, NJ 07102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pet food*, from the plant facilities of Campbell Soup Co., Camden, N.J., to New York, N.Y., and points in Nassau, Suffolk, Westchester, and Rockland Counties, N.Y. NOTE: Applicant already has authority to transport foodstuffs from and to the points sought herein. No duplicate authority is sought. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Newark, N.J.

No. MC 105566 (Sub-No. 65), filed November 9, 1971. Applicant: SAM TANKSLEY TRUCKING, INC., Post Office Box 1119, Cape Girardeau, MO 63701. Applicant's representative: Thomas F. Kilroy, 2111 Jefferson Davis Highway, Arlington, VA 22202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Printed matter and items* used or necessary to the manufacture of printed matter, from Milwaukee, Wis., to points in Arizona, California, Idaho, Montana, Nevada, Oregon, Utah, Washington, Texas, Oklahoma, Colorado, Kansas, Missouri, and New Mexico. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Washington, D.C.

No. MC 106398 (Sub-No. 563), filed November 11, 1971. Applicant: NATIONAL TRAILER CONVOY, INC., 1925 National Plaza, Tulsa, Okla. 74151. Applicant's representative: Irvin Tull (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers*, designed to be drawn by passenger automobiles, in initial movements, from points in Hamilton County, Nebr., to points in the United States (except Alaska and Hawaii). NOTE: Common control and dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr.

No. MC 106398 (Sub-No. 564), field November 18, 1971. Applicant: NATIONAL TRAILER CONVOY, INC., 1925 National Plaza, Tulsa, Okla. 74151. Applicant's representative: Irvin Tull (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers*, designed to be drawn by passenger automobiles, in initial movements, from points in York County, Nebr., to points in the United States (except Alaska and Hawaii). NOTE: Common control and dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr.

No. MC 106398 (Sub-No. 565), filed November 19, 1971. Applicant: NATIONAL TRAILER CONVOY, INC., 1925 National Plaza, Tulsa, OK 74151. Applicant's representative: Irvin Tull (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers* designed to be drawn by passenger automobiles, in initial movements and *buildings* in sections mounted on wheeled undercarriages, from Kimball County, Nebr., to points in the United States (except Alaska and Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control and dual operations may be involved.

If a hearing is deemed necessary, applicant requests it be held at Denver, Colo.

No. MC 106398 (Sub-No. 566), filed November 22, 1971. Applicant: NATIONAL TRAILER CONVOY, INC., 1925 National Plaza, Tulsa, OK 74151. Applicant's representative: Irvin Tull (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers* designed to be drawn by passenger automobiles, in initial movements and *buildings* in sections mounted on wheeled undercarriages, from points in Gallatin County, Mont., to points in the United States (except Alaska and Hawaii). NOTE: Common control and dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Butte, Mont.

No. MC 106398 (Sub-No. 567), filed November 22, 1971. Applicant: NATIONAL TRAILER CONVOY, INC., 1925 National Plaza, Tulsa, Okla. 74151. Applicant's representative: Irvin Tull (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers* designed to be drawn by passenger automobiles, in initial movements and buildings in sections, mounted on wheeled undercarriages, from points in Providence County, R.I., to points in the United States (except Alaska and Hawaii). NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Providence, R.I.

No. MC 106398 (Sub-No. 568), filed November 22, 1971. Applicant: NATIONAL TRAILER CONVOY, INC., 1925 National Plaza, Tulsa, Okla. 74151. Applicant's representative: Irvin Tull (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers* designed to be drawn by passenger automobiles, in initial movements, from points in Union County, Ill., to all points in the United States (except Alaska and Hawaii). NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at St. Louis, Mo.

No. MC 106603 (Sub-No. 115), filed October 28, 1971. Applicant: DIRECT TRANSIT LINES, INC., 200 Colrain Street SW., Grand Rapids, MI 49508. Applicant's representative: Martin J. Leavitt, 1800 Buhl Building, Detroit, Mich. 48226. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Urethane and urethane products, urethane roofing, and insulation and materials* used in the installation thereof, from the plantsite of the Philip Carey Co., Division of Panacon Corp. at Elizabethtown, Ky., to points in Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, New York, Ohio, Pennsylvania, West Virginia, and Wisconsin. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Applicant now holds contract carrier authority under its No. MC 46240 and subs, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Chicago, Ill.

No. MC 106674 (Sub-No. 83), filed November 8, 1971. Applicant: SCHILLI MOTOR LINES, INC., Post Office Box 451, Delphi, IN 46923. Applicant's representative: Carl L. Steiner, 39 South La Salle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer* in bags and in bulk, and *anhydrous ammonia*, from the plantsites of Illinois Nitrogen, Inc., and Occidental Chemical Co. at Marseilles, Ill., to points in Indiana. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 107002 (Sub-No. 412), filed November 15, 1971. Applicant: MILLER TRANSPORTERS, INC., Post Office Box 1123 U.S. Highway 80 West, Jackson, MS 39205. Applicant's representative: H. D. Miller, Jr., Post Office Box 22567, Jackson, MS 39205. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer*, in bulk, from Friars Point, Miss., to points in Arkansas, Missouri, and Tennessee. NOTE: Applicant states that tacking possibilities exist but although it is not contemplated, the authority sought could be combined with other authorities held by it to serve points in other states beyond the scope of this authority. Persons interested in the tacking information are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Jackson, Miss., or Memphis, Tenn.

No. MC 107012 (Sub-No. 134), filed November 12, 1971. Applicant: NORTH AMERICAN VAN LINES, INC., Lincoln Highway East and Meyer Road, Post Office Box 988, Fort Wayne, IN 46801. Applicant's representative: Terry G. Fewell (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, and commercial and institutional furniture, fixtures and equipment*, between points in Clay and Greene Counties, Ark., on the one hand, and, on the other, points in the United States (except Alaska and Hawaii). NOTE: Applicant states that the requested authority could be tacked with a limited amount of its authority under MC 107012 Sub-75 at Greene County, Ark. Common control and dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., Indianapolis, Ind., or Chicago, Ill.

No. MC 107295 (Sub-No. 565) (Correction), filed November 4, 1971, published in the FEDERAL REGISTER issue of December 2, 1971, and republished as corrected, this issue. Applicant: PREFAB TRANSIT CO., a corporation, 100 South Main Street, Farmer City, IL 61842. Applicant's representative: Mack Stephenson (same address as applicant). NOTE: The purpose of this partial republication is to note the correct docket number assigned thereto as No. MC 107295 (Sub-No. 565) in lieu of No. MC 107295 (Sub-No. 595), which was in error. The rest of the notice remains as previously published.

No. MC 107515 (Sub-No. 782), filed October 28, 1971. Applicant: REFRIGERATED TRANSPORT CO., INC., Post Office Box 308, 3901 Jonesboro Road SE., Forest Park, GA 30050. Applicant's representative: Paul M. Daniell, Post Office Box 872, Atlantic, GA 30301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, except in bulk, in vehicles equipped with mechanical refrigeration, from South Hutchinson, Kans., to points in Alabama, Florida, Georgia, South Carolina, North Carolina, Tennessee (except Memphis and points in its commercial zone), Kentucky, Virginia, Maryland, West Virginia, Delaware, New Jersey, Pennsylvania, and New York. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control and dual operations may be involved. No duplicate authority is sought. If a hearing is deemed necessary, applicant requests it be held at Kansas City, Mo.

No. MC 107515 (Sub-No. 784), filed November 26, 1971. Applicant: REFRIGERATED TRANSPORT CO., INC., Post Office Box 308, Forest Park, GA 30050. Applicant's representative: Paul M. Daniell, Post Office Box 872, Atlanta, GA 30301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk), in vehicles equipped with mechanical refrigeration, between all points in Florida. NOTE: Common control and dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. No duplicating authority is held or sought. If a hearing is deemed necessary, applicant requests it be held at Orlando, Fla.

No. MC 107515 (Sub-No. 785), filed November 26, 1971. Applicant: REFRIGERATED TRANSPORT CO., INC., Post Office Box 308, Forest Park, GA 30050. Applicant's representative: Paul M. Daniell, Post Office Box 872, Atlanta, GA 30301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Unfrozen bakery products*, from Battle Creek, Mich., to points in Kentucky, Tennessee, Virginia, North Carolina, South

Carolina, Georgia, Alabama, Mississippi, Louisiana, and Florida. NOTE: Common control and dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. Applicant seeks no duplicating authority. If a hearing is deemed necessary, applicant requests it be held at Detroit, Mich.

No. MC 109490 (Sub-No. 8), filed November 1, 1971. Applicant: H. W. HEDING, doing business as HEDING TRUCK SERVICE, Union Center, Wis. 53962. Applicant's representative: Edward Solie, Executive Building, Suite 100, 4513 Vernon Boulevard, Madison, WI 53705. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Animal and poultry feeds and animal and poultry feed ingredients and medications* used in treating animals and poultry, in mixed loads with animal and poultry feeds and animal and poultry feed ingredients (except commodities in bulk), from Howard Lake, Minn., to points in Illinois, Iowa, and Wisconsin, restricted to traffic originating at the plantsite and facilities of American Feeds & Livestock Co., at Howard Lake, Minn; (2) *animal and poultry feeds and animal and poultry ingredients* (except commodities in bulk), from Union Center, Wis., to points in Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, Ohio, Pennsylvania; and (3) *materials, equipment, and supplies* used in the manufacture, sale, or distribution of animal and poultry feeds and animal and poultry feed ingredients, from said destination States to Union Center, Wis., restricted to traffic originating at or destined to the plantsite and facilities of Merrick Dry Milk Co., Inc., at Union Center, Wis. NOTE: If a hearing is deemed necessary, applicant requests it be held at Madison, Wis.

No. MC 109689 (Sub-No. 229), filed November 4, 1971. Applicant: W. S. HATCH CO., a corporation, 643 South 800 West, Woods Cross, UT 84087. Applicant's representative: Mark K. Boyle, 345 South State Street, Salt Lake City, UT 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Inedible tallow grease and feed fats*, in bulk; (a) from points in Utah and Idaho to points in California; and (b) between points in Utah and Idaho; (2) *boiler cleaning compound*, in bulk, from Hawthorne, Calif., to points in Oklahoma and Texas; (3) *uranium liquor*, in bulk, from points in Garfield County, Colo., to points in Fremont and Natrona Counties, Wyo.; and (4) *ferric chloride solution*, in bulk, from Salt Lake City, Utah, to Spokane, Wash. NOTE: Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no present intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Salt Lake City, Utah, or San Francisco, Calif.

No. MC 110098 (Sub-No. 121), filed November 3, 1971. Applicant: ZERO REFRIGERATED LINES, a corporation, 1400 Ackerman Road, Post Office Box 20380, San Antonio, TX 78220. Applicant's representative: Donald L. Stern, 530 Univac Building, 7100 West Center Road, Omaha, NE 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts and articles distributed by meat packinghouses* as described in sections A and C of appendix 1 to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk); (1) from Denison and LeMars, Iowa; Emporia, Kans.; and West Point, Nebr., to points in Texas; and (2) From Denison, Fort Dodge, LeMars and Mason City, Iowa; Emporia, Kans.; Luverne, Minn.; and West Point, Nebr.; to points in New Mexico, Oklahoma, Arkansas, and Louisiana, restricted in (1) and (2) above to traffic originating at the plantsites and storage facilities of Iowa Beef Processors, Inc., at or near the named origins. NOTE: Applicant states tacking possibilities, but states it does not intend to tack. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr. or San Antonio, Tex.

No. MC 111375 (Sub-No. 57), filed November 17, 1971. Applicant: PIRKLE REFRIGERATED FREIGHT LINES, INC., Post Office Box 3358, Madison, WI 53704. Applicant's representative: Charles W. Singer, 33 North Dearborn Street, Chicago, IL 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) (a) *Foodstuffs;* (b) *food ingredients;* and (c) *advertising material and specialties, and related equipment and supplies*, when moving with foodstuffs and food ingredients, from points in Minnesota and Wisconsin, and Estherville, Iowa, to points in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming; and (2) *returned and rejected shipments* of the above-described commodities, from the destination States named in (1) above to points in Minnesota, Wisconsin, and Estherville, Iowa. NOTE: The two primary purposes of the application are (a) to clarify certain of applicant's present commodity authorizations and (b) to eliminate certain interlines in connection with operations from and to the points named in (1) above. In addition, certain extensions of operations are involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Milwaukee or Madison, Wis., or Chicago, Ill.

No. MC 111812 (Sub-No. 451), filed November 15, 1971. Applicant: MIDWEST COAST TRANSPORT, INC., 405½ East Eighth Street, Post Office Box 1233, Sioux Falls, SD 57101. Applicant's representative: Donald L. Stern, 530 Univac Building, 7100 West Center Road, Omaha, NE 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy, confectionery, and related items*, from points in Blair County, Pa., to points in Arizona, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it beheld at Altoona, Pa.

No. MC 111812 (Sub-No. 452), filed November 11, 1971. Applicant: MIDWEST COAST TRANSPORT, INC., 405½ East Eighth Street, Post Office Box 1233, Sioux Falls, SD 57101. Applicant's representative: Donald L. Stern, 530 Univac Building, 7100 West Center Road, Omaha, NE 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy and confectionery and related items*, from Hackettstown, N.J., to points in Arizona, California (south of U.S. Highway 40), Nevada (south of U.S. Highway 6), and Utah. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at New York City, N.Y.

No. MC 111812 (Sub-No. 453), filed November 11, 1971. Applicant: MIDWEST COAST TRANSPORT, INC., 405½ East Eighth Street, Post Office Box 1233, Sioux Falls, SD 57101. Applicant's representative: Donald L. Stern, 530 Univac Building, 7100 West Center Road, Omaha, NE 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Advertising materials, circulars, periodical inserts, and newsprint* which are exempt from economic regulation in mixed truckloads with regulated commodities, from points in Hartford, New Haven, and Fairfield Counties, Conn., Providence, R.I., New York Commercial Zone, N.Y., Baltimore and Anne Arundel Counties, Md., and Philadelphia and Chester Counties, Pa., to points in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at New York City, N.Y.

No. MC 111812 (Sub-No. 454), filed November 11, 1971. Applicant: MIDWEST COAST TRANSPORT, INC., 405½ East Eighth Street, Post Office Box 1233, Sioux Falls, SD 57101. Applicant's

representative: Donald L. Stern, 530 Univac Building, 7100 West Center Road, Omaha, NE 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from Baltimore, Md., and New York, N.Y., to points in Michigan, Missouri, Minnesota, and Wisconsin. NOTE: Applicant states that the requested authority can be tacked with its existing authority at Minnesota to provide a through service on meats and frozen to various Western States. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at New York City, N.Y.

No. MC 111812 (Sub-No. 455), filed November 11, 1971. Applicant: MIDWEST COAST TRANSPORT, INC., 405½ East Eighth Street, Post Office Box 1233, Sioux Falls, SD 57101. Applicant's representative: Donald L. Stern, 530 Univac Building, 7100 West Center Road, Omaha, NE 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy, confectionery, and related items*, from Brentwood, Md., to points in Arizona, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 111812 (Sub-No. 456), filed November 11, 1971. Applicant: MIDWEST COAST TRANSPORT, INC., 405½ East Eighth Street, Post Office Box 1233, Sioux Falls, SD 57101. Applicant's representative: Donald L. Stern, 530 Univac Building, 7100 West Center Road, Omaha, NE 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy and confectionery and related items*, from West Reading, Pa., to points in California, Idaho, Iowa, Minnesota, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming. NOTE: Applicant states it is possible to tack at Sioux Falls, S. Dak. (Sub-200), to serve Arizona for which no authority is sought herein. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Lancaster, Reading, or Philadelphia, Pa.

No. MC 111812 (Sub-No. 457), filed November 11, 1971. Applicant: MIDWEST COAST TRANSPORT, INC., 405½ East Eighth Street, Post Office Box 1233, Sioux Falls, SD 57101. Applicant's representative: Donald L. Stern, 530 Univac Building, 7100 West Center Road, Omaha, NE 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy, confectionery, and related items*, from Chicago, Ill., to points in California, Arizona, and Nevada, restricted to traffic originating at the plantside and warehouse facilities of M&M Mars. NOTE: Applicant states that the requested authority cannot be tacked with it existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at New York City, N.Y.

No. MC 111812 (Sub-No. 458), filed November 15, 1971. Applicant: MIDWEST COAST TRANSPORT, INC., 405½ East Eighth Street, Post Office Box 1233, Sioux Falls, SD 57101. Applicant's representative: Donald L. Stern, 530 Univac Building, 71 West Center Road, Omaha, NE 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy, confectionery, chewing gum, and related items*, from Philadelphia, Pa., to Chicago, Ill. (and commercial zone), and points in California. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Philadelphia, Pa.

No. MC 111812 (Sub-No. 459), filed November 22, 1971. Applicant: MIDWEST COAST TRANSPORT, INC., 405½ East Eighth Street., Post Office Box 1233, Sioux Falls, SD 57101. Applicant's representative: Donald L. Stern, 530 Unviac Building, 7100 West Center Road, Omaha, NE 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy, confectionery, and related items*, from Havertown, Pa., to points in Arizona, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Philadelphia, Pa.

No. MC 112123 (Sub-No. 9), filed November 10, 1971. Applicant: BEST-WAY TRANSPORTATION, 2343 West Mohave, Phoenix, AZ 85009. Applicant's representative: Marvin Handler, 405 Montgomery Street, Suite 1400, San Francisco, CA 94104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron and steel and iron and steel articles* as described in *Motor Carrier Certificates Ex parte* No. MC-45; (2) *commodities* which by reason of size or weight require special handling or the use of special equipment, and *commodities* which do not require special handling or the use of special equipment when moving in the same shipment on the same bill of lading as commodities which, by reason of size or weight require the use of special equipment; and (3) *construction materials, equipment, and supplies*, between points in California, on the one hand, and, on the other, points in Arizona, Colorado, Nevada, New Mexico, Oregon, Utah, and Washington. NOTE: Applicant states that the requested authority can be tacked with all common points which may exist by reason of authority granted in applicant's conversion application embracing points within the State of Arizona filed concurrently herewith. The purpose of this application is to convert the certificate of registration under applicant's Sub 6, into a certificate of public convenience and necessity. If a hearing is deemed necessary, applicant requests it be held at Phoenix, Ariz., or Los Angeles, Calif.

No. MC 112254 (Sub-No. 8), filed November 15, 1971. Applicant: B & B TRANSPORT, INC., 4609 Chandler Avenue, Chattanooga, TN 37410. Applicant's representative: R. Cameron Rollins, 321 East Center Street, Kingsport, TN 37660. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Brick, cinder blocks, concrete blocks, clay products, shale and shale products, and mortar mixes;* (1) from Groseclose, Va., to points in Tennessee; (2) from Richlands, Va., to points in Kentucky, North Carolina, Tennessee, and West Virginia; and (3) from Knoxville and Chattanooga, Tenn., to points in Alabama, Georgia, North Carolina, Kentucky, and Virginia, restricted against the transportation of cement, in bulk, under contract with General Shale Products Corp. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Nashville, Tenn.

No. MC 112713 (Sub-No. 137), filed November 1, 1971. Applicant: YELLOW FREIGHT SYSTEM, INC., Box 8462, 92d at State Line, Kansas City, MO 64114. Applicant's representative: John M. Records (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B exposives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the plantsite of PPG Industries, Inc., at or near Mount Holly Springs, Pa., as an off-route point in connection with applicant's authorized regular route operations. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Harrisburg, Pa., or Washington, D.C.

No. MC 113362 (Sub-No. 226), filed November 10, 1971. Applicant: ELLSWORTH FREIGHT LINES, INC., 310 East Broadway, Eagle Grove, IA 50533. Applicant's representative: Raymond W. Ellsworth, Post Office Box 227, Seneca, PA 16346. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum and petroleum products* (restricted against traffic in bulk or in tank vehicles); (1) from East Brady, Pa., to points in Illinois, Indiana, Kentucky, and Michigan; (2) from Petrolia, Pa., to points in Illinois and Indiana; (3) from

Bradford, Pa., to points in Illinois, Indiana, and Kentucky; and (4) from Karns City, Pa., to points in Illinois, Indiana, and Kentucky. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 113651 (Sub-No. 147), filed November 9, 1971. Applicant: INDIANA REFRIGERATOR LINES, INC., 2404 North Broadway, Muncie, IN 47303. Applicant's representative: Charles W. Singer, Suite 1625, 33 North Dearborn, Chicago, IL 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed by meat packinghouses* as described in sections A and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk in tank vehicles), from the plantsites and/or storage facilities utilized by Spencer Foods, Inc., located at or near Cherokee, Hartley, and Spencer, Iowa; Worthington, Minn.; Fremont, Nebr.; and Sioux Falls, S. Dak.; to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the District of Columbia, restricted to traffic originating at the above-named plantsites and warehouse facilities. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Des Moines, Iowa, or Washington, D.C.

No. MC 113651 (Sub-No. 149), filed November 9, 1971. Applicant: INDIANA REFRIGERATOR LINES, INC., 2404 North Broadway, Muncie, IN 47303. Applicant's representative: Charles W. Singer, Suite 1625, 33 North Dearborn, Chicago, IL 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts and articles distributed by meat packinghouses* as described in sections A and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), (1) from Luverne, Minn., to points in Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Maryland, Delaware, Virginia, West Virginia, Kentucky, Tennessee, North Carolina, South Carolina, Florida, Georgia, Alabama, Mississippi, Louisiana, Texas, Ohio, Michigan, and the District of Columbia; (2) from West Point, Nebr., to points in Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Maryland, Delaware, Virginia, West Virginia, Kentucky, Tennessee, North Carolina, South Carolina, Florida, Georgia, Alabama, Mississippi, Louisiana, Texas, Ohio, Michigan, and the District of Columbia; (3) from Mason City, Iowa, to points in Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Delaware, Maryland, Michigan, Indiana, Ohio, Kentucky, Louisiana, Mississippi, Texas, and the District of Columbia; (4) from Fort Dodge, Iowa, to points in Connecticut, New Jersey, Maryland, Delaware, Indiana, points in Ohio, on and north of U.S. Highway 224, Kentucky, Michigan, Mississippi, Louisiana, Texas, and the District of Columbia; (5) from Denison, Iowa, to points in Michigan, Louisiana, Mississippi, and Texas; and (6) from Emporia, Kans., to points in Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas. Restricted in 1 through 6 above to traffic originating at the plantsites and storage facilities of Iowa Beef Processors, Inc., at or near the named origins. At the present time applicant can serve all of the destinations included in this portion of the application by tacking its authority through Muncie, Ind., in (6) above. Common control may be involved. If a hearing is demed necessary, applicant requests it be held at Des Moines, Iowa, or Omaha, Nebr.

No. MC 113651 (Sub-No. 150), filed November 9, 1971. Applicant: INDIANA REFRIGERATOR LINES, INC., 2404 North Broadway, Muncie, IN 47303. Applicant's representative: Charles W. Singer, Suite 1625, 33 North Dearborn, Chicago, IL 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts and articles distributed by meat packinghouses* as described in sections A and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plantsite and/or storage facilities utilized by Wilson Sinclair Co., at Cedar Rapids, Iowa, to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the District of Columbia, restricted to the transportation of traffic originating at the above specified plantsite and/or storage facilities and destined to the above specified destinations. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Washington, D.C.

No. MC 113651 (Sub-No. 151), filed November 10, 1971. Applicant: INDIANA REFRIGERATOR LINES, INC., 2404 North Broadway, Muncie, IN 47303. Applicant's representative: Charles W. Singer, Suite 1625, 33 North Dearborn, Chicago, IL 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from Cheriton, Va., to points in Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Texas, West Virginia, and Wisconsin. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 114290 (Sub-No. 63), filed November 1, 1971. Applicant: EXLEY EXPRESS, INC., 2610 Southeast Eighth Avenue, Portland, OR 97202. Applicant's representative: James T. Johnson, 1610 IBM Building, Seattle, Wash. 98101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wine* (excluding wine in bulk in tank vehicles), from Prosser, Wash., to points in Oregon, California, Arizona, and Nevada. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Portland, Oreg., Seattle or Spokane, Wash.

No. MC 114312 (Sub-No. 23) (Correction), filed October 29, 1971, published in the FEDERAL REGISTER issue of November 25, 1971, and republished in part as corrected this issue. Applicant: ABBOTT TRUCKING, INC., Route 3, Delta, Ohio 43515. Applicant's representative: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. NOTE: The purpose of this partial republication is to show address of applicant's representative as 100 East Broad Street in lieu of 10 East Broad Street as was erroneously shown in the previous publication. The rest of the application remains as previously published.

No. MC 115162 (Sub-No. 239), filed November 19, 1971. Applicant: POOLE TRUCK LINE, INC., Post Office Drawer 500, Evergreen, AL 36401. Applicant's representative: Robert E. Tate (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Plastic pipe, plastic conduit and fittings*, from Slocomb, Ala., to points in that part of the United States in and east of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas, and (2) *materials and supplies used* in the production of plastic pipe, plastic conduit and fittings, from points in that part of the United States in and east of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas to Slocomb, Ala. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Montgomery or Mobile, Ala.

No. MC 115162 (Sub-No. 240), filed November 19, 1971. Applicant: POOLE TRUCK LINE, INC., Post Office Drawer 500, Evergreen, AL 36401. Applicant's representative: Robert E. Tate (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bounding mortar, insulating cement, fire brick, and fire clay*, from points in Sumter County, Ga., to points in Ala-

bama, Georgia, Florida, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Texas. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga., or Montgomery, Ala.

No. MC 115180 (Sub-No. 80), filed November 15, 1971. Applicant: ONLEY REFRIGERATED TRANSPORTATION, INC., 265 West 14th Street, New York, N.Y. 10014. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, and meat byproducts and articles distributed by meat packinghouses* (except hides and commodities in bulk) as described in sections A and C of Appendix 1 to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from the plantsite and storage facilities of Needham Packing Co. at West Fargo and Fargo, N. Dak., to points in Maine, Massachusetts, New Hampshire, Vermont, New York, Rhode Island, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Ohio, West Virginia, Virginia, North Carolina, South Carolina, Kentucky, and the District of Columbia. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr., or Chicago, Ill.

No. MC 115212 (Sub-No. 22), filed November 17, 1971. Applicant: H. M. H. MOTOR SERVICE, a corporation, Route 130, Cranbury, N.J. 08512. Applicant's representative: Morton E. Kiel, 140 Cedar Street, New York, NY 10006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: Such commodities as are dealt in by women's and children's ready-to-wear retail apparel stores, and in connection therewith *supplies and equipment* used in the conduct of such business, between North Bergen, N.J., on the one hand, and, on the other, points in Iowa, Missouri, Arkansas, Washington, Oregon, Idaho, North Dakota, South Dakota, Colorado, California, Nevada, Arizona, Wyoming, Montana, Maryland, and Kansas, under contract with Diana Stores Corp. NOTE: If a hearing is deemed necessary, applicant requests it be held at New York, N.Y.

No. MC 115331 (Sub-No. 325), filed November 11, 1971. Applicant: TRUCK TRANSPORT, INCORPORATED, 1931 North Geyer Road, St. Louis, MO 63131. Applicant's representative: J. R. Ferris, 230 St. Clair Avenue, East St. Louis, MO 62201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Toilet preparations, toilet articles and premiums, cosmetics, drugs, cleaning compounds, buffing or polishing compounds, disinfectants and household products;* and (2) *materials and supplies* used in the manufacture or sale and distribution of the commodities named in (1) above, between Fort Madison, Iowa; Danville, Ill., and Jackson, Miss., on the one hand, and, on the other, points in Minnesota, Wisconsin, Nebraska, Illinois, Indiana, Michigan, Ohio, Missouri, Tennessee, Iowa, Arkansas, Kansas, Kentucky, Mississippi, Texas Oklahoma, Louisiana, Georgia, and Alabama. NOTE: Common control may be involved. Applicant states that the requested authority can be tacked with its existing authority, but indicates that it has no present intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at St. Louis, Mo., Chicago, Ill., or Washington, D.C.

No. MC 115331 (Sub-No. 326), filed November 22, 1971. Applicant: TRUCK TRANSPORT, INCORPORATED, 1931 North Geyer Road, St. Louis, MO 63131. Applicant's representative: J. R. Ferris, 230 St. Clair Avenue, East St. Louis, IL 62201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Moulding sand and blends; foundry sand and blends; ground coal; foundry, moulding sand treating compounds and blends*, in bulk, from points in the St. Louis, Mo.-East St. Louis, Ill., commercial zone, as defined by the Commission, to points in Missouri, Iowa, Indiana, Kentucky, Illinois, Kansas, and Oklahoma; and (2) *lime, limestone, and limestone products*, from Hannibal, Mo., and Marblehead and Quincy, Ill., to points in Arkansas, Oklahoma, and Louisiana. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at St. Louis, Mo.

No. MC 115841 (Sub-No. 420), filed November 15, 1971. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., 1215 Bankhead Highway West, Birmingham, AL 35204. Applicant's representative: Roger M. Shaner, Post Office Box 168, Concord, TN 37720. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except commodities in bulk), in vehicles equipped with mechanical refrigeration, from Williamson and Marion, N.Y., to points in Virginia. Restriction: The above authority is restricted to traffic originating at the plantsite and storage facilities utilized by Seneca Foods Corp. located at or near Williamson, N.Y., and the plantsite and storage facilities utilized by Marion Foods, a subsidiary of Seneca Foods Corp. located at or near Marion, N.Y., and destined to points in Virginia. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Buffalo or Rochester, N.Y.

No. MC 116273 (Sub-No. 207), filed October 27, 1971. Applicant: BARRETT MOBILE HOME TRANSPORT, INC., 1825 Main Avenue, also Post Office Box 919, Moorhead, MN 56560. Applicant's representative: Robert G. Tessar, 1819 Fourth Avenue South, Kegel Plaza, Moorhead, MN 56560. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers* designed to be drawn by passenger automobiles, in initial movements, from points in New Castle County, Del., to points in the United States (except Alaska and Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Dover, Del.

No. MC 116561 (Sub-No. 5), filed November 8, 1971. Applicant: KELLER-WEBER TRUCKING, INC., 215 Old Tote Road, Mountainside, NJ 07092. Applicant's representative: Thomas C. Dorsey, 1625 Eye Street NW., Washington, DC 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by wholesale, retail, and chain grocery and food business houses, and in connection therewith, *equipment, materials, and supplies* used in the conduct of such business, from Lancaster, Pa., to points in that part of New Jersey north and east of a line beginning at the Atlantic Ocean and extending along the southern and western boundaries of Ocean County, N.J., to junction with the western boundary of Monmouth County, N.J., thence along the western boundary of Monmouth County to junction with the southern boundary of Mercer County, N.J., and thence along the southern boundary of Mercer County to the New Jersey-Pennsylvania State line, and points in that part of New York south of a line beginning at the New York-Pennsylvania State line and extending along the northern boundary of Sullivan County, N.Y., to the northern boundary of Ulster County, N.Y., thence along the northern boundary of Ulster County to the northern boundary of Dutchess County, N.Y., thence along the northern boundary of Dutchess County to the New York-Connecticut State line, including New York, N.Y., and points on Long Island, N.Y., and including points on the above-specified boundary line, and from points in described area of New Jersey and New York to Lancaster, Pa., under contract with Acme Markets, Inc. NOTE: Applicant has common carrier authority under MC 116561 Sub. 1. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or New York, N.Y.

No. MC 116763 (Sub-No. 213), filed November 8, 1971. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. 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: *Such commodities* as are used, distributed, or dealt in by automotive, vehicular, or engine supply outlets, manufacturers or distributors (except (a),

commodities, the transportation of which, because of size or weight requires the use of special equipment; (b) automobiles, trucks, and buses, as described in the Report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766; and (c) commodities in bulk), from points in Maine, to points in the United States (except Alaska, Connecticut, Hawaii, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont), restricted to traffic moving from the ports of entry on the United States-Canada boundary line in Maine. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Tampa, Fla.

No. MC 117119 (Sub-No. 444), filed November 5, 1971. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., Post Office Box 188, Elm Springs, AR 72728. Applicant's representative: Bobby G. Shaw (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts and articles distributed by meat packinghouses* as described in sections A and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk); (1) from Emporia, Kans., to points in Louisiana and points in the United States east of the Mississippi River (except Minesota and Wisconsin); and (2) from Dakota City, Nebr., to points in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, West Virginia, Virginia, Tennessee, North Carolina, South Carolina, and District of Columbia, restricted in (1) and (2) above to traffic originating at the plantsites of and storage facilities utilized by Iowa Beef Processors at or near the named origins. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr., or Washington, D.C.

No. MC 117119 (Sub-No. 445), filed November 8, 1971. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., Post Office Box 188, Elm Springs, AR 72728. Applicant's representative: Bobby G. Shaw (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from New Hampton, Iowa, to points in New Mexico, Arizona, California, Nevada, Oregon, Washington, Montana, Idaho, Utah, and Wyoming. NOTE: Applicant states that he does hold authority which could be tacked with that sought herein, however, tacking is not intended. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Des Moines, Iowa, or Washington, D.C.

No. MC 117799 (Sub-No. 20), filed November 5, 1971. Applicant: BEST WAY FROZEN EXPRESS, INC., Room 205, 3033 Excelsior Boulevard, Minneapolis, MN 55416. Applicant's representative: Val M. Higgins, 1000 First National Bank Building, Minneapolis, Minn. 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts and articles distributed by meat packinghouses* as described in sections A and C of appendix 1 to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from Tama, Iowa, to points in Arizona, New Mexico, California, Utah, Idaho, Nevada, Washington, Oregon, Colorado, Montana, and Texas. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Applicant further states that no duplicating authority is being sought. Common control and dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Minneapolis-St. Paul, Minn., or Washington, D.C.

No. MC 117940 (Sub-No. 67) (Correction), filed August 10, 1971, published in the FEDERAL REGISTER issue of September 30, 1971, and republished as corrected, this issue. Applicant: NATIONWIDE CARRIERS, INC., Post Office Box 104, Maple Plain, MN 55359. Applicant's representative: Donald L. Stern, 530 Univac Building, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Magazines, periodicals, catalogs, books, and parts and supplements thereof*, in straight or mixed loads, from Kokomo, Ind., to Washington, D.C.; Baltimore, Md.; Binghamton, Buffalo, Hicksville, and New York, N.Y.; Greensboro, N.C.; and Harrisburg, Philadelphia, and Pittsburgh, Pa. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. The purpose of this republication is to include Philadelphia as a destination point which was omitted from previous publication. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y.

No. MC 118180 (Sub-No. 12), filed November 2, 1971. Applicant: GOVAN EXPRESS, INC., Post Office Box 1605, 3200 Conflans Road, Irving, TX 75060. Applicant's representative: James K. Newbold, Jr., Post Office Box 1605, Irving, TX 75060. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts and articles distributed by meat packinghouses* as described in sections A, B, and C of appendix 1 to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, and *foodstuffs* when being transported with the above commodities (except commodities in bulk, in tank vehicles, and hides), from the plant and/or storage facilities of Wilson Certified Foods, Inc., at or near Oklahoma City, Okla., to points in Arkansas, Colorado, Iowa, Kansas, Louisiana, and Missouri. NOTE: Applicant states that the requested authority can be tacked from points in Texas authorized in certificate MC 118180 Sub-1, via joinder at the plant and/or storage facilities of Wilson Certified Foods, Inc., at or near Oklahoma City, Okla., to points in Arkansas, Colorado, Iowa, Kansas, Louisiana, and Missouri. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Dallas or Fort Worth, Tex.

No. MC 118263 (Sub-No. 50), filed November 26, 1971. Applicant: COLDWAY CARRIERS, INC., Post Office Box 38, Clarksville, IN 47130. Applicant's representative: George M. Catlett, 703-706 McClure Building, Frankfort, KY 40601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas and plantains*, covered under section 203 (b) of the Act, from Morehead City, N.C., to points in Minnesota, Iowa, Missouri, Wisconsin, Illinois, Michigan, Indiana, Ohio, Kentucky, Tennessee, New York, New Jersey, Pennsylvania, West Virginia, Virginia, Maryland, Delaware, and the District of Columbia. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Louisville, Ky., or Indianapolis, Ind.

No. MC 118518 (Sub-No. 6) (Amendment), filed September 20, 1971, published in the FEDERAL REGISTER issue of October 29, 1971, and republished in part, as amended, this issue. Applicant: MUKLUK FREIGHT LINES, INC., Post Office Box 3-4127, Anchorage, AK 99501. Applicant's representative: Joseph W. Sheehan, Post Office Box 2551, Fairbanks, AK 99701. NOTE: The sole purpose of this partial republication is to reflect that applicant states that the requested authority can be tacked with its existing authority, in lieu of the previous statement that it could not, but does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. The rest of the application remains as previously published.

No. MC 118518 (Sub-No. 7) (Correction), filed September 20, 1971, published in the FEDERAL REGISTER issue of November 11, 1971, and republished in part, as corrected, this issue. Applicant: MUKLUK FREIGHT LINES, INC., Post Office Box 3-4127, Anchorage, AK 99501. Applicant's representative: Joseph W. Sheehan, Post Office Box 2551, Fairbanks, AK 99701. NOTE: The sole purpose of this partial republication is to reflect that the transfer proceedings mentioned in the tacking information are before

the Interstate Commerce Commission, in lieu of the Alaska Transportation Commission, as stated in the previous publication. The rest of the application remains as previously published.

No. MC 118745 (Sub-No. 12), filed November 5, 1971. Applicant: JOHNSON PFROMMER, INC., Post Office Box 307, Douglassville, PA 19518. Applicant's representative: Theodore Polydoroff, 1140 Connecticut Avenue NW., Washington, DC 20036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Scrap metal, scrap motor blocks, and pig iron*, from Philadelphia, Pa., to points in Delaware, New Jersey, New York, Maryland, and Ohio, restricted to a transportation service to be performed under a continuing contract with Pollock-Abrams, Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at Philadelphia, Pa.

No. MC 119140 (Sub-No. 4), filed November 15, 1971. Applicant: P. CALLAHAN, 5240 Comly Street, Philadelphia, PA 19135. Applicant's representative: Terrence L. Bowers (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Beds, couches, bedsprings, mattresses, and parts thereof*, from Pennsauken, N.J., to points in Pennsylvania and *returned (reshipped) shipments of the above-described commodities* from points in Pennsylvania to Pennsauken, N.J., under contract with Honorbilt Products, Inc. NOTE: Applicant holds common carrier authority under MC 20894 and subs, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Philadelphia, Pa., or Washington, D.C.

No. MC 119422 (Sub-No. 50), filed November 10, 1971. Applicant: Ee-JAY MOTOR TRANSPORTS, INC., 15th and Lincoln, East St. Louis, IL 62204. Applicant's representative: Ernest A. Brooks II, 1301 Ambassador Building, St. Louis, MO 63101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, in bulk, in tank vehicles, from the plantsite of Illinois Road Contractors, Inc., terminal, in Pike County, near Meredosia, Ill., to points in Iowa, Missouri, and Illinois. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at St. Louis, Mo., or Springfield, Ill.

No. MC 119539 (Sub-No. 14), filed November 15, 1971. Applicant: BEVERAGE TRANSPORT, INC., Post Office Box 88, East Bloomfield, NY 14443. Applicant's representative: Raymond A. Richards, 23 West Main Street, Webster, NY 14580. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages and advertising material* when moving in the same vehicle, from Merrimack, N.H., to Rochester, N.Y., and *empty malt beverage containers*, on return. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Buffalo, N.Y.

No. MC 119547 (Sub-No. 29), filed November 6, 1971. Applicant: EDGAR W. LONG, INC., Route 4, Zanesville, OH 43701. Applicant's representative: Richard H. Brandon, 79 East State Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic ware*, from Columbus, Ohio, to points in the United States (except Alaska and Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio.

No. MC 119547 (Sub-No. 30), filed November 19, 1971. Applicant: EDGAR W. LONG, INC., Route 4, Zanesville, OH 43701. Applicant's representative: Richard H. Brandon, 79 East State Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prepared animal food* (except in bulk) from Corwin, Ohio, to points in the United States (except Alaska and Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio.

No. MC 119547 (Sub-No. 31), filed November 19, 1971. Applicant: EDGAR W. LONG, INC., Route 4, Zanesville, Ohio 43701. Applicant's representative: Richard H. Brandon, 79 East State Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Materials handling equipment, conveyors, and material* used in the installation of materials handling equipment and conveyors, from Zanesville, Ohio, to points in the United States (except Alaska and Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio.

No. MC 119897 (Sub-No. 13), filed November 15, 1971. Applicant: A-1 TRANSPORTATION COMPANY, a corporation, 8826 Mississippi Street, Houston, TX 77029. Applicant's representative: J. G. Dail, Jr., 1111 E Street NW., Washington, DC 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wellpoint equipment, machinery, materials, and supplies*, between Houston, Tex., and Mobile, Ala., on the one hand, and, on the other, points in Alabama, Arizona, Arkansas, Colorado, Florida, Kansas, Louisiana, Mississippi, New Mexico, Oklahoma, Tennessee, and Texas. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Houston, Tex.

No. MC 121046 (Sub-No. 4), filed November 5, 1971. Applicant: B. A. MILLER & SONS TRUCKING, INC., Box 41, East Street, Liberty Center, OH 43532. Applicant's representative: A. Charles Tell, 100 East Broad Street, Columbus, OH 43125. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except classes A and B explosives, household goods, commodities in bulk, and those injurious and contaminating to other lading), between points in Henry County, Ohio, on the one hand, and, on the other, points in the Lower Peninsula of Michigan, Indiana, Illinois, and Louisville, Ky. NOTE: Applicant states related application seeks conversion of present certificates of registration which authorizes general commodities service between Napoleon, Ohio, on the one hand, and, on the other, points in Ohio. Tacking could take place at Napoleon for service to and from all Ohio points. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio.

No. MC 121656 (Sub-No. 2), filed November 8, 1971. Applicant: SPRINGFIELD EXPRESS, INC., Post Office Box 153, Springfield, TN 38172. Applicant's representative: Walter Harwood, 1822 Parkway Towers, Nashville, Tenn. 37219. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except household goods, classes A and B explosives, commodities in bulk, and articles requiring special equipment); (1) between Nashville and Springfield, Tenn., over U.S. Highway 41, serving all intermediate points in Robertson County, and also over U.S. Highway 431, serving all intermediate points in Robertson County, and serving Barren Plains, Tenn., as an off-route point; and (2) between Springfield, Tenn., and Russellville, Ky., over U.S. Highway 431, serving all intermediate points. NOTE: Applicant states that route (1) above, represents presently held registered authority which it seeks to convert to a certificate of public convenience and necessity, since route (2) involves two States. If a hearing is deemed necessary applicant requests it be held at Nashville, Tenn., or Russellville, Ky.

No. MC 123075 (Sub-No. 23), filed November 15, 1971. Applicant: SHUPE & YOST, INC., North U.S. 85 Bypass, Greeley, CO 80631. Applicant's representative: Stuart L. Poelman, Seventh Floor, Continental Bank Building, Salt Lake City, UT 84101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Salt and salt products*, from the plantsite of Hardy Salt Co. located at or near Lakepoint, Utah, to points in Colorado, Kansas, those parts of Nebraska and South Dakota on and west of U.S. Highway 83, and Wyoming, under a continuing contract with Carey Salt Co. of Hutchinson, Kans. NOTE: If a hearing is deemed necessary, applicant requests

it be held at Denver, Colo., or Salt Lake City, Utah.

No. MC 123841 (Sub-No. 2), filed November 15, 1971. Applicant: DAVID TESONE TRUCKING, INCORPORATED, Box 35, Wildwood, PA 15091. Applicant's representative: H. Ray Pope, Jr., 10 Grant Street, Clarion, PA 16214. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, in bulk, in dump vehicles, from the plantsite of Tesone Coal Co. in Perry Township, Armstrong County, and Butler Township, Butler County, Pa., to points in Ohio, *refused or rejected materials*, on return. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Pittsburgh, Pa., or Washington, D.C.

No. MC 124211 (Sub-No. 204), filed November 10, 1971. Applicant: HILT TRUCK LINE, INC., Post Office Drawer 988 D.T.S., Omaha, NE 68101. Applicant's representative: Thomas L. Hilt (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Containers, cordage, bags, paper, paper products, twine, and yarn*, from Omaha, Nebr., to points in Illinois, Indiana, Michigan, Ohio, South Dakota, and Centerville, Clarinda, Davenport, Des Moines, Ottumwa, Red Oak, and Shenandoah, Iowa. NOTE: Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no present intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. Applicant does not seek duplicating authority and is willing to accept a restriction against any such duplication of the authority sought and that presently held by applicant. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr.

No. MC 124230 (Sub-No. 16), filed October 20, 1971. Applicant: C. B. JOHNSON, INC., Post Office Drawer S, Cortex, CO 81321. Applicant's representative: Leslie R. Kehl, 420 Denver Club Building, Denver, Colo. 80202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ore and concentrates*, from points in Sandoval County, N. Mex., to Bernalillo, N. Mex., and El Paso, Tex. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Denver, Colo.

No. MC 124673 (Sub-No. 14), filed November 1, 1971, Applicant: FEED TRANSPORTS, INC., Post Office Box 2167, Amarillo, TX 79105. Applicant's representative: Austin L. Hatchell, 1102 Perry Brooks Building, Austin, Tex. 78701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry feed ingredients*, in bulk or in bags, in trailer with special unloading devices, from points in Pratt County, Kans., to points in Curry County, N. Mex. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Dallas or Lubbock, Tex., or Santa Fe or Albuquerque, N. Mex.

No. MC 124692 (Sub-No. 87), filed November 2, 1971. Applicant: SAMMONS TRUCKING, Post Office Box 1447, Missoula, MT 59801. Applicant's representative: Donald W. Smith, 900 Circle Tower Building, Indianapolis, IN 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transpotring: *Iron and steel articles*, (a) from points in Arizona to points in California, Colorado, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming; and (b) from Burns Harbor, Ind.; Chicago and Granite City, Ill.; Houston, Tex.; Kansas City, Mo.; and California to points in Arizona. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Phoenix, Ariz., or Los Angeles, Calif.

No. MC 124708 (Sub-No. 37), filed November 8, 1971. Applicant: MEAT PACKERS EXPRESS, INC., 222 South 72d Street, Omaha, NE 68114. Applicant's representative: Val M. Higgins, 1000 First National Bank Building, Minneapolis, Minn. 55402. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts and articles distributed by meat packinghouses*, as described in sections A and C of appendix 1 to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plantsites and storage facilities of Farmland Foods located in Omaha, Nebr.; Denison and Carroll, Iowa, to points in Texas, Kansas, Oklahoma, Arkansas, Louisiana, and Colorado, under contract with Farmland Foods, Inc., Denison, Iowa. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr., or Kansas City, Mo.

No. MC 124708 (Sub-No. 38), filed November 8, 1971. Applicant: MEAT PACKERS EXPRESS, INC., 222 South 72d Street, Omaha, NE 68114. Applicant's representative: Val M. Higgins, 1000 First National Bank Building, Minneapolis, Minn. 55402. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Foodstuffs;* and (2) *equipment, materials, and supplies* used or useful in the manufacture of foodstuffs, between points in Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Wisconsin, under a continuing contract, or contracts with Fairmont Foods Company. NOTE: Applicant states that no duplicating authority is being sought. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr., or Chicago, Ill.

No. MC 124839 (Sub-No. 11), filed November 5, 1971. Applicant: BUILDERS TRANSPORT, INC., Post Office Box 7057, also 4800 Augusta Road, Savannah, GA 31408. Applicant's representative: William P. Sullivan, 1819 H Street NW., Washington, DC 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Gypsum, gypsum products, building materials and materials, equipment, and supplies* used in the manufacture, distribution, installation, and application thereof, between the plantsites and storage facilities of National Gypsum Co., at Port Wentworth, Ga., on the one hand, and, on the other, points in Arkansas, Florida, Kentucky, Louisiana, Mississippi, Oklahoma, Texas, Virginia, and West Virginia, and (2) *materials, supplies, and accessories* used in the manufacture, installation and distribution of gypsum, gypsum products, wallboard, insulating materials, building materials, and scrap paper, from points in Alabama, Georgia, North Carolina, South Carolina, and Tennessee, to the plantsites and storage facilities of National Gypsum Co., at Port Wentworth, Ga., restricted to transportation performed under continuing contract or contracts with National Gypsum Co., of Buffalo, N.Y. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Atlanta, Ga.

No. MC 126305 (Sub-No. 37), filed November 8, 1971. Applicant: BOYD BROTHERS TRANSPORTATION CO., INC., Rural Delivery 1, Clayton, AL 36016. Applicant's Representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Metal shelving, office furniture, tables, supplies, and equipment* sold by furniture distributors from Aurora, Ill., Kalamazoo, Grand Rapids, and Muskegon, Mich., to points in Alabama, Georgia, and Florida. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Birmingham, Ala., or Washington D.C.

No. MC 126428 (Sub-No. 5), filed November 1, 1971. Applicant: ZIBERT TRANSPORT CO., a corporation, 2828 Market Street, Peru, IL 61354. Applicant's representative: Robert H. Levy, 29 South La Salle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic pellets and/or plastic resins*, dry, in bulk, in tank vehicles, from the plantsite of Marbon Chemical Co., Division of Borg-Warner Corp., Marseilles, Ill., to points in California, Nevada, Utah,

Arizona, Colorado, New Mexico, Texas, Oklahoma, Kansas, Nebraska, Minnesota, Iowa, Missouri, Arkansas, Louisiana, Wisconsin, Illinois, Mississippi, Michigan, Indiana, Kentucky, Tennessee, Alabama, Ohio, Georgia, Florida, South Carolina, North Carolina, Virginia, West Virginia, Maryland, Delaware, Pennsylvania, New York, New Jersey, Connecticut, Massachusetts, and Rhode Island. NOTE: Applicant states that the requested authority cannot be tacked with its existin authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 127186 (Sub-No. 5), filed November 17, 1971. Applicant: PAUL P. LANIER, Post Office Box 492, Ironton, OH 45638. Applicant's representative: Charles F. Dodrill, 600 Fifth Avenue, Post Office Box 1824, Huntington, WV 25719. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic foam products*, from Decatur, Ind., to all points in the continental United States on and east of U.S. Highway 85, under contract with Dolco Packaging Corp., North Hollywood, Calif., from its Decatur, Ind., plant. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 127372 (Sub-No. 2), filed November 7, 1971. Applicant: SIDNEY A. AHL, 1921 Bexley Street, North Charleston, SC 29406. Applicant's representative: Frank D. Hull, Suite 713, Peachtree Road NE., Atlanta, GA 30326. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Home care products;* and (2) *merchandise, equipment, and supplies* sold, used, or distributed by a manufacturer of home care products, from Charleston, S.C., to points in Allendale, Barnwell, Clarendon, Jasper, Florence, Orangeburg, Hampton, Marion, Dorchester, Colleton, Charleston, Berkeley, Beaufort, Horry, Bamberg, Williamsburg, and Georgetown Counties, S.C., under contract with Amway Corp. NOTE: If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga., or Charleston, S.C.

No. MC 128256 (Sub-No. 9), filed November 15, 1971. Applicant: O. W. BLOSSER, doing business as BLOSSER TRUCKING, 215 North Main Street, Middlebury, IN 46540. Applicant's representative: Alki E. Scopelitis, 815 Merchants Bank Building, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, plywood, particle board, wooden mouldings, and hardboard*, between points in Elkhart County, Ind., on the one hand, and, on the other, points in Alabama, Arkansas, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Vermont, West Virginia, and Wisconsin. NOTE: Applicant states that tacking possibilities exist in its No. MC 128256 although tacking is not contemplated at this time. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Indianapolis, Ind.

No. MC 128256 (Sub-No. 10), filed November 15, 1971. Applicant: O. W. BLOSSER, doing business as BLOSSER TRUCKING, 215 North Main Street, Middlebury, IN 46540. Applicant's representative: Alki E. Scopelitis, 815 Merchants Bank Building, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Axle assemblies and related parts accessories*, between the international boundary line between the United States and Canada at Detroit, Mich., on the one hand, and, on the other, White Pigeon, Mich.; (2) *axle assemblies, frames, wheels, axles, and related parts and accessories*, from White Pigeon, Mich., to points in Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, North Carolina, Ohio, Pennsylvania, and Wisconsin; (3) *windows, doors, screens, aluminum extrusions, and related hardware and accessories* used in the installation thereof, from Bristol, Ind., to points in Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia; and (4) *materials, equipment*, and supplies used in the manufacture of windows, doors, screens, aluminum extrusions, and related hardware and accessories used in the installation thereof, from points in Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia, to Bristol, Ind. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Indianapolis, Ind., or Chicago, Ill.

No. MC 128273 (Sub-No. 113), filed November 4, 1971. Applicant: MIDWESTERN EXPRESS, INC., Box 189, Fort Scott, KS 66701. Applicant's representative: Danny Ellis (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products, products produced or distributed by manufacturers and converters of paper and paper products; and materials and supplies* used in the manufacture and distribution of the foregoing commodities (except commodities which, because of size or weight, require the use of special equipment, and except commodities in bulk), between Richmond, Va., on the one hand, and, on the other, points in Washington, Oregon, California, Idaho, Nevada, Arizona, Utah, Montana, Wyoming, Colorado, New Mexico, Kansas, Oklahoma, Texas, Nebraska, South Dakota, North Dakota, Minnesota, Iowa, Missouri, Arkansas, Louisiana, Wisconsin, Illinois, and Indiana. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 128524 (Sub-No. 1), filed November 12, 1971. Applicant: OLPAG, INC., 2364 Cleveland Street, North Bellmore, NY 11710. Applicant's representative: Martin Werner, 2 West 45th Street, New York, NY 10036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in or distributed by a manufacturer or distributor of toilet preparations (except in bulk) and *materials and supplies* used in the manufacture or distribution of the commodities described above (except in bulk), between the town of Huntington (Suffolk County), N.Y., on the one hand, and, on the other, points in New Jersey, north of New Jersey Highway 70 from the Delaware River to its junction with New Jersey Highway 88 and thence New Jersey Highway 88 to the Atlantic Ocean, under a continuing contract or contracts with Estee Lauder, Inc., and its affiliates including Len-Ron Manufacturing Co., Inc. NOTE: No duplicating authority sought. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y.

No. MC 128746 (Sub-No. 11), filed November 12, 1971. Applicant: D'AGATA NATIONAL TRUCKING CO., a corporation, 3222–44 South 61st Street, Philadelphia, PA 19153. Applicant's representative: Leonard A. Jaskiewicz, 1730 M Street NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, in containers, and *related advertising materials*, (1) from Williamsett, Mass., to Philadelphia, Pa.; and (2) from Norristown, Pa., to points in Connecticut, Delaware, Maryland, New Jersey, New York, Virginia, and the District of Columbia. NOTE: Applicant states that it intends to tack at Philadelphia, Pa., to serve named points in Delaware, Maryland, Connecticut, New York, Massachusetts, Maine, New Hampshire, Vermont, and Rhode Island. If a hearing is deemed necessary, applicant requests it be held at Philadelphia, Pa., Baltimore, Md., or Washington, D.C.

No. MC 129291 (Sub-No. 5), filed November 2, 1971. Applicant: McDANIEL MOTOR EXPRESS, INC., 1115 Winchester Road, Lexington, KY 40505. Applicant's representative: George M. Catlett, 703–706 McClure Building, Frankfort, Ky. 40601. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, commodities in bulk, household

goods as defined by the Commission and those requiring special equipment), between Paris and Maysville, Ky., from Paris, Ky., over U.S. Highway 68 to Maysville, Ky., and return over the same route, serving all intermediate points except Carlisle, Ky., and points within its commercial zone, restricted against service at points in Ohio within the Maysville, Ky., commercial zone. NOTE: If a hearing is deemed necessary, applicant requests it be held at Lexington, Ky., or Maysville, Ky.

No. MC 129631 (Sub-No. 22), filed November 11, 1971. Applicant: PACK TRANSPORT, INC., Post Office Box 17233, Salt Lake City, UT 84117. Applicant's representative: Max D. Eliason, Post Office Box 2602, Salt Lake City, UT 84110. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Insulation, roofing, and siding materials*, from points in Arizona to points in Idaho, Oregon, Montana, and Washington. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Applicant holds contract carrier authority under MC 101741, therefore, dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Salt Lake City, Utah.

No. MC 129643 (Sub-No. 9), filed November 15, 1971. Applicant: GEORGE SMITH, doing business as GEORGE SMITH TRUCKING CO., 433 Mountain Avenue, Winnipeg, MB Canada. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas*, from Seattle, Wash., to port of entry on the international boundary line between the United States and Canada located at or near Eastport, Idaho, restricted to traffic destined to points in Manitoba and Saskatchewan, Canada. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Fargo, N. Dak.

No. MC 129657 (Sub-No. 10), filed November 18, 1971. Applicant: KEN McCARVILLE DISTRIBUTING COMPANY, INC., 436 Rainbow Road, Spring Green, WI 53588. Applicant's representative: Michael J. Wyngaard, 125 West Doty Street, Madison, WI 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages and advertising equipment, premiums, material, and supplies* when shipped therewith, from Monroe, Wis., to points in Missouri other than St. Louis, Mo.; and (2) the return of *empty malt beverage containers*, from points in Missouri other than St. Louis, Mo., to Monroe, Wis. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Madison or Milwaukee, Wis.

No. MC 133095 (Sub-No. 14), filed November 8, 1971. Applicant: TEXAS-CONTINENTAL EXPRESS, INC., Post Office Box 434, Euless, TX 76039. Applicant's representative: Rocky Moore (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pickles and condiments*, from Boston, Mass., to points in Texas and California. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Boston, Mass., Dallas, Tex., or Washington, D.C.

No. MC 133095 (Sub-No. 15), filed November 11, 1971. Applicant: TEXAS-CONTINENTAL EXPRESS, INC., Post Office Box 434, Euless, TX 76039. Applicant's representative: Rocky Moore (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts* as described in sections A, B, and C of appendix 1 to the report in *Descriptions in Motor Carrier Certificates*, from points in Illinois and Missouri to points in Massachusetts. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex., or Washington, D.C.

No. MC 133106 (Sub-No. 10), filed October 26, 1971. Applicant: NATIONAL CARRIERS, INC., 1501 East Eighth Street, Post Office Box 1358, Liberal, KS 67901. Applicant's representative: Frederick J. Coffman, 521 South 14th Street, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Pipe fittings and connections, pipe hangers, indicator posts, hydrants, pipe, bars and rods, valves with or without operating apparatus, castings, water motor alarms, pipe cement, joint compound, automatic sprinkler heads, automatic fire protection and prevention systems, and air heaters, blowers, and parts* (except those commodities which because of size or weight require the use of special equipment), for the account of Grinnell Corp., from the plants, warehouses, and storage facilities utilized by Grinnell Corp. at or near Cranston and West Kingston, R.I.; Elmira, N.Y.; and Columbia and Wrightsville, Pa.; to points in Wisconsin, Illinois, Minnesota, Iowa, Missouri, Arkansas, Nebraska, Kansas, Oklahoma, Texas, Colorado, and New Mexico, under contract with Grinnell Corp. NOTE: If a hearing is deemed necessary, applicant requests it be held at Lincoln, Nebr., or Kansas City, Mo.

No. MC 133562 (Sub-No. 8), filed November 15, 1971. Applicant: HOLIDAY EXPRESS CORPORATION, Post Office Box 204, Estherville, IA 51334. Applicant's representative: Merle Johnson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cleaning compounds*, from Turbotville, Pa., to points in Ohio, Illinois, Kansas, and Missouri. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 133796 (Sub-No. 7), filed October 4, 1971. Applicant: GEORGE APPEL, 249 Carverton Road, Trucksville, PA 18708. Applicant's representative: Kenneth R. Davis, 999 Union Street, Taylor, PA 18517. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic; pipe and fittings, materials, and supplies* used in the manufacture or distribution thereof, between Los Angeles, Calif., on the one hand, and, on the other, points in the United States except Alaska and Hawaii. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Applicant holds contract carrier authority under MC 129239, therefore, dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 134068 (Sub-No. 8), filed November 8, 1971. Applicant: KODIAK REFRIGERATED LINES, INC., 4510 Seville Avenue, Vernon, CA 90058. Applicant's representative: Duane W. Acklie, Box 80806, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Swimming pool filters, cleaners, parts, purifiers, and accessories*, from Cucamonga, Calif., to points in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, South Carolina, and Wisconsin. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Los Angeles, Calif.

No. MC 134592 (Sub-No. 4), filed November 10, 1971. Applicant: HERB MOORE AND HAZEL MOORE, a partnership, doing business as H & H TRUCKING CO, 10360 North Vancouver Way, Portland, OR 97217. Applicant's representative: Philip G. Skofstad, 4410 Northeast Fremont, Portland, OR 97213. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Shakes, shingles, and ridge trim;* (1) from ports of entry on the international boundary line between the United States and Canada at or near Blaine, Sumas, Oroville, and Port Angeles, Wash., to points in Oregon, Washington, California, Nevada, and Arizona; (2) from points in Washington on and west of U.S. Highway 97 to points in Oregon, California, Nevada, and Arizona; and (3) from points in Oregon on and west of U.S. Highway 97 to points in California, Nevada, and Arizona. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Portland, Oreg.

No. MC 134599 (Sub-No. 33), filed November 15, 1971. Applicant: INTER-

STATE CONTRACT CARRIER CORPORATION, Post Office Box 748, Salt Lake City, UT 84110. Applicant's representatives: Duane W. Acklie and Richard Peterson, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Auto parts, advertising and promotional matter and equipment, materials, and supplies* used in the manufacture of auto parts, between the plantsite and storage facilities of Monroe Auto Equipment Co., at Cozad, Nebr., on the one hand, and, on the other, points in California, Nevada, Arizona, Utah, Washington, Oregon, and Idaho, under contract with Monroe Auto Equipment Co. NOTE: If a hearing is deemed necessary, applicant requests it be held at Salt Lake City, Utah., or Lincoln, Nebr.

No. MC 134776 (Sub-No. 17), filed November 11, 1971. Applicant: MILTON TRUCKING, INC., Post Office Box 207, Milton, PA 17847. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper, paper bags, and plastic bags*, between Covington, Ky., and Ludlow, Ky., on the one hand, and, on the other, points in Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Maryland, Delaware, Ohio, Virginia, and the District of Columbia, under contract with Duro Paper Bay Manufacturing Co., and its subsidiaries. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or New York, N.Y.

No. MC 134910 (Sub-No. 6), filed November 19, 1971. Applicant: CALLIS TRUCKING, INC., Clay and Market Streets, Box 25, Centerton, IN 46116. Applicant's representative: Warren C. Moberly, 777 Chamber of Commerce Building, Indianapolis, Ind. 46202. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: *Processed clay (mortar mix or admixture)*, in bags, palletized, or in containers, from points in Boone County, Iowa, to points in Indiana, under contract with Richard D. Light, doing business as Architectural Brick Sales. NOTE: If a hearing is deemed necessary, applicant requests it be held at Indianapolis, Ind., or Washington, D.C.

No. MC 135616 (Sub-No. 1), filed November 23, 1971. Applicant: PERRYSBURG TRUCKING CO., INC., 24982 Thompson Road, Perrysburg, OH 43551. Applicant's representative: E. Stephen Heisley, 705 McLachlen Bank Building, 666 11th Street NW., Washington, DC 20001. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Glass*, and (2) *materials, equipment, and supplies*, used or useful in the manufacture, sale, production, and distribution of glass (except commodities in bulk), from points in the United States (except Alaska and Hawaii), to the plantsite of Guardian Industries Corp., at or near Ash Township, Monroe County, Mich., restricted to the transportation of traffic under a continuing contract with Guardian Industries Corp. NOTE: Applicant states that it already has contract carrier authority outbound from the plant of Guardian Industries Corp., and here merely seeks to be able to provide the shipper an inbound service as a contract carrier. If a hearing is deemed necessary, applicant requests it be held at Detroit, Mich., or Washington, D.C.

No. MC 135720 (Sub-No. 2), filed September 22, 1971. Applicant: ROBERT WAYNE MABE, doing business as BOB'S AUTO TRANSPORT, 349 Johnson Ridge Road, Elkin, NC 28621. Applicant's representative: Charles M. Neaves, Post Office Box 809, 213 North Bridge Street, Elkin, NC 28621. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Automobiles* and *pickup trucks*, in truckaway service, from Newark, N.J.; Baltimore, Md.; Norfolk, Va.; and the District of Columbia and their commercial zones to points in North Carolina. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Charlotte or Raliegh, N.C.

No. MC 135874 (Sub-No. 1), filed November 3, 1971. Applicant: LTL PERISHABLES, INC., 120 Main Street, Lamoni, IA 50140. Applicant's representative: Donald L. Stern, 530 Univac Building, Omaha, NE 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from Omaha, Nebr., to points in Illinois, Iowa, Minnesota, Missouri, Kansas, and South Dakota. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr.

No. MC 136015, filed August 19, 1971. Applicant: ROGERS TRUCKING, INC., 2300 Canyon Road, Ellensburg, WA 98926. Applicant's representative: Robt. L. Rogers (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Bananas*, from points in California to ports of entry on the international boundary line between the United States and Canada located in Washington; and (2) *shakes*; (a) from points in Washington to points in California; and (b) from ports of entry on the international boundary line between the United States and Canada located in Washington to points in California. NOTE: If a hearing is deemed necessary, applicant requests it be held at Seattle, Wash.

No. MC 136069 (Sub-No. 1), filed October 15, 1971. Applicant: COIN DEVICES CORP., 64 Broad Street, Elizabeth, NJ 07201. Applicant's representative: Robert B. Pepper, 174 Brower Avenue, Edison, NJ 08817. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Coins, currency, and checks*, between Nanuet, N.Y., and Elizabeth, N.J., under a continuing contract with Bamberger's, Newark, N.J., and intrastate shipments exempt from economic regulations under section 202(b) of the Interstate Commerce Act, when transported in mixed loads with coins, currency, and checks; (2) *coins, rare metals, and precious metals*, between points in New Jersey, on the one hand, and, on the other, Hudson, N.Y.; Providence, R.I.; Boston, Mass.; and Philadelphia, Pa.; under a continuing contract with Commonwealth Silver Industries, Ltd., Millburn, N.J.; (3) *coins*, between New York, N.Y., and Elizabeth, N.J., under a continuing contract with Community National Bank, Staten Island, N.Y.; (4) *coins, currency and checks*, between Elizabeth, N.J., and New York, N.Y., under a continuing contract with The National State Bank, Elizabeth, N.J.; (5) *coins, bullions, rare metals, and precious metals*, between points in New Jersey, on the one hand, and, on the other, New York, N.Y.; Philadelphia, Pa.; Providence, R.I.; Boston, Mass.; and Chicago, Ill.; under a continuing contract with Pep Levin, Inc., Pennsauken, N.J.; and (6) *coins, currency and checks*, between Monsey, N.Y., and Elizabeth, N.J., under a continuing contract with Rickel Bros., South Plainfield, N.J., and intrastate shipments exempt from economic regulations under section 202(b) of the Interstate Commerce Act, when transported in mixed loads with coins, currency, and checks. NOTE: If a hearing is deemed necessary, applicant requests it be held at Newark, N.J., or New York, N.Y.

No. MC 136122 (Sub-No. 1), filed November 22, 1971. Applicant: FILM DELIVERY SERVICE, INC., 216 North Avenue, Shopping Center, Albertville, AL 35950. Applicant's representative: John P. Carlton, 327 Frank Nelson Building, Birmingham, AL 35203. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Motion picture films and prints and advertising and promotional materials incidental* thereto, between Atlanta, Ga., on the one hand, and, on the other, Albertville, Ala., under a continuing contract with Marshall Drive-In Theatre, Inc., Decatur, Ala.; Princess Theatre, Inc.; and Bowline Drive-In Theatre, Inc., Huntsville, Ala. NOTE: If a hearing is deemed necessary, applicant requests it be held at Birmingham, Ala., or Atlanta, Ga.

No. MC 136168, filed November 3, 1971. Applicant: WILSON CERTIFIED EXPRESS, INC., 27th and Y Street, Omaha, NE. Applicant's representative: J. Max Harding, 605 South Fourth Street, Post Office Box 82028, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (A) *Meats and packinghouse products*, as described in sections A, B, and C of the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209; (1) from Cherokee, Iowa; Kansas City, Kans.; Omaha, Nebr.; Louisville, Ky.; Marshall, Mo.; and

Oklahoma City, Okla., to points in the United States (except Alaska and Hawaii), restricted against the transportation of hides and commodities in bulk; (2) from points in Illinois, Iowa, Nebraska, Colorado, Kansas, Missouri, Oklahoma, Texas, and New Mexico, to Cherokee, Iowa; Kansas City, Kans.; Omaha, Nebr.; Louisville, Ky.; Marshall, Mo.; and Oklahoma City, Okla., restricted against the transportation of hides and commodities in bulk; (B) *returned shipments, materials, supplies, and equipment* utilized in the manufacture, sale, and distribution of the commodities specified in (1) above, in the reverse direction, restricted against the transportation of hides, commodities in bulk or those requiring special equipment. Restriction: All restricted to traffic originating or terminating at the plantsites or warehouse facilities utilized by Wilson Certified Foods, Inc., and limited to a transportation service performed under a continuing contract with Wilson Certified Foods, Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr.

No. MC 136180, filed November 10, 1971. Applicant: CHARLES A. NOLLMAN, Route 6, Box 662, Ringgold, GA 30736. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *General Motors Acceptance Corp. company and repossessed automobiles and trucks*, by driveaway method, betwen points in Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, Wisconsin, and the District of Columbia, under contract with General Motors Acceptance Corp. NOTE: If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 136180, filed November 10, 1971. Applicant: CHARLES ROLAND BALDRIDGE, Route 1, Pryor, Okla. 74361. Applicant's representative: Charles Roland Baldridge (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Prefabricated agricultural buildings, prefabricated grain bins and grain augers*, from Galesburg, Ill., and Kansas City, Mo., and Clay Center, Kans., to points in the counties of Ottawa, Craig, Nowata, Rogers, Tulsa, Mayes, Wagoner, Cherokee, Adair, Delaware, all located in the northeastern parts of Oklahoma, under a contract with Joe Brewer Construction Co. NOTE: If a hearing is deemed necessary, applicant requests it be held at Tulsa, Okla.

No. MC 136182, filed November 11, 1971. Applicant: B & C MOTOR FREIGHT, INC., 18 Matilda Street, Post Office Box 166, Peru, IN 46970. Applicant's representative: Walter F. Jones, Jr., 601 Chamber of Commerce Building, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid fertilizer, nitrogen solutions, and nitric acid*, (1) from Finney, Ohio, to points in Indiana, Illinois, Kentucky, Michigan, and West Virginia, and (2) from Fulton, Kitchel, and Bluffton, Ind., to points in Michigan and Ohio. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Indianapolis, Ind., or Chicago, Ill.

No. MC 136187, filed November 22, 1971. Applicant: CONTRACT CARRIER CORPORATION, Rural Delivery No. 1, Box 35-J, Chestertown, MD 21620. Applicant's representative: Charles E. Creager, Suite 523, 816 Easley Street, Silver Spring, MD 20910. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classed A and B explosives, commodities in bulk, and those requiring special equipment), from Baltimore, Md., to points in Virginia, West Virginia, Delaware, New Jersey, Pennsylvania, New York, and the District of Columbia, under contract with Phillips Bros., Warehouse & Distributing Corp., of Baltimore, Md. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 136188, filed November 12, 1971. Applicant: J & S, INC., 30 Valley View Drive, Indianapolis, IN 46227. Applicant's representative: Walter F. Jones, Jr., 601 Chamber of Commerce Building, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from the plantsite of Van Camp Hardware & Iron Co. Inc., Marion County, Ind., to points in Kankakee, Will, Kendall, Kane, La Salle, De Kalb, Boone, Ogle, Lee, and Bureau Counties, Ill., and Defiance, Paulding, Van Wert, Mercer, Darke, Preble, Henry, Putnam, Allen, Auglaize, Shelby, Miami, Wood, Hancock, Seneca, Crawford, and Marion Counties, Ohio. NOTE: If a hearing is deemed necessary, applicant requests it be held at Indianapolis, Ind., or Washington, D.C.

No. MC 136193, filed November 17, 1971. Applicant: F & M TRUCKING COMPANY, INC., 722 Second Avenue East, Oneonta, AL 35121. Authority sought to operate as a *contract carrier*, by motor vehicle, over regular routes, transporting: *Bagged cement and bagged masonry mix*, between Lone Star Cement Plant in Birmingham, Ala., and Lone Star Warehouse in Atlanta, Ga., from Birmingham over U.S. Highway 78 to junction Interstate Highway 20 to Atlanta (until Interstate Highway 20 is completed, applicant will use Alabama Highway 46; Georgia Highway 166 or U.S. Highway 78), under contract with Lone Star Industries, Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at Birmingham. Ala.

MOTOR CARRIER OF PASSENGERS

No. MC 3647 (Sub-No. 437), filed November 1, 1971. Applicant: TRANSPORT OF NEW JERSEY, 180 Boyden Avenue, Maplewood, NJ 07040. Applicant's representative: Richard Fryling (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage, and express and newspapers* in the same vehicle with passengers, Between Jersey City, N.J., and the Military Ocean Terminal, Bayonne, N.J.: From the junction of the New Jersey Turnpike Extension at Interchange 14A and access roads, Jersey City, N.J., over the access roads to the junction of New Jersey Highway 169, thence over New Jersey Highway 169 to the Military Ocean Terminal, Bayonne, N.J., and return over the same route, serving no intermediate points. NOTE: Applicant states it holds existing restricted authority, for operating convenience only over the New Jersey Turnpike Extension in MC 3647 Sub-No. 191. It now seeks authority for a tacking point on the New Jersey Turnpike Extension at Interchange 14A so that the above-described route may be tacked at that junction point. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Newark, N.J., or New York, N.Y.

No. MC 3647 (Sub-No. 438), filed November 5, 1971. Applicant: TRANSPORT OF NEW JERSEY, 180 Boyden Avenue, Maplewood, NJ 07040. Applicant's representative: Richard Fryling (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage* in the same vehicle with passengers, in special operations during the authorized racing seasons at said race track, (1) beginning and ending at Brooklyn and Staten Island, N.Y., and extending to Green Mountain Race Track, Pownal, Vt., and (2) beginning and ending at Brooklyn and Staten Island, N.Y.; at Philadelphia and Upper Darby, Pa.; and at points in New Jersey and extending to Harrington Race Track, Harrington, Del. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Applicant holds a brokerage license under MC 12668. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Newark, N.J., New York, N.Y., or Philadelphia, Pa.

No. MC 54534 (Sub-No. 6), filed October 28, 1971. Applicant: GRAND ISLAND TRANSIT CORPORATION, 200 Broadway, Buffalo, NY 14204. Applicant's representative: James E. Wilson, 1032 Pennsylvania Building, Pennsylvania Avenue and 13th Street NW., Washington, DC 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in the

same vehicle with passengers, in special operations, in round-trip sightseeing or pleasure tours, beginning and ending at Buffalo, N.Y., and extending to points in the United States (except Alaska and Hawaii). NOTE: Applicant states it intends to tack the requested authority with its existing authority, but does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Buffalo, N.Y.

No. MC 136189, filed November 12, 1971. Applicant: GEORGE V. HESSELGRAVE, doing business as HESSELGRAVE CHARTER SERVICE, Box 68, Route No. 1, Sumas, WA 98295. Applicant's representative: George V. Hesselgrave (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in the same vehicle with passengers, in special and charter operations, in round-trip and one-way charter service, between points in Whatcom, Skagit, San Juan, and Island Counties, Wash., on the one hand, and, on the other, points on the international boundary line between the United States and Canada located in Washington. NOTE: If a hearing is deemed necessary, applicant requests it be held at Seattle, Wash.

APPLICATIONS FOR BROKERAGE LICENSES

No. MC 29488 (Sub-No. 4), filed November 19, 1971. Applicant: TAUCK TOURS, INC., 475 Fifth Avenue, New York, NY 10017. For a license (BMC-5) to engage in operations as a *broker* at Westport, Conn., in arranging for the transportation in interstate or foreign commerce of *passengers and their baggage*, in all-expense tours, between points in the United States (except from or to any point within 25 miles of New York, N.Y., other than New York, N.Y., and Newark, N.J.). NOTE: Applicant states its existing license under MC 29488 (Sub-No. 3) authorizes it to operate as a passenger broker at New York, N.Y., Newark, N.J., and Philadelphia, Pa., and that it proposes to continue an office at New York, N.Y., and, if a license is granted empowering it to have an authorized place of business at Westport, Conn., it will concurrently surrender its rights to conduct broker operations in Newark, N.J., and Philadelphia, Pa. Applicant further states that it does not propose to operate tours by motor vehicle originating and terminating at Westport, Conn., and, if a license is issued hereunder, it may contain a restriction to that effect. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y.

No. MC 130159, filed November 12, 1971. Applicant: LOUISVILLE AUTOMOBILE CLUB, 435 East Broadway, Louisville, KY 40202. Applicant's representative: Ben T. Cooper, Kentucky Home Life Building, Louisville, Ky. 40202. For a license (BMC-5) to engage in operations as a *broker* at Louisville, Ky., in arranging for the transportation by motor vehicle, in interstate or foreign commerce of *passengers and group of passengers, and their baggage* in round-trip tours in special and chartered passenger vehicles, beginning and ending at Louisville, Owensboro, Bowling Green, and Paducah, Ky., and extending to points in the United States (including Alaska and Hawaii).

No. MC 130161, filed November 22, 1971. Applicant: MILLIE BLASER, doing business as MAGIC VALLEY TRUCK BROKERS, 5821 Randolph Drive, Boise, ID 83705. For a license (BMC-4) to engage in operations as a *broker* at Boise, Idaho, in arranging for the transportation in interstate or foreign commerce of *general commodities*, beginning and ending at Boise, Idaho, and extending to points in the United States (except Alaska and Hawaii).

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary*.

[FR Doc.71-18322 Filed 12-15-71;8:45 am]

ASSIGNMENT OF HEARINGS

DECEMBER 13, 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.

MC 135312, Floyd W. Mensch, assigned January 5, 1972, at Washington, D.C., is postponed to February 9, 1972, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 119777 Sub 208, Ligon Specialized Hauler, Inc., assigned January 10, 1972, at Washington, D.C., is postponed to March 6, 1972, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 134599 Sub 15, Interstate Contract Carrier Corp., assigned for continued hearing January 5, 1972, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC-F 11193, Midwest Emery Freight System, Inc.—Control—Laskas Motor Lines, Inc., assigned January 17, 1972, postponed to March 6, 1972, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 67450 Sub 42, Peterlin Cartage Co., now being assigned January 19, 1972, in Room 1086A, Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, IL.

MC 51146 Sub 232, Schneider Transport & Storage, Inc., now being assigned January 17, 1972, in Room 1086A, Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, IL.

MC 69275 Sub 41, M & M Transportation Co., continued to January 6, 1972, at the Offices of the Interstate Commerce Commisison, Washington, D.C.

MC 107162 Sub 32, Noble Grahma, now being assigned January 20, 1972, in Room 1086A, Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, IL.

MC-C 7384, Lovelace Truck Service, Inc., assigned January 10, 1972, will be held in the Bankruptcy Courtroom, Room 32, U.S. Post Office and Courthouse, 600 East Monroe Street, Springfield, IL.

MC 119395 Sub 2, William's Chemical Transport, Inc., now being assigned hearing on January 17, 1972, at the Offices of the Interstate Commerce Commission, Washington, D.C.

[SEAL] ROBERT L. OSWALD, *Secretary*.

[FR Doc.71-18918 Filed 12-15-71;8:49 am]

[Notice 797]

MOTOR CARRIER TRANSFER PROCEEDINGS

DECEMBER 13, 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-72978. By order of December 6, 1971, Division 3 approved the transfer to Redstone Hauling and Equipment Co., a corporation, Uniontown, Pa., of the operating rights set forth in Certificate No. MC-8509 issued January 7, 1966, to Thompson Hauling, Inc., Canonsburg, Pa., authorizing the transportation of structural steel, from Canonsburg, Pa., to all points in West Virginia, Maryland, and New York, and specified points in Ohio; machinery, materials, supplies and equipment incidental to or used in the construction, development, operation, and maintenance of facilities for the production, discovery, and development of natural gas and petroleum, coal mining machinery, and roadbuilding and construction equipment, between points in Maryland and West Virginia and specified points in Ohio, on the one hand, and, on the other, points in Beaver, Butler, Allegheny, Washington, Greene, Westmoreland, and Fayette Counties, Pa.; and heavy machinery, between points in Allegheny and Washington Counties, Pa., on the one hand, and, on the other, Washington, D.C., points in Maryland, West Virginia, and New York, and specified points in Ohio. Arthur J.

Diskin, 806 Frick Building, Pittsburgh, Pa. 15219, attorney for applicants.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-18415 Filed 12-15-71;8:49 am]

[Notice 797-A]

MOTOR CARRIER TRANSFER PROCEEDINGS

DECEMBER 13, 1971.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-73259. By order of December 10, 1971, the Motor Carrier Board approved the transfer to Elmer Bailey Gibson, doing business as Gibson Transfer and Storage, Appalachia, Va., of Certificate No. MC-64240, issued August 21, 1958, to Edward Thurman Wolfe and Mildred F. Wolfe, doing business as Wolfe's Transfer, Appalachia, Va., authorizing the transportation of general commodities, with the usual exceptions, between Appalachia, Va., on the one hand, and, on the other, points in Virginia, and those in Kentucky within 50 miles of Appalachia, Va.; and household goods as defined by the Commission, between points in Harlan and Letcher Counties, Ky., and Dickerson and Wise Counties, Va., on the one hand, and, on the other, points in 14 specified States and the District of Columbia and between points in Lee County, Va., on the one hand, and, on the other, points in 13 specified States and the District of Columbia. William J. Sturgill, The Law Building, Norton, Va. 24273, attorney for applicants.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-18416 Filed 12-15-71;8:49 am]

FEDERAL COMMUNICATIONS COMMISSION

COMMON CARRIERS

Reminder of Reporting Requirements

NOVEMBER 24, 1971.

The Commission wishes to call the attention of all common carriers to the requirements of §§ 43.51 and 43.52 of its rules which respectively concern the filing of Contracts and Concessions and Reports of Negotiations regarding foreign communication matters.

A review of the filings pursuant to each rule has revealed incomplete compliance upon the part of carriers. Specifically, there is a requirement of timely filing under each section (30 days after execution of agreements for § 43.51, and not later than the 10th day of the month after negotiations are conducted for § 43.52). Oral agreements or modifications entered into by a carrier, coming within the scope of § 43.51, are required to be reported by means of a certified statement covering all the details of the agreement, contract, concession, license, authorization or other arrangement within the period provided for in the section.

Section 43.52 requires the carriers to report negotiations carried on with their foreign counterparts, whether they be written or oral. Reports of Negotiations are to be submitted on a monthly basis commencing with initial contact. If an agreement is reached, coming within the scope of § 43.51, then the agreement or the required certified statement must be filed within 30 days. Section 43.52 also requires that reports be certified as true and correct to the best of the knowledge and belief of a responsible official of the carrier.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE, *Secretary.*

[FR Doc.71-18386 Filed 12-15-71;8:50 am]

[Docket No. 19325; FCC 71-1229]

INTERNATIONAL TELECOMMUNICATIONS UNION WORLD ADMINISTRATIVE RADIO CONFERENCE

Report Regarding ITU Proposed Agenda

In the matter of preparation for the ITU World Administrative Radio Conference for maritime mobile telecommunications to be convened at the beginning of 1974, Docket No. 19325.

1. On September 29, 1971, the Commission adopted a notice of inquiry in the above-captioned proceeding calling for comments and reply comments on or before November 1 and 15, 1971, respectively. In response to that proceeding, comments were filed by the General Electric Co. (GE), Communications Satellite Corp. (Comsat), American Telephone and Telegraph Co. (A.T. & T.), and RCA Global Communications, Inc. (RCA). Comments in reply to GE and A.T. & T. were filed by the National Association of Broadcasters (NAB) and the Association of Maximum Service Telecasters, Inc. (AMST).

2. GE's comments reflected on the broad range of the ITU Secretary General's suggestions for discussion by the conference, but noted the absence of any specific provision for a consideration of the use of satellite communications in the Maritime Mobile Service. With respect to the suggestions of the Radio Technical Commission for Marine Services (RTCM), it was indicated that GE is in agreement with the technical approach reflected in RTCM's agenda proposals, including those recognizing that satellite applications to the maritime area should be an item for specific consideration by the World Administrative Radio Conference for maritime mobile telecommunications (WARC-MAR). GE went on to comment that "not only are satellites going to be required, as a practical matter, by at least the latter part of this decade for the maritime industry, but their feasibility and efficiency are a demonstrated fact now."

3. The comments of Comsat pointed out its role as a satellite communications carrier and its potential in the maritime field. The agenda items suggested by the ITU Secretary General and by the RTCM appear to be sufficient to permit consideration by the Commission and the WARC-MAR of all necessary and timely matters.

4. The A.T. & T. comments note, in reviewing the suggestions made by the ITU Secretary General, that the scope of the conference has been determined principally by the unfinished business of the 1967 WARC-MAR, with the specific purpose to consider revisions of the telephone frequency allotment plan (Appendix 25), in light of additional frequency channels resulting from conversion to single sideband transmission. In its further comments, A.T. & T. believes it would be prudent in terms of both manpower and expense to limit the U.S. proposed agenda to consideration of the allotment plan and only such other matters as may be essential to effective use of bands now allocated to the maritime mobile service. In conclusion, A.T. & T. indicates that attention should be directed to Recommendation No. SPA II of the WARC-ST (Geneva, 1971), relating to future frequency allocations to the Maritime Mobile Satellite Service. While noting that new allocations for the Maritime Mobile Satellite Service are beyond the scope of the 1974 WARC-MAR, A.T. & T. states that additional information pertaining to the technical feasibility and use of satellites should be considered and recommends that the United States propose an agenda item similar to that suggested by RTCM (Notice, Appendix B, Item 4).

5. RCA comments deal with the use of special calling frequencies, as permitted by No. 1013E of the international Radio Regulations, pointing out that little or no use appears to be made of them in the Western Hemisphere, based on observations made during the past 12 months. Consequently, it is recommended that consideration be given to limiting the use of special calling frequencies to coast stations in regions where a need exists.

6. In the reply comments, NAB takes issue with the comments of GE and A.T. & T. that the proposed agenda of the WARC-MAR should include consideration of the use of channels in the 400 MHz range for the Maritime Mobile Satellite Service. NAB maintains that

GE's comments "deal in broad rhetoric and fail to demonstrate the real need for, and benefits which might be derived from, such a service * * *" and, further, that nowhere is GE's broad assertion supported by facts. In reviewing A.T. & T.'s comments, NAB feels that they are no more constructive than GE's in pointing out concrete reasons for the necessity of a Maritime Mobile Satellite Service in the 400 MHz range. In addition, NAB states that this proposal should be rejected because use of the band 400–500 MHz for maritime mobile satellites would stifle UHF broadcasting in the coastal areas where most of the country's population lives, and because it does not explain why longstanding spectrum allocation and Commission policies for UHF television around 400 MHz should totally be disregarded.

7. The reply comments of AMST are similar to those of NAB and also urge rejection of a proposed agenda item for the WARC–MAR relating to use of channels at about 400 MHz for maritime mobile satellites.

8. The Commission has taken the above comments into consideration as a part of its processes of recommending items for a proposed agenda for the 1974 WARC–MAR. With regard to the comments of both NAB and AMST, which appear to be the only dissenting comments, it is recognized that their concern pertains directly to possible preemption of the UHF television band 470–500 MHz by the maritime mobile satellite service. NAB and AMST apprehensions appear to be based on the terms of reference for WARC–ST Recommendation SPA II which specifies a frequency at about 400 MHz. However, there is no doubt about this item being included in the proposals for the agenda, regardless of whether it is proposed by the United States. Accordingly, an appropriate U.S. position should be prepared taking into consideration the views of the U.S. broadcasting interests. The NAB and AMST are invited to participate in the working group responsible for considering Recommendation SPA II.

9. The Commission also has participated in the Government/industry group established by the Interdepartment Radio Advisory Committee (IRAC) of the Office of Telecommunications Policy. After taking all available sources of information and guidance into consideration, the Commission is making the attached recommendations to the Department of State with regard to the proposed agenda for the 1974 WARC–MAR. Subsequent notices will be issued in this docket as the work of the U.S. preparatory group progresses.

Adopted: December 8, 1971.

Released: December 14, 1971.

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

[1] Commissioner Johnson concurring in the result.

PROPOSED AGENDA FOR THE ITU WORLD ADMINISTRATIVE CONFERENCE FOR MARITIME MOBILE TELECOMMUNICATIONS

To consider, and revise as necessary, those provisions of the Radio Regulations pertaining to the Maritime Mobile Service including, but not limited to the following:

1. Provisions pertaining to distress, alarm, urgency, and safety telecommunications, including:

(a) Designation of 156.800 MHz as the radiotelephone frequency for international distress, safety, and calling in the band 156–174 MHz.

(b) Use of Emergency Positioning Indicating Radio Beacons (EPIRB's).

2. Provisions pertaining to the use of VHF in the Maritime Mobile Service including:

(a) Possible use of teleprinter, facsimile, and data transmission systems in the 156–174 MHz band.

(b) Revision of Resolution No. MAR 14 to advance the date by which all equipment used in the Maritime Mobile Service on frequencies in the 156–174 MHz band shall conform to 25 kHz standards.

(c) Designation of a frequency or frequencies in the 156–174 MHz band for rapid safety communications between the navigating bridges of approaching vessels.

(d) Consideration of frequencies for vessel traffic systems.

3. Frequencies and conditions for use for "on board" communications by ships.

4. Use of communications and radiodetermination in the Maritime Mobile-Satellite Service including:

(a) Use of frequencies in the bands 156–174 MHz and 1535–1660 MHz, including consideration of Resolution SPA B.

(b) Consideration of Recommendation No. SPA II.

(c) Consequential revision of Recommendation No. MAR 3.

(d) Changes to the Radio Regulations considered necessary to provide for the use of EPIRB's with space systems.

5. Use of radar including:

(a) Standardization of frequencies to be used for radar identification of navigation aids.

(b) Consideration of Recommendation No. MAR 4.

6. Other matters pertaining to the Maritime Mobile Service:

(a) Consideration of Appendix 25.

(b) Use of class A3B emission in the Maritime Mobile Service (ref. Resolution No. MAR 13).

(c) Consideration of the special calling frequencies (ref. art. 29 and app. 15).

(d) Revision of regulations relating to selective calling systems.

(e) Review status of plan for oceanography provided for in Resolution No. MAR 20.

(f) Revision of operator certificate requirements applicable to:

(1) Radiotelephony and radiotelegraphy where the operation of the transmitter requires only the use of simple external switching devices; and

(2) Servicing of radar equipment.

(g) Revision of the regulations relating to use of narrow band direct printing telegraph and data transmission systems (ref. arts. 28, 29, 32, apps. 15, and 20B).

[FR Doc.71–18389 Filed 12–15–71;8:50 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. FDC–D–393; NDA No. 0–4150, etc.]

NEW-DRUG APPLICATIONS

Notice of Opportunity for Hearing

The holders of the new-drug applications listed herein have advised the Food and Drug Administration that the new drugs involved were never marketed or marketing has been discontinued.

Notice is hereby given to each holder of the new-drug applications listed herein that the Commissioner of Food and Drugs proposes to issue an order under the provisions of section 505(e) of the Federal Food, Drug, and Cosmetic Act withdrawing approval of such applications and all approved amendments and supplements thereto on the grounds that marketing of the articles having been discontinued or the articles having never been marketed, annual reports of experience with the drug required under section 505(j) of the Act (21 U.S.C. 355(j)) and new-drug regulations 21 CFR 130.13 and 130.35 (e) and (f) have not been submitted for each new drug listed.

The objective of this action is to close a large number of new-drug files on drugs that have been discontinued or were never marketed. Withdrawal of approval of these applications is not for the purpose of classifying the products as new drugs or of applying the efficacy provisions of the act to drugs of the same composition marketed by other firms.

Upon request, the Commissioner will supply to any interested person directly concerned, a statement of the composition of any of the drugs listed herein to the extent that such information was disclosed or required by law to be disclosed in the labeling.

In accordance with the provisions of section 505 of the Act (21 U.S.C. 355) and the new-drug regulations (21 CFR Part 130) the Commissioner will give the applicants named, and any interested person who would be adversely affected by an order withdrawing such approvals, an opportunity for a hearing to show cause why approval of the following new-drug applications should not be withdrawn:

George Breon & Company, Inc.—Division of Sterling Drug, 90 Park Avenue, New York, N.Y., 10016.

NDA's:
0–4150, Thiamine HCL Tablets.
0–4234, Alfabetamin Capsules.
0–4304, Brenonex Stronger Injection.
0–4328, Menadione Injection.
0–4333, Menadione Solution.
0–4398, Mannitol Hexanitrate Tablets.
0–4447, Stilbestrol Suspension.
0–4450, Thromboplastin Suspension.
0–4453, Riboflavin Tablets.
0–4475, Diethylstilbestrol Injection.
0–4495, Nicotinic Acid Amide Tablets.
0–4623, Dehydrocholic Acid Tablets.
0–5069, Sulthigel Gel.
0–5481, Diethylstilbestrol Dipropionate Injection.

0-5583, Biotin Sol. Injection.
0-5604, Lorthio Solution.
0-5765, Fenoxydyne Tablets.
0-7686, Mertestate Injection.
0-7785, Pregnenolone AC Tablets.
0-8676, Acorto Gel Injection.
0-8743, El-Acorto-Gel Injection.
0-9334, Broxolin Tablets.
10-699, Maxukal Brand/Calciumkinate Gluconate Injection.
10-779, Enzeon Chymotrypsin Injection.

G. F. Harvey Co., Division Bard-Saratoga Labs, 99-101 Saw Mill River Road, Yonkers, New York 10701.
NDA's:
10-490, Harvamine Syrup.
10-591, Warcoumin Tablets.
10-903, Cobegel Injection.
11-715, Serphylline Tablets.
11-716. Serphedrine Tablets.
12-175, Palfium Tablets.

Givaudan Corp., 321 West 44th Street, New York, New York 10036.
NDA's:
0-5818, Germicidal Soap.

Gold Leaf Pharmacal Inc., 223 South Dean St., Englewood, N.J. 07631.
NDA's:
0-7141, Histex Tablets.
0-7665, Methiouracil Tablets.
0-7870, Gentasol Tablets.
0-8282, Cortisone AC Tablets.
0-8509, Hexamethonium CL Tablets.
0-9785, Hydrocortisone Acetate Ophtalmic 1.5 percent Ointment.
0-9787, Hydrocortisone Tablets.
10-445, Reserpine Elixir.
10-892, Neobalin Injection.

Hoechst Pharmaceutical Co., Division American Hoechst Corp., 1385 Tennessee Avenue, Cincinnati, Ohio 45229.
NDA's:
0-8182, Khelloyd W/Phenobarbital Tablets.
10-235, Cobaloyd Tablets.
11-758, Copletin Tablets.

Hoffman-LaRoche Inc., 340 Kingsland Street, Nutley, N.J., 07110.
NDA's:
0-0240, Berocca Elixir.
0-0280, Vi-Penta Drops.
0-0764, Syntrogel Capsules.
0-0830, Berocca-B Complex Capsules.
0-2449, Prostigmin Methylsulfate Injection.
0-2574, Morphine-Prostigmin Hypodermic Tablets.
0-2575, Pantopon-Prostigmin Hypodermic Tablets.
0-3021, Visco-Rayopake Injection.
0-5502, Larovical Wafer.
0-6443, Presidon Roche Tablets.
0-7082, Propotin Cream, Ointment, Powder.
0-7528, Dormoran Hydro-Bromide Injection.
0-8028, Dormoran Hydro-Bromide Tablets.
0-8394, Marsilid Phosphate Tablets.
0-9759, Clafanone Suspension & Tablets.
10-593, Trionine Tablets.
11-765, Madricid Capsules.
Hyland Labs., Division of Travenol Labs., 6301 Lincoln Avenue, Morton Grove, Illinois 60053.
NDA:
0-7376, Paraminose Powder & Injection.

Hynson Westcott & Dunning Inc., Charles and Chase Streets, Baltimore, Maryland 21201.
NDA:
0-4361, Sulfanilamide H. W. & D. Powder.

Intermedico Corp., 21 Hudson Street, New York, New York.
NDA:
0-8514, Comison Tablets.

International Vitamin Corp., 50 East 42nd Street, New York, New York.
NDA:
0-1093, I.V.C. Compomol Liquid.

Smith, Kline & French Labs., 1500 Spring Garden Street, Philadelphia, Pa. 19101.
NDA's:
0-6996, Aptrol Tablets.
0-7042, Feojectin Injection.
0-7273, Eskel Tablets.
0-7615, Resodec Powder.
0-8227, Toryn Syrup and Tablets.

Smith, Miller & Patch, 902 Broadway, New York, New York 10010.
NDA's:
0-4181, Diethylstilbestrol Tablets.
0-4215, Choranid Injection.
0-4325, Private Formula Rx 1979 Tablets.

Smith-Dorsey Co., Division Wander Co., Lincoln, Nebraska 68501.
NDA's:
0-0135, Vitamin B Complex Syrup.
0-0232, Nicotinic Acid Tablets.
0-0273, Petrolatum w/agar & Thiamin chloride in Chocolate Emulsion.
0-0274, Aspirin Acetophenetidin & Codeine Compound #1 Tablets.
0-0275, Aspirin Acetophenetidin & Codeine Compound #2 Tablets.
0-0324, Private Formula Tablets.
0-0343, Special Formula for George Jay Drug Company Tablets.
0-0344, Tannin Belladonna & Benzocaine Compound.
0-0345, Rhubarb Hydrastis Pancreatin Elixir.
0-0369, Petrolatum w/Phenolphthalein #1 Chocolate Emulsion.
0-0370, Petrolatum w/Phenolphthalein #2 Chocolate Emulsion.
0-0371, Petrolatum #3 Chocolate Emulsion.
0-0372, Magnesium Trisilicate w/Lac Pulvis Tablets.
0-0410, Petrolatum w/cascara Emulsion.
0-0435, Atropine Sulfate Hypodermic Tablets.
0-0436, Atropine Sulfate Hypodermic Tablets/Injection.
0-437, Codeine Sulfate Hypodermic Tab.
0-0438, Morphine Sulfate Hypodermic Tab/Injection.
0-0439, Morphine Sulfate Hypodermic Tab/Injection.
0-0440, Morphine Sulfate Hypodermic Tab/Injection.
0-0441, Morphine Sulfate Hypodermic Tab/Injection.
0-0442, Morphine Sulfate Hypodermic Tab/Injection.
0-0443, Strychnine Sulfate Hypodermic Tab/Injection.
0-0444, Strychnine Sulfate Hypodermic Tab/Injection.
0-0445, Strychnine Sulfate Hypodermic Tab/Injection.

Within 30 days after publication hereof in the FEDERAL REGISTER, the applicants, as well as any interested person who would be adversely affected and who wants an opportunity for a hearing, are required to file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-62, 5600 Fishers Lane, Rockville, Md. 20852, a written appearance electing whether:

1. To avail themselves of the opportunity for a hearing; or

2. Not to avail themselves of the opportunity for a hearing.

If such persons elect not to avail themselves of the opportunity for a hearing, the Commissioner without further notice will enter a final order withdrawing the approval of the new-drug application. Failure of such persons to file a written appearance of election within said 30 days will be construed as an election by such persons not to avail themselves of the opportunity for a hearing.

If such persons elect to avail themselves of the opportunity for a hearing, they must file within 30 days after publication of this notice in the FEDERAL REGISTER, a written appearance requesting a hearing giving the reasons why approval of the new-drug application should not be withdrawn, together with a well-organized and full factual analysis of the clinical and other investigational data they are prepared to prove in support of their opposition. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that a genuine and substantial issue of fact requires a hearing. When it clearly appears from the data in the application and from the reasons and factual analysis in the request for the hearing that no genuine and substantial issue of fact precludes the withdrawal of approval of the application, the Commissioner will enter an order on these data making findings and conclusions on such data.

If a hearing is requested and justified by the response to this notice, the issues will be defined, a hearing examiner will be named, and he shall issue, as soon as practicable after the expiration of such 30 days, a written notice of the time and place at which the hearing will commence (35 F.R. 7250, May 8, 1970; 35 F.R. 16631, October 27, 1970).

Received requests for a hearing, and/or elections not to request a hearing, may be seen in the office of the Hearing Clerk (address given above) during regular business hours, Monday through Friday.

The hearing contemplated by this notice will be open to the public except that any portion of the hearing that concerns a method or process the Commissioner finds entitled to protection as a trade secret will not be open to the public unless the respondent specifies otherwise in his appearance.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050-53, as amended; 21 U.S.C. 352, 355) and under authority delegated to the Commissioner (21 CFR 2.120).

Dated: December 6, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71-18408 Filed 12-15-71;8:50 am]

FEDERAL POWER COMMISSION

[Docket No. CS72-426, etc.]

HAWK ENTERPRISES, INC., ET AL.

Notice of Applications for "Small Producer" Certificates [1]

DECEMBER 7, 1971.

Take notice that each of the applicants listed herein has filed an application

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before December 29, 1971, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

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 all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

Docket No.	Date filed	Name of applicant
CS72-426	11-18-71	Hawk Enterprises, Inc., c/o Johnson, McElroy, Cravens & Boone, 1900 Mercantile Dallas Bldg., Dallas, Tex. 75201.
CS72-439	11-16-71	Cerro Corp., 300 Park Ave., 15th Floor, New York, NY 10022.
CS72-440	11-19-71	Edwin E. Simmons and Paul Simmons, Box 1535, Pampa, TX 79065.
CS72-441	11-22-71	Harold E. O'Connor, 2700 Republic National Bank Bldg., Dallas, Tex 75201.
CS72-442	11-22-71	Marvin C. Gross, Post Office Box 763, Hobbs, NM 88240.
CS72-443	11-22-71	Tres Oil Co., 930 First Wichita National Bldg., Wichita Falls, Tex. 76301.
CS72-444	11-22-71	William M. Shepperd, 2635 Main St., Houston, TX 77002.
CS72-445	11-22-71	Alfred Wagner, Jr., 1228 Bank of the Southwest Bldg., Houston, Tex. 77002.
CS72-446	11-22-71	The First National Bank of Midland, Texas, Trustee, Post Office Box 270, Midland, TX 79701.
CS72-447	11-22-71	Fred Goodstein, Box 1700, Casper, WY 82601.
CS72-448	11-22-71	Basic Earth Science Systems, Inc., 1080 Capitol Life Center, Denver, Colo. 80202.
CS72-449	11-22-71	George A. Musselman, 1920 Alamo National Bldg., San Antonio, Tex. 78205.

[FR Doc.71-18314 Filed 12-15-71;8:45 am]

[Docket No. RP72-47]

CONSOLIDATED GAS SUPPLY CORP.

Order Suspending Proposed Tariff Sheets

DECEMBER 3, 1971.

On October 5, 1971, Consolidated Gas Supply Corp. (Consolidated) tendered for filing under sections 4 and 5 of the Natural Gas Act revised tariff sheets to its FPC Gas Tariff, First Revised Volume No. 1[1] and requested that those sheets become effective December 4, 1971, 60 days from the date of filing.

The changes contained in those tariff sheets embody Consolidated's curtailment plan. The provisions of that plan are set forth in section 11 of the General Terms and Conditions of the tariff and replace the third paragraph of the existing section 10 of the General Terms and Conditions of Consolidated's tariff. The new section 11 sets forth the particular rules by which the general provisions of existing section 10 would be implemented when a discontinuance or curtailment of deliveries of gas may become necessary. Under the plan, priorities of service are based on end-use concepts with the highest priority uses for domestic and commercial consumption and the lowest priority for industrial usage where alternative fuel can be feasibly utilized.

Protests to the curtailment plan have been filed by some of Consolidated's customers and their consumers. The curtailment plan contained in the revised tariff sheets has not been shown to be lawful and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful under the Natural Gas Act. Accordingly, since the company has the initial responsibility to implement a fair curtailment program (subject to review by this Commission and any results that may flow therefrom), either by interpreting their existing tariff or by new tariff, we deem it appropriate to suspend the revised tariff sheets for one day.

The Commission further finds:

(1) It is necessary and appropriate for the purposes of the Natural Gas Act, particularly sections 4, 5, and 16 thereof, that the operation of the revised tariff sheets tendered by Consolidated on October 5, 1971, and designated in footnote 1 above, be suspended and the use thereof deferred as hereinafter provided.

(2) In the event Commission determination of this proceeding is not concluded prior to the termination of the suspension period herein ordered, the placing of the tariff changes applied for in this proceeding into effect after the suspension period in the manner prescribed by the Natural Gas Act, all subject to refund with interest, while pending Commission determination as to their justness and reasonableness, is consistent with the purposes of the Economic Stabilization Act of 1970, as amended.

The Commission orders:

First Revised Sheets Nos. 51, 52, and 53 and Original Sheets Nos. 53-A, 53-B, 53-C, and 53-D to Consolidated's FPC Gas Tariff, First Revised Volume No. 1 are hereby suspended and the use thereof deferred until December 5, 1971, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.71-18374 Filed 12-15-71;8:47 am]

[Docket No. CP72-151]

CITIES SERVICE GAS CO.

Notice of Application

DECEMBER 14, 1971.

Take notice that on December 6, 1971, Cities Service Gas Co. (applicant), Post Office Box 25128, Oklahoma City, OK 73125, filed in Docket No. CP72-151 a budget-type application pursuant to section 7(b) of the Natural Gas Act, as implemented by § 157.7(e) of the regulations under said Act, for permission and approval to abandon certain natural gas direct sales facilities no longer required for service to applicant's customers, and pursuant to section 7(c) of the Natural Gas Act, as implemented by § 157.7(c) of the regulations under said Act, for a certificate of public convenience and necessity authorizing the construction during 1972 and operation of certain natural gas sales and transportation facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the purpose of the application is to enable it to act with reasonable dispatch in establishing new delivery points for direct sales of natural gas, to make necessary miscellaneous rearrangements on its system, and to cease service and remove direct sales facilities

[1] The proposed tariff sheets are designated as First Revised Sheets Nos. 51, 52, and 53 and Original Sheets Nos. 53-A, 53-B, 53-C, and 53-D.

no longer needed to serve applicant's customers. Applicant states that the proposed facilities will not be used to deliver natural gas for boiler fuel purposes and that deliveries to any one customer will not exceed 36,000 Mcf annually. The total cost of the facilities propsed herein is not to exceed $300,000. Applicant further states that it will not abandon any service under this requested authorization unless it has received a written request, or written permission, from the customer to terminate the service, and that deliveries to any one direct sales customer through sales measuring facilities to be abandoned will not have exceeded 100,000 Mcf annually during the last year of service. Applicant proposes to finance the cost of the facilities from treasury cash.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 4, 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.71-18467 Filed 12-15-71;8:51 am]

[Docket No. CI72-343]

JAMES M. FORGOTSON, SR.

Notice of Application

DECEMBER 14, 1971.

Take notice that on December 6, 1971, James M. Forgotson, Sr., 409 Beck Building, Shreveport, La. 71101, filed in Docket No. CI72-343 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to United Gas Pipe Line Co. (United) from the Anse La Butte Field, St. Martin Parish, La., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that he has commenced the sale of natural gas to United within the contemplation of § 157.29 of the regulations under the Natural Gas Act (18 CFR 157.29) and that he proposes to continue said sale for 1 year within the contemplation of § 2.70 of the Commission's General Policy and Interpretations (18 CFR 2.70) at the rate of 30 cents per Mcf at 15.025 p.s.i.a. Deliveries would not exceed 10,000 Mcf of gas per day.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before December 23, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). 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.71-18466 Filed 12-15-71;8:51 am]

INTERAGENCY TEXTILE ADMINISTRATIVE COMMITTEE

CERTAIN COTTON TEXTILES AND COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN HAITI

Entry or Withdrawal From Warehouse for Consumption

DECEMBER 9, 1971.

On November 3, 1971, the U.S. Government, in furtherance of the objectives of, and under the terms of, the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, concluded a new comprehensive bilateral cotton textile agreement with the Government of Haiti concerning exports of cotton textiles and cotton textile products from Haiti to the United States over a 5-year period beginning on October 1, 1971, and extending through September 30, 1976. Among the provisions of the agreement are those establishing an aggregate limit for the 64 categories, and within the aggregate limit specific limits on Categories 39, 53, and 54 for the first agreement year which began on October 1, 1971.

Accordingly, there is published below a letter of December 9, 1971, from the Chairman of the President's Cabinet Textile Advisory Committee to the Commissioner of Customs, directing that the amounts of cotton textile products in Categories 39, 53, and 54 produced or manufactured in Haiti which may be entered or withdrawn from warehouse for consumption in the United States for the 12-month period beginning October 1, 1971, and extending through September 30, 1972, be limited to the designated levels. The letter published below and the actions pursuant thereto are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Previously, the Chairman of the President's Cabinet Textile Advisory Committee issued a series of directives, pursuant to Article 3 of the Long-Term Arrangement Regarding International Trade in Cotton Textiles, limiting imports of cotton textile products in various categories from Haiti. The letter published below also cancels and supersedes these directives.

STANLEY NEHMER,
Chairman, Interagency Textile Administrative Committee, and Deputy Assistant Secretary for Resources.

SECRETARY OF COMMERCE

PRESIDENT'S CABINET TEXTILE ADVISORY COMMITTEE

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20226.

DECEMBER 9, 1971.

DEAR MR. COMMISSIONER: This directive cancels and supersedes the directives issued to you on the following dates by the Chairman, President's Cabinet Textile Advisory

Committee, regarding imports of cotton textile products in the following categories produced or manufactured in Haiti:

Date of P.C.T.A.C. directive:	*Categories*
Apr. 2, 1971	62
Aug. 24, 1971	54
Aug. 24, 1971	39

Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to the bilateral cotton textile agreement of November 3, 1971, between the Governments of the United States and Haiti, and in accordance with Executive Order 11052 of September 28, 1962, as amended by Executive Order 11214 of April 7, 1965, you are directed to prohibit, effective as soon as possible, and for the 12-month period beginning October 1, 1971, and extending through September 30, 1972, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 39, 53, and 54, produced or manufactured in Haiti, in excess of the following levels of restraint:

Category		*12-month levels of restraint* [1]
39	dozen pair	200,000
53	dozen	18,764
54	do	30,000

[1] These levels have not been adjusted to reflect any entries made on or after Oct. 1, 1971.

Cotton textile products in Categories 39, 53, and 54 produced or manufactured in Haiti and which have been exported prior to October 1, 1971, shall not be subject to this directive.

Cotton textile products in Categories 39, 53, and 54 which have been released from the custody of the Bureau of Customs under the provisions of 19 U.S.C. 1448(b) prior to the effective date of this directive shall not be denied entry under this directive.

The levels of restraint set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of November 3, 1971, between the Governments of the United States and Haiti which provide, in part, that within the aggregate limit, the limits on certain categories may be exceeded by not more than 5 percent; for the limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements. Any appropriate adjustments pursuant to the provisions of the bilateral agreement referred to above, will be made to you by letter from the Chairman of the Interagency Textile Administrative Committee.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on October 9, 1971 (36 F.R. 19722).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Haiti and with respect to imports of cotton textiles and cotton textile products from Haiti have been determined by the President's Cabinet Textile Advisory Committee to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the notice provisions of 5 U.S.C. 553.

This letter will be published in the FEDERAL REGISTER.

Sincerely yours,

MAURICE H. STANS,
Secretary of Commerce, Chairman, President's Cabinet Textile Advisory Committee.

[FR Doc.71-18383 Filed 12-15-71;8:48 am]

CERTAIN COTTON TEXTILES AND COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN PERU

Entry or Withdrawal From Warehouse for Consumption

DECEMBER 9, 1971.

On November 23, 1971, the U.S. Government, in furtherance of the objectives of, and under the terms of, the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, concluded a new comprehenisve bilateral cotton textile agreement with the Government of Peru concerning exports of cotton textiles and cotton textile products from Peru to the United States over a 5-year period beginning on October 1, 1971, and extending through September 30, 1976. Among the provisions of the agreement are those establishing an aggregate limit for the 64 Categories, and within the aggregate limit specific limits on Categories 22, 56, 57, 58, and 60 for the first agreement year which began on October 1, 1971.

Accordingly, there is published below a letter of December 9, 1971 from the Chairman of the President's Cabinet Textile Advisory Committee to the Commissioner of Customs, directing that the amounts of cotton textile products in Categories 22, 56, 57, 58, and 60 produced or manufactured in Peru which may be entered or withdrawn from warehouse for consumption in the United States for the 12-month period beginning October 1, 1971, and extending through September 30, 1972, be limited to the designated levels. The letter published below and the actions pursuant thereto are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only the implementation of certain of its provisions.

Previously, the Chairman of the President's Cabinet Textile Advisory Committee issued a directive, pursuant to Article 3 of the Long-Term Ararngement Regarding International Trade in Cotton Textiles, limiting imports of cotton textile products in Category 22 from Peru. The letter published below also cancels and supersedes this directive.

STANLEY NEHMER,
Chairman, Interagency Textile Administrative Committee, and Deputy Assistant Secretary for Resources.

SECRETARY OF COMMERCE

PRESIDENT'S CABINET TEXTILE ADVISORY COMMITTEE

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20226.

DECEMBER 9, 1971.

DEAR MR. COMMISSIONER: This directive cancels and supersedes the directive issued to you on July 23, 1971, by the Chairman, President's Cabinet Textile Advisory Committee, regarding imports of cotton textile products in Category 22 produced or manufactured in Peru.

Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to the bilateral cotton textile agreement of November 23, 1971, between the Governments of the United States and Peru, and in accordance with Executive Order 11052 of September 28, 1962, as amended by Executive Order 11214 of April 7, 1965, you are directed to prohibit, effective as soon as possible, and for the 12-month period beginning October 1, 1971, and extending through September 30, 1972, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 22, 56, 57, 58, and 60, produced or manufactured in Peru in excess of the following levels of restraint:

Category		*12-Month levels of restraint* [1]
22	square yards	1,750,000
56	dozen	48,913
57	do	40,000
58	do	90,000
60	do	14,434

[1] These levels have not been adjusted to reflect any entries made on or after Oct. 1, 1971.

Cotton textile products in Categories 22, 56, 57, 58, and 60 produced or manufactured in Peru and which have been exported prior to October 1, 1971, shall not be subject to this directive.

Cotton textile products in Categories 22, 56, 57, 58, and 60 which have been released from the custody of the Bureau of Customs under the provisions of 19 U.S.C. 1448(b) prior to the effective date of this directive shall not be denied entry under this directive.

The levels of restraint set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of November 23, 1971, between the Governments of the United States and Peru which provide, in part, that within the aggregate limit, the limits of certain categories may be exceeded by not more than 5 percent; for the limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements. Any appropriate adjustments pursuant to the provisions of the bilateral agreement referred to above, will be made to you by letter from the Chairman of the Interagency Textile Administrative Committee.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on October 9, 1971 (36 F.R. 19722).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Peru and with respect to imports of cotton textiles and cotton textile products from Peru have been determined

by the President's Cabinet Textile Advisory Committee to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the notice provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely yours,

MAURICE H. STANS,
Secretary of Commerce, Chairman, President's Cabinet Textile Advisory Committee.

[FR Doc.71-18384 Filed 12-15-71;8:48 am]

NATIONAL CAPITAL PLANNING COMMISSION

SITE AND BUILDING PLANS

Proposed Requirements

Correction

In F.R. Doc. 71-18188 appearing at page 23654 in the issue for Saturday, December 11, 1971, the word "was" in the fifth line of the second paragraph in section 1 should read "has".

OFFICE OF EMERGENCY PREPAREDNESS

IMPORT-BASED NATURAL GAS SUBSTITUTES

Notice of Study

Notice is hereby given that George A. Lincoln, Director of the Office of Emergency Preparedness and Chairman of the Oil Policy Committee has initiated a staff study of the security and economic implications of producing natural gas substitutes from imported crude oil and oil products (e.g., liquefied petroleum gas, methanol, and naphtha).

Necessarily, such a study will also include consideration of liquefied natural gas as an alternative or supplemental source of pipeline gas. It is the intention to build the necessary fact foundation for general import policy formulation, including possible rule making under the Mandatory Oil Import Program for finished and unfinished oils controlled thereunder.

Interested parties are invited to submit in writing information concerning production of pipeline quality gas derived from imported gas and oil in their various forms including techniques and any pending proposals for this type of operation. Views are also sought from any interested party, whether submitting a proposal or not, as to the consequences of approving some part or all of such proposals upon national security, the well-being of the economy, the consumer, and the affected domestic industries during the remainder of this decade.

Submissions should be sent before February 1, 1972, to W. C. Truppner, Assistant Director for Resource Analysis, Office of Emergency Preparedness, Washington, D.C. 20504. Fifteen copies of each submission are requested. A copy of all submissions will be available for public inspection except those portions that are individual company confidential and so identified.

Dated: December 15, 1971.

G. A. LINCOLN,
Director,
Office of Emergency Preparedness.

[FR Doc.71-18534 Filed 12-15-71;11:48 am]

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PART II

COST OF LIVING COUNCIL

PRICE COMMISSION

■

Economic Stabilization

Title 6—ECONOMIC STABILIZATION

Chapter I—Cost of Living Council

PART 101—COVERAGE, EXEMPTIONS AND CLASSIFICATION OF ECONOMIC UNITS

Miscellaneous Amendments

Part 101—Coverage, Exemptions and Classification of Economic Units was added to a new Title 6 and a new Chapter I of the Code of Federal Regulations on November 13, 1971 (36 F.R. 21788) and amended on November 17, 1971 (36 F.R. 21952).

Part 101 presently contains certain provisions which must be revised in order to carry out the stated purpose of the regulations. These revisions, as set forth below, further amend the provisions of this part.

Since the immediate publication of these amendments is necessary to implement Executive Order No. 11627, the Council finds that their publication in accordance with usual rule making procedures is impracticable and that good cause exists for promulgating them in less than 30 days.

These amendments shall become effective when filed with the FEDERAL REGISTER.

DONALD RUMSFELD,
Director, Cost of Living Council.

Part 101 of Chapter I of Title 6 of the Code of Federal Regulations is amended as follows:

1. In § 101.1, paragraph (e) is added to read as follows:

§ 101.1 Purpose and scope.

* * * * *

(e) This part applies only to economic units and transactions in the United States and the District of Columbia.

2. Subpart B is amended by adding a new § 101.16 and revising § 101.17 as follows:

§ 101.16 Special provisions for modification of prenotification requirements.

(a) Notwithstanding the provisions of § 101.11, price category I firms need not prenotify with regard to price adjustments based upon the increased cost of raw or partially processed products, subject to the conditions and procedures set forth in § 300.51 (f) through (i) of this title.

(b) Notwithstanding the provisions of § 101.11, price category I firms need not prenotify with regard to price adustments which may be excluded in computing the base price under §§ 300.401 through 300.409 of this title as a temporary special deal or temporary special allowance as described in § 300.405(a) of this title and subject to the conditions set forth therein.

§ 101.17 Reclassification.

With the advice of the Price Commission, the Director of the Cost of Living Council has authority to reclassify firms from one price category to another when he deems such action necessary or advisable to effectuate the purposes of the Act and regulations issued pursuant thereto.

3. In § 101.21, paragraph (a) is revised to read as follows:

§ 101.21 Category I pay adjustments; construction pay adjustments; prenotification requirements.

(a) A category I pay adjustment means a pay adjustment which applies to or affects 5,000 or more employees or which applies to or affects employees who are engaged in construction as defined by section 11 of Executive Order No. 11588.

4. Section 101.27 is revised to read as follows:

§ 101.27 Reclassification.

With the advice of the Pay Board, the Director of the Cost of Living Council has authority to reclassify pay adjustments from one category to another when he deems such action necessary or advisable to effectuate the purposes of the Act and regulations issued pursuant thereto.

5. In § 101.32, paragraph (g)(1)(iii)(*b*) is revised to read as follows:

§ 101.32 Exemptions.

* * * * *

(g) * * *
(1) * * *
(iii) * * *

(*b*) The sales price is determined before the completion of construction and the wage rates estimated by the builder at the time the price is determined are not subsequently reduced by any action of the Pay Board.

6. In § 101.33, a new paragraph (c) is added to read as follows:

§ 101.33 Items not included in coverage.

* * * * *

(c) *United States citizens residing and employed abroad.* Pay adjustments which apply to or affect United States citizens who reside and are employed abroad.

[F.R. Doc.71-18544 Filed 12-15-71; 3:39 pm]

Chapter III—Price Commission

PART 300—PRICE AND RENT STABILIZATION

The purpose of this amendment is to republish Part 300 of the regulations of the Price Commission in its entirety to include all amendments made to the date of this publication, to make the substantive changes discussed below, to make certain changes in the arrangement and numbering of sections, and to make certain editorial and drafting changes.

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

The words "established by treaty or agreement between participating governments" have been inserted to modify the words "international organization" in the definition of "person", to clarify the types of international organizations that are not to be covered by the definition.

Section 300.13 (a) and (b) (former § 300.013 (a) and (b)), relating to price posting requirements, has been amended to lessen the requirements for retailers with total sales of less than $100,000 in their last fiscal year. Such a retailer will be required to post only the prices of those 40 items which had the largest dollar sales volume during that fiscal year or those items that accounted for a least 50 percent of total dollar sales during that year, whichever is less. The requirement is not changed with regard to other retailers.

A new paragraph (e) has been added to § 300.15 (former § 300.015), relating to the rental of real property, to make it clear that lessors must furnish information to lessees and prospective lessees on increased rent charges.

Section 300.15 (former § 300.015) has also been amended by adding new paragraphs (g), (h), and (i) to allow any State or local rent control body administering a rent control program of general applicability in effect before November 14, 1971, to control rent increases on rental units under their jurisdiction. The authority conferred will not apply to public housing and certain publicly financed housing. The Price Commission reserves the right to review and limit or decrease any increase made under the amendment, to impose additional or different requirements on the controlling agency or instrumentality, and to revoke the authority in any case in which required information is not furnished.

Section 300.51 (a) and (c) (former § 300.051 (a) and (c)) has been amended to make it clear that Saturdays, Sundays, and holidays, are not included in computing the 72-hour decision period requirements for prenotification firms, and that if the 30-day decision period would otherwise end on a Saturday, Sunday, or Federal holiday, it will end at the close of the next succeeding workday.

Sections 300.51(e) (former § 300.051 (e)) and 300.52(a) (former § 300.052(a)) have been amended to provide that reports from prenotification and reporting firms may be submitted to the Commission at the same time they are normally released by those firms, but not later than 45 days after the close of a quarter or 90 days after the close of the firm's fiscal year.

Section 300.51 (former § 300.051) has been amended by adding new paragraphs (f), (g), (h), and (i) to provide a procedure whereby the Price Commission may, upon request, issue authorizations to prenotification firms to increase certain prices without prenotification. The authorization will be used only in the case of prenotification firms that have customarily priced an item in a manner immediately responsive to frequent and customary market price fluctuations in

the raw materials or partially processed products used in the production of that item. In the case of a price increase on a partially processed product, the price increase will be limited to that part of the increased price of the partially processed product that is based on an increase in the market price of the raw material. No firm will be authorized to increase a price to an extent that would result in an increase in its profit margin above that which prevailed during its base period. Any part of a price that is increased under the amendment because of an increase in the price of a partially processed product must be noted on the customer invoice. Each firm increasing the price of an item under the amendment will be required to reduce the price (but not below its base price) to the extent of any later decrease in the cost of the material or product upon which the increase was based.

Section 300.405(a) (former § 300.505 (a)) relating to the computation of base prices for the sale of personal property or services, has been amended to allow the exclusion from that computation of any temporary deal or temporary allowance, if the deal or allowance was announced before August 15, 1971, and was intended to be in effect for less than 92 days.

Section 300.202 which authorized increases in prices to the extent of any increases in excise taxes (including sales and use taxes) and in import duties, but not increased francise, gross receipts, property, or income taxes, has been deleted. Under the definition of "allowable costs," taxes (except income taxes) are generally treated as allowable costs. Section 300.51 (a) and (b), relating to prenotification firms, has been amended to make it clear that the prenotification requirement does not apply to price increases to the extent they reflect solely increases in excise taxes (including sales and use taxes) or in import duties.

A new § 300.506 has been added to authorize the written submission of data, information, or views by any person who shows a direct interest in any application for a price increase, or request for exception, made by any other person. Each relevant submission received early enough in the proceeding will be sent to the other parties in the case for their consideration and comment. Otherwise they will be treated as requests for reexamination of the matter involved. No oral hearings will be held on the submission.

Section 300.551 (former § 300.651), relating to penalties, has been revised to make it clear that certain actions, such as failure to prenotify as required, failure to keep required records, and to make them available for inspection, and the furnishing of false information are subject to penalty, whether or not done to seek a higher price than would be permitted.

In consideration of the foregoing, Part 300 of Title 6 of the Code of Federal Regulations is amended to read as follows, effective December 13, 1971.

Issued in Washington, D.C., on December 13, 1971.

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

Subpart A

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300.1	Scope.
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300.15	Rental of real property.
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AUTHORITY: The provisions of this Part 300 issued under the Economic Stabilization Act of 1970, as amended (Public Law 91-379, 84 Stat. 799; Public Law 91-558, 84 Stat. 1468; Public Law 92-8, 85 Stat. 13; Public Law 92-15, 85 Stat. 38), Executive Order No. 11627 (36 F.R. 20139, Oct. 16, 1971), and Cost of Living Council Order No. 4 (36 F.R. 20202, Oct. 16, 1971).

Subpart A—General

§ 300.1 Scope.

(a) This part sets forth the regulations applicable to increases in prices after November 13, 1971, for the sale or lease of real property, personal property, and services.

(b) This part does not apply to the sale or lease of any property or service that is exempted by Subpart D of Part 101 of this title.

(c) This part does not apply to transactions for sales, leases, or services occurring outside the United States. For the purposes of this paragraph, a transaction is considered to occur outside the United States if delivery of the property or performance of the service which is the subject matter of the transaction occurs outside the United States. If personal property which is the subject of a lease is used both inside and outside the United States during the period of the lease, the transaction is considered to have occurred exclusively in the United States. Similarly, if services are partially performed in the United States and partially outside the United States, the services are considered to have been performed exclusively in the United States.

§ 300.5 Definitions.

The following definitions apply in this part:

"Allowable cost" means any cost, direct or indirect, unless disallowed by the Price Commission.

"Base period" means any two, at the option of the person concerned, of that person's last 3 fiscal years ending before August 15, 1971, and in determining a base period for the purpose of computing a profit margin during a base period, a weighted average of its profits during the 2 years chosen shall be used.

"Base price" means the base price determined under Subpart F of this part.

"Class of purchasers" means purchasers to whom a person has charged a comparable price for comparable property or service during the freeze base period pursuant to customary price differentials between those purchasers and other purchasers.

"Controlled group" means a controlled group of corporations, as defined in section 1563(a) of title 26, United States Code.

"Customary initial percentage markup" means the markup applied to the cost (purchase price actually paid by the selling person and transportation charges to be allocated to the merchandise) of merchandise when first offered for sale, determined on an item, product line, department, store, or other pricing unit basis, according to the person's customary pricing practice.

"Customary price differential" includes a price distinction based on a discount, allowance, add-on, premium, and an extra based on a difference in volume, grade, quality, or location or type of purchaser, or a term or condition of sale or delivery.

"Department" means the organizational unit customarily treated by the seller as a department.

"Freeze base period" means either—

(a) The period beginning on July 16, 1971, and ending on August 14, 1971; or

(b) For a person who had no transactions during the period stated in paragraph (a) of this section, the nearest preceding 30-day period in which he had a transaction.

"Highest price in a substantial number of transactions" means the highest price at or above which at least 10 percent of the units were priced in transactions with any class of purchasers.

"Including" means including but not limited to.

"Lease" means a contract whereby a person having a legal estate in any real or personal property conveys a part of his interest to another person in consideration of rent or other compensation, but does not include a license.

"Manufacturer" means a person who carries on the trade or business of making, fabricating, or assembling a product

or commodity by manual labor or machinery for sale to another person, and wherever the Price Commission considers it appropriate, also includes any manufacturing subsidiary, division, affiliate, or similar entity that is a part of, or is directly or indirectly controlled by, another person.

"Person" includes any individual, trust, estate, partnership, association, company, firm, or corporation, a government, and any agency or instrumentality of a government, but does not include a foreign government, or any international organization established by treaty or agreement between participating governments.

"Prenotification firm" means a firm subject to § 101.11 of Part 101 of this title.

"Price" means any compensation for the sale or lease of any property or services and includes rent, commissions, dues, fees, margins, rates, charges, tariffs, fares, or premiums, regardless of form.

"Price increase" means an increase in the unit price of a property or service or a decrease in the quality of substantially the same property or services.

"Product" means an item of tangible personal property offered for sale to another person.

"Product line" means an aggregation of products of the same manufacturer or different manufacturers, substantially similar as to intended function, usage, and structure, which are offered for sale simultaneously, or within the same commercial season, by a person.

"Profit margin" means the ratio that net profits (determined before taxes) bears to gross sales as reported on the person's financial statement prepared in accordance with generally accepted accounting principles consistently applied; however, in determining net profits, extraordinary items and income taxes may not be considered.

"Reporting firm" means a firm subject to § 101.13 of Part 101 of this title.

"Rent" means any price for the use of real or personal property of any description, including any charge no matter how identified in a lease or other agreement, for the use of any property or for any service in connection with the use of leased property.

"Retailer" means a person who carries on the trade or business of selling property to ultimate consumers, and whenever the Price Commission considers it appropriate, includes any retailing subsidiary, division, affiliate, or similar entity that is part of, or is directly or indirectly controlled by another person.

"Sale" includes exchange, transfer, or other disposition.

"Service" includes any service performed by a person for another person, other than in an employment relationship, and also includes professional services of any kind and services performed by membership organizations for which dues are charged, and the leasing or licensing of property to another person.

"Service organization" means a person who carries on the trade or business of selling or making available services, including nonprofit organizations, governments, and government agencies or instrumentalities which carry on those activities, and a person who provides professional services; and, whenever the Price Commission considers it appropriate, also including any service organization subsidiary, division, affiliate, or similar entity that is part of, or is directly or indirectly controlled by, another person.

"Transaction" means an arms-length transaction between unrelated persons which are not members of a controlled group, and is considered to occur at the time and place a binding contract is entered into between the parties.

"United States" means the several States and the District of Columbia.

"Unrelated person" means a person other than a person described in section 267(b) of title 26, United States Code.

"Wholesaler" means a person who carries on the trade or business of purchasing property and, without substantially changing the form of that property, reselling it to another person who is not the ultimate consumer and, whenever the Price Commission considers it appropriate, includes any wholesaling subsidiary, division, affiliate, or similar entity that is a part of, or is directly or indirectly controlled by, another person.

§ 300.11 General rule.

Except as otherwise provided in this subpart, no person may charge a price with respect to any sale or lease of property services after November 13, 1971, which exceeds the base price for that property or service.

§ 300.12 Manufacturers.

A manufacturer may charge a price in excess of the base price only to reflect allowable costs in effect on November 13, 1971, and cost increases being incurred after November 13, 1971, reduced to reflect productivity gains, and only to the extent that the increased price does not result in an increase in its profit margin over that which prevailed during the base period.

§ 300.13 Retailers and wholesalers.

(a) *General.* A retailer or wholesaler may charge a price in excess of the base price whenever—

(1) Its customary initial percentage markup after November 13, 1971, with respect to the property sold is equal to or less than that its customary initial percentage markup during the period beginning on August 15, 1971, and ending on November 13, 1971, or, at its option, during its last fiscal year ending before August 15, 1971; and

(2) The aggregate effect of all of its price changes is not to increase its profit margin over that which prevailed during the base period.

However, no retailer may increase any price under this paragraph until it has complied with paragraph (b) of this section.

(b) *Posting requirement.* Before January 2, 1972, each retailer shall display prominently in its place of sale, base prices with respect to—

(1) For a retailer with total sales of less than $100,000 in its last fiscal year, those 40 items which had the largest dollar sales volume during that fiscal year, or those items which accounted for at least 50 percent of its total dollar sales during that year, whichever is less; and

(2) For any other retailer—

(i) All of its food products; and

(ii) Those 40 items in each department which had the highest dollar sales volume during its last fiscal year, or those items which accounted for at least 50 percent of its total dollar sales in each department during that fiscal year, whichever is less.

(c) *Interim procedure.* Each retailer shall use the following interim procedure until it posts base prices under paragraph (b) of this section with respect to all products. After that posting it shall use the procedure with respect to base prices not posted under paragraph (b) of this section:

(1) Post on each floor of its establishment at least one sign (minimum of 22" x 28"), as specified below, announcing availability of base price information:

BASE PRICE INFORMATION

Information regarding the lawful base price for any item sold by this store not posted may be obtained by filling in a Base Price Information Request Form available at (specify location) and by handing it to (fill in). You will receive a prompt answer by mail.

(2) Make available in at least one location on each selling floor of its establishment, Base Price Information Request Forms, as follows:

BASE PRICE INFORMATION REQUEST FORMS

Please furnish me with your base price for the following item sold in your store:

Item _____
(Describe)
Retail price_____
Style No_____
Department where sold_____
Name _____
Address _____
_____ Zip_____

(d) *Written requests for base prices.* The retailer shall reply to each written request for base price information within 48 hours after receiving the request, using a letter, substantially in the following form, signed by the owner or by an officer of the company:

To: (Name, Address, City, Zip.)
Dear _____:
In reply to your request, we are pleased to inform you that base price for_____
_____
is $_____.
Sincerely,
_____
(Owner or company officer)

§ 300.14 Service organizations.

A service organization may charge a price in excess of the base price with respect to the furnishing of services or

the leasing of personal property only to reflect allowable costs in effect on November 13, 1971, and cost increases being incurred after November 13, 1971, reduced to reflect productivity gains, and only to the extent that the increased price does not result in an increase in that person's profit margin over that which prevailed during the base period.

§ 300.15 Rental of real property.

(a)-(c) [Reserved]

(d) *Special record requirement.* Each person leasing or offering to lease any real property shall maintain records showing—

(1) The base price charged with respect to each unit of real property;

(2) The reason for any difference between the base price and the price allowable after November 13, 1971; and

(3) The reason for any difference between the base price and the maximum price allowable during the period beginning August 15, 1971, and ending November 13, 1971, pursuant to Executive Order 11615.

(e) *Information to lessees and prospective lessees.* A person who is leasing or offering to lease, after November 13, 1971, any unit of residential real property at a rent higher than the rent charged for that unit during the freeze base period shall inform the lessee or any prospective lessee of that unit of the factual justification for the difference between the rent charged during the freeze base period and the rent which the lessor is currently charging or proposes to charge.

(f) *Availability of records.* Each person required to maintain a record under paragraph (d) of this section shall make it available, upon the request of any tenant, prospective tenant, or representative of the Internal Revenue Service or the Price Commission.

(g) *Property subject to State or local rent regulation.* Subject to paragraphs (h) and (i) of this section, a person whose charges for the rental of any unit of real property which he is leasing or offering to lease are established or controlled, under a rent control program of general applicability in existence before November 14, 1971, by the laws or regulations of a State or local government, or an agency or instrumentality thereof, may charge a rent for that unit in excess of the base price therefore, only to the extent authorized by that government, agency, or instrumentality. The authority for a State or local government, or an agency or instrumentality thereof, to authorize rent increases under this paragraph continues only so long as that government, agency, or instrumentality does not fail to comply with paragraph (h) of this section. This paragraph does not apply to—

(1) Public housing owned or operated by the Federal Government, a State or local government, or an agency or instrumentality thereof, the rents for which are regulated by that government, agency, or instrumentality; or

(2) Housing financed by, or receiving financial assistance from, the Federal Government, a State or local government, or an agency or instrumentality thereof, the rents for which are fixed by that government, agency, or instrumentality.

(h) Each State or local government, or agency or instrumentality thereof, which establishes or controls rent under a rent control program of general applicability in existence before November 14, 1971, shall—

(1) Before January 15, 1972, furnish the Price Commission a full description of its methods of rent control, and a copy of each of its laws, regulations, and procedures by which that control is implemented;

(2) Report to the Price Commission each significant change in any of those laws, regulations, or procedures, within 30 days after the date of that change;

(3) Report to the Price Commission, within 30 days after the end of each calendar quarter, on the aggregate percentage rent increases for controlled units under its jurisdiction during that quarter; and

(4) Furnish any further information requested by the Price Commission.

(i) To ensure that the goals of the Economic Stabilization Program are attained, the Price Commission reserves the right to review and limit or decrease any requested, ordered, or authorized price increase made pursuant to paragraph (g) of this section, and to impose additional or different requirements on the government, agency, or instrumentality reporting under paragraph (h) of this section.

§ 300.16 Regulated public utilities.

(a) *In general.* A person which is a regulated public utility (as defined in section 7701(a)(33) of the Internal Revenut Code of 1954 (26 U.S.C. sec. 7701(a)(33))), may charge a price, rate, or tariff in excess of the base price if that increase has been approved by a regulatory agency or other appropriate legal authority. A public utility which had revenues of $100 million or more during its most recent fiscal year shall inform the Price Commission of all requests for rate increases and immediately notify the Commission in writing of any agency order granting an increase and of any other authorized increase. A public utility which had revenues between $50 and $100 million during its most recent fiscal year shall immediately notify the Commission in writing of any agency order granting an increase and of any other authorized increase. In order to insure that the goals of the economic stabilization program are attained, the Price Commission reserves the right to review and limit the amount of any such requested increase, ordered increase, or other authorized increase.

(b) *Special rule.* In the case of rate increases which were approved by a regulatory agency or other appropriate legal authority before November 14, 1971, but which were not permitted to take effect due to Executive Order 11615, the rate increase may take effect with respect to transactions occurring after November 13, 1971. However, before the increases may take effect, the regulatory agency or other appropriate legal authority shall review the increase with regard to their consistency with the purposes of the Economic Stablization Act of 1970, as amended, and certify that the increases or adjusted increases are consistent with those purposes. The certification, together with a report of the increased rate schedule thus put into effect, showing the amount of the increased rates, shall immediately be supplied to the Commission by any regulated person which receives such a certification and which had revenues of $50 million or more during its most recent fiscal year.

§ 300.51 Prenotification firms.

(a) *General-Manufacturers and Service Organizations.* A manufacturer or service organization which is a prenotification firm may not charge a price in excess of the base price, or charge an increased price as a result of the calculation of a base price under Subpart F of this part, until the Price Commission has approved that price in excess of the base price or that increased price. If the Price Commission does not act upon a request under this paragraph within 30 days after receiving it, the increase may go into effect without Commission action. However, in any case in which the 30-day period would otherwise end on a Saturday, Sunday, or Federal holiday, it will end at the close of the next succeeding work day. This paragraph does not require prenotification of any price increase to the extent it reflects solely an increase in excise taxes (including sales and use taxes) or in duties on imports (including the import surcharge imposed by the President on August 15, 1971).

(b) *General—Retailers and wholesalers.* A retailer or wholesaler which is a prenotification firm may not charge a price in excess of the base price before filing notification of his customary initial percentage markups with the Price Commission in the form and containing the information prescribed by it. After filing, and after posting the base prices as required by § 300.13(b), a retailer or wholesaler may adjust its prices to the extent that the adjustments do not increase the customary initial percentage markup above that authorized by § 300.13 and to the extent that the aggregate of all of that retailer's or wholesaler's price changes do not increase its profit margin over that which prevailed during the base period. This paragraph does not require prenotification of any price increase to the extent it reflects solely an increase in excise taxes (including sales and use taxes) or in duties on imports (including the import surcharge imposed by the President on August 15, 1971).

(c) *Special rule.* If, after November 13, 1971, and before January 1, 1972, a prenotification firm submits a prenotification to the Price Commission with respect to any of the following and the Commission does not challenge the proposed price adjustment within 72 hours (excluding Saturdays, Sundays, and Federal

holidays) after receiving that prenotification, the price adjustment may be placed in effect.

(1) Price increases resulting from the calculation of a base price under Subpart F of this part.

(2) Price increases resulting from the operation of § 300.101.

(3) Price increases which reflect increases in costs of labor pursuant to contracts or pay practices in effect before November 14, 1971, which became effective during the period after November 13, 1971 and before January 1, 1972.

(4) Price adjustments which were announced or posted before August 15, 1971.

This paragraph does not authorize any price increase not otherwise allowable under this part.

(d) *Manner of notification.* Each prenotification firm shall notify the Price Commission, on a form to be prescribed by the Commission, whenever that firm intends to increase the price of a product or service. The firm shall provide information sufficient to enable the Commission to make a determination with respect to that proposed increase. If the Commission finds that the information submitted is not sufficient to make such a determination it shall notify the person and the 30-day period provided in paragraph (a) of this section or the 72-hour period provided in paragraph (c) of this section does not begin to run until the time the additional information is received.

(e) *Reporting requirement.* Each prenotification firm shall file a quarterly report with the Price Commission at the time it normally releases its quarterly report, but not more than 45 days after the end of each fiscal quarter beginning with its first fiscal quarter ending after November 13, 1971, or, in the case of a report for the quarter ending the firm's fiscal year, not more than 90 days after the end of that fiscal year. Each quarterly report shall be made on a form to be prescribed by the Commission and shall contain the information required by that form.

(f) *Volatile prices—Special rule.* Subject to paragraphs (g) through (i) of this section, a prenotification firm that has customarily priced an item in a manner immediately responsive to frequent and customary market price fluctuations of the raw materials or partially processed products which it uses in that item, may, when and to the extent authorized by the Price Commission, increase the price of that item to the extent of any significant market price increase of those raw materials or partially processed products, without regard to paragraphs (a) through (d) of this section. However, in the case of a price increase based on an increase in the price of a partially processed product, only that part of the increased cost of the partially processed product that is due to an increase in the market price of the raw materials in that product may be used in computing any allowable increase under this paragraph. For the purposes of this paragraph and paragraphs (h) and (i) of this section "raw materials" include raw agricultural products, raw seafood, and other raw materials used by the prenotification firm in preparing an item for which an authorization is sought under this section.

(g) *Limitation.* No firm may increase a price pursuant to an authorization granted under paragraph (f) of this section to the extent that the price as increased would result in an increase of its profit margin over that which prevailed during the base period.

(h) *Notice on invoice.* A firm which increases a price on any partially processed product pursuant to authorization granted under paragraph (f) of this section, shall indicate on each invoice to its manufacturing and processing customers that part of any cost increase that is due to an increase in the cost of the raw materials used in making the partially processed product.

(i) *Reduction of prices.* Each firm that increases a price on an item pursuant to an authorization granted under paragraph (f) of this section shall reduce that price to the extent of any later decrease in the cost of the raw material or partially processed product upon which the price increase was based, but is not required to decrease the price of the item concerned below its base price.

§ 300.52 Reporting firms.

(a) *General.* Each reporting firm shall file a quarterly report with the Price Commission in the form provided in paragraph (b) of this section at the time it normally releases its quarterly report, but not more than 45 days after the end of each fiscal quarter beginning with its first fiscal quarter ending after November 13, 1971 or, in the case of a report for the quarter ending the firm's fiscal year, not more than 90 days after the end of that fiscal year. In addition, each reporting firm shall report to the Commission with respect to price changes resulting from calculation of a base price under subpart F of this part or from the operation of § 300.101 of this part relating to contracts entered into before August 15, 1971.

(b) *Manner of filing.* Each quarterly report required under paragraph (a) of this section shall be made on a form to be prescribed by the Commission and shall contain the information required by that form.

§ 300.60 Other factors.

Notwithstanding any other provision of this part, in making any determination, the Price Commission will take into account whatever factors it considers relevant to an equitable resolution of the case and considers necessary to achieve the overall goal of holding average price increases across the economy to a rate of not more than 2½ percent per year.

§ 300.81 Seasonal patterns.

(a) *General.* Notwithstanding any other provision of this subpart, prices which normally fluctuate in distinct seasonal patterns may be adjusted as prescribed in this section.

(b) *Distinct fluctuation.* Prices must show a large or otherwise distinct fluctuation at a specific, identifiable point in time. The distinct fluctuation must be an established practice that has taken place in each of the 3 years before the date of the contemplated change. New persons may determine their qualifications from those generally prevailing with respect to persons similarly situated, selling or leasing in the same marketing area. If there are not similar persons in the immediate area, qualification may be established by reference to the nearest similar marketing area.

(c) *Time of price fluctuation.* The price fluctuation referred to in paragraph (b) of this section may not take place at a time other than the time at which that fluctuation took place in the preceding year unless the date of the price fluctuation is tied to a specific event such as a previously planned introduction of new models.

(d) *Allowable price.* Subject to paragraph (e) of this section, if the requirements of paragraphs (b) and (c) of this section are met, the maximum price which may be charged by the person concerned is either—

(1) The base price determined under Subpart F of this part; or

(2) The price charged by that person during the first 30 days of the period following the seasonal price adjustment in the preceding year, whichever is greater.

For purposes of subparagraph (2) of this paragraph, the price charged during that 30-day period is the weighted average of the prices charged on all transactions occurring during that period.

(e) *Limitation.* Notwithstanding paragraph (d) of this section, the price charged by a person may not result in an increase of his profit margin over that prevailing during the base period.

(f) *Return to nonseasonal prices.* Each person that increases a price under this section shall decrease that price at the same date or identifiable point in time as the price was decreased in the previous season.

§ 300.101 Contracts entered into before August 15, 1971.

The price specified in any contract for the sale of property or services entered into before August 15, 1971, with respect to any delivery or performance occurring after November 13, 1971, shall be allowable if that contract price does not exceed that amount which would result in an increase in the person's profit margin over that prevailing during the base period. In addition, each prenotification firm must comply with § 300.51.

§ 300.111 Formula-determined rentals.

A lease of personal or real property entered into before August 15, 1971, in which the periodic rental price is determined by means of a formula specified in the lease agreement may continue with that formula in effect. However, any increase in the periodic rental price due to the passage of time or increase in the consumer price index is not allowed.

§ 300.121 Price Commission address.

Each document, report, or other information required or authorized by this part to be sent directly to the Price Commission shall be addressed to—Price Commission, 2000 M Street NW., Washington, DC 20508.

Subpart B—E [Reserved]

Subpart F—Base Price

§ 300.401 Scope.

This subpart sets forth the regulations for determining base prices for the purpose of applying Subpart A of this part, after November 13, 1971, with respect to the sale or lease of real property, personal property, and services.

§ 300.402 General.

The base price for the sale or lease of any property or service is the highest price permitted for the period beginning August 16, 1971, and ending November 13, 1971, except that if the price of a property or service has been adjusted under this subpart, that adjusted price is the base price.

§ 300.403 May 25, 1970, limitation date.

This part does not require a person to establish any price which is lower than the average price which was received by him in arms-length transactions involving the property or service on May 25, 1970. In cases where there were no arms-length transactions on May 25, 1970, involving the person, the nearest date preceding May 25, 1970, on which such a transaction did occur shall be considered to be May 25, 1970, for purposes of this section. However, this section does not apply if the person did not offer the property or service on May 25, 1970, due to causes other than the temporary closing of his business.

§ 300.405 Sales and leases of personal property and services.

(a) *Sales.* The base price with respect to a sale of personal property or services is the highest price charged by the seller to a specific class of purchasers in a substantial number of transactions involving that personal property or services during the freeze base period. However, in computing the base price of an item of personal property or a service, a manufacturer or service organization may exclude any temporary special deal or temporary special allowance on that property or service, if that deal or allowance was announced before August 15, 1971, and was intended to be in effect for less than 92 days, including any deal or allowance that was continued in effect for a longer period than intended because of the Phase I freeze or the regulations of the Price Commission. A person who increases a price on the basis of the preceding sentence is not required to comply with § 300.51(d) of this part with respect to that price increase. For the purposes of this paragraph, "temporary special deal" includes an offer of free goods, a combination sale, increase quantities, an introductory offer, and a "cents-off" or "price-pack" offer; and "temporary special allowance" includes early shipping, advertising, display buying, and promotional or other similar arrangements.

(b) *Leases.* The base price with respect to a lease of personal property is the highest price charged to a specific class of purchasers with respect to leases of the same or substantially identical personal property in a substantial number of transactions during the freeze base period.

§ 300.407 Sales and leases of real property.

(a) *Sales.* The base price with respect to the sale of any interest in real property which is held by a person for sale in the ordinary course of trade or business is the highest price received by him with respect to the same type of interest in similar real property during the freeze base period. A sale of an interest in real property which is not held for sale in the ordinary course of a trade or business is considered to be a sale of new property for the purposes of paragraph (c)(1) of § 300.409.

(b) *Leases—general.* The base price for a lease of an interest in real property is the highest price charged by the person with respect to the same or substantially identical rental units in a substantial number of transactions during the freeze base period. A provision in a lease of an interest in real property executed before August 15, 1971, which provides for an increased rental to take effect after August 14, 1971, may take effect after November 13, 1971, to the extent the increased rental does not exceed the base price for the rental of that real property.

(c) *Property not previously leased or which has been vacant for more than 1 year.* The base price for property which was not previously leased or which was vacant for more than 1 year before the beginning of the lease period is determined by a computation based on the average arms-length price received by persons currently leasing comparable property in the same marketing area. In determining this average price, only a quantity of transactions which is not insubstantial in relation to the total number of those transactions need be taken into consideration.

(d) *Capital improvements.* A property, or part thereof, which undergoes a substantial capital improvement, but which does not, after completion of the improvement, qualify as a rehabilitated dwelling under § 101.32(g)(2)(i)(b) of this title, is treated as a property not previously leased under paragraph (c) of this section. However, the base price for that improved property, or part thereof, may not be increased over the monthly rental charged before the improvement was initiated by more than 1½ percent of the cost of the substantial capital improvement allocable to the property or part thereof. For the purposes of this paragraph, "substantial capital improvement" means a permanent improvement or betterment made to increase the value of the property or to restore the property, or part thereof, the cost of which equals or exceeds at least 3 months' rent and exceeds $250.

§ 300.409 New property and new services.

(a) *Definition.* For the purposes of this section, "new property" or "new services" means any property or service which was not offered for sale (or lease in the case of property) at any time during the 1-year period immediately preceding the date on which the person is offering the property or service for sale.

(b) *Personal property or services.* To be considered as new personal property or new services, a property or service must be substantially different from other property or services in purpose, function, quality, or technology, or the use of that property or service must effect a substantially different result. Property or services that differ from other property or services only in appearance, arrangement, or combination is not to be considered to be new. A change in fashion, style, form, or packaging is not ordinarily considered to create a new property or service. A property, or part thereof, which undergoes a substantial capital improvement is treated as new property for purposes of a lease. For the purposes of this paragraph, "substantial capital improvement" means a permanent improvement or betterment made to increase the value of the property or to restore the property, the cost of which equals or exceeds at least 3 months' rent and which exceeds $100.

(c) *Base price determination.* A person offering new property or services may determine the base price by either of the following methods:

(1) By applying the customary initial percentage markup he received during the freeze base period on the most nearly similar property or service he offered to the direct unit or net invoice cost of the new product or service, but a person may not use this method if he did not offer during the freeze base period any property or service that is similar to the new property or service.

(2) By a computation based on the average prices received in a substantial number of current transactions by persons selling or leasing comparable property or services in the same marketing area.

Subpart G—Procedure and Administration

§ 300.501 Records.

(a) *General.* Each person who sells property or services, or leases property, that is subject to this part shall keep such records as are sufficient to establish the base prices for all of that property or services offered for sale or lease by that person and the prices at which that property or services were actually sold or leased, and which are sufficient to justify any price increase for which that person has applied, or has made, under this part.

(b) *Inspection.* Records required to be kept under paragraph (a) of this section

shall be made available for inspection at any time upon the request of an officer or employee of the Internal Revenue Service or the Price Commission.

(c) *Special rule for imported items.* In addition to the records required to be kept under paragraph (a) of this section, each person selling any item which has been imported into the United States and upon which an import surcharge has been imposed by the President in conjunction with other measures taken under the Economic Stabilization Act of 1970, as amended, shall set forth clearly, upon the accompanying sales ticket or invoice, the exact amount of the import surcharge the seller is passing on to the customer or a statement that such an import surcharge, though so imposed, is not being passed on.

(d) *Period for keeping records.* Each person required to keep a record under this section shall maintain and preserve that record for at least 4 years after the last day of the calendar year in which the transactions or other events recorded in that record occurred or the property was acquired by that person, whichever is later.

§ 300.506 Submissions on price increase filings by persons not a party to the filing.

(a) Any person who shows that he has a direct interest in any application for a price increase, or a request for an exception from any provision of this part, made by any other person or class of persons may submit written data, information, or views to the Price Commission with respect to that application or request. The submission must state the grounds on which the person making the submission considers that he has a direct interest in the case.

(b) Each submission that conforms to paragraph (a) of this section and that is relevant to the case to which it is directed will be considered by the Commission.

(c) Each submission that is received by the Commission soon enough to allow a copy to be given to each party involved in the case, for the consideration and comments of that party, will be given to that party. The Commission will consider a submission in arriving at a decision only when it is received in time for the procedure described in this paragraph to be used.

(d) A submission that is not received within the time prescribed in paragraph (c) of this section will be treated by the Commission as a request to reexamine the matters involved in the case to which the submission is addressed.

(e) The Price Commission does not hold oral hearings on submissions made under this section.

§ 300.511 Exceptions by ruling.

(a) *General.* The Chairman of the Price Commission, or his delegate, may by a ruling, make any exception from the operation of this part that the Price Commission considers necessary for the purpose of preventing or correcting a serious hardship or gross inequity.

(b) *Requests for exceptions.* Except as otherwise prescribed by the Price Commission, a person requesting an exception from the operation of this part shall submit his request, in writing, to the District Director of Internal Revenue for the district in which that person has his residence or principal place of business. The request must state the reason why the exception is being requested and contain sufficient information to establish to the satisfaction of the Price Commission that—

(1) The application of this part to that person would result in a serious hardship or gross inequity; and

(2) That the request for exception is not part of a plan having as one of its principal purposes the avoidance of the purposes of the Economic Stabilization Act of 1970, as amended, and this part.

§ 300.513 Rulings.

(a) *General.* In the interest of sound administration of the Economic Stabilization Act of 1970, as amended, and this part, the Internal Revenue Service will answer inquiries of persons regarding their status for price stabilization purposes and as to the applicability of this part to their proposed acts or transactions.

(b) *Price stabilization ruling.* A "Price Stabilization Ruling" is an official interpretation of the law by the Internal Revenue Service which has been published in the FEDERAL REGISTER. Price Stabilization Rulings are published for the information and guidance of the Price Commission, Internal Revenue Service officials and others concerned.

(c) *Ruling guidelines.* The Internal Revenue Service will issue a ruling only with respect to prospective transactions. It will not issue rulings—

(1) On alternative plans of proposed transactions;

(2) In any case in which the national office of the Internal Revenue Service knows or has reason to believe that the same or identical issue in connection with a possible violation of this part by the person who is the subject of the ruling request is before any field office of the Service or any other agency charged with enforcement of this part; or

(3) With respect to a matter upon which a recent court decision adverse to the Federal Government has been handed down, until it has decided whether to follow the decision or litigate further.

(d) *Instructions.* Any person requesting a ruling should direct his request, in writing, to the District Director of Internal Revenue for the district in which that person has his residence or principal place of business. Each request for a ruling must include—

(1) A complete statement of all information relevant to the status of the person and proposed transaction under this part;

(2) Copies of all relevant documents affecting that status or transaction; and

(3) A statement, executed under penalty of perjury, that those statements and documents, to the knowledge of the person making the request, are true and accurate.

Only one ruling request may be made with respect to a particular transaction.

(e) *Determination letter.* In the discretion of the Internal Revenue Service, the request of a person for a ruling may, in any case in which the Service considers the question not of sufficient importance to the Price Commission, the Internal Revenue Service, or the public in general to warrant the issuance of a ruling, be answered with a determination letter directed solely to the attention of that person.

§ 300.514 Adverse determinations and appeal.

A person who receives an adverse determination letter under § 300.513(e) of this part may, within 10 days after receiving it, file a written request for a conference with the district director who issued that letter. If, after that conference, the district director fails to change or reverse his initial determination as requested by the person making the request, that person may, within 10 days after notice of the final determination, file a written appeal, together with a brief outlining the basis for that appeal, with the Price Commission. A copy of the appeal and the brief shall, at the same time, be sent to the Internal Revenue Service, Attention: Assistant Chief Counsel (Stabilization), Washington, D.C. 20224.

§ 300.15 Failure to obtain relief.

A person who is denied relief by the Price Commission, either because of an adverse determination or because of the Price Commission's refusal to grant an appeal, may, within 30 days after that action, file an action for relief in the appropriate U.S. District Court.

§ 300.516 Reports of alleged violations.

Whenever any person has reason to believe that a violation of this part has taken place, he should contact the nearest office of the Internal Revenue Service. Such cooperation on the part of every citizen will ensure that the price stabilization program achieves its maximum and intended effect.

§ 300.551 Penalties.

(a) *General.* The following persons shall be subject to paragraphs (b) and (c) of this section:

(1) Any person who fails to post prices as required by § 300.13 of this part; fails to file a prenotification or report as required by § 300.51 or § 300.52; furnishes any false information in a prenotification or report required to be filed by § 300.51 or § 300.52, or to make them available for inspection as required by this part; or falsifies any record required to be kept by this part.

(2) Any person who, by means of any inducement, commission, kickback, retroactive increase, transportation arrangement, premium, discount, special privilege, tie-in agreement, trade understanding, substitution of inferior commodities, failure to provide the same services and equipment previously sold or leased, or in any other manner seeks

to obtain a higher price than is permitted under this part.

(b) *Injunctions.* Whenever it appears that any person is engaged, or is about to engage, in any act or practice described in paragraph (a) of this section, the Federal Government may, in its discretion, bring an action in the appropriate district court of the United States to enjoin that act or practice. Upon a proper showing, a permanent or temporary injunction or a restraining order may be granted. In addition, upon proper application, the court may order any person to comply with any provision of this part.

(c) *Fines.* Any person who willfully violates a provision of this part shall, upon conviction thereof, be subject to a fine of not more than $5,000 for each violation.

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