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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of Commerce

Section 213.3214 is amended to show that the Schedule B authority covering 35 positions of Minority Business Opportunity Specialist in grades GS-9 through GS-15 in the Office of Minority Business Enterprise is extended from December 31, 1973, to December 31, 1974.

Effective September 25, 1973, § 213.3214(c)(1) is amended as set out below.

§ 213.3214 Department of Commerce.

* * * * *

(c) *Office of Minority Business Enterprise.* (1) Until December 31, 1974, not to exceed 35 positions of Minority Business Opportunity Specialist at grades GS-9 through GS-15.

(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.73-20386 Filed 9-24-73;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Agriculture

Section 213.3313 is amended to show that ten positions of Federal Regional Council Representatives, Office of the Under Secretary, are excepted under Schedule C.

Effective September 25, 1973, § 213.3313(c)(7) is added as set out below.

§ 213.3313 Department of Agriculture.

* * * * *

(c) *Office of the Under Secretary.* * * *

(7) Ten Federal Regional Council Representatives.

* * * * *

(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.73-20388 Filed 9-24-73;8:45 am]

PART 213—EXCEPTED SERVICE

Environmental Protection Agency

Section 213.3318 is amended to reflect the following title changes: from Special Assistant to the Assistant Administrator for Planning and Management to Special Assistant to the Administrator and from Program Advisor to the Special Assistant to the Assistant Administrator for Planning and Management to Program Advisor to the Special Assistant to the Administrator.

Effective September 25, 1973, § 213.3318(a)(1) is amended, § 213.3318(a)(10) is added, and § 213.3318(h) is revoked as set out below.

§ 213.3318 Environmental Protection Agency.

(a) *Office of the Administrator.*

(1) Four Special Assistants to the Administrator. * * *

(10) One Program Advisor to the Special Assistant to the Administrator.

* * * * *

(h) [Revoked]

(5 U.S.C. 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.73-20387 Filed 9-24-73;8:45 am]

PART 213—EXCEPTED SERVICE

Department of the Interior

Section 213.3312 is amended to show that one position of Confidential Assistant (Administrative Assistant) to the Assistant Secretary for Congressional and Public Affairs is excepted under Schedule C.

Effective September 25, 1973, § 213.3312(a)(5) is amended as set out below.

§ 213.3312 Department of the Interior.

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

(5) Three Special Assistants to the Assistant Secretary for Fish and Wildlife and Parks and one Confidential Assistant (Administrative Assistant) to each of the four Assistant Secretaries for Energy and Minerals, Land and Water Resources, Fish and Wildlife and Parks, and Congressional and Public Affairs.

* * * * *

(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.73-20384 Filed 8-24-73;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Housing and Urban Development

Section 213.3384 is amended to show that one position of Secretary to the Deputy Assistant Secretary for Policy Development is excepted under Schedule C.

Effective September 25, 1973, § 213.3384(j) is added as set out below.

§ 213.3384 Department of Housing and Urban Development.

* * * * *

(j) *Office of the Assistant Secretary for Policy Development and Research.* (1) One Secretary to the Deputy Assistant Secretary for Policy Development.

(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.73-20385 Filed 9-24-73;8:45 am]

PART 213—EXCEPTED SERVICE

Veterans Administration

Section 213.3327 is amended to show that one position of Director, National Cemetery System is excepted under Schedule C.

Effective on September 25, 1973, § 213.3327(a)(9) is added as set out below.

§ 213.3327 Veterans Administration.

(a) *Office of the Administrator.* * * *

(9) Director, National Cemetery System.

(5 U.S.C. 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.73-20470 Filed 9-24-73;8:45 am]

Title 15—Commerce and Foreign Trade

CHAPTER X—OFFICE OF FOREIGN DIRECT INVESTMENTS, DEPARTMENT OF COMMERCE

FOREIGN DIRECT INVESTMENT REGULATIONS

Revision of Parts

The Office of Foreign Direct Investment (the Office) publishes hereinafter a complete composite of the Foreign Direct Investment Regulations (the Regulations) as amended to date. The amended Regulations include changes published in the FEDERAL REGISTER on September 6, 1972, February 3, 1973, May 17, 1973, and June 25, 1973.

In this edition of the regulations the Office also promulgates a minor amendment to section 319 of the Foreign Direct Investment Regulations. The countries designated under section 319(b) are amended to include the Iraq-Saudi Arabia. Neutral Zone as an additional "country" and, commencing May 15, 1972, the Ryukyu Islands as part of Japan.

This amendment takes effect September 25, 1973. These designations of additional Schedule B Areas represent clarifications of the Regulations. Accordingly it is unnecessary to have notice or public procedure regarding the change.

ROBERT H. ENSLOW,
Director, Office of Foreign Direct Investments.

Accordingly, Parts 1000, 1025, 1030, 1035, 1040, and 1050 are revised to read as follows:

PART 1000—FOREIGN DIRECT INVESTMENT REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
1000.101 Relation of this part to other laws and regulations.

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4 Canada—Application of Foreign Direct Investment Regulations (Proposed but withdrawn prior to adoption; superseded by Subpart K, Direct Investment in Canada).

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2 G.A.1(2)(b)—Certificate. (REVOKED)
3 § 1000.312—Transfer of capital. (REVOKED)

Identity of Countries in Schedules A, B, and C.

AUTHORITY: The provisions of this Part 1000 issued pursuant to sec. 5 of the Act of Oct. 6, 1917, 40 Stat. 415, as amended, 12 U.S.C. 95a; E.O. 11387, Jan. 1, 1968, 33 FR 47; Department Organization Order 25-3A (formerly Department Order 184-A), Jan. 1, 1968, 33 FR 54.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 1000.101 Relation of this part to other laws and regulations.

(a) This part is independent of Title 31 CFR, Chapter V. The prohibitions contained in this part are in addition to the prohibitions contained in said Chapter V. No license contained in or issued pursuant to said Chapter V shall be deemed to authorize any transaction prohibited by this part, nor shall any license or authorization issued pursuant to any other provision of law be deemed to authorize any transaction so prohibited.

(b) No authorization or exemption contained in or issued pursuant to this part shall be deemed to authorize any transaction to the extent that it is prohibited by reason of the provisions of any law or statute other than 12 U.S.C. 95a, as amended, or any proclamation, order, or regulation other than those contained

in or issued pursuant to Executive Order 11387 or this part.

(c) No authorization or exemption contained in or issued pursuant to this part shall be deemed to authorize any transaction to the extent that it is prohibited by reason of the provisions of any part of Title 31 CFR.

Subpart B—Prohibitions

§ 1000.201 Prohibited direct investment in affiliated foreign nationals.

(a) Except as provided in this part, and as otherwise permitted by the Secretary of Commerce (hereinafter referred to as the Secretary) by means of rulings, instructions, authorizations, waivers, exemptions or otherwise, positive direct investment by a direct investor in affiliated foreign nationals of such direct investor in Schedule A, B, or C countries is prohibited during any year (as defined in § 1000.321) commencing with the effective date.

(b) (1) All transactions prohibited by section 1 of Executive Order 11387 which are not prohibited by this part are hereby authorized.

(2) To the extent delineated from time to time by the Board of Governors of the Federal Reserve System nothing in this part shall apply to any bank or other financial institution certified by the Board as being subject to the Federal Reserve Foreign Credit Restraint Program, or to any program instituted by the Board under section 2 of Executive Order 11387.

(c) Nothing contained in this part shall be construed to limit the right of a person within the United States to make a bona fide transfer of capital or earnings in the ordinary course of business to a foreign national in respect of an interest in such person held by such foreign national.

(d) In addition to all other powers reserved to the Secretary in this part, the Secretary may in his discretion, as to any direct investor, amend or revoke the authorizations set forth in this part by reducing the amount of positive direct investment, positive net transfers of capital and reinvestment of earnings authorized in any scheduled area during a year, by limiting the application of such authorizations and exemptions and of § 1000.201 from "during any year" to periods shorter than a year, and by otherwise imposing such conditions as the Secretary shall deem appropriate to carry out the purposes of this part. In exercising his discretion with respect to any direct investor, the Secretary may consider, among other factors, the following:

(1) Whether the positive direct investment, positive net transfers of capital or reinvestment of earnings by such direct investor in any scheduled area during any quarter is, or may reasonably be estimated to be, materially in excess of 25 percent of the amount thereof generally authorized to such direct investor during the year;

(2) Whether the transactions resulting in such excess during such quarter are in accordance with the customary business practices of the direct investor; and

(3) Whether the direct investor has complied with the provisions of Subpart F.

§ 1000.202 Repatriation of direct investment earnings. (REVOKED)

§ 1000.203 Liquid foreign balances.

(a) For purposes of this section:

(1) The term "foreign balances" means money on deposit in a foreign bank (as defined in § 1000.317), including certificates of deposit and fixed interest deposits of such a bank, negotiable instruments, nonnegotiable instruments acquired after June 30, 1968, and commercial paper of an unaffiliated foreign national (other than negotiable instruments, nonnegotiable instruments or commercial paper arising from the export by the direct investor of goods or services from the United States to foreign nationals) and securities issued or guaranteed by a foreign country.

(2) The term "liquid foreign balances" means foreign balances (as defined in paragraph (a) (1) of this section) other than (i) those negotiable instruments, nonnegotiable instruments, commercial paper and securities which are acquired on or before June 30, 1968, and which are not redeemable at the option of the direct investor and are not transferable and readily marketable; (ii) bank deposits, negotiable instruments, nonnegotiable instruments, commercial paper and securities with a period of more than 1 year remaining to maturity when acquired by the direct investor and which are not redeemable in full at the option of the direct investor within a period of 1 year after such acquisition; (iii) foreign balances which are subject to restrictions of a foreign country on liquidation and transfer; and (iv) foreign balances which have been pledged or hypothecated in connection with borrowings by a direct investor or its affiliated foreign nations.

(3) [Revoked]

(4) Foreign balances shall be deemed to be held by a direct investor if title to such balances is held (i) by any person (including an affiliated foreign national of the direct investor) principally formed or availed of for the purpose of holding title to such balances; or (ii) by any person (including an affiliated foreign national of the direct investor), if such balances are returnable to the direct investor on its demand without material conditions and if the holding of such balances is unrelated to the business needs of such person.

(5) Negotiable instruments, nonnegotiable instruments, commercial paper and securities constituting foreign balances shall be valued at their respective fair market values or, if evidence of fair market value is not readily available, at the cost to the direct investor.

(b) Each direct investor shall maintain books and records that identify separately all proceeds of long-term foreign borrowing received with respect to each long-term foreign borrowing made by the direct investor and the uses to which such proceeds have been put.

(c) Each direct investor is hereby required to limit the amount of liquid foreign balances held at the end of any month (other than Canadian foreign balances, as defined in § 1000.1105(a)) to the sum of (1) the amount of available proceeds (as defined in § 1000.324(d)) of such direct investor at the end of such month, plus (2) the greater of (i) the average end-of-month amount of such balances (other than available proceeds in the form of such balances, and Canadian foreign balances) held by such direct investor during 1965 and 1966 (whether or not a direct investor at that time) or (ii) $100,000.

(d) (1) [Revoked]

(2) A direct investor which expended proceeds of long-term foreign borrowing made during 1965 or any succeeding year and deducted the amount of such proceeds from net transfer of capital to a schedule area under § 1000.313(d) (1) may thereafter deduct, during 1973 or any succeeding year, from positive direct investment in a different scheduled area, an amount equal to all or a part of such expended proceeds as are allocated pursuant to this subparagraph. Proceeds shall be allocated in a different scheduled area pursuant to this subparagraph if (i) an entry is made in the books and records maintained by the direct investor under paragraph (b) of this section and § 1000.601; (ii) the allocation and the deduction from positive direct investment in a different scheduled area are reported on the next annual report of the direct investor (Form FDI-102F) filed for the year for which the deduction is made; and (iii) the proceeds with respect to which such deduction is made, as of the end of the year for which the deduction is made and thereafter, are not held, directly or indirectly, in the form of foreign balances or in the form of securities (including debt obligations, equity interests and any other type of investment contract) of foreign nationals or in the form of any other foreign property: *Provided,* That such proceeds may remain expended in an affiliated foreign national or again be expended at any time in making transfers of capital to affiliated foreign nationals. The direct investor shall be deemed at the time of such deduction from positive direct investment in a different scheduled area to have made a transfer of capital equal to the amount of such deduction to the scheduled area in which the deduction from net transfer of capital under § 1000.313(d) (1) was previously made. The direct investor may thereafter continue to change the scheduled area in which a deduction from positive direct investment is made, up to the amount of proceeds of long-term foreign borrowing expended in making the original transfer of capital for which a deduction under § 1000.313(d) (1) was made: *Provided,* That each time such change occurs, the direct investor shall be deemed to have

made a transfer of capital to the immediately previous scheduled area in the amount of the deduction from positive direct investment in the subsequent scheduled area.

(3) A direct investor which, during 1968 or any succeeding year, allocates proceeds of long-term foreign borrowing and deducts the amount of such proceeds from positive direct investment in a scheduled area under § 1000.306(e), may, during 1969 or any succeeding year, reallocate all or part of such proceeds of long-term foreign borrowing to positive direct investment in another scheduled area. The direct investor which makes a reallocation under this paragraph (d)(3) of this section shall be deemed at the time of such reallocation to have made a transfer of capital equal to the amount so reallocated to the scheduled area in which the proceeds of long-term foreign borrowing were allocated immediately prior thereto. The direct investor may thereafter continue to reallocate to different scheduled areas, up to the amount of proceeds of long-term foreign borrowing previously allocated: *Provided,* That each time such reallocation occurs, the direct investor shall be deemed to have made a transfer of capital equal to the amount so reallocated to the scheduled area to which the proceeds of long-term foreign borrowing were allocated or reallocated immediately prior to such reallocation.

(e) [Revoked]

§ 1000.204 Evasion.

Anything in this part to the contrary notwithstanding, any transaction for the purpose of, or which has the effect of, evading or avoiding any of the provisions set forth in this part may be disregarded in whole or in part for purposes of measuring compliance with the provisions of this part.

Subpart C—General Definitions

§ 1000.301 Foreign country.

The term "foreign country" includes, but not by way of limitation:

(a) The state and the government of any foreign country as well as any political subdivision, agency, or instrumentality thereof or any territory, dependency, colony, protectorate, mandate, dominion, possession or place subject to the jurisdiction thereof.

(b) Any other government (including any political subdivision, agency, or instrumentality thereof) to the extent and only to the extent that such government exercises or claims to exercise control, authority, jurisdiction or sovereignty over territory which constitutes such foreign country.

(c) [Revoked]

(d) Any territory which is controlled or occupied by the military, naval or police forces or other authority of a foreign country.

§ 1000.302 Foreign national.

(a) The term "foreign national" means a foreign country (as defined in § 1000.301) and any person which is not a person within the United States (as defined in § 1000.322), including a corporation or partnership organized under the laws of a foreign country (as defined in § 1000.304(a)(1)(i)), a business venture conducted within a foreign country (as defined in § 1000.304(a)(1)(ii) and (iii)), and a foreign bank (as defined in § 1000.317(b)).

(b) Notwithstanding the provisions of paragraph (a) of this section, the Secretary retains full power to determine that any person is a foreign national.

§ 1000.304 Affiliated foreign national

(a) Except as provided in paragraphs (b)(4), (c), and (d) of this section, the term "affiliated foreign national" of a person within the United States includes each of the following in which such person owns, directly or indirectly, a 10-percent interest:

(1) A corporation or partnership organized under the laws of a foreign country (including all business ventures conducted by employees or partners of such corporation or partnership on behalf of such corporation or partnership within any foreign countries assigned to the same scheduled area as the country of organization);

(2) A business venture conducted within a foreign country on behalf of such person within the United States by such person or by employees or partners of such person; and

(3) A business venture conducted on behalf of a corporation or partnership organized under the laws of a foreign country by employees or partners of such corporation or partnership if the business venture is conducted within a foreign country which is not assigned to the same scheduled area as the country of organization.

For purposes of determining whether a business venture conducted on behalf of a foreign corporation or partnership is a separate affiliated foreign national, Canada shall be deemed to be in a scheduled area other than Schedule B.

(b)(1) A corporation or partnership referred to in paragraph (a)(1) of this section is an affiliated foreign national in the scheduled area in which the foreign country under whose laws it is organized is located. A business venture referred to in paragraph (a)(2) or (3) of this section is an affiliated foreign national in the scheduled area in which the business is conducted: *Provided,* That, if such a business venture is conducted in more than one scheduled area during any year, the scheduled area in which the business venture is conducted for the greatest period of time during such year shall, for purposes of this section, be deemed the only scheduled area in which the business venture is conducted during such year.

(2) The term "10 percent interest," when used with respect to any corporation, partnership or business venture referred to in paragraph (a) of this section, means (i) 10 percent or more of the total combined voting power of all outstanding securities of such corporation or (ii) 10 percent or more of the profit interest in such partnership or business venture. Whether a person within the United States directly or indirectly owns a 10 percent interest in a corporation, partnership or business venture referred to in paragraph (a) of this section shall be determined in accordance with the provisions of §§ 1000.901 and 1000.902.

(3) For purposes of this part, the term "incorporated affiliated foreign national" includes a corporation described in paragraph (a)(1) of this section and the term "unincorporated affiliated foreign national" includes a partnership described in paragraph (a)(1) of this section and a business venture described in paragraph (a)(2) or (3) of this section.

(4) Notwithstanding the provisions of paragraph (a) of this section and the foregoing provisions of this paragraph (b), the Secretary retains full power, with respect to any person within the United States, to determine that any person is an affiliated foreign national of such person within the United States and to determine the scheduled area in which such affiliated foreign national is located.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a corporation, partnership or business venture referred to in paragraph (a) of this section shall not be considered an affiliated foreign national of a person within the United States if the operations of such corporation, partnership, or business venture consist solely of charitable, educational, religious, scientific, literary, or other similar activities not engaged in for profit.

(d) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a business venture referred to in paragraph (a)(2) or (3) of this section shall not be considered an affiliated foreign national of a person within the United States during any year if (1) the business venture does not have or involve, at any time during such year, gross assets of more than $50,000 (valued at the greatest of cost, book value, replacement value or market value); or (2) the business venture is commenced during such year and is not reasonably expected to be conducted within one or more foreign countries for more than 12 consecutive months; or (3) the business venture is terminated during such year and was not in fact conducted within one or more foreign countries for more than 12 consecutive months.

§ 1000.305 Direct investor.

The term "direct investor" means any person within the United States which directly or indirectly owns or acquires a 10-percent interest in a corporation or partnership organized under the laws of a foreign country or in a business venture conducted within a foreign country as described in § 1000.304.

§ 1000.306 Positive and negative direct investment.

(a) Direct investment by a direct investor in all affiliated foreign nationals in any scheduled area during any period means:

(1) The net transfer of capital (as defined in § 1000.313(c)) made during such period by the direct investor to all incorporated and unincorporated affiliated foreign nationals in such scheduled area; and

(2) The direct investor's share in the total reinvested earnings of all incorporated affiliated foreign nationals in such scheduled area during such period (computed in accordance with paragraphs (b) and (c) of this section).

(3) If the sum of paragraphs (a)(1) and (2) of this section is in excess of zero, the direct investment during such period shall be positive direct investment; if a negative amount, it shall be negative direct investment.

(b) A direct investor's share in the total reinvested earnings of all incorporated affiliated foreign nationals in any scheduled area during any period means the direct investor's share in the total earnings or losses during such period of such incorporated affiliated foreign nationals (computed in accordance with paragraph (c) of this section) less an amount (which may be positive or negative) obtained by subtracting (1) the sum of (i) the direct investor's share of all dividends paid during such year to such affiliated foreign nationals by incorporated affiliated foreign nationals of the direct investor in other scheduled areas and (ii) the direct investor's share of all earnings remitted during such year to such affiliated foreign nationals by unincorporated affiliated foreign nationals of the direct investor in other scheduled areas from (2) the sum of (x) all dividends paid during such year by such affiliated foreign nationals to the direct investor and (y) the direct investor's share of all dividends paid during such year by such affiliated foreign nationals to affiliated foreign nationals of the direct investor in other scheduled areas: *Provided*, That, in calculating a direct investor's share in the total reinvested earnings of incorporated affiliated foreign nationals for any year (including the years 1965 and 1966), a direct investor may elect, in such manner as the Secretary may determine, to treat dividends paid within 60 days after the end of the year as having been paid during such year.

(c) Computations of earnings or losses of affiliated foreign nationals under this section or any other provision of this part shall (except as otherwise provided herein) be made in accordance with accounting principles generally accepted in the United States and consistently applied: to the extent such principles are reflected in reports to stockholders, the computation shall follow the principles used in preparing such reports. The earnings or loss of each incorporated affiliated foreign national in that scheduled area shall be added to the earnings or loss of every other incorporated affiliated foreign national in that scheduled area in order to determine the total earnings or losses of such affiliated foreign nationals as a group. In computing such total earnings and losses, there shall be excluded all dividends paid during such year to such affiliated foreign nationals by incorporated foreign nationals of the direct investor in the same or other scheduled areas and all earnings of unincorporated affiliated foreign nationals of the direct investor in other scheduled areas. Earnings and losses shall be computed without regard to U.S. taxes and foreign withholding taxes on the payment of dividends. Earnings shall not be reduced by application or provision by the direct investor of reserves for devaluation or impairment of investment. Notwithstanding the foregoing, the Secretary shall have the right, generally or specifically, in his discretion to disapprove any such accounting principles determined by him to be inconsistent with the purposes of this part and to prescribe such principles as he may deem appropriate to carry out the purposes of this part.

(d) For purposes of this part:

(1) Earnings of an unincorporated affiliated foreign national during any period shall be deemed to have been remitted to the extent that such earnings exceed the net increase in the net assets of the unincorporatd affiliated foreign national during the period.

(2) The term "dividends" means cash dividends, whether paid out of current or accumulated earnings (other than liquidating dividends). The amount of a dividend paid shall be calculated before deducting foreign withholding taxes. A dividend shall be deemed to have been paid to a direct investor or an affiliated foreign national, as the case may be, when entered on the books of account of the recipient as actually having been paid in cash or as being subject to payment upon demand, whichever first

(e)(1) There shall be deducted from positive direct investment in a scheduled area during any year, as calculated under paragraph (a) of this section, an amount equal to any available proceeds (as defined in § 1000.324(d)) allocated by the direct investor to such positive direct investment for such year. Available proceeds shall be allocated to such positive direct investment for such year if (i) an entry is made in the books and records maintained by the direct investor under §§ 1000.203(b) and 1000.601; (ii) the allocation and deduction is reported on the next annual report of the direct investor (Form FDI-102F) filed for the year for which the deduction is made; and (iii) the proceeds, as of the end of the year for which the deduction is made and thereafter, are not held, directly or indirectly, in the form of foreign balances or in the form of securities (including debt obligations, equity interests, and any other type of investment contract) of foreign nationals or in the form of any other foreign property: *Provided*, That proceeds so allocated may at any time be expended in making transfers of capital to affiliated foreign nationals. In addition, available proceeds of long-term foreign borrowing made on or before February 28, 1974 (including available proceeds so treated under § 1000.1403(a) (1) as the result of proceeds borrowing made on or before February 28, 1974), shall be allocated to such positive direct investment for the year 1973 if bookkeeping entries and a report on Form FDI-102F for 1973 are made with respect to such allocation, as required under this section, and such proceeds, as of February 28, 1974, are not held, directly or indirectly, in the form of foreign balances or in the form of securities of foreign nationals or in the form of any other foreign property: *Provided*, That proceeds so allocated may at any time be expended in making transfers of capital to affiliated foreign nationals.

(2) [Revoked]

(3) A deduction made pursuant to paragraph (e)(1) of this section from positive direct investment in all scheduled areas by a direct investor electing to be governed by § 1000.503 for any year, commencing with the year 1969, shall be deemed to have been made in each scheduled area in the same proportions as the amount of positive direct investment (calculated as provided in paragraph (a) of this section and, in the case of positive direct investment in the year 1969, disregarding each scheduled area's proportionate share of aggregate annual losses, as defined in § 1000.503(b) in effect for the year 1969) in such scheduled area during such year. A deduction made pursuant to paragraph (e)(1) of this section or § 1000.203(d) (2) or (3) from positive direct investment in Schedules B and C by a direct investor that elected to be governed by § 1000.507 for any year shall be deemed to have been made in each such scheduled area in the same proportions as the amount of positive direct investment (calculated as provided in paragraph (a) of this section) made by the direct investor in such scheduled area during such year. The Secretary may, upon application pursuant to § 1000.801, permit a direct investor to apportion such deductions in some other manner reasonably reflecting the direct investor's interests in each scheduled area during such year.

§ 1000.307 Person; corporation.

(a) The term "person" means an individual, corporation, partnership, business venture, trust, or estate.

(b) The term "corporation" means an organization or entity incorporated under the laws of the United States or a foreign country and any other organization or entity not so incorporated but which is organized under the laws of the United States or a foreign country and has all or a substantial part of the legal characteristics commonly attributed to corporations under the laws of the United States.

§ 1000.308 Transfer.

The term "transfer" means any act or transaction, whether or not evidenced by a writing and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, transfer, or

alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property wherever located.

§ 1000.309 Property, property interest.

The terms "property" and "property interest" include any property, real, personal, or mixed, tangible or intangible (including the value of services performed), or interest or interests therein, present, future or contingent.

§ 1000.310 Interest.

The term "interest" when used with respect to property shall mean an interest of any nature whatsoever, direct or indirect.

§ 1000.311 Banking institution. (REVOKED)

§ 1000.312 Transfers of capital.

(a) *Transfers of capital by direct investor.*—Except as otherwise provided in paragraph (c) of this section, a transfer of capital by a direct investor to an affiliated foreign national means any transfer of funds or other property by or on behalf or for the benefit of a direct investor directly or indirectly to or on behalf or for the benefit of an affiliated foreign national (including a transfer described in § 1000.505); and any transaction or occurrence as a result of or in connection with which the direct investor directly or indirectly acquires or increases a debt or equity interest in the affiliated foreign national or the affiliated foreign national directly or indirectly disposes of or reduces a debt or equity interest in the direct investor held by the affiliated foreign national. Such transfers of capital shall include, but not by way of limitation:

(1) The aquisition by the direct investor of an equity interest in or debt obligation of an affiliated foreign national (including the acquisition of an equity interest in or a debt obligation of a foreign national as a result of which the foreign national becomes an affiliated foreign national of the direct investor).

(2) A contribution by the direct investor to the capital of the affiliated foreign national.

(3) The complete or partial satisfaction by the direct investor of a debt obligation of the direct investor held by the affiliated foreign national.

(4) The reduction of an equity interest in the direct investor held by the affiliated foreign national (as the result of a redemption of stock, liquidating dividend, or like transaction).

(5) A transfer by the affiliated foreign national of an equity interest in or debt obligation of the direct investor held by the affiliated foreign national.

(6) The complete or partial satisfaction by the direct investor of a debt obligation of an affiliated foreign national, whether or not such debt obligation was guaranteed or assumed by the direct investor.

(7) The complete or partial satisfaction by a direct investor of a long-term foreign borrowing made by the direct investor before or after the effective date of the regulations to the extent the proceeds of the borrowing were expended in making transfers of capital on or after January 1, 1965, or were allocated by the direct investor (on the books and records maintained by the direct investor under §§ 1000.203(b) and 1000.601) to positive direct investment. A transfer of capital resulting from the repayment of a borrowing by a direct investor shall be deemed to have been made to the scheduled area in which such proceeds were expended or to which they were allocated at the time of such repayment and with respect to which a deduction was made under § 1000.203 (d)(2), § 1000.203(d)(3), § 1000.306(e), or § 1000.313(d)(1); or if deductions were made in two or more scheduled areas with respect to such repaid borrowing, the transfer shall be apportioned among such scheduled areas in the same proportions as the amount of such deductions in each such scheduled area. If any apportionment made by a direct investor hereunder is determined by the Secretary to be inconsistent with the purposes of this part, the Secretary shall have the right, in his discretion, to make an apportionment consistent with the purposes of this part.

(8) A lease of property by a direct investor to an affiliated foreign national, if the property has a remaining useful life when leased of a year or more and is not required or expected to be returned to the direct investor in less than one year.

(9) A pledge, hypothecation or other transfer by a direct investor of foreign balances (as defined in § 1000.203(a)(1)) or equity securities of a foreign corporation owned by the direct investor (other than equity securities of an affiliated foreign national of the direct investor), which pledge, hypothecation, or other transfer is made by the direct investor to or with a foreign national, on or after the effective date of the regulations, pursuant to an express or implied agreement with the foreign national whereby the foreign national transfers or agrees to transfer funds or other property, as a loan or otherwise, to an affiliated foreign national of the direct investor or to the direct investor itself for investment in such an affiliated foreign national: *Provided,* That this subparagraph shall not apply to a pledge, hypothecation or other transfer by a direct investor to a foreign national in connection with a borrowing by the direct investor for investment in an affiliated foreign national, if the borrowing is not a long-term foreign borrowing (as defined in § 1000.324(a)).

(b) *Transfers of capital by affiliated foreign nationals.*—Except as otherwise provided in paragraph (c) of this section, a transfer of capital by an affiliated foreign national to a direct investor in such affiliated foreign national means any of the following transactions or occurrences as a result of or in connection with which the affiliated foreign national directly or indirectly acquires or increases a debt or equity interest in the direct investor or the direct investor directly or indirectly disposes of or reduces a debt or equity interest in the affiliated foreign national held by the direct investor:

(1) The acquisition by an affiliated foreign national of an equity interest in or debt obligation of the direct investor.

(2) A contribution by an affiliated foreign national to the capital of the direct investor.

(3) The complete or partial satisfaction by an affiliated foreign national of a debt obligation of the affiliated foreign national held by the direct investor.

(4) The reduction of an equity interest in an affiliated foreign national held by the direct investor (as the result of a redemption of stock, liquidating dividend, or like transaction):

(5) A transfer by the direct investor of an equity interest in or debt obligation of an affiliated foreign national held by the direct investor.

(6) The complete or partial satisfaction by an affiliated foreign national of a debt obligation of the direct investor, whether or not such debt obligation was guaranteed or assumed by the affiliated foreign national.

(c) *Transactions not involving transfer of capital.*—Notwithstanding the provisions of paragraphs (a) and (b) of this section, the following shall not be deemed transfers of capital:

(1)(i) An acquisition by a direct investor described in paragraph (a)(1) of this section if the acquisition is from a person within the United States acting for its own account. If the acquisition is of an equity interest from a person within the United States which was immediately prior to the transaction a direct investor in the affiliated foreign national, and the acquiring and divesting direct investors each file Form FDI-107 on or before the end of the month following the close of the calendar quarter during which the acquisition occurs, direct investment made by the divesting direct investor in 1965, 1966, and the year of the acquisition that corresponds to the interest transferred shall be deemed to have been made by the acquiring direct investor (except that the provisions of §§ 1000.203(d)(2) and (3), 1000.306(e)(1) and 1000.313(d)(1) shall be disregarded in calculating such direct investment unless the acquiring direct investor shall have assumed the obligation to repay long-term foreign borrowing in connection with which deductions under such sections were made), and annual earnings (as defined in § 1000.504(b)(4)) in 1966, 1967, and the year immediately preceding the year of acquisition that correspond to the interest transferred shall be attributed to the acquiring direct investor.

(ii) A transfer of capital shall not be deemed to occur in connection with or as the result of any combination of two or more direct investors or of a direct investor and a person within the

United States. For purposes of this subparagraph, such combination shall include merger, consolidation, reorganization, acquisition (from a person within the United States acting for its own account) of a direct investor which thereby becomes an affiliate, or other combination. The surviving direct investor shall file Form FDI-107 on or before the end of the month following the close of the calendar quarter during which the combination occurs. The aggregate amount of direct investment made by each of the direct investors involved in the combination in 1965, 1966, and the year in which the combination occurs shall be deemed to have been made by the surviving direct investor. The aggregate amount of annual earnings (as defined in § 1000.504(b)(4)) of each of the direct investors involved in the combination in 1966, 1967, and the year immediately preceding the year in which the combination occurs shall be attributed to the surviving direct investor. The aggregate amount of liquid foreign balances held by each of the direct investors involved in the combination in 1965 and 1966 and each month commencing with the month during which the combination occurs shall be attributed to the surviving direct investor.

(2) A transfer described in paragraph (a)(5) of this section unless (i) the transferee is the direct investor or (ii) the transferor or transferee is an affiliated foreign national which is an affiliate of the direct investor as defined in § 1000.903(a).

(3) An acquisition by an affiliated foreign national described in paragraph (b)(1) of this section unless the acquisition is from the direct investor.

(4) A transfer described in paragraph (b)(5) of this section, other than a transfer after December 31, 1972, of a qualified export obligation, unless (i) the transfer is made (A) to a foreign national or (B) to a financial institution subject to the Federal Reserve Foreign Credit Restraint Program and the transfer is charged against the ceiling of such institution under such Program, and (ii) the transfer constitutes a transfer of capital after application of paragraph (c)(12) of this section: *Provided,* That, if the transfer is of a debt obligation and does not constitute a transfer of capital because of this paragraph, repayment by the affiliated foreign national of such debt obligation to a person within the United States shall be deemed a transfer of capital by the affiliated foreign national.

(5) An increase in an equity interest in a corporation resulting from the reinvestment of earnings of such corporation.

(6) An increase or decrease in the value of assets resulting from a reappraisal of such assets.

(7) The making of a guarantee.

(8) The payment by the primary obligor of interest currently due, fees or commissions in connection with borrowings or extensions of credit (including prepayments of interest if such prepayments are made in the course of customary lending practices or commercial transactions).

(9) The payment by the lessee under a lease of real or personal property of rental currently due (including prepayments of rental if such prepayments are customarily made by lessees under leases of the type involved).

(10) The payment by the licensee under a license agreement of royalties currently due (including prepayments of royalties if such prepayments are customarily made by licensees under agreements of the type involved).

(11) A transfer of patents, copyrights, trademarks, trade names, trade secrets, technology, proprietary processes, proprietary information or similar intangibles or any rights or interests therein or applications or contracts relating thereto (each of the foregoing being hereinafter referred to as an intangible), regardless of the form of the transfer or the consideration exchanged therefor: *Provided,* That the foregoing shall not apply to the transfer of an intangible by a direct investor to an affiliated foreign national on or after the effective date if (i) the direct investor had a previously established practice with respect to the exploitation of intangibles of the type so transferred and the transfer represents a substantial departure from such previously established practice and (ii) the intangible transferred was, prior to the transfer, a substantial source of royalty or other like income to the direct investor: *And provided, further,* That, if the transfer of an intangible to an affiliated foreign national does not constitute a transfer of capital under this subparagraph, no deduction for amortization or any like charge with respect to the intangible transferred shall be made against earnings in calculating the earnings of the transferee affiliated foreign national.

(12) On or after July 1, 1972, any transaction described in paragraph (b) of this section, other than a transaction entered into after December 31, 1972, involving a qualified export obligation or qualified export lease, in connection with which a financial institution subject to the Federal Reserve Foreign Credit Restraint Program, without charging its ceiling under such Program, acquires a debt obligation of a foreign national and transfers funds or other property (i) to the direct investor, or (ii) to an affiliated foreign national, or (iii) to a foreign financial institution which transfers funds or other property to an affiliated foreign national or to the direct investor, or (iv) to a foreign national other than a financial institution and other than an affiliated foreign national ("unaffiliated foreign national"), or to a foreign financial institution which transfers funds or other property to an unaffiliated foreign national, which unaffiliated foreign national transfers funds or other property to an affiliated foreign national or to the direct investor, unless, for purposes of this paragraph (c)(12) of this section, (iv) the debt obligation is treated as a direct or indirect export credit to an unaffiliated foreign national under the Federal Reserve Foreign Credit Restraint Program and is acquired without the intervention of the direct investor or an affiliated foreign national in a manner that departs from their previously established practices: *Provided,* That if the transaction does not constitute a transfer of capital because of this paragraph, repayment of the debt obligation by a foreign national to a person within the United States shall be deemed a transfer of capital by the affiliated foreign national.

(13)(i) Commencing January 1, 1973: (A) The acquisition by a direct investor of a qualified export obligation of an incorporated affiliated foreign national, until such obligation has been outstanding for a period longer than the arm's length term applicable to it; (B) the payment or satisfaction of a qualified export obligation by an incorporated affiliated foreign national to a direct investor, or the transfer by a direct investor of a qualified export obligation of an incorporated affiliated foreign national, except to the extent that a transfer of capital by the direct investor was previously recognized with respect to such obligation in 1973 or subsequently; and (C) any repayment, relating to a qualified export obligation, that would be deemed a transfer of capital by an affiliated foreign national under the proviso to paragraph (c)(4) or the proviso to paragraph (c)(12) of this section.

(ii)(A) The term "qualified export obligation" means a debt obligation of an affiliated foreign national acquired in any year by a direct investor attendant to a sale by a direct investor to an affiliated foreign national of United States goods or United States services. Each installment payable on an installment sale which entails a qualified export obligation is considered a separate qualified export obligation of the affiliated foreign national.

(B) In no case shall a qualified export obligation arise in connection with (1) a transaction which is in substance a contribution to capital, regardless of the manner in which such transaction is entered in the books and records of the direct investor, or (2) an installment sale, unless its terms require installment payments at an arm's length rate, considering the time and amount of each payment to be made, except that, for purposes of determining the arm's length rate, the credit standing of the affiliated foreign national shall be disregarded.

(iii) The term "United States goods" means tangible property (A) grown, produced or manufactured in the United States, and (B) exported from the United States by the direct investor. Property is grown, produced or manufactured in the United States only if it may be classified as "domestic" for purposes of a Department of Commerce Shipper's Export Declaration (Commerce Department Form 7525-V or any superseding form).

(iv) The term "United States services" means services performed for an

affiliated foreign national by a direct investor but does not include services performed by any affiliated foreign national of the direct investor.

(v) The "arm's length term" means the period for which credit would have been extended, at the time the sale was entered into, in an independent transaction between unrelated parties under similar circumstances, considering all relevant factors, such as the type of goods or services involved, the security involved, shipping time, and the terms prevailing at the situs for comparable transactions, except that the credit standing of the affiliated foreign national shall be disregarded. With respect to the sale of United States goods, any term of 180 days or less from the time of shipment of the goods shall be deemed an arm's length term. With respect to the sale of United States services, any term of 90 days or less, measured from the end of the month in which such services would be billed in a similar transaction between unrelated parties, shall be deemed an arm's length term: *Provided,* That in the case of United States services related and subsidiary to a sale of goods which entails a qualified export obligation, the arm's length term shall be the same as that for the sale of the goods.

(vi) (A) Any direct investor may elect that none of its transactions shall be deemed to involve qualified export obligations (as defined in paragraph (c) (13) (ii) of this section) or qualified export leases (as defined in paragraph (c) (14) of this section).

(B) An election pursuant to this paragraph (c) (13) (vi) must be made on the Form FDI-102F filed by the direct investor for the year 1973 and may not thereafter be revoked by the direct investor without obtaining the prior permission of the Office.

(C) Notwithstanding any other provision of this part, the Secretary retains full power to deem that any direct investor has elected that none of its obligations shall be deemed to involve qualified export obligations or qualified export leases, effective for 1973 or any subsequent year.

(14) Commencing January 1, 1973, a transfer of property pursuant to a qualified export lease or the return of property so transferred. The term "qualified export lease" means a lease of United States goods (as defined in paragraph (c) (13) (iii) of this section) by a direct investor to an affiliated foreign national which requires rental payments at an arm's length rate, considering the time and amount of each rental payment to be made, except that, for purposes of determining the arm's length rate the credit standing of the affiliated foreign national shall be disregarded.

(d) The term "debt obligation" or "debt interest" means any item of indebtedness or liability, regardless of the maturity thereof (excluding capital surplus, and contingency reserves) which would, in accordance with accounting principles generally accepted in the United States, be included in determining total liabilities as of the date on which the existence of a debt obligation or debt interest is to be determined: *Provided,* That a debt obligation or debt interest shall not include the liability of an affiliated foreign national to a direct investor arising out of the declaration of a dividend until such dividend becomes payable on demand.

(e) [Revoked]

§ 1000.313 Net transfer of capital.

(a) A net transfer of capital (which may be a positive or negative amount) by a direct investor to all incorporated affiliated foreign nationals in any scheduled area during any period means (1) the aggregate of all transfers of capital made during such period by the direct investor to such affiliated foreign nationals, less (2) the aggregate of all transfers of capital made during such period by such affiliated foreign nationals to the direct investor.

(b) (1) A net transfer of capital (which may be a positive or negative amount) by a direct investor to all unincorporated affiliated foreign nationals in any scheduled area during any period means the direct investor's share of the aggregate net increase or net decrease, during such period, in the aggregate net assets of such affiliated foreign nationals (whether such net increase or decrease results from any transfer of capital (as defined in § 1000.312), earnings, or losses or any combination thereof). In calculating the net assets of all unincorporated affiliated foreign nationals in any scheduled area, there shall be excluded (i) all equity interests in and debt obligations of such unincorporated affiliated foreign nationals held by the direct investor or affiliated foreign nationals of the direct investor, except qualified export obligations held and acquired by the direct investor after 1972 unless such obligations have been outstanding for periods longer than the qualifying terms applicable to them, and (ii) all assets of such unincorporated affiliated foreign nationals consisting of equity interests in or debt obligations of the direct investor or affiliated foreign national of the direct investor.

(2) Any reduction in net assets of an unincorporated affiliated foreign national resulting from a repayment after 1972 of a qualified export obligation acquired by a direct investor prior to 1973 shall be disregarded in calculating the increase or decrease in net assets of such unincorporated affiliated foreign national.

(c) A net transfer of capital (which may be a positive or negative amount) by a direct investor to all incorporated and unincorporated affiliated foreign nationals in any scheduled area during any period means (1) the net transfer of capital by the direct investor to all incorporated affiliated nationals in such scheduled area during such period, and (2) the net transfer of capital by the direct investor to all unincorporated affiliated foreign nationals in such scheduled area during such period. If the sum of paragraphs (c) (1) and (2) of this section is in excess of zero, the net transfer of capital during such period shall be deemed a positive net transfer of capital; if a negative amount, it shall be deemed a negative net transfer of capital.

(d) In calculating the amount of the net transfer of capital made by a direct investor to a scheduled area during any period (including the years 1965 and 1966) pursuant to paragraph (c) of this section:

(1) [Revoked][1]

(2) There shall be included all transfers of funds or other property as a result of which the direct investor became a direct investor in any affiliated foreign national and all transfers of funds or other property to or on behalf of or for the benefit of such affiliated foreign national made by or on behalf of or for the benefit of such direct investor within 12 months (whether or not during the period for which the calculation is being made) prior to the date of the transfer by which it became a direct investor in such affiliated foreign national, to the same extent as if the direct investor had been a direct investor in such affiliated foreign national during such 12-month period.

(e) (1) In calculating the amount of the net transfer of capital made by a direct investor to all affiliated foreign nationals in any scheduled area during the year 1972, the direct investor may include transfers of capital by incorporated affiliated foreign nationals and decreases in net assets of unincorporated affiliated foreign nationals in such scheduled area that are recognized upon repayments of debt obligations outstanding as of December 31, 1972, by such affiliated foreign nationals to the direct investor during January 1973 or, as alternatively elected by the direct investor, during January and February 1973: *Provided,* That the direct investor has made a worldwide negative net transfer of capital during the period elected under this section: *And provided further,* That the aggregate amount of such transfers of capital and decreases in net assets included in calculating the amounts of the net transfers of capital made by the direct investor during the year 1972 does not exceed the amount of such worldwide negative net transfer of capital.

(2) The worldwide net transfer of capital by a direct investor during the period elected by the direct investor under this section means the algebraic sum of the net transfers of capital by the direct investor to all incorporated and unincorporated affiliated foreign nationals in all scheduled areas during such period.

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[1] All references to § 1000.313(d) (1) refer to that section prior to its revocation effective July 1, 1972. Former § 1000.313(d) (1) read as follows:

"(1) There shall be deducted an amount equal to the proceeds of long-term foreign borrowing actually expended in making transfers of capital to affiliated foreign nationals in such scheduled area during such period."

(3) Any transfer of capital or decrease in net assets that is included in calculating the amount of a net transfer of capital made by a direct investor to all affiliated foreign nationals in any scheduled area during the year 1972 pursuant to this section shall be excluded in calculating the amount of the net transfer of capital made by the direct investor to such affiliated foreign nationals in such scheduled area during the year 1973.

(4) All calculations under this paragraph (e) shall be made in accordance with this part as in force on December 31, 1972.

(f) [Revoked]

§ 1000.314 Authorization and exemption.

The terms "authorization" and "exemption" mean an authorization or exemption which is set forth in this part or which is issued pursuant to this part.

§ 1000.315 General authorization and exemption.

The term "general authorization" and "general exemption" mean an authorization or exemption which is set forth in this part or which is issued pursuant to this part and published in the FEDERAL REGISTER.

§ 1000.316 Specific authorization and exemption.

The terms "specific authorization" and "specific exemption" mean an authorization or exemption which is issued pursuant to this part but which is neither set forth in this part nor published in the FEDERAL REGISTER.

§ 1000.317 Domestic bank; foreign bank.

(a) The term "domestic bank" includes any branch or office within the United States of any of the following: (1) A bank or trust company organized under the banking laws of the United States; (2) a private bank or banker subject to supervision and examination under the banking laws of the United States; and (3) a foreign bank described in paragraph (b)(1) of this section.

(b) The term "foreign bank" includes any branch or office within a foreign country of any of the following: (1) A bank, trust company, private bank or merchant bank organized under the laws of a foreign country; and (2) a domestic bank described in paragraphs (a) (1) or (2) of this section.

§ 1000.318 United States.

(a) The term "United States" includes the States, the District of Columbia, the Commonwealth of Puerto Rico, the Panama Canal Zone, the Virgin Islands, Guam, Wake Island, American Samoa, and the Trust Territory of the Pacific Islands.

(b) For purposes of this part, a person is organized under the laws of the United States if it is organized under the laws of the United States, any State, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or the Trust Territory of the Pacific Islands.

§ 1000.319 Schedule A, B, and C countries.

(a) Schedule A countries are all foreign countries designated as less developed countries in the Executive order, as from time to time in force, issued under section 4916 of the Internal Revenue Code.

(b) Schedule B countries are such other foreign countries as the Secretary may determine to be developed countries in which a high level of capital inflow is essential for the maintenance of economic growth and financial stability, and where those requirements cannot be adequately met from non-U.S. sources. The following countries are hereby determined to fall in this category: Abu Dhabi, Australia, The Bahamas, Bahrain, Bermuda, Canada, Hong Kong, Iran, Iraq, Iraq-Saudi Arabia Neutral Zone, Ireland, Japan (including Ryukyu Islands commencing May 15, 1972), Kuwait, Kuwait-Saudi Arabia Neutral Zone, Libya, New Zealand, Qatar, Saudi Arabia, the United Kingdom, and, commencing with the year 1970, Spain.

(c) Schedule C countries are all foreign countries not included as Schedule A or B countries.

(d) The Secretary may in his discretion, from time to time, transfer any foreign country from any one of the Schedules to another.

§ 1000.320 Effective date.

The term "effective date" means 12:00 noon eastern standard time of January 1, 1968.

§ 1000.321 Year; period.

(a) The term "year" shall mean a calendar year except with respect to a person who has applied for and received the permission provided in paragraph (b) of this section. With respect to such person, the term "year" shall mean such person's fiscal year. The term "period" shall mean any period of time (including a year) on the basis of which compliance with the provisions of this part is or may be measured, or for which reports must be filed pursuant to Subpart F of this part.

(b) A direct investor which customarily maintains its books of account on the basis of a fiscal year other than a calendar year may apply to the Secretary for permission to have its compliance with the provisions of this part measured on the basis of its fiscal year. The Secretary may, in his discretion, grant the application upon a showing of good cause therefor, including a showing that, notwithstanding the granting of such application, the direct investor will substantially comply with the provisions of this part on a calendar year basis. The Secretary may make the grant of the application subject to any terms and conditions that he deems necessary.

§ 1000.322 Person within the United States.

(a) The term "person within the United States" means:

(1) An individual who is a resident of the United States;

(2) An individual, wherever residing, who is a citizen of the United States and the center of whose economic interests is located within the United States;

(3) A corporation or partnership organized under the laws of the United States (excluding a branch of such a corporation or partnership if the branch is a separate foreign national under § 1000.302);

(4) A trust (other than a trust which is deemed a corporation under § 1000.307 (b)) governed by the laws of the United States if the grantor of the trust is, or the person under whose will the trust was created was at the time of his death, a person within the United States;

(5) An estate, if the decedent was a person within the United States at the time of his death;

(6) A domestic bank (as defined in § 1000.317(a));

(7) An affiliated group (as defined in § 1000.903); and

(8) A family group (as defined in § 1000.904).

(b) Notwithstanding the provisions of paragraph (a) of this section, the Secretary retains full power to determine that any person is a person within the United States.

§ 1000.323 International finance subsidiary.

(a) The term "international finance subsidiary" of a direct investor means a corporation organized under the laws of the United States, all the stock of which (disregarding directors' qualifying shares) is owned directly or indirectly by the direct investor, and the principal business of which is to borrow funds from foreign nationals other than affiliated foreign nationals and to invest such funds in debt or equity security of affiliated foreign nationals.

(b) For purposes of this part, a direct investor and all of its international finance subsidiaries shall be considered a single person.

§ 1000.324 Long-term foreign borrowing.

(a) (1) "Foreign borrowing" means a borrowing made by a direct investor on or after May 1, 1970, from any foreign national (other than an affiliated foreign national and except as provided in § 1000.1106), including, but not by way of limitation, an extension of credit by any such foreign national to the direct investor in connection with the purchase of property (including securities) by the direct investor from such foreign national: *Provided*, That (i) the borrowing is from a foreign bank; or (ii) the borrowing is from or is guaranteed by a foreign country or any agency thereof; or (iii) at the time of the borrowing, the debt obligations resulting therefrom would, if purchased by nationals or residents of the United States, be subject to the Interest Equalization Tax (Internal Revenue Code, Chapter 41, sections 4911–4931); or (iv) the lender agrees in writing that, for a period of

3 years from the original date of the borrowing or until final maturity, whichever first occurs, it will not sell or otherwise transfer the debt obligation resulting from the borrowing to a resident or national of the United States (other than a foreign bank described in § 1000.317(b)(2) or a Canadian person (as defined in § 1000.1101(d)) or to any person who the lender has reason to believe will sell or otherwise transfer the debt obligation to any such U.S. resident or national or Canadian person.

(2) In the case of borrowings made on or after May 1, 1970, "long-term foreign borrowing" means a foreign borrowing (as defined in paragraph (a)(1) of this section) to the extent that such foreign borrowing is not repaid within 12 months after the original date of the borrowing: *Provided*, That solely for purposes of this subparagraph, a borrowing that is repaid in whole or in part pursuant to provisions in a debt instrument for acceleration upon default or that is repaid by reason of the conversion of convertible debt instruments shall be deemed to have been repaid in accordance with the maturities otherwise provided in such instruments.

(3) In the case of borrowings made prior to May 1, 1970, "long-term foreign borrowing" shall be as defined by paragraphs (a) and (e) of this section as in effect on April 30, 1970.

(b) (1) The refinancing in whole or in part of a foreign borrowing or a long-term foreign borrowing (by renewal, extension, or continuance of such borrowing or by making a foreign borrowing from the same or another lender) shall not, to that extent, be deemed a repayment of the borrowing or the making of a new borrowing.

(2) The delivery of equity securities of a direct investor to holders of debt instruments issued by the direct investor in connection with a long-term foreign borowing, pursuant to the exercise of conversion or similar rights, shall be deemed a repayment of the borrowing to the extent of the principal amount of indebtedness surrendered by such holders in exchange for such equity securities.

(c) "Proceeds of long-term foreign borrowing" means (1) the gross amount or value (before deducting any discounts, commissions or fees) of funds or other property received by a direct investor from the first purchaser or holder in exchange for the debt obligation issued or created in connection with the borrowing, and reported by the direct investor on its next and all succeeding periodic reports filed with the Office (whether quarterly on Form FDI-102 or annually on Form FDI-102F) for periods during which such borrowing is outstanding, less (2) repayments of principal of such borrowing.

(d) "Available proceeds" means proceeds of long-term foreign borrowing (as defined in paragraph (c) of this section) less (1) amounts allocated to positive direct investment and deducted under § 1000.306(e), and (2) amounts expended prior to July 1, 1972 in transfers of capital to affiliated foreign nationals other than Canadian affiliates as defined in § 1000.1101(a) and deducted under § 1000.313(d)(1).

(e) [Revoked]

§ 1000.325 Incorporated and unincorporated affiliated foreign nationals. (Proposed but withdrawn prior to adoption; see § 1000.304(b)(3)).

Subpart D—Interpretations

§ 1000.401 Reference to amended sections.

Reference to any section of this part or to any regulation, ruling, order, instruction, direction, authorization, license or exemption issued pursuant to this part shall be deemed to refer to the same as currently amended unless otherwise so specified.

§ 1000.402 Effect of amendment of sections of this part or of other orders, etc.

Any amendment, modification, or revocation of any section of this part or of any order, regulation, ruling, instruction, authorization, license, or exemption issued by or under the direction of the Secretary pursuant to 12 U.S.C. 95a, as amended, shall not unless otherwise specifically provided be deemed to affect any act done or omitted to be done, or any suit or proceeding had or commenced in any civil or criminal case, prior to such amendment, modification, or revocation, and all penalties, forfeitures, and liabilities under any such section, order, regulation, ruling, instruction, authorization, license, or exemption shall continue in effect and may be enforced as if such amendment, modification, or revocation had not been made.

§ 1000.403 Transactions between principal and agent. (REVOKED)

§ 1000.404 Distribution, apportionment or allocation of earnings.

In any case of two or more organizations, trades or businesses owned or controlled directly or indirectly by the same interests, the Secretary may distribute, apportion or allocate earnings or any component of earnings, if he determines that such distribution, apportionment, or allocation is necessary or appropriate clearly or properly to reflect earnings attributable to a direct investor's interest in affiliated foreign nationals or otherwise to carry out the purposes of this part.

Subpart E—Authorizations or Exemptions

§ 1000.501 Exclusion from authorization or exemption.

(a) No authorization or exemption contained in this part, or issued by or under the direction of the Secretary pursuant to this part, shall be deemed to authorize or validate any direct investment made prior to the issuance thereof, unless such authorization or other exemption specifically so provides.

(b) The Secretary reserves the right to exclude transactions or property or classes thereof from the operation of any authorization or exemption or from the privileges therein conferred, or to restrict the applicability thereof with respect to particular persons. Such action shall be binding upon all persons receiving actual notice or constructive notice thereof.

§ 1000.502 Elections with respect to §§ 1000.503 and 1000.504.

(a) A direct investor shall elect for each year, commencing with the year 1973, to be governed by the provisions of

(1) Section 1000.503, or

(2) Section 1000.504 (a) and (c), or

(3) Section 1000.504(b).

(4) [Revoked]

(b) The election made pursuant to this paragraph shall be binding and effective as to all (and not less than all) scheduled areas and as to the year for which the election is made, and shall be made on Form FDI-102F timely filed by the direct investor pursuant to § 1000.602 (b)(3) for the year for which the election is made.

(c) [Revoked]

(d) [Revoked]

§ 1000.503 Positive direct investment not exceeding $6 million; minimum allowable.

(a) If for any year commencing with the year 1973 a direct investor elects under § 1000.502(a)(1), positive direct investment is authorized for such year in all scheduled areas in an aggregate amount not exceeding $6 million.

(b) [Revoked]

(c) If a direct investor elects to make positive direct investment during any year commencing with the year 1969 as authorized under this section, no positive direct investment shall be authorized in such year under § 1000.504 and any positive direct investment which would otherwise have been authorized in such year under § 1000.504 (d), (e), or (f) or § 1000.1302 shall, notwithstanding those provisions, not be authorized in such year or succeeding years.

(d) Positive direct investment made during the year 1968 which was authorized by § 1000.503 as in effect for such year shall reduce the amount of positive direct investment authorized to be made in succeeding years under § 1000.504(f). Such reduction shall first be made in the scheduled area in which such positive direct investment was made, and to the extent that the amount of positive direct investment made in such scheduled area exceeds the amount of positive direct investment authorized to be made in such scheduled area under § 1000.504(f), further reductions shall be made in the amount of positive direct investment authorized under § 1000.504(f) in Schedules C, B, and A, in that order, until such reductions shall equal in the aggregate the total amount of positive direct investment made or the total amount of positive direct investment authorized under § 1000.504(f), whichever is less.

§ 1000.504 Authorized positive direct investment in scheduled areas; scheduled allowables.

(a) *Historical allowables.*—If for any year commencing with the year 1969 a

direct investor elects under § 1000.502(a)(2), positive direct investment for such year is authorized as follows:

(1) In Schedule A, in an amount not exceeding 110 percent of the average of direct investment by the direct investor in Schedule A during the years 1965 and 1966;

(2) In Schedule B, in an amount not exceeding 65 percent of the average of direct investment by the direct investor in Schedule B during the year 1965 and 1966;

(3) In Schedule C, in an amount not exceeding 35 percent of the average of direct investment by the direct investor in Schedule C during the years 1965 and 1966.

(b) *Earnings allowable.*—If for any year commencing with the year 1971 a direct investor elects under § 1000.502(a)(3), positive direct investment for such year is authorized as follows:

(1) In Schedule A, in an amount not exceeding 40 percent of the annual earnings of the direct investor in Schedule A during the immediately preceding year.

(2) In Schedule B, in an amount not exceeding 40 percent of the annual earnings of the direct investor in Schedule B during the immediately preceding year;

(3) In Schedule C, in an amount not exceeding 40 percent of the annual earnings of the direct investor in Schedule C during the immediately preceding year.

(4) The term "annual earnings" means the algebraic sum of a direct investor's share of total earnings or total losses during a year of all the direct investor's incorporated affiliated foreign nationals in a schedule area (excluding Canadian affiliates as defined in § 1000.1101(a) from Schedule B) determined in accordance with the provisions of § 1000.306(c) and the direct investor's share of net earnings or losses during such year of all the direct investor's unincorporated affiliated foreign nationals in such scheduled area (excluding Canadian affiliates as defined in § 1000.1101(a) from Schedule B) determined in accordance with accounting principles generally accepted in the United States consistently applied: *Provided,* That annual earnings of less than zero shall for purposes of this section be treated as zero.

(c) *Adjustment to historical allowable.*—If for any year commencing with the year 1971 a direct investor elects under § 1000.502(a)(2),

(1) The amount of positive direct investment authorized in Schedule C under paragraph (a)(3) of this section shall be increased by the lesser of either the amount by which 40 percent of annual earnings in Schedule C during the immediately preceding year is in excess of positive direct investment authorized in Schedule C under said paragraph (a)(3) of this section during the current year or the amount of positive direct investment authorized in Schedule A under paragraph (a)(1) of this section: *Provided,* That the amount of positive direct investment authorized in Schedule A under said paragraph (a)(1) of this section shall be reduced by the amount of such increase:

(2) The amount of positive direct investment authorized in Schedule C under paragraph (a)(3) of this section shall be increased by the lesser of either the amount by which 40 percent of annual earnings in Schedule C during the immediately preceding year is in excess of positive direct investment authorized in Schedule C under paragraph (a)(3) of this section and paragraph (c)(1) of this section during the current year or the amount of positive direct investment authorized in Schedule B under paragraph (a)(2) of this section: *Provided,* That the amount of positive direct investment authorized in Schedule B under said paragraph (a)(2) of this section shall be reduced by the amount of such increase; and

(3) The amount of positive direct investment authorized in Schedule B under paragraph (a)(2) of this section shall be increased by the lesser of either the amount by which 40 percent of annual earnings in Schedule B during the immediately preceding year is in excess of positive direct investment authorized in Schedule B under said paragraph (a)(2) of this section during the current year or the amount of positive direct investment authorized in Schedule A under paragraph (a)(1) of this section (calculated after the reduction provided in subparagraph (1) of this paragraph): *Provided,* That the amount of positive direct investment authorized in Schedule A under paragraph (a)(1) of this section shall be reduced by the amount of such increase.

(d) *Carryforward allowables and use of schedular allowables in other scheduled areas.*—(1) If, during any year commencing with the year 1969, the amount of positive direct investment authorized to a direct investor in Schedule A under paragraphs (a)(1) and (c) of this section or paragraph (b)(1) of this section exceeds the amount of direct investment (whether positive or negative) made by the direct investor during such year in Schedule A, or if no positive direct investment is so authorized to the direct investor in Schedule A during such year but the direct investment by the direct investor in Schedule A during such year is negative, the direct investor is authorized to make additional positive direct investment in Schedule A during succeeding years in an aggregate amount of not more than the amount of such excess, or the amount of such negative direct investment, as the case may be.

(2) If, during any year commencing with the year 1969, the amount of positive direct investment authorized to a direct investor in Schedule B under paragraphs (a)(2) and (c) of this section or paragraph (b)(2) of this section exceeds the amount of direct investment (whether positive or negative) made by the direct investor during such year in Schedule B, or if no positive direct investment is so authorized to the direct investor in Schedule B during such year but the direct investment by the direct investor in Schedule B during such year is negative, the direct investor is authorized to make additional positive direct investment in Schedule A during such year, and, to the extent additional positive direct investment in Schedule A is not made during such year the direct investor is authorized to make additional positive direct investment in Schedules A and B during succeeding years: *Provided,* That the aggregate amount of additional positive direct investment authorized by this subparagraph shall not be more than the amount of such excess, or the amount of such negative direct investment, as the case may be.

(3) If, during any year commencing with the year 1969, the amount of positive direct investment authorized to a direct investor in Schedule C under paragraphs (a)(3) and (c) of this section or paragraph (b)(3) of this section exceeds the amount of direct investment (whether positive or negative) made by the direct investor during such year in Schedule C, or if no positive direct investment is so authorized to the direct investor in Schedule C during such year but the direct investment by the direct investor in Schedule C during such year is negative, the direct investor is authorized to make additional positive direct investment in Schedule A or B during such year, and, to the extent additional positive direct investment in Schedules A or B is not made during such year, the direct investor is authorized to make additional positive direct investment in Schedules A, B, or C during succeeding years: *Provided,* That the aggregate of additional positive direct investment authorized by this subparagraph shall not be more than the amount of such excess, or the amount of such negative direct investment, as the case may be.

(e) *Schedule C total losses; reinvestment allowable.*—If the incorporated affiliated foreign nationals of a direct investor in Schedule C have total losses during any year commencing with the year 1969 (calculated as provided in § 1000.306(c)), such losses shall, for purposes of this section, be disregarded in calculating the direct investment (whether positive or negative) made by the direct investor in Schedule C for such year: *Provided,* That the direct investor shall be authorized to reinvest additional earnings of incorporated affiliated foreign nationals in Schedule C during succeeding years in an aggregate amount of not more than the direct investor's share of such total losses.

(f) *Carryforward allowables from 1968.*—(1) A direct investor authorized under former § 1000.504(b)(1), as in effect on December 31, 1968, to make positive direct investment in Schedule A during 1969 is authorized to make positive direct investment in Schedule A during 1969 and succeeding years in an aggregate amount not to exceed the amount of positive direct investment so authorized to be made during 1969 under said former § 1000.504(b)(1).

(2) A direct investor authorized under former § 1000.504(b)(2), as in effect on

December 31, 1968, to make positive direct investment in Schedule B during 1969 is authorized to make positive direct investment in Schedules A or B during 1969 and succeeding years in an aggregate amount not to exceed the amount of positive direct investment so authorized to be made during 1969 under said former § 1000.504(b)(2).

(3)(i) A direct investor authorized to make positive direct investment, to make a positive net transfer of capital, or to reinvest additional earnings of incorporated affiliated foreign nationals under former § 1000.504(c) (1) and (2), as in effect on December 31, 1968, is authorized to make positive direct investment in Schedules A, B, or C during 1969 and succeeding years in an aggregate amount not to exceed the aggregate amount of positive direct investment, positive net transfer of capital, and additional reinvested earnings so authorized to be made under said former § 1000.504 (c) (1) and (2).

(ii) A direct investor authorized under former § 1000.504(c)(3), as in effect on December 31, 1968, to reinvest earnings of incorporated affiliated foreign nationals in Schedule C during 1969 shall be authorized to reinvest earnings of incorporated affiliated foreign nationals in Schedule C during 1969 or succeeding years in an aggregate amount not to exceed the amount of earnings so authorized to be reinvested during 1969 under said former § 1000.504(c)(3).

§ 1000.505 Transfers between affiliated foreign nationals.

(a) (1) For purposes of the succeeding provisions of this § 1000.505, (i) if funds or other property are transferred by an unincorporated affiliated foreign national of a direct investor to the direct investor or to another affiliated foreign national of the direct investor, the funds or property shall, if the transferee is not the immediate parent of the transferor affiliated foreign national, be treated as having been transferred by such immediate parent and (ii) if funds or other property are transferred to an unincorporated affiliated foreign national of a direct investor by the direct investor or by another affiliated foreign national of the direct investor, the funds or property shall, if the transferor is not the immediate parent of the transferee affiliated foreign national, be treated as having been transferred to such immediate parent: *Provided,* in each case, That the immediate parent is the direct investor or an incorporated affiliated foreign national of the direct investor and that such immediate parent is not the immediate parent of both the transferor and transferee affiliated foreign national.

(2) For purposes of §§ 1000.312 and 1000.313(a), (i) if funds or other property are deemed under paragraph (a)(1)(ii) of this section to have been transferred by an incorporated affiliated foreign national of a direct investor to the direct investor, the transfer shall be treated as a transfer of capital by the incorporated affiliated foreign national to the direct investor (in an amount equal to the full amount or value of the funds or property so transferred) and (ii) if funds or other property are deemed under paragraph (a)(1)(i) of this section to have been transferred by the direct investor to an incorporated affiliated foreign national of the direct investor, the transfer shall be treated as a transfer of capital by the direct investor to the incorporated affiliated foreign national (in an amount equal to the full amount or value of the funds or property so transferred): *Provided, in each case,* That either the affiliated foreign national actually transferring the funds or other property or the affiliated foreign national actually receiving such funds or other property is an affiliate of the direct investor as defined in § 1000.903(a) and that the transfer, if actually made by or to the direct investor, as the case may be, would have constituted a transfer of capital under § 1000.312.

(3) For purposes of §§ 1000.312 (a) and (b) and 1000.313(a), if funds or other property are transferred (or deemed under paragraph (a)(1) of this section to have been transferred) by an incorporated affiliated foreign national of a direct investor to another incorporated affiliated foreign national of such direct investor, the transfer shall be treated as a transfer of capital by the transferor affiliated foreign national to the direct investor (in an amount equal to the full amount or value of the funds or property so transferred) and as a further transfer of capital in an equivalent amount by the direct investor to the transferee affiliated foreign national: *Provided,* That the affiliated foreign national actually transferring the funds or other property or the affiliated foreign national actually receiving such funds or other property is an affiliate of the direct investor as defined in § 1000.903(a) and that the transfer, if actually made by the direct investor, would have constituted a transfer of capital under § 1000.312(a): *And provided further,* That a charter of a vessel by an incorporated affiliated foreign national of such direct investor shall not be subject to this subparagraph.

(4) In calculating the net transfer of capital made by a direct investor during any period to all unincorporated affiliated foreign nationals in a schedule area under § 1000.313(b), the direct investor shall be deemed not to have any share in a net increase or decrease in the net assets of an unincorporated affiliated foreign national in the scheduled area if the immediate parent of such unincorporated affiliated foreign national is not the direct investor or an affiliate of the direct investor as defined in § 1000.903(a).

(5) For purposes of §§ 1000.312(a) and 1000.313(a), if an unincorporated affiliated foreign national of a direct investor has a net decrease in its net assets during any period, the direct investor shall be deemed to have made a transfer of capital to the immediate parent of such unincorporated affiliated foreign national to the extent that the direct investor's share of such net decrease is not attributable to losses incurred by the unincorporated affiliated foreign national during such period: *Provided,* That such immediate parent is an incorporated affiliated foreign national and is an affiliate of the direct investor as defined in § 1000.903(a).

(6) For purposes of §§ 1000.312(b) and 1000.313(a), (i) if an unincorporated affiliated foreign national of a direct investor has a net increase in its net assets during any period, the immediate parent of such unincorporated affiliated foreign national shall be deemed to have made a transfer of capital to the direct investor to the extent that the direct investor's share of such net increase is not attributable to earnings of the unincorporated affiliated foreign national during such period, and (ii) if an unincorporated affiliated foreign national of a direct investor incurs a loss during any period but such unincorporated affiliated foreign national has no change or has a net increase in its net assets during such period, or has a net decrease in its net assets during such period but the loss exceeds the net decrease in net assets, the immediate parent of such unincorporated affiliated foreign national shall be deemed to have made a transfer of capital to the direct investor in an amount equal to (*a*) the direct investor's share of the loss, (*b*) the direct investor's share of the net increase in net assets plus the direct investor's share of the loss or (*c*) the amount by which the direct investor's share of the loss exceeds the direct investor's share of the net decrease in net assets, as the case may be: *Provided, in each case,* That the immediate parent of the unincorporated affiliated foreign national is an incorporated affiliated foreign national and is an affiliate of the direct investor as defined in § 1000.903(a).

(7) In determining the effect of transfers between affiliated foreign nationals and the effect of changes in net assets of unincorporated affiliated foreign nationals under this § 1000.505, the fact that the underying transactions may involve qualified export obligations or qualified export leases (as defined respectively in §§ 1000.312(c)(13) and 1000.312 (c)(14) shall be disregarded.

(b) Notwithstanding anything to the contrary contained in paragraph (a) of this section, a trade credit extended by one affiliated foreign national of a direct investor to another affiliated foreign national of such direct investor in the ordinary course of business pursuant to arm's-length terms shall not be deemed a transfer of capital by the direct investor to the affiliated foreign national receiving the credit nor a transfer of capital by the affiliated foreign national extending the credit to the direct investor if the obligation is in fact paid within 12 months after extension of the credit, in which event payment of the obligation shall not be deemed a transfer of capital by the direct investor to the affiliated foreign national receiving payment nor

a transfer of capital by the affiliated foreign national making payment to the direct investor. If the affiliated foreign national extending or receiving the credit is an unincorporated affiliated foreign national of the direct investor and the obligation is in fact paid within 12 months, any change in the net assets of the unincorporated affiliated foreign national attributable to the transaction shall not be taken into account under § 1000.313(b) in calculating the net transfer of capital made by the direct investor to all unincorporated affiliated foreign nationals in the scheduled area in which such unincorporated affiliated foreign national is located.

(c) For purposes hereof, the immediate parent of a partnership referred to in § 1000.304(a)(1) is the direct investor or affiliated foreign national which is the partner, the immediate parent of a business venture referred to in § 1000.304(a)(2) is the direct investor, and the immediate parent of a business venture referred to in § 1000.304(a)(3) is the corporation or partnership on whose behalf the business venture is conducted.

§ 1000.506 Additional authorized positive direct investment in any one or more scheduled areas; incremental earnings allowable.

(a) For the purposes of this section:

(1) The term "aggregate annual earnings" means the algebraic sum of a direct investor's annual earnings in all scheduled areas as defined in § 1000.504(b)(4).

(2) The term "base period aggregate annual earnings" means an amount equal to 50 percent of the sum of the aggregate annual earnings for the years 1966 and 1967: *Provided,* That the base period aggregate annual earnings shall in no event be less than zero.

(3) The term "incremental earnings" means, with respect to each year beginning with the year 1970, the amount, if any, by which the aggregate annual earnings for such year exceed the base period aggregate annual earnings.

(4) The term "incremental earnings allowable" means, with respect to each year beginning with the year 1973 in which there are incremental earnings, the amount by which 40 percent of the incremental earnings for such year exceeds the greatest of the following (computed without regard to the reduction provisions of § 1000.1003 or any authorization, exemption, ruling, compliance settlement or order, and without regard to any election made under § 1000.502(a)): (i) $2 million, or (ii) the amount of positive direct investment, if any, authorized to be made by the direct investor during such year in all scheduled areas under § 1000.504(a)(1), (2), and (3), or (iii) the amount of positive direct investment, if any, authorized to be made by the direct investor during such year in all scheduled areas under § 1000.504(b)(1), (2), and (3).

(b) For any year, commencing with the year 1970, a direct investor that elects under § 1000.502(a)(1) may make additional positive direct investment in excess of that authorized by § 1000.503 in all scheduled areas in an aggregate amount not exceeding the direct investor's incremental earnings allowable for such year.

(c) For any year, commencing with the year 1973, a direct investor that elects under § 1000.502(a)(2) or (3) may make additional positive direct investment in excess of that authorized by § 1000.504 in any scheduled area in an amount not exceeding the direct investor's incremental earnings allowable for such year: *Provided,* That the aggregate of positive direct investment made pursuant to this paragraph in all scheduled areas shall not exceed the incremental earnings allowable. Additional positive direct investment made in Schedule C for such year pursuant to this section shall be computed in accordance with § 1000.504(e).

(d) If, during any year commencing with the year 1970, the incremental earnings allowable authorized to a direct investor exceeds the aggregate of additional positive direct investment made in all scheduled areas pursuant to paragraph (b) or (c) of this section, the direct investor is authorized to make additional positive direct investment, during succeeding years, in the same manner as provided in paragraphs (b) and (c) of this section, in an aggregate amount not exceeding such excess.

§ 1000.507 Alternative minimum and Schedule A supplemental allowable. [Revoked]

Subpart F—Records and Reports

§ 1000.601 Records.

Every person subject to the provisions of this part shall keep in the United States a full and accurate record of each transaction engaged in by it which is subject to the provisions of this part, regardless of whether such transaction is effected pursuant to authorization or otherwise, and of every other transaction between such person and an affiliated foreign national. Such records (including, but not limited to, source materials, journals or other books of original entry, ledgers, financial statements, work papers, regardless of by whom prepared, and minute books) shall be retained for the greater of (a) 3 years after the date on which an annual report, relating to the year in which the transaction is effected, is due, irrespective of whether such person is exempt from filing such report and irrespective of whether there is a reporting requirement with respect to such transaction, or (b) 3 years after the due date for the filing of an annual report relating to or containing information concerning or based upon such transaction, whether or not the transaction is individually identified.

§ 1000.602 Reports.

(a) Every person is required to furnish under oath, in the form of reports or otherwise, from time to time and at any time as may be required by the Secretary, complete information relative to any transaction with respect to which records are required to be kept under this part or information otherwise reasonably related to direct investment or the purposes of Executive Order 11387 or of this part. The Secretary may require that such reports include the production of any books of account, contracts, letters, or other papers, relevant to direct investment or transactions related thereto in the custody or control of persons required to make such reports. Complete information with respect to transactions related to direct investment may be required either before or after such transactions are completed. The Secretary may, through any person or agency, investigate any such transaction or any violation of the provisions of this part, regardless of whether any report has been required or filed in connection therewith.

(b) In addition to such other reports as may be required under paragraph (a) of this section, the following reports are required to be filed by direct investors with the Office of Foreign Direct Investments, Department of Commerce, Washington, D.C. 20230:

(1) *Form FDI-101, Base Period Report.*—Each direct investor must file this report on or before the end of the month following the close of the calendar quarter during which it becomes a direct investor, unless the direct investor is exempt from filing as provided in the instructions to this report. If an exemption from filing ceases to apply to a direct investor, such direct investor must file this report on or before the end of the month following the close of the calendar quarter during which the exemption ceases to apply.

(2) *Form FDI-102, Cumulative Quarterly Report.*—Each direct investor must file this report (on Form FDI-102/102F) within 45 days after the close of each quarter of the calendar year, unless such filing is waived by OFDI or the direct investor is exempt from filing as provided in the instructions to this report.

(3) *Form FDI-102F, Annual Report.*—Each direct investor must file this report (on Form FDI-102/102F) for each year on or before April 30 of the succeeding year, unless the direct investor is exempt from filing as provided in the instructions to this report or is exempt from filing a Base Period Report on Form FDI-101 as provided in the instructions to such report.

(4) *Form FDI-102F/S, Annual Report: Short Form.*—If a direct investor elects pursuant to § 1000.502(a)(1) to be governed by the provisions of § 1000.503 and satisfies other criteria specified in the instructions to this report, it may file its Annual Report on Form FDI-102F/S in lieu of Form FDI-102F on or before April 30 of the year succeeding the year for which the report is filed.

(5) *Form FDI-105, AFN Financial Structure and Related Data.*—Each direct investor must file this report on or before the date specified in the instructions to this report.

(6) *Form FDI-106, Standard Certificate for Repayment of Borrowings Made on or after May 1, 1970.*—In order for positive direct investment resulting from the repayment of borrowing made by a direct investor or its affiliated foreign national to be authorized under Subpart J of this part, a certificate on Form FDI-106 must be filed not later than 10 days after the direct investor makes the borrowing or guarantees the borrowing by its affiliated foreign national.

(7) *Form FDI-107, Adjusted 1965-67 Base Period and Prior Years' Annual Earnings Report for DIs Engaging in § 312(c)(1) Transactions.*—If the filing of Forms FDI-107 is elected under § 1000.312(c)(1)(i), this report must be filed by the acquiring and divesting direct investors on or before the end of the month following the close of a calendar quarter during which the acquisition occurred. The surviving direct investor is required by § 1000.312(c)(1)(ii) to file this report on or before the end of the month following the close of the calendar quarter during which a combination of direct investors occurred.

(c) Applications for extensions of time in which to file reports shall be made to the Office of Foreign Direct Investments and must be received by the Office prior to the time such reports are due. Applications shall contain a statement of reasons for inability to report on time. An extension of time will be given for good cause shown.

(d) Reports mailed to the Office are deemed filed on the date post-marked on the envelope in which they are mailed. Reports delivered directly to the Office are deemed filed when received as evidenced by the Office's date stamp thereon.

(e) Copies of all necessary forms, and instructions as to their preparation and filing, may be obtained from the Office of Foreign Direct Investments, Department of Commerce, Washington, D.C. 20230.

Subpart G—Penalties

§ 1000.701 Penalties.

(a) Attention is directed to 12 U.S.C. 95a, which provides in part:

> Whoever willfully violates any of the provisions of this section or of any license, order, rule, or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than 10 years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this section the term "person" means an individual, partnership, association, or corporation.

This section is applicable to violations of any provision of this part and to violations of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary pursuant to this part or otherwise under such section.

(b) Attention is also directed to 18 U.S.C. 1001, which provides:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both.

§ 1000.702 Effect upon lenders.

Any person (other than an affiliated foreign national of a direct investor) who lends money or extends credit to such direct investor or to an affiliated foreign national of such direct investor and who does not have actual knowledge, when such loan is made or credit extended (or when a commitment is given to make the loan or extend the credit), that the use of the proceeds thereof, the repayment thereof or any other transaction in connection therewith will involve or constitute a violation by the direct investor of any provision of this part or of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the authorization or direction of the Secretary pursuant to this part or otherwise under § 1000.701, may receive repayment thereof (together with all interest and other fees and charges) and otherwise participate in any other transaction in connection therewith without being subject to the penalties referred to in § 1000.701(a), and such person's rights against the direct investor or affiliated foreign national in connection with such loan or extension of credit shall not in any way be affected or impaired by reason of the provisions of this part.

Subpart H—Procedures

§ 1000.801 Applications for specific authorizations and exemptions.

(a) *Filing.*—Transactions subject to the prohibitions contained in this part which are not generally authorized may be effected only under specific authorization. Persons subject to the requirements of this part may be exempted from complying with any requirement thereof only through a specific exemption. Any person may file an application for specific authorization or for specific exemption. Such application shall contain all relevant information and shall be filed in triplicate with the Director, Office of Foreign Direct Investments, Department of Commerce, Washington, D.C. 20230. An applicant may furnish additional information or present views concerning the application at any time before a decision has been rendered thereon. The application may include a request that the Director, in his discretion, grant the applicant a conference with the Director or his designee.

(b) *Decisions.*—Written notice of action taken on an application shall be given to the applicant. Whenever an application is denied, such notice shall include a brief statement of the grounds therefor.

§ 1000.802 Petitions for reconsideration; appeals.

This section sets forth the procedures applicable to (1) petitions to the Director for reconsideration of administrative actions and (2) appeals to the Foreign Direct Investments Appeals Board (the "Board") from administrative actions and decisions on petitions for reconsideration.

(a) *General provisions.*—(1) The term "administrative action" means, with respect to any person, (i) a decision upon an application for a specific authorization or exemption filed by such person, or (ii) any action taken specifically with respect to such person pursuant to the exercise of a discretionary power by the Secretary in accordance with any provision of this part. The term "administrative action" does not include an opinion or ruling interpreting the regulations, or a decision upon a petition for reconsideration or upon an appeal.

(2) Notice of an administrative action or of a decision rendered upon a petition for reconsideration or upon an appeal shall be deemed to have been given on the date when mailed or delivered to the petitioner or appellant: *Provided,* That notice of an administrative action taken prior to the effective date of this section shall be deemed to have been given on such effective date.

(3) A petition for reconsideration shall be deemed filed on the date received by the Office of Foreign Direct Investments. An appeal shall be deemed filed on the date received by the secretary of the Board.

(4) Any person may withdraw a petition for reconsideration or an appeal at any time prior to the date a decision is rendered thereon.

(b) *Petitions for reconsideration.*—Any person may petition for reconsideration of an administrative action taken with respect to such person unless such person has previously appealed the same or a related administrative action to the Board and such appeal is then pending or a decision has been rendered thereon. The filing of a petition for reconsideration shall not suspend or stay the effect of the administrative action of which reconsideration is sought unless the Director, in his discretion, so orders.

(1) *Form of petitions.*—An original and five copies of the petition for reconsideration and all supporting documents shall be submitted. The petition shall enclose a copy of the administrative action of which reconsideration is asked, and shall state the grounds upon which the petition is based and the relief requested. All facts and argument in support of the petition shall be separately identified and set forth in detail.

(2) *Filing.*—A petition for reconsideration of an administrative action shall be filed not later than 20 days after notice of the administrative action is given to the petitioner. It shall be addressed to the Director, Office of Foreign Direct Investments, Ref.: "Petition for

Reconsideration," U.S. Department of Commerce, Washington, D.C. 20230. If a petition is withdrawn, the time which has elapsed since notice of the administrative action was given to the petitioner shall not be counted as part of the time allowed for appeal. Requests for extension of time within which to file petitions for reconsideration may be granted in the discretion of the Director.

(3) *Conferences.*—The petition may include a request that the Director, in his discretion, grant an informal conference with the Director or his designee.

(4) *Decisions.*—The Director may dismiss the petition, may grant or deny the petition in whole or in part, or may modify all or part of the administrative action under reconsideration. Written notice of the decision shall be given to the petitioner.

(c) *Appeals*—(1) *Foreign Direct Investment Appeals Board.*—The Foreign Direct Investment Appeals Board is established in the Office of the Secretary. The Secretary of Commerce (without power of delegation) shall appoint three responsible officials of the Department of Commerce, none of whom shall be employees of the Office of Foreign Direct Investments, to serve as members of the Board. The Board may, in its discretion, establish rules of procedure in addition to those set forth in this section. Any person may appeal in writing to the Board on the ground that an administrative action or a decision on petition for reconsideration with respect to such person resulted in unusual hardship upon appellant and is inconsistent with achievement of the goals and objectives of Executive Order 11387 and this part. An appeal may not be filed if such person has previously filed a petition for reconsideration respecting the same or a related administrative action and no decision has been rendered thereon or the petition has not been withdrawn. The filing of an appeal shall not suspend or stay the effect of the administrative action or decision on the petition for reconsideration under appeal unless the Board, in its discretion, so orders.

(2) *Form of appeals.*—An original and ten copies of the appeal and all supporting documents shall be submitted. The appeal shall enclose a copy of the administrative action or decision on the petition for reconsideration from which appeal is made, and shall state the particulars upon which the appeal is based and the relief requested. All facts and argument in support of the appeal shall be separately identified and set forth in detail. The Board may, in its discretion, request an appellant to make an oral presentation to the Board or any member thereof, at a time and place designated by the Board.

(3) *Filing.*—Appeals shall be filed with the Board not later than 30 days after notice of the administrative action or decision on the petition for reconsideration has been given to the appellant. Requests for extensions of time within which to file appeals may be granted in the discretion of the Board. Appeals shall be addressed to the Secretary, Foreign Direct Investment Appeals Board, U.S. Department of Commerce, Washington, D.C. 20230.

(4) *Decisions.*—The Board may dismiss, grant or deny the appeal in whole or in part or modify all or part of the administrative action or decision on the petition for reconsideration under appeal. Written notice of the Board's decision shall be furnished to the appellant and shall constitute final Departmental action.

§ 1000.803 Proof of authority to file certain documents.

An application for a specific authorization or exemption, a request for an interpretative opinion, a petition for reconsideration or an appeal will not be considered unless in the case of:

(a) A corporation, partnership, trust, or other unincorporated entity, it is executed by a corporate officer, general partner, trustee, or other duly authorized person who shall certify his authority to act on behalf of the entity;

(b) A natural person, it is executed and acknowledged by him; or

(c) Submission by an attorney or agent on behalf of any person, it is accompanied by a duly authorized power of attorney.

§ 1000.804 Amendment, modification, or revocation.

The provisions of this part and any rulings, exemptions, authorizations, instructions, waivers, orders, or forms issued under this part may be amended, modified, or revoked at any time. Unless the Secretary otherwise specifies, the public interest requires that such amendments, modifications, or revocations be made without prior notice.

§ 1000.805 Rules governing availability of information.

Completed Forms FDI-101, -102, -102F, -103, -104, -105, -106, or any other completed forms filed with the Office, applications and requests for specific authorizations, exemptions or interpretations, petitions for reconsideration, appeals, materials submitted thereunder, and decisions thereon are considered to be matters covered by 5 U.S.C. 552(b). Other information, records, and material of the Office of Foreign Direct Investments if required by 5 U.S.C. 552 to be made available to the public shall be available in accordance with the provisions of Department Order 64 of the Secretary of Commerce (32 FR 9643, July 4, 1967) and in accordance with the provisions of Part 4 of this title (32 FR 9643, July 4, 1967).

§ 1000.806 Delegations.

Any function, duty or authority under this part may be performed or exercised by the Secretary or any person, agency or instrumentality designated by him (directly or indirectly by one or more redelegations of authority); and the term "Secretary," as used in this part, shall include any such designated person, agency, or instrumentality, as applicable.

Subpart I—Direct and Indirect Interests; Affiliated, Associated and Family Groups; Ownership of Direct Investors; Rules for Reporting

§ 1000.901 Direct interests.

A direct interest in a person is an interest which is not owned through an intervening person or chain of persons. The amount of a direct interest owned by one person in another person is calculated according to the following rules:

(a) The amount of a direct interest owned by a person in a corporation is the percentage of the total combined voting power of all outstanding securities of the corporation possessing voting power represented by such securities which are beneficially owned by such person or in respect of which such person beneficially owns voting trust certificates, depositary receipts or other similar instruments representing such securities. Voting power means the power presently to vote in the election of the directors of the corporation or, if the corporation does not have directors, in the election or appointment of persons performing management functions or functions supervisory of management.

(b) The amount of a direct interest owned by a person in a partnership, trust, or business venture which is not a corporation is such person's percentage share in the profits of such organization: *Provided,* That if an interest in an such organization shall entitle the owner to a fixed amount out of, rather than a percentage of profits, or another arrangement is in effect which may cause the interest in profits to vary in accordance with future conditions or contingencies, the interest shall be calculated by reference to the proportion of the profits of the organization actually distributed or distributable to such person at the close of the most recent annual accounting period of the organization.

(c) If the rules set forth in paragraphs (a) or (b) of this section are not applicable to a particular corporation, partnership, trust or business venture in which such person owns an interest, the amount of the interest shall be calculated by any reasonable method which fairly reflects the amount thereof.

§ 1000.902 Indirect interests.

An indirect interest in a person is an interest owned through ownership of an intervening person or chain of persons. The amount of an indirect interest owned by one person in another person is calculated by multiplying together the direct interests of each person in the chain in each person in the chain (treating stock of a higher tier corporation held by a lower tier corporation as not outstanding).

§ 1000.903 Affiliated groups.

(a) For purposes of paragraph (b) of this section, an "affiliate" of a person within the United States means any other person (other than an individual), wheresoever located, in which the aggregate of direct interests owned by such

person within the United States and any affiliate or affiliates (as herein defined) of such person exceeds 50 percent.

(b) An "affiliated group" means a person within the United States and all of its affiliates which are persons within the United States; such person and such affiliates are members of the affiliated group. Any person which owns a direct or indirect interest in a member of an affiliated group but which is not itself a member thereof shall be deemed to own a direct or indirect interest, as the case may be, in the affiliated group.

(c) Except as provided in § 1000.906 (b)(1), the members of an affiliated group shall, for all purposes of this part, be considered a single person within the United States.

(d) An affiliated group shall file reports under § 1000.602 in the manner provided in § 1000.907.

§ 1000.904 Family groups.

(a) For all purposes of this part, an individual who is a person within the United States, his spouse (unless legally separated), and all relatives of such individual or his spouse residing with such individual shall be considered a single person within the United States.

(b) A family group shall file reports under § 1000.602 in the manner provided in § 1000.907.

§ 1000.905 Associated groups.

(a) An "associated group" consists of two or more persons within the United States (one or all of which may be an affiliated or family group) which, pursuant to an express or implied agreement or understanding, act in concert to own or acquire interests in the same corporation or partnership organized under the laws of a foreign country or in the same business venture conducted within a foreign country: *Provided,* That, the interests are not owned or acquired through a corporation, partnership (other than a joint venture), or trust which is a person within the United States (without regard to whether the corporation, partnership, or trust is organized or created for the purpose of owning or acquiring such interests); *And provided further,* That the aggregate of such interests would, if owned or acquired by only one of such persons, cause such person to be a direct investor in the corporation, partnership, or business venture under § 1000.305.

(b)(1) Notwithstanding the provisions of § 1000.305, each member of an associated group shall be deemed a direct investor in the corporation, partnership, or business venture in which the interests are owned or acquired (hereinafter referred to as the "group affiliated foreign national") for all purposes of this part: *Provided,* That, a person which is a direct investor by virtue of this paragraph (b)(1) of this section but not by virtue of the provisions of § 1000.305 shall not be subject to the provisions of § 1000.203.

(2)(i) Notwithstanding the provisions of § 1000.503, positive direct investment made during any year, commencing with the year 1970, by members of an associated group that elect § 1000.503 in group affiliated foreign nationals of the associated group shall not be authorized by § 1000.503, unless the aggregate of direct investment made during the year by all such members (being considered for purposes of this subdivision as a single direct investor) in all group affiliated foreign nationals would have been authorized by § 1000.503.

(ii) [Revoked]

(iii) [Revoked]

(3) Unless the election referred to in § 1000.907(c)(2) has been made and approved by the Secretary, each member of an associated group shall file separate reports under § 1000.602 in the manner provided in § 1000.907.

§ 1000.906 Ownership of direct investors.

(a)(1) Unless the election provided for in paragraph (b)(1) of this section is made, no direct investment made or foreign balances held before or after the effective date by a direct investor shall be deemed to have been made or held by any other person within the United States because such other person owns or acquires a direct or indirect interest in such direct investor.

(2) A person within the United States which owns a direct or indirect interest in a direct investor may, depending on all the facts and circumstances of the particular case, be deemed to be acting for or on behalf of the direct investor if such person transfers funds or other property to affiliated foreign nationals of the direct investor.

(b)(1) Persons within the United States owning a direct interest in a direct investor may elect not to be governed by the rule set forth in paragraph (a)(1) of this section: *Provided,* That this election shall not, unless the Secretary in his sole discretion determines otherwise, be available if there are more than 10 persons (whether such persons are persons within the United States or foreign nationals) which own direct interest in such direct investor. For purposes of this paragraph (b) of this section, each member of an affiliated group shall be considered a separate person within the United States.

(2) An election pursuant to paragraph (b)(1) of this section as to any direct investor shall be made with the consent of those persons within the United States owning, in the aggregate, a majority interest in such direct investor. The election shall be evidenced by a document executed by or on behalf of all persons consenting thereto (hereinafter referred to as the "consenting owners") and such documents shall be filed promptly after its execution with the Program Reports Division, Office of Foreign Direct Investments, U.S. Department of Commerce, Washington, D.C. 20230. All persons within the United States owning a direct interest in the direct investor shall be afforded a reasonable opportunity to join in the election and, if any persons within the United States owning a direct interest in the direct investor do not join in the election, the document evidencing the election shall recite that a reasonable opportunity to join in the election was in fact afforded to such persons.

(3)(i) Notwithstanding the provisions of § 1000.305, if an election pursuant to paragraph (b)(1) of this section is made as to any direct investor (hereinafter referred to in this paragraph (3) of this section as the "principal direct investor"), each consenting owner shall be deemed a direct investor in every affiliated foreign national of the principal direct investor for all purposes of this part. The entire amount of direct investment made and foreign balances held by the principal direct investor before and after the effective date shall be deemed to have been made or held by the consenting owners. The portion of such foreign balances and direct investment allocable to each such consenting owner shall be a fraction thereof, the numerator of such fraction to be the direct interest in the principal direct investor owned by such consenting owner and the denominator of such fraction to be the aggregate of the direct interest in the principal direct investor owned by all consenting owners.

(ii) Notwithstanding the provisions of § 1000.503, positive direct investment made (or deemed to have been made under subdivision (i) of this subparagraph) during any year, commencing with the year 1970, by consenting owners that elect § 1000.503 in an affiliated foreign national of the principal direct investor shall not be authorized by § 1000.503, unless the aggregate of direct investment made or deemed to have been made during the year by all consenting and nonconsenting owners electing § 1000.503 (such owners being considered for purposes of this subdivision as a single direct investor) in all affiliated foreign nationals of the principal direct investor would have been authorized by § 1000.503.

(iii) [Revoked]

(iv) [Revoked]

(4) Once an election is made pursuant to paragraph (b)(1) of this section, it may not be changed without the permission of the Secretary.

§ 1000.907 Reporting.

(a) Except as provided in paragraph (b)(3) of this section (or unless a specific exemption from reporting is otherwise available) each person within the United States which is a direct investor by virtue of the provisions of §§ 1000.305, 1000.905(b)(1), or 1000.906(b)(3)(i), other than a direct investor as to which an election has been made under § 1000.906(b)(1), shall file separate reports (including Forms FDI-101 and FDI-102) under § 1000.602.

(b)(1) If a direct investor owns direct interests in one or more other direct investors as to which an election has been made under § 1000.906(b)(1) and such direct investor has consented to

the election, the reports filed by the direct investor shall include, in addition to all other required information, the direct investor's fractional share (computed in accordance with § 1000.906(b)(3)(i)) of the amount of foreign balances, direct investment and other items which such direct investors would have been required to include in their reports if the elections had not been made.

(2) If a direct investor owns indirect interests in one or more other direct investors, or owns direct interests in one or more other direct investors as to which an election has not been made under § 1000.906(b)(1) or as to which such an election has been made but the direct investor has not consented thereto, reports filed by the direct investor shall not include any foreign balances held or direct investment made by such other direct investors during the relevant period before or after the effective date or any other items required to be included in the reports of such other direct investors for such period.

(3) If, by virtue of the provisions of paragraph (b)(2) of this section, a direct investor has no foreign balances or direct investment transactions which are reportable by it for any period before or after the effective date, the direct investor shall not be required to file a Form FDI-101 or FDI-102 for such period.

(c)(1) If a direct investor is a member of one or more associated groups, the reports filed by the direct investor shall include, in addition to all other required information, the net transfers of capital made by the direct investor to all group affiliated foreign nationals during the relevant period, and, if any of the group affiliated foreign nationals are incorporated affiliated foreign nationals as defined in § 1000.304, shall also include the direct investor's proportionate share in the reinvested earnings of such incorporated affiliated foreign nationals during such period. A member of an associated group which is a direct investor under § 1000.905(b)(1) but not under § 1000.305 is not subject to the provisions of § 1000.203, and such member shall not report its foreign balances on Forms FDI-101 or FDI-102.

(2) Notwithstanding the foregoing, the members of an associated group may elect, by a document executed by or on behalf of a majority in interest of the members of the group and filed with the Program Reports Division, Office of Foreign Direct Investments, U.S. Department of Commerce, Washington, D.C. 20230, to have one member of the group file reports under § 1000.602 on behalf of all members, each such report to reflect the aggregate direct investment transactions of all members with all group affiliated foreign nationals during the relevant period before or after the effective date. Such election shall be subject to the approval of the Secretary who may grant such approval subject to any terms and conditions that he deems necessary. Once an election is made pursuant to this paragraph (c)(2) of this section it may not be changed without the permission of the Secretary.

(d) If a direct investor is an affiliated or family group, the reports filed by the direct investor shall aggregate all foreign balances, direct investment transactions and other reportable items attributable to each member of the group. The group's Forms FDI-101 and FDI-102 shall be filed on behalf of the group by one member thereof. Such member shall also file all other reports, certificates, and other documents required to be filed by the group under the provisions of this part.

Subpart J—Repayment of Borrowings

§ 1000.1001 Definitions.

For purposes of this part and General Authorization No. 1 (33 FR 818):

(a) The term "borrowing by an affiliated foreign national" means a borrowing by an affiliated foreign national of a direct investor from any person (other than the direct investor or another affiliated foreign national of the direct investor), including, but not by way of limitation, an extension of credit by any such person to the affiliated foreign national in connection with the purchase of property (including securities) by the affiliated foreign national from such person. Repayment by a direct investor of a borrowing by an affiliated foreign national includes repayment of all interest, premiums and other fees and charges, if any, owing to the lender in connection therewith.

(b) The term "borrowing by a direct investor" means a borrowing by the direct investor, repayment of which by the direct investor would constitute a transfer of capital under § 1000.312(a)(7).

(c) The term "guarantee," when used with respect to a borrowing by an affiliated foreign national, includes (1) a written acknowledgement of secondary responsibility (whether or not legally enforceable) to a bank with respect to the borrowing or with respect to the financial condition of the affiliated foreign national; (2) a written guarantee, endorsement, surety agreement, application for letter of credit or standby agreement with respect to the borrowing; (3) a contingent contractual commitment with respect to the borrowing of the type involved in so-called through-put agreements, take-or-pay contracts, keep-well agreements, and other similar written agreements; and (4) a mortgage, pledge or hypothecation of property as security for repayment of the borrowing, other than a mortgage, pledge or hypothecation to or with a foreign national which constitutes a transfer of capital under § 1000.312(a)(9). The term "guarantee" includes a guarantee given by one affiliated foreign national of a direct investor with respect to a borrowing by another affiliated foreign national of the direct investor if repayment pursuant to the guarantee would result in a transfer of capital by the direct investor under § 1000.505.

(d) The term "bank" means a domestic bank or a foreign bank as described in § 1000.317.

§ 1000.1002 Transfers of capital in connection with repayment of borrowings.

(a) Subject to the provisions of § 1000.1003, positive direct investment by a direct investor during any year in affiliated foreign nationals in any Scheduled Area is authorized, notwithstanding the provisions of § 1000.201, to the extent such positive direct investment is attributable in whole or in part to those transfers of capital by the direct investor (including transfers of capital under § 1000.505) as are described in paragraphs (a)(1) through (6) of this section:

(1) A transfer of capital, pursuant to a guarantee made prior to June 10, 1968, which transfer is made in repayment of, or to enable an affiliated foreign national to repay, a borrowing by such affiliated foreign national: *Provided*, That, in the case of a guarantee made on or after January 1, 1968, the direct investor shall have complied with the certification requirements set forth in section 2(a)(1) of General Authorization No. 1.

(2) A transfer of capital in repayment of, or to enable an affiliated foreign national to repay, a borrowing by such affiliated foreign national from a bank made prior to January 1, 1968, or a borrowing by such affiliated foreign national from a bank made on or after January 1, 1968, pursuant to a fixed loan commitment or line of credit established prior to such date or pursuant to any renewal or extension of such a fixed loan commitment or line of credit: *Provided*, That the liquid assets of the affiliated foreign national are not sufficient to repay such borrowing and that the affiliated foreign national has made every reasonable effort to refinance the borrowing on terms generally available to companies of similar size and financial position; *And provided further*, That, if, on or after January 1, 1968, the amount of such a fixed loan commitment or line of credit is increased by 10 percent or more, a new fixed loan commitment or line of credit shall be deemed to have been established at the time of such increase in an amount equal to the amount of the increase.

(3) A transfer of capital consisting of the delivery of equity securities of the direct investor, pursuant to the exercise of conversion or similar rights, to holders of debt obligations issued by the direct investor or by an affiliated foreign national of the direct investor, without regard to the date the borrowing is made: *Provided*, That, for purposes of § 1000.1003, any such transfer of capital shall be deemed to have been made in the year immediately following the year in which the conversion or similar rights are exercised.

(4) A transfer of capital (other than a transfer referred to in paragraph (a)(3) of this section) in repayment of a borrowing by the direct investor made prior to June 10, 1968: *Provided*, That with respect to a borrowing made on or after January 1, 1968, the direct investor shall

have complied with the certification requirements set forth in section 2(b) of General Authorization No. 1.

(5) A transfer of capital, pursuant to a guarantee made on or after June 10, 1968, which transfer is made in repayment of, or to enable an affiliated foreign national to repay, a borrowing by such affiliated foreign national: *Provided,* That the direct investor shall have complied with the certification requirements set forth in paragraph (b) of this section.

(6) A transfer of capital (other than a transfer referred to in paragraph (a)(3) of this section) in repayment of a borrowing by the direct investor made on or after June 10, 1968: *Provided,* That the direct investor shall have complied with the certification requirements set forth in paragraph (b) of this section.

(b) The certificate required by paragraphs (a)(5) and (6) of this section shall (after June 9, 1969) be made on Form FDI-106, and shall, except as otherwise provided in paragraph (e)(3) of this section, be delivered to the Secretary not later than 10 days after the date of the borrowing by the direct investor or the date of the guarantee of the borrowing by the affiliated foreign national, as the case may be. It shall be executed by the direct investor or a duly authorized representative of the direct investor, shall state the amount of the borrowing, and the amount of the required principal repayment, shall identify the lender (or the managing underwriter, if the borrowing involves a public offering), and shall certify as follows:

(1) If the direct investor believes, on the basis of all facts and circumstances existing when the certificate is delivered to the Secretary, that it will not make any transfers of capital in connection with repayment of the borrowing within 7 years after the date of the borrowing (or the date of the guarantee, if the borrowing is by an affiliated foreign national), the certificate shall state such belief and the reasons therefor.

(2) If the direct investor believes, on the basis of all facts and circumstances existing when the certificate is delivered to the Secretary, that it will make transfers of capital in connection with repayment of the borrowing within the aforesaid 7-year period, but also believes, on the basis of such facts and circumstances, that no positive direct investment by the direct investor in any scheduled area during any year will result in whole or in part from such transfers, or that any positive direct investment in any scheduled area which does result from such transfers will be authorized by this part (otherwise than by this section), the certificate shall state such beliefs and the reasons therefor.

(c) In determining whether a transfer of capital in connection with the repayment of a borrowing will be made within 7 years from the date of the borrowing or the guarantee thereof, as the case may be, and whether any such transfer will result in unauthorized positive direct investment during any year:

(1) A direct investor may disregard the possible occurrence of events (such as defaults by the direct investor or the borrowing affiliated foreign national, as the case may be), which are not reasonably likely to occur in view of the facts and circumstances existing when the certificate is delivered to the Secretary;

(2) A direct investor may disregard potential transfers of capital resulting from conversions into equity securities of the direct investor of the debt obligation as to which the certificate is being given and of other convertible debt obligations issued by the direct investor or affiliated foreign nationals of the direct investor: *Provided,* That potential transfers of capital resulting from conversions of debt obligations issued on or after June 10, 1968, shall not be disregarded if (i) the obligations have an original maturity of less than 7 years or (ii) the obligations are not sold in a public offering and are convertible within 3 years from the date of issuance; and

(3) A direct investor must consider, if a guaranteed borrowing by an affiliated foreign national is involved, whether the borrowing affiliated foreign national is reasonably likely to have sufficient financial resources to repay the borrowing after such affiliated foreign national (and all other affiliated foreign nationals in the same scheduled area) have paid all dividends or remittance which they may be required to pay by virtue of the limitations imposed in this part on positive direct investment.

(d) Notwithstanding the provisions of paragraph (a) of this section, no positive direct investment resulting from repayment of a borrowing shall be authorized by this subpart if repayment is made at the option of the direct investor. For purposes hereof, a repayment shall be deemed to have been made at the option of a direct investor if it was made pursuant to a call or like provision resting control of the time of repayment in the direct investor or an affiliated foreign national or if, at the time of repayment, the direct investor or an affiliated foreign national had the option to renew, extend or continue the borrowing and such option was not exercised.

(e) For purposes of this part and of General Authorization No. 1:

(1) A borrowing by a direct investor or an affiliated foreign national shall be deemed to have been made on the date the proceeds thereof are received by the borrower or, if an extension of credit in connection with the purchase of property is involved, on the date such property is purchased. Notwithstanding the foregoing, (i) if a borrowing involves a public offering of debt obligations, the borrowing shall be deemed to have been made on the date the obligations are issued and (ii) if a borrowing involves the use of an overdraft facility, the borrowing shall be deemed to have been on the date the overdraft is used.

(2) The refinancing by a direct investor of a foreign borrowing or a long-term foreign borrowing in accordance with the provisions of § 1000.324(b)(1), or the refinancing of a borrowing by an affiliated foreign national (by renewal, extension or continuance of such borrowing or by making a subsequent borrowing from the same or another lender), shall not be deemed a repayment of the original borrowing or the making of a new borrowing.

(3) If funds are to be borrowed by a direct investor or an affiliated foreign national pursuant to an arrangement with a lender (such as a line of credit or revolving credit arrangement) whereby the funds may be taken down from time to time over a specified period up to a stated maximum aggregate amount (or pursuant to a renewal or extension of such an arrangement), the direct investor may, in lieu of filing a separate certificate as to each take-down which constitutes a borrowing, file a single certificate with respect to all such borrowings, such certificate to be filed on or prior to the date of the first borrowing under the arrangement or under the renewal or extension thereof, as the case may be.

§ 1000.1003 Effect of transfers of capital in repayment of borrowings.

(a) For the purposes of this § 1000.1003, the term "repayment charge" shall mean an amount equivalent to the amount of positive direct investment made by a direct investor pursuant to § 1000.1002. A repayment charge shall be incurred by a direct investor in any year in which positive direct investment is made pursuant to § 1000.1002.

(b) The amount of positive direct investment authorized to be made by a direct investor under Subparts E and M of this part shall be reduced as provided in paragraphs (c) and (d) of this section until reductions equal in the aggregate to the repayment charge shall have been made.

(c)(1) In any year, commencing with the year 1973, in which a repayment charge is incurred, the amount of positive direct investment authorized to be made by the direct investor shall be reduced and, except as hereinafter provided, such reduction shall be made first in the amount of positive direct investment authorized under Subpart E of this part in the scheduled area in which the positive direct investment under § 1000.1002 was made, and, to the extent that the repayment charge exceeds the amount of positive direct investment so authorized in such scheduled area, further reduction shall be made in the amount of positive direct investment authorized under Subpart E of this part in Schedules C, B, and A, in that order, and then in the amount of positive direct investment authorized under Subpart M of this part: *Provided,* That a direct investor electing to be governed by § 1000.503 that makes negative direct investment, as defined in § 1000.306, may decrease the amount of the repayment charge in the amount of such negative direct investment: *And provided further,* That the amount of the reduction of the amount of positive direct

investment authorized under Subpart E or M of this part shall not exceed the repayment charge (as decreased by negative direct investment), and that such reduction shall not reduce authorized positive direct investment under said subparts in any year to an amount less than zero.

(2) Reductions under paragraph (c)(1) of this section in the amount of positive direct investment authorized under Subpart E of this part shall be made first on the aggregate amount of positive direct investment authorized under § 1000.503 or § 1000.504, whichever is elected by the direct investor for the year, and then in the amount of positive direct investment authorized under § 1000.506.

(3) Reductions under paragraph (c)(1) of this section in the amount of positive direct investment authorized in Schedule C pursuant to § 1000.504 shall be made first in the amount of authorized positive direct investment under § 1000.504 (a) and (c) or (b), (d)(3), and (f)(3)(i), and then in the amount of authorized reinvested earning under § 1000.504 (e) and (f)(3)(ii).

(4) Reductions in the amount of authorized positive direct investment under paragraph (c)(1) of this section for a repayment charge attributable to transfers of capital primarily related to operations in foreign air transportation by direct investors described in § 1000.1302(a) shall be made first in the amount of authorized positive direct investment under Subpart M of this part.

(5) [Revoked]

(d) If the repayment charge incurred in any year exceeds the amount of authorized positive direct investment reduced under this section, reductions shall be made in each succeeding year in the same manner and order as set forth in paragraph (c) of this section.

General Authorization No. 1—Transfers of Capital. (REVOKED), superseded by Subpart J, Repayment of Borrowings).

Subpart K—Direct Investment in Canada

§ 1000.1101 Definitions.

(a) The term "Canadian affiliate" of a direct investor means an affiliated foreign national of the direct investor in Canada.

(b) The term "Non-Canadian Scheduled B affiliate" of a direct investor means an affiliated foreign national of the direct investor in a Schedule B country other than Canada.

(c) The term "Canadian bank" includes any branch or office within Canada of any of the following: Any bank or trust company organized under the banking laws of Canada or any province thereof, or any private bank or banker subject to supervision and examination under the banking laws of Canada or any province thereof.

(d) The term "Canadian person" means an individual who is a resident of Canada, a Canadian bank, and a Corporation or other entity (other than a bank) organized under the laws of Canada or any political subdivision thereof.

§ 1000.1102 Authorized positive direct investment in Canada.

Positive direct investment by a direct investor during any year in Canadian affiliates of the direct investor is authorized, without limitation as to amount.

§ 1000.1103 Net transfers of capital to Schedule B countries.

(a) For purposes of determining the net transfer of capital by a direct investor to all incorporated affiliated foreign nationals of the direct investor in Schedule B countries during any period (including the years 1965 and 1966) under § 1000.313(a), there shall be included only (1) the aggregate of all transfers of capital made during such period by the direct investor to incorporated Non-Canadian Schedule B affiliates of the direct investor less (2) the aggregate of all transfers of capital made during such period by such incorporated Non-Canadian Schedule B affiliates to the direct investor.

(b) For purposes of determining the net transfer of capital by a direct investor to all unincorporated affiliated foreign nationals of the direct investor in Schedule B countries during any period (including the years 1965 and 1966) under § 1000.313(b), there shall be included only the direct investor's share of the aggregate net assets of unincorporated Non-Canadian Schedule B affiliates of the direct investor.

(c) The provisions of § 1000.505(b) relating to the extension of short-term trade credits from one affiliated foreign national of a direct investor to another affiliated foreign national of the direct investor shall not be applicable if either the affiliated foreign national extending the credit or the affiliated foreign national receiving the credit is a Canadian affiliate.

(d) [Revoked]

§ 1000.1104 Reinvested earnings—Schedule B countries.

(a) For purposes of determining a direct investor's share in the total reinvested earnings of all incorporated affiliated foreign nationals of the direct investor in Schedule B countries during any period (including the years 1965 and 1966) under § 1000.306(a)(2), there shall be included only the direct investor's share in the total reinvested earnings of all incorporated Non-Canadian Schedule B affiliates of the direct investor during such period.

(b) In determining the direct investor's share in the total reinvested earnings of all incorporated Non-Canadian Schedule B affiliates during any period pursuant to § 1000.306(b), all incorporated and unincorporated Canadian affiliates of the direct investor shall be deemed to be in a scheduled area other than Schedule B.

§ 1000.1105 Foreign balances.

(a) The term "Canadian foreign balances" means (1) money on deposit in a Canadian bank (including fixed interest deposits of a Canadian bank); (2) negotiable instruments, nonnegotiable instruments or commercial paper of Canadian persons; and (3) securities issued or guaranteed by the Government of Canada or any political subdivision thereof or by any agency or instrumentality of the Government of Canada or any such political subdivision.

(b) For purposes of § 1000.203(c), the average end-of-month amounts of liquid foreign balances (other than direct investment liquid foreign balances) held by a direct investor during 1965 and 1966 and as of the end of any month commencing June 1968 shall be calculated by excluding all such liquid foreign balances then held by the direct investor which constitute Canadian foreign balances.

(c) [Revoked]

§ 1000.1106 Long-term foreign borrowing.

For all purposes of this part, a borrowing by a direct investor from a Canadian person, whether before or after the effective date, shall not be deemed a "long-term foreign borrowing": *Provided*, That, a borrowing involving the public offering, prior to April 1, 1968, of instruments of indebtedness of a direct investor, shall be considered a long-term foreign borrowing in its entirety if less than 25 percent of the aggregate principal amount of such instruments was sold to Canadian persons, or, if 25 percent or more of the aggregate principal amount of such instruments was sold to Canadian persons, the borrowing shall be considered a long-term foreign borrowing to the extent of the aggregate principal amount which the direct investor proves, to the satisfaction of the Secretary, to have been sold to persons other than Canadian persons: *And provided further*, That, a borrowing involving the public offering, on or after April 1, 1968, of instruments of indebtedness of a direct investor, shall be considered a long-term foreign borrowing in its entirety if such instruments are sold through underwriters in accordance with agreements limiting such sales to persons other than Canadian persons (other than sales to underwriters or securities dealers who are Canadian persons but who agree that they are purchasing such instruments as principals for resale to persons who are not Canadian persons and sales to agents or fiduciaries who are Canadian persons but who are acting for the benefit of persons who are not Canadian persons).

§ 1000.1107 Canadian program.

If a program for governing transfers of capital to foreign countries or the nationals thereof by Canadian affiliates and other Canadian business ventures shall hereafter be instituted by the Canadian Government or by any department or agency thereof (which program is consistent with the purposes of the regulations), the regulations will be amended appropriately with respect to transfers of capital to or from Canadian affiliates of a direct investor certified as subject to

or participating in such program by the Canadian Government or such department or agency.

Subpart L—Exploration and Development Expenditures

(Proposed but Withdrawn Prior to adoption; see Federal Register, Vol. 34, No. 122—Thursday, June 26, 1969)

Subpart M—Affiliated Foreign Nationals of Air Carriers Engaged in Foreign Air Transportation

§ 1000.1301 Exclusions.

(a) For purposes of determining transfers of capital to incorporated or unincorporated affiliated foreign nationals, for any period (including the years 1965 and 1966), a direct investor who is an "air carrier" or "supplemental air carrier", engaged in "foreign air transportation" as those terms are defined in the Federal Aviation Act of 1958 as amended, 49 U.S.C. § 1301 (3), (21), and (32), may elect to exclude from such transfers (i) flight equipment expendable parts described in Civil Aeronautics Board asset account number (CAB No.) 1310, (ii) aircraft engines described in CAB No. 1602, and (iii) flight equipment rotable parts and assemblies described in CAB No. 1608; *Provided,* That if such assets are so excluded, the direct investor shall also exclude, in calculating the amount of such transfers, reserves for depreciation or obsolescence or like reserves associated with such assets, and shall exclude all charges to depreciation expense or any other charges against earnings associated with such assets; *And provided further,* That such assets are reasonably necessary to the direct investor's operations in foreign air transportation.

(b) The election provided under this section shall be made as to any compliance year commencing with 1968 by stating that a § 1000.1301 election is made on the cover page of the last quarterly report for such year on Form FDI-102 timely filed by the direct investor pursuant to § 1000.602(b)(2) and by filing with said Form FDI-102, if not previously filed, an appropriately revised base period report on Form FDI-101. An election made pursuant to this section shall be binding and effective as to all assets meeting the requirements of paragraph (a) of this section and shall be binding and effective as to the year for which the election is made and for all succeeding years. Such an election may not thereafter be changed without the consent of the Secretary.

§ 1000.1302 Foreign air transport allowable.

(a) Positive direct investment by a direct investor who is an "air carrier" or "supplemental air carrier" engaged in "foreign air transportation" as those terms are defined in the Federal Aviation Act of 1958, as amended, 49 U.S.C. § 1301 (3), (21), and (32), and who elects under § 1000.502(a) (2) or (3), is authorized during any year commencing with the year 1971 in an amount not to exceed 40 percent of aggregate annual foreign air transport earnings for the immediately preceding year: *Provided,* That such positive direct investment is primarily related to the direct investor's operations in foreign air transportation.

(b) "Aggregate annual foreign air transport earnings" for any year shall mean operating profit from international and territorial route operations as properly reported by the direct investor for such year for Civil Aeronautics Board (CAB) income statement account number 7999 minus (1) annual net interest expense (including amortization of debt discount less capitalized interest) or amortization charges related to investment in international and territorial route operations as properly reported on and included in CAB Schedule P-3 or comparable nondivisional report; (2) taxes assessed by foreign countries and primarily related to the direct investor's operations in foreign air transportation; and (3) Federal subsidy as properly reported in CAB account number 4100.

(c) (1) If, during any year commencing with the year 1969, the amount of positive direct investment authorized under § 1000.504 to a direct investor governed by this section exceeds the amount of direct investment (whether positive or negative) not primarily related to the direct investor's operations in foreign air transportation made by the direct investor during such year under § 1000.504, the direct investor is authorized to make additional positive direct investment as provided in paragraph (a) of this section during such year or succeeding years: *Provided,* That the aggregate amount of additional positive direct investment authorized by this subparagraph shall not be more than the amount of such excess, and that the amount of positive direct investment authorized to the direct investor under § 1000.504 shall be reduced by the amount of additional positive direct investment made under this subparagraph.

(2) If, during any year commencing with the year 1969, the amount of positive direct investment authorized to a direct investor under paragraph (a) of this section exceeds the amount of direct investment (whether positive or negative) made by the direct investor during such year under paragraph (a) of this section, the direct investor is authorized to make additional positive direct investment as provided in paragraph (a) of ths section during succeeding years in a aggregate amount of not more than the amount of such excess.

(d) A direct investor governed by this section shall recalculate the amount of positive direct investment authorized to be made in any year commencing with the year 1971 under § 1000.504 (a) and (b) to exclude from the calculation of direct investment during the years 1965 and 1966 under § 1000.504(a), and from the calculation of annual earnings during any year under § 1000.504(b)(4), transfers of capital primarily related to the direct investor's operations in foreign air transportation, aggregate annual foreign air transport earnings and all component accounts and charges associated with such earnings, and all reserves or charges against earnings associated with such transfers.

(e) A direct investor governed by this section shall file on or before June 30, 1969, a revised Base Period Report on Form FDI-101 to exclude any direct investment primarily related to foreign air transportation, and shall thereafter file separate Cumulative Quarterly Reports and Annual Reports on Forms FDI-102 and FDI-102F as provided in § 1000.602 (b) (2) and (3) with respect to direct investment governed by this section and with respect to direct investment not so governed.

§ 1000.1303 Adjustment to incremental earnings allowable.

(a) For direct investors governed by § 1000.1302, "aggregate annual earnings" under § 1000.506(a)(1) shall mean the sum of "aggregate annual foreign air transport earnings" as defined in § 1000.1302(b) plus the algebraic sum of such direct investor's annual earnings (as calculated under §§ 1000.504(b)(4) and 1000.1302(d)) during a year in all scheduled areas.

(b) All reference to § 1000.504 in § 1000.506(a)(4) and (c) shall be deemed to include reference to § 1000.1302(a).

Subpart N—Overseas Finance Subsidiaries

§ 1000.1401 Definitions.

(a) "Overseas finance subsidiary" of a direct investor means an affiliated foreign national which:

(1) Is incorporated under the laws of a foreign country other than Canada;

(2) Is directly or indirectly wholly owned (disregarding directors' qualifying shares) by the direct investor;

(3) Has as its principal business making overseas borrowing (as defined in paragraph (b) of this section) and investing overseas proceeds (as defined in paragraph (c) of this section) in (i) debt obligations of the direct investor and (ii) debt obligations of or equity securities in affiliated foreign nationals of the direct investor; and

(4) Has been qualified as an overseas finance subsidiary pursuant to § 1000.1402(a).

(b) "Overseas borrowing" means borrowing by an overseas finance subsidiary which, if made by a direct investor, would qualify as long term foreign borrowing under § 1000.324.

(c) "Overseas proceeds" means the funds or other property received by an overseas finance subsidiary from the first purchaser or holder in exchange for the debt obligation issued or created in connection with an overseas borrowing, less reductions provided for in § 1000.1404.

(d) "Available overseas proceeds" means overseas proceeds held by the overseas finance subsidiary.

(e) "Proceeds borrowing" means a borrowing by a direct investor from its overseas finance subsidiary of overseas proceeds, (1) which borrowing is continuously outstanding for at least 12 months after the date of the borrowing

and (2) in exchange for which borrowing the overseas finance subsidiary receives and thereafter holds a debt obligation of the direct investor until such borrowing is repaid or until such debt obligation is canceled.

§ 1000.1402 Qualification.

(a) *Certificate.* An affiliated foreign national may be qualified as an overseas finance subsidiary for any year, commencing with the year 1970, if its direct investor shall have delivered to the Secretary in such year or in any prior year a certificate executed by the direct investor, or its duly authorized representative, which certificate states that:

(1) The affiliated foreign national has been organized as provided in § 1000.1401 (a)(1), is owned as provided in paragraph (a)(2) of that section and is operating so that its principal business is as provided in paragraph (a)(3) of that section; and

(2) The direct investor will take all action necessary to cause such affiliated foreign national at all times to operate in the manner provided in § 1000.1401 (a)(3).

(b) *Records.* A direct investor shall maintain books and records that identify separately each overseas borrowing and proceeds borrowing, the uses to which all overseas proceeds have been put, and all repayments of proceeds borrowing and overseas borrowing.

(c) *Revocations.* Qualifications as an overseas finance subsidiary may not thereafter be withdrawn or canceled by the direct investor except as permitted by the Secretary by authorization, exemption or otherwise. The Secretary may revoke the qualification of an affiliated foreign national as an overseas finance subsidiary if he determines, in his discretion, that such affiliated foreign national was not organized as provided in § 1000.1401(a)(1), is not owned as provided in paragraph (a)(2) of that section, is not operating so that its principal business is as provided in paragraph (a)(3) of that section, or has not complied with paragraph (b) of this section.

(d) *Effect on certain specific authorizations.* Any foreign-incorporated finance subsidiary of a direct investor which, pursuant to specific authorization issued under § 1000.801, has been deemed to be a person within the United States or an unaffiliated foreign lender, shall, beginning January 1, 1970, be governed in all respects by the provisions of this subpart in lieu of the provisions and conditions of such specific authorization, except that no certificate need be filed pursuant to paragraph (a) of this section.

§ 1000.1403 Transfers of overseas proceeds; foreign balances.

(a) *Transfers of overseas proceeds.* (1) The transfer of funds or other property in proceeds borrowing shall not be a transfer of capital under § 1000.312(b). For all purposes of this part, the funds or other property received by the direct investor in exchange for the debt obligation issued or created in connection with a proceeds borrowing shall be treated as available proceeds of long-term foreign borrowing (as defined in § 1000.324(d)).

(2) Notwithstanding the provisions of § 1000.505, the transfer of overseas proceeds by an overseas finance subsidiary in the acquisition of an equity interest in or a debt obligation of another affiliated foreign national of the direct investor shall not be included by the direct investor in the calculation of net transfer of capital under § 1000.313.

(3) Notwithstanding the provisions of § 1000.505, the return of overseas proceeds to an overseas finance subsidiary upon the satisfaction, liquidation, sale or other disposition of an equity interest or debt obligation acquired pursuant to paragraph (a)(2) of this section shall not be included by the direct investor in the calculation of net transfer of capital under § 1000.313.

(b) *Foreign balances.* (1) Foreign balances, as defined in § 1000.203(a)(1), held in liquid form by an overseas finance subsidiary, other than (i) available overseas proceeds and (ii) funds contributed to an overseas finance subsidiary as original or additional equity capital, shall be included in the computation of liquid foreign balances held by the direct investor for purposes of § 1000.203(c).

(2) [Revoked]

§ 1000.1404 Repayment of overseas borrowing and proceeds borrowing.

(a) For the purposes of this subpart, repayment by a direct investor of overseas borrowing shall mean (i) the complete or partial repayment by the direct investor directly of overseas borrowing and (ii) complete or partial repayment by the direct investor of proceeds borrowing to enable the overseas finance subsidiary to repay overseas borrowing. Notwithstanding the provisions of § 1000.312(a) (6) and (7), a repayment by the direct investor of overseas borrowing or a repayment by the direct investor of proceeds borrowing shall have the effect prescribed by subparagraphs (1) through (6) of this paragraph:

(1) Any repayment by the direct investor of overseas borrowing or proceeds borrowing shall constitute a reduction of available proceeds of long-term foreign borrowing held by the direct investor pursuant to § 1000.1403(a)(1). Overseas proceeds which became available proceeds of long-term foreign borrowing pursuant to such section shall be reduced in the same amount.

(2) The amount of any repayment by the direct investor or overseas borrowing or proceeds borrowing that exceeds the aggregate amount of reduction of available proceeds pursuant to subparagraph (1) of this paragraph shall constitute a transfer of capital to each scheduled area in proportion to and to the extent that the direct investor has expended or allocated to each such scheduled area available proceeds of long-term foreign borrowing and has made a deduction under § 1000.203(d)(2), § 1000.203(d)(3), § 1000.306(e), or § 1000.313(d)(1). Overseas proceeds so expended or allocated shall be reduced in the amount of transfers of capital to scheduled areas prescribed by this subparagraph.

(3) The amount of any repayment by the direct investor of overseas borrowing or proceeds borrowing that exceeds the aggregate amount of reduction of available proceeds pursuant to subparagraph (1) of this paragraph and the aggregate amount of transfers of capital pursuant to subparagraph (2) of this paragraph shall constitute a transfer of capital under § 1000.312(a) to each scheduled area in proportion to and to the extent that the overseas finance subsidiary has, as of the time of repayment, transferred overseas proceeds to other affiliated foreign nationals of the direct investor pursuant to § 1000.1403(a)(2). Overseas proceeds held by such affiliated foreign nationals shall be reduced by an amount equal to the transfers of capital prescribed by this subparagraph.

(4) The amount of any repayment by the direct investor of overseas borrowing or proceeds borrowing that exceeds the aggregate amount of (i) the reduction of available proceeds pursuant to subparagraph (1) of this paragraph and (ii) transfers of capital pursuant to subparagraphs (2) and (3) of this paragraph, shall constitute a transfer of capital under § 1000.312(a) to the scheduled area in which the overseas finance subsidiary is incorporated. Overseas proceeds held by the overseas finance subsidiary at the time of the repayment shall be reduced by an amount equal to the transfer of capital prescribed by this subparagraph.

(5) For purposes of subparagraphs (2), (3), and (4) of this paragraph, transfers of capital resulting from the delivery of equity securities of a direct investor to holders of debt instruments issued by the overseas finance subsidiary in connection with an overseas borrowing, pursuant to the exercise of conversion or similar rights, shall be deemed to have been made in the year immediately following the year in which the conversion or similar rights are exercised.

(6) The aggregate amount of transfers of capital and reduction of available proceeds of long-term foreign borrowing pursuant to paragraphs (a)(1) through (4) of this section and paragraph (b) of this section shall not exceed the amount of overseas proceeds (calculated without regard to the provisions of paragraphs (a)(1) through (4) of this section): *Provided,* That any transfer of funds or other property, in partial or complete repayment by the direct investor of proceeds borrowing, which repayment is made after complete repayment of the overseas borrowing, shall be a transfer of capital to the scheduled area in which such overseas finance subsidiary is incorporated.

(b) For purposes of this subpart, repayment by the overseas finance subsidiary of overseas borrowing shall mean the complete or partial repayment of overseas borrowing other than with funds

or other property supplied to the overseas finance subsidiary by the direct investor to enable the overseas finance subsidiary to repay overseas borrowing. A repayment by the overseas finance subsidiary of overseas borrowing shall have the effect prescribed by subparagraphs (1) and (2) of this paragraph:

(1) The complete or partial repayment by an overseas finance subsidiary of overseas borrowing shall reduce available overseas proceeds, but not to an amount less than zero. Overseas proceeds held by the overseas finance subsidiary shall be reduced by an amount equal to the reduction of available overseas proceeds prescribed by this subparagraph.

(2) The amount of any repayment by an overseas finance subsidiary of overseas borrowing that exceeds the reduction of available overseas proceeds pursuant to subparagraph (1) of this paragraph shall be treated as a repayment by the direct investor of overseas borrowing with the effects prescribed by paragraph (a) of this section.

(c) Notwithstanding the provisions of § 1000.505, the complete or partial repayment by an affiliated foreign national (other than an overseas finance subsidiary) of overseas borrowing shall be treated as a repayment by the direct investor of overseas borrowing, with the effects prescribed by paragraph (a) of this section: *Provided,* That such repayment shall also be treated as a transfer from such affiliated foreign national to the direct investor in the amount of such repayment.

§ 1000.1405 Authorized repayments.

(a) Overseas borrowing shall be deemed to be a borrowing by an affiliated foreign national within the meaning of § 1000.1001(a). A borrowing by an overseas finance subsidiary other than an overseas borrowing shall not be deemed to be a borrowing by an affiliated foreign national for any purposes of this part.

(b) Subject to the provisions of § 1000.1003, positive direct investment during any year in affiliated foreign nationals in any scheduled area is authorized, notwithstanding the provisions of § 1000.201, to the extent such positive direct investment is attributable to a transfer of capital in repayment of overseas borrowing pursuant to a guarantee: *Provided,* That the direct investor shall have complied with the certification requirements set forth in § 1000.1002(b).

(c) For the purposes of § 1000.1002(b) and (c), the term "transfer of capital" shall include a transfer of capital attributable to a repayment of overseas borrowing pursuant to § 1000.140(a).

(d) All reference to Subpart J in § 1000.1002(d) and all reference to § 1000.1002 in § 1000.1003 shall be deemed to include reference to paragraph (b) of this section.

§ 1000.1406 Substitution of borrowing.

(a) To the extent that a foreign borrowing (as defined in § 1000.324(a)(1)) is substituted for a proceeds borrowing, as defined in § 1000.1401(e), or for other borrowing by a direct investor from its overseas finance subsidiary that would qualify as a proceeds borrowing under § 1000.1401(e) if such borrowing and the underlying borrowing by the overseas finance subsidiary were continuously outstanding for at least 12 months, such foreign borrowing shall, for the purposes of this part, be treated as a continuance of such proceeds borrowing or other borrowing by the direct investor from its overseas finance subsidiary: *Provided,* That repayment of such foreign borrowing shall reduce proceeds of long-term foreign borrowing or involve a transfer of capital, or both, as prescribed under §§ 1000.324(c) and 1000.312(a)(7).

(b) To the extent that a proceeds borrowing, as defined in § 1000.1401(e), or other borrowing by a direct investor from its overseas finance subsidiary that would qualify as a proceeds borrowing under § 1000.1401(e) if such borrowing and the underlying borrowing by the overseas finance subsidiary were continuously outstanding for at least 12 months, is substituted for a foreign borrowing (as defined in § 1000.324(a)(1)), such proceeds borrowing or other borrowing by the direct investor from its overseas finance subsidiary shall, for the purposes of this part, be treated as a continuance of such foreign borrowing: *Provided,* That repayment of such borrowing from the overseas finance subsidiary or underlying foreign borrowing shall have the effect prescribed under § 1000.1404.

(c) A substitution under paragraph (a) or (b) of this section shall be made on the books and records maintained by the direct investor under §§ 1000.203 (b), 1000.601, and 1000.1402(b).

§ 1000.1407 Assumption of debt obligation incurred by overseas finance subsidiary.

(a) To the extent that a direct investor, pursuant to an election under section 4912(c) of the Internal Revenue Code of 1954, as amended, assumes the obligation to repay overseas borrowing incurred by an overseas finance subsidiary, such assumption is foreign borrowing as defined in § 1000.324(a)(1) and also shall have the effect prescribed by subparagraphs (1) through (5) of this paragraph:

(1) To the extent of available overseas proceeds of such overseas borrowing held by the overseas finance subsidiary at the time of assumption, such assumption shall constitute a transfer of capital by the direct investor to the overseas finance subsidiary.

(2) The amount of such assumption that exceeds the amount of the transfer of capital pursuant to subparagraph (1) of this paragraph shall constitute a transfer of capital by the direct investor to each scheduled area in proportion to and to the extent of the amount of overseas proceeds of such overseas borrowing that have been transferred by the overseas finance subsidiary to other affiliated foreign nationals in such scheduled area pursuant to § 1000.1403(a)(2) and are held by such affiliated foreign nationals at the time of assumption.

(3) The amount of such assumption that exceeds the aggregate amount of transfers of capital pursuant to subparagraphs (1) and (2) of this paragraph shall constitute foreign borrowing substituted for proceeds borrowing pursuant to § 1000.1406(a) to the extent that overseas proceeds of such overseas borrowing have been transferred by the overseas finance subsidiary to the direct investor in a proceeds borrowing, as defined in § 1000.1401(e), that is outstanding at the time of assumption.

(4) The amount of such assumption that exceeds the aggregate amount of transfers of capital pursuant to subparagraphs (1) and (2) and substituted foreign borrowing pursuant to subparagraph (3) of this paragraph shall constitute foreign borrowing made by the direct investor on the date of the assumption.

(5) Overseas proceeds of such overseas borrowing shall be reduced by the amount of such assumption or the amount of such proceeds, whichever is less.

(b) To the extent that a direct investor, pursuant to an election under section 4912(c) of the Internal Revenue Code of 1954, as amended, assumes the obligation to repay borrowing incurred by an overseas finance subsidiary that would qualify as overseas borrowing if it were continuously outstanding for at least 12 months but at the time of such assumption has not so qualified, such assumption is foreign borrowing as defined in § 1000.324(a)(1) and also shall have the effect prescribed by subparagraphs (1) through (4) of this paragraph:

(1) To the extent that proceeds of such borrowing by the overseas finance subsidiary are held by the overseas finance subsidiary at the time of assumption, such assumption shall constitute a transfer of capital by the direct investor to the overseas finance subsidiary.

(2) The amount of such assumption that exceeds the amount of the transfer of capital pursuant to subparagraph (1) of this paragraph shall constitute a transfer of capital by the direct investor to each scheduled area in proportion to and to the extent of the amount of proceeds of such borrowing by the overseas finance subsidiary that have been transferred by the overseas finance subsidiary to other affiliated foreign nationals in such scheduled area pursuant to § 1000.1403(a)(2) and are held by such affiliated foreign nationals at the time of assumption.

(3) The amount of such assumption that exceeds the aggregate amount of transfers of capital pursuant to subparagraphs (1) and (2) of this paragraph shall constitute foreign borrowing substituted for borrowing by a direct investor from its overseas finance subsidiary pursuant to § 1000.1406(a) to the extent that proceeds of such borrowing by the overseas finance subsidiary have been transferred by the overseas finance

subsidiary to the direct investor in a borrowing that is outstanding at the time of assumption and would qualify as proceeds borrowing under § 1000.1401(e) if such borrowing and the underlying borrowing by the overseas finance subsidiary were continuously outstanding for at least 12 months.

(4) The amount of such assumption that exceeds the aggregate amount of transfers of capital pursuant to subparagraphs (1) and (2) and substituted foreign borrowing pursuant to subparagraph (3) of this paragraph shall constitute foreign borrowing made by the direct investor on the date of assumption.

(c) An asumption under paragraph (a) or (b) of this section shall be reported on the books and records maintained by the direct investor under §§ 1000.203(b), 1000.601 and 1000.1402 (b).

GENERAL AUTHORIZATIONS

1 Transfers of capital. (REVOKED, superseded by Subpart-J, Repayment of Borrowings).
2 Limited authorization to refrain from repatriation. (REVOKED)
3 Authorized transfers of capital. (REVOKED)
4 Canada—Application of foreign direct investment regulations. (Proposed but withdrawn prior to adoption; superseded by Subpart-K, Direct Investment in Canada).

GENERAL INTERPRETATIVE RULES

1 § 1000.312—Transfer of capital. (REVOKED)
2 General Authorization 1(2)(b)—Certificate. (REVOKED)
3 § 1000.312—Transfer of capital. (REVOKED)

IDENTITY OF COUNTRIES IN SCHEDULES A, B, AND C

For the information of the public, there follow the names of the countries allocated to Schedule A, Schedule B, and Schedule C pursuant to § 1000.319 of the Foreign Direct-Investment Regulations. Determination of the schedule of any country, territory, department, province or possession under § 1000.319 depends upon its classification as to less developed country status under § 4916(b) of the Internal Revenue Code, and applicable Executive orders thereunder, administered by the Department of the Treasury. Since no official enumeration of less developed countries has been promulgated pursuant to § 4916(b), the lists below cannot be either definitive or exhaustive.

I. Schedule A Countries

Afghanistan.
Algeria.
Angola.
Anguilla.
Antigua.
Argentina.
Bangladesh.
Barbados.
Belize.
Bhutan.
Bolivia.
Botswana.
Brazil.
British Indian Ocean Territory.
British Solomon Islands.
British Virgin Islands.
Brunei.
Burma.
Burundi.
Cambodia.
Cameroon.
Canton and Enderbury Islands.

I. Schedule A Countries—Continued

Cape Verde.
Central African Republic.
Chad.
Chile.
China, Republic of.
Christmas Island.
Cocos (Keeling) Islands.
Colombia.
Comoro Islands.
Congo.
Cook Islands.
Costa Rica.
Cyprus.
Dahomey.
Dominica.
Dominican Republic.
Ecuador.
El Salvador.
Egypt.
Equatorial Guinea.
Ethiopia.
Faeroe Islands.
Falkland Islands.
Fiji.
Finland.
French Guiana.
French Polynesia.
French Southern and Antarctic Lands.
French Territory of Afars and Issas.
Gabon.
Gambia.
Ghana.
Gibraltar.
Gilbert and Ellice Islands.
Greece.
Greenland.
Grenada.
Guadeloupe.
Guatemala.
Guinea.
Guyana.
Haiti.
Honduras.
Iceland.
India.
Indonesia.
Israel.
Ivory Coast.
Jamaica.
Jordan.
Kenya.
Korea, Republic of.
Laos.
Lebanon.
Lesotho.
Liberia.
Macao.
Madagascar.
Malawi.
Malaysia.
Maldives.
Mali.
Malta.
Martinique.
Mauritania.
Mauritius.
Mexico.
Montserrat.
Morocco.
Mozambique.
Nauru.
Nepal.
Netherlands Antilles.
New Caledonia.
New Hebrides.
Nicaragua.
Niger.
Nigeria.
Niue.
Norfolk Island.
Oman.
Pakistan.
Panama.
Papua New Guinea.
Paraguay.
Peru.
Philippines.
Pitcairn Island.
Portuguese Guinea.
Portuguese Timor.
Reunion.
Rwanda.
Ryukyu Islands, including Okinawa, (prior to May 15, 1972).
St. Christopher—Nevis—Anguilla.
St. Helena.
St. Lucia.
St. Pierre and Miquelon.
St. Vincent.
Sao Tome and Principe.
Senegal.
Seychelles.
Sierra Leone.
Sikkim.
Singapore.
Somalia.
Southern Rhodesia.
Spanish North Africa.
Spanish Sahara.
Sri Lanka (Ceylon).
Sudan.
Surinam.
Svalbard.
Swaziland.
Syria.
Tanzania.
Thailand.
Togo.
Tonga.
Trinidad and Tobago.
Tunisia.
Turkey.
Turks and Caicos Islands.
Uganda.
United Arab Emirates (excluding Abu Dhabi).
Upper Volta.
Uruguay.
Venezuela.
Vietnam, Republic of
Wallis and Futuna.
Western Samoa.
Yemen (Aden).
Yemen (San'a).
Yugoslavia.
Zaire.
Zambia.

II. Schedule B Countries

Abu Dhabi.
Australia.
Bahamas.
Bahrain.
Bermuda.
Canada.
Hong Kong.
Iran.
Iraq.
Iraq-Saudi Arabia Neutral Zone.
Ireland.
Japan (including Ryukyu Islands commencing May 15, 1972).

II. Schedule B Countries—Continued

Kuwait.
Libya.
New Zealand.
Qatar.
Saudi Arabia.
Spain (effective January 1, 1970).
United Kingdom.

III. Schedule C Countries

Albania.
Andorra.
Austria.
Belgium.
Bulgaria.
China, Peoples Republic of.
Cuba.
Czechoslovakia.
Denmark.
France.
Germany, East.
Germany, West.
Hungary.
Italy.
Korea, North.
Liechtenstein.
Luxembourg.
Monaco.
Mongolia.
Netherlands.
Norway.
Poland. (*)
Portugal.
Romania.
San Marino.
South Africa.
South-West Africa.
Soviet Union. (**)
Spain (prior to January 1, 1970).
Sweden.
Switzerland.
Vatican City.
Vietnam, North.

IV. Areas Not Subject to the Regulations

American Samoa.
Canal Zone.
Guam.
Johnston Atoll.
Midway Islands.
Navassa Island.
Puerto Rico.
Trust Territory of the Pacific Islands (Caroline Islands, Mariana Islands, and Marshall Islands).
Virgin Islands.
Wake Island.

Any country in any Schedule may be subject to additional Treasury Department, Commerce Department, and other governmental controls.

FOREIGN DIRECT INVESTMENT RULES OF PRACTICE AND GENERAL PROCEDURES

PART 1020—INVESTIGATIVE PROCEDURES

Sec.
1020.111 Investigations.
1020.112 Investigative policy.
1020.113 By whom conducted.
1020.114 Notification of purpose.
1020.121 Orders to furnish information.
1020.122 Authority to initiate investigations and to issue or modify agency process.
1020.123 Motions relating to agency process.
1020.124 Review; finality.
1020.131 Investigative hearings.
1020.132 Rights of witnesses in investigations.
1020.141 Noncompliance with orders or directions.
1020.151 Termination of investigations.

AUTHORITY: The provisions of this Part 1020 issued pursuant to sec. 5 of the Act of Oct. 6, 1917, 40 Stat. 415, as amended, 12 U.S.C. 95a; E.O. 11387, Jan. 1, 1968, 33 FR 47; Department Organization Order 25-3A (formerly Department Order 184-A), Jan 1, 1968, 33 FR 54.

§ 1020.111 Investigations.

The Office[1] may, in its discretion, initiate investigations relating to com-

(*) Includes Danzig and de facto areas of 1937 Germany east of the Oder-Neisse Line.

(**) Includes the de facto areas of Estonia, Latvia, Lithuania, Southern Kuril Islands, Habomai Islands, southern Sakhalin, and northern East Prussia.

[1] As used in Parts 1020-1050 of this chapter, the "Office" means the Office of Foreign Direct Investments, U.S. Department of Commerce.

pliance by any person[2] with the Foreign Direct Investments Program (hereinafter referred to as the Program) as embodied in E.O. 11387 and Part 1000 of this chapter, any rule, regulation, or order thereunder, term or condition of any authorization or exemption issued thereunder, any decree of court relating thereto, or any other agency action thereunder.

§ 1020.112 Investigative policy.

The Office encourages voluntary coperation with its investigations. Where the circumstances appear so to require, however, the Office may invoke compulsory process as authorized by law.

§ 1020.113 By whom conducted.

Investigations will be conducted by representatives of the Office duly designated and authorized for the purpose. Such representatives are authorized, among other things, to administer oaths and receive affirmations in any matter under investigation by the Office.

§ 1020.114 Notification of purpose.

Any person under investigation who is compelled or requested to furnish information or documentary evidence shall be advised with respect to the general purpose for which such information or evidence is sought.

§ 1020.121 Orders to furnish information.

(a) The Office may issue orders requiring any person or persons named therein:

(1) To appear before a designated representative at a designated time and place to testify, produce documentary evidence, and/or produce other information relating to any transaction involving foreign direct investment; and/or

(2) To file (whether on a continuing basis, at stated intervals, upon the occurrence of specified acts or omissions, or otherwise) reports or answers in writing to specified questions, relating to any matter that is or has been under investigation or inquiry, or is likely to lead to the production of information relating to any such matter.

(b) Any person required to submit any report, whether under this section or under § 1000.602(b) of this chapter, shall preserve, or cause to be preserved, for at least 3 years after the date of filing of such report all working papers, irrespective of by whom prepared, used in the preparation of such report; all exhibits, all schedules, and all attachments to such papers; and all books and all records related to such report or to such other papers, that were prepared in the ordinary course of business.

§ 1020.122 Authority to initiate investigations and to issue or modify agency process.

The Director of the Compliance Division is hereby delegated, without power of redelegation, the authority to initiate investigations under § 1020.111 and to issue orders under § 1020.121 and, for good cause shown, to limit, quash, modify, or withdraw such orders or to extend the time prescribed therein for compliance.

§ 1020.123 Motions relating to agency process.

Any motion to limit, quash, modify, or withdraw any order issued under § 1020.121 or to extend the time prescribed for compliance must be filed with the Office (to the attention of the person issuing said order) within seven (7) days after service of such order, or, if the return date is less than seven (7) days after service of the order, within such other time prior to the return date as may be designated in such order. Any allegation of undue burden must be accompanied by an affidavit setting forth with particularity the supporting facts.

§ 1020.124 Review; finality.

(a) Upon denial of a motion made under § 1020.123, the moving party may appeal to the decision officer pursuant to the procedure set out in § 1030.514 of this chapter. The determination of the decision officer shall constitute final agency action.

(b) The Director of the Compliance Division may extend the return date specified in an order issued pursuant to § 1020.121 by up to twenty (20) days later than the date of denial of relief under paragraph (a) of this section where:

(1) Such relief is requested by motion under § 1020.123 for the purpose of seeking judicial review of the order without first committing a willful violation thereof, and

(2) The public interest in effective enforcement and administration of the Program will not be compromised thereby.

§ 1020.131 Investigative hearings.

(a) The Office may conduct investigative hearings in the course of any investigation or inquiry relating to the administration or enforcement of the Program, as described in § 1020.111, including inquiries initiated for the purpose of determining whether to institute a proceeding under Part 1030 of this chapter.

(b) Investigative hearings shall be nonadjudicative proceedings, presided over by a representative of the Office (hereinafter referred to as the "presiding official") designated in the order issued pursuant to § 1020.121.

(c) Investigative hearings shall be stenographically recorded unless the presiding official, in his discretion upon the request of a witness, otherwise orders.

(d) Unless otherwise ordered by the Director of the Office, investigative hearings shall not be public.

§ 1020.132 Rights of witnesses in investigations.

Any person compelled or requested to submit information to the Office, or to testify in an investigative hearing, shall be entitled to be accompanied, represented, and advised by counsel or another person who has entered an appearance under § 1050.101 of this chapter (referred to hereafter in this section as "counsel") as follows:

(a) Counsel for a witness may advise his client, in confidence, and upon the initiative of either himself or the witness, with respect to any question asked of his client. If it appears that counsel is prompting the witness under color of this paragraph, the presiding official will so note and take appropriate action in respect thereto under paragraph (f) of this section. If, upon advice of counsel, the witness refuses to answer a question, counsel may briefly state that he has advised his client not to answer the question and the legal grounds for such refusal.

(b) Where it is claimed that the testimony or other evidence sought is outside the scope of the investigation, or that the witness is privileged to refuse to answer a question or to produce other evidence, counsel for the witness may object and briefly and precisely state the grounds therefor.

(c) Cumulative objections are unnecessary. Repetition of the grounds for any objection will not be allowed. At the request of counsel and/or when directed by the presiding official, any objections will be treated as continuing objections and preserved throughout the further course of the hearings as to any related line of inquiry.

(d) Any motion challenging the Office's authority to conduct the investigation or the sufficiency or legality of the order to testify or produce documents or other information must have been addressed to the Office prior to the hearing (see § 1020.123). Additional copies of such motions may be filed with the presiding official as part of the record of the investigation and may be incorporated by reference into counsel's statements or objections, but no arguments in support thereof will be allowed at the hearing.

(e) After the presiding official and/or counsel for the Compliance Division have completed the examination of a witness, counsel for the witness may request the presiding official to permit the witness to clarify any of his answers in order that they may not remain equivocal or incomplete. The granting or denial of such request shall be within the sole discretion of the presiding official, and any grant may be withdrawn if counsel attempts to lead the witness or suggest answers.

(f) The presiding official shall take all necessary and appropriate actions to avoid delay, to prevent or restrain disorderly, dilatory, obstructive, or contumacious conduct and/or otherwise to regulate the course of the hearing.

§ 1020.141 Noncompliance with orders or directions.

(a) In cases of failure to comply fully with any compulsory process, including

[2] As used in Parts 1020–1050 of the chapter, "person" means any individual, corporation, partnership, business venture, trust, or estate.

an order issued under § 1020.121, or refusal to obey a direction by a presiding official to answer a specific question, the Office may initiate or recommend appropriate action. The fact that an order is partially defective, or that a person may so believe, will not excuse compliance with the remainder of the order.

(b) Honest mistakes or isolated oversights, made in a good faith attempt to comply with an order of the Office or the direction of a presiding official, will normally not lead to an enforcement action.

§ 1020.151 Termination of investigations.

When the facts disclosed by an investigation indicate that further action is not necessary or warranted in the public interest, the investigative file will be closed, without prejudice to further investigation by the Office at any time if circumstances so warrant.

PART 1025—SETTLEMENT PROCEDURES

Sec.
1025.111 General policy.
1025.211 Informal, voluntary settlement.
1025.311 Consent agreement policy and procedures.

AUTHORITY: The provisions of this Part 1025 issued pursuant to Sec. 5 of the Act of Oct. 6, 1917, 40 Stat. 415, as amended (12 U.S.C. 95a); E.O. 11387, Jan. 1, 1968, 33 FR 47; Department Organization Order 25-3A (formerly Department Order 184-A), Jan. 1, 1968, 33 FR 54.

§ 1025.111 General policy.

When the Office has reason to believe that any person subject to the jurisdiction of the Office (referred to hereinafter in this part as a "party") has violated any requirement of the Program, the Office may initiate enforcement action. Sections 5(b)(3) and 17 (as amended) of the Act of October 6, 1917 (50 U.S.C. App. 5(b)(3) 17), permit either criminal or civil sanctions, and Part 1030 of this chapter provides for formal administrative proceedings. Ordinarily, in the absence of willful violation or flagrant disregard of Program requirements, the Office will utilize one of the settlement procedures described in this part when such resolution is deemed to be in the public interest.

§ 1025.211 Informal, voluntary settlement.

(a) *Policy.* In determining whether to afford a party the opportunity for informal, voluntary settlement, the Office will consider the following:

(1) Whether the party acted in good faith;

(2) Whether the alleged noncompliance was unintentional or unforeseeable and whether the party took steps to avoid the alleged noncompliance;

(3) Whether the party cooperated with the office in ascertaining the facts and did not attempt to conceal or falsify information;

(4) The nature of the alleged noncompliance;

(5) The prior conduct of the party with respect to Program requirements; and

(6) Other relevant factors, including whether the Office believes that the party's assurances of future compliance with the Program will be adequate to ensure such compliance.

(b) *Investigation.* In addition to any investigation the Office may conduct into the substantive nature of the noncompliance, the Office may conduct an independent inquiry regarding any or all of the items enumerated in paragraph (a) of this section.

(c) *Conference policy.* It is the policy of the Office to give any party the opportunity to discuss with the staff, on an informal basis, the possible settlement of any compliance investigation involving such party. Ordinarily, any request for such discussion should be directed, in the first instance, to the staff member responsible for conducting the investigation.

(d) *Form.* (1) Disposition of a matter by an informal settlement will be in the form of an exchange of agreed-upon letters passing between the party and the Office. The letter from the Office will be signed by the Director of the Office.

(2) The letter from the party to the Office will set forth the pertinent circumstances relating to and constituting the alleged noncompliance, the steps taken to undo, correct, and prevent its recurrence, and other matters agreed upon by the party and the Office. The letter from the Office to the party will state the intention of the Office, based on the representations in the party's letter, to close the matter; however, the Office will expressly reserve the power to reopen the matter should the public interest so require.

§ 1025.311 Consent agreement policy and procedures.

(a) *Preliminary Notice.* If the Office, in its discretion, determines that informal, voluntary settlement is inappropriate, it will, where time, the nature of the matter involved, and the public interest permit, notify the party (i) of its intention to institute a formal proceeding against the party and (ii) that the party will be afforded an opportunity to confer with the Office staff and to submit an appropriate consent agreement proposal for consideration by the Office. Such notice may be in the form specified in § 1030.211 of this chapter or, in the discretion of the Office, in such other form sufficient to apprise the party of the nature of the alleged noncompliance. The party may appear personally or he may be represented by a person who has entered an appearance under § 1050.101 of this chapter.

(b) *Conditions.* The Office will consider each such case individually, on the basis of all relevant facts and circumstances, including any mitigating or extenuating factors. Depending upon the circumstances of the case, administrative settlement of compliance matters by a consent agreement may entail one or more of the remedies set forth in § 1030.472 of this chapter.

(c) *Form of agreement.* (1) Every consent agreement tendered by a party shall contain an appropriate form of order or judgment to be entered, an admission of all jurisdictional facts, and express waivers of further procedural steps, of any requirement of findings, and of rights to seek any form of judicial or appellate review or otherwise to challenge or contest the content, validity, or finality of the order. In addition, such proposed agreement may contain a statement that the signing thereof is for settlement purposes only and does not constitute an admission by the party that the law has been violated.

(2) The Office will determine whether the public interest would be better served by an agreement providing for an administrative consent order or a judicial consent judgment. Among the factors that the Office will ordinarily consider in making such determination are: (i) The nature and gravity of the alleged noncompliance, (ii) the prior conduct of the party with respect to Program requirements and (iii) the likelihood that subsequent enforcement proceedings against the party will be necessary.

PART 1030—PROCEDURES AND RULES OF PRACTICE FOR FORMAL ADMINISTRATIVE PROCEEDINGS

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1030.515 Petition for reconsideration.

AUTHORITY: The provisions of this Part 1030 issued pursuant to sec. 5 of the Act of Oct. 6, 1917, 40 Stat. 415, as amended, 12 U.S.C. 95a; E.O. 11387, Jan. 1, 1968, 33 FR 47; Department Organization Order 25-3A (formerly Department Order 184-A), Jan. 1, 1968, 33 FR 54.

Subpart A—General Policies and Procedures; Scope of Rules

§ 1030.111 Formal administrative proceedings.

The Office may institute a formal administrative proceeding when, on the basis of facts known to the Office, there is reason to believe that any person (hereinafter referred to as "respondent") has violated any requirement of the Program. Such proceedings may include, but are not limited to, allegations that the respondent has failed to comply with or is in violation, willfully or otherwise, of any such agency action; or that the respondent has made a transaction with intent to evade any requirement of the Program. Such proceedings shall be conducted in accordance with procedures that will assure due process of law to any party who may be adversely affected because of the determination therein.

§ 1030.112 Scope of the rules in this part.

(a) The rules in this part govern procedure in formal administrative proceedings described in § 1030.111.

(b) Except as specifically provided, the rules in this part do not govern any other proceedings, such as negotiations for the entry of consent orders, investigative hearings pursuant to § 1020.131 of this chapter, applications for specific authorizations or exemptions, or promulgation of substantive rules and regulations, general bulletins, interpretative opinions, or other rule making procedures.

Subpart B—Notice; Answer; Other Pleadings

§ 1030.211 Commencement of proceedings.

A formal administrative proceeding is commenced by the issuance and service of a notice, signed by the Director of the Office, containing the following:

(a) A clear and concise statement of facts sufficient to inform the respondent with reasonable definiteness of the type of acts or practices alleged to constitute a violation;

(b) Designation of specific requirements of the Program actions alleged to have been violated;

(c) A statement that the notice has been issued upon representations of the Director of the Compliance Division as summarized in the notice, and that respondent will have the opportunity to controvert the same:

(d) The substance of §§ 1030.212 and 1030.213;

(e) Specification of the time and place for hearing, such time to be at least twenty (20) days after service of the notice unless it is found and so stated in the notice that the public interest requires a shorter period;

(f) Identification of the person who will preside over the hearing and/or prehearing matters (hereinafter referred to as the "hearing examiner") and of the representative or representatives of the Compliance Division designated to prosecute the matter;

(g) A form of order which the Office has reason to believe should issue if the facts are found to be as alleged in the notice; and

(h) Recital of the legal authority and jurisdiction for institution of the proceeding.

§ 1030.212 Answer.

(a) A respondent shall, except as provided otherwise pursuant to § 1030.211 (e), have twenty (20) days after service of such notice within which to file an answer.

(b) Each answer shall contain a specific admission, denial, or explanation of each fact alleged in the notice or, if the respondent is without knowledge thereof, a statement to that effect. Allegations of a notice not specifically answered pursuant to this paragraph shall be deemed to have been admitted.

(c) Each answer shall contain a concise statement of each defense or affirmative matter that respondent will present, including a concise statement of the facts upon which it is founded. No defense or affirmative matter of which the respondent was aware at the time of filing his answer but did not include therein may be added by way of amendment or supplemental pleading under §§ 1030.221–1030.223, unless the hearing examiner, in his discretion, is convinced that respondent's failure was justifiable and that the interests of justice require its later admission.

§ 1030.213 Default.

Failure of the respondent to file an answer within the time provided or to appear as ordered shall constitute a waiver of his right to appear and contest the allegations of the notice and shall authorize the Office, without further notice, to find the facts to be as alleged in the notice and to enter findings and an order thereon.

§ 1030.221 Amendments, by leave.

The hearing examiner may, in his discretion, in the interests of justice, to faciliate the determination of a controversy, and upon such terms as are just, allow amendments to the notice or answer at any time prior to the filing of his decision.

§ 1030.222 Amendments conforming pleadings to evidence.

When issues not raised by the notice or answer but reasonably within the scope thereof are tried by express or implied consent of the parties, they shall be treated in all respects as though they had been timely raised. Amendments necessary to make the notice or answer conform to the evidence and the raising of such issues shall be allowed at any time.

§ 1030.223 Supplemental pleadings.

The hearing examiner may, in his discretion, in the interests of justice, to facilitate the determination of a controversy, and upon such terms as are just, allow service of a supplemental notice or answers setting forth transactions, occurrences, or events which occurred or were discovered since the date of the notice or answer sought to be supplemented and which are relevant to any of the issues involved in the proceeding.

Subpart C—Prehearing Procedures; Motions; Discovery

§ 1030.311 Prehearing conferences.

(a) The hearing examiner may direct any or all parties to meet with him for a conference to consider any or all of the following:

(1) Simplication and clarification of the issues;

(2) Necessity or desirability of amendments to pleadings;

(3) Stipulations or admissions of fact and of the contents, authenticity, and admissibility of documents; and

(4) Such other matters as may aid in the orderly and expeditious disposition of the proceeding, including disclosure of documents or other physical exhibits which will be offered in evidence in the course of the proceeding and of the names of witnesses.

(b) Prehearing conferences shall not be public unless all parties so agree.

(c) The hearing examiner, at his discretion, may direct that the prehearing conference be stenographically reported.

(d) When, as a result of a prehearing conference, it appears to the hearing examiner that the orderly, fair, and expeditious disposition of the proceeding will be aided thereby, he shall enter upon the record an order reciting any and all actions taken as a result of the conference. Insofar as such order states the issues to be resolved in the proceeding or the facts or documents which have been admitted to or stipulated by the parties, such order shall take precedence over any prior pleading or portion of the proceeding.

§ 1030.321 Motions.

(a) While a proceeding is before a hearing examiner all motions must be addressed to him. Copies of all written motions must be served upon each party.

(b) Motions should, if practicable, be in writing and shall state the particular order, ruling, or action desired and the grounds therefor. However, the hearing examiner may allow oral motions to be made before him, in appropriate cases, when each party affected or to be affected by such motion is present. Oral motions must be made upon the record.

(c) Within ten (10) days after service of any written motion, or within such longer or shorter time as may be fixed

by the hearing examiner, the opposing party shall answer. Failure to answer shall constitute consent to the granting of the relief or sanction requested in the motion. The moving party will ordinarily have no right to reply.

(d) As a matter of discretion, the hearing examiner may waive the requirements of paragraphs (a) through (c) of this section as to motions for extensions of time and he may rule upon such motions ex parte.

(e) The hearing examiner shall rule, either in writing or upon the record, upon all motions presented to him. No formal opinion or findings are required on any motion.

§ 1030.326 Interlocutory appeals.

No interlocutory appeal to the decision officer (see § 1030.510) will be allowed from any decision of the hearing examiner unless the hearing examiner certifies that the ruling involves an important question of law that should be resolved at that time.

§ 1030.331 Discovery.

(a) The Federal Rules of Civil Procedure shall apply to discovery proceedings. There will be no fixed rule on priority of discovery.

(b) Discovery (including requests for admission) and compulsory process for discovery shall be available to the parties to a formal administrative proceeding under this part. Upon written motion pursuant to § 1030.321, the hearing examiner shall promptly rule upon any objection to discovery action initiated pursuant to this section. The hearing examiner shall also have the power to grant a protective order or relief to any party or third party subjected to discovery or compulsory process for discovery.

Subpart D—Hearings

§ 1030.411 Public hearings.

All hearings in formal administrative proceedings shall be public unless otherwise ordered by the hearing examiner.

§ 1030.412 Expendition of hearings.

Hearings shall proceed with all reasonable expedition, be held at one place, and continue without suspension until concluded, unless the hearing examiner specifically provides otherwise. The hearing examiner may, in the interests of justice, in order to assure full and fair presentation of the issues, and consistent with the public interest in the expeditious administration and enforcement of the Program, order brief intervals in any proceeding. In unusual and exceptional circumstances, for good cause stated on the record, he shall have the authority to order hearings at more than one place and to order brief intervals to permit discovery necessarily deferred during the prehearing procedures.

§ 1030.413 Rights of parties.

Every party shall have the right of representation by counsel, due notice, presentation of evidence, objection, cross-examination, motion argument, determination upon a record, and all other rights essential to a fair hearing.

§ 1030.414 Examination of witnesses.

An adverse party, or an officer, agent, or employee thereof, and any witness determined by the hearing examiner to be hostile, unwilling, or evasive, may be interrogated by leading questions. Any witness may be contradicted and impeached by any party, including the party calling him.

§ 1030.415 Admissibility of evidence.

Technical rules of evidence shall not apply in proceedings under this part. Relevant, material, and reliable evidence shall be admitted. Irrelevant, immaterial, unreliable, and unduly repititious evidence shall be excluded. Immaterial or irrelevant parts of admissible documents shall be segregated and excluded so far as practicable.

§ 1030.416 Objections.

Objections to evidence shall be timely and shall briefly state the grounds relied upon but the transcript shall not include argument or debate thereon except as ordered by the hearing examiner. The hearing examiner shall, when requested by a party, rule upon the record on any properly presented objection, or specifically defer such ruling. Any objection not ruled upon shall be deemed overruled. The substance of any overruled objection shall be deemed preserved without formal exception.

§ 1030.417 Burden of proof.

Counsel representing the Compliance Division shall have the burden of persuasion and the burden of going forward with evidence to show, prima facie, that respondent failed to comply with a requirement of the Program, but the proponent of any proposition shall be required to sustain the burden of persuasion and the burden of going forward with evidence with respect thereto.

§ 1030.418 Use of information obtained in investigations.

Any documents, papers, books, physical exhibits, or other materials or information obtained by the Office under any of its powers may be disclosed by counsel representing the Compliance Division when necessary in connection with formal administrative proceedings and may be offered in evidence by such counsel in any such proceeding.

§ 1030.421 Transcript.

Hearings shall be stenographically recorded and transcribed by a reporter under the supervision of the hearing examiner. The original transcript shall be a part of the record and the sole official transcript.

§ 1030.422 Record.

The record shall include the pleadings, all motions, all orders of the hearing examiner, the original transcript, all exhibits offered in evidence by any party, all proposed findings of fact, conclusions, and orders, and the recommended decision and proposed order of the hearing examiner. Except as provided under § 1030.451, the record shall be open to public inspection during business hours at the Department of Commerce, Office of Foreign Direct Investments, upon application therefor to the Clerk.

§ 1030.423 Excluded evidence.

When an objection to a question propounded to a witness is sustained, the examining attorney may make a specific offer on the record of what he expected to prove by the answer of the witness, or the hearing examiner may, in his discretion, hear and record the evidence in full. Rejected exhibits, adequately marked for identification, and other rejected evidence shall be retained in the record and be available for consideration by any reviewing authority.

§ 1030.431 Hearing examiners.

(a) Hearings and prehearing matters in formal administrative proceedings shall be presided over by a hearing examiner appointed or designated pursuant to section 3105 or section 3344 of title 5, United States Code.

(b) The hearing examiner for prehearing matters may differ from the hearing examiner presiding over the hearing. A hearing examiner who opens the hearings under a particular notice shall, in the ordinary course, be the sole hearing examiner for such hearings, but, in the event of the death, illness, or other unavailability of a hearing examiner, or other extenuating and unusual circumstances, another hearing examiner may be appointed as provided in paragraph (a) of this section.

(c) In the event of the substitution of a new hearing examiner for the one originally designated, any motion predicated upon such substitution shall be made within five (5) days following notice of such substitution.

§ 1030.433 Powers and duties.

Hearing examiners shall conduct fair and impartial hearings, take all necessary action to avoid delay in the disposition of proceedings, and maintain order. They shall have all powers necessary and appropriate to that end, including, but not limited to, the following:

(a) To administer oaths and receive affirmations;

(b) To issue compulsory process;

(c) To take depositions or to order depositions or other discovery procedures as provided in § 1030.331;

(d) To rule upon offers of proof and receive evidence;

(e) To regulate the course of the hearings and the conduct of the parties and their counsel therein;

(f) To hold conferences for stipulations, simplification of issues, settlement, or any other proper purpose;

(g) To consider the rule upon, as justice may require, all procedural and other motions;

(h) To make findings of fact and conclusions of law and to issue recommended decisions and proposed orders and

(i) To take any action authorized by the rules in this part or in conformance with law.

§ 1030.434 Suspension of attorneys.

(a) The hearing examiner shall have the authority, for good cause stated on the record, to suspend or bar from participation in a particular proceeding any attorney who shall refuse to comply with his direction, or who shall be guilty of disorderly, dilatory, obstructive, or contumacious conduct in the course of such proceeding.

(b) Any attorney so suspended or barred may appeal to the decision officer. Appeals shall be in the form of a brief, not to exceed ten (10) pages in length and shall be filed within five (5) days after notice of the hearing examiner's action. Answer thereto may be filed within five (5) days after service of the appeal brief and may not exceed ten (10) pages. The decision of the decision officer shall constitute final agency action. The appeal shall not operate to suspend the hearing unless otherwise ordered by the decision officer. In the event the hearing is not suspended, the attorney may continue to participate therein pending disposition of the appeal.

§ 1030.451 In camera policy.

(a) Hearing examiners shall have the authority, for good cause stated on the record, to order any documents, or oral testimony, or other matter offered in evidence, whether admitted or rejected, to be placed in camera.

(b) Except as provided in paragraph (c) of this section, matter placed in camera is kept confidential and is not part of the public record. Only the respondent, his counsel, authorized personnel of the Office and court personnel concerned with judicial review shall have access to such matter. Where it is appropriate, in order to protect a trade secret or other confidential business information, the hearing examiner may enter other orders necessary and appropriate to protect such information from misuse.

(c) The power of the hearing examiner, the Office and reviewing courts to disclose in camera matter to the extent necessary for the proper disposition of a proceeding is specifically reserved.

§ 1030.461 Submission by the parties of proposed findings, conclusions, and order.

(a) Within such time after the close of the reception of the evidence as the hearing examiner may fix, each party to a proceeding under this part shall file with the hearing examiner for his consideration all proposed findings of fact, conclusions of law, and forms of order, together with briefs in support thereof. Answering briefs may be filed within a reasonable time thereafter, as fixed by the hearing examiner. The hearing examiner, in his discretion, may vary the sequence of filing documents following the close of reception of evidence.

(b) Such proposed findings, conclusions, and orders and any briefs or other papers shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on. "Passim" references to the record may not be used.

(c) If a party fails to file a proposed finding as to any fact involved in the proceeding, or a proposed conclusion of law as to any legal question raised by the proceeding, he shall be deemed to have waived any objections or contentions with regard to that fact or that question of law.

§ 1030.471 Hearing examiner's findings, conclusions, recommended decision and proposed order.

(a) Within a reasonable time after receipt of all briefs and/or other papers pursuant to § 1030.461, the hearing examiner who presided, unless he shall become unavailable to the Office, shall make findings of fact and conclusions of law and issue a recommended decision and proposed order. The findings, conclusions, recommended decision and proposed order shall be served upon the parties and shall be included in the record.

(b) The findings of fact and conclusions of law shall be numbered and shall contain appropriate references to the record.

§ 1030.472 Form of proposed order.

(a) If the hearing examiner determines that the respondent has not violated any requirement of the Program, he shall in his proposed order dismiss the notice.

(b) If the hearing examiner determines that the respondent has violated any requirement of the Program, he shall issue a proposed order taking into account, in fashioning said proposed order, the nature and circumstances of the violation as well as the importance of encouraging future good faith efforts to comply with the Program. Where appropriate (including, but not limited to, cases where the respondent's violation involves positive direct investment or the holding of liquid foreign balances under circumstances where such is prohibited or in excess of the amount generally and/or specifically authorized or failure to comply with conditions of specific authorizations, and/or willful failure to or delay in filing required reports) the proposed order may include in addition to any other appropriate remedies:

(1) Reduction during any year or years in the amount of positive direct investment and/or liquid foreign balances that would have been authorized to the respondent under Part 1000 of this chapter;

(2) A requirement that the respondent repatriate all or part of its share in the earnings of incorporated affiliated foreign nationals, which repatriation shall be disregarded for the purpose of measuring compliance with the provisions of Part 1000 of this chapter;

(3) A requirement that the respondent cause its affiliated foreign nationals to make transfers of capital to the respondent, which transfers shall be disregarded for the purpose of measuring compliance with the provisions of Part 1000 of this chapter;

(4) A requirement that the respondent repatriate available proceeds of long-term foreign borrowing, which proceeds may not be held thereafter in the form of foreign balances or other foreign property;

(5) A requirement that quarterly or other special reports be filed with the Office containing such information as may be appropriate.

Subpart E—Decision and Review

§ 1030.510 Decision officer; designation and disqualification.

(a) The Director of the Office shall be the decision officer unless he is unavailable by reason of disqualification or otherwise, in which case the Deputy Director of the Office shall be the decision officer.

(b) The decision officer shall withdraw from any case when he is disqualified by reason of personal relationship or interest or other just cause. If the decision officer has not withdrawn from the case and respondent believes that grounds for disqualification exist, respondent shall submit, with its first brief submitted pursuant to § 1030.511, a motion supported by an affidavit or affidavits specifying such grounds with particularity. In such case, the decision officer shall himself rule upon the motion in writing and his decision shall become part of the record of the case.

(c) If both the Director and the Deputy Director of the Office are disqualified or otherwise unavailable, the Appeals Board for the Department of Commerce shall perform the functions of the decision officer under the rules contained in this subpart, and the decision and order of the Appeals Board shall constitute the final agency action.

§ 1030.511 Objections.

(a) Any party in a proceeding under this part may file specific objections to the hearing examiner's findings of fact, conclusions of law, recomemnded decision and/or proposed order, provided that notice of intent to file such ojections is filed with the Office within ten (10) days after service upon the parties of the hearing examiner's recommended decision and proposed order.

(b) Objections shall be in the form of a brief, not to exceed thirty (30) pages, filed no later than thirty (30) days after service of the hearing examiner's recommended decision and proposed order. Answering briefs, not to exceed thirty (30) pages, shall be filed not later than thirty (30) days after the closing date for submission of each objection. Reply briefs, not to exceed fifteen (15) pages, shall be filed not later than seven (7)

days after the closing date for submission of answering briefs. Briefs, if typewritten, shall be double spaced.

(c) The briefs shall be made a part of the record and the entire record shall then be certified promptly to the decision officer.

(d) If no notice of intent to file objections to the hearing examiner's findings of fact, conclusions of law, recommended decision or proposed order are filed within the time provided in paragraph (a) of this section, the record shall be certified at the conclusion of such time to the decision officer who shall decide the case in the manner provided in § 1030.513(b). The decision officer may, at his discretion, request the parties to submit briefs on any or all of the issues raised by the record.

§ 1030.513 Decision.

(a) If objections are filed pursuant to § 1030.511, unless all parties have stipulated otherwise in writing, there shall be oral argument before the decision officer at a date and time set by him in writing and served on all parties, which argument shall be reported stenographically. The original transcript shall be made a part of the record. Each party shall be limited to thirty (30) minutes for presentation of oral argument, unless the decision officer shall determine that the circumstances of the case require more lengthy presentation.

(b) The decision officer, in deciding a matter, shall not be limited to consideration of the issues raised by the parties, but may consider all issues raised by the record.

(c) Within a reasonable time after receipt and consideration of the record and oral argument, if any, the decision officer shall do one of the following:

(1) Remand the case to the hearing examiner for the reception of additional evidence;

(2) Issue an interlocutory decision, either orally or in writing, with respect to the issues of fact and questions of law involved in the proceeding. Thereafter, in his discretion, he may direct the hearing examiner to conduct a separate hearing on relief and form of order. The decision officer may permit the filing of additional briefs and may request that the prevailing party or parties propose a form of order and the other party or parties comment thereon, or that all parties present their views concurrently. Any failure to object to any part of a form of order proposed by a prevailing party will constitute a waiver of objection to it. The decision officer shall then render a decision as specified in subparagraph (3) of this paragraph;

(3) Issue findings of fact and conclusions of law and render a decision that adopts, modifies or sets aside the hearing examiner's findings, conclusions and recommended decision and states the reasons for his action, and enter an order which shall be served on each party to the proceeding.

(d) The order entered by the decision officer shall become effective ten (10) days after service thereof, unless the respondent appeals to the Appeals Board for the Department of Commerce, pursuant to the procedure set out in Part 1035 of this chapter or files a petition for reconsideration under § 1030.515.

§ 1030.514 Appeals from orders under Part 1020 of this chapter.

Any party appealing from the denial of a motion under § 1020.123 of this chapter, shall file an appeal brief, not to exceed thirty (30) pages, within seven (7) days after service of the order denying said motion. The answering brief, not to exceed thirty (30) pages, shall be filed within seven (7) days thereafter. Oral argument will not be allowed. Within a reasonable time after receipt of the briefs, the decision officer shall render an appropriate decision.

§ 1030.515 Petition for reconsideration.

Any party may petition for reconsideration of a final decision or order of the decision officer by filing a written brief with the Office stating succinctly and with particularity the grounds upon which reconsideration is being sought within five (5) days after the date of service of the decision officer's order. The decision officer shall thereafter enter as promptly as possible an order either granting or denying the petition.

PART 1035—RULES OF PRACTICE FOR APPEALS IN PROCEEDINGS ORIGINATING UNDER PART 1030

Sec.
1035.101 Scope of rules.
1035.102 Board.
1035.103 Appeals.
1035.104 Certification of the record.
1035.105 Briefs.
1035.107 Oral Argument.
1035.108 Disposition of appeals by Board.
1035.109 Content of orders.

AUTHORITY: The provisions of this Part 1035 issued pursuant to sec. 5 of the Act of Oct. 6, 1917, 40 Stat. 415, as amended, (12 U.S.C. 95a); E.O. 11387, Jan. 1, 1968, 33 FR 47; Department Organization Order 25-3A (formerly Department Order 184-A), Jan. 1, 1968, 33 FR 54.

§ 1035.101 Scope of rules.

The rules of practice in this part shall govern appeals from final decisions of the decision officer in proceedings originating under Part 1030 of this chapter. Appeals in proceedings originating under Part 1000 of this chapter shall be governed by § 1000.802 of this chapter.

§ 1035.102 Board.

(a) The Appeals Board for the Department of Commerce (referred to in this part as the "Board") shall have sole and exclusive jurisdiction to hear administrative appeals from final decisions of decision officers in proceedings under Part 1030 of this chapter. The decision of the Board shall constitute final agency action.

(b) The Chairman of the Board shall designate a panel of three Board members, from time to time, to pass upon such appeals.

(c) All communications to the Board shall be addressed to: Chairman, Department of Commerce Appeals Board, Department of Commerce, Washington, D.C. 20230, and shall be in writing.

§ 1035.103 Appeals.

(a) The respondent in a proceeding under Part 1030 of this chapter may appeal to the Board from the decision and order of the decision officer, provided that notice of intent to appeal is filed with the Board within ten (10) days after service of the decision officer's decision and order or, if the respondent files a petition for reconsideration of the decision officer's order (pursuant to § 1030.515 of this chapter), notice of intent to appeal shall be filed with the Board within ten (10) days after the date of service of the decision officer's order either denying the petition for reconsideration or disposing of a petition that had been granted.

(b) The respondent, in a proceeding under Part 1030 of this chapter, may appeal on the following grounds: that prejudicial error of law was committed; that the findings were clearly erroneous or were not supported by substantial evidence; or that the provisions of the order are arbitrary, capricious or an abuse of discretion.

§ 1035.104 Certification of the record.

Promptly after the filing of notice of intent to appeal, the record including the decision and order of the decision officer, and any petition for reconsideration and order relating thereto, shall be certified to the Board.

§ 1035.105 Briefs.

(a) The appeal brief shall be served and filed no later than thirty (30) days after service of the appropirate order of the decision officer (determined pursuant to § 1035.103(a)); the answering brief shall be served and filed no later than thirty (30) days after service of the appeal brief; and the reply brief shall be served and filed no later than seven (7) days after service of the answering brief. The appeal and answering briefs shall not exceed thirty (30) pages (if typewritten, double spaced) exclusive of appendices, and the reply brief shall not exceed fifteen (15) pages.

(b) An original and five (5) copies of each brief shall be filed with the Board and three (3) copies shall be served upon each party to the proceeding, including the Office.

(c) The appeal and answering briefs shall contain in the following order:

(1) Index, table of cases, statutes, and other authorities—and page references thereto;

(2) Concise, nonargumentative statement of facts, with specific page references to the record to support each assertion;

(3) Argument, with specific page references to the record to support each assertion;

(4) Conclusion;

(5) Appendix (optional), any record material or exhibits on which the party places particular reliance.

(d) The appeal brief shall, in addition, include in the argument section a specific explanation of how the grounds for appeal fall within the standards of § 1035.103(b), and, following the conclusion, any form of order that the respondent proposes be issued in lieu of the order issued by the decision officer.

§ 1035.107 Oral argument.

The Board will ordinarily determine an appeal on the basis of the briefs. The Board will allow oral argument only in exceptional cases when it deems it necessary, upon its own motion.

§ 1035.108 Disposition of appeals by Board.

(a) The appeal shall be determined upon the basis of the record and the briefs and argument ,and shall not constitute a hearing de novo. The Board shall not substitute its discretion for that of the decision officer in any matter involving expertise in interpreting, defining, administering, or effectuating the policies and purposes of the regulations or other agency actions under the Program. The Board shall not consider facts or arguments affecting the merits of the policies embodied in the regulations or other agency actions alleged to have been violated.

(b) Unless two members of the Board are of the opinion, and so advise the Chairman of the Board in writing within 20 days after the date of the filing of the appeal brief, that they desire to grant the appeal or consider further briefs or arguments, the Chairman of the Board shall, on the 20th day after the date of the filing of the appeal brief, enter an order pursuant to § 1035.109(b).

§ 1035.109 Content of orders.

(a) The grant of an appeal may be by an order remanding the matter to the decision officer, accompanied with a brief statement of reasons therefor.

(b) The denial of an appeal ordinarily will be in the form of an order signed by the Chairman of the Board, stating that the appeal was denied by the Board on a particular date, and ordinarily will not be accompanied by an explanatory statement. Such denial without an explanatory statement shall be deemed equivalent to adoption by the Board of the decision officer's decision.

(c) Where the Board grants an appeal in part and denies it in part, it ordinarily will remand the matter to the decision officer, as specified in paragraph (a) of this section. Where the Board can appropriately dispose of such a matter by entering its own order, rather than by remanding the matter, it may do so.

(d) Entry of an order by the Board shall be effective ten (10) days after service thereof.

PART 1040—COMPLIANCE PROCEDURES; REPORTS, ADVISORY OPINIONS, AND ENFORCEMENT

Subpart A—Compliance Reports

Sec.
1040.111 Compliance reports following Parts 1030 or 1035 orders.
1040.114 Noncompliance with reporting requirements.
1040.121 Comment on report.

Subpart B—Advisory Opinions on Compliance

Sec.
1040.211 Request for opinion.
1040.212 Response by Office.
1040.214 Advisory opinion during compliance investigation.
1040.221 Revocation.
1040.222 Reliance.

Subpart C—Enforcement

1040.311 Enforcement.

AUTHORITY: The provisions of this Part 1040 issued pursuant to sec. 5, of the Act of Oct. 6, 1917, 40 Stat. 415, as amended, (12 U.S.C. 95a); E.O. 11387, Jan. 1, 1968, 33 FR 47; Department Organization Order 25-3A (formerly Department Order 184-A), Jan. 1, 1968, 33 FR 54.

Subpart A—Compliance Reports

§ 1040.111 Compliance reports following Parts 1030 or 1035 orders.

(a) Whenever, in a proceeding under Parts 1030 or 1035, an order is entered requiring the respondent to refrain from or to undertake any future act or practice, the Office will further require the respondent to file a compliance report with the Office. Such requirement will be by action of the Director of the Compliance Division pursuant to § 1020.121(a) (2) of this chapter.

(b) Such report shall be in writing, signed by the respondent or an officer thereof, be made under oath or affirmation, and be filed with the Office, Attention: Director of Compliance Division.

(c) Such report shall set forth in detail the manner and form of the respondent's compliance with each of the provisions of the order.

(d) Such report shall be filed within twenty (20) days after the order becomes effective unless the Director of the Compliance Division, upon timely request, extends such time. Further and subsequent reports may also be required by the Director of the Compliance Division.

§ 1040.114 Noncompliance with reporting requirements.

In cases of failure to comply with compliance report requirements, the Office may initiate appropriate action pursuant to § 1020.141 of this chapter.

§ 1040.121 Comment on report.

The Office will review compliance reports. The Director of the Compliance Division may comment in wrting to the respondent in respect to whether the actions set forth in such a report evidence compliance with the order.

Subpart B—Advisory Opinions on Compliance

§ 1040.211 Request for opinion.

Any respondent subject to an order issued under Parts 1030 or 1035 of this chapter may request advice from the Office as to whether a proposed course of action, if pursued by it, will constitute compliance with such order. The request for advice should be submitted in writing and should include full information regarding the proposed course of action.

§ 1040.212 Response by Office.

On the basis of the facts submitted as well as other information properly available to it, the Office will, where it is practicable and otherwise appropriate, by letter signed by the Director of the Compliance Division, inform the respondent whether the proposed course of action, if pursued, would constitute compliance with the order. The Office expressly reserves the power to take such other and/or additional action as the public interest may require.

§ 1040.214 Advisory opinion during compliance investigation.

Once the Office has instituted an investigation to determine whether a respondent is in violation of an outstanding order issued against it, the Office will ordinarily consider it inappropriate to give the respondent an advisory opinion on the subject. No request for an advisory opinion, in such circumstances, will ordinarily cause the Office to discontinue such investigation.

§ 1040.221 Revocation.

The Office may, at any time, reconsider any advice or comment made under §§ 1040.121 or 1040.212, and rescind, alter, or revoke the same. If it does so, the Office will, whenever possible, give prompt notice to the respondent.

§ 1040.222 Reliance.

(a) When the Office believes that a respondent has violated an order issued against it under Parts 1030 or 1035 of this chapter but the respondent establishes to the Office that it acted in actual, properly warranted, and good faith reliance upon written advice to it under §§ 1040.121 or 1040.212, then the Office will not proceed or recommend any proceeding against such respondent in respect to such possible violation without first giving respondent notice under § 1040.221 and an opportunity to discontinue the questioned practice or transaction and to correct the effects thereof.

(b) If the respondent effects such discontinuance and correction promptly and fully, and satisfies the Office that it is complying with the requirements of the Program is regard to the matter, then the Office will take no further action.

Subpart C—Enforcement

§ 1040.311 Enforcement.

When the Office has information indicating that a respondent has failed or is failing to comply with the provisions of an order entered against the respondent under Part 1030, the Office may institute or recommend a civil or criminal enforcement proceeding (see, e.g., 50 U.S.C. App. 5(b)(3), 17) or a further administrative proceeding under Part 1030 of this chapter.

PART 1050—MISCELLANEOUS RULES

Sec.
1050.101 Appearances.
1050.102 Standards of conduct.
1050.103 Requirements as to form and filing of documents.
1050.104 Clerk.
1050.105 Time computation.
1050.106 Service.
1050.107 Fees.
1050.108 Ex parte communications.
1050.111 Freedom of information.

AUTHORITY: The provisions of this Part 1050 issued pursuant to sec. 5 of the Act of Oct. 6, 1917, 40 Stat. 415, as amended, (12 U.S.C. 95a); E.O. 11387, Jan. 1, 1968, 33 FR 47; Department Organization Order 25-3A (formerly Department Order 184-A), Jan. 1, 1968, 33 FR 54.

§ 1050.101 Appearances.

(a) *Qualifications.* (1) Members of the bar of a Federal Court or of the highest court of any State or territory of the United States are eligibile to practice before the Office and the Appeals Board for the Department of Commerce in any proceeding under Parts 1020–1050 of this chapter.

(2) Any individual or member of a partnership involved in any such proceeding may appear on behalf of himself or of such partnership, upon adequate identification. A corporation or association may be represented by an Officer thereof.

(3) Accountants who are authorized to practice in any State or territory of the United States are eligible to appear before the Office on behalf of any person or party in matters arising under Part 1025 or 1040 of this chapter.

(b) *Notice of appearance.* Any person desiring to appear before the Office on behalf of a person or party shall file a written notice of his appearance, stating the basis of his eligibility under this section. No other application shall be required for admission to practice, and no register of attorneys will be maintained.

§ 1050.102 Standards of conduct.

(a) All attorneys practicing before the Office shall conform to the standards of ethical conduct required of practitioners in the courts of the United States. Accountants who prepare reports or other documents for submittal to the Office or who appear before the Office shall conform to the standards of ethical conduct prescribed by the State Board of Accountancy or other licensing authority for the State in which such accountant maintains his principal place of business.

(b) If the Office has reason to believe that any person is not conforming to such standards, or that he has been otherwise guilty of conduct warranting disciplinary action, the Office may issue an order requiring such person to show cause why he should not be suspended or disbarred from practice or appearance before, or from the preparation of reports or other documents for submittal to, the Office. The alleged offender shall be granted due opportunity to be heard and may be represented by counsel. Thereafter, if warranted by the facts, the Office may issue against the person an order of reprimand, suspension, disbarment, or other appropriate sanction.

§ 1050.103 Requirements as to form and filing of documents.

(a) *Filing.* In formal administrative proceedings under Part 1030 of this chapter, except as otherwise provided, all documents submitted to the Office shall be addressed to the hearing examiner. Where practicable, such documents shall be filed with him; otherwise, they shall be filed with the Clerk (see § 1050.104). Informational applications or requests, however, may be submitted directly to the official in charge thereof or to the Director of the appropriate Division.

(b) *Title.* Documents shall clearly show the file or docket number and title of the matter in connection with which they are filed.

(c) *Copies.* Five copies of all formal documents shall be filed, unless otherwise specified. Informal applications and correspondence should be submitted in the form of an original and two copies thereof.

(d) *Form.* (1) Documents shall be printed, typewritten (double spaced) or otherwise processed in permanent form.

(2) Wherever practicable, documents shall be on paper approximately 8½ inches by 11 inches, bound or stapled on the left side.

(e) *Signature.* One copy of each document filed shall be signed by a person who has entered an appearance (or in informal matters by a person qualified to do so).

§ 1050.104 Clerk.

The Director of the Office shall designate an employee of the Office to serve as Clerk of the Office. The Clerk shall, in general, perform the functions of the Clerk of a district court, in respect to the proceedings under Part 1030 of this chapter and where otherwise appropriate. Papers may be filed with him; he shall accept and record receipt of formal papers; he shall enter the orders of hearing examiners and cause them to be served upon parties. Where it is appropriate, the Clerk shall sign documents and other papers in the name of the Office. Nothing contained in this section shall be deemed to preclude the Clerk from performing any other functions within the Office.

§ 1050.105 Time computation.

Computation of any period of time prescribed or allowed under Parts 1020–1040 of this chapter shall begin with the first business day following that on which the act, event, or development initiating such period of time shall have occurred. When the last day of the period so computed is a Saturday, Sunday, or national holiday, or other day on which the Office is closed, the period shall run until the end of the next following business day. When such period of time, with the intervening Saturdays, Sundays, and national holidays counted, is 5 days or less, each Saturday, Sunday, and any such holiday shall be excluded from the computation. When such period of time, with the intervening Saturdays, Sundays, and national holidays counted, exceeds 5 days, each of the Saturdays, Sundays, and such holidays shall be included in the computation.

§ 1050.106 Service.

(a) *By the Office.* (1) Service of notices, orders, and other processes of the Office or a hearing examiner may be effected as follows:

(i) *By registered or certified mail.* A copy of the document shall be addressed to the person to be served, at its residence, office, or place of business, and sent thereto by registered or certified mail; or

(ii) *By delivery to an individual.* A copy thereof may be delivered to the natural person to be served, or to a member of the partnership to be served, or to any officer or director of the corporation or unincorporated association to be served; or

(iii) *By delivery to an address.* A copy thereof may be left at the office or place of business of the person, or it may be left at the residence of the person or of a member of the partnership or of an officer or director of the corporation or unincorporated association to be served.

(2) All other documents may be similarly served, or they may be served by ordinary first-class mail.

(b) *By other parties.* Service of documents by parties other than the Office shall be by delivering copies thereof as follows: Upon the Office, by personal delivery or delivery by first-class mail to the Clerk; upon any other party, by delivery to the party, as specified in paragraph (a) of this section.

(c) *Service on attorney of party.* When a party is represented by a person qualified pursuant to § 1050.101(a), and such representative has filed a notice of appearance as required by § 1050.101(b), or has filed any pleading or other document on behalf of the party, any notice, order, or other process or communication required or permitted to be served upon a person or party may be served upon such representative in lieu of any other service.

(d) *Proof of service.* (1) When service is by registered, certified, or ordinary first class, it is complete upon delivery of the document by the post office to the person served.

(2) The return post office receipt for a document registered or certified and mailed, or the verified return or certificate by the person serving the document

by personal delivery, shall be proof of the service of the document. All documents served by ordinary mail shall have appended thereto a certificate of service, setting forth the manner of said service, including the address of any person so served.

§ 1050.107 Fees.

(a) *Witnesses.* Any person compelled to appear in person in response to compulsory process shall, upon his application therefor, be paid the same fees and mileage as are paid witnesses in the courts of the United States.

(b) *Responsibility.* The fees and mileage referred to in this section shall be paid by the party at whose instance the witness appears.

§ 1050.108 Ex parte communications.

(a) In a formal administrative proceeding, no person not employed by the Office and no employee or agent of the Office who performs any investigative or prosecuting function in connection with the proceeding, shall communicate ex parte, directly or indirectly, with any person involved in the decisional process in such proceeding, with respect to the merits of that or a factually related proceeding.

(b) In a formal administrative proceeding, no person involved in the decisional process of such proceeding shall communicate ex parte, directly or indirectly, with any person not employed by the Office, or with any employee or agent of the Office who performs any investigative or prosecuting function in connection with the proceedings, with respect to the merits of that or a factually related proceeding.

(c) In a formal administrative proceeding, if an ex parte communication is made to or by any employee involved in the decisional process, in violation of paragraph (a) or (b) of this section, such employee shall promptly inform the Office of the substance of such communication and the circumstances thereof. The Office will take such action thereon as it may consider appropriate.

§ 1050.111 Freedom of information.

(a) All documents (including transcripts) filed in formal administrative proceedings conducted under Part 1030 of this chapter (except those documents placed in camera pursuant to § 1030.451 (b) of this chapter), and such other documents as the Office may from time to time designate, shall be made part of the public records of the Office. Copies thereof are maintained for public inspection and copying in the office of the Clerk (see § 1050.104).

(b) For good cause shown and upon application by any party submitting a document that is to be placed on the public record, pursuant to paragraph (a) of this section, the Office may excise trade secrets and customarily privileged commercial or financial information obtained from any person. Requests for such excision may be made by timely submittal to the Office of a written request specifying with particularity each item sought to be excised and setting forth in each instance a full statement of the party's business reasons for requesting excision. Mere conclusory allegations and requests that an entire document be omitted from the public record will not be deemed to satisfy the requirements of this paragraph.

(c) All documents of any description received by the Office from any person in connection with an investigation of possible noncompliance with the Program, and not described in paragraph (a) of this section, are considered part of the investigatory files of the Office, compiled for law enforcement purposes, and will not be disclosed to any person except pursuant to law.

(d) Terms used in this section shall have the meanings ascribed thereto in 5 U.S.C. §§ 551–553.

Effective date. The amendments to Parts 1020–1050 shall be effective as of the date of publication in final form in the FEDERAL REGISTER, and shall govern all proceedings commenced after the effective date and all pending proceedings except to the extent that the Director of the Office determines, in his discretion, that application of the amendments or any portion thereof in a pending proceeding would not be feasible or would work injustice, in which case the appropriate former rule or rules shall apply.

[FR Doc.73-19181 Filed 9-24-73;8:45 am]

Title 7—Agriculture

CHAPTER VIII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE (SUGAR), DEPARTMENT OF AGRICULTURE

SUBCHAPTER K—GENERAL CONDITIONAL PAYMENTS PROVISIONS

PART 891—DOMESTIC BEET SUGAR AREA

Subpart F—Determination of Sugar Commercially Recoverable

RATES OF RECOVERABILITY: 1973 CROP

Pursuant to section 302(a) of the Sugar Act of 1948, as amended (7 U.S.C. 1132(a)), and as provided in § 891.45 (38 F.R. 6374), Subpart F of Part 891 is amended by adding § 891.46 to read as follows:

§ 891.46 Rates of recoverability, 1973 crop.

The hundredweight of sugar, raw value, commercially recoverable from sugarbeets on the 1973 crop shall be computed by multiplying the net weight thereof in tons, at the time of delivery to a processor, by the rate of commercially recoverable sugar which is applicable under the following provisions of this section:

(a) For sugarbeets marketed within a settlement area under any type of agreement other than "individual test" or a "combined individual-cossette test" contract, the rate of commercially recoverable sugar per ton of beets with respect to each settlement area is established as follows:

Sugar companies and settlement areas	1969–72 average sugar content (percent)	Rate of commercially recoverable sugar (hundredweight)
Amalgamated Sugar Co.:		
Idaho Districts and Elwyhee District	16.01	2.820
Cache, Franklin, and Ogden District	15.24	2.670
Utah-Idaho Sugar Co.:		
Layton, Idaho District	15.79	2.770
Buckeye Sugars, Inc.:		
Ottawa, Ohio	14.76	2.595

(b) For sugarbeets marketed under "individual test" contracts, other than those sugarbeets marketed for processing by the American Crystal Sugar Company at their Moorhead, Crookston, and East Grand Forks, Minnesota, and Drayton, North Dakota factories, the rate of commercially recoverable sugar per ton of beets shall be computed by multiplying 20 hundredweight by the percentage of sugar content of such beets, and then multiplying the result by 83.9 percent (the average extraction rate, as adjusted for shrink, effective for such beets). This computation can be shortened by the use of the factor of 0.1678. As an example, a content of 16.37 when multiplied by 0.1678 would result in a rate of commercially recoverable sugar of 2.747 hundredweight.

(c) For sugarbeets marketed under "combined individual-cossette test" contracts, including those sugarbeets marketed for processing by the American Crystal Sugar Company at their Moorhead, Crookston, and East Grand Forks, Minnesota, and Drayton, North Dakota factories, the rate of commerically recoverable sugar per ton of beets for a producer shall be computed by multiplying 20 hundredweight by the adjusted percentage of sugar content of the beets delivered by such producer and then multiplying the result by 87.9 percent (the average extraction rate effective for such beets). This computation can be shortened by the use of the factor of 0.1758. As an example, an adjusted content of 16.37 when multiplied by 0.1758 would result in a rate of commercially recoverable sugar of 2.878 hundredweight. The adjusted percentage of sugar content for each producer shall be obtained by multiplying the weighted average percentage of sugar content of the beets delivered by him by a factor, the numerator of which shall be the appropriate factory cossette test average set forth below and the denominator of which shall be the weighted average sugar content of all beets delivered to the factory at such time as the Agricultural Stabilization and Conservation State Committee determines that at least 97 percent of the current crop of beets has been delivered to such factory.

	1966–72 average sugar content (percent)
Sugar companies and settlement areas:	
Amalgamated Sugar Co., Nyssa-Nampa District	15.08
American Crystal Sugar Co., Moorhead, Crookston, and East Grand Forks, Minn., Factories and Drayton, N. Dak	15.64
Utah-Idaho Sugar Co.:	
Toppenish-Mosses Lake District	15.69
Utah Area (also includes beets from the Layton Utah Area) and Idaho District	15.55

STATEMENT OF BASES AND CONSIDERATIONS

Section 891.45 (38 FR 6374) provides the method of determining and establishing amount of sugar commercially recoverable from sugarbeets and provides that the rates shall become effective when public notice thereof is given in the Federal Register.

Pursuant to that regulation, this section sets forth the rates of recoverability as determined for the 1973 crop. Definitive rates are specified for the various settlement areas wherein sugarbeets are marketed under "cossette test" contract. Within these areas, the rates give effect to 1966–72 average percentages of sugar content and the 1967–71 national average extraction rate of beet sugar, raw value, of 87.9 percent.

The Amalgamated Sugar Company's Idaho districts of Twin Falls Northside, Twin Falls Southside, Mini-Cassia Northside, Mini-Cassia Southside and Elwyhee are not listed as separate settlement areas in paragraph (a) of this section since there is no separate past production history for each of these districts. Therefore, payments for these districts will be based on the 1966–72 average sugar content computed for the company's Idaho and Elwyhee districts combined.

In lieu of an extensive table of definitive rates applicable to sugarbeets of various percentages of sugar content as marketed under "individual test" contracts, this section provides that the rate of recoverability per ton of beets of any given percentage of sugar content so marketed may be computed by multiplying such content by the factor of 0.1678. This factor gives effect to the average rate of extraction of sugar, raw value, of 83.9 percent, as applicable to individual test beets. Listings of the applicable rates (expressed in hundredths) will be available for inspection at county ASCS offices in sugarbeet producing counties. Similarly, for beets marketed under "combined individual-cossette test" contracts, a factor of 0.1758 may be used to give effect to the average extraction rate of 87.9 percent. The difference between 87.9 and 83.9 represents the average "shrink" in percentage of sugar content between the time of delivery and the time of processing for all beets of the crops of 1967–71 marketed under individual test contracts. The lower percentage is not specified for beets marketed under combined individual-cossette tests because the results of such tests include adjustments to the cossette basis.

The percentages of 87.9 and 83.9 as determined herein for the 1973 crop, compare with the percentages of 88.8 and 84.8 for the 1972 crop.

Beginning with the 1964 crop, the regulations have provided that the 7-year factory cossette test average be substituted for the current year's factory cossette test average in calculating the factor to be applied to individual grower's sugar content for those growers marketing beets under "combined individual-cossette contracts". The average sugar content for each factory shown in paragraph (c) of this section represents the weighted average of the factory's cossette tests for the crops 1966–72.

The American Crystal Sugar Company factories at Moorhead, Crookston, and East Grand Forks, Minnesota and Drayton, North Dakota have been included in paragraph (c) of this section as a "combined individual-cossette test" area effective with the 1973 crop. This determination is based on the method the company proposes to use in making individual tests of producers' beets and is deemed necessary to avoid inequities in Sugar Act payments.

A notice of proposed rule making was not given for this determination as it follows mathematical formulas which make use of actual operating and production data reported by the sugar factories involved. Therefore, no discretionary decisions are involved and a public recommendation would not change the data. Public notice is, therefore, unnecessary.

Accordingly, I hereby find and conclude that the foregoing determination will effectuate the applicable provisions of the Act.

(Secs. 302, 303, 304, 403, 61 Stat. 930 as amended, 932; 7 U.S.C. 1132, 1133, 1134, 1153.)

Effective date.—September 25, 1973.

Signed at Washington, D.C., on September 19, 1973.

E. J. PERSON,
Deputy Administrator, Programs, Agricultural Stabilization and Conservation Service.

SEPTEMBER 19, 1973.

[FR Doc.73-20348 Filed 9-24-73;8:45 am]

CHAPTER X—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; MILK), DEPARTMENT OF AGRICULTURE

[Milk Order No. 73; Docket No. AO-173-A29]

PART 1073—MILK IN THE WICHITA, KANSAS, MARKETING AREA

Order Amending Order

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 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 Wichita, Kansas, 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 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 Wichita, Kansas 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. Section 1073.7 is revised as follows:

§ 1073.7 Producer.

"Producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted regulatory agency, which milk is received at a pool plant, diverted to a nonpool plant pursuant to § 1073.14(b), or accounted for by a cooperative association pursuant to § 1073.14(c), except:

(a) A producer-handler as defined in any order (including this part) issued pursuant to the Act, or

(b) A person with respect to milk that is physically received at a pool plant as diverted milk from an other order plant if a Class II or Class III classification under this order is designated for such milk and it is subject to the pricing and pooling provisions of another order issued pursuant to the Act.

2. In § 1073.8, paragraphs (c) and (d) are revised as follows:

§ 1073.8 Handler.

* * * * *

(c) Any cooperative association with respect to milk of producers it diverts from a pool plant to a nonpool plant;

(d) Any cooperative association with respect to milk it receives for its account from the farm of a producer in a tank truck owned and operated by, or under the control of, such association, for delivery to a pool plant(s); and

* * * * *

3. Section 1073.10 is revised as follows:

§ 1073.10 Distributing plant.

"Distributing plant" means a plant approved by a duly constituted regulatory agency for the processing or packaging of Grade A milk and from which during the month route disposition is made in the marketing area.

4. Section 1073.11 is revised as follows:

§ 1073.11 Supply plant.

"Supply plant" means a plant from which fluid milk products, acceptable to a duly constituted regulatory agency for distribution under a Grade A label, are shipped during the month to, and physically received at, a distributing plant.

5. Section 1073.12 is revised as follows:

§ 1073.12 Pool plant.

"Pool plant" means a plant specified in paragraph (a), (b) or (c) of this section that is not an other order plant or a producer-handler plant.

(a) A distributing plant that has:

(1) Route disposition, except filled milk, during the month of not less than 35 percent (25 percent for each month of March through July) of the fluid milk products, except filled milk, that are approved by a duly constituted regulatory agency for distribution under a Grade A label and are physically received at such plant, or diverted therefrom by the plant operator or a cooperative association to a nonpool plant as producer milk pursuant to § 1073.14, and route disposition, except filled milk, in the marketing area during the month is not less than 10 percent of such fluid milk products. If the entire quantity of fluid milk products, except filled milk, disposed of in packages in a particular size and form is received in such packages from other plants, all such disposition shall be credited to the plant from which such packages were received and shall be deducted from the appropriate disposition of the receiving plant; or

(2) Qualified as a pool plant in the immediately preceding month on the basis of performance standards described in paragraph (a)(1) of this section.

(b) A supply plant from which during the month not less than 50 percent of the total quantity of Grade A milk approved by a duly constituted regulatory agency that was physically received at such plant from dairy farmers and handlers described in § 1073.8(d), or diverted therefrom by the plant operator or a cooperative association as producer milk to a nonpool plant pursuant to § 1073.14, is shipped to a plant(s) described in paragraph (a) of this section. A supply plant that was a pool plant pursuant to this paragraph in each of the months of September through December shall be a pool plant in each of the following months of January through August unless the plant operator requests the market administrator in writing that such plant not be a pool plant. Such nonpool status shall be effective the first month following such notice and thereafter until the plant again qualifies as a pool plant on the basis of shipments; and

(c) A plant that is approved by a duly constituted regulatory agency to handle milk for fluid consumption, that is operated by a cooperative association, and from which during the month not less than 50 percent of the milk of producer members of such association is delivered directly or is transferred by the association to pool plants described in paragraph (a) of this section, unless such plant qualifies for the month as a pool plant under another order issued pursuant to the Act by delivering 50 percent or more of its Grade A receipts from dairy farmers to plants qualified as pool distributing plants under such other order.

6. Section 1073.14 is revised as follows:

§ 1073.14 Producer milk.

"Producer milk" shall be that skim milk and butterfat in milk from producers that is:

(a) Received at a pool plant directly from a producer or a handler pursuant to § 1073.8(d);

(b) Diverted by the operator of a pool plant or by a cooperative association to a nonpool plant other than a producer-handler plant, subject to the conditions of paragraph (d) of this section; or

(c) The difference between the quantity of milk as received by a handler pursuant to § 1073.8(d) from producers' farms and the quantity of such milk delivered to pool plants. For the purposes of §§ 1073.53 and 1073.82, such milk shall be deemed to have been received by such handler at the pool plant to which all other producer milk in the same tank truck was delivered.

(d) The following conditions shall apply to milk diverted from a pool plant to a nonpool plant that is not a producer-handler plant:

(1) Such milk shall be accounted for as received by the diverting handler at the location of the nonpool plant;

(2) Milk of a producer shall not be eligible for diversion from a pool plant under this section if during the month less than 15 percent of total milk of such person as a producer is received at a pool plant;

(3) The total quantity of milk diverted by a cooperative association that is greater than the total quantity of producer milk received at all pool plants during the month from the cooperative association shall not be producer milk;

(4) The total quantity of milk diverted by the operator (other than a cooperative association) of a pool plant that is greater than the total quantity received at such plant during the month from producers who are not members of a cooperative association shall not be producer milk;

(5) The diverting handler shall designate the dairy farmers' deliveries that are not producer milk pursuant to this paragraph. If the handler fails to make such designation, no milk diverted by him to a nonpool plant shall be producer milk;

(6) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk; and

(7) Milk diverted to an other order plant shall be producer milk only if a Class II or Class III classification is designated for such milk pursuant to the provisions of another order issued pursuant to the Act and such milk is not subject to the pricing and pooling provisions of such order.

7. In § 1073.30, paragraph (c) is revised as follows:

§ 1073.30 Reports of receipts and utilization.

* * * * *

(c) Each cooperative association shall report with respect to milk for which it is a handler pursuant to § 1073.8(c) and (d), as follows:

(1) Receipts of skim milk and butterfat in producer milk;

(2) The quantities delivered to each pool plant of another handler pursuant to § 1073.8(d) (the utilization of which is accountable by the latter under paragraph (a) of this section);

(3) The utilization of milk received under § 1073.8(d) but not delivered to the pool plant of another handler pursuant to such paragraph, and the utilization of milk for which the cooperative

is the handler pursuant to § 1073.8(c); and

(4) Such other information as the market administrator may require.

8. In § 1073.53, the section title and the introductory paragraph are revised as follows:

§ 1073.53 Location adjustments to handlers.

For milk received from producers or from a handler pursuant to § 1073.8(d) at a plant and classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (d) of this section or for other source milk to which a location adjustment is applicable, the price at such plant when located:

* * * * *

9. In § 1073.61, paragraph (c) is revised as follows:

§ 1073.61 Plants subject to other Federal orders.

* * * * *

(c) A supply plant meeting the requirements of § 1073.12(b) that also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, except during the months of January through August if such plant retains automatic pooling status under this part.

10. In § 1073.71, paragraph (a) is revised as follows:

§ 1073.71 Computation of uniform prices.

* * * * *

(a) Combine into one total the values computed pursuant to § 1073.70 for all handlers who filed the reports prescribed by § 1073.30 for the month, except those in default of payments required pursuant to § 1073.84 for the preceding month;

11. In § 1073.80, the introductory sentence in paragraph (d) is revised as follows:

§ 1073.80 Time and method of payment.

* * * * *

(d) Each handler who receives milk for which a cooperative association is the handler pursuant to § 1073.8(d), including the milk of producers who are not members of such association, and who the market administrator determines have authorized such cooperative association to collect for their milk, shall, on or before the second day prior to the date payments are due individual producers, pay such cooperative association for such milk as follows:

* * * * *

12. In § 1073.82, the section title and paragraph (a) are revised as follows:

§ 1073.82 Location adjustments to producers and on nonpool milk.

(a) For producer milk received at plants located outside Zone 1 there shall be added or deducted, as the case may be, an adjustment for each such plant for all milk at the rates specified in § 1073.53 (b) and (c); and

* * * * *

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

Effective date.—November 1, 1973.

Signed at Washington, D.C., on September 19, 1973.

CLAYTON YEUTTER,
Assistant Secretary.

[FR Doc.73-20342 Filed 9-24-73;8:45 am]

[Milk Order No. 129]

PART 1129—MILK IN THE AUSTIN-WACO, TEXAS, MARKETING AREA

Order Suspending Certain Provisions

This order suspending certain provisions is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Austin-Waco marketing area.

Notice of proposed rulemaking was published in the FEDERAL REGISTER (38 FR 23535) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. None was filed in opposition to the proposed suspension.

After consideration of al relevant material, including the proposal set forth in the aforesaid notice, data, views, and arguments filed thereon, and other available information, it is hereby found and determined that for the months of October 1973 through March 1974 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1129.20, which defines a "fluid milk product", the language "cultured sour cream."

STATEMENT OF CONSIDERATION

This suspension will result in milk used in sour cream being classified as Class II milk rather than Class I milk under the order.

The suspension was requested by the two pool plant operators regulated under the Austin-Waco order. Handlers in the North Texas and San Antonio Federal order markets, where sour cream is a Class II product, account for a substantial portion of the total sour cream sales in the Austin-Waco marketing area, competing with handlers under the Austin-Waco order. By changing the classification of sour cream under the Austin-Waco order as proposed, the producer price to Austin-Waco handlers for milk in such use will be closely aligned with the price of milk so used under such other orders.

The uniform classification of milk in Austin-Waco and other Texas markets has been recommended by the Department on the basis of a hearing covering 32 Federal orders. In this circumstance, the suspension of sour cream from the fluid milk product definition should apply for the period of October 1973–March 1974.

It is thereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension (38 FR 23535).

Therefore, good cause exists for making this order effective October 1, 1973.

It is therefore ordered, That the aforesaid provisions of the order are hereby suspended for the months of October 1973 through March 1974.

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

Effective date.—October 1, 1973.

Signed at Washington, D.C., on September 19, 1973.

CLAYTON YEUTTER,
Assistant Secretary.

[FR Doc.73-20345 Filed 9-24-73;8:45 am]

Title 12—Banks and Banking

CHAPTER V—FEDERAL HOME LOAN BANK BOARD

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

[No. 73-1340]

PART 545—OPERATIONS

NOW Accounts

SEPTEMBER 14, 1973.

Section 2(a) of Public Law No. 93–100 of August 16, 1973, provides that "No depository institution [as defined in section 2(b)] shall allow the owner of a deposit or account on which interest or dividends are paid to make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties, except that such withdrawals may be made in the States of Massachusetts and New Hampshire." By section 8 thereof, section 2 takes effect on the thirtieth day after the day of its enactment.

The Federal Home Loan Bank Board considers it desirable to amend Part 545 of the Rules and Regulations for the Federal Savings and Loan System by adding a new subparagraph (3) to § 545.-4-1(a) thereof. The purpose of the new subparagraph (3) is to make clear that the Board considers that section 2 of said Public Law No. 93–100 permits each Federal association having its home office in New Hampshire or Massachusetts to allow the owner of a savings account on which interest or dividends are paid to

make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties. By companion Resolution No. 73-1341, the Board adopts a similar amendment to Part 563 of the Rules and Regulations for Insurance of Accounts (12 CFR Part 563). By companion Resolution No. 73-1339, the Board proposes amendments to Part 526 of the Regulations for the Federal Home Loan Bank System (12 CFR Part 526) relating to the issuance and payment of interest or dividends on transaction accounts by member institutions having their home offices in New Hampshire or Massachusetts.

Accordingly, the Federal Home Loan Bank Board hereby amends said § 545.-4-1(a) by adding a new subparagraph (3) thereto to read as set forth below, effective September 15, 1973.

Since affording notice and public procedure on the above amendment would delay it from becoming effective for a period of time and since it is in the public interest that such amendment becomes effective as soon as possible, the Board hereby finds that notice and public procedure thereon are contrary to the public interest under the provisions of 12 CFR 508.11 and 5 U.S.C. 553(b); and the Board hereby finds that publication of such amendment for the 30-day period specified in 12 CFR 508.14 and 5 U.S.C. 553(d) prior to the effective date thereof is unnecessary since it relieves restrictions; and the Board hereby provides that such amendment shall become effective as hereinbefore set forth.

§ 545.4-1 Payments to third parties by withdrawal or transfer of savings accounts; checks and money orders.

(a) *Withdrawals and transfers.* * * *

(3) *Exception for transaction accounts.* Notwithstanding this paragraph (a) or any other provision of this subchapter C to the contrary, each Federal association having its home office in New Hampshire or Massachusetts may allow the owner of a savings account on which interest or dividends are paid to make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties.

* * * * *

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Public Law 93-100. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071.)

By the Federal Home Loan Bank Board.

[SEAL] EUGENE M. HERRIN, *Assistant Secretary.*

[FR Doc.73-20419 Filed 9-24-73;8:45 am]

[No. 73-1337]

PART 545—OPERATIONS

Real Estate Loan Percentage-of-Assets Limitations

SEPTEMBER 14, 1973.

The Federal Home Loan Bank Board, by Resolution No. 73-921, dated July 3, 1973, proposed to amend Part 545 of the Rules and Regulations for the Federal Savings and Loan System (12 CFR Part 545) for the purposes described herein. By a companion document (Resolution No. 73-922; July 3, 1973) the Board proposed collateral amendments to Parts 561 and 563 of the Rules and Regulations for Insurance of Accounts (12 CFR Parts 561 and 563). Notice of such proposed rulemaking was duly published in the FEDERAL REGISTER on July 15, 1973, and allowed until August 15, 1973; for interested persons to submit written comments.

On the basis of its consideration of all relevant material presented by interested persons and otherwise available, the Board hereby amends said Part 545 by revising § 545.6-6 and paragraphs (a)(1)(i), (c)(1)(ii) and (iii), and (c)(2)(i) and (iii) of § 545.6-7 thereof to read as set forth below. By companion Resolution No. 73-1338, the Board adopts amendments to said Parts 561 and 563.

Section 5(c) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(c)) provides that Federal associations "shall lend their funds only * * * on the security of first liens on real property within 100 miles of their home office or within the State in which such home office is located * * *." Pursuant to that language, the revised § 545.6-6 expands the "regular lending area" of a Federal association to include the entire State in which an association's home office is located and any area outside such State within a radius of 100 miles from such an association's home office. In the previous § 545.6-6, the Board had confined the "regular lending area" of a Federal association to the area within a radius of 100 miles from such an association's home office both within and without the State in which such home office is located and an additional area within a radius of 100 miles from each branch or agency of such an association to the extent that such additional area is also within the State in which the association's home office is located. (There continues to be a further provision for additional lending area for Federal associations which have converted from State-chartered institutions.) In so prescribing the regular lending area of Federal associations, the Board did not grant the full lending area available in section 5(c). Furthermore, this restriction on regular lending area was a basis for certain real estate loan percentage-of-assets restrictions in § 545.6-7.

Under paragraph (a) of § 545.6-7 a loan on the security of a single-family dwelling, a home or combination of home and business property is not subject to a percentage-of-assets limitation if such a loan, among other things, is made on the security of any such property located within the Federal association's "regular lending area." A loan on the security of such properties located beyond the association's regular lending area is subject to the "general" 20-percent-of-assets category of § 545.6-7(c)(1). As a result, prior to the instant amendment a loan of $45,000 or less on the security of a single-family dwelling or on the security of a home or combination of home and business property located within the State in which the association's home office is located but located beyond the 100 mile radius around home or branch offices had to be included within the general 20-percent-of-assets category under § 545.6-7(c)(1). The expansion of the "regular lending area" to include the entire State thereby allows for the removal of such loans from the "general" 20-percent-of-assets category.

Under paragraph (c)(1)(i) of § 545.6-7, any loan on the security of other dwelling units (defined in § 541.10-3; generally multi-family apartment loans) falls within the general 20-percent-of-assets category without regard to the location of the security property. However, loans made on other dwelling units located within regular lending area also may be placed in the "special" 20-percent-of-assets category of § 545.6-7(c)(2), assuming that the other requirements of that category are met also. Under the previous "regular lending area" computation, a loan made on an apartment building located within the State but beyond the 100 mile radius around home or branch offices had to be included within the general category and could not be included in the special category. Under the revised "regular lending area" definition, such an apartment loan could be included within the "special" category. The same result applies to the type of security property described as "a combination of dwelling units, including homes, and business property involving only minor or incidental business use" (defined in § 541.11-1).

This same result applies to certain participation loans. Under § 545.6-7(c)(3)(ii) and (iii), a participation interest in a loan on the security of a single-family dwelling, a home, or combination of home and business property located beyond regular lending area but within the State had to be placed in either the general category or the "participation" 20-percent-of-assets category. By applying the revised statewide regular-lending-area definition, participation loans made on the security of such properties located within the State but beyond a 100-mile radius of home or branch offices, would not be subject to percentage-of-assets limitations.

In connection with expanding the regular lending area, the Board also finds it desirable to make four conforming amendments to § 545.6-7, as were discussed in said Resolution No. 73-921. These amendments delete now unnecessary exceptions from the previous restrictions for insured loans secured by a single-family dwelling, a home, or combination of home and business property located more than 100 miles from an office of the Federal association but within the State in which the association's home office is located. These exceptions are deleted from § 545.6-7(a)(1)(i), (c)(1)(ii)(b), (c)(1)(iii)(b) and (c)(2)(i). Insured loans now must be

allocated to percentage-of-assets categories on the same basis as uninsured conventional loans.

Revised § 545.6–7(c)(2)(iii) provides that otherwise qualifying loans secured by other dwelling units or a combination of dwelling units, including homes, and business property involving only minor or incidental business use may be placed in the "special" 20-percent-of-assets category if, at the time the loan is allocated to that category, the lending Federal association meets the net worth requirement set forth in Insurance Regulation § 563.13. The provision previously required that at the time the loan was to be allocated to the "special" category, the Federal association's net worth had to be not less than 5% of the average of the association's savings accounts balances as of the close of the three preceding calendar years.

Accordingly, the Federal Home Loan Bank Board hereby amends said Part 545 by revising § 545.6–6 and paragraphs (a)(1)(i), (c)(1)(ii) and (iii), and (c)(2)(i) and (iii) of § 545.6–7 to read as set forth below, effective September 25, 1973.

Since the above amendments relieve restrictions, the Board hereby finds that the delay in the effective date of 30 days after publication in the FEDERAL REGISTER with respect to said amendments is unnecessary under the provisions of 12 CFR 508.14 and 5 U.S.C. 553(d), and the Board hereby provides that such amendments shall become effective as hereinbefore set forth.

§ 545.6–6 Lending area.

The regular lending area of a Federal association consists of the area: (a) Within the State in which such association's home office is located; (b) within any portion of a circle with a radius of 100 miles from such association's home office which is outside of the State in which such association's home office is located; and (c) in the case of a Federal association which is converted from a State-chartered institution, beyond the areas specified in paragraphs (a) and (b) of this section but within which area such association made loans while operating under State charter. Each converted association that desires to continue to make loans beyond the areas specified in paragraph (a) and (b) of this section but in the areas in which it made loans while operating under State charter shall file with the Board a map showing the areas within which such association made loans while operating under State charter. For the purpose of this section, the term "State" shall include the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States; and a county, parish, or similar political subdivision of a State is the unit of "area" in which a converted association made loans beyond the areas specified in paragraphs (a) and (b) of this section while operating under State charter.

§ 545.6–7 Percentage limitations on real estate loan investments.

(a) *Loan investments not subject to percentage limitations.* The following investments by a Federal association in loans on the security of real estate shall not be subject to any percentage-of-assets or percentage-of-savings-accounts limitation:

(1) A loan on the security of a single-family dwelling, or on the security of a home or combination of home and business property except, however, any such loan which is:

(i) On the security of any such property located beyond the association's regular lending area;

* * * * *

(c) *Percentage limitations for other loans.* Except as specified in paragraphs (a) and (b) of this section, no Federal association may make any investment in a real estate loan unless the amount of such investment can be allocated within one or more of 3 percentage-limitation categories specified in this paragraph. In the case of a loan investment which is specified as allocable to more than one of the 3 categories, all or part of any allocation to any one of such categories may be reallocated at any time to another one of such categories, if applicable.

(1) *General 20-percent-of-assets category.* The following investments, not to exceed at any one time an amount equal to 20 percent of the association's assets, are allocable to this category:

(i) Any loan on the security of other improved real estate, other dwelling units, or a combination of dwelling units, including homes, and business property involving only minor or incidental business use, without regard to the location of the security property;

(ii) Any loan on the security of a single-family dwelling, if either—

(*a*) Such loan exceeds $45,000, or

(*b*) The security property is located beyond the association's regular lending area;

(iii) Any loan on the security of a home or combination of home and business property if either—

(*a*) The amount of such loan exceeds, for any dwelling unit in any such security property which is not a single-family dwelling, an amount prescribed in or under section 207(c)(3) of the National Housing Act; or

(*b*) The security property is located beyond the association's regular lending area;

* * * * *

(2) *Special 20-percent-of-assets category.* The following investments, not to exceed at any one time an amount equal to 20 percent of the association's assets, are allocable to this category: any loan, or participation interest in a loan, on the security of other dwelling units or a combination of dwelling units, including homes, and business property involving only minor or incidental business use, if—

(i) The security property is located within the association's regular lending area;

* * * * *

(iii) At the time of the allocation to this category, the association's net worth (as defined in § 561.13 of this chapter) meets the net worth requirement of § 563.13 of this chapter.

* * * * *

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.)

By the Federal Home Loan Bank Board.

[SEAL] EUGENE M. HERRIN, *Assistant Secretary.*

[FR Doc.73-20417 Filed 9-24-73;8:45 am]

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

[No. 73-1338]

PART 561—DEFINITIONS

PART 563—OPERATIONS

Normal Lending Territory

SEPTEMBER 14, 1973.

The Federal Home Loan Bank Board, by Resolution No. 73–922, dated July 3, 1973, proposed to amend Parts 561 and 563 of the Rules and Regulations for Insurance of Accounts (12 CFR Parts 561 and 563), for the purposes described herein. By a companion document (Resolution No. 73–921; July 3, 1973) the Board proposed collateral amendments to Part 545 of the Rules and Regulations for the Federal Savings and Loan System (12 CFR Part 545). Notice of such proposed rulemaking was duly published in the FEDERAL REGISTER on July 15, 1973, and allowed until August 15, 1973, for interested persons to submit written comments. On the basis of its consideration of all relevant material presented by interested persons and otherwise available, the Board hereby amends said Parts 561 and 563 by revising §§ 561.22 and 563.9(b) to read as set forth below. By companion Resolution No. 73–1337, the Board adopts amendments to said Part 545.

The revised § 561.22 expands the definition of "normal lending territory" of insured institutions to conform with the expansion of "regular lending area" of § 545.6–6 for Federal associations as amended by Resolution No. 73–1337. "Normal lending territory" as previously defined by the Board in Insurance Regulation 561.22 was the same area as "regular lending area", except that the 100-mile radius from an insured institution's principal office, branch office or agency office was reduced to 50 miles if the insured institution has scheduled items (other than assets acquired in a merger instituted for supervisory reasons) in excess of 4 percent of its specified assets. Under the revised definition, "normal lending territory" includes the entire State in which an insured institution's

principal office is located, plus the territory within any portion of a circle with a radius of 100 miles from the institution's principal office which is outside of such state. The provision for "grandfathered" normal lending territory and the reduction in normal lending territory caused by having a scheduled items ratio in excess of 4 percent remains unchanged.

The term "normal lending territory" is used principally for nationwide loans (§ 563.9) and participation loans (§ 563.9-1). Under the previous § 563.9(b) nationwide lending provision, an insured institution having a scheduled-items ratio in excess of 4% had a 20-percent-of-assets limit on loans made on the security of real estate located between 50 and 100 miles from the principal, branch, agency or other approved office of the institution. Under revised § 563.9(b), the Board has put the section in conformity with the expanded normal lending territory definition by substituting a statewide limitation for the 100-mile limitation. This means that the 20-percent limit applies to loans made on the security of real estate located anywhere in the State but beyond 50 miles from the offices of an association which has a scheduled-items ratio in excess of 4%.

The application of § 563.9(e), concerning other nationwide loans, is also affected by the expansion of normal lending territory, although no language change was necessary. An investment by an insured institution in a conventional whole loan secured by improved real estate located beyond the previous 100 mile normal lending territory but within the State in which the insured institution's principal office is located was a "nationwide loan" and was subject to the 15%-of-assets limitation of § 563.9(e). As a result of the revision of "normal lending territory", such an in-State investment is no longer a "nationwide loan" and would not be subject to that percentage-of-assets limitation.

A similar change occurs in the participation loan provisions of § 563.9-1. Under § 563.9-1(b), concerning participation loans outside normal lending territory, the 40%-of-assets limitation previously included participation loan investments on the security of improved real estate located beyond the 100-mile radius but within the State. Under the expanded definition of normal lending territory, such investments are still "participation loans", but now are within § 563.9-1(a) (participation loans within normal lending territory) and are therefore not subject to any of the § 563.9-1(b) requirements.

Accordingly, the Federal Home Loan Bank Board hereby amends Parts 561 and 563 of the Rules and Regulations for the Federal Savings and Loan Insurance Corporation by revising §§ 561.22 and 563.9(b) to read as set forth below, effective September 25, 1973.

Since the above amendments relieve restriction, the Board hereby finds that the delay in the effective date of 30 days after publication in the FEDERAL REGISTER with respect to said amendments is unnecessary under the provisions of 12 CFR 508.14 and 5 U.S.C. 553(d), and the Board hereby provides that such amendments shall become effective as hereinbefore set forth.

§ 561.22 Normal lending territory.

(a) *Scheduled items not in excess of 4 percent.* "Normal lending territory" for an insured institution which, at the close of its most recent semiannual period, had scheduled items (other than assets acquired in a merger instituted for supervisory reasons) not in excess of 4 percent of its specified assets means the territory: (1) Within the State in which such institution's principal office is located; (2) within any portion of a circle with a radius of 100 miles from such institution's principal office which is outside of the State in which such institution's principal office is located; and (3) beyond paragraph (a)(1) and (2) of this section but within which territory the institution was operating on June 27, 1934.

(b) *Scheduled items in excess of 4 percent.* "Normal lending territory" for an insured institution which, at the close of its most recent semiannual period, had scheduled items (other than assets acquired in a merger instituted for supervisory reasons) in excess of 4 percent of its specified assets means the territory: (1) Within the portion of the State in which the institution's principal office is located which is within a radius of 50 miles from such principal office or from each place of business which has been approved in writing by the institution's appropriate supervisory authority as a branch office, agency office, or similar place of business for such institution; (2) within any portion of a circle with a radius of 50 miles from such institution's principal office which is outside of the State in which such institution's principal office is located; and (3) beyond 50 miles from such institution's principal office but within which territory the institution was operating on June 27, 1934.

(c) *Definitions.* For the purpose of this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States; and a county, parish, or similar political subdivision of a State is the unit of "territory" in which the institution was operating on June 27, 1934.

§ 563.9 Nationwide lending.

* * * * *

(b) *Loans beyond normal lending territory when scheduled items exceed 4%.* Any insured institution which, at the close of its most recent semiannual period, had scheduled items (other than assets acquired in a merger instituted for supervisory reasons) in excess of 4 percent of its specified assets, may, to the extent that it has legal power to do so, make or purchase whole loans in an aggregate amount not exceeding 20 percent of its assets on the security of real estate located outside its normal lending territory but within the State in which its principal office is located.

* * * * *

(Secs. 402, 403, 48 Stat. 1256, 1257, as amended; 12 U.S.C. 1725, 1726. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071.)

By the Federal Home Loan Bank Board.

[SEAL] EUGENE M. HERRIN, *Assistant Secretary.*

[FR Doc.73-20418 Filed 9-24-73;8:45 am]

FEDERAL HOME LOAN BANK BOARD

[No. 73-1341]

PART 563—OPERATIONS

NOW Accounts

SEPTEMBER 14, 1973.

Section 2(a) of Public Law No. 93-100 of August 16, 1973, provides that "No depository institution [as defined in section 2(b)] shall allow the owner of a deposit or account on which interest or dividends are paid to make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties, except that such withdrawals may be made in the States of Massachusetts and New Hampshire." By section 8 thereof, section 2 takes effect on the thirtieth day after its enactment.

The Federal Home Loan Bank Board, as the operating head of the Federal Savings and Loan Insurance Corporation, considers it desirable to amend Part 563 of the Rules and Regulations for Insurance of Accounts by adding a new § 563.7-3 thereto. The purpose of the new section is to make clear that the Board considers that section 2 of said Public Law No. 93-100 permits each insured institution having its principal office in New Hampshire or Massachusetts to allow the owner of a savings account on which interest or dividends are paid to make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties. By companion Resolution No. 73-1340, the Board adopts a similar amendment to Part 545 of the Rules and Regulations for the Federal Savings and Loan System (12 CFR Part 545). By companion Resolution No. 73-1339, the Board proposes amendments to Part 526 of the Regulations for the Federal Home Loan Bank System (12 CFR Part 526) relating to the issuance and payment of interest or dividends on transaction accounts by member institutions having their home offices in New Hampshire or Massachusetts.

Accordingly, the Federal Home Loan Bank Board hereby amends said Part 563 by adding a new § 563.7-3 thereto, immediately after § 563.7-2, to read as set forth below, effective September 15, 1973.

Since affording notice and public procedure on the above amendment would delay it from becoming effective for a period of time and since it is in the public interest that such amendment becomes effective as soon as possible, the Board hereby finds that notice and public procedure thereon are contrary to the public

interest under the provisions of 12 CFR 508.11 and 5 U.S.C. 553(b); and the Board hereby finds that publication of such amendment for the 30-day period specified in 12 CFR 508.14 and 5 U.S.C. 553(d) prior to the effective date thereof is unnecessary since it relieves restrictions; and the Board hereby provides that such amendment shall become effective as hereinbefore set forth.

§ 563.7-3 Exception for transaction accounts.

Notwithstanding any other provision of this subchapter D to the contrary, each insured institution having its principal office in New Hampshire or Massachusetts is not prohibited from allowing the owner of a savings account on which interest or dividends are paid to make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties.

(Secs. 402, 403, 48 Stat. 1256, 1257, as amended; 12 U.S.C. 1725, 1726. Public Law 93-100. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071.)

By the Federal Home Loan Bank Board.

[SEAL] EUGENE M. HERRIN, *Assistant Secretary.*

[FR Doc.73-20420 Filed 9-24-73;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 11423; Amdt. 39-1723]

PART 39—AIRWORTHINESS DIRECTIVES

Nickel-Cadmium Batteries

Amendment 39-1521 (37 FR 18522), AD 72-19-4, as amended by Amendment 39-1598 (38 FR 5238), effective March 6, 1973, requires, in part, that aircraft to which it applies be modified before October 1, 1973, to prevent a possible battery fire that could result from overheating caused by an undetected battery failure. The required modification must be FAA approved as meeting one of the following three alternative objectives: (1) Automatic control of battery charging rate as a function of battery temperature; (2) warning of battery overtemperature, based on sensing of battery temperature, with means and procedures for disconnecting the battery from the charging source; and (3) warning of battery failure with means and procedures for disconnecting the battery from its charging source.

After the issuance of Amendment 39-1598, the FAA has determined that parts are not available in sufficient quantities to permit timely compliance by all affected persons. Furthermore, the FAA has determined that sufficient parts will be available in time to permit compliance by February 1, 1974, and that extension of the compliance time until that date will have no adverse effect on safety. Therefore, Amendment 39-1521, AD 72-19-4, as amended by Amendment 39-1598, is being further amended to require acceptable modification before February 1, 1974.

Since this amendment merely extends a compliance date 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.

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

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 39-1521 (37 F.R. 18522), AD 72-19-4, as amended by Amendment 39-1598 (38 F.R. 5238), is further amended by striking out the words "October 1, 1973" from paragraph (f) and inserting the words "February 1, 1974" in place thereof.

Issued in Washington, D.C., on September 11, 1973.

This amendment becomes effective September 19, 1973.

JAMES F. RUDOLPH, *Director, Flight Standards Service.*

[FR Doc.73-20351 Filed 9-24-73;8:45 am]

[Airworthiness Docket No. 73-WE-16-AD; Amdt. 39-1720]

PART 39—AIRWORTHINESS DIRECTIVES

General Dynamics Model 340/440 and C-131E Airplanes, Including Those Converted to Turbo-Propeller Power

There have been cracks in the nose landing gear, left hand upper, drag struts in the area of the shear-bolt bore that could result in failure of the drag strut and collapse of the nose landing gear. Since this condition is likely to exist or develop in airplanes of the same type design, an A.D. is being issued to require repetitive inspections and replacement or repair of cracked drag struts on General Dynamics Model 340/440 and C-131E airplanes, including those converted to turbo-propeller power.

The 1200 landing compliance time for the initial inspection and modification has been established by the agency on the basis of safety considerations. It is the same as that recommended in General Dynamics Service Bulletin No. 32-8, dated August 10, 1973.

This compliance time provides the lead time for operators to schedule and plan compliance with the AD with a minimum burden. To prescribe the initial inspection and modification required by this AD under the usual notice and public procedures followed by the agency within the time the agency has determined is required in the interest of safety, would necessarily result in a reduction of the compliance time for the initial inspection and modification required by this A.D. This could possibly leave the operators insufficient time to schedule airplanes for compliance with the A.D. Therefore, accomplishment of the initial inspection and modification required by this A.D. within the time the agency has determined is necessary makes strict compliance with the notice and public procedure provisions of the Administrative Procedure Act impracticable and this amendment becomes effective 30 days after publication in the Federal Register. However, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this A.D. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the Regional Counsel, FAA Western Region, Attention: Rules Docket, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. All communications received before the effective date will be considered by the Administrator, and the AD may be changed in the light of comments received. All comments will be available both before and after the effective date in the Rules Docket for examination by interested persons. Operators are urged to submit their comments as early as possible so that comments will be received in sufficient time to amend the AD before it becomes effective.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (31 FR 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

GENERAL DYNAMICS. Applies to Models 340/440 and C-131E airplanes certificated in all categories, including those converted to Turbo-propeller power.

Compliance required as indicated.

To detect cracks originating at the shear-bolt bore in the drag strut, and to prevent possible failure of the landing gear, accomplish the following:

(a) Non-Modified Struts (See Note, below).

(1) Within 1200 landings after the effective date of this A.D., unless already accomplished within the last 4800 landings prior to this A.D., perform a disassembly inspection of the nose landing gear, left hand, upper drag strut for crack development in the area of the clutch plate to strut shear bolt attach hole per General Dynamics Service Bulletin No. 32-8, dated August 10, 1973, or later FAA-approved revisions, and modify the strut per Part III of the Bulletin.

(2) If no cracks are found, repeat the inspection at intervals not to exceed 6000 landings thereafter, until the strut has been modified in accordance with the provisions of Part IV, Service Bulletin No. 32-8, or later FAA-approved revisions.

(3) If cracks are located, replace the drag strut with new or serviceable parts of the same type design. The various configurations and the reinspection requirements are as shown below:

(A) The installation of new P/N 340-7310231-1 parts reconfigured per Part IV of Service Bulletin No. 32-8 or original configuration P/N's 340-5210103 and 340-5215103 struts modified per Part III and Part IV of Service Bulletin No. 32-8 constitutes terminating action.

(B) If new or previously modified struts are used for replacement, which do not have the modifications of Part IV, Service Bulletin No. 32-8 incorporated, perform repetitive inspections at intervals not to exceed

6000 landings from the time of replacement.

(C) If previously modified parts are used for replacement that have a subsequent rework accomplished per Part IV of Service Bulletin No. 32-8, perform an initial inspection at or before 20,000 landings following rework, and at intervals not to exceed 6000 landings thereafter.

(D) Struts repaired per Part II of the Service Bulletin No. 32-8, or later FAA-approved revisions, will be inspected at intervals not to exceed 6000 landings following the repair.

(b) Modified or New Struts (See Note, below).

(1) On or before 20,000 landings after the effective date of this AD, perform a disassembly inspection of the nose landing gear, left hand upper drag strut in the area of the clutch plate to strut shear bolt attach hole as specified in General Dynamics Service Bulletin No. 32-8, or later FAA-approved revisions.

(2) If no cracks are found, repeat the inspection in (b)(1), above, at intervals not to exceed 6000 landings until the strut has been modified in accordance with the provisions of Part IV, Service Bulletin No. 32-8, or later FAA-approved revisions.

(3) If cracks are found, replace the drag struts with new or serviceable parts of the same type design. Re-inspection requirements for each type part are as specified in (a)(3)(A)(B)(C) and (D), above.

(c) Equivalent inspections and installations may be approved by the Chief, Aircraft Engineering, FAA Western Region.

(d) For the purpose of complying with this A.D., subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's hours time in service by the operators fleet average time from takeoff to landing for the airplane type.

NOTE.—The following definitions apply.

Non-Modified Struts—This is an original configuration strut, which has not been modified by previous Service Engineering Reports or by Service Bulletin 32-8.

Modified Struts—This includes all struts modified by previous SER's No. 15-4-340-38/440-38 and 15-4-440-44A/440-44 and/or by Part III of Service Bulletin No. 32-8 that have not been modified per Part IV of Service Bulletin No. 32-8.

New Struts—Part Number 340-7310231-1 struts that have not been reworked per Part IV of Service Bulletin No. 32-8.

This amendment becomes effective October 18, 1973.

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

Issued in Los Angeles, California, on September 7, 1973.

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

[FR Doc.73-20352 Filed 9-24-73;8:45 am]

[Airspace Docket No. 73-AL-8]

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

Redesignation of Colored Federal Airways and Reporting Points

On June 26, 1973, a notice of proposed rulemaking (NPRM) was published in the Federal Register (38 FR 16785) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 71 of the Federal Aviation Regulations that would alter Amber Federal Airway No. 1 between Anchorage and Skwentna, Alaska, Radio Rangers; revoke Red Federal Airway No. 82 between Skwentna and Matanuska, Alaska, Intersection; redesignate the Skwentna Transition Area to include a smaller area and also lower the floor; and effect editorial changes generated by conversion of the Anchorage and Skwentna Radio Ranges to Radio Beacons and NAVAID name changes.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. No comments were received.

Effective October 11, 1973, the Anchorage and Skwentna Radio Ranges (RR) will be converted to Radio Beacons (RBN), and the Anchorage NAVAID will be renamed at that time as the Campbell Lake RBN. The editorial amendment associated with these NAVAIDS will be made effective simultaneously with the conversions, and are contained herein as Airspace Docket No. 73-AL-8. The substantive amendment proposed in the Notice will be contained in Airspace Docket No. 73-AL-8A which will be published later with an effective date of November 8, 1973, and will reflect the realignment of Amber Airway No. 1 from Campbell Lake RBN to Skwentna RBN, revocation of Red Airway No. 82 in its entirety, and reconfiguration of the Skwentna Transition Area.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 GMT, October 11, 1973, as hereinafter set forth.

1. Section 71.103 (38 FR 305 and 22770) is amended as follows:

a. In G-8 "INT northeast course Kenai and a bearing of 266° from Anchorage, Alaska, RR; Anchorage RR; INT northeast course Anchorage RR and southeast course Skwentna, Alaska, RR;" is deleted and "INT northeast course Kenai and a bearing of 266° from Campbell Lake, Alaska, RBN; Campbell Lake RBN; INT Campbell Lake RBN 026° and Skwentna, Alaska, RBN 111° bearings;" is substituted therefor.

b. In G-9 "Anchorage, Alaska, RR." is deleted and "to Campbell Lake, Alaska, RBN." is substituted therefor.

2. Section 71.105 (38 FR 305 and 21492) is amended as follows:

In A-1 "INT west course Hinchinbrook RR and southeast course Anchorage, Alaska, RR: Anchorage, RR; INT northwest course Anchorage and southeast course Skwentna, Alaska, RR; Skwentna RR;" is deleted and "INT west course Hinchinbrook RR and 122° Campbell Lake, Alaska, RBN; Campbell Lake RBN; INT Campbell Lake RBN 331° and Skwentna, Alaska, RBN 111° bearings; Skwentna RBN;" is substituted therefor.

3. Section 71.107 (38 FR 306) is amended as follows:

a. In R-40 "INT east course Kenai, Alaska, RR and southwest course Anchorage, Alaska, RR; Anchorage, RR." is deleted and "to Campbell Lake, Alaska, RBN." is substituted therefor.

b. R-82 is amended to read:

"R-82 from Skwentna, Alaska, RBN; to INT Skwentna RBN 111° and Campbell Lake, Alaska, RBN 026° bearings."

4. Section 1.109 (38 FR 306 and 8133) is amended as follows:

In. B-26 "From Anchorage, Alaska, RR," is deleted and "From Campbell Lake, Alaska, RBN, via" is substituted therefor.

5. Section 71.171 (38 FR 351) is amended as follows:

In Anchorage, Alaska (Anchorage International Airport), "Anchorage RR southwest course extending from the 5-mile radius zone to 8.5 miles southwest of the RR;" is deleted and "Campbell Lake RBN 209° bearing extending from the 5-mile radius zone to 8.5 miles southwest of the RBN;" is substituted therefor.

6. Section 71.211 (38 FR 618) is amended as follows:

a. "Anchorage, Alaska, RR" is deleted and "Campbell Lake, Alaska, RBN" is substituted therefor.

b. "Skwentna, Alaska, RR" is deleted and "Skwentna, Alaska, RBN" is substituted therefor.

(SEC. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c).)

Issued in Washington, D.C., on September 10, 1973.

CHARLES H. NEWPOL,
Acting Chief, Airspace and
Air Traffic Rules Division.

[FR Doc.73-20353 Filed 9-24-73;8:45 am]

[Airspace Docket No. 73-SW-56]

PART 73—SPECIAL USE AIRSPACE

Revocation of Restricted Area

The purpose of this amendment to Part 73 of the Federal Aviation Regulations is to revoke Restricted Area R-5116A and R-5116B, White Sands Missile Range, N. Mex.

The United States Air Force has advised the Federal Aviation Administration that the requirement for restricted airspace R-5116 A & B is no longer valid.

Since this amendment returns the airspace to public use and is a minor amendment upon which the public would have no particular reason to comment, notice and public procedure thereon are unnecessary. In order to make this airspace available for public use at the earliest possible date, good cause exists for making this amendment effective on less than 30 days notice.

In consideration of the foregoing, Part 73 of the Federal Aviation Regulations is amended, effective September 25, 1973.

Section 73.51 (38 FR 658, 1923, 14271 and 12735) is amended as follows:

1. "R-5116A White Sands Proving Grounds, N. Mex." is deleted.

2. "R-5116B White Sands Proving Grounds, N. Mex." is deleted.

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

Issued in Washintgon, D.C., on September 10, 1973.

CHARLES H. NEWPOL,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.73-20354 Filed 9-24-73;8:45 am]

[Airspace Docket No. 73-WA-39]

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Alteration of RNAV Waypoint Reference Facilities

The purpose of this amendment to Part 75 of the Federal Aviation Regulations is to amend several RNAV waypoint reference facilities on J859R, J880R, and J992R. These changes are prompted by the alteration of other RNAV routes which share common waypoints with J859R, J880R, and J992R. The action taken herein will assign a single reference facility to waypoints which are included in more than one route.

Since this amendment is minor in nature with no substantive change in regulation and upon which the public affected thereby would not be particularly interested in commenting, notice and public procedure thereon are unnecessary. However, since sufficient time must be allowed to make appropriate changes on aeronautical charts, this amendment will become effective in more than 30 days after publication.

In consideration of the foregoing, Part 75 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., November 8, 1973, as hereinafter set forth.

Section 75.400 (38 FR 700) is amended as follows:

Waypoint, location, and reference facility

1. In J859R Kansas City, Mo., to Denver, Colo., "Walcott, Kans.; 39°13'06" N. 94°-59'28" W.; Salina, Kans., Enterprise, Kans. 38°58'04" N. 96°59"46" W. Salina, Kans." is deleted and "Walcott, Kans., 39°13'06" N. 94°59'28" W. Butler, Mo., Enterprise, Kans., 38°58'04" N. 96°59'46" W. Wichita, Kans.," is substituted therefor.

2. In J880R Jacksonville, Fla., to Cleveland, Ohio, "Beech Mountain, N.C., 36°05'30" N. 82°04'58" W. Greensboro, N.C.," is deleted and "Beech Mountain, N.C., 36°05'30" N. 82°04'58" W. Spartanburg, S.C.," is substituted therefor.

3. In J992R Refinery, Tex., to Tulsa, Okla., "Tulsa, Okla., 36°11'46" N. 95°47'16" W. Oklahoma City, Okla.," is deleted and "Tulsa, Okla., 36°11'46" N. 95°47'16" W. Tulsa, Okla.," is substituted therefor.

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

Issued in Washington, D.C., on September 10, 1973.

CHARLES H. NEWPOL,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.73-20355 Filed 9-24-73;8:45 am]

[Airspace Docket No. 73-RM-19]

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Extension of Jet Route

On July 20, 1973, a notice of proposed rulemaking (NPRM) was published in the FEDERAL REGISTER (38 FR 19415) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 75 of the Federal Aviation Regulations that would extend Jet Route 148 from Delta, Utah, to Coaldale, Nev.

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

In consideration of the foregoing, Part 75 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., December 6, 1973, as hereinafter set forth.

In § 75.100 (38 FR 681) the description of the Jet Route 148 is amended to read as follows:

Jet Route No. 148. From Coaldale, Nev., via Delta, Utah; Myton, Utah; Cheyenne, Wyo.; to O'Neill, Nebr.

This amendment is made under the authority of Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on September 17, 1973.

H. B. HELSTROM,
Chief, Airspace and Air Traffic Division.

[FR Doc.73-20356 Filed 9-24-73;8:45 am]

[Docket No. 13181; Amdt. No. 881]

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 (SIAP's) that were recently adopted by the Administrator to promote safety at the airports concerned.

The complete SIAP's 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 rulemaking dockets of the FAA in accordance with the procedures set forth in Amendment No. 97-696 (35 FR 5609).

SIAP's are available for examination at the Rules Docket and at the National Flight Data Center, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591. Copies of SIAP's adopted in a particular region are also available for examination at the headquarters of that region. Individual copies of SIAP's may be purchased from the FAA Public Document Inspection Facility, HQ-405, 800 Independence Avenue SW., Washington, D.C. 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 $150.00 per annum from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Additional copies mailed to the same address may be ordered for $30.00 each.

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 97.23 is amended by originating, amending, or canceling the following VOR-VOR/DME SIAP's, effective October 28, 1973.

Ft. Worth, Tex.—Greater Southwest Int'l Dallas/Ft. Worth Field, VOR Rwy 13, Amdt. 12, Canceled.

Ft. Worth, Tex.—Greater Southwest Int'l Dallas/Ft. Worth Field, VOR/DME Rwy 35, Amdt. 3, Canceled.

* * * effective October 25, 1973

Brownsville, Tex.—Brownsville Int'l Arpt., VOR Rwy 26, Amdt. 14.

Commerce, Tex.—Commerce Municipal Arpt., VORTAC-A, Amdt. 1.

Pontiac, Mich.—Oakland-Pontiac Arpt., VOR Rwy 9R, Amdt. 14.

Pontiac, Mich.—Oakland-Pontiac Arpt., VOR Rwy 27L, Amdt. 7.

Waco, Tex.—Waco-Madison Cooper Arpt., VOR Rwy 14, Amdt. 14.

Waco, Tex.—Waco-Madison Cooper Arpt., VORTAC Rwy 32, Amdt. 6.

* * * effective September 27, 1973

Salinas, Cal.—Salinas Municipal Arpt., VOR Rwy 13, Amdt. 7.

Salinas, Cal.—Salinas Municipal Arpt., VOR/DME-A, Amdt. 2.

Salinas, Cal.—Salinas Municipal Arpt., VOR/DME Rwy 13, Amdt. 2.

Santa Ynez, Cal.—Santa Ynez Arpt., VOR-A, Amdt. 1.

2. Section 97.25 is amended by originating, amending, or canceling the following SDF-LOC-LDA SIAP's, effective October 28, 1973.

Ft. Worth, Tex.—Greater Southwest Int'l Dallas/Ft. Worth Field, LOC (BC) Rwy 31, Amdt. 16, Canceled.

* * * effective October 25, 1973

Waco, Tex.—Waco-Madison Cooper Arpt., LOC (BC) Rwy 36, Amdt. 4.

* * * effective September 27, 1973

Niagara Falls, N.Y.—Niagara Falls Int'l Arpt., LOC (BC) Rwy 10L, Amdt. 1.

3. Section 97.27 is amended by originating, amending, or canceling the following NDB/ADF SIAP's, effective October 28, 1973.

Ft. Worth, Tex.—Greater Southwest Int'l Dallas/Ft. Worth Field, NDB Rwy 13, Amdt. 17, Canceled.

* * * effective October 25, 1973

Brownsville, Tex.—Brownsville Int'l Arpt., NDB Rwy 13R, Amdt. 5.

Brownsville, Tex.—Brownsville Int'l Arpt., NDB Rwy 17L, Orig., Canceled.
Ft. Lauderdale, Fla.—Ft. Lauderdale Executive Arpt., NDB Rwy 8, Orig.
Heber Springs, Ark.—Heber Springs Municipal Arpt., NDB-A, Amdt. 2.
Philadelphia, Pa.—Philadelphia Int'l Arpt., NDB Rwy 27L, Orig.
Waco, Tex.—Waco-Madison Cooper Arpt., NDB Rwy 18, Amdt. 9.

4. Section 97.29 is amended by originating, amending, or canceling the following ILS SIAP's, effective October 28, 1973.

Ft. Worth, Tex.—Greater Southwest Int'l Dallas/Ft. Worth Field, ILS Rwy 13, Amdt. 17, Canceled.

* * * effective October 25, 1973

Brownsville, Tex.—Brownsville Int'l Arpt., ILS Rwy 13R, Amdt. 2.
Miami, Fla.—Miami Int'l Arpt., ILS Rwy 27R, Amdt. 1.
Pontiac, Mich.—Oakland-Pontiac Arpt., ILS Rwy 9R, Amdt. 2.
Waco, Tex.—Waco-Madison Cooper Arpt., ILS Rwy 18, Amdt. 6.

* * * effective September 27, 1973

Salinas, Cal.—Salinas Municipal Arpt., ILS/DME Rwy 31, Orig.

* * * effective August 30, 1973

Newark, N.J.—Newark Int'l Arpt., ILS Rwy 22R, Amdt. 5, Canceled.

5. Section 97.31 is amended by originating, amending, or canceling the following Radar SIAP's, effective October 28, 1973.

Ft. Worth, Tex.—Greater Southwest Int'l Dallas/Ft. Worth Field, RADAR-1, Amdt, 8, Canceled.

* * * effective October 25, 1973

Augusta, Ga.—Daniel Field, RADAR-1, Orig.
Augusta, Ga.—Bush Field, RADAR-1, Orig.
Covington, Ky.—Greater Cincinnati Arpt., RADAR-1, Amdt. 14.

6. Section 97.33 is amended by originating, amending, or canceling the following RNAV SIAP's, effective October 28, 1973.

Ft. Worth, Tex.—Greater Southwest Int'l Arpt. Dallas/Ft. Worth Field RNAV Rwy 31, Amdt. 1, Canceled.
Ft. Worth, Tex.—Greater Southwest Int'l Arpt. Dallas/Ft. Worth Field RNAV Rwy 35, Amdt. 1, Canceled.

* * * effective October 25, 1973

Cleveland, Ohio—Cleveland Hopkins Int'l Arpt., RNAV Rwy 23L, Amdt. 2, Canceled.
Houston, Tex.—Houston Intercontinental Arpt. RNAV Rwy 26, Orig.
Pontiac, Mich.—Oakland - Pontiac Arpt., RNAV Rwy 27L, Amdt. 1.

* * * effective August 30, 1973

Columbus, Ind.—Bakalar Municipal Arpt., RNAV Rwy 22, Orig., Canceled.

(Secs. 307, 313, 601, 1110, Federal Aviation Act of 1948; 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 September 6, 1973.

JAMES M. VINES,
Chief,
Aircraft Programs Divisions.

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

[FR Doc.73-20357 Filed 9-24-73;8:45 am]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-10391]

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

Interpretation of "Affiliated Person"

The Securities and Exchange Commission today announced that it has sent the following letter to the New York Stock Exchange in response to the Exchange's proposed interpretation of the term "affiliated person" as used in Rule 19b-2 under the Securities Exchange Act of 1934 [17 C.F.R. 240.19b-2] and in the New York Stock Exchange's Rule 318:

THE NEW YORK STOCK EXCHANGE,
Eleven Wall Street,
New York, N.Y.

Attention: David D. Huntoon
Re: Proposed Interpretation of the Term "Affiliated Person"

GENTLEMEN: This is in further response to your letter of May 31, 1973 enclosing for our concurrence a "significant interpretation" of the term "affiliated person", as that term is used in Securities Exchange Act Rule 19b-2 and NYSE Rule 318. While our letter of June 1, 1973 indicated that we had no objection to your issuance of the proposed interpretation as of that date, pending our consideration of its appropriateness, it also indicated that, because of the importance of this interpretation, we would solicit public comments thereon. We further stated that it might be necessary to revise the proposed interpreation as a result of our conclusions after further consideration of the interpretation and any comments received. We have received comments from thirteen persons and organizations representing various sectors of the investment community expressing diverse views regarding the appropriateness of the interpretation. Our conclusions, based on our consideration of the comments received and our view of the purposes of Rule 19b-2, as expressed in Securities Exchange Act Release No. 9950 (January 16, 1973), are set forth below.

The proposed interpretation delineates certain circumstances under which the term "affiliated person" would include an institutional account over which a money manager exercises investment discretion. Rule 19b-2, clause (b) provides, in part, that an "affiliated person" of a member shall include:

"(1) any person directly or indirectly controlling, controlled by or under common control with such member, whether by contractual arrangement or otherwise, provided that the right to exercise investment discretion with respect to an account, without more, shall not constitute control; * * *" Thus, under clause (b)(1), in order to find that a person is an "affiliated person" for purposes of Rule 19b-2 a finding of "control" must be made. NYSE Rule 318 contains identical language.

The NYSE's proposed interpretation would find the existence of "control" in all cases where, in addition to having investment discretion, a money manager, by contract or by furnishing additional services, has decreased the likelihood that his customer will dispense with his services in favor of those of another money manager on the basis of competitive merit alone. While in certain respects the NYSE's interpretation is consistent with the "competitive merit" considerations which we enunciated in Release No. 9950, at pages 152 and 153, the rigid approach implicit in the interpretation would deprive the term "control" of the flexibility which we intended it to have by giving rise to an irrebuttable presumption of control without regard to whether, in a particular case, control is actually present.

The terms "affiliated person" and "control" were assigned by the Commission "their traditional legal meanings", as indicated in Release No. 9950 at footnote 434 on page 152, and the NYSE should utilize those traditional meanings in applying Rule 19b-2 and its Rule 318. While it may be difficult for securities exchanges to probe the relationships between customers and their money managers and other factual circumstances having a bearing on the question of control, denial of membership on an exchange is a serious matter and must be based on a careful review of all relevant facts and the particular circumstances of each case. At page 8 of Release No. 9950 we stated that Rule 19b-2 *"requires"* exchanges "to make exchange membership available to *any* person or entity, assuming minimum standards of financial responsibility and competency are met" and assuming the availability of a seat, "provided *only* that each member demonstrate his commitment to compete for the public's exchange securities business" [emphasis supplied]. This does not mean that each member must prove that persons for whom the member effected at least 80 percent of the value of its exchange securities transactions during the preceding six months were not affiliates of the member. Rather, disclosure of the identity of a member's affiliates (if any) and a showing that the required volume of transactions was for persons other than those affiliates satisfactorily demonstrates the requisite commitment of the public's business. A determination that a broker-dealer is not engaged in a "public securities business" as defined in Rule 19b-2 and Rule 318 must be bottomed on findings more substantial and more carefully tailored to particular situations that those envisaged by the NYSE's proposed interpretation. All exchanges should carefully formulate questions to be put to their memberships and to applicants for membership designed to uncover the identities of affiliates and the amount of business done for the accounts of those affiliates. The exchanges' power under their rules to compel disclosures which will reveal control relationships cannot be questioned. The burden of proof that a broker-dealer's claimed "public" business is in fact a "private" business because of a control relationship with its customer, however, must rest with the securities exchange which denies membership.

An additional disagreement we have with the NYSE's interpretation stems from its premise that a money manager's "control" over an "account" can be determined without also determining that a money manager is in a control relationship with the persons who own the account or are charged with its care. It is difficult to conceive of a money management relationship which by itself so separates an account from the persons whose account it is or those charged with its care that control over the account could be said to have passed to the money manager. We believe that such a situation generally could

exist only where other factors clearly establish a money manager's control relationship with those persons sufficient to enable the money manager to direct their allocation of money management for the account. Those ultimately responsible for an account are legally entitled, and, indeed, are obliged, to make such disposition of the funds constituting the account as they deem appropriate. No money management agreement, whatever its terms may be, can deprive such ultimately responsible persons of that right or relieve them of that duty. At page 153 of Release No. 9950 we noted that whether an adviser "with mere discretionary authority over an account" was a broker, an insurance company or a bank, he was "subject to discharge by whoever is ultimately in control of the account." We also noted that if the element of competition for the account's business was present and the money manager had no authority in the selection or retention of a money manager, that account "should not be considered a captive or 'controlled' advisory account." In the words of Release No. 9950, at page 152, it is the receipt of business "because of an identity of interest between the broker and his 'customer'" that requires the business to be characterized as private, rather than public. In this context, the person owning or ultimately responsible for the account, not the account itself, is the customer.

A transaction executed by a broker-dealer subsidiary of an insurance company, for example, for an account of its parent—consisting of the parent's assets invested for its sole benefit—is clearly executed for an affiliated person and does not qualify as public securities business. A transaction executed for a corporation's pension fund account managed by that insurance company parent, however, should qualify as public business absent other circumstances evidencing a control relationship between the insurance company and the trustees of the pension fund or the corporation (in the event the pension fund's trustees are deemed affiliates of the corporation). As we stated in Release No. 9950 at pages 155 and 156:

"Where the insurance company, or its subsidiary, is simply managing and investing pension fund assets without any other indicia of control, as is typically the case with a separate account, we would consider transactions executed on an exchange for the account by the insurer's affiliated member to be public business * * *."

The NYSE's interpretation would make ready and inexpensive mobility of an account the definitive test of whether a control relationship exists between the money manager and the person owning or charged with custody of that account. Mobility of a managed account is, of course, an evidentiary factor to be considered in determining whether a control relationship exists between a money manager and his customer, but the customer must be allowed sufficient latitude to exchange easy mobility of the account for economical packages of money management, brokerage and other services. Contractual impediments to mobility (e.g., notice periods prior to cancellation, liquidated damages, termination or increase in price of other services) do not by themselves, except in extreme cases, demonstrate either conclusively or presumtively that a control relationship between the parties exists.

Similarly, the coupling of investment discretion over a customer's account with commercial banking, insurance or investment banking services does not prove the existence of a control relationship, although it may be evidence of it, particularly where it can be demonstrated that a mix of services provided to the customer at a particular price was not obtainable from any other source. For example, the fact that a bank may provide various banking services to a corporation in addition to managing its employees' profit-sharing plan is not a sufficient basis for concluding that a control relationship exists between them. Moreover, the fact that an insurance company may write group life insurance for a corporation in addition to managing its employees' pension fund would be unlikely to affect the corporation's desire to seek the best available performance, consistent with the most economical cost of management, for its pension fund.

Certainly state law to the effect that "separate accounts" of an insurance company are to be deemed property of that insurance company has little, if anything, to do with whether the persons beneficially interested in or ultimately responsible for such accounts are in a control relationship with the insurance company. While many states have adopted statutes under which separate accounts legally are deemed to be the property of insurance companies (for purposes quite different from those governing qualification for exchange membership), such laws do not change the practical nature of these separate accounts whereby all gains and losses, as well as income, inure to the benefit of the account holder. Furthermore, these state statutes typically provide that the assets of separate accounts may not be used to satisfy the obligations of the insurance company. Even more significantly, the technical ownership of the funds by the insurer does not, as a practical matter, restrict their mobility. Thus, such laws cannot be said to constitute a realistic index of control sufficient to overcome our view that for purposes of Rule 19b-2 separate accounts of insurance companies are essentially public business. To assert the existence of affiliation under such circumstances would appear to contravene the conclusion articulated in Release No. 9950 that separate accounts of insurance companies would be considered to be "public" business, absent a showing of other indicia of control. As stated by the Supreme Court in *Rochester Telephone Corp. v. United States*, 307 U.S. 125, 145 (1959): "* * * control cannot be determined by artificial tests but is an issue of fact to be determined by the special circumstances of each case."

In light of the foregoing, it appears that none of the hypothetical cases submitted by the NYSE set forth facts sufficient to support a predetermined finding of control by a money manager over the persons owning or charged with custody of a pension fund or trust. Thus, it does not appear that the NYSE's proposed interpretation is in accord with the intent of Rule 19b-2 and the interpretation therefore should be promptly withdrawn. While the Commission encourages the NYSE to publish new hypothetical situations which illustrate cases in which the NYSE believes that facts will require it to find that a control relationship exists, such hypotheticals should be drawn with the principles set forth above in mind. Such hypotheticals, of course, as significant interpretations, should be submitted to the Commission for its review prior to their circulation.

The Commission, in promulgating Rule 19b-2, of course, stressed the experimental nature of its policymaking endeavors, thus leaving open the possibility that changes in the rule might be appropriate after necessary experience with the rule has been obtained. The interpretations you have furnished would effect significant changes in the concept of the term "affiliated person" bringing the scope of that term closer to the formulation utilized by two Congressional subcommittees in drafting new legislation. As you know, we have advised the Congress that its approach—which would preclude any exchange member from executing transactions for any institutional account the member manages—reflects a valid legislative resolution of the issues involved. As a matter of administrative policymaking, however we did not believe we should adopt that approach without first obtaining some practical experience with a somewhat more gradual formulation.

The Commission has no further comment at this time.

Sincerely yours,

RAY GARRETT, JR.,
Chairman.

The Exchange's proposed interpretation, which was enclosed with its letter to the Commission dated May 31, 1973, is attached hereto as Exhibit 1.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

SEPTEMBER 13, 1973.

MAY 31, 1973.

Mr. JOHN LIPTIN,
Associate Director,
Division of Market Regulation,
Securities and Exchange Commission,
Washington, D.C.

DEAR MR. LIPTIN: In SEC Release No. 9350, the Commission stated that it expected national securities exchanges to discuss in advance significant interpretations of the rule adopted by them pursuant to Rule 19b-2. The interpretation which is the subject of this letter is significant because the dollar value of transactions involved.

The definition of "affiliated person" in Exchange Rule 318, adopted pursuant to SEC Rule 19b-2 includes the following language:

"any person directly or indirectly controlling, controlled by or under common control with the member or member organization, whether by contractual arrangement or otherwise, provided that the right to exercise investment discretion with respect to an account, without more, shall not constitute control;"

The Exchange intends to issue a circular containing the attached language. We would appreciate your concurrence that this interpretation is consistent with SEC Rule 19b-2.

Questions regarding this matter may be directed to David D. Huntoon at (212) 623-5233.

Very truly yours,

JAMES E. BUCK.

INTERPRETATION OF RULE 318

Under the existing definition of "affiliated person", the Exchange has determined that for an account not to be considered to be in a control relationship with the person holding the investment discretion, the conferring of such discretion must be based on competitive merit and may not be the result of or incidental to other circumstances or relationships. Among other circumstances and relationships which are considered to constitute such a control relationship for the purposes of Rule 318 are:

(1) Investment discretion is given pursuant to a contract or agreement which can be cancelled only on notice of more than 30 days.

(2) Investment discretion is given pursuant to a contract or agreement which provides for a penalty upon termination.

(3) Investment discretion cannot be cancelled without the incurrence of substantial expense or hardship.

(4) Investment discretion is part of a more extensive relationship which includes providing other services to a substantial degree,

including, but not limited to, commercial banking, insurance and investment banking.

(5) The account is a so-called "separate account" managed by an insurance company which exercises investment discretion and under applicable law the securities in the account are the property of the insurance company.

The following examples may serve to illustrate this interpretation.

(1) The portfolio of a pension fund is managed by an investment manager which has discretion over the account. The discretion may be cancelled at any time on receipt by the investment manager from the fund of written notice without the payment of any penalty of any sort. Neither the investment manager nor the pension fund have any other relationship which might constitute control. The pension fund is not considered to be controlled by the investment manager, and is not an "affiliated person" of the investment manager.

(2) The circumstances are the same as in (1) above, except that the investment discretion is given by a contract which may be cancelled only on notice which must be given at least 90 days prior to the effective date of cancellations. The pension fund is considered to be controlled by the investment manager and is an "affiliated person" of the investment manager.

(3) A pension fund is managed by an insurance company as a "separate account" and the insurance company has investment discretion over the account. The agreement between the pension fund and the insurance company provides that investment discretion may be cancelled upon 30 days written notice, but that in the event of such cancellation a substantial cash penalty must be paid. The pension fund is considered to be controlled by the insurance company and is an "affiliated person" of the insurance company, even though under applicable law the securities in the "separate account" are not considered to be the property of the insurance company.

(4) A charitable trust is managed by an investment manager which exercises investment discretion over the trust account. The discretion may be cancelled at any time by the trustees (who have no other relationship with the investment manager) upon written notice, without penalty. However, the investment manager also provides office space, clerical support, telephones and other services which are necessary to the trust. In order to cancel the investment discretion, the trustees would have to find other quarters and arrange for clerical, telephone and other essential services. The trust is considered to be controlled by the investment manager, and is an "affiliated person" of the manager.

(5) A pension or profit sharing trust established by the X corporation is managed by an investment manager which holds investment discretion over the trust account. The discretion may be cancelled forthwith at any time by the trustees without penalty. The parent of the investment advisor is a bank holding company which has as another of its subsidiaries the principal commercial bank servicing the X corporation. The trustees of the trust are officers and/or employees of the X corporation. Under these circumstances, the trust will be considered to be in a control relationship with the investment manager and an "affiliated person" of the manager.

(6) A pension or profit sharing trust established by the X corporation is managed by an investment manager which holds investment discretion over the trust account. The discretion may be cancelled forthwith at any time by the trustees without penalty. The investment manager is also an investment banker and has traditionally been a managing underwriter of securities issued by X corporation. The trustees of the trust are officers and/or employees of X corporation. Under these circumstances, the trust will be considered to be controlled by the investment manager and an "affiliated person" of the manager.

(7) A pension or profit sharing trust established by the X corporation is managed by an insurance company as a "separate account" and the insurance company holds investment discretion over the trust account. The discretion may be cancelled forthwith at any time by the trustees without penalty. The account of the trust is operated as a "separate account" by the insurance company. The insurance company provides substantial insurance coverage to X corporation. The trustees of the trust are officers and/or employees of X corporation. Under these circumstances, the trust will be considered to be controlled by the insurance company and an "affiliated person" of the insurance company, even though under applicable state law the securities in the "separate account" are not considered to be the property of the insurance company.

(8) A pension or profit sharing trust is managed by an insurance company which holds investment discretion over the trust account. The discretion may be cancelled forthwith at any time by the trustees without penalty. The trust account is operated as a "separate account" by the insurance company. Under applicable law the securities held in the "separate account" are considered the property of the insurance company which operates the "separate account". Under these circumstances, the "separate account" is considered to be an "affiliated person" of the insurance company.

[FR Doc.73-20336 Filed 9-24-73;8:45 am]

Title 20—Employees' Benefits

CHAPTER III—SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Reg. No. 5, further amended]

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED (1965.....)

Designation of Extended Care Facilities as Skilled Nursing Facilities

The Social Security Amendments of 1972 (P.L. 92-603; 86 Stat. 1329-1493) designated or redesignated "extended care facilities" as "skilled nursing facilities" throughout title XVIII of the Social Security Act. In order to conform the regulations of the Social Security Administration to this change in name, the regulations of the Social Security Administration (20 CFR Part 405) are amended as follows: Wherever the terms "extended care facility," and "extended care facilities," appear, the terms "skilled nursing facility" or "skilled nursing facilities," as the case may be, is substituted therefor, and the indefinite article "an" is changed to "a" as appropriate.

(Sec. 1102, 1814, 1861, 1864, 1866, and 1871, 49 Stat. 647, as amended; 79 Stat. 294, as amended; 79 Stat. 313, as amended; 79 Stat. 326, as amended; 79 Stat. 327, as amended; 79 Stat. 331, 42 U.S.C. 1302, 1395f, 1395x, 1395aa, 1395cc, and 1395hh.)

Effective date.—This amendment is effective September 25, 1973.

(Catalog of Federal Domestic Assistance Program Nos. 13.800, Health Insurance for the Aged—Hospital Insurance, and 13.801, Health Insurance for the Aged—Supplemental Medical Insurance.)

Dated September 6, 1973.

ARTHUR E. HESS,
Acting Commissioner of Social Security.

Approved September 20, 1973.

CASPAR W. WEINBERGER,
Secretary of Health, Education, and Welfare.

[FR Doc.73-20412 Filed 9-24-73;8:45 am]

Title 29—Labor

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

PART 723—LAUNDRY AND CLEANING INDUSTRY IN PUERTO RICO

Wage Order

Pursuant to sections 5, 6 and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064, as amended; 29 U.S.C. 205, 206, 208) and Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and by means of Administrative Order No. 625 (38 FR 9031), the Secretary of Labor appointed and convened Industry Committee No. 115 for the Laundry and Cleaning Industry in Puerto Rico, referred to the Committee the question of the minimum rate or rates of wages to be paid under section 6(c) of the Act to employees in the industry, and gave notice of a hearing to be held by the Committee.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the Committee has filed with the Administrator of the Wage and Hour Division of the Department of Labor a report containing its findings of fact and recommendations with respect to the matters referred to it.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950, and 29 CFR 511.18, the recommendations of Industry Committee No. 115 are hereby published, amending subparagraph (1) of paragraph (b) of § 723.2, Code of Federal Regulations.

As amended § 723.2 reads as follows:

§ 723.2 Wage rates.

* * * * *

(b) *Other activities classification.* (1) The minimum rate for this classification is $1.60 an hour.

* * * * *

(Secs. 5, 6, 8, 52 Stat. 1062, 1064, as amended; 29 U.S.C. 205, 206, 208).

Effective date.—This amendment shall become effective October 11, 1973.

Signed at Washington, D.C., this 18th day of September 1973.

WARREN D. LANDIS,
Acting Administrator, Wage and Hour Division, U.S. Department of Labor.

[FR Doc.73-20374 Filed 9-24-73;8:45 am]

CHAPTER XIV—EQUAL EMPLOYMENT OPPPORTUNITY COMMISSION

PART 1602—RECORDS AND REPORTS

Recordkeeping and Filing Requirements Report EEO-5

By virtue of the authority vested in it by sec. 713(a) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. sec. 2000e-12(a), 78 Stat. 265, The Equal Employment Opportunity Commission (hereinafter referred to as the Commission) hereby amends Title 29, Chapter XIV, Part 1602 of the Code of Federal Regulations.

On June 12, 1973, there was published in the FEDERAL REGISTER (38 FR 15462) a notice of proposed rule making with proposed amendments to Part 1602 of the regulations. The proposed amendments adding Subparts L, M, and N, §§ 1602.39–1602.46, would have required public and private elementary and secondary school systems, districts, and individual schools to keep personnel and employment records for a period of two years, keep employment statistics by race and job category as required by Report EEO-5 for a period of three years, and file Report EEO-5 annually unless the school system employed fewer than 100 employees. Pursuant to the June 12, 1973, notice, a duly constituted public hearing was held at 10 a.m., June 27, 1973, in the hearing room of the Equal Employment Opportunity Commission, Washington, D.C., for the purpose of considering the views of the public on the proposed amendments. Three individuals were heard by the Commission and four written comments were received during the period that the record remained open.

All comments submitted with respect to the proposed amendments were given due consideration. The public comments resulted in certain changes. Reporting and recordkeeping requirements for private schools were temporarily eliminated due to an incomplete universe of names and addresses of private schools. The reporting and recordkeeping requirements for private schools will be imposed in 1974. In addition, due to time limitations, the date on which the 1973 EEO-5 must be filed has been deferred from October 15, 1973, to November 30, 1973. The October 15, date shall apply to all calendar years after 1973.

Part 1602, Chapter XIV of Title 29 of the Code of Federal Regulations is amended by adding new subparts L, M, and N and by adding new §§ 1602.39, 1602.40, 1602.41, 1602.42, 1602.43, 1602.44, 1602.45, and 1602.46 thereto to read as follows below. These amendments shall become effective October 25, 1973.

Subpart L—Elementary and Secondary School Systems, Districts, and Individual Schools Recordkeeping

Sec.
1602.39 Records to be made or kept.
1602.40 Preservation of records made or kept.

AUTHORITY.—Sec. 709(c), 78 Stat. 265, 42 U.S.C. sec. 2000e-8(c), 29 CFR 1602.3.

Subpart L—Elementary and Secondary School Systems, Districts, and Individual Schools Recordkeeping

§ 1602.39 Records to be made or kept.

On or before October 15, 1973, and annually thereafter, every public elementary and secondary school system or district, including every individually or separately administered district within a system, with 15 or more employees and every individual school within such system or district, regardless of the size of the school shall make or keep all records and information therefrom which are or would be necessary for the completion of report EEO-5 whether or not it is required to file such a report under § 1602.41. The instructions for completion of report EEO-5 are specifically incorporated herein by reference and have the same force and effect as other sections of this part.[1] Such records and the information therefrom shall be retained at all times for a period of 3 years at the central office of the elementary or secondary school system or district, or at the individual school which is the subject of the records and the information therefrom, where more convenient, and shall be made available if requested by an officer, agent, or employee of the Commission under sec. 710 of Title VII, as amended. It is the responsibility of every such school system or district, to obtain from the Commission or its delegate necessary instructions in order to comply with the requirements of this section.

§ 1602.40 Preservation of records made or kept.

(a) Any personnel or employment record made or kept by a school system, district, or individual school (including but not necessarily limited to application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, layoff, or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship) shall be preserved by such school system, district, or school, as the case may be, for a period of 2 years from the date of the making of the record or the personnel action involved, whichever occurs later. In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of 2 years from the date of termination. Where a charge of discrimination has been filed, or an action brought against an elementary or secondary school by the Commission or the Attorney General, the respondent elementary or secondary school system, district, or individual school shall preserve similarly at the central office of the system or district or individual school which is the subject of the charge or action, where more convenient, all personnel records relevant to the charge or action until final disposition thereof. The term "personnel record relevant to the charge," for example, would include personnel or employment records relating to the person claiming to be aggrieved and to all other employees holding positions similar to that held or sought by the person claiming to be aggrieved; and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the person claiming to be aggrieved applied and was rejected. The date of "final disposition of the charge or the action" means the date of expiration of the statutory period within which a person claiming to be aggrieved may bring an action in a U.S. district court or, where an action is brought against a school system, district, or school either by a person claiming to be aggrieved, the Commission, or the Attorney General, the date on which such litigation is terminated.

(b) The requirements of this section shall not apply to application forms and other preemployment records of applicants for positions known to applicants to be a temporary or seasonal nature.

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

Subpart M—Elementary-Secondary Staff Information Report

Sec.
1602.41 Requirement for filing and preserving copy of report.
1602.42 Penalty for making of willfully false statements on report.
1602.43 Commission's remedy for school systems', districts', or individual schools' failure to file report.
1602.44 School systems', districts', or individual schools' exemption from reporting requirement.
1602.45 Additional reporting requirements.

AUTHORITY.—Sec. 709(c), 78 Stat. 265, 42 U.S.C. sec. 2000e-8(c); 29 CFR 1602.3.

Subpart M—Elementary-Secondary Staff Information Report

§ 1602.41 Requirement for filing and preserving copy of report.

(a) On or before October 15, 1974, and annually thereafter, certain public elementary and secondary school systems and districts, including individually or separately administered districts within such systems, and individual schools within such systems or districts shall file with the Commission or its delegate executed copies of Elementary-Secondary Staff Information Report EEO-5 in conformity with the directions set forth in the form and accompanying instructions. The elementary and secondary school systems and districts covered are: (1) Every one of those which have 100 or more employees, and (2) every one of those others which have 15 or more employees from whom the Commission requests the filing of reports. Every such elementary or secondary school system or district shall retain at all times, for a

[1] NOTE.—Instructions were published as an appendix to the proposed regulations on June 12, 1973 (38 FR 15463).

period of 3 years, a copy of the most recently filed report EEO-5 at the central office of the school system or district, or the individual school which is the subject of the report, where more convenient, and shall make the same available if requested by an officer, agent, or employee of the Commission under the authority of sec. 710 of Title VII, as amended. It is the responsibility of the school systems or districts above described in this section to obtain from the Commission or its delegate necessary supplies of the form.

(b) For calendar year 1973, the requirements of paragraph (a) of this section shall be carried out on or before November 30, 1973.

§ 1602.42 Penalty for making of willfully false statements on report.

The making of willfully false statements on report EEO-5 is a violation of the United States Code, Title 18, section 1001, and is punishable by fine or imprisonment as set forth therein.

§ 1602.43 Commission's remedy for school systems', districts', or individual schools' failure to file report.

Any school system, district, or individual school failing or refusing to file report EEO-5 when required to do so may be compelled to file by order of a U.S. district court, upon application of the Commission or the Attorney General.

§ 1602.44 School systems', districts', or individual schools' exemption from reporting requirements.

If it is claimed that the preparation or filing of the report would create undue hardship, the school system, district, or individual school may apply to the Commission for an exemption from the requirements set forth in this part by submitting to the Commission or its delegate a specific proposal for an alternative reporting system prior to the date on which the report is due.

§ 1602.45 Additional reporting requirements.

The Commission reserves the right to require reports, other than that designated as the Elementary-Secondary Information Report EEO-5, about the employment practices of private or public individual school systems, districts, or schools, or groups thereof, whenever, in its judgment, special or supplemental reports are necessary to accomplish the purposes of Title VII. Any system for the requirement of such reports will be established in accordance with the procedures referred to in section 709(c) of Title VII and as otherwise prescribed by law.

Subpart N—Records and Inquiries as to Race, Color, National Origin, or Sex

§ 1602.46 Applicability of State or local law.

The requirements imposed by the Equal Employment Opportunity Commission in these regulations, subparts L and M of this part, supersede any provisions of State or local law which may conflict with them.

(Sec. 709(c), 78 Stat. 265, 42 U.S.C. 2000e-8(c), 29 CFR 1602.3.)

Signed at Washington, D.C., this 17th day of September 1973.

WILLIAM H. BROWN III,
Chairman.

[FR Doc. 73-20438 Filed 9-24-73;8:45 am]

Title 32—National Defense

CHAPTER I—OFFICE OF THE SECRETARY OF DEFENSE

SUBCHAPTER Q—CIVIL RIGHTS

PART 301—EQUAL OPPORTUNITY IN OFF-BASE HOUSING PROGRAM

The Assistant Secretary of Defense (Manpower and Reserve Affairs) approved the following revision to Part 301. This Part 301 revises the policies covering "restrictive sanctions" and "relief for complainants"; updates the reporting requirements; includes sex discrimination under its provisions; and authorizes commanders to use verifiers under certain conditions.

Sec.
301.1 Purpose.
301.2 Applicability and scope.
301.3 Definitions.
301.4 Objectives and policies.
301.5 Reports.
301.6 Check list for commanders.
301.7 Definitions of terms.

AUTHORITY.—Sec. 301, 80 Stat. 379; 5 U.S.C. Sec. 301.

§ 301.1 Purpose.

This Part 301 supplements the "equal opportunity" provisions of DOD Directive 1100.15, "Equal Opportunity Within the DOD," dated December 14, 1970,[1] relating to equal opportunity in off-base housing and fair housing enforcement.

§ 301.2 Applicability and scope.

The provisions of this Part apply to all DOD Components (Military Departments, Defense Agencies, Specified and Unified Commands and other DOD Components) which have under their jurisdiction:

(a) Military personnel authorized to live in the civilian community in the United States, or

(b) DOD personnel authorized to live in the civilian community in areas outside of the United States.

§ 301.3 Definitions.

Terms which apply to this Part are contained in § 301.7.

§ 301.4 Objectives and policies.

The Department of Defense is fully committed to the goal of obtaining equal treatment for all DOD personnel as specified in DOD Directive 1100.15.[1] To carry out this policy with regard to off-base housing and fair housing enforcement, the Secretaries of the Military Departments and Heads of other DOD Components concerned will develop and issue implementing regulations consistent with the following:

(a) *National Housing Policy.* In the United States, Federal legislation prohibits discrimination in housing against any person because of race, color, religion, or national origin:

(1) Title VIII of the Civil Rights Act of 1968 contains the fair housing provisions; outlines the responsibilities of the Secretary of Housing and Urban Development with regard to the Act; and requires all executive departments and agencies to administer housing and urban development programs and activities under their jurisdiction in a manner which will reflect "affirmatively" the furthering of the purposes of Title VIII.

(2) Title IX of the Civil Rights Act of 1968 makes it a crime to willfully intimidate or interfere with any person by force or threat because of his activities in support of fair housing.

(3) 42 U.S.C. 1982 states that all citizens shall have the same right as is enjoyed by white citizens to purchase, lease, sell and convey real and personal property.

(b) *DOD Fair Housing Policy.* The Department of Defense intends that Federal fair housing legislation be supported and that DOD personnel have equal opportunity for available housing regardless of race, color, religion, national origin or sex. This includes the objective of eliminating discrimination against DOD personnel in off-base housing. This is not achieved simply by finding a place to live in a particular part of town or in a particular facility for a person from a minority group. It is achieved only when a person who meets the ordinary standards of character and financial responsibility is able to obtain off-base housing in the same manner as any other person anywhere in the area surrounding his installation, without suffering refusal and humiliation because of his race, color, religion, national origin or sex.

(1) The accomplishment of the objective shall not be hampered in any case by requiring the submission of a formal complaint of discrimination. A suspected discriminatory act, with or without the filing of a formal complaint, is a valid basis for investigation and, if discrimination is substantiated, for imposition of restrictive sanctions.

(2) No member of the Armed Forces moving into or changing his place of residence in the commuting area of a military installation or activity in the United States and no DOD member moving into or changing his place of residence in the commuting area of a DOD installation or activity outside the United States, shall be authorized to enter into a rental, purchase or lease arrangement with an agent or a facility which is under restrictive sanctions. (See paragraph (b)(3) of this section.)

[1] Filed as part of the original. Copies available from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120, Attention: Code 300.

(3) Restrictive sanctions shall be imposed upon substantiation that discrimination was practiced by an agent in accordance with (d)(2) of this section. These sanctions are not applicable to DOD personnel who may be residing in a facility at the time the restriction is imposed or to the extension or renewal of a rental or lease agreement originally entered into prior to the imposition of the restrictive sanctions. Relocation of a tenant within a restricted facility is not authorized without the written approval of the commander.

(4) In the case of paragraph (b)(3) of this section, the agent shall be informed in writing that restrictions have been imposed, the reasons therefor, and the actions which must be taken to remove the restriction after the 180 days minimum restriction expires. In order for restrictive sanctions to be removed, the agent must provide assurances of future non-discriminatory practices.

(5) After imposition of restrictive sanctions, the commander shall insure that DOD personnel comply with the restrictive sanctions imposed on the agent.

(6) If a discrimination complaint is substantiated, the commander shall take whatever action is deemed reasonable to assist the complainant in obtaining suitable housing. If, due to discrimination practices in the community, suitable housing cannot be obtained by the complainant in a reasonable amount of time, the complainant and the commander may use this fact as a reason to justify a request for, if otherwise eligible, priority in obtaining military housing or for compassionate reassignment.

(7) The fact that 42 U.S.C. 1982 and P.L. 90-284 may or may not provide a remedy in a given case of discrimination affecting DOD personnel does not relieve a commander of the responsibility to insure equal treatment and opportunity for such personnel or to impose restrictive sanctions against the agent when appropriate.

(8) Consistent with the policy of freedom of choice, commanders shall insure non-discrimination in referring personnel to off-base housing facilities.

(9) Continuing efforts (as described in Part 239a and Part 239b) shall be made to identify and solicit non-discriminatory assurances from those rental facilities within the commuting area which are considered to be suitable for occupancy by DOD personnel.

(10) An information program to apprise DOD personnel of the DOD policy and program for equal opportunity in off-base housing shall be developed at each installation. For support of this program, use should be made of local community resources such as civil rights organizations, religious and civic groups, and others.

(c) *DOD personnel seeking off-base housing.* DOD personnel shall:

(1) Be processed through the Housing Referral Office in the United States and, when available, in areas outside the United States.

(2) Be provided the following assistance in seeking temporary and permanent off-base housing:

(i) Counseling concerning the Equal Opportunity in Off-Base Housing Program, with particular stress placed on obligation of applicants to report any indication of discrimination against them in their search for housing.

(ii) Personal assistance by:

(*a*) Ascertaining the applicant's desires and requirements for housing and matching them as nearly as possible with current available listings.

(*b*) Offering to follow up by a telephone check of the selected listings to insure their availability. In taking this action, a record shall be made of the date, time and nature of the conversation confirming the unit, which record shall be retained for future reference. In no case will the race, color, religion, national origin, or sex of the applicant be divulged.

(*c*) Offering the services of a command representative (such as a unit sponsor or other person) to accompany and assist the applicant in his search for housing. The command representative will be responsible for taking the following action:

(*1*) If an agent of a housing facility refuses to accept or consider the applicant as a tenant; falsely indicates the unit sought has been rented to another applicant; or otherwise fails to furnish the unit under the same terms and conditions as are ordinarily applied to applicants for his facilities, the agent will be queried concerning the reasons why the unit is not available. After all reasonable steps have been taken to ascertain whether any valid nondiscriminatory reason can be shown for the agent's rejection of the applicant, and there appears to be no such reason, a reasonable effort will be made to persuade the agent to make the unit available to the applicant.

(2) Failing to persuade the agent to accept the applicant as a tenant, the incident will be reported to the appropriate command official for investigation. (Whether a complaint is or is not filed by the applicant, the procedures outlined in paragraph (d)(1) and (2) of this section as warranted by the circumstances, shall be followed.)

(d) *Responsibilities of commanders*—(1) *Enforcement procedures in the United States.* Every commander shall:

(i) Insure that on office and staff serving the command are available to advise DOD personnel concerning:

(*a*) The procedures set forth in this part.

(*b*) The application of 42 U.S.C. 1982 and P.L. 90-284 in specific situations.

(*c*) The rights of individuals to pursue remedies through civilian channels, without recourse or in addition to the procedures prescribed herein, including the right to:

(*1*) Make a complaint directly to the Department of Housing and Urban Development (HUD) or to the Department of Justice; and,

(2) Bring a private civil action in any court of competent jurisdiction.

(ii) Periodically review the off-base housing procedures in his command to insure adequacy and compliance with this part. In order to assist the commander in accomplishing this review, a checklist is provided in § 301.6 of this part.

(2) *Complaint procedures in the United States.* Upon receipt of a housing discrimination complaint, an investigation will be initiated within three (3) working days after receipt of the complaint, using verifiers if deemed necessary. Verifiers will not be used for the sole purpose of ascertaining the sincerity of the practices of an agent unless a housing discrimination complaint has been filed against the agent. The investigation shall conform to the due-process procedures as set forth for Armed Forces Disciplinary Control Boards.[2]

(i) If the complaint is not substantiated by the investigation, the complainant will be (*a*) so informed, (*b*) advised of his rights to pursue further actions through HUD, the Department of Justice, and/or State or Federal Court, and (*c*) offered whatever assistance is appropriate and can be provided legally by the Military Service in pursuing the courses of action in paragraph (d)(1) of this section.

(ii) If the complaint is substantiated by the investigation, restrictive sanctions will be imposed against the agent for a minimum of 180 days; the agent will be informed in writing of this action and advised on what action he must take to remove the restrictive sanctions after the 180 day minimum.

(*a*) The complainant will be informed in writing of the results of the investigation and action will be taken to assure relief for the complainant as outlined in paragraph (b)(6) of this section.

(*b*) The complainant shall also be informed of his rights to pursue further actions through HUD, the Justice Department and/or State or Federal Courts and he shall be offered whatever assistance can be provided legally by the Military Service in pursuing these courses of action.

(c) If the act of discrimination falls under existing laws, the commander shall forward a copy of the complaint directly to HUD using HUD Form 903, if the complainant concurs. A complaint must be received by HUD within 180 days after the occurrence of the alleged discriminatory act. A copy of the Complaint shall also be forwarded to the Department of Justice (Civil Rights Division), Washington, D.C. 20530.

(iii) Where more than one complaint alleging discrimination involves the same agent, documentation may be consolidated. In these cases, if appropriate, the consolidated documentation shall be

[2] Filed as part of the original. Copies available from The Adjutant General's Center, Attention: DAAG-PAS-I, Washington, D.C. 20314.

forwarded to HUD and to the Department of Justice (Civil Rights Division), Washington, D.C. 20530.

(3) *Complaint procedures in areas outside the United States.* The procedures outlined in paragraph (d)(2) of this section shall be used for processing complaints of housing discrimination in areas outside the United States with the exception of submitting complaints to HUD or the Department of Justice.

(4) *Cooperation with Governmental agencies investigating alleged housing discrimination complaints.* Commanders shall cooperate to the fullest extent possible with other governmental agencies investigating housing discrimination complaints filed by a complainant.

§ 301.5 Reports.

(a) *Reporting requirements.* (1) A copy of each investigative report that substantiates a case of housing discrimination shall be submitted by the Military Services to the Assistant Secretary of Defense (Manpower and Reserve Affairs) and not later than 45 days from the date the case is forwarded from the installation. Under normal circumstances, the installation will complete required investigation and processing of complaints within 20 days from the date that a housing complaint is filed by a complainant. The Military Services shall summarize and make appropriate comments to include the affirmative action taken in the case prior to submission of the report to the Assistant Secretary of Defense (Manpower and Reserve Affairs).

(2) A copy of investigative reports that do not substantiate allegations of housing discrimination shall be kept on file at the installation level for a period of 24 months. Requests for these cases to be forwarded to the Assistant Secretary of Defense (Manpower and Reserve Affairs) normally will be made only when other government or civilian agencies have expressed an interest.

(3) Each Military Service shall submit semi-annual reports to the Assistant Secretary of Defense (Manpower and Reserve Affairs) as follows:

(i) Total number of rental facilities surveyed during the reporting period.

(ii) Total number of rental facilities listed to date and number of rental facilities listed during the reporting period.

(iii) Total number of rental facilities under restrictive sanctions and number of rental facilities restricted during the reporting period.

(iv) Total number of discrimination complaints processed during the reporting period by each Military Service.

(v) The number of compassionate reassignment and priority housing requests received under the provisions of this Part and their disposition during the reporting period.

(vi) By installation in the United States, a list of housing facilities upon which restrictive sanctions have been imposed. This shall include, as available, the name and address of the facility and agent, the reason for the restriction and the status of negotiations with the agent.

(vii) A short narrative report summarizing servicewide significant Equal Opportunity in Off-Base Housing activities, problems and experiences and appropriate explanatory comments concerning the statistical portion of the report.

(viii) Reports (as of December 31 and June 30) shall be submitted to the Assistant Secretary of Defense (Manpower and Reserve Affairs) not later than the 25th of the month following the end of the reporting period.

(b) *Report control symbol.* (1) Reports of investigation required in (a)(1) and (2) of this section are exempt from RCS by Paragraph III.D.6., DoD Directive 5000.19, "Policies for the Management and Control of DoD Information Requirements," June 2, 1971.[1]

(2) The report required in paragraph (a)(3) of this section is assigned Report Control Symbol DD-M(SA) 1146.

§ 301.6 Check list for commanders.

(a) Are newly assigned personnel informed as to the requirements of the equal opportunity in off-base housing program prior to obtaining housing off-base?

(b) Is there an effective equal opportunity in off-base housing information program?

(c) Are community resources being used to support the equal opportunity in off-base housing information program?

(d) Are housing discrimination complaints being expeditiously processed?

(e) Are complainants being informed, in writing, of the results of investigations?

(f) Are housing surveys being conducted periodically to obtain new listings?

(g) Are restrictive sanctions being imposed immediately for a minimum of 180 days on agents found to be practicing discrimination?

(h) Are the services of command representatives offered to accompany and assist applicants in their search for housing?

(i) Are Housing Referral Office and equal opportunity personnel sensitive to the problems of minority personnel?

(j) Are accurate equal opportunity in off-base housing reports being submitted in a timely manner?

§ 301.7 Definition of terms.

(a) *Agent.* Real estate agency, manager, landlord or owner, as appropriate, of a housing facility doing business with DOD personnel or a Housing Referral Office.

(b) *Area Outside the U.S.* An area in which DOD personnel reside but which is not subject to U.S. laws or regulations.

(c) *Commander.* The military or civilian head of any installation, organization or agency of the DOD.

(d) *Commuting Area.* That area defined in DOD Instruction 4165.45, "Determination of Family Housing Requirements," January 19, 1972.[1]

(e) *Complainant.* A military member, adult dependent acting for a military member, or a civilian employee of the DOD who submits a complaint of discrimination.

(f) *Discrimination.* The act of denying housing to DOD personnel because of race, color, religion, national origin, or sex.

(g) *DOD personnel.* In the United States, military personnel and their dependents. Outside the United States, military personnel and their dependents, and non-appropriated and appropriated fund U.S. citizen civilian employees and their dependents, assigned to any DOD component.

(h) *Listed facility.* A suitable facility listed with the housing referral office as available for DOD personnel which is not under restrictive sanctions and whose agent and/or owner has provided a nondiscriminatory assurance.

(i) *Relief for the complainant.* Action taken by a commander for the benefit of a complainant if a discrimination complaint is substantiated.

(j) *Restrictive sanctions.* Action taken by a commander to preclude DOD personnel from entering into a new rental, lease or purchase arrangement with, or otherwise moving into, a housing facility, the agent of which has been found to have discriminated against DOD personnel. Restrictive sanctions are effective against the agent and the facility.

(k) *Verifiers.* Volunteers used by the commander during the course of a housing discrimination investigation to determine if, in fact, housing discrimination is being practiced by a facility or individual as alleged. Verifiers are not required to be prospective tenants.

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

SEPTEMBER 20, 1973.

[FR Doc.73-20422 Filed 9-24-73;8:45 am]

Title 35—Panama Canal

CHAPTER I—CANAL ZONE REGULATIONS

PART 51—AIR NAVIGATION

General Traffic Circuit Rules

Effective September 25, 1973 § 51.122 (c) and (d), Subpart B of Part 51 of Title 35, Code of Federal Regulations, is amended to read as follows:

§ 51.122 General traffic circuit rules.

* * * * *

(c) Aircraft entering the traffic circuit shall exercise caution and courtesy so as not to cause aircraft already in the circuit to deviate from their course. Aircraft shall enter for runway 35 downwind where Galeta Road intersects with Randolph Road; for runway 17, aircraft shall enter south of New France Field. Straight in approaches to either runway will not be permitted.

(d) Aircraft leaving the traffic circuit shall, when departing runway 35, proceed straight out to the Colon breakwater, and then make a 45° right turn;

aircraft departing runway 17 shall proceed straight out to Randolph Road, and then make a 45° left turn.

* * * * *

(2 C.Z.C. § 701, 76 A Stat. 29; 35 CFR 3.1(a)(2); 35 CFR 51.81.)

Dated August 29, 1973.

[SEAL] DAVID S. PARKER, *Governor.*

[FR Doc.73-20335 Filed 9-24-73;8:45 am]

Title 36—Parks, Forests, and Memorials

CHAPTER II—FOREST SERVICE, DEPARTMENT OF AGRICULTURE

PART 295—USE OF OFF-ROAD VEHICLES

In notice of proposed rulemaking published on March 2, 1973 (38 FR 5643), the Forest Service requested public comment on a proposal for a regulation of the use of off-road vehicles on National Forest System lands.

Comments were received from Governmental agencies (National, State, and local), organizations, companies, and formal groups, as well as many private individuals. The majority of respondents expressed support for the regulations in general, but numerous suggestions were made for change or improvement.

Several respondents felt the definitions were too broad and/or incomplete to ensure uniform interpretation. Accordingly, some revisions and expansions have been incorporated to provide for more uniform terminology and interpretation. A few comments were concerned with the delays that could be encountered to obtain a permit for emergency repairs for utility maintenance. All utilities located on National Forest System lands are under a permit, lease or license and, therefore, the use of any off-road vehicles authorized in the permitting document is exempt from these regulations. Administrative instructions in the Forest Service Manual also address the point of access for emergency purposes so as to minimize delays.

Some Governmental agency comments on the designation of areas indicated the need for cooperation with other agencies in the planning process. This need does exist and has been recognized in the regulations. Several comments were received concerning the need for seasonal restrictions. Although this is not specifically stated in the regulations, the instructions in the Forest Service Manual, FSM 2351, address this situation.

Several respondents commented that the section on public participation was not specific enough in that it did not identify the specific method for this participation. The Forest Service Manual instructions on this issue outline various methods for public participation and it is felt that latitude must be available at the local level to choose one or more methods rather than to be restrictive in the regulation. Comments were also received indicating the need for more time for public participation. This is recognized and although not specifically detailed in the regulation, it has been changed to indicate that adequate time will be provided for public participation.

Numerous responses were made to the requirement for the posting of signs to identify areas or trails having off-road vehicle restrictions. The majority of responses desired to have the Forest Service sign the areas open to off-road vehicle travel rather than the closed areas. Several reasons were given: the impact of signing would be lessened in that areas where this use is permitted would have less emphasis on esthetics; there would be less area open to off-road vehicles than are closed, thus less signing. Others felt that enforcement would be simplified in that vandalism to the signing of closed areas could effectively negate the closure in that enforcement would be questionable without the signs, whereas the absence of the signing of open areas would cause no problems. The Forest Service policy has been one of multiple use with a philosophy that the National Forests are public lands and as such are open to the public. Although there is merit to many of the reasons stated for signing of open areas this concept cannot be accepted for all National Forest System lands. Modification has been made to the regulations to eliminate the mandatory signing of closed areas and the Forest Service Manual instructions have been changed to allow latitude as to the signing of either open or closed areas or the use of maps and brochures and the possible elimination of all signing.

Many comments were received on the exemption of equipment used in connection with mining activities. Only 25 percent of comments were in favor of the exemption. However, because the Forest Service is in the process of issuing new regulations governing mining activities, no change is being made in this regulation until the mining regulations are finalized. Necessary changes will then be made in this part to bring them into agreement with the mining regulations.

Several comments were concerned about the specifics of permits. Most felt the regulations were too vague. The Forest Service Manual contains instructions on permit issuance and it is felt that no additional instructions should be provided in the regulations. A comment was received relative to permit needs for group activities such as races, rallies, meets and other events. Since there is a requirement for a permit to conduct group activities on National Forest System lands it was not included in this regulation. A few respondents questioned the monitoring procedure. The Executive order was explicit in indicating that each agency would monitor; therefore, for clarification purposes, the regulation has been modified to indicate monitoring by the Forest Service.

Several comments were received concerning operating conditions, for which § 295.6 was reserved. Subsequently, operating conditions have been written and the proposed rulemaking process will bring them to the attention of interested parties for comment.

In consideration of the foregoing, 36 CFR Chapter II is amended by adding a new Part 295—Use of Off-Road Vehicles—to read as set forth below.

Effective date.—This amendment is effective October 20, 1973.

ROBERT W. LONG,
Assistant Secretary for Conservation, Research, and Education.

SEPTEMBER 19, 1973.

Sec.
295.1 Applicability.
295.2 Definitions.
295.3 Planning Designation of Areas and Trails.
295.4 Public Participation.
295.5 Public Information.
295.6 Operating Conditions. (Reserved)
295.7 Restricted and Prohibited Use.
295.8 Off-Road Vehicle Permit.
295.9 Monitoring Effects of Off-Road Vehicle Use.

AUTHORITY.—30 Stat. 35, as amended; 16 U.S.C. 551; 50 Stat. 525, as amended; 7 U.S.C. 1011; 83 Stat. 852; E.O. 11644.

§ 295.1 Applicability.

The regulations in this part pertain to administrative designation of specific areas and trails of National Forest System lands on which the use of off-road vehicles shall be allowed, restricted, or prohibited and establishing controls governing the use of off-road vehicles on such areas. The use of off-road vehicles in National Forest Wilderness and Primitive Areas is governed by §§ 293.1 through 293.17 of this Title.

§ 295.2 Definitions.

(a) "Off-road vehicles" means any motorized vehicles designed for or capable of cross country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other terrain which would include, but not be limited to, such vehicles as four wheel drive, motorcycle, snowmobile, amphibious, and air cushion vehicles; except that such term excludes (1) any registered motorboat, (2) any military, fire, emergency or law enforcement vehicle when used for official or emergency purposes, and (3) any vehicle whose use is expressly authorized by the Chief, Forest Service, under a permit, lease, license, or contract.

(b) "National Forest System lands" means National Forests, National Grasslands, and other lands and interests in land administered by the Forest Service.

(c) "Official use" means an employee, agent, or designated representative of the Federal Government or one of its contractors in the course of his employment, agency, or representation.

(d) "Trail" means a designated path or way of varying width which is commonly used by and maintained for hikers, horsemen, snow travelers, bicyclists or for motorized vehicles with a total width of 40 inches or less.

§ 295.3 Planning designation of areas and trails.

On National Forest System lands the continuing resource planning process

will provide for designation of specific areas and trails for off-road vehicle use, use restrictions, and closures to any or all types of such use. This process will include coordination with appropriate Federal, State, and local agencies. The planning process will analyze and evaluate alternatives to enable decisions which best provide for the protection of the natural and historic resources, promotion of safety for all users, minimization of use conflicts, and accomplishment of all of the other resource objectives for National Forest System lands. Analysis and evaluation of off-road vehicles uses will take into consideration factors such as noise, safety, quality of the various recreational experiences provided, potential impacts on soil, watershed, vegetation, fish, wildlife, fish and wildlife habitat, and existing or proposed recreational uses of the same or neighboring lands.

§ 295.4 Public participation.

The public shall be provided an opportunity to participate in the designation of areas and trails relating to off-road vehicle use. Advance notice will be given to allow review by the public of proposed designations or revisions of designations of any areas or trails for off-road vehicle use, for restrictions, or for closures to such use. Adequate time will be allowed for public response prior to any designations or revisions. In emergency situations, designation or revision of designation may be made without public participation to protect natural resources and to provide for public safety.

§ 295.5 Public information.

Areas and trails may be marked with appropriate signs to control off-road vehicle use. All notices issued concerning the regulation of off-road vehicles shall be posted so as to reasonably bring them to the attention of the public, and a copy of the notice shall be kept available to the public in the offices of the District Rangers and Forest Supervisors. Information and maps will be published and distributed describing the conditions of use and the time periods when areas and trails are: (a) Open to off-road vehicle use, (b) restricted to certain types of off-road vehicle use, (c) closed to off-road vehicle use.

§ 295.6 Operating conditions. [Reserved]

§ 295.7 Restricted and prohibited use.

Except as provided in § 295.8, and except for use in connection with mining activities under the provisions of the General Mining Act of 1872, the use of off-road vehicles is prohibited in areas and trails on National Forest System lands during any period when such areas and trails have been closed to vehicles or certain types of vehicles pursuant to these regulations.

§ 295.8 Off-road vehicle permit.

Use of off-road vehicles on National Forest System lands where the use of off-road vehicles is prohibited may be allowed for official use or with prior authorization by means of an Off-Road Vehicle permit. Off-Road Vehicle permits may be issued by the Chief or authorized official of the Forest Service, and such permits will be for a specific area, conditions of use, and a definite period of time. Off-Road Vehicle permits shall be revocable for violation of the rules and regulations governing the National Forests.

§ 295.9 Monitoring effects of off-road vehicle use.

The effects of off-road vehicle use on National Forest System lands will be monitored by the Forest Service. Designation, use restrictions, and operating conditions will be revised as needed to meet changing conditions.

[FR Doc.73-20324 Filed 9-24-73;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

PART 0—COMMISSION ORGANIZATION

Chief Broadcast Bureau; Delegation of Authority

There have been approximately twenty-one amendments to § 0.281 since it was published at 28 FR 12402, November 22, 1963. To coincide with the 1973 revision of Title 47, Chapter I, Parts 0 to 19 of the Code of Federal Regulations, it is appropriate to recap § 0.281. The text of this section, which was last amended effective November 7, 1972 and published in the FEDERAL REGISTER at 37 FR 23336, is set forth below.

Released September 20, 1973.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Acting Secretary.

The text of § 0.281 as in effect on September 20, 1973, is as follows:

CHIEF, BROADCAST BUREAU

§ 0.281 Authority delegated.

The Chief of the Broadcast Bureau is delegated authority to act upon applications, requests, and other matters which are not in hearing status relating to broadcast services as follows:

(a) Formal applications for broadcast authorizations:

(1) For construction permits for new or changed standard, FM, noncommercial educational FM, television, television translator, FM translator, FM booster facilities, and UHF television booster facilities, or for modification thereof; for licenses or modification thereof; or for renewal of licenses for such facilities for the normal license term, which applications comply fully with the requirements of the Communications Act and the provisions of this chapter, accord with Commission policy and standards, are not mutually exclusive with any other application, and concerning which no petition to deny pursuant to § 1.580 of this chapter or other substantial objection has been filed.

(2) For assignment of broadcast licenses or permits or for transfer of control of broadcast licensees or permittees, which applications comply fully with the requirements of the Communications Act and the provisions of this chapter, accord with Commission policy and standards, and concerning which no petition to deny pursuant to § 1.580 of this chapter or other substantial objection has been filed.

(3) For new or modified experimental, developmental, and auxiliary broadcast authorizations covered by Part 74 of this chapter, or for renewal of authority for such facilities.

(4) For reinstatement of expired construction permits

(5) For new or modified Subsidiary Communications Authorizations, or for renewal of such Authorizations.

(b) Designate for hearing, upon appropriate issues, mutually exclusive applications for new or modified standard, FM, noncommercial FM, and television facilities.

(c) Requests for temporary authority:

(1) For temporary waiver of technical operating requirements relating to overall system performance or elements thereof and rules requiring that specified items of equipment be employed.

(2) For operation with temporary antenna system.

(3) For operation with auxiliary transmitter as main transmitter.

(4) For operation with new or modified equipment pending repair of existing equipment or pending receipt and action upon a formal application.

(5) For operation with reduced power or to make other changes in operation of authorized equipment for technical reasons.

(6) For special operation necessary to facilitate equipment, program and service tests or to comply with technical requirements specified in authorizations, orders, rules or releases of the Commission.

(7) For operation with licensed, new, or modified equipment at a temporary site with a temporary antenna system when in case of an emergency it becomes impossible to continue operating at the regularly authorized site.

(8) For special operation of stations in the experimental, developmental and auxiliary broadcast services covered by Part 74 of this chapter.

(9) For temporary authority in emergency cases, at times outside of the regular office hours of the Commission, which require immediate action during such hours.

(10) For authority for television broadcast stations to operate with visual-to-aural power other than that specified in this chapter.

(d) Miscellaneous applications and requests:

(1) For temporary operation, for a lesser period of time than specified by §§ 73.71, 73.261, and 73.651 of this chapter, or to remain silent for temporary periods.

(2) For extension of time within which a transfer of control or assignment of license may be effectuated.

(3) For authority for FM broadcast stations to transmit multiplex facsimile in accordance with § 73.266 of this chapter.

(4) For authority to rebroadcast when authorization is required under Parts 73 and 74 of this chapter.

(5) For any permit required by the provisions of section 325(b) of the Communications Act.

(6) For cancellation of licenses, construction permits or other authorizations.

(7) For withdrawal of papers in accordance with § 1.8 of this chapter.

(8) For the extension of time in which to file briefs, comments, pleadings, and all other papers, including papers relating to matters which are to be decided by the Commission, such as applications for review of actions taken by the Chief, Broadcast Bureau, and including situations in which the filing date was initially specified by the Commission.

(9) For conducting equipment and program tests.

(10) For operation during daytime for specified periods with the nighttime facilities in order to check measurements and operation.

(11) For extension of time within which to comply with technical requirements specified in authorizations, orders, and rules or releases of the Commission.

(12) For television site survey.

(13) For standard broadcast special field test authorizations.

(14) For authority to relocate the main studio outside the corporate limits of the community to which the station is assigned, when no change in station location or identification is involved.

(15) For waiver of the transmitter inspection requirements imposed by §§ 73.93(e), 73.265(e), and 73.565(e) of this chapter.

(16) To waive the provisions of the note to §§ 1.571 and 73.37 of this chapter to the extent necessary to accept for filing and application by an existing standard broadcast facility for change of site or antenna efficiency, which would result in new or increased cochannel or first adjacent channel overlap, if it is found that good cause for the change exists, and such overlap is not in excess of 2 miles along the line of maximum penetration.

(17) For waiver of the provisions of § 73.652(a) of this chapter to permit multiple-city identification, where the additional community or communities with which identification is sought, are provided with the requisite field intensity specified in § 73.685(a) of this chapter by the station seeking such authority.

(e) Applications or requests concerning experimental or developmental broadcast stations involving:

(1) Assignment from time to time of the frequency or frequencies, power, emission, and type of equipment to be employed by any experimental or developmental broadcast station, so as to provide the maximum results from the experimentation with the minimum interference.

(2) Addition, modification, or coordination of programs of research or experimentation of any experimental or developmental broadcast station, so as to provide the maximum results from the experimentation which can be reasonably expected of the licensee or licensees.

(f) To withdraw authorizations for equipment and service or program tests where the terms of the construction permit have not been met.

(g) Requests for modification of tower painting and lighting specifications.

(h) To issue such National Defense Emergency Authorizations as may be required to permit stations licensed by the Commission to participate in approved National Defense Plans during a national emergency, and to issue such further authorizations as may be appropriate under Executive Order 11092.

(i) To dismiss applications without prejudice (1) as provided in § 1.568 (a) and (b) of this chapter, or (2) where an application is not timely filed under the Commission's rules in order to receive comparative consideration with an application or applications with which it is mutually exclusive.

(j) To give written consent to applicants who request authority to make minor changes in effecting transfers of control, or assignment of licenses, previously authorized by the Commission.

(k) To advise licensees to cease operation in the event renewal applications are not filed with the Commission prior to the expiration date of the particular license.

(l) To defer action on those renewal license applications received subsequent to the fifteenth day of the month prior to the expiration date of the particular license.

(m) To grant, for good cause shown, requests for temporary authority to continue operation for a period not to exceed 90 days, where an application for renewal of license has been filed subsequent to the expiration of the particular license.

(n) To dismiss or return applications or petitions which are not acceptable under Commission rules.

(o) To extend the time to file oppositions to petitions relating to broadcast applications not designated for hearing.

(p) To administer, interpret, and apply orders or rules of practice and procedure promulgated by the Commission relating to financial and statistical data of stations in the broadcast service and broadcast networks and chains, including applications for extension of time in which to file financial and statistical statements and reports.

(q) To declare a construction permit for a broadcast facility automatically forfeited if the station authorized by the construction permit is not ready for operation within the time specified therein or within such further time as the Commission may have allowed for completion, and if no application for extension of construction permit has been granted by the Commission or timely filed by the permittee, and to place a notation of the forfeiture in the records of the Commission as of the expiration date of the construction permit.

(r) After coordination with the U.S. Information Agency, to authorize the use of frequencies and frequency hours by international broadcast stations; and to grant, upon adequate showing of need, waivers for operation in excess of the frequency-hour limitations imposed by § 73.702(d) and the note to § 1.574 (c) of this chapter.

(s) To determine whether an application for modification constitutes a major change in facilities, and whether an amendment to an application constitutes a major amendment; and, if so, to so designate such a change or amendment.

(t) To direct standard broadcast stations to refrain from pre-sunrise operation with their daytime facilities pursuant to § 73.87 of this chapter.

(u) To dismiss petitions and other pleadings which have clearly been rendered moot.

(v) To extend the time to file responses to official correspondence.

(w) With the concurrence of the General Counsel, to issue rulings and interpretations with respect to, and to act upon complaints arising under, section 315 of the Communications Act and §§ 73.120, 73.290, 73.590 or 73.657 of this chapter.

(x) To issue Notices of Apparent Liability in amounts not in excess of $250, under Section 503(b) of the Communications Act and § 1.621 of this chapter.

(y) To issue lists of applications for standard broadcast facilities establishing a "cut-off" date pursuant to the provisions of § 1.571(c) of this chapter.

(z) To dismiss, subject to request within 30 days for reinstatement and hearing, applications for extensions of time in which to construct a station where it appears that the failure to complete was due to causes under the control of the grantee.

(aa) To dismiss, as repetitious, any petition for reconsideration of a Commission order which disposed of a petition for reconsideration and which did not reverse, change, or modify the original order.

(bb) To dismiss or deny petitions for rule making which are repetitive or moot or which, for other reasons, plainly do not warrant consideration by the Commission.

(cc) To act on requests for temporary exemption from the provisions of § 73.242(a) of the Commission's rules and regulations, and if good cause is shown to grant temporary exemption for a period of no more than 3 months.

(dd) To accept and grant reinstatement applications beyond the 30-day period in § 1.534(b) of this chapter.

(ee) To grant temporary operation by remote control pending receipt and consideration of a formal application.

(ff) To waive the provisions of the note to §§ 1.571 and 73.37 of this chapter to the extent necessary to accept and grant an application by an existing standard broadcast facility for change of site or antenna efficiency, which would result in new or increased co-channel or first adjacent channel overlap, if it is found that good cause for the change exists, and such overlap is not in excess of 2 miles along the line of maximum penetration.

(gg) To grant, grant in part, or dismiss, as appropriate, informal applications for Presunrise Service Authority (PSA) in acordance with § 73.99 of this chapter, and to suspend, modify, or withdraw such authority under the circumstances outlined therein.

(hh) To grant temporary authority for subchannel operation.

(ii) In conjunction with the Office of Chief Engineer, to rule on objections based on claimed phonetic similarity arising under § 1.550 of this chapter.

(jj) In conjunction with the Office of Chief Engineer, to waive the provisions of § 1.550(d)(1) of this chapter if an examination of the call signs of the broadcast stations notified by applicant clearly indicates that no significant likelihood of public confusion could arise and that no purpose would be served by the waiting period prescribed.

(kk) For waiver of the provisions of §§ 73.117 and 73.287 of this chapter to permit multiple-city identification, where the additional community or communities with which identification is sought are provided with the minimum principal city signal intensity specified in §§ 73.188(b) and 73.315(a) of this chapter for AM and FM broadcast stations, respectively; and to dismiss requests for multiple-city identification which do not meet principal city coverage requirements.

(ll) To act on requests for waiver of § 73.651(c) or § 74.931(a) of this chapter, where operation under such requests will not exceed 10 hours per week, to permit operation by a noncommercial educational television broadcast station or an instructional television fixed station of their aural transmitters to transmit music accompanied by slides, films, or other visual transmissions.

[FR Doc.73-20380 Filed 9-24-73;8:45 am]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER B—PRACTICE AND PROCEDURE

[Ex Parte No. 274 (Sub-No. 1)]

PART 1121—ABANDONMENT OF RAILROAD LINES

Special Procedures for Proposed Railroad Abandonment; Corrected Order [1]

At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 14th day of January 1972.

§ 1121.32 Notice, publication, posting, service.

(a) *Publication in county newspapers.* The front page of the application (short-form) and attachment (if any) must be published by the applicant in some newspaper of general circulation in each county in which any part of the line of railroad sought to be abandoned is situated. The notice must be published at least once during each of three consecutive weeks. The last publication date must be at least 20 days before the date specified therein for the filing of protests with the Commission.

(b) *Posting.* Copy of the front page of the application and attachment (if any) must be posted in a conspicuous place at each agency station on the line sought to be abandoned. If there is no agency station on the line sought to be abandoned, the notice shall be posted at the agency station on the applicant's line through which business for the line sought to be abandoned is handled.

(c) *Mail service.* On or before the date the application is filed with the Commission, the applicant shall serve, by first class mail:

(1) A conformed copy of the application on the governor and public service commission of each state in which any part of the line of railroad sought to be abandoned is situated, accompanied by a statement that if they desire to be heard in the matter they shall advise the Commission within the period specified of their interest in the proceeding; and

(2) Copy of the notice on all shippers and consignees which, after diligent, inquiry, are found to be located on the line proposed to be abandoned and to have used the services of said line during the 12-month period immediately preceding the date of filing the application and upon all prospective shippers and consignees which may have newly located on the line during the aforesaid 12-month period regardless of whether or not they may have utilized the line during the period.

(d) *Certificate of service.* A certificate of mail service and proof of publication and posting of the notice shall be filed with the Commission at least 10 days before the date specified in the notice for the filing of protests.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73-20326 Filed 9-24-73;8:45 am]

SUBCHAPTER D—TARIFFS AND SCHEDULES

[Ex Parte No. MC-1 (Sub-No. 3)]

PART 1322—EXTENSION OF CREDIT TO SHIPPERS BY MOTOR CARRIERS

Payment of Rates and Charges of Motor Carriers Credit Regulations—Household Goods

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 5th day of September 1973.

It appearing, that pursuant to part II of the Interstate Commerce Act (section 223) and section 553 of the Administrative Procedure Act (5 U.S.C. section 553), a rulemaking proceeding was instituted by the Commission on November 24, 1970, for the purpose of determining whether and to what extent the currently effective rules and regulations pertaining to the period of credit following delivery of freight by motor common carriers of household goods should be modified or changed, and whether the carriers should be allowed to impose penalty charges upon shippers who fail to pay the freight charges within the credit period;

If further appearing, that investigation of the matters and things involved in this proceeding has been made and that the Commission has made and filed its report herein containing its findings of facts and conclusions thereon, which report is hereby referred to and made a part hereof;

It is ordered, That Part 1322 of Chapter X of Title 49 of the Code of Federal Regulations be, and it is hereby, modified by amending § 1322.1 by adding thereto the following provisions:

§ 1322.1 Carrier may extend credit to shipper.

* * * * *

(c) *Exceptions—Carriers of houshold goods.* Except as provided in paragraph (b) of this section, motor common carriers of household goods must also provide in their tariffs that (1) the aforestated credit period of 7 calendar days shall automatically be extended to a total of 30 calendar days for any shipper who has not paid the carrier's freight bill within the aforesaid 7-day period, (2) such shipper will be assessed a service charge by the carrier equal to 1 percent of the amount of said freight bill, subject to a $10 minimum charge, for such extension of the credit period, and (3) no such carrier shall grant credit to any shipper which fails to pay a duly presented freight bill within the 30-day period, unless and until such shipper affirmatively satisfies the carrier that all future freight bills duly presented will be paid strictly in accordance with the rules and regulations prescribed by the Commission for the settlement of carrier rates and charges. *Provided,* That no service charge authorized herein shall be assessed in connection with rates and charges on freight transported for the United States, for any department, bureau, or agency thereof, or for any State or territory, or political subdivision thereof, or for the District of Columbia.

It is further ordered, That this order shall become effective on November 5, 1973, and shall remain in effect until modified or revoked in whole or in part by further order of the Commission.

And it is further ordered, That notice of this order shall be given to the general public by depositing a copy thereof in the Office of the Secretary of the Commission at Washington, D.C., and by

[1] In the order of the Commission, served September 1, 1972, part 1121.32 was inadvertently omitted. (37 FR 18918, September 16, 1972.)

filing a copy with the Director, Office of the Federal Register (49 U.S.C. 301, 302, 304, 303, and 323, 5 U.S.C. 553 and 599).

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73-20428 Filed 9-24-73;8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER I—BUREAU OF SPORT FISHERIES AND WILDLIFE, FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 32—HUNTING

Montezuma National Wildlife Refuge, New York

The following special regulation is issued and effective during the period December 5, 1973, through February 28, 1974.

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

NEW YORK

MONTEZUMA NATIONAL WILDLIFE REFUGE

The public hunting of gray squirrels, cottontail rabbits, raccoons, foxes, and unprotected mammals is permitted from December 5, 1973, to February 28, 1974, inclusive, on the Montezuma National Wildlife Refuge, New York, except on areas designated by signs as closed. The open area, comprising 5,285 acres, is delineated on maps available at refuge headquarters, RD1, Box 232, Seneca Falls, New York, 13148; and from the Regional Director, Bureau of Sport Fisheries and Wildlife, John W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109.

Hunting shall be in accordance with all other applicable state regulations governing the hunting of the above mammals.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through February 28, 1974.

RICHARD E. GRIFFITH,
Regional Director, Bureau of Sport Fisheries and Wildlife.

SEPTEMBER 17, 1973.

[FR Doc.73-20331 Filed 9-24-73;8:45 am]

PART 32—HUNTING

Prime Hook National Wildlife Refuge, Delaware

The following special regulation is issued and is effective during the period November 3, 1973, through January 3, 1974.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

DELAWARE

PRIME HOOK NATIONAL WILDLIFE REFUGE

The public hunting of waterfowl, rails, coots, gallinules, common snipe, woodcock, and mourning doves on Prime Hook National Wildlife Refuge is permitted within the regularly established 1973-74 waterfowl hunting season of the State of Delaware, but only within the 1,003 acre waterfowl hunting area as delineated on a map available at refuge headquarters, RD 1, Box 195, Milton, Delaware 19968, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, U.S. Post Office and Courthouse, Boston, Massachusetts 02109.

Hunting shall be in accordance with all applicable Federal and State regulations covering the hunting of migratory birds subject to the following special conditions:

(1) Permits will be issued by a ticket-lottery system at two hours before sunrise. Hunters arriving after the lottery will be issued permits on a first-come, first-served basis until 3:00 p.m. Permits will be surrendered at the checking station within one hour after sunset.

(2) Hunting shall be only from blinds at locations designated by refuge personnel. The possession of a loaded gun or shooting outside of a blind while hunting migratory game birds is prohibited. Three hunters per blind permitted.

(3) Access to the waterfowl hunting area will be at the refuge headquarters, and other designated access points.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge area generally, which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through January 16, 1974.

RICHARD E. GRIFFITH,
Regional Director, Bureau of Sport Fisheries and Wildlife.

SEPTEMBER 17, 1973.

[FR Doc.73-20329 Filed 9-24-73;8:45 am]

PART 32—HUNTING

Tishomingo National Wildlife Refuge, Oklahoma

The following special regulation is issued and is effective on September 25, 1973.

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

OKLAHOMA

TISHOMINGO NATIONAL WILDLIFE REFUGE

Public hunting of quail on the Tishomingo National Wildlife Refuge, Oklahoma, is permitted only on the area designated by signs as open to hunting. This open area, comprising 3,170 acres, is delineated on maps available at refuge headquarters, Tishomingo, Oklahoma, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office Box 1306, Albuquerque, New Mexico 87103. Hunting shall be in accordance with all applicable State regulations governing the hunting of quail subject to the following special conditions:

(1) The open season for hunting quail on the Management Unit (Zones 1 and 2) extends from sunrise to 11:45 A.M. November 20, 1973 through February 1, 1974, inclusive, on Tuesdays, Thursdays, Saturdays, Sundays, and all national holidays.

(2) Dogs may be used for the purpose of hunting and retrieving.

(3) A Federal permit is not required to enter the public hunting area, but hunters, upon entering and leaving, shall report at designated checking stations as may be established for the regulation of the hunting activity and shall furnish information pertaining to their hunting, as requested.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through February 1, 1974.

ERNEST S. JENISON,
Refuge Manager, Tishomingo National Wildlife Refuge, Tishomingo, Oklahoma.

SEPTEMBER 11, 1973.

[FR Doc.73-20332 Filed 9-24-73;8:45 am]

PART 32—HUNTING

Tishomingo National Wildlife Refuge, Oklahoma

The following special regulation is issued and is effective on September 25, 1973.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

OKLAHOMA

TISHOMINGO NATIONAL WILDLIFE REFUGE

Public hunting of deer on the Tishomingo National Wildlife Refuge, Oklahoma, is permitted only on the area designated by signs as open to hunting. This open area, comprising 3,170 acres, is delineated on maps available at refuge headquarters, Tishomingo, Oklahoma, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office Box 1306, Albuquerque, New Mexico 87103. Hunting shall be in accordance with all applicable State regulations covering the hunting of deer subject to the following special conditions:

(1) The archery deer hunting season on the Management Unit (Zone 1, 2, and 3) is from October 13 through October 21, 1973, to buck only deer hunting. Shooting hours are from daylight to dark. No permit required. A maximum of 60 archery hunters per day will be admitted to the hunting area.

(2) The gun deer hunting season on the Management Unit will be open November 23, 24, 25, 1973, to buck deer hunting only by permits. The Oklahoma Wildlife Department will issue 35 permits per day by public drawing. Shooting hours are from daylight to dark.

(3) A Federal permit is not required to enter the public hunting area for the hunting of deer, but hunters, upon entering and leaving, shall report at designated checking stations as may be established for the regulation of the

hunting activity and shall furnish information pertaining to their hunting, as requested.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through November 25, 1973.

ERNEST S. JEMISON,
Refuge Manager, Tishomingo National Wildlife Refuge, Tishomingo, Oklahoma.

SEPTEMBER 10, 1973.

[FR Doc.73-20333 Filed 9-24-73;8:45 am]

PART 32—HUNTING

Yazoo National Wildlife Refuge, Mississippi

The following special regulations are issued and are effective on September 29, 1973.

§ 32.22 Special regulations; upland game; for individual refuge areas. areas.

MISSISSIPPI

YAZOO NATIONAL WILDLIFE REFUGE

Public hunting of squirrels on the Yazoo National Wildlife Refuge, Mississippi, is permitted only on the areas designated by signs as open to hunting. These open areas, comprising approximately 10,500 acres, are delineated on a map available at refuge headquarters and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, 17 Executive Park Drive NE., Atlanta, Georgia 30329. Hunting shall be in accordance with all applicable State regulations governing the hunting of squirrels subject to the following special conditions:

(1) The open season extends from September 29–October 10, 1973, Sundays excluded, one-half hour before official sunrise to official sunset. Hunters may not enter hunting area earlier than one hour before official sunrise and must depart area immediately after official sunset.

(2) Bag limit: 8 per day.

(3) Firearms: shotguns, 10 gauge or smaller (no buckshot or slugs permitted, possession illegal), rifles limited to 22 caliber (22 magnum and 222 rifles prohibited). *All shotguns must be plugged to hold three shells. Sidearms (pistols and revolvers) prohibited.*

(4) Use of dogs prohibited.

(5) No firearms may be discharged within 250 yards of Refuge Headquarters or residences.

(6) Carrying of loaded firearms in vehicles prohibited. Shooting from vehicles or paved roads prohibited.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through October 10, 1973.

PHILLIP S. MORGAN,
Acting Regional Director, Bureau of Sport Fisheries and Wildlife.

SEPTEMBER 14, 1973.

[FR Doc.73-20330 Filed 9-24-73;8:45 am]

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rulemaking prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 221]

SALT RIVER INDIAN IRRIGATION PROJECT, ARIZONA

Proposed Revisions

Pursuant to the authority vested in the Secretary of the Interior for issuance of irrigation operation and maintenance orders fixing per acre assessments against lands included in Indian Irrigation Projects, delegated to the Commissioner of Indian Affairs by Order No. 2508 (10 BIAM 2.1, Section 15a) and redelegated to the Area Directors by 10 BIAM 4.1, notice is hereby given that it is proposed to modify § 221.120 *Basic assessment*, of Title 25, Code of Federal Regulations, dealing with operation and maintenance assessment against the lands under the Salt River Indian Irrigation Project in Arizona, by increasing the annual basic assessment rate for the calendar year 1974 and subsequent years until further notice, from $7.35 to $9.60 per acre; § 221.121 *Payment*, to change annual date of payment from April 1 to February 1 each year; and § 221.123 *Excess water*, by increasing the rate from $8.00 to $9.50 per acre-foot.

The revised sections will read as follows:

§ 221.120 Basic assessment.

The basic operation and maintenance assessment against the lands under the Salt River Indian Irrigation Project in Arizona to which water can be delivered through the irrigation project works is hereby fixed at $9.60 per acre for the year 1974 and subsequent years until further notice. The payment of the per-acre assessment shall entitle the land for which payment is made to receive three acre-feet of water per annum, or such lesser amount as represents the proportionate share of the available supply of water.

§ 221.121 Payment.

The annual basic charge fixed in § 221.120 shall be due and payable on or before February 1, 1974, and on February 1 of each year thereafter until further notice. Charges not paid on the due date shall stand as a first lien against the lands until paid.

§ 221.123 Excess water.

Additional water in excess of the basic apportionment of three acre-feet per acre per annum, may be purchased if and when the water is available at the rate of $9.50 per acre-foot or fraction thereof, measured at the farm delivery point. Payment shall be made in advance of delivery.

It is the policy of the Department of the Interior whenever practicable to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed revisions to John Artichoker, Area Director, Phoenix Area Office, Post Office Box 7007, Phoenix, Arizona 85011, on or before October 25, 1973.

JOHN ARTICHOKER,
Area Director.

[FR Doc.73-20328 Filed 9-24-73;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 989]

RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Proposed Designation of Desirable Free Tonnage for Natural Thompson Seedless Raisins

Notice is given of a proposal to designate a desirable free tonnage for natural Thompson Seedless raisins of 150,000 tons which would be made available as free tonnage during the 1973–74 crop year. This action would be in accordance with the marketing agreement, as amended, and Order No. 989, as amended (7 CFR Part 989), hereinafter referred to collectively as the "order", regulating the handling of raisins produced from grapes grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposal was unanimously recommended by the Raisin Administrative Committee.

The Committee's recommendation is pursuant to § 989.54 of the order and is based on its review of shipment data, inventory data, and other matters, relating to a desirable free tonnage for natural Thompson Seedless raisins for the 1973–74 crop year.

The proposed desirable free tonnage is based upon the following estimates:

Item	Natural condition tons
1. Free tonnage trade demand	131,500
2. Desirable carryout Aug. 31, 1974	20,000
3. Total requirements	151,500
4. Less carryin Sept. 1, 1973	1,500
5. Desirable free tonnage	150,000

Consideration will be given to any written data, views, or arguments pertaining to the proposal which are received by the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than October 15, 1973. All written submissions made pursuant to this notice should be in quadruplicate and will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Dated September 19, 1973.

CHARLES R. BRADER,
Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.73-20343 Filed 9-24-73;8:45 am]

[7 CFR Part 1140]

MILK IN THE FRONTIER MARKETING AREA

Postponement of Hearing on Proposed Marketing Agreement and Order

A notice was issued on July 10, 1973 (38 FR 18681), giving notice of a public hearing to be held at the U.S. Courthouse, Old Federal Building (Courtroom 1), 111 South Wolcott Street, Casper, Wyoming, beginning at 10 a.m., local time, on August 7, 1973, with respect to a proposed marketing agreement and order, regulating the handling of milk in the Frontier marketing area.

The hearing was convened on August 7 and recessed on August 10, 1973. The Administrative Law Judge scheduled the hearing to reconvene at the same place on September 25, 1973, at 9 a.m., local time.

Notice is hereby given, pursuant to the rules of practice applicable to such proceedings (7 CFR Part 900), that said hearing is postponed until the earliest date feasible for rescheduling, such date and the time and place of the hearing to be announced later. The major order proponent had requested a postponement of the hearing for approximately sixty days.

Copies of this notice of postponement of hearing may be procured from the Hearing Clerk, Room 112, Administration Building, U.S. Department of Agriculture, Washington, D.C. 20250, or may be there inspected.

Signed at Washington, D.C., on September 20, 1973.

JOHN C. BLUM,
Deputy Administrator Regulatory Programs.

[FR Doc.73-20433 Filed 9-24-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

[42 CFR Part 81]

CAPITAL EXPENDITURES

Payment to States for Costs of Review

On August 3, 1973, a notice of proposed rulemaking was published in the FEDERAL REGISTER (38 FR 20994) stating that the Assistant Secretary for Health of the Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, proposed to issue a new Part 81 of Title 42, Code of Federal Regulations, entitled "Limitation on Federal Participation for Capital Expenditures". The Notice stated that the purpose of the proposed Part 81 was to implement the provisions of section 1122 of the Social Security Act, as added by Section 221(a) of the Social Security Amendments of 1972 (86 Stat. 1386–89; 42 U.S.C. 1320a–1). Interested persons were given 30 days to comment on the proposal.

The proposed Part 81 did not include any provision implementing paragraph (c) of such section 1122, relating to payment to the States by the Secretary from the Federal Hospital Insurance Trust Fund for the performance of functions under section 1122(b). Such a provision has now been prepared for inclusion in Part 81.

Accordingly, notice is hereby given that the Assistant Secretary for Health, with the approval of the Secretary, proposes to add to 42 CFR Part 81, as such Part 81 was proposed in the notice of proposed rulemaking published on August 3, 1973 (38 FR 20994), a new § 81.110, entitled "Payment by Secretary of costs of agency review".

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed new 42 CFR 81.110 to the Comprehensive Health Planning Service, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20852, on or before October 10, 1973. Comments will be available for public inspection in Room 7–43, Parklawn Building, between the hours of 8:30 a.m. and 5 p.m., Monday through Friday.

It is, therefore, proposed to add the following new § 81.110 to the new Part 81 of Title 42, as such Part 81 was proposed in the notice of proposed rulemaking published in the FEDERAL REGISTER on August 3, 1973 (38 FR 20994).

Dated August 31, 1973.

H. E. SIMMONS,
Acting Assistant Secretary for Health.

Approved September 21, 1973.

CASPAR W. WEINBERGER,
Secretary of Health, Education, and Welfare.

§ 81.110 Payment by Secretary of costs of agency review.

(a) In accordance with section 1122(c) of the Act, the Secretary will pay to each designated planning agency, from the Federal Hospital Insurance Trust Fund, an amount for each fiscal year beginning with the fiscal year ending June 30, 1974, to be determined as follows:

(1) The Secretary will determine, on the basis of information furnished to him by the designated planning agency and such other information as may be available to him, (i) the amount of funds, both Federal and non-Federal, which will be expended in such State during such fiscal year to carry out sections 314(a) and (b) of the Public Health Service Act, and (ii) the amount of such funds which will be expended for the purpose of cost containment.

(2) The amount to be paid to each designated planning agency under this paragraph will be computed by multiplying the lesser of (i) the amount determined pursuant to clause (ii) of paragraph (a)(1) of this section or (ii) 50 percent of the amount determined pursuant to clause (i) of paragraph (a)(1), of this section, by the percentage obtained by dividing the total amount of Federal expenditures for hospital and nursing home services under Titles V, XVIII and XIX of the Act in such State by the total amount of all expenditures for hospital and nursing home services, from whatever source in such State. This computation shall utilize data from the latest fiscal year for which all necessary data is available, as determined by the Secretary.

(3) The amounts to be paid to the States pursuant to this paragraph for each fiscal year will be published by the Secretary in the FEDERAL REGISTER as soon as practicable following the beginning of such fiscal year.

(b) Each designated planning agency shall be responsible for making payments from funds paid to it by the Secretary pursuant to paragraph (a) of this section to the other agencies described in § 81.105 in such State. The method for computing such payments shall be described in the Agreement.

(c) The Secretary shall from time to time make payments to a designated planning agency of all or a portion of the amount determined pursuant to paragraph (a) of this section, in advance or by way of reimbursement as provided in the Agreement, to the extent he determines such payments necessary to promote the carrying out of the purposes of section 1122 of the Act in such State. Such payments shall be subject to adjustments, on account of overpayments or underpayments previously made, in accordance with the Agreement.

(d) The designated planning agency shall keep such records and accounts, and furnish such reports to the Secretary, as may be required pursuant to the Agreement.

[FR Doc.73-20497 Filed 9-24-73;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 73-EA-84]

CONTROL ZONE

Proposed Alteration

The Federal Aviation Administration is considering amending § 71.171 of Part 71 of the Federal Aviation Regulations so as to alter the Calverton, N.Y., Control Zone (38 FR 362).

The communications and weather information at the Peconic River Airport will be available from 0800 to sunset, local time, Monday through Saturday. It is proposed to alter the control zone description so as to make its effectivity coincident with such availability.

Interested parties may submit such written data or views as they may desire. Communications should be submitted in triplicate to the Director, Eastern Region, Attn: Chief, Air Traffic Division, Department of Transportation, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. All communications received on or before October 25, 1973, will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements may be made for informal conferences with Federal Aviation Administration officials by contacting the Chief, Airspace and Procedures Branch, Eastern Region.

Any data or views presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested parties at the Office of Regional Counsel, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York.

The Federal Aviation Administration, having completed a review of the airspace requirements for the terminal area of Calverton, New York, proposes the airspace action hereinafter set forth:

1. Amend § 71.171 of Part 71 of the Federal Aviation Regulations so as to alter the Calverton, N.Y. control zone as follows:

In the text, delete "from 0800 to 1630 hours, local time, Monday through Friday." and substitute in lieu thereof, "from 0800 to sunset, local time, Monday through Saturday."

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 [72 Stat. 749; 49 U.S.C. 1348] and section 6(c) of the Department of Transportation Act [49 U.S.C. 1655(c)].

Issued in Jamaica, N.Y., on September 11, 1973.

ROBERT H. STANTON,
Director, Eastern Region.

[FR Doc.73-20358 Filed 9-24-73;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 73-SO-61]

CONTROL ZONE

Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Knoxville, Tenn. (Downtown Island Airport) control zone.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Federal Aviation Administration, Southern Region, Air Traffic Division, P.O. Box 20636, Atlanta, Ga. 30320. All communications received on or before October 25, 1973, will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in light of comments received.

The official docket will be available for examination by interested persons at the Federal Aviation Administration, Southern Region, Room 770, 3400 Whipple Street, East Point, Ga.

The Knoxville (Downtown Island Airport) control zone described in 71.171 (38 FR 351) would be amended to read:

Within a 5-mile radius of Downtown Island Airport (Lat. 35°57'45" N, Long. 83°52'30" W); excluding the portion within the Knoxville control zone. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airman's Information Manual.

The proposed alteration is required to provide controlled airspace protection for IFR operations at Knoxville Downtown Island Airport. An instrument approach procedure to this airport, utilizing the Knoxville VOR and Knoxville Approach Control Radar, is proposed.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in East Point, Ga., on September 10, 1973.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.73-20368 Filed 9-24-73;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 73-EA-80]

CONTROL ZONE

Proposed Alteration

The Federal Aviation Administration is considering amending § 71.171 of the Federal Aviation Regulations so as to alter the Morristown, N.J., Control Zone (38 FR 403, 21393).

A review of the terminal airspace requirements for Morristown, New Jersey, indicates a need to alter the control zone to conform to the criteria of the Terminal Instrument Procedures (TERPs).

Interested parties may submit such written data or views as they may desire. Communications should be submitted in triplicate to the Director, Eastern Region, Attn: Chief, Air Traffic Division, Department of Transportation, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. All communications received on or before October 25, 1973, will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements may be made for informal conferences with Federal Aviation Administration officials by contacting the Chief, Airspace and Procedures Branch, Eastern Region.

Any data or views presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested parties at the Office of Regional Counsel, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York.

The Federal Aviation Administration, having completed a review of the airspace requirements for the terminal area of Morristown, New Jersey, proposes the airspace action hereinafter set forth:

1. Amend § 71.171 of Part 71 of the Federal Aviation Regulations by deleting the description of the Morristown, N.J. control zone and by substituting the following in lieu thereof:

Within a 5-mile radius of the center, 40°47'58" N., 74°34'56" W., of Morristown Municipal Airport, Morristown, N.J., extending clockwise from a 339° bearing to a 229° from the airport; within a 6-mile radius of the center of Morristown Municipal Airport, extending clockwise from a 229° bearing to a 339° bearing from the airport and within 3 miles each side of a 204° bearing from the Chatham, N.J., RBN, extending from the 5-mile-radius zone to 8.5 miles southwest of the RBN, excluding a 1-mile radius of the center, 40°41'28" N., 74°32'08" W., of Somerset Hills, Airport, Basking Ridge, N.J. This control zone is effective from 0630 to 2230 hours, local time, daily.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 [72 Stat. 749; 49 U.S.C. 1348] and section 6(c) of the Department of Transportation Act [49 U.S.C. 1655(c)].

Issued in Jamaica, N.Y., on September 11, 1973.

ROBERT H. STANTON,
Director, Eastern Region.

[FR Doc.73-20363 Filed 9-24-73;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 73-EA-71]

CONTROL ZONE

Proposed Alteration

The Federal Aviation Administration is considering amending § 71.171 of the Federal Aviation Regulations so as to alter the New York, N.Y. (La Guardia Airport) Control Zone (38 FR 406).

A review of the terminal area airspace requirements for New York, N.Y., indicates a need to alter the control zone so as to conform to the criteria of the Terminal Instrument Procedures (TERP's).

Interested parties may submit such written data or views as they may desire. Communications should be submitted in triplicate to the Director, Eastern Region, Attn: Chief, Air Traffic Division, Department of Transportation, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. All communications received within 30 days after publication in the Federal Register will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements may be made for informal conferences with Federal Aviation Administration officials by contacting the Chief, Airspace and Procedures Branch, Eastern Region.

Any data or views presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested parties at the Office of Regional Counsel, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York.

The Federal Aviation Administration, having completed a review of the airspace requirements for the terminal area of New York, New York (La Guardia Airport), proposes the airspace action hereinafter set forth:

1. Amend § 71.171 of the Federal Aviation Regulations by deleting the description of the New York, N.Y. (La Guardia Airport) control zone and by substituting the following in lieu thereof:

Within a 5-mile radius of the center 40°46'36" N., 73°52'24" W. of La Guardia Airport; within 1.5 miles each side of a line bearing 124° from a point 40°46'20" N., 73°51'34" W., extending from said point to 5 miles southeast of said point.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 [72 Stat. 749; 49 U.S.C. 1348] and section 6(c) of the Department of Transportation Act [49 U.S.C. 1655(c)].

Issued in Jamaica, N.Y., on September 11, 1973.

ROBERT H. STANTON,
Director, Eastern Region.

[FR Doc.73-20361 Filed 9-24-73;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 73-EA-77]

CONTROL ZONE AND TRANSITION AREA

Proposed Alteration and Revocation

The Federal Aviation Administration is considering amending §§ 71.171 and 71.181 of the Federal Aviation Regulations so as to alter the Newburgh, N.Y., Control Zone (38 FR 405) and Transition Area (38 FR 543) and revoke the Middletown, N.Y., Transition Area (38 FR 533).

A review of the terminal airspace requirements for Montgomery, N.Y., Middletown, N.Y., and Newburgh, N.Y., indicates a need to increase the controlled airspace to protect aircraft executing instrument procedures for Randall Airport, Orange County Airport and Stewart Airport. Such alteration will also permit the deleting of the Middletown, N.Y., Transition Area, which will be included in the Newburgh, N.Y., Transition Area.

Interested parties may submit such written data or views as they may desire. Communications should be submitted in triplicate to the Director, Eastern Region, Attn: Chief, Air Traffic Division, Department of Transportation, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y. 11430. All communications received on or before October 25, 1973, will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements may be made for informal conferences with Federal Aviation Administration officials by contacting the Chief, Airspace and Procedures Branch, Eastern Region.

Any data or views presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested parties at the Office of Regional Counsel, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York.

The Federal Aviation Administration, having completed a review of the airspace requirements for the terminal areas aforementioned, proposes the airspace action hereinafter set forth:

1. Amend § 71.171 of the Federal Aviation Regulations by deleting the description of the Newburgh, N.Y. control zone and by substituting the following in lieu thereof:

Within a 5-mile radius of the center, 41°-30'05" N., 74°05'40" W., of Stewart Airport, Newburgh, N.Y., extending clockwise from a 066° bearing to a 209° bearing from the airport; within a 5.5-mile radius of the center of the airport, extending clockwise from a 209° bearing to a 249° bearing from the airport; within a 5-mile radius of the center of the airport, extending clockwise from a 249° bearing to a 315° bearing from the airport; within a 6.5-mile radius of the center of the airport, extending clockwise from a 315° bearing to a 066° bearing from the airport; within 3 miles each side of the Stewart VOR (41°30'28" N., 74°05'53" W.) 325° radial, extending from the VOR to 15 miles northwest of the VOR and within 4.5 miles each side of the Stewart VOR 085° radial, extending from the VOR to 11.5 miles east of the VOR, excluding the portion that coincides with the Poughkeepsie, N.Y., control zone. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airman's Information Manual.

2. Amend § 71.181 of the Federal Aviation Regulations by deleting the description of the Newburgh, N.Y., transition area and by substituting the following in lieu thereof:

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the center, 41°30'05" N., 74°05'40" W. of Stewart Airport, Newburgh, N.Y., extending clockwise from a 222° bearing to a 332° bearing from the airport; within an 11.5-mile radius of the center of Stewart Airport, extending clockwise from the 332° bearing to a 045° bearing from the airport; within an 8.5-mile radius of the center of Stewart Airport, extending clockwise from a 045° bearing to a 076° bearing from the airport, within a 10-mile radius of the center of Stewart Airport, extending clockwise from a 076° bearing to a 130° bearing from the airport; within a 12.5-mile radius of the center of Stewart Airport, extending clockwise from a 130° bearing to a 159° bearing from the airport; within a 14.5-mile radius of the center of Stewart Airport, extending clockwise from a 159° bearing to a 191° bearing from the airport, within a 12.5-mile radius of the center of Stewart Airport, extending clockwise from a 191° bearing to a 222° bearing from the airport; within 3.5 miles each side of the Stewart VOR (41°30'28" N., 74°05'53" W.) 325° radial, extending from the Stewart VOR to 18.5 miles northwest of the Stewart VOR; within 5 miles each side of the Stewart VOR 085° radial, extending from the Stewart VOR to 13 miles east of the Stewart VOR; within 5 miles each side of the Huguenot VORTAC 074° radial extending from the Huguenot VORTAC to 20 miles east of the Huguenot VORTAC; within a 7-mile radius of the center 41°30'41" N., 74°15'51" W. of Orange County Airport, Montgomery, N.Y., extending clockwise from a 332° bearing to a 074° bearing from the airport; within a 7.5-mile radius of the center of Orange County Airport, extending clockwise from a 074° bearing to a 161° bearing from the airport; within an 8-mile radius of the center of Orange County Airport, extending clockwise from a 161° bearing to a 228° bearing from the airport within a 9-mile radius of the center of Orange County Airport, extending clockwise from a 228° bearing to a 332° bearing from the airport; within 3.5 miles each side of the Orange County Airport ILS localizer south course, extending from the OM to a point 14 miles south of the OM; within a 6-mile radius of the center, 41°25'54" N., 74°23'45" W. of Randall Airport, Middletown, N.Y., extending clockwise from a 015° bearing to a 128° bearing from the airport; within a 6.5-mile radius of the center of Randall Airport, extending clockwise from a 128° bearing to a 167° bearing from the airport; within a 6-mile radius of the center of Randall Airport, extending clockwise from a 167° bearing to a 227° bearing from the airport; within a 7-mile radius of the center of Randall Airport, extending clockwise from a 227° bearing to a 309° bearing from the airport; within a 6.5-mile radius of the center of Randall Airport, extending clockwise from a 309° bearing to a 015° bearing from the airport; and within 2 miles each side of the Huguenot VORTAC 082° radial, extending from the Huguenot VORTAC to 10 miles east of the Huguenot VORTAC.

3. Amend § 71.181 of the Federal Aviation Regulations so as to revoke the Middletown, N.Y., transition area.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 [72 Stat. 749; 49 U.S.C. 1348] and section 6(c) of the Department of Transportation Act [49 U.S.C. 1655(c)].

Issued in Jamaica, N.Y., on September 11, 1973.

ROBERT H. STANTON,
Director, Eastern Region.

[FR Doc.73-20360 Filed 9-24-73;8:45 am]

[14 CFR Parts 71, 73]

[Airspace Docket No. 73-SW-33]

RESTRICTED AREAS AND CONTROLLED AIRSPACE

Proposed Designation

On July 31, 1973, a notice of proposed rulemaking (NPRM) was published in the FEDERAL REGISTER (38 FR 20348) stating that the Federal Aviation Administration was considering amendments to Parts 71 and 73 of the Federal Aviation Regulations that would alter the description of Restricted Areas R-2401 and R-2402, Fort Chaffee, Ark., and include R-2401 in the description of the continental control area. The deadline for public comment on the proposal was August 30, 1973.

Subsequent to publication of the NPRM, problems in the distribution of the notice arose which required an extension of the comment period.

In consideration of the foregoing, the comment period for the proposal to alter the Fort Chaffee, Ark., Restricted Areas R-2401 and R-2402, as contained in Airspace Docket No. 73-SW-33, is extended to September 30, 1973.

This action is taken under the authority of sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on September 10, 1973.

CHARLES H. NEWPOL,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.73-20364 Filed 9-24-73;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 73-EA-68]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending § 71.181 of the Federal Aviation Regulations so as to alter the Hershey, Pa., Transition Area (38 FR 501).

A review of the terminal area airspace requirements for Hershey, Pa., indicates a need to alter the transition area to

conform to the criteria of the Terminal Instrument Procedures (TERP's).

Interested parties may submit such written data or views as they may desire. Communications should be submitted in triplicate to the Director, Eastern Region, Attn: Chief, Air Traffic Division, Department of Transportation, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. All communications received on or before October 25, 1973, will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements may be made for informal conferences with Federal Aviation Administration officials by contacting the Chief, Airspace and Procedures Branch, Eastern Region.

Any data or views presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested parties at the Office of Regional Counsel, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York.

The Federal Aviation Administration, having completed a review of the airspace requirements for the terminal area of Hershey, Pennsylvania, proposes the airspace action hereinafter set forth:

1. Amend § 71.181, Federal Aviation Regulations so as to delete the description of the Hershey, Pa. 700-foot floor transition area and by substituting the following in lieu thereof:

HERSHEY, PA.

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the center, Lat. 40°17'35" N., Long. 76°39'40" W. of Hershey Airpark, Hershey, Pa.; within a 7-mile radius of the center of the airport extending clockwise from a 092° bearing to a 041° bearing from the airport excluding that portion that coincides with the Harrisburg, Pa., transition area. This transition area shall be effective from sunrise to sunset, daily.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 [72 Stat. 749; 49 U.S.C. 1348] and section 6(c) of the Department of Transportation Act [49 U.S.C. 1655(c)].

Issued in Jamaica, N.Y., on September 11, 1973.

ROBERT H. STANTON,
Director, Eastern Region.

[FR Doc.73-20362 Filed 9-24-73;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 73-SW-62]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations to alter the Lafayette, La., transition area.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. All communications received within 30 days after publication of this notice in the Federal Register will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Fort Worth, Texas. An informal docket will also be available for examination at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

It is proposed to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth.

In § 71.181 (38 FR 435), the Lafayette, La., transition area is amended to read:

LAFAYETTE, LA.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Lafayette Airport (latitude 30°12'00" N., longitude 91°59'40" W.); within 2 miles each side of the Lafayette ILS localized north course extending from the OM to the 5-mile radius area; within 2 miles each side of the Lafayette ILS localizer south course extending from the 5-mile-radius area to the 5-mile-radius area of the Abbeville Municipal Airport (latitude 29°58'19" N., longitude 92°05'06" W.); within 2 miles each side of the Lafayette VORTAC 171° radial extending from the 5-mile-radius area of the Lafayette Airport to 8 miles south of the VORTAC; within 2 miles each side of the 276° bearing from the Lafayette RBN (latitude 30°11'35" N., longitude 91°52'58" W.) extending from the RBN to the 5-mile-radius area; within 2 miles each side of the Lafayette VORTAC 206° radial extending from the VORTAC to the 5-mile-radius area of the Abbeville Airport; within a 5-mile-radius of Acadiana Regional Airport (latitude 30°-02'15" N., longitude 91°53'00" W.); within 2 miles each side of the Lafayette VORTAC 139° radial extending from the 5-mile-radius area of Lafayette Airport to the 5-mile-radius area of Acadiana Airport; within 3 miles each side of the Lafayette VORTAC 145° radial extending from the 5-mile-radius area of Acadiana to 17.5 miles from the Lafayette VORTAC.

The proposed amendment to the transition area will provide controlled airspace for aircraft executing the proposed VORTAC runway 34 standard instrument approach to Acadiana Airport.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Fort Worth, Tex., on September 10, 1973.

ALBERT H. THURBURN,
Acting Director,
Southeast Region.

[FR Doc.73-20309 Filed 9-24-73;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 73-WE-15]

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 Blythe, California transition area.

Interested persons may participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Airspace and Procedures Branch, Federal Aviation Administration, 15000 Aviation Blvd., P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. All communications received within 30 days after publication of this notice in the Federal Register will be considered before action is taken on the proposed 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, 15000 Aviation Blvd., Lawndale, California. 90261.

The FAA has developed two new VOR instrument approach procedures and an Area Navigation Approach to Blythe Airport, California. The new VOR procedures (VOR-A and VOR RWY 26) procedures will utilize the Blythe VORTAC 250° M (264° T) and 052° M (066° T) radials respectively as final approach courses. The VOR 26 approach will also incorporate a 15 NM mile arc transition extending from the Blythe 080° M counterclockwise to the 052° M radial. In addition, holding will be approved east of the 080°/15 DME fix.

The procedure turn for the VOR RWY 26 approach is described on the 052°/8 DME fix (McGowan intersection). The McGowan intersection is also designated as the intersection of the 052° M radial of the Blythe VORTAC and the 004° M bearing from the Ripley radiobeacon.

Describing the intersection in this manner will require that Ripley be redesignated from a SABH to a HSAB radiobeacon.

The proposed alteration of the Blythe, California transition area is necessary to provide controlled airspace protection for aircraft executing the proposed instrument procedures.

If the proposals outlined above are adopted, the current VOR-2 instrument approach procedure to Blythe Airport will be cancelled.

In consideration of the foregoing, the FAA proposes the following airspace action.

In § 71.181 (38 FR 435), the description of the Blythe, California transition area is amended to read as follows:

BLYTHE, CALIF.

That airspace extending upward from 700 feet above the face within 3 miles each side of the Blythe VORTAC 264° radial, extending from the VORTAC to 9 miles W. of the VORTAC; that airspace extending upward from 1,200 feet above the surface within 9.5 miles S. and 4.5 miles N. of the Blythe VORTAC 264° radial, extending from the VORTAC to 18.5 miles W. of the VORTAC; within 4.5 miles N.W. and 9.5 miles S.E. of the Blythe VORTAC 066° radial, extending from the VORTAC to 28 miles N.E. of the VORTAC; within 9 miles N. and 10 miles S. of the Blythe VORTAC 094° radial, extending from the VORTAC to 36 miles E. of the VORTAC, excluding the airspace within R-2306B, and that airspace within an arc of an 18-mile radius circle centered on the Blythe Airport (latitude 33°37'15" N., longitude 114°43'00" W.), extending clockwise from longitude 114°30'00" W. to the S. edge of V-16.

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 Los Angeles, California, on September 7, 1973.

ROBERT O. BLANCHARD,
Acting Director, Western Region.

[FR Doc.73-20370 Filed 9-24-73;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 73-EA-79]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending § 71.181 of the Federal Aviation Regulations so as to alter the Andover, N.J., Transition Area (38 FR 440).

A review of the terminal airspace requirements for Andover, N.J. indicates a need to alter the transition area so as to conform to the criteria of the Terminal Instrument Procedures (TERP's).

Interested parties may submit such written data or views as they may desire. Communications should be submitted in triplicate to the Director, Eastern Region, Attn: Chief, Air Traffic Division, Department of Transportation, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. All communications received on or before October 25, 1973, will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements may be made for informal conferences with Federal Aviation Administration officials by contacting the Chief, Airspace and Procedures Branch, Eastern Region.

Any data or views presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested parties at the Office of Regional Counsel, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York.

The Federal Aviation Administration, having completed a review of the airspace requirements for the terminal area of Andover, New Jersey, proposes the airspace action hereinafter set forth:

1. Amend § 71.181 of Part 71 of the Federal Aviation Regulations by deleting the description of the Andover, N.J., 700-foot floor transition area and by substituting the following in lieu thereof:

That airspace extending upward from 700 feet above the surface within a 10.5-mile radius of the center 41°00'00"N., 74°44'00"W. of Aeroflex-Andover Airport, Andover, N.J., extending clockwise from a 103° bearing to a 103° bearing from the airport; within a 9.5-mile radius of the center of the airport, extending clockwise from a 103° bearing to a 174° bearing from the airport; within an 8.5-mile radius of the center of the airport extending clockwise from a 174° bearing to a 225° bearing from the airport; within a 7-mile radius of the center of the airport, extending clockwise from a 225° bearing to a 295° bearing from the airport; within a 6-mile radius of the center of the airport, extending clockwise from a 295° bearing to a 053° bearing from the airport; within 1.5 miles each side of the Stillwater, N.J. VORTAC 083° radial, extending from the 7-mile-radius area to the Stillwater, N.J., VORTAC.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 [72 Stat. 749; 49 U.S.C. 1348] and section 6(c) of the Department of Transportation Act [49 U.S.C. 1655(c)].

Issued in Jamaica, N.Y., on September 11, 1973.

ROBERT H. STANTON,
Director, Eastern Region.

[FR Doc.73-20359 Filed 9-24-73;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 73-RM-24]

VOR FEDERAL AIRWAY

Proposed Designation

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would designate VOR Federal Airway No. 207 west alternate between Denver, Colo., and Gill, Colo.

Interested persons may participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and be sumitted in triplicate to the Director, Rocky Mountain Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Park Hill Station, P.O. Box 7213, Denver, Colo. 80207. All communications received within 30 days after publicaion of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Indpendence Avenue SW., Washington, D.C. 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The proposed amendment would designated VOR Federal Airway No. 207 west alternate from Denver, Colo., to Gill, Colo., via INT Denver 359°T(346°M) and Gill 224°T(211°M) radials. This amendment would provide for segregation of departing and arriving aircraft northeast of Denver.

This amendment is proposed under the authority of Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on September 10, 1973.

CHARLES H. NEWPOL,
Acting Chief, Airspace and Traffic Rules Division.

[FR Doc.73-20365 Filed 9-24-73;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 73-CE-27]

VOR FEDERAL AIRWAY

Proposed Designation and Extension

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would:

1. Designate a new VOR Federal Airway between Kansas City, Mo., and Ottumwa, Iowa.

2. Extend an airway from Kirksville, Mo., to Ottumwa.

Interested persons may participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 601 E. 12th Street, Kansas City, Mo. 64106. All communications received on or before October 25, 1973, will be considered before action is

taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, D.C. 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The proposed amendment would designate new VOR Federal Airway No. 22 from Kansas City, Mo., direct to Ottumwa, Iowa, and extend V206 from Kirksville, Mo., direct to Ottumwa. This amendment would simplify flight planning, increase safety, and permit more flexible air traffic control in that vicinity.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on September 10, 1973.

CHARLES H. NEWPOL,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.73-20367 Filed 9-24-73;8:45 am]

[14 CFR Part 75]

[Airspace Docket No. 73-SW-59]

JET ROUTE

Proposed Establishment

The Federal Aviation Administration (FAA) is considering an amendment to Part 75 of the Federal Aviation Regulations that would establish a new jet route from Humble, Tex., to Little Rock, Ark., via Daisetta, Tex.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southwest Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101. All communications received on or before October 25, 1973 will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, D.C. 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The proposed amendment would establish new Jet Route No. J-180 from Humble, Tex., to Little Rock, Ark., via Daisetta, Tex. This jet route would be used primarily for traffic from over Little Rock and Memphis, Tenn., en route to the Houston, Tex., Terminal Area, and would relieve traffic congestion in the Shreveport, La., area.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on September 10, 1973.

CHARLES H. NEWPOL,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.73-20366 Filed 9-24-73;8:45 am]

ATOMIC ENERGY COMMISSION

[10 CFR Part 70]

SPECIAL NUCLEAR MATERIAL

Fundamental Nuclear Material Controls

The Atomic Energy Commission has under consideration amendments to 10 CFR Part 70, "Special Nuclear Material" which would specify fundamental nuclear material controls required to be established, maintained, and followed by licensees authorized to possess at any one time and location more than one effective kilogram of special nuclear material in unsealed form.

Part 70 of the Commission's regulations now requires that each application for a license to possess at any one time more than 5,000 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, except in reactors or as sealed sources, contain a description of the applicant's procedures for control of and accounting for special nuclear material. In addition, each applicant is required to identify those fundamental material controls in the described procedures which he considers essential for assuring that the special nuclear material in his possession under license will be protected adequately. Further, as a condition of each license, the licensee is required to maintain such fundamental material controls and such other material control procedures as the Commission determines to be essential for the safeguarding of special nuclear material.

During the six years in which these requirements have been in effect fundamental material controls have been incorporated into licenses by a series of license conditions based on each license application. These license conditions now have been developed to the point where they can be standardized and included as a part of AEC regulations. The proposed amendments would eliminate the need for each license applicant to identify and to state these fundamental controls and for the Commission to issue separate but essentially similar conditions for each licensee. Instead the amendments would require each major licensee to establish, maintain, and follow specified fundamental nuclear material controls and to describe to the Commission his program to comply with such requirements. Some changes from the wording of the license conditions have been made in the fundamental material control requirements and additional requirements for control of scrap and waste have been included.

When the Commission determines that requirements specific to a given licensee are needed in addition to those in the proposed amendments, specific license conditions would be issued on a case by case basis.

Pursuant to the Atomic Energy Act of 1954, as amended, and section 553 of Title 5 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR Part 70 is contemplated. All interested persons who desire to submit written comments or suggestions should send them to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Staff, by November 24, 1973. Copies of comments on the proposed amendments may be examined at the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C.

1. Paragraph (b) of § 70.22 is amended to read as follows and footnote 1 thereto is deleted:

§ 70.22 Contents of applications.

* * * * *

(b) Each application for a license to possess at any one time and location special nuclear material in a quantity exceeding one effective kilogram of special nuclear material and to use such special nuclear material for activities other than those involved in the operation of a nuclear reactor licensed pursuant to Part 50 of this chapter, or as sealed sources, shall contain a full description of the applicant's program for control of and accounting for special nuclear material which will be in his possession under license, to show how compliance with the requirements of § 70.58 will be accomplished.

* * * * *

§ 70.32 [Amended]

2. Paragraph (c) of § 70.32 is deleted.

3. A new § 70.58 is added to read as follows:

§ 70.58 Fundamental nuclear material controls.

(a) Each licensee who is authorized to possess at any one time and location special nuclear material in a quantity exceeding one effective kilogram, and to use such special nuclear material for activities other than those involved in the operation of a nuclear reactor licensed pursuant to Part 50 of this chapter, or as sealed sources, shall establish, maintain, and follow written material control and accounting procedures in compliance with the fundamental nuclear material controls requirements specified in paragraphs (b) through (k) of this section and such other controls as the Commission determines to be

essential for the control of and accounting for special nuclear material.

(b) (1) The overall planning, coordination, and administration of the material control and accounting functions for special nuclear materials shall be vested in a single individual at an organizational level sufficient to assure independence of action and objectiveness of decisions. In manufacturing organizations, such individual shall be independent of individuals or units that are solely responsible for production functions.

(2) Material control and accounting functions shall be identified and assigned in the licensee organization to provide a separation of functions so that the activities of one individual or organizational unit serve as controls over and checks of the activities of other individuals or organizational units.

(3) Material control and accounting functional and organizational relationships shall be set forth in writing in job descriptions, organizational directives, instructions, procedure manuals, etc. Such documentation shall include position qualification requirements and difinitions of authorities, responsibilities, and duties. Delegations of material control and accounting responsibilities and authority shall be in writing.

(c) A management system shall be established, maintained, and followed to provide for the development, revision, implementation, and enforcement of nuclear material control and accounting procedures. The system shall include:

(1) Provisions for written approval of such procedures and any revisions thereto by the individual with overall responsibility for the material control and accounting function and by licensee plant management.

(2) Provision for a review at least every 12 months of the nuclear material control system. Such a review shall include an audit of the nuclear material records by individuals in licensee management independent of both nuclear material control management personnel and personnel who have direct responsibility for the receipt, custody, utilization, measurement, measurement quality, and shipment of special nuclear material. The results of the review and audit along with recommendations for improvements shall be documented, reported to the licensee's corporate management and plant management, and kept available at the plant for inspection for a period of five years.

(d) Material Balance Areas (MBA) or Item Control Areas (ICA) shall be established for physical and administrative control of nuclear material.

(1) Each MBA shall be an identifiable physical area such that the quantity of nuclear material being moved into or out of the MBA can be measured.

(2) A sufficient number of MBAs shall be established so that nuclear material losses, thefts, or diversions can be localized and the mechanisms identified.

(3) The custody of all nuclear material within an MBA shall be the responsibility of a single individual.

(4) ICAs shall be established according to the same criteria as MBAs except that control into and out of such areas shall be by item identity and count for previously determined special nuclear material quantities.

(e) A system shall be established, maintained, and followed for the measurement of all special nuclear material received, produced, transferred between MBAs, on inventory, or shipped, discarded, or otherwise removed from inventory and for the determination of the limit of error associated with each such measured quantity. The system shall provide for sufficient measurements to substantiate the quantities of element and isotope measured and the associated limits of error.

(f) A program shall be established, maintained, and followed for the maintenance of acceptable measurement quality in terms of measurement bias and random and systematic errors and for the evaluation and control of the quality of the measurement system.

(g) Procedures shall be established, maintained, and followed to:

(1) Assure accurate identification and measurement of the quantities of special nuclear material received and shipped by a licensee;

(2) Review and evaluate shipper-receiver differences both individually and in series;

(3) Take appropriate investigative and corrective action to reconcile shipper-receiver differences that are statistically significant; and

(4) Maintain records of shipper-receiver difference evaluations, investigations and corrective actions on file at the facility for a period of five years.

(h) A system of storage and internal handling controls shall be established, maintained, and followed to provide continuous knowledge of the identity, quantity, and location of all special nuclear material contained within a facility in discrete items and containers. Such a system shall include procedures as specified in § 70.51(e)(1).[1]

(i) Procedures for special nuclear material scrap and waste control shall be established, maintained, and followed to limit the accumulation and the uncertainty of measurement of these materials on inventory. Such procedures shall include:

(1) Identification and classification of scrap;[2]

(2) Regular processing and recovery of scrap materials so that no item of scrap remains on inventory longer than three months;

(3) Minimization of the quantities of waste held on inventory so that no disposable waste is kept on inventory longer than three months, except as specifically authorized by the Commission; and

(4) Limitation of the uncertainty in measurement of scrap and waste materials so that the total measurement uncertainty attributable to these materials during a material balance period does not exceed thirty (30) percent of the limit of error of the plant material unaccounted for for that period.

(j) Physical inventory procedures shall be established, maintained, and followed so that special nuclear material balances and their measurement uncertainties can be determined on the basis of measurements in compliance with the material balance and inventory requirements and criteria specified in § 70.51.[1]

(k) A system of records and reports shall be established, maintained, and followed which will provide information sufficient to locate special nuclear material and to close a measured material balance around each material balance area and the total plant, as specified in § 70.51.[1] Such a system shall include:

(1) A centralized accounting system employing double entry bookkeeping;

(2) Subsidiary accounts for each material balance area and item control area;

(3) Records pertinent to the requirements of § 70.51 (e)(1).[1]

(4) Procedures for the reconciliation of subsidiary accounts to control accounts at the end of each accounting period; and

(5) Procedures for reconciliation of control and subsidiary accounts to the results of physical inventories.

(l) Each licensee subject to the requirements of this section who has not submitted a description of his fundamental material controls pursuant to this part by September 25, 1973, shall submit by December 24, 1973, a full description of his program for control of and accounting for special nuclear material in his possession under license to show how compliance with the requirements of this section will be accomplished.

(Secs. 53, 161, 68 Stat. 930, 148 (42 U.S.C. 2073, 2201).)

Dated at Washington, D.C., this 19th day of September 1973.

For the Atomic Energy Commission.

PAUL C. BENDER,
Secretary of the Commission.

[FR Doc.73-20302 Filed 9-24-73;8:45 am]

[1] As proposed in amendments to 10 CFR Part 70 published for public comment in 38 FR 3077 dated February 1, 1973.

[2] Guidance as to classification is provided in Regulatory Guide 5.2 "Classification of Unirradiated Plutonium and Uranium Scrap" which is available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Copies may be obtained by addressing a request to the Director of Regulatory Standards, U.S. Atomic Energy Commission, Washington, D.C. 20545.

FEDERAL HOME LOAN BANK BOARD

[No. 73-1339]

[12 CFR Part 526]

FEDERAL HOME LOAN BANK SYSTEM

NOW Accounts

SEPTEMBER 14, 1973.

Section 2(a) of Public Law No. 93-100 of August 16, 1973, provides that "No

depository institution (as defined in section 2(b)) shall allow the owner of a deposit or account on which interest or dividends are paid to make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties, except that such withdrawals may be made in the States of Massachusetts and New Hampshire." By section 8 thereof, section 2 takes effect on the thirtieth day after the day of its enactment.

The Federal Home Loan Bank Board considers that deposits or accounts on which Federal Home Loan Bank member institutions may pay interest on dividends and may allow the owner to make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third persons (NOW accounts) are "regular accounts" as that term is defined in § 526.1(d) (12 CFR 526.1(d)). Such accounts of member institutions are subject to the Board's authority under section 5B of the Federal Home Loan Bank Act (12 U.S.C. 1425b) to prescribe regulations governing the payment and advertisement of interest or dividends thereon.

The Board, in conjunction with the Board of Governors of the Federal Reserve Board and the Board of Directors of the Federal Deposit Insurance Corporation, proposes to amend Part 526 of the Regulations for the Federal Home Loan Bank System (12 CFR Part 526) to prescribe the maximum rate of return which may be paid on NOW accounts and the conditions under which a return may be paid. The Board expects that final regulations for NOW accounts and those of the Federal Reserve Board and the Federal Deposit Insurance Corporation will be similar in substance. Therefore the Board urges interested persons to comment to the Board on the proposed NOW account regulations of those agencies as well as the Board's. Member institutions should keep these proposed amendments (and those of the Federal Reserve Board and the Federal Deposit Insurance Corporation) in mind if they decide to make these accounts available to their customers before the Board has had the opportunity to adopt final regulations in this area.

The Board proposes to add two definitions to § 526.1. The term "instrument" would be defined to include any paper writing, whether or not negotiable, by which payment or credit is effected. The term "transaction account" would be the term used to describe a NOW account and would mean a "regular account" (as defined in § 526.1(d)) of a member institution upon which the owner is allowed to make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties.

New § 526.8 would set forth the rules under which a member institution having its home office in New Hampshire or Massachusetts may pay a return on transaction accounts. If the member institution did not comply with those rules, it could not pay a return on its transaction accounts.

The Board proposes to set the maximum rate of return on transaction accounts at 4.50 percent on the lowest monthly balance for each month of the distribution period. A service charge would be required for the handling of each transaction-account-related instrument in excess of 10 per month.

The Board proposes to limit the payment of interest or dividends to transaction accounts of owners having addresses in New Hampshire or Massachusetts (except that a member institution could pay a return on transaction accounts of out-of-state customers who create transaction accounts by transfers of funds from savings accounts in existence on September 14, 1973). In order to provide competitive equality with commercial banks and mutual savings banks, interest or dividends could be paid only on transaction accounts owned by individuals and certain non-profit organizations. Advertising for interest or dividend-paying transaction accounts would be limited primarily to the States of New Hampshire and Massachusetts and would be subject to the existing advertising restrictions of § 526.6.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend said Part 526 by adding new paragraphs (k) and (l) to § 526.1 thereof and by adding new § 526.8 thereto to read as set forth below.

Interested persons are invited to submit written data, views, and arguments to the Office of the Secretary, Federal Home Loan Bank Board, 101 Indiana Avenue, NW., Washington, D.C. 20552, by November 9, 1973, as to whether this proposal should be adopted, rejected, or modified. Written material submitted will be available for public inspection at the above address unless confidential treatment is requested or the material would not be made available to the public or otherwise disclosed under § 505.6 of the General Regulations of the Federal Home Loan Bank Board (12 CFR 505.6).

§ 526.1 Definitions.

As used in this Part 526—

* * * * *

(k) *Instrument.* The term "instrument" includes any paper writing, whether or not negotiable, by which payment or credit is effected.

(l) *Transaction account.* The term "transaction account" means a "regular account", as that term is defined in paragraph (d) of this section, of a member institution upon which the owner is allowed to make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties.

§ 526.8 Transaction accounts.

(a) *General.* Subject to the provisions of this section, each member institution having its home office in New Hampshire or Massachusetts may pay a return on transaction accounts.

(b) *Maximum rate of return.* Such member institution may pay a return on a transaction account at a rate not in excess of 4.50 percent per annum on the lowest monthly balance for each month of the distribution period.

(c) *Service charge.* Such member institution shall impose a service charge for the handling of each instrument in excess of 10 per month in connection with any transaction account.

(d) *Limitations on owners.* (1) Transaction accounts, or the entire beneficial interest therein, issued by such member institution may be owned only by (i) one or more individuals or (ii) a corporation, business trust, association or other organization which is not operated for profit; and

(2) Interests in transaction accounts issued by such member institution may be owned only by (i) owners having addresses in New Hampshire or Massachusetts, or (ii) owners whose transaction accounts are created by transfers of funds from such owners' savings accounts which were in such member institution on September 14, 1973.

(e) *Advertising.* Each newspaper, magazine, radio, television or similar advertisement, announcement or solicitation by such member institution relating to transaction accounts shall be limited to media primarily serving residents of New Hampshire and Massachusetts. All other advertisements, announcements and solicitations including direct mailing, circulars, and notices, to the extent practicable, shall be directed only to residents of New Hampshire and Massachusetts. The provisions of § 526.6 shall also apply to all advertisements, announcements and solicitations related to transaction accounts.

(Sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended by Public Law 91-151, sec. 2(b), 83 Stat. 371; sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1425b, 1437). Sec. 2, Public Law 93-100. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071.)

By the Federal Home Loan Bank Board.

[SEAL] EUGENE M. HERRIN, *Assistant Secretary.*

[FR Doc.73-20421 Filed 9-24-73;8:45 am]

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF STATE

[Public Notice CM-67]

SECRETARY OF STATE'S ADVISORY COMMITTEE ON PRIVATE INTERNATIONAL LAW

Notice of Meeting

A meeting of the Secretary of State's Advisory Committee on Private International Law will be held at 10 a.m. on Friday, October 5, 1973, in room 5519 of the Department of State. The Committee meeting will be open to the public.

The principal topics of the meeting will be consideration of positions to be taken by the United States at the Diplomatic Conference on Wills to be held in Washington from October 16–26, 1973, and in bilateral negotiations on the recognition and enforcement of foreign judgments.

Members of the general public who desire to attend the meeting will be admitted up to the limits of the capacity of the meeting room. Entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. It is requested that prior to October 5, 1973, members of the general public who plan to attend the meeting inform their name and affiliation and address to Mr. Robert E. Dalton, Office of the Legal Adviser, Department of State; the telephone number is area code 202–632–2107. All non-government attendees at the meeting should use the C Street entrance to the building.

Dated September 13, 1973.

ROBERT E. DALTON,
Executive Director.

[FR Doc.73-20341 Filed 9-24-73;8:45 am]

DEPARTMENT OF THE TREASURY

Office of the Secretary

NON-POWERED HAND TOOLS FROM JAPAN

Antidumping Proceeding Notice

SEPTEMBER 21, 1973.

On August 20, 1973, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), indicating a possibility that certain non-powered hand tools from Japan are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.). For the purpose of this notice, the term "non-powered hand tools" means wrenches, pliers, chisels, punches, screwdrivers, hammers, metal-cutting snips and shears, wheel and gear pullers, valve tools, and body and fender tools.

There is evidence on record concerning injury to or likelihood of injury to or prevention of establishment of an industry in the United States.

Having conducted a summary investigation as required by § 153.29 of the Customs Regulations (19 CFR 153.29) and having determined as a result thereof that there are grounds for so doing, the United States Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

A summary of information received from all sources is as follows:

The information received tends to indicate that the prices of the merchandise sold for exportation to the United Staes are less than the prices for home consumption.

This notice is published pursuant to § 153.30 of the Customs Regulations (19 CFR 153.30).

[SEAL] EDWARD L. MORGAN,
Assistant Secretary of the Treasury.

[FR Doc.73-20502 Filed 9-24-73;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Navy

CHIEF OF NAVAL OPERATIONS INDUSTRY ADVISORY COMMITTEE FOR TELECOMMUNICATIONS (CIACT)

Notice of Meetings

Pursuant to the provisions of the Federal Advisory Committee Act [Public Law 92-463 (1972)], notice is hereby given that closed meetings of the Chief of Naval Operations Industry Advisory Committee for Telecommunications will be held on October 16 and 17, 1973, at Sunnyvale, California. The meetings will be closed to the public as the committee will be participating in classified discussions.

H. B. ROBERTSON, Jr.,
Rear Admiral, JAGC, U.S. Navy,
Acting Judge Advocate General.

SEPTEMBER 18, 1973.

[FR Doc.73-20308 Filed 9-24-73;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

CHIEF, DIVISION OF MANAGEMENT SERVICES, STATE OFFICE ET AL.

Delegation of Authority Regarding Contracts and Leases

A. Pursuant to delegation of authority contained in Bureau Manual 1510-03B2, and 38 FR No. 154, dated August 10, 1973, the Chief, Division of Management Services, State Office, Chief, Branch of Administrative Management, State Office, and Chief, Procurement and Property Section, State Office, are authorized:

1. To enter into contracts with established sources for supplies, equipment and services, regardless of amount, and

2. To enter into contracts on the open market for supplies, equipment and services, not to exceed $2,500 per transaction ($2,000 for construction), provided that the requirement is not available from established sources. (sec. 302(c)(3) of the FPAS Act).

3. To enter into contracts in an unlimited amount for necessary procurements in the case of emergency fire suppression work for the rental of equipment and aircraft and for the purchase of supplies, equipment and services required in such operations. (sec. 302 (c)(2) of the FPAS Act).

If purchases for capitalized property are to be charged to fire suppression funds, or if the item is not included in an approved equipment budget, prior approval of purchase by the Assistant Director Administration is required. This authority may be exercised only in a true emergency situation such as immediate use in suppression of active fires; and delivery for use on that fire is attainable.

B. The (1) District Managers and (2) District Chiefs, Division of Administration, are authorized to enter into contracts under the authority of A 1, 2, and 3 above, *excluding capitalized property*, as appropriate.

C. The Chief, Division of Management Services, and Chief, Branch of Administrative Management are delegated authority to negotiate contracts in excess of $2,500 under sec. 302(c)(10) of the FPAS Act of 1949, for air transportation services not related to emergency fire presuppression or suppression, in accordance with the following:

1. *Limitations.* This authority may be used only:

a. To hire aircraft with crew for transportation of persons or cargo, not for project work.

b. To hire such aircraft for unforeseeable short term needs, where lead time is not available to permit the Service Center to handle the contract.

c. After it has been determined that Bureau-owned aircraft, or aircraft available under existing contracts or offers (when appropriate) cannot satisfy the need.

D. District Managers may redelegate the authority granted in "B" above.

E. All previous delegations of procurement authority are hereby canceled.

CURTIS V. MCVEE,
State Director.

SEPTEMBER 6, 1973.

[FR Doc.73-20327 Filed 9-24-73;8:45 am]

PRINEVILLE DISTRICT ADVISORY BOARD

Bureau of Land Management

Notice of Meeting

Notice is hereby given that the Prineville District Advisory Board will meet on October 25, 1973, commencing at 10 a.m. in the Prineville District Office, Bureau of Land Management, 185 E. Belknap Street, Prineville, Oregon. The agenda for the meeting includes review of Step 1 of the Management Framework Plans for the Glass Butte-Hampton-Brothers Planning Units and the Lower John Day-Fossil Planning Units.

The meeting will be open to the public. It will be held in the conference room which accommodates about 30 people. In addition to District presentation and discussion of topics by board members, there will be time allowed for brief questions and statements by non-members. Written statements will also be accepted for consideration. Send them to the chairman in care of the co-chairman, Prineville District Manager, P.O. Box 550 Prineville, Oregon 97754.

PAUL W. ARRASMITH,
District Manager.

SEPTEMBER 14, 1973.

[FR Doc.73-20392 Filed 9-24-73;8:45 am]

National Park Service

SECRETARY'S ADVISORY BOARD ON NATIONAL PARKS, HISTORIC SITES, BUILDINGS AND MONUMENTS

Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that meetings of the Advisory Board on National Parks, Historic Sites, Buildings and Monuments will be held on October 1, 2, and 3, at the Department of the Interior, 18th and C Streets NW., Washington, D.C.

The purpose of the Advisory Board is to advise the Secretary of the Interior on matters relating to the National Park System, and the administration of the Historic Sites Act of 1935.

The members of the Advisory Board are as follows:

Dr. Melvin M. Payne (Chairman), Washington, D.C.
Mrs. Lyndon B. Johnson (Vice Chairman), Stonewall, Texas.
Mr. Peter C. Murphy, Jr. (Secretary), Springfield, Oregon.
Hon. E. Y. Berry, Rapid City, South Dakota.
Laurence W. Lane, Jr., Menlo Park, California.
Dr. A. Starker Leopold, Berkeley, California.
Mr. Linden C. Pettys, Ludington, Michigan.
Mr. Steven Rose, Arcadia, California.
Capt. Walter M. Schirra, Jr., Englewood, Colorado.
Dr. Douglas W. Schwartz, Santa Fe, New Mexico.
Dr. William G. Shade, Bethlehem, Pennsylvania.

Meetings will be conducted in different locations as follows:

October 1. 9 a.m., Room 5160. The Advisory Board will meet on October 1 in regard to administrative matters pertaining to the Board and to hear reports on several topics, including Bicentennial activities, Regional Advisory Committees, archeological salvage, backcountry management, and the campground reservation system. This session is open to the public.

October 2. The Board will meet in committee sessions for the entire day. At 9 a.m., North Penthouse, Room 8068, the Natural Areas Committee and the Recreation Areas Committee will meet in joint session. From 9 a.m. to 9:45 a.m., the committees will hear legislative reports on proposed additions to the National Park System. This portion of the meeting shall be closed to the public. Commencing at 9:45 a.m. the committees shall consider 73 natural areas as potential additions to the National Registry of Natural Landmarks. This portion of the meeting shall be open to the public.

At 9 a.m., Room 5160, the Historical Areas Committee will meet. From 9 a.m. to 9:30 a.m., the committee will consider reports on two pending legislative proposals. This portion of the meeting shall be closed to the public. At 9:30 a.m., the committee will hear reports on various studies, including a part of the Theme, "Architecture in the South," and the study to revise the boundaries of Cape Krusenstern, Alaska. This portion of the meeting shall be open to the public.

October 3. Room 5160, commencing at 9 a.m. the Advisory Board shall be reconvened to receive reports from the committee meetings and from ad hoc committees. The meeting will be an executive session in order for the Advisory Board to formulate its comments and recommendations. This meeting will be closed to the public.

The meeting will be open to the public only as indicated above. The Secretary of the Interior has made a determination in accordance with section 10(d) of the Federal Advisory Committee Act that the portions of the meeting to be closed will involve matters exempt from public disclosure under the provisions of 5 U.S.C. 552(b).

Any member of the public may file with the Advisory Board a statement in writing concerning any of the matters to be discussed. In regard to the meeting on October 1, facilities and space to accommodate members of the public are limited and it is expected that not more than 35 people will be able to attend. Persons desiring further information concerning this meeting or who wish to file written statements, may contact Miss Shirley Luikens, National Park Service, Washington, D.C., at 202-343-2012.

Minutes of the meeting will be available for public inspection 8 to 10 weeks after the meeting in Room 3123, Interior Building, Washington, D.C.

Dated September 18, 1973.

STANLEY W. HULETT,
Associate Director,
National Park Service.

[FR Doc.73-20526 Filed 9-24-73;8:45 am]

Office of the Secretary

[INT DES 73-55]

PROPOSED DEVELOPMENT OF HORICON NATIONAL WILDLIFE REFUGE, WISCONSIN

Availability of Draft Environmental Statement

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, Public Law 91-190, the Department of the Interior has prepared a draft environmental statement for development of the Horicon National Wildlife Refuge, Wisconsin, and invites written comments within 45 days of this notice.

The proposal recommends the purchase of 42.86 acres of land as an addition to the Horicon National Wildlife Refuge, Dodge County, Wisconsin. Planned development will include a visitor information center, wildlife walking trail, hiking trail, approximately 1½ miles of new road, parking areas, and rehabilitation of existing roadway.

Copies of the draft statement are available for inspection at the following locations:

Bureau of Sport Fisheries and Wildlife
Federal Building, Fort Snelling
Twin Cities, Minnesota 55111

Headquarters
Horicon National Wildlife Refuge
Route 2
Mayville, Wisconsin 53050

Bureau of Sport Fisheries and Wildlife
Office of Environmental Quality
Department of the Interior
Room 2246
18th and C Streets NW.
Washington, D.C. 20240

Single copies may be obtained by writing the Chief, Office of Environmental Quality, Bureau of Sport Fisheries and Wildlife, Department of the Interior, Washington, D.C. 20240. Comments concerning the proposed action should also be addressed to the Chief, Office of Environmental Quality. Please refer to the statement number above.

Dated September 17, 1973.

LAURENCE E. LYNN, Jr.,
Assistant Secretary,
Program Development and Budget.

[FR Doc.73-20334 Filed 9-24-73;8:45 am]

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[PPQ 639, Amdt.]

SOIL SAMPLES

List of Approved Laboratories Authorized To Receive Interstate and Foreign Shipments of Soil Samples for Processing, Testing, or Analysis

This document amends the regulation listing laboratories authorized to receive interstate and foreign shipments of soil samples for processing, testing, or analysis by deleting reference to 11 laboratories which no longer receive interstate shipments of soil samples for analysis, and by deleting reference to 22 laboratories whose permits to receive foreign

soil samples have expired. It also lists 15 laboratories whose permits to receive foreign soil samples were extended. It further amends the regulation by adding 65 laboratories approved since the last amendment of the list to receive soil samples shipped interstate and shipped from foreign sources. Various other changes were also made.

Under the Japanese Beetle, White-fringed Beetle, Witchweed, Imported Fire Ant, and Golden Nematode Quarantines (Notices of Quarantine Nos. 48, 72, 80, 81, and 85; 7 CFR 301.48, 301.72, 301.80, 301.-81, and 301.85), under sections 8 and 9 of the Plant Quarantine Act of 1912, as amended, and section 106 of the Federal Plant Pest Act (7 U.S.C. 161, 162, 150ee), the list of laboratories (37 FR 7813) operating under a compliance agreement and approved under said Quarantines to receive interstate and foreign shipments of soil samples for processing, testing, or analysis is hereby amended by deleting therefrom, adding thereto, and correcting certain listings as set forth below:

DELETIONS

Agronomics International Corp., Barnesville, Minn.
Alpha Research & Development, Inc., Blue Island, Ill.
Ansul Co., Marinette, Wis.
Associated Laboratories, Orange, Calif.[3] (6-30-73).
California State University, College of Sciences, San Diego, Calif.,[2] (6-30-73).
Dickinson College, Department of Biology, Carlisle, Pa.[2] (6-30-73).
Earth Sciences Associates, Palo Alto, Calif.[3] (6-30-73).
England, C. W., Laboratories, Inc., Beltsville, Md.[2] (6-30-73).
Florida State University, Department of Oceanography, Tallahassee, Fla.[2] (6-30-75).
Ford County Farm Bureau, Inc., Melvin, Ill.
Forsyth Dental Center, Boston, Mass.[2] (6-30-73).
Hayssen Manufacturing Co., Sheboygan, Wis.[2] (6-30-73).
Larsen, Herluf T., Harrisburg, Pa.
Lerch Brothers, Inc., Hibbing, Minn.[2] (6-30-73).
Mecom, John W., Houston, Tex.[2] (6-30-73).
Minnesota, University of, Department of Plant Pathology, St. Paul, Minn.[2] (6-30-73).
Missouri, University of, Department of Agronomy, Columbia, Mo.
Mobile Testing Co., Corpus Christi, Tex.
Nevada, University of, Desert Research Institute, Reno, Nev.[2] (6-30-73).
Pan American Laboratories, Brownsville, Tex.[2] (6-30-73).
Plant Science Associates, Inc., Winter Haven, Fla.
Rochester, University of, School of Medicine and Dentistry, Department of Radiation, Biology, and Biophysics, Rochester, N.Y.[2] (6-30-73).
Smith, Charles M., Circle "S" Ranch, Red Oak, Iowa [2] (6-30-73).
Smithsonian Institution, Radiation Biology Laboratory, Rockville, Md.[2] (6-30-73).
Southern Illinois University, Department of Plant Industries, Carbondale, Ill.[2] (6-30-73).
Southern Turf Nurseries, Tifton, Ga.[2] (6-30-73).
Standard Brands, Inc., Fleischmann Laboratories, Stamford, Conn.[2] (6-30-73).
Stanford Research Institute, Irvine, Calif.
Texas A & M University, Soil and Crop Sciences Department, College Station, Tex.[3] (6-30-75).
U.S. Department of Agriculture, ARS, U.S. Water Conservation Laboratory, Phoenix, Ariz.[2] (6-30-73).
U.S. Environmental Protection Agency, Western Environmental Research Laboratory, Las Vegas, Nev.[2] (6-30-73).
Willchemco Testing Laboratory, Grand Island, Nebr.

ADDITIONS

Ambric Testing & Engineering Associates, Inc., Testing Laboratories, Arlington, Va.
American Testing Institute, San Diego, Calif.[2] (6-30-74).
Arizona, University of, Department of Geosciences, Tucson, Ariz.[2] (6-30-74).
Bethany Laboratory of Uni-Royal Chemical, Division of Uni-Royal, Inc., Bethany, Conn.
Brigham Young University, Department of Anthropology & Archaeology, Provo, Utah [2] (6-30-74).
California Department of Food & Agriculture, Chemistry Laboratories, Sacramento, Calif.
California, University of, Department of Plant Pathology, Davis, Calif.[2] (6-30-74).
California, University of, Department of Agronomy & Range Science, Davis, Calif.[3] (6-30-75).
Chemonics Industries, Phoenix, Ariz.[2] (6-30-78).
Coles County Farm Bureau, Charleston, Ill.
Colorado State University, College of Veterinary Medicine & Biomedical Sciences, Fort Collins, Colo.[2] (6-30-74).
Crop Chemical Testing Services, Inc., Arcola, Ill.
Dames & Moore, Seattle, Washington [2] (6-30-74).
Dickinson Laboratories, Inc., El Paso, Tex.[2] (6-30-74).
Environmental Science & Engineering Corp., Mt. Juliet, Tenn.
Florida Technological University, Department of Biological Sciences, Orlando, Fla.[2] (6-30-74).
Florida University of, Agricultural Research & Education Center, Belle Glade, Fla.[2] (6-30-74).
Florida, University of, Department of Geology, Gainesville, Fla.[2] (6-30-74).
Franklin, R. T. & Assoc., Burbank, Calif.
Geocon Incorporated, San Diego, Calif.[2] (6-30-74).
GREFCO, Inc., Torrance, Calif.[2] (6-30-78).
GREFCO, Inc., Lompoc, Calif.[2] (6-30-74).
Grubbs Consulting Engineers, Little Rock, Ark.
Hill Top Research, Inc., Miamiville, Ohio.
Kansas State University, Dept. of Agronomy, Manhattan, Kans.[2] (6-30-74).
McClellan Engineers, Clayton, Mo.
Memphis State University, Department of Biology, Memphis, Tenn.
Merck Institute for Therapeutic Research, Rahway, N.J.[2] (6-30-78).
Mountain State Research & Development, Tucson, Ariz.[2] (6-30-74).
Norvell Plowman Laboratories, Little Rock, Ark.
Oregon State Highway Department, Salem Oregon.[1]
Pacific Environmental Laboratory, San Francisco, Calif.[2] (6-30-75).
Pennsylvania, University of, Dept. of Geology, Philadelphia, Pa.[2] (6-30-78).
Pioneer Testing Laboratory, Inc., Redlands, Calif.
Resources International, Fresno, Calif.
Rhode Island, University of, Department of Botany, Kingston, R.I.[2] (6-30-74).
Shannon & Wilson, Inc., Portland, Oreg.
Shilstone Testing Laboratory, Corpus Christi, Tex.
Smith, Kline & French Laboratories, Philadelphia, Pa.[2] (6-30-74).
Soil Consultants, Inc., Merrifield, Va.
Soilab Enterprises, Lancaster, Calif.
Southern Illinois University, University Museum, Carbondale, Ill.[2] (6-30-74).
Southwestern Laboratories, Dallas, Tex.[2] (6-30-74).
State University of New York, State University College at Brockport, Brockport, N.Y.[2] (6-30-74).
Tennessee Valley Authority, Materials Engineering Laboratory, Knoxville, Tenn.
Texas, University of, Radiocarbon Laboratory, Balcones Research Center, Austin, Tex.[2] (6-30-74).
United Horticulture, Inc., Apopka, Fla.[2] (6-30-74).
University of Southern California, Dept. of Geological Sciences, Los Angeles, Calif.[2] (6-30-74).
University of South Alabama, Dept. of Geology, Mobile, Ala.[2] (6-30-74).
U.S. Department of Agriculture, APHIS, Environmental Quality Laboratory, Brownsville, Tex.
U.S. Department of Agriculture, SCS, Soil Survey Investigations Unit, Lincoln, Nebr.[2] (6-30-78).
U.S. Department of Agriculture, ARS, Southern Piedmont Conservation Research Center, Watkinsville, Ga.[2] (6-30-78).
U.S. Department of Agriculture, APHIS, Southern Methods Development Laboratory, Gulfport, Miss.
U.S. Department of Defense, U.S. Army Mobile Equipment Research Development Center, Countermine/Counter Intrusion Dept., Fort Belvoir, Va.[2] (6-30-74).
U.S. Environmental Protection Agency, Pesticides Monitoring Laboratory, Bay St. Louis, Miss.
U.S. Environmental Protection Agency, Robert Kerr Laboratories, Ada, Okla.[3] (6-30-75).
U.S. Geological Survey, Quality of Water Laboratory, Water Resources Division, Menlo Park, Calif.
Value Engineering Company, Alexandria, Va.
West Virginia, University of, Soil Testing Laboratory, Morgantown, W. Va.
Wisconsin, University of, Dept. of Anthropology, Madison, Wis.[2] (6-30-74).
Wisconsin, University of, Dept. of Anthropology, Milwaukee, Wis.[2] (6-30-74).
Woodward-Gizienski & Associates, San Diego, Calif.[2] (6-30-74).

CORRECTIONS

Change "A & L Agricultural Laboratories, Memphis, Tenn.[3] (6-30-73)" to read:
A & L Laboratory, Memphis, Tenn.
Change "Advanced Tests and Inspections, Inc., National City, Calif." to read:
American Testing Institute, San Diego, Calif.
Change "Analytical Development Corp., Monument, Colo." to read:
Analytical Development Corp., Monument, Colo.[3] (6-30-74).
Change "Atkins Farmlab, Sacramento, Calif." to read:
Atkins Farmlab, Chico, Calif.
Change "Brucker and Thacker, St. Louis, Mo." to read:
Brucker & Associates, St. Louis, Mo.
Change "Ecto Engineers and Associates, Baton Rouge, La." to read:
Woodward & Associates, Inc., Baton Rouge, La.
Change "Elco Engineers & Associates, Houston, Tex." to read:
Woodward-Etco & Associates, Inc., Houston, Tex.[2] (6-30-78).
Change "Georgia, University of, Institute of Ecology, Athens, Georgia" to read:
Georgia, Universtiy of, Institute of Ecology, Athens, Ga.[2] (6-30-75).

See footnotes at end of document.

Change "Gribaldo, Jones, & Associates, Mountain View, Calif.[3] (6-30-73)" to read:

Gribaldo, Jones, & Associates, Mountain View, Calif.

Change "Hawley & Hawley, Assayers & Chemists, Inc., Tucson, Ariz.[3] (6-30-75)" to read:

Hawley & Hawley, Division of Skyline Labs, Inc., Tucson, Ariz.[3] (6-30-75).

Change "Kentucky, University of, Agronomy Department, Lexington, Ky.[3] (6-30-76)" to read:

Kentucky, University of, Division of Regulatory Services, Lexington, Ky.

Change "Langford & Meredith Laboratories, New Orleans, La." to read:

Langford & Meredith Laboratories, Div. of The Analysts, Inc., The Analysts, Inc., New Orleans, La.

Change "Larutan Corp., Anaheim, Calif.[2] (6-30-77)" to read:

Stabilization Chemicals, Anaheim, Calif.[2] (6-30-77)" to read:

Change "Maine State Highway Commission, Bangor, Me.[3] (6-30-73)" to read:

Maine State Highway Commission, Bangor, Maine.

Change "Merck & Co., Inc., Rahway, N.J." to read:

Merck & Co., Inc., Agri Chemical Development, Rahway, N.J.

Change "Memphis State University, Memphis, Tenn." to read:

Memphis State University, Department of Biology, Memphis, Tenn.

Change "Parke, Davis & Co., (Joseph Campau at the River), Detroit, Mich.[3] (6-30-73)" to read:

Parke, Davis & Co., (Joseph Campau at the River), Detroit, Mich.

Change "Pickett, Ray, and Van Silver, St. Charles, Mo." to read:

Pickett, Ray, and Silver, St. Charles, Mo.

Change "Pittsburgh Testing Laboratory, Pittsburgh, Pa." to read:

Pittsburgh Testing Laboratory, Pittsburgh, Pa.[1]

Change "Princeton University, Department of Geology, Princeton, N.J.[2] (6-30-76)" to read:

Princeton University, Department of Geological & Geophysical Sciences, Princeton, N.J.[2] (6-30-76).

Change "Shannon & Wilson, Co., Seattle, Wash.[2] (6-30-75)" to read:

Shannon & Wilson, Co., Seattle, Wash.[3] (6-30-75).

Change "Tennessee, University of, Nashville, Tenn." to read:

Tennessee, University of, Soil Testing Laboratory, Nashville, Tenn.

Change "Tetco Engineering Testing, Corpus Christi, Tex." to read:

Tetco, Trinity Engineering Testing Corp., Corpus Christi, Tex.

Change "Texas A. & M. University, Soil Testing Laboratory, Agricultural Extension Service, College Station, Tex.[3] (6-30-75)" to read:

Texas A. & M. University, Soil Testing Laboratory, Agricultural Extension Service and Experiment Station, College Station, Tex.[3] (6-30-75).

Change "Texas Soil Laboratory, McAllen, Tex." to read:

Texas Soil Laboratory, McAllen, Tex.[3] (6-30-78).

Change "Trapelo-West, Division of LFE Corp., Richmond, Calif." to read:

LFE Environmental Analysis Laboratory, Richmond, Calif.

Change "Utah State University, College of Engineering, Agriculture and Irrigation Engineering, Logan, Utah[3] (6-30-73)" to read:

Utah State University, College of Engineering, Agriculture and Irrigation Engineering, Logan, Utah.

Change "U.S. Department of Agriculture, ARS, U.S. Fruit, Vegetable, Soil, and Water Laboratory, Nematology Investigation, Weslaco, Tex.[2] (6-30-77)" to read:

U.S. Department of Agriculture, CARD, ARS, U.S. Fruit, Vegetable, Soil, and Water Laboratory, Nematology Investigation, Weslaco, Tex.[3] (6-30-77).

Change U.S. Department of Health, Education, and Welfare, National Communicable Disease Center, Atlanta, Ga.[3] (6-30-73)" to read:

U.S. Department of Health, Education, and Welfare, National Communicable Disease Center, Atlanta, Ga.

Change "U.S. Department of the Interior, Geological Survey, Albuquerque, N. Mex.[3] (6-30-73)" to read:

U.S. Department of the Interior, Geological Survey, Albuquerque, N. Mex.

Change "Wharton County Junior College, Soil Testing Laboratory, Wharton, Tex.[3] (6-30-73)" to read:

Wharton County Junior College, Soil Testing Laboratory, Wharton, Tex.

Change "Woodson-Tenent Laboratories, Memphis, Tenn." to read:

Woodson-Tenent Laboratories, Memphis, Tenn.[3] (6-30-74).

Change "Yeshiva University, New York, N.Y.[3] (6-30-73)" to read:

Yeshiva University, New York, N.Y.

The import permits for the following organizations have been extended as indicated:

California State Polytechnic College, Department of Biological Sciences, Pomona, Calif.[2] (6-30-75) changed from (5-20-73).

Dames & Moore, Park Ridge, Ill.[3] (6-30-78) changed from (6-30-73).

EFCO Laboratories, Tucson, Ariz.[2] (6-30-78) changed from (6-30-73).

Georgia, University of, Department of Agronomy, Athens, Ga.[3] (6-30-78) changed from (6-30-73).

Hoffman-LaRoche Inc., Nutley, N.J.[3] (6-30-78) changed from (6-30-73).

Illinois, University of, at Chicago Circle, Department of Geography, Chicago, Ill.[3] (6-30-78) changed from (6-30-73).

Michigan Department of Public Health, Bureau of Laboratories, Division of Antibiotics and Fermentation, Lansing, Mich.[3] (6-30-78) changed from (6-30-73).

Missouri University of, Department of Food Sciences and Nutrition, Columbia, Mo.[3] (6-30-75) changed from (6-30-73).

Monsanto Co., Agricultural Division, St. Louis, Mo.[3] (6-30-78) changed from (6-30-73).

North Carolina, University of, Department of Botany, Chapel Hill, N.C.[3] (6-30-75) changed from (6-30-73). (Dr. R. Malcom Brown) changed to (Dr. Edward G. Barry).

Pfeiffer Foundation, Inc., Threefold Farm, Spring Valley, N.Y.[3] (6-30-78) changed from (6-30-73).

Purdue University, Department of Agronomy, West Lafayette, Ind.[3] (6-30-74) changed from (6-30-73).

U.S. Department of Defense, U.S. Army, South Pacific Corps of Engineers, Engineering Division Laboratory, Sausalito, Calif.[3] (6-30-78) changed from (6-30-73).

U.S. Department of Defense, U.S. Army Engineer Power Group, Engineering Division, Pollution Control Laboratory, Fort Belvoir, Va.[3] (6-30-74) changed from (6-30-73).

Yale University, Department of Geology & Geophysics, New Haven, Conn.[3] (6-30-78) changed from (6-30-73).

NOTE.—A date after a name indicates when the import permit expires.

(Secs. 8 and 9, 37 Stat. 318, as amended, sec. 106, 71 Stat. 33; 7 U.S.C. 161, 162, 150ee; 29 FR 16210, as amended, 37 FR 28464, 28477, 38 FR 19140; 7 CFR 301.48, 301.72, 301.80, 301.81, and 301.85.)

Effective date.—This amendment to the list of approved laboratories, PPQ 639, shall become effective September 25, 1973.

Under the provisions of the regulations supplemental to the notices of quarantine cited herein, soil samples for processing, testing, or analysis may be moved interstate from any regulated area specified in the regulations to laboratories approved by the Deputy Administrator and so listed by him. A laboratory may be approved if a compliance agreement is signed; samples are packaged to prevent spillage of soil; and soil residues, hazardous water residues, and shipping containers are treated in accordance with specified procedures.

The Deputy Administrator of Plant Protection and Quarantine Programs has approved the above-listed additions to the list of laboratories as establishments which meet the qualifications required under the regulations. These laboratories listed as additions are, therefore, authorized to receive soil samples from the regulated areas specified in the regulations without certificates or permits attached.

With respect to the establishments added to the list of approved laboratories, this amendment relieves certain restrictions presently imposed and should be made effective promptly in order to be of maximum benefit to persons subject to the restrictions that are being relieved. The deletion of laboratories from such list imposes certain restrictions that are necessary to prevent the spread of the above-named pests and should be made effective promptly to prevent the interstate spread of such dangerous pests. The corrections of previously listed establishments are nonsubstantive in nature and notice and other public procedure with respect thereto would serve no useful purpose. Accordingly, it is found upon good cause under the administrative procedure provisions of 5 U.S.C. 553, that notice and other public procedure

See footnotes at end of document.

[1] National Compliance Agreement—applies to all branch laboratories in conterminous United States.

[2] Authorized to receive unsterilized foreign samples only.

[3] Authorized to receive unsterilized foreign samples also.

with respect to this amendment are impracticable and contrary to the public interest, and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 19th day of September 1973.

T. G. DARLING,
Acting Deputy Administrator, Plant Protection and Quarantine Programs.

[FR Doc.73-20347 Filed 9-24-73;8:45 am]

Forest Service

FOREST RESEARCH ADVISORY COMMITTEE, ORONO, MAINE

Notice of Meeting

The Forest Research Advisory Committee, Orono, Maine will meet at 10 a.m.–12 noon, October 15, 1973, at 205 Main Street, Woodland, Maine.

The purpose of this meeting is to describe and discuss the current research program of the NEFES Orono Work Unit.

The meeting will be open to the public. Persons who wish to attend should notify Barton M. Blum, U.S. Forest Service, Northeastern Forest Experiment Station, USDA Building, University of Maine, Orono, Maine 04473, Telephone 866-4140.

B. F. DUFFY,
Acting Director.

SEPTEMBER 18, 1973.

[FR Doc.73-20349 Filed 9-24-73;8:45 am]

MULTIPLE USE ADVISORY COMMITTEE

Notice of Meeting

The Ottawa National Forest Multiple Use Advisory Committee will meet at 1 p.m. thru 5 p.m., c.d.t., October 18, 1973, and at 8:30 a.m. thru 12 noon, c.d.t., October 19, 1973, in the conference room of the Ontonagon Village Senior Housing Project, 100 Cane Court, Ontonagon, Michigan.

The purpose of the meeting is to discuss forest management.

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor, Ottawa National Forest, Ironwood, Michigan 49938, phone number: 906-932-1330. Written statements may be filed with the committee before or after the meeting.

The committee has established the following rules for public participation: Public participation will be limited to a period designated for open discussion. To the extent time permits, interested persons may be permitted by the committee chairman to present oral statements at the meeting.

JOSEPH H. HARN,
Forest Supervisor.

SEPTEMBER 17, 1973.

[FR Doc.73-20344 Filed 9-24-73;8:45 am]

Office of Plant and Operations

FEE SCHEDULE

On June 21, 1973 (38 FR 16253), the Department of Agriculture published a revision to its Fee Schedule which was subsequently rescinded on July 6, 1973 (38 FR 18051), to comply with Phase III of the Cost of Living Council Economic Stabilization Regulations. As Phase III has expired and as Phase IV permits units of government to make certain price adjustments (38 FR 21601) and as it is necessary to raise certain prices to recover the cost of making reproductions, therefore, pursuant to the authority delegated to the Director, Office of Plant and Operations, in Title 7, Code of Federal Regulations, § 1.2(b), there is published the following:

SECTION 1. *General.* This notice sets forth the policy on providing copies of records, including photographic reproductions, microfilm, maps and mosaics, related services, and the fees therefor. The agencies of the Department will be guided by these procedures in making copies available to the public, and in the collection of appropriate fees.

SEC. 2. *Facilities.* Records and related services are available at the locations specified by the agencies in their statements or organization and services. Each agency establishes procedures to facilitate public inspection and copying of records. Any materials offered for sale by the Government Printing Office should be purchased from that source. Departmental agencies will not stock such materials for public sale.

Agencies do not stock copies of forms and publications or maintain records at any facility which does not of itself require these materials in its operations.

SEC. 3. *Fees for materials and services.* All agencies of the Department shall be guided by the fees set forth herein. Any changes or additions to this fee schedule shall be made by amendment to or revision of this schedule. Agencies may set their own fees on specialized materials, such as printouts, magnetic tapes, directives, handbooks, building plans, and other material unique to any one agency. Where a fee has not been established in this schedule, an appropriate fee will be set by the individual agency.

SEC. 4. *Circumstances Governing Exceptions to the Charging of Fees for Records and Related Services.* (For photographic reproductions; see Sec. 12.)

A. *Waiver of fees for records and related services.* Fees may be waived under the following conditions:

1. Where individual collections are $1.00 or less.

2. Where individual collections are more than $1.00 and the total cost of collecting the fees would be an unduly large part of the receipts.

3. Where the furnishing of the service without charge is an appropriate courtesy to a foreign country or international organization; or comparable fees are set on a reciprocal basis with a foreign country.

4. Where the recipient is engaged in a nonprofit activity designed for the public safety, health, or welfare.

5. Where payment of the full fee by a State, local government, or nonprofit group would not be in the interest of the program involved, all or part of the fee may be waived.

B. *Fees not to be charged for records and related services.* Fees shall not be charged under the following conditions:

1. When the furnishing of records and related service benefits the public.

2. When filling requests from other Departments or Government agencies for official use, provided quantities requested are reasonable in number.

3. When members of the public provide their own copying equipment, in which case no copying fee will be charged.

4. When any notices, decisions, orders or other material are required by law to be served on a party in any proceedings or matter before any Department agency.

SEC. 5. *Limitations of copies.* Agencies may restrict numbers of photocopies and directives furnished the public to one copy of each page. Copies of forms provided the public shall also be held to the minimum practical. Persons requiring any large quantities should be encouraged to take single copies to commercial sources for further appropriate reproduction.

When transcripts are requested which have been provided the Department under a reporting service contract which requires that copies of transcripts be sold only by the contractor, the public may be shown a copy of the transcript. However, the agency shall refer the public to the contractor for purchase of copies.

SEC. 6. *Searches and deletions.* Because of the nature of the Department's business and records, the normal location of a document in a file or other facility will not be considered a search. This would be the same as quickly locating a piece of material for purposes of answering a letter or telephone inquiry, and is based on the Department's obligation to respond to requests furnishing reasonably specific description of the record.

Where a requested record is not discovered by normal location efforts, or where deletion of part of a record is necessary, the office will notify the requestor of that fact and require payment of the estimated search or deletion charge as prescribed in the fee schedule in advance before further efforts are undertaken to locate the requested record. Such searches shall be limited by availability of time and staff to perform them and to locations where the record would reasonably be expected to be found.

SEC. 7. *Payments of fees and charges.* Payments will be made to the fullest extent possible in advance or at the time of the transaction. Except as otherwise stipulated by agency procedures, payment shall be made by check, draft or

money order made payable to Treasurer of the United States, but small amounts may be paid in cash, particularly where services are performed in response to a visit to a Department office.

SEC. 8. *Fees for records and related services.*

Class of service	Unit	Price	Minimum
Photocopies 8½ × 14" or smaller.	Each	$0.10, first copy	No minimum.
	Each	.05 additional copies.	
Certifications	Each	1.00 additional to any other charge.	$1.00.
Authentications under Department Seal (excluding aerial photographs).	Each	2.00, additional to any other charge.	$2.00.
Searches and deletions.	Each	1.00 each 15 minutes or fraction thereof.	$4.00.

An additional handling charge of $.50 for each order may be imposed when a request must be sent to another office for filling, or request is handled by mail.

SEC. 9. *Photographic reproduction, microfilm, mosaic and maps.* Reproduction of such aerial or other photographic microfilm, mosaic and maps as have been obtained in connection with the authorized work of the Department may be sold at the estimated cost of furnishing such reproductions as prescribed in this schedule.

SEC. 10. *Agencies which furnish photographic reproductions.*—a. *Aerial photographic reproductions.* The following agencies of the Department furnish aerial photographic reproductions:

Agricultural Stabilization and Conservation Service (ASCS).
Forest Service (FS).
Soil Conservation Service (SCS).

b. *Other photographic reproductions.* Other types of photographic reproductions may be obtained from the following agencies of the Department:

Agricultural Stabilization and Conservation Service.
Forest Service.
Office of Communication.
Soil Conservation Service.
National Agricultural Library.

SEC. 11. *Photographic Sales Committee.* The Photographic Sales Committee consists of representatives designated by Department agencies principally concerned with the sale of photographic reproductions. The Committee recommends prices at which photographic and mosaic reproductions, except library material, shall be sold, and other matters related to photographic reproductions.

SEC. 12. *Circumstances under which photographic reproductions may be provided free.* Reproductions may be furnished free at the discretion of the agencies of the Department to:

a. Press, radio, television, and newsreel representatives for dissemination to the general public.

b. Agencies of State and local governments which are carrying on a function related to that of the Department when furnishing the service will help to accomplish an objective of the Department.

c. Cooperators and others in furthering agricultural programs. As a general rule, only one print of each photograph should be provided free. Care should be exercised in approving requests for free prints to determine that such action is in the public interest.

SEC. 13. *Loans.* Aerial photographic film negatives or reproductions may not be loaned to the general public.

SEC. 14. *Sales of positive prints under Government contracts.* The annual contract for furnishing single and double frame slide film negatives and positive prints to agencies of the Department, County Extension Agents, and other agencies cooperating with the Department carries a stipulation that the successful bidder must agree to furnish slide film positive prints to such persons, organizations, and associations as may be authorized by the Department to purchase them.

SEC. 15. *Procedure for handling orders.* In order to expedite handling, all orders shall contain adequate identifying information. Agencies furnishing aerial photographic reproductions require that all such orders identify the photographs. Each agency has its own procedure and order forms.

SEC. 16. *Photographic reproduction prices.* The prices for photographic reproduction listed here are for the most generally requested items.

a. *National Agricultural Library.* The following prices are applicable to National Agricultural Library items only:

Microfilm—$1.00 for each 30 pages or fraction thereof.
Photoreproduction—$1.00 for each 10 pages or fraction thereof.

b. *General photographic reproductions.* Minimum charge $1.00 per order. All sizes are approximate. An extra charge may be necessary for excessive laboratory time caused by any special instructions from the purchaser.

Class of work	Unit	Price
1. Black and white copy negatives and film positives:		
4 x 5	Each	$3.20
5 x 7	Each	3.75
8 x 10	Each	4.20
11 x 14	Each	6.80
2. Black and white enlargements:		
Up to 8 x 10	Each	2.40
11 x 14	Each	4.20
Over 11 x 14	Per square foot.	3.00
3. Reductions (from any size negative).		3.00
4. Mounting	Per square foot.	2.10
5. Slides: Black and white (from copy negative):		
2 x 2 cardboard mounted	Each	2.40
3¼ x 3¼	Each	3.60
Original Color (from flat copy).	Each	1.80
Duplicate Color (2 x 2 cardboard mounted).	Each	.20
(Duplicate color slides are slides copied from 35 MM color slides only).		
Slide made from black and white material, or from transparencies larger or smaller than 35 MM, will be charged at the same rates shown for black and white and original color slides.		
6. Color transparencies (4 x 5)	Each	8.00
7. Color prints		By quotation
8. Current USDA slide sets in stock:		
1-50 frames		13.00
51-60 frames		14.00
61-75 frames		15.50
76-95 frames		17.50
96-105 frames		18.50
106-120 frames		21.00
(Prices include printed narrative guide)		
The following can be purchased for the corresponding slide sets above:		
Cassettes		3.00
Records		3.00
Audio-tape		1.00
9. Milk Sedimentation Standards (5 x 7 Black and White Photograph).	Each	1.25
10. Seeds and Seedlings (any size).	Each	2.40

c. *Aerial photographic reproductions.* No minimum charge on aerial photographic reproductions.

Single or double weight paper not ferrotyped (double weight, semimatte furnished, unless otherwise specified). All contact prints and enlargements unmounted and untrimmed.

1. *Contact prints.* The prices for contact prints are set forth below. The size refers to the approximate size of the contact print.

Size 9" x 9" on commercial grade paper

Quantity	*Price each*
1-25	$1.75
Excess over 25	1.25

For polyester base paper, add $.75 for contact print (Available from ASCS only).

Size 70mm contact prints

1-25	1.25
Excess over 25	1.00

2. Enlargements (projection prints).

The prices for enlargements of various sizes are set forth below. The size in each case refers to the approximate size of paper required to produce the enlargement ordered. For "scale accuracy" add $.50 per print.

Size 9 x 9 inches (from 70mm)

Quantity	*Price each*
1-25	$1.75
Excess over 25	1.25

Size 17 x 17 inches

1-25	3.00
Excess over 25	2.50

Size 17 x 17 inches

1-25	3.50
Excess over 25	3.00

Size 24 x 24 inches

1–25	4.50
Excess over 25	3.50

Size 38 x 38 inches

1–25	9.00
Excess over 25	8.00

For larger size reproductions, add $2.00 for each additional 12" or fraction thereof, linear measurement.

3. *Aerial photo-index sheets.*

Size 20 x 24 inches

Quantity	*Price each*
Any quantity	$3.00

4. *Film positives*—Contact printed from aerial negatives, size 9 x 9 inches.

Quantity	*Price each*
Any quantity	$3.00

5. *Copy negatives*—On film, aerial exposures, size 9 x 9 inches.

One-step method (direct duplicating film)

Quantity	*Price each*
1–25	$3.25
Excess over 25	2.75

Two-step method

Quantity	*Price each*
Any quantity	$6.00

6. *Diapositives.*

Prints on glass, size 9 x 9 inches, thickness .06 inch.

1–25	$6.50
Excess over 25	$6.00

7. *Aperture Cards and Printouts*

	1st unit	Each additional unit
Duplicate of an aperture card	$1.00	$0.10
Aperture card from photo-index sheet	1.00	.25
Printout from aperture card	1.00	.50

8. *Color Photography.* Furnished only by the Regional Forest Service Aerial Photography Laboratories at Ogden, Utah and San Francisco, California and the Agricultural Stabilization and Conservation Service Aerial Photography Laboratory in Salt Lake City, Utah.

Positive contact print made from negative

Quantity	*Price each*
First print	$7.00
Each additional print	3.00

Enlargements 9 x 9 inches (from 70mm)

First print	7.00
Each additional print	3.00

Enlargements 17 x 17 inches

First print	15.00
Each additional print	9.00

Enlargements 24 x 24 inches

First print	20.00
Each additional print	14.00

Enlargements 38 x 38 inches

First print	25.00
Each additional print	20.00

Color film transparencies (Positives or Negatives)

Contacts 70mm

First print	4.00
Each additional print	2.50

Contacts 9 x 9 inches

First print	10.00
Each additional print	8.00

Enlargements 9 x 9 inches (from 70mm)

First print	10.00
Each additional print	8.00

Enlargements 17 x 17 inches

First print	20.00
Each additional print	15.00

Enlargements 24 x 24 inches

First print	30.00
Each additional print	25.00

Enlargements 38 x 38 inches

First print	60.00
Each additional print	55.00

9. *Special Needs.* For special needs not covered above, persons desiring aerial photographic reproductions should contact the agencies listed in Section 10a, or the Coordinator, Aerial Photographic Work of the Department of Agriculture, ASCS, 2511 Parley's Way, Salt Lake City, Utah 84109.

SEC. 17. The fee schedule published in the FEDERAL REGISTER on October 14, 1972 (37 FR 21859), is superseded by this fee schedule.

SEC. 18. *Effective Date.*—The fee schedule and related procedures shall become effective upon publication in the FEDERAL REGISTER.

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

[FR Doc.73-20344 Filed 9-24-73;8:45 am]

Office of the Secretary

CHAIRMAN, COMMODITY EXCHANGE COMMISSION

Notice of Designation

Pursuant to the provisions of sec. 2(a) of the Commodity Exchange Act, as amended (7 U.S.C. 2), I hereby designate Ervin L. Peterson, Administrator, Agricultural Marketing Service, United States Department of Agriculture, to serve in my stead as Chairman of the Commodity Exchange Commission, effective immediately.

Done at Washington, D.C., this 18th day of September 1973.

EARL L. BUTZ,
Secretary of Agriculture.

[FR Doc.73-20315 Filed 9-24-73;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

CORNELL UNIVERSITY, ET AL.

Notice of Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of 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). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Special Import Programs Division, Office of Import Programs, Washington, D.C. 20230, on or before October 15, 1973.

Amended regulations issued under cited Act, as published in the February 24, 1972, issue of the FEDERAL REGISTER, prescribe the requirements applicable to comments.

A copy of each application is on file, and may be examined during ordinary Commerce Department business hours at the Special Import Programs Division, Department of Commerce, Washington, D.C.

Docket Number: 74-00075-33-46040. Applicant: Cornell University, Section of Genetics, Development and Physiology, New York State College of Agriculture and Life Sciences, Plant Science Building, Ithaca, New York 14850. Article: Electron Microscope, Model EM 201. Manufacturer: Philips Electronic Instruments NVD, The Netherlands. Intended Use of Article: The foreign article is intended to be used in research on various aspects of ultrastructural studies in different organisms. The main areas of research will be the following: (1) Fine structure of cytoplasmic microfilaments in elogating plants cells, and of P-protein in the sieve elements of phloem; (2) fate of DNA in a differentiating and mature sieve elements; (3) alterations in chloroplast membranes during cold acclimation of spinach plants; and (4) comparative ultrastructural studies of the ascospore in the wild type and mutant strains of the fungus *Neurospora crassa.*

The article is also intended to be used to train undergraduates, graduates, post doctoral fellows, and technicians in three courses in electron microscopy. Application received by Commissioner of Customs: August 20, 1973.

Docket Number: 74-00076-33-43420. Applicant: The University of Oklahoma, Purchasing Department, 660 Parrington Oval, Room 321, Norman, Oklahoma 73069. Article: Micromanipulator, Type MZ-10 and accessories. Manufacturer: Narishige Scientific Instrument Laboratory, Japan. Intended Use of Article: The foreign article is intended to be used in research on the large paired Retzius Cells in segmental ganglia of the leech. The program will examine the synaptic interactions between Retzius Cells, large fiber units in the connective, which mediate shortening, and the large lateral motor neurons. Retzius Cells will also be examined to measure their presynaptic effects upon the tension and potentials of the muscles during the reflexive shortening. The article will also be used

to teach a course entitled "Electrophysiological Techniques." Application received by Commissioner of Customs: August 20, 1973.

Docket Number: 74-00078-33-46070. Applicant: Virginia Commonwealth University, Medical Health Sciences Center, Medical College of Virginia, 1200 East Broad, Richmond, Virginia 23219. Article: Scanning Electron Microscope, Model JSM-S1. Manufacturer: JEOL, Ltd., Japan. Intended use of article: The article is intended to be used for studies of ocular tissue, normal and pathological, derived from human and animal eyes and their adnexa. Experiments to be conducted include:

(a) Investigations of normal and abnormal development of the eye primarily based on teratogenic agents interfering with normal ocular development.

(b) Comparison of the morphological configuration of normal and glaucomatous outflow channels and structures from embryonic and postnatal stages of the eye.

(c) Studies to detect differences of normal and glaucomatous corneal epithelium and their causes.

(d) Study of effects of intense bright light on the receptor organs of the retina and the retinal pigment epithelium and to compare those changes with macular degeneration in man, a not infrequent cause of reduced vision primarily with age.

The article will also be used for training of post-graduate fellows in Research Ophthalmology with main emphasis on ocular fine structure and pathology and for four year NIH traineeship in ophthalmology leading to a career in academic medicine. Application received by Commissioner of Customs: August 17, 1973.

Docket Number: 74-00079-33-46040. Applicant: DHEW/PHS, Food and Drug Administration, National Center for Toxicological Research, Jefferson, Arkansas 72079. Article: Electron Microscope, Model EM 201. Manufacturer: Philips Electronic Instruments NVD, The Netherlands. Intended Use of Article: The foreign article is intended to be used in research on biological, mainly mammalian tissues derived from experimental animals, and exhibit both normal and pathologic structure. Specifically, the experiments will be (1) transmission electron microscopy (TEM) of myocardial necrosis in adult female mice given 2,4,5-T; (2) transmission and scanning electron microscopy (TEM and SEM) in conjunction with elemental x-ray analysis of crystalline material present in the lungs of mice associated with carcinogenesis; (3) TEM and SEM in conjunction with elemental x-ray analysis of transitional epithelium of the urinary bladder of mice which have received 2-AAF, a carcinogenic compound; (4) TEM and SEM study of intracycoplasmic hyaline bodies in epithelial cells of urinary bladder from mice treated with 2-AAF; (5) SEM of teratologic defects in mice fetuses from maternal animals which have received 2,4,5-T; (6) an electron microscope study to define subcellular deviations which occur within neoplastic transitional epithelial cells of the urinary bladder of mice and (7) an electron microscopic study of liver and kidney of mice treated with 2-AAF. Application received by Commissioner of Customs: August 20, 1973.

Docket Number: 74-00080-33-46040. Applicant: DHEW/PHS, Food and Drug Administration, National Center for Toxicological Research, Jefferson, Arkansas 72079. Article: Electron Microscope, Model EM 301. Manufacturer: Philips Electronic Instruments NVD, The Netherlands. Intended Use of Article: The foreign article is intended to be used in research on biological, mainly mammalian tissues derived from experimental animals, and exhibit both normal and pathologic structure. Specifically, the experiments will be (1) transmission electron microscopy (TEM) of myocardial necrosis in adult female mice given 2,4,5-T; (2) transmission and scanning electron microscopy (TEM and SEM) in conjunction with elemental x-ray analysis of crystalline material present in the lungs of mice associated with carcinogenesis; (3) TEM and SEM in conjunction with elemental x-ray analysis of transitional epithelium of the urinary bladder of mice which have received 2-AAF, a carcinogenic compound; (4) TEM and SEM study of intracytoplasmic hyaline bodies in epithelial cells of urinary bladder from mice treated with 2-AAF; (5) SEM of teratologic defects in mice fetuses from maternal animals which have received a 2,4,5-T; (6) An electron microscope study to define subcellular deviations which occur within neoplastic transitional epithelial cells of the urinary bladder of mice; and (7) An electron microscopic study of liver and kidney of mice treated with 2-AAF. Application received by Commissioner of Customs: August 20, 1973.

Docket Number: 74-00081-33-46500. Applicant: University of Nebraska Medical Center, Department of Dermatology, Conkling Hall, Room 406, 42nd and Dewey Avenue, Omaha, Nebraska 68105. Article: Ultramicrotome, Model LKB 8800A, 7800B Knifemaker, and 4806A Ultrotome Table. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The foreign article is intended to be used in research on biological, exclusively mammalian tissues derived from human skin and from experimental animals, which exhibit both normal and pathologic structure. Specifically, the experiments to be conducted include sequential biopsies during the development of the various forms of dermatitis (eczema) and during the resolution of various skin diseases using different clinical therapeutic modalities. Application received by Commissioner of Customs: August 21, 1973.

Docket Number: 74-00082-33-37100. Applicant: University of Pennsylvania, Department of Microbiology, School of Dental Medicine, 4001 Spruce Street, Philadelphia, Pennsylvania 19174. Article: Yeda Press. Manufacturer: Yeda Research & Development Co., Ltd., Israel. Intended Use of Article: The foreign article is intended to be used in research on virus infected KB living cells. Specifically, the virus-infected cells will be factionated and virus antigens located in order to document membrane alterations. Application received by Commissioner of Customs: August 22, 1973.

Docket Number: 74-00083-33-46500. Applicant: William Paterson College of New Jersey, 300 Pompton Road, Wayne, New Jersey 07407. Article: Ultramicrotome, Model LKB 8800A and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended Use of Article: The foreign article is intended to be used in teaching a course entitled "Electron microscopy" to seniors in the Biology major program. In addition, a second course entitled Cell Ultrastructure is planned for Spring 1974. Application received by Commissioner of Customs: August 21, 1973.

Docket Number: 74-00084-33-46500. Applicant: Wayne State University, Department of Dermatology, Research Medical Building, 550 East Canfield, Detroit, Michigan 48201. Article: Ultramacrotome, Model LKB 8800A and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended Use of Article: The foreign article is intended to be used to study biological, mainly mammalian tissues derived from human and experimental animals which exhibit both normal and pathologic structure. Specifically, experiments will be conducted on the normal, physiological behavior of cells and tissues in regard to the transport and ingestion of macromolecules. Variations in the behavior of cells and tissues under experimental pathological conditions will also be studied. Application received by Commissioner of Customs: August 21, 1973.

Docket Number: 74-00085-01-77040. Applicant: California State University, Los Angeles, 5151 State University Drive, Los Angeles, California 90032. Article: Mass Spectrometer, Model CH-5. and accessories. Manufacturer: Varian MAT-GMBH, West Germany. Intended Use of Article: The article is intended to be used for the application of negative ion mass spectrometry in the following research projects:

I. Negative Ion Mass Spectrometric Sequencing of Amino Acids in Peptides.

II. Negative Ion Mass Spectral Studies of Carboranes and Boron Hydrides.

III. Gas Phase Non-Benzenoid Aromatic Systems studies.

The article will also be used in various chemistry courses for the teaching of instrumental techniques. Application received by Commissioner of Customs: August 21, 1973.

Docket Number: 74-00086-33-46040. Applicant: University of Rochester, Medical Center, 260 Crittenden Boulevard, Rochester, New York 14642. Article: Electron Microscope, Model EM 201 and accessories. Manufacturer: Philips Electronic Instruments NVD, The Netherlands. Intended Use of Article: The

article is intended to be used for the examination by electron microscopy of the fine structural features of brain tumor cells in culture with particular attention given to a search for viral particles, and for cellular features which correlate with tumor malignancy and invasiveness. In addition, morphologic characteristics will be correlated with metabolic properties determined by physiological and biochemical methods. An important aspect of these studies will be an assessment of the influence of chemical substances (or physical conditions such as irradiation) which might therefore, have applicability in the treatment of patients with brain tumors. Application received by Commissioner of Customs: August 20, 1973.

A. H. STUART,
Director, Special Import Programs Division.

[FR Doc.73-20306 Filed 9-24-73;8:45 am]

CORNELL UNIVERSITY

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 (37 FR 3892 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. 20230.

Docket Number: 73-00561-90-73610. Applicant: Cornell University, NYS Agricultural Experiment Station, Department of Plant Pathology, Geneva, New York 14456. Article: Recording Volumetric Spore Trap. Manufacturer: Burkard Manufacturing Co. Ltd., United Kingdom. Intended use of Article: The article is intended to be used in studies of fungus spores to determine the type and quantity of spores in the air in relation to weather conditions.

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 is designed to continuously sample airborne particles for periods up to 7 days and provide a record of the type and quantity of particles collected at a given time. The Department of Health, Education, and Welfare (HEW) in its memorandum dated Augsut 30, 1973 advised that the ability to record such data for 7 days is pertinent to the applicant's research purposes. HEW further advised that it knows of no domestic instrument of equivalent scientific value to the foreign article for such purposes as the article is intended to be used.

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.

A. H. STUART,
Director, Special Import Programs Division.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

[FR Doc.73-20382 Filed 9-24-73;8:45 am]

SAN FRANCISCO STATE UNIVERSITY

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 (37 FR 3892 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. 20230.

Docket Number: 73-00497-33-46040. Applicant: San Francisco State University, Division of Biology, 1600 Holloway, San Francisco, Calif. 94132. Article: Electron microscope, EM 10. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used in the study of sperm cell activation in opistobranch mollusks to understand the mechanisms of sperm cell maturation; how mature sperm cells are transferred from one individual to another; how viable sperm cells can be stored up to one month in the seminal receptacle while remaining inactive; and how they are activated at the precise time of egg-laying so they are fertilized just prior to being shed. The article will be used to take low magnification orientation pictures and to take high-magnification, high-resolution pictures in order to observe the finest structural details in the developing sperm cells, the fine details of the lining cells of the seminal receptacle, and minute differences between activated and inactive sperm cells. In addition, the article will be used in the course, Electron Microscopy, to prepare students to work independently in electron microscopy, whether it be as electron microscope technicians or using the instrument in original research for a higher degree.

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 has a specified resolving capability of 3.5 Angstroms. The most closely comparable domestic instrument is the Model EMU-4C electron microscope manufactured by the Forgflo Corporation. The Model EMU-4C has a specified resolving capability of 5 Angstroms. (The lower the numerical rating in terms of Angstrom units, the better the resolving capability.) We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated August 30, 1973 that the additional resolving capability of the foreign article is pertinent to the purposes for which the foreign article is intended to be used. We, therefore, find that the Model EMU-4C is not of equivalent scientific value to the foreign article for such purposes as the article is intended to be used.

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.

A. H. STUART,
Director, Special Import Programs Division.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

[FR Doc.73-20383 Filed 9-24-73;8:45 am]

UNIVERSITY OF RHODE ISLAND

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 (37 FR 3892 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. 20230.

Docket Number: 73-00550-33-01710. Applicant: University of Rhode Island, Kingston, R.I. 02881. Article: Voltage-Clamp Amplifier. Manufacturer: Hugo Sachs Elektronik K.G., West Germany. Intended Use of Article: The article is intended to be used in studies of smooth and cardiac muscle wherein membrane potential difference will be clamped at a value corresponding to deplorization by acetylcholine, while the muscle is treated with 5-hydroxtryamine to determine whether current oscillations and rhythmicity will be established. 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 applicant's use is in a very specialized study of membrane potentials in smooth and cardiac muscle requiring very specialized apparatus. In addition the applicant requires a device to satisfy the articles capabilities and be compatible with a particular microelectrode amplifier. The Department of Health, Education, and Welfare (HEW) advised in its memorandum dated August 30, 1973 that the specific design of the foreign article is pertinent to the purposes described above. HEW also advised that it knows of no domestic instrument of equivalent scientific value to the foreign article for the purposes for which the article is intended to be used.

The Department of Commerce knows 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.

A. H. STUART,
Director, Special Import Programs Division.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

[FR Doc.73-20381 Filed 9-24-73;8:45 am]

NORTH TEXAS STATE UNIVERSITY AND UNIVERSITY OF ILLINOIS

Notice of Consolidated Decision on Applications for Duty-Free Entry of Accessories for Foreign Instruments

The following is a consolidated decision on applications for duty-free entry of accessories for foreign instruments 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 (37 FR 3892 et seq). (see especially § 701.11 (e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review during ordinary business hours of the Department of Commerce, at the Special Import Programs Division, Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 73-00540-00-77030. Applicant: North Texas State University, Denton, Tex. 76203. Article: ^{2}D internal field frequency lock system. Manufacturer: JOEL Ltd., Japan. Intended Use of Article: The article is an accessory to be used with a nuclear magnetic resonance spectrometer being used in studies of the structures of and of the bonding within various chemical (mainly organic) compounds. The objectives pursued in the course of these investigations include:

(a) The training of graduate students for futures in the chemical industry and academia,

(b) Basic Research for a better understanding of synthetic chemistry, and

(c) New applications of nuclear magnetic resonance to study of reaction products and molecular structures.

In addition the article is to be used for educational purposes in various Chemistry courses to train students in the most modern methods of chemistry including nmr spectroscopy. Application received by Commission of Customs: May 30, 1973. Advice submitted by Department of Health, Education, and Welfare on: August 30, 1973.

Docket Number: 73-00557-00-77040. Applicant: University of Illinois-Urbana-Champaign, Purchasing Division, 223 Administration Building, Urbana, Illinois 61801. Article: Combination Field Desorption-Field Ionization-Electron Impact Ion Source Device. Manufacturer: Varian MAT GmBH, West Germany. Intended use of article: The articles are accessories to an existing mass spectrometer to be used for studies of organic compounds and mixtures of interest in biology and medicine to determine their molecular weights and molecular formulas. The article will also be used for educational purposes in various Chemistry courses. Application received by Commissioner of Customs: May 25, 1973. Advice submitted by Department of Health, Education, and Welfare on: August 30, 1973.

Comments: No comments have been received with respect to any of the foregoing applications. Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles, for the purposes for which the articles are intended to be used, is being manufactured in the United States.

Reasons: The applications relate to compatible accessories for instruments that have been previously imported for the use of the applicant institutions. The articles are being manufactured by the manufacturers which produced the instruments with which they are intended to be used. We are advised by the Department of Health, Education, and Welfare in the respectively cited memoranda that the accessories are pertinent to the applicants' intended uses and that it knows of no comparable domestic articles.

The Department of Commerce knows of no similar accessories manufactured in the United States which are interchangeable with or can be readily adapted to the instruments with which the foreign articles are intended to be used.

A. H. STUART,
Director Special Import Programs Division.

[FR Doc.73-20307 Filed 9-24-73;8:45 am]

Maritime Administration

EXXON CORP.

Application for Construction of DWT Tankers

Notice is hereby given that Exxon Corp. has filed an application dated September 6, 1973, pursuant to Title V of the Merchant Marine Act, 1936, as amended for construction-differential subsidy to aid in the construction of two 400,000 DWT tankers of approximately 15.4 knots speed proposed for operation in worldwide tanker trades.

Interested parties may inspect this application in the office of the Secretary, Room 3099-B, Maritime Administration, Commerce Department Building Fourteenth & E Streets NW., Washington, D.C. 20235.

Dated September 19, 1973.

By Order of the Maritime Subsidy Board, Maritime Administration.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.73-20434 Filed 9-24-73;8:45 am]

WATERMAN MARINE CORP.

Application for Construction of DWT Ore/Bulk/Oil Type Vessels

Notice is hereby given that Waterman Marine Corp. has filed an application dated September 7, 1973, pursuant to Title V of the Merchant Marine Act, 1936, as amended for construction-differential subsidy to aid in the construction of four 80,000 DWT OBO's of approximately 16.5 knots speed proposed for operation in worldwide tanker trades.

Interested parties may inspect this application in the office of the Secretary, Room 3099-B, Maritime Administration, Commerce Department Building, Fourteenth and E Streets NW., Washington, D.C. 20235.

Dated September 19, 1973.

By Order of the Maritime Subsidy Board Maritime Administration.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.73-20435 Filed 9-24-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[FAP 4B2945]

AMERICAN CYANAMID CO.

Notice of Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 4B2945) has been filed by American Cyanamid Company, Wayne NJ 07470, proposing that § 121.2571 *Components of paper and paperboard in contact with dry food* (21 CFR 121.2571) be amended in paragraph (b)(2) to provide for the safe use of the antimicrobial agents dodecylguanidine acetate and dodecylguanadine hydrochloride in paper and paperboard in contact with dry foods.

The environmental impact analysis report and other relevant material have been reviewed, and it has been determined that the proposed use of the

additive will not have a significant environmental impact. Copies of the environmental impact analysis report are available in the Office of the Assistant Commissioner for Public Affairs, Rm. 15B-42 or the Office of the Hearing Clerk, Food and Drug Administration, Rm. 6-86, 5600 Fishers Lane, Rockville, MD 20852.

Dated September 12, 1973.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.73-20299 Filed 9-24-73;8:45 am]

[DESI 5378; Docket No. FDC-D-582; NDA 11-522]

CERTAIN COMBINATION ANORECTIC DRUGS

Final Order on Objections and Request for a Hearing Regarding Withdrawal of Approval of New Drug Applications

In the FEDERAL REGISTER of August 8, 1970 (35 FR 12652) the Commissioner of Food and Drugs published a statement of policy (21 CFR 130.46) concerning amphetamines for human use. The statement contained the findings of the Food and Drug Administration based upon reports received from the National Academy of Sciences-National Research Council (NAS-NRC) Drug Efficacy Study Group. Also published in the FEDERAL REGISTER of August 8, 1970 (35 FR 12678) was a notice (DESI 5378) on drugs containing amphetamines and their salts, stating that the drugs were regarded as possibly effective for their claimed anorectic effect and lacked substantial evidence of effectiveness for their other labeled indications. The statement of policy also contained the findings of the Commissioner that because of the extensive use of the drugs in the treatment of obesity, and their stimulant effect on the nervous system, they have a potential for misuse and actual abuse, and production data indicated that amphetamines are produced and prescribed in quantities greatly in excess of demonstrated medical needs. As a condition for continued marketing of amphetamines, the statement of policy required relabeling as specified and the submission of a new drug application (NDA) within one year for all such drugs not then the subject of NDA approval. Holders of approved NDAs were required to submit additional evidence of safety and substantial evidence of efficacy in the form of adequate and well-controlled clinical investigations.

On February 12, 1973, the Commissioner published in the FEDERAL REGISTER (38 FR 4249) a final order stating that there was a lack of substantial evidence of effectiveness for, and a recognized potential for the abuse of, fixed combination drugs for anorectic use which contained, among other ingreidents, amphetamine, methamphetamine, or dextroamphetamine. In addition, the Commissioner found that alternative therapeutic measures which are safe and effective are available for use. The Commissioner also stated in the final order that a mixture of dextroamphetamine and amphetamine is ordinarily regarded as a single drug entity. A similar conclusion as to a mixture of dextroamphetamine and methamphetamine, and/or amphetamine and methamphetamine, was not made. In § 3.86 (21 CFR 3.86) the Food and Drug Administration set forth a policy on fixed-combination drugs for prescription use requiring that each drug in a fixed-combination drug contribute to the claimed effect of the drug; section IV, infra. Therefore, drugs containing combinations of amphetamine and methamphetamine and/or dextroamphetamine and methamphetamine, are fixed combination drugs. The final order also stated that a proposal to withdraw approval of such combination drugs for anorectic use was published elsewhere in the same issue of the FEDERAL REGISTER.

In a notice in the FEDERAL REGISTER of February 12, 1973 (38 FR 4279), the Commissioner announced an opportunity for hearing on his proposal to withdraw approval of new drug applications for the combination amphetamine or other anorectic drugs. This notice was based on evaluation of data submitted pursuant to the FEDERAL REGISTER notice of August 8, 1970 (35 FR 12678). This data was found, after review, not to provide substantial evidence that the drugs named in the FEDERAL REGISTER notice of February 12, 1973, were effective as fixed combination for their claimed anorectic uses. Based on this lack of substantial evidence of effectiveness of the drugs as fixed combinations, the recognized potential for abuse of these combination drugs, and the availability of alternative therapeutic measures which are safe and effective, the named drugs were also found to be lacking in proof of safety. The Commissioner further found that the data submitted in response to the FEDERAL REGISTER notice of August 8, 1970, did not support a contention that the combination products decrease the incidence or severity of side effects associated with the abuse potential of the single entity anorectic drug. Notice was therefore given to holders of the named new drug applications and all other interested persons, including those marketing similar, identical or related drugs (§ 130.40 (21 CFR 130.40)) that the Commissioner proposed to withdraw approval of these new drug applications based on a lack of substantial evidence of effectiveness and a lack of proof of safety. All holders of the NDA's and persons marketing similar, identical or related drugs, and other interested persons were invited to request a hearing on the proposed withdrawals and to submit with such request a well organized and full-factual analysis of the clinical and other investigational data they were prepared to prove in support of their opposition to the withdrawal of the named NDA's and any such similar, identical or related drugs. The notice stated that if substantial evidence of effectiveness and evidence of safety was received for any of the named drugs, or for similar, identical and related drugs, the notice would be rescinded as to such drugs.

In response to the notice in the FEDERAL REGISTER of February 12, 1973, requests for a hearing were received from four persons for five drugs. The persons and the drugs were named in the FEDERAL REGISTER notice of March 30, 1973 (38 FR 8290). The subject final order concerns only two of those persons requesting hearings.

Rexar Pharmacal Co., 396 Rockaway Ave., Valley Stream, NY 11582, requested a hearing for the drugs Obetrol-10 and Obetrol-20 Tablets (NDA 11-522). These drugs are the subject of an NDA which was made conditionally effective on July 24, 1959, and fully effective on February 23, 1960. The Obetrol drugs had been reviewed by the NAS-NRC and found to be possibly effective as an adjunct in the management of some forms of obesity in which an appetite depressant is indicated. The NAS-NRC finding was incorporated into the August 8, 1970 FEDERAL REGISTER notice discussed above (35 FR 12678).

Delco Chemical Co., 7 McQuesten Parkway North, Mount Vernon, NY 10550, requested a hearing for the drugs Delcobese Sustained Release Tablets and Capsules and Delcobese Tablets and Capsules. Pursuant to the August 8, 1970 FEDERAL REGISTER order, the Commissioner received from Barrows Pharmacal Inc., 300 Prospect St., Inwood, NY 11696, four new drug applications on the following dates for the following drugs: March 15, 1971, NDA 17-162, Delcobese Tablets, 5 mg., 10 mg., 15 mg., and 20 mg.; March 15, 1971, NDA 17-161, Delcobese Capsules, 5 mg., 10 mg., 15 mg., and 20 mg.; March 26, 1971, NDA 17-160, Delcobese Sustained Release Capsules, 5 mg., 10 mg., 15 mg., and 20 mg.; and June 24, 1971, NDA 17-159, Delcobese Sustained Release Double-Layer Tablets, 5 mg., 10 mg., 15 mg., and 20 mg. All four of the drugs consist of a combination of amphetamines and methamphetamines. No data was submitted in support of the efficacy of these combination drugs; the sponsor merely paraphrased the conclusions stated in the August 8, 1970 FEDERAL REGISTER notice in support of the safety and efficacy of the drugs for use as anorectics and in treating narcolepsy and minimal brain dysfunction in children.

Due to the large number of new drug applications received pursuant to the August 8, 1970 FEDERAL REGISTER order, a review and evaluation of the new drug applications submitted by Barrows was delayed. Barrows was notified of this delay by a letter from the Food and Drug Administration on February 25, 1972. On January 15, 1973, a letter was sent to Barrows from J. Richard Crout, M.D., Acting Director, Office of Scientific Evaluation, Bureau of Drugs, stating the conclusion of the Food and Drug Administration that the four new drug applications submitted by Barrows could not be approved because the submissions

failed to demonstrate that each component of the drug makes a contribution to the claimed effect and that the dosage of each component is such that the combination is safe and effective for a significant patient population requiring such concurrent therapy as defined in the labeling for the drug (21 CFR 3.86). In response to this letter, Delco Chemical Co., Inc., 7 McQuesten Parkway North, Mount Vernon, NY 10550, notified the Food and Drug Administration that it was reformulating the products subject to the submitted new drug applications into "single entity amphetamine preparations." No further communication has taken place.

The other drugs named in the FEDERAL REGISTER notice of March 30, 1973, will be the subject of orders ruling on the requests for hearings to be published in the FEDERAL REGISTER at a future date.

I. *The Drugs* a. Obetrol 10 and Obetrol 20 Tablets, respectively contain 2.5 mg. each or 5 mg. each of methamphetamine saccharate, methamphetamine hydrochloride, amphetamine sulfate, and dextroamphetamine sulfate per tablet.

b. The four Delcobese drugs are combinations of dextroamphetamine sulfate, methamphetamine hydrochloride, methamphetamine adipate and amphetamine sulfate.

II. *Recommended Uses* a. Obetrol 10 and Obetrol 20 Tablets are recommended in exogenous obesity as a short-term (a few weeks) adjunct to a regimen of weight reduction based on caloric restriction.

b. The Delcobese drugs are recommended in exogenous obesity, as a short-term (a few weeks) adjunct in a regimen of weight reduction based on caloric restriction, and in the treatment of narcolepsy and minimal brain dysfunction in children.

III. *The Data to Support Claims of Effectiveness A. Obetrol 10 and Obetrol 20 Tablets* 1. *Published Studies.* Rexar has submitted five literature reprints which it contends support the efficacy of Obetrol Tablets. For the following reasons, these studies are not substantial evidence of the effectiveness of Obetrol Tablets since they are not adequate and well-controlled clinical investigations.

a. *Modern Management of Obesity—The "Social Diet"*, Milton Plotz, M.D., *J.A.M.A.*, July 25, 1959, Vol. 170, pp. 1513–1515. This report is substantially a discourse on the causes of obesity and the various methods of treating the condition. It merely reports that the author feels that some investigators, including himself, have established a genuine therapeutic action with certain drugs in promoting weight reduction. There is no actual clinical data presented, no discussion of the investigations as to size of the studies, no controls or statistical methods, and no reference to the composition of the drugs that were employed in the investigations, as required by § 130.12(a)(5) (21 CFR 130.12). The author mentions that Obetrol was used in "this" study, but the reference to which study is unclear. The criteria for establishing that a study is adequate and well-controlled, set forth at § 130.12(a)(5), have not been met.

The study is, on its face, insufficient to support any claim of effectiveness for the Obetrol Products. The Commissioner finds that this article is not substantial evidence of the efficacy of Obetrol Tablets.

b. *The Treatment of Obesity in Patients With Cardiovascular Disease*, Franklin Simon, M.D. and Arthur Bernstein, M.D., *Angiology*, Vol. 12 No. 1, January, 1961, 32–37. This is a report of the obesity problem in the United States and a study conducted with Obetrol.

The study reported consisted of 100 patients who were seen by the investigators for "varying" periods of time. The authors stated the test was conducted for two months, an "appropriate" period of time. Why the two months was "appropriate" is not stated. The standard for determining "overweight" was given as "overweight by any standard used." Both Obetrol 10 and Obetrol 20 were administered, with dosage and time of administration altered to conform to individual requirements.

No attempt was made to use any controls in the study. The investigators reported that a placebo substitute was attempted with twenty-five patients after four weeks of treatment, but this type of placebo employment is not a placebo control contemplated by § 130.12(a)(5)(ii)(*a*)(*4*)(*ii*), since the regulation requires that the test drug be compared with the results of a patient group to whom a placebo, in all respects physically identical to the test drug, has been administered throughout the study. The subject study did not comply with the regulation.

The patient population was made up of patients some of whom had some sort of cardiovascular disease with or without diabetes, some with diabetes alone, and some with no other disease conditions. There is no information as to suitability of the patients to be included in a study to determine the effectiveness of an anorectic, and no assurance of comparability of the test group with a control group, since a control group was not employed (§ 130.12(a)(5)(ii)(*a*)(2)(*i*) and (*iii*)). Because of the great variations in the physical conditions of the patients and the other medications they were taking, and the variations of dosage and duration of administration reported by the authors, any specific finding by the investigators related to the effectiveness of Obetrol is of questionable value.

Section 130.12(a)(5)(ii)(*a*)(*5*) requires that "a summary of the methods of analysis and an evaluation of the data derived from the study, including any appropriate statistical methods" be submitted. No such data is presented in this study. Therefore, it is not possible to evaluate the analytical and statistical methods employed in order to determine the validity of the results and the investigator's conclusions.

The results of the study were stated in general terms of the total number of pounds lost, with an average being assigned to each patient. No actual patient results were stated. The investigators state that the range of weight loss varied from "almost nothing" to 25 pounds. The authors admit that their results are "made up of combining the good with the bad, the effective with the ineffective weight reducer." Thus, it is impossible to draw any meaningful conclusions as to the efficacy of Obetrol from the study because full reports of patient data obtained from the study are not presented as required by § 130.12(a)(5)(ii)(*a*)(*5*).

In addition, since Obetrol is a combination drug within the meaning of § 3.86, the investigators must show that both the amphetamine and methamphetamine components of the drug contribute to the drug's purposed effect. No such showing was made in this study.

The Commissioner finds that this study is not substantial evidence of the effectiveness of Obetrol Tablets.

c. *Treatment of Obese Diabetics and Arteriosclerotics*, Arthur Bernstein, M.D. and Franklin Simon, M.D., Reprint from *Clinical Medicine*, May, 1961, pp. 1–6. This is another report of the study discussed in b, above. It contains no more patient information or data than does the other report, and no statistical analysis. For the reasons stated above, the Commissioner finds this study is not substantial evidence of the effectiveness of Obetrol Tablets.

d. *Use of an Amphetamine-Combination Drug in an Anti-Obesity Clinic*, Merrill Berman, M.D. and Ian Anderson, M.D., *Md. St. Med. J.*, Jan., 1965, pp. 22–31. This is a report of study conducted with Obetrol-10 Tablets. The patient population numbered 43; the only medical problem of the group was obesity. The drug was tested in 25 patients and compared with 18 patients to whom no medication was administered. The authors stated that "the final outcome of this study will await its ultimate re-evaluation when the patients are reviewed one year from the time they entered the clinic program."

The patients were selected at random, and randomly placed on either the drug or no treatment. Both test and control patients were weighed each week, given nutritional counseling and participated in the same group discussions. The results obtained showed that the group to whom the drug had been administered lost an average of 20.2 pounds over a ten week period, while the control group lost an average of 9.61 pounds over the ten week period. The actual weight loss for each patient is tabulated. The authors concluded that "the group on the amphetamine preparation was able to lose twice as much, on the average, as the control group."

The study is deficient in several respects. First, the degree of overweight of the patients is not specified. Second, the method of randomizing the selection of the patients is not stated, nor is a table of random numbers presented (§ 130.12(a)(5)). Data is not presented as to the number of entrants in the study and the

number of dropouts. This data is necessary both in order to demonstrate that equal numbers of patients were placed in each group and to follow up on these patients to ascertain why they dropped out. Finally, the analytical technique for evaluating the results is not described making it impossible to establish the significance of the differences of treatment of the two groups (§ 130.12(a) (5) (ii) (*a*) (*4*)).

In adition to the above deficiencies, the study is not adequate and well-controlled to establish the efficacy of Obetrol for the following reasons. As pointed out by the investigators in this and the other studies submitted by Rexar, one of the major factors contributing to obesity, and crucial in its treatment, is the psychological condition of the patient. In order to conduct an adequately controlled test with an obesity drug, it is imperative that placebo controls as set forth in § 130.12 (a) (5) (ii) (*a*) (*4*) (*ii*) be employed so that all patients think that they are receiving some medication in order to adequately compare the test and control groups. No treatment controls are insufficient in this type of study since a placebo has a definite and significant effect in obesity studies (§ 130.12(a) (5) (ii) (*a*) (*4*) (*i*)). As with all placebo studies, true double blinding is required. Thus, a third party must package both the active drugs and the placebos in containers which are indistinguishable and which can only be identified by code numbers known only to the third party. The placebos and drugs must be physically indistinguishable to both the physician and the patient. Only in this manner will the study result in neither the physician nor the patient being aware, at the time of treatment, which patient is receiving the drug or the placebo. This is required so that physician and patient expectations do not bias the study. Double blinding was not done in this study.

Finally, the study was not conducted in such a manner that the investigators demonstrated that both the amphetamine and the methamphetamine constituents of Obetrol contributed to its anorectic effect. Such a showing is required to establish the efficacy of a fixed combination drug such as Obetrol. In order to show the contribution of each ingredient it is necessary to have four test groups—one on the combination drug, one each on each of the active ingredients, and one on a placebo. This was not done (§ 3.86).

The Commissioner finds that this study is not substantial evidence of the efficacy of Obetrol Tablets.

e. *Comparison of Weight Losses With Their Reducing Regimens-Diet Therapy, Phenmetrazine, and . . . Obetrol,* Merrill Berman, M.D. and Ian Anderson, M.D., *J. Am. Geriatric Soc'y,* Vol. 14 No. 6, pp. 623–630.

In this study, 88 overweight female outpatients in the Anti-Calory Clinic were randomly divided into three groups, unequal in size: 18 to whom no medication was administered; 41 to whom phenmetrazine hydrochloride was administered; and 29 to whom Obetrol was administered. There is no explanation given for the variation in the number of subjects in each group. The no treatment group had an obesity duration of 10 years or longer in all cases; the other two groups had a long obesity duration. There is no reason given why the 10 years for the no-treatment group is significant or why the lack of specific duration of obesity for the other two groups is significant.

The results of the study showed an average loss of 2.0 pounds in two weeks, 4.2 pounds in four weeks, 6.4 pounds in six weeks, 8.6 pounds in eight weeks and 10.3 pounds in 10 weeks for the controls. For the phenmetrazine group, the average weight loss was 3.6 pounds in two weeks, 6.8 pounds in four weeks, 9.7 pounds in six weeks, 11.9 pounds in eight weeks and 13.8 pounds in 10 weeks. Finally, the Obetrol group averaged a weight loss of 5.0 pounds in two weeks, 9.5 pounds in four weeks, 13.8 pounds in six weeks, 18.3 pounds in eight weeks and 22.6 pounds in 10 weeks.

The results are not meaningful since there are no data relevant to the amount and frequency of medication. The degree of overweight of the patients is not given so that an objective comparison of the test subjects' weight loss is not possible. There is no method of randomizing the selection of the subjects stated, nor is a table of random numbers presented. The analytical technique for evaluating the results is not described so that the significance of the differences of treatment of the various groups cannot be established (§ 130.12(a) (5) (ii) (*a*) (*4*), and (a) (*5*) (*ii*) (*a*) (*4*) (*i*), (*ii*), *and* (*iii*)).

As with the study discussed in paragraph d. above, the necessary placebo is not present. The "active drug" control is insufficient because the administration of a placebo would not be contrary to the interest of the patient (§ 130.12(a) (5) (ii) (*a*) (*4*) (*iii*)). Furthermore, the follow-up study, in which only Obetrol was used, and then, only as needed, has no significance for purposes of demonstrating the efficacy of Obetrol. The study is not adequately double blinded for the reasons set forth in d above. Finally, there are no data to show that both the amphetamine and methamphetamine constituents of Obetrol contributed to the efficacy of the drug (§ 3.86).

The Commissioner finds that this study is not substantial evidence of the efficacy of Obetrol Tablets.

2. *Unpublished Studies.* a. *The Leberco studies.* Rexar also submitted two studies conducted by Leberco Laboratories in 1952. The studies are apparently acute toxicity studies. The first was conducted with Dexedrine. The purpose of this uncontrolled study is not stated. The target population ostensibly consisted of "normal, healthy albino rats", although the criteria for determining the condition of the rats is not stated (§ 130.12 (a) (5) (ii) (*a*) (2) (*i*)). The animals were fed 10 milligrams of Dexedrine per cc of a suspension substance for an unspecified period of time, possibly only once, although this is not clear. The investigator concluded that "when the above results were calculated according to the method of Behrens, the LD_{50} was established to be 112 milligrams per kilogram of rat. This is equivalent to 5,730 milligrams in a 60 kilogram human being."

The second study was conducted with 500 tablets of "Oby-Rex #1", composition not stated. The purpose of this uncontrolled study is not stated. In this study, the target population ostensibly consisted of "normal, healthy albino rats", although the criteria for determining the condition of the rats is not stated (§ 130.12(a) (5) (ii) (*a*) (2) (*i*)). The test animals were fed 40 milligrams of Oby-Rex #1 per cc of a suspension substance for an unspecified length of time, possibly only once, although this is not clear. The investigator concluded that "when the above results were calculated according to Behrens, it was found that the LD_{50} of the test material is 283 milligrams per kilogram of rat. This is analogous in the human to 16,890 milligrams".

Rexar states that these two studies were comparative, but fails to state what was being compared, and the results of any such a comparison are nowhere stated. Furthermore, the results are not confirmed by clinical data since they are only acute data. The results of such animal studies cannot be extrapolated to man. Therefore, these studies do not prove the safety of Obetrol Tablets in human beings.

The two studies do not establish either the effectiveness or safety of Obetrol. Indeed, whether or not the "Oby-Rex #1" is of the same composition as Obetrol is not stated. The Commissioner finds that these studies do not constitute evidence of safety or substantial evidence of the efficacy of Obetrol Tablets for its intended use.

b. *The Nedelman study.* In a letter dated September 21, 1971, Rexar was advised by the Food and Drug Administration that a proposed clinical protocol for a double-blind efficacy study of Obetrol was deficient in several respects; several requirements for the study to be adequate and well-controlled were provided to Rexar. One of these requirements was that Rexar "should provide for acquiring data on the contributions of the individual constituents to the total claimed effect for the drug." Rexar submitted with its request for a hearing, a copy of a protocol of a study to be conducted with Obetrol for Rexar by Medical and Technical Research Associates, Medford, MA, dated January 20, 1972. There is no mention in the protocol of acquiring data on the contribution of the individual constiuents to the total claimed effect for the drug. The protocol only provided for two test groups: one to whom Obetrol would be administered, and one to whom placebo medication would be administered. Rexar submitted the results of this study, which was conducted by Philip B. Nedelman, M.D. In the foreword to the study,

Rexar stated that pursuant to the September 21, 1971 Food and Drug Administration letter, it was incorporating new requirements for the study, and set them out. These revised requirements did not include a provision for acquiring data on the contribution of the individual constituents to the total claimed effect of the drug. Thus, at the threshold, the study is not adequate since Rexar failed to comply with the requirements for the study to be considered adequate and well-controlled.

In addition, the study itself is deficient in several respects. There are no data provided on patient selection, condition, randomization, comparability of test and control groups, or steps taken to minimize bias (§ 130.12(a)(5)(ii)(*a*) (2) and (*4*)). There are no data presented to show that an adequate placebo control was employed since the data presented do not state whether a certain number of patients received only the drug and a certain number received only the placebo. The investigator states that the groups were designated X and Y, but states both X and Y groups received Obetrol. Furthermore, the investigator states that both groups received a known placebo during the last one week of the study. Therefore, a comparison of the test and control groups is not possible (§ 130.12(a)(5)(ii)(*a*)(*4*)(*ii*)).

The Commissioner finds that the Nedelman study is not substantial evidence of the efficacy of Obetrol Tablets.

B. *Delcobese*. As stated above, no data from clinical investigations were submitted with the nonapproval new drug applications for the Delcobese drugs. In Delco's request for a hearing, no investigations, including adequate and well-controlled clinical investigations were submitted. All that Delco has presented is 47 physicians' reports from a survey conducted by Delco from 1964 to 1968. Most of the physicians used the drug for treating obesity, although some did not state for what purpose they used the drug. Only one physician stated he used the drug to treat narcolepsy, and none stated they used the drug to treat minimal brain dysfunction in children. There are also no data presented on whether capsules or tablets were administered or whether the medication was of the sustained release type. The material, five to ten years old, was not submitted with the NDAs.

The physician reports are testimonials at best. There are no actual patient data in any report. None of these "investigations" were controlled. Furthermore, there are no data that demonstrate that the constituent ingredients in the Delcobese drugs contribute to the total claimed effects for the drugs. The Commissioner finds that these testimonials are not substantial evidence of the efficacy of the Delcobese drugs.

IV. *General Objections*. Both Rexar and Delco object to the Commissioner's finding in the February 12, 1973 FEDERAL REGISTER final order (38 FR 4249), that while a mixture of dextroamphetamine and amphetamine is ordinarily regarded as a single drug entity, a mixture of amphetamine and methamphetamine, or a mixture of dextroamphetamine and methamphetamine is not regarded as a single drug entity. The Commissioner's finding is sound from a pharmacological and chemical standpoint, and no evidence was submitted to refute it.

Dextroamphetamine is one of the two optical isomers which constitute the racemic mixture known as amphetamine; its chemical formula is identical with that of amphetamine. Methamphetamine, however, is a distinct chemical entity with a formula different from amphetamine or dextroamphetamine. Methamphetamine is one of many different sympathomimetic amines, such as ephedrine or phenylpropanolamine. While methamphetamine and amphetamine are at times lumped together due to their similar pharmacological action, namely central nervous system stimulation, the differences in pharmacological actions and chemistry make a mixture of amphetamine and methamphetamine a combination drug subject to § 3.86 (Goodman and Gilman, *The Pharmacological Basis of Therapeutics*, 1970, pp. 501–506, 293–296).

The fixed combination prescription drug policy, set forth at § 3.86, provides that where two or more drugs are combined into a single dosage form, each drug must make a contribution to the claimed effect. In addition, the dosage of each drug in the combination must be safe and effective for a significant patient population requiring concurrent therapy as defined in the drug's labeling. Exceptions to this general rule are where a component is added to enhance the safety or effectiveness of the principal active component or to minimize the potential for abuse of the principal active component.

Since the Obetrol and Delcobese drugs are fixed combination drugs because they consist of two separate drug entities, amphetamines and dextroamphetamines as one drug entity and methamphetamines as a second drug entity, these drugs are subject to the fixed combination prescription drug policy. Neither of the two special cases applies here, since no data were submitted to show that one drug entity enhanced the safety or effectiveness of the other; the drugs consist of equal parts of the two drug entities. Second, the abuse potential of both amphetamine and dextroamphetamine, and methamphetamine is well known throughout both the medical and lay communities. Therefore, addition of one drug entity to the other does not minimize the potential for abuse for one or the other. The fixed combination policy thus applies to Obetrol and Delcobese.

Rexar and Delco, to establish the safety and efficacy of Obetrol and Delcobese, would have had to submit studies in which four test groups were used: one to whom the combination drug was administered; one to whom the amphetamine and dextroamphetamine drug entity was administered; one to whom the methamphetamine drug entity was administered; and one to whom a placebo was administered. As pointed out above, none of the submitted studies were carried out in this manner. Thus, the effectiveness of these fixed-combination prescription drugs has not been proven by either Rexar or Delco.

V. *Legal Objections*. No legal objections to the withdrawal of approval of NDA 11-522 were raised by either Rexar or Delco. Delco admitted in its request for a hearing that the Delcobese drugs are similar to the Obetrol drugs. The Delcobese drugs are thus subject to the conclusions of the Commissioner reached with respect to the Obetrol drugs and their NDA (§ 130.40).

VI. *Findings*. The Commissioner, based on the review of the medical documentation offered to support the claims of safety and efficacy for Obetrol Tablets as a short term adjunct to a regimen of weight reduction based on caloric restriction in exogenous obesity, and Delcobese tablets and capsules and Delcobese sustained release tablets and capsules as a short term adjunct to a regimen of weight reduction based on caloric restriction in exogenous obesity and in the treatment of narcolepsy and minimal brain dysfunction in children, finds that Rexar Pharmacal Corp. and Delco Chemical Co. have failed to present substantial evidence of effectiveness for these products. No data was submitted on these fixed-combination drugs for prescription use that establishes that each of the drug components make a contribution to the claimed effect of the drug (§ 3.86).

Neither Rexar or Delco presented any data to establish that there is no potential for abuse of the Obetrol and Delcobese drugs. In addition, there is nothing in the record to show that there are not safer and effective drugs available for use for the conditions for which Obetrol and Delcobese are intended. The only safety data submitted were the apparent acute toxicity studies conducted with a drug "Oby-Rex #1", the results of which were not confirmed with clinical data. Therefore, no evidence has been submitted which challenges the Commissioner's finding as to the lack of proof of safety or which, in fact, proves the safety of Obetrol and Delcobese, and a hearing is not necessary on this issue. Nevertheless, the safety issue, for the purposes of this order, becomes moot since no substantial evidence of the effectiveness of Obetrol or Delcobese has been submitted. Therefore, the drugs would be withdrawn from the market even if they could be proven safe.

The Commissioner further finds that the approval of the New Drug Application heretofore approved for Obetrol-10 and Obetrol-20 Tablets (NDA 11-522) should be withdrawn on the basis of a lack of substantial evidence of effectiveness and lack of proof of safety. This finding applies with full force to the Delcobese drugs (§ 130.40).

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 505, 701, 52 Stat. 1052–1053, 1055–1056, as amended; (21 U.S.C. 355,

371)), and under authority delegated to the Commissioner (21 CFR 2.120), notice is given that the approval of the New Drug Application for Obetrol-10 and Obetrol-20 Tablets (NDA 11-522) is withdrawn, effective October 5, 1973. This order applies with full force and effect to the Delcobese drugs (§ 130.40).

(Sec. 505, 701, 52 Stat. 1052-1053, 1055-1056, as amended; (21 U.S.C. 355, 371).)

Dated September 17, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

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[DESI 9418]

[Docket No. FDC-D-602; NDA No. 9-418 etc.]

CERTAIN DRUGS CONTAINING PENTAERYTHRITOL TETRANITRATE IN COMBINATION WITH RAUWOLFIA ALKALOIDS

Notice of Withdrawal of Approval of New Drug Applications

A notice was published in the FEDERAL REGISTER of March 6, 1973 (38 FR 6090), extending to the holders of the new drug applications listed below, and to any interested person who may be adversely affected, an opportunity for hearing on the proposal of the Commissioner of Food and Drugs to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act, withdrawing approval of the listed applications and all amendments and supplements thereto. The basis of the proposed action was the lack of substantial evidence that the drugs are effective for their labeled indications.

NDA No.	Drug	NDA holder
9-418	Pentoxylon Tablets, containing pentaerythritol tetranitrate and alseroxylon.	Riker Laboratories, Inc., Subsidiary of 3M Co., 19901 Nordhoff St., Northridge, Calif. 91325.
10-084	Nitralox Tablets, containing pentaerythritol tetranitrate and alseroxylon.	Dorsey Laboratories, Division of Sandoz-Wander, Inc., Northeast U.S. 6 & Interstate 80, Lincoln, Nebr. 68501.
10-245	Pentaserpine Tablets and Pentaserpine "20" Tablets, containing pentaerythritol tetranitrate and reserpine.	USV Pharmaceutical Corp., 1 Scarsdale Rd., Tuckahoe, N.Y. 10707 (NDA formerly held by Nysco Laboratories, Inc.).
11-129	Respet Tablets, containing pentaerythritol tetranitrate and reserpine.	Westerfield Laboratories, Inc., 3941 Brotherton Rd., Cincinnati, Ohio 45209.

Both Riker Laboratories and USV Pharmaceutical Corp. (formerly Nysco Laboratories, Inc.) had previously discontinued their products and elected not to request a hearing. Neither Dorsey Laboratories, Inc. nor Westerfield Laboratories, Inc. filed a written appearance of election as provided by said notice. The failure to file such an appearance constitutes election not to avail themselves of an opportunity for hearing.

In addition to those listed above, three other new drug applications were included in the notice of March 6, 1973. Pfizer Pharmaceuticals, Inc., holder of NDA 10-998 for Cartrax 10 and Cartrax 20 Tablets (pentaerythritol tetranitrate and hydroxyzine hydrochloride), American Home Products Corp., holder of NDA 11-423 for Equanitrate 10 and Equanitrate 20 Tablets (pentaerythritol tetranitrate and meprobamate), and Carter-Wallace, Inc., holder of NDA 11-502 for Miltrate Tablets (pentaerythritol tetranitrate and meprobamate), elected to avail themselves of the opportunity for a hearing on their drugs. Their requests for a hearing are under review and will be the subject of a future publication in the FEDERAL REGISTER.

All identical, related, or similar products, not the subject of an approved new drug application, are covered by the new drug applications reviewed and are subject to this notice. See 21 CFR 130.40 (37 FR 23185, October 31, 1972). Any person who wishes to determine whether a specific product is covered by this notice should write to the Food and Drug Administration, Bureau of Drugs, Office of Compliance (BD-300), 5600 Fishers Lane, Rockville, MD 20852.

The Commissioner of Food and Drugs pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1053, as amended; 21 U.S.C. 355), and the Administrative Procedure Act (5 U.S.C. 554), and under authority delegated to him (21 CFR 2.120), finds that on the basis of new information before him with regard to the drugs, evaluated together with the evidence available to him when the applications were approved, there is a lack of substantial evidence that the drugs will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof.

Therefore, pursuant to the foregoing finding, approval of new drug applications Nos. 9-418, 10-084, 10-245, and 11-129 and all amendments and supplements thereto is withdrawn.

Shipment in interstate commerce of the above-listed drug products or of any identical, related, or similar product, not the subject of an approved new drug application, is henceforth unlawful.

Effective date.—This order shall become effective on October 5, 1973.

Dated September 19, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73-20298 Filed 9-24-73;8:45 am]

[FAP 3B2856]

SANDOZ COLORS & CHEMICALS

Notice of Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 3B7856) has been filed by Sandoz Colors & Chemicals, East Hanover, NJ 07936, proposing that § 121.2426 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 121.2526) be amended in paragraph (a)(5) to provide for the safe use of polyamide-epichlorohydrin water-soluble thermosetting resins prepared by reacting adipic acid with diethylenetriamine to form a basic polyamide and further reacting the polyamide with an epichlorohydrin and dimethylamine mixture for use in the manufacture of paper and paperboard intended for use in contact with food.

Dated September 11, 1973.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.73-20300 Filed 9-24-73;8:45 am]

[DESI 11073]

[Docket No. FDC-D-541; NDA 11-073]

WAMPOLE LABORATORIES

Notice of Withdrawal of Approval of New Drug Application

On January 12, 1973, there was published in the FEDERAL REGISTER (38 FR 1404) a notice of opportunity for hearing (DESI 11073) in which the Commissioner of Food and Drugs proposed to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) withdrawing approval of new drug application 11-073 for Vastran Forte Capsules containing niacin (375 mg.) with ascorbic acid, riboflavin, thiamine mononitrate, cyanocobalamin, pyridoxine hydrochloride, and calcium pantothenate; Wampole Laboratories, 35 Commerce Road, Stamford, CT 06904. The basis of the proposed withdrawal of approval was the lack of substantial evidence that this fixed combination drug, offered for hypercholesteremia, will have the effects that it purports or is represented to have under the conditions of use prescribed, recommended or suggested in the labeling.

All identical, related, or similar products, not the subject of an approved new drug application, are covered by the new drug application reviewed and are subject to this notice. See 21 CFR 130.40 (37 FR 23185, Oct. 31, 1972). Any person who wishes to determine whether a specific product is covered by this notice should write to the Food and Drug Administration, Bureau of Drugs, Office of Compliance (BD-300), 5600 Fishers Lane, Rockville, MD 20852.

Pursuant to the notice, Wampole Laboratories has reformulated Vastran Forte Capsules into a new product named Wampocap Capsules containing 500 mg. niacin. In the FEDERAL REGISTER of April 15, 1972 (37 FR 7535) and an amendment on March 19, 1973 (38 FR 7270) (DESI 9760), niacin as a single active ingredient was evaluated as effective for hypercholesterolemia and hyperbetalipoproteinemia. The amendment of March 19, 1973 stated the following indications:

As adjunctive therapy in addition to diet and other measures in the treatment of hypercholesterolemia and hyperbetalipoproteinemia.

It also required that the following statement follow the "Indications" section either enclosed in a block or in italics:

Notice: It has not been established whether drug-induced lowering of serum cholesterol or other lipid levels has a detrimental, a beneficial, or no effect on the morbidity due to atherosclerosis or coronary heart disease. Several years will be required before current investigations can yield an answer to this question.

No data were submitted, pursuant to the notice of January 12, 1973, in support of the effectiveness of the combination product, nor has any person filed a written appearance of election as provided by said notice. The failure to file such an appearance constitutes an election by such persons not to avail themselves of the opportunity for a hearing.

The Commissioner of Food and Drugs, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1053, as amended (21 U.S.C. 355)), and the Administrative Procedure Act (5 U.S.C. 554), and under authority delegated to him 21 CFR 2.120), finds that on the basis of new information before him with respect to the drug, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof.

Therefore pursuant to the foregoing finding, approval of that part of NDA 11-073 pertaining to Vastran Forte Capsules and all amendments and supplements applying thereto is withdrawn effective on October 5, 1973.

Shipment in interstate commerce of the above-listed drug product or of any identical, related, or similar product, not the subject of an approved new drug application, will then be unlawful.

Dated September 19, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73-20297 Filed 9-24-73;8:45 am]

Health Services Administration

NATIONAL ADVISORY COMMITTEES

Notice of Meetings

The Administrator, Health Services Administration, announces the meeting dates and other required information for the following National Advisory bodies scheduled to assemble the month of October 1973:

Committee name	Date, time, and place	Type of meeting and/or contact person
National Migrant Health Advisory Committee.	10/1-3, 9 a.m., Conference Room G, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open, contact Billy M. Sandlin, Room 7-20, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md., code 301-443-1150.

Purpose. The Committee is charged with advising the Administrator, Health Services Administration, on National policies and priorities; program guidelines, standards, and evaluation techniques; and other crucial issues relating to migrant health program.

Agenda. The Committee will consider new legislative initiatives and program innovations.

* * * * *

Committee name	Date, time, and place	Type of meeting and/or contact person
Maternal and Child Health Services Research Grants Review Committee.	10/18-19, 9 a.m., Conference Room L, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Closed, contact Gloria Weckerman, Room 12A-11, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md., code 301-443-2160.

Purpose. The Committee is charged with the review of all research grant applications in the program areas of maternal and child health administered by the Bureau of Community Health Services.

Agenda. The Committee will be performing review of grant applications for Federal assistance and will not be open to the public, in accordance with the determination by the Administrator, Health Services Administration, pursuant to Public Law 92-463, section 10(d).

Committee name	Date, time, and place	Type of meeting and/or contact person
National Advisory Council on Health Manpower Shortage Areas.	10/19-20, 9 a.m., Howard Johnson's Motor Lodge, University Blvd. and Viers Mill Rd., Wheaton, Md.	Open, contact Howard Hilton, Room 6-05, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md., code 301-443-4337.

Purpose. The Council is charged with establishing guidelines and regulations to improve the delivery of health care services; assigning Public Health Service personnel to areas where medical manpower and facilities are inadequate to meet the health needs of persons living in such areas; and on a nationwide basis recommending the criteria and personnel on which selection of areas are based.

Agenda. Agenda items include progress made in the designation process, results of review and evaluation visits, and open discussion with Acting Office Directors, Bureau of Community Health Service.

Agenda items are subject to change as priorities dictate.

A roster of members and other relevant information regarding the open/closed sessions may be obtained from the contact persons listed above.

Dated September 19, 1973.

ISABELLE G. GOLDBERG,
Acting Associate Administrator for Management Health Services Administration.

[FR Doc.73-20301 Filed 9-24-73;8:45 am]

National Institutes of Health

AD HOC TOXICOLOGY COMMITTEE

Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Ad Hoc Toxicology Committee, National Cancer Institute, September 27 and 28, 1973, 9:00 a.m. to 5:00 p.m., National Institutes of Health, Building 31, Conference Room 2. This meeting will be closed to the public to review 3 contract proposals in the field of toxicology, in accordance with the provisions set forth in Section 552(b) 4 of Title 5 U.S. Code and 10(d) of P.L. 92-463.

Mr. Frank Karel, Associate Director for Public Affairs, NCI, Building 31, Room 10A31, National Institutes of Health, Bethesda, Maryland 20014, 301-496-1911, will furnish summaries of the closed meeting and roster of committee members.

Dr. J. A. R. Mead, Executive Secretary, Building 37, Room 5A05, National Institutes of Health, Bethesda, Maryland 20014, 301-496-4386, will provide substantive program information.

Dated September 13, 1973.

JOHN F. SHERMAN,
Deputy Director, National Institutes of Health.

[FR Doc.73-20323 Filed 9-24-73;8:45 am]

CANCER CONTROL ADVISORY COMMITTEE

Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Cancer Control Advisory Committee, National Cancer Institute, October 4, 1973, at 9:00 a.m., National Institutes of Health, Building 31, Conference Room 9. This meeting will be open to the public from 9:00 a.m. to 5:00 p.m. for the Committee to discuss and advise the National Cancer Institute on: (1) The development of program plans for cancer control, including the recommendations from the cancer control planning conference; (2) the most effective methods and procedures for the implementation of the recommendations from the planning conference. Attendance by the public will be limited to space available.

Mr. Frank Karel, Associate Director for Public Affairs, NCI, Building 31, Room 10A31, National Institutes of Health, Bethesda, Maryland 20014, 301-496-1911, will furnish summaries of the open meeting and a roster of committee members.

Dr. Robert L. Woolridge, Executive Secretary, Building 31, Room 10A19, National Institutes of Health, Bethesda, Maryland 20014, 301-496-1946, will provide substantive program information.

Dated September 14, 1973.

JOHN F. SHERMAN,
Deputy Director, National Institutes of Health.

[FR Doc.73-20317 Filed 9-24-73;8:45 am]

PERIODONTAL DISEASES ADVISORY COMMITTEE

Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Periodontal Diseases Advisory Committee, National Institute of Dental Research, October 16-17, 1973, National Institutes of Health, Building 31-C, Conference Room 8. This meeting will be open to the public from 2:00 p.m. to 5:00 p.m. on October 16 and from 9:00 a.m. to 5:00 p.m. on October 17 to discuss research progress and research plans for the remainder of FY 1974. Attendance by the public will be limited to space available. The Executive Secretary from whom substantive program information may be obtained is: Dr. Anthony A. Rizzo, Scientist-Administrator, Extramural Programs, National Institute of Dental Research, National Institutes of Health, Westwood Building, Room 521, Bethesda, Maryland 20014.

Dated September 14, 1973.

JOHN F. SHERMAN,
Deputy Director,
National Institutes of Health.

(Catalog of Federal Domestic Assistance Program No. 13.325 and 13.827 National Institutes of Health.)

[FR Doc.73-20318 Filed 9-24-73;8:45 am]

NATIONAL ADVISORY COMMISSION ON MULTIPLE SCLEROSIS

Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Commission on Multiple Sclerosis on October 3, 1973, at the National Institutes of Health, Building 31A, Room 8A03A. This meeting will be open to the public from 10 a.m. to 4 p.m. and will continue the investigation into the most promising avenues for research leading to causes of and preventives and treatments for multiple sclerosis. Attendance by the public will be limited to space available.

1. The Institute Information Officer who will furnish summaries of the meeting and rosters of committee members is: Mrs. Ruth Dudley, Building 31, Room 8A03, phone: 496-5751.
2. The Executive Director from whom substantive program information may be obtained is: Dr. Harry M. Weaver, Room 8A11, Building 31A, NIH, phone: 496-3523.

Dated September 14, 1973.

JOHN F. SHERMAN,
Deputy Director,
National Institutes of Health.

[FR Doc.73-20321 Filed 9-24-73;8:45 am]

HYPERTENSION INFORMATION AND EDUCATION ADVISORY COMMITTEE

Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Hypertension Information and Education Advisory Committee, National Heart and Lung Institute, October 23, 1973, 9:00 a.m., National Institutes of Health, Building 31, Conference Room 6. This meeting will be open to the public from 9:00 a.m. to 5:00 p.m., October 23, 1973. The agenda will include progress reports on various aspects of the National High Blood Pressure Education Program. Attendance by the public will be limited to space available.

Mr. Hugh Jackson, Information Officer, NHLI, NIH Landow Building, Room C918, phone 496-4236, will furnish summaries of the meeting and rosters of the committee members. Substantive information may also be obtained from the Executive Secretary, Dr. John B. Stokes III, NHLI, NIH Building 31, Room 5A27, phone 496-6331.

Dated September 14, 1973.

JOHN F. SHERMAN,
Deputy Director,
National Institutes of Health.

[FR Doc.73-20322 Filed 9-24-73;8:45 am]

DENTAL CARIES PROGRAM ADVISORY COMMITTEE

Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Dental Caries Program Advisory Committee, National Institute of Dental Research, October 15-16, 1973, National Institutes of Health, Building 31-C, Conference Room 8. This meeting will be open to the public from 9:00 a.m. to 5:00 p.m. on October 15 and from 9:00 a.m. to 1:30 p.m. on October 16 to discuss research progress and research plans for the remainder of FY 1974. Attendance by the public will be limited to space available. The Executive Secretary from whom substantive program information may be obtained is: Dr. James P. Carlos, Associate Director, National Caries Program, National Institute of Dental Research, National Institutes of Health, Westwood Building, Room 528, Bethesda, Maryland 20014.

(Catalog of Federal Domestic Assistance Program No. 13.325 and 13.827 National Institutes of Health.)

Dated September 14, 1973.

JOHN F. SHERMAN,
Deputy Director,
National Institutes of Health.

[FR Doc.73-20319 Filed 9-24-73;8:45 am]

NATIONAL RESEARCH AND DEMONSTRATION CENTERS FOR HEART, BLOOD VESSEL, LUNG AND BLOOD DISEASES AND BLOOD RESOURCES

Request for Letters of Intent

The National Heart and Lung Institute announces its intent to establish a limited number of National Research and Demonstration Centers under authority of Part B of Title IV of the Public Health Service Act as amended by the National Heart, Blood Vessel, Lung and Blood Act of 1972 (P.L. 92-423) (42 U.S.C. 287 et seq.)

A National Research and Demonstration Center is defined as a national resource attached to a major medical complex and dedicated to working in close collaboration with the National Heart and Lung Institute to further the goals of the National Heart, Blood Vessel, Lung and Blood Program through a multidisciplined, coordinated, yet flexible, approach to research, education (public and professional) and demonstration of the applicability of the results of research. It is the inclusion of education and demonstrations and the coordination of these programs with the research and training efforts that sets a National Research and Demonstration Center apart from other types of programs.

Centers will be funded by the grant mechanism, but under conditions that will require close coordination with the National Heart and Lung Institute.

Proposals should be submitted on Form NIH-398, the application form for traditional research project grants. The format for presentation of a proposal should be as outlined in the "Program Announcement and Guidelines: National Research and Demonstration Centers for Heart, Blood Vessel, Lung and Blood Diseases and Blood Resources" dated August 20, 1973. Awards will be based on national competition. Only a limited number of awards will be made at the start of the program; additional Centers may be established later.

To describe the program in more detail and to enable potential applicants to ask questions, the National Heart and Lung Institute plans to hold a meeting of representatives of interested institutions on or about October 2, 1973. The Institute asks for letters of intent, which will not be binding, by November 1, 1973 in order to start planning for review of proposals. The deadline for receipt of formal applications is January 15, 1974.

Additional information may be obtained from:

Jerome G. Green, M.D.
Director, Division of Extramural Affairs
National Heart and Lung Institute
National Institutes of Health
Westwood Building, Room 5A18
Bethesda, Maryland 20014

Dated September 12, 1973.

ROBERT S. STONE,
Director,
National Institutes of Health.

[FR Doc.73-20316 Filed 9-24-73;8:45 am]

PULMONARY DISEASE ADVISORY COMMITTEE

Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Pulmonary Diseases Advisory Committee, National Heart and Lung Institute, October 8 and 9, 1973, 8:30 a.m., at the Holiday Inn of Bethesda (conference room to be assigned), Bethesda, Maryland. This meeting will be open to the public from 8:30 a.m., October 8, until its adjournment on October 9. The main

focus of the meeting will be on reports by subcommittees of the Advisory Committee and discussion of the Pulmonary Specialized Centers of Research Program. Attendance by the public will be limited to space available.

Mr. Hugh Jackson, Information Officer, NHLI, NIH Landow Building, Room C918, phone 496-4236, will furnish summaries of the meeting and rosters of the committee members. Substantive information may also be obtained from the Executive Secretary, Dr. Malvina Schweizer, NHLI, NIH Building 31, Room 5A10, phone 496-1613.

Dated September 14, 1973.

JOHN F. SHERMAN,
Deputy Director,
National Institutes of Health.

(Catalog of Federal Domestic Assistance Program No. 13.374, National Institutes of Health.)

[FR Doc.73-20320 Filed 9-24-73;8:45 am]

ATOMIC ENERGY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON D. C. COOK NUCLEAR PLANT, UNITS 1 & 2

Notice of Meeting

SEPTEMBER 21, 1973.

In accordance with the purposes of section 29 and 182 b. of the Atomic Energy Act (42 U.S.C. 2039, 2232 b.), the Advisory Committee on Reactor Safeguards Subcommittee on the D.C. Cook project will hold a meeting on October 5, 1973, in Room 1046, at 1717 H Street, NW., Washington, D.C. The purpose of this meeting will be to continue the Committee's formal Operating License review of the Donald C. Cook Nuclear Plant, Units 1 & 2. This facility is located in Lake Township near Benton Harbor, Michigan.

The following constitutes that portion of the Subcommittee's agenda for the above meeting which will be open to the public:

Friday, October 5, 1973, 9:30 a.m.-3:30 p.m.

The Subcommittee will hear presentations by Regulatory Staff and representatives of Indiana Michigan Electric Co. and their representatives and hold discussions with these groups pertinent to issuance of an Operating License for Donald C. Cook Nuclear Plant, Units 1 & 2.

In connection with the above agenda item, the Subcommittee will hold an executive session beginning at 8:30 a.m. which will involve a discussion of its preliminary views, and an executive session at the end of the day, consisting of an exchange of opinions of the Subcommittee members present and internal deliberations for the purpose of formulation of recommendations to the ACRS. In addition, prior to the executive session at the end of the day, the Subcommittee may hold a closed session with the Regulatory Staff and Applicant to discuss privileged information relating to plant security and fuel design, if necessary.

I have determined, in accordance with subsection 10(d) of Public Law 92-463, that the executive session at the beginning and end of the meeting will consist of an exchange of opinions and formulation of recommendations, the discussion of which, if written, would fall within exemption (5) of 5 U.S.C. 552(b) and that a closed session may be held, if necessary, to discuss certain information relating to plant security and fuel design, which is privileged and falls within exemption (4) of 5 U.S.C. 552(b). It is essential to close such portions of the meeting to protect such privileged information and protect the free interchange of internal views and to avoid undue interference with agency or Committee operation.

Practical considerations may dictate alterations in the above agenda or schedule.

The Chairman of the Subcommittee is empowered to conduct the meeting in a manner that in his judgment will facilitate the orderly conduct of business. With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by mailing 25 copies thereof, postmarked no later than October 1, 1973, to the Executive Secretary, Advisory Committee on Reactor Safeguards, U.S. Atomic Energy Commission, Washington, D.C. 20545. Such comments shall be based upon the Final Safety Analysis Report for this facility and related documents on file and available for public inspection at the Atomic Energy Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20545, and the St. Joseph Public Library, 500 Market Street, St. Joseph, Michigan 49085.

(b) Those persons submitting a written statement in accordance with paragraph (a) above may request an opportunity to make oral statements concerning the written statement. Such requests shall accompany the written statement and shall set forth reasons justifying the need for such oral statements and its usefulness to the Subcommittee. To the extent that the time available for the meeting permits, the Subcommittee will receive oral statements during a period of not more than 30 minutes at an appropriate time, chosen by the Chairman of the Subcommittee, between the hours of 1:30 p.m. and 3 p.m. on the day of the meeting.

(c) Requests for the opportunity to make oral statements shall be ruled on by the Chairman of the Subcommittee, who is empowered to apportion the time available among those selected by him to make oral statements.

(d) Information as to whether the meeting has been cancelled or rescheduled and in regard to the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted, can be obtained by a prepaid telephone call on October 4, 1973, to the Office of the Executive Secretary of the Committee (telephone: 301-973-5651) between 8:30 a.m. and 5:15 p.m. e.d.t.

(e) Questions may be propounded only by members of the Subcommittee and its consultants.

(f) Seating for the public will be available on a first-come, first-served basis.

(g) A copy of the transcript of the open portions of the meeting will be available for inspection during the following workday at the Atomic Energy Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20545, and within approximately nine days at the St. Joseph Public Library, 500 Market Street, St. Joseph, Michigan 49085. On request, copies of the minutes of the meeting will be made available for inspection at the Atomic Energy Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20545, on or after December 5, 1973. Copies may be obtained upon payment of appropriate charges.

JOHN C. RYAN,
Advisory Committee
Management Officer.

[FR Doc.73-20493 Filed 9-24-73;8:45 am]

[Docket Nos. 50-413; 50-414]

DUKE POWER CO. (CATAWBA NUCLEAR STATION, UNITS 1 AND 2)

Assignment of Members of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority in 10 CFR 2.787 (a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for these proceedings:

Alan S. Rosenthal, Chairman
Michael C. Farrar, Member
Dr. Lawrence R. Quarles, Member

Dated September 19, 1973.

MARGARET E. DU FLO,
Secretary to the Appeal Board.

[FR Doc.73-20415 Filed 9-24-73;8:45 am]

[Docket No. 50-346(OL)]

TOLEDO EDISON CO. AND CLEVELAND ELECTRIC ILLUMINATING CO.

Notice and Order for Special Prehearing Conference

Pursuant to notice and order of this Board, dated August 13, 1973, and in accordance with the Commission's rules of practice, notice is hereby given that a special prehearing conference will be held in this proceeding on October 12, 1973, at 10 am, local time, at the Lucas County Courthouse, Court of Appeals (Forth Floor), Adams and Erie Streets, Toledo, Ohio.

All members of the public are invited to attend this special prehearing conference as well as the evidentiary hearing to be scheduled and held at a later date. However, no evidence will be received at this Conference; nor will there be opportunity for presentation of limited appearance statements. Such statements will be received on the initial day of the evidentiary hearing.

This special prehearing conference will be conducted in accordance with § 2.751 (a) of the Commission's rules of practice, and will deal with the following matters:

a. The identification and simplification of the issues,

b. The obtaining of stipulations and admissions of fact,

c. The need for discovery and time required for such discovery, and

d. Such other matters which will aid in the orderly disposition of the case.

It is so ordered.

Issued at Washington, D.C., this 19th day of September 1973.

ATOMIC SAFETY AND LICENSING BOARD,

JOHN B. FARMAKIDES,
Chairman.

[FR Doc.73-20303 Filed 9-24-73;8:45 am]

[Docket No. 70-371]

UNITED NUCLEAR CORP.

Notice of Availability of Applicant's Environmental Report

Pursuant to the National Environmental Policy Act of 1969 and the Atomic Energy Commission's regulations, notice is hereby given that a copy of a revised environmental report received May 3, 1973, and revised data received June 11 and July 24, 1973, submitted by United Nuclear Corporation, are available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Raymond Hill Library, Raymond Hill Road, Oakdale, Connecticut. The report and revisions are also being made available to the public at the State Clearinghouse, Office of State Planning, Department of Finance and Control, 340 Capitol Avenue, Hartford, Connecticut 06115 and at the Southeastern Connecticut Regional Planning Agency, 139 Boswell Avenue, Norwich, Connecticut 06360.

The report and revisions discuss environmental considerations related to the production and assembly of unirradiated enriched uranium fuel elements and other components for naval reactor cores at United Nuclear Corporation's Naval Products Division Montville Plant located in the town of Montville, New London County, Connecticut.

After the report and revisions have been analyzed by the Commission's Director of Regulation or his designee, a draft environmental statement related to the proposed action will be prepared. Upon preparation of the draft environmental statement, the Commission will, among other things, cause to be published in the FEDERAL REGISTER a notice of its availability. The notice will request comments from interested persons on the proposed action and on the draft environmental statement. The notice will also contain a statement to the effect that the comments of Federal agencies and State and local officials and interested persons thereon will be available when received.

Dated at Bethesda, Maryland, this eighteenth day of September, 1973.

For the Atomic Energy Commission.

R. B. CHITWOOD,
Chief, Technical Support Branch, Directorate of Licensing.

[FR Doc.73-20414 Filed 9-24-73;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 25826; Order No. 73-9-75]

SEABOARD WORLD AIRLINES, INC.

Order To Show Cause Regarding Flag-Stop Service at Bangor, Maine

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 19th day of September 1973.

By petition filed August 23, 1973, Seaboard World Airlines, Inc. (Seaboard) requests the Board to issue an order to show cause amending its certificates for routes 119 and 119-A[1] to authorize all-cargo flag-stop service at Bangor, Maine. The petition was filed in response to Press Release CAB 73-106, issued June 19, 1973, in which the Board invited, inter alia, U.S.-flag carriers to apply for flag-stop or permissive authority to enplane and deplane cargo at Bangor International Airport.

In support of its petition, Seaboard states that the authorization of flag-stop all-cargo service at Bangor will enable Maine area shippers and consignees to receive their first direct North Atlantic cargo service; that no carrier will be adversely affected by such authorization; and that, since Seaboard regularly serves Bangor International Airport as a technical stop, it will not incur any additional direct expenses in providing flag-stop service at Bangor.

The State of Maine and the Bangor Parties[2] filed answers in support of Seaboard's application. No answers in opposition to the petition have been received.

Upon consideration of the pleadings and all the relevant facts, we have decided to issue an order to show cause which proposes to add Bangor, Maine, as a temporary point on Seaboard's routes 119 and 119-A.[3] The authority to serve Bangor will be limited to all-cargo flag-stop service, for a period of three years. We tentatively find and conclude that the public convenience and necessity require the amendment of Seaboard's certificates as outlined above.[4] The facts and circumstances which we have tentatively found to support our proposed ultimate conclusion appear below.

In the Board's Press Release CAB 73-106, dated June 19, 1973, we invited U.S.-flag and foreign-flag airlines operating between the United States and Europe or the Orient to apply for the right to enplane and deplane cargo at Bangor International Airport in Maine on a "flag-stop" or permissive basis, without passenger traffic rights. We found that the airport is uncongested, offers carriers excellent facilities, and is on or close to the great circle route between much of the United States and Europe. Furthermore, we pointed out that Bangor flag-stop authority could facilitate the handling of international air cargo by alleviating the burden on existing cargo facilities, promoting the export of goods such as seafoods, and helping attract light manufacturing industries to the State of Maine, which is currently suffering relatively high rates of unemployment. Finally, we contemplated that the privileges would be granted on a temporary, experimental basis for a period of three years.

Seaboard is an all-cargo U.S.-flag carrier operating between the United States and Europe, and the carrier already utilizes Bangor International Airport as a technical stop. Thus, we tentatively find that Seaboard is in an excellent position to use Bangor on a flag-stop basis and to provide the benefits accruing from Bangor flag-stop service which we set out in Press Release CAB 73-106. Moreover, we note that the State of Maine and the Bangor Parties support Seaboard's proposal, and no answers in opposition to the applications have been received. Further, we tentatively find that the same reasons which prompted the Board to authorize Seaboard to engage in restricted interstate commerce apply equally to the addition of Bango as a temporary flag-stop point on route 119-A. Thus, under these circumstances and in view of these tentative findings, we tentatively conclude that amendment of Seaboard's certificates to authorize flag-stop all-cargo service at Bangor, Maine, for an experimental period of three years is in the public interest.

Interested persons will be given twenty days following service of this order to show cause why the tentative findings and conclusions set forth herein should not be made final. We expect such persons to support their objections, if any, with detailed answers, specifically setting forth the tentative findings and conclusions to which objection is taken. Such objections should be accompanied by arguments of fact or law and should be supported by legal precedent or detailed economic analysis. If an evidentiary hearing is requested, the objector should state in detail why such a hearing is considered necessary and what relevant and material facts he would expect to establish through such a hearing that cannot be established in written pleadings. General, vague, or unsupported objections will not be entertained.

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[1] Route 119 includes the U.S. coterminal points Los Angeles/San Francisco/Chicago/Detroit/Cleveland/Philadelphia/New York/Boston and points throughout Western and Northern Europe. Route 119-A authorizes interstate air transportation of cargo on flights serving Europe between U.S. coterminals, except New York.

[2] The City of Bangor, Maine, and the Greater Bangor Area Chamber of Commerce.

[3] The authority to serve Bangor as a flag-stop on route 119-A would permit Seaboard to collect and disperse cargo to and from Bangor originating at or destined for other U.S. coterminals, provided the flights also serve Europe.

[4] We also tentatively find that Seaboard is fit, willing, and able properly to perform the air transportation authorized by the certificates proposed to be issued herein and to conform to the provisions of the Act and the Board's rules, regulations, and requirements thereunder.

Accordingly, It Is Ordered, That:

1. All interested persons are directed to show cause why the Board should not issue an order making final the tentative findings and conclusions stated herein, and amending the certificates of public convenience and necessity of Seaboard World Airlines, Inc. for routes 119 and 119-A so as to add Bangor, Maine, as a temporary point thereto, subject to the condition that the authority to serve Bangor will be limited to all-cargo flag-stop service, for a period of three years;

2. Any interested persons having objection to the issuance of an order making final any of the proposed findings, conclusions, or certificate amendments set forth herein shall, within 20 days after service of a copy of this order, file with the Board and serve upon all persons listed in paragraph 5 a statement of objections together with a summary of testimony, statistical data, and other evidence expected to be relied upon to support the stated objections;[5]

3. If timely and properly supported objections are filed, full consideration will be accorded the matters and issues raised by the objections before further action is taken by the Board;

4. In the event no objections are filed, all further procedural steps will be deemed to have been waived and the Board may proceed to enter an order in accordance with the tentative findings and conclusions set forth herein; and

5. A copy of this order shall be served upon Seaboard World Airlines, Inc.; Delta Air Lines, Inc.; Governor, State of Maine; City Manager of Bangor; the Maine Department of Aeronautics; Flying Tiger Line Inc.; Pan American World Airways, Inc.; Trans World Airlines, Inc.; National Airlines, Inc.; Northwest Airlines, Inc.; American Airlines, Inc.; and the Postmaster General (attention: Assistant General Counsel for Transportation), U.S. Postal Service.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND, *Secretary.*

[FR Doc.73-20425 Filed 9-24-73;8:45 am]

[5] All motions and/or petitions for reconsideration shall be filed within the period allowed for filing objections and no further such motions, requests, or petitions for reconsideration of this order will be entertained.

CONSUMER PRODUCT SAFETY COMMISSION

STANDARD FOR THE FLAMMABILITY OF MATTRESSES

Notice of Approval of Alternate Sampling Plan for Mattresses and Mattress Pads

In the FEDERAL REGISTER of June 7, 1972 (37 FR 11362), the Secretary of Commerce published the Flammability Standard for Mattresses (DOC FF 4-72) pursuant to provisions of the Flammable Fabrics Act.

Effective May 14, 1973, section .30(b) of the Consumer Product Safety Act (Public Law 92-573, 86 Stat. 1231; 15 U.S.C. 2079(b)) transferred all functions under the Flammable Fabrics Act to the Consumer Product Safety Commission.

Subsequently, the Consumer Product Safety Commission amended and reissued the standard (as the Standard for the Flammability of Mattresses (FF 4-72)) in the FEDERAL REGISTER of June 8, 1973 (38 FR 15095), effective June 7, 1973. As a result of a judicially imposed temporary stay, the standard as amended became effective June 22, 1973.

The standard contains a sampling plan for the selection and testing of mattresses and mattress pads. A provision (.4(b)(1)) of the standard allows alternate sampling plans to be used provided they are approved by the Consumer Product Safety Commission. Such plans must provide at least the equivalent level of fire safety to the consumer as that provided by the standard's sampling plan.

The alternate sampling plan for mattresses and mattress pads set forth below was submitted for approval in accordance with .4(b)(1) of the standard. It has been reviewed and determined to offer an equivalent level of fire safety to the consumer and to meet all technical requirements of the standard. It has operating characteristics such that the probability of unit acceptance at any percentage defective does not exceed the corresponding probability of unit acceptance of the basic sampling plan in the region of the operating characteristic curve that lies between 5 and 95 percent acceptance probability. The Commission hereby approves the plan.

Use of this alternate sampling plan, which may be cited as Alternate Sampling Plan No. 6 to FF 4-72, is applicable to mattresses and mattress pads. The plan is not restricted to the party submitting it but may be used by any mattress or mattress pad manufacturer.

Records of the use of this plan shall be maintained by the manufacturer in accordance with regulations established by the Consumer Product Safety Commission (see proposed 16 CFR 302.20 in the FEDERAL REGISTER of June 11, 1973; 38 FR 15373).

All provisions of the Standard for the Flammability of Mattresses (FF 4-72, as amended) are applicable under this alternate sampling plan except as specified below.

Dated September 20, 1973.

SADYE E. DUNN, *Secretary, Consumer Product Safety Commission.*

ALTERNATE SAMPLING PLAN NUMBER 6 TO FF 4-72 MATTRESSES AND MATTRESS PADS

The following substitutes for .4(b) *Specimen and sampling* of FF 4-72:

.4 *Test procedure.*

* * * * *

(b) *Specimen and sampling.*—(1) *General.*—(i) The test criterion of .3(b) of FF 4-72 shall be used in conjunction with this Alternate Sampling Plan No. 6 (ASP No. 6). This ASP No. 6 may be used in conjunction with ASP No. 4 to FF 4-72 (mattress ticking) if desired. (ASP No. 4 was published in the FEDERAL REGISTER of June 19, 1973; 38 FR 15990). When ASP No. 4 is so used, the provisions of this ASP No. 6 shall apply with respect to production testing of mattresses or mattress pads.

(ii) Differing options or sampling plans may be employed with respect to differing mattress types and/or production units; however, any sampling plan employed with respect to a specific production unit shall be so employed in its entirety. (Note: Throughout this ASP No. 6 (except for (A), (B), and (C) of .4(b)(1)(iii)), "mattress(es)" means "mattress(es) or mattress pad(s).")

(iii) For purposes of this ASP No. 6, "initial production quantity" means a quantity of mattresses equalling or exceeding a specified fraction of the quantity to be contained in the production unit to be accepted upon successful completion of the sampling requirements. Each prototype to be included in the production unit shall be represented in the initial production quantity. For each production unit, one of the following four options shall be selected:

(A) *Option 1.*—The specified fraction shall be one-thirtieth. The quantity limit shall be 800 mattresses or 5,500 mattress pads for normal sampling (.4(b)(2)(i)(B)(*1*)) and 1,700 mattresses or 11,000 mattress pads for reduced sampling (.4(b)(2)(i)(B)(2)) unless a smaller limit is imposed under the provisions of .4(b)(2)(i).

(B) *Option 2.*—The specified fraction shall be one-twentieth. The quantity limit shall be 950 mattresses or 6,600 mattress pads for normal sampling and 2,000 mattresses or 13,000 mattress pads for reduced sampling unless a smaller limit is imposed under the provisions of .4(b)(2)(i).

(C) *Option 3.*—The specified fraction shall be one-tenth. The quantity limit shall be 2,000 mattresses for normal sampling and 4,650 mattresses for reduced sampling unless a smaller limit is imposed under the provisions of .4(b)(2)(i). The quantity limit shall be 13,450 mattress pads for normal sampling unless a smaller limit is imposed under the provisions of .4(b)(2)(i). The quantity limit for mattress pads for reduced sampling shall be that imposed under the provisions of .4(b)(2)(i).

(D) *Option 4.*—The specified fraction shall be one-fifth. The quantity limit shall be that imposed under the provisions of .4(b)(2)(i).

(2) *Mattress sampling.*—The basic mattress sampling plan is made up of two parts: Prototype qualification (.4(b)(2)(i)(A)) and production testing (.4(b)(2)(i)(B)). In addition, a batch sampling plan (.4(b)(2)(ii)) is given that may be used for small production quantities, when shipping requirements prohibit the use of the basic plan or for other reasons at the discretion of the manufacturer.

(i) *Basic sampling plan.*—A production unit in the basic sampling plan shall consist of not more than 250 mattresses

of a mattress type in normal sampling (.4(b)(2)(i)(B)(*1*)) nor more than 500 mattresses of a mattress type in reduced sampling (.4(b)(2)(i)(B)(2)) or the quantity produced in 1½ consecutive calendar months, whichever is smaller in either case. This production unit size may be increased to the quantity produced in 1½ consecutive calendar months or less: *Provided,* That it is either documented that each of the materials contributing to the cigarette ignition characteristics of all the mattresses in the production unit and the preceding or the following production unit came from a single manufacturing lot of such material, or 50 consecutive production units (at least 20,000 mattresses) have all been accepted in production testing as set forth in .4(b)(2)(i)(B). In no event shall the production unit size exceed quantity limits imposed by the option selected.

(A) *Protoype qualification.*—(*1*) For prototype qualification, the term "manufacturer" shall mean (*i*) with respect to a company having one manufacturing facility, that company; (*ii*) with respect to a company having two or more manufacturing facilities, either that company or one or more of its manufacturing facilities as it elects; or (*iii*) with respect to a company that is part of a group of companies that have elected to share in a prototype design, either that group of companies or a portion of that group or (*i*) or (*ii*) above, as that company elects.

(*2*) Each "manufacturer" shall select enough of each mattress prototype from preproduction or current production to provide six surfaces for test (three mattresses if both sides can be tested or six mattresses if only one side can be tested). Test each of the six surfaces according to .4(d) *Testing* of FF 4–72. If all the cigarette test locations on all six surfaces satisfy the test criterion of .3(b) of FF 4–72, accept the mattress prototype. If one or more of the cigarette test locations on the six surfaces fail the test criterion of .3(b), reject the mattress prototype.

(*3*) If it has been elected to include more than one company and/or more than one manufacturing facility in the term "manufacturer" for purposes of prototype qualification, each such company and each such manufacturing facility shall select enough additional prototype mattresses from its own preproduction or current production to provide two surfaces for test. Test each of the two surfaces according to .4(d) of FF 4–72. If all the cigarette test locations on both surfaces satisfy the test criterion of .3(b) of FF 4–72, accept the mattress prototype for that company or manufacturing facility. If one or more of the cigarette test locations on the two surfaces fail the test criterion of .3(b), reject the mattress prototype for that company or manufacturing facility.

(*4*) Mattress prototype qualification may be repeated after the manufacturer has taken action to improve the resistance of the mattress prototype to ignition by cigarettes through mattress design, production, or materials selection. When mattress prototype qualification is repeated as a result of prototype rejection by the "manufacturer," such qualification shall be conducted as if it were an original qualification. When the mattress prototype qualification is repeated as a result of prototype rejection under the provisions of the proceding (*3*) or as a result of production unit rejection, such qualification shall be performed as if the producer of the failing mattress were a company having one manufacturing facility.

(*5*) Each mattress prototype must be accepted in prototype qualification prior to shipping any mattresses to customers and prior to producing significant quantities of mattresses. If the "manufacturer" is one manufacturing facility, the first production unit manufactured immediately after successful prototype qualification or the production unit from which the mattresses were selected for the successful prototype qualification (not to exceed 500 mattresses in either case) may be accepted and shipped to customers without further testing if all mattresses in the production unit are the same as the prototype except for size.

(B) *Production testing.*—For production testing, the term "manufacturer" shall mean each manufacturing facility. Random selection for production testing shall be accomplished by use of random number tables or equivalent means as determined by the Consumer Product Safety Commission. If it is desired to use only mattresses of a specified size (for example, twin) for testing, the drawing may be repeated until sufficient mattresses of that size have been selected. A production unit, except for the first production unit following successful prototype qualification as specified in .4(b)(2)(i)(A), is either accepted or rejected according to the following plan:

(*1*) *Normal sampling.*—(*i*) From the initial production quantity (.4(b)(1)(iii)), randomly select enough mattresses to provide four surfaces for test (two mattresses if both sides can be tested or four mattresses if only one side can be tested). Test each of the four surfaces according to .4(d) of FF 4–72. If all the cigarette test locations on all four surfaces meet the test criterion of .3(b) of FF 4–72, accept the production unit. If two or more individual cigarette test locations fail the test criterion of .3(b), reject the production unit. If only one individual cigarette test location fails the test criterion of .3(b), select enough additional mattresses from the initial production quantity to provide eight additional surfaces for test. Test each of the eight additional surfaces according to .4(d). If all the cigarette test locations on the eight additional surfaces meet the test criterion of .3(b), accept the production unit. If one or more of the individual cigarette test locations on the eight additional surfaces fail the test criterion of .3(b), reject the production unit.

(*ii*) Production unit rejection shall include all mattresses in the particular production unit under test. Such rejection also results in the loss of prototype qualification (.4(b)(2)(i)(A)) for all prototypes included in the production unit under test.

(*2*) *Reduced sampling.*— (*i*) The level of sampling required for mattress production acceptance may be reduced provided the preceding 15 consecutive production units of mattresses (at least 500 mattresses) have all been accepted using the normal sampling plan of this ASP No. 6 (.4(b)(2)(i)(B)(*1*)) or that of FF 4–72. The production quantity for reduced sampling under this ASP No. 6 shall consist of one production unit as defined in .4(b)(2)(i).

(*ii*) From the initial production quantity (.4(b)(1)(iii)), randomly select enough mattresses to provide four surfaces for test. Test each of the four surfaces according to .4(d) of FF 4–72. If all the cigarette test locations on the four surfaces meet the test criterion of .3(b) of FF 4–72, accept the production unit. If two or more individual cigarette test locations fail the test criterion of .3(b), reject the production unit. If only one individual cigarette test location fails the test criterion of .3(b), accept the production unit.

(*iii*) Production unit rejection shall include all mattresses in the particular production unit under test. Such rejection also results in the loss of prototype qualification (.4(b)(2)(i)(A)) for all prototypes included in the production unit under test.

(ii) *Batch sampling plan.*—For the batch sampling plan, the term "manufacturer" shall mean each manufacturing facility. A production unit in the batch sampling plan shall consist of not more than 250 mattresses or the quantity produced in one period of 30 consecutive calendar days, whichever is smaller.

(A) *Batch unit qualification and acceptance.*—(*1*) Select enough mattresses from the inital production of the production unit to provide four surfaces for test (two mattresses if both sides can be tested or four mattresses if only one side can be tested). Test each of the four surfaces according to .4(d) of FF 4–72. If all the cigarette test locations on the four surfaces meet the test criterion of .3(b) of FF 4–72, accept the production unit. If one or more of the cigarette test locations on the four surfaces fail the test criterion of .3(b), reject the production unit.

(*2*) After rejection, production unit qualification and acceptance under this batch sampling plan may be repeated after the resistance of the mattress to ignition by cigarettes is improved by the manufacturer taking corrective action in mattress design, production, or materials selection.

(*3*) Acceptance of any production unit under this batch sampling plan shall not have any effect on prototype qualification (.4(b)(2)(i)(A)) or production unit acceptance of any other production unit.

(*3*) *Disposition of rejected units.*—Rejected production units shall not be retested, offered for sale, sold, or promoted for use as mattresses as defined in .1(a) of FF 4–72 except after reworking to

improve the resistance to ignition by cigarettes and subsequent retesting in accordance with the procedures set forth in the basic sampling plan (.4(b)(2)(i)).

(4) *Records.*—Records of all production unit sizes, test results, and the disposition of rejected production units shall be maintained by the manufacturer in accordance with regulations established by the Consumer Product Safety Commission (see proposed 16 CFR 302.20 in the FEDERAL REGISTER of June 11, 1973; 38 FR 15373).

(5) *Preparation of mattress samples.*—The mattress surface shall be divided laterally into two sections (see figure 1 of FF 4–72); one section for the bare mattress tests and the other for the two-sheet tests.

(6) *Sheet selection.*—The sheets shall be white, 100-percent combed cotton percale, not treated with a chemical finish which imparts a characteristic such as permanent press or flame resistance, and shall have 170–200 threads per square inch and fabric weight of 115±14 grams per square meter (3.4±0.4 ounces per square yard), or shall be of another type approved by the Consumer Product Safety Commission. Size of sheet shall be appropriate for the mattress being tested.

(7) *Sheet preparation.*—The sheet shall be laundered once before use (in an automatic home washer using the hot water setting and longest normal cycle with the manufacturer's recommended quantity of a commercial detergent) and dried in an automatic home tumble dryer. The sheet shall be cut across the width into two equal parts after washing.

(8) *Cigarettes.*—Unopened packages of cigarettes shall be selected for each series of tests.

(9) *Compliance marketing sampling plans.*—(i) Sampling plans for use in market testing of items covered by the standard (FF 4–72) may be issued by the Consumer Product Safety Commission. Such plans shall define noncompliance of a production unit to exist only when it is shown, with a high level of statistical confidence, that those production units represented by tested items which fail such plans will in fact fail the standard.

(ii) Production units found to be noncomplying under these provisions shall be deemed not to conform to the standard (FF 4–72).

(iii) The Consumer Product Safety Commission will propose such plans in the FEDERAL REGISTER for public comment prior to their promulgation.

(10) *Postponement of production testing.*—Temporary suspension of production testing may be granted on a case-by-case basis by the Consumer Product Safety Commission in those instances where an individual manufacturer proves, under rules prescribed by the Commission, that he cannot acquire access to either in-house or independent testing facilities for production testing. In the event of such a suspension, the manufacturer would still be obligated to produce a mattress that meets all other requirements of the standard (FF 4–72).

[FR Doc.73-20423 Filed 9-24-73;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FIFRA Docket No. 294]

CALCIUM CYANIDE, STRYCHNINE, SODIUM MONOFLUOROACETATE (1080) AND SODIUM CYANIDE USED IN CERTAIN RODENTICIDES

Order Fixing Parties

By notice dated June 19, 1973, and published in the FEDERAL REGISTER on June 26, 1973, 38 FR 16796, the Acting Administrator, Environmental Protection Agency, under authority of section 6(b) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, gave notice of his intention to hold a hearing to determine whether or not the use of the above products as rodenticides in field, human or urban areas, should be canceled or amended. Under said notice any person who wished to become a party to the hearing was required to file by July 26, 1973, a response to the statement of issues which accompanied the notice and which was published therewith.

The undersigned has been designated as the Administrative Law Judge to be in charge of and to preside at these proceedings.

Pursuant to § 164.8 of the rules of practice for the conduct of these hearings (38 FR 19371, July 20, 1973), notice is hereby given that it has been determined that the following persons, firms, associations, and governmental units have filed responses, in accordance with § 164.24 of said rules, to the notice of June 19, 1973. Accordingly, *It is hereby ordered,* That the following are parties to the proceedings:

1. United States Environmental Protection Agency
   Anson M. Keller, Esquire
   Office of General Counsel
   401 M Street SW.
   Washington, D.C. 20460
2. B & G Company
   L. P. Quattrochi
   General Manager
   P.O. Box 20372
   Dallas, Texas 75220
3. Defenders of Wildlife
   Mary Hazell Harris
   Executive Director and Editor
   2000 N Street NW., Suite 201
   Washington, D.C. 20036
4. Environmental Defense Fund
   William A. Butler, Esquire
   1525 18th Street NW.
   Washington, D.C. 20036
5. Fund for Animals, Inc., The
   Lewis Regenstein
   Executive Vice President
   1765 P Street NW.
   Washington, D.C. 20036
6. Humane Society of the United States, The
   Murdaugh S. Madden, Esquire
   General Counsel
   910 17th Street NW.
   Washington, D.C. 20006
7. Izaak Walton League of America, Inc., The
   Maitland S. Sharpe
   Environmental Affairs Director
   1800 North Kent Street, Suite 806
   Arlington, Virginia 22209
8. National Audubon Society
   Cynthia E. Wilson
   Washington Representative
   1511 K Street NW.
   Washington, D.C. 20005
9. National Forest Products Association
   Robert S. Bassman, Esquire
   1619 Massachusetts Avenue NW.
   Washington, D.C. 20036
10. National Parks & Conservation Association
    John W. Grandy, IV, Ph.D.
    Administrative Assistant
    Parks and Wildlife
    1701 18th Street NW.
    Washington, D.C. 20009
11. National Pest Control Association
    Philip J. Spear, Ph.D.
    Senior Director, Research
    C. D. Mampe, Ph.D.
    Director, Technical Services
    250 West Jersey Street
    Elizabeth, New Jersey 07207
12. National Resources Defense Council, Inc.
    Hamilton F. Kean
    15 West 44th Street
    New York, New York 10036
13. Sebesta Bait Mixing Plant
    O. L. Sebesta
    P.O. Box 306
    Mitchell, South Dakota 57301
14. Sierra Club
    William A. Butler, Esquire
    1525 18th Street NW.
    Washington, D.C. 20036
15. United States Department of Agriculture
    Alfred R. Nolting, Esquire
    Raymond W. Fullerton, Esquire
    Office of the General Counsel
    14th & Independence Avenue SW.
    Washington, D.C. 20250
16. United States Department of Defense
    Lt. Col. Harland W. Fowler, Jr.
    Executive Secretary
    Armed Forces Pest Control Board
    Forest Glen Section, WRAMC
    Washington, D.C. 20012
17. Wilderness Society, The
    Stewart M. Brandborg
    Executive Director
    1901 Pennsylvania Avenue NW.
    Washington, D.C. 20006

Certain firms, associations, and governmental units have indicated their desire to become parties but have filed incomplete responses and it has been determined that they are not parties.

Any person, firm, association, or governmental unit not included in the above list of parties may show cause before me, in writing, not later than October 4, 1973, why he or it should not be added as a party to these proceedings. For those who wish to intervene in this hearing attention is called to § 164.31 of the above-mentioned Rules of Practice.

Notice of public hearing will be published in the FEDERAL REGISTER as required by § 164.8 of the Rules of Practice.

Due notice of prehearing conference will be given to all party-participants.

BERNARD D. LEVINSON,
Administrative Law Judge.

SEPTEMBER 20, 1973.

[FR Doc.73-20440 Filed 9-24-73;8:45 am]

MOTOR VEHICLE POLLUTION CONTROL

California State Standards; Notice of Public Hearing

Whereas, the Clean Air Act, as amended, section 209(a) 42 U.S.C. 1857f-6a(a) 81 Stat. 501 (Public Law 91-604) provides, "No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part, * * * [or] * * * shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment";

Whereas, section 209(b) of said Act directs the Administrator of the Environmental Protection Agency, after notice and opportunity for public hearing, to waive application of the prohibitions of said section 209 to any State which had adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, unless he finds that such State does not require standards more stringent than applicable Federal standards to meet compelling and extraordinary conditions or that such State standards and accompanying enforcement procedures are not consistent with section 202(a) of the Clean Air Act;

Whereas, the State of California had, prior to March 30, 1966, adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines;

Whereas, by letter dated September 29, 1971, California submitted a request for waiver of preemption with respect to model years 1973 through 1976 gasoline powered motor vehicles (including both passenger vehicles and light duty trucks) under 6,001 pounds gross vehicle weight;

Whereas, on April 19, 1972, and by notice published in the FEDERAL REGISTER, on April 25, 1972 (37 FR 8128), after holding a public hearing February 8, 1972, on California's request for waiver and after California withdrew the model year 1976 portion of the request, the Administrator, pursuant to section 209(b), granted the model year 1973 and 1974 portions of the request, but held in abeyance the model year 1975 portion of the request pending development of further information;

Whereas, on April 11, 1973, and by notice published in the FEDERAL REGISTER, on April 26, 1973 (38 FR 10317), the Administrator, pursuant to section 202(b)(5)(D) of the Act, granted the requests of five automobile manufacturers to suspend for one year the effective date of the statutory standards for model year 1975 light duty vehicles (hydrocarbons, 41 grams/mile; carbon monoxide, 3.4 grams/mile; oxides of nitrogen, 3.1 grams/mile) and established interim standards (hydrocarbons, 1.5 grams/mile for the nation, carbon monoxide, 15 grams/mile for the nation other than California, and 9 grams/mile for California; and oxides of nitrogen, 3.1 grams/mile for the nation);

Whereas, on April 11, 1973, the Administrator pursuant to section 209(b) of the Act, also acted on California's request for waiver of preemption with respect to model year 1975 light duty (passenger) motor vehicles and granted such request to California with respect to hydrocarbons (.9 grams/mile), extended to the model year 1975 the previously granted waiver for model year 1974 with respect to oxides of nitrogen (2.0 grams/mile), but denied the request with respect to carbon monoxide (17 grams/mile);

Whereas, as a consequence of the decision rendered in International Harvester v. Ruckelshaus by the U.S. Court of Appeals for the District of Columbia, February 10, 1973 (378 F.2d 615), holding that light duty vehicles and light weight trucks are separate classes, the Administrator has established (38 FR 21362 et seq., August 7, 1973) standards for light duty (weight) trucks (hydrocarbon, 2 grams/mile; carbon monoxide, 20 grams/mile; oxides of nitrogen, 3.1 grams/mile) with the result that the standards adopted by California for light duty trucks are more stringent than applicable Federal standards;

Whereas, by letter dated August 17, 1973, California has renewed its request for waiver of Federal preemption in order to enable California to enforce its standards of .9 grams/mile for hydrocarbons, 17 grams/mile for carbon monoxide, and 1.5 grams/mile for oxides of nitrogen for gasoline-powered light duty trucks;

Therefore, I hereby give notice that (i) California has renewed its request for waiver of the application of the prohibitions of section 209(a) with respect to the above described model year 1975 emission standards for which waiver has not yet been granted, that (ii) information obtained from the February 8, 1972 public hearing on this issue as well as other pertinent information appears to require the granting of California's request, and that (iii) a public hearing on the request is to be held in San Francisco, California, at the Environmental Protection Agency Conference Room, 100 California Street, on Tuesday, October 2, 1973, commencing at 10 a.m., P.s.t.

Although it is EPA policy in most circumstances to give at least thirty days FEDERAL REGISTER notice of hearings, the notice time has been abridged here for the following reasons:

(i) Manufacturers are presently at an advanced planning and design stage for their 1975 model light weight trucks, and it is imperative that administrative procedures be completed and a final California standard set as soon as possible, and

(ii) California sent copies of its letter dated August 12, 1973 renewing its waiver application to all affected manufacturers and actual notice of this hearing was given to all affected motor vehicle manufacturers and to the State of California on or before September 12, 1973.

Dr. Norman D. Shutler of the Environmental Protection Agency is hereby designated as Presiding Officer to conduct the hearing. Any person desiring to make a statement at the hearing or to submit material for the record of the hearing should file a notice of such intention and, if practicable, five copies of his proposed statement (and other revelant material) with the Director, Mobile Source Enforcement Division, Environmental Protection Agency, Room 3220, 401 M Street SW., Washington, D.C. 20460, not later than September 28, 1973.

The pertinent standards, requirements, conditions, and test procedures for gasoline-powered 1975 model year light duty trucks are contained in the following identified publications:

FEDERAL

40 CFR Part 85, Subpart C, Emission Regulations for New Gasoline—Fueled Light Duty Trucks (38 FR 21362, August 7, 1973).

CALIFORNIA

Section 1955, Title 13, California Administrative Code, as amended June 26, 1973, and California Exhaust Emission Standards and Test Procedures for 1975 and Subsequent Model Gasoline-Powered Motor Vehicles 6,000 pounds Gross Vehicle Weight or Less, dated June 21, 1973, and California Assembly Line Test Procedures for 1974 Model Light Duty Gasoline-Powered Vehicles, dated June 20, 1973.

A copy of the above-described material is available for public inspection during normal working hours (8:00 a.m. to 4:30 p.m.) at the Office of Public Affairs, Room 232, Waterside Mall—West Tower, 401 M Street SW., Washington, D.C. 20460. Copies of the Federal regulations will be provided upon request to that office. Copies of the California standards and test procedures are available upon request from the California Air Resources Board, 1025 P Street, Sacramento, California 95814.

Procedures. Since the public hearing is designed to give interested persons an opportunity to participate in this proceeding by the presentation of data, views, arguments, or other pertinent information concerning the Administrator's proposed action, there are no adversary parties as such. Statements by the participants will not be made under oath and the participants will not be subject to cross-examination.

Presentations by the participants should be limited to the following considerations with particular attention to (ii):

(i) Whether the standards adopted by California for hydrocarbons, carbon monoxide, and oxides by nitrogen, and related test procedures and enforcement procedures applicable to new model

year 1975 light duty trucks are required to meet compelling and extraordinary conditions in California; and

(ii) Whether such standards are consistent with section 202(a) of the Act, in particular with respect to their technological feasibility in the lead time remaining.

In order to assure full opportunity for the presentation of data, views, and arguments by participants, the Presiding Officer will, upon request of the participants, allow a reasonable time after the close of the hearing for the submission of written data, views, arguments or other pertinent information to be included as part of the record of the public hearing.

A verbatim record of the proceeding will be made and a copy of the transcript will be made available on request at the expense of the person so requesting.

The determination of the Administrator regarding the action to be taken under section 209(b) of the Clean Air Act with respect to the waiver of the application of the prohibition of section 209(a) to the State of California is not required to be made solely on the record of the public hearing. Other scientific, engineering, and related pertinent information, not included in the transcript of the public hearing, may also be considered.

Dated September 19, 1973.

ALAN G. KIRK II,
Acting Assistant Administrator for Enforcement and General Counsel.

[FR Doc.73-20439 Filed 9-24-73;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 19419; FCC 73-924]

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

Memorandum Opinion and Order Clarifying Issues

In the matter of American Telephone and Telegraph Company Long Lines Department (A.T. & T.), Revisions of Wide Area Telephone Service (WATS) Tariff F.C.C. No. 259, Private Line Service (PLS) Taaiff F.C.C. No. 260, and The Western Union Telegraph Company (Western Union) revisions of Tariff F.C.C. No. 254.

1. The Commission has before it for consideration an Order of Certification in Docket No. 19419, issued by Administrative Law Judge Denniston on April 12, 1973. (FCC 73M-457). Basically, we are requested to clarify the issues in this proceeding and determine whether the technical necessity for the Automatic Data Access Arrangement (ADAA) is at issue herein. A petition for leave to file Comments and Comments regarding the order of Certification were filed on April 27, 1973, by the American Telephone and Telegraph Company and the Associated Bell System Companies (A.T. & T.). A petition for leave to file Comments and Comments concerning the Order of Certification were also filed on May 11, 1973, by The Independent Data Communications Manufacturers Association Inc. (IDCMA). On June 5, 1973, the National Association of Regulatory Utility Commissioners (NARUC) filed a letter with the Commission commenting on the Order of Certification.

2. By *Memorandum Opinion and Order* released February 7, 1972, 33 FCC 2d 518, we suspended and instituted an investigation into the lawfulness of certain tariff revisions in A.T. & T.'s Wide Area Telephone (WATS) Tariff F.C.C. No. 259 and Private Line Service (PLS) Tariff F.C.C. No. 260. As originally filed, these tariffs included (a) substantial reductions in existing interstate charges for A.T. & T.-provided "Dataphone" data sets that are offered for the modulation and demodulation of data signals; (b) establishment of new interstate charges for an A.T. & T.-provided "automatic data access arrangement" that is required for customers who wish to connect their own data facilities, including modems, to the switched network through private line service; (c) changes in existing interstate tariff regulations to permit more flexible use of A.T. & T.-provided "multi-channel data station equipment" offered to customers who wish to use such channel-deriving equipment in combination with voice-grade data channels obtained from the telephone company; and (d) establishment of new interstate rates for an additional category of "Dataphone" sets suitable for combined sending and receiving and for handling data at higher speeds. Subsequently, modified tariffs were filed by A.T. & T., the hearing held in abeyance, and matching tariffs were filed by The Western Union Telegraph Company. (36 FCC 2d 498). The subsequent filings were designated for hearing and investigation in this proceeding. 39 FCC 2d 637 (1973).

3. By an information request dated March 2, 1973, the Chief of the Common Carrier Bureau (Bureau) directed a series of questions to A.T. & T. relating to the ADAA, which were designated to elicit information to establish the technical necessity for the arrangement in conjunction with the specific rates for equipment designated in the tariffs under investigation. A.T. & T. refused to supply this information on the grounds that the questions went beyond the issues specified by the Commission. The Administrative Law Judge was requested to clarify this question and after hearing arguments on the record took the matter under advisement. Subsequently, the Administrative Law Judge issued the Order of Certification currently under consideration, nonetheless expressing the view that "full exploration of the questions of need and technical performance characteristics of the items in issue, as well as of marketing practices, is required for an adequate determination of whether anti-competitive or monopolistic forces are embodied in these rate schedules."

4. We have considered the record in this matter and the Comments filed by A.T. & T., IDCMA, and NARUC. A.T. & T. basically contends that the issues in this proceeding inquire only into the lawfulness of the rates for the ADAA and that this is a rate investigation. It states that the order instituting this investigation noted IDCMA's allegations with respect to the ADAA, but failed to specify an issue as to the technical need for, and performance of, the ADAA. A.T. & T. states that further orders in this proceeding also did not contain such an issue. Therefore, A.T. & T. concludes that its general regulations requiring protection of the network were not affected by the filing in question and were not designated for investigation in this proceeding. Moreover, A.T. & T. maintains there is no need to consider the need of the ADAA, since this is presently at issue in other Commission proceedings, particularly Docket No. 19528 *In re Interstate and Foreign MTS and WATS* 35 FCC 2d 539 (1972). In Docket No. 19528, the Commission initiated "an inquiry into whether and under what conditions the telephone companies subject to our jurisdiction should provide new or revised classes of interstate and foreign MTS and WATS service whereby customers would have the option of furnishing "Network Control Signalling Units * * * and any needed 'Connecting Arrangements' * * * (or the functional equivalent thereof) that are presently furnished only by the telephone company * * *." (35 FCC 2d at 539) A.T. & T. maintains that to litigate in Docket No. 19419 the lawfulness of the present requirements for the ADAA and possible alternative means for achieving such protection would result in the wholesale fragmentation of, and duplication of, the proceedings in Docket No. 19528, which would be neither appropriate nor conducive to an expeditious resolution of the interconnection issue. A.T. & T. also contends that an investigation of the interconnection issue in Docket No. 19419 would appear to usurp the functions of The Federal-State Joint Board in Docket No. 19528.[1] Similarly, NARUC, in its letter urges the Commission to defer determination on the need and technical performance of connecting arrangements, whether in Docket No. 19419 or other proceedings, until a determination on such issues is made by the Joint Board in Docket No. 19528 or, in the alternative, to consolidate any such proceeding in which the issues are raised in Docket No. 19528. If such issues are considered in a separate proceeding, NARUC requests that determination on such issues be made only upon consultation with the Joint Board. NARUC contends that the integrity of the Joint Board proceeding in Docket No. 19528 requires that issues before it not be prejudiced by prior determination in separate proceedings.

[1] A.T. & T. also requests that we issue the instant order absent advice from the Common Carrier Bureau. We have stated previously our views concerning the Bureau's role herein and adhere to that view now. See, *Memorandum Opinion and Order*, released May 4, 1973. FCC 73-446.

5. IDCMA contends that it is not merely the ratemaking policies of A.T. & T. which are under investigation in this proceeding, but that the rates for these devices must be tested in relationship to each other and must be viewed in light of the technical and marketing restrictions A.T. & T. applies. IDCMA urges that the requirement of the ADAA and the imposition of a charge only on customers not wanting to use A.T. & T. data sets are unreasonably discriminatory, either standing alone or when viewed in light of the alternatives available to reduce the cost. Moreover, IDCMA contends that to the extent A.T. & T. can impose a higher rate for the ADAA, or cause additional costs to the customer, or affect the customers' service, A.T. & T. can aid their own data equipment sales. In summary, IDCMA submits that it is essential to consider the total impact of the ADAA and its rate in relationship to its need in order to understand its anti-competitive impact and lawfulness. In particular, IDCMA urges that the proceeding in Docket No. 19419 affords the Commission an opportunity to consider the need for and the design and performance characteristics for the ADAA in view of the charges for the device and to evaluate the alleged anti-competitive practices within the confines of a definite and precise factual situation, an undertaking which would not interfere with or duplicate Docket No. 19528.

DISCUSSION

6. The specific question before us is whether the issues we have designated for resolution in this proceeding are sufficiently broad to encompass the sub-issue raised as to the need for and technical performance characteristics of the telephone company-provided ADAA.

7. We framed the issues herein in the broad terms of the relevant statutory provisions, as follows:

(1) Whether the charges, classifications, practices, and regulations published in the aforesaid tariffs are or will be unjust and unreasonable within the meaning of Section 201(b) of the Act;

(2) Whether such charges, classifications, practices, and regulations will, or could be applied to, subject any person or class of persons to unjust or unreasonable discrimination or give any undue or unreasonable preference or prejudice to any person, class of persons, or locality, within the meaning of Section 202(a) of the Act;

(3) Whether the aforesaid tariffs conform to the requirements of Section 203 of the Act and Part 61 (47 CFR Part 61) of our Rules implementing that Section;

(4) If any of such charges, classifications, practices, and regulations are found to be unlawful, whether the Commission should prescribe charges, classifications, practices, and regulations for the service governed by the tariffs, and if so, what should be prescribed. 33 FCC 2d 518 (1972)

Under these issues, any competent and material evidence is admissible that is relevant to whether and to what extent the ADAA charges and the regulations, classification and practices to the carriers with respect thereto are just, reasonable, and free of undue discrimination. For reasons to be stated, we believe that the questions relating to the need for the ADAA and its performance characteristics are matters that are clearly relevant to the issues herein.

8. Under the applicable tariff provisions, whenever a customer wishes to provide his own modem (modulating/demodulating unit) to condition data signals for transmission and reception over a carrier's voice-grade private line, the customer must have his modem connected to the telephone network through a "connecting arrangement" (CA) provided only by the telephone company. The ADAA is one of several CA's that are provided by the carrier for such purpose. A.T. & T. claims that all carrier-provided CA's, including the ADAA, contain certain protective features that prevent harm to the carrier's network and services that could or would be caused if noncarrier modems are connected directly to the network without such CA's. Thus, customers desiring to obtain modems from an independent, competitive supplier that are functionally the same as the carrier's modems must pay the telephone company for such CA's. The ADAA, for example, costs the customer $15.00 to $20.00 for installation and $3.50–$4.75 a month rental. However, if the subscriber obtains a modem from the telephone company, he does not have to obtain or pay for any CA even if the carrier-provided modem is of the same make, characteristics and quality as that provided by a noncarrier source.

9. Clearly, the tariff requirement is anti-competitive in effect insofar as it provides that only those customers who do not use carrier-provided modems must use and pay for carrier-provided CA's, including the ADAA. This is because a customer obtaining modems from a competitor of the carrier, must pay not only the purchase price for such modems but he must also pay the installation and rental charges for the ADAA. Such tariff would appear to be unjust, unreasonable and unduly discriminatory *unless* the requirements thereof which have these anti-competitive effects can be justified by an over-riding public interest. *Com-u-trol Corp.* v. *GTE* 97 PUR 113 (1973) (Calif.). Moreover, even if the carrier were to make no anti-competitive charges for the ADAA when used with customer-provided modems, if the ADAA operates to degrade such interconnected service in contrast to the service furnished through a carrier-provided modem, this too would be anti-competitive in effect. Accordingly, in order to determine whether there is any over-riding public interest consideration that would warrant the anti-competitive charges for the ADAA, it is pertinent to determine to what extent the ADAA is reasonably necessary to perform the function of protecting carrier facilities from the type of harm that we would consider to be contrary to the public interest. We are concerned particularly with the three types of harm that the National Academy of Sciences has advised us can degrade the service to the public generally, i.e. (a) excessive voltages or signal levels (b) improper network signalling and (c) line imbalance. If it is shown by the evidence herein that the ADAA is needed for such purposes, there would remain the question of whether and to what extent the ADAA may be over-designed or over-built in relation to such needs and thus whether the charges therefor are unnecessarily high. In addition, it is important to determine, apart from justification for the anti-competitive charges for the ADAA, whether and to what extent the ADAA may cause any degradation of service to the subscriber that is not present when carrier-modems are used. If such degradation may reasonably be expected to occur, it will become necessary to determine whether there is any over-riding public interest to warrant any such degradation. All of these questions are pertinent to the lawfulness of the tariffs in issue herein and should be considered in this evidentiary proceeding.

10. As is characteristic of common carrier proceedings, there are areas of overlap among the questions under consideration in most, if not all of the various cases now pending before us. This is true to a certain extent with respect to the proceedings in this case and the Joint Board proceedings in Docket 19528. However, as we recently stated, the Joint Board proceedings are not concerned with the question of lawfulness of any existing interstate tariffs. It is rather an inquiry and rule-making proceeding which seeks to determine what additional options, if any, shall be given to the customer whereby the customer may provide CA's and network control signalling units that are currently provided only by the carrier. We are not concerned in this case with the possibility of such options but only with questions of lawfulness of tariffs requiring a specific type of CA. The Joint Board will not be concerned with determining whether the ADAA equipment and the charges therefor are lawful or what the lawful charges, if any, should be for the ADAA. In setting up the Joint Board, we specifically stated that we were concerned in such joint proceedings with whether and under what terms and conditions customers should be given the option of providing any *needed* CA in lieu of carrier-provided CA's. 35 FCC 2d 539; page 542 (1972). Thus, in the instant case we must determine whether there is a need for the ADAA and if we find on the basis of the evidence herein, that ADAA's serve a need in the public interest, and we approve or prescribe appropriate charges therefor for interestate private line service, then the Joint Board will be concerned with whether and under what terms customers should be allowed to provide such ADAA's or the functional equivalent thereof, from sources of supply other than the carrier. If we should find that there is no overriding public interest warranting the use of the ADAA, this would moot any question before the Joint Board as to any options for customers to provide such unneeded device.

11. Our treatment of the question before us is consistent with recent actions by A.T. & T. revising the interstate tariffs with respect to certain other carrier-provided CA's. Thus, A.T. & T. has recently changed its interstate tariffs generally to eliminate the requirement for carrier-provided CA's for customer-provided headsets and nonpowered conferencing devices. Neither we nor A.T. & T. considered this action by A.T. & T. of making its carrier-provided CA's unneeded for such usages as impinging upon the Joint Board issues in Docket 19528; such action merely made it unnecessary for the Joint Board to consider whether customers using such headsets and conferencing devices should have the option of providing CA's or the functional equivalent thereof for such customer devices. For the same reasons, our determination herein of the ADAA questions discussed above will not, in our judgment, affect the Joint Board's deliberations in Docket 19528.

12. We should make it clear that we agree with NARUC that no decision should be made in this, or in any other case pending before us concerning the lawfulness of interstate tariffs, that would infringe in any way upon the determinations of the Joint Board with regard to the issues before it. Accordingly, the Presiding Judge should not admit evidence in this case that may be offered for the purpose of showing that customers should be allowed the option of providing any needed ADAA or any other CA or the functional equivalent thereof. These are matters that are in issue in Docket 19528 and we agree that they should be left for determination by the Joint Board. We recognize that there may be technical evidence adduced on the record herein with respect to the types of network harm that the ADAA is designed to prevent that may be of interest to the Joint Board and which it may wish to give some consideration to in resolving the questions before it. To the extent that this occurs, we will, of course, make such evidence available to the Board for its use in the proceedings in Docket 19528. Furthermore, in view of the aforementioned mutual objectives of NARUC and the Commission, we would welcome the participation by NARUC as a party in this proceeding.

13. In view of the foregoing, we agree with the conclusions of the Presiding Judge that, in order to determine whether the ADAA tariff provisions are just, reasonable and nondiscriminatory within the meaning of sections 201(b) and 202(a) of the Act, it is necessary to investigate herein the questions raised concerning the need for and technical performance of, the ADAA, including the marketing practices of the carriers with respect thereto. In this latter connection, we the deleting the footnote from our initial hearing order herein, 33 FCC 2d, at page 520, which excluded, at that time, consideration of marketing practices relating to carrier-provided modems, namely the 201A and 201B data sets. We believe that the marketing practices of the carriers with respect to all of these carrier-provided devices are pertinent to the anti-competitive issues in this case.

14. *It is ordered*, That the issues herein are clarified and defined as set forth above and that the Presiding Judge shall proceed accordingly.

Adopted September 6, 1973.

Released September 13, 1973.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] VINCENT J. MULLINS,
Acting Secretary.

[FR Doc.73-20377 Filed 9-24-73;8:45 am]

[Docket Nos. 19820-19823; File Nos. BRED-49, BRED-169, 1-359; FCC 73-940]

BOARD OF EDUCATION, UNION SCHOOL DISTRICT #46 AND COLLEGE OF DUPAGE, DISTRICT 502

Order Designating Applications for Consolidated Hearing

In re applications of Board of Education, Union School District #46 Noncommercial educational FM station WEPS, Elgin, Illinois, for renewal of license; College of Dupage, District 502, Glen Ellyn, Illinois, requests 90.9 MHz., #215; 5 kW (H&V), 293 feet; Board of Education, Union School District #46, Noncommercial educational FM station WEPS, Elgin, Illinois has 90.9 MHz, #215; 364 watts; 24 feet and requests 90.9 MHz, #215; 4.7 kW; 100 feet for construction permits.

1. The Commission has before it (a) the captioned applications which are mutually exclusive and thus must be designated for comparative hearing; and (b) a "Petition To Add A New Educational FM Station" filed by the College of DuPage (DuPage) on September 4, 1970.

2. In its petition, DuPage stated that it had determined that there were no vacant noncommercial educational FM broadcast channels available for its use. However, its study revealed that if the edauctional station operated by the Board of Education, Union School District #46 (School District), were to shift the frequency on which it operates from channel 215 (90.9 MHz) to channel 205 (88.9 MHz), then DuPage could operate on channel 215 (90.9 MHz). It also asserted that it was willing to reimburse the School District for any reasonable expenses it might incur in changing frequency. Nevertheless, despite attempts on the part of DuPage to negotiate this change in the frequency utilized by the School District, the School District was unwilling to make the switch. Therefore, DuPage requested us to issue an order against the School District's application for renewal of its license to show cause why it should not have its license modified to specify operation on channel 205 (88.9 MHz). In addition, DuPage filed an application against the School District's renewal application, within the period prescribed by our rules, which requested authority to utilize channel 215, the frequency on which the School District is currently licensed to operate. Subsequently, on December 30, 1971, the School District submitted an application to increase its effective radiated power and antenna height. If the School District's application for increased facilities were granted, the School District could not operate on channel 205 (88.9 MHz), the frequency to which DuPage requested it to move, without causing prohibited interference to the 1 mV/m contour of station WONC, Naperville, Illinois. However, if the School District were to maintain its present effective radiated power and antenna height, it could operate on channel 205 (88.9 MHz) and no prohibited interference would result.

3. Accordingly, if the Administrative Law Judge finds DuPage basically qualified to be a broadcast licensee, evidence must be adduced to determine whether the public interest, convenience and necessity would best be served by granting the School District's application for renewal of its license with a modification specifying operation on channel 205 (88.9 MHz), denying its application for increased facilities, and granting DuPage's application; or whether a share-time arrangement between the applicants would result in the most efficient use of channel 215 (90.9 MHz) and thus best serve the public interest, convenience and necessity (see paragraph 4); or whether a choice between the applicants should be made pursuant to section 307(b) of the Communications Act of 1934, as amended (see paragraph 5).

4. Although DuPage has attempted to negotiate a share-time arrangement with the School District on channel 215 (90.9 MHz), the School District has not been amenable to such an agreement. Therefore, an issue will be specified to determine whether a share-time arrangement between the applicants would be the most effective use of the frequency and thus best serve the public interest. In the event that this issue is resolved in the affirmative, an issue will also be specified to determine the nature of such an arrangement. It should be noted that our action specifying a "share-time issue" is not intended to preclude the applicants, either before the commencement of the hearing or at any time during the course of the hearing, from participating in negotiations with a view toward establishing a share-time agreement between themselves.

5. It appears that there will be a significant disparity in the areas and populations served by the applicants. Consequently, we shall include issues to determine whether a choice between the two applicants should be made pursuant to section 307(b) of the Communications Act of 1934, as amended, and if so, which of the proposals would better provide a fair, efficient and equitable distribution of radio service. Inasmuch as this proceeding involves competing applicants for noncommercial educational facilities, the standard 307(b) issue shall be modified in accordance with our prior action

[1] Commissioner Reid dissenting.

in *New York University*, 10 RR 2d 215 (1967). Such a determination requires that we consider the areas and populations to be served by the applicants, as well as the number of other aural educational services available in the proposed service area of both applicants.

6. DuPage's application indicates that it will require $82,369 to construct and operate its proposed station for one year, itemized as follows: equipment costs, $50,869; building expenses, $3,000; miscellaneous expenses, $1,500; and first-year operating expenses, $27,000. To meet these expenses, the applicant initially relied on its "existing operating budget," but its application was unclear as to whether funds had been earmarked for its FM station or whether funds could be obtained from a particular budget account. Accordingly, by staff letter of December 15, 1972, DuPage was requested to submit a current budget showing the availability of funds for its proposed FM station, together with a statement from an appropriate member of the Board of Education asserting that funds had been earmarked for the proposed radio station. Subsequently, DuPage submitted another budget and statement indicating that it might be able to obtain funds for its FM station from the U.S. Office of Education and the Illinois Junior College Board. DuPage did not explain, however, whether it had earmarked the necessary funds, nor did it specify any particular account in its budget from which these funds could be derived. In addition, DuPage does not appear to have allocated sufficient funds to cover its costs in the imminent comparative hearing. Accordingly, appropriate financial issues will be specified.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, because the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding.

8. *Accordingly, it is ordered,* That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are Designated for Hearing in a Consolidated Proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to the application of the College of DuPage, District 502 (College of DuPage):

(a) The applicant's estimated expenses for the comparative hearing;

(b) In light of the foregoing issue, whether the applicant has accurately estimated its total costs for procuring its construction permit, building its station, and operating it for one year;

(c) Whether sufficient funds will be available to meet the applicant's total estimated costs; and

(d) Whether, in light of the evidence adduced pursuant to the foregoing issues, the applicant is financially qualified.

2. To determine whether the public interest, convenience and necessity would best be served by renewing the license of the Board of Education, Union School District #46 (School District), with a modification specifying operation on channel 205 (88.9 MHz), denying the School District's application for increased facilities, and granting the College of DuPage's application.

3. To determine whether a share-time arrangement between the applicants would result in the most effective use of channel 215 (90.9 MHz) and thus best serve the public interest, convenience and necessity.

4. If issue 3 is decided in the affirmative, to determine the terms of a share-time agreement.

5. To determine whether a choice between the two applicants should be made pursuant to section 307(b) of the Communications Act of 1934, as amended, to ascertain which of the applicants would better provide a fair, efficient, and equitable distribution of radio service. Evidence shall be adduced under this alternative, as follows:

(a) To determine the areas and populations which would receive FM service of 1 mV/m or greater intensity from the respective proposals;

(b) To determine the number of other aural educational services available (primary for AM, 1 mV/m or better for FM) in the proposed service area of both applicants, and the areas and populations served thereby;

(c) To determine the extent to which each of the proposed operations will be integrated into the overall educational operation and objectives of the respective applicants; or whether other factors in the record demonstrate that one applicant will provide a superior educational FM broadcast service; and

(d) To determine, in light of the evidence adduced pursuant to the foregoing issues 5(a) through 5(c), which of the proposals would better serve the public interest, and therefore, which application should be granted.

9. *It is further ordered,* That the burden of proceeding with the introduction of evidence and the burden of proof with respect to the foregoing issues (1) and (2) shall be upon the College of DuPage, District 502.

10. *It is further ordered,* That the applicants shall file a written appearance stating an intention to appear and present evidence on the specified issues within the time and in the manner specified by § 1.221(c) of the rules.

11. *It is further ordered,* That the applicants shall give notice of the hearing within the time and in the manner specified in § 1.594 of the rules, and shall seasonably file the statement required by § 1.594(g).

Adopted September 11, 1973.

Released September 18, 1973.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] VINCENT J. MULLINS,
Acting Secretary.

[FR Doc.73-20379 Filed 9-24-73;8:45 am]

[1] Commissioner Robert E. Lee absent; Commissioner Reid not participating; Commissioner Hooks concurring in the result.

[FCC 73-904]

BOSTON BROADCASTERS, INC.

Declaratory Ruling Re "Significant Viewing"

1. Boston Broadcasters, Inc., is the permittee of Station WCVB-TV, Channel 5, Boston, Massachusetts. Until March 19, 1972, Station WHDH-TV operated on Channel 5 in Boston. Thereafter, WCVB-TV commenced operation with technical facilities substantially the same as those previously licensed to WHDH-TV. Boston Broadcasters, Inc., requests a ruling that it is to be considered significantly viewed for purposes of cable television system carriage in those counties where WHDH-TV would have been significantly viewed pursuant to § 76.54(a) of the rules.[1] Issuance of the following declaratory ruling is requested:

"Significant viewing" attributed to a particular station in Appendix B to the February 2, 1972 Report and Order in Docket No. 18397 shall be attributed to any subsequently authorized station utilizing the same channel in the same city, and operating with substantially the same technical facilities as the listed station.

2. In support of the requested ruling, it is urged that WCVB-TV's position is not materially different from that of an existing station that made an insignificant change in its technical facilities or that of an existing television station that acquired its authorization by assignment after Appendix B to the *Cable Television Report and Order*[2] was adopted.

3. We agree with Boston Broadcasters, Inc.'s interpretation of the rules and that such a ruling is in conformity with the objectives and policy enunciated in the *Cable Television Report and Order*, paragraphs 85-86, and in the rule itself. We will, therefore, grant the requested ruling and adopt the language as proposed

[1] Section 76.54(a) states:

"(a) Signals that are significantly viewed in a county (and thus are deemed to be significantly viewed within all communities within the county) are those that are listed in Appendix B of the *Memorandum Opinion and Order on Reconsideration of the Cable Television Report and Order* (Docket 18397 et al.), FCC 72-530."

Stations are entitled to request carriage on cable television systems in those areas where they are found to be significantly viewed.

[2] 36 FCC 2d 141 (1972). Appendix B was modified in some respects not here relevant on reconsideration of the *Cable Television Report and Order*, 36 FCC 2d 326 (1972).

by Boston Broadcasters, Inc. (paragraph 1, above).[3]

Adopted September 6, 1973.

Released September 13, 1973.

FEDERAL COMMUNICATIONS COMMISSION,[4]
[SEAL] VINCENT J. MULLINS,
Acting Secretary.

[FR Doc.73-20376 Filed 9-24-73;8:45 am]

[Docket No. 19684]

ITT WORLD COMMUNICATIONS INC.

Order Extending Time

In the Matter of ITT World Communications Inc. petition under section 201(a) of the Communications Act of 1934 for connection with RCA Global Communications, Inc., to enable ITT World Communications Inc., to provide telex and message telegraph services to Guam.

1. By telex dated September 11, 1973, Western Union International, Inc. (WUI), requests a two-week extension of time within which written briefs on the application of the International Formula to Guam may be filed in this proceeding.

2. WUI represents that the requested extension is necessary because of WUI's current staffing problem and the absence of supervisory counsel from the office. WUI also represents that it has informed RCA Global Communications, Inc. and ITT World Communications Inc. of the subject request and no objections have been raised.

3. We find that good cause has been shown for the requested extension of time.

Accordingly, *It Is Ordered*, Pursuant to § 0.303(c) of the Commission's rules pertaining to delegations of authority that the request of WUI is granted; and

(A) the time in which to file written briefs pursuant to the Commission's Memorandum Opinion and Order released July 31, 1973, and the Commission's order released August 14, 1973, extending the time for filing until September 15, 1973 [38 FR 22431] is extended until October 1, 1973; and

(B) the time in which to file reply briefs is extended until five days thereafter.

Adopted September 14, 1973.

Released September 17, 1973.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] CHARLES COWAN,
Acting Chief, Common Carrier Bureau.

[FR Doc.73-20378 Filed 9-24-73;8:45 am]

[3] Subsequent to the filing of this declaratory ruling petition, the same issue was put in question in connection with several certificate of compliance applications. In connection with CAC's 1133-1137 for Norwich, Lisbon, Franklin, Sprague, and Bozrah, Connecticut; Boston Broadcasters incorporated by reference its petition and urged that the requested certificate not be granted until its carriage rights had been resolved. Cable Video, Inc., the applicant in these communities had not proposed carriage of WCVB-TV. In CAC-656, International Telemeter of New Bedford, New Bedford, Massachusetts, proposed carriage of WCVB-TV as a significantly viewed signal. The request was opposed by WGAL Television, licensee of Television Station WTEV, New Bedford, which argued as follows: "TTNB is incorrect in asserting * * * that WHDH-TV is 'now WCVB-TV.' WCVB-TV is not operating under any sort of continuation of WHDH-TV's license, and there was no mere change of call signs. WCVB-TV is a totally new station, with a network affiliation different from that of WHDH-TV and with its own new non-network programming. WCVB-TV cannot, therefore, be carried on a New Bedford CATV system (footnote omitted)." We have reviewed the arguments raised in these certificate of compliance proceedings but are not persuaded that the WCVB-TV's position is incorrect. We see no reason why changes in a station's ownership should change the availability of the station's signal for cable television carriage purposes, so long as the technical facilities involved remain substantially the same.

[4] Commissioner Robert E. Lee absent; Commissioner Reid concurring in the result.

COST OF LIVING COUNCIL

FOOD INDUSTRY WAGE AND SALARY COMMITTEE

Notice of Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) notice is hereby given that the Food Industry Wage and Salary Committee, established under the authority of sec. 212(f) (iv) of Executive Order 11695, and Cost of Living Council Order No. 14, will meet at 10 A.M., Thursday, September 27, 1973, at 2025 M Street, NW., Washington, D.C.

The agenda will consist of discussions leading to recommendations on specific Phase II and Phase III wage cases in the food area, and future wage policy.

Since the above stated meeting will consist of discussions of future food wage policy and Phase II and III cases for decision, pursuant to authority granted me by Cost of Living Council Order 25, I have determined that the meeting would fall within exemption (5) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with the operation of the Committee.

Issued in Washington, D.C., on September 24, 1973.

HENRY H. PERRITT, Jr.,
Executive Secretary, Cost of Living Council.

[FR Doc.73-20608 Filed 9-24-73;12:11 pm]

LABOR-MANAGEMENT ADVISORY COMMITTEE

Determination To Close Meeting

Purusant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) notice is hereby given that a meeting of the Labor-Management Advisory Committee created by Section 8 of Executive Order 11695 will be held on October 2, 1973, in the Secretary's Conference Room, Main Treasury Building, Washington, D.C., from 10 a.m. to 12:30 p.m.

The purpose of the meeting is to discuss policy matters relating to the future of the Stabilization Program and to industrial relations will be considered.

Pursuant to authority granted me by Cost of Living Council Order 25, I have determined that the meeting of the Labor-Management Advisory Committee will consist of exchanges of opinions, that the discussions, if written, would fall within exemption (5) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with the operation of the Committee.

Issued in Washington, D.C. on September 24, 1973.

HENRY H. PERRITT, Jr.,
Executive Secretary, Cost of Living Council.

[FR Doc.73-20609 Filed 9-24-73;12:12 pm]

FEDERAL POWER COMMISSION

[Docket Nos. RI74-35, *et al.*]

AMOCO PRODUCTION COMPANY, ET AL.

Order Providing for Hearing on and Suspension of Proposed Changes in Rates, and Allowing Rate Changes To Become Effective Subject to Refund [1]

SEPTEMBER 14, 1973.

Respondents have filed proposed changes in rates and charges for jurisdictional sales of natural gas, as set forth in Appendix A below.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds

It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR Ch. I), and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column. Each of these supple-

[1] Does not consolidate for hearing or dispose of the several matters herein.

ments shall become effective, subject to refund, as of the expiration of the suspension period without any further action by the Respondent or by the Commission. Each Respondent shall comply with the refunding procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder.

(C) Unless otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period, whichever is earlier.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

APPENDIX "A"

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf*		Rate in effect subject to refund in dockets Nos.
									Rate in effect	Proposed increased rate	
RI74-35	Amoco Production Co	594	1	El Paso Natural Gas Co. (Basin Dakota Field, San Juan and Rio Arriba Counties, N. Mex., San Juan Basin).	$13,200	8-17-73		2-17-74	[1] 20.4	[1] 30.8	
RI74-36	Atlantic Richfield Co	666	1	El Paso Natural Gas Company (Ignacio Blanco Field, La Plata County, Colo., San Juan Basin).	2,960	8-20-73		2-20-74	[2] 21.0	[2] 23.0	

* Unless otherwise stated, the pressure base is 15.025 psia.
[1] Includes upward Btu adjustment for 1,100 Btu from a base of 1,000 Btu per cubic foot.
[2] Subject to Btu adjustment from a base of 1,000 Btu per cubic foot.

The proposed rate increases are suspended for five months since they exceed the applicable ceiling rate established in Order No. 435.

[FR Doc.73-20262 Filed 9-24-73;8:45 am]

[Docket No. CP74-14]

EL PASO NATURAL GAS CO.

Notice of Amendment to Application

SEPTEMBER 19, 1973.

Take notice that on August 20, 1973, El Paso Natural Gas Co. (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP74-14 an amendment to its application filed in said docket pursuant to section 7(b) of the Natural Gas Act by documenting certain additional information and data respecting the abandonment authorization sought therein through divestiture to Northeast Pipeline Corporation (Northwest) and by requesting pursuant to section 7(c) of the Natural Gas Act a certificate of public convenience and necessity authorizing certain gathering and exchange arrangements to implement said divestiture, all as more fully set forth in the application, as amended, which is on file with the Commission and open to public inspection.

El Paso filed its initial application in this proceeding for authorization to abandon certain facilities as a result of the mandate of the United States Supreme Court in *United States* v. *El Paso Natural Gas Co., et al.*, 376 U.S. 651 (1964), as implemented by the Orders and Opinion of the United States District Court for the District of Colorado (District Court) entered on June 16, 1972, in *United States* v. *El Paso Natural Gas Co.*, Civil Action No. C-2626, aff'd *sub nom. California-Pacific Utilities Co., et al.* v. *United States*, U.S. ____ (1973), requiring divestiture by El Paso to Northwest of the facilities and properties acquired by Applicant in 1959 from Pacific Northwest Pipeline Corporation (Pacific Northwest) together with additional properties and facilities.

El Paso states that at the time it made its initial filing in the subject docket, it was in the process of negotiating an agreement with the APCO group pertaining to the price to be paid for twenty percent of Northwest's common stock and other matters related to implementation of the divestiture. El Paso further states that it has now reached such an agreement and that it and Northwest have filed Implementing Documents with the District Court, as required by the court's order of July 25, 1973. El Paso requests that these Implementing Documents be made part of its application in the subject proceeding by incorporation by reference to Northwest's Exhibit Z-4 in the application pending in Docket No. CP73-331.

El Paso also requests certificate authorization pursuant to one of the Implementing Documents, a San Juan Gathering Agreement, for the mutual gathering and exchange of natural gas in the San Juan Basin after divesture in order to utilize existing facilities and to avoid duplication of facilities. Said agreement provides that if the quantities of gas gathered by each party for the other party are not equal, deliveries of balancing gas possessing equivalent heating value shall be made to the deficient party on a reasonably concurrent basis. The party receiving balancing deliveries is required to pay the other party 6.61 cents per Mcf for all gas so received. El Paso states that two existing interconnecting points in Rio Arriba County, New Mexico, and La Plata County, Colorado, and related measuring and regulating stations thereat will be utilized to effectuate such exchange.

Any person desiring to be heard or to make any protest with reference to said amendment to application should on or before October 9, 1973, 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. Persons who have heretofore filed petitions to intervene in this proceeding need not file again.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-20410 Filed 9-24-73;8:45 am]

[Project No. 401]

MICHIGAN POWER CO.

Notice of Issuance of Annual License

SEPTEMBER 18, 1973.

On December 30, 1970, and supplemented February 1, 1971, February 23, 1973, and August 15, 1973, Michigan Power Co., Licensee for Mottville Project No. 401, located on the St. Joseph River in St. Joseph County, Michigan, filed an application for a new license under section 15 of the Federal Power Act and Commission regulations thereunder (§§ 16.1-16.6).

The license for Mottville Project No. 401 was issued effective September 19, 1923, for a period ending September 18, 1973. In order to authorize the continued operation of the project pursuant to Section 15 of the Act pending completion of Licensee's application and Commission action thereon it is appropriate and in the public interest to issue an annual license to Michigan Power Co. for continued operation and maintenance of Project No. 401.

Take notice that an annual license is issued to Michigan Power Co. (Licensee) under section 15 of the Federal Power Act for the period September 19, 1973, to September 18, 1974, or until Federal takeover, or the issuance of a new license

for the Project, whichever comes first, for the continued operation and maintenance of the Mottville Project No. 401 subject to the terms and conditions of its license.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-20407 Filed 9-24-73;8:45 am]

[Docket No. RP72-149]

MISSISSIPPI RIVER TRANSMISSION CORP.

Notice of Proposed Changes in Rates and Charges

SEPTEMBER 18, 1973.

Take notice that Mississippi River Transmission Corporation (Mississippi) on August 20, 1973, tendered for filing Substitute Twelfth Revised Sheet No. 3A to its FPC Gas Tariff, First Revised Volume No. 1 to become effective October 1, 1973.

The instant filing was made pursuant to the purchased gas cost adjustment provisions of Mississippi's tariff to reect: (1) Rate changes applicable to Mississippi by Natural Gas Pipeline Company of America (Natural), pursuant to the provisions of Natural's Amended Stipulation and Agreement at Docket No. RP72-132, approved by the Commission by order issued July 18, 1973; (2) a rate change applicable to Mississippi by Trunkline Gas Company, effective August 1, 1973; and (3) a change in the Deferred Cost Adjustment pursuant to Mississippi's tariff effective October 1, 1973.

Mississippi states that on June 22, 1973, it submitted for filing Twelfth Revised Sheet No. 3A to its FPC Gas Tariff but that the Commission rejected the filing without prejudice to its refiling with certain changes.

Copies of the filing were served on Mississippi's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). However, parties previously permitted to intervene need not file such a petition. All such petitions or protests should be filed on or before September 25, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-20399 Filed 9-24-73;8:45 am]

[Docket No. E-8391]

MT. CARMEL PUBLIC UTILITY CO.

Notice of Changes in Wholesale Rate

SEPTEMBER 18, 1973.

Take notice that on August 28, 1973, Mt. Carmel Public Utility Co. (Mt. Carmel) tendered for filing changes in its wholesale rate for Resale Schedule (FPC No. 1) and a new fuel adjustment clause rider.

Mt. Carmel states that the revised rates are proposed to go into effect October 1, 1973. According to Mt. Carmel, the purpose of the change in the rate is to remove an ambiguity in language that had resulted in exempting the Village of Allendale, Allendale, Illinois (Allendale) from fuel adjustment charges.

Mt. Carmel further states that the purpose of the revised fuel adjustment charge is to reduce the amount by factoring in the lower unit cost of purchased energy that prevails since Mt. Carmel has converted from coal-firing to oil-firing. Mt. Carmel also states that the total revenue from Allendale is less than $30,000 annually and that this filing will result in a change of $8,936 annually.

Any person desiring to be heard or to protest should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 8, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-20400 Filed 9-24-73;8:45 am]

[Dockets Nos. CI72-233, CP73-15; CI72-677, CI73-231]

NATURAL GAS PIPELINE COMPANY OF AMERICA AND TEXACO INC.

Order Permitting Deferral of Hearing

SEPTEMBER 12, 1973.

On August 8, 1973, Michel Levant, the Presiding Administrative Law Judge in the above-entitled proceedings, certified to the Commission a request by the parties for deferral of hearing and a record of a prehearing conference held on August 7, 1973. On July 13, 1973, we ordered that a prehearing conference be held on August 7 in these proceedings to narrow the issues and to find which issues may usefully be considered in a hearing while deferring the policy questions with respect to the transportation of gas until a determination is made in *Tennessee Gas Pipeline Co.*, Docket No. CP72-6, *et al.* At the prehearing conference counsel for Texaco, Natural Gas Pipeline, Northern Illinois Gas Co., the New York Public Service Commission, Associated Gas Distributors and the Staff representing all parties appearing agreed that no useful purpose would be accomplished by proceeding with the hearing and the Judge so ruled. We note that there was also a discussion on the record of the possibility of a settlement.

Texaco and Natural made an oral motion on the record that the Commission defer the hearing, pending the determination in the *Tennessee* case. Staff counsel asked that they should bear the responsibility for filing an appropriate motion with the Commission asking that the case be reactivated at such time as they desire to go forward. We agree that Texaco, Natural, or any other party can file such a motion.

The Commission orders

The hearing in the above-entitled proceedings is deferred pending determination in *Tennessee, supra,* and may be reconvened upon appropriate motion or upon the Commission's initiative.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.73-20411 Filed 9-24-73;8:45 am]

[Docket No. RP71-119]

PANHANDLE EASTERN PIPELINE CO.

Notice of Motion for Extraordinary Relief

SEPTEMBER 18, 1973.

On September 7, 1973, DeKalb AgResearch Inc. (DeKalb) filed a petition for extraordinary relief with the Commission pursuant to § 1.7 of the Commission's rules of practice and procedure requesting that its Crawfordsville, Indiana seed-drying plant be exempted from the provisions of Panhandle Easter Pipeline Company's (Panhandle) presently effective curtailment plan and/or any other curtailment plans of that company that may subsequently become effective.

DeKalb, in its petition, alleges that it purchases natural gas on an interruptible basis from Indiana Gas Company Inc. (Indiana Gas), which in turn is supplied by Panhandle. This gas is used by DeKalb's Crawfordsville Plant for corn seed drying. Approximately 45,000 Mcf of natural gas is required to meet the plant's requirements during the critical 60 day period prior to November 15 of each year when the corn seed must be dried.

DeKalb in its petition notes that its Crawfordsville Plant provides farmers with hybrid seed corn for planting. It stresses that seed corn is an essential element in a food production and that seed is a basic element in the food chain. It contends that interruption in natural gas deliveries to its Crawfordsville Plant commencing on October 1, 1973, would reduce annual production by at least 65 percent and require the plant to lay off a number of employees. It contends that such reduced seed production could conceivably result in a shortfall of nearly 40 million bushels of high-quality corn next summer. DeKalb notes that the problem is further compounded by the fact that seed corn is presently in short supply because of the relatively poor season experienced last year and that most of the stock that they normally maintain has been depleted.

DeKalb contends that its Crawfordsville Plant is confronted by an immediate emergency, because it lacks a presently installed alternate fuel capability. It further contends that up until August 20, 1973, it had acted under an assurance from Indiana Gas, its distributor supplier, that it would be provided with sufficient gas to meet its 1973 fall drying season requirements.

DeKalb, therefore, requests that the Commission grant its petition for extraordinary relief filed pursuant to § 1.7 of the Commission's rules of practice and procedure, in order to avert the damages hereinbefore set forth.

It appears reasonable and consistent with the public interest in this proceeding 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 protest said application, should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10) on or before September 25, 1973. The notices and petitions for intervention previously filed in this proceeding will not operate to make those parties interveners or protestants with respect to the instant filing. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules. This filing which was made with the Commission is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-20397 Filed 9-24-73;8:45 am]

[Project No. 135]

PORTLAND GENERAL ELECTRIC CO.

Notice of Issuance of Annual License

SEPTEMBER 19, 1973.

On February 19, 1970, Portland General Electric Co., Licensee for Project No. 135, located in Clackamas County, Oregon, on the Clackamas River, filed an application for a new license under section 15 of the Federal Power Act and Commission regulation thereunder (§§ 16.1–16.6).

The license for Project No. 135 was issued effective September 27, 1922, for a period ending September 26, 1972. In order to authorize the continued operation of the project pursuant to section 15 of the Act, pending completion of Commission action thereon, it is appropriate and in the public interest to issue an annual license to Portland General Electric Co. for continued operation and maintenance of Project No. 135.

Take notice that an annual license is issued to Portland General Electric Co. (Licensee) under section 15 of the Federal Power Act for the period September 27, 1973, to September 26, 1974, or until Federal takeover or the issuance of of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 135, subject to the terms and conditions of its present license.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-20408 Filed 9-24-73;8:45 am]

[Docket No. E-7723]

POTOMAC EDISON CO.

Order Granting Motion for Approval of Settlement Offer

SEPTEMBER 14, 1973.

On March 29, 1972, the Potomac Edison Company (Edison) tendered for filing proposed changes in its Electric Tariff, Volume No. 2 (Original Sheet Nos. 4b, 5b, and 6b, First Revised Sheet Nos. 4, 4a, 5, 5a, 6 and 6a, and Third Revised Sheet No. 8) and on March 30, 1972, Edison tendered for filing Amendment No. 3 to its FPC Rate Schedule No. 30. Notice of Edison's tendered filing was issued on April 18, 1972, with comments due on April 26, 1972. No protests or petions to intervene were received. By Commission order issued July 11, 1972, Edison's proposed changes were accepted for filing and the use thereof suspended until December 11, 1972, and hearing procedures were established.

On February 1, 1973, as supplemented on February 20, 1973, The Potomac Edison Company (Edison) filed a motion for approval of a Settlement Offer which is intended to resolve all issues in this proceeding. Edison requests the Commission approve the proposed Settlement Offer and permit the proposed rates to become effective December 11, 1972, the date on which the rates originally proposed became effective subject to refund. Edison also requested on March 19, 1973, that the Commission further extend the procedural dates established by notice issued February 23, 1973, until 60 days after the Commission has acted upon the proposed Settlement Offer. By notice issued March 22, 1973, dates for filing of evidence and hearing procedures were deferred pending disposition of the offer of settlement.

Public notice of Edison's motion was issued on February 23, 1973, providing for receipt of comments by March 9, 1973. On March 9, 1973, the Commission Staff filed comments wherein the staff recommended that on the basis of its review of the proposed settlement and cost of service support thereof the Settlement Offer as filed be approved.

In support of its offer of settlement, Edison states that the proposed rates are not objected to by its customers to be served thereunder. Edison further asserts that the revision of some of the originally proposed increases are in settlement of differences between Edison and the Commission Staff which were made known in discussions with the staff.

The Settlement Offer consists in principal part of the following:

(1) A reduction in revenues from the originally proposed increases of $239,000 to $216,000 based on calendar year 1970 and excluding the additional revenue effect of the proposed fuel clause.

(2) Normalization of the cost of service to reflect the substantial load changes of Hagerstown and of a high load factor industrial retail customer.

(3) The rates of return are:

Wholesale for Resale Rate Groups

WS-HV (percent)	WS-LV (percent)	WS-DV (percent)	Total (percent)
6.64	7.03	5.83	6.39

(4) The originally proposed fuel adjustment clause has been modified to recognize the fuel cost of energy generated by Edison and in energy purchased by Edison from other companies in the Allegheny Power System (APS) and will not apply to energy purchased from companies other than those which are members of APS. Also the base cost of fuel was revised to include the base fuel component of energy purchases.

The settlement offer is based on the cost of service for the test period (1970) submitted by Edison and set forth in Appendix A below. In addition, the computation of Edison's capitalization set forth in Appendix A below shows the yield on common equity at a 6.39 percent overall return.

Based upon our review of the terms and conditions of the proposed Settlement Offer and the cost of service attached thereto (Appendix A below), we conclude that the proposed settlement offer provides a reasonable and appropriate resolution of the issues herein and that the public interest will be served by our approval of the settlement offer.

The Commission finds

Approval of the settlement of these proceedings on the basis of the Settlement Offer filed by Edison on February 1, 1973, as supplemented on February 20, 1973, is reasonable and proper and in the public interest in carrying out the provisions of the Federal Power Act, and should be approved and made effective.

The Commission orders

(A) The Settlement Offer as described above is incorporated herein by reference, and is approved and made effective on December 11, 1973.

(B) Edison shall fully comply with each of the provisions of the Settlement Offer and the terms of this order.

(C) Edison shall file with the Commission revised tariff and rate schedules to conform with the Offer of Settlement filed February 1, 1973, within 30 days of the date of issuance of this order.

(D) This order is without prejudice to any finding or orders which have been

made or may hereinafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, its Staff, Edison, or any other party or person affected by this order.

(E) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

APPENDIX A

SOUTHERN TEXAS NATURAL GAS GATHERING COMPANY, DOCKET NOS. RP73-7 AND RP73-57, SUMMARY COST OF SERVICE AND GATHERING COST YEAR ENDED, JUNE 31, 1972, AS ADJUSTED

[In Dollars]

Line No.	Particulars	Company	Adjustments	As adjusted
1	Operating expenses	$18,370	[1] ($378)	$17,[illegible]
2	Depreciation expense	829	[2] (219)	610
3	Taxes other than income	150	—	150
4	Federal income taxes	1,077	67	1,144
5	Return (company—8 percent, staff 8.75 percent)	1,300	84	1,[illegible]
6	Other Operating Revenue—Cr	(300)	—	(300)
7	Total cost of service	21,378	(749)	20,[illegible]
	Cost other than purchased:			
8	Gas cost	5,208	[3] ($89)	5,119
9	Sales volumes (Mcf)	74,949,000		72,333,000
10	Gathering cost per Mcf line 8÷line 9 (cents)	6.95		7.08
11	Gathering charge proposed (cents)	6.22		6.22

[1] Reflects reduction in staff's sales volumes.
[2] To eliminate depreciation expense on general plant transferred to affiliated companies.
[3] Net adjustments to cost other than purchased gas cost.

[FR Doc.73-20263 Filed 9-24-73;8:45 am]

[Docket Nos. RP73-7, RP73-57]

SOUTH TEXAS NATURAL GAS GATHERING CO.

Order Terminating Proceeding and Allowing Rate Increase To Become Effective Without Further Refund Obligation

SEPTEMBER 14, 1973.

On July 31, 1972, South Texas Natural Gas Gathering Company (South Texas) tendered for filing proposed changes in its rates to Transcontinental Gas Pipe Line Corporation (Transco) under South Texas' FPC Gas Rate Schedule No. 2 and to Natural Gas Pipeline Company of America (Natural) under South Texas' FPC Rate Schedule No. 1. South Texas stated that the proposed rates were in accord with the prices provided in its producer type sales contracts and were based on a test year ended March 31, 1972. The proposed changes would increase South Texas' annual revenues by $1,240,251 with respect to Transco and by $96,406 with respect to Natural or a total of $1,336,657. These totals were based on an increase in its rates from 19.58 cents per Mcf to 22.05 cents per Mcf for Transco and from 19.50 cents per Mcf to 21.55 cents per Mcf for Natural. South Texas alleged that such rate increases would yield a negative 7.53 percent return, because of a contract which limits South Texas' rate of return. The rates were proposed to become effective September 1, 1972.

On August 31, 1972, we accepted and suspended the proposed changes for one day, set hearing dates and permitted interventions.[1]

On October 17, 1972, South Texas tendered for filing a proposed Purchased Gas Adjustment Clause (PGA) and an additional increase of $2.8 million annually for its sales to Transco, under South Texas' FPC Gas Rate Schedule No. 2, based on an overall rate of return of 10%, increased purchased gas costs, and decreased annual sales, among other things.

South Texas had requested that the Commission waive its notice requirements to permit this filed increase to become effective on a date to coincide with the Commission approval of the conditional settlement in the Docket No. RI72-240, or November 15, 1972, whichever was earlier.[2]

On November 16, 1972, we rejected the proposed PGA clause, accepted and suspended the proposed increase for the statutory five months, established dates for service of evidence and hearing, and permitted the interventions.[3]

On December 4, 1972, South Texas submitted a revised PGA clause and requested that it be accepted and permitted to become effective immediately or no later than the effective date of approval of the settlement in the producers rate case, RI72-240, and the abandonment proceeding, Docket No. CP67-349.

On January 10, 1973, we issued an order that dealt with four South Texas cases pending before the Commission including Docket Nos. RP73-7 and RP73-57. In Docket Nos. RI72-240 and CP67-349, et al. we approved proposed settlements. In RP73-57 we approved the revised PGA clause filed on December 4, 1972, terminated the suspension period ordered on November 16, 1972, and permitted the rates in Docket No. RP73-57 to go into effect at the settlement rate in CP67-349, et al., subject to refund. We also consolidated Docket Nos. RP73-7 and RP73-57 for disposition and approved the change or rate charged to Transco, but left the issue of the precise rate level for determination in the instant consolidated docket.[4]

At the prehearing conference on June 19, 1973, Staff placed into the record its direct testimony and exhibits which included a cost of service analysis which would support a 28.70 cents per Mcf rate based upon a purchased gas cost of 21.62 cents per Mcf and a gathering charge of 7.08 cents per Mcf. Also at this prehearing conference South Texas moved to terminate the proceeding and to terminate the refund provisions in the instant dockets. All of the parties represented at that conference either supported the filed rates or expressed no opposition to them. On July 2, 1973, Judge Litt certified South Texas' motion to the Commission, and such certification was noticed on July 20, 1973, with comments due on or before August 3, 1973. No comments were received.

We note that staff cost of service supports a rate higher than South Texas' proposed producer—type rates of 21.55 cents per Mcf to Natural and 22.05 cents per Mcf to Transco in Docket No. RP73-7 and its proposed 27.87 cents per Mcf rate to Transco in Docket No. RP73-57 based on purchased gas costs of 21.65 cents per Mcf and a gathering charge of 6.22 cents per Mcf. The cost of service presentations in support of the filings in both dockets are basically for the same test period and the Staff as a basis for testing the rates in both dockets utilized a test period of the twelve months ending June 30, 1972, as adjusted. Staff recommended an overall rate of return of 8.75 percent with an allowance of 10.74 percent on equity. (For the summary cost of service, see Appendix A to this order).

Our review of the record in these proceedings which includes South Texas' rate increase filing, testimony and exhibits as well as the testimony and exhibits of the Staff, and the aforementioned history of the case reveals that the settlement rates are not excessive. Accordingly, good cause exists to grant South Texas' motion to terminate the refund provisions in these proceedings and approve the proposed settlement.

The Commission finds

Approval of the proposed settlement in these dockets and granting of South Texas' motion to terminate refunds on

[1] Transco, Philadelphia Gas Works Division of UGI Corporation (PGW), Natural, and Public Service Electric and Gas Company (Public Service).

[2] The Settlement in Docket No. RI72-240 was approved by an order issued January 10, 1973.

[3] Natural, Consolidated Edison Company of New York, Inc. (Consolidated), Transco, Public Service Commission for the State of New York.

[4] On March 19, 1973, we issued an order permitting Philadelphia Gas Works Division of UGI Corporation (PGW) & Associated Gas Distributors (AGD) to intervene in the consolidated dockets.

the basis set forth above is just and reasonable and in the public interest in carrying out the provisions of the Natural Gas Act.

The Commission orders

(A) For the reasons stated herein the settlement of these dockets is accepted, the settlement rates in Docket Nos. RP73-7 and RP73-57 shall be made effective as of September 2, 1972, and January 10, 1973, respectively, without further refund obligation, and this proceeding is terminated.

(B) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

APPENDIX A

DOCKET NO. E-7723, SETTLEMENT COST OF SERVICE—WHOLESALE CUSTOMERS[1] (TEST YEAR 1970)

Expenses:	
Production—Capacity component	$640,151
Production—Energy component	651,933
Production—Plant component	188,941
Transmission	128,231
Distribution	153,403
Customer accounting	263
Sales	4,033
Administrative and general	110,379
Total	1,877,349
Taxes other than F.I.T. and payroll	156,810
Federal income tax	(16,422)
Return	532,061
Total cost of service	2,549,798

Capitalization—June 30, 1973

	Amount	Percent	Cost factors (percent)	Weighted totals (percent)
Long-term debt	$164,431	51.23	6.03	3.12
Preferred stock	43,348	13.52	6.84	.92
Common equity	112,911	35.20	6.63	2.35
	$320,740	100.00	19.60	6.39

[1]After normalization adjustments.

[FR Doc.73-20261 Filed 9-24-73;8:45 am]

[Docket No. CP70-7 (Phase II)]

SOUTHERN NATURAL GAS CO.

Notice of Petition To Amend

SEPTEMBER 19, 1973.

Take notice that on August 29, 1973, Southern Natural Gas Co. (Petitioner), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP70-7 (Phase II) a petition to amend the Commission's order issued October 29, 1969 (42 FPC 944), in the subject docket pursuant to section 7(c) of the Natural Gas Act by authorizing certain changes and reallocations in the contract quantities of natural gas to be delivered to Atlanta Gas Light Co. (Atlanta) among individual delivery points, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By the Commission's order of October 20, 1969, Petitioner was authorized, inter alia to sell and deliver to Atlanta at certain specified delivery points a contract demand of 737,500 Mcf of gas per day. On November 30, 1972, Petitioner tendered for filing under Section 4 of the Natural Gas Act a ninth revised Exhibit A to its presently effective firm service agreement with Atlanta. By order issued March 20, 1973, in Docket No. RP73-73, the Commission rejected this filing because it was inconsistent with the outstanding certificate authorization in the subject docket.

Petitioner seeks authorization herein to make changes and reallocations in the contract quantities delivered to Atlanta among individual delivery points, pursuant to its rejected ninth revised Exhibit A. In an affidavit filed with the petition to amend, the president of Atlanta states that these changes and reallocations are needed to:

(1) Efficiently operate its gas distribution system, particularly occasioned by the recent construction of its Riverdale LNG storage facility in the Altanta area;

(2) Shift approximately 40,000 Mcf of contract demand quantity out of the Atlanta area in order to cover the estimated firm design day requirements in other areas on its system; and

(3) Alleviate a measure of hardship caused for some of its customers under Southern Natural's curtailment program which, if not corrected, could cause the curtailment of high priority uses such as process and possible feedstock gas and at the same time cause these curtailed volumes to become available as excess "AO" or direct interruptible gas at other delivery points and to other delivery points and to other customers of Southern Natural for lower priority uses.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before October 9, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-20409 Filed 9-24-73;8:45 am]

[Docket No. RP72-121]

SOUTHWEST GAS CORP.

Notice of Proposed PGA Rate Adjustment

SEPTEMBER 18, 1973.

Take notice that Southwest Gas Corporation (Southwest) on August 23, 1973, tendered for filing proposed changes in its FPC Gas Tariff, Original Volume No. 1. Concurrently with the filing, Southwest requests that its filing made by letter dated August 17, 1973, be withdrawn. The proposed rate change is described in the company's transmittal letter as follows:

El Paso Natural Gas Company, the sole supplier of gas to the Company's Northern Nevada Division, has filed pursuant to its PGA Clause for an increase of .315 cents per therm to become effective October 1, 1973. El Paso also proposes an alternate tariff sheet which would increase its rates by .149 cents per therm to become effective October 1, 1973. Southwest is unable to anticipate which El Paso increase the Commission will finally authorize, therefore, Southwest has included under Tab A, attached hereto, its Substitute Second Revised Sheet No. 3A containing the .315 cents per therm and under Tab B, also attached hereto, the identical Sheet No. 3A containing the .149 cents per therm increase. It is respectfully requested that the Commission select for approval Southwest's tariff sheet that has the identical increase proposed therein as the El Paso tariff sheet which the Commission makes effective October 1, 1973.

Southwest respectfully requests that the appropriate enclosed tariff sheet herewith submitted for filing become effective October 1, 1973, concurrent with El Paso's increase.

Southwest states that copies of the filing were sent to its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 27, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-20400 Filed 9-24-73;8:45 am]

[Docket No. E-8379]

UTAH POWER AND LIGHT CO.

Notice of Proposed Changes in Rates and Charges

SEPTEMBER 18, 1973.

Take notice that on August 27, 1973 Utah Power and Light Company (Utah) tendered for filing proposed changes in its FPC Electric Tariff, Original Volume No. 1, Resale Service Rates. Each of the changes reflect the addition of Resale Service Schedule RS-3 and/or the Resale Electric Service Agreement between Provo City and Utah.

Utah states that its system is presently interconnected with the electrical system of Provo City and has for several years delivered Colorado River Storage Project power to Provo City under an agreement with the federal government. That

agreement is on file with the FPC and designated Utah Rate Schedule FPC No. 98. As a result, Utah claims that no new facilities have been installed or modified in order to supply service under proposed Resale Service Schedule RS-3. Utah currently has, it says, no other rates for similar wholesale or resale services.

According to Utah, the service agreement with Provo contains a clause exempting the company from providing firm power, if and only if any of its planned facilities are delayed or prevented from entering service for reasons beyond the company's control. Utah states such a clause is necessary because of unrealistic and unduly restrictive environmental protection requirements, delaying governmental approval of new plants.

While service to Provo is not contemplated until 1974–1975, Utah states that Provo wishes to have call on the power for unforeseen developments in the interim. Therefore, Utah requests waiver of the notice requirements of the Commission's Rules and Regulations so that October 1, 1973 might be the effective date. Because of the uncertainties about power supplied over the coming year, Utah claims that estimates of revenues for that period are impossible.

Any person desiring to be heard or to protest should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 in accordance with Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before September 27, 1973. Protests will be considered by the Commission in determining the appropriate action but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-20398 Filed 9-24-73;8:45 am]

[Docket No. E-8388]

WESTERN MASSACHUSETTS ELECTRIC CO.

Notice of Cancellation

SEPTEMBER 18, 1973.

Take notice that on September 5, 1973, Western Massachusetts Electric Co. of West Springfield, Massachusetts (Company), tendered for filing notice of cancellation of its Rate Schedules FPC Nos. 22, 24, 25, 33, 45 and 67. The Company states that such cancellation is made pursuant to the terms of the rate schedule and the notice given thereunder. The effective date of cancellation for each Rate Schedule is September 30, 1973, except for Rate Schedule F.P.C. No. 67 which has an effective cancellation date of August 31, 1973.

In its letter of transmittal, the Company states that it intends to offer customers affected by these cancellations new long-term contracts. Pending completion of the development of proposals for such contracts, the Company is offering to continue service to the affected wholesale customers on a month-to-month basis following the cancellation date if such customers wish to receive service following that date.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 9, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-20405 Filed 9-24-73;8:45 am]

NATIONAL GAS SURVEY

Order Designating Survey Coordinating Representative and Secretary

SEPTEMBER 14, 1973.

The Federal Power Commission by Order issued December 21, 1971, established the Technical Advisory and Coordinating Committee Task Forces of the National Gas Survey.

1. FPC Survey Coordinating Representative and Secretary. A new FPC Survey Coordinating Representatives and Secretary to the Supply-Technical Advisory Task Forces on Natural Gas Supply, Reformer Gas, Liquefied Natural Gas (LNG), Natural Gas Technology, Synthetic Gas-Coal, and Regulation and Legislation, as selected by the Chairman of the Commission with the approval of the Commission, is as follows:

Frederick W. Lawrence, Technical Director, National Gas Survey, Bureau of Natural Gas, Federal Power Commission.

Mr. Lawrence has resigned his membership on the Supply-Technical Advisory Task Force-Natural Gas Supply as a representative of the Environmental Protection Agency. He is to fill the positions on the Supply-Technical Advisory Task Forces vacated by the resignation of Dr. Paul J. Root, Federal Power Commission, from these Task Forces.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.73-20401 Filed 9-24-73;8:45 am]

NATIONAL GAS SURVEY TECHNICAL ADVISORY COMMITTEE-SUPPLY

Order Designating Survey Coordinating Representative and Secretary

SEPTEMBER 14, 1973.

The Federal Power Commission by Orders issued April 6, 1971, and February 23, 1973, respectively, the Commission established and renewed the Technical Advisory Committees of the National Gas Survey.

1. FPC Survey Coordinating Representative and Secretary. The new FPC Survey Coordinating Representative and Secretary to the Technical Advisory Committee-Supply, as selected by the Chairman of the Commission with the approval of the Commission, is as follows:

Frederick W. Lawrence, Technical Director, National Gas Survey, Bureau of Natural Gas, Federal Power Commission.

Mr. Lawrence has resigned his membership on the Technical Advisory Committee-Supply as a representative of the Environmental Protection Agency. He will fill the position vacated by the resignation of Dr. Paul J. Root, Federal Power Commission, from this Committee.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.73-20402 Filed 9-24-73;8:45 am]

NATIONAL GAS SURVEY COORDINATING COMMITTEE

Order Designating Member

SEPTEMBER 14, 1973.

The Federal Power Commission by Orders issued May 10, 1971, and April 16, 1973, respectively, the Commission established and renewed a Coordinating Committee of the National Gas Survey.

1. Membership. A new member to the Coordinating Committee, as selected by the Chairman of the Commission with the approval of the Commission, is as follows:

Frederick W. Lawrence, Technical Director, National Gas Survey, Bureau of Natural Gas, Federal Power Commission.

Mr. Lawrence is to fill the position vacated by the resignation of Dr. Paul J. Root, Federal Power Commission, from this Committee.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.73-20403 Filed 9-24-73;8:45 am]

NATIONAL GAS SURVEY COORDINATING TASK FORCE

Order Designating Alternate Survey Coordinating Representative and Secretary

SEPTEMBER 14, 1973.

The Federal Power Commission by Order issued December 21, 1971, established the Technical Advisory and Coordinating Committee Task Forces of the National Gas Survey.

1. Alternate FPC Survey Coordinating Representative and Secretary. The new Alternate FPC Survey Coordinating Representative and Secretary to the Coordinating Task Force, as selected by the Chairman of the Commission with the approval of the Commission, is as follows:

Frederick W. Lawrence, Technical Director, National Gas Survey, Bureau of Natural Gas, Federal Power Commission.

Mr. Lawrence is to fill the position vacated by the resignation of Dr. Paul J. Root, Federal Power Commission, from this Task Force.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-20404 Filed 9-24-73;8:45 am]

FEDERAL RESERVE SYSTEM

CHASE MANHATTAN CORP.

Acquisition of Bank

The Chase Manhattan Corp., New York, New York, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to The First National Bank of Canton, Canton, New York. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The Chase Manhattan Corp. is also engaged in the following nonbank activities: Mortgage servicing and servicing the Shapiro Factors Division of the Chase Manhattan Bank. In addition to the factors considered under section 3 of the Act (banking factors), the Board will consider the proposal in the light of the company's nonbanking activities and the provisions and prohibitions in section 4 of the Act (12 U.S.C. 1843).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of New York. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than October 2, 1973.

Board of Governors of the Federal Reserve System, September 17, 1973.

[SEAL] THEODORE E. ALLISON, *Assistant Secretary of the Board.*

[FR Doc.73-20309 Filed 9-24-73;8:45 am]

COMBANKS CORP.

Acquisition of Bank

Combanks Corp., Winter Park, Florida, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 98.8 percent of the voting shares of Combank/Longwood, Longwood, Florida, a proposed new bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit his views in writing to the Reserve Bank, to be received not later than October 1, 1973.

Board of Governors of the Federal Reserve System, September 17, 1973.

[SEAL] THEODORE E. ALLISON, *Assistant Secretary of the Board.*

[FR Doc.73-20310 Filed 9-24-73;8:45 am]

FBT BANK

Order Approving Application for Consolidation of Banks

FBT Bank, Fremont, Michigan, a proposed State member bank of the Federal Reserve System, has applied for the Board's approval pursuant to the Bank Merger Act (12 U.S.C. 1828(c)), of the consolidation of that bank with Fremont Bank and Trust Company, Fremont, Michigan, under the name of Fremont Bank and Trust Co.

As required by the Act, notice of the proposed transaction, in form approved by the Board, has been published, and reports on competitive factors have been requested from the Attorney General, the Comptroller of the Currency, and the Federal Deposit Insurance Corp. This Reserve Bank has considered the application in light of the factors set forth in the Act.

On the basis of the record, the application is approved for the reasons summarized in the Order of this date by the Federal Reserve Bank of Chicago, relating to the application of Old Kent Financial Corp. for acquisition of 100 percent of the voting shares of the successor by consolidation with Fremont Bank and Trust Co., provided that said transaction shall not be consummated (a) before the thirtieth calendar day following the date of this Order or (b) later than three months after the date of this Order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Chicago, pursuant to delegated authority.

By order of the Federal Reserve Bank of Chicago acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System effective September 12, 1973.

[SEAL] ROBERT P. MAYO, *President.*

[FR Doc.73-20311 Filed 9-24-73;8:45 am]

OLD KENT FINANCIAL CORP.

Order Approving Acquisition of Fremont Bank and Trust Co., Fremont, Michigan

Old Kent Financial Corp., Grand Rapids, Michigan, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of the successor by consolidation to Fremont Bank and Trust Co., Fremont, Mich. (Bank). The bank into which Bank is to be merged has no significance except as a means to facilitate the acquisition of the voting shares of Bank. Accordingly, the proposed acquisition of shares of the successor organization is treated herein as the proposed acquisition of the shares of Bank.

Notice of the application, affording opportunity for persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired and this Reserve Bank has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant controls two banks with deposits of $696.3 million, representing 2.7 percent of the total deposits in commercial banks in Michigan, and is the seventh largest banking organization in the State.[1] Consummation of the proposed acquisition of Bank, with deposits of $14.4 million, would not significantly increase Applicant's share of commercial bank deposits in Michigan and result in only a nominal increase in the concentration of banking resources in that section of the State approximated by the adjacent Grand Rapids and Fremont banking markets.

Bank is the smaller of two banks in Fremont. Bank's sole office is located approximately 45 Road miles northwest of Applicant's largest and closest subsidiary, Old Kent Bank and Trust Co. (deposits $680.8 million) in Grand Rapids, Michigan. There is no meaningful competition between Bank and Applicant's present subsidiary banks in either Cadillac or Grand Rapids, Michigan, nor does there seem to be any serious competition between Bank and Applicant's proposed subsidiary in Holland, Michigan.[2] Therefore, the proposed acquisition of Bank would foreclose no substantial present competition in any relevant market and have no undue adverse effect on competing banks. However, the Fremont market is adjacent to, if it does not adjoin, the Grand Rapids market, where Applicant is the dominant banking organization. In addition, Applicant has the managerial and financial expertise to enter the Fremont market de novo. The effect of the proposed transaction on potential competition is thought to be only slightly adverse, however, since Applicant is acquiring the smaller of the two banks located in Fremont and because there is no evidence that the city of Fremont, with a population of 3,465,[3] is attractive for de novo entry.

[1] Banking data are as of December 31, 1972, adjusted to reflect holding company formations and acquisitions approved through August 1, 1973.

[2] Applicant has a pending application before the Board to acquire Peoples State Bank of Holland, Holland, Michigan.

[3] Population data is based on 1970 census.

The financial and managerial resources of Applicant, its subsidiary banks and Bank are satisfactory and support approval of the application, particularly in view of Applicant's injection of $120,000 of equity capital of Bank through the consolidation. Applicant also proposes to assist Bank in providing new or improved services with respect to such areas as Mortgages, Farm Loans, Installment lending, and trust services. Considerations relating to the convenience and needs of the communities involved are thus regarded as lending some weight toward approval and as outweighing any slight anticompetitive effects which may result from the proximities of Applicant's lead bank and Bank. It is this Reserve Bank's judgment that the proposed transaction is on balance, in the public interest and should be consummated.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the thirtieth calendar day following the effective date of this Order or (b) later than three months after the effective date of this Order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Chicago pursuant to delegated authority.

By order of the Federal Reserve Bank of Chicago acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System, effective September 12, 1973.

[SEAL] ROBERT P. MAYO, *President.*

[FR Doc.73-20312 Filed 9-24-73;8:45 am]

WEST FLORIDA BANK HOLDING CO., INC.

Acquisition of Bank

West Florida Bank Holding Co., Inc., Panama City, Florida, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of Panama City National Bank, Panama City, Florida. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit his views in writing to the Reserve Bank, to be received not later than September 24, 1973.

[SEAL] THEODORE E. ALLISON, *Assistant Secretary of the Board.*

[FR Doc.73-20313 Filed 9-24-73;8:45 am]

GENERAL SERVICES ADMINISTRATION

NATIONAL HEALTH RESOURCES ADVISORY COMMITTEE

Notice of Meeting

Notice is hereby given, pursuant to the Federal Advisory Committee Act, P.L. 92-463, that the next meeting of the Presidentially-appointed National Health Resources Advisory Committee will be held October 11-12, 1973, at the O'Hare Inn, 6600 North Mannheim Road, Rosemont, IL 60018.

The subject of the meeting will be Airport/Community Emergency Medical Preparedness. It will review the current status nationwide of joint airport/community planning designed to ensure an adequate emergency medical response to the needs created by emergencies at airports and in their environs and will evaluate the progress made since Federal Air Regulation 139.

Officials of Federal, State, and local governments will participate in the meeting as well as representatives of major related agencies and associations in the private sector.

The meeting will be open to the public from 9 a.m. to 3 p.m. on October 11, 1973, and from 9 a.m. to 12 Noon on October 12, 1973.

Due to airport restrictions and space limitations, a demonstration at O'Hare Airport from 3 p.m. to 5 p.m. on October 11, 1973, cannot be open to the public. Executive Session from 1 p.m. to 3 p.m. on October 12, 1973, will not be open to the public.

In order to assure adequate seating arrangements for the portions of the meeting which are open to the public, persons planning to attend are asked to notify Frederick J. Haase, Staff Director, telephone 202/395-3100 as soon as possible.

EDWARD R. SAUNDERS, Jr., *Acting Director, Office of Preparedness, General Services Administration.*

SEPTEMBER 13, 1973.

[FR Doc.73-20416 Filed 9-24-73;8:45 am]

[GSA Bulletin FPMR E-121]

CONSERVATION OF PAPER PRODUCTS

Recommended Procedures and Solicitation of Cooperation

SEPTEMBER 24, 1973.

1. *Purpose.* This bulletin solicits the cooperation of Federal agencies in reducing paper product usage and furnishes information on actions being taken by GSA to maintain essential levels of supply in light of current critical shortages.

2. *Expiration date.* This bulletin contains information of a continuing nature and remains in effect until canceled.

3. *Background.* Paper shortages are having a serious effect on the GSA supply system and difficulty is being experienced in obtaining various types of paper used by Federal agencies. Indications are that this situation will prevail for at least two years and the current results of our product solicitations indicate a potential fluctuation in the availability of various types of paper for different uses. For example, uncoated offset book paper (FSC 9310) is in critically short supply, whereas current requirements for bond and other writing paper (FSC 7530) are being met. As a means of reducing requirements, and thereby effecting conservation of paper products, there are a number of actions which should be taken by Federal agencies. The following actions, in concert with those steps being taken by GSA in the procurement and supply of paper products, will materially assist in alleviating this shortage.

4. *Recommended agency action.* a. Publicize the need for conservation of paper products and encourage employees to reduce the usage of paper to the maximum extent.

b. Assure that adequate safeguards and controls are established in conformance with the requirements for proper use of consumable or low cost items as provided in § 101-25.107. Further, all requisitions should be screened so that only essential requirements are ordered, thereby avoiding accumulation of obsolete or unneeded items.

c. Institute strict conservation practices in the generation and distribution of copies of documents, especially where the internal reproduction of copies is involved.

d. Select the least expensive stock available commensurate with maintaining a suitable level of quality.

e. Use both sides of the sheet of writing paper when drafting material.

f. Print and duplicate on both sides of paper whenever possible.

g. Give extensive consideration to the feasibility of substituting bond or other writing paper (FSC 7530) where such use may be appropriate because of the severe shortage of uncoated offset book paper (FSC 9310) referred to in paragraph 3.

h. Examine ways and means to ease existing specifications for packaging requirements, such as the use of polyurethane foam cushioning instead of cellulose material.

5. *GSA action.* a. Deviations from Federal specifications are being authorized in the procurement of paper when the product does not differ substantially from the specification item and will serve the intended purpose.

b. Substitute items which serve the same functional purpose are being procured. As a case in point, there is currently a critical shortage of lightweight manila file folders. GSA is procuring kraft folders as an alternative item. Legal size (8½" x 14") pads are being procured both in yellow and white because of the severity in the shortage of yellow paper. Agencies may receive either color against requisitions for this item.

c. Allocation of shipments to agencies is not contemplated at this time; however, it may become necessary to make incremental deliveries on large volume orders.

M. J. TIMBERS, *Commissioner, Federal Supply Service.*

[FR Doc.73-20586 Filed 9-24-73;11:35 am]

NATIONAL SCIENCE FOUNDATION

ADVISORY PANEL FOR ASTRONOMY

Notice of Public Meeting

Pursuant to the Federal Advisory Committee Act (P.L. 92-463), notice is hereby given that a meeting of the Advisory Panel for Astronomy will be held at 9 a.m. on October 15 and 16, 1973, in Room 338 at 1800 G Street, NW., Washington, D.C. 20550. The purpose of this Panel is to provide advice and recommendations concerning support for research and research-related activities in astronomy.

The agenda for this meeting shall include discussions of the following topics:

1. Astronomical Research presently supported by the National Science Foundation.
2. Balloon and Rocket Payload support for infrared and X-ray Astronomy.
3. Development of Budgets at NSF.
4. Research review at the National Observatories.

The meeting shall be open to the public. Individuals who plan to attend should notify Mrs. Marvis M. Rush, Secretary to the Astronomy Section, by telephone (202-632-4196) or by mail (Room 305, 1800 G Street, NW., Washington, D.C. 20550) not later than close of business on October 12, 1973.

Persons who require further information concerning this Panel may contact Dr. Robert Fleisher, Head, Astronomy Section, Room 305, 1800 G Street, NW., Washington, D.C. 20550. Summary minutes of this meeting may be obtained from the Management Analysis Office, Room K-720, 1800 G Street, NW., Washington, D.C. 20550.

T. E. JENKINS,
Assistant Director for Administration.

SEPTEMBER 14, 1973.

[FR Doc.73-20393 Filed 9-24-73;8:45 am]

ADVISORY PANEL FOR ATMOSPHERIC SCIENCES

Notice of Meeting

Pursuant to the Federal Advisory Committee Act (P.L. 92-463), notice is hereby given that a meeting of the Advisory Panel for Atmospheric Sciences will be held at 9 a.m. on October 10 and 11, 1973, in Room 511 at 1800 G Street, NW., Washington, D.C. 20550. The purpose of this Panel is to advise the Foundation of the impact of its research support program on the scientific community in atmospheric sciences.

The agenda for this meeting shall include:

OCTOBER 10

MORNING

9:00—Introductory Remarks, Head, Atmospheric Sciences Section.
9:15—NSF Highlights, Division Director, Division of Environmental Sciences.
9:45—Review of NSF Atmospheric Sciences Activities since last Panel meeting (May 8 and 9, 1973), Head, Atmospheric Sciences Section.
10:15—Discussion of Proposal Review Process, Atmospheric Sciences Section staff and Panel members.
12:00—Recess for lunch.

AFTERNOON

1:00—Presentation of the Past, Present, and Future of Weather Modification—A Suggested Role for NSF, Panel members.

OCTOBER 11

MORNING

9:00—Discussions of issues concerning Upper and Lower Atmospheric Research Support:
Discussion of topics pertaining to Lower Atmosphere, Appropriate Panel members and Section staff (to be held in Room 511).
Discussion of topics pertaining to Upper Atmosphere, Appropriate Panel members and Section staff (to be held in Room 650).
12:00—Recess for lunch.

AFTERNOON

1:00—Reassembly of full Panel (Room 511); Panel Summary and Recommendations.
3:00—Adjournment.

The meeting shall be open to the public. Individuals who wish to attend this meeting should notify Dr. Fred D. White, Head, Atmospheric Sciences Section, by telephone (202-632-4198) or by mail (Room 312, 1800 G Street, NW., Washington, D.C. 20550) not later than close of business on October 10, 1973.

Persons who require further information concerning this Panel may contact Dr. Fred D. White, Head, Atmospheric Sciences Section, Room 312, 1800 G Street, NW., Washington, D.C. 20550. Summary minutes may be obtained from the Management Analysis Office, Room K-720, 1800 G Street, NW., Washington, D.C. 20550.

T. E. JENKINS,
Assistant Director for Administration.

SEPTEMBER 13, 1973.

[FR Doc.73-20395 Filed 9-24-73;8:45 am]

ADVISORY PANEL FOR EXPERIMENTAL R&D INCENTIVES, PUBLIC SECTOR SUBCOMMITTEE

Notice of Meeting

Pursuant to the Federal Advisory Committe Act (P.L. 92-463), notice is hereby given that a meeting of the Public Sector Subcommittee of the Advisory Panel for Experimental R&D Incentives will be held at 9 a.m. on October 9, 1973, in Room 550 at 1800 G Street, NW., Washington, D.C. 20550. The purpose of this Subcommittee is to review and evaluate program plans of the Public Sector Office, Office of Experimental R&D Incentives. The agenda for this meeting shall include:

MORNING

9:00—Introduction, Subcommittee Chairman.
9:30—Comments of Advisory Panel for Experimental R&D Incentives on FY 1973 Activities, Panel member:
1. Background and Definition studies.
2. Experiments.
10:45—Coffee break.
11:00—Review of Proposed FY 1974 Activities, Subcommittee Chairman.
11:45—Recess for lunch.

AFTERNOON

1:30—Comments of Advisory Panel for Experimental R&D Incentives on Proposed FY 1974 Activities, Panel member:
1. Proposed Target Areas for Experimental Activity.
2. Proposed Target Areas for Exploratory Study.
3:30—Coffee break.
3:45—Summary and Recommendations, Subcommittee Chairman.
4:30—Public Questions and Comments.
5:00—Adjournment.

The meeting shall be open to the public. Individuals who wish to attend this meeting should notify Mr. Elisha C. Freedman, Head, Public Sector Office, Office of Experimental R&D Incentives, by telephone (202-632-5778) or by mail (Room 549, 1800 G Street, NW., Washington, D.C. 20550) not later than close of business on October 4, 1973.

Persons who require further information concerning this Subcommittee may contact Mr. Elisha C. Freedman, Head, Public Sector Office, Office of Experimental R&D Incentives, Room 549, 1800 G Street, NW., Washington, D.C. 20550. Summary minutes of this meeting may be obtained from the Management Analysis Office, Room K-720, 1800 G Street, NW., Washington, D.C. 20550.

T. E. JENKINS,
Assistant Director for Administration.

SEPTEMBER 13, 1973.

[FR Doc.73-20394 Filed 9-24-73;8:45 am]

ADVISORY PANELS FOR REGULATORY AND SYSTEMATIC BIOLOGY

Notice of Meetings

Pursuant to the Federal Advisory Committee Act (P.L. 92-463), notice is hereby given of meetings of the following advisory panels including the individuals to contact for further information respecting each panel. The purpose of each of these advisory bodies is to provide advice and recommendations as part of the review and evaluation process for specific proposals and projects.

ADVISORY PANEL FOR REGULATORY BIOLOGY

Date and Time of Meeting: October 11 and 12, 1973; 9 a.m.

Location of Meeting: Room 321, 1800 G Street, NW., Washington, D.C. 20550

Agenda: The agenda will be devoted to the review and evaluation of research proposals.

For Further Information, Contact: Dr. John W. Mehl, Deputy Division Director, Division of Biological and Medical Sciences, Room 325, 1800 G Street, NW., Washington, D.C. 20550

ADVISORY PANEL FOR SYSTEMATIC BIOLOGY

Date and Time of Meeting: October 12 and 13, 1973; 9 a.m.

Location of Meeting: Room 338, 1800 G Street, NW., Washington, D.C. 20550

Agenda: The agenda will be devoted to the review and evaluation of research proposals.

For Further Information, Contact: Mr. William E. Sievers, Associate Program Director, Systematic Biology Program, Room 331, 1800 G Street, NW., Washington, D.C. 20550

These meetings are concerned with matters which are within the exemptions of the Freedom of Information Act, 5 U.S.C. 552(b) and will not be open to the public in accordance with the determination by the Director of the National Science Foundation dated January 15, 1973, pursuant to the provisions of Section 10(d) of the Federal Advisory Committee Act.

T. E. JENKINS,
Assistant Director for Administration.

SEPTEMBER 13, 1973.

[FR Doc.73-20396 Filed 9-24-73;8:45 am]

CANAL ZONE POSTAL SERVICE

CERTAIN POSTAGE RATES

Notice of Change

The Canal Zone Government hereby gives notice of certain changes in postage rates as set out in the schedule below. These rates will govern until such time as the permanent postage rates which have been prescribed by the U.S. Postal Service, effective September 9, 1973 (38 FR 24002. September 5, 1973; 37 FR 13148-50, July 1, 1972) are modified, superseded, revoked, or incorporated in Title 39 Code of Federal Regulations. The purpose of this notice is to advise of administrative action that will retain the established relationship between United States and Canal Zone postage rates.

SCHEDULE OF POSTAGE RATES

I. Domestic Postage Rates:

Second class	Zones 1 and 2[1]	Zones 8[2]
	Cents	Cents
Regular rate publications:		
Nonadvertising portion (per pound)	4.9	4.9
Advertising portion (per pound)	6.8	17.8
Minimum-per-piece:		
5,000 copies per issue or more	1.3	1.3
Less than 5,000 copies per issue	0.8	0.8
Per-piece charge:		
(In addition to foregoing) 5,000 copies per issue or more	0.6	0.6
Less than 5,000 copies	0.2	0.2
Publication of authorized nonprofit organizations:		
Nonadvertising portion (per pound)	2.7	2.7
Advertising portion (per pound)	4.8	10.4
Minimum-per-piece	0.2	0.2
Per-piece charge (in addition to foregoing)	0.3	0.3
Classroom publications:		
Nonadvertising portion (per pound)	2.6	2.6
Advertising portion (per pound)	4.1	11.7
Minimum-per-piece	0.8	0.8
Per-piece charge (in addition to foregoing)	0.3	0.3

[1] Zones 1 and 2 are applicable to second class mail destined to the Canal Zone.

[2] Zone 8 rates are applicable to second class mail destined to the United States, its territories and possessions and the Commonwealth of Puerto Rico.

NOTE.—The second class transient rate remains unchanged.

Controlled circulation:	Cents
Per pound	15.0
Minimum-per-piece	4.3
Third class:	
Non-profit bulk:	
Ordinary matter—per pound	11.0
Minimum-per-piece	1.7
Books, catalogs, etc.—per pound	9.0
Minimum-per-piece	1.7

NOTE.—No change with respect to regular rate third-class mail rates.

Fourth class:	
Special rate (educational):	
First pound	16.0
Each additional pound	8.0
Library rate:	
First pound	6.0
Each additional pound	3.0

II. International Postage Rates:

Surface rates: Books and Sheet music.

To PUAS countries except Spain and Spanish possessions:

Pounds:	Rate
1	$0.17
2	.24
4	.36
6	.54
8	.72
10	.90
11	1.03[3]
12	1.03
Each additional 2 pounds or fraction	0.18[4]

To all other countries including Spain and Spanish possessions:

Pounds:	Rate
1	$0.17
2	.23
4	.48
6	.72
8	.96
10	1.20[5]
11	1.44

[3] Eleven pounds is maximum weight limit to Canada.

[4] The provisions of 39 CFR relating to weight limits are applicable in the Canal Zone.

[5] Charge 24 cents for each additional 2 pounds or fraction on packages weighing over 10 and up to 22 pounds, destined for Spain and Spanish possessions.

Effective date.—The changes in postage rates referred to in this notice became effective at 12:01 a.m. September 9, 1973. (2 C.Z.C. sections 1131-1133, 76A Stat. 38-39)

[SEAL] DAVID S. PARKER,
Governor of the Canal Zone.

[FR Doc.73-20207 Filed 9-24-73;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[811-2029]

CNA ASSOCIATION MEMBERS FUND, INC.

Notice of Filing of Application for Order Declaring Company Has Ceased To Be an Investment Company

SEPTEMBER 18, 1973.

Notice is hereby given that CNA Association Members Fund, Inc., 245 Park Ave., New York, New York 10017 (Applicant), an open-end, diversified management investment company registered under the Investment Company Act of 1940 (the Act), has filed an application pursuant to section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment Company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant was organized as a Delaware corporation on February 13, 1970, and registered under the Act by filing a Form N-8A Notification of Registration on February 20, 1970.

Applicant represents that it never made a public offering of its shares, has no intention of making a public offering in the future, and at present has no shareholders. Applicant's registration statement under the Securities Act of 1933 was withdrawn on August 2, 1973, by order of the Commission.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of such order the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than October 12, 1973 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the Applicant at the address stated above. Proof of such service (by affidavit, or in case of an attorney at law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for a hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.73-20337 Filed 9-24-73;8:45 am]

[File No. 1-7167]

CHICAGO BOARD OPTIONS EXCHANGE, INC. AND CHICAGO BOARD OPTIONS EXCHANGE CLEARING CORP.

Notice of Application and Opportunity for Hearing

SEPTEMBER 17, 1973.

Notice is hereby given that Chicago Board Options Exchange, Incorporated (Exchange) and Chicago Board Options Exchange Clearing Corporation (Clearing Corp.), (both referred to as Applicant) have filed an application pursuant

to section 12(h) of the Securities Exchange Act of 1934, as amended, ("the Act"), for an order exempting them from the provisions of sections 13(a), 13(d), 13(e), 14(d), 15(d), and 16 of the Act.

Section 12(h) empowers the Commission to exempt, in whole or in part, any issuer or class of issuers from the registration, periodic reporting and proxy solicitation sections of the Act, if the Commission finds by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, or otherwise, that such exemption is not inconsistent with the public interest or the protection of investors.

The application of the Exchange and the Clearing Corp. states in part:

Chicago Board Options Exchange Clearing Corp. is a wholly owned subsidiary of the Chicago Board Options Exchange, Incorporated. The Exchange is a registered national securities exchange under the Securities Exchange Act of 1934. The Clearing Corp. has registered under the Securities Act of 1933, call option contracts to be purchased or sold in transactions on the Exchange. The Clearing Corp. has also registered these option contracts under section 12(b) of the Securities Exchange Act of 1934.

Applicant points out that since securities that will be the subject of the call option contracts will be issued by persons other than and not affiliated with the Exchange or the Clearing Corporation and the underlying stocks will themselves all be registered under the provisions of Section 12 of this Act:

1. Those sections of the Act that require information on the financial condition and business of the Clearing Corporation as issuer do not furnish necessary information to the investor in the Options since the value of the Options does not depend upon the business of the Clearing Corporation but instead reflects the value of the underlying stock;

2. Those sections of the Act which provide full disclosure in connection with cash tender offers and other acquisitions of registered equity securities for the purpose of obtaining control of the issuer should not be applicable to the Chicago Board Options because these Options do not represent any possibility of control over the issuer thereof, the Clearing Corporation; and

3. The section of the Acts designed to prevent the improper use by an insider of nonpublic information should not be applicable since the holder of a Chicago Board Option cannot benefit from any inside information concerning the Clearing Corporation because the value of the option depends on the value of the underlying stock, not on the business of the Clearing Corporation.

For a more detailed statement of the information, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street NW., Washington, D.C.

Notice is further given that any interested persons not later than October 17, 1973, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.73-20338 Filed 9-24-73;8:45 am]

[File No. 500-1]

HOME-STAKE PRODUCTION CO.

Order Suspending Trading

SEPTEMBER 17, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $2.50 par value, and all other securities of Home-Stake Production Company being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15 (c) (5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from September 17, 1973, through September 26, 1973.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.73-20339 Filed 9-24-73;8:45 am]

[70-5389]

MISSISSIPPI POWER CO.

Notice of Proposed Agreement With State Authority for Construction of Pollution Control Facilities Financed by Sale of Revenue Bonds

SEPTEMBER 17, 1973.

Notice is hereby given that Mississippi Power Company, 2992 West Beach, Gulfport, Mississippi 39501 (Mississippi), an electric utility subsidiary company of The Southern Company, a registered holding company, has filed a declaration with this Commission designating sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 (Act) and Rule 50(a)(4) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Mississippi is engaged in building a steam electric generating plant (Plant) on or near the Pascagoula River in Jackson County, Mississippi. The Plant will initially consist of two 500 megawatt steam generating units which will require a significant supply of water for cooling and other purposes. Current thermal water pollution control requirements of the Mississippi Air and Water Pollution Control Commission prescribe maximum temperature limits for cooling water effluent, and would prohibit discharge into the Pascagoula River or any natural waterway of cooling water used in the Plan on a "once through" basis. In order to comply with the thermal discharge criteria, Mississippi has entered into a "Water Pollution Control Agreement", dated April 5, 1973, and an amendment thereto, dated August 28, 1973 (Agreement), with the Jackson County Port Authority, an agency of the State of Mississippi, and the Board of Supervisors of Jackson County, Mississippi (herein collectively called the "County").

Pursuant to the Agreement it is proposed, among other things, that the County will construct, operate and maintain thermal water pollution control facilities and a system (herein collectively referred to as the "Facilities") for the supply to Mississippi of cooling water for said units of the generating plant.

The total cost of these Facilities is estimated at approximately $17,250,000, which is to be financed from the proceeds of the issuance and sale by the County of its Water Pollution Control Revenue Bonds (Bonds), in an aggregate principal amount not exceeding $17,250,000. The Bond proceeds will be initially deposited with a trustee (Trustee) designated by the County in a resolution authorizing and creating the Bonds (the form of which will be filed by amendment); and may be withdrawn as needed for construction of the Facilities and the expenses of issuance.

The duration of the primary term of the Agreement (which will correspond to the term of the Bonds) will be supplied herein by amendment. During said primary term Mississippi will be obligated to pay monthly for water service rendered by the County in amounts sufficient (i) to pay the County's operating and maintenance costs of the Facilities, (ii) for the payment of principal and interest on the Bonds and the fees and expenses of the Trustee, (iii) to establish a reserve fund not to exceed $500,000 for maintenance, operation and repairs, and (iv) to provide a margin to the County in an amount equal to 3% of the County's operation and maintenance costs. The Agreement provides that under certain circumstances the County may provide service to third parties from the Facilities and that in any such event provision is made for reimbursement to Mississippi of a fair allocated portion of the amounts under (i) and (ii) above. The Agreement provides for up to two five-year renewal terms, each at Mississippi's option, and for payment during such terms of the County's operation and maintenance costs, plus 3 percent thereof as a margin and a reserve fund to be agreed upon.

It is stated that the Bonds will not constitute general obligations of the County, but will be revenue bonds, the principal of and interest on which will be payable solely out of funds paid by Mississippi pursuant to the Agreement. The Agreement may be pledged by the County as security for the payment of the Bonds; in addition, payment of principal and interest on the Bonds will be guaranteed by Mississippi under terms of a Guaranty Agreement among Mississippi, the County, and the Pascagoula-Moss Point Bank of Pascagoula, Mississippi, as trustee.

It is contemplated that, in accordance with its usual practice, the County will sell the Bonds at competitive bidding, and in this connection the County has engaged the services of Smith, Barney & Co. Incorporated, investment bankers, as its financial advisor. In accordance with the laws of the State of Mississippi, the interest rate or rates to be borne by the Bonds will be fixed by the Board of Supervisors of the County. While Mississippi will not be party to the underwriting arrangements for the Bonds, the Agreement provides that terms of the offering shall be satisfactory to Mississippi. It is stated that the Internal Revenue Service has ruled that interest on the Bonds will be exempt from Federal income taxation. Mississippi has been advised that the annual interest rates on obligations, interest on which is so tax exempt, historically have been, and can be expected at the time of the issue of the Bonds to be, 1½ percent to 2½ percent lower than the rates on obligations of like tenor and comparable quality, interest on which is fully subject to Federal income taxation.

Mississippi expects the proposed transactions to be consummated prior to December 31, 1973. For accounting and financial reporting purposes the proposed transactions will be capitalized by Mississippi.

It is stated that none of the proposed transactions are subject to the jurisdiction of any State commission or any Federal commission other than this Commission. A statement of the fees and expenses to be incurred in connection with the proposed transactions will be filed by amendment.

Notice is further given that any interested person may, not later than October 11, 1973, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grnt exemption from its rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.73-20340 Filed 9-24-73;8:45 am]

SMALL BUSINESS ADMINISTRATION

[License No. 04/05-0011]

VICKSBURG SMALL BUSINESS INVESTMENT COMPANY

Filing of Application for Approval of Conflict of Interest Transaction

Notice is hereby given that Vicksburg Small Business Investment Company (Vicksburg), 302 First National Bank Building, Vicksburg, Mississippi 39180, a Federal licensee under the Small Business Investment Act of 1958, as amended (Act), has filed an application with the Small Business Administration (SBA), pursuant to sec. 312 of the Act and covered by § 107.1004 of the SBA rules and regulations governing Small Business Investment Companies (13 CFR Part 107.1004(1973)), for approval of a conflict of interest transaction falling within the scope of the above section of the Act and regulations.

Subject to such approval, Vicksburg proposes to provide financing to River Barges, Inc. (River). River is an operator of river-going barges.

The proposed financing is brought within the purview of sec. 107.1004 of the Regulations since Raymond B. May (Raymond) is the brother of David May, a director and treasurer and owner of less than 10 percent of Vicksburg's stock. Raymond also owns approximately 25 percent of River's stock; is the owner of less than 10 percent of Vicksburg stock. The financing is no more favorable in regard to its terms and conditions than other financings provided by Vicksburg to other small concerns.

Notice is hereby given that interested persons may, not later than October 10, 1973, submit to SBA in writing, relevant comments on the proposed transaction. Any such communication should be addressed to the Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416. After expiration of the fifteen days, SBA may dispose of this application on the basis of the information contained in the application, the comments (if any) which are received, and other relevant data.

Dated September 17, 1973.

JAMES THOMAS PHELAN, *Deputy Associate Administrator for Investment.*

[FR Doc.73-20350 Filed 9-24-73;8:45 am]

TARIFF COMMISSION

[332-70]

CONVERSION OF TARIFF SCHEDULES OF THE UNITED STATES INTO FORMAT OF BRUSSELS TARIFF NOMENCLATURE

Notice of Change in Deadline

On August 4, 1972, in response to a request by the President of the United States, the U.S. Tariff Commission instituted a study, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332 (g)), for the preparation of a draft conversion of the Tariff Schedules of the United States (TSUS) to conform to the Brussels Tariff Nomenclature (BTN). The President has notified the Commission that the date for submission of the revised draft of the Tariff Schedules and a report on the probable economic effect on U.S. industries and trade if such revision were to be adopted has been extended from September 30, 1973, to September 30, 1974.

In due course the Commission will schedule public hearings in connection with the study. Appropriate public notice will be issued with respect to such hearings.

By order of the Commission.

Issued September 19, 1973.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.73-20389 Filed 9-24-73;8:45 am]

[TEA-W-212]

FORANN CORP.

Workers' Petition for a Determination: Notice of Investigation

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of the former workers of the Forann Corporation, Brooklyn, New York, a subsidiary of Herbert Levine, Inc., New York, New York, the United States Taraff Commission, on September 19, 1973, instituted an investigation under section 301(c)(2) of the Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with footwear for women (of the types provided for in items 700.20, 700.45 and 700.55 of the Tariff Schedules of the United States) produced by said firm are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such firm or an appropriate subdivision thereof.

The optional public hearing afforded by law has not been requested by the petitioners. Any other party showing a proper interest in the subject matter of the investigation may request a hearing, provided such request is filed on or before October 5, 1973.

The petition filed in this case is available for inspection at the Office of the Secretary, United States Tariff Commission, 8th and E. Streets NW., Washington, D.C., and at the New York City office of the Tariff Commission located in Room 437 of the Customhouse.

By order of the Commission.

Issued: September 19, 1973.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.73-20391 Filed 9-24-73;8:45 am]

[TEA-W-211]

M. LAUER, INC.

Workers' Petition for a Determination: Notice of Investigation

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of the former workers of M. Lauer, Inc., Long Island City, New York, the United States Tariff Commission, on September 18, 1973, instituted an investigation under section 301(c)(2) of the Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with footwear for women (of the types provided for in items 700.20, 700.45, 700.55, and 700.68 of the Tariff Schedules of the United States) produced by said firm are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such firm or an appropriate subdivision thereof.

The optional public hearing afforded by law has not been requested by the petitioners. Any other party showing a proper interest in the subject matter of the investigation may request a hearing, provided such request is filed on or before October 5, 1973.

The petition filed in this case is available for inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets NW., Washington, D.C., and at the New York City office of the Tariff Commission located in Room 437 of the Customhouse.

By order of the Commission.

Issued September 19, 1973.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.73-20390 Filed 9-24-73;8:45 am]

[TEA-W-213]

MATHER CO.

Workers' Petition for a Determination: Notice of Investigation

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of the former workers of Plant No. One, Toledo, Ohio, of the Mather Company, Sylvania, Ohio, the United States Tariff Commission, on September 20, 1973, instituted an investigation under section 301(c)(2) of the Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with springs and leaves for springs, of base metal, suitable for motor vehicle suspension (of the types provided for in items 652.84 and 652.85 of the Tariff Schedules of the United States) produced by said firm are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such firm or an appropriate subdivision thereof.

The optional public hearing afforded by law has not been requested by the petitioners. Any other party showing a proper interest in the subject matter of the investigation may request a hearing, provided such request is filed on or before October 5, 1973.

The petition filed in this case is available for inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets NW., Washington, D.C., and at the New York City office of the Tariff Commission located in Room 437 of the Customhouse.

By order of the Committee.

Issued September 20, 1973.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.73-20431 Filed 9-24-73;8:45 am]

[TEA-F-55]

MOXEES SHOE CORP.

Notice of Investigation and Hearing

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962 by the Moxees Shoe Corp., Auburn, Maine, a wholly owned subsidiary of Multivisions Corporation, Bellows Falls, Vt., the United States Tariff Commission, on September 17, 1973, instituted an investigation under section 301(c)(1) of the said Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with footwear for women and children (of the types provided for in items 700.20, 700.43, 700.45 and 700.55 of the Tariff Schedules of the United States) produced by the aforementioned firm or firms, are being imported into the United States in such increased quantities as to cause, or threaten to cause, serious injury to such firm.

A public hearing in connection with this investigation will be held beginning at 10 a.m., e.d.t., on Tuesday, October 9, 1973, in the Hearing Room, U.S. Tariff Commission Building, Eighth and E Streets NW., Washington, D.C. Requests for appearances at the hearing should be received by the Secretary of the Tariff Commission, in writing, at his office in Washington, D.C., not later than noon, Thursday, October 4, 1973.

The petition filed in this case is available for inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets NW., Washington, D.C., and at the New York City office of the Tariff Commission located in Room 437 of the Customhouse.

By order of the Commission.

Issued: September 20, 1973.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.73-20430 Filed 9-24-73;8:45 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

BURD & FLETCHER CO.

Variance Application; Interim Order

I. *Notice of application.* Notice is hereby given that Burd & Fletcher Company, 321 W. Seventh Street, Kansas City, Missouri 64105, has made application pursuant to Section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1596), and 29 CFR 1905.11 for a variance, and interim order pending a decision on the application for a variance, from the standards prescribed in 29 CFR 1910.-213(c)(1) concerning guards for circular hand-fed ripsaws.

The address of the place of employment that will be affected by the application is as follows:

Burd & Fletcher Company
321 West Seventh Street
Kansas City, Missouri 64105

The applicant certifies that employees who would be affected by the variance have been notified of the application by giving a copy of it to their authorized employee representative, and by posting a copy at all places where notices to employees are normally posted. Employees have also been informed of their right to petition the Assistant Secretary for a hearing.

Regarding the merits of the application, the applicant contends that it is providing a place of employment as safe as that required by 29 CFR 1910.213 (c)(1) which sets the standard for the guarding of circular hand-fed ripsaws.

The applicant states that a manually adjustable clear plastic guard is used when cutting pieces 1 inch or larger. The blade is guarded on 2 sides and the top, rather than completely surrounded by the guard as required by 29 CFR 1910.-213(c)(1). With the guard in place, it is impossible to cut pieces less than 1 inch in width, so the guard is removed while making these cuts, and the piece is held in place with a pick.

A copy of the application will be made available for inspection and copying upon request at the Office of Standards, U.S. Department of Labor, Railway Labor Building, 400 First Street NW., Room 508, Washington, D.C. 20210, and at the following Regional and Area Offices:

Regional Office

U.S. Department of Labor
Occupational Safety and
Health Administration

823 Walnut Street
Waltower Bldg.—Rm. 300
Kansas City, Missouri 64106

Area Office

U.S. Department of Labor
Occupational Safety and
Health Administration
1627 Main Street—Rm. 1100
Kansas City, Missouri 64108

Interested persons, including affected employers and employees, are invited to submit written data, views, and arguments regarding the application for a variance, not later than October 25, 1973.

In addition, employers and employees who believe they would be affected by a grant or denial of the variance may request a hearing on the application for a variance not later than October 25, 1973, in conformity with the requirements of 29 CFR 1905.15. Submission of written comments and requests for a hearing shall be in quadruplicate, and shall be addressed to the Office of Standards, Room 504.

II. *Interim order.* Burd and Fletcher Company has requested an interim order to be effective pending a decision on the variance.

A. *Grant of interim order.* It appears from the application for a variance and interim order that an interim order is necessary to prevent undue hardship to the applicant pending a decision on the variance, by permitting the use of its present system in certain situations. Therefore, it is ordered, pursuant to authority in Section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 and 29 CFR 1905.11(c) that Burd and Fletcher Company be, and is hereby authorized to use its present system, including the manually adjustable guard described in its application, when making cuts on material 1 inch or greater in width. Burd and Fletcher Company shall give notice of the interim order to employees affected thereby, by the same means required to be used to inform them of the application for a variance.

Effective date. This interim order shall be effective as of September 25, 1973, and shall remain in effect until a decision is rendered on the application for variance by Burd and Fletcher Company.

B. *Denial of interim order.* It has been determined that the applicant has not shown that the method it uses to make cuts on material less than 1 inch in width, utilizing a pick to hold the material, is as safe as that required by 29 CFR 1910.213(c)(1).

Therefore, the applicant's request for an interim order is hereby denied for this situation, without prejudice to its application for a variance.

Signed at Washington, D.C., this 18th day of September 1973.

JOHN H. STENDER,
Assistant Secretary of Labor.

[FR Doc.73-20371 Filed 9-24-73;8:45 am]

FISHER SCIENTIFIC CO.

Notice of Application for Variance and Interim Order; Grant of Interim Order

I. *Notice of application.* Notice is hereby given that Fisher Scientific Company, 711 Forbes Avenue, Pittsburgh, Pennsylvania 15219, has made application pursuant to Section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1596), and 29 CFR 1905.11, for a permanent variance and for an interim order pending a decision on the applications, from the Occupational Safety and Health Standards prescribed in 29 CFR 1910.106(d)(5)(v), storage inside buildings.

The addresses of the places of employment affected by these applications are as follows.

Regional Distribution Center
Post Office Box 3400
Somerville, New Jersey 08876

Medford Distribution Branch
461 Riverside Avenue
Medford, Massachusetts 02155

Cincinnati Distribution Branch
5481 Creek Road
Cincinnati, Ohio 45242

Atlanta Distribution Branch
690 Miami Circle
Atlanta, Georgia 30324

Cleveland Distribution Branch
26401 Miles Avenue
Warrensville Heights
Cleveland, Ohio 44128

Pittsburgh Distribution Branch
585 Alpha Drive
Pittsburgh, Pennsylvania 15238

Raleigh Distribution Branch
3315 Winton Road
Raleigh, North Carolina 27604

Washington Distribution Branch
7722 Fenton Street
Silver Spring, Maryland 20910

Rochester Distribution Branch
15 Jetview Drive
Rochester, New York 14624

Houston Distribution Branch
4102 Greenbriar Drive
Houston, Texas 77001

King of Prussia Distribution Branch
191 S. Gulph Road
King of Prussia, Pennsylvania 19406

Springfield Distribution Branch
52 Fadem Road
Springfield, New Jersey 07081

St. Louis Distribution Branch
1241 Ambassador Boulevard
St. Louis, Missouri 63132

Chicago Distribution Branch
1458 North Lamon Avenue
Chicago, Illinois 60651

The applicant certifies that their employees have been informed of the application by giving a copy to the authorized representatives, posting a copy of the application at places where notices to employees are normally posted, and at employee meetings where they were informed of their right to petition the Assistant Secretary for a hearing.

Regarding the merits of the application, the applicant contends that it is providing a place of employment as safe as that required by 29 CFR 1910.106(d)(5)(v) which limits the storage of flammable and combustible liquids.

The applicant requests a variance for each of the facility locations listed above to permit the storage of flammable liquids is accordance with their present procedures, which exceeds the requirements of 29 CFR 1910.106(d)(5)(v) Table H-14. For each facility, the applicant has provided information on the following items: Type and size of storage spaces; class of liquids involved; storage patterns within storage areas; construction characteristics of the building, storage valuts, roofs, walls, doors, sprinklers, electrical fixtures, drainage, ventilation; firefighting capabilities; material handling equipment; and architectural and structural considerations (rules, codes, and regulations).

The applicant states that their facilities are in conformity with the standards or code authorities referenced in the application and have provided employees safe working facilities, operating methods, and procedures.

The applicant further stated that no flammable liquid related accidents or fires of any type have occurred at any of the facilities listed in the application.

The applicant contends that the storage conditions, practices, methods and operations provide employment and places of employment to employees which are as safe and healthful as the requirements of 29 CFR 1910.106(d)(5)(v) from which a variance is sought.

A copy of the application will be made available for inspection and copying upon request at the Office of Standards, U.S. Department of Labor, Railway Labor Building, 400 First Street, NW., Room 504, Washington, D.C. 20210, and at the following Regional and Area Offices:

Regional Offices

U.S. Department of Labor
Occupational Safety and Health Administration
1515 Broadway (1 Astor Plaza)
New York, New York 10036

U.S. Department of Labor
Occupational Safety and Health Administration
Gateway Plaza Building
3535 Market Street, Rm. 15220
Philadelphia, Pa. 19104

U.S. Department of Labor
Occupational Safety and Health Administration
300 South Wacker Drive
Room 1201
Chicago, Illinois 60606

U.S. Department of Labor
Occupational Safety and Health Administration
823 Walnut Street
Waltower Building—Room 300
Kansas City, Missouri 64106

U.S. Department of Labor
Occupational Safety and Health Administration
Fourth Floor, 18 Oliver Street
Boston, Massachusetts 02110

U.S. Department of Labor
Occupational Safety and Health Administration
1375 Peachtree Street NE.
Suite 587
Atlanta, Georgia 30309

U.S. Department of Labor
Occupational Safety and Health Administration
7th Floor—Texaco Building
1512 Commerce Street
Dallas, Texas 75201

Area Offices

U.S. Department of Labor
Occupational Safety and Health Administration
Custom House Building, State Street
Boston, Massachusetts 02109

U.S. Department of Labor
Occupational Safety and Health Administration
Federal Office Building
970 Broad Street—Rm. 635
Newark, New Jersey

U.S. Department of Labor
Occupational Safety and Health Administration
31 Hopkins Plaza—Charles Center
Baltimore, Maryland 21201

U.S. Department of Labor
Occupational Safety and Health Administration
1361 East Morehead Street
Charlotte, North Carolina 28204

U.S. Department of Labor
Occupational Safety and Health Administration
847 Federal Office Building
1240 East Ninth Street
Cleveland, Ohio 44199

U.S. Department of Labor
Occupational Safety and Health Administration
307 Central National Bank Bldg.
Houston, Texas 77002

U.S. Department of Labor
Occupational Safety and Health Administration
Room 203—Midtown Plaza
700 East Water Street
Syracuse, New York 13210

U.S. Department of Labor
Occupational Safety and Health Administration
1317 Filbert Street—Suite 1010
Philadelphia, Pennsylvania 19107

U.S. Department of Labor
Occupational Safety and Health Administration
1371 Peachtree Street, N.E., Rm. 723
Atlanta, Georgia 30309

U.S. Department of Labor
Occupational Safety and Health Administration
300 South Wacker Drive, Rm. 1200
Chicago, Illinois 60606

U.S. Department of Labor
Occupational Safety and Health Administration
Room 5522 Federal Office Bldg.
550 Main Street
Cincinnati, Ohio 45202

U.S. Department of Labor
Occupational Safety and Health Administration
210 North 12th Boulevard, Room 554
St. Louis, Missouri 63101

Interested persons, including affected employers and employees, are invited to submit written data, views, and arguments regarding the application for a variance not later than October 25, 1973.

In addition, employers and employees who believe they would be affected by a grant or denial of the variance may request a hearing on the application for a variance not later than October 25, 1973, in conformity with the requirements of 29 CFR 1905.15. Submissions of written comments and requests for a hearing shall be in quadruplicate, and shall be addressed to the Office of Standards at the above address.

II. *Interim order.* It appears from the application for a variance and interim order; and supporting data that an interim order is necessary to avoid undue hardships pending the decision on the merits of the application. Therefore, it is ordered, pursuant to authority in Section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970, and 29 CFR 1905.11(c) that Fisher Scientific Company be, and is hereby authorized to continue the storage of flammable liquids in accordance with their present procedures at their facilities listed above.

Fisher Scientific Company shall give notice of this interim order to employees affected thereby, by the same means required to be used to inform them of the application for a variance.

Effective date. This interim order shall be effective as of September 25, 1973, and shall remain in effect until a decision is rendered on the application for variance by Fisher Scientific Company.

Signed at Washington, D.C., this 18th day of September 1973.

JOHN H. STENDER,
Assistant Secretary.

[FR Doc.73-20325 Filed 9-24-73;8:45 am]

NEW MEXICO DEVELOPMENTAL PLAN

Submission of Plan and Availability for Public Comment

1. *Submission and description of plan.* Pursuant to section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) and § 1902.11 of Title 29, CFR, notice is hereby given that an Occupational Safety and Health Plan for the State of New Mexico has been submitted to the Assistant Secretary of Labor for Occupational Safety and Health for approval. A preliminary examination of the plan raises serious questions involving its enforcement and penalty provisions that put in issue not only the approval but possible disapproval of the plan. The questions are discussed below in this numbered paragraph. In order to insure that the public has an opportunity to discuss these issues and to identify and discuss any additional issues, interested persons are hereby invited to submit in writing data, views, and arguments on the Plan within the time provided under paragraph no. 3 of this notice.

The Plan designates the Environmental Improvement Agency of the State Health and Social Services Department as the agency responsible for administering and enforcing the Plan throughout the State. It defines the occupational safety and health issues as defined in 29 CFR 1902.2(c)(1).

Although New Mexico has enacted enabling legislation, the New Mexico Occupational Health and Safety Act, N.M.S.A. 59-14-1 et seq., the plan is still developmental. Steps remain which are intended to make the Plan as effective as the Federal program. The Plan contains a developmental schedule which anticipates full operation 30 months after approval. The Plan is accompanied by a statement of the Governor's support and an opinion by the Attorney General that the proposed Plan is consistent with the Constitution and laws of the State of New Mexico.

A preliminary examination of the New Mexico State Plan reveals several areas where its provisions differ substantially from the Federal Act. The Plan provides mandatory sanctions only in imminent danger situations, and not for other situations involving serious violations, the procedure for enforcement of civil penalties is different, and the limits on penalties themselves are in lesser amounts than those of the Federal Act. Public comments are particularly invited on these matters.

2. *Location of Plan for Inspection and Copying.* A copy of the Plan may be inspected and copied during normal business hours at the following locations: Office of Federal and State Operations, Occupational Safety and Health Administration, Room 305, 400 First Street, NW., Washington, D.C. 20210; Assistant Regional Director, Occupational Safety and Health Administration, Suite 600, Texaco Building, 1512 Commerce Street, Dallas, Texas 75201 and the Occupational Health and Safety Section, Environmental Improvement Agency, P.O. Box 2348, Santa Fe, New Mexico 87501.

3. *Public Participation.* Interested persons are hereby given until October 25, 1973, to submit to the Assistant Secretary written data, views, and arguments concerning the Plan. The submissions are to be addressed to the Director, Office of Federal and State Operations, Room 305, 400 First Street, NW., Washington, D.C. 20210. The written comments will be available for public inspection and copying at the above address.

Any interested person(s) may request an informal hearing concerning the proposed Plan, or any part thereof, whenever particularized written objections thereto are filed by October 25, 1973. If the Assistant Secretary finds that substantial objections are filed, he shall hold a formal or informal hearing on the subjects and issues involved.

The Assistant Secretary for Occupational Safety and Health shall thereafter consider all relevant comments and arguments presented and issue his decision as to approval or disapproval of the Plan.

Signed at Washington, D.C., this 18th day of September 1973.

JOHN H. STENDER,
Assistant Secretary of Labor.

[FR Doc.73-20413 Filed 9-24-73;8:45 am]

ROLLINS COLLEGE

Notice of Application for Variance

Notice of application. Notice is hereby given that Rollins College, Winter Park, Florida, 32789 has made application pursuant to section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1596) and 29 CFR 1905.11 for a variance from the standards prescribed in 29 CFR 1910.37(i) concerning means of egress.

The address of the place of employment that will be affected by the application is as follows:

Eleven dormitories (Rollins, Hooker, Lyman, Gale, Pugsley, Mayflower, Cross, Strong, Corrin, Fox, Rex Beach) at Rollins College, Winter Park, Florida 32789.

The applicant certifies that employees who would be affected by the variance have been notified of the application by posting a copy at all places where notices to employees are normally posted. Employees have also been informed of their right to petition the Assistant Secretary for a hearing.

Regarding the merits of the application, the applicant contends that it is providing a place of employment as safe as that required by 29 CFR 1910.37(i) which sets the minimum ceiling height for means of egress at 7'6".

The applicant proposes to install acoustical ceilings in the corridors at a height of 7½". This ceiling will provide a cover for air conditioning pipes and a base for lighting and fire detectors. The clearance requirement of 6'8" for obstructions will be maintained. The corridors have a maximum travel distance to protected stairs or exists of 30 feet, with a maximum of 13 rooms opening onto a corridor. All functioning rooms have outside windows for alternate means of egress. The buildings are equipped with an automatic fire alarm system which has ionization detectors for very early warning. The system automatically relays alarms to the city fire department located within ½ mile of the buildings.

A copy of the application will be made available for inspection and copying upon request at the Office of Standards, U.S. Department of Labor, Railway Labor Building, 400 First Street NW., Room 508, Washington, D.C. 20210, and at the following Regional and Area Offices:

Regional Office

U.S. Department of Labor
Occupational Safety and Health Administration
1375 Peachtree Street, NE.
Suite 587
Atlanta, Georgia 30309

Area Office

U.S. Department of Labor
Occupational Safety and Health Administration
2809 Art Museum Drive
Suite 4
Jacksonville, Florida 32202

Interested persons, including affected employers and employees, are invited to submit written data, views, and arguments regarding the application for a variance, not later than October 25, 1973.

In addition, employers and employees who believe they would be affected by a grant or denial of the variance may request a hearing on the application for a variance not later than October 25, 1973, in conformity with the requirements of 29 CFR 1905.15. Submission of written comments and requests for a hearing shall be in quadruplicate, and shall be addressed to the Office of Standards, Room 504.

Signed at Washington, D.C., this 18th day of September 1973.

JOHN H. STENDER,
Assistant Secretary of Labor.

[FR Doc.73-20372 Filed 9-24-73;8:45 am]

SPRAGUE

Notice of Application for Variance and Interim Order; Grant of Interim Order

I. *Notice of application.* Notice is hereby given that Sprague, L.P.G. Division, P.O. Box 327, Cedartown, Georgia 30125 has made application pursuant to Section 6(b)(6)(A) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1594), and 29 CFR 1905.10 for a variance, and interim order pending a decision on the application for a variance, from the standards prescribed in 29 CFR 1910.107(c)(6), (7) concerning spray finishing using flammable and combustible materials.

The address of the place of employment that will be affected by the application is as follows:

Sprague
L.P.G. Division
811 West Avenue
Cedartown, Georgia 30125

The applicant certifies that employees who would be affected by the variance have been notified of the application by giving a copy of it to their authorized employee representative, and by posting a copy at all places where notices to employees are normally posted. Employees have also been informed of their right to petition the Assistant Secretary for a hearing.

Regarding the merits of the application, the applicant states that a time extension until May 1, 1974 is needed to come into compliance with 29 CFR 1910.107(c)(6), (7) which sets standards for wiring motors and lamps within 20 feet of a spray finishing area.

The applicant states that it has electrical motors, wiring, and other equipment outside of, but within 20 feet of, the spraying area. Since this equipment cannot be moved, the applicant states that it is presently in compliance by using a water soluble paint. However, it is impossible to produce a satisfactory product with this type of paint. The applicant, therefore, requests a temporary variance to permit the use of flammable paints and enamels while a new facility is under construction.

The applicant states that plans have been drawn for a new building which will house all spraying operations in compliance with 29 CFR 1910.107. Construction of the new building will begin soon after September 15, 1973 and be completed by February 1, 1974. The new building will be fully operational by May 1, 1974.

In order to protect employees in the interim, the applicant states that all flammable liquids have been removed from the spraying area except what is actually involved in a spraying operation. The flammable liquids used in the spray booth will be placed in approved safety containers.

A copy of the application will be made available for inspection and copying upon request at the Office of Standards, U.S. Department of Labor, Railway Labor Building, 400 First Street, N.W., Room 504, Washington, D.C. 20210, and at the following Regional and Area Offices:

Regional Office

U.S. Department of Labor
Occupational Safety and Health Administration
1375 Peachtree Street, N.E.
Suite 587
Atlanta, Georgia 30309

Area Office

U.S. Department of Labor
Occupational Safety and Health Administration
1371 Peachtree Street, N.E.
Room 723
Atlanta, Georgia 30309

Interested persons, including affected employers and employees, are invited to submit written data, views, and arguments regarding the application for a variance, not later than October 25, 1973. In addition, employers and employees who believe they would be affected by a grant or denial of the variance may request a hearing on the application for a variance not later than October 25, 1973, in conformity with the requirements of 29 CFR 1905.15. Submission of written comments and requests for a hearing shall be in quadruplicate, and shall be addressed to the Office of Standards at the above address.

II. *Interim order.* It appears from the application for a variance and interim order, that an interim order is necessary to prevent undue hardship pending a decision on the variance application. Therefore it is ordered, pursuant to authority in Section 6(b)(6)(A) of the Williams-Steiger Occupational Safety and Health Act of 1970, and 29 CFR 1905.10 (c) that Sprague be, and is hereby authorized to use paints and enamels in its spraying operations in the manner described in its application.

Sprague shall give notice of this interim order to employees affected thereby, by the same means required to be used to inform them of the application for a variance.

Effective date.—This interim order shall be effective as of September 25, 1973, and shall remain in effect until a decision is redered on the application for variance by Sprague.

Signed at Washington, D.C., this 18th day of September 1973.

JOHN H. STENDER,
Assistant Secretary of Labor.

[FR Doc.73-20373 Filed 9-24-73;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 348]

ASSIGNMENT OF HEARINGS

SEPTEMBER 20, 1973.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested. No amendments will be entertained after the date of this publication.

Finance Docket No. 27438, National Railroad Passenger Corporation, Discontinuance of Trains Nos. 98 and 99 Between Norfolk/Newport News and Richmond, Virginia, now assigned October 24, 1973, at Newport News, Virginia, will be held in U.S. Post Office and Courthouse Bldg., Judge Hoffman's Courtroom, 101 25th Street; now assigned October 26, 1973, at Richmond, Virginia, will be held in Room 1035, 400 N. 8th Street.

No. 35863, Montana Intrastate Rail Freight Rates and Charges, 1973, now being assigned hearing November 28, 1973 (3 days), at Billings, Mont., in a hearing room to be later designated.

MC 128527 Sub 38, May Trucking Co., now being assigned hearing December 3, 1973 (1 week), at Boise, Idaho, in a hearing room to be later designated.

MC-F-11918, Lynden Transport, Inc.—Purchase—Alaska Transfer, Inc., now being assigned December 10, 1973 (2 days), at Seattle, Wash., in a hearing room to be later designated.

MC 114416 Sub 6, Elkins Transport Service, Inc., now being assigned hearing December 14, 1973 (3 days), at Seattle, Wash., in a hearing room to be later designated.

I&S No. 8863, Switching and Minimum Carload Charges, Houston, Texas, is continued to October 1, 1973, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 138237, Metro Heavy Hauling, Inc., now assigned October 1, 1973, at Olympia, Washington, is postponed indefinitely.

MC 263 Sub 204, Garrett Freightlines, Inc., now being assigned hearing November 26, 1973 (2 weeks), at Salt Lake City, Utah, in a hearing room to be later designated.

MC-29886 Sub 272, Dallas & Mavis Forwarding Co., application is dismissed.

MC-F-11851, Smith Transfer Corporation—Control—Brady Motorfrate, Inc., MC-F-11853, Lee Way Motor Freight, Inc.—Purchase (Portion)—Brady Motorfrate, Inc., MC-F-11876, Burgmeyer Bros., Inc.—Purchase (Portion)—Brady Motorfrate, Inc., now being assigned hearing November 26, 1973 (2 weeks), at Kansas City, Mo., in a hearing room to be later designated.

MC 97310 Subs 11 and 12, Bell Transfer Company, Inc., continued to October 29, 1973, will be held in the East Courtroom, U.S. Court of Appeals, 600 Camp Street, New Orleans, Louisiana.

MC 128944 Sub 10, Reliable Truck Lines, Inc., is continued to November 5, 1973, at Nashville, Tenn., Sheraton-Nashville Hotel, State Room, 920 Broadway.

MC 124692 Sub 108, Sammons Trucking, now being assigned hearing October 29, 1973 (2 weeks), at Portland, Oregon, will be held in Room 401, 450 Multnomah Bldg., 319 SW. Pine Street.

MC 113495 Sub 56, Gregory Heavy Haulers, Inc., now assigned October 4, 1973, at Chicago, Ill., is cancelled and application dismissed.

MC 71459 (Sub-No. 31), O. N. C. Freight Systems, now assigned continued hearing October 9, 1973, at Salt Lake City, Utah, is postponed to November 5, 1973, at Salt Lake City, Utah, in a hearing room to be later designated.

MC 128944 Sub 11, Reliable Truck Lines, Inc., MC 136678, Alabama-Tennessee Express, Inc., continued to December 3, 1973, at the Read House & Motor Inn, Broad and 9th Sts., Chattanooga, Tenn.

MC 111878 Sub 6, Babbitt Bros., Inc., Extension Stanley, Wis.; now assigned September 24, 1973, will be held in Court Room No. 3, Federal Building, 316 N. Robert St., St. Paul, Minn.

FD-24679, Spokane, Portland & Seattle Railway Company and Union Pacific Railroad Co.—Control—Peninsula Terminal Co., FD-24890, Southern Pacific Co.—Common Use of Terminal Facilities Peninsula Terminal Co., FD-24891 Southern Pacific Co.—Common Use of Certain Terminal Facilities—Union Pacific Railroad Co., now assigned October 9, 1973, will be held in Room 401, Multnomah Bldg., 319 SW. Pine Street, Portland, Oreg.

MC-124692 Sub 96, Sammons Trucking, now assigned October 1, 1973, will be held in Room 401, Multnomah Bldg., 319 SW. Pine Street, Portland, Oreg.

MC 82841 Sub 118, Hunt Transportation, Inc., now being assigned hearing November 5, 1973 (1 week), at Chicago, Ill., in a hearing room to be later designated.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73-20426 Filed 9-24-73;8:45 am]

[Notice No. 356]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's Special Rules of Practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before October 15, 1973. 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-74277. By order entered September 17, 1973, the Motor Carrier Board approved the transfer to Anthony P. Sparacino and Ralph Sparacino, a partnership, doing business as Sparacino Brothers, of the operating rights set forth in Certificates Nos. MC-7585 (Sub-No. 2), and MC-7585 (Sub-No. 4), issued by the Commission December 19, 1957, and April 22, 1971, respectively, to Anthony Sparacino, John Sparacino, and Ralph Sparacino, a partnership, doing business as Sparacino Bros., Scranton, Pa., authorizing the transportation of household goods, as defined by the Commission, between Scranton, Pa., and points within 25 miles of Scranton, on the one hand, and, on the other, points in New York, New Jersey, Connecticut, and Maryland; and used household goods, between specified counties in Pennsylvania, with certain restrictions—James J. Powell III, 700 Mears Building, Scranton, Pa. 18503, attorney for applicants.

No. MC-FC-74278. By order entered September 17, 1973, the Motor Carrier Board approved the transfer to Anthony P. Sparacino and Ralph Sparacino, a partnership, doing business as Sparacino Brothers, Scranton, Pa., of the operating rights set forth in Certificate No. MC-136104, issued by the Commission May 1, 1972, to Thomas J. Cerep, doing business as Richie Moving & Storage Co., Scranton, Pa., authorizing the transportation of household goods, between Ashland, Pa., and points within 25 miles of Ashland, on the one hand, and, on the other, points in Pennsylvania, Ohio, West Virginia, Virginia, New Jersey, New York, Maryland, Delaware, and the District of Columbia—James J. Powell III, 700 Mears Building, Scranton, Pa. 18503, attorney for applicants.

No. MC-FC-74566. By order of September 18, 1973, the Motor Carrier Board approved the transfer to Seco Trucking, Inc., Memphis, Tenn., of Certificate No. MC-133936 issued November 19, 1970, to Lesco, Inc., Memphis, Tenn., authorizing the transportation of: (1) New Furniture, (2) premiums, prizes, and (3) agricultural commodities otherwise exempt under Section 203(b)(6) of the Interstate Commerce Act when moving in mixed loads with commodities set forth in (1) and (2) above, from Camden, Ark., and Athens, Tenn., to Memphis, Tenn.; and from Memphis, Tenn., to points in Arkansas, Missouri, Mississippi, Kentucky, Tennessee, Louisiana, Alabama, and Georgia—Mr. Robert L. White, Suite 1031, 100 N. Main Building, Memphis, Tenn. 38103.

No. MC-FC-74577. By order of September 18, 1973, the Motor Carrier Board approved the transfer to Spears Trucking Co., Inc., Owens Cross Roads, Ala., of Permit Nos. MC-128581 and MC-128581 (Sub-No. 1), issued October 1, 1969, and December 22, 1969, respectively, to John E. Spears Trucking Co., Owens Cross Roads, Ala., authorizing the transportation of cinder blocks, concrete blocks, and bricks, from Huntsville, Ala., to points in Georgia, Kentucky, Mississippi, North Carolina, and Tennessee and from points in Georgia, Kentucky, Mississippi, North Carolina, and Tennessee, to Huntsville, Ala.—John Z. Higgs Jr., 401 Franklin Street, SE. Huntsville, Alabama 35801.

No. MC-FC-74642. By order of September 14, 1973, the Motor Carrier Board approved the transfer to Freeport Transport, Incorporated, Clearfield, Utah, of Permits Nos. MC-133065 (Sub-No. 8) and (Sub-No. 17) issued March 8, 1971, and April 10, 1973, respectively, to Eckley Trucking and Leasing, Inc., Mead, Nebr., authorizing the transportation of salvage rail track, salvage switches, salvage plates, salvage ties, salvage spikes, and related salvage materials between points in the United States (except Alaska and Hawaii)—Miss Irene Warr, Attorney at Law, 430 Judge Building, Salt Lake City, Utah 84111.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73-20427 Filed 9-24-73;8:45 am]

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TUESDAY, SEPTEMBER 25, 1973
WASHINGTON, D.C.

Volume 38 ■ Number 185

PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

■

SPECIAL PROJECTS AND TEACHER TRAINING IN ADULT EDUCATION

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 167]

SPECIAL PROJECTS AND TEACHER TRAINING IN ADULT EDUCATION

Proposed Priorities for Fiscal Year 1974

Pursuant to the authority contained in the Adult Education Act (84 Stat. 159–164, 20 U.S.C. 1201–1211), notice is hereby given that the Commissioner of Education, with the approval of the Secretary of Health, Education, and Welfare, proposes to amend Part 167 of Title 45 of the Code of Federal Regulations by adding thereto an Appendix A. Appendix A of Part 167 would read as set forth below.

The proposed Appendix to Part 167 would contain the priorities for fiscal year 1974 preapplications and applications for special experimental demonstration projects and for teacher training.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed priorities to the Division of Adult Education, U.S. Office of Education, 7th and D Streets SW., Room 5056–ROB, Washington, D.C. 20202. Comments received in response to this notice will be available for public inspection at the above office on Mondays through Fridays between 8:30 a.m. and 4:30 p.m.

All relevant material received not later than October 25, 1973, will be considered.

Dated August 10, 1973.

JOHN OTTINA,
U.S. Commissioner of Education.

Approved September 21, 1973.

CASPAR W. WEINBERGER,
Secretary of Health, Education, and Welfare.

(Catalog of Federal Domestic Assistance No. 13.401, Adult Education—Special Projects and No. 13.402, Adult Education—Teacher Education.)

APPENDIX A

PRIORITIES FOR FISCAL YEAR 1974

This Appendix contains priorities for preapplications and applications only for fiscal year 1974. The priorities for future fiscal years will be published in the FEDERAL REGISTER and thereafter may be obtained from the Division of Adult Education, U.S. Office of Education, Washington, D.C. 20202. Projects proposed in accordance with these priorities are subject to applicable statutes, regulations and guidelines, including the Adult Education Act, the regulations contained in 45 CFR 167, and the appropriate guidelines. Preapplications and applications should indicate the priority and the special emphasis being addressed within the priority.

(a) *Special experimental demonstration projects.* Section 309(b) of the Adult Education Act authorizes the Commissioner to make grants for certain special experimental demonstration projects.

(1) *Appropriate adult population.* The Adult Education Act authorizes education services for adults with less than a high school education or the equivalent. This group encompasses a population of 66,500,000 adults 16 years or older. However, past experience and program evaluations and reports have indicated that the needs of the following groups should be more adequately addressed in fiscal year 1974:

(i) Those with a fourth grade or less capability in reading, writing, computational and communication skills;

(ii) Welfare recipients; and

(iii) Rurally situated adults.

(2) *Program component needs.* In relation to the above populations, past experience and program evaluations also indicate remaining needs in two component areas:

(i) Recruitment and retention of participants in programs; and

(ii) Instruction, including

(*a*) prescribing learning activities to meet individual needs;

(*b*) fostering student participation in setting objectives and evaluating learning activities;

(*c*) evaluating the overall instructional program;

(*d*) diagnosing student learning needs;

(*e*) using adult basic education teachers to counsel adults; and

(*f*) using small group instruction.

It is hoped that preapplications and applications for fiscal year 1974 will, when appropriate, specifically address the above groups and components.

(3) *Program priorities.* For fiscal year 1974, the Commissioner will accept preapplications and applications for special experimental demonstration projects in the following areas: adult career education; adult right to read effort; and improving State-administered adult education services. These program priorities are detailed below. Projects initiated under the program priorities of fiscal year 1973 may also be renewed, under circumstances which will be described below.

(i) *Adult career education.* Career education, in general, provides for the sequential development of occupational awareness, orientation, exploration, and specialization. Career education for educationally disadvantaged adults, particularly as distinguished from career education for children and youth, is in need of definition, development, and placement in the adult education program. Furthermore, adult career education programs offer a unique opportunity to combine adult education experimental and demonstration activities with vocational and technical and manpower development and training programs. Therefore, preapplications and applications addressing one or more of the following career education-related areas will be accepted:

(*a*) Demonstration projects involving approximately five employers, each of which would experiment with introducing models which have a common adult education component. Such models must involve 60 or more employees each, and be designed in concert with concerned employers and unions. The models must provide for modifications of the work and learning environments in specific ways to determine the effect of these changes on adult learning, job satisfaction, and, where appropriate, cost effectiveness;

(*b*) Demonstration projects which are jointly administered by a State-administered adult education program and another State agency or projects which are jointly administered by a local adult educational agency (funded under a State-administered adult education program) and an appropriate municipal agency. These projects must develop model career education programs for educationally disadvantaged public service employees or potential employees by bringing together appropriate career education components including the development of career ladders within the participating agencies. An instructional materials package must be developed and validated. Competency-based instruction, utilizing specific objective performance standards, may be incorporated into the package. Current relevant materials should be analyzed prior to the development of the project, including ERIC materials and the career education materials developed under Parts D and I of the Vocational Education Act. An example of the latter type of materials is "Dissemination of Career Education Materials for Summer of 1973." A plan for national distribution of the project design and materials should also be developed. Linkages with appropriate national, State, and local organiztions should be established;

(*c*) Demonstration projects which experiment with supplementing a local adult education program which is funded under the State-administered adult education program with a model for adult career development. Such projects must provide needs assessment services and information on available careers, advice on educational and learning opportunities available, and placement assistance in new careers. The project may also link with skill centers, business, industry, unions, and community organizations and advise them on structuring new careers and sequential career-ladders and collaborate with them in developing educational opportunities designed to assure career opportunities and progression;

(*d*) A study of practices in industry which treat the employment structure itself as a part of an adult learning system. Such a project must survey and analyze a limited number of good examples in which the work environment and personnel policies and procedures have been structured to facilitate a program of adult learning and development. Criteria used by the applicant in evaluating such praactices must be specified, A state-of-the-art report of effective structures and practices might be the project outcome. Procedures and methodologies which were used and those which were abandoned by the applicant should be identified and analyzed in the final report on the project;

(*e*) Studies which analyze existing models of cooperative industry and State-administered adult education programs. These studies must identify four or five of the most successful joint programs. Each such program must be analyzed in depth and a comparative analysis would highlight common characteristics and differences and strengths and weaknesses. Emphasis should be placed on dissemination of the studies in order to encourage similar cooperative programs; and

(*f*) Studies which analyze several current industry- and labor-sponsored adult basic education programs which do not receive State or Federal assistance. Large amounts of money are spent by industry and unions on adult basic education. Public school adult education personnel need to know the current policies and practices of business and industry regarding adult education for employees with less than a high school education or its equivalent. After identifying and analyzing current practices, projects must be designed to create collaborative career education programs utilizing the adult education expertise of public education programs and the skills, instruction, and job training capabilities of industry and unions.

(ii) *Adult right to read effort.* (*a*) The experience of the past eight years of adult basic education, together with information compiled from surveys of State and local adult education directors, the analysis of various program reports, and evaluations of State-administered adult education programs lead to the following conclusions:

(*1*) State-administered adult education programs have not adequately addressed the

needs of the hard-to-reach adult who either has not completed at least four years of formal schooling or who is not functioning at the fourth-year level;

(2) Curricula for this hard-to-reach group either have not been developed or, if developed, have failed to sustain the interest of this group;

(3) Reading materials in these curricula have failed to be of a level suitable for use with this group; and

(4) Males have been more difficult to recruit for State-administered adult education programs, especially those young males in large cities and those located in isolated rural areas.

(b) The emphasis of the adult basic education program is on the most severely impoverished, the most severely undereducated, the unemployed, and the underemployed. The development of programs to serve the needs of these persons remains one of the primary national objectives.

(c) To address this national objective and the above conclusions, the U.S. Office of Education will accept preapplications and applications for adult right to read programs which design and demonstrate adult basic education models which should include a majority of the following characteristics:

(1) Grade level structure 0–4;

(2) Motivation and recruitment provisions, including but not limited to the mass media, for attracting the young males and others of the target group;

(3) Curricula developed or to be tested which include reading, computational, communication, and social living skills. Emphasi should be on curricula for reading at the grade level 0–4 which has a high-interest level and is compatible with providing a remedial reading approach for grade level 0–4;

(4) Special program provisions for retaining the hard to reach once they enter the program. These provisions may involve special pre-service and in-service education programs designed specifically for teachers of the grade level 0–4 group;

(5) Special counseling programs designed to meet the particular needs of young males, minorities, and adults functioning at grade level 0–4;

(6) Coordination with other Federal, State, and local programs, particularly those seeking to reach the same target group;

(7) Coordination and cooperation with public library programs in reassessing the availability of appropriate reading materials for grade level 0–4 adults;

(8) Survey of the grade level 0–4 adult population in the area where the project is to be conducted;

(9) Controlled and non-controlled classes of the grade level 0–4 adult population;

(10) Pre- and post-testing of the target population with emphasis on informal, less structured testing methods and procedures;

(11) Formative and summative evaluation plans. Formative evaluation should provide information on a monthly basis for project modification, while summative evaluation data should provide evidence for determining the extent to which project goals or objectives have been accomplished; and

(12) Third-party evaluations to assess the overall planning and management of the program model.

Knowledge of the current activities and projected ten-year plan for the national right to read effort is essential.

(iii) *Improving State-administered adult education services.* Adult education services must be broadened in size and scope and made responsive to the needs and interests of adults as they perceive them. Furthermore, the advances in this direction made by State-administered adult education programs should be further disseminated, expanded, and coordinated with compatible efforts by agencies outside of the State and local educational agencies.

To address this national need, preapplications and applications for the following projects will be accepted:

(a) Projects which experiment with adding to a local program funded under a State-administered adult education program new supportive capabilities in assessing adult needs and in designing educational experiences to meet these needs. An example of such a project would be the creation of a community adult educational services unit. This unit would monitor the community to identify major problem areas (for example, specific types of crimes, unemployment, health, and inadequate community services), analyze how adult education and other community resources can contribute to solutions of the problem areas, and design adult learning experiences accordingly. Such a project would also demonstrate new delivery systems which foster access of adults to these learning experiences. It may also experiment with allowing recipient groups to actually operate educational programs for their peers, calling upon professional help as necessary.

(b) Projects which experiment with adding to a local project operated pursuant to a State-administered adult education program new capabilities to link the project with business and industry. The primary objective of these projects must be to link the local adult educational program, business, industry, unions, employees, and other related community groups in a planned and targeted adult education program. Such a project might, for example, create business and industry liaison and planning units which will seek to utilize the predictable and unpredictable periods of idleness in industry. Lay-offs occasioned by model change-overs, plant remodeling, and supply shortages present periods of opportunity for targeted and relevant adult education. Such industry liaison and planning units might survey industry to ascertain planned and possible periods of idleness, industry's assessment of employee training needs, and the workers' and their families' learning interests. The units might design special learning programs for workers and their families during such periods of idleness. Since business and industry facilities are usually available during such periods of idleness, industry and union contributions to these learning efforts might be solicited.

(c) Projects which systematically exchange public school adult education administrators and practitioners with personnel from community agencies, industry, unions, and other identified organizations. The primary objective of such projects would be to provide adult educators with broadened experience of adult learner needs. A secondary objective would be to provide avenues of communication and community contact normally outside the organization experience of the public education system. Objectives for the community exchange personnel would be to give them experience with the public education system and its possible uses as a community resource in meeting adult needs. Such experience would correspondingly open to the exchange personnel new avenues of communication with the public education system.

(iv) *Renewals.* Preapplications and applications under section 309(b) of the Act will also be accepted in accordance with those fiscal year 1973 priorities (as described in the "Open Letter" announcing the fiscal year 1973 priorities) which have not been continued for fiscal year 1974. However, such preapplications and applications will only be accepted from those applicants who received grants under such discontinued priorities in fiscal year 1973 and will be reviewed on a competitive basis with all other applications under section 309(b) of the Act.

(20 U.S.C. 1208(b); 45 CFR 167.4(a), 167.7 (b).)

(b) *Teacher training programs.* Section 303(c) of the Act authorizes the Commissioner to make grants to provide training for persons engaged, or preparing to engage, as personnel in adult education programs designed to carry out the purposes of the Act.

(1) *National adult education staff development program.* It is anticipated that approximately nine national adult education staff development programs (which were started in fiscal year 1972 and continued in fiscal year 1973) will be continued in fiscal year 1974. The purpose of the programs is to establish a more effective means of providing quality in-service education for adult education personnel while at the same time developing more effective systems of pre-service education. To continue this effort, the U.S. Office of Education will award grants for the conduct of the third year of the national adult education staff development programs. Applications are requested for the continuation of such programs.

(2) *Adult education program for cultural and ethnic understanding.* (i) Preapplications and applications will be accepted for adult education programs for cultural and ethnic understanding. The purposes of the programs will be to provide leadership development for representatives of minority groups and to sensitize teachers and administrators to the needs and values of culturally and ethnically different adults. A problem frequently encountered in the preparation of teachers and counselors for adult education programs is that of developing staff awareness of the unique problems encountered by the adult student. A specific problem is the social distance that exists between the adult students of varied ethnic and cultural backgrounds and many public school teachers. To work effectively with adult students with different social and cultural perspectives, teachers must have understanding and appreciation of the point of view of the adult student. Minorities must also be adequately represented in leadership positions in adult education.

(ii) To address this national need, preapplications and applications are requested for programs which are designed to accomplish one or more of the following:

(a) Identify leaders and potential leaders who are engaged in or preparing to become engaged in leadership roles in the growing variety of adult education programs. Leaders should be representative of all segments of the minority population, including women and racial, ethnic, cultural, and social diversification within the adult education population;

(b) Provide effective cross-cultural training for teachers and administrators;

(c) Include the involvement and participation of the diverse minority groups represented in the adult education population in career development programs, along with majority group representation;

(d) Provide linkages with the national staff development programs as a direct strategy for incorporating programs for minority leadership development. This would serve as a first step in bringing minority leadership into State and local adult education systems. Emphasis should be placed on the involvement of teacher educators as strategic personnel in responding to the needs of minority groups;

(e) Provide linkages with other related special project activity to serve as a source

of information of minority leaders and leadership development techniques, and to provide ideas for other projects; and

(*f*) Include the development and dissemination of such publications as are needed to incorporate ethnic and cultural understanding concepts into ongoing adult education programs.

(3) *Support programs for the national adult education staff development program.* The U.S. Office of Education will also accept preapplications and applications for programs that would provide direct support to the national adult education staff development program. Preapplications and applications must be written in cooperation with projects funded under the above regional staff development effort, and needs should be jointly identified. Identified needs must be national or multi-regional in nature, and programs must be designed to provide services that cannot feasibly be implemented by the individual regional staff development projects. Such support programs could, for example, identify national resources, disseminate relevant adult education personnel training information, or provide specialized training activities on a multi-regional or national basis.

(20 U.S.C. 1208(c); 45 CFR 167.4(b), 167.7 (c).)

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