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FEDERAL REGISTER

VOLUME 28 NUMBER 170

Washington, Friday, August 30, 1963

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Codification Guide

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

Monthly, quarterly, and annual cumulative guides, published separately from the daily issues, include the section numbers as well as the part numbers affected.

Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

Department of Defense

Effective upon publication in the FEDERAL REGISTER, subparagraphs (48), (49), (50), (51), (52), and (53) are added to paragraph (a) of § 6.304 as set out below.

§ 6.304 **Department of Defense.**

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

(48) One Deputy Assistant Secretary (Civil Rights), Office of the Assistant Secretary of Defense (Manpower).

(49) The Principal Assistant to the Deputy Assistant Secretary (Civil Rights).

(50) One Staff Assistant to the Deputy Assistant Secretary (Civil Rights).

(51) One Private Secretary to the Deputy Assistant Secretary (Civil Rights).

(52) The Director for Equal Employment Opportunity, Office of the Deputy Assistant Secretary (Civilian Personnel and Industrial Relations), Office of the Assistant Secretary of Defense (Manpower).

(53) One Private Secretary to the Director for Equal Employment Opportunity.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

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

[F.R. Doc. 63-9383; Filed, Aug. 29, 1963; 8:55 a.m.]

Title 7—AGRICULTURE

Chapter IV—Federal Crop Insurance Corporation, Department of Agriculture

PART 401—FEDERAL CROP INSURANCE

Subpart—Regulations for the 1961 and Succeeding Crop Years

APPENDIX; COUNTIES DESIGNATED FOR BARLEY CROP INSURANCE

Pursuant to authority contained in § 401.1 of the above-identified regulations, as amended, the following counties are hereby added to the lists of counties published March 27, 1963, and August 3, 1963, which were designated for barley crop insurance for the 1964 crop year.

MONTANA

Dawson
McCone

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U.S.C. 1506, 1516)

[SEAL] JOHN N. LUFT,
Manager,
Federal Crop Insurance Corporation.

[F.R. Doc. 63-9360; Filed, Aug. 29, 1963; 8:52 a.m.]

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

SUBCHAPTER B—SUGAR REQUIREMENTS AND QUOTAS

[Sugar Reg. 811, Amdt. 6]

PART 811—CONTINENTAL SUGAR REQUIREMENTS AND AREA QUOTAS

Sugar Requirements, Quotas and Quota Deficits for 1963

Basis and purpose and statement of bases and considerations. This amendment is issued pursuant to the authority vested in the Secretary of Agriculture by the Sugar Act of 1948, as amended (61 Stat. 922, as amended), hereinafter referred to as the "Act." The purpose of this amendment to Sugar Regulation 811 (27 F.R. 12340, 28 F.R. 715, 1099, 1981, 2978, 3438, and 4696) is to extend the terminal date for importation of sugar from foreign countries as a group (global quota) established pursuant to section 202(c)(4)(A) of the Act.

Prospective monthly imports of sugar from foreign countries during the remainder of 1963 show December arrivals to be extremely light as compared with arrivals of earlier months. The extension of the terminal importation date to December 31, 1963, for global quota sugar will enable importers to enter substantial quantities of such sugar in December which is now committed for delivery by November 15, 1963, or earlier. Extending the period for importation will provide greater flexibility in the timing of importations of foreign sugar to better serve the needs of refiners and consumers.

Effective date. This amendment authorizes the extension of the terminal date of importation of sugar into the continental United States from foreign countries as a group (global quota) to December 31, 1963. In order to insure an orderly flow of sugar into the United States during the remainder of 1963 for the mutual benefit of consumers and the sugar industry, it is essential that all persons selling and purchasing sugar for consumption in the United States be informed as soon as possible. Therefore, it is hereby determined and found that compliance with the notice, procedure and effective date requirements of the Administrative Procedure Act is unnecessary, impracticable and contrary to the public interest and the amendment herein shall become effective when filed for public inspection in the Office of the Federal Register.

By virtue of the authority vested in the Secretary of Agriculture by the Act, Part 811 of this chapter is hereby amended as follows:

A new subdivision (iv) is added to paragraph (e)(3) of § 811.13 as follows:

§ 811.13 **Quotas for foreign countries.**

* * * * *

(e) * * *
(3) * * *

(iv) The authorized terminal date for purchase and importation of sugar pursuant to subdivisions (ii) or (iii) of this subparagraph (3) is hereby extended to December 31, 1963, provided that importations are made in accordance with the requirements set forth in Part 817 of this chapter.

(Sec. 403, 61 Stat. 932, 7 U.S.C. 1153. Interprets or applies sec. 202, 61 Stat. 924, as amended; 7 U.S.C. 1112)

Issued at Washington, D.C., this 27th day of August 1963.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 63-9316; Filed, Aug. 29, 1963; 8:55 a.m.]

[Sugar Reg. 817, Amdt.]

PART 817—REQUIREMENTS RELATING TO BRINGING OR IMPORTING SUGAR OR LIQUID SUGAR INTO CONTINENTAL UNITED STATES

Applications for Set-Aside of Quota; Modification of Requirements

Basis and purpose and bases and considerations. This amendment is issued pursuant to the authority vested in the Secretary of Agriculture by the Sugar Act of 1948, as amended (61 Stat. 922, as amended), hereinafter referred to as the "Act." The purpose of this amendment is to permit importers to schedule the importation of foreign sugar in 1963 later than the dates of importation stated on approved Quota Set-Aside Applications and Agreements covering sugar which is now committed for importation prior to November 15, 1963. Such commitments to import sugar at dates prior to November 15, 1963, were largely made during April and May, a period of excessively high prices and demand for sugar and when there was widespread uncertainty among sugar buyers as to the supply of sugar to serve this market. Subsequently, the price of sugar has declined and presssure for early importations has lessened. Thus, permitting importations of sugar to be delayed to a date later in the year, than present commitment dates, will promote a more orderly flow of sugar to meet market needs in late 1963 and early 1964. Under the current and prospective circumstances, it is to the best interest of the government to permit, where applicable, a change in the date of importation on Set-Aside Agreements executed

by sugar importers and approved by the Secretary.

The amendment provides for changing the date of importation of sugar covered by an approved Set-Aside Agreement by submission of a rider to be signed by the importer and accepted by the Secretary. Such changes may be accepted only if the number of days from the date of approval of the original Set-Aside Agreement to the date of importation, as changed, does not exceed the applicable 140 day or 235 day limitation, established in subparagraph (2) of paragraph (e) of § 817.4 and only if the sugar is to be imported before midnight of December 31, 1963.

Effective date. In view of the time required to plan and execute changes in the date of importation of sugar, as provided for by this amendment, it is important that importers who may wish to do so be given prompt notice of this amendment and that the amendment be made effective as soon as possible. Therefore, it is hereby determined and found that compliance with the notice, procedure and effective date requirements of the Administrative Procedure Act is unnecessary, impracticable and contrary to the public interest and the amendment herein shall become effective when published in the FEDERAL REGISTER.

Pursuant to the provisions of section 403 of the Act (61 Stat. 932), paragraph (e) of § 817.4 is hereby amended by adding subparagraph (4) to read as follows:

§ 817.4 Application by importer.

* * * * * *

(e) * * *

(4) The provisions of this subparagraph (4) shall apply to any approved Quota Set-Aside Application and Agreement on which the stated date of importation is prior to November 15, 1963, and with respect to which the period between the date of approval thereof and the dates of departure and importation stated therein are less than the applicable maximum periods provided for in subparagraph (2) of this paragraph (e). Any such approved Set-Aside Application and Agreement may be amended, by a rider provided for herein, to extend the stated date of departure and date of importation: *Provided,* That the period between the date of approval of the original Set-Aside Agreement and the extended dates shall not exceed the applicable maximum period as provided in subparagraph (2) of paragraph (e) of this section: *And provided,* That the time and date of importation shall not be later than 12:00 midnight, December 31, 1963. Such a change in the dates of departure and importation stated in a Quota Set-Aside Application and Agreement shall be made in accordance with the terms of a rider as follows: which is signed by the applicant, delivered to the Secretary, and is accepted by him and made a part of such Quota Set-Aside Application and Agreement:

RIDER

It is agreed by and between the United States of America and the undersigned:

That this rider, when accepted by the Secretary, shall be a part of the Quota Set-Aside Application and Agreement approved on _____, as Set-Aside No. _____
(Date)

for _____ short tons (commercial weight) of sugar from _____.
(Country)

That paragraph two of that agreement is hereby amended to read as follows: "I agree that in consideration of the approval of this application and rider, I will ship the quantity of sugar approved for set-aside pursuant to application before _____ for importa-
(Date)

tion into the continental United States, and will import such quantity into the continental United States on or before _____
(Date)

in accordance with the provisions of this agreement and applicable provisions of Sugar Regulations 817 and 811, regardless of whether sugar quotas are suspended on or before such date of importation."

That the date of importation stated in such Quota Set-Aside Application and Agreement shall be extended as provided in this rider only with respect to sugar imported into the continental United States after the date of acceptance of this rider by the Secretary of Agriculture; and

That this rider will be accepted by the Secretary only on or before the date of importation stated in such Quota Set-Aside Application and Agreement, and only if he receives confirmation acceptable to him that the letter of credit referred to in such Quota Set-Aside Application and Agreement will cover failure to import under the provisions of such Quota Set-Aside Application and Agreement as amended by the terms of this rider.

Signed _____.

Date _____.

Accepted by the Secretary of Agriculture by _____.

(Sec. 403, 61 Stat. 932, 7 U.S.C. 1153. Interprets or applies secs. 101, 202, 211, 212; 61 Stat. 922, as amended, 924, as amended, 928, as amended, 929, as amended, sec. 213 as added by Public Law 87-535, Public Law 87-539; 7 U.S.C. 1101, 1112, 1121, 1122)

Issued at Washington, D.C., this 27th day of August 1963.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 63-9387; Filed, Aug. 29, 1963; 8:55 a.m.]

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

PART 925—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN IDAHO AND IN MALHEUR COUNTY, OREGON

Determination Relative to Expenses and Fixing of Rate of Assessment for Fiscal Period 1963–64

Pursuant to the marketing agreement and Order No. 925 (7 CFR Part 925), regulating the handling of fresh prunes grown in designated counties in Idaho and in Malheur County, Oregon, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the proposals submitted by the Idaho-Malheur County, Oregon Fresh Prune Marketing Committee (established pursuant to said marketing agreement and order), it is hereby found and determined that:

§ 925.202 Expenses and rate of assessment for the fiscal period 1963–64.

(a) *Expenses.* The expenses that are reasonable and likely to be incurred by the Idaho-Malheur County, Oregon Fresh Prune Marketing Committee, established pursuant to the provisions of the aforesaid marketing agreement and order, to enable such committee to perform its functions, in accordance with the provisions thereof, during the fiscal period beginning June 1, 1963, and ending May 31, 1964, will amount to $3,850.

(b) *Rate of assessment.* The rate of assessment, which each handler who first handles prunes shall pay as his pro rata share of the aforesaid expenses in accordance with the applicable provisions of said marketing agreement and order is hereby fixed at one-third cent ($0.0033) per one-half bushel of prunes so handled by such handler during such fiscal period.

(c) *Reserve.* Unexpended assessment funds, in excess of expenses incurred during the fiscal year ending May 31, 1963, shall be carried over as a reserve in accordance with the applicable provisions of § 925.42 of the said marketing agreement and order.

It is hereby further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, and engage in public rule-making procedure, and good cause exists for not postponing the effective date hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 1001–1011) in that (1) the relevant provisions of said amended marketing agreement and this part require that rates of assessment fixed for a particular marketing year shall be applicable to all assessable prunes from the beginning of such year; and (2) the current fiscal period began June 1, 1963, and the rate of assessment herein fixed will automatically apply to all assessable prunes beginning with such date.

Terms used in the marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said marketing agreement and order.

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

Dated: August 26, 1963.

PAUL A. NICHOLSON,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 63-9359; Filed, Aug. 29, 1963; 8:52 a.m.]

[948.342; Amdt. 3]

PART 948—IRISH POTATOES GROWN IN COLORADO

Limitation of Shipments; Area No. 3

Findings. (a) Pursuant to Marketing Agreement No. 97, as amended, and Order No. 948, as amended (7 CFR Part 948), regulating the handling of Irish potatoes grown in Colorado, effective

under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of recommendations and information submitted by the Area No. 3 Committee, established pursuant to the said marketing agreement and order, and other available information, it is hereby found that the amendment to the limitation of shipments hereinafter set forth, will tend to effectuate the declared policy of the Act.

(b) It is hereby found that it is impracticable and contrary to the public interest to give preliminary notice or engage in public rule making procedure, and that good cause exists for not postponing the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 1003) in that (1) the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the Act is insufficient, (2) compliance with this amendment will not require any special preparation on the part of handlers which cannot be completed by the effective date, (3) reasonable time is permitted under the circumstances for such preparation, and (4) this amendment relieves restrictions on the handling of potatoes in the production area.

Order, as amended. In § 948.342 (28 F.R. 7119, 7422, 9253) delete paragraph (c) and substitute in lieu thereof a new paragraph (c) as set forth below.

§ 948.342 Limitation of shipments.

* * * * *

(c) *Special purpose shipments*—(1) *Chipping stock.* Potatoes may be handled for chipping if they meet the requirements of U.S. No. 2, or better, grade, 1⅞ inches minimum diameter, if such potatoes are handled in accordance with paragraph (d) of this section.

(2) The quality and maturity requirements of paragraphs (a) and (b) of this section and the inspection and assessment requirements of this part shall not be applicable to shipments of potatoes for:

(i) Livestock feed; and

(ii) Charity.

(3) The maturity requirements set forth in paragraph (b) of this section shall not be applicable to shipments of potatoes for:

(i) Chipping; and

(ii) Prepeeling.

(4) The quality and maturity requirements of paragraphs (a) and (b) of this section shall not be applicable to shipments of potatoes for seed (§ 948.6) but such shipments shall be subject to assessments.

* * * * *

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

Dated August 27, 1963, to become effective August 27, 1963.

PAUL A. NICHOLSON,
Acting Director,
Fruit and Vegetable Division.

[F.R. Doc. 63-9385; Filed, Aug. 29, 1963; 8:55 a.m.]

[980.102 Onions]

PART 980—VEGETABLES; IMPORT REGULATIONS

Onions

Findings. (a) Notice of rule making regarding proposed restrictions on the importation of onions into the United States to be made effective under section 8e–1 of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 608e–1), was published in the August 14, 1963, FEDERAL REGISTER (28 F.R. 8324). The notice afforded interested persons an opportunity to file data, views, or arguments in regard thereto not later than 10 days after publication. None was filed.

After consideration of all relevant matters, including the proposal set forth in the aforesaid notice, and other available information, it is hereby found that the proposal as published in the notice should be issued and that such restrictions on the importation of onions, as hereinafter provided, comply with the grade, size, and quality requirements applicable to onions produced in the United States, and effective under Marketing Order No. 958 (7 CFR 958) regulating the handling of onions grown in designated counties of Idaho and eastern Oregon. This regulation is subject to amendment with adequate notice as domestic regulations are changed.

(b) It is hereby further found that good cause exists for not postponing the effective date of this regulation beyond the time specified (5 U.S.C. 1003) in that (1) the requirements established by this regulation are mandatory under section 8e–1 of the Act; (2) all known onion importers were notified of the proposed regulation; and (3) notice hereof was published in the August 14, 1963, FEDERAL REGISTER (28 F.R. 8324), and such notice is determined to be reasonable.

§ 980.102 Onion import regulation.

Except as otherwise provided, during the period September 9, 1963, through June 30, 1964, no person shall import dry onions of the yellow or white varieties unless such onions are inspected and meet the requirements of this section.

(a) *Grade and size requirements*—(1) *Yellow varieties.* U.S. No. 2, or better grade, 2 inches minimum diameter.

(2) *White varieties.* U.S. No. 2, or better grade, 1 inch minimum diameter.

(b) *Condition.* Due consideration is given to the time required for transportation and entry of onions into the United States. Onions with transit time from country of origin to entry into the United States of ten or more days may be entered if they meet an average tolerance for decay of not more than 5 percent, provided they also meet the other requirements of this section.

(c) *Minimum quantity.* Any importation which in the aggregate does not exceed 100 pounds in any day, may be imported without regard to the provisions of this section.

(d) *Plant quarantine.* Provisions of this section do not supersede the restrictions or prohibitions on onions under the Plant Quarantine Act of 1912.

(e) *Designation of Governmental inspection service.* The Federal or the Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, and the Fruit and Vegetable Division, Production and Marketing Branch, Canada Department of Agriculture, are designated as governmental inspection services for certifying the grade, size, quality and maturity of onions that are imported into the United States under the provisions of section 8e–1 of the Act.

(f) *Inspection and official inspection certificates.* (1) An official inspection certificate certifying the onions meet the United States import requirements for onions under section 8e–1 (7 U.S.C. 608e–1), issued by a designated governmental inspection service and applicable to a specific lot is required on all imports of onions.

(2) Inspection and certification by the Federal or Federal-State Inspection Service will be available and performed in accordance with the rules and regulations governing certification of fresh fruits, vegetables and other products (Part 51 of this title). Each lot shall be made available and accessible for inspection as provided therein. Cost of inspection and certification shall be borne by the applicant.

(3) Since inspectors may not be stationed in the immediate vicinity of some smaller ports of entry, importers of onions should make advance arrangements for inspection by ascertaining whether or not there is an inspector located at their particular port of entry. For all ports of entry where an inspection office is not located, each importer must give the specified advance notice to the applicable office listed below prior to the time the onions will be imported.

Ports	Office	Advance notice
All Texas points.	W. T. McNabb, 222 McClendon Bldg., Harlingen, Tex. (Phone: Garfield 3–5644).	1 day.
All Arizona points.	R. H. Bertelson, 136 Grand Ave., P.O. Box 1646, Nogales, Ariz. (Phone: Atwater 7–2902).	Do.
All California points.	Carley D. Williams, 784 S. Central Ave., Room 294, Los Angeles 21, Calif. (Phone: Madison 2–8756).	3 days.
New York City.	Edward J. Beller, 346 Broadway, Room 306, New York 13, N.Y. (Phone: Rector 2–8000, Ext. 807).	1 day.
New Orleans	Pascal J. Lamarca, 5027 Federal Office Bldg., 701 Loyola Ave., New Orleans 12, La. (Phone: 529–2411, Ext. 6741).	Do.
All other points.	E. E. Conklin, Fruit and Vegetable Division, AMS, Washington, D.C., 20250 (Phone: Dudley 8–5870)	3 days.

(4) Inspection certificates shall cover only the quantity of onions that is being imported at a particular port of entry by a particular importer.

(5) In the event the required inspection is performed prior to the arrival of the onions at the port of entry, the inspection certificate that is issued must show that the inspection was performed at the time of loading such onions for direct transportation to the United

States; and if transportation is by water, the certificate must show that the inspection was performed at the time of loading onto the vessel.

(6) Each inspection certificate issued with respect to any onions to be imported into the United States shall set forth, among other things:

(i) The date and place of inspection;

(ii) The name of the shipper, or applicant;

(iii) The commodity inspected;

(iv) The quantity of the commodity covered by the certificate;

(v) The principal identifying marks on the containers;

(vi) The railroad car initials and number, the truck and trailer license number, the name of the vessel, or other identification of the shipment; and

(vii) The following statement, if the facts warrant: Meets U.S. Import requirements under the Agricultural Marketing Agreement Act.

(g) *Reconditioning prior to importation.* No provision in this part precludes any importer from reconditioning prior to importation any shipment of onions for the purpose of making it eligible for importation.

(h) *Definitions.* For the purpose of this section, "Onions" means all varieties of Allium cepa marketed dry, except dehydrated, canned and frozen onions, onion sets, green onions, and pickling onions. Onions commonly referred to as "braided," that is, with tops, may be imported if they meet the grade and size requirements except for top length. The term "U.S. No. 2" has the same meaning as set forth in the United States Standards for Grades of Onions (other than Bermuda-Granex and Creole Types, §§ 51.2830–51.2850 of this title. Tolerances for size are those in the United States Standards. Onions meeting the requirements of Canada No. 2 grade are deemed to comply with the requirements of U.S. No. 2 grade. "Importation" means release from custody of the United States Bureau of Customs.

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

Dated August 26, 1963, to become effective September 9, 1963.

PAUL A. NICHOLSON,
Acting Director,
Fruit and Vegetable Division.

[F.R. Doc. 63–9357; Filed, Aug. 29, 1963; 8:52 a.m.]

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

[Milk Order No. 96]

PART 1096—MILK IN NORTHERN LOUISIANA MARKETING AREA

Order Suspending Certain Provision

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 northern Louisiana marketing area (7 CFR Part 1096), it is hereby found and determined that:

(a) The following provision of the order no longer tends to effectuate the declared policy of the Act for the months of September and October 1963:

In § 1096.51(a) the provision "For the months of June 1962 through August 1963".

(b) Notice of proposed rule making, public procedure thereon, and 30 days notice of effective date hereof are impractical, unnecessary, and contrary to the public interest in that:

(1) This suspension order does not require of persons affected substantial or extensive preparation prior to the effective date.

(2) This suspension order is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area.

(3) At the hearing held on August 8, 1963, consideration was given to the future level of Class I prices under the Northern Louisiana order. Briefs are not due until August 23, and consequently there is insufficient time in which to carry out the procedure for amending the order prior to the expiration date (September 1, 1963) of the Class I pricing provisions. This action is necessary to provide a Class I price for September and October 1963 until appropriate amendatory action can be taken.

Therefore, good cause exists for making this order effective September 1, 1963.

It is therefore ordered, That the aforesaid provision of the order is hereby suspended for the months of September and October 1963.

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

Effective date: September 1, 1963.

Signed at Washington, D.C., on August 26, 1963.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 63–9358; Filed, Aug. 29, 1963; 8:52 a.m.]

Title 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

Orders To Show Cause and Warrants of Arrest

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

1. The last sentence of paragraph (a) of § 242.1 is amended so that paragraph will read as follows:

§ 242.1 Order to show cause and notice of hearing.

(a) *Commencement.* Every proceeding to determine the deportability of an alien in the United States is commenced by the issuance and service of an order to show cause by the Service. In the proceeding the alien shall be known as the respondent. Orders to show cause may be issued by district directors, acting district directors, deputy district directors, and officers in charge at Albany, N.Y.; Cincinnati, Ohio; Dallas, Tex.; Hammond, Ind.; Houston, Tex.; Milwaukee, Wis.; Ogdensburg, N.Y.; Pittsburgh, Pa.; Providence, R.I.; San Diego, Calif.; Salt Lake City, Utah; St. Louis, Mo.; Spokane, Wash.

2. The last sentence of § 242.4 is amended so that section will read as follows:

§ 242.4 Fingerprints and photographs.

Every alien 14 years of age or older against whom proceedings are commenced under this part shall be fingerprinted. Any such alien, regardless of his age, shall be photographed if a photograph is required by the district director, acting district director, deputy district director, or officer in charge authorized to issue an order to show cause.

3. The first sentence of § 242.7 is amended so that section will read as follows:

§ 242.7 Cancellation of proceedings.

If an order to show cause has been issued, a district director, acting district director, deputy district director, or officer in charge authorized to issue an order to show cause, may cancel the order to show cause or, prior to the actual commencement of the hearing under a served order to show cause, terminate proceedings thereunder, if in either case he is satisfied that the respondent is actually a national of the United States, or is not deportable under the immigration laws, or is deceased, or is not in the United States. If an order to show cause has been cancelled or proceedings have been terminated pursuant to this section, any outstanding warrant of arrest shall also be cancelled.

4. Paragraph (b) of § 242.9 is amended to read as follows:

§ 242.9 Trial attorney.

* * * * *

(b) *Assignment.* The district director, acting district director, or deputy district director shall assign a trial attorney to every case within the provisions of § 242.16(c). In his discretion, or at the request of the special inquiry officer, the district director, acting district director, or deputy district director, may assign a trial attorney to any other case at any stage of the proceedings.

5. The first sentence of § 242.13 is amended so that section will read as follows:

§ 242.13 Postponement and adjournment of hearing.

Prior to the commencement of a hearing, the district director, acting district

director, deputy district director, or officer in charge authorized to issue an order to show cause may grant a reasonable postponement for good cause shown, at his own instance upon notice to the respondent, or upon request of the respondent. After the commencement of the hearing, the special inquiry officer may grant a reasonable adjournment either at his own instance or, for good cause shown, upon application by the respondent or the trial attorney. A continuance of the hearing for the purpose of allowing the respondent to obtain representation shall not be granted more than once unless sufficient cause for the granting of more time is shown.

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

This order shall become effective on the date of its publication in the FEDERAL REGISTER. Compliance with the provisions of section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003), as to notice of proposed rule making and delayed effective date is unnecessary in this instance because the rules prescribed by the order relate to agency management.

Dated: August 26, 1963.

RAYMOND F. FARRELL,
Commissioner of Immigration and Naturalization.

[F.R. Doc. 63-9369; Filed, Aug. 29, 1963; 8:54 a.m.]

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

PART 541—DEFINING AND DELIMITING THE TERMS "ANY EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR PROFESSIONAL CAPACITY, OR IN THE CAPACITY OF OUTSIDE SALESMAN"

Pursuant to notices published in the FEDERAL REGISTER (27 F.R. 665 and 7651), regarding the regulations contained in the above entitled part, both oral and written data, views and arguments were received in Washington, D.C., and Santurce, Puerto Rico. After having given careful consideration to all relevant information received concerning these regulations, a document was published (28 F.R. 7002) proposing a revision of 29 CFR Part 541. Written views and arguments have been received concerning the proposed revision, and after having given careful consideration to all of them, I have decided to and do hereby adopt it without change, effective September 30, 1963.

Between the date of publication of this document and the effective date provided above, the Administrator will consider all employees of retail or service establishments employed in an executive, administrative or professional capacity and who receive not less than the minimum wage provided in section 6(b) of the Fair Labor Standards Act to meet the requirements of section 13(a)(1) of the Act.

Signed at Washington, D.C., this 27th day of August 1963.

CLARENCE T. LUNDQUIST,
Administrator.

Subpart A—General Regulations

Subpart B—Interpretations

AUTHORITY: §§ 541.1 to 541.602 issued under sec. 13, 52 Stat. 1067, as amended; 29 U.S.C. 213.

Subpart A—General Regulations

§ 541.1 Executive.

The term "employee employed in a bona fide executive * * * capacity" in section 13(a)(1) of the act shall mean any employee:

(a) Whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof; and

(b) Who customarily and regularly directs the work of two or more other employees therein; and

(c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

(d) Who customarily and regularly exercises discretionary powers; and

(e) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (d) of this section: *Provided*, That this paragraph shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a 20-percent interest in the enterprise in which he is employed; and

(f) Who (except as provided in § 541.5b of this part) is compensated for his services on a salary basis at a rate of not less than $100 per week (or $75 per week if employed in Puerto Rico, the Virgin Islands, or American Samoa) exclusive of board, lodging, or other facilities:

Provided, That an employee who (except as provided in § 541.5b of this part) is compensated on a salary basis at a rate of not less than $150 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two or more other employees therein, shall be deemed to meet all of the requirements of this section.

§ 541.2 Administrative.

The term "employee employed in a bona fide * * * administrative * * * capacity" in section 13(a)(1) of the act shall mean any employee:

(a) Whose primary duty consists of the performance of office or nonmanual work directly related to management policies or general business operations of his employer or his employer's customers; and

(b) Who customarily and regularly exercises discretion and independent judgment;

(c)(1) Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity (as such terms are defined in the regulations in this subpart), or

(2) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge, or

(3) Who executes under only general supervision special assignments and tasks; and

(d) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent of his hours worked in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (c) of this section; and

(e) Who (except as provided in § 541.5b of this part) is compensated for his services on a salary or fee basis at a rate of not less than $100 per week (or $75 per week if employed in Puerto Rico, the Virgin Islands or American Samoa) exclusive of board, lodging, or other facilities:

Provided, That an employee who (except as provided in § 541.5b of this part) is compensated on a salary or fee basis at a rate of not less than $150 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the performance of office or nonmanual work directly related to management policies or general business operations of his employer or his employer's customers, which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all of the requirements of this section.

§ 541.3 Professional.

The term "employee employed in a bona fide * * * professional capacity" in section 13(a)(1) of the act shall mean any employee:

(a) Whose primary duty consists of the performance of work:

(1) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or

(2) Original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee; and

(b) Whose work requires the consistent exercise of discretion and judgment in its performance; and

(c) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and

(d) Who does not devote more than 20 percent of his hours worked in the workweek to activities which are not an essential part of and necessarily incident to the work described in paragraphs (a) through (c) of this section; and

(e) Who (except as provided in § 541.5b of this part) is compensated for his services on a salary or fee basis at a rate of not less than $115 per week (or $95 per week if employed in Puerto Rico, the Virgin Islands or American Samoa) exclusive of board, lodging, or other facilities: *Provided,* That this paragraph shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof:

Provided, That an employee who (except as provided in § 541.5b of this part) is compensated on a salary or fee basis at a rate of not less than $150 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the performance of work either requiring knowledge of an advanced type in a field of science or learning, which includes work requiring the consistent exercise of discretion and judgment, or requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section.

§ 541.5 Outside salesman.

The term "employee employed * * * in the capacity of outside salesman" in section 13(a)(1) of the act shall mean any employee:

(a) Who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place or places of business in:

(1) Making sales within the meaning of section 3(k) of the act, or

(2) Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and

(b) Whose hours of work of a nature other than that described in paragraph (a)(1) or (2) of this section do not exceed 20 percent of the hours worked in the workweek by nonexempt employees of the employer: *Provided,* That work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, shall not be regarded as nonexempt work.

§ 541.5a Special provision for motion picture producing industry.

The requirement of §§ 541.1, 541.2 and 541.3 that the employee be paid "on a salary basis" shall not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least $200 a week (exclusive of board, lodging or other facilities).

§ 541.5b Minimum salary requirements for employees of a retail or service establishment.

(a) In the case of an employee of a retail or service establishment, the minimum salary requirements for executive employees, set forth in paragraph (f) of § 541.1 and in the final paragraph of that section, or for administrative employees, set forth in paragraph (e) of § 541.2 and in the final paragraph of that section, or for professional employees, set forth in paragraph (e) of § 541.3 and in the final paragraph of that section, shall not apply until September 3, 1965.

(b) For the period beginning September 3, 1963, and terminating September 2, 1965, the minimum salary rate for an executive or administrative employee of a retail or service establishment shall be not less than $80 per week ($55 per week if employed in Puerto Rico, the Virgin Islands, or American Samoa); the minimum salary rate for a professional employee of a retail or service establishment shall be not less than $95 per week ($75 per week if employed in Puerto Rico, the Virgin Islands, or American Samoa); and for an executive, administrative or professional employee of a retail or service establishment the minimum salary rate for purposes of the final paragraph of § 541.1, 541.2 or 541.3, respectively, shall be not less than $125 per week.*

§ 541.6 Petition for amendment of regulations.

Any person wishing a revision of any of the terms of the foregoing regulations may submit in writing to the Administrator a petition setting forth the changes desired and the reasons for proposing them. If, upon inspection of the petition, the Administrator believes that reasonable cause for amendment of the regulations is set forth, the Administrator will either schedule a hearing with due notice to interested parties, or will make other provision for affording interested parties an opportunity to present their views, either in support of

*This special proviso is applicable to all employees covered by the act, including those in Puerto Rico, the Virgin Islands and American Samoa.

or in opposition to the proposed changes. In determining such future regulations, separate treatment for different industries and for different classes of employees may be given consideration.

Subpart B—Interpretations

§ 541.99 Introductory statement.

(a) Section 13(a)(1) of the Fair Labor Standards Act exempts from the wage and hour provisions of the act "any employee employed in a bona fide executive, administrative, or professional capacity, or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities)". The requirements of the exemption under this section of the act are contained in Subpart A of this part.

(b) This subpart contains material explaining and illustrating the terms used in the regulations in Subpart A of this part. These statements and illustrations reflect the construction of the regulations in Subpart A which the Divisions will follow. This subpart supersedes and replaces all prior statements, releases, and opinions explaining and interpreting this part and section 13(a)(1) of the act.

(c) A few words of caution are necessary in connection with the use of the illustrations. The exempt or nonexempt status of any particular employee must be determined on the basis of whether his duties, responsibilities, and salary meet all the requirements of the pertinent section of the regulations in Subpart A of this part. The employee's title or class specification is of no significance in determining whether he meets these tests. The use of any job titles in the illustrations contained in this subpart should not be construed to mean that employees holding such titles are either exempt or nonexempt, or that they meet any one of the specific requirements for exemption. In any specific case it is the actual work performance, the responsibilities, and salary of the individual employee which determines whether a particular test has been met or whether the exemption applies.

(d) In determining that an employee's duties, responsibilities, and salary meet the requirements for exemption, it should be borne in mind that a change in the employee's assignment may bring with it a change in his exemption status. For example, an employee may be assigned additional or different duties during a busy period. Such additional or different duties should be considered in ascertaining whether the employee meets the requirements for exemption during those weeks.

(e) Finally, it is a well-established principle that the burden of proving exemption under section 13(a)(1), as well as any other exemption provision of the Fair Labor Standards Act, rests on the employer.

Employee Employed in a Bona Fide Executive Capacity

§ 541.100 The definition of "executive".

Section 541.1 defines the term "bona fide executive" as follows: The term "employee employed in a bona fide executive * * * capacity" in section 13(a)(1) of the act shall mean any employee:

(a) Whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof; and

(b) Who customarily and regularly directs the work of two or more other employees therein; and

(c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

(d) Who customarily and regularly exercises discretionary powers; and

(e) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (d) of this section: *Provided*, That this paragraph shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a 20-percent interest in the enterprise in which he is employed; and

(f) Who (except as provided in § 541.5b of this part) is compensated for his services on a salary basis at a rate of not less than $100 per week (or $75 per week if employed in Puerto Rico, the Virgin Islands, or American Samoa) exclusive of board, lodging, or other facilities:

Provided, That an employee who (except as provided in § 541.5b of this part) is compensated on a salary basis at a rate of not less than $150 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two or more other employees therein, shall be deemed to meet all of the requirements of this section.

§ 541.101 General.

The duties and responsibilities of an exempt executive employee are described in paragraphs (a) through (d) of § 541.1. Paragraph (e) of § 541.1 contains, among other things, percentage limitations on the amount of time which an employee may devote to activities "which are not directly and closely related to the performance of the work described in paragraphs (a) through (d)" of that section. For convenience in discussion, the work described in paragraphs (a) through (d) of § 541.1 and the activities directly and closely related to such work will be referred to as "exempt" work, while other activities will be referred to as "nonexempt" work.

§ 541.102 Management.

(a) In the usual situation the determination of whether a particular kind of work is exempt or nonexempt in nature is not difficult. In the vast majority of cases the bona fide executive employee performs managerial and supervisory functions which are easily recognized as within the scope of the exemption.

(b) For example, it is generally clear that work such as the following is exempt work when it is performed by an employee in the management of his department or the supervision of the employees under him: Interviewing, selecting and training of employees; setting and adjusting their rates of pay and hours of work; directing their work; maintaining their production or sales records for use in supervision or control; appraising their productivity and efficiency for the purpose of recommending promotions or other changes in their status; handling their complaints and grievances and disciplining them when necessary; planning the work; determining the techniques to be used; apportioning the work among the workers; determining the type of materials, supplies, machinery or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety of the men and the property.

§ 541.103 Primary duty.

A determination of whether an employee has management as his primary duty must be based on all the facts in a particular case. The amount of time spent in the performance of the managerial duties is a useful guide in determining whether management is the primary duty of an employee. In the ordinary case it may be taken as a good rule of thumb that primary duty means the major part, or over 50 percent, of the employee's time. Thus, an employee who spends over 50 percent of his time in management would have management as his primary duty. Time alone, however, is not the sole test, and in situations where the employee does not spend over 50 percent of his time in managerial duties, he might nevertheless have management as his primary duty if the other pertinent factors support such a conclusion. Some of these pertinent factors are the relative importance of the managerial duties as compared with other types of duties, the frequency with which the employee exercises discretionary powers, his relative freedom from supervision, and the relationship between his salary and the wages paid other employees for the kind of nonexempt work performed by the supervisor.

§ 541.104 Department or subdivision.

(a) In order to qualify under § 541.1, the employee's managerial duties must be performed with respect to the enterprise in which he is employed or a customarily recognized department or subdivision thereof. The phrase "a customarily recognized department or subdivision" is intended to distinguish between a mere collection of men assigned from time to time to a specific job or series of jobs and a unit with permanent status and function. In order properly to classify an individual as an executive he must be more than merely a supervisor of two or more employees; nor is it sufficient that he merely participates in the management of the unit. He must be in charge of and have as his primary duty the management of a recognized unit which has a continuing function.

(b) In the vast majority of cases there is no difficulty in determining whether an individual is in charge of a customarily recognized department or subdivision of a department. For example, it is clear that where an enterprise comprises more than one establishment, the employee in charge of each establishment may be considered in charge of a subdivision of the enterprise. Questions arise principally in cases involving supervisors who work outside the employer's establishment, move from place to place, or have different subordinates at different times.

(c) In such instances, in determining whether the employee is in charge of a recognized unit with a continuing function, it is the Division's position that the unit supervised need not be physically within the employer's establishment and may move from place to place, and that continuity of the same subordinate personnel is not absolutely essential to the existence of a recognized unit with a continuing function, although in the ordinary case a fixed location and continuity of personnel are both helpful in establishing the existence of such a unit. The following examples will illustrate these points.

(d) The projects on which an individual in charge of a certain type of construction work is employed may occur at different locations, and he may even hire most of his work force at these locations. The mere fact that he moves his location would not invalidate his exemption if there are other factors which show that he is actually in charge of a recognized unit with a continuing function in the organization.

(e) Nor will an otherwise exempt employee lose the exemption merely because he draws the men under his supervision from a pool, if other factors are present which indicate that he is in charge of a recognized unit with a continuing function. For instance, if this employee is in charge of the unit which has the continuing responsibility for making all installations for his employer, or all installations in a particular city or a designated portion of a city, he would be in charge of a department or subdivision despite the fact that he draws his subordinates from a pool of available men.

(f) It cannot be said, however, that a supervisor drawn from a pool of supervisors who supervises employees assigned to him from a pool and who is assigned a job or a series of jobs from day to day or week to week has the status of an executive. Such an employee is not in charge of a recognized unit with a continuing function.

§ 541.105 Two or more other employees.

(a) An employee will qualify as an "executive" under § 541.1 only if he customarily and regularly supervises at lease two full-time employees or the equivalent. For example, if the "executive" supervises one full-time and two part-time employees of whom one works mornings and one, afternoons; or four part-time employees, two of whom work mornings and two afternoons, this requirement would be met.

(b) The employees supervised must be employed in the department which the "executive" is managing.

(c) It has been the experience of the Divisions that a supervisor of as few as two employees usually performs nonexempt work in excess of the general 20-percent tolerance provided in § 541.1.

(d) In a large machine shop there may be a machine-shop supervisor and two assistant machine-shop supervisors. Assuming that they meet all the other qualifications of § 541.1 and particularly that they are not working foremen, they should certainly qualify for the exemption. A small department in a plant or in an office is usually supervised by one person. Any attempt to classify one of the other workers in the department as an executive merely by giving him an honorific title such as assistant supervisor will almost inevitably fail as there will not be sufficient true supervisory or other managerial work to keep two persons occupied. On the other hand, it is incorrect to assume that in a large department, such as a large shoe department in a retail store which has separate sections for men's, women's and children's shoes, for example, the supervision cannot be distributed among two or three employees, conceivably among more. In such instances, assuming that the other tests are met, especially the one concerning the performance of nonexempt work, each such employee "customarily and regularly directs the work of two or more other employees therein".

(e) An employee who merely assists the manager or buyer of a particular department and supervises two or more employees only in the actual manager's or buyer's absence, however, does not meet this requirement. For example, where a single unsegregated department, such as a women's sportswear department or a men's shirt department in a retail store, is managed by a buyer, with the assistance of one or more assistant buyers, only one employee, the buyer, can be considered an executive, even though the assistant buyers at times exercise some managerial and supervisory responsibilities. A shared responsibility for the supervision of the same two or more employees in the same department does not satisfy the requirement that the employee "customarily and regularly directs the work of two or more employees therein".

§ 541.106 Authority to hire or fire.

Section 541.1 requires that an exempt executive employee have the authority to hire or fire other employees or that his suggestions and recommendations as to hiring or firing and as to advancement and promotion or any other change of status of the employees whom he supervises will be given particular weight. Thus, no employee, whether high or low in the hierarchy of management, can be considered as employed in a bona fide executive capacity unless he is directly concerned either with the hiring or the firing and other change of status of the employees under his supervision, whether by direct action or by recommendation to those to whom the hiring and firing functions are delegated.

§ 541.107 Discretionary powers.

(a) Section 541.1(d) requires that an exempt executive employee customarily and regularly exercise discretionary powers. A person whose work is so completely routinized that he has no discretion does not qualify for exemption.

(b) The phrase "customarily and regularly" signifies a frequency which must be greater than occasional but which, of course, may be less than constant. The requirement will be met by the employee who normally and recurrently is called upon to exercise and does exercise discretionary powers in the day-to-day performance of his duties. The requirement is not met by the occasional exercise of discretionary powers.

§ 541.108 Work directly and closely related.

(a) This phrase brings within the category of exempt work not only the actual management of the department and the supervision of the employees therein, but also activities which are closely associated with the performance of the duties involved in such managerial and supervisory functions or responsibilities. The supervision of employees and the management of a department include a great many directly and closely related tasks which are different from the work performed by subordinates and are commonly performed by supervisors because they are helpful in supervising the employees or contribute to the smooth functioning of the department for which they are responsible. Frequently such exempt work is of a kind which in establishments that are organized differently, or which are larger and have greater specialization of function, may be performed by a nonexempt employee hired especially for that purpose. Illustration will serve to make clear the meaning to be given the phrase "directly and closely related".

(b) Keeping basic records of working time, for example, is frequently performed by a timekeeper employed for that purpose. In such cases the work is clearly not exempt in nature. In other establishments which are not large enough to employ a timekeeper, or in which the timekeeping function has been

decentralized, the supervisor of each department keeps the basic time records of his own subordinates. In these instances, as indicated above, the timekeeping is directly related to the function of managing the particular department and supervising its employees. However, the preparation of a payroll by a supervisor, even the payroll of the employees under his supervision, cannot be considered to be exempt work, since the preparation of a payroll does not aid in the supervision of the employees or the management of the department. Similarly, the keeping by a supervisor of production or sales records of his own subordinates for use in supervision or control would be exempt work, while the maintenance of production records of employees not under his direction would not be exempt work.

(c) Another example of work which may be directly and closely related to the performance of management duties is the distribution of materials or merchandise and supplies. Maintaining control of the flow of materials or merchandise and supplies in a department is ordinarily a responsibility of the managerial employee in charge. In many nonmercantile establishments the actual distribution of materials is performed by nonexempt employees under the supervisor's direction. In other establishments it is not uncommon to leave the actual distribution of materials and supplies in the hands of the supervisor. In such cases it is exempt work since it is directly and closely related to the managerial responsibility of maintaining the flow of materials. In a large retail establishment, however, where the replenishing of stocks of merchandise on the sales floor is customarily assigned to a nonexempt employee, the performance of such work by the manager or buyer of the department is nonexempt. The amount of time the manager or buyer spends in such work must be offset against the statutory tolerance for nonexempt work. The supervision and control of a flow of merchandise to the sales floor, of course, is directly and closely related to the managerial responsibility of the manager or buyer.

(d) Setup work is another illustration of work which may be exempt under certain circumstances if performed by a supervisor. The nature of setup work differs in various industries and for different operations. Some setup work is typically performed by the same employees who perform the "production" work; that is, the employee who operates the machine also "sets it up" or adjusts it for the particular job at hand. Such setup work is part of the production operation and is not exempt. In other instances the setting up of the work is a highly skilled operation which the ordinary production worker or machine tender typically does not perform. In some plants, particularly large ones, such setup work may be performed by employees whose duties are not supervisory in nature. In other plants, however, particularly small plants, such work is a regular duty of the executive and is directly and closely related to his responsibility for the work performance of his subordinates and for the adequacy of the final product. Under such circumstances it is exempt work.

(e) Similarly, a supervisor who spot checks and examines the work of his subordinates to determine whether they are performing their duties properly, and whether the product is satisfactory, is performing work which is directly and closely related to his managerial and supervisory functions. However, this kind of examining and checking must be distinguished from the kind which is normally performed by an "examiner", "checker", or "inspector", and which is really a production operation rather than a part of the supervisory function. Likewise, a department manager or buyer in a retail or service establishment who goes about the sales floor, observing the work of sales personnel under his supervision to determine the effectiveness of their sales techniques, checking on the quality of customer service being given, or observing customer preferences and reactions to the lines, styles, types, colors and quality of the merchandise offered, is performing work which is directly and closely related to his managerial and supervisory functions. His actual participation, except for supervisory training or demonstration purposes, in such activities as making sales to customers, replenishing stocks of merchandise on the sales floor, removing merchandise from fitting rooms and returning to stock or shelves, however, is not. The amount of time a manager or buyer spends in the performance of such activities must be included in computing the percentage limitation on nonexempt work.

(f) Watching machines is another duty which may be exempt when performed by a supervisor under proper circumstances. Obviously the mere watching of machines in operation cannot be considered exempt work where as in certain industries in which the machinery is largely automatic, it is an ordinary production function. Thus, an employee who watches machines for the purpose of seeing that they operate properly or for the purpose of making repairs or adjustments is performing nonexempt work. On the other hand, a supervisor who watches the operation of the machinery in his department in the sense that he "keeps an eye out for trouble" is performing work which is directly and closely related to his managerial responsibilities. Making an occasional adjustment in the machinery under such circumstances is also exempt work.

(g) A word of caution is necessary in connection with these illustrations. The recordkeeping, material distributing, setup work, machine watching and adjusting, and inspecting, examining, observing and checking referred to in the examples of exempt work are presumably the kind which are supervisory and managerial functions rather than merely "production" work. Frequently it is difficult to distinguish the managerial type from the type which is a production operation. In deciding such difficult cases it should be borne in mind that it is one of the objectives of § 541.1 to exclude from the definition foremen who hold "dual" or combination jobs.[1] Thus, if work of this kind takes up a large part of the employee's time it would be evidence that management of the department is not the primary duty of the employee, that such work is a production operation rather than a function directly and closely related to the supervisory or managerial duties, and that the employee is in reality a combination foreman-"setup" man, foreman-machine adjuster (or mechanic), or foreman-examiner, floorman-salesperson, etc., rather than a bona fide executive.

§ 541.109 **Emergencies.**

(a) Under certain occasional emergency conditions, work which is normally performed by nonexempt employees and is nonexempt in nature will be directly and closely related to the performance of the exempt functions of management and supervision and will therefore be exempt work. In effect, this means that a bona fide executive who performs work of a normally nonexempt nature on rare occasions because of the existence of a real emergency will not, because of the performance of such emergency work, lose the exemption. Bona fide executives include among their responsibilities the safety of the employees under their supervision, the preservation and protection of the merchandise, machinery or other property of the department or subdivision in their charge from damage due to unforeseen circumstances, and the prevention of widespread breakdown in production, sales, or service operations. Consequently, when conditions beyond control arise which threaten the safety of the employees, or a cessation of operations, or serious damage to the employer's property, any manual or other normally nonexempt work performed in an effort to prevent such results is considered exempt work and is not included in computing the percentage limitation on nonexempt work.

(b) The rule in paragraph (a) of this section is not applicable, however, to nonexempt work arising out of occurrences which are not beyond control or for which the employer can reasonably provide in the normal course of business.

(c) A few illustrations may be helpful in distinguishing routine work performed as a result of real emergencies of the kind for which no provision can practicably be made by the employer in advance of their occurrence and routine work which is not in this category. It is obvious that a mine superintendent who pitches in after an explosion and digs out the men who are trapped in the mine is still a bona fide executive during that week. On the other hand, the manager of a cleaning establishment who personally performs the cleaning operations on expensive garments because he fears damage to the fabrics if he allows his subordinates to handle them is not performing "emergency" work of the kind which can be considered exempt. Nor is the manager of a department in a retail store performing nonexempt work when he personally waits on a special or

[1] See discussion of working foremen in § 541.115.

impatient customer because he fears the loss of the sale or the customer's good will if he allows a salesperson to serve him. The performance of nonexempt work by executives during inventory-taking, during other periods of heavy workload, or the handling of rush orders are the kinds of activities which the percentage tolerances are intended to cover. For example, pitching in on the production line in a canning plant during seasonal operations is not exempt "emergency" work even if the objective is to keep the food from spoiling. Similarly, pitching in behind the sales counter in a retail store during special sales or during Christmas or Easter or other peak sales periods is not "emergency" work, even if the objective is to improve customer service and the store's sales record. Maintenance work is not emergency work even if performed at night or during weekends. Relieving subordinates during rest or vacation periods cannot be considered in the nature of "emergency" work since the need for replacements can be anticipated. Whether replacing the subordinate at the work bench, or production line, or sales counter during the first day or partial day of an illness would be considered exempt emergency work would depend upon the circumstances in the particular case. Such factors as the size of the establishment and of the executive's department, the nature of the industry, the consequences that would flow from the failure to replace the ailing employee immediately, and the feasibility of filling the employee's place promptly would all have to be weighed.

(d) All the regular cleaning up around machinery, even when necessary to prevent fire or explosion, is not "emergency" work. However, the removal by an executive of dirt or obstructions constituting a hazard to life or property need not be included in computing the percentage limitation if it is not reasonably practicable for anyone but the supervisor to perform the work and it is the kind of "emergency" which has not been recurring. The occasional performance of repair work in case of a breakdown of machinery, or the collapse of a display rack, or damage to or exceptional disarray of merchandise caused by accident or a customer's carelessness may be considered exempt work if the breakdown is one which the employer cannot reasonably anticipate. However, recurring breakdowns or disarrays requiring frequent attention, such as that of an old belt or machine which breaks down repeatedly or merchandise displays constantly requiring re-sorting or straightening, are the kind for which provision could reasonably be made and repair of which must be considered as nonexempt.

§ 541.110 Occasional tasks.

(a) In addition to the type of work which by its very nature is readily identifiable as being directly and closely related to the performance of the supervisory and management duties, there is another type of work which may be considered directly and closely related to the performance of these duties. In many establishments the proper management of a department requires the performance of a variety of occasional, infrequently recurring tasks which cannot practicably be performed by the production workers and are usually performed by the executive. These small tasks when viewed separately without regard to their relationship to the executive's overall functions might appear to constitute nonexempt work. In reality they are the means of properly carrying out the employee's management functions and responsibilities in connection with men, materials, and production. The particular tasks are not specifically assigned to the "executive" but are performed by him in his discretion.

(b) It might be possible for the executive to take one of his subordinates away from his usual tasks, instruct and direct him in the work to be done, and wait for him to finish it. It would certainly not be practicable, however, to manage a department in this fashion. With respect to such occasional and relatively inconsequential tasks, it is the practice in industry generally for the executive to perform them rather than to delegate them to other persons. When any one of these tasks is done frequently, however, it takes on the character of a regular production function which could be performed by a nonexempt employee and must be counted as nonexempt work. In determining whether such work is directly and closely related to the performance of the management duties, consideration should be given to whether it is (1) the same as the work performed by any of the subordinates of the executive; or (2) a specifically assigned task of the executive employee; or (3) practicably delegable to nonexempt employees in the establishment; or (4) repetitive and frequently recurring.

§ 541.111 Nonexempt work generally.

(a) As indicated in § 541.101 the term "nonexempt work", as used in this subpart, includes all work other than that described in § 541.1 (a) through (d) and the activities directly and closely related to such work.

(b) Nonexempt work is easily identifiable where, as in the usual case, it consists of work of the same nature as that performed by the nonexempt subordinates of the "executive." It is more difficult to identify in cases where supervisory employees spend a significant amount of time in activities not performed by any of their subordinates and not consisting of actual supervision and management. In such cases careful analysis of the employee's duties with reference to the phrase "directly and closely related to the performance of the work described in paragraphs (a) through (d) of this section" will usually be necessary in arriving at a determination.

§ 541.112 Percentage limitations on nonexempt work.

(a) An employee will not qualify for exemption as an executive if he devotes more than 20 percent, or, in the case of an employee of a retail or service establishment if he devotes as much as 40 percent, of his hours worked in the workweek to nonexempt work. This test is applied on a workweek basis and the percentage of time spent on nonexempt work is computed on the time worked by the employee.

(b) There are two special exceptions to these limitations—that relating to the employee in "sole charge" of an independent or branch establishment and that relating to an employee owning a 20-percent interest in the enterprise in which he is employed. These except the employee only from the percentage limitations on nonexempt work. They do not except the employee from any of the requirements of § 541.1. Thus while the percentage limitations on nonexempt work are not applicable, it is clear that the employee would not qualify for the exemption if he performs so much nonexempt work that he could no longer meet the requirement of § 541.1(a) that his primary duty must consist of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof.

§ 541.113 Sole-charge exception.

(a) An exception from the percentage limitations on nonexempt work is provided in § 541.1(e) for "an employee who is in sole charge of an independent establishment or a physically separated branch establishment * * *". Such an employee is considered to be employed in a bona fide executive capacity even though he exceeds the applicable percentage limitation on nonexempt work.

(b) The term "independent establishment" must be given full weight. The establishment must have a fixed location and must be geographically separated from other company property. The management of operations within one among several buildings located on a single or adjoining tracts of company property does not qualify for the exemption under this heading. In the case of a branch, there must be a true and complete physical separation from the main office.

(c) (1) A determination as to the status as "an independent establishment or a physically separated branch establishment" of any part of the business operations on the premises of a retail or other establishment, however, must be made on the basis of the physical and economic facts in the particular situation. (See 29 CFR 779.305, 779.306, 779.225.) A leased department cannot be considered to be a separate establishment where, for example, it and the retail store in which it is located operate under a common trade name and the store may determine, or have the power to determine, the leased department's space location, the type of merchandise it will sell, its pricing policy, its hours of operation and some or all of its hiring, firing and other personnel policies, and matters such as advertising, adjustment and credit operations, insurance and taxes, are handled on a unified basis by the store.

(2) A leased department may qualify as a separate establishment, however, where, among other things, the facts show that the lessee maintains a separate entrance and operates under a separate name, with its own separate employees and records, and in other re-

spects conducts his business independently of the lessor's. In such a case the leased department would enjoy the same status as a physically separated branch store.

(d) Since the employee must be in "sole" charge, only one person in any establishment can qualify as an executive under this exception, and then only if he is the top person in charge at that location.[2] Thus, it would not be applicable to an employee who is in charge of a branch establishment but whose superior makes his office on the premises. An example is a district manager who has overall supervisory functions in relation to a number of branch offices, but makes his office at one of the branches. The branch manager at the branch where the district manager's office is located is not in "sole charge" of the establishment and does not come within the exception. This does not mean that the "sole-charge" status of an employee will be considered lost because of an occasional visit to the branch office of the superior of the person in charge, or, in the case of an independent establishment, by the visit for a short period on 1 or 2 days a week of the proprietor or principal corporate officer of the establishment. In these situations, the sole-charge status of the employee in question will appear from the facts as to his functions, particularly in the intervals between visits. If, during these intervals, the decisions normally made by an executive in charge of a branch or an independent establishment are reserved for the superior, the employee is not in sole charge. If such decisions are not reserved for the superior, the sole-charge status will not be lost merely because of the superior's visits.

(e) In order to qualify for the exception the employee must ordinarily be in charge of all the company activities at the location where he is employed. If he is in charge of only a portion of the company's activities at his location, then he cannot be said to be in sole charge of an independent establishment or a physically separated branch establishment. In exceptional cases the Divisions have found that an executive employee may be in sole charge of all activities at a branch office except that one independent function which is not integrated with those managed by the executive is also performed at the branch. This one function is not important to the activities managed by the executive and constitutes only an insignificant portion of the employer's activities at that branch. A typical example of this type of situation is one in which "desk space" in a warehouse otherwise devoted to the storage and shipment of parts is assigned a salesman who reports to the sales manager or other company official located at the home office. Normally only one employee (at most two or three, but in any event an insignificant number when compared with the total number of persons employed at the branch) is engaged in the nonintegrated function for which the executive whose sole-charge status is in question is not responsible. Under such circumstances the employee does not lose his "sole charge" status merely because of the desk-space assignment.

[2] It is possible for other persons in the same establishment to qualify for exemption as executive employees, but not under the exception from the nonexempt work limitation.

§ 541.114 Exception for owners of 20-percent interest.

(a) An exception from the percentage limitations on nonexempt work is provided in § 541.1(e) for an employee "who owns at least a 20-percent interest in the enterprise in which he is employed". This provision recognizes the special status of a shareholder of an enterprise who is actively engaged in its management.

(b) The exception is available to an employee owning a bona fide 20-percent equity in the enterprise in which he is employed regardless of whether the business is a corporate or other type of organization.

§ 541.115 Working foremen.

(a) The primary purpose of the exclusionary language placing a limitation on the amount of nonexempt work is to distinguish between the bona fide executive and the "working" foreman[3] or "working" supervisor who regularly performs "production" work or other work which is unrelated or only remotely related to his supervisory activities.

(b) One type of working foreman or working supervisor most commonly found in industry works alongside his subordinates. Such employees, sometimes known as strawbosses, or gang or group leaders perform the same kind of work as that performed by their subordinates, and also carry on supervisory functions. Clearly, the work of the same nature as that performed by the employee's subordinates must be counted as nonexempt work and if the amount of such work performed is substantial[4] the exemption does not apply. A foreman in a dress shop, for example, who operates a sewing machine to produce the product is performing clearly nonexempt work. However, this should not be confused with the operation of a sewing machine by a foreman to instruct his subordinates in the making of a new product, such as a garment, before it goes into production.

(c) Another type of working foreman or working supervisor who cannot be classed as a bona fide executive is one who spends a substantial amount of time in work which, although not performed by his own subordinates, consists of ordinary production work or other routine, recurrent, repetitive tasks which are a regular part of his duties. Such an employee is in effect holding a dual job. He may be, for example, a combination foreman-production worker, supervisor-clerk, or foreman combined with some other skilled or unskilled occupation. His nonsupervisory duties in such instances are unrelated to anything he must do to supervise the employees under him or to manage the department. They are in many instances mere "fill-in" tasks performed because the job does not involve sufficient executive duties to occupy an employee's full time. In other instances the nonsupervisory, nonmanagerial duties may be the principal ones and the supervisory or managerial duties are subordinate and are assigned to the particular employee because it is more convenient to rest the responsibility for the first line of supervision in the hands of the person who performs these other duties. Typical of employees in dual jobs which may involve a substantial amount of nonexempt work are: (1) Foremen or supervisors who also perform one or more of the "production" or "operating" functions, though no other employees in the plant perform such work. An example of this kind of employee is the foreman in a millinery or garment plant who is also the cutter, or the foreman in a garment factory who operates a multiple-needle machine not requiring a full-time operator; (2) foremen or supervisors who have as a regular part of their duties the adjustment, repair, or maintenance of machinery or equipment. Examples in this category are the foreman-fixer in the hosiery industry who devotes a considerable amount of time to making adjustments and repairs to the machines of his subordinates, or the planer-mill foreman who is also the "machine man" who repairs the machines and grinds the knives; (3) foremen or supervisors who perform clerical work other than the maintenance of the time and production records of their subordinates; for example, the foreman of the shipping room who makes out the bills of lading and other shipping records, the warehouse foreman who also acts as inventory clerk, the head shipper who also has charge of a finished goods stock room, assisting in placing goods on shelves and keeping perpetual inventory records, or the office manager, head bookkeeper, or chief clerk who performs routine bookkeeping. There is no doubt that the head bookkeeper, for example, who spends a substantial amount of his time keeping books of the same general nature as those kept by the other bookkeepers, even though his books are confidential in nature or cover different transactions from the books maintained by the under bookkeepers, is not primarily an executive employee and should not be so considered.

[3] The term "working" foreman is used in this subpart in the sense indicated in the text and should not be construed to mean only one who performs work similar to that performed by his subordinates.

[4] "Substantial", as used in this section, means more than 20 percent. See discussion of the 20-percent limitation on nonexempt work in § 541.112.

§ 541.116 Trainees, executive.

The exemption is applicable to an employee employed in a bona fide executive capacity and does not include employees training to become executives and not actually performing the duties of an executive.

§ 541.117 Amount of salary required.

(a) Compensation on a salary basis at a rate of not less than $100 per week is

required for exemption as an executive.[5] The $100 a week may be translated into equivalent amounts for periods longer than one week. The requirement will be met if the employee is compensated biweekly on a salary basis of $200, semimonthly on a salary basis of $216.67 or monthly on a salary basis of $433.33. (In the case of an employee of a retail or service establishment, the salary rate, until September 3, 1965, is $80 per week on a salary basis. This requirement will be met if the employee is compensated on a salary basis of $160 biweekly, $173.33 semimonthly, or $346.67 monthly.) However, the shortest period of payment which will meet the requirement of payment "on a salary basis" is a week.

(b) In Puerto Rico, the Virgin Islands and American Samoa, the salary test for exemption as an "executive" is $75 per week ($55 per week, until September 3, 1965, in the case of an employee of a retail or service establishment).

(c) The payment of the required salary must be exclusive of board, lodging, or other facilities; that is, free and clear. On the other hand, the regulations in Subpart A of this part do not prohibit the sale of such facilities to executives on a cash basis if they are negotiated in the same manner as similar transactions with other persons.

§ 541.118 Salary basis.

(a) An employee will be considered to be paid "on a salary basis" within the meaning of the regulations if under his employment agreement he regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of his compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Subject to the exceptions provided below, the employee must receive his full salary for any week in which he performs any work without regard to the number of days or hours worked. This policy is also subject to the general rule that an employee need not be paid for any workweek in which he performs no work.

(1) An employee will not be considered to be "on a salary basis" if deductions from his predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. Accordingly, if the employee is ready, willing and able to work, deductions may not be made for time when work is not available.

(2) Deductions may be made, however, when the employee abents himself from work for a day or more for personal reasons, other than sickness or accident. Thus, if an employee is absent for a day or longer to handle personal affairs, his salaried status will not be affected if deductions are made from his salary for such absences.

(3) Deductions may also be made for absences of a day or more occasioned by sickness or disability (including industrial accidents), if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by both sickness and disability. Thus, if the employer's particular plan, policy or practice provides compensation for such absences, deductions for absences of a day or longer because of sickness or disability may be made before an employee has qualified under such plan, policy or practice, and after he has exhausted his leave allowance thereunder. It is not required that the employee be paid any portion of his salary for such day or days for which he receives compensation for leave under such plan, policy or practice. Similarly, if the employer operates under a State sickness and disability insurance law, or a private sickness and disability insurance plan, deductions may be made for absences of a working day or longer if benefits are provided in accordance with the particular law or plan. In the case of an industrial accident, the "salary basis" requirement will be met if the employee is compensated for loss of salary in accordance with the applicable compensation law or the plan adopted by the employer, provided the employer also has some plan, policy or practice of providing compensation for sickness and disability other than that relating to industrial accidents.

(4) Deductions may not be made for absences of an employee caused by jury duty, attendance as a witness, or temporary military leave. The employer may, however, offset any amounts received by an employee as jury or witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption.

(5) Penalties imposed in good faith for infractions of safety rules of major significance will not affect the employee's salaried status. Safety rules of major significance include only those relating to the prevention of serious danger to the plant or other employees, such as rules prohibiting smoking in explosive plants, oil refineries, and coal mines.

(6) The effect of making a deduction which is not permitted under these interpretations will depend upon the facts in the particular case. Where deductions are generally made when there is no work available, it indicates that there was no intention to pay the employee on a salary basis. In such a case the exemption would not be applicable to him during the entire period when such deductions were being made. On the other hand, where a deduction not permitted by these interpretations is inadvertent, or is made for reasons other than lack of work, the exemption will not be considered to have been lost if the employer reimburses the employee for such deductions and promises to comply in the future.

(b) *Minimum guarantee plus extras.* It should be noted that the salary may consist of a predetermined amount constituting all or part of the employee's compensation. In other words, additional compensation besides the salary is not inconsistent with the salary basis of payment. The requirement will be met, for example, by a branch manager who receives a salary of $100 or more per week ($80 per week, until September 3, 1965, in the case of an employee of a retail or service establishment) and, in addition, a commission of 1 percent of the branch sales. The requirement will also be met by a branch manager who receives a percentage of the sales or profits of his branch if the employment arrangement also includes a guarantee of at least the minimum weekly salary (or the equivalent for a monthly or other period) required by the regulations. Another type of situation in which the requirement will be met is that of an employee paid on a daily or shift basis, if the employment arrangement includes a provision that he will receive not less than the amount specified in the regulations in any week in which he performs any work. Such arrangements are subject to the exceptions in paragraph (a) of this section. The test of payment on a salary basis will not be met, however, if the salary is divided into two parts for the purpose of circumventing the requirement of payment "on a salary basis". For example, a salary of $145 a week may not arbitrarily be divided into a guaranteed minimum of $100 paid in each week in which any work is performed, and an additional $45 which is made subject to deductions which are not permitted under paragraph (a) of this section.

(c) *Initial and terminal weeks.* Failure to pay the full salary in the initial or terminal week of employment is not considered inconsistent with the salary basis of payment. In such weeks the payment of a proportionate part of the employee's salary for the time actually worked will meet the requirement. However, this should not be construed to mean that an employee is on a salary basis within the meaning of the regulations if he is employed occasionally for a few days and is paid a proportionate part of the weekly salary when so employed. Moreover, even payment of the full weekly salary under such circumstances would not meet the requirement, since casual or occasional employment for a few days at a time is inconsistent with employment on a salary basis within the meaning of the regulations.

§ 541.119 Special proviso for high salaried executives.

(a) Section 541.1 contains a special proviso for managerial employees who are compensated on a salary basis at a rate of not less than $150 per week ($125 per week, until September 3, 1965, in the case of an employee of a retail or service establishment) exclusive of board, lodging or other facilities. Such a highly paid employee is deemed to meet all the requirements in paragraphs (a) through (f) of § 541.1 if his primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof and includes the customary

[5] The validity of including a salary requirement in the regulations in Subpart A of this part has been sustained in a number of appellate court decisions. See, for example, Walling v. Yeakley, 140 F. (2d) 830 (CCA 10); Helliwell v. Haberman, 140 F. (2d) 833 (CCA 2); and Walling v. Morris, 155 F. (2d) 832 (CCA 6) (reversed on another point in 332 U.S. 442).

and regular direction of the work of two or more other employees therein. If an employee qualifies for exemption under this proviso, it is not necessary to test his qualifications in detail under paragraphs (a) through (f) of § 541.1.[6]

(b) Mechanics, carpenters, linotype operators, or craftsmen of other kinds are not exempt under the proviso no matter how highly paid they might be.

EMPLOYEE EMPLOYED IN A BONA FIDE ADMINISTRATIVE CAPACITY

§ 541.200 Definition of "Administrative".

Section 541.2 defines the term "bona fide * * * administrative" as follows: The term "employee employed in a bona fide * * * administrative * * * capacity" in section 13(a)(1) of the act shall mean any employee:

(a) Whose primary duty consists of the performance of office or nonmanual work directly related to management policies or general business operations of his employer or his employer's customers; and

(b) Who customarily and regularly exercises discretion and independent judgment;

(c)(1) Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity (as such terms are defined in the regulations in this subpart), or

(2) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge, or

(3) Who executes under only general supervision special assignments and tasks; and

(d) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent of his hours worked in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (c) of this section; and

(e) Who (except as provided in § 541.5b of this part) is compensated for his services on a salary or fee basis at a rate of not less than $100 per week (or $75 per week if employed in Puerto Rico, the Virgin Islands or American Samoa) exclusive of board, lodging, or other facilities:

Provided, That an employee who (except as provided in § 541.5b of this part) is compensated on a salary or fee basis at a rate of not less than $150 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the performance of office or nonmanual work directly related to management policies or general business operations of his employer or his employer's customers, which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all of the requirements of this section.

[6] This special proviso is applicable to all employees covered by the act, including those in Puerto Rico, the Virgin Islands and American Samoa.

§ 541.201 Types of administrative employees.

(a) Three types of employees are described in § 541.2(c) who, if they meet the other tests in § 541.2, qualify for exemption as "administrative" employees.

(1) *Executive and administrative assistants.* The first type is the assistant to a proprietor or to an executive or administrative employee. In modern industrial practice there has been a steady and increasing use of persons who assist an executive in the performance of his duties without themselves having executive authority. Typical titles of persons in this group are executive assistant to the president, confidential assistant, executive secretary, assistant to the general manager, administrative assistant and, in retail or service establishments, assistant manager and assistant buyer. Generally speaking, such assistants are found in large establishments where the official assisted has duties of such scope and which require so much attention that the work of personal scrutiny, correspondence, and interviews must be delegated.

(2) *Staff employees.* (i) Employees included in the second alternative in the definition are those who can be described as staff rather than line employees, or as functional rather than departmental heads. They include among others employees who act as advisory specialists to the management. Typical examples of such advisory specialists are tax experts, insurance experts, sales research experts, wage-rate analysts, investment consultants, foreign exchange consultants, and statisticians.

(ii) Also included are persons who are in charge of a so-called functional department, which may frequently be a one-man department. Typical examples of such employees are credit managers, purchasing agents, buyers, safety directors, personnel directors, and labor relations directors.

(3) *Those who perform special assignments.* (i) The third group consists of persons who perform special assignments. Among them are to be found a number of persons whose work is performed away from the employer's place of business. Typical titles of such persons are lease buyers, field representatives of utility companies, location managers of motion picture companies, and district gaugers for oil companies. It should be particularly noted that this is a field which is rife with honorific titles that do not adequately portray the nature of the employee's duties. The field representative of a utility company, for example, may be a "glorified serviceman".

(ii) This classification also includes employees whose special assignments are performed entirely or partly inside their employer's place of business. Examples are special organization planners, customers' brokers in stock exchange firms, so-called account executives in advertising firms and contact or promotion men of various types.

(b) *Job titles insufficient as yardsticks.* (1) The employees for whom exemption is sought under the term "administrative" have extremely diverse functions and a wide variety of titles. A title alone is of little or no assistance in determining the true importance of an employee to the employer or his exempt or nonexempt status under the regulations in Subpart A of this part. Titles can be had cheaply and are of no determinative value. Thus, while there are supervisors of production control (whose decisions affect the welfare of large numbers of employees) who qualify for exemption under section 13(a)(1), it is not hard to call a rate setter (whose functions are limited to timing certain operations and jotting down times on a standardized form) a "methods engineer" or a "production-control supervisor".

(2) Many more examples could be cited to show that titles are insufficient as yardsticks. As has been indicated previously, the exempt or nonexempt status of any particular employee must be determined on the basis of whether his duties, responsibilities and salary meet all the requirements of the appropriate section of the regulations in Subpart A of this part.

§ 541.202 Categories of work.

(a) The work generally performed by employees who perform administrative tasks may be classified into the following general categories for purposes of the definition:[7] (1) the work specifically described in paragraphs (a), (b), and (c) of § 541.2; (2) routine work[8] which is directly and closely related to the performance of the work which is described in paragraphs (a), (b), and (c) of § 541.2; and (3) routine work which is not related or is only remotely related to the administrative duties.

(b) The work in category 1, that which is specifically described in § 541.2 as requiring the exercise of discretion and independent judgment, is clearly exempt in nature.

(c) Category 2 consists of work which if separated from the work in category 1, would appear to be routine, or on a fairly low level, and which does not itself require the exercise of discretion and independent judgment, but which has a direct and close relationship to the performance of the more important duties. The directness and closeness of this relationship may vary depending upon the nature of the job and the size and organization of the establishment in which the work is performed. This "directly and closely related" work includes routine work which necessarily arises out of the administrative duties, and routine work without which the employee's more important work cannot be performed properly. It also includes a variety of routine tasks which may not be essential to the proper performance of the more important duties but which are func-

[7] This classification is without regard to whether the work is manual or nonmanual. The problem of manual work as it affects the exemption of administrative employees is discussed in § 541.203.

[8] As used in this subpart the phrase "routine work" means work which does not require the exercise of discretion and independent judgment. It is not necessarily restricted to work which is repetitive in nature.

tionally related to them directly and closely. In this latter category are activities which an administrative employee may reasonably be expected to perform in connection with carrying out his administrative functions including duties which either facilitate or arise incidentally from the performance of such functions and are commonly performed in connection with them.

(d) These "directly and closely related" duties are distinguishable from the last group, category 3, those which are remotely related or completely unrelated to the more important tasks. The work in this last category is nonexempt and must not exceed the 20-percent limitation for nonexempt work (up to 40 percent in the case of an employee of a retail or service establishment) if the exemption is to apply.

§ 541.203 Nonmanual work.

(a) The requirement that the work performed by an exempt administrative employee must be office work or nonmanual work restricts the exemption to "white-collar" employees who meet the tests. If the work performed is "office" work it is immaterial whether it is manual or nonmanual in nature. This is consistent with the intent to include within the term "administrative" only employees who are basically white-collar employees since the accepted usage of the term "white-collar" includes all office workers. Persons employed in the routine operation of office machines are engaged in office work within the meaning of § 541.2 (although they would not qualify as administrative employees since they do not meet the other requirements of § 541.2).

(b) Section 541.2 does not completely prohibit the performance of manual work by an "administrative" employee. The performance by an otherwise exempt administrative employee of some manual work which is directly and closely related to the work requiring the exercise of discretion and independent judgment is not inconsistent with the principle that the exemption is limited to "white-collar" employees. However, if the employee performs so much manual work (other than office work) that he cannot be said to be basically a "white-collar" employee he does not qualify for exemption as a bona fide administrative employee, even if the manual work he performs, is directly and closely related to the work requiring the exercise of discretion and independent judgment. Thus, it is obvious that employees who spend most of their time in using tools, instruments, machinery, or other equipment, or in performing repetitive operations with their hands, no matter how much skill is required, would not be bona fide administrative employees within the meaning of § 541.2. An office employee, on the other hand, is a "white-collar" worker, and would not lose the exemption on the grounds that he is not primarily engaged in "nonmanual" work, although he would lose the exemption if he failed to meet any of the other requirements.

§ 541.205 Directly related to management policies or general business operations.

(a) The phrase "directly related to management policies or general business operations of his employer or his employer's customers" describes those types of activities relating to the administrative operations of a business as distinguished from "production" or, in a retail or service establishment, "sales" work. In addition to describing the types of activities, the phrase limits the exemption to persons who perform work of substantial importance to the management or operation of the business of his employer or his employer's customers.

(b) The administrative operations of the business include the work performed by so-called white-collar employees engaged in "servicing" a business as, for example, advising the management, planning, negotiating, representing the company, purchasing, promoting sales, and business research and control. An employee performing such work is engaged in activities relating to the administrative operations of the business notwithstanding that he is employed as an administrative assistant to an executive in the production department of the business.

(c) As used to describe work of substantial importance to the management or operation of the business, the phrase "directly related to management policies or general business operations" is not limited to persons who participate in the formulation of management policies or in the operation of the business as a whole. Employees whose work is "directly related" to management policies or to general business operations include those whose work affects policy or whose responsibility it is to execute or carry it out. The phrase also includes a wide variety of persons who either carry out major assignments in conducting the operations of the business, or whose work affects business operations to a substantial degree, even though their assignments or tasks relate to the operation of a particular segment of the business.

(1) It is not possible to lay down specific rules that will indicate the precise point at which work becomes of substantial importance to the management or operation of a business. It should be clear that the cashier of a bank performs work at a responsible level and may therefore be said to be performing work directly related to management policies or general business operations. On the other hand, the bank teller does not. Likewise it is clear that bookkeepers, secretaries, and clerks of various kinds hold the run-of-the-mine positions in any ordinary business and are not performing work directly related to management policies or general business operations. On the other hand, a tax consultant employed either by an individual company or by a firm of consultants is ordinarily doing work of substantial importance to the management or operation of a business.

(2) An employee performing routine clerical duties obviously is not performing work of substantial importance to the management or operation of the business even though he may exercise some measure of discretion and judgment as to the manner in which he performs his clerical tasks. A messenger boy who is entrusted with carrying large sums of money or securities cannot be said to be doing work of importance to the business even though serious consequences may flow from his neglect. An employee operating very expensive equipment may cause serious loss to his employer by the improper performance of his duties. An inspector, such as, for example, an inspector for an insurance company, may cause loss to his employer by the failure to perform his job properly. But such employees, obviously, are not performing work of such substantial importance to the management or operation of the business that it can be said to be "directly related to management policies or general business operations" as that phrase is used in § 541.2.

(3) Some firms employ persons whom they describe as "statisticians". If all such a person does, in effect, is to tabulate data, he is clearly not exempt. However, if such an employee makes analyses of data and draws conclusions which are important to the determination of, or which, in fact, determine financial, merchandising, or other policy, clearly he is doing work directly related to management policies or general business operations. Similarly, a personnel employee may be a clerk at a hiring window of a plant, or he may be a man who determines or affects personnel policies affecting all the workers in the establishment. In the latter case, he is clearly doing work directly related to management policies or general business operations. These examples illustrate the two extremes. In each case, between these extreme types there are many employees whose work may be of substantial importance to the management or operation of the business, depending upon the particular facts.

(4) Another example of an employee whose work may be important to the welfare of the business is a buyer of a particular article or equipment in an industrial plant or personnel commonly called assistant buyers in retail or service establishments. Where such work is of substantial importance to the management or operation of the business, even though it may be limited to purchasing for a particular department of the business, it is directly related to management policies or general business operations.

(5) The test of "directly related to management policies or general business operations" is also met by many persons employed as advisory specialists and consultants of various kinds, credit managers, safety directors, claim agents and adjusters, wage-rate analysts, tax experts, account executives of advertising agencies, customers' brokers in stock exchange firms, promotion men, and many others.

(6) It should be noted in this connection that an employer's volume of activ-

ities may make it necessary to employ a number of employees in some of these categories. The fact that there are a number of other employees of the same employer carrying out assignments of the same relative importance or performing identical work does not affect the determination of whether they meet this test so long as the work of each such employee is of substantial importance to the management or operation of the business.

(d) Under § 541.2 the "management policies or general business operations" may be those of the employer or the employer's customers. For example, many bona fide administrative employees perform important functions as advisors and consultants but are employed by a concern engaged in furnishing such services for a fee. Typical instances are tax experts, labor relations consultants, financial consultants, or resident buyers. Such employees, if they meet the other requirements of § 541.2, qualify for exemption regardless of whether the management policies or general business operations to which their work is directly related are those of their employer's clients or customers, or those of their employer.

§ 541.206 Primary duty.

(a) The definition of "administrative" exempts only employees who are primarily engaged in the responsible work which is characteristic of employment in a bona fide administrative capacity. Thus, the employee must have as his primary duty office or nonmanual work directly related to management policies or general business operations of his employer or his employer's customers. The words "primary duty" have the effect of placing major emphasis on the character of the employee's job as a whole.

(b) In determining whether an employee's exempt work meets the "primary duty" requirement, the principles explained in § 541.103 in the discussion of "primary duty" under the definition of "executive" are applicable.

§ 541.207 Discretion and independent judgment.

(a) In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered. The term as used in the regulations in Subpart A of this part, moreover, implies that the person has the authority or power to make an independent choice, free from immediate direction or supervision and with respect to matters of significance.[9]

(b) The term must be applied in the light of all the facts involved in the particular employment situation in which the question arises. It has been most frequently misunderstood and misapplied by employers and employees in cases involving the following: (1) Confusion between the exercise of discretion and independent judgment, and the use of skill in applying techniques, procedures, or specific standards; and (2) misapplication of the term to employees making decisions relating to matters of little consequence.

(c) Distinguished from skills and procedures.

(1) Perhaps the most frequent cause of misapplication of the term "discretion and independent judgment" is the failure to distinguish it from the use of skill in various respects. An employee who merely applies his knowledge in following prescribed procedures or determining which procedure to follow, or who determines whether specified standards are met or whether an object falls into one or another of a number of definite grades, classes, or other categories, with or without the use of testing or measuring devices, is not exercising discretion and independent judgment within the meaning of § 541.2. This is true even if there is some leeway in reaching a conclusion, as when an acceptable standard includes a range or a tolerance above or below a specific standard.

(2) A typical example of the application of skills and procedures is ordinary inspection work of various kinds. Inspectors normally perform specialized work along standardized lines involving well established techniques and procedures which may have been catalogued and described in manuals or other sources. Such inspectors rely on techniques and skills acquired by special training or experience. They may have some leeway in the performance of their work but only within closely prescribed limits. Employees of this type may make recommendations on the basis of the information they develop in the course of their inspections (as for example to accept or reject an insurance risk or a product manufactured to specifications), but these recommendations are based on the development of the facts as to whether there is conformity with the prescribed standards. In such cases a decision to depart from the prescribed standards or the permitted tolerance is typically made by the inspector's superior. The inspector is engaged in exercising skill rather than discretion and independent judgment within the meaning of the regulations in Subpart A of this part.

(3) A related group of employees usually called examiners or graders perform similar work involving the comparison of products with established standards which are frequently catalogued. Often, after continued reference to the written standards, or through experience, the employee acquires sufficient knowledge so that reference to written standards is unnecessary. The substitution of the employee's memory for the manual of standards does not convert the character of the work performed to work requiring the exercise of discretion and independent judgment as required by the regulations in Subpart A of this part. The mere fact that the employee uses his knowledge and experience does not change his decision, i.e., that the product does or does not conform with the established standard, into a real decision in a significant matter.

(4) For example, certain "graders" of lumber turn over each "stick" to see both sides, after which a crayon mark is made to indicate the grade. These lumber grades are well established and the employee's familiarity with them stems from his experience and training. Skill rather than discretion and independent judgment is exercised in grading the lumber. This does not necessarily mean, however, that all employees who grade lumber or other commodities are not exercising discretion and independent judgment. Grading of commodities for which there are no recognized or established standards may require the exercise of discretion and independent judgment as contemplated by the regulations in Subpart A of this part. In addition, in those situations in which an otherwise exempt buyer does grading, the grading, even though routine work, may be considered exempt if it is directly and closely related to the exempt buying.

(5) Another type of situation where skill in the application of techniques and procedures is sometimes confused with discretion and independent judgment is the "screening" of applicants by a personnel clerk. Typically such an employee will interview applicants and obtain from them data regarding their qualifications and fitness for employment. These data may be entered on a form specially prepared for the purpose. The "screening" operation consists of rejecting all applicants who do not meet standards for the particular job or for employment by the company. The standards are usually set by the employee's superior or other company officials, and the decision to hire from the group of applicants who do meet the standards is similarly made by other company officials. It seems clear that such a personnel clerk does not exercise discretion and independent judgment as required by the regulations in Subpart A of this part. On the other hand an exempt personnel manager will often perform similar functions; that is, he will interview applicants to obtain the necessary data and eliminate applicants who are not qualified. The personnel manager will then hire one of the qualified applicants. Thus, when the interviewing and screening are performed by the personnel manager who does the hiring they constitute exempt work, even though routine, because this work is directly and closely related to the employee's exempt functions.

(6) Similarly, comparison shopping performed by an employee of a retail store who merely reports to the buyer his findings as to the prices at which a competitor's store is offering merchandise of the same or comparable quality does not involve the exercise of discretion and judgment as required in the regulations. Discretion and judgment are exercised, however, by the buyer who evaluates the assistants' reports and on the basis of their findings directs that certain items be re-priced. When performed by the buyer who actually makes the decisions

[9] Without actually attempting to define the term, the courts have given it this meaning in applying it in particular cases. See for example, Walling v. Sterling Ice Co., 69 F. Supp. 665, reversed on other grounds, 165 F. (2d) 265 (CCA 10). See also Connell v. Delaware Aircraft Industries, 55 Atl. (2d) 637.

which effect the buying or pricing policies of the department he manages, the comparison shopping, although in itself a comparatively routine operation, is directly and closely related to his managerial responsibility.

(d) Decisions in significant matters: (1) The second type of situation in which some difficulty with this phrase has been experienced relates to the level or importance of the matters with respect to which the employee may make decisions. In one sense almost every employee is required to use some discretion and independent judgment. Thus, it is frequently left to a truck driver to decide which route to follow in going from one place to another; the shipping clerk is normally permitted to decide the method of packing and the mode of shipment of small orders; and the bookkeeper may usually decide whether he will post first to one ledger rather than another. Yet it is obvious that these decisions do not constitute the exercise of discretion and independent judgment at the level contemplated by the regulations in Subpart A of this part. The Divisions have consistently taken the position that decisions of this nature concerning relatively unimportant matters are not those intended by the regulations in Subpart A of this part, but that the discretion and independent judgment exercised must be real and substantial, that is, they must be exercised with respect to matters of consequence. This interpretation has also been followed by courts in decision involving the application of the regulations in this part, to particular cases.

(2) It is not possible to state a general rule which will distinguish in each of the many thousands of possible factual situations between the making of real decisions in significant matters and the making of choices involving matters of little or no consequence. It should be clear, however, that the term "discretion and independent judgment," within the meaning of the regulations in Subpart A of this part, does not apply to the kinds of decisions normally made by clerical and similar types of employees. The term does apply to the kinds of decisions normally made by persons who formulate or participate in the formulation of policy within their spheres of responsibility or who exercise authority within a wide range to commit their employer in substantial respects financially or otherwise. The regulations in Subpart A of this part, however, do not require the exercise of discretion and independent judgment at so high a level. The regulations in Subpart A of this part also contemplate the kind of discretion and independent judgment exercised by an administrative assistant to an executive, who without specific instructions or prescribed procedures, arranges interviews and meetings, and handles callers and meetings himself where the executive's personal attention is not required. It includes the kind of discretion and independent judgment exercised by a customer's man in a brokerage house in deciding what recommendations to make to a customer for the purchase of securities. It may include the kind of discretion and judgment exercised by buyers, certain wholesale salesmen, representatives, and other contact persons who are given reasonable latitude in carrying on negotiations on behalf of their employers.

(e) Final decisions not necessary: (1) The term "discretion and independent judgment" as used in the regulations in Subpart A of this part does not necessarily imply that the decisions made by the employee must have a finality that goes with unlimited authority and a complete absence of review. The decisions made as a result of the exercise of discretion and independent judgment may consist of recommendations for action rather than the actual taking of action. The fact that an employee's decision may be subject to review and that upon occasion the decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment within the meaning of the regulations in Subpart A of this part. For example, the assistant to the president of a large corporation may regularly reply to correspondence addressed to the president. Typically, such an assistant will submit the more important replies to the president for review before they are sent out. Upon occasion, after review, the president may alter or discard the prepared reply and direct that another be sent instead. This action by the president would not, however, destroy the exempt character of the assistant's function, and does not mean that he does not exercise discretion and independent judgment in answering correspondence and in deciding which replies may be sent out without review by the president.

(2) The policies formulated by the credit manager of a large corporation may be subject to review by higher company officials who may approve or disapprove these policies. The management consultant who has made a study of the operations of a business and who has drawn a proposed change in organization, may have the plan reviewed or revised by his superiors before it is submitted to the client. The purchasing agent may be required to consult with top management officials before making a purchase commitment for raw materials in excess of the contemplated plant needs for a stated period, say 6 months. These employees exercise discretion and independent judgment within the meaning of the regulations despite the fact that their decisions or recommendations are reviewed at a higher level.

(f) Distinguished from loss through neglect: A distinction must also be made between the exercise of discretion and independent judgment with respect to matters of consequence and the cases where serious consequences may result from the negligence of an employee, the failure to follow instructions or procedures, the improper application of skills, or the choice of the wrong techniques. The operator of a very intricate piece of machinery, for example, may cause a complete stoppage of production or a breakdown of his very expensive machine merely by pressing the wrong button. A bank teller who is engaged in receipt and disbursement of money at a teller's window and in related routine bookkeeping duties may, by crediting the wrong account with a deposit, cause his employer to suffer a large financial loss. An inspector charged with responsibility for loading oil onto a ship may, by not applying correct techniques, fail to notice the presence of foreign ingredients in the tank with resulting contamination of the cargo and serious loss to his employer. In these cases, the work of the employee does not require the exercise of discretion and independent judgment within the meaning of the regulations in Subpart A of this part.

(g) Customarily and regularly: The work of an exempt administrative employee must require the exercise of discretion and independent judgment customarily and regularly. The phrase "customarily and regularly" signifies a frequency which must be greater than occasional but which, of course, may be less than constant. The requirement will be met by the employee who normally and recurrently is called upon to exercise and does exercise discretion and independent judgment in the day-to-day performance of his duties. The requirement is not met by the occasional exercise of discretion and independent judgment.

§ 541.208 Directly and closely related.

(a) As indicated in § 541.202, work which is directly and closely related to the performance of the work described in § 541.2 is considered exempt work. Some illustrations may be helpful in clarifying the differences between such work and work which is unrelated or only remotely related to the work described in § 541.2.

(b) (1) For purposes of illustration, the case of a high-salaried management consultant about whose exempt status as an administrative employee there is no doubt will be assumed. The particular employee is employed by a firm of consultants and performs work in which he customarily and regularly exercises discretion and independent judgment. The work consists primarily of anaylzing, and recommending changes in, the business operations of his employer's client. This work falls in the category of exempt work described in § 541.2.

(2) In the course of performing that work, the consultant makes extensive notes recording the flow of work and materials through the office and plant of the client. Standing alone or separated from the primary duty such note-making would be routine in nature. However, this is work without which the more important work cannot be performed properly. It is "directly and closely related" to the administrative work and is therefore exempt work. Upon his return to the office of his employer the consultant personally types his report and draws, first in rough and then in final form, a proposed table of organization to be submitted with it. Although all this work may not be essential to the proper performance of his more important work, it is all directly and closely related to that work and should be considered exempt. While it

is possible to assign the typing and final drafting to nonexempt employees and in fact it is frequently the practice to do so, it is not required as a condition of exemption that it be so delegated.

(3) Finally, if because this particular employee has a special skill in such work, he also drafts tables of organization proposed by other consultants, he would then be performing routine work wholly unrelated, or at best only remotely related, to his more important work. Under such conditions, the drafting is nonexempt.

(c) Another illustration is the credit manager who makes and administers the credit policy of his employer. Establishing credit limits for customers and authorizing the shipment of orders on credit, including the decisions to exceed or otherwise vary these limits in the case of particular customers, would be exempt work of the kind specifically described in § 541.2. Work which is directly and closely related to these exempt duties may include such activities as checking the status of accounts to determine whether the credit limit would be exceeded by the shipment of a new order, removing credit reports from the files for analysis and writing letters giving credit data and experience to other employers or credit agencies. On the other hand, any general office or bookkeeping work is nonexempt work. For instance, posting to the accounts receivable ledger would be only remotely related to his administrative work and must be considered nonexempt.

(d) One phase of the work of an administrative assistant to a bona fide executive or administrative employee provides another illustration. The work of determining whether to answer correspondence personally, call it to his superior's attention, or route it to someone else for reply requires the exercise of discretion and independent judgment and is exempt work of the kind described in § 541.2. Opening the mail for the purpose of reading it to make the decisions indicated will be directly and closely related to the administrative work described. However, merely opening mail and placing it unread before his superior or some other person would be related only remotely, if at all, to any work requiring the exercise of discretion and independent judgment.

(e) The following additional examples may also be of value in applying these principles. A traffic manager is employed to handle the company's transportation problems. The exempt work performed by such an employee would include planning the most economical and quickest routes for shipping merchandise to and from the plant, contracting for common-carrier and other transportation facilities, negotiating with carriers for adjustments for damages to merchandise in transit and making the necessary rearrangements resulting from delays, damages, or irregularities in transit. This employee may also spend part of his time taking "city orders" (for local deliveries) over the telephone. The order-taking is a routine function not "directly and closely related" to the exempt work and must be considered nonexempt.

(f) An office manager who does not supervise two or more employees would not meet the requirements for exemption as an executive employee but may possibly qualify for exemption as an administrative employee. Such an employee may perform administrative duties, such as the execution of the employer's credit policy, the management of the company's traffic, purchasing, and other responsible office work requiring the customary and regular exercise of discretion and judgment, which are clearly exempt. On the other hand, this office manager may perform all the bookkeeping, prepare the confidential or regular payrolls, and send out monthly statements of account. These latter activities are not "directly and closely related" to the exempt functions and are not exempt.

§ 541.209 Percentage limitations on nonexempt work.

(a) Under § 541.2(d), an employee will not qualify for exemption as an administrative employee if he devotes more than 20 percent, or, in the case of an employee of a retail or service establishment if he devotes as much as 40 percent, of his hours worked in the workweek to nonexempt work; that is, to activities which are not directly and closely related to the performance of the work described in § 541.2 (a) through (c).

(b) This test is applied on a workweek basis and the percentage of time spent on nonexempt work is computed on the time worked by the employee.

(c) The tolerance for nonexempt work allows the performance of nonexempt manual or nonmanual work within the percentages allowed for all types of nonexempt work.

§ 541.210 Trainees, administrative.

The exemption is applicable to an employee employed in a bona fide administrative capacity and does not include employees training for employment in an administrative capacity who are not actually performing the duties of an administrative employee.

§ 541.211 Amount of salary or fees required.

(a) Compensation on a salary or fee basis at a rate of not less than $100 a week (exclusive of board, lodging, or other facilities) is required for exemption as an "administrative" employee. The requirement will be met if the employee is compensated biweekly on a salary basis of $200, semimonthly on a salary basis of $216.67 or monthly on a salary basis of $433.33. (In the case of an employee of a retail or service establishment, the salary rate, until September 3, 1965, is $80 per week on a salary basis. This requirement will be met if the employee is compensated on a salary basis of $160 biweekly, $173.33 semimonthly, or $346.67 monthly.)

(b) In Puerto Rico, the Virgin Islands and American Samoa, the required compensation is $75 per week ($55 per week, until September 3, 1965, in the case of an employee of a retail or service establishment), exclusive of board, lodging, or other facilities, on a salary or fee basis.

(c) The payment of the required salary must be exclusive of board, lodging, or other facilities; that is, free and clear. On the other hand, the regulations do not prohibit the sale of such facilities to administrative employees on a cash basis if they are negotiated in the same manner as similar transactions with other persons.

§ 541.212 Salary basis.

The explanation of the salary basis of payment made in § 541.118 in connection with the definition of "executive" is also applicable in the definition of "administrative".

§ 541.213 Fee basis.

The requirements for exemption as an administrative employee may be met by an employee who is compensated on a fee basis as well as by one who is paid on a salary basis. For a discussion of payment on a fee basis, see § 541.313.

§ 541.214 Special proviso for high salaried administrative employees.

Section 541.2 contains a special proviso including within the definition of "administrative" an employee who is compensated on a salary or fee basis at a rate of not less than $150 per week ($125 per week, until September 3, 1965, in the case an employee of a retail or service establishment) exclusive of board, lodging, or other facilities, and "whose primary duty consists of the performance of office or nonmanual work directly related to management policies or general business operations of his employer or his employer's customers, which includes work requiring the exercise of discretion and independent judgment * * *." Such a highly paid employee is deemed to meet all the requirements in § 541.2 (a) through (e). If an employee qualifies for exemption under this proviso, it is not necessary to test his qualifications in detail under § 541.2 (a) through (e).[10]

Employee Employed in a Bona Fide Professional Capacity

§ 541.300 Definition of "professional".

Section 541.3 defines the term "bona fide * * * professional" as follows: The term "employee employed in a bona fide * * * professional capacity" in section 13(a)(1) of the act shall mean any employee:

(a) Whose primary duty consists of the performance of work:

(1) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or

(2) Original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and

[10] This special proviso is applicable to all employees covered by the act, including those in Puerto Rico, the Virgin Islands and American Samoa.

training), and the result of which depends primarily on the invention, imagination, or talent of the employee; and

(b) Whose work requires the consistent exercise of discretion and judgment in its performance; and

(c) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and

(d) Who does not devote more than 20 percent of his hours worked in the workweek to activities which are not an essential part of and necessarily incident to the work described in paragraphs (a) through (c) of this section; and

(e) Who (except as provided in § 541.5b of this part) is compensated for his services on a salary or fee basis at a rate of not less than $115 per week (or $95 per week if employed in Puerto Rico, the Virgin Islands or American Samoa) exclusive of board, lodging, or other facilities: *Provided,* That this paragraph shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof:

Provided, That an employee who (except as provided in § 541.5b of this part) is compensated on a salary or fee basis at a rate of not less than $150 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the performance of work either requiring knowledge of an advanced type in a field of science or learning, which includes work requiring the consistent exercise of discretion and judgment, or requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section.

§ 541.301 General.

The term "professional" is not restricted to the traditional professions of law, medicine, and theology. It includes those professions which have a recognized status and which are based on the acquirement of professional knowledge through prolonged study. It also includes the artistic professions, such as acting or music. Since the test of the bona fide professional capaciy of such employment is different in character from the test for persons in the learned professions, an alternative test for such employees is contained in the regulations, in addition to the requirements common to both groups.

§ 541.302 Learned professions.

(a) The "learned" professions are described in § 541.3(a)(1) as those requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study as distinguished from a general academic education and from an apprenticeship and from training in the performance of routine mental, manual or physical processes.

(b) The first element in the requirement is that the knowledge be of an advanced type. Thus, generally speaking, it must be knowledge which cannot be attained at the high-school level.

(c) Second, it must be knowledge in a field of science or learning. This serves to distinguish the professions from the mechanical arts where in some instances the knowledge is of a fairly advanced type, but not in a field of science or learning.

(d) The requisite knowledge, in the third place, must be customarily acquired by a prolonged course of specialized intellectual instruction and study. Here it should be noted that the word "customarily" has been used to meet a specific problem occuring in many industries. As is well known, even in the classical profession of law, there are still a few practitioners who have gained their knowledge by home study and experience. Characteristically, the members of the profession are graduates of law schools, but some few of their fellow professionals whose status is equal to theirs, whose attainments are the same, and whose work is the same did not enjoy that opportunity. Such persons are not barred from the exemption. The word "customarily" implies that in the vast majority of cases the specific academic training is a prerequisite for entrance into the profession. It makes the exemption available to the occasional lawyer who has not gone to law school, or the occasional chemist who is not the possessor of a degree in chemistry, etc., but it does not include the members of such quasiprofessions as journalism in which the bulk of the employees have acquired their skill by experience rather than by any formal specialized training. It should be noted also that many employees in these quasiprofessions may qualify for exemption under other sections of the regulations in Subpart A of this part or under the alternative paragraph of the "professional" definition applicable to the artistic fields.

(e) No need appears to translate the word "prolonged" into arithmetical terms. Generally speaking, the professions which meet this requirement will include law, medicine, accountancy, actuarial computation, engineering, architecture, various types of physical, chemical and biological sciences, teaching, and so forth. The typical symbol of the professional training and the best prima facie evidence of its possession is, of course, the appropriate academic degree, and in these professions an advanced academic degree is a standard (if not absolutely universal) prerequisite.

(f) Many accountants are exempt as professional employees[11] (regardless of whether they are employed by public accounting firms or by other types of enterprises). However, exemption of accountants, as in the case of other occupational groups (see § 541.308), must be determined on the basis of the individual employee's duties and the other criteria in the regulations. It has been the Divisions' experience that certified public accountants who meet the salary requirement of the regulations will, except in unusual cases, meet the requirements of the professional exemption since they meet the tests contained in § 541.3. Similarly, accountants who are not certified public accountants may also be exempt as professional employees if they actually perform work which requires the consistent exercise of discretion and judgment and otherwise meet the tests prescribed in the definition of "professional" employee. Accounting clerks, junior accountants, and other accountants, on the other hand, normally perform a great deal of routine work which is not an essential part of and necessarily incident to any professional work which they may do. Where these facts are found such accountants are not exempt. The title "Junior Accountant," however, is not determinative of failure to qualify for exemption any more than the title "Senior Accountant" would necessarily imply that the employee is exempt.

[11] Some accountants may qualify for exemption as bona fide administrative employees.

§ 541.303 Artistic professions.

(a) The requirements concerning the character of the artistic type of professional work are contained in § 541.3(a)(2). Work of this type is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee.

(b) The work must be "in a recognized field of artistic endeavor." This includes such fields as music, writing, the theater, and the plastic and graphic arts.

(c)(1) The work must be original and creative in character, as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training. In the field of music there should be little difficulty in ascertaining the application of this requirement. Musicians, composers, conductors, soloists, all are engaged in original and creative work within the sense of this definition. In the plastic and graphic arts the requirement is, generally speaking, met by painters who at most are given the subject matter of their painting. It is similarly met by cartoonists who are merely told the title or underlying concept of a cartoon and then must rely on their own creative powers to express the concept. It would not normally be met by a person who is employed as a copyist or as an "animator" of motion-picture cartoons, or as a retoucher of photographs since it is not believed that such work is properly described as creative in character.

(2) In the field of writing the distinction is perhaps more difficult to draw. Obviously the requirement is met by essayists or novelists or scenario writers who choose their own subjects and hand in a finished piece of work to their employers (the majority of such persons are, of course, not employees but self-employed). The requirement would also be met, generally speaking, by persons holding the more responsible writing positions in advertising agencies.

(d) Another requirement is that the employee be engaged in work "the result of which depends primarily on the invention, imagination, or talent of the employee." This requirement is easily met by a person employed as an actor, or a singer, or a violinist, or a short-story writer. In the case of newspaper employees the distinction here is similar to the distinction observed above in connection with the requirement that the work be "original and creative in character." Obviously the majority of reporters do work which depends primarily on intelligence, diligence, and accuracy. It is the minority whose work depends primarily on "invention, imagination, or talent." On the other hand, this requirement will normally be met by actors, musicians, painters, and other artists.

(e)(1) The determination of the exempt or nonexempt status of radio announcers as professional employees has been relatively difficult because the radio broadcasting industry is comparatively new in the field of entertainment and because of the merging of the artistic aspects of the job with the commercial. There is considerable variation in the type of work performed by various radio announcers, ranging from predominantly routine to predominantly exempt work. The wide variation in earnings as between individual radio announcers, from the highly paid "name" announcer on a national network who is greatly in demand by sponsors to the staff announcer paid a comparatively small salary in a small station, indicates not only great differences in personality, voice and manner, but also in some inherent special ability or talent which, while extremely difficult to define, is nevertheless real.

(2) The duties which many announcers are called upon to perform include: Functioning as a master of ceremonies; playing dramatic, comedy or straight parts in a program; interviewing; conducting farm, fashion, and home economics programs; covering public events, such as sports programs, in which the announcer may be required to "ad lib" and describe current changing events; and acting as narrator and commentator. Such work is generally exempt. Work such as giving station identification and time signals, announcing the names of programs, and similar routine work is nonexempt work. In the field of radio entertainment as in other fields of artistic endeavor, the status of an employee as a bona fide professional under § 541.3 is in large part dependent upon whether his duties are original and creative in character, and whether they require invention, imagination or talent. The determination of whether a particular announcer is exempt as a professional employee must be based upon his individual duties and the amount of exempt and nonexempt work performed, as well as his compensation.

(f) The field of journalism also employs many exempt as well as many nonexempt employees under the same or similar job titles. Newspaper writers and reporters are the principal categories of employment in which this is found.

(1) Newspaper writers, with possible rare exceptions in certain highly technical fields, do not meet the requirements of § 541.3(a)(1) for exemption as professional employees of the "learned" type. Exemption for newspaper writers as professional employees is normally available only under the provisions for professional employees of the "artistic" type. Newspaper writing of the exempt type must, therefore, be "predominantly original and creative in character." Only writing which is analytical, interpretative or highly individualized is considered to be creative in nature. (The writing of fiction to the extent that it may be found on a newspaper would also be considered as exempt work.) Newspaper writers commonly performing work which is original and creative within the meaning of § 541.3 are editorial writers, columnists, critics, and "top-flight" writers of analytical and interpretative articles.

(2) The reporting of news, the rewriting of stories received from various sources, or the routine editorial work of a newspaper is not predominantly original and creative in character within the meaning of § 541.3 and must be considered as nonexempt work. Thus, a reporter or news writer ordinarily collects facts about news events by investigation, interview, or personal observation and writes stories reporting these events for publication, or submits the facts to a rewrite man or other editorial employees for story preparation. Such work is nonexempt work. The leg man, the reporter covering a police beat, the reporter sent out under specific instructions to cover a murder, fire, accident ship arrival, convention, sport event, etc., are normally performing duties which are not professional in nature within the meaning of the act and § 541.3.

(3) Incidental interviewing or investigation, when it is performed as an essential part of and is necessarily incident to an employee's professional work, however, need not be counted as nonexempt work. Thus, if a dramatic critic interviews an actor and writes a story around the interview, the work of interviewing him and writing the story would not be considered as nonexempt work. However, a dramatic critic who is assigned to cover a routine news event such as a fire or a convention would be doing nonexempt work since covering the fire or the convention would not be necessary and incident to his work as a dramatic critic.

§ 541.304 Primary duty.

For an explanation of the term "primary duty" see the discussion of this term under "executive" in § 541.103, and under "administrative" in § 541.206.

§ 541.305 Discretion and judgment.

(a) Under § 541.3 a professional employee must perform work which requires the consistent exercise of discretion and judgment in its performance.

(b) A prime characteristic of professional work is the fact that the employee does apply his special knowledge or talents with discretion and judgment. Purely mechanical or routine work is not professional.

§ 541.306 Predominantly intellectual and varied.

Section 541.3 requires that the employee be engaged in work predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work. This test applies to the type of thinking which must be performed by the employee in question. While a doctor may make 20 physical examinations in the morning and perform in the course of his examinations essentially similar tests, it requires not only judgment and discretion on his part but a continual variety in his interpretation of the tests to perform satisfactory work. Likewise, although a professional chemist may make a series of similar tests, the problems presented will vary as will the deductions to be made therefrom. The work of the true professional is inherently varied even though similar outward actions may be performed.

§ 541.307 Essential part of and necessarily incident to.

(a) Section 541.3(d), it will be noted, has the effect of including within the exempt work activities which are an essential part of and necessarily incident to the professional work described in § 541.3 (a) through (c). This provision recognizes the fact that there are professional employees whose work necessarily involves some of the actual routine physical tasks also performed by obviously nonexempt employees. For example, a chemist performing important and original experiments frequently finds it necessary to perform himself some of the most menial tasks in connection with the operation of his experiments, even though at times these menial tasks can be conveniently or properly assigned to laboratory assistants. See also the example of incidental interviewing or investigation in § 541.303 (f)(3).

(b) It should be noted that the test of whether routine work is exempt work is different in the definition of "professional" from that in the definition of "executive" and "administrative". Thus, while routine work will be exempt if it is "directly and closely related" to the performance of executive or administrative duties, work which is directly and closely related to the performance of the professional duties will not be exempt unless it is also "an essential part of and necessarily incident to" the professional work.

§ 541.308 Nonexempt work generally

(a) It has been the Divisions' experience that some employers erroneously believe that anyone employed in the field of accountancy, engineering, or other professional fields, will qualify for exemption as a professional employee by virtue of such employment. While there are many exempt employees in these fields, the exemption of any individual depends upon his duties and other qualifications.

(b) It is necessary to emphasize the fact that section 13(a)(1) exempts "any

employee employed in a bona fide * * * professional capacity". It does not exempt all employees of professional employers, or all employees in industries having large numbers of professional members, or all employees in any particular occupation. Nor does it exempt, as such, those learning a profession. Moreover, it does not exempt persons with professional training, who are working in professional fields, but performing subprofessional or routine work. For example, in the field of library science there are large numbers of employees who are trained librarians but who, nevertheless, do not perform professional work or receive salaries commensurate with recognized professional status. The field of "engineering" has many persons with "engineer" titles, who are not professional engineers, as well as many who are trained in the engineering profession, but are actually working as trainees, junior engineers, or draftsmen.

§ 541.309 20-percent nonexempt work limitation.

Time spent in nonexempt work, that is, work which is not an essential part of and necessarily incident to the exempt work, is limited to 20 percent of the time worked by the employee in the workweek.

§ 541.310 Trainees, professional.

The exemption applies to an employee employed in a bona fide professional capacity and does not include trainees who are not actually performing the duties of a professional employee.

§ 541.311 Amount of salary or fees required.

(a) Compensation on a salary or fee basis at a rate of not less than $115 per week (exclusive of board, lodging, or other facilities) is required for exemption as a "professional" employee. An employee will meet the requirement if he is paid a biweekly salary of $230, a semimonthly salary of $249.17, or a monthly salary of $498.33. (In the case of an employee of a retail or service establishment, the rate, until September 3, 1965, is $95 per week. This requirement will be met if the employee is compensated on a salary basis of $190 biweekly, $205.83 semimonthly, or $411.67 monthly.)

(b) In Puerto Rico, the Virgin Islands and American Samoa, the required salary is $95 per week ($75 per week, until September 3, 1965, in the case of an employee of a retail or service establishment) exclusive of board, lodging or other facilities, on a salary or fee basis.

(c) The payment of the required salary must be exclusive of board, lodging, or other facilities; that is, free and clear. On the other hand, the regulations in Subpart A of this part do not prohibit the sale of such facilities to professional employees on a cash basis if they are negotiated in the same manner as similar transactions with other persons.

§ 541.312 Salary basis.

The salary basis of payment is explained in § 541.118 in connection with the definition of "executive".

§ 541.313 Fee basis.

(a) The requirements for exemption as a professional (or administrative) employee may be met by an employee who is compensated on a fee basis as well as by one who is paid on a salary basis.

(b) Little or no difficulty arises in determining whether a particular employment arrangement involves payment on a fee basis. Such arrangements are characterized by the payment of an agreed sum for a single job regardless of the time required for its completion. These payments in a sense resemble piecework payments with the important distinction that generally speaking a fee payment is made for the kind of job which is unique rather than for a series of jobs which are repeated an indefinite number of times and for which payment on an identical basis is made over and over again. Payments based on the number of hours or days worked and not on the accomplishment of a given single task are not considered payments on a fee basis. The type of payment contemplated in the regulations in Subpart A of this part is thus readily recognized.

(c) The adequacy of a fee payment—whether it amounts to payment at a rate of not less than $115 per week—can ordinarily be determined only after the time worked on the job has been determined. In determining whether payment is at the rate specified in the regulations in Subpart A of this part the amount paid to the employee will be tested by reference to a standard workweek of 40 hours. Thus, compliance will be tested in each case of a fee payment by determining whether the payment made is at a rate which would amount to at least $115 if 40 hours were worked.

(d) The following examples will illustrate the principle stated above:

(1) A singer receives $25 for a song on a 15-minute program (no rehearsal time is involved). Obviously the requirement will be met since the employee would earn $115 at this rate of pay in far less than 40 hours.

(2) An artist is paid $60 for a picture. Upon completion of the assignment, it is determined that the artist worked 20 hours. Since earnings at this rate would yield the artist $120 if 40 hours were worked, the requirement is met.

(3) An illustrator is assigned the illustration of a pamphlet at a fee of $120. When the job is completed, it is determined that the employee worked 60 hours. If he worked 40 hours at this rate, the employee would have earned only $80. The fee payment of $120 for work which required 60 hours to complete therefore does not meet the requirement of payment at a rate of $115 per week and the employee must be considered nonexempt. It follows that if in the performance of this assignment the illustrator worked in excess of 40 hours in any week, overtime rates must be paid. Whether or not he worked in excess of 40 hours in any week, records for such an employee would have to be kept in accordance with the regulations covering records for nonexempt employees (Part 516 of this chapter).

§ 541.314 Exception for physicians and lawyers.

A holder of a valid license or certificate permitting the practice of law or medicine or any of their branches, who is actually engaged in practicing the profession, is excepted from the salary or fee requirement. This exception applies only to the traditional professions of law and medicine and not to employees in related professions which merely service the professions of law or medicine. For example, in the case of medicine, the exception applies to physicians and other practitioners in the field of medical science and healing, such as dentists, or any of the medical specialties, but it does not include pharmacists, nurses, or other professions which service the medical profession.

§ 541.315 Special proviso for high salaried professional employees.

The definition of "professional" contains a special proviso for employees who are compensated on a salary or fee basis (exclusive of board, lodging, or other facilities) at a rate of at least $150 per week ($125 per week, until September 3, 1965, in the case of an employee of a retail or service establishment). Under this proviso, the requirements for exemption in § 541.3 (a) through (e) will be deemed to be met by an employee who receives the higher salary or fees and "whose primary duty consists of the performance of work either requiring knowledge of an advanced type in a field of science or learning, which includes work requiring the consistent exercise of discretion and judgment, or requiring invention, imagination, or talent in a recognized field of artistic endeavor". Thus, the exemption will apply to highly paid employees employed either in one of the "learned" professions or in an "artistic" profession and doing primarily professional work. If an employee qualifies for exemption under this proviso, it is not necessary to test his qualifications in detail under § 541.3 (a) through (e).[12]

EMPLOYEE EMPLOYED IN THE CAPACITY OF OUTSIDE SALESMAN

§ 541.500 Definition of "outside salesman".

Section 541.5 defines the term "outside salesman" as follows:

The term "employee employed * * * in the capacity of outside salesman" in section 13(a)(1) of the act shall mean any employee:

(a) Who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place or places of business in:

(1) Making sales within the meaning of section 3(k) of the act; or

(2) Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and

(b) Whose hours of work of a nature other than that described in paragraph

[12] This special proviso is applicable to all employees covered by the act, including those in Puerto Rico, the Virgin Islands and American Samoa.

(a) (1) or (2) of this section do not exceed 20 percent of the hours worked in the workweek by nonexempt employees of the employer: *Provided,* That work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, shall not be regarded as nonexempt work.

§ 541.501 Making sales or obtaining orders.

(a) Section 541.5 requires that the employee be engaged in (1) making sales within the meaning of section 3(k) of the act or (2) obtaining orders or contracts for services or for the use of facilities.

(b) Generally speaking, the Divisions have interpreted section 3(k) of the act to include the transfer of title to tangible property, and in certain cases, of tangible and valuable evidences of intangible property. Thus sales of automobiles, coffee, shoes, cigars, stocks, bonds, and insurance are construed as sales within the meaning of section 3(k).

(c) It will be noted that the exempt work includes not only the sales of commodities, but also "obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer". "Obtaining orders or contracts * * * for the use of facilities" includes the selling of time on the radio, the solicitation of advertising for newspapers and other periodicals and the solicitation of freight for railroads and other transportation agencies.

(d) The word "services" extends the exemption as outside salesmen to employees who sell or take orders for a service, which is performed for the customer by someone other than the person taking the order. For example, it includes the salesman of a typewriter repair service who does not himself do the repairing. It also includes otherwise exempt outside salesmen who obtain orders for the laundering of the customer's own linens as well as those who obtain orders for the rental of the laundry's linens.

(e) The inclusion of the word "services" is not intended to exempt persons who, in a very loose sense, are sometimes described as selling "services". For example, it does not include persons such as service men even though they may sell the service which they themselves perform. Selling the service in such cases would be incidental to the servicing rather than the reverse. Nor does it include outside buyers, who in a very loose sense are sometimes described as selling their employer's "service" to the person from whom they obtain their goods. It is obvious that the relationship here is the reverse of that of salesman-customer.

§ 541.502 Away from his employer's place of business.

(a) Section 541.5 requires that an outside salesman be customarily and regularly engaged "away from his employer's place or places of business". This requirement is based on the obvious connotation of the word "outside" in the term "outside salesman". It would obviously lie beyond the scope of the Administrator's authority that "outside salesman" should be construed to include inside salesmen. Inside sales and other inside work (except such as is directly in conjunction with and incidental to outside sales and solicitations, as explained in paragraph (b) of this section) is nonexempt.

(b) Characteristically the outside salesman is one who makes his sales at his customer's place of business. This is the reverse of sales made by mail or telephone (except where the telephone is used merely as an adjunct to personal calls). Thus any fixed site, whether home or office, used by a salesman as a headquarters or for telephonic solicitation of sales must be construed as one of his employer's places of business, even though the employer is not in any formal sense the owner or tenant of the property. It should not be inferred from the foregoing that an outside salesman loses his exemption by displaying his samples in hotel sample rooms as he travels from city to city; these samples rooms should not be considered as his employer's places of business.

§ 541.503 Incidental to and in conjunction with sales work.

Work performed "incidental to and in conjunction with the employee's own outside sales or solicitations" includes not only incidental deliveries and collections which are specifically mentioned in § 541.5(b), but also any other work performed by the employee in furthering his own sales efforts. Work performed incidental to and in conjunction with the employee's own outside sales or solicitations would include, among other things, the writing of his sales reports, the revision of his own catalogue, the planning of his itinerary and attendance at sales conferences.

§ 541.504 Promotion work.

(a) Promotion work is one type of activity often performed by persons who make sales, which may or may not be exempt work, depending upon the circumstances under which it is performed. Promotion men are not exempt as "outside salesmen".[13] However, any promotional work which is actually performed incidental to and in conjunction with an employee's own outside sales or solicitations is clearly exempt work. On the other hand, promotional work which is incidental to sales made, or to be made, by someone else cannot be considered as exempt work. Many persons are engaged in certain combinations of sales and promotional work or in certain types of promotional work having some of the characteristics of sales work while lacking others. The types of work involved include activities in borderline areas in which it is difficult to determine whether the work is sales or promotional. Where the work is promotional in nature it is sometimes difficult to determine whether it is incidental to the employee's own sales work.

(b) (1) Typically, the problems presented involve distribution through jobbers (who employ their own salesmen) or through central warehouses of chain-store organizations or cooperative retail buying associations. A manufacturer's representative in such cases visits the retailer, either alone or accompanied by the jobber's salesman. In some instances the manufacturer's representative may sell directly to the retailer; in others, he may urge the retailer to buy from the jobber.

(2) This manufacturer's representative may perform various types of promotional activities such as putting up displays and posters, removing damaged or spoiled stock from the merchant's shelves or rearranging the merchandise. Such persons can be considered salesmen only if they are actually employed for the purpose of and are engaged in making sales or obtaining orders or contracts. To the extent that they are engaged in promotional activities designed to stimulate sales which will be made by someone else the work must be considered nonexempt. With such variations in the methods of selling and promoting sales each case must be decided upon its facts. In borderline cases the test is whether the person is actually engaged in activities directed toward the consummation of his own sales, at least to the extent of obtaining a commitment to buy from the person to whom he is selling. If his efforts are directed toward stimulating the sales of his company generally rather than the consummation of his own specific sales his activities are not exempt. Incidental promotional activities may be tested by whether they are "performed incidental to and in conjunction with the employee's own outside sales or solicitations" or whether they are incidental to sales which will be made by someone else.

(c) (1) A few illustrations of typical situations will be of assistance in determining whether a particular type of work is exempt or nonexempt under § 541.5. One situation involves a manufacturer's representative who visits the retailer for the purpose of obtaining orders for his employer's product, but transmits any orders he obtains to the local jobber to be filled. In such a case the employee is performing sales work regardless of the fact that the order is filled by the jobber rather than directly by his own employer. The sale in this instance has been "consummated" in the sense that the salesman has obtained a commitment from the customer.

(2) Another typical situation involves facts similar to those described in the preceding illustration with the difference that the jobber's salesman accompanies the representative of the company whose product is being sold. The order in this instance is taken by the jobber's salesman after the manufacture's representative has done the preliminary work which may include arranging the stock, putting up a display or poster, and talking to the retailer for the purpose of getting him to place the order for the

[13] This discussion relates solely to the exemption under § 541.5, dealing with outside salesmen. Promotion men who receive the required salary and otherwise qualify, may be exempt as administrative employees.

product with the jobber's salesman. In this instance the sale is consummated by the jobber's salesman. The work performed by the manufacturer's representative is not incidental to sales made by himself and is not exempt work. Moreover, even if in a particular instance the sale is consummated by the manufacturer's representative it is necessary to examine the nature of the work performed by the representative to determine whether his promotional activities are directed toward paving the way for his own present and future sales, or whether they are intended to stimulate the present and future sales of the jobber's salesman. If his work is related to his own sales it would be considered exempt work, while if it is directed toward stimulating sales by the jobber's representative it must be considered nonexempt work.

(3) Another type of situation involves representatives employed by utility companies engaged in furnishing gas or electricity to consumers. In a sense these representatives are employed for the purpose of "selling" the consumer an increased volume of the product of the utility. This "selling" is accomplished indirectly by persuading the consumer to purchase appliances which will result in a greater use of gas or electricity. Different methods are used by various companies. In some instances the utility representative after persuading the consumer to install a particular appliance may actually take the order for the appliance which is delivered from stock by his employer, or he may forward the order to an appliance dealer who then delivers it. In such cases the sales activity would be exempt, since it is directed at the consummation of a specific sale by the utility representative, the employer actually making the delivery in the one case, while in the other the sale is consummated in the sense that the representative obtains an order or commitment from the customer. In another type of situation the utility representative persuades the consumer to buy the appliance and he may even accompany the consumer to an appliance store where the retailer shows the appliance and takes the order. In such instances the utility representative is not an outside salesman since he does not consummate the sale or direct his efforts toward making the sale himself. Similarly, the utility representative is not exempt as an outside salesman if he merely persuades the consumer to purchase an appliance and the consumer then goes to an appliance dealer and places his order.

(4) Still another type of situation involves the company representative who visits chain stores, arranges the merchandise on shelves, replenishes stock by replacing old with new merchandise, consults with the manager as to the requirements of the store, fills out a requisition for the quantity wanted and leaves it with the store manager to be transmitted to the central warehouse of the chain-store company which later ships the quantity requested. The arrangement of merchandise on the shelves or the replenishing of stock is not exempt work unless it is incidental to and in conjunction with the employee's own outside sales. Since the manufacturer's representative in this instance does not consummate the sale nor direct his efforts toward the consummation of a sale (the store manager often has no authority to buy) this work must be counted as nonexempt.

§ 541.505 Driver salesmen.

(a) A large group of employees known generally as "route salesmen", "distributor salesmen", or "driver salesmen" are commonly employed by distributors of carbonated beverages and beer, cigars, and numerous dairy and other food products. Typically, the driver salesman carries an assortment of the articles he sells and calls on the same customers at frequent and regular intervals. He confers with the customers, replenishes the customer's stock of goods and if he is introducing new varieties or new lines, endeavors to persuade the customer to buy the new products. He removes the empty bottles, cases, and other containers if these are to be returned to his employer and delivers the articles sold to the customer. The exemption is not defeated by the fact that the employee combines deliveries, collections, and other incidental work with his sales activities. It is clear that such an employee is employed for the purpose of making sales.

(b) On the other hand, an employee who is basically a truck driver and only incidentally or occasionally a salesman does not qualify for the exemption. Some employees occasionally described as outside salesmen, merely deliver orders in an amount exactly or approximately prearranged by customer or contractual arrangement and frequently make collections for the goods they deliver. Such employees are clearly not salesmen. Moreover, driving a truck or making collections is not exempt work when the truck is being used to deliver goods sold by someone else or when the collections are for sales made by another employee.

(c) In borderline cases, a determination of whether a driver salesman is employed for the purpose of making sales or is primarily a truck driver and only incidentally or occasionally a salesman, can be made in the light of facts that will illustrate the actual nature of the employee's work. Among factors to be considered are: the employer's specifications as to qualifications for hiring; sales training; attendance at sales conferences; method of payment; proportion of earnings directly attributable to sales effort; description of occupation in union contracts; comparison of duties of employees in question and of other employees engaged as (1) truck drivers and (2) salesmen; possession of a salesman's or solicitor's license when such license is required by law or ordinance; and presence or absence of customary or contractual prearrangements concerning amount to be delivered.

§ 541.506 Nonexempt work generally.

Nonexempt work is that work which is not sales work and is not performed incidental to and in conjunction with the outside sales activities of the employee. It includes outside activities like meter-reading, which are not part of the sales process. Inside sales and all work incidental thereto are also nonexempt work. So is clerical warehouse work which is not related to the employee's own sales. Similarly, the training of other salesmen is not exempt as outside sales work, with one exception. In some concerns it is the custom for the salesman to be accompanied by the trainee while actually making sales. Under such circumstances it appears that normally the trainer-salesman and the trainee make the various sales jointly, and both normally receive a commission thereon. In such instances, since both are engaged in making sales, the work of both is considered exempt work. However, the work of a helper who merely assists the salesman in transporting goods or samples and who is not directly concerned with effectuating the sale is nonexempt work.

§ 541.507 20-percent limitation on nonexempt work.

Nonexempt work in the definition of "outside salesman" is limited to "20 percent of the hours worked in the workweek by nonexempt employees of the employer". The 20 percent is computed on the basis of the hours worked by nonexempt employees of the employer who perform the kind of nonexempt work performed by the outside salesman. If there are no employees of the employer performing such nonexempt work, the base to be taken is 40 hours a week, and the amount of nonexempt work allowed will be 8 hours a week.

§ 541.508 Trainees, outside salesmen.

The exemption is applicable to an employee employed in the capacity of outside salesman and does not include employees training to become outside salesmen who are not actually performing the duties of an outside salesman (see also § 541.506).

Special Problems

§ 541.600 Combination exemptions.

(a) The Divisions' position under the regulations in Subpart A of this part permits the "tacking" of exempt work under one section of the regulations in Subpart A to exempt work under another, so that a person who, for example, performs a combination of executive and professional work may qualify for exemption. In combination exemptions, however, the employee must meet the stricter of the requirements on salary and nonexempt work. For instance, if the employee performs a combination of an executive's and an outside salesman's functions (regardless of which occupies most of his time) he must meet the salary requirement for executives ($100 a week). Also, the total hours of nonexempt work under the definition of "executive" together with the hours of work which would not be exempt if he were clearly an outside salesman, must not exceed either 20 percent of his own time or 20 percent of the "hours worked in the workweek by the nonexempt employees of the employer", whichever is the smaller amount.

(b) Under the principles in paragraph (a) of this section combinations of ex-

emptions under the other sections of the regulations in Subpart A of this part are also permissible. In short, under the regulations in Subpart A, work which is "exempt" under one section of the regulations in Subpart A will not defeat the exemption under any other section.

§ 541.601 Special provision for motion picture producing industry.

Under § 541.5a, the requirement that the employee be paid "on a salary basis" does not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least $200 a week (exclusive of board, lodging, or other facilities). Thus, an employee in this industry who is otherwise exempt under §§ 541.1, 541.2, or 541.3 and who is employed at a base rate of at least $200 a week is exempt if he is paid at least pro rata (based on a week of not more than 6 days) for any week when he does not work a full workweek for any reason. Moreover, an otherwise exempt employee in this industry qualifies for exemption if he is employed at a daily rate under the following circumstances: (a) The employee is in a job category for which a weekly base rate is not provided and his daily base rate would yield at least $200 if 6 days were worked; or (b) the employee is in a job category having a weekly base rate of at least $200 and his daily base rate is at least one-sixth of such weekly base rate.

§ 541.602 Special proviso concerning executive and administrative employees in multi-store retailing operations.

(a) The tolerance of up to 40 percent of the employee's time which is allowed for nonexempt work performed by an executive or administrative employee of a retail or service establishment does not apply to employees of a multi-unit retailing operation, such as a chain-store system or a retail establishment having one or more branch stores, who perform central functions for the organization in physically separated establishments such as warehouses, central office buildings, or other central service units or by traveling from store to store. Nor does this special tolerance apply to employees who perform central office, warehousing, or service functions in a multi-unit retailing operation by reason of the fact that the space provided for such work is located in a portion or portions of the building in which the main retail or service establishment or another retail outlet of the organization is also situated. Such employees are subject to the 20-percent limitation on nonexempt work.

(b) With respect to executive or administrative employees stationed in the main store of a multi-store retailing operation who engage in activities (other than central office functions) which relate to the operations of the main store, and also to the operations of one or more physically separate units, such as branch stores, of the same retailing operation, the Divisions will, as an enforcement policy, assert no disqualification of such an employee for the section 13(a)(1) exemption by reason of nonexempt activities if the employee devotes less than 40 percent of his time to such nonexempt activities. Under the enforcement policy also, such employees will be deemed subject to the salary test provided in § 541.5b. This enforcement policy would apply, for example, in the case of a buyer who works in the main store of a multi-store retailing operation and who not only manages the millinery department in the main store, but is also responsible for buying some or all of the merchandise sold in the millinery departments of the branch stores.

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Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

SUBCHAPTER E—AIRSPACE [NEW]

[Airspace Docket No. 62-WE-132]

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

Modification of Amendment; Reno, Nevada

On July 27, 1963, there was published in the FEDERAL REGISTER (28 F.R. 7669) an amendment to § 71.171 of the Federal Aviation Regulations. This amendment altered the Reno, Nev. (Reno Municipal Airport) control zone.

Subsequent to publication of the amendment, precise cartographic measurements, attendant to the production of aeronautical charts, has revealed that the length of the control zone extension based on the 323° bearing from the Reno LMM is not sufficient to join the Stead AFB 5-mile radius control zone as intended. Therefore, action is taken herein to redescribe this portion of the Reno (Reno Municipal Airport) control zone as extending from the Reno Municipal Airport 5-mile radius zone to the arc of a 5-mile radius circle centered on Stead AFB.

Since this change is minor in nature and imposes no additional burden on any person, notice and public procedure hereon are unnecessary, and the effective date of the final rule as initially adopted may be retained.

In consideration of the foregoing, effective immediately, Airspace Docket No. 62-WE-132 (28 F.R. 7669) is hereby modified as follows:

In the description of the Reno, Nev. (Reno Municipal Airport) control zone, "extending from the 5-mile radius zone to 4 miles NW of the MM;" is deleted and "extending from the 5-mile radius zone to the arc of a 5-mile radius circle centered on Stead AFB (latitude 39°40'-25'' N., longitude 119°52'40'' W.);" is substituted therefor.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washngton, D.C., on August 23, 1963.

H. B. HELSTROM,
Acting Chief,
Airspace Utilization Division.

[F.R. Doc. 63-9336; Filed, Aug. 29, 1963; 8:46 a.m.]

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

Alteration of Control Zone

The purpose of this amendment to § 71.171 of the Federal Aviation Regulations is to alter the time of designation of the Del Rio, Tex., control zone.

The Del Rio control zone is presently designated on a full-time basis. However, the Department of the Air Force has advised that effective August 1, 1963, weather and communications service is available only from 0600 to 1900 hours, local time, Monday through Friday and 1200 to 1800 hours, local time, Sunday, excluding Federal legal holidays. Therefore, action is taken herein to redesignate the Del Rio control zone with effective hours coincident with those during which weather and communications service is provided.

Since the change effected by this amendment is less restrictive in nature than present requirements, notice and public procedure hereon are unnecessary and it may be made effective upon the date of publication in the FEDERAL REGISTER.

In consideration of the foregoing, the following action is taken:

Section 71.171 (27 F.R. 220-91, November 10, 1962) is amended as follows:

In the Del Rio, Tex., control zone, "12 miles SE of the AFB." is deleted and "12 miles SE of the AFB. This control zone is effective from 0600 to 1900 hours, local time, Monday through Friday and from 1200 to 1800 hours, local time, Sunday, excluding Federal legal holidays." is substituted therefor.

This amendment shall become effective upon the date of publication in the FEDERAL REGISTER.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on August 23, 1963.

H. B. HELSTROM,
Acting Chief,
Airspace Utilization Division.

[F.R. Doc. 63-9337; Filed, Aug. 29, 1963; 8:47 a.m.]

[Airspace Docket No. 63-SW-1]

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

Alteration of Control Zone

Correction

In F.R. Doc. 63-8987, appearing at page 9250 of the issue for Thursday, August 22, 1963, the following corrections are made in the matter for Midlands, Texas, in § 71.181:

1. Between the first and second semicolons, that matter reading "to 2 miles N of the VOR" should read "to 8 miles N of the VOR".

2. Between the second and third semicolons, that matter reading "to 8 INT of the Midland VOR 128°" should read "to the INT of the Midland VOR 128°".

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 55977]

PART 8—LIABILITY FOR DUTIES, ENTRY OF IMPORTED MERCHANDISE

Additional Information Required on Invoices of Certain Imported Merchandise

Under the authority of section 481(a)(10) of the Tariff Act of 1930 additional information is required on the invoices of certain classes of merchandise. These requirements and the Treasury decisions in which they appear are listed in § 8.13(h) of the Customs Regulations. The classification of commodities under the Tariff Schedules of the United States provided for by the Tariff Classification Act of 1962 (76 Stat. 702) have made some of the requirements for additional information unnecessary. In addition, the description of other commodities and the additional information requirements need to be amended to conform to the terms of the Tariff Schedules of the United States and its headnotes and rules of interpretation. Accordingly, § 8.13(h) is amended as follows:

The items listed below are deleted from the listing of classes of merchandise for which additional information is required and the Treasury decisions putting them in effect (identified in parenthesis following the item) are revoked:

Braids * * * (T.D. 49501, 52020)

Church bells (T.D. 42177)

Glass mirrors framed, measuring over 144 square inches in size (T.D. 53231)

Matting, articles made from * * * (T.D. 49858)

Metal, articles wholly or in chief value of * * * (T.D. 49901)

The description of the classes of merchandise and the additional information requirements for the items set forth below are amended as follows:

"Aluminum and alloys containing aluminum" is amended to read:

Aluminum and alloys of aluminum classifiable under schedule 6, part 2D, Tariff Schedules of the United States (T.D. 53092, *55977*) * * * (1) Statement of the percentages by weight of any metallic element used as an alloy in the articles.

"Beads" is amended to read:

Beads (T.D. 50088, *55977*)—(1) The length of the string, if strung; (2) the size of the beads expressed in millimeters; (3) the material of which the beads are composed, i.e., ivory, glass, imitation pearl, etc.

"Braids, plaits, laces, and willow sheets or squares" is amended to read:

Braids, nonelastic, and other nonelastic braided materials suitable for making or ornamenting headwear, classifiable under item 703.80 or 703.85 (T.D. 49501, 52020, 52114, *55977*)—(1) A statement as to whether or not the article has been bleached or colored.

"Copper, articles dutiable under the Tariff Act of 1930" is amended to read:

Copper, articles classifiable under the provisions of schedule 6, part 2C, Tariff Schedules of the United States (T.D. 45878, 50158, *55977*)—(1) A statement of the weight of articles of copper and a statement of percentage of copper content by weight of articles dutiable on their copper content.

"Copper bearing ores and concentrates" is amended to read:

Copper bearing ores and concentrates classifiable under items 602.25, 602.30, 602.31, 603.50, 603.55 or 603.65 (T.D. 45878, 50158, *55977*)—(1) Statement as to the weight of the article and the weight of the copper content.

"Cotton fabrics", the description of the class of merchandise for which the additional information is required is amended to read:

Cotton fabrics classifiable under the following items of the Tariff Schedules of the United States; schedule 3, part 1A—Cotton: items 301.60 through 301.98, and items 302.__, and 303.20; schedule 3, part 3A—Woven fabrics of cotton; all items except items 332.10 and 332.40; schedule 3, part 6A—Handkerchiefs; items 370.24 through 370.68; schedule 3, part 6B—Mufflers, etc.; item 372.15; schedule 3, part 6C—Hosiery; item 374.40; schedule 3, part 6E—Underwear; item 378.15 (T.D. 49303, *55977*)—

"Fish or fish livers" is amended to read:

Fish or fish livers imported in airtight containers classifiable under schedule 1, part 3C, Tariff Schedules of the United States (T.D. 50724, 49640, *55977*)—(1) Statement whether the articles contain an oil, fat, or grease which has had a separate existence as an oil, fat, or grease; (2) The name and quantity of any such oil, fat, or grease.

"Flax, hemp, and ramie fabrics", the description of the class of merchandise for which the additional information is required is amended to read:

Flax, hemp, and ramie fabrics and articles classifiable under the following items of the Tariff Schedules of the United States: 335.80, 335.90, 355.55, 356.25, 356.70, 356.80, 363.35, 366.30, 366.33, 366.36, 366.48, 366.81, 370.72, 370.76, or 370.80, and tablecloths, table scarves, and table doilies classifiable under items 366.51, or 366.84 (T.D. 50083, *55977*)—

"Glassware commercially known as plated or cased glass", the description of the class of merchandise for which the additional information is required is amended to read:

Glassware and other glass products classifiable under schedule 5, part 3C, Tariff Schedules of the United States, when imported in sets (T.D. 53079, *55977*)—

"Hats, bonnets, and hoods" is amended to read:

Hats or headwear classifiable under item 702.37 or 702.40 (T.D. 52114, *55977*)—(1) Statement as to whether or not the article has been bleached or colored.

"Iron or steel" is amended to read:

Iron or steel, articles of, classifiable under schedule 6, part 2B, Tariff Schedules of the United States (T.D. 53092, *55977*)—(1) Statement of the percentages by weight of any metallic element used as an alloy in the articles.

"Lumber" is amended to read:

Lumber, rough, dressed, or worked, classifiable under schedule 2, part 1B, Tariff Schedules of the United States, and dutiable on the basis of board measure (T.D. 50498, 51906, *55977*)—(1) Quantity in board feet of the rough lumber before dressing.

"Lumber, Northern white pine" is amended to read:

Lumber, Eastern white pine (also termed Northern white pine) (Pinus strobus) and red pine (also termed Norway pine) (Pinus resinosa) which is classifiable under item 202.06, Tariff Schedules of the United States (T.D. 49643(8), 51906, 52620, 53846, *55977*)—(1) A declaration of the shipper or other person having knowledge of the facts that the species of lumber comprising the shipment is Eastern White pine (Pinus strobus) or red pine (Pinus resinosa).

"Needlework tapestries composed of cotton canvas" is amended to read:

Needlework tapestries classifiable under schedule 3, part 5C, Tariff Schedules of the United States (T.D. 50369, *55977*)—(1) A statement of the separate cost of each fiber used.

"News-reel films" is amended to read:

News-reel films (T.D. 44703, 44938, *55977*)—(1) Statement of footage and title of each subject; (2) Declaration of shipper, cameraman or other person with knowledge of the facts identifying the films with the invoice and stating that the basic films were to the best of his knowledge and belief exposed abroad and returned for use as newsreel; (3) Declaration of importer that he believes the films entered by him are the ones covered by the preceding declaration and that the films are intended for use as newsreel.

"Oils, or products of such oils" is amended to read:

Oils or products of such oils, classifiable under schedule 4, part 8A, Tariff Schedules of the United States, and subject to a specific rate of duty (T.D. 49640, *55977*)—State if article is derived from coconut, palm-kernel, palm oil, or other.

"Toys" is amended to read:

Toys classifiable under item 737.25 or 737.30, Tariff Schedules of the United States (T.D. 49859, 50107, 52160, *55977*)—(1) Specify the actual over-all height of each stuffed figure of an animate object not having a spring mechanism.

"Watch movements", the description of the class of merchandise for which the additional information is required is amended to read:

Watch movements, and time-keeping, time-measuring, or time-indicating mechanisms, devices, and instruments, having 17 or less jewels, and dutiable under schedule 7, part 2E, Tariff Schedules of the United States, but not including movements designed for clocks and so stated on the invoice unless and until such time as the Commissioner of Customs issues a decision applicable to such movements (T.D. 54286, *55977*)—

The citation of authority for § 8.13 is amended to read:

(Secs. 481, 484, 46 Stat. 719, 722, as amended, sec. 101, 76 Stat. 72; 19 U.S.C. 1481, 1484; Sch. 1, Pt. 13, Hdnotes 1, 2, Tariff Schedules of the United States)

(Sec. 624, 46 Stat. 759, sec. 101, 76 Stat. 72; 19 U.S.C. 1624; Gen. Hdnote 11, Tariff Schedules of the United States)

Notice of proposed rulemaking and public procedure under section 4 of the Administrative Procedure Act (5 U.S.C. 1003) are found to be unnecessary and impracticable as the amendments merely substitute provisions of the Tariff Schedules of the United States for corresponding provisions of the titles I and II of the Tariff Act of 1930 which they replace, and make other minor adjustments necessitated by the changeover. Section 501 of the Tariff Classification Act of 1962 provides that the Tariff Schedules of the United States shall become effective on and after the 10th day following the date of the proclamation of the President provided for in section 102 of the Act. For this reason good cause is found to dispense with the delayed effective date provision of section 4 of the Administrative Procedure Act. The amendments shall, therefore, be in effect on the day the Tariff Schedules of the United States become effective.

PHILIP NICHOLS, Jr.,
Commissioner of Customs.

Approved: August 22, 1963.

JAMES POMEROY HENDRICK,
Acting Assistant Secretary of the Treasury.

[F.R. Doc. 63-9376; Filed, Aug. 29, 1963; 8:54 a.m.]

Title 20—EMPLOYEES' BENEFITS

Chapter II—Railroad Retirement Board

PART 237—INSURANCE ANNUITIES AND LUMP SUMS FOR SURVIVORS

Pursuant to the general authority contained in section 10 of the act of June 24, 1937 (50 Stat. 314, 43 U.S.C. 228j), §§ 237.701(1)(ii), 237.702(b), 237.702(c)(1), 237.702(f) and 237.703(c) of Part 237 (20 CFR 237.701(1)(ii), 237.702(b), 237.702(c)(1), 237.702(f) and 237.703(c)) of the regulations under such act are amended by Board Order 63-149, dated August 7, 1963, to read as follows:

§ 237.701 Statutory provisions.

Deductions from annuities. (1) * * * (ii) will have been under the age of seventy-two and for which month he is charged with any excess earnings under section 203(f) of the Social Security Act or, having engaged in any activity outside the United States, would be charged under such section 203(f) with any excess earnings derived from such activity if it had been an activity within the United States; and for purposes of this subdivision the Board shall have the authority to make such determinations and such suspensions of payment of benefits in the manner and to the extent that the Secretary of Health, Education, and Welfare would be authorized to do so under section 203(h)(3) of the Social Security Act if the individuals to whom this subdivision applies were entitled to benefits under section 202 of such Act; or

* * * * *

§ 237.702 Deductions because an individual works or a widow fails to have a child in her care.

* * * * *

(b) *Work other than employer service—(1) When deductions imposed.* Deductions are to be made from any annuity or annuities payable to an individual under this part for any month in which the individual is under age 72 and is charged, in accordance with the provisions of subparagraph (3) of this paragraph, with excess earnings determined in the following manner:

(i) Excess earnings for a taxable year beginning after December 1960 and ending on or before June 30, 1961, are those "earnings," as that term is defined in subparagraph (6) of this paragraph, which are in excess of $100 times the number of months in such year, except that one-half of the first $300 of such excess (or one-half of all such excess if it is less than $300) shall not be included. The excess earnings so determined, if not a multiple of $1, shall be reduced to the next lower multiple of $1.

(ii) Excess earnings for a taxable year ending after June 30, 1961, are those "earnings," as that term is defined in subparagraph (6) of this paragraph, which are in excess of $100 times the number of months in such year, except that one-half of the first $500 of such excess (or one-half of all such excess if it is less than $500) shall not be included. The excess earnings so determined, if not a multiple of $1, shall be reduced to the next lower multiple of $1.

(2) *Amount of deductions.* The amount to be deducted shall be equal to the annuity or total of annuities payable to the individual in the month in which such individual is charged, in accordance with the provisions of subparagraph (3) of this paragraph, with excess earnings equal to such annuity or annuities. If the excess earnings to be charged are less than the annuity or annuities, the deduction with respect to such month shall be equal only to the amount of such excess earnings.

(3) *Charging of excess earnings.* The amount of an individual's excess earnings in a taxable year, as determined in accordance with the provisions of subparagraph (1) of this paragraph, shall be charged to the first month of the taxable year in an amount equal to the annuity payable for such month (or all of the excess earnings shall be charged to such month if such excess is less than the annuity payable for such month). The balance of the excess earnings, if any, shall be charged to each succeeding month in such year to the extent of the annuity payable for such month until the total of such excess earnings has been so charged or until every month to which the excess earnings are chargeable has been charged with such excess earnings. The phrase "first month of the taxable year" means the earliest month in such year to which the charging of excess earnings is not prohibited by the provisions of subparagraph (4) of this paragraph.

(4) *Months to which excess earnings cannot be charged.* Notwithstanding the provisions of subparagraph (3) of this paragraph, excess earnings determined in accordance with subparagraph (1) of this paragraph shall not be charged to any month:

(i) In which the individual was not entitled to an annuity;

(ii) In which the individual was 72 years of age or over;

(iii) In which the individual was entitled to a child's insurance annuity under section 237.409 based on a disability; or

(iv) In which the individual did not engage in self-employment and did not render services for wages, as defined in subparagraph (6)(ii) of this paragraph, of more than $100. (An individual shall be deemed to have engaged in self-employment in any month if in such month he renders substantial services, as defined in subparagraph (5) of this paragraph, in operating a trade or business as owner or partner, even though there may be no earnings or net earnings from self-employment attributable to his services for such month; and he will be presumed with respect to any month to have rendered services for wages, as defined in subparagraph (6)(ii) of this paragraph, of more than $100 until it is shown to the satisfaction of the Board that he did not render services in such month for more than such amount.)

(5) *Definition of "substantial services."* For the purposes of subparagraph (4) of this paragraph, an individual engaged in self-employment is presumed to have rendered substantial services in each month in his taxable year. However, he may submit evidence to establish that in any month in such taxable year he did not render substantial services with respect to any trade or business the net income or loss of which is includible in computing his earnings (but without regard to subparagraph (6)(ii) of this paragraph) for any taxable year if such taxable year begins after 1956. In determining whether an individual has rendered such substantial services in a month, the particular facts in his case will be examined. The following factors, among others, will be considered in making the determination:

(i) The amount of time devoted to the trade or business;

(ii) The nature of the services rendered by the individual;

(iii) The relationship of the activity performed prior to the period of retirement with that performed subsequent to retirement;

(iv) The setting in which the services were performed, including:

(*a*) The presence or absence of a paid manager, a partner, or a family member who manages the business;

(*b*) The type of business establishment that is involved;

(*c*) The amount of capital invested in the trade or business; and

(*d*) The seasonal nature of the trade or business.

(6) *Definition of earnings.* When the term "earnings" is used in this paragraph and not as a part of the phrase "net earnings from self-employment" and not as a part of the term "excess earnings," it shall mean an individual's earnings with respect to a taxable year beginning after 1956 and includes the sum of his wages, as defined in subdivision (ii) of this subparagraph, for services rendered in such year and his net earnings from self-employment, as defined in subdivision (i) of this subparagraph, for such year minus any net loss from

self-employment as defined in subdivision (i) of this subparagraph, for such year. With respect to a taxable year beginning after 1958 an individual's earnings from an activity performed outside the United States shall be determined in the same manner as if such activity were performed within the United States.

* * * * *

(c) *Failure of a widow to have a child in her care.* (1) Deductions are to be made from any annuity or annuities payable to a widow under section 237.408 for any month in which such widow does not have in her care a child of her deceased husband entitled to a child's insurance annuity for such month. The amount to be deducted is equal to the amount of the widow's current insurance annuity to which she was entitled for the month in which she did not have such a child in her care.

* * * * *

(f) *Total amount to be deducted.* If, however, any of the events occasioning the deduction under paragraph (a), (b), or (c) of this section occurs in more than one month, the total amount to be deducted is equal to the sum of the deductions for all months in which any such event occurred. With respect to earnings under paragraph (b)(1) of this section, a deduction event is deemed to have occurred in any month to which excess earnings are charged (see paragraph (b)(3) of this section).

* * * * *

§ 237.703 Deductions because of death-benefit payments.

* * * * *

(c) *Manner of making deductions.* (1) If more than one person is entitled to any insurance annuity or annuities under this part on the basis of the insured status of the same deceased employee, the deduction required under paragraph (a) or (b) of this section is made from the insurance annuity or annuities to which each such person is entitled in the proportion that his insurance annuity or annuities for a month bears to the total of such insurance annuities for a month.

(2) In any case in which a deduction under paragraph (a) or (b) of this section is to be made, the deduction of the amount designated in paragraph (a) or (b) of this section is made by actuarial recovery from any insurance annuity under this part to which such individual is or becomes entitled on the basis of the insured status of the employee referred to in such paragraph: *Provided, however,* That the deduction is not less than the amount of the insurance annuity for a month: *Provided further,* That the actuarial reduction does not exceed the amount of the insurance annuity for a month: *And provided further,* That such individual does not request the withholding of the entire monthly insurance annuity until the total amount withheld equals the total amount to be recovered. If the deduction is less than the amount of the insurance annuity, or if the actuarial reduction exceeds the amount of the insurance annuity for a month, or if the individual specifically so requests, the deduction is made by withholding until the accumulated withholdings equal the total amount to be recovered.

* * * * *

(Sec. 10, 50 Stat. 314, 45 U.S.C. 228j)

By authority of the Board.

Dated: August 26, 1963.

LAWRENCE GARLAND,
Secretary of the Board.

[F.R. Doc. 63-9380; Filed, Aug. 29, 1963; 8:54 a.m.]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER A—GENERAL

PART 3—STATEMENTS OF GENERAL POLICY OR INTERPRETATION

Revocation of Obsolete Material

Because of the amendment of section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act, § 3.37 is revoked, the material therein being obsolete.

This order is effective upon publication in the FEDERAL REGISTER.

(Sec. 701(a), 52 Stat. 1055 as amended; 21 U.S.C. 371(a))

Dated: August 26, 1963.

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

[F.R. Doc. 63-9352; Filed, Aug. 29, 1963; 8:51 a.m.]

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Subpart D—Food Additives Permitted in Food for Human Consumption

CASTOR OIL

The Commissioner of Food and Drugs has concluded that § 121.1028 of the regulations should be amended to more specifically prescribe conditions of use of castor oil since § 121.2553 also provides for similar use. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (25 F.R. 8625), § 121.1028(b) is amended to read:

§ 121.1028 Castor oil.

* * * * *

(b) The additive is used or intended for use as follows:

Use and Limitations
Hard candy production—As a release agent and antisticking agent, not to exceed 500 parts per million in hard candy.
Vitamin and mineral tablets—As a component of protective coatings.

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

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

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

Dated: August 26, 1963.

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

[F.R. Doc. 63-9354; Filed, Aug. 29, 1963; 8:52 a.m.]

PART 121—FOOD ADDITIVES

Subpart G—Radiation and Radiation Sources Intended for Use in the Production, Processing, and Handling of Food

ELECTRON BEAM RADIATION FOR PROCESSING OF FOOD

The Commissioner of Food and Drugs, having evaluated the data submitted in a petition filed by General Electric Company, X-Ray Department, Milwaukee, Wisconsin, and other relevant material, has concluded that the following regulation should issue to provide for the safe use of electron beam radiation on canned bacon. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (25 F.R. 8625), Part 121 is amended by adding to Subpart G the following new section:

§ 121.3004 Electron beam radiation for the processing of food.

Electron beam radiation for the processing of food may be safely used under the following conditions:

(a) The radiation source consists of an electron accelerator producing a beam of electrons at energy levels not to exceed 5.0 million electron volts.

(b) The electron beam radiation is used or intended for use as follows:

In irradiated food	Limitation	Use
Canned bacon	Irradiated in cans coated with polymeric and resinous coatings meeting the specifications in § 121.2514, after packing under vacuum or in an inert atmosphere; absorbed dose, 4.5 to 5.6 megarads.	Radiation preservation.

(c) In the case of radiation used for the preservation of food, a record of the total dose absorbed shall be obtained by the use of phantoms having the same geometry as the containers of food and containing dosimeters suitable for the maintenance of a permanent record of exposure. Measurement of total dose shall be made by use of one phantom per 24-hour period of operation or by use of one phantom for each 1,000 packages exposed, whichever occurs first, with exposure records being retained for Food and Drug Administration inspection for a period of 1 year.

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

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

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

Dated: August 23, 1963.

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

[F.R. Doc. 63-9355; Filed, Aug. 29, 1963; 8:52 a.m.]

SUBCHAPTER C—DRUGS

PART 146—GENERAL REGULATIONS FOR THE CERTIFICATION OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

Exemptions for Repacking

Pursuant to section 507(d) of the Federal Food, Drug, and Cosmetic Act (sec. 507(d), 59 Stat. 463 as amended; 21 U.S.C. 357(d)), and under the authority delegated to the Commissioner of Food and Drugs by the Secretary of Health, Education, and Welfare (25 F.R. 8625), the following amendments are ordered to permit repackers of antibiotics to ship their repacked drugs under an exemption from certification for manufacturing use.

Section 146.21 *Exemptions for repacking* is amended by inserting in paragraphs (b), (c), and (d) the reference "146.22," preceding "or 146.23."

The amendments made in this order relax existing regulations, and the requirements for notice and public procedure and delayed effective date are considered unnecessary in this instance.

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

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

Dated: August 23, 1963.

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

[F.R. Doc. 63-9353; Filed, Aug. 29, 1963; 8:57 a.m.]

Title 22—FOREIGN RELATIONS

Chapter I—Department of State

SUBCHAPTER G—INTERNATIONAL EDUCATIONAL EXCHANGE SERVICE

[Dept. Reg. 108.498]

PART 61—PAYMENTS TO AND ON BEHALF OF PARTICIPANTS IN THE INTERNATIONAL EDUCATIONAL EXCHANGE PROGRAM

Grants to United States Participants To Consult, Lecture, Teach, Engage in Research; or Demonstrate Special Skills

Section 61.7 *Grants to United States participants to consult, lecture, teach, engage in research, or demonstrate special skills,* is amended to read as follows:

§ 61.7 Grants to United States participants to consult, lecture, teach, engage in research, or demonstrate special skills.

A citizen or resident of the United States who has been awarded a grant to consult, lecture, teach, engage in research, or demonstrate special skills may be entitled to any or all of the following benefits when authorized by the Department.

(a) *Transportation.* Transportation in the United States and abroad, including baggage charges.

(b) *Subsistence and miscellaneous travel expenses.* Per diem, in lieu of subsistence while in a travel status, at the maximum rates allowable in accordance with the provisions of the Standardized Government Travel Regulations and the Travel Expense Act of 1949, as amended, unless otherwise specified, and miscellaneous travel expenses, in the United States and abroad. Alternatively, a travel allowance may be authorized to cover subsistence and miscellaneous travel expenses. The participant shall be considered as remaining in a travel status during the entire period covered by his grant unless otherwise designated.

(c) *Orientation and debriefing within the United States.* For the purpose of orientation and debriefing within the United States, compensation, travel, and per diem at the maximum rates allowable in accordance with the provisions of the Standardized Government Travel Regulations and the Travel Expense Act of 1949, as amended, unless otherwise specified. Alternatively, a travel allowance may be authorized to cover subsistence and miscellaneous travel expenses.

(d) *Advance of funds.* Advance of funds, including allowance for books and educational materials and per diem, or alternatively, the allowance to cover subsistence and miscellaneous travel expenses.

(e) *Compensation.* Compensation at a rate to be specified in each grant.

(f) *Allowances.* Appropriate allowances as determined by the Department.

(g) *Books and educational materials allowance.* Where appropriate, an allowance for books and educational materials. Such books and materials, unless otherwise specified, shall be selected by the grantee and purchased and shipped either by the grantee, or the Department or its agent. At the conclusion of the grant, the books and materials shall be transferred to and become the property of an appropriate local institution or be otherwise disposed of as directed by the Department.

For the Secretary of State.

WILLIAM J. CROCKETT,
Deputy Under Secretary for Administration.

AUGUST 2, 1963.

[F.R. Doc. 63-9365; Filed, Aug. 29, 1963; 8:53 a.m.]

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

MISCELLANEOUS AMENDMENTS

1. In § 3.350, paragraph (h) is amended to read as follows:

§ 3.350 Special monthly compensation ratings.

* * * * *

(h) *Special aid and attendance benefit in maximum monthly compensation cases; 38 U.S.C. 314(r).* A veteran receiving the maximum rate ($525, or $420) of special monthly compensation under any provision or combination of provisions in 38 U.S.C. 314 who is in need of regular aid and attendance is entitled to an additional allowance during periods he is not hospitalized at United States Government expense. (See § 3.552(b)(2) as to continuance following admission for hospitalization.) Rate is $200 (or $160). Determination

of this need is subject to the criteria of § 3.352. This additional allowance is payable whether or not the need for regular aid and attendance was a partial basis for entitlement to the maximum $525 (or $420) rate, or was based on an independent factual determination.

* * * * *

2. In § 3.552(b), subparagraph (3) is amended to read as follows:

§ 3.552 Adjustment of allowance for regular aid and attendance.

* * * * *

(b) * * *

(3) Where the additional aid and attendance allowance authorized by 38 U.S.C. 314(r) is continued under subparagraph (2) of this paragraph during hospitalization, reduction from the maximum rate ($525 or $420) under any provision or combination of provisions in section 314 required by the following paragraphs will not be effective until the effective date of discontinuance of the additional aid and attendance allowance under section 314(r).

* * * * *

(72 Stat. 1114; 38 U.S.C. 210)

These VA Regulations are effective June 21, 1963.

Approved: August 27, 1963.

By direction of the Administrator.

[SEAL] W. J. DRIVER,
Deputy Administrator.

[F.R. Doc. 63-9366; Filed, Aug. 29, 1963; 8:53 a.m.]

Title 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 21—FIRST CLASS

Post Cards

The regulations of Post Office Department in § 21.2 *Classification* are amended as follows:

I. In paragraph (a) subparagraph (1) is amended to revise the minimum thickness standard for post cards from 0.0085 to 0.006 of an inch. As so amended, subparagraph (7) reads as follows:

(a) *Description* * * *

(7) Post cards are manufactured by private concerns and must conform to the following specifications:

(i) *Size, shape, and ratio.* Not larger than 3⁹⁄₁₆ by 5⁹⁄₁₆ inches, nor smaller than 3 by 4¼ inches. Must be rectangular in shape. A ratio of width (height) to length of less than 1 to 1.414 (1 to the square root of 2) is not recommended. (See § 21.3(b) and § 24.3(b) of this chapter.)

(ii) *Material.* An unfolded and uncreased piece of cardboard of approximately the quality and weight of a postal card; thickness not less than 0.006 or more than 0.0095 of an inch, and the cardboard to be uniform in thickness and as near 0.0090 as possible.

(iii) *Color.* Any light color that does not interfere with legible address and postmark.

These specifications apply to single post cards and each part of double post cards.

NOTE: The corresponding Postal Manual Section as 131.217.

II. In paragraph (b), subparagraph (2) is amended by adding subdivisions (iv) and (v) to include new mailing regulations for post cards. As so amended, subparagraph (2) reads as follows:

(b) *Use of postal and post cards* * * *

(2) Additions to cards are limited to the following:

(i) The face of the card may be divided by a vertical line, the left half of the card to be used for the message and the right half for the address only.

(ii) The message on a single card, or on the first portion of a double card, may consist of advertising, illustrations, or any kind of writing, and may occupy the space to the left of the vertical line and the entire back of the card.

(iii) Very thin sheets of paper may be attached to the card, provided they are completely stuck to it.

(iv) Numbers used for accounting purposes may be shown on a shaded background below the address. Holes which do not eliminate any letters or numbers may be punched in either the address or message portion of the card. A vertical tearing guide may divide the face of the card. The address portion may be smaller than the remainder of the card. However, mailings of cards having any one or more of these four characteristics must meet all of the following conditions:

(*a*) The mailings must consist of not less than 200 cards which are identical as to size and weight.

(*b*) The addresses on the cards must include ZIP Code numbers.

(*c*) Postage must be paid in cash by permit imprints (see Part 34 of this chapter); by meter stamps (see Part 33 of this chapter); or by precanceled stamps (see Part 32 of this chapter).

(*d*) The mailer must separate the cards by complete 5 digit ZIP Code number; by the first 3 digits of a ZIP Code number; or by the first 2 digits of a ZIP Code number where there are 10 or more pieces for any of these separations. The separated cards must be faced and tied in bundles both lengthwise and crosswise with twine strong enough to withstand handling in the mail. Sacking of the bundles by the mailer is required under the conditions stated in § 24.4(b)(6) of this chapter.

(v) It is recommended that all post cards having a thickness less than 0.0085 of an inch meet all of the conditions in (*a*) through (*d*) of this subdivision.

NOTE: The corresponding Postal Manual section is 131.222.

III. In paragraph (c)(4) strike out the illustrations "A" and "B" and insert in lieu thereof the following:

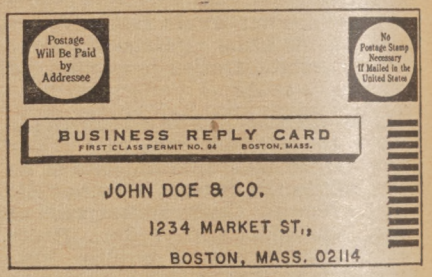
(c) *Business reply mail.* * * *

(4) *Form of imprint and address.* * * *

SURFACE MAIL

A

B



(R.S. 161, as amended; 5 U.S.C. 22, 39 U.S.C. 501, 2502–2504, 4251, 4254)

LOUIS J. DOYLE,
General Counsel.

[F.R. Doc. 63-9231; Filed, Aug. 29, 1963; 8:45 a.m.]

Title 41—PUBLIC CONTRACTS

Chapter 9—Atomic Energy Commission

PART 9-17—EXTRAORDINARY CONTRACTUAL ACTIONS TO FACILITATE THE NATIONAL DEFENSE

Sec.

9-17.000	Scope of part.
9-17.101	Authority.
9-17.105	Reports.
9-17.207-1	Filing requests.
9-17.208	Processing cases.
9-17.208-4	Records.
9-17.304	Records.
9-17.402	Final records.
9-17.550	Contract Adjustment Board.

AUTHORITY: §§ 9-17.000 to 9-17.550 issued under sec. 161, 68 Stat. 948; 42 U.S.C. 2201; sec. 205, 63 Stat. 390; 40 U.S.C. 486.

§ 9-17.000 Scope of part.

This part establishes procedures to implement and supplement FPR 1-17.

§ 9-17.101 Authority.

The General Manager and Deputy General Manager are authorized to approve actions in accordance with the authority vested in the Atomic Energy Commission by Public Law 85-804 and Executive Order No. 10789, as amended. This authority is not redelegated. No request for relief for any amount shall be granted or denied and no contract or amendment or modification of a contract or advance payment shall be made or refused pursuant to this part prior to

approval by the General Manager or Deputy General Manager.

§ 9–17.105 Reports.

The Director, Division of Contracts, Headquarters, is responsible for preparing the annual report to the Congress required by FPR 1–17.105.

§ 9–17.207–1 Filing requests.

The request of a contractor shall be filed in quintuplicate.

§ 9–17.208 Processing cases.

Managers of Field Offices and Directors of Headquarters Divisions shall submit to the Director, Division of Contracts, Headquarters, four copies of the following:

(a) The form of request described in FPR 1–17.207–2.

(b) The preliminary record required by FPR 1–17.207–3.

(c) The facts and evidence described in FPR 1–17.207–4.

unless the Director, Division of Contracts, Headquarters, shall approve their omission.

(d) A recommended course of action.

§ 9–17.208–4 Records.

The Director, Division of Contracts, Headquarters, shall maintain the records required by FPR 1–17.208–4.

§ 9–17.304 Records.

The Director, Division of Contracts, Headquarters, shall retain a copy of the memorandum required by FPR 1–17.303 (a).

§ 9–17.402 Final records.

The Director, Division of Contracts, Headquarters, shall prepare the final record described in FPR 1–17.402.

§ 9–17.550 Contract Adjustment Board.

A Contract Adjustment Board, composed of the Director, Division of Contracts, Headquarters, or his duly authorized representative, as chairman, and representatives of the General Counsel, of the Controller, and of other interested Headquarters Divisions designated by the Director, Division of Contracts, Headquarters, as members shall review cases submitted to the Director, Division of Contracts, Headquarters, pursuant to this part and shall make recommendations to the General Manager or Deputy General Manager regarding the disposition of such cases.

Effective date: These regulations are effective 45 days following publication in the FEDERAL REGISTER, but may be observed earlier.

Dated at Germantown, Maryland, this 22d day of August 1963.

For the U.S. Atomic Energy Commission.

A. R. LUEDECKE,
General Manager.

[F.R. Doc. 63–9329; Filed, Aug. 29, 1963; 8:45 a.m.]

Chapter 50—Division of Public Contracts, Department of Labor

PART 50–201—GENERAL REGULATIONS

Student Learners

In the June 27, 1963, issue of the FEDERAL REGISTER (28 F.R. 6656), there was published a notice of a proposal to amend 41 CFR Part 50–201 to provide a tolerance from minimum wage determinations established under the Walsh-Healey Public Contracts Act for certain student learners. Interested persons were given 15 days in which to submit data, views, or arguments concerning the proposal. After consideration of all relevant matter presented, the proposal is hereby adopted without change.

I do not believe any useful purpose will be served by providing any delay in the effective date of this amendment, and none is required by the Walsh-Healey or Administrative Procedure Acts (41 U.S.C. 40, 43a; 5 U.S.C. 1003). Accordingly, this amendment shall become effective immediately.

Signed at Washington, D.C., this 23d day of August 1963.

W. WILLARD WIRTZ,
Secretary of Labor.

§ 50–201.1102 Tolerance for apprentices, student-learners, and handicapped workers.

(a) Apprentices, student-learners, and workers whose earning capacity is impaired by age or physical or mental deficiencies or injuries may be employed at wages lower than the prevailing minimum wages, determined by the Secretary of Labor pursuant to section 1(b) of the Public Contracts Act, in accordance with the same standards and procedures as are prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, and by the regulations of the Administrator of the Wage and Hour and Public Contracts Division of the Department of Labor issued thereunder (29 CFR Parts 520, 521, 524, 525, and 528).

(b) Any certificate in effect pursuant to such regulations shall constitute authorization for employment of that worker under the Public Contracts Act in accordance with the terms of the certificate, insofar as the prevailing minimum wage is concerned.

(c) The Administrator is authorized to issue certificates under the Public Contracts Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, at appropriate rates of compensation and in accordance with the standards and procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(d) The Administrator is also authorized to withdraw, annul, or cancel such certificates in accordance with the regulations set forth in 29 CFR Parts 525 and 528.

(Sec. 6, 49 Stat. 2038; 41 U.S.C. 40)

[F.R. Doc. 63–9341; Filed, Aug. 29, 1963; 8:47 a.m.]

Title 50—WILDLIFE AND FISHERIES

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

PART 32—HUNTING

Alaska

The following special regulations are issued and are effective on date of publication in the FEDERAL REGISTER. The limited time ensuing from the date of the adoption of the national migratory game bird regulations to and including the establishment of State hunting seasons makes it impracticable to give public notice of proposed rule making.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

ALASKA

ALEUTIAN ISLANDS NATIONAL WILDLIFE REFUGE

Public hunting of migratory game birds is permitted only on the islands of Adak, Atka, Unimak, Shemya, Attu, and Great Sitkin. A map of the area is available at the refuge headquarters, Cold Bay, Alaska, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 1002 Northeast Holladay, Portland, Oregon. Hunting shall be subject to the following conditions:

(a) Species permitted to be taken: Wilson's snipe, brant, coot, ducks (except canvasback and redheads) and geese (except Canada geese and subspecies).

(b) Open season:

(1) Wilson's snipe—from one-half hour before sunrise to sunset September 1 through October 15, 1963.

(2) Coots, ducks, geese, and brant—from one-half hour before sunrise to sunset October 15, 1963 through January 15, 1964.

(c) Daily bag limits:

(1) Ducks 5, brant 3, coot 15, Wilson's snipe 8. In addition to the limits on other ducks, a daily limit of 15, singly or in the aggregate, is permitted on scoter, eider, harlequin, old squaw, and American and red-breasted mergansers.

(2) Geese 6. The daily bag limit on geese may not include more than 3 white-fronted geese or subspecies of white-fronted geese.

(d) Methods of hunting:

(1) Weapons—Shotguns only (not larger than 10 gauge and incapable of holding more than 3 shells) fired from the shoulder.

(2) Guides may be employed for hunting.

(e) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and in the current Federal Migratory Bird Regulations.

(2) A Federal permit is not required to enter the public hunting area.

(3) The provisions of this special regulation are effective to January 16, 1964.

ARCTIC NATIONAL WILDLIFE RANGE

Public hunting of migratory game birds is permitted on all lands within the Arctic National Wildlife Range. A map of the area is available from the Regional Director, Bureau of Sport Fisheries and Wildlife, 1002 Northeast Holladay, Portland, Oregon. Hunting shall be subject to the following conditions:

(a) Species permitted to be taken: Wilson's snipe, brant, coot, ducks (except canvasback and redhead) and geese.

(b) Open season:

(1) Wilson's snipe—from one-half hour before sunrise to sunset September 1 through October 15, 1963.

(2) Coots, ducks, geese, and brant—from one-half hour before sunrise to sunset September 1 through December 14, 1963.

(c) Daily bag limits:

(1) Ducks 5, brant 3, coot 15, Wilson's snipe 8. In addition to the limits on other ducks, a daily bag limit of 15, singly or in the aggregate, is permitted on scoter, eider, harlequin, old squaw, and American and red-breasted mergansers.

(2) Geese 6. The daily bag limit on geese may not include more than 3, singly or in the aggregate, of white-fronted and Canada geese or subspecies of Canada or white-fronted geese.

(d) Methods of hunting:

(1) Weapons—Shotguns only (not larger than 10 gauge and incapable of holding more than 3 shells) fired from the shoulder.

(2) Guides may be employed for hunting.

(e) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and in the current Federal Migratory Bird Regulations.

(2) A Federal permit is not required to enter the public hunting area.

(3) The provisions of this special regulation are effective to December 15, 1963.

KENAI NATIONAL MOOSE RANGE

Public hunting of migratory game birds is permitted on all the lands within the Kenai National Moose Range. A map of the area is available at the refuge headquarters, Kenai, Alaska, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 1002 Northeast Holladay, Portland, Oregon. Hunting shall be subject to the following conditions:

(a) Species permitted to be taken: Wilson's snipe, brant, coot, little brown crane, ducks (except canvasback and redhead) and geese.

(b) Open season:

(1) Wilson's snipe—from one-half hour before sunrise to sunset September 1 through October 15, 1963.

(2) Coots, ducks, geese, and brant—from one-half hour before sunrise to sunset September 1 through December 14, 1963.

(3) Little brown crane—from one-half hour before sunrise to sunset September 1 through September 30, 1963.

(c) Daily bag limits:

(1) Ducks 5, coots 15, brant 3, Wilson's snipe 8, little brown crane 2. In addition to the limits on other ducks, a daily bag limit of 15, singly or in the aggregate is permitted on scoter, eider, harlequin, old squaw, and American and red-breasted mergansers.

(2) Geese 6. The daily bag limit on geese may not include more than 3, singly or in the aggregate of white-fronted and Canada geese or subspecies of Canada or white-fronted geese.

(d) Methods of hunting:

(1) Weapons—Shotguns only (not larger than 10 gauge and incapable of holding more than 3 shells) fired from the shoulder.

(2) Guides may be employed for hunting.

(e) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and in the current Federal Migratory Bird Regulations.

(2) A Federal permit is not required to enter the public hunting area.

(3) The provisions of this special regulation are effective to December 15, 1963.

IZEMBEK NATIONAL WILDLIFE RANGE

Public hunting of migratory game birds is permitted on all lands within the Izembek National Wildlife Range. A map of the area is available at the refuge headquarters, Cold Bay, Alaska, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 1002 Northeast Holladay, Portland, Oregon. Hunting shall be subject to the following conditions:

(a) Species permitted to be taken: Wilson's snipe, brant, coot, ducks (except canvasback and redhead) and geese.

(b) Open season:

(1) Wilson's snipe—from one-half hour before sunrise to sunset September 1 through October 15, 1963.

(2) Coots, ducks, geese, and brant—frome one-half hour before sunrise to sunset September 1 through December 14, 1963.

(c) Daily limits:

(1) Ducks 5, brant 3, coot 15, Wilson's snipe 8. In addition to the limits on other ducks, a daily bag limit of 15, singly or in the aggregate, is permitted on scoter, eider, harlequin, old squaw, and American and red-breasted mergansers.

(2) Geese 6. The daily bag limit on geese may not include more than 3, singly or in the aggregate, of white-fronted and Canada geese or subspecies of Canada or white-fronted geese.

(d) Methods of hunting:

(1) Weapons—Shotguns only (not larger than 10 gauge and incapable of holding more than 3 shells) fired from the shoulder.

(2) Guides may be employed for hunting.

(e) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and in the current Federal Migratory Bird Regulations.

(2) A Federal permit is not required to enter the public hunting area.

(3) The provisions of this special regulation are effective to December 15, 1963.

CLARENCE RHODE NATIONAL WILDLIFE RANGE

Public hunting of migratory game birds is permited on all lands within the Clarence Rhode National Wildlife Range. A map of the area is available from the Regional Director, Bureau of Sport Fisheries and Wildlife, 1002 Northeast Holladay, Portland, Oregon. Hunting shall be subject to the following conditions:

(a) Species permitted to be taken: Wilson's snipe, brant, coot, little brown crane, ducks (except canvasback and redhead) and geese.

(b) Open season:

(1) Wilson's snipe—from one-half hour before sunrise to sunset September 1 through October 15, 1963.

(2) Coots, ducks, geese, and brant—from one-half hour before sunrise to sunset September 1 through December 14, 1963.

(3) Little brown crane—from one-half hour before sunrise to sunset September 1 through September 30, 1963.

(c) Daily bag limits:

(1) Ducks 5, brant 3, coot 15, Wilson's snipe 8, little brown crane 2. In addition to the limit on other ducks a daily bag limit of 15, singly or in the aggregate is permitted on scoter, eider, harlequin, old squaw, and American and red-breasted mergansers.

(2) Geese 6. The daily bag limit on geese may not include more than 3, singly or in the aggregate, of white-fronted and Canada geese or subspecies of Canada or white-fronted geese.

(d) Methods of hunting:

(1) Weapons—Shotguns only (not larger than 10 gauge and incapable of holding more than 3 shells) fired from the shoulder.

(2) Guides may be employed for hunting.

(e) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and in the curent Federal Migratory Bird Regulations.

(2) A Federal permit is not required to enter the public hunting area.

(3) The provisions of this special regulation are effective to December 15, 1963.

KODIAK NATIONAL WILDLIFE REFUGE

Public hunting of migratory game birds is permitted on all the lands within the Kodiak National Wildlife Refuge. A map of the area is available at the refuge headquarters, Kodiak, Alaska, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 1002 Northeast Holladay, Portland, Oregon. Hunting shall be subject to the following conditions:

(a) Species permitted to be taken; Wilson's snipe, brant, coot, ducks (except canvasback and redhead) and geese.

(b) Open season:

(1) Wilson's snipe—from one-half hour before sunrise to sunset September 1 through October 15, 1963.

(2) Coots, ducks, geese, and brant—from one-half hour before sunrise to sunset September 1 through December 14, 1963.

(c) Daily bag limits:

(1) Ducks 5, coot 15, brant 3, Wilson's snipe 8. In addition to the daily bag limit on other ducks, a daily bag of 15, singly or in the aggregate, is permitted on scoter, eider, harlequin, old squaw, and American and red-breasted mergansers.

(2) Geese 6. The daily bag limit on geese may not include more than 3, singly or in the aggregate of white-fronted and Canada geese or subspecies of white-fronted or Canada geese.

(d) Methods of hunting:

(1) Weapons—Shotguns only (not larger than 10 gauge and incapable of holding more than 3 shells) fired from the shoulder.

(2) Guides may be employed for hunting.

(e) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and in the current Federal Migratory Bird Regulations.

(2) A Federal permit is not required to enter the public hunting area.

(3) The provisions of this special regulation are effective to December 15, 1963.

NUNIVAK NATIONAL WILDLIFE REFUGE

Public hunting of migratory game birds is permitted on all of the lands within the Nunivak National Wildlife Refuge. A map of the area is available from the Regional Director, Bureau of Sport Fisheries and Wildlife, 1002 Northeast Holladay, Portland, Oregon. Hunting shall be subject to the following conditions:

(a) Species permitted to be taken: Wilson's snipe, brant, coot, little brown crane, ducks (except canvasback and redhead) and geese.

(b) Open season:

(1) Wilson's snipe—from one-half hour before sunrise to sunset September 1 through October 15, 1963.

(2) Coots, ducks, geese, and brant, from one-half hour before sunrise to sunset September 1 through December 14, 1963.

(3) Little brown crane—from one-half hour before sunrise to sunset during the period September 1 through September 30, 1963.

(c) Daily bag limits:

(1) Ducks 5, coot 15, brant 3, Wilson's snipe 8, little brown crane 2. In addition to the limits on other ducks, a daily bag limit of 15, singly or in the aggregate is permitted on scoter, eider, harlequin, old squaw, and American and red-breasted mergansers.

(2) Geese 6. The daily bag limit on geese may not include more than 3, singly or in the aggregate, of white-fronted and Canada geese or subspecies of white-fronted or Canada geese.

(d) Methods of hunting:

(1) Weapons—Shotguns only (not larger than 10 gauge and incapable of holding more than 3 shells) fired from the shoulder.

(2) Guides may be employed for hunting.

(e) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and in the current Federal Migratory Bird Regulations.

(2) A Federal permit is not required to enter the public hunting area.

(3) The provisions of this special regulation are effective to December 15, 1963.

ABRAM V. TUNISON,
Acting Director, Bureau of Sport Fisheries and Wildlife.

AUGUST 27, 1963.

[F.R. Doc. 63-9338; Filed, Aug. 29, 1963; 8:47 a.m.]

PART 32—HUNTING

Crab Orchard National Wildlife Refuge, Illinois

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER. The limited time ensuing from the date of the adoption of national migratory game bird regulations to and including the establishment of State hunting seasons makes it impracticable to give public notice of proposed rule making.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

ILLINOIS

CRAB ORCHARD NATIONAL WILDLIFE REFUGE

Public hunting of mourning doves on the Crab Orchard National Wildlife Refuge, Illinois, is permitted only on the area designated by signs as open to hunting. This open area, comprising approximately 12,380 acres or 28 percent of the total area of the refuge, is delineated on a map available at the refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Minneapolis, Minnesota. Hunting shall be subject to the following conditions:

(a) Species permitted to be taken: Mourning doves.

(b) Open season: September 1 through November 9, 1963. Shooting hours from 12 o'clock noon until sunset (c.s.t.).

(c) Daily bag limits: 10 per day. Possession limit 20.

(d) Methods of hunting:

(1) Weapons—shotguns only; not larger than 10 gauge and incapable of holding more than three shells.

(2) Dogs—not to exceed two dogs per hunter may be used to retrieve mourning doves.

(e) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and in the current Federal Migratory Bird Regulations.

(2) A Federal permit is not required to enter the public hunting area.

(3) The provisions of this special regulation are effective to November 10, 1963.

ABRAM V. TUNISON,
Acting Director, Bureau of Sport Fisheries and Wildlife.

AUGUST 27, 1963.

[F.R. Doc. 63-9339; Filed, Aug. 29, 1963; 8:47 a.m.]

PART 32—HUNTING

Yazoo National Wildlife Refuge, Mississippi

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER. The limited time ensuing from the date of the adoption of the national migratory game bird regulations to and including the establishment of State hunting seasons makes it impracticable to give public notice of proposed rule making.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

MISSISSIPPI

YAZOO NATIONAL WILDLIFE REFUGE

Public hunting of mourning doves on the Yazoo National Wildlife Refuge, Mississippi is permitted only on the area designated by signs as open to hunting. This open area, comprising 960 acres or 21.6 percent of the total area of the refuge, is delineated on a map available at the refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 809 Peachtree-Seventh Building, Atlanta 23, Georgia. Hunting shall be subject to the following conditions:

(a) Species permitted to be taken: Mourning doves.

(b) Open season: September 14 to September 29, 1963, inclusive. Shooting hours from 12 o'clock noon until sunset.

(c) Daily bag limits: 10, possession limit—20.

(d) Methods of hunting:

(1) Weapons—Shotgun only (not larger than 10 gauge and incapable of holding more than 3 shells in chamber and magazine).

(2) Dogs—Not to exceed one per hunter may be used to retrieve mourning doves.

(3) Blinds—Use of portable blinds permitted.

(e) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and in the current Federal Migratory Bird Regulations.

(2) No hunting will be permitted within 250 yards of any building or pastured cattle.

(3) A Federal permit is required to enter the public hunting area. Permits may be obtained by writing to the Refuge Manager, Yazoo National Wildlife Refuge, Hollandale, Mississippi, or by picking them up at headquarters. Hunters will be required to submit a form questionnaire to be used in analysis of hunter participation and success. Forms to be made available near the hunt area.

(4) The provisions of this special regulation are effective to September 30, 1963.

ABRAM V. TUNISON,
Acting Director, Bureau of Sport Fisheries and Wildlife.

AUGUST 27, 1963.

[F.R. Doc. 63-9340; Filed, Aug. 29, 1963; 8:47 a.m.]

PART 32—HUNTING

Kentucky Woodlands National Wildlife Refuge, Kentucky

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

KENTUCKY

KENTUCKY WOODLANDS NATIONAL WILDLIFE REFUGE

Public hunting of big game on the Kentucky Woodlands National Wildlife Refuge, Kentucky, is permitted only on the area designated by signs as open to hunting. This open area, comprising 25,000 acres or 38 percent of the total area of the refuge, is delineated on a map available at the refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 809 Peachtree-Seventh Building, Atlanta 23, Georgia. Hunting shall be subject to the following conditions:

(a) Species permitted to be taken: Fallow Deer, White-tailed Deer.

(b) Open season: November 27 and November 29, from sunrise till noon on each day.

(c) Daily bag limits: One (1) deer, either sex.

(d) Season limit: Only one (1) deer, either sex, per hunter for the season shall be taken.

(e) Methods of hunting:

(1) Shotgun 10 gauge maximum and 20 gauge minimum with shell carrying a single slug, and plugged to hold not more than 3 shells in magazine and chamber combined. Center fire rifles .243 caliber or larger. Muzzle loading rifles of .38 caliber or larger; semi-automatic rifles.

(2) The use of dogs is prohibited.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32.

(2) Camping prohibited.

(3) Preseason scouting prohibited.

(4) No hunting or discharging of firearms permitted within ¾ mile of the refuge headquarters and refuge housing areas. All land east of State Highway 289 and the Honker Lake waterfowl area closed to hunting.

(5) Hunters are required to check in at designated checking stations each day of the hunt.

(6) A Federal permit is required to enter the public hunting area. Permits may be obtained at the designated checking stations each morning of the hunt.

(7) The provisions of this special regulation are effective to November 30, 1963.

WALTER A. GRESH,
Regional Director, Bureau of Sport Fisheries and Wildlife.

[F.R. Doc. 63-9379; Filed, Aug. 29, 1963; 8:54 a.m.]

Proposed Rule Making

DEPARTMENT OF THE INTERIOR

Bureau of Mines

[30 CFR Part 12]

[Bureau of Mines Schedule 19B]

SUPPLIED-AIR RESPIRATORS

Proposed Amendments to Requirements for Investigation, Testing, and Approval

Pursuant to section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003), notice is hereby given that under authority contained in secs. 2 and 5 of the Act of May 16, 1910 (36 Stat. 370; 30 U.S.C. secs. 3, 7) as amended, it is proposed to amend the regulations issued as Part 12 of Title 30, Code of Federal Regulations, to govern investigation, testing, and approval of supplied-air respirators.

The purpose of the proposed amendments is to: (1) Extend approval to pressure-demand, Type C supplied-air respirators; (2) increase the maximum allowable length of air hose for Type A supplied-air respirators from 150 to 300 feet; (3) permit the use of motor-operated as well as hand-operated blowers to furnish air for Type A supplied-air respirators; and (4) revise the fees to reflect increased costs of testing.

In accordance with the policy of the Department of the Interior, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendments to the Director, Bureau of Mines, Interior Building, Washington 25, D.C., within 30 days after the date of publication of this notice in the FEDERAL REGISTER.

STEWART L. UDALL,
Secretary of the Interior.

AUGUST 23, 1963.

1. Paragraph (a) § 12.2 is amended to read as follows:

§ 12.2 Types of supplied-air respirators.

* * * * * * *

(a) *Type A supplied-air respirator.* (1) The Type A supplied-air respirator is commonly called a hose mask. This respirator is designed to require the presence of a man (safety man or blower operator) in addition to the wearer; to permit the wearer to inspire air through the hose, connections, and air-supply device (blower) by his lungs alone when the blower is not operated; and to permit the wearer to be drawn to safety by a life line, or, if necessary, the hose in case of accident. It is the only supplied-air respirator that will be approved for use in immediately harmful atmospheres or those from which the wearer could not escape without the aid of the respirator.

(2) The principal parts of a Type A supplied-air respirator are: A hand-operated or motor-driven blower that shall permit free entrance of air to the hose when the blower is not operated; a strong, large-diameter hose having a low resistance to flow of air; a strong harness to which the hose and life line are attached; and a tight-fitting facepiece.

2. Subparagraph (2) of paragraph (c) of § 12.2 is amended to read as follows:

§ 12.2 Type C air-supplied respirator.

* * * * * * *

(c) * * *

(2) Type C supplied-air respirators are divided into three classes: (i) Continuous-flow, (ii) demand, and (iii) pressure-demand. Type C respirators of the continuous-flow class supply respirable air to the respiratory-inlet covering continuously, even when the wearer exhales. Type C respirators of the demand class supply respirable air to the respiratory-inlet covering only when the wearer inhales. Type C respirators of the pressure-demand class supply respirable air to the respiratory-inlet covering until a predetermined pressure is established in the respiratory-inlet covering and then supply additional respirable air when the wearer inhales.

3. Subparagraph (5) of paragraph (c) of § 12.2 is renumbered subparagraph (6) and a new subparagraph (5) is inserted to read as follows:

(5) The principal parts of a Type C supplied-air respirator, pressure-demand class, are: A positive pressure air-supply system; a hose; a detachable coupling; a pressure-demand valve; an arrangement for attaching the respirator to the wearer; and a tight-fitting respiratory-inlet covering that has provision for establishing a predetermined pressure in it. A maximum air pressure of 125 pounds per square inch gage is allowed at the point of attachment of the air-supply hose to the air-supply system.

4. Paragraph (c) of § 12.4 is amended to read as follows:

§ 12.4 Fees.

* * * * * * *

(c) * * *

1. Types A or AE supplied-air respirators (complete)	$475
(i) Blower, single outlet	160
(ii) Each hand-operated blower outlet more than one (at time of blower testing)	20
(iii) Each motor-operated blower outlet more than one (at time of blower testing)	40
(iv) Air-supply line (hose)	190
(v) Body harness	35
(vi) Respiratory-inlet covering (facepiece)	130
2. Types B or BE supplied-air respirators (complete)	355
(i) Air-supply line (hose)	145
(ii) Body harness	35
(iii) Respiratory-inlet covering (facepiece)	130
3. Types C or CE supplied-air respirators, continuous-flow class (complete)	355
(i) Air-supply line (hose)	120
(ii) Respiratory-inlet covering (facepiece)	140
4. Types C or CE supplied-air respirators, demand class (complete)	390
(i) Air-supply line (hose)	135
(ii) Respiratory-inlet covering (facepiece)	140
5. Types C or CE supplied-air respirators, pressure-demand class (complete)	410
(i) Air-supply line (hose)	135
(ii) Respiratory-inlet covering (facepiece)	160
6. Additional examination and tests of respirator in connection with other tests, per man-day required	40
7. Fees for tests of unusually complicated apparatus, for unusual tests or tests not included in this list, or for tests required for extensions of approval will be based on the actual costs of testing, which will be determined in advance by the Bureau. The applicant will be notified accordingly, and the fee shall be paid before the tests are begun.	

NOTE: If a respirator fails to pass any of the required tests and the applicant notifies the Bureau to terminate further investigation or testing, the Bureau will return to the applicant any part of the fee not applied to its compensation for services. If the respirator is resubmitted for testing and approval after correcting the deficiencies, the additional fee will be determined in advance by the Bureau and the applicant will be notified accordingly. Such fee shall be paid before tests are begun.

5. Subparagraph (1) of paragraph (e) of § 12.5 is amended to read as follows:

§ 12.5(e) Requirements and tests for air-supply device.

* * * * * * *

(e) * * *

(1) *Type A supplied-air respirator (hose mask).* (i) Each Type A supplied-air respirator shall be provided with a hand-operated or motor-driven air blower. No multiple system, whereby more than one user is supplied by one blower, will be approved unless each hose line is connected directly to a manifold at the blower. The blower shall permit free entrance of air to the hose when the blower is not operated, and it shall deliver the amount of air hereinafter specified with either direction of rotation, except when the construction of the blower is such that it cannot be operated in other than a specific direction for delivering the required amount of air.

(ii) A hand-operated blower will be tested by attaching it to a mechanical drive and operating it continuously 6 to 8 hours daily for a total of 100 hours at the speed required to deliver 50 liters of air per minute through each respirator, when assembled with the kind and maximum length of hose for which the device is to be approved, connected to each blower or manifold outlet designed for hose connections. The blower shall operate throughout the period without failure or indication of excessive wear of bearings or other working parts. The crank speed of a hand-operated blower shall not exceed 50 revolutions per minute to deliver the required 50 liters of

air per minute to each facepiece. For a hand-operated blower the power required to deliver 50 liters of air per minute to each wearer through the maximum length of hose shall not exceed one-fiftieth horsepower, and the torque shall not exceed a force of 5 pounds on an 8-inch crank. The torque and power shall be measured as hereinafter provided.

(iii) A motor-operated blower shall be tested by operating it continuously at its specified running speed 6 to 8 hours daily for a total of 100 hours when assembled with the kind and maximum length of hose for which the device is to be approved and when connected to each blower or manifold outlet designed for hose connections. The blower shall operate throughout the period without failure or indication of excessive wear of bearings or other working parts. The connection between the motor and the blower shall be so constructed that the motor is disengaged automatically from the blower when the blower is operated by hand.

(iv) When a blower, which ordinarily is motor driven, is operated by hand, the power required to deliver 50 liters of air per minute to each wearer through the maximum length of hose shall not exceed one-fiftieth horsepower, and the torque shall not exceed a force of 5 pounds on an 8-inch crank. The torque and power shall be measured as hereinafter provided.

(v) When assembled with the facepiece and 50 feet of the hose for which it is to be approved and when connected to one outlet, with all other outlets closed, and operated at a speed not exceeding 50 revolutions of the crank per minute, the amount of air delivered into the respiratory-inlet covering shall not exceed 150 liters per minute.

(*a*) *Method of measuring power and torque required to operate blowers.* (*1*) As shown in figure 1, the blower crank is replaced by a wooden drum, *a* (5 inches in diameter is convenient). This drum is wound with about 40 feet of No. 2 picture cord, *b*. A weight, *c*, of sufficient mass to rotate the blower at the desired speed is suspended from this wire cord. A mark is made on the cord about 10 to 15 feet from the weight, *c*. Another mark is placed at a measured distance (20 to 30 feet is convenient) from the first. These are used to facilitate timing.

(*2*) To determine the torque or horsepower required to operate the blower, the drum is started in rotation manually at or slightly above the speed at which the power measurement is to be made. The blower is then permitted to assume constant speed, and then as the first mark on the wire leaves the drum a stopwatch is started. The watch is stopped when the second mark leaves the drum. From these data the foot-pounds per minute and the torque may be calculated readily.

6. The heading only of subparagraph (4) of paragraph (e) of § 12.5 is amended to read as follows: "(4) *Type C supplied-air respirators, demand and pressure-demand classes.*"

7. Table 1—"AIR-SUPPLY-LINE REQUIREMENTS AND TESTS," referred to in paragraph (f) of §12.5, is amended to read as follows:

TABLE 1—AIR-SUPPLY-LINE REQUIREMENTS AND TESTS

Specific requirements	Requirements for the air-supply lines of the indicated types of supplied-air respirators		
	Type A	Type B	Type C
Length of hose	Maximum of 300 feet, in multiples of 25-foot sections.	Maximum of 75 feet, in multiples of 25-foot sections.	Maximum of 250 feet in multiples of 25-foot sections. It will be permissable for the applicant to supply hose of the approved type of shorter length than 25 feet provided it meets the requirements of this part.
Air flow	None	None	The air-supply hose with air-regulating valve or orifice shall permit a flow of not less than 115 liters (4 cubic feet) per minute to tight-fitting and 170 liters (6 cubic feet) per minute to loose-fitting respiratory-inlet coverings, through the maximum length of hose for which Bureau approval is issued and at the minimum specified air-supply pressure. The maximum flow shall not exceed 566 liters (20 cubic feet) per minute at the maximum specified air-supply pressure, with the minimum length of hose which is approved. The air-supply hose, detachable coupling, and demand valve of the demand class, or pressure-demand valve of the pressure-demand class, Type C supplied-air respirator, shall be capable of delivering respirable air at a rate of not less than 115 liters (4 cubic feet) of air per minute to the respiratory-inlet covering at an inhalation resistance not exceeding 50 mm (2 inches) of water-column height measured at the respiratory-inlet covering with any combination of air-supply pressure and length of hose within the applicant's specified range of pressure and hose length. The air-flow rate and resistance to inhalation shall be measured while the demand or pressure-demand valve is actuated 20 times per minute by a source of intermittent suction. The maximum rate of flow to the respiratory-inlet covering shall not exceed 566 liters (20 cubic feet) of air per minute under the specified operating conditions.
Air-regulating valve	None	None	If an air-regulating valve is provided, it shall be so designed that it will remain at a specific adjustment, which will not be affected by ordinary movement of the wearer. The friction developed between the packing and a valve stem will not be considered as meeting this requirement. The valve shall be so constructed that the air supply with the maximum length of hose and minimum specified air-supply pressure will not be less than 2 cubic feet per minute for any adjustment of the valve. The demand or pressure-demand valve replaces the air-regulating valve. It shall be connected to the air supply at the maximum requested air pressure by means of the minimum requested length of air-supply hose. The outlet of the demand or pressure-demand valve shall be connected to a source of intermittent suction so that the demand or pressure-demand valve is actuated approximately 20 times per minute for a total of 100,000 inhalations. To expedite this test, the rate of actuation may be increased if mutually agreeable to the applicant and the Bureau. During this test the valve shall function without failure and without excessive wear of the moving parts. The demand or pressure-demand valve shall not be damaged in any way when subjected at the outlet to a pressure or suction of 10 inches of water gage for 2 minutes.
Noncollapsibility	The hose shall not collapse or exhibit permanent deformation when a force of 200 pounds is applied for 5 minutes between 2 planes 3 inches wide on opposite sides of the hose.	Same as for type A.	None.
Nonkinkability	None	None	A 25-foot section of the hose will be placed on a horizontal-plane surface and shaped into a one-loop coil with one end of the hose connected to an airflow meter and the other end of the hose supplied with air at the minimum specified supply pressure. The connection shall be in the plane of the loop. The other end of the hose will be pulled tangentially to the loop and in the plane of the loop until the hose straightens. To meet the requirements of this test the loop shall maintain a uniform near-circular shape and ultimately unfold as a spiral, without any localized deformation that decreases the flow of air to less than 90 percent of the flow when the hose is tested while remaining in a straight line.
Strength of hose and couplings	Hose and couplings shall not separate or otherwise fail when tested with a pull of 250 pounds for 5 minutes.	Same as for type A.	Hose and couplings shall not exhibit any separation or failure when tested with a pull of 100 pounds for 5 minutes and when tested by subjecting them to an internal air pressure of 2 times the maximum respirator-supply pressure that is specified by the applicant or at 25 pounds per square inch gage, whichever is higher.

TABLE 1—AIR-SUPPLY-LINE REQUIREMENTS AND TESTS—Continued

Specific requirements	Requirements for the air-supply lines of the indicated types of supplied-air respirators		
	Type A	Type B	Type C
Tightness	No air leakage shall occur when the hose and couplings are joined and the joint(s) are immersed in water and subjected to an internal air pressure of 5 pounds per square inch gage.	None	Leakage of air exceeding 50 cc. per minute at each coupling shall not be permitted when the hose and couplings are joined and are immersed in water, with air flowing through the respirator under a pressure of 25 pounds per square inch gage, applied to the inlet end of the air-supply hose, or at twice the maximum respirator-supply pressure that is specified by the applicant, whichever is higher.
Permeation of hose by gasoline.	The permeation of the hose by gasoline will be tested by immersing 25 feet of hose and one coupling in gasoline, with air flowing through the hose at the rate of 8 liters per minute for 6 hours. The air from the hose shall not contain more than 0.01 percent by volume of gasoline vapor at the end of the test.	Same as for type A	Same as for type A, except the test period shall be 1 hour.
Detachable coupling.	None	None	A hand-operated detachable coupling by which the wearer can readily attach or detach the connecting hose shall be provided at a convenient location. This coupling shall be durable, remain connected under all conditions of normal respirator use, and meet the prescribed tests for strength and tightness of hose and couplings.

8. The heading only of subparagraph (6) of paragraph (i) of § 12.5 is amended to read as follows: "(6) *Type C supplied-air respirator, demand and pressure-demand classes.*"

9. Subdivision (i) (*a*) of subparagraph (1) of paragraph (j) of § 12.5 is amended to read as follows:

§ 12.5 Requirements and tests for complete respirator.

* * * * *

(j) * * *

(1) *Resistance to air flow*—(i) *Types A and AE supplied-air respirators.* (*a*) The resistance to air flow shall be determined when these respirators are completely assembled with the respiratory-inlet covering, the air-supply device, and the maximum length of air-supply hose coiled for one-half its length in loops 5 to 7 feet in diameter. The resistance to air flow shall not exceed the following amounts to air flowing at the rate of 85 liters (3 cubic feet) per minute when the blower is not operating or under any practical condition of blower operation:

Maximum length of hose for which respirator is approved, feet	*Maximum resistance, inches of water column height*
75	1.5
150	2.5
250	3.5
300	4.0

Resistance of the exhalation valve shall not exceed 25 mm (1 inch) of water column height at this flow rate.

10. A new subdivision (v) of subparagraph (1) of paragraph (j) of § 12.5 is added to read as follows:

(v) *Type C supplied-air respirator, pressure-demand class.* The static pressure in the facepiece shall not exceed 38 mm (1.5 inches) of water-column height. The pressure in the facepiece shall not fall below atmospheric at inhalation flows not exceeding 115 liters (4 cubic feet) per minute. The resistance of the facepiece-exhalation valve to a flow of air at a rate of 85 liters (3 cubic feet) per minute shall not exceed the static pressure in the facepiece by more than 50 mm (2 inches) of water-column height.

11. The heading only of subdivision (iv) of subparagraph (2) of paragraph (j) of § 12.5 is amended to read as follows: "(iv) *Type C supplied-air respirator, demand and pressure-demand classes.*"

12. Subdivision (iv) of subparagraph (3) of paragraph (j) of § 12.5 is amended to read as follows:

(iv) *Type C supplied-air respirator, demand and pressure-demand classes.* No specific test will be made to determine the protection against particulate matter afforded by the demand and pressure-demand classes of Type C supplied-air respirators. However, two men shall wear the respirator at both extremes of the specified ranges of air pressure and hose length, while performing the required schedule of exercise, to appraise the comfort and practicability of the respirator.

[F.R. Doc. 63-9276; Filed, Aug. 29, 1963; 8:45 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 53]

FEEDER CATTLE

Extension of Time for Filing Comments on Proposed Official U.S. Standards for Grades

On May 28, 1963, pursuant to section 4 of the Administrative Procedure Act (5 U.S.C. 1003), there was published in the FEDERAL REGISTER (28 F.R. 5268), a notice of a proposal to amend the provisions of the official United States standards for live cattle appearing in 7 CFR 53.201 and 53.202 and to promulgate official United States standards for grades of feeder cattle to appear in 7 CFR 53.207 and 53.208, under the provisions of sections 203 and 205 of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1622 and 1624). The notice provided for a 90-day period within which interested persons could submit written data, views, or arguments to the Director of the Livestock Division concerning the proposal. It is now deemed advisable to provide additional time for such submissions. Any person who wishes to do so may file written data, views, or arguments relating to the proposal with the Director, Livestock Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C., 20250, before January 1, 1964.

Done at Washington, D.C., this 27th day of August 1963.

ROY W. LENNARTSON,
Associate Administrator.

[F.R. Doc. 63-9356; Filed, Aug. 29, 1963; 8:52 a.m.]

[7 CFR Part 958]

ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

Notice of Proposed Expenses and Rate of Assessment

Consideration is being given to the approval of proposed expenses and a proposed rate of assessment as hereinafter set forth, which were recommended by the Idaho-Eastern Oregon Onion Committee, established pursuant to Marketing Agreement No. 130 and Order No. 958 (7 CFR Part 958).

This marketing order program regulates the handling of onions grown in designated counties in Idaho and Malheur County, Oregon, and is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

Consideration will be given to any data, views, or arguments pertaining thereto which are filed with the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C., 20250, not later than 10 days following publication of this notice in the FEDERAL REGISTER.

§ 958.207 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred during the fiscal period beginning July 1, 1963, and ending June 30, 1964, by the Idaho-Eastern Oregon Onion Committee for its maintenance and functioning, and for such purposes as the Secretary determines to be appropriate will amount to $6,715.00.

(b) The rate of assessment to be paid by each handler in accordance with the Marketing Agreement and this part shall be three-tenths of one cent ($0.003) per hundredweight of onions handled by him as the first handler thereof during said fiscal period.

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

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

Dated: August 27, 1963.

PAUL A. NICHOLSON,
Acting Director,
Fruit and Vegetable Division.

[F.R. Doc. 63–9384; Filed, Aug. 29, 1963; 8:55 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Part 71 [New]]

[Airspace Docket No. 63–EA–69]

FEDERAL AIRWAYS AND ASSOCIATED CONTROL AREAS

Proposed Alteration and Designation

Notice is hereby given that the Federal Aviation Agency is considering amendments to Part 71 [New] of the Federal Aviation Regulations, the substance of which is stated below.

VOR Federal airway No. 30 is designated in part from Idlewild, N.Y., to Hampton, N.Y. The Federal Aviation Agency is considering extending Victor 30 and its associated control areas from Hampton to Norwich, Conn., via the intersection of Hampton 059° and Norwich 177° True radials.

The preferred route between Boston, Mass., and Washington, D.C., as published in the Airman's Guide, is via Putnam, Conn., VOR Federal airway No. 879 to Norwich, the 190 magnetic radial of Norwich (177° True), to VOR Federal airway No. 837, thence via Victor 837 to North Beach Intersection. The extension of Victor 30 as proposed herein would provide a Federal airway for the segment of this preferred route between Norwich and Victor 139.

To reduce clearance phraseology and improve flight planning, the Federal Aviation Agency is also considering assigning an 800 series airway number to this preferred route and designating it as follows:

VOR Federal airway No. 888 (Boston, Mass., Metropolitan Area to Washington, D.C., Metropolitan Area); normal traffic flow southbound.

From Boston, Mass., via the intersection of Boston 256° and Putnam, Conn., 043° True radials; Putnam; Norwich, Conn.; intersection of Norwich 177° and Hampton, N.Y., 059° True radials; Hampton; intersection of Hampton 223° and Sea Isle, N.J., 049° True radials (Dutch Intersection); intersection of Kenton, Del., 086° and Sea Isle 049° True radials (Avalon Intersection); Kenton, including the airspace between lines diverging from Hampton to a point of tangency to a 9-mile radius circle centered at Dutch Intersection, within the circumference of the circle and between lines tangent to that circle converging at Sea Isle, to Avalon Intersection; to Nottingham, Md. The airspace below 2,000 feet MSL that lies outside the United States and the airspace below 3,000 feet MSL between Idlewild, N.Y., 087° and 141° True radials would be excluded.

The offshore portion of this airway would conform to the alignment of Victor 139. The proposed airway floor would be consistent with the floor of Victor 139.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Eastern Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica, N.Y., 11430. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington, D.C., 20553. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room A–103, 1711 New York Avenue NW., Washington, D.C., 20553. An informal docket will also be available for examination at the office of the Regional Air Traffic Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on August 23, 1963.

H. B. HELSTROM,
Acting Chief,
Airspace Utilization Division.

[F.R. Doc. 63–9335; Filed, Aug. 29, 1963; 8:46 a.m.]

[14 CFR Parts 71 [New], 73 [New]]

[Airspace Docket No. 63–CE–67]

RESTRICTED AREA AND CONTROLLED AIRSPACE

Proposed Alteration

Notice is hereby given that the Federal Aviation Agency is considering amendments to §§ 71.123, 71.143, 71.171 and 73.42 of the Federal Aviation Regulations, the substance of which is stated below.

The Sault Ste. Marie, Mich. (Kincheloe AFB), Restricted Area/Military Climb Corridor R–4205 is presently designated as follows:

R–4205 Sault Ste. Marie, Mich. (Kincheloe-AFB), Restricted Area/Military Climb Corridor.

Boundaries. The area centered on the 149° radial of the Kincheloe AFB VOR, extending from 7 miles SE of the VOR to 34 miles SE of the VOR, having a width of 2 miles at the beginning and expanding uniformly to a width of 4.6 miles at the outer extremity.

Designated altitudes. 2,800 feet MSL to 15,800 feet MSL from 7 miles SE of the VOR to 8 miles SE of the VOR. 2,800 feet MSL to flight level 248 from 8 to 9 miles SE of the VOR. 2,800 feet MSL to flight level 270 from 9 to 12 miles SE of the VOR. 6,800 feet MSL to flight level 270 from 12 to 17 miles SE of the VOR. 10,800 feet MSL to flight level 270 from 17 to 22 miles SE of the VOR. 15,800 feet MSL to flight level 270 from 22 to 27 miles SE of the VOR. 19,800 feet MSL to flight level 270 from 27 to 34 miles SE of the VOR.

Time of designation. Continuous.

Using agency. Kincheloe AFB Control Tower.

The Federal Aviation Agency is considering the redesignation of R–4205 as follows:

R–4205 Sault Ste. Marie, Mich. (Kincheloe AFB), Restricted Area/Military Climb Corridor.

Boundaries. The area centered on the 150° bearing from the SE end of Runway 15 at Kincheloe AFB, beginning at a point 2 nautical miles SE and extending to a point 32 nautical miles SE from the end of the runway, having a width of 1 nautical mile at the beginning and expanding uniformly to a width of 6 nautical miles at the outer extremity.

Designated altitudes. Surface to FL 270 from 2 nmi to 5 nmi from end of runway. 2,000 feet MSL to FL 270 from 5 nmi to 7 nmi from end of runway. 4,000 feet MSL to FL 270 from 7 nmi to 11 nmi from end of runway. 8,000 feet MSL to FL 270 from 11 nmi to 17 nmi from end of runway. 14,000 feet MSL to FL 270 from 17 nmi to 26 nmi from end of runway. 19,000 feet MSL to FL 270 from 26 nmi to 32 nmi from end of runway.

Time of designation. Continuous.

Using agency. Kincheloe AFB Approach Control.

Due to the ability of the latest fighter/intercepter aircraft to reach high speed and high rates of climb in a short time after takeoff, the Federal Aviation Agency has revised the criteria for establishing restricted area/military climb corridors for use by these aircraft. The proposal contained herein is consistent with the new criteria. Altered as proposed, R–4205 would provide protection for air defense aircraft and other air traffic operating in the vicinity of Kincheloe AFB during the initial climb phase of air defense missions. The using agency would authorize aircraft to operate within R–4205 when not in use by active air defense aircraft.

A portion of the reconfigured corridor would coincide to a minor degree with VOR Federal airways No. 193 and No. 1509. Also a portion of the climb corridor would coincide with the Sault Ste. Marie (Kincheloe AFB) control zone. Accordingly, the control zone and airway designations would be amended to refer to the requirement for pilots to obtain prior approval from appropriate authority before using the portions within R–4205.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, 4825 Troost Avenue, Kansas City, Mo., 64110. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing

is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington, D.C., 20553. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room A–103, 1711 New York Avenue NW., Washington, D.C., 20553. An informal Docket will also be available for examination at the office of the Regional Air Traffic Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on August 23, 1963.

H. B. HELSTROM,
Acting Chief,
Airspace Utilization Division.

[F.R. Doc. 63–9334; Filed, Aug. 29, 1963; 8:46 a.m.]

[14 CFR Part 73 [New]]

[Airspace Docket No. 63–AL–15]

RESTRICTED AREA

Proposed Alteration

Notice is hereby given that the Federal Aviation Agency is considering an amendment to § 73.22 of the Federal Aviation Regulations, the substance of which is stated below.

The Anchorage, Alaska (Elmendorf AFB), Restricted Area/Military Climb Corridor (RA/MCC) R–2201 is centered on the 296° radial of the Elmendorf Air Force Base TACAN. The corridor starts 3 miles from and extends to 25 miles from the west end of Elmendorf AFB runway 23. The area is 2.145 miles wide at the beginning and expands uniformly to a width of 4.3 miles at the outer extremity. The lower altitude limits extend, in graduated steps, from 3,000 feet MSL to 16,000 feet MSL. The upper altitude limit is flight level 270. The time of designation is continuous. The Federal Aviation Agency, Anchorage Approach Control, is the controlling agency and the using agency is Commander, Elmendorf AFB, Alaska.

The Federal Aviation Agency, as a result of discussions held with Air Force representatives, is considering a proposal to lower the first step of R–2201 from 3,000 feet MSL to 2,700 feet MSL, extend the corridor entrance one mile eastward toward Elmendorf AFB and, to conform to standard RA/MCC configuration where possible, extend the outer limits of R–2201 from 25 miles to 32 nautical miles west of the west end of runway 23. However, the corridor as proposed herein, would continue to deviate from the standard RA/MCC configuration for the following reasons:

1. Standard alignment of the corridor (within 25° of the heading of the scramble runway), based on runway 23, would restrict VFR aircraft crossing Knik Arm. This is a natural VFR flyway and crossing point for all aircraft operating to the northeast, northwest, and southwest of Anchorage because of the location of Elmendorf AFB and the high terrain to the east.

2. Lowering the floor to the surface, as in a standard RA/MCC initial segment, would restrict VFR operations north and south over Knik Arm. Lowering the floor of the first portion of the RA/MCC to 2,700 feet MSL and moving the corridor entrance one mile eastward would cause the floor of the restricted area to coincide with the 2,700 feet MSL ceiling of the Anchorage Airport Traffic Area. This would eliminate the present 300-foot gap in which the interceptor might encounter VFR aircraft not known to the Elmendorf Tower.

Therefore, if this action is taken, the Anchorage, Alaska (Elmendorf AFB), Restricted Area/Military Climb Corridor R–2201 would be designated as follows:

R–2201 Anchorage, Alaska (Elmendorf AFB), Restricted Area/Military Climb Corridor.

Boundaries. The area centered on the 296° radial of the Elmendorf AFB TACAN, extending from 2 nautical miles from the W end of Elmendorf AFB runway 23 to 32 nautical miles from the W end of runway 23, and having a width of 2 nautical miles at the beginning and expanding uniformly to a width of 6 nautical miles at the outer extremity.

Designated altitudes. 2,700 feet MSL to flight level 270 from 2 nautical miles W of the W end of runway 23 to 7 nautical miles W of the W end of runway 23. 4,000 feet MSL to flight level 270 from 7 to 10 nautical miles W of the W end of runway 23. 7,000 feet MSL to flight level 270 from 10 to 15 nautical miles W of the W end of runway 23. 12,000 feet MSL to flight level 270 from 15 to 22 nautical miles W of the W end of runway 23. 17,000 feet MSL to flight level 270 from 22 to 27 nautical miles W of the W end of runway 23. 20,000 feet MSL to flight level 270 from 27 to 32 nautical miles W of the W end of runway 23.

Time of designation. Continuous.

Controlling agency. Federal Aviation Agency, Anchorage Approach Control.

Using agency. Commander, Elmendorf AFB, Alaska.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Alaskan Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, P.O. Box 440, Anchorage, Alaska, 99501. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington, D.C., 20553. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room A–103, 1711 New York Avenue NW., Washington, D.C., 20553. An informal docket will also be available for examination at the office of the Regional Air Traffic Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on August 26, 1963.

H. B. HELSTROM,
Acting Chief,
Airspace Utilization Division.

[F.R. Doc. 63–9333; Filed, Aug. 29, 1963; 8:46 a.m.]

FEDERAL HOME LOAN BANK BOARD

[12 CFR Part 545]

[No. 17,358]

OPERATIONS

Distribution of Earnings

AUGUST 22, 1963.

Resolved that, pursuant to Part 508 of the general regulations of the Federal Home Loan Bank Board (12 CFR Part 508) and § 542.1 of the rules and regulations for the Federal Savings and Loan System (12 CFR 542.1), it is hereby proposed that Part 545 of the rules and regulations for the Federal Savings and Loan System (12 CFR Part 545) be amended by an amendment the substance of which is as follows:

Part 545 aforesaid is hereby amended by adding thereto, immediately after § 545.3, the following new section:

§ 545.3–1 Distribution of earnings at variable rate.

A Federal association which has a charter in the form of Charter N or Charter K (rev.) may, as determined from time to time by resolution of such association's board of directors, distribute earnings on the following basis on savings accounts the amount of which has been not less than $1,000 continuously for not less than the 12 months, including grace periods authorized by this part, immediately preceding any date as of which such association is authorized to distribute earnings:

(a) On the portion of each such account that has remained continuously in the association at least 12 months, earnings may be distributed at a rate not more than ¼ percent per annum in excess of the rate at which earnings are distributed on savings accounts and portions of savings accounts other than those on which earnings are distributed pursuant to the provisions of this section;

(b) On the portion of each such account that has remained continuously in the association at least 24 months, earn-

ings may be distributed at a rate not more than ½ percent per annum in excess of the rate at which earnings are distributed on savings accounts and portions of savings accounts other than those on which earnings are distributed pursuant to the provisions of this section:

Provided, That the board of directors of a Federal association may, by resolution, from time to time fix the maximum amount in any such savings account on which such association will distribute earnings pursuant to the provisions of this section, and such maximum shall be applicable alike to each savings account on which earnings are so distributed: *Provided further*, That a Federal association shall not distribute earnings pursuant to the provisions of this section on any savings account on which such association is paying, or is obligated to pay, a bonus under any provision of the association's charter or under any other provision of this part.

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1947 Supp.)

Resolved further that all interested persons are hereby given the opportunity to submit written data, views, or arguments on the following subjects and issues: (1) Whether said proposed amendment should be adopted as proposed; (2) whether said proposed amendment should be modified and adopted as modified; (3) whether said proposed amendment should be rejected. All such written data, views, or arguments must be received through the mail or otherwise at the office of the Secretary, Federal Home Loan Bank Board, Federal Home Loan Bank Board Building, 101 Indiana Avenue NW., Washington 25, D.C., not later than October 1, 1963, to be entitled to be considered, but any received later may be considered in the discretion of the Federal Home Loan Bank Board.

By the Federal Home Loan Bank Board.

[SEAL] HARRY W. CAULSEN,
Secretary.

[F.R. Doc. 63-9324; Filed, Aug. 29, 1963; 8:45 a.m.]

Notices

DEPARTMENT OF THE TREASURY

Bureau of Customs

[T.D. 55979]

COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN KOREA

Restriction on Category 43 Merchandise

AUGUST 27, 1963.

There is published below a letter of August 16, 1963, from the Acting Chairman, President's Cabinet Textile Advisory Committee, directing me to prohibit, effective as soon as possible and for the period extending through April 1, 1964, the entry for consumption or withdrawal from warehouse for consumption in the United States (including the Commonwealth of Puerto Rico) of cotton textile products in Category 43, produced or manufactured in Korea, which were exported from Korea to the United States on or after April 2, 1963. This prohibition was made effective at the opening of business on August 19, 1963.

Collectors of customs and appraisers of merchandise have been directed accordingly and have been instructed to give the information public notice.

[SEAL] PHILIP NICHOLS, JR.,
Commissioner of Customs.

THE SECRETARY OF COMMERCE

PRESIDENT'S CABINET TEXTILE ADVISORY COMMITTEE

Washington 25, D.C., August 16, 1963.

COMMISSIONER OF CUSTOMS
DEPARTMENT OF THE TREASURY
Washington, D.C.

DEAR MR. COMMISSIONER: The United States Government on April 2, 1963, in furtherance of the objectives of, and under the terms of, the Long Term Arrangement Regarding International Trade done at Geneva on February 9, 1962, requested the Government of Korea to restrain the export of cotton textiles and cotton textile products in Category 43 to the United States during the twelve-month period beginning April 2, 1963. The Long Term Arrangement is an agreement contemplated by Section 204 of the Agricultural Act of 1956, as amended.

Under the terms of the Long Term Arrangement, including Article 6 relating to non-participants, and in accordance with the procedures outlined in Executive Order 11052 of September 28, 1962, you are directed to prohibit, effective as soon as possible and for the period extending through April 1, 1964, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textiles and cotton textile products in Category 43, produced or manufactured in Korea, in excess of the level of restraint provided:

Category:	*Level of Restraint*
43	0

The level of restraint of 15,000 dozen established for the twelve-month period April 2, 1963, through April 1, 1964, plus the additional quantity of 15,000 dozen which the United States Government agreed could be entered during this period without regard to the level of restraint, have been exhausted by entries made during the period April 2, 1963, to date.

In carrying out this directive, you shall allow entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textiles and cotton textile products in Category 43, produced or manufactured in Korea, when the cotton textiles and cotton textile products sought to be entered have been exported to the United States from Korea prior to the initial date of the twelve-month period of restraint even though the level of restraint has been exhausted.

A detailed description of the listed category in terms of Schedule A numbers and U.S.I.D.A. numbers is attached.

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Korea and with respect to imports of cotton textiles and cotton textile products from Korea have been determined by the President's Cabinet Textile Advisory Committee to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the notice provisions of Section 4 of the Administrative Procedure Act. You are requested to publish this letter in the FEDERAL REGISTER.

Sincerely yours,

JACK N. BEHRMAN,
Acting Secretary of Commerce, and Acting Chairman, President's Cabinet Textile Advisory Committee.

Enclosure

SCHEDULE A AND U.S.I.D.A. COMPONENTS OF SELECTED INTERNATIONAL COTTON TEXTILE ARRANGEMENT CATEGORIES

Category	Description	Schedule A number	U.S.I.D.A. number
43	Shirts, knit, other than T-shirts and sweatshirts	3112 742 745 845	0917 1330 1350 2210

NOTE: Items shall be classified separately, whether or not imported in suits, sets, or in other combinations.

[F.R. Doc. 63-9368; Filed, Aug. 29, 1963; 8:53 a.m.]

Comptroller of the Currency

BANK OF HORTON AND HOME STATE BANK

Notice of Report to Board of Directors, Federal Deposit Insurance Corporation on Competitive Factors Involved in Acquisition of Assets

On July 18, 1963, the Board of Directors of the Federal Deposit Insurance Corporation, pursuant to 12 U.S.C. 1828 (c), requested the Comptroller of the Currency to report on the competitive factors involved in the proposed purchase of assets and assumption of liabilities of the $1.3 million Home State Bank, Horton, Kansas, by the $1.8 million Bank of Horton, Horton, Kansas.

On August 15, 1963, the Comptroller of the Currency reported that the competition existing between these banks is weak and approval of this transaction will give Horton an institution more capable of serving the financial needs of its people.

Copies of this report are available upon request to the Comptroller of the Currency, Washington 25, D.C.

Dated: August 26, 1963.

[SEAL] A. J. FAULSTICH,
Administrative Assistant to the Comptroller of the Currency.

[F.R. Doc. 63-9370; Filed, Aug. 29, 1963; 8:54 a.m.]

CALUMET NATIONAL BANK OF HAMMOND AND MERCANTILE NATIONAL BANK OF HAMMOND

Notice of Decision Granting Application To Consolidate

On May 6, 1963, the $48.3 million Calumet National Bank of Hammond, Hammond, Indiana, and the $42.9 million Mercantile National Bank of Hammond, Hammond, Indiana, applied to the Comptroller of the Currency for permission to consolidate under the charter and title of Calumet National Bank of Hammond.

On August 9, 1963, the Comptroller of the Currency granted this application, effective on or after August 16, 1963.

Copies of this decision are available on request to the Comptroller of the Currency, Washington 25, D.C.

Dated: August 26, 1963.

[SEAL] A. J. FAULSTICH,
Administrative Assistant to the Comptroller of the Currency.

[F.R. Doc. 63-9371; Filed, Aug. 29, 1963; 8:54 a.m.]

HOWARD NATIONAL BANK AND TRUST COMPANY OF BURLINGTON AND ESSEX TRUST COMPANY

Notice of Decision Granting Application To Merge

On May 31, 1963, the $47 million Howard National Bank & Trust Company

of Burlington, Burlington, Vermont, applied to the Comptroller of the Currency for permission to merge the $3.9 million Essex Trust Company, Essex Junction, Vermont, under the charter and title of the former.

On August 15, 1963, the Comptroller of the Currency granted this application, effective on or after August 22, 1963.

Copies of this decision are available on request to the Comptroller of the Currency, Washington 25, D.C.

Dated: August 26, 1963.

[SEAL] A. J. FAULSTICH,
Administrative Assistant to the Comptroller of the Currency.

[F.R. Doc. 63-9349; Filed, Aug. 29, 1963; 8:51 a.m.]

INDUSTRIAL VALLEY BANK & TRUST COMPANY AND NATIONAL BANK OF OXFORD

Notice of Report to Board of Directors, Federal Deposit Insurance Corporation on Competitive Factors Involved in Merger Application

On July 3, 1963, the Board of Directors of the Federal Deposit Insurance Corporation, pursuant to 12 U.S.C. 1828(c), requested the Comptroller of the Currency to report on the competitive factors involved in the proposed merger of the $136 million Industrial Valley Bank & Trust Company, Jenkintown, Pennsylvania, with the $7.4 million National Bank of Oxford, Oxford, Pennsylvania.

On August 13, 1963, the Comptroller of the Currency reported that consummation of this proposal would have an adverse competitive effect on the remaining bank in Oxford and also on other small banks in the area.

Copies of this report are available upon request to the Comptroller of the Currency, Washington 25, D.C.

Dated: August 26, 1963.

[SEAL] A. J. FAULSTICH,
Administrative Assistant to the Comptroller of the Currency.

[F.R. Doc. 63-9347; Filed, Aug. 29, 1963; 8:51 a.m.]

SECURITY NATIONAL BANK OF MANISTEE AND KALEVA STATE BANK

Notice of Decision Granting Application To Consolidate

On May 20, 1963, the $6.8 million Security National Bank of Manistee, Manistee, Michigan, and the $3.5 million Kaleva State Bank, Kaleva, Michigan, applied to the Comptroller of the Currency for permission to consolidate under the charter and title of the former.

On August 14, 1963, The Comptroller of the Currency granted this application, effective on or after August 21, 1963.

Copies of this decision are available on request to the Comptroller of the Currency, Washington 25, D.C.

Dated: August 26, 1963.

[SEAL] A. J. FAULSTICH,
Administrative Assistant to the Comptroller of the Currency.

[F.R. Doc. 63-9374; Filed, Aug. 29, 1963; 8:54 a.m.]

VIRGINIA NATIONAL BANK AND NATIONAL BANK OF SUFFOLK

Notice of Decision Granting Application To Merge

On May 28, 1963, Virginia National Bank, Norfolk, Virginia, and the National Bank of Suffolk, Suffolk, Virginia, applied to the Comptroller of the Currency for permission to merge under the charter and title of the former.

On August 15, 1963, the Comptroller of the Currency granted this application, effective on or after August 22, 1963.

Copies of this decision are available on request to the Comptroller of the Currency, Washington 25, D.C.

Dated: August 26, 1963.

[SEAL] A. J. FAULSTICH,
Administrative Assistant to the Comptroller of the Currency.

[F.R. Doc. 63-9375; Filed, Aug. 29, 1963; 8:54 a.m.]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

IDAHO

Designation of Areas for Emergency Loans

For the purpose of making emergency loans pursuant to section 321 of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961), it has been determined that in the hereinafter-named counties in the State of Idaho natural disasters have caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

IDAHO

Jerome	Nez Perce
Latah	Twin Falls
Minidoka	

Pursuant to the authority set forth above, emergency loans will not be made in the above-named counties after December 31, 1964, except to applicants who previously received emergency or special livestock loan assistance and who can qualify under established policies and procedures.

Done at Washington, D.C., this 27th day of August 1963.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 63-9388; Filed, Aug. 29, 1963; 8:55 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

E. I. DU PONT DE NEMOURS AND COMPANY, INC.

Notice of Filing of Petition Regarding Food Additives

Pursuant to the 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 1200) has been filed by E. I. du Pont de Nemours and Company, Inc., Wilmington 98, Delaware, proposing that paragraph (c)(5) of § 121.2520 *Adhesives* be amended by inserting alphabetically in the list of substances the new item:

Sodium diisopropyl- and triisopropylnaphthalenesulfonate.

Dated: August 22, 1963.

J. K. KIRK,
Assistant Commissioner of Food and Drugs.

[F.R. Doc. 63-9347; Filed, Aug. 29, 1963; 8:51 a.m.]

MINNESOTA MINING AND MANUFACTURING CO.

Notice of Filing of Petition Regarding Food Additives Pressure-Sensitive Adhesives

Pursuant to the 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 996) has been filed by Minnesota Mining and Manufacturing Company, 2501 Hudson Road, St. Paul 19, Minnesota, proposing the issuance of a regulation to provide for the safe use of pressure-sensitive adhesives formulated from substances identified in § 121.1059 and used as the food-contact surface of pressure-sensitive tapes that contact food.

Dated: August 22, 1963.

J. K. KIRK,
Assistant Commissioner of Food and Drugs.

[F.R. Doc. 63-9349; Filed. Aug. 29, 1963; 8:51 a.m.]

ELANCO PRODUCTS CO.

Notice of Filing of Petition Regarding Food Additives

Pursuant to the 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 1181) has been filed by Elanco Products Company, A Division of Eli Lilly and Company, Indianapolis 6, Indiana, proposing the issuance of an amendment to § 121.1010(a)(6) to provide for the safe use of salts of fatty acids conforming to

§ 121.1071 as diluents for gibberellic acid or potassium gibberellate.

Dated: August 22, 1963.

J. K. KIRK,
Assistant Commissioner of Food and Drugs.

[F.R. Doc. 63-9348; Filed, Aug. 29, 1963; 8:51 a.m.]

ORGANICO, S.A.

Notice of Filing of Petition Regarding Food Additives Nylon 11 Resins

Pursuant to the 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 773) has been filed by Organico, S.A., 23 Avenue F. D. Roosevelt, Paris 8, France, proposing the issuance of a regulation to provide for the safe use of nylon 11 resins, produced by the condensation of 11-aminoundecanoic acid, as articles or components of articles that contact food.

Dated: August 22, 1963.

J. K. KIRK,
Assistant Commissioner of Food and Drugs.

[F.R. Doc. 63-9350; Filed, Aug. 29, 1963; 8:51 a.m.]

UNION CARBIDE CORP.

Notice of Filing of Petition Regarding Food Additives Ethylene-ethyl Acrylate Copolymers

Pursuant to the 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 1169) has been filed by Union Carbide Corporation, 270 Park Avenue, New York 17, New York, proposing that paragraph (b) of § 121.2554 *Ethylene-ethyl acrylate copolymers* be amended to read as follows:

(b) The ethyl acrylate content of the copolymer does not exceed 8 percent by weight unless it is blended with polyethylene complying with § 121.2510 or with one or more ethylene-alkene-1 copolymers complying with § 121.2508 or with a mixture of polyethylene and one or more ethylene-alkene-1 copolymers, in such proportions that the ethyl acrylate content of the blend does not exceed 8 percent by weight, or unless it is used in a coating complying with § 121.2514 or § 121.2526, in such proportions that the ethyl acrylate content of the coating does not exceed 8 percent by weight of the finished coating.

Dated: August 22, 1963.

J. K. KIRK,
Assistant Commissioner of Food and Drugs.

[F.R. Doc. 63-9351; Filed, Aug. 29, 1963; 8:51 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-151]

NOTICE OF ISSUANCE OF FACILITY LICENSE AMENDMENT

Board of Trustees of University of Illinois

Please take notice that the Atomic Energy Commission has issued, effective as of the date of issuance, Amendment No. 3, set forth below, to Facility License No. R-69. The license authorizes The Board of Trustees of The University of Illinois to operate its TRIGA Mark II nuclear reactor, located in Urbana, Illinois. The amendment authorizes the licensee to operate the reactor at a maximum steady state power level of 250 Kilowatts (thermal), and to operate the reactor with power transients produced by step insertions of reactivity up to a maximum of 2.2 percent delta k/k, as described in the licensee's application for license amendment dated June 14, 1963.

The Commission has found that:

(1) Operation of the reactor in accordance with the license as amended will not present undue hazard to the health and safety of the public and will not be inimical to the common defense and security;

(2) The application for amendment complies with the requirements of the Atomic Energy Act of 1954, as amended, and the Commission's regulations set forth in Title 10, Chapter I, CFR;

(3) Prior public notice of proposed issuance of this amendment is not necessary in the public interest since operation of the reactor in accordance with the license, as amended, does not involve safety factors significantly different from those considered and evaluated in connection with the previously approved operation.

Within fifteen (15) days from the date of publication of this notice in the FEDERAL REGISTER, the applicant may file a request for a hearing, and any person whose interest may be affected by this proceeding may file a petition for leave to intervene. Requests for a hearing and petitions to intervene shall be filed in accordance with the provisions of the Commission's regulation (10 CFR 2). If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in this notice, the Commission will issue a notice of hearing or an appropriate order.

For further details with respect to this amendment, see (1) a related hazards analysis prepared by the Test and Power Reactor Safety Branch of the Division of Licensing and Regulation and (2) the licensee's application for license amendment dated June 14, 1963, both of which are available for public inspection at the Commission's Public Document Room or upon request, addressed to the Atomic Energy Commission, Washington 25, D.C., Attention: Director, Division of Licensing and Regulation.

Dated at Bethesda, Maryland, this 22d day of August 1963.

For the Atomic Energy Commission.

SAUL LEVINE,
Chief, Test and Power Reactor Safety Branch, Division of Licensing and Regulation.

[License No. R-69; Amdt. 3]

License No. R-69, as amended, issued to The Board of Trustees of The University of Illinois, is hereby amended to authorize the changes described in the application for license amendment dated June 14, 1963, as follows:

1. Paragraph 1. of License No. R-69 is hereby amended to read as follows:

1. This license applies to the TRIGA Mark II nuclear reactor (hereinafter referred to as "the reactor") which is owned by The Board of Trustees of The University of Illinois (hereinafter referred to as "The University of Illinois") and located on the University's campus in Urbana, Illinois, and described in the University's application for license dated October 29, 1959, and amendments thereto dated December 17, 1959, May 20, 1960, July 19, 1960, March 1 1961, April 27, 1961, April 3, 1962, and June 14, 1963 (hereinafter collectively referred to as "the application") and authorized for construction by Construction Permit No. CPRR-51 issued to The University of Illinois on April 5, 1960.

2. Paragraphs 4.A.1. and 4.A.2. of License No. R-69, are hereby amended in their entirety to read as follows:

4.A.1. The University of Illinois shall not operate the reactor at power levels in excess of 250 kilowatts (thermal) without prior written authorization from the Commission.

4.A.2. The University of Illinois shall not operate the reactor under pulsing experiment conditions with a step insertion of reactivity greater than 2.2 percent delta k/k without prior written authorization from the Commission.

This amendment is effective as of the date of issuance.

For the Atomic Energy Commission.

SAUL LEVINE,
Chief, Test and Power Reactor Safety Branch, Division of Licensing and Regulation.

[F.R. Doc. 63-9327; Filed, Aug. 29, 1963; 8:45 a.m.]

[Docket No. 115-2]

NORTH AMERICAN AVIATION, INC.

Notice of Issuance of Amendment to Provisional Operating Authorization

Please take notice that the Atomic Energy Commission has issued, effective as of the date of issuance, Amendment No. 1, set forth below, to Provisional Operating Authorization No. DPRA-2. The amendment extends the authorization issued to North American Aviation, Inc., to operate the Piqua Nuclear Power Facility for an additional 6-months' period.

The Commission has found that:

(1) The application for amendment complies with the requirements of the Atomic Energy Act of 1954, as amended, and the Commission's regulations set forth in Title 10, Chapter I, CFR;

(2) Operation of the reactor in accordance with the license, as amended, will not present undue hazard to the health and safety of the public and will not be inimical to the common defense and security;

(3) Good cause for extending the expiration date of Provisional Operating Authorization No. DPRA–2 has been shown;

(4) Prior public notice of proposed issuance of this amendment is not necessary in the public interest since no significant hazards consideration is presented by the application for the amendment.

Within fifteen (15) days from the date of publication of this notice in the FEDERAL REGISTER, the applicant may file a request for a hearing, and any person whose interest may be affected by this proceeding may file a petition for leave to intervene. Requests for a hearing and petitions to intervene shall be filed in accordance with the provisions of the Commission's regulation (10 CFR 2). If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in this notice, the Commission will issue a notice of hearing or an appropriate order.

For further details with respect to this amendment, see (1) a related hazards analysis prepared by the Test and Power Reactor Safety Branch of the Division of Licensing and Regulation and (2) the licensee's application for amendment dated June 12, 1963, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. A copy of item (1) above may be obtained at the Commission's Public Document Room, or upon request, addressed to the Atomic Energy Commission, Washington, D.C., Attention: Director, Division of Licensing and Regulation.

Dated at Bethesda, Maryland, this 22d day of August 1963.

For the Atomic Energy Commission.

EBER R. PRICE,
Acting Director, Division of Licensing and Regulation.

[Authorization DPRA–2; Amdt. 1]

1. Paragraph 5 of Provisional Operating Authorization No. DPRA–2 which authorizes North American Aviation, Inc., to operate the Piqua Nuclear Power Facility, located in the City of Piqua, Ohio, at thermal power levels up to 45.5 Mwt is hereby amended to read as follows:

5. This authorization shall be effective August 23, 1962 and shall expire eighteen months from the date of issuance unless extended for good cause shown, or upon the earlier issuance of a superseding authorization pursuant to further order of the Commission.

2. This amendment is effective as of the date of issuance.

For the Atomic Energy Commission.

———— ————,
Director, Division of Licensing and Regulation.

[F.R. Doc. 63–9328; Filed, Aug. 29, 1963; 8:45 a.m.]

CIVIL AERONAUTICS BOARD

[Order E–19954]

PAN AMERICAN WORLD AIRWAYS, INC., AND QANTAS EMPIRE AIRWAYS, LTD.

Agreement Relating to Economy Class Group Fares

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 26th day of August, 1963.

There has been filed with the Board, pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations, an agreement between Pan American World Airways, Inc., and Qantas Empire Airways, Ltd. The agreement has been assigned the above-designated C.A.B. agreement number.

The agreement provides for the offering on the South Pacific of group fares substantially similar to those adopted by the Traffic Conferences of the International Air Transport Association (IATA) for application on the North and Central Pacific and in other areas of air transportation. It provides reduced round-trip fares for groups of 15 or more traveling together in economy-class service. The fares reflect a reduction of about 26 percent from the normal round-trip fares for travel between the West Coast/Honolulu and Sydney, Australia. The fares are to be available to groups having a demonstrated "prior affinity" and are subject to essentially the same restrictions and limitations as the IATA group fare resolutions.

A general open-rate situation prevails on the South Pacific due to the inability of IATA carriers concerned to reach agreement on fares to be offered. While Pan American and Qantas are both members of IATA, the agreement was apparently adopted outside the framework of the IATA machinery wherein the Board has approved procedures for rate making by agreement subject to appropriate safeguards.

The Board has consistently recognized strong policy considerations against the rate making by agreement and in practice carriers have requested in advance authority to engage in discussions looking to the establishment of rates. In this instance, the Board has received no request from the carrier parties concerned for authority to meet to discuss the establishment of these fares. The approval of the IATA rate-making machinery was given only after consideration of the worldwide problems of achieving a stability of rate structure and careful consideration of the conditions and requirements requisite for such discussions. The approval of the IATA rate-making machinery, including approval to hold discussions leading to agreements, does not extend to discussions of rates by individual members of IATA outside of such machinery. The instant open-rate situation in this area leaves the carriers free to file individual rate proposals in their tariffs. No supporting data or other factual background was submitted in connection with the filing of this agreement.

As noted, however, the instant agreement extends to a new area the availability of group fares substantially similar to those adopted within IATA which the Board has heretofore approved, and is consistent with the Board's desire to make such type fares of greater availability. It may be contended with some force that the Board's power to approve or disapprove agreements affords the Board adequate control since it can strike down those agreements which it finds to be adverse to the public interest. However, a policy which would permit air carriers complete freedom to discuss rates and fares and related matters subject only to the requirement that they file any agreements that may be reached is basically inconsistent with our concept of a competitive air transport system composed of independent carriers. Moreover, as a practical matter, individual carrier rate actions may be substantially influenced and affected by intercarrier discussions even though no agreement is reached. While we believe that policy considerations should preclude the approval of rate agreements entered into following discussions for which no approval has been granted, such specific policy consideration may not be generally known. In view of this possibility and of the prior approval of similar agreements, the instant agreement will be approved. We intend, however, in the future to withhold our approval and the antitrust immunity it conveys from intercarrier agreements on rates and fares unless we have given advance authorization to the discussions leading to such agreements.

The Board's approval of the instant agreement is made subject to conditions similar to those attached to its approval of the IATA group fare resolutions with respect to those restrictions and limitations which the Board found objectionable. In this regard we will expect the carriers by prompt action to modify their tariffs on file with the Board to be consistent with the conditions herein attached to its approval.

The Board, acting pursuant to sections 102, 204(a), and 412 of the Act, does not find the above-described agreement to be adverse to the public interest or in violation of the Act, provided that approval thereof is conditioned as hereinafter ordered.

Accordingly, it is ordered, That Agreement C.A.B. 16978 is approved provided that:

(a) The provisions imposing numerical limitations and/or population standards on affinity groups from which passengers may be drawn shall not be applicable;

(b) The restrictive clause, in the provision permitting a lesser number of passengers to travel when the appropriate number of tickets are paid for and deemed used, which provides "that the reduction in the number of passengers traveling with the Travel Group is caused by circumstances beyond the control of the passenger (i.e., force majeure)" shall not be applicable;

(c) In the event a passenger discontinues his journey en route for any reason (as opposed to a death in his immediate family or illness of the passen-

ger), the amount of the fare paid may be applied as a credit toward the purchase of normal fare transportation;

(d) Full refund of group fares paid shall be made in the event of cancellation of travel arrangements by a carrier on the grounds that the group or any member of the group is ineligible for the group fares; and

(e) The amount of the forfeiture to be imposed in the event of cancellation at any time for any reason by the group or member of the group shall not exceed 25 percent of the fare paid.

Either of the carrier parties to the agreement, or any interested person, may, within 15 days from the date of service of this order, submit statements in writing containing reasons deemed appropriate, together with supporting data, in support of or in opposition to the Board's action herein. An original and nineteen copies of the statement should be filed with the Board's Docket Section. The Board may, upon consideration of any such statements filed, modify or rescind its action herein by subsequent order.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON, *Secretary.*

[F.R. Doc. 63-9381; Filed, Aug. 29, 1963; 8:54 a.m.]

[Docket No. 14717; Order E-19953]

PETITIONS TO MODIFY THE MODEL ASSEMBLY AND DISTRIBUTION RULES

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 26th day of August 1963.

Three air carriers have petitioned the Board, requesting the modification of the "model rules" for assembly and distribution services which are set forth in the Appendix to Order E-4606.[1] The "model rules" were originally promulgated to provide guidelines for the carriers to follow in submitting to the Board lawful tariff provisions to govern their assembly and distribution services. Insofar as here pertinent, the rules provided that all parts of a shipment receiving assembly services must be delivered to the consignee at one time, and that all parts of a shipment receiving distribution services must be received by the carrier at one time. Minimum charges for such services were also adopted.

United Air Lines, Inc., by a petition dated April 12, 1963 (Docket 14444), has requested the deletion of those portions of the rules which presently require that all parts of assembly shipments (except those mislaid) must be delivered to the consignee at one time and that all parts of distribution shipments must be received by the carrier at one time. In support of its petition United has stated that its proposed modification would permit its customers to use ground service to and from airports more advantageously, relieve congestion in their shipping and receiving facilities, speed deliveries to consignees, and reduce costs. United also urges that the modifications may permit the carrier to alleviate significantly the peak period congestion in its facilities, and render a higher quality of air freight service to shippers.

The Slick Corporation filed a letter, dated May 3, 1963, requesting that action be deferred on this petition. Subsequently, on August 8, 1963, it filed a petition for leave to intervene, asserting that the rules as proposed will be unlawful. Wings and Wheels Express, Inc., Airborne Freight Corporation, a group of eleven air freight forwarders represented by the Air Freight Forwarders Association, and The Flying Tiger Line, Inc., by petitions dated May 3, June 21, July 9, and July 26, 1963, respectively, request leave to intervene. Airborne Freight Corporation also filed a statement, dated June 25, 1963, which supports United's petition except insofar as the proposed modification would apply to shippers other than indirect air carriers or, in the alternative, urging denial of the petition in its entirety.

Trans World Airlines, by a petition dated April 26, 1963 (Docket 14465), requests that the rules be amended to provide that all parts of an assembly shipment (except those mislaid) be delivered to consignee within a 24 hour period, and that in distribution service the carrier be permitted to receive parts of a shipment for a period of 24 hours after having received the first part thereof. In support of its petition, Trans World states that the current rules hamper the development of air cargo service, inconvenience shippers and air freight forwarders, and prevent optimum utilization of the carrier's delivery services. The carrier further urges that the modifications it proposes will serve the convenience of shippers, maximize carrier cost savings, and promote more efficient use of the carrier's personnel and equipment. The Slick Corporation, Wings and Wheels Express, Inc., Airborne Freight Corporation and the group of eleven air freight forwarders represented by the Air Freight Forwarders Association have made substantially the same filings in this docket as they made in Docket 14444.

American Airlines, Inc., by a petition dated May 20, 1963 (Docket 14513), generally supports the proposal made by United in Docket 14444, but proposes to limit the applicability of the services to shipments moving at general commodity rates, and urges that there be minimum charges of 50 cents per part and $6.00 per shipment. In support of its proposal, American advances the same grounds as those set forth by United. However, American contends that a modification of the model rules without the limitations it suggests would invite abuses by some shippers who could thereby obtain volume rate advantages although they do not require assembly and distribution services in their operations. Airborne Freight Corporation filed a petition requesting leave to intervene in Docket 14513 on June 21, 1963, and on June 26, 1963, filed a statement supporting American's petition. However, Airborne opposes American's petition to the extent it also opposed United's petition in Docket 14444 and, in addition, opposes the minimum charges suggested by American. The Slick Corporation and the group of eleven air freight forwarders have also filed petitions for leave to intervene herein.

Upon consideration of all matters asserted in these docketed proceedings, the Board is of the view that current conditions in the industry may indicate the desirability of modifying the "model rules" issued in Order E-4606. While the Board is concerned that the unjust discrimination found to exist in the assembly and distribution practices of 13 years ago might again be found if the "model rules" were amended as suggested, we are also mindful of the many changes in air freight operations which have occurred during this period so that there may well be factors now existing which would justify the discriminatory practices which we heretofore have found unlawful. The present restriction that a shipment either be received or delivered by the carrier at one time and place may be artificial since in actual practice many shipments of more than one part are not handled and moved as a unit and thus the noted restriction may not result in lower costs. In fact, the restriction may add to handling and storage complexities and costs. While there may be a discrimination between large and small shippers in the absence of the current restriction, removal of the restriction may well benefit all shippers of air cargo and improve the overall quality of air cargo service to an extent which would justify the discrimination. Therefore, the Board will propose to modify the "model rules" in order to permit assembly shipments to be released by the carrier throughout a calendar day and permit distribution shipments to be delivered to the carrier throughout a calendar day.

With respect to the minimum rates suggested by American for assembly and distribution services, the minimum rates established in Order E-4606 for these services were revoked in Order E-17370, dated August 28, 1961, and there appears to be no strong reason for reinstating minimum charges for these services. Similarly, to restrict these services to cargo moving at general commodity rates does not appear necessary. We propose, therefore, to deny these requests of American in Docket 14513.

Air carriers, indirect air carriers, shippers, and other interested persons are invited to submit supporting or opposing data, views, and arguments on the legal, economic, and operational questions involved in these proposals, before final action is taken.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly section 204(a) thereof,

It is ordered:

1. That air carriers, indirect air carriers, shippers, and other interested persons show cause why an order embodying

[1] *Investigation of Accumulation, Assembly, and Distribution Rules*, 12 C.A.B. 337, 345, 346 (1950).

the principles stated herein should not be issued;

2. That any such interested person having objection to or supporting the issuance of an order making final the proposed modifications to the "model rules" in accordance with the principles set forth herein, shall within 30 days of the date of adoption hereof, file written notice of objection or support with the Board;

3. That the petitions to intervene filed by The Flying Tiger Line Inc., in Docket 14444, Wings and Wheels Express, Inc., in Dockets 14444 and 14465, and by Airborne Freight Corporation, The Slick Corporation, and the Air Freight Forwarders Association in Dockets 14444, 14465, and 14513 are granted;

4. That Dockets 14444, 14465, and 14513 shall be consolidated into this proceeding;

5. That all domestic trunkline, local service, supplemental, and scheduled all-cargo air carriers, and all domestic air freight forwarders, shall be served with a copy of this order.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 63-9382; Filed, Aug. 29, 1963; 8:54 a.m.]

FEDERAL AVIATION AGENCY

[OE Docket No. 63-SO-9]

L AND E ANTENNA, INC.

Determination of Hazard to Air Navigation

The Federal Aviation Agency has circularized the following proposal for aeronautical comment and has conducted a study (SO-OE-2098) to determine its effect upon the safe and efficient utilization of navigable airspace.

L & E Antenna, Inc., Florence, Alabama, proposes to construct a television receiving antenna structure near Dothan, Alabama, at latitude 31°10'00" N., longitude 85°20'04" W. The overall height of the structure would be 725 feet above mean sea level (400 feet above ground).

The proposed structure would be located approximately 9325 feet south/southeast of the south end of the runway of Baker's Skytel Airport, and would exceed the standards for determining hazards to air navigation as defined in § 77.25(b)(2) of the Federal Aviation Regulations by approximately 157 feet as applied to this airport. The above airport has a single runway 2470 feet in length and oriented in a north/south direction.

The aeronautical study disclosed that the structure would be 395 feet above the airport elevation and located in the base/cross-wind leg of the airport traffic pattern. The traffic pattern is east of the field and flown at an altitude of 700 feet above the airport elevation.

Baker's Skytel Airport has approximately 1,600 aircraft operations per year, 600 of which are itinerant flights, with a peak month operation of 200. Student flight training, air taxi service and aerial dusting operations are conducted from the above airport.

Based upon the aeronautical study, it is the finding of the Agency that aircraft operating in the traffic pattern would pass in dangerous proximity to the proposed structure at a time when a pilot's attention would be directed toward critical phases of flight shortly after takeoff to the south, and preparatory to landing to the north.

Therefore, pursuant to the authority delegated to me by the Administrator (§ 77.37 [New]), it is found that the proposed structure would have a substantial adverse effect upon the safe and efficient utilization of the navigable airspace; and it is hereby determined that the proposed structure would be a hazard to air navigation.

This determination is effective and becomes final 30 days after the date of issuance unless an appeal is filed under § 77.39 [New] (27 F.R. 10352). If the appeal is denied, the determination will then become final as of the date of the denial or 30 days after the issuance of the determination, whichever is later.

Issued in Washington, D.C., on August 23, 1963.

GEORGE R. BORSARI,
Chief,
Obstruction Evaluation Branch.

[F.R. Doc. 63-9330; Filed, Aug. 29, 1963; 8:45 a.m.]

[OE Docket No. 63-SW-5]

LOYOLA UNIVERSITY

Determination of Hazard to Air Navigation

The Federal Aviation Agency has circularized the following proposal for aeronautical comment and has conducted a study (SW-OE-4742) to determine its effect upon the safe and efficient utilization of airspace.

The Loyola University, New Orleans, Louisiana, proposes to increase by 200 feet a proposed television antenna structure near Gretna, Louisiana, at latitude 29°54'22.5" N., longitude 90°02'23.3" W. The overall height of the structure would be 1,249 feet above mean sea level (1,249 feet above the ground).

Loyola University previously submitted a proposal for an increase in height from 750 feet to 1,049 feet above mean sea level for its existing television antenna structure. An aeronautical study of this proposal was conducted and a determination of no hazard was issued under Study No. SW-OE-2509 on June 20, 1962.

Loyola University also previously submitted a proposal for a new television antenna structure 1,049 feet above mean sea level, 320 feet west of its existing 750-foot television antenna structure which would be an additional structure to its existing structure which is to remain erected at 750 feet above mean sea level. An aeronautical review of this proposal was conducted and a determination of no hazard was issued under Study No. SW-OE-2509 (Amended) on September 14, 1962.

Loyola University also previously submitted a proposal for an increase in height from 1,049 feet to 1,549 feet above mean sea level for the same structure for which a determination of no hazard was issued at 1,049 feet above mean sea level under Study No. SW-OE-2509 (Amended). An aeronautical study of this proposal at a height of 1,549 feet above mean sea level was conducted and a Determination of Hazard to Air Navigation was issued in OE Docket No. 63-SW-1 on March 29, 1963.

The proposed structure for which a determination of no hazard was issued in OE Study No. SW-OE-2509 (Amended) at 1,049 feet above mean sea level is now under construction. Therefore, this aeronautical study did not evaluate the effect of this proposed increase as related to the existing structure at 750 feet above mean sea level and this study anticipated the completion of the structure now under construction to a height of 1,049 feet above mean sea level.

In relationship to the major airport facilities in the New Orleans area, the proposed structure would be located approximately 5.5 miles north/northwest of New Orleans Naval Air Station; approximately 13.5 miles east/southeast of the New Orleans International Airport and approximately 9 miles south of the New Orleans Municipal Airport.

The total overall height of the proposed structure would exceed the Standards for Determining Hazards to Air Navigation contained in § 77.25(c)(1) of the Federal Aviation Regulations, as applied to the New Orleans Naval Air Station, by 749 feet and 200 of these feet are represented by the increase in this proposal.

The proposed structure would require the following changes in currently prescribed minimum flight altitudes in order to provide minimum obstruction clearance altitudes in accordance with Agency standards:

1. It would require an increase from 2,000 feet to 2,200 feet in the missed approach altitude on Standard Instrument Approach Procedure AL-609-ADF-1.

2. It would require an increase from 2,000 feet to 2,200 feet in the missed approach altitude on Standard Instrument Approach Procedure AL-609-ILS-RWY-10.

3. It would require an increase from 2,000 feet to 2,200 feet in the procedure turn altitude for Standard Instrument Approach Procedure AL-609-ADF-2.

4. It would require an increase from 2,000 feet to 2,200 feet in the procedure turn altitude for Standard Instrument Approach Procedure AL-609-ILS-RWY 28.

5. It would require an increase from 2,000 feet to 2,200 feet in the minimum en route altitude on off-airway direct route 116d between the New Orleans VORTAC and the Violet Intersection.

6. It would require an increase in the minimum radar vectoring altitudes from 2,000 feet to 2,200 feet within a three mile radius of the proposed structure and an increase from 1,500 feet to 1,700 feet

within a three to five mile radius of the proposed structure.

7. It would require an increase from 1,500 feet to 1,700 feet in the final approach altitude at the Bridge Intersection for Standard Instrument Approach Procedure AL–609–ILS–RWY 28.

8. It would require an increase from 2,000 feet to 2,200 feet in the minimum safe obstruction clearance altitude in the southwest quadrant of New Orleans air navigation aids within 25 miles of such aids.

The aeronautical study disclosed that the proposed structure would have the following effects upon the safe and efficient utilization of airspace in the New Orleans, Louisiana, area:

It would result in the loss of a critical IFR cardinal altitude in a large hub category terminal area because of the inability to use 2,000 feet or 3,000 feet whenever the procedures reported in paragraphs one through six above were being used since the altitude of 2,200 feet would have to be reserved for aircraft utilizing these procedures and this would result in the inefficient utilization of airspace by aircraft.

It would require a modification of IAP AL–609–ILS–RWY 28 in order to compensate for the increase from 1,500 feet to 1,700 feet reported in paragraph seven above but this modification would not have a substantial adverse effect upon this procedure.

The proposed structure would be located within a triangle formed by the New Orleans Naval Air Station, New Orleans International Airport, and the New Orleans Muncipal Airport. During Calendar Year 1962, the total aeronautical opeartions for these three airports was estimated to be 330,538 operations. In addition there are three seaplane bases and one private airport located in the vicinity of the proposed structure.

There are a large number of land and sea airplanes based in the New Orleans area which are not equipped to fly in accordance with Instrument Flight Rules and a large number of pilots which are not qualified to fly in accordance with Instrument Flight Rules. In the New Orleans area, there are extended periods of low ceilings, haze and fog which reduce visibility. These meteorological phenomena require pilots operating in accordance with Visual Flight Rules to fly at low altitudes and make structures of the type proposed difficult to observe by pilots in flight. Based upon a survey of airport operators in the New Orleans area, it is estimated that there is a total of approximately 3,982 VFR operations per month by locally based airplanes which operate in the general vicinity of the proposed structure. In addition, based upon aircraft observed on the Agency's radar equipment, there is a total of approximately 600 VFR operations per month by itinerant aircraft arriving or departing from the New Orleans area which operate in the general vicinity of the proposed structure. The proposed structure would require pilots of aircraft operating in accordance with Visual Flight Rules in the general vicinity of the proposed structure during periods of low ceilings, haze and fog to fly at a higher altitude or to deviate from a normal course of flight in order to avoid the proposed structure.

Based upon the aeronautical study, which disclosed the high volume of aeronautical operations conducted in the vicinity of the proposed structure, the permanent loss to IFR aeronautical operations of the cardinal altitude of 2,000 feet in specified minimum flight altitudes (which would also require the displacement of aircraft from 3,000 feet to 3,200 feet or 4,000 feet), and the requirement imposed upon VFR aeronautical operations to fly higher or to deviate from a normal course in order to avoid the proposed structure during low ceiling and/or reduced visibility flight conditions which are common in the New Orleans area, it is found that the proposed structure would have a substantial adverse effect upon the safe and efficient utilization of airspace by aircraft.

Further, based upon this aeronautical study and the aeronautical studies conducted under Studies Nos. SW–OE–2509, SW–OE–2509 (Amended), SW–OE–3850 and other aeronautical studies in the New Orleans, Louisiana, area, it is found that the height of 1,049 feet above mean sea level at or near the location specified herein is a critical height; and any structure which exceeds a height of 1,049 feet above mean sea level at or near the location specified herein would have a substantial adverse effect upon the safe and efficient utilization of airspace by aircraft in the New Orleans, Louisiana, area.

Therefore, pursuant to the authority delegated to me by the Administrator (§ 77.37 [New]), it is found that the proposed structure, or any structure at or near the location specified herein which exceeds a height of 1,049 feet above mean sea level, would have a substantial adverse effect upon the safe and efficient utilization of airspace; and it is hereby determined that the proposed structure, or any structure which exceeds a height of 1,049 feet above mean sea level at or near the location specified herein, would be a hazard to air navigation.

This determination is effective and will become final 30 days after the date of issuance unless an appeal is filed under § 77.39 [New] (27 F.R. 10352). If the appeal is denied, the determination will then become final as of the date of the denial or 30 days after the issuance of the determination, whichever is later.

Issued in Washington, D.C., on August 23, 1963.

GEORGE R. BORSARI,
Chief,
Obstruction Evaluation Branch.

[F.R. Doc. 63–9331; Filed, Aug. 29, 1963; 8:45 a.m.]

[OE Docket No. 63–SO–8]

WKY TELEVISION SYSTEM, INC.

Determination of Hazard to Air Navigation

The Federal Aviation Agency has circularized the following proposal for aeronautical comment and has conducted a study (SO–OE–1969) to determine its effect upon the safe and efficient utilization of navigable airspace.

Television Station WTVT–TV of the WKY Television System, Inc., Tampa, Florida, proposes to construct a television antenna structure at latitude 27°49'09" N., longitude 82°14'26" W., approximately 4.3 miles northeast of Balm, Florida, at an overall height of 1,649 feet above mean sea level (1,563 feet above ground).

The proposed structure would be located approximately 1.9 miles southeast of an existing television antenna structure having an overall height of 1,135 feet above mean sea level, 15.4 miles east of MacDill Air Force Base, and 18.5 miles southwest of the Lakeland, Florida, airport.

The aeronautical study disclosed that the proposed structure would also be located within five miles of two approved off-airway air carrier routes and would exceed the standards for determining hazards to air navigation as defined in § 77.23(a)(3) of the Federal Aviation Regulations as applied to these routes. The structure at this location and height would require an increase from 2,100 to 2,600 feet in the minimum flight altitude for the approved off-airway route between the Tampa non-directional radio beacon and West Palm Beach, Florida, and from 1,600 feet to 2,600 feet in the minimum flight altitude for the off-airway route between Sarasota, Florida, and Lakeland, Florida. The increase of MEA for the direct route between Tampa and West Palm Beach would have no substantial adverse effect upon aeronautical operations; however, the increase in the MEA on the direct route between Sarasota and Lakeland would result in the loss of cardinal altitude of 2,000 feet.

The study disclosed that the structure would require an increase from 1,600 feet to 2,100 feet in procedure turn and missed approach altitudes specified in standard instrument approach procedure AL–939–VOR–RWY 4 for Lakeland, Florida. It would require a corresponding increase in the minimum holding altitude at the Lakeland VOR. The increase of altitude would result in the loss of the cardinal altitude of 2,000 feet for all aircraft operating in accordance with instrument flight rules and executing an SIAP at Lakeland. It would require an increase from 1,500 feet to 1,900 feet in the procedure turn altitude specified in SIAP AL–416–ADF 2 to the Tampa International Airport and would establish 1,900 feet as the lowest available minimum transition altitude for aircraft inbound to Tampa and executing this procedure.

The proposed structure would be within the radar vectoring area authorized for use by Tampa approach control. The study disclosed that it would require an increase from 1,500 feet to 2,600 feet in the minimum radar vectoring altitude within three miles of the site and from 1,500 feet to 2,100 feet within five miles of the site.

There is a heavy volume of flight operations conducted in the Tampa-St. Petersburg terminal area. In calendar year 1962 there were approximately

370,000 such operations. This figure is estimated to increase to approximately 600,000 in 1963. A major portion of these operations are conducted at low altitudes in accordance with visual flight rules.

The low, flat character of the terrain in this area and on the Florida peninsula favor low altitude flight operations. The low winter stratus cloud conditions and the high incidence of thunderstorms and broken to overcast cumulus cloud formations in the nonwinter months further restrict such flights to low altitudes. The proposed structure would derogate the safe use of altitudes below 2,600 feet MSL in the area.

Based upon the aeronautical study, it is the finding of the Agency that the proposed structure would create an unsafe obstruction to low altitude VFR flight operations and would have an adverse effect upon existing IFR aeronautical operations, procedures and minimum flight altitudes in the Tampa-St. Petersburg terminal area and at Lakeland.

Therefore, pursuant to the authority delegated to me by the Administrator (§ 77.37 [New]), it is found that the proposed structure would have a substantial adverse effect upon the safe and efficient utilization of navigable airspace; and it is hereby determined that the proposed structure would be a hazard to air navigation.

This determination is effective and will become final 30 days after the date of issuance unless an appeal is filed under § 77.39 [New] (27 F.R. 10352). If the appeal is denied, the determination will then become final as of the date of the denial or 30 days after the issuance of the determination, whichever is later.

Issued in Washington, D.C., on August 23, 1963.

GEORGE R. BORSARI,
Chief,
Obstruction Evaluation Branch.

[F.R. Doc. 63-9332; Filed, Aug. 29, 1963; 8:46 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 812-1606]

GREATER WASHINGTON INDUSTRIAL INVESTMENTS, INC.

Notice of Filing of Application

AUGUST 26, 1963.

Notice is hereby given that Greater Washington Industrial Investments, Inc., 1725 K Street NW., Washington 6, D.C. ("applicant"), a District of Columbia corporation licensed under the Small Business Investment Act of 1958 ("SBI Act") and a closed-end, nondiversified management investment company, has filed an application under section 17(b) of the Investment Company Act of 1940 ("Act") for an order exempting from the provisions of sections 17(a) (1) and 17(a) (2) of the Act, certain transactions between applicant and Mount Vernon Research Company ("Mt. Vernon"), a Virginia corporation and a small business concern as defined by the Small Business Administration for purposes of the SBI Act. All interested persons are referred to the application filed with the Commission for a full statement of applicant's representations which are summarized below.

On February 1, 1962, Mt. Vernon and applicant entered into a loan agreement under which applicant agreed to purchase, at principal amount, an aggregate of $400,000 principal amount of 8 percent convertible debentures of Mt. Vernon to be due 5 years from date of issuance as follows:

(a) $200,000 on the signing of the agreement,

(b) $200,000 prior to February 1, 1963, in minimum increments of $50,000.

Applicant purchased $200,000 principal amount of debentures on February 1, 1962, and debentures of $50,000 principal amount on July 1, 1962, August 15, 1962, September 13, 1962 and November 13, 1962, respectively.

Said agreement and the debentures issued thereunder provide an option to the debenture holder to convert the debentures, at any time within five years from the date of issuance, into shares of Mt. Vernon's common stock at the rate of one share for each $5 principal amount of debentures. Item 11(a) of said loan agreement provides that "Issuer (Mt. Vernon) agrees that it will exercise its best efforts to cause the election to its Board of Directors of such one person as may from time to time be designated by GWII * *. *." Applicant has not exercised this privilege. However, Dean B. Cowie, a "Technical Consultant" to applicant, is a member of the Mt. Vernon Board of Directors. Mt. Vernon's By-Laws provide for a board of directors of nine members. Five are currently in office. Under these circumstances, applicant may be deemed to hold 5 percent or more of the outstanding voting securities of Mt. Vernon and Mt. Vernon and applicant may be affiliated persons.

Mt. Vernon has outstanding 148,540 shares of stock, 102,300 (69 percent) of which are owned by its President, Gaines W. Monk, or persons closely related to Monk. The balance of the stock is held by 53 stockholders, 3 of whom are employees of the company. No other stockholder's interest exceeds 5 percent of the total outstanding stock. Mt. Vernon is engaged in the business of space exploration, advanced instrumentation and the development of related systems and products. Applicant represents that to the best of its knowledge, no officer, director, employee or 5 percent shareholder of applicant has any interest, direct or indirect, in Mt. Vernon or in the subject transactions.

Applicant and Mt. Vernon propose to enter into the following transactions:

(a) Applicant will exchange its $400,000 principal amount of convertible debentures (described above) for 144,000 shares of Mt. Vernon common stock and a 40-month 8 percent note of Mt. Vernon in the principal amount of $40,000 secured by certain equipment owned by Mt. Vernon; and

(b) Applicant will grant to Mt. Vernon a five year option to purchase 24,000 shares of Mt. Vernon stock at $1.00 per share for the purpose of enabling Mt. Vernon to grant options to employees with respect to such shares from time to time.

As a result of these transactions, applicant will have an approximate 49 percent equity interest in Mt. Vernon and the proportionate equity interest of all existing stockholders will be reduced by 50 percent. Should the company have prospered to the extent that applicant would have elected to convert its debentures at the $5.00 rate, the proportionate equity interest of all existing stockholders would have been reduced by 35 percent. The book value per share of all existing stockholders will be increased from a deficit of $2.08 to a net worth of $0.175.

The transactions are of major importance to Mt. Vernon in that if effected, Mt. Vernon will be relieved of the debenture interest charges ($32,000 per annum) and it will have a positive net worth which, in the opinion of applicant and Mt. Vernon, is essential to Mt. Vernon's ability to obtain new business and its ability to negotiate new credit which is essential to its day-to-day operation. On the other hand, applicant will receive a secured note for $40,000 which is approximately the estimated amount that it would receive today on a liquidation of Mt. Vernon (assuming no wind-up costs or expenses of administration) plus a one-half interest in the future growth of the company in the event it is able to succeed.

Section 17(a) (1) and section 17(a) (2) of the Act, as here pertinent, prohibit an affiliated person of a registered investment company from selling to or purchasing from such registered company securities or property, unless the Commission upon application pursuant to section 17(b), grants an exemption from such provisions upon a finding that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, that the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the Act, and is consistent with the general purposes of the Act.

Notice is further given that any interested person may, not later than September 11, 1963, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C., 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon applicant at the address set forth 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 O–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the showing contained in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

It is ordered, That the Secretary of the Commission shall give notice of the filing of this application by mailing a copy of this notice by registered mail to the applicant and to the Director, Office of Investment, Small Business Administration, Washington, D.C., 20416; that notice to all other persons shall also be given by publication of this notice in the FEDERAL REGISTER; and that a general release of this Commission in respect of this notice be distributed to the press and mailed to the mailing list for releases.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 63–9342; Filed, Aug. 29, 1963; 8:47 a.m.]

[File No. 24NY–5841]

REGAL FACTORS, INC.

Order Temporarily Suspending Exemption, Statement of Reasons Therefor, and Notice of Opportunity for Hearing

AUGUST 26, 1963.

I. Regal Factors, Inc., 32 Broadway, New York, N.Y., filed a notification on Form 1–A and an offering circular on October 2, 1962 and subsequently filed amendments thereto relating to an offering of 90,000 shares of its common stock, par value 10 cents per share, at an offering price of $2 per share, aggregating a total of $180,000 for the purpose of obtaining an exemption from the registration requirements under section 3(b) of the Securities Act of 1933, pursuant to Regulation A.

II. The Commission has reasonable cause to believe that the terms and conditions of Regulation A have not been complied with in that:

A. The notification fails to disclose certain affiliates as required by item 2 of Form 1–A.

B. The offering circular contains untrue statements of material facts and omits to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, particularly with respect to:

1. The actual use of the proceeds in that the funds received from the public were placed in the individual name and personal account of Richard Litt;

2. The failure to disclose all material transactions within the past two years to which the issuer, predecessors or affiliates were a party, as required by paragraph 9(c) of Schedule I;

3. The failure to disclose material transactions between the issuer and the underwriter whereby the underwriter would retain part of the offering proceeds;

4. The failure to comply with the terms of the underwriting agreement as set out in the offering circular; and

5. The value of assets, liabilities and capital shares as of October 1, 1962.

C. The offering is and if continued would be in violation of section 17.

III. It appearing to the Commission that it is in the public interest and for the protection of investors that the exemption of the issuer under Regulation A be temporarily suspended,

It is ordered, Pursuant to Rule 261(a) of the general rules and regulations under the Securities Act of 1933, as amended, that the exemption of the issuer under Regulation A be, and it hereby is, temporarily suspended.

Notice is hereby given that any person having any interest in the matter may file with the Secretary of the Commission a written request for hearing within thirty days after the entry of this order; that within twenty days after receipt of such request the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission, for the purpose of determining whether this order of suspension should be vacated or made permanent, without prejudice, however, to the consideration and presentation of additional matters at the hearing; that, if no hearing is requested and none is ordered by the Commission, this order shall become permanent on the thirtieth day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission; and that notice of the time and place for any hearing will promptly be given by the Commission.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 63–9343; Filed, Aug. 29, 1963; 8:48 a.m.]

[File No. 811–888]

SUMMIT MUTUAL FUND, INC.

Notice of Filing of Application for Order Declaring That Company Has Ceased To Be an Investment Company

AUGUST 26, 1963.

Notice is hereby given that an application has been filed pursuant to section 8(f) of the Investment Company Act of 1940 ("Act") for an order of the Commission declaring that Summit Mutual Fund, Inc., 1028 Connecticut Avenue NW., Washington 6, D.C. ("Applicant"), a management open-end diversified investment company, has ceased to be an investment company.

The application states that pursuant to a special stockholders meeting held on March 6, 1961, the Applicant has sold its portfolio of investments for cash and after payment and/or provision for outstanding liabilities and expenses incidental to liquidation and dissolution the remaining cash has been distributed to the shareholders.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission upon application finds that a registered investment company has ceased to be an investment company, it shall so declare by order and upon the taking effect of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than September 11, 1963, at 5:30 p.m. submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. At any time after such date, as provided by Rule O–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the showing contained in said application unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 63–9344; Filed, Aug. 29, 1963; 8:48 a.m.]

[File No. 54–225]

VALLEY GAS CO. ET AL.

Notice of Filing of Plan and Order for Hearing

AUGUST 26, 1963.

In the matter of Valley Gas Company, Blackstone Valley Gas and Electric Company, Eastern Utilities Associates; File No. 54–225.

By order dated August 10, 1960 (Holding Company Act Release No. 14266) the Commission approved, pursuant to Section 11(e) of the Public Utility Holding Company Act of 1935 ("Act"), Step 1 of a divestment plan filed by Eastern Utilities Associates ("EUA"), a registered holding company. Step 1 of the plan, which was approved and ordered enforced by the United States District Court for the District of Rhode Island (Valley Gas Company, 193 F. Supp. 808 (1960), affirmed sub nom. Kelaghan v. S.E.C., 288 F. 2d 67 (C.A. 1, 1961)), was the initial step in compliance with the

Commission's order dated April 4, 1950, entered pursuant to section 11(b) of the Act directing EUA, among other things, to sever its relationship with the gas properties owned by Blackstone Valley Gas and Electric Company ("Blackstone") by disposing or causing the disposition of EUA's direct or indirect ownership or control of such properties (Eastern Utilities Associates, 31 S.E.C. 329).

Pursuant to Step 1 of the plan, which was consummated August 1, 1961, Blackstone's gas properties were released from the lien of its mortgage indenture and transferred to Valley Gas Company ("Valley"), a Rhode Island corporation and a wholly-owned subsidiary company of Blackstone organized for the purpose of acquiring and operating such gas properties. In consideration, Blackstone received Valley's entire outstanding capital stock, consisting of 400,000 shares of common stock, par value $10 per share, together with certain bonds and notes of Valley which in 1961 were sold by Blackstone to institutional investors. (See Holding Company Act Release No. 14485.) The Commission and the District Court reserved jurisdiction, among other things, to take such further action, to enter such further orders, and to grant such other and further relief as may be deemed appropriate in connection with the divestment plan, the transactions incident thereto, and the consummation thereof; the District Court also reserved jurisdiction to enforce, if application therefor is duly made, subsequent orders of the Commission relating to the divestment plan.

Notice is hereby given that EUA, joined in by Blackstone and Valley, has filed Step 2 of its divestment plan, pursuant to section 11(e) of the Act, providing for the sale by Blackstone of its holdings of the 400,000 shares of Valley common stock. All interested persons are referred to Step 2 of the plan, on file at the office of the Commission, for a statement of the transactions therein proposed which are summarized below.

Blackstone has outstanding 184,062 shares of common stock, of which 182,569 shares (99.19 percent) are owned by EUA, and the balance of 1,493 shares (0.81 percent) are publicly held. EUA has outstanding 1,257,945 shares of common stock, all publicly held.

Blackstone proposes to offer its holdings of the 400,000 shares of Valley common stock for sale through a rights offering to the public holders of its common stock, to the stockholders of EUA, and to the employees of Valley, as follows:

(1) The public common stockholders of Blackstone will receive warrants evidencing their primary right to subscribe to two and eighteen hundredths (2.18) shares of common stock of Valley for each share of common stock of Blackstone held at the record date, or an aggregate of 3,254.74 Valley shares.

(2) The holders of common shares of EUA will receive warrants evidencing their primary right to subscribe to thirty-one hundredths (0.31) of a share of Valley common stock for each common share of EUA held at the record date, or an aggregate of 389,962.95 Valley shares.

(3) The public stockholders of Blackstone and the stockholders of EUA will also have the privilege of subscribing (subject to allotment) to the balance of 6,782.31 shares of Valley stock not initially offered under the primary rights pursuant to (1) and (2) above and to any Valley shares not subscribed for under said primary rights.

(4) The employees of Valley at the record date will receive warrants evidencing the privilege of each employee to subscribe, subject to allotment, for any number up to but not exceeding one hundred (100) shares of Valley common stock not subscribed for by the stockholders of Blackstone and EUA pursuant to (1), (2), and (3) above.

The warrants to be issued to the stockholders of Blackstone and EUA will be fully transferable; those issued to Valley's employees will be nontransferable. No fractional shares of Valley stock will be issued; in lieu thereof, arrangements will be made enabling stockholders to purchase or sell rights relating to fractional shares, at no brokerage cost to them.

The aggregate subscription price for the Valley shares will be an amount approximating the book value of the 400,000 shares on the books of Valley, plus the expenses (currently estimated at $100,000) incurred by Blackstone in connection with the proposed offering and sale. As of April 30, 1963, the book value of the Valley shares aggregated $4,458,231, or $11.15 per share. The net proceeds from the sale of the 400,000 shares of Valley common stock will be applied by Blackstone to the reduction of its outstanding short-term indebtedness.

The offering will be underwritten, and Blackstone proposes publicly to invite bids pursuant to Rule 50 under the Act for the purchase from it of all the shares of Valley common stock, if any, not subscribed for by stockholders or employees, at the same price per share as set forth in the warrants. Each bid will specify the amount to be paid by Blackstone to the bidder as compensation for the commitment.

EUA has requested that the Commission, pursuant to section 11(e) of the Act, apply to the United States District Court for the District of Rhode Island, which Court has already taken jurisdiction in connection with the divestment plan, to enforce and carry out the terms and provisions of Step 2 of the plan. The effective and consummation dates of Step 2 of the plan, if any are to be set, shall be those fixed by that Court.

The Commission being required by the provisions of section 11(e) of the Act, before approving any plan thereunder, to find, after notice and opportunity for hearing, that a plan, as submitted or as it may thereafter be amended or modified, is necessary to effectuate the provisions of section 11(b) of the Act and is fair and equitable to the persons affected thereby; and it appearing to the Commission that it is appropriate in the public interest and for the protection of investors and consumers that a hearing be held concerning Step 2 of the plan to afford all interested persons an opportunity to be heard in respect thereof:

It is ordered, That a hearing in respect of Step 2 of the plan be held on October 10, 1963, at 10:00 a.m., at the office of the Securities and Exchange Commission, 425 Second Street NW., Washington, D.C., 20549. Any person desiring to be heard, or otherwise to participate in the proceeding shall file with the Secretary of the Commission on or before September 26, 1963, a request therefor in the manner prescribed by Rule 9 of the Commission's rules of practice.

It is further ordered, That Frederick Zazove, or any other officer or officers of the Commission designated by it, from time to time, for that purpose shall preside at such hearing. The officer so designated to preside at such hearing is hereby authorized to exercise all of the power granted to the Commission under section 18(c) of the Act and to a hearing officer under the Commission's rules of practice.

The Division of Corporate Regulation of the Commission having advised the Commission that it has made a preliminary examination of Step 2 of the plan and, upon the basis thereof, is presenting the following matters and questions for consideration with respect thereto, without prejudice to its specifying additional matters and questions upon further examination:

(1) Whether Step 2 of the plan effectuates compliance with the Commission's order of April 4, 1950, issued pursuant to section 11(b) of the Act, and, if not, in what respects Step 2 of the plan should be modified.

(2) Whether Step 2 of the plan is fair and equitable to the persons affected thereby, and, if not, in what respects the terms thereof should be modified to make it fair and equitable.

(3) Whether the securities proposed to be issued and sold and the terms and conditions of their issuance and sale meet the applicable provisions of the Act.

(4) Whether the accounting entries to record the transactions under Step 2 of the plan conform to sound accounting principles.

(5) Whether Step 2 of the plan is in all respects in the public interest and in the interest of investors and consumers and whether the proposed transactions comply in all respects with all applicable provisions of the Act and the general rules and regulations promulgated thereunder.

It is further ordered, That at said hearing attention shall be given to such matters and questions and to such other matters and questions as shall be specified during the proceeding.

It is further ordered, That notice of this hearing shall be given by registered mail to EUA, Blackstone, Valley, and to the Rhode Island Public Utility Administrator; that notice to all other persons shall be given by publication of this notice and order in the FEDERAL REGISTER; and that a general release of the Commission in respect of this notice and order shall be distributed to the press and mailed to the persons appearing on

the mailing list of the Commission for releases under the Act.

It is further ordered, That EUA shall give notice of the filing of Step 2 of the plan and of the hearing by causing to be mailed, at its expense, a copy of this notice and order at least 30 days prior to the date set for the hearing to each of the public stockholders of Blackstone.

By the Commission. (Entered on the date first noted above.)

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 63-9345; Filed, Aug. 29, 1963; 8:48 a.m.]

DEPARTMENT OF COMMERCE

Maritime Administration

[Report No. 15]

LIST OF FREE WORLD AND POLISH FLAG VESSELS ARRIVING IN CUBA SINCE JANUARY 1, 1963

SECTION 1. Pursuant to the National Security Action Memorandum No. 220, dated February 5, 1963, addressed to The Secretary of State; The Secretary of Defense; The Secretary of Agriculture; The Secretary of Commerce; The Administrator, Agency for International Development; and The Administrator, General Services Administration, concerning United States Government shipments by foreign-flag vessels in the Cuban trade, the Maritime Administration is making available to the appropriate Departments the following list of vessels which have arrived in Cuba since January 1, 1963, based on information received through August 23, 1963, exclusive of those vessels that called at Cuba on United States Government-approved noncommercial voyages and those listed in section 2:

FLAG OF REGISTRY AND NAME OF SHIP	*Gross tonnage*
Total—All flags (164 ships)	1,300,313
British (49 ships)	450,782
Ardgem	6,981
Ardmore	4,664
Ardrowan	7,300
Arlington Court	9,662
Athelcrown (Tanker)	11,149
Athelduke (Tanker)	9,089
Athelmere (Tanker)	7,524
Athelmonarch (Tanker)	11,182
Athelsultan (Tanker)	9,149
Avisfaith	7,868
Baxtergate	8,813
Cedar Hill	7,156
Chipbee	7,271
East Breeze	8,708
Fir Hill	7,119
Grosvenor Mariner	7,026
Hazelmoor	7,907
Ho Fung	7,121
Inchstaffa	5,255
Ivy Fair (now Cosmo Trader)	7,201
Kirriemoor	5,923
Linkmoor	8,236
London Confidence (Tanker)	21,699
London Glory (Tanker)	10,081
London Harmony (Tanker)	13,157
London Independence (Tanker)	22,643
London Majesty (Tanker)	12,132
London Pride (Tanker)	10,776
London Splendour (Tanker)	16,195
London Victory (Tanker)	12,132
Lord Gladstone	11,299
Maratha Enterprise	7,166
Oceantramp	6,185
*Oceantravel	10,477
Overseas Explorer (Tanker)	16,267
Overseas Pioneer (Tanker)	16,267
Redbrook	7,388
Shienfoon	7,127
Silverforce	8,058
Silverlake	8,058
Suva Breeze	4,970
Thames Breeze	7,878
Tulse Hill	7,120
Vercharmian	7,265
Vergmont	7,381
West Breeze	8,718
Yungfutary	5,388
Yunglutaton	5,414
Zela M	7,237
Greek (49 ships)	378,562
Aegaion	7,239
*Agios Therapon	5,617
*Akastos	7,331
Aldebaran (Tanker)	12,897
Alice	7,189
Americana	7,104
Anacreon	7,359
Antonia	5,171
Apollon	9,744
Armathia	7,091
Athanassios K	7,216
Barbarino	7,084
Calliopi Michalos	7,249
Capetan Petros	7,291
Despoina	5,006
Efcharis	7,249
Eftychia	7,223
Embassy	8,418
Everest	7,031
Galini	7,266
Gloria	7,128
Hydraios III	5,239
*Istros II	7,275
Katingo	7,349
Kyra Hariklia	6,888
Maria de Lourdes	7,219
Maria Santa	7,217
Maria Theresa	7,245
Maroudio	7,369
Mastro-Stelios II	7,282
Nicolaos Frangistas	7,199
North Empress	10,904
North Queen	9,341
Pamit	3,929
Pantanassa	7,131
Paxoi	7,144
Penelope	6,712
Perseus (Tanker)	15,852
Polaris	9,603
Pollux	9,956
Polyxeni	7,143
Propontis	7,128
Redestos	5,911
Seirios	7,239
Sirius (Tanker)	16,241
Stylianos N. Vlassopulos	7,244
Timios Stavros	5,269
Tina	7,362
Western Trader	9,268
Lebanese (30 ships)	202,046
Aiolos II	7,256
Akamas	7,285
Alaska	6,989
Anthas	7,044
Antonis	6,259
*Aristefs	6,995
Astir	5,324
Carnation	4,884
Dimos	7,187
Giorgos Tsakiroglou	7,240
Granikos	7,282
Ilena	5,925
Ioannis Aspiotis	7,297
Kalliopi D. Lemos	5,103
Malou	7,145
Mantric	7,255
Mersinidi	6,782
Mousse	6,984
Noelle	7,251
Noemi	7,070
Olga	7,199
Panagos	7,133
Parmarina	6,721
Razani	7,253
St. Anthony	5,349
St. Nicolas	7,165
*San John	5,172
San Spyridon	7,260
Tertric	7,045
Vassiliki	7,192
Italian (8 ships)	60,384
Achille	6,950
Airone	6,969
Annalisa	2,479
Arenella	7,183
Cannaregio	7,184
Linda Giovanna (Tanker)	9,985
Nazareno	7,173
San Nicola (Tanker)	12,461
Polish (8 ships)	51,899
Baltyk	6,963
Bialystok	7,173
Bytom	5,967
Chopin	6,987
Chorzow	7,237
Kopalnia Miechowice	7,223
Kopalnia Siemianowice	7,165
Piast	3,184
Yugoslav (6 ships)	42,801
Bar	7,233
Cavtat	7,266
Cetinje	7,200
Dugi Otok	6,997
*Promina	6,960
Trebisnjica	7,145
Norwegian (5 ships)	54,502
Kongsgaard (Tanker)	19,999
Lovdal (Tanker)	12,764
Ole Bratt	5,252
Polyclipper (Tanker)	11,737
Tine (now Jezrell)	4,750
Spanish (3 ships)	5,564
Castillo Ampudia	3,566
Sierra Madre	999
Sierra Maria	999
Moroccan (2 ships)	19,140
Atlas	10,392
Toubkal	8,748
Swedish (2 ships)	14,295
Dagmar	6,490
Atlantic Friend	7,805
Finnish (1 ship):	
Valny (Tanker)	11,691
Japanese (1 ship):	
Meishun Maru	8,647

*Added to Report No. 14 appearing in the FEDERAL REGISTER issue of August 16, 1963.

SEC. 2. In accordance with the provisions of National Security Action Memo-

randum No. 220 of February 5, 1963, the following vessels which called at Cuba after January 1, 1963, have reacquired eligibility to carry United States Government-financed cargoes from the United States by virtue of the persons who control the vessels having given satisfactory certification and assurance that no ships under their control will, thenceforth, be employed in the Cuba trade so long as it remains the policy of the United States Government to discourage such trade:

a. Since last report: None.
b. Previous reports:

Flag of registry:	Number of ships
British	2
Danish	1
German (West)	1
Greek	1
Norwegian	1

SEC. 3. The ships listed in sections 1 and 2 have made the following number of trips to Cuba in 1963, based on information received through August 23, 1963:

Flag of registry	Number of trips								
	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Total
British	5	8	8	17	13	15	14	3	83
Greek	4	6	8	8	17	12	12	2	69
Lebanese	1		2	8	8	9	5	2	35
Norwegian		2	4		1	2	1	2	12
Italian	1	1	1	2	3	2			10
Yugoslav		2	1	1	1		1	1	7
Spanish			2				1		3
Danish			1						1
Finnish						1			1
German (West)					1				1
Japanese	1								1
Moroccan			1			1	1		3
Swedish				1		1		1	3
Subtotal	12	19	28	37	44	43	35	11	229
Polish	2	1	1	2	2	2	1		11
Grand total	14	20	29	39	46	45	36	11	240

NOTE: Trip totals in this section exceed ship totals in Sections 1 and 2 because some of the ships made more than one trip to Cuba.

Dated: August 27, 1963.

GEORGE R. GRIFFITHS,
Acting Deputy
Maritime Administrator.

[F.R. Doc. 63-9409; Filed, Aug. 29, 1963; 9:15 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATION FOR RELIEF

AUGUST 27, 1963.

Protests to the granting of an application must be prepared in accordance with Rule 1.40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 38505: *Caustic Potash to Ivorydale, Ohio.* Filed by O. W. South, Jr., Agent (No. A4367), for interested rail carriers. Rates on potassium (potash), caustic, in tank-car loads, from Calvert, Ky., to Ivorydale, Ohio.

Grounds for relief: Market competition.

Tariff: Supplement 29 to Southern Freight Association, agent, tariff I.C.C. S-263.

By the Commission.

[SEAL] HAROLD D. McCOY,
Secretary.

[F.R. Doc. 63-9361; Filed, Aug. 29, 1963; 8:52 a.m.]

[Notice No. 858]

MOTOR CARRIER TRANSFER PROCEEDINGS

AUGUST 26, 1963.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC. 66183. By order of August 20, 1963, the Transfer Board approved the transfer to Julius Osowieki, Suffield, Conn., of certificate in Nos. MC 13674 and MC 13674 (Sub-No. 2), issued August 17, 1956 and March 16, 1960, respectively, to James A. Fleming, Suffield, Conn., authorizing the transportation of: Lime and limestone, from North Adams, Lee, and West Stockbridge, Mass., to points in Hartford County, Conn.; tobacco, from East Granby, Suffield, and West Suffield, Conn., to points in Hampshire County, Mass., and empty tobacco containers on return; farm machinery, between Hartford, Conn., and West Springfield, Mass.; such bulk commodities as are transported in dump trucks, between points in Hartford, and Tolland Counties, Conn., and Hampden County, Mass.; fertilizer and fertilizer materials, between Hartford, East Hartford, and Suffield, Conn., on the one hand, and, on the other, points in Newport, and Washington Counties, R.I., and Franklin, Hampden, and Hampshire Counties, Mass.; and fertilizer and fertilizer materials, and agricultural insecticides, fungicides, and herbicides, from Portland, East Windsor and North Haven, Conn., to points in Rhode Island, and points in Rensselaer, Columbia, Dutchess, Putnam, Westchester, Suffolk, Nassau, Clinton, Essex, Warren, and Washington Counties, N.Y. Thomas W. Murrett, 410 Asylum Street, Hartford 3, Conn., attorney for applicants.

[SEAL] HAROLD D. McCOY,
Secretary.

[F.R. Doc. 63-9362; Filed, Aug. 29, 1963; 8:52 a.m.]

[Section 5a Application No. 85]

OIL CAPITAL TARIFF BUREAU, INC.

Application for Approval of Agreement

AUGUST 27, 1963.

The Commission is in receipt of the above-entitled and numbered application for approval of an agreement under the provisions of section 5a of the Interstate Commerce Act.

Filed August 12, 1963, by Martin E. Wyatt, attorney at law, Post Office Box 771, 3108 East 15th Street, Tulsa, Okla.

Agreement involved: Agreement between motor common carriers, members of Oil Capital Tariff Bureau, Inc., providing for joint consideration of the establishment or change in charges, rates, rules, and classifications applicable to the transportation of property in interstate or foreign commerce between points in the United States. (Applicants have an approved agreement in section 5a application No. 50, 294 I.C.C. 781, which they request be canceled if and when this agreement is approved.)

The complete application may be inspected at the office of the Commission in Washington, D.C.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 20 days from the date of this notice. As provided by the general rules of practice of the Commission, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing.

By the Commission, Division 2.

[SEAL] HAROLD D. McCOY,
Secretary.

[F.R. Doc. 63-9364; Filed, Aug. 29, 1963; 8:52 a.m.]

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