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Rules and Regulations

Title 7—AGRICULTURE

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture

PART 26—GRAIN STANDARDS

Official Grain Standards of the United States for Wheat [1]

Pursuant to authority of the United States Grain Standards Act, 39 Stat. 482, as amended (7 U.S.C. 71 et seq.) and section 4 of the Administrative Procedure Act (5 U.S.C. 1003) a notice of proposed rule making was published in the FEDERAL REGISTER (28 F.R. 7949) on August 3, 1963, regarding a proposed revision of the Official Grain Standards of the United States for Wheat (7 CFR 26.101 et seq.). Public hearings were held at 4 locations as follows: Kansas City, Mo., on October 1; Minneapolis, Minn., on October 4; Portland, Oreg., on October 8; and Toledo, Ohio, on October 11. Notice was also given that written data, views, and arguments might be submitted to the Agricultural Marketing Service of the United States Department of Agriculture to be received not later than October 31, 1963. Consideration has been given to all information obtained at the hearings, to written comments received and to other information available in the United States Department of Agriculture.

Statement of considerations. The aforementioned notice proposed changes to the Official Grain Standards of the United States for Wheat which were last revised effective June 15, 1957. The proposed revision set forth changes which were considered necessary to describe more accurately wheat inspected under the terms of the official standards. The need for these revisions has been reviewed for the past 2 years with wheat producer, trade, and processor groups and organizations.

General statement. Two features are involved in working on any set of grade standards. The first feature is to determine the factors or attributes of quality, including value and usability, and condition which (1) are important, (2) vary from lot to lot, and (3) can be satisfactorily measured using available and acceptable inspection techniques. All such factors are normally included in the U.S. grade standards for any agricultural product. The second feature is to determine how these factors of quality should be grouped or classified into a number of grades showing meaningful gradations in value or usability. This involves setting minimum or maximum allowances for each factor for each grade; setting tolerances or cut-off points for each grade; and coming out with a single grade designation (e.g., U.S. No. 1) which, because of specified limits on the individual quality factors, will provide a meaningful and useful yardstick of value or usability.

No new or additional factor of quality has been proposed in this revision of the wheat standards. Therefore, the official grade factors will continue to be confined basically to the weight, soundness, and cleanliness of the grain. These factors can be readily measured by simple mechanical or visual means, and are adapted to the customary, rapid inspection and certification job needed to sample and grade wheat at the time it is moving in interstate or foreign commerce. There are other important factors of quality, such as milling and baking characteristics of the wheat. Most tests for these characteristics are not simple or rapid. Also, the flour milling industry has many intricate and varied requirements as to milling and baking characteristics which would not be conducive at the present time to the adoption of a uniform, national set of standards incorporating these factors. Therefore, official certification of these factors remains entirely on a voluntary basis (e.g., protein, sedimentation, etc.) and they are not part of the official grade standards.

This revision, therefore, involves only the second feature—the tolerances or allowances for the existing quality factors to be established for the individual numerical grades. No change is proposed in test weights per bushel. The requirements for soundness and cleanliness for each numerical grade would be tightened. The purpose of such tightening is to improve the grade designations as yardsticks of soundness and cleanliness—which are still important quality factors in determining value and usability of wheat.

General issues. The general issues are whether:

(1) Tolerances used in the past are far too broad and allow too much variability within each grade to serve their purpose of providing useful and meaningful yardsticks of value and usability.

(2) The competitive position of U.S. wheat in foreign markets is damaged because of these excessive tolerances.

(3) Wheat delivered to Commodity Credit Corporation under its storage contracts is of reduced value because of these excessive tolerances.

(4) Tightening the requirements for soundness and cleanliness is entirely feasible, would benefit growers, and would be in the general interest of the entire wheat industry.

Specific issues. The specific issues are whether the following changes in the official standards for wheat should be adopted:

(a) Delete the subclasses Red Winter Wheat and Western Red Wheat in the class Soft Red Winter Wheat. (Red Winter Wheat and Western Red Wheat heretofore have been designated as subclasses of the class Soft Red Winter Wheat).

(b) Change the subclass Western White to Mixed White and require that the percentages of White Club and Common White Wheat be made a part of the grade designation. (The subclass Western White is White Club Wheat and Common White Wheat mixed in varying proportions but until recent years wheat of this subclass was about 40 percent Club Wheat. The official grade standards for wheat heretofore have not required such composition determination to be made and shown as a part of the grade for the subclass Western White Wheat).

(c) Express dockage to the nearest whole and half percent (e.g., 0.3 to 0.7 would be called 0.5) or, as an alternative, disregard other fractions and express dockage in half percent, whole percent, or whole and half percent (e.g., 0.4 would be disregarded and 0.9 would be called 0.5).

(In the past, dockage when equal to 1 percent or more was recorded on inspection certificates in whole percent and when less than 1 percent was not recorded. A fraction of a percent was disregarded.)

(d) Provide maximum limits for total defects (damaged kernels, foreign material and shrunken and broken kernels) in the numerical grades. (In the past, no limitation on total defects was set other than that which results from a summation of the limits for each defect. As an illustration total defects for grade No. 1 would be reduced from 7.5 percent to 3 percent and in grade No. 2 from 10 percent to 5 percent.)

(e) Change the limits of shrunken and broken kernels from 5 percent to 3 percent for grade No. 1 and establish maximum limits of 12 percent and 20 percent, respectively, for grades No. 4 and No. 5.

(f) Combine the tables of grade requirements for all classes of wheat. (Heretofore 5 tables of grade requirements were given for the separate classes.)

(g) Change the minimum and maximum moisture limits for tough wheat. (In the past, depending on the class, wheat with over 14 percent or 14.5 percent moisture was graded "tough" and if over 15.5 percent or 16 percent moisture was graded "sample grade." The minimum moisture content for "tough" would be reduced to 13.5 percent for all classes, the maximum limit would be deleted, and the application of "sample grade" based on moisture content would be discontinued.)

(h) Delete the provision for making smut dockage determinations on smutty wheat.

(i) Provide a special grade of "Heavy Wheat" for all classes of wheat. (In the past, the wheat standards defined only

[1] The specifications of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

the minimum test weights permitted per grade and did not recognize superior test weights for any grade, except No. 1 Heavy Hard Red Spring Wheat.)

(j) Except for the class Red Durum, change the maximum limit for wheat of other classes for grade No. 1 from 5 percent to 3 percent and provide limits for contrasting classes. (In the past, the standards provided maximum limits (e.g., 0.5 percent, 1 percent, and 2 percent) for certain classes depending on the end use and ability to distinguish the classes on visual examination.)

(k) Renumber or otherwise redesignate the sections and paragraphs of the standards in the interest of clarity and make other minor changes as proposed.

(l) Provide for determination by AMS of equipment and procedure to be used in making moisture tests. (In the past, the standards have provided by reference for the use of an air-oven test or "any method which gives equivalent results.")

Findings and conclusions. Findings and conclusions on the aforementioned issues, based upon the data presented at the hearings, written and oral comments received, and other information available in the United States Department of Agriculture, are as follows with respect to the general issues:

(1) Tolerances used in the past are far too broad and allow too much variability within each grade to serve their purpose of providing useful and meaningful yardsticks of value and usability.

Graded wheat of known quality, including soundness and cleanliness, has a higher value than does a heterogeneous mixture of ungraded wheat. If this were not a fact, there would be no reason for having any established grades or inspection system. There is evidence that the present grade requirements are so loose that they do not provide a reliable basis for judging soundness or cleanliness. Both domestic and foreign buyers make a price allowance (discount) because of the possible wide variation in nonmillable material whenever they buy solely on the basis of the U.S. grades. Unless he has examined a sample of the wheat or has other contractual specifications, the buyer has to protect himself against receiving wheat at the bottom of the grade by applying a price discount. As expressed by a representative of the milling industry at the hearings, "the ill effects of these wide open permissible limits are the fears that they may engender in the mind of the prospective buyer of wheat by contract."

The total limit for damaged kernels, shrunken and broken kernels, and foreign material in the present standards is 7.5 percent for U.S. No. 1 grade, 10 percent for U.S. No. 2 grade, and 17 percent for U.S. No. 3 grade. Inspection records show that the majority of the domestic shipments in each of these grades contain only a fraction of the allowable maximum of non-millable material. Since much of the wheat is bought on the basis of samples, both the seller and buyer in such transactions well know that the wheat—even though it is certified as U.S. No. 1, U.S. No. 2, or U.S. No. 3 grade—does not begin to approach the maximum non-millable material tolerances permitted in the respective official grade. Consequently, such tolerances do not represent acceptable, commercial trading standards and, when the buyer does make a purchase solely on the basis of the official grades he has to protect himself by applying a price discount. The value of this objectionable material is that of mill-feed which is usually worth only 15 to 35 percent as much as sound, clean wheat.

(2) The present excessive tolerances in the U.S. grades for non-millable material damages the competitive position of U.S. wheat in foreign markets.

The Wheat Market Development Evaluation Team, composed of industry and government representatives, reported on its July-August 1963 survey of European markets as follows:

> Whenever the team met with representatives of the wheat trade, whether in the Netherlands, Belgium, West Germany, or the United Kingdom, it heard complaints regarding the quality and cleanliness of United States wheat. It was also asserted that price differentials were inadequate to offset these disadvantages—that prices were, therefore, not competitive. United States wheat has acquired the unfortunate distinction of being considered one of the "dirtiest" wheats in international trade * * * A member of the Netherlands trade expressed his experience in the following words, "To the extent permitted by your grain standards, you will find foreign material present in the shipments of American wheat." Another went further, saying "I do not know of any other national system where artificial deterioration of a sound clean agricultural product is tolerated, or regarded as legal."

A study of European imports of wheat from November 1959 to January 1961 showed that the total foreign material, dockage, and shrunken and broken kernels in wheat from the United States was more than double the content of these non-millable materials in wheat from Canada, Russia, Argentina, or Australia. While slight improvement in the amount of some of these factors has been recorded in subsequent exports from the United States, the excessive non-millable material in wheat exports continues to the present time. Analysis of inspection certificates issued on export cargoes of wheat during 1962–63 shows that a much larger proportion of these cargoes contained more than 0.5 percent dockage than did the receipts of wheat at domestic markets or did the 2,561 samples of 1962 farm-stored wheat analyzed by State and Federal agencies.

Annual exports of wheat and flour have exceeded 500 million bushels since 1959. Foreign buyers depend almost entirely on official standards to measure the quality of wheat they buy. Although total exports have increased, dollar sales for export have not shared in this increase. The United States' share of commercial wheat exports dropped sharply between the crop years 1951 and 1961. Complaints from abroad indicate that the variable quality of U.S. wheat contributed to this drop.

The foreign wheat buyer has been operating in a buyer's market. He can buy wheat from other countries with greater uniformity of quality and containing less non-millable material than wheat exported from the United States. He objects to examining samples or writing special specifications for soundness or cleanliness and paying premiums in order to protect himself against getting excessive non-millable material. Furthermore, he knows that wheat he receives from the United States would not be commercially acceptable at the regular market price to most domestic U.S. buyers.

It is incongruous to argue that foreign buyers can obtain any quality of wheat they want, if they are willing to pay the price, merely by writing a set of specifications or examining a representative sample to meet their specifications for each purchase. If such were the general marketing practice, there would be no need for any wheat standards. This type of argument runs completely counter to the universally accepted view that the official grade standards should facilitate the movement of wheat through trade channels by providing realistic and useful measures of the quality factors designated in the grades.

Most wheat importing countries have restrictions which govern the amount of wheat they can import. Transportation costs of non-millable material and the amount of millable wheat are important factors in selecting the final source of supply. Also, import levies and taxes are assessed on gross weight which is an important factor in the Common Market. Flour extraction, set by law in many countries, is also based on the gross weight received by the miller. The negative economic impact of non-millable material in U.S. wheat is intensified as these restrictions become more severe.

(3) The Commodity Credit Corporation is peculiarly vulnerable because of the excessive tolerances for non-millable material in the U.S. grade standards for wheat.

CCC has no practicable alternative to using the official grades in its price support and storage operations. Since wheat is a fungible commodity, CCC does not require delivery of the identical grain which its contractors receive for storage. Instead, deliveries of CCC-owned wheat are made against the official grade standards, including the full tolerances for non-millable material. Much of the wheat which CCC acquires under the price support program is U.S. No. 2 or No. 3 grade because of light test weight per bushel but these grades also allow the maximum total tolerances of 10 percent and 17 percent, respectively, for damaged kernels, shrunken and broken kernels, and foreign material. Much of the wheat as it leaves the farm and country elevators contains only a fraction of these defects. The 1962 crop, farm-stored wheat survey, showed that the 1,000 samples of U.S. No. 3 grade wheat in Nebraska averaged only 1.98 percent and 484 samples of U.S. No. 3 grade wheat in South Dakota averaged 2.56 percent for Hard Red Spring Wheat and 3.50 percent for Hard Red Winter Wheat as compared with the 17 percent total tolerance for these factors in the present U.S. No. 3 grade. Domestic buyers protect their interests by examining representative samples prior to purchase. CCC has no practicable alternative to accepting the full

grade tolerance for all defects, without discount, if the storage contractor delivers such wheat.

(4) Tightening the requirements for soundness and cleanliness is entirely feasible, would benefit growers, and would be in the general interest of the entire wheat industry.

Since the original standards were established in 1917, better equipment and better methods have come into use in the production, harvesting, transportation, storage, cleaning, and drying of grain. The broad allowance for nonmillable material within each grade which was needed in 1917 is not needed in 1963. Historical data clearly point up the significant improvement in the cleanliness of U.S. wheat delivered at country points and received at terminal markets, which has taken place gradually over a long period of years. To further postpone full use of this knowledge and equipment is tantamount to leaving grain marketing in the first quarter of the 20th century.

Available facts indicate that the growers and the country elevator do not make use of the present wide tolerances. Many wheat growers are paid on a net clean wheat basis. Therefore, a change in the U.S. grade tolerances, which may be applied to the wheat at some point in the marketing channel after it has left the farm, should in no way penalize the grower or reduce his prices. During the transition from the old to revised, tighter wheat standards in 1957, wheat sold under the revised standards at higher prices even when falling in the same numerical grade.

Inspection records show that most wheat moving through the domestic market channels is well within the proposed revised tolerances. Therefore, tightening the standards as proposed will adversely affect (1) only those lots of wheat which were at or near the bottom of the grade and were clearly below normally acceptable levels of quality and were, therefore, objectionable even though they were technically "within grade" and (2) that small minority of persons who are abusing or misusing the existing wide tolerances which were originally established to allow for naturally occurring defects and not for the purpose of "blending down" lots of wheat to include the official maximum of non-millable or other undesirable material.

Allegations that tightening the wheat standards will simply result in shifting a greater percentage of the wheat into lower numerical grades are refuted by the experience when standards were tightened on soybeans in 1955 as revealed in the following data:

SOYBEANS

Crop year	U.S. No. 1	U.S. No. 2	U.S. No. 3 and lower
	Percent of carlots inspected		
1952-54	24.0	46.4	29.6
1955	(Grade standards were tightened)		
1956-58	27.5	44.0	28.5

For the reasons set forth above, it is concluded that such changes can only prove to be beneficial—not detrimental—to the best interests of wheat growers and other segments of the industry.

With respect to the specific issues, it was proposed to:

(a) Delete the subclasses Red Winter Wheat and Western Red Wheat in the class Soft Red Winter Wheat. Red Winter Wheat and Western Red Wheat heretofore have been designated as subclasses of the class Soft Red Winter Wheat. Very little Soft Red Winter Wheat is produced west of the Great Plains area; therefore, the subclass Western Red Wheat of the class Soft Red Winter Wheat should be deleted. This would eliminate any need for the subclass designation Red Winter Wheat and all wheat of the class Soft Red Winter Wheat would be designated by the class name. No objections have been made to this proposed change and it should be adopted.

(b) Change the subclass Western White to Mixed White and require that the percentages of White Club and Common White Wheat be made a part of the grade designation. The subclass Western White is White Club Wheat and Common White Wheat mixed in varying proportions, but until recent years wheat of this subclass was about 40 percent Club Wheat. The official grade standards for wheat heretofore have not required such composition determination to be made and shown as a part of the grade for the subclass Western White Wheat.

Information submitted at the hearings and otherwise available to this Department has established that the subclass Western White Wheat has become a designation with good acceptance in foreign markets. Changing the name of this subclass to Mixed White Wheat would be confusing and detrimental to trade in these markets, unless club wheat were available in adequate amounts as a substitute. New rust-resistant varieties are expected to result in increased production of White Club Wheat within a few years. Therefore, the proposal to change the subclass name should not be adopted at this time. However, the percentage of White Club Wheat in Western White Wheat has markedly declined in the past two years and this percentage is an important element in determining the value and usability of Western White Wheat. A statement of the percentages of White Club Wheat and of Common White Wheat in Western White Wheat on the inspection certificates should be required.

(c) Express dockage to the nearest whole and half percent (e.g., 0.3 to 0.7 would be called 0.5) or, as an alternative, disregard other fractions and express dockage in half percent, whole percent, or whole and half percent (e.g., 0.4 would be disregarded and 0.9 would be called 0.5). In the past, dockage when equal to 1 percent or more was recorded on inspection certificates in whole percent and when less than 1 percent was not recorded. A fraction of a percent was disregarded. Dockage is not a grade determining factor. The amount of dockage is established before the official grade is determined. Dockage enters into the estimate of the value of a given lot of wheat, however, since it composes a proportion of the non-millable material.

The effect of the standards in the past has been to conceal the presence of dockage in quantities up to 0.9 percent. Ignoring dockage content up to 0.9 percent does not provide adequate information concerning the extent of the nonmillable material in the wheat. There have been many proposals that the determination and recording of dockage be refined to smaller fractions of a percent.

To define dockage in one-half percent intervals gives greater precision in describing wheat than heretofore was provided by the standards. The proposal would encourage producers to deliver cleaner wheat to the first buyer and would discourage the blending of high-dockage wheat with cleaner wheat throughout the marketing process. The amount of dockage can be controlled through proper binning and cleaning.

There is little reason to believe that expressing dockage in more precise terms, as proposed, would decrease aggregate farm income to those producers who are producing quality wheat. In fact, the marketing system should be more responsive to quality at the farm level with subsequent improvement in quality throughout the marketing system.

The argument was made that the past system was satisfactory, but that showing dockage in increments of one-half percent would result in price discounts to producers. This argument breaks down of its own weight. In the first place, most wheat purchased by domestic millers contains considerably less than 0.9 percent dockage. In the second place, if it were true that wheat containing 0.9 percent dockage is readily acceptable to the trade, then a premium—not a discount—should be forthcoming for wheat that is recorded as having only 0.5 percent dockage. It is concluded that the alternate proposal should be adopted.

(d) Provide maximum limits for total defects (damaged kernels, foreign material, and shrunken and broken kernels) in the numerical grades. In the past, no limitation on total defects was set other than that which results from a summation of the limits for each defect. In other words, 2 percent of damaged kernels, 0.5 percent of foreign material and 5 percent of shrunken and broken kernels each separately had the same significance as the total of the three factors; i.e. the maximum for grade No. 1. Total defects for Grade No. 1 would be reduced from 7.5 percent to 3 percent and in Grade No. 2 from 10 percent to 5 percent.

Data were obtained from more than 2,500 composite samples of farm-stored wheat in five major wheat States. In every State, "total defects" was less than in the proposed standards for the grade. This indicates that the proposed factor

of "total defects" would not have an adverse effect on the grade of the wheat delivered by most farmers.

Exports of wheat surveyed in 1962–63 showed a different picture. Total defects exceeded the proposed limit for the grade in every one of 33 cargoes of No. 1 Hard Red Spring Wheat. About one-third of the 46 cargoes of No. 2 Hard Red Spring Wheat exceeded the 5 percent maximum limit proposed. In exports of Hard Red Winter Wheat, 85 percent of No. 1 grade and 13 percent of No. 2 grade cargoes exceeded the proposed maximum on total defects. A factor of "total defects" should contribute to the reduction of the amount of non-millable material in exports and will provide for a more accurate description of wheat shipped in foreign and domestic trade.

It is reasonable and realistic to establish a combined total tolerance for a group of defects which is less than the sum of the individual tolerances established for each defect. In fact this approach is a common one in grade standards and is incorporated in the U.S. grades for oats, barley, and many other products. This approach recognizes that the incidence of total defects and the composition of these defects are both important features in determining value and usability. In developing grade standards, it is quite customary to determine first what total content of defective units or other undesirable material is commercially acceptable and reasonable for a designated grade. Then, within this total limitation, individual tolerances or "stoppers" are specified for important factors. Establishing a total defect limit would make each numerical grade more meaningful because it will reduce the amount of variation of quality within each grade.

It is concluded that the adoption of this proposal will result in less non-millable material in top grades of wheat and will facilitate trade.

(e) Change the limits of shrunken and broken kernels from 5 percent to 3 percent for grade No. 1, and establish maximum limits of 12 percent and 20 percent, respectively, for grades No. 4 and No. 5. The findings clearly show that shrunken and broken kernels influence the value by reducing the quantity of whole millable kernels of wheat.

The problem of shrunken and broken kernels is most acute in Durum wheat, but the proposal to set the maximum limit for No. 1 grade at 3.0 percent would still permit almost 90 percent of the Durum wheat inspected to grade No. 1 on this factor. For the other classes the percent grading No. 1 on the factor shrunken and broken kernels would be even higher.

This proposed change should be adopted.

(f) Combine the tables of grade requirements for all classes of wheat. Heretofore 5 tables of grade requirements were given for the separate classes. Since the grades and grade requirements are practically the same for all classes of wheat the tables for all classes should be combined for the purpose of simplification.

(g) Change the minimum and maximum moisture limits for tough wheat. In the past, depending on the class, wheat with over 14 percent or 14.5 percent moisture was graded "tough" and if over 15.5 percent or 16 percent moisture was graded "Sample grade." The minimum moisture content for "tough" would be reduced to 13.5 percent for all classes, the maximum limit would be deleted, and the application of "Sample grade" based on moisture content would be discontinued.

The keeping quality of wheat depends on various factors—moisture content, temperature, amount and kinds of microorganisms present, and the initial soundness of the wheat. At moisture levels above about 12 percent, the rate of respiration in stored wheat increases and small differences in moisture content may account for large differences in keeping quality. At temperatures prevailing in summer in most of the wheat-producing areas of the U.S., wheat stored at moisture levels exceeding 13.5 percent will increase in fat acidity, will decrease in viability, and is in danger of developing germ damage characteristic of "sick" wheat. Musty odors will frequently develop after extended storage periods.

Scientific data indicate that the moisture limits heretofore provided for tough wheat in the standards are too high to assure safe storage or foreign shipment of wheat during the warm seasons of the year. A reduction of the maximum moisture limit to 13.5 percent for all classes of wheat would materially increase the safety with which wheat not grading "tough" can be stored or shipped.

Wheat storage is not confined to any geographical area and the danger of deterioration from high moisture should be recorded regardless of location. All wheat with more than 13.5 percent moisture should be graded "Tough wheat."

(h) Delete the provision for making smut dockage determinations on smutty wheat. This item is involved in the Pacific Northwest where for many years smutty wheat was scoured to remove the smut spores adhering to the surface of the wheat kernels. The material removed was called smut dockage. Varieties of wheat have now been developed that are practically smut free. In addition, the commercial practice of scouring to remove smut spores has been replaced by a washing process. Therefore, the smut-dockage method of appraising the quantity of smut in a lot of wheat should be discontinued.

(i) Provide a special grade of "Heavy Wheat" for all classes of wheat. In the past, the wheat standards defined only the minimum test weights permitted per grade and did not recognize superior test weights for any grade, except No. 1 Heavy Hard Red Spring Wheat. From the inception of grain grading, test weight has been recognized as an indicator of quality. It is concluded that the influence of superior test weight on quality should be recognized for grades 1, 2, and 3 for all classes of wheat.

(j) Except for the class Red Durum, change the maximum limit for wheat of other classes for grade No. 1 from 5 percent to 3 percent and provide limits for contrasting classes. In the past, the standards provided maximum limits (e.g. 0.5 percent, 1 percent, and 2 percent) for certain classes depending on the end use and ability to distinguish the classes on visual examination. The mixing of "wheat of other classes" into a specific lot tends to lower the value and usability of that lot of wheat.

The kernels of some classes of wheat are readily distinguishable from other classes and, therefore, are "contrasting classes." The proposal would make uniform maximum limits for contrasting classes in all grades. There was serious objection to this restriction as applied to soft red winter wheat and white wheat since the end use is similar. The proposal should be adopted with modifications so that (1) Soft Red Winter Wheat is not listed with the classes considered contrasting in White Wheat and (2) White Wheat is not listed with the classes considered contrasting in Soft Red Winter Wheat.

(k) Renumber or otherwise redesignate the sections and paragraphs of the standards in the interest of clarity and make other minor changes as proposed. One of the proposed minor changes would have redefined "Mixed Wheat". Modification of this proposed definition appears to be desirable in the interest of clarity and this definition should be adopted with such modification. The proposal to redesignate the sections and paragraphs of the standards and to make the other minor changes proposed are appropriate and should be adopted.

(l) Provide for determination by AMS of equipment and procedure to be used in making moisture tests. (In the past, the standards have provided by reference for the use of an air-oven test or "any method which gives equivalent results.")

The air-oven moisture test is accurate, but is so time consuming as to be impractical for routine inspection and has not been so used. The selection of a "method which gives equivalent results" as provided for in the past cannot be left to the judgment of individual licensed inspectors if uniformity of inspection results is to be achieved, and they are generally not informed of the availability and characteristics of moisture testing devices. The development of moisture testing devices capable of making quicker and more accurate moisture readings is constant, requiring continuing study and observation on the part of the Department, resulting in modification and change from time to time. This procedure is consistent with that followed in regard to other equipment used under the Act. This proposal should be adopted.

Therefore, under the authority of section 2 of the United States Grain Standards Act, as amended (7 U.S.C. 74) the Official Grain Standards of the United States for Wheat are revised to read as hereinafter set forth. Insofar as the revision differs from the proposals in the notice of rule-making, the differences are due to changes made as a result of comments of interested persons pursuant to the notice. It appears that public rule-making procedure with respect to such changes would not make additional information available to this Department.

Therefore under section 4 of the Administrative Procedure Act (5 U.S.C. 1003) it is found upon good cause that notice and other public rule-making procedure with respect to the changes are unnecessary and impracticable.

The revised standards are as follows:

Sec.
26.101 Terms defined.
26.102 Wheat.
26.103 Dockage.
26.104 Foreign material.
26.105 Other grains.
26.106 Damaged kernels.
26.107 Heat-damaged kernels.
26.108 Contrasting classes.
26.109 Shrunken and broken kernels.
26.110 0.064 x 3/8 oblong hole sieve.
26.111 Stones.
26.112 Defects.
26.113 Principles governing application of standards.
26.114 Basis of determination.
26.115 Percentages.
26.116 Moisture.
26.117 Test weight per bushel.
26.118 Classes.
26.119 Hard Red Spring Wheat.
26.120 Durum Wheat.
26.121 Red Durum Wheat.
26.122 Hard Red Winter Wheat.
26.123 Soft Red Winter Wheat.
26.124 White Wheat.
26.125 Mixed Wheat.
26.126 Grades.
26.127 Numerical grades and Sample grade and grade requirements.
26.128 Special grades, special grade requirements, and special grade designations.
26.129 Grade designations for all classes and subclasses of wheat.

§ 26.101 Terms defined.

For the purposes of the Official Grain Standards of the United States for Wheat, the terms specified in § 26.102 through § 26.112 shall have the meanings stated in said sections respectively.

§ 26.102 Wheat.

Wheat shall be the grain of common wheat, club wheat, and durum wheat which, before the removal of the dockage, consists of 50 percent or more of one or more of these wheats and not more than 10.0 percent of other grains for which standards have been established under the United States Grain Standards Act and which, after the removal of the dockage, contains 50 percent or more of whole kernels of one or more of these wheats.

§ 26.103 Dockage.

Dockage shall be weed seeds, weed stems, chaff, straw, grain other than wheat, sand, dirt, and any other material other than wheat, which can be removed readily from the wheat by the use of appropriate sieves and cleaning devices; also underdeveloped, shriveled, and small pieces of wheat kernels removed in properly separating the material other than wheat and which cannot be recovered by properly rescreening or recleaning. (See also §§ 26.115 and 26.129.)

§ 26.104 Foreign material.

Foreign material shall be all matter other than wheat which is not separated from the wheat in the proper determination of dockage.

§ 26.105 Other grains.

Other grains shall be rye, oats, corn, grain sorghum, barley, hull-less barley, flaxseed, ommer, spelt, einkorn, Polish wheat, poulard wheat, cultivated buckwheat, and soybeans.

§ 26.106 Damaged kernels.

Damaged kernels shall be kernels and pieces of kernels of wheat and other grains which are heat damaged, sprouted, frosted, badly ground damaged, badly weather damaged, moldy, diseased, or otherwise materially damaged.

§ 26.107 Heat-damaged kernels.

Heat-damaged kernels shall be kernels and pieces of kernels of wheat and other grains which have been materially discolored and damaged by heat.

§ 26.108 Contrasting classes.

Contrasting classes shall be (a) Durum Wheat, Red Durum Wheat, and White Wheat in the classes Hard Red Spring Wheat and Hard Red Winter Wheat; (b) Hard Red Spring Wheat, Red Durum Wheat, Hard Red Winter Wheat, Soft Red Winter Wheat, and White Wheat in the class Durum Wheat; (c) Durum Wheat and Red Durum Wheat in the class Soft Red Winter Wheat; and (d) Durum Wheat, Red Durum Wheat, Hard Red Spring Wheat, and Hard Red Winter Wheat in the class White Wheat.

§ 26.109 Shrunken and broken kernels.

Shrunken and broken kernels shall be all kernels and pieces of kernels of wheat and other matter that will pass readily through a 0.064 x 3/8 oblong hole sieve.

§ 26.110 0.064 x 3/8 oblong hole sieve.

A 0.064 x 3/8 oblong hole sieve shall be a metal sieve 0.0319 inch thick perforated with oblong holes 0.064 inch wide by 3/8 (0.375) inch long which are 1/8 (0.1250) inch from center to center and with 0.0525 inch end bridges. The perforations shall be staggered in relation to the adjacent rows.

§ 26.111 Stones.

Stones shall be concreted earthy or mineral matter and other substances of similar hardness that do not disintegrate readily in water.

§ 26.112 Defects.

Defects shall include damaged kernels, foreign material, and shrunken and broken kernels.

§ 26.113 Principles governing application of standards.

The principles stated in § 24.114 through § 26.117 shall apply in the determination of the classes and grades of wheat.

§ 26.114 Basis of determination.

Each determination of dockage, moisture, temperature, odor, garlic, live weevils or other insects injurious to stored grain, and distinctly low quality shall be upon the basis of the grain as a whole. All other determinations shall be upon the basis of the grain when free from dockage.

§ 26.115 Percentages.

All percentages shall be upon the basis of weight. Percentages except for dockage shall be expressed in whole and tenth percent to the nearest tenth of a percent. The percentage of dockage when equal to one-half percent or more shall be stated in terms of half percent, whole percent, or whole and half percent, as the case may be, with other fractions disregarded as shown in the following examples: Dockage ranging from 0.5 to 0.9 percent shall be expressed as 0.5 percent, from 1.0 to 1.4 percent as 1.0 percent, from 1.5 to 1.9 percent as 1.5 percent, etc.

§ 26.116 Moisture.

Moisture shall be ascertained by use of the equipment and procedure prescribed by the Agricultural Marketing Service, United States Department of Agriculture. (Information thereon may be obtained from said Service.)

§ 26.117 Test weight per bushel.

Test weight per bushel shall be the weight per Winchester bushel as determined by the method prescribed by the United States Department of Agriculture, as described in Circular No. 921 issued June 1953. Test weight per bushel shall be expressed to the nearest tenth of a pound.

§ 26.118 Classes.

Wheat shall be divided into the following seven classes: Hard Red Spring Wheat, Durum Wheat, Red Durum Wheat, Hard Red Winter Wheat, Soft Red Winter Wheat, White Wheat, and Mixed Wheat.

§ 26.119 Hard Red Spring Wheat.

The class Hard Red Spring Wheat shall include all varieties of hard red spring wheat. This class shall be divided into the following three subclasses:

(a) *Dark Northern Spring Wheat.* The subclass Dark Northern Spring Wheat shall be Hard Red Spring Wheat with 75 percent or more of dark, hard, and vitreous kernels.

(b) *Northern Spring Wheat.* The subclass Northern Spring Wheat shall be Hard Red Spring Wheat with 25 percent or more but less than 75 percent of dark hard, and vitreous kernels.

(c) *Red Spring Wheat.* The subclass Red Spring Wheat shall be Hard Red Spring Wheat with less than 25 percent of dark, hard, and vitreous kernels.

§ 26.120 Durum Wheat.

The class Durum Wheat shall include all varieties of white (amber) Durum Wheat. This class shall be divided into the following three subclasses:

(a) *Hard Amber Durum Wheat.* The subclass Hard Amber Durum Wheat shall be Durum Wheat with 75 percent or more of hard and vitreous kernels of amber color.

(b) *Amber Durum Wheat.* The Subclass Amber Durum Wheat shall be Durum Wheat with 60 percent or more but less than 75 percent of hard and vitreous kernels of amber color.

(c) *Durum Wheat.* The subclass Durum Wheat shall be Durum Wheat with less than 60 percent of hard and vitreous kernels of amber color.

§ 26.121 Red Durum Wheat.

The class Red Durum Wheat shall include all varieties of red durum wheat. There are no subclasses in this class.

§ 26.122 Hard Red Winter Wheat.

The class Hard Red Winter Wheat shall include all varieties of hard red winter wheat. This class shall be divided into the following three subclasses:

(a) *Dark Hard Winter Wheat.* The subclass Dark Hard Winter Wheat shall be Hard Red Winter Wheat with 75 percent or more of dark, hard, and vitreous kernels.

(b) *Hard Winter Wheat.* The subclass Hard Winter Wheat shall be Hard Red Winter Wheat with 40 percent or more but less than 75 percent of dark, hard, and vitreous kernels.

(c) *Yellow Hard Winter Wheat.* The subclass Yellow Hard Winter Wheat shall be Hard Red Winter Wheat with less than 40 percent of dark, hard, and vitreous kernels.

§ 26.123 Soft Red Winter Wheat.

The class Soft Red Winter Wheat shall include all varieties of soft red winter wheat. There are no subclasses in this class.

§ 26.124 White Wheat.

The class White Wheat shall include all varieties of white wheat. This class shall be divided into the following four subclasses:

(a) *Hard White Wheat.* The subclass Hard White Wheat shall be White Wheat with 75 percent or more of hard kernels and may contain not more than 10.0 percent of wheat of the white club varieties.

(b) *Soft White Wheat.* The subclass Soft White Wheat shall be White Wheat with less than 75 percent of hard kernels and may contain not more than 10.0 percent of wheat of the white club varieties.

(c) *White Club Wheat.* The subclass White Club Wheat shall be White Wheat consisting of wheat of the white club varieties and may contain not more than 10.0 percent of other white wheat.

(d) *Western White Wheat.* The subclass Western White Wheat shall be White Wheat containing more than 10.0 percent of wheat of the white club varieties and more than 10.0 percent of other white wheat.

§ 26.125 Mixed Wheat.

The class Mixed Wheat shall be any mixture of wheat which consists of one of the following:

(a) Two or more classes each of which constitutes more than 10.0 percent of the mixture; or

(b) One class that constitutes more than 10.0 percent and two or more other classes in combination that exceed 10.0 percent of the mixture; or

(c) Several classes none of which constitutes 10.0 percent or more of the mixture but which combined meet the definition for wheat.

§ 26.126 Grades.

Grades shall be the numerical grades, Sample grade, and special grades provided for in § 26.127 and § 26.128.

§ 26.127 Numerical grades and Sample grade and grade requirements.

(a) *Numerical grades and Sample grade and grade requirements for all classes of wheat except Mixed Wheat* (see also § 26.128).

Grade	Minimum test weight per bushel		Maximum limits of—						
			Defects					Wheat of other classes [1]	
	Hard Red Spring Wheat	All other classes	Heat-damaged kernels	Damaged kernels (total)	Foreign material	Shrunken and broken kernels	Defects (total)	Contrasting classes	Wheat of other classes (total)
	Pounds	*Pounds*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*
1	58.0	60.0	0.1	2.0	0.5	3.0	3.0	0.5	3.0
2	57.0	58.0	0.2	4.0	1.0	5.0	5.0	1.0	5.0
3	55.0	56.0	0.5	7.0	2.0	8.0	8.0	2.0	10.0
4	53.0	54.0	1.0	10.0	3.0	12.0	12.0	10.0	10.0
5	50.0	51.0	3.0	15.0	5.0	20.0	20.0	10.0	10.0

Sample grade: Sample grade shall be wheat which does not meet the requirements for any of the grades from No. 1. to No. 5, inclusive; or which contains stones; or which is musty, or sour, or heating; or which has any commercially objectionable foreign odor except of smut or garlic; or which contains a quantity of smut so great that any one or more of the grade requirements cannot be applied accurately; or which is otherwise of distinctly low quality.

[1] Red Durum Wheat of any grade may contain not more than 10.0 percent of wheat of other classes.

(b) *Numerical grades and Sample grade and grade requirements for Mixed Wheat.* (See also § 26.128.) Mixed Wheat shall be graded according to the numerical and Sample grade requirements of the class of wheat which predominates in the mixture, except that the factor "wheat of other classes" shall be disregarded.

§ 26.128 Special grades, special grade requirements, and special grade designations.

(a) *Tough wheat*—(1) *Requirements.* Tough wheat shall be wheat which contains more than 13.5 percent of moisture.

(2) *Grade designation.* Tough wheat shall be graded and designated according to the grade requirements of the standards applicable to such wheat if it were not tough, and there shall be added to and made a part of the grade designation the word "Tough."

(b) *Smutty wheat*—(1) *Requirements.* Smutty wheat shall be wheat which has an unmistakable odor of smut or which contains balls, portions of balls, or spores, of smut in a quantity equivalent to more than 14 balls of average size in 250 grams of wheat.

(2) *Grade designation.* Smutty wheat shall be graded and designated according to the grade requirements of the standards applicable to such wheat if it were not smutty; and

(i) In the case of smutty wheat which has an unmistakable odor of smut, or which contains balls, portions of balls, or spores, of smut, in excess of a quantity equal to 14 balls but not in excess of a quantity equal to 30 balls of average size in 250 grams of wheat, there shall be added to and made a part of the grade designation the words "Light Smutty"; and

(ii) In the case of smutty wheat which contains balls, portions of balls, or spores, of smut, in excess of a quantity equal to 30 balls of average size in 250 grams of wheat, there shall be added to and made a part of the grade designation the word "Smutty."

(c) *Garlicky wheat* — (1) *Requirements.* Garlicky wheat shall be wheat which contains two or more green garlic bulblets, or an equivalent quantity of dry or partly dry bulblets, in 1,000 grams of wheat.

(2) *Grade designation.* Garlicky wheat shall be graded and designated according to the grade requirements of the standards applicable to such wheat if it were not garlicky; and

(i) In the case of garlicky wheat which contains two or more but not more than six green garlic bulblets, or an equivalent quantity of dry or partly dry bulblets, in 1,000 grams of wheat, there shall be added to and made a part of the grade designation the words "Light Garlicky"; and

(ii) In the case of garlicky wheat which contains more than six green garlic bulblets, or an equivalent quantity of dry or partly dry bulblets, in 1,000 grams of wheat, there shall be added to and made a part of the grade designation the word "Garlicky."

(d) *Weevily wheat* — (1) *Requirements.* Weevily wheat shall be wheat which is infested with live weevils or other insects injurious to stored grain.

(2) *Grade designation.* Weevily wheat shall be graded and designated according to the grade requirements of the standards applicable to such wheat if it were not weevily, and there shall be added to and made a part of the grade designation the word "Weevily."

(e) *Ergoty wheat*—(1) *Requirements.* Ergoty wheat shall be wheat which contains more than 0.3 percent of ergot.

(2) *Grade designation.* Ergoty wheat shall be graded and designated according to the grade requirements of the standards applicable to such wheat if it were not ergoty, and there shall be added to and made a part of the grade designation the word "Ergoty."

(f) *Treated wheat*—(1) *Requirements.* Treated wheat shall be wheat which has been scoured, limed, washed, sulfured, or treated in such a manner that the true quality is not reflected by either the numerical grade or the Sample grade designation alone.

(2) *Grade designation.* Treated wheat shall be graded and designated according to the grade requirements of the standards applicable to such wheat if it were not treated, and there shall

be added to and made a part of the grade designation a statement indicating the kind of treatment.

(g) *Heavy wheat*—(1) *Requirements.* Heavy wheat shall be (i) Hard Red Spring Wheat of grades No. 1, No. 2, and No. 3 which has a test weight per bushel of 60 pounds or more, or (ii) any other class of wheat of grades No. 1, No. 2, and No. 3 which has a test weight per bushel of 62 pounds or more.

(2) *Grade designation.* Heavy wheat shall be graded and designated according to the grade requirements of the standards applicable to such wheat if it were not heavy, and there shall be added to and made a part of the grade designation preceding the name of the class or subclass, as the case may be, the word "Heavy."

§ 26.129 Grade designation for all classes and subclasses of wheat.

(See also § 26.128). The grade designation for wheat shall include in the order named the number of the grade or the words "Sample grade," as the case may be; the name of the applicable subclass, or in the case of Red Durum Wheat, Soft Red Winter Wheat, and Mixed Wheat, the name of the class; the name of each applicable special grade; and when applicable the word "dockage" together with the percentage thereof. In the case of Western White Wheat, the grade designation shall also include, following the name of the subclass, the name and percentage of white club wheat and other white wheat in the mixture. In the case of Mixed Wheat, the grade designation shall also include, following the name of the class, the name and percentage of hard red spring, durum, red durum, hard red winter, soft red winter, and white wheat, if any, contained in the mixture.

The foregoing standards supersede the official grain standards of the United States for wheat as amended effective June 15, 1957, and shall become effective May 1, 1964.

Done at Washington, D.C., this 22d day of January 1964.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 64–752; Filed, Jan. 24, 1964; 8:50 a.m.]

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

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

[Amdt. 6]

PART 724 — BURLEY, FLUE-CURED, FIRE-CURED, DARK AIR-CURED, VIRGINIA SUN-CURED, CIGAR-BINDER (TYPES 51 AND 52), CIGAR-FILLER AND BINDER (TYPES 42, 43, 44, 53, 54, AND 55) AND MARYLAND TOBACCO ALLOTMENT AND MARKETING QUOTA REGULATIONS, 1963–64 AND SUBSEQUENT MARKETING YEARS

Subpart—Tobacco Allotment and Marketing Quota Regulations, 1963–64 and Subsequent Marketing Years

(a) *Basis and purpose.* This amendment to the above designated regulations (27 F.R. 8937, 9211, 10743; 28 F.R. 7757, 8018, 9144, 11049) is issued pursuant to the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et seq.). The purpose of the amendment is to revise the regulations to make uniform for all kinds of tobacco the percentage of the acreage available for allotments which may be reserved to make equitable adjustments, to correct errors, and to provide allotments for overlooked farms. As tobacco farmers are now making plans for the production in 1964 of all kinds of tobacco, and cannot complete such plans until informed of their tobacco allotments for such year and this amendment affects the determination of such allotments, it is essential that the amendment be made effective at the earliest possible date. Accordingly, it is hereby found and determined that compliance with the notice, public procedure and effective date requirements of section 4 of the Administrative Procedure Act (5 U.S.C. 1003) is impractical and contrary to the public interest, and the amendment contained herein shall become effective upon publication in the FEDERAL REGISTER.

(b) *The amendment.* Section 724.57, as amended, of the above designated regulations is hereby amended by revising the second sentence thereof to read: "Not to exceed two percent of the total acreage for the respective kind of tobacco allotted to all tobacco farms in the State for the preceding year shall be made available in the State by the State Committee, with the approval of the Deputy Administrator, for increasing allotments as described above in this section, for correcting errors, and for providing allotments for overlooked farms."

(Secs. 313, 375, 52 Stat. 47, as amended, 66, as amended; 7 U.S.C. 1313, 1375)

Effective date: Date of publication in the FEDERAL REGISTER.

Signed at Washington, D.C., on January 24, 1964.

H. D. GODFREY,
Administrator, Agricultural Stabilization and Conservation Service.

[F.R. Doc. 64–852; Filed, Jan. 24, 1964; 11:34 a.m.]

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

[Navel Orange Reg. 48]

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

Limitation of Handling

§ 907.348 Navel Orange Regulation 48.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907; 27 F.R. 10087), regulating the handling of navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such navel oranges as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on January 23, 1964.

(b) *Order.* (1) The respective quantities of navel oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a.m., P.s.t., January 26, 1964, and ending at 12:01 a.m., P.s.t, February 2, 1964, are hereby fixed as follows:

(i) District 1: 950,000 cartons;
(ii) District 2: 325,000 cartons;
(iii) District 3: Unlimited movement;
(iv) District 4: Unlimited movement.

(2) As used in this section, "handled," "District 1," "District 2," "District 3,"

"District 4," and "carton" have the same meaning as when used in said amended marketing agreement and order.

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

Dated: January 24, 1964.

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

[F.R. Doc. 64–851; Filed, Jan. 24, 1964; 11:25 a.m.]

[Lemon Reg. 94]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.394 **Lemon Regulation 94.**

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910; 27 F.R. 8346), regulating the handling of lemons grown in California and Arizona, 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 recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on January 21, 1964.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period beginning at 12:01 a.m., P.s.t., January 26, 1964, and ending at 12:01 a.m., P.s.t., February 2, 1964, are hereby fixed as follows:

(i) District 1: 11,160 cartons;

(ii) District 2: 153,450 cartons;

(iii) District 3: Unlimited movement.

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

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

Dated: January 23, 1964.

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

[F.R. Doc. 64–773; Filed, Jan. 24, 1964; 8:51 a.m.]

PART 917—FRESH BARTLETT PEARS, PLUMS, AND ELBERTA PEACHES GROWN IN CALIFORNIA

Changes in Representation of Certain Districts on Commodity Committee

Notice was publised in the FEDERAL REGISTER issue of January 10, 1964 (29 F.R. 266), that the Department was giving consideration to proposed amendments to the rules and regulations (Subpart—Rules and Regulations; 7 CFR 917.100–917.179) currently in effect pursuant to the marketing agreement, as amended, and Order No. 917, as amended (7 CFR Part 917), regulating the handling of Bartlett pears, plums, and Elberta peaches grown in California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

After consideration of all relevant matters presented, including the proposal set forth in the aforesaid notice which was submitted by the Control Committee (established pursuant to said amended marketing agreement and order as the agency to administer the provisions thereof), it is hereby found that the amendment, as hereinafter set forth, of the said rules and regulations is in accordance with the provisions of the said amended marketing agreement and order and will tend to effectuate the declared purposes of the Agricultural Marketing Agreement Act of 1937, as amended. Such amendment is hereby approved; and the said rules and regulations are amended as follows:

1. Delete § 917.116 and substitute therefor the following:

§ 917.116 **Changes in representation of certain districts on Bartlett Pear Commodity Committee.**

The representation or membership on the Bartlett Pear Commodity Committee is changed to provide for:

(a) One (1) member to represent the North Sacramento Valley District and the Central Sacramento Valley District;

(b) Three (3) members to represent the Sacramento River District, Stockton District, Contra Costa District, Santa Clara District, and Solano District;

(c) One (1) member to represent the Placer District and the Colfax District;

(d) Four (4) members to represent the Lake District;

(e) One (1) member to represent the North Coast District and the North Bay District;

(f) Two (2) members to represent the El Dorado District; and all of the area not included in the North Sacramento Valley District, Central Sacramento Valley District, Colfax District, Placer District, Sacramento River District, Stockton District, Solano District, Contra Costa District, Santa Clara District, Lake District, North Coast District, and North Bay District.

It is hereby further found 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. 1001–1011) in that (1) changes in the representation of districts on the commodity committees are required to be based, insofar as practicable, on shipments of fruit during the past 3 seasons; (2) accurate information concerning such shipments was not available to the Department until December 8, 1963; (3) notice that consideration was being given to the proposed amendment was issued on January 6, 1964, and published in the FEDERAL REGISTER on January 10, 1964; (4) nominations for membership on the commodity committees are required to be made not later than February 15 of each year; and (5) it is necessary that this amendment be made effective as soon as practicable in order that the required nomination meetings may be scheduled and nominations made prior to such date.

Dated: January 22, 1964, to become effective upon publication in the FEDERAL REGISTER.

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

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

[F.R. Doc. 64–753; Filed, Jan. 24, 1964; 8:51 a.m.]

[Grapefruit Reg. 6, Amdt. 2]

PART 944—FRUIT; IMPORT REGULATIONS

Grapefruit

Pursuant to the provisions of section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the provisions of paragraph (a) of Grapefruit Regulation 6, as amended (§ 944.102; 28 F.R. 9877, 29 F.R. 311), are hereby further amended to read as follows:

§ 944.102 **Grapefruit Regulation No. 6.**

(a) On and after 12:01 a.m., e.s.t., January 29, 1964, the importation of any

grapefruit is prohibited unless such grapefruit are inspected and meet the following applicable requirements:

(1) Seeded grapefruit shall grade at least U.S. No. 1 Russet and be of a size not smaller than 3 15/16 inches in diameter, except that a tolerance of 10 percent, by count, of seeded grapefruit smaller than such minimum size shall be permitted which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in the United States Standards for Florida Grapefruit;

(2) Seedless grapefruit, other than pink seedless grapefruit, shall grade at least U.S. No. 1 Russet and be of a size not smaller than 3 7/16 inches in diameter, except that a tolerance of 10 percent, by count, of seedless grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in the United States Standards for Florida Grapefruit; and

(3) Pink seedless grapefruit shall grade at least U.S. No. 2 and be of a size not smaller than 3 7/16 inches in diameter, except that a tolerance of 10 percent, by count, of seedless grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in the United States Standards for Florida Grapefruit.

* * * * *

It is hereby found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective time of this amendment beyond that hereinafter specified (5 U.S.C. 1001–1011) in that (a) the requirements of this amended import regulation are imposed pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), which makes such regulation mandatory; (b) such regulation imposes the same restrictions on imports of all grapefruit as the grade and size restrictions being made applicable to the shipment of all grapefruit grown in Florida under Grapefruit Regulation 34 (§ 905.407); (c) compliance with this amended import regulation will not require any special preparation which cannot be completed by the effective time hereof; and (d) this amendment relieves restrictions on the importation of grapefruit.

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

Dated January 22, 1964, to become effective at 12:01 a.m., e.s.t., January 29, 1964.

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

[F.R. Doc. 64-799; Filed, Jan. 24, 1964; 8:51 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter II—Civil Aeronautics Board

SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. No. ER-399]

PART 298—CLASSIFICATION AND EXEMPTION OF AIR TAXI OPERATORS

Limitation Upon Exemption

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 22d day of January 1964.

A notice of proposed rule making was published in the FEDERAL REGISTER on November 30, 1963 (28 F.R. 12767) and circulated to the industry as EDR–63, Docket 14885, proposing amendments to Part 298 of the Economic Regulations (14 CFR Part 298) which would revise §§ 298.3 and 298.11 thereof to limit the exemption of air taxi operators from sections 408(a) and 409(a) of the Federal Aviation Act of 1958 so as to exclude from exemption certain transactions or relationships with any air carrier which holds a certificate of public convenience and necessity.

Interested persons have been afforded an opportunity to participate in the formulation of the proposed amendments, and due consideration has been given to all relevant matter presented. The two comments on the proposed amendments which were submitted do not express any objections to the proposed rule.

Accordingly, the Board hereby amends Part 298 of the Economic Regulations (14 CFR Part 298), effective February 24, 1964, as follows:

1. By amending § 298.3(a)(1) to read as follows:

§ 298.3 Classification.

(a) * * *

(1) Do not, directly or indirectly, utilize large aircraft in air transportation.

* * * * *

2. By amending § 298.11 (g) and (h) to read as follows:

§ 298.11 Exemption authority.

* * * * *

(g) Subsection 408(a); except that no exemption is granted hereby for any air taxi operator to enter into any of the transactions or relationships prohibited by subsection 408(a) with any person who operates large aircraft for compensation or hire, or who engages in air transportation from which the air taxi operator is excluded by the limitations imposed by § 298.21.

NOTE: For additional exemptions from section 408(a) applicable to air taxi operators, see Part 299 of the Board's Economic Regulations.

(h) Subsection 409(a); except that no exemption is granted hereby for any air taxi operator to enter into any of the relationships prohibited by subsection 409(a) with any person who operates large aircraft for compensation or hire, or who engages in air transportation from which the air taxi operator is excluded by the limitations imposed by § 298.21.

* * * * *

(Secs. 204(a) and 416(b) of the Federal Aviation Act of 1958; 72 Stat. 743, 771; 49 U.S.C. 1324, 1386)

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 64-750; Filed, Jan. 24, 1964; 8:50 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket No. 8567]

PART 13—PROHIBITED TRADE PRACTICES

James B. Tompkins et al.

Subpart—Advertising falsely or misleadingly: § 13.195 *Safety;* § 13.195–600 *Product.* Subpart—Furnishing means and instrumentalities of misrepresentation or deception: § 13.1055 *Furnishing means and instrumentalities of misrepresentation or deception.* Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1890 *Safety.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, James B. Tompkins (Los Angeles, Calif.) et al., Docket 8567, Dec. 5, 1963]

In the Matter of James B. Tompkins, an Individual, and Stalco Products Corporation, a Corporation, and William Houle, and Donald R. Tugwell, as Individuals and as Officers of Said Corporation

Order issued in default requiring the California manufacturer and distributors of a toy product designated "Arch-a-Ball"—consisting of a head band holding a transparent visor over the upper face and eyes and with an inflatable plastic ball attached to the center front by a rubber string, to be punched like a punching bag—to cease representing that the toy was safe for use by such practices as furnishing to dealers window posters and other advertising containing depictions of a child using the toy, and placing the depictions also on the display containers along with the statement: "Simple-Safe-Durable", when the toy was not hazard free due to the possibility of injury to the user's eyes or face in the event of breaking or shattering of the eye shield.

The order to cease and desist is as follows:

It is ordered, That respondents James B. Tompkins, an individual, Stalco Products Corporation, a corporation, and its

officers, and William Houle and Donald R. Tugwell, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of a toy product designated "Arch-a-Ball", or any other product of similar construction or having substantially similar properties, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that such product is safe or is free from hazard, or that the purchaser may use it without risk of injury.

2. Failing to clearly and conspicuously disclose on the container in which the product is sold that the visor or eye shield may break or shatter and thereby cause injury to the eyes or face of the user.

3. Furnishing or placing in the hands of jobbers, retailers or dealers in said products the means and instrumentalities by and through which they may deceive or mislead the public in the manner or as to the things hereinabove prohibited.

By "Final Order", report of compliance was required as follows:

It is further ordered, That respondents Stalco Products Corporation, a corporation, and James B. Tompkins, William Houle, and Donald R. Tugwell shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist set forth in the initial decision.

Issued: December 5, 1963.

By the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 64-712; Filed, Jan. 24, 1964; 8:45 a.m.]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

RESINOUS AND POLYMERIC COATINGS

The Commissioner of Food and Drugs, having evaluated the data submitted in a petition (FAP 1263) filed by Humble Oil and Refining Company, Houston 1, Texas, and other relevant material, has concluded that the food additive regulations should be amended to include test procedures for determining the amount of extractives from resinous and polymeric coatings intended for use in contact with nonacid, aqueous foods (§ 121.2514(d), Table 1, food type I) that are filled and stored at room temperature with no subsequent thermal treatment in the container (§ 121.2514(d), Table 2, condition of use E). 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), paragraph (d) of § 121.2514 *Resinous and polymeric coatings* is amended by adding to Table 2, Item E, food types "II, IV-B, VI-B", the additional food type "I".

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: January 21, 1964.

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

[F.R. Doc. 64-729; Filed, Jan. 24, 1964; 8:47 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 204—DANGER ZONE REGULATIONS

Pacific Ocean in the Vicinity of Point Mugu, Calif., Naval Small Arms Firing Range; Correction

F.R. Document 63-5119, appearing at 28 F.R. 4783, May 14, 1963, is corrected to show the reading of latitude in the fourth line of § 204.201a(b)(4) to be 34°05'32".

[Letter, ENGCW-ON, January 15, 1964] (Sec. 7, 40 Stat. 266; 33 U.S.C. 1)

J. C. LAMBERT,
Major General, U.S. Army,
The Adjutant General.

[F.R. Doc. 64-705; Filed, Jan. 24, 1964; 8:45 a.m.]

Title 20—EMPLOYEES' BENEFITS

Chapter V—Bureau of Employment Security, Department of Labor

PART 604—POLICIES OF THE UNITED STATES EMPLOYMENT SERVICE

Occupational Testing and Industrial Services

Pursuant to authority in section 12 of the Wagner-Peyser Act (29 U.S.C. 49k), Reorganization Plan No. 2 of 1949 (3 CFR 1949-53 Comp., p. 998), and 20 CFR 602.21, I hereby amend 20 CFR 604.10 and 604.11 as set forth below.

As these regulations provide statements of general policy, notice of proposed rule making, public participation in their adoption, and delay in their effective date are excepted from the requirements of the Administrative Procedure Act (5 U.S.C. 1003). I do not believe that such procedure will serve a useful purpose here. Accordingly, these amendments shall become effective immediately.

1. Paragraph (a) of 20 CFR 604.10 is revised to read as follows:

§ 604.10 **Occupational testing.**

It is the policy of the United States Employment Service:

(a) To use objective tests and related techniques, as needed, for the measurement of skills, aptitudes, and interests (1) in the employment counseling and placement of applicants; (2) in the employment counseling of high school students who are planning to enter the Labor market upon graduation from high school; (3) in the selection of employed workers being considered by management for training in shortage occupations involved in new operations within the plant; and (4) in the selection of apprentices, State civil service candidates for job orders placed with the Employment Service, and candidates for admission to training in nonprofit technical and vocational schools, when cooperative arrangements have been established which provide full opportunity for the Employment Service to make referrals also from its own applicant supply.

2. Section 604.11 of 20 CFR Part 604 is revised to read as follows:

§ 604.11 **Industrial services.**

It is the policy of the United States Employment Service:

(a) To cooperate with employers, educational and training institutions, labor organizations, other government agencies, and community groups in resolving their manpower problems concerned with the recruitment, development, utilization, and stabilization of the work force, through the use of employment service materials, techniques, and related information.

(b) To apply only those materials, techniques and related information that have been developed by or are recommended by the United States Employment Service.

(c) To provide maximum assistance to employers who are experiencing, or are in danger of experiencing, multiple manpower problems that are likely to affect the work force.

(d) To train representatives of hiring establishments in employment service techniques, such as job analysis, rather than perform the actual services, except in connection with employment problems related to (1) entry jobs, hard-to-fill jobs, trainee jobs, or new jobs; or (2) firms with multiple manpower problems.

(e) To refrain from participation or involvement in wage disputes or bargaining agreements.

(48 Stat. 113, as amended; 29 U.S.C. 49k)

Signed at Washington, D.C., this 21st day of January 1964.

ROBERT C. GOODWIN,
Administrator,
Bureau of Employment Security.

[F.R. Doc. 64-717; Filed, Jan. 24, 1964; 8:46 a.m.]

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

PART 545—HOMEWORKERS IN THE FABRIC AND LEATHER GLOVE INDUSTRY; THE HANDKERCHIEF, SCARF, AND ART LINEN INDUSTRY; THE CHILDREN'S DRESS AND RELATED PRODUCTS INDUSTRY; THE WOMEN'S AND CHILDREN'S UNDERWEAR AND WOMEN'S BLOUSE INDUSTRY; THE NEEDLEWORK AND FABRICATED TEXTILE PRODUCTS INDUSTRY; AND THE SWEATER AND KNIT SWIMWEAR INDUSTRY IN PUERTO RICO

PART 681—HOMEWORKERS IN CERTAIN INDUSTRIES IN PUERTO RICO

Miscellaneous Amendments

On December 7, 1963, a notice proposing to change the piece rates contained in Schedules A and B of 29 CFR 545.13 and those contained in 29 CFR 681.9(b) was published in the FEDERAL REGISTER (28 F.R. 13312-13315). Interested persons were given 15 days to file written statements of data, views, and argument in regard to the proposal. After considering all relevant matter submitted, I have decided to and do hereby adopt the proposal, subject to the following typographical correction: Item "164" of Schedule B, 29 CFR 545.13 is amended by changing the rate "19.79" cents to "19.97" cents.

As these amendments merely articulate changed piece rates already in effect pursuant to 29 CFR 545.9 and 681.9(a), good cause is hereby found to make them effective without delay and they shall be effective immediately.

Signed at Washington, D.C., this 21st day of January 1964.

CLARENCE T. LUNDQUIST,
Administrator.

1. Section 545.13 of 29 CFR Part 545 would be amended to read as follows:

§ 545.13 Piece rates established in accordance with § 545.9.

SCHEDULE A—PIECE RATE SCHEDULE FOR THE WOMEN'S AND CHILDREN'S UNDERWEAR AND WOMEN'S BLOUSE INDUSTRY AND THE CHILDREN'S DRESS AND RELATED PRODUCTS INDUSTRY IN PUERTO RICO [1]

No.	Operation	Women's and children's underwear and women's blouse industry		Children's dress and related products industry	Unit of payment
		Blouses and neckwear and silk and synthetic underwear and nightwear	Cotton underwear and nightwear		
		(1)	(2)	(3)	
		Cents	*Cents*	*Cents*	
1	Arenilla (seed stitch), close, ½" squares	93.60	84.24	90.00	Per dozen squares.
2	Arenilla (seed stitch), scattered, ½" squares	46.80	42.12	45.00	Do.
3	Arrows, filled in, ¼"	23.40	21.06	22.50	Per dozen.
4	Back stitch on yokes, armholes, etc	[2] 52.00	[2] 46.80	63.33	Per yard.
5	Basting bias with cord	25.74	23.17	24.75	Do.
6	Basting darts before sewing	[2] 27.14	[2] 24.44	33.25	Do.
7	Basting for fagoting	7.04	6.34	6.77	Do.
8	Basting hems, 1" to 6" wide	[2] 15.60	[2] 14.04	19.00	Do.
9	Basting lace incidental to sewing on lace with solid cord stitch.	13.49	12.13	12.96	Do.
10	Basting waist lines, plackets, and facings, 2 to 3 stitches per inch.	[2] 9.76	[2] 8.79	11.90	Do.
11	Bias piping, joined, double, over 10 stitches per inch.	31.20	28.08	30.00	Do.
12	Bias piping, joined, single, over 10 stitches per inch.	39.00	35.10	37.50	Do.
13	Bias piping, second seam joined double, set flat on garment with running stitch.	47.01	42.31	45.20	Do.
14	Blanket stitch, folding included, 18 stitches per inch.	88.40	79.56	85.00	Do.
15	Buttons sewed on with double thread, 2 to 3 stitches.	[2] 10.19	[2] 9.17	12.37	Per dozen.
16	Buttonhole, stamped, 3/8" long	[2] 33.64	[2] 30.28	40.93	Do.
17	Buttonhole, stamped, ½" long	[2] 44.72	[2] 40.25	54.52	Do.
18	Buttonhole stitch, close	70.20	63.18	67.50	Per yard.
19	Buttonhole stitch for joining seams	70.20	63.18	67.50	Do.
20	Cord, twisted, over basting	7.80	7.02	7.50	Per dozen inches.
21	Cutting material applied over lace with solid cord stitch.	10.69	9.62	10.29	Per yard.
21.1	Hand cutting material over lace applique or other material and at edges of garment following machine embroidered cord, large outline, around scallops measuring 1" or more.	1.95	----------	----------	Do.
21.2	Hand cutting material over lace applique or other material and at edges of garment following machine embroidered cord, small outline around scallops measuring less than 1".	4.38	----------	----------	Do.
22	Cutting material under lace or at seams, straight outline, following hand-sewing operation.	4.39	3.95	4.21	Do.
22.1	Cutting material under lace or at seams, straight outline, following machine operations (formerly operation No. 93).	5.37	5.37	5.33	Do.
22.2	Hand cutting material underneath straight or nearly straight outline.	1.49	----------	----------	Do.
22.3	Hand cutting material underneath irregular outline.	2.22	----------	----------	Do.
23	Dots, baby, not finished off, 2 to 3 stitches	6.50	5.86	6.25	Per dozen.
24	Dots, medium, not filled in, finished off, 8 to 9 stitches.	10.30	9.27	9.89	Do.
25	Eyelets, up to 1/8" diameter	17.39	15.65	16.71	Do.
26	Eyelets, 3/16" diameter	31.20	28.08	30.00	Do.
27	Fagoting, straight lines	108.65	97.78	104.46	Per yard.
28	Fagoting, twisted lines	52.00	46.80	50.00	Do.
29	Feather stitch, 12 stitches per inch	52.00	46.80	50.00	Do.
30	Feather stitch cord	27.37	24.63	26.32	Do.
31	Flat fell seams, first seam by machine	[2] 30.47	[2] 27.42	37.07	Do.
32	Flat roll	[2] 23.66	[2] 21.29	28.77	Do.
33	French knots, not finished off	3.26	2.93	3.13	Per dozen.
34	French seams, over 12 stitches per inch	[2] 19.50	[2] 17.56	23.75	Per yard.
35	French seams, first seam by machine, 9 to 12 stitches per inch.	[2] 12.88	[2] 11.60	15.70	Do.
36	Furunecos, with tape	117.00	105.30	112.50	Do.
37	Furunecos, without tape	93.60	84.24	90.00	Do.
38	Guariquenas	7.80	7.02	7.50	Per dozen.
39	Half roll (with colored or emb. thread)	25.58	23.02	24.61	Per yard.
40	Hemming stitch for felling, 2 to 3 stitches per inch.	[2] 13.64	[2] 12.27	16.60	Do.
41	Hemming stitch for felling, cuffs, collars, plackets, and waist bands, 8 to 10 stitches per inch.	[2] 34.89	[2] 31.41	42.50	Do.
42	Hemstitch, double (trutru), 4 threads in a bundle, thread drawing not included.	96.72	87.05	93.00	Do.
43	Hemstitch, single, 4 threads in a bundle, thread drawing not included.	50.77	45.69	48.82	Do.
44	Lace, joined with whipping stitch	81.26	73.13	78.12	Do.
45	Lace, sewed on with hemming stitch or round roll.	39.00	35.10	37.50	Do.
46	Leaves, open, ¼" long	31.20	28.08	30.00	Per dozen.
47	Leaves, open, 3/8" to ½" long	46.80	42.12	45.00	Do.
48	Leaves, simple	2.91	2.62	2.80	Do.
49	Leaves, solid, not finished off, 1/8" long	8.56	7.71	8.23	Do.
50	Leaves, solid, not finished off, ¼" long	10.40	9.36	0.00	Do.
51	Leaves, solid, not finished off, 3/8" to ½" long	15.60	14.04	15.00	Do.
52	Leaves, solid, finished off, 3/8" to ¾" long	31.20	28.08	30.00	Do.

See footnotes at end of table.

SCHEDULE A—Continued

No.	Operation	Women's and children's underwear and women's blouse industry: Blouses and neckwear and silk and synthetic underwear and nightwear (1)	Women's and children's underwear and women's blouse industry: Cotton underwear and nightwear (2)	Children's dress and related products industry (3)	Unit of payment
		Cents	*Cents*	*Cents*	
53	Loops, knitted, ¼"	9.76	8.79	9.39	Do.
54	Loops, knitted, 1" to 1½"	16.40	14.77	15.77	Do.
55	Loops, made with buttonhole stitch	23.40	21.06	22.50	Do.
56	Mounting fagoting appliques, including pinning and basting to garment, first seam with running stitch, felled with hemming stitch.	93.20	83.88	89.61	Per yard.
57	Overcasting seams	[2] 16.59	[2] 14.92	20.22	Do.
58	Pasadas, short, 1" to 8"	----------	7.28	----------	Per dozen pasadas.
59	Patches, sewed on with single point de turc	155.38	139.85	149.39	Per yard.
59.1	Patches, rectangular, sewed on with blind stitch, up to 1½ inch.	9.81	8.82	9.43	Per dozen inches.
59.2	Patches, sewed on with solid cord, cutting and basting included.	152.88	137.59	147.00	Per yard.
60	Pin stitch, thread drawing not included, 1 inch squares.	187.20	168.48	180.00	Per dozen squares.
61	Point de turc double, with embroidery thread.	77.60	69.84	74.61	Per yard.
62	Point de turc plain, with embroidery thread	45.50	40.94	43.75	Do.
63	Randa, bundles twisted but not tied, thread drawing not included.	19.50	17.54	18.75	Do.
64	Randa, Don Gonzales, thread drawing not included.	81.90	73.70	78.75	Do.
65	Randa, Mexican, tied at center only, thread drawing not included.	23.40	21.06	22.50	Do.
66	Ribbons, setting ends of	10.69	9.62	10.29	Per dozen.
67	Rolling armholes and reboques	[2] 39.85	[2] 35.86	48.53	Per yard.
68	Rose buds, worm stitch, 4 worms, 1 or 2 colors or tones.	23.17	20.85	22.29	Per dozen.
69	Running stitch on darts, 8 to 10 stitches per inch.	[2] 19.50	[2] 17.56	23.75	Per yard.
70	Running stitch for felling, very close stitch	[2] 19.50	[2] 17.56	23.75	Do.
71	Running stitch on hems up to 1" wide, 12 stitches per inch.	[2] 20.96	[2] 18.86	25.57	Do.
72	Running stitch on lace	20.70	18.63	19.91	Do.
73	Running stitch for plain sewing	[2] 14.09	[2] 12.69	17.18	Do.
74	Scallops, plain, cutting included	78.52	70.67	75.50	Do.
75	Shadow stitch, up to ⅜" wide	150.80	135.72	145.00	Do.
76	Shell, 4 to 5 stitches per inch	26.75	24.08	25.71	Do.
77	Shirring, material to be measured before shirring.	15.70	14.13	15.11	Do.
78	Shirring and basting lace edging, material to be measured after shirring.	18.88	16.99	18.14	Do.
79	Shirring and setting lace edging with hemming stitch on straight outline, material to be measured after shirring.	33.92	30.52	32.61	Do.
80	Shoulder straps, set with buttonhole stitch, 14½" x ¼", measured after turning, sewing up to ⅝" at each end at strap.	92.20	82.97	----------	Per dozen straps.
81	Size tickets set with hemming stitch, cutting tickets included.	[2] 15.60	[2] 14.04	19.00	Per dozen inches.
82	Smocking	.64	.57	.63	Per dozen stitches.
83	Snaps, sewing on, both sides	[2] 15.60	[2] 14.04	19.00	Per dozen.
84	Solid cord stitch on gores and embroidery	73.32	65.99	70.50	Per yard.
85	Solid cord stitch to sew on lace	66.30	59.66	63.75	Do.
86	Spiders, 4 legs	15.60	14.04	15.00	Per dozen.
87	Spiders, 8 legs	30.49	27.44	29.32	Do.
88	Tacks, set for fagoting	7.80	7.02	7.50	Do.
89	Tucks, stamped, 1/16" to ¼" wide, up to 6" long.	24.41	21.96	23.46	Do.
90	Tucks, pin, stamped up to 7" long	25.72	23.16	24.74	Do.
91	Tucks, pin, unstamped up to 6" long	31.20	28.08	30.00	Do.
93	(See operation No. 22.1)				

See footnotes at end of table.

SCHEDULE A—Continued

No.	Operation	Women's and children's underwear and women's blouse industry: Blouses and neckwear and silk and synthetic underwear and nightwear (1)	Women's and children's underwear and women's blouse industry: Cotton underwear and nightwear (2)	Children's dress and related products industry (3)	Unit of payment
		Cents	*Cents*	*Cents*	
94	Turning belts, machine sewn, 29" x ½", measured after turning.	22.20	22.20	22.08	Per dozen belts.
95	Turning belts, machine sewn, 60" x ½", measured after turning.	28.20	28.20	28.07	Do.
96	Turning shoulder pads, 5¾" long, with an unsewed slit of 1" for turning.	14.41	14.41	14.33	Per dozen pads.
97	Turning shoulder straps, 14½" x ¼", measured after turning.	44.25	44.25	----------	Per dozen straps.

[1] See current wage orders for these two industries for definitions of the industries and of the classifications of "hand-sewing", "hand-embroidery", and "other operations", and for applicable minimum hourly wage rates.
[2] Piece rate not applicable when operation is performed on articles which are wholly machine-sewn or machine-knit.

SCHEDULE B—PIECE RATE SCHEDULE FOR THE HANDKERCHIEF, SCARF, AND ART LINEN INDUSTRY IN PUERTO RICO [1]

No.	Operation	Cents	Unit of payment
99	Arenillas (seed stitch), close, ½" squares	37.20	Per dozen squares.
100	Arenillas (seed stitch), scattered, ½" squares	18.60	Do.
101	Arrows, filled in, ¼" long	9.30	Per dozen.
102	Basting lace for setting with straight sewing stitch	1.78	Per dozen inches.
103	Basting stitch for trimming, forming crosses, etc., 4 stitches per inch	1.55	Do.
103.1	Basting and folding hem on edges up to 1½" hem	[2] .62	Do.
104	Blind hemstitch	6.20	Do.
105	Buttonhole stitch, 16 stitches per inch	6.20	Do.
106	Buttonhole stitch, 24 to 30 stitches per inch	9.30	Do.
107	Chain stitch, 4 stitches per inch	1.55	Do.
108	Chain stitch, 8 stitches per inch	3.10	Do.
109	Cord, solid, on stem	9.71	Do.
110	Cord, twisted, over basting	3.10	Do.
111	Cord or embroidery, solid, without filling, up to 1/8" thick [3]	9.30	Do.
112	Crouching or flat cord, 4 stitches per inch	1.55	Do.
113	Cross stitch, 6 crosses per inch	6.61	Do.
114	Cut work with buttonhole stitch, 24 to 30 stitches per inch	12.40	Do.
114.1	Daisies, 12 to 15 stitches, with double embroidery thread	9.30	Per dozen.
115	Diamonds, filled in, ¼" to ⅜" wide	9.30	Do.
116	Dots, baby, not finished off, 2 to 3 stitches	2.58	Do.
117	Dots, large, not filled in, finished off, 12 stitches	4.65	Do.
118	Dots, large, filled in, finished off, over 12 stitches	9.30	Do.
119	Dots, large, not filled in, finished off, over 12 stitches	6.20	Do.
120	Dots, medium, not filled in, finished off, 8 to 9 stitches	4.09	Do.
120.1	Dots, medium, in groups, not finished off, 5 stitches, with double embroidery thread.	2.65	Do.
120.2	Dots, medium, finished off, 5 stitches, with double embroidery thread.	3.51	Do.
121	Embroidery, solid, 3/16" to ¾" thick, averages 28 stitches per inch [3]	12.40	Per dozen inches.
122	Embroidery, solid, straight or diagonal, same as image stitch, filled in, loose.	12.40	Do.
123	Embroidery, solid, straight or diagonal, same as image stitch, not filled in, loose.	9.30	Do.
124	Eyelets, 1/8" diameter	6.92	Per dozen.
125	Feather stitch, 12 stitches per inch	6.89	Per dozen inches.
126	Feather stitch cord	3.64	Do.
127	Flat hems without pasada	[2] 3.22	Do.
128	French knots, not finished off	1.30	Per dozen.
128.1	French knots, finished off, with double embroidery thread	2.48	Do.
129	Guariquenas	3.10	Do.
130	Hand or French rolling, 10 stitches or less per inch:		
	(a) Square scarves	8.76	Per 48 inches.
	(b) Oblong scarves	20.35	Do.
131	Hand or French rolling, 11 stitches or more per inch	10.53	Do.

See footnotes at end of table.

SCHEDULE B—PIECE RATE SCHEDULE FOR THE HANDKERCHIEF, SCARF, AND ART LINEN INDUSTRY IN PUERTO RICO [1]—Continued

No.	Operation	Cents	Unit of payment
132	Hand-rolling one side of a corner The piece rate shall apply under the following conditions: (a) The machine-stitching runs to the end on one side of each corner; and on the other side, the space left open for hand-rolling at the corner is not less than ¼" nor more than 1"; and (b) Only one side of each corner is hand-rolled; and the hand-rolling is not longer than 1".	20.67	Per dozen handkerchiefs.
133	Hand-rolling both sides of a corner The piece rate shall apply under the following conditions: (a) The machine-stitching does not run to the end of either side of any corner; and the space left open for hand-rolling at each side of the corners is not less than ¼" nor more than 1"; and (b) Both sides of the corners are hand-rolled; but the hand-rolling is not longer than one inch on either side of any corner.	41.33	Do.
134	Hand-rolling both sides of a corner— The piece rate shall apply under the following conditions: (a) The machine-stitching runs to the end on one side of each corner; and on the other side, the space left open for hand-rolling at the corner is not less than ¼" nor more than 1"; and (b) Both sides of the corners are hand-rolled; but the hand-rolling is not longer than two inches on any corner.	51.67	Do.
135	Hemstitch, double (tru-tru), 4 threads in a bundle, thread drawing not included.	12.81	Per dozen inches.
136	Hemstitch, single, 4 threads in a bundle, thread drawing not included.	6.74	Do.
137	Initials, simple, with hoops	31.00	Do.
138	Initials, simple, without hoops	19.22	Do.
139	Lace, joined at corners with hemming stitch	9.30	Do.
140	Leaves, simple	1.16	Do.
141	Leaves, solid, not finished off, ¼" long	4.13	Do.
142	Leaves, solid, not finished off, ⅜" to ½" long	6.20	Do.
143	Leaves, solid, not finished off, ⅝" to ¾" long	12.40	Do.
144	Loops, made with worm stitch, ¼"	2.07	Do.
145	Pasadas, 11" x 11" to 14" x 14", linen up to 1600 count, inclusive	6.20	Per dozen pasadas.
146	Pasadas, 11" x 11" to 14" x 14", linen 1700 count and over	8.68	Do.
147	Pasadas, 15" x 15", linen up to 1600 count, inclusive	10.54	Do.
148	Pasadas, 15" x 15", linen 1700 count and over	13.02	Do.
149	Pasadas, 16" x 16" to 20" x 20", linen up to 1400 count inclusive	14.88	Do.
150	Pasadas, short, 1" to 7", linen up to 1600 count inclusive	[6] 3.22	Do.
	Pasadas, short:		
151	Cambric, 1" to 10"	6.20	Do.
152	Crash, 1" to 10"	4.65	Do.
153	Cambric, 10½" to 18"	12.40	Do.
154	Crash, 10½" to 18"	9.30	Do.
155	Patches, circular, sewed on with hemming stitch, cutting included	6.78	Per dozen inches.
156	Patches, irregular outline, sewed on with hemming stitch, cutting included.	11.82	Do.
156.1	Patches, irregular outline, sewed on with blind stitch, up to 4"	8.68	Do.
156.2	Patches, irregular outline sewed on with blind stitch, over 4"	4.41	Do.
157	Patches, rectangular, sewed on with hemming stitch, cutting included.	5.57	Do.
158	Pin stitch, thread drawing not included, 1" sq	74.40	Do.
159	Randa, Don Diego, thread drawing not included	13.95	Do.
160	Randa, Mexican, tied at center only, thread drawing not included	3.10	Do.
161	Randa, simple, not stitched at either side, thread drawing not included.	2.35	Do.
162	Rose buds, worm stitch, 4 worms, 2 colors or tones	9.20	Per dozen.
163	Scallops, plain, cutting included	10.41	Per dozen inches.
164	Shadow stitch, up to ⅜" wide	19.97	Do.
165	Spiders, 4 legs	6.20	Per dozen.
166	Spiders, 8 legs	12.13	Do.

SCHEDULE B—PIECE RATE SCHEDULE FOR THE HANDKERCHIEF, SCARF, AND ART LINEN INDUSTRY IN PUERTO RICO [1]—Continued

No.	Operation	Cents		Unit of payment
		Cambric (1)	Crash (2)	
	Thread drawing			
	Art linens, first thread, not coming out at edge:			
167.0	Stamped 1" to 10"	2.22	----------	Per dozen threads.
167.2	Not stamped 1" to 10"	2.77	1.65	Do.
	Art linen, unstamped, first thread, all-around, not coming out at edge:			
167.4	Doilies 12" x 18"	12.39	10.09	Per dozen pieces.
	Napkins:			
167.6	12" x 12"	9.91	8.39	Do.
167.7	15" x 15"	12.39	10.09	Do.
167.8	18" x 18"	14.87	11.65	Do.
	Scarves:			
168.0	17" x 36"	21.88	15.68	Do.
168.1	17" x 45"	25.60	17.68	Do.
168.2	17" x 54"	29.32	19.63	Do.
	Squares:			
168.3	36" x 36"	29.75	19.83	Do.
168.4	45" x 45"	37.16	23.57	Do.
168.5	54" x 54"	44.60	27.54	Do.
	Art linens, unstamped, first thread at one end, coming out at both edges.			
	Towels:			
168.6	9" x 15"	----------	1.56	Do.
168.7	15" x 24"	----------	2.27	Do.
168.8	18" x 30"	----------	2.60	Do.
169	Art linens, after first thread	----------	(7)	Do.

No.	Operation	Cents	Unit of payment
	Thread drawing		
	Ladies handkerchiefs:		
170	First thread around edge, cotton or linen, up to 1600 count inclusive	3.10	Per dozen threads.
171	First thread, inside, cotton or linen, up to 1600 count inclusive	3.89	Do.
172	After first thread (for example, for hemstitching)	(7)	Do.
173	First thread around edge, linen up to 1500 count inclusive, 16" x 16" to 20" x 20"	4.65	Do.
174	First thread around edge, linen 1600 count and over, 16" x 16" to 20" x 20"	5.44	Do.
175	First thread, inside, linen up to 1500 count inclusive, 16" x 16" to 20" x 20"	5.44	Do.
176	First thread, inside, linen 1600 count and over, 16" x 16" to 20" x 20"	6.20	Do.
177	After first thread (for example, for hemstitching)	(7)	Do.

See footnotes at end of table.

SCHEDULE B. PIECE RATE SCHEDULE FOR THE HANDKERCHIEF, SCARF, AND ART LINEN INDUSTRY IN PUERTO RICO [1]—Continued

No.	Operation	Doilies			Napkins			Table scarves			Squares			Table cloths		
		8" x 16"	10"x14"	12"x18"	12"x12"	15"x15"	18"x18"	17"x36"	17"x45"	17"x54"	36"x36"	45"x45"	54"x54"	54"x72"	72"x72"	72"x90"
179	Half roll, cambric and crash, at 3.39 cents per dozen inches	1.62	1.62	2.03	1.62	2.03	2.43	3.59	4.20	4.80	4.88	6.09	7.31	8.52	9.75	10.97
180	Hand or French rolling, 10 stitches or less per inch, cambric, and crash, at 2.19 cents per dozen inches	1.05	1.05	1.31	1.05	1.31	1.57	2.32	2.72	3.11	3.16	3.95	4.75	5.53	6.32	7.11
	Hemming stitch over pasada, measuring all around edge:															
181	Cambric at 2.07 cents per dozen inches [2]	.99	.99	1.24	.99	1.24	1.49	2.19	2.56	2.93	2.98	3.72	4.47	5.21	5.96	6.70
182	Crash, at 1.94 cents per dozen inches [2]	.93	.93	1.17	.93	1.17	1.39	2.06	2.41	2.75	2.80	3.49	4.20	4.90	5.60	6.30
	Second seams, for separate borders, measuring all around edge:															
183	Cambric, at 2.07 cents per dozen inches [2]	.99	.99	1.24	.99	1.24	1.49	2.19	2.56	2.93	2.98	3.72	4.47	5.21	5.96	6.70
184	Crash, at 1.94 cents per dozen inches [2]	.93	.93	1.17	.93	1.17	1.39	2.06	2.41	2.75	2.80	3.49	4.20	4.90	5.60	6.30
	Second seams, for separate borders, with French corners, measuring all around edge:															
185	Cambric, at 2.32 cents per dozen inches [2]	1.12	1.12	1.39	1.12	1.39	1.68	2.47	2.89	3.30	3.35	4.18	5.03	5.87	6.70	7.55
186	Crash, at 2.07 cents per dozen inches [2]	.99	.99	1.24	.99	1.24	1.49	2.19	2.56	2.93	2.98	3.72	4.47	5.21	5.96	6.70

No.	Operation	Cents	Unit of payment
	Scallop cutting		
	Hand-cutting machine-embroidered, shallow, curved scallops on handkerchiefs or square scarves:		
187.4	Small, measuring from 5/16" up to but not including 5/8", along outside edge.	30.18	Per dozen scallops.
187.5	Medium, measuring from 5/8" up to but not including 7/8", along outside edge.	38.00	Do.
187.6	Large, measuring from 7/8" to and inclusive of 1 1/4", along outside edge.	57.00	Do.
	Needlepoint operations [4] [5]		
200	Compact florals, figures and landscapes	32.24	Per 1,000 stitches.
201	Scattered florals	34.72	Do.
202	Scattered florals consisting of borders or garlands only	37.20	Do.
203	Combinations of compact center and scattered borders in which the compact portion totals 45 percent or more of the total design.	34.72	Do.
204	Combinations of compact center and scattered borders in which the compact portion totals less than 45 percent of the entire design.	37.20	Do.
205	2.48 cents must be added to the above piece rates to cover thumb-tack mounting on frame for each piece of canvas. Employers using other methods must set individual rates for mounting and removing canvas in accordance with section 545.10.		

[1] See current wage order for this industry for definition of the industry and of the classification of "hand-sewing" and "other operations", and for applicable minimum hourly wage rates.

[2] Piece rate not applicable when operation is performed on articles which are otherwise wholly machine-sewn.

[3] These piece rates have been set on the basis of O.N.T. thread #5, corded, which averages 28 stitches per inch of solid cord. If corded threads are used which are not so thick, the rate should be increased in proportion to the increase in the number of stitches per inch. If corded thread #11 is used, 15 percent must be added to the piece rates established for thread #5.

[4] *Exceptions.* These piece rates do not apply to the following types of needlepoint. For these and all other varieties of needlepoint not covered by the schedule and definitions, piece rates must be set by employers in accordance with Regulation 545.10.

1. Florals having more than 10,000 stitches.
2. Florals having more than 36 color tones.
3. Figures and landscapes having more than 3,000 stitches.
4. Figures and landscapes having more than 25 color tones.
5. Petit Point.
6. Stamped grospoint.

[5] *Definitions.* (1) A scattered design is one in which 50 percent or more of the component parts, when finished, are separated by spaces of unsewn canvas. (2) A compact design is one in which 50 percent or more of the finished piece contains no spaces of unsewn canvas.

[6] For each additional count of 100, add 1.24 cents.

[7] For second and third threads, 20 percent of rate for first thread; for additional threads, 15 percent of rate for first thread.

2. Section 681.9(b) of 29 CFR Part 681 would be amended to read as follows:

§ 681.9 Minimum piece rates prescribed by the Administrator.

* * * * *

(b) *Piece rate for hand-braiding leather buttons.* A minimum piece rate of 45 cents a gross shall be paid to homeworkers in Puerto Rico engaged in the hand-braiding of leather buttons, 24 to 30 ligne by the following method: Tying a braided knot around the tip of a finger, bringing the knot into a rounded button shape by pulling the ends of the strip, forming the button shank from the prepared shank end of the strip, and trimming the loose end by cutting off the excess leather; all operations to be performed upon undegreased leather strips, each of which has been cut in advance to suitable dimensions so that one end may be formed into the button shank and the remainder braided to become the rounded button.

[F.R. Doc. 64-727; Filed, Jan. 27, 1964; 8:47 a.m.]

Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER G—CIVIL DEFENSE

PART 221—CONTRIBUTIONS FOR CIVIL DEFENSE EQUIPMENT

Part 221 of Subchapter G, Chapter I, Title 32, is revised to read as follows:

SEC.

221.1 Purpose.
221.2 Definitions.
221.3 Request for contributions.
221.4 Conditions of contributions.
221.5 Project application approval.
221.6 Billing and payment.
221.7 Advances of Federal funds for State procurement.
221.8 Limitations on obligating contributions funds.
221.9 State procurement.
221.10 Federal procurement.
221.11 Compliance.

AUTHORITY: The provisions of this Part 221 issued under secs. 201(i) and 401 of the Federal Civil Defense Act of 1950, 64 Stat. 1245–1257, as amended, 50 U.S.C. App. 2251–2297; Reorg. Plan No. 1 of 1958, 72 Stat. 1799, 23 F.R. 4991; E.O. 10952, 26 F.R. 6577; Organizational Statement, Assistant Secretary of Defense (Civil Defense), published Sept. 14, 1961, 26 F.R. 8604; Delegation of Authorities and Functions, Director for Federal Assistance, published June 8, 1962, 27 F.R. 5455.

§ 221.1 Purpose.

The purpose of the regulations in this part is to prescribe the basic terms and conditions under which the OCD, pursuant to the provisions of section 201(i) of the Act, contributes Federal funds to the States for the procurement of civil defense equipment.

§ 221.2 Definitions.

Except as otherwise stated, the following terms shall have the following meanings when used in the regulations in this part:

(a) *Act.* The Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251–2297).

(b) *Civil Defense equipment.* Facilities, materials, and organizational equipment for which the OCD approves financial contributions under section 201(i) of the Act.

(c) *Facilities.* Buildings, shelters, and utilities.

(d) *Materials.* All materials, supplies, medicines, equipment, component parts, and technical information (including training courses) and processes necessary for civil defense.

(e) *OCD.* Department of Defense, Office of Civil Defense. Where action is to be taken this term denotes the Assistant Secretary of Defense (Civil Defense) or other duly authorized official(s) acting under the authority delegated to the Secretary of Defense by Executive Order 10952 (26 F.R. 6577).

(f) *Organizational equipment.* Equipment (other than materials and facilities) determined by the OCD to be (1) necessary to a civil defense organization, as distinguished from personal equipment, and (2) of such a type or nature as to require it to be financed in whole or in part by the Federal Government. It shall not be construed to include those items which the local community normally utilizes in combating local disasters except when required in unusual quantities dictated by the requirement of the civil defense plans.

(g) *Program.* A course of action adopted by a State (or political subdivision) in a specific civil defense area of activity.

(h) *Project.* A definable part of a program which is complete in itself.

§ 221.3 Request for contributions.

A request for a Federal contribution must be made on an OCD prescribed project application form and in accordance with the procedures and criteria set forth in OCD guidance material.

§ 221.4 Conditions of contributions.

The OCD shall make contributions for civil defense equipment, including approved costs, subject to the following conditions:

(a) *Certification.* The making of a request for a contribution shall constitute a certification by the State (and political subdivision) that the necessary funds to provide for the State's share are available or will be available before Federal funds are disbursed; that the equipment to be acquired is required for civil defense purposes; and that the State (and political subdivision) will comply with the OCD regulations covering "Contributions for Civil Defense Equipment" (this part), and "Labor Standards for Federally Assisted Contracts" (Part 228 of this chapter).

(b) *Standards and specifications.* Civil defense equipment procured by the State (or political subdivision) must meet minimum standards and specifications as established by the OCD. Application of such standards and specifications to unique installations or uses of equipment shall be as determined by the OCD following receipt of full information.

(c) *Cancellation or breach.* If for any reason the State (or political subdivision) revokes or cancels its request for a financial contribution after approval by the OCD, or breaches any condition of the regulations in this part or of the project application by which the contribution was approved, it shall promptly reimburse the Federal Government for any loss, as determined by the OCD, occasioned to the Federal Government.

(d) *Inspection and accounting.* Civil defense equipment shall be controlled in accordance with accepted or prescribed methods and standards of accounting, identification, and administrative responsibility. Such methods and standards as the OCD may prescribe shall be met. OCD representatives shall have access to civil defense equipment at all reasonable times for purposes of inspection. The OCD shall also be granted ready access to the books and records of the State and political subdivision relating to such equipment.

(e) *Use and disposal.* Except as otherwise may be prescribed or authorized in OCD guidance material, civil defense equipment shall be distributed, maintained, and used solely for civil defense purposes and shall not be disposed of without prior approval of the OCD.

(f) *Distribution and maintenance.* Civil defense equipment shall be protected and maintained in such a way as to assure its ready availability for the civil defense purpose for which it was acquired. Such equipment shall, to the extent practicable, be distributed and stored in such a manner as to minimize its loss in the event of an attack and at the same time assure its availability for use at the places required immediately after an attack.

(g) *Information and reports.* The State (or political subdivision) shall transmit to the OCD, as required, a statement of its plans for meeting the conditions of this § 221.4 and such reports as the OCD may from time to time request.

(h) *Insigne.* Civil defense equipment shall, whenever practicable, be marked with the official civil defense insigne.

(i) *Damage or loss.* If civil defense equipment procured by the Federal Government should be lost or damaged prior to its delivery to the State, the OCD shall promptly make replacement or any necessary repair. If civil defense equipment procured either by the Federal Government or the State (or political subdivision) is consumed, lost, damaged, or destroyed after delivery, the State (or political subdivision) shall, except as otherwise may be prescribed or authorized in OCD guidance material, promptly make replacement.

(j) *Loyalty oath.* No request for civil defense equipment shall be approved by the OCD unless (1) the State law requires that each person who is appointed to serve in a State or local organization for civil defense shall, before entering upon his duties, take an oath of the character and in the manner provided for in subsection 403(b) of the Act or (2) the State certifies that it has directed the State or local civil defense agency to require that such person shall, before entering upon his duties, take such oath, unless it is determined that an oath of equivalent character has been taken by such person, or that a combination of an oath and requirements of State or Federal law imposes on such person an obligation equivalent to that imposed by the oath contained in subsection 403(b) of the Act.

(k) *Federal—State share.* The Federal contribution shall not exceed fifty percent of the total allowable cost of the civil defense equipment. The State's share of such cost may be derived from any source it determines consistent with its laws: *Provided, however,* That no part of the State's share has been or will be derived from Federal funds. No Federal contribution shall be made for the procurement of land. The value of any land contributed by any State (or political subdivision) shall be excluded from the computation of the State's share.

§ 221.5 Project application approval.

(a) If a project application is found acceptable and approved without change by the OCD, a signed copy thereof evidencing such approval shall be returned to the State.

(b) If the OCD's approval of a project application is made subject to revisions or additional conditions, the project application shall be returned to secure the agreement of the State (and political subdivision) to such revisions or additional conditions. If there is agreement by the State (and political subdivision) to such revisions or additional conditions, the authorized official(s) shall so signify by signing and returning the project application to the OCD.

(c) If the project application is disapproved, it shall be returned to the State with a brief statement of the reasons for such disapproval.

§ 221.6 Billing and payment.

(a) When civil defense equipment procured by the Federal Government has been delivered to the State, the OCD shall invoice the State for the State's share, and the State shall make payment to the OCD.

(b) When civil defense equipment procured by a State (or political subdivision) has been delivered to the State (or political subdivision), the OCD, upon the receipt of proper billing, shall make payment, by check drawn against the Treasury of the United States, to the properly authorized State official.

(c) Representatives of the OCD and the General Accounting Office of the United States shall have access at all reasonable times to the books, records, and other pertinent documents and information of the State (and political subdivisions) and their contractors and subcontractors. Such books, records, and documents shall be maintained for a minimum period of three years following completion of the approved project.

§ 221.7 Advances of Federal funds for State procurement.

(a) Advances of funds may be made to States, to be applied to the Federal share of the cost of items procured by the State (or political subdivision), under the conditions set forth in subparagraphs (1), (2), and (3) of this paragraph.

(1) The State is required by law to have funds on deposit, in addition to its own, available for obligation and expenditure to cover the estimated cost of equipment.

(2) The State is precluded from expending State funds in excess of its share of the estimated cost of the equipment subject to reimbursement by the Federal Government.

(3) Procurement is to be made by a political subdivision which is subject to either the first or second condition set forth in this paragraph (a).

(b) In requesting an advance under the conditions set forth in paragraph (a) of this section, the State must agree to:

(1) Deposit the advanced funds in a separate fund or account, under the sole custody of its Treasurer or other authorized fiscal officer. Any interest ac-

cruing in connection with such fund or account shall be paid to the Federal Government.

(2) Withdraw such funds only upon the certification of its authorized official, and then only for the payment of items covered by a project application against which such funds are advanced, or for advance to a political subdivision under the same restrictions.

(3) Keep such central records and accounts as are in accordance with accepted or prescribed methods of accounting, showing the receipt and expenditure of the Federal funds advanced to it. Representatives of the OCD and the General Accounting Office shall be granted ready access to such records and accounts.

(c) Each request for an advance must be made, separate from the project application, on an OCD prescribed form and in accordance with the procedures and criteria set forth in OCD guidance material. Individual requests for advances must be submitted for each project application for which an advance is required.

§ 221.8 Limitations on obligating contributions funds.

(a) Except as otherwise may be prescribed or authorized in OCD guidance material, no contribution shall be made toward the cost of civil defense programs and projects which have been procured or for which a contract, order, or other obligation to procure has been entered into prior to the date of the OCD approval of the project application involved.

(b) Contributions cannot be made toward obligations incurred or expenditures made by the State (or political subdivision) prior to the date of availability of the applicable Federal appropriation. With regard to services, such as maintenance and utility services, being rendered over a continuing period of time, contributions shall be only for eligible services required to serve the civil defense needs of the State (or political subdivision) during the Federal fiscal year current at the time the project application is submitted.

§ 221.9 State procurement.

Except as otherwise may be prescribed or authorized in OCD guidance material, civil defense equipment (other than that which may be provided by the Federal Government under § 221.10) must be procured by the State (or political subdivision) and in accordance with the following requirements:

(a) *Purchase procedures.* Procurement of any item of civil defense equipment by the State (or political subdivision) must comply with all statues, regulations, and ordinances covering purchasing by such State (or political subdivision). In addition, if the Federal share of the total of the estimated price, as approved in the project application, of all similar or indentical items exceeds $1,250, procurement must be by invitation to bid through formal advertisement, and the Federal contribution will be limited to the Federal share of the amount of the lowest acceptable bid.

(b) *Formal advertisement.* As used in paragraph (a) of this section, the term "formal advertisement" means procurement by competitive bids and involves the following:

(1) Preparation of the invitation for bids, describing the requirements of the State and local government clearly, accurately, and completely, but avoiding unnecessarily restrictive specifications or requirements which might unduly limit the number of bidders. The term "invitation for bids" means the complete assembly of related documents (whether attached or incorporated by reference) furnished prospective bidders for the purpose of bidding.

(2) If bid specifications used by the State (or political subdivision) are so drawn that only one manufacturer is able to bid on the equipment or a manufacturer whose equipment meets minimum standards and specifications established by the OCD is precluded from bidding, approval of procurement of the equipment under such specifications must be obtained from the OCD. The request for approval should include a copy of the bid specifications with a statement justifying the need for their restrictive content.

(3) Publicizing the invitation for bids (i) through publication of notices in a newspaper or other recognized periodical having general circulation in the competitive area, or (ii) through a combination of posting of public notices and circularizing all known suppliers, or (iii) through distribution to all prospective bidders whose names are on current bidder lists maintained in accordance with a system approved by the OCD. Such formal advertising must be initiated in sufficient time to enable prospective bidders to prepare and submit bids before the time set for public opening of bids.

(4) Receipt of bids from prospective contractors.

(c) *Procurement costs.* The Federal Government will not under the regulations in this part or the program governed thereby, contribute toward administrative costs incurred in procurement by the State (or political subdivision). (Contributions for State and local civil defense personnel and administrative expenses are provided for under Part 227 of this chapter.) The project application may, however, include the costs of transportation, installation, and non-Federal taxes (other than those imposed by the State government or political subdivision submitting the application). It may also include Federal taxes if an exemption therefrom cannot be obtained by the State (or political subdivision).

(d) *Prices.* The OCD will review the estimated price of each item of civil defense equipment listed in the project application. In establishing the maximum amount of the Federal contribution to be approved therefor, the OCD will take into account current market conditions and other circumstances which may be involved in the procurement. The OCD will not contribute to additional expenses which may be incurred due to deviations from minimum standards and specifications established by the OCD where such deviation is determined by the OCD to be unnecessary for civil defense purposes.

§ 221.10 Federal procurement.

Procurement of civil defense equipment will normally be undertaken by the State (or political subdivision). If the OCD determines it to be administratively feasible to undertake Federal procurement, procedures will be as provided in OCD guidance material: *Provided, however,* That title to civil defense equipment procured by the Federal Government shall pass to the State upon delivery of such equipment to the State. When procurement contracts are let by the Federal Government on an f.o.b. origin basis and the Federal Government executes inspection and receiving reports which have the effect of accepting the equipment at the shipping point, it shall be considered that title has passed at that time and at that place. The State shall furnish to the OCD the name or names of such person or persons who has or have been authorized, in the name of the State, to execute the necessary receiving reports, fiscal records, and other necessary documents in connection with such equipment.

§ 221.11 Compliance.

(a) The State (or political subdivision) must be prepared to furnish the OCD, upon its request, with proper documentation that there has been compliance with the requirements of the regulations in this part and the related procedures and criteria prescribed in OCD guidance material in connection with its procurement of any item of civil defense equipment and its request and receipt of a Federal contribution therefor.

(b) Where, after reasonable notice to the State and opportunity for hearing in accordance with Part 223 of this chapter, the OCD finds that the State (or political subdivision) has failed or is failing to expend funds in accordance with the requirements of the Act or the terms and conditions of the regulations in this part, the OCD may withhold payments of any financial contributions to such State, due or to become due.

This revision shall be effective upon publication in the FEDERAL REGISTER.

Dated: January 21, 1964.

HUBERT A. SCHON,
Director for Federal Assistance.

[F.R. Doc. 64-720; Filed, Jan. 24, 1964; 8:46 a.m.]

PART 228—LABOR STANDARDS FOR FEDERALLY ASSISTED CONTRACTS

Part 228 of Subchapter G, Chapter I, Title 32, is revised to read as follows:

SEC.

228.1 Purpose and scope.
228.2 Definitions.
228.3 Project applications.
228.4 Contract provisions.
228.5 Ineligible bidders.
228.6 Examination of payrolls.
228.7 Investigations.
228.8 Compliance.
228.9 Certification regarding compliance.

AUTHORITY: The provisions of this Part 228 issued under secs. 201(i) and 401 of the Federal Civil Defense Act of 1950, 64 Stat. 1245–1257, as amended, 50 U.S.C. App. 2251–2297; Reorganization Plan No. 1 of 1958, 72 Stat. 1799, 23 F.R. 4991; Executive Order 10952, 26 F.R. 6577; Organizational Statement, Assistant Secretary of Defense (Civil Defense), published Sept. 14, 1961, 26 F.R. 8604; Delegation of Authorities and Functions, Director for Federal Assistance, published June 8, 1962, 27 F.R. 5455.

§ 228.1 Purpose and scope.

The regulations in this part are supplemental to those contained in 29 CFR Part 5, and together, they prescribe the labor standards applicable to construction work financed with the assistance of a contribution of Federal funds made under the provisions of section 201(i) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251–2297) to any State (and political subdivision thereof, where applicable). The regulations in this part, to the extent that they vary from those published in 29 CFR Part 5, have been approved by the Secretary of Labor under 29 CFR 5.5(a), 5.12 and 5.12a to meet the particular needs of the Department of Defense, Office of Civil Defense. To assure full labor standards compliance reference should be made to the regulations contained in 29 CFR Part 5 as well as those published herein.

§ 228.2 Definitions.

Except where otherwise clearly required by the context, each of the following terms shall have the meaning defined in this section when used in the regulations in this part:

(a) *Building or work.* Construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work; including without limitation, buildings, structures, and improvements of all types such as shelters, ramps, roadways, parking lots, tunnels, mains, power lines, pumping and generator stations, terminals, plants, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies, or equipment is not a "building" or "work" within the meaning of the regulations in this part unless conducted in connection with and at the site of such building or work as defined hereunder.

(b) *Construction.* All types of work done on a particular building or work at the site thereof, including without limitation, altering, repairing, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or the construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work by persons employed by the contractor or the subcontractor.

(c) *Contract.* Any contract which is entered into for the actual construction, alteration, or repair, including painting and decorating, of a building or work financed with the assistance of any contribution of Federal funds made under the provisions of section 201(i) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251–2297).

(d) *Employed.* Every person paid by a contractor or subcontractor in any manner for his labor on construction work financed with the assistance of any contribution of Federal funds made under the provisions of section 201(i) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251–2297) is "employed" and receiving "wages," regardless of any contractual relationship alleged to exist.

§ 228.3 Project applications.

Each project application submitted by a State, involving construction work to be financed with the assistance of any contribution of Federal funds under the provisions of section 201(i) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251–2297) shall include as a condition thereof, the following provisions, verbatim:

(a) The State hereby agrees, as a condition of this project application, to conform to each and every obligation required on its part by the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251–2297) and by Department of Defense, Office of Civil Defense Regulations, Part 228 and guidance material, as now or hereafter provided. The obligations of the State include without limitation the requirement that the State include, verbatim in each contract involving construction work, and cause to be included, verbatim in each subcontract thereunder, the provisions set forth in § 228.4 (a) or (b), whichever are applicable.

(b) The State hereby agrees to and represents, as a condition of this project application, the following:

(1) Prior to entering into a contract involving construction work in excess of $2,000, a United States Department of Labor Form DB–11, requesting the Secretary of Labor to issue a wage determination decision in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276 et seq.) for the project, shall be duly executed by the authorized official on behalf of the State (or political subdivision where applicable) and shall be submitted to the Department of Defense, Office of Civil Defense in accordance with the procedures established by it, including any amendments thereto, for transmittal to the Department of Labor.

(2) Each advertisement of an invitation to bid shall indicate expressly that: (i) If the construction phase of the contract exceeds $2,000, all laborers and mechanics employed by contractors or subcontractors in performance of the construction work shall be paid wages at rates not less than those determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a et seq.), and every such employee shall receive compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in any workweek, as the case may be, as provided in section 201(i) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251–2297) and in the Contract Work Hours Standards Act (76 Stat. 357) and, (ii) the bid specifications shall contain the applicable labor standards provisions set forth in § 228.4 and, where one is required, shall have attached thereto the wage determination decision of the Secretary of Labor issued for the project.

(c) The State hereby agrees that the Department of Defense, Office of Civil Defense may withhold from the amount of any contributions otherwise due the State a sum sufficient to cover: (1) The amount of any restitution due laborers and mechanics employed by a contractor or subcontractor and (2) liquidated damages administratively determined due under section 104(a) of the Contract Work Hours Standards Act. Further, the maximum estimated total under payments and liquidated damages may be withheld from any advance or interim or final payment which otherwise would be due the State, pending the investigation and definite ascertainment of the amount. This provision shall in nowise reduce the efficacy of section 401(h) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2551–2297) and regulations issued in furtherance thereof, as now or hereafter provided.

§ 228.4 Contract provisions.

(a) Each contract involving construction work of $2,000 or less and all subcontracts thereunder shall include as a part thereof the following labor standards provisions, verbatim:

(1) *Copeland Act requirements.* The Contractor will comply with the regulations (copy of which is attached) of the Secretary of Labor made pursuant to the Copeland Act, as amended, 48 Stat. 948, 62 Stat. 862, 63 Stat. 108, 72 Stat. 967, 40 U.S.C. 276c, and any amendments or modifications thereof, will cause appropriate provisions to be inserted in subcontracts to insure compliance therewith by all subcontractors subject thereto, and will be responsible for the submission of statements required of subcontractors thereunder, except as the Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances and exemptions from the requirements thereof.

(2) *Subcontract provisions.* The contractor will insert verbatim in each of his subcontracts the provisions set forth in stipulation (1) through (3) hereof, and such other stipulations as the Department of Defense, Office of Civil Defense may by appropriate instructions require.

(3) *Termination.* A breach of either stipulation (1) or (2) may be grounds for termination of the contract.

(b) Each contract involving construction work in excess of $2,000 and all subcontracts thereunder shall include as a part thereof the following labor standards provisions, in completed form, verbatim:

(1) *Wage determination decision.* All mechanics and laborers employed by the contractor or subcontractor in the performance of construction work hereunder will be paid unconditionally and not less than once a week, and without subsequent deduction or rebate on any

account except such payroll deductions as are permitted by the Copeland Regulations issued by the Secretary of Labor (29 CFR, Subtitle A, Part 3), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics; and the wage determination decision shall be posted by the contractor at the site of the work in a prominent place where it can be easily seen by the workers.

(2) *Overtime requirements.* (As used in this subparagraph, the terms "laborers" and "mechanics" include watchmen and guards.) No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic to be employed on such work in excess of eight hours in any calendar day or in excess of forty hours in any workweek unless such laborer or mechanic receives compensation at a rate of not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any such calendar day or in excess of forty hours in any such workweek, as the case may be.

(3) *Violations; liability for unpaid wages; liquidated damages.* In the event of any violation of the clauses set forth in subparagraphs (1) or (2) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, in the event of any violation of the clause set forth in subparagraph (2) of this paragraph, such contractor and subcontractor shall be liable to the United States (in the case of work under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic (including watchmen and guards) employed in violation of the clause set forth in subparagraph (2) of this paragraph, in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (2) of this paragraph.

(4) *Withholding for liquidated damages and unpaid wages.* The (write in the name of the State or political subdivision) may withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for liquidated damages as provided in the clause set forth in subparagraph (3) of this paragraph. In the event of failure to pay any laborer or mechanic employed by the contractor or subcontractor in the performance of construction work hereunder, all or part of the wages required by the contract, the (write in the name of the State or political subdivision) may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds until such violations have ceased.

(5) *Payroll records.* Payroll records will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working on the construction of the project. Such records will contain the name and address of each such employee, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. The contractor will submit weekly a certified copy of all payrolls to the (write in the name of the State or political subdivision) for transmission by or through the State to the Department of Defense, Office of Civil Defense. The statement will affirm that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classification set forth for each laborer or mechanic conform with the work he performed. The contractor will make his employment records available for inspection by authorized representatives of the (write in the name of the State and the political subdivision, if any) the Department of Defense, Office of Civil Defense, and the Department of Labor, and will permit such representatives to interview employees during working hours on the job.

(6) *Apprentices.* Apprentices will be permitted to work only under a bona fide apprenticeship program registered with a State Apprenticeship Council which is recognized by the Federal Committee on Apprenticeship, U.S. Department of Labor; or if no such recognized Council exists in a State, under a program registered with the Bureau of Apprenticeship, U.S. Department of Labor.

(7) *Copeland Act requirements.* The contractor will comply with the regulations (copy of which is attached) of the Secretary of Labor made pursuant to the Copeland Act, as amended, 48 Stat. 948, 62 Stat. 862, 63 Stat. 108, 72 Stat. 967, 40 U.S.C. 276c and any amendments or modifications thereof, will cause appropriate provisions to be inserted in subcontracts to insure compliance therewith by all subcontractors subject thereto, and will be responsible for the submission of statements required of subcontractors thereunder, except as the Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances and exemptions from the requirements thereof.

(8) *Subcontract provisions.* The contractor will insert verbatim in each of his subcontracts the provisions set forth in stipulations (1) through (9) hereof, and such other stipulations as the Department of Defense, Office of Civil Defense may by appropriate instructions require.

(9) *Termination.* A breach of any of the stipulations (1) through (8), may be grounds for termination of the contract.

(c) Each contract involving construction work in excess of $2,000 and all subcontracts thereunder shall have attached thereto and made a part thereof the applicable wage determination decision of the Secretary of Labor.

(d) Each contract involving construction work, regardless of amount, and all subcontracts thereunder shall have attached thereto the Copeland Regulations issued by the Secretary of Labor (29 CFR, Subtitle A, Part 3).

§ 228.5 Ineligible bidders.

No construction contract or any subcontracts thereunder shall be awarded to any contractor or subcontractor appearing on the list of ineligible bidders published by the Comptroller General of the United States pursuant to regulations issued by the Secretary of Labor (29 CFR, Subtitle A, Part 5) and the Davis-Bacon Act, as amended (40 U.S.C. 276a et seq.). A certification by the party to whom the contract or subcontract is being awarded that he is not listed on the Comptroller General's list of ineligible bidders shall be a condition of the contract and all subcontracts thereunder. Such certification shall constitute a warranty, the falsity of which will render void the contract or subcontract, as the case may be.

§ 228.6 Examination of payrolls.

In cases where the contract involves construction work in excess of $2,000, a certified copy of all payrolls shall be submitted weekly to Department of Defense, Office of Civil Defense by or through the State. All payrolls will be checked by the State or political subdivisions, where applicable, against the applicable wage determination decision of the Secretary of Labor to verify labor standards compliance and to ascertain the following:

(a) That the rates paid to various classifications of employees are in conformity with the applicable wage determination decision.

(b) That the ratio of apprentices to journeymen is not disproportionate.

(c) That the ratio of laborers to journeymen is not disproportionate.

(d) That the ratio of helpers to journeymen is not disproportionate.

(e) That each classification shown in the payrolls is a classification for which a rate was predetermined in the applicable wage determination decision.

(f) That there are included in the payrolls those classifications of workers who would logically perform the work performed during the weeks in question.

§ 228.7 Investigations.

(a) All indications, including but not limited to all complaints, of alleged violations of labor standards brought to its attention shall be investigated by the State, and the State shall require that all such indications brought to the attention of a political subdivision shall be forthwith brought to the attention of the State. In cases where the contract involves construction work in excess of $2,000, the State shall make an "on the

site" labor standards check, at least once during the project and at least every six months on projects of long duration, including without limitation the following:

(1) Interviewing of a representative number of employees including but not necessarily limited to one employee in each classification or craft to ascertain what work the employee is doing and his regular rate of pay. This information shall be checked against the payrolls and the applicable wage determination decision to verify compliance or noncompliance.

(2) Checking of the registration of all apprentices. (b) In conducting investigations, including those of complaints of alleged violations, all statements, written or oral made by an employee are to be treated as confidential and shall not be disclosed to his employer without the consent of the employee.

§ 228.8 Compliance.

If there is evidence of labor standards noncompliance, restitution shall be required of the contractor or subcontractor and the State shall, after written notice to the contractor, withhold from the contractor such advances, guarantees and accrued payments as are administratively determined necessary to cover any liquidated damages and the restitution due laborers and mechanics employed by the contractor or subcontractor. The State also has the option of terminating the contract in accordance with its provisions. If there is evidence that the violations were aggravated, willful, or resulted in underpayments of $200 or more, a detailed report, including information as to restitution made; payments, advances and guarantees of funds withheld; contract terminations; and the name and address of each laborer and mechanic and contractor or subcontractor affected, and the day or days of such violations, shall be submitted by the State to the Department of Defense, Office of Civil Defense. No report need be made where the underpayments total less than $200, if nonwillful, restitution has been made and the State has received assurance of future compliance.

§ 228.9 Certification regarding compliance.

Before making final payment on the contract, the State shall submit a certification to the Department of Defense, Office of Civil Defense verifying the following:

(a) That the required labor standards provisions have been included in all construction contracts and subcontracts;

(b) That the State has made the investigation required in § 228.7 and has found that:

(1) The contractor was in compliance, or

(2) The contractor has come into compliance, or

(3) The contractor is still not in compliance and that $_____ restitution is due the employees of the contractor or subcontractors.

(c) That the payrolls required to be submitted by the contractor and subcontractors have been submitted and disclose no labor standards violations other than those investigated and covered in subparagraphs (2) and (3) of paragraph (b) of this section.

Effective date. This revision shall be effective upon publication in the FEDERAL REGISTER.

Dated: January 21, 1964.

HUBERT A. SCHON,
Director for Federal Assistance.

[F.R. Doc. 64-721; Filed, Jan. 24, 1964; 8:47 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 3314]

[Anchorage 054023]

ALASKA

Power Site Restoration No. 372, Power Site Cancellation No. 159, Revoking Power Site Reserve No. 674, Cancelling Wholly or in Part Power Site Classifications Nos. 107 and 399

By virtue of the authority vested in the President by section 1 of the Act of June 25, 1910 (36 Stat. 847; 43 U.S.C. 141), and pursuant to Executive Order No. 10355 of May 26, 1952, and by virtue of the authority contained in section 1 of the Act of March 3, 1879 (20 Stat. 394; 43 U.S.C. 31), it is ordered as follows:

1. The Executive Order of January 23, 1918 creating Power Site Reserve No. 674, as heretofore modified, is hereby revoked.

2. The Order of the Geological Survey issued March 29, 1950, creating Power Site Classification No. 399, is hereby revoked.

3. The departmental order of June 12, 1925, creating Power Site Classification No. 107, is hereby revoked so far as it affects any of the lands described in paragraph 4 of this order.

4. The lands listed below in this paragraph are released by this order from the reserves described in paragraphs 1, 2, and 3. Much of the land is withdrawn for other purposes. Some of it has been heretofore restored, subject to the provisions of section 24 of the Federal Power Act. As to these lands, the effect of this order is to relieve the lands of the recapture provisions of section 24. Status of any particular tract may be obtained by inquiring of the Manager, Land Office, Bureau of Land Management, Anchorage, Alaska.

SEWARD MERIDIAN

T. 12 N., R. 1 W. (unsurveyed),
All lands within ¼ mile of Ship Creek and Campbell Creek.

T. 13 N., R. 1 W. (unsurveyed),
All lands within ¼ mile of Eagle River and within ¼ mile of Ship Creek above the 1300 foot contour on the stream.

T. 15 N., R. 1 W.,
Sec. 4, NW¼SW¼ and S½SW¼;
Sec. 5, lot 1, W½NE¼, SE¼NE¼, SE¼ NW¼ and SE¼;
Sec. 9, lots 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, W½NE¼, NW¼, NE¼ SW¼, E½NE¼SE¼ and SE¼SE¼;
Sec. 10, SW¼ and SW¼SE¼;
Sec. 14, N½, N½SW¼, N½SE¼ and SE¼ SE¼;
Sec. 15, N½;
Sec. 16, N½N½NE¼NE¼;
And all unsurveyed lands lying within ¼ mile of Peters Creek.

T. 16 N., R. 1 W.,
Sec. 32, lot 4.

T. 11 N., R. 2 W. (unsurveyed),
All lands within ¼ mile of Rabbit Creek.

T. 12 N., R. 2 W.,
Sec. 6, N½NE¼;
Sec. 29, E½ and NE¼NW¼;
Sec. 30, lot 4, and SE¼SW¼;
Sec. 31, lots 1, 2, W½NE¼, E½NW¼, N½ SW¼ and SE¼;
Sec. 32, NE¼NE¼;
And all unsurveyed lands lying within ¼ mile of Campbell Creek.

T. 13 N., R. 2 W.,
Sec. 31, lots 3, 4, E½SW¼ and SE¼;
And unsurveyed lands lying within ¼ mile of Campbell Creek, and unsurveyed lands lying within ¼ mile of Ship Creek within sections 5, 8 and 9.

T. 14 N., R. 2 W.,
Sec. 8, SW¼SW¼ and SE¼SE¼;
Sec. 10, S½S½;
Sec. 11, S½NW¼, SW¼ and SE¼;
Sec. 12, SW¼SW¼;
Sec. 13, NW¼NE¼, NW¼ and SW¼;
Sec. 14, N½NE¼, SE¼NE¼ and N½NW¼;
Sec. 15, N½;
Sec. 16, NE¼, NE¼SW¼ and S½SW¼;
Sec. 17, NW¼NE¼, N½NW¼, NW¼SW¼ and SE¼SE¼;
Sec. 24, N½N½.

T. 11 N., R. 3 W.,
Sec. 5, lot 1.

T. 12 N., R. 3 W.,
Sec. 1, SW¼;
Sec. 2, NW¼NE¼, S½NE¼, NW¼, NE¼ SW¼ and SE¼;
Sec. 3, N½N½;
Sec. 4, N½NE¼;
Sec. 11, NE¼NE¼;
Sec. 12, N½, NE¼SW¼ and N½SE¼;
Sec. 25, S½;
Sec. 26, S½;
Sec. 27, S½S½;
Sec. 33, NE¼, NE¼NW¼, S½NW¼ and S½;
Sec. 34, N½NE¼ and NW¼;
Sec. 35, N½N½;
Sec. 36, N½N½.

T. 13 N., R. 3 W.,
Sec. 1, SE¼NE¼, E¾SW¼NE¼, SW¼ NW¼, W½SE¼NW¼, W½NW¼NE¼ SW¼, S½NE¼SW¼, W½SW¼, SE¼ SW¼, NE¼SE¼, E¾N½NW¼SE¼, S½ NW¼SE¼ and S½SE¼;
Sec. 2, S½SW¼ and SE¼;
Sec. 3, S½S½;
Sec. 4, SE¼SE¼;
Sec. 8, S½SW¼ and SE¼;
Sec. 9, NE¼, SE¼NW¼, SW¼ and NW¼ SE¼;
Sec. 10, NE¼ and S½NW¼;
Sec. 11, N½NE¼ and NW¼;
Sec. 16, lots 3 and 4;
Sec. 17, lots 1 and 2;
Sec. 33, N½, NE¼SW¼ and SE¼;
Sec. 34;
Sec. 35, NE¼, W½NW¼, SE¼NW¼ and S½;
Sec. 36, S½NE¼, NW¼ and S½.

T. 13 N., R. 1 E.,
All unsurveyed lands lying within ¼ mile of Eagle River and tributaries above an altitude of 500 feet m.s.l.

T. 15 N., R. 1 E.,
All unsurveyed lands lying within ¼ mile of Eklutna Creek and within ¼ mile of Peters Creek.

T. 16 N., R. 1 E.,
All unsurveyed lands lying within ¼ mile of Eklutna Creek.

T. 12 N., R. 2 E.,
All unsurveyed lands lying within ¼ mile of Eagle River.
T. 13 N., R. 2 E.,
All unsurveyed lands lying within ¼ mile of Eagle River.
T. 15 N., R. 2 E.,
All unsurveyed lands within ¼ mile of Eklutna Creek and all unsurveyed lands above altitude 900 within ¼ mile of Eklutna Lake.
T. 14 N., R. 3 E.,
All unsurveyed lands above altitude 900 feet m.s.l., lying within ¼ mile of Eklutna Lake.
T. 15 N., R. 3 E.,
All unsurveyed lands above altitude 900 feet m.s.l., lying within ¼ mile of Eklutna Lake.

The areas described aggregate approximately 44,000 acres.

5. Subject to valid existing rights and the provisions of existing withdrawals, the public lands are hereby opened to settlement and to filing of applications and selections in accordance with the following:

a. Until 10:00 a.m. on March 20, 1964, the State of Alaska shall have a preferred right to select the lands in accordance with provisions of the Act of July 28, 1956 (70 Stat. 709; 48 U.S.C. 46–3b) and section 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339) and the regulations in 43 CFR Part 76. The State of Alaska also has a more limited preferred right of application for the restored lands for highway easement or for highway material site purposes as provided by section 24 of the Act of June 10, 1920, as amended May 28, 1948 (62 Stat. 275; 16 U.S.C. 818).

b. All other valid applications and selections under the nonmineral public land laws presented at or prior to 10:00 a.m. on March 20, 1964, will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

6. Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims must enclose properly corroborated statements in support of their applications, setting forth all facts relevant to their claims.

The lands will be open to settlement under the homestead and Alaska homesite laws at 10:00 a.m. on March 20, 1964.

JOHN A. CARVER, Jr.,
Assistant Secretary of the Interior.

JANUARY 17, 1964.

[F.R. Doc. 64–714; Filed, Jan. 24, 1964; 8:45 a.m.]

[Public Land Order 3315]

[Washington 04968]

WASHINGTON

Opening of Land Formerly in Project No. 2068

1. In an order issued July 20, 1962, the Federal Power Commission vacated the withdrawal created pursuant to the filing of an application for license for Project No. 2068, for the following-described national forest land in the Chelan National Forest:

WILLAMETTE MERIDIAN

All portions of the following subdivision lying within 10 feet of the centerline of the pipe line, and from the centerline and ends of the dam as indicated upon map designated "Exhibit K" entitled "Power Project of Mrs. O. Beryl Blankenship, Stehekin, Washington, Chelan National Forest", filed in the office of the Federal Power Commission on December 14, 1950:

T. 33 N., R. 18 E.,
Sec. 31, SW¼SE¼.

Containing 0.42 acres.

2. Beginning at 10:00 a.m. on March 26, 1964, the land shall be open to such forms of disposition as may by law be made of forest lands, provided that until 10:00 a.m. on March 26, 1964, the State of Washington shall have a preferred right of application for the land for highway easement or for highway material site purposes as provided by section 24 of the Act of June 10, 1920, as amended May 28, 1948 (62 Stat. 275; 16 U.S.C. 818).

JOHN A. CARVER, Jr.,
Assistant Secretary of the Interior.

JANUARY 17, 1964.

[F.R. Doc. 64–715; Filed, Jan. 24, 1964; 8:46 a.m.]

[Public Land Order 3316]

[Colorado 012292]

COLORADO

Partly Revoking Public Land Order No. 1742 of October 6, 1958

By virtue of the authority vested in the President, and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. Public Land Order No. 1742 of October 6, 1958, so far as it withdrew the following-described national forest land for use of the Forest Service, United States Department of Agriculture, as a roadside zone, is hereby revoked:

SIXTH PRINCIPAL MERIDIAN

ROOSEVELT NATIONAL FOREST

Colorado Highway No. 14, Roadside Zone

Poudre Canyon Highway

A strip of land 200 feet on each side of the center line of Colorado Highway No. 14 through the following legal subdivision:

T. 9 N., R. 73 W.,
Sec. 35, SE¼SE¼.

The area described contains approximately 10 acres.

2. At 10:00 a.m., on February 18, 1964, the land shall be open to such forms of disposition as may by law be made of national forest lands.

JOHN A. CARVER, Jr.,
Assistant Secretary of the Interior.

JANUARY 17, 1964.

[F.R. Doc. 64–716; Filed, Jan. 24, 1964; 8:46 a.m.]

Title 46—SHIPPING

Chapter II—Maritime Administration, Department of Commerce

SUBCHAPTER J—MISCELLANEOUS

[General Order 84, Amdt. 1]

PART 360—TRANSFER OF MARINE EQUIPMENT TO SHIP OPERATORS AND SHIPYARDS

Miscellaneous Amendments

Sections 360.3 and 360.5 of this part are hereby amended as follows:

1. Amend paragraph (d) of § 360.3 to read as follows:

§ 360.3 **Policy.**

* * * * *

(d) The transferee shall pay to the Maritime Administration a service charge in the amount of $200 to cover administrative and operating expenses incurred in processing the transfer. This amount is to be deposited to the credit of the Government, and will not be returned to the transferee.

2. Amend paragraphs (e) and (f) of § 360.5 to read as follows:

§ 360.5 **Procedure.**

* * * * *

(e) The transferee shall transmit to the Maritime Administration a certified or cashier's check payable to the "Maritime Adm.-Commerce" in the amount of $200, which is the service charge provided under § 360.3(d).

(f) Upon determination that the equipment transferred has been satisfactorily replaced and all conditions of the transfer have been complied with, the Maritime Administration will refund to the transferee the amount of his deposit less such deductions as are determined by the Maritime Administration to be appropriate.

Dated: January 20, 1964.

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

J. W. GULICK,
Deputy Maritime Administrator.

[F.R. Doc. 64–755; Filed, Jan. 24, 1964; 8:51 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

PART 73—RADIO BROADCAST SERVICES

Replacement of Transmitters

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 8th day of January 1964;

The Commission having under consideration its order (FCC 63–36) adopted January 9, 1963, amending §§ 3.48, 3.250, and 3.550 (now §§ 73.48, 73.250, and 73.550) of the Commission's rules re-

lating to acceptability of broadcast transmitters for licensing, to provide for interchangeability of transmitting equipment under certain circumstances;

It appearing, that, pursuant to the aforesaid sections as so amended a licensee or a permittee may, without further authority, install and utilize a transmitter other than that specifically authorized in its station license or construction permit if such transmitter is listed in the Commission's "Radio Equipment List, Part B, Aural Broadcast Equipment" as acceptable for the transmitter output power authorized and, if operation under §§ 73.295, 73.297, 73.595, or 73.596 is included, such transmitter is listed in the said "Radio Equipment List" as acceptable for the appropriate type of operation; and

It further appearing, that, §§ 73.257 (b) (2) and 73.557(b) (2) of the Commission rules and regulations relating to replacement of transmitter should be amended to make them consistent with the rule changes effected by the aforementioned order; and

It further appearing, that, these amendments to the rules are procedural in nature and that compliance with the notice and effective date provisions of section 4 of the Administrative Procedure Act is not required; and

It further appearing, That, authority for the promulgation of these amendments to the rules is contained in sections 4(i), 301, 303(e) and 303(r) of the Communications Act of 1934, as amended;

It is ordered, That, §§ 73.257(b) (2) and 73.557(b) (2) of the Commission's rules are amended, effective January 20, 1964, to read as follows:

§ 73.257 Changes in equipment and antenna system.

* * * * *

(b) * * *

(2) A replacement of the transmitter as a whole, unless such transmitter is one which may be installed and utilized in accordance with the provisions of § 73.250(a) (5).

* * * * *

§ 73.557 Changes in equipment and antenna system.

* * * * *

(b) * * *

(2) A replacement of the transmitter as a whole, unless such transmitter is one which may be installed and utilized in accordance with the provisions of § 73.550(a) (5).

* * * * *

(Sec. 4, 48 Stat. 1066, as amended, 47 U.S.C. 154. Interpret or apply secs. 301, 303, 48 Stat. 1081, 1082, 47 U.S.C. 301, 303.)

Released: January 22, 1964.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 64-640; Filed, Jan. 24, 1964; 8:45 a.m.]

Title 50—WILDLIFE AND FISHERIES

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

PART 33—SPORT FISHING

Wildlife Refuges in South Carolina

The following special regulations are issued and are effective on date of publication in the FEDERAL REGISTER.

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

SOUTH CAROLINA

CAROLINA SANDHILLS NATIONAL WILDLIFE REFUGE

Sport fishing on the Carolina Sandhills National Wildlife Refuge, South Carolina, is permitted only on the areas designated by signs as open to fishing. This open area, comprising 64 acres or 13 percent of the total area of the refuge, is delineated on a map available at the refuge headquarters and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, 809 Peachtree-Seventh Building, Atlanta 23, Georgia. Sport fishing is subject to the following conditions:

(a) Species permitted to be taken: Black bass, bluegill, bream, jackfish (Eastern pickerel), catfish, and other minor species permitted by State regulations.

(b) Open season: Martins Pond—March 15, 1964, through October 15, 1964; Lakes Sixteen and Seventeen—February 15, 1964, through November 30, 1964. Daylight hours only. Fishing on Sunday prohibited.

(c) Daily creel limits: Black bass—10; game fish other than bass—25; no creel limit on catfish. Other minor species as permitted by State regulations.

(d) Methods of fishing:

(1) Pole and line, rod and reel, artificial and live baits permitted.

(2) Rowboats and canoes permitted. Gasoline-powered motors prohibited; electric motors permitted.

(e) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

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

(3) The provisions of this special regulation are effective to December 1, 1964.

CAPE ROMAIN NATIONAL WILDLIFE REFUGE

Sport fishing on the Cape Romain National Wildlife Refuge, South Carolina, is permitted only on the areas designated by signs as open to fishing. This open area, comprising 580 acres or 1.67 percent of the total area of the refuge, is delineated on a map available at the refuge headquarters and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, 809 Peachtree-Seventh Building, Atlanta 23, Georgia. Sport fishing is subject to the following conditions:

(a) Species permitted to be taken: Black bass; bream; and other minor species permitted by State regulations.

(b) Open season: April 1, 1964, through September 30, 1964. Daylight hours only.

(c) Daily creel limits: Black bass—10; game fish other than bass—25.

(d) Methods of fishing:

(1) Pole and line, rod and reel, artificial and live baits permitted, including live minnows.

(2) Rowboats, canoes, and other floating devices without motors permitted.

(3) Fishing from dikes, dams, and water control structures prohibited.

(e) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) Rowboats, canoes, and other floating devices without motors may be placed in Jack's Creek only at points designated by posting by the officer-in-charge, but must be removed from the refuge at the close of each day's fishing.

(3) A Federal permit is not required to enter the public fishing area.

(4) The provisions of this special regulation are effective to October 1, 1964.

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

JANUARY 17, 1964.

[F.R. Doc. 64-713; Filed, Jan. 24, 1964; 8:45 a.m.]

Proposed Rule Making

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 2a]

[No. MC–C–4366]

SPECIAL RULES OF PROCEDURE GOVERNING CONVERSION OF IRREGULAR-ROUTE TO REGULAR-ROUTE MOTOR CARRIER OPERATIONS

Notice of Proposed Rule Making

At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 13th day of January A.D. 1964.

In the matter of declaration of policy and promulgation of special rules for conversion of irregular-route to regular-route motor carrier operations.

It is ordered, That for the reasons hereinafter indicated, a proceeding be, and it is hereby, instituted under the authority of Part II of the Interstate Commerce Act and section 4 of the Administrative Procedure Act, to determine whether the special rules of procedure set forth below should be promulgated by this Commission.

From the inception of Federal motor carrier regulation, this Commission has issued certificates of public convenience and necessity authorizing interstate property-carrying operations over either regular routes or irregular routes depending upon the pattern of operations conducted or proposed and their relation to the briefly-stated statutory distinction between the two types of service. Although the problem of classifying motor carrier operations in terms of regular- or irregular-route service thus had arisen in a general way with the passage of the Motor Carrier Act of 1935 (see, for example, Kaplan Trucking Co. Common Carrier Application, 21 M.C.C. 691), it was not until 1947 that the basic problem of definition was resolved by issuance of the decision in Transportation Activities, Brady Transfer & Storage Co., 47 M.C.C. 23. That decision, however, though it reviewed the entire matter as it then stood and enunciated eight specific criteria to be used as guideposts in distinguishing irregular-route operations from those of a duly authorized regular-route operator, recognized the plain impossibility of promulgating a general rule by which the essential character of all operations could be determined. As a result, the history of our regulation of motor carriers of property includes quite a number of individual application, investigation, complaint, and other proceedings dealing with the demarcation between regular- and irregular-route service. See Ex Parte No. MC–55, Motor Common Carriers of Property—Routes and Service, 88 M.C.C. 415 (decided December 4, 1961, and cases cited therein.

The Brady case, supra, also noted the natural tendency of the irregular-route operations of motor common carriers of general commodities or of a wide range of diverse commodities, with the development of traffic, to gravitate toward and evolve into regular-route operations between certain terminals. And such irregular-route carriers were informed by that decision of their obligation either to check that tendency or to obtain appropriate authority for the conversion to regular routes. The motor carrier industry, prior to the institution of Ex Parte No. MC–55 in 1959, came to rely upon the Brady case criteria and to obey its mandate that they seek conversion of their authorities in appropriate circumstances. The initiation of the rule-making proceeding in Ex Parte No. MC–55, however, wherein a number of proposals designed to blur or eliminate the distinction between regular- and irregular-route service were to be considered, cast doubt upon the continuing efficacy of the Brady case criteria and, although the natural processes of evolution discussed above continued, resulted in an obvious hiatus in the handling of appropriate conversion applications and the institution of other proceedings. Though ultimately rejected, the Ex Parte No. MC–55 proposals and the hiatus caused by their pendency have complicated the overall situation, and the controversy regarding the demarcation line between irregular-route services and those of duly authorized regular-route carriers shows every sign of continuing unabated, of becoming a perennial source of litigation, and of ripening, at this time, into a plethora of application, complaint, investigation, or other proceedings looking toward the piecemeal correction of what is essentially a fundamental and widespread problem. Consequently, it is desirable in the public interest, and in the interests of a stable system of transportation adequate to meet the needs of commerce and the national defense that simplified and expedient procedures be made available for a reasonable period to enable carriers to bring into harmony with both the letter and spirit of the Interstate Commerce Act and the Commission's decisions thereunder that portion of their irregular-route operations which has, through the natural processes of evolution, developed into regular-route service between fixed termini. To this end, the special rules of procedure set forth below are promulgated.

These procedures are not to be utilized to obtain regular-route authority in addition to, rather than in lieu of, corresponding irregular-route authority, and to be successful the applicants must indicate a willingness to surrender that portion of their irregular-route authority which is found to have evolved into a regular-route service. Nor do they contemplate the broadening of a carrier's existing authority, either as to commodities or as to territory. Rather, the adoption of the rules for a limited period of time is designed to resolve for both this Commission and the surface transportation industry generally a long-standing problem without unduly burdening the Commission or the carriers, and without doing violence to the substantial rights of all concerned. In order to achieve the beneficial results hoped for, however, it is expected that all carriers holding irregular-route motor carrier authority to transport either general commodities or a large number of diverse commodities will examine their present operations in the light of the criteria enunciated in the Brady case, supra; and if any such operations are believed to have evolved into those of a regular-route operator, to file an appropriate application as provided in the special rules as soon as practicable, but in no event later than March 1, 1965. Otherwise, any application filed for authority of the type here contemplated will be governed by the applicable general or special rules of practice.

It is further ordered, That representations of interested persons with respect to the declaration of policy and special rules, their amendment or rejection, or to the issuance of additional such rules, may be submitted in writing to the Commission within 30 days from the date of publication of this order in the FEDERAL REGISTER.

It is further ordered, That in the absence of written representations as provided above, and effective 30 days from the date of publication in the FEDERAL REGISTER of this notice of proposed rule making, 49 CFR be, and it is hereby, amended by the addition of Part 2a as set forth below which is hereby incorporated into, and made a part of, this order.

And it is further ordered, That a copy of this order and Part 2a be delivered to the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER; and that a copy be posted in the Office of the Secretary of the Commission in Washington, D.C., for public inspection.

By the Commission.

[SEAL] HAROLD D. McCOY, *Secretary.*

PART 2a—SPECIAL RULES OF PROCEDURE GOVERNING CONVERSION OF IRREGULAR-ROUTE TO REGULAR-ROUTE MOTOR CARRIER OPERATIONS

Sec.

2a.1 Scope of special rules.
2a.2 Rules otherwise applicable.
2a.3 Applications for conversion to regular routes.
2a.4 Notice, protests, and subsequent procedures.
2a.5 Bases for approval.
2a.6 Expiration date.

AUTHORITY: The provisions of this Part 2a issued under secs. 12, 17, 24 Stat. 383, as amended, 385, as amended; secs. 204, 205, 206, 207, 49 Stat. 546, as amended, 548, as

amended, 551, as amended; sec. 304, 54 Stat. 933; sec. 403, 56 Stat. 285; 49 U.S.C. 12, 17, 304, 305, 306, 307, 904, 1003; and 60 Stat. 537, 5 U.S.C. 1003 and 1004.

§ 2a.1 Scope of special rules.

The special rules in this part govern the filing and handling under section 206(b) and section 207 of the Interstate Commerce Act, as amended, of applications for certificates of public convenience and necessity which would authorize operations, in interstate or foreign commerce, as a common carrier by motor vehicle, over described regular routes, in lieu of certain corresponding authorized transportation of property over irregular routes between terminals, which transportation has evolved into regular-route operations within the criteria enunciated in Transportation Activities, Brady Transfer & Storage Co., 47 M.C.C. 23.

§ 2a.2 Rules otherwise applicable.

Except as otherwise provided in the special rules in this part, § 1.247 of this chapter (Commission's Special Rules of Practice) shall apply.

§ 2a.3 Applications for conversion to regular routes.

To be eligible for processing under the special rules in this part, an application for conversion of irregular-route operating authority to corresponding regular-route authority, accompanied by a specific request for such processing, shall be filed with the Interstate Commerce Commission at Washington, D.C., on or before March 1, 1965. Such application shall be prepared in accordance with and contain all information called for in Form BMC 78, Application for Motor Carrier Certificate or Permit (§ 7.78 of this chapter) (16 F.R. 3587). In addition, the application shall be accompanied by verified statements of facts setting forth in detail all the evidence relied upon to justify the proposed conversion to regular-route operations within the criteria established in Transportation Activities, Brady Transfer & Storage Co., supra. A map or maps indicating in detail the scope of the applicant's proposals shall be attached to and submitted with the application. Copies of such application shall be furnished in such number, and be filed and served in the manner and upon the persons (except competing carriers) specified in the form of application. Applicant shall furnish copies of his verified statements to interested persons upon request from such interested persons. Where applicant's verified statements of facts include abstracts of applicant's past operations, the underlying original records shall be made available for examination by any interested person at a time and place mutually agreed upon by applicant and such interested person.

§ 2a.4 Notice, protests, and subsequent procedures.

The manner of giving notice to interested persons of the filing of such applications, the filing of protests thereto, the subsequent handling of such applications, and all other procedural matters relating thereto will be governed by the applicable provisions of § 1.247 of this chapter (Commission's Special Rules of Practice).

§ 2a.5 Bases for approval.

Each such application must be determined upon its own particular facts, with every effort being made to dispose of the application on the basis of verified statements. The following quotation, taken from page 40 of the Brady case, supra, has been cited in other proceedings seeking the conversion of irregular-route to regular-route authority and provides a useful framework within which to view application proceedings instituted under these special rules in this part:

> Whenever, in the normal development and growth of an irregular-route service, the movement of traffic between particular points becomes so constant in point of time and of such volume as to suggest a public need for an added regular-route service between such points, the act provides a means by which appropriate authority for such an operation may be obtained. Noting a tendency for its operation to fall into regular routes, it is the obligation of every irregular-route carrier either to check the tendency and preserve its status, or to obtain appropriate authority for the conversion.
>
> * * * * * *
>
> A related argument that irregular-route carriers should be allowed to convert to regular-route "upon a showing of past performance" without the introduction of testimony of shipper witnesses, merits only brief comment. To begin with, the reference to "past performance" is not entirely clear in its meaning. If knowingly unlawful "past performance" of unauthorized regular-route service is referred to, they are entitled to little, if any, weight * * *. If, on the other hand, reference is to an increasing and constant volume of lawful past operations in authorized irregular-route service, then clearly such operations are entitled to weight in the disposition of any application for authority to convert to regular-route service, but patently it cannot be said that past operations, standing alone, would in every case constitute sufficient proof of public need for regular-route service to justify a grant of authority to convert. Each such application must be determined upon its own particular facts.

Consistent with the foregoing, and in the light of the National Transportation Policy declared in the Act, where the facts make it clear that applications filed under the rules in this part represent a bona fide effort to aid the Commission in resolving the larger problem occasioned by the controversial distinction between regular- and irregular-route service, it will be the policy of the Commission to hold the applicant carriers only to such burden of proof as is consistent with a realistic approach to the objective here sought to be achieved.

§ 2a.6 Expiration date.

The special rules of procedure in this part, except as they shall be applicable to applications filed under such rules prior to that date, shall expire at midnight of the 1st day of March 1965.

[F.R. Doc. 64-723; Filed, Jan. 24, 1964; 8:47 a.m.]

Notices

DEPARTMENT OF THE TREASURY

Coast Guard

[CGFR 64–5]

JAMES RIVER

Closed to Navigation During Launching of U.S.S. America

By virtue of the authority vested in me as Commandant, United States Coast Guard, by Treasury Department Order 120 dated July 31, 1950 (15 F.R. 6521) and Executive Order 10173, as amended, by Executive Orders 10277 and 10352, I hereby affirm for publication in the FEDERAL REGISTER the order of H. J. Wuensch, Rear Admiral, United States Coast Guard, Commander, Fifth Coast Guard District, who has exercised authority as District Commander, such order reading as follows:

SPECIAL NOTICE JAMES RIVER

Pursuant to the request of the Commandant, Fifth Naval District, Norfolk, Virginia, and under the authority of Title II of the Espionage Act of June 15, 1917 (40 STAT 220), as amended and Executive Order 10173, as amended, I declare that from 9:30 a.m., e.s.t., until 3:30 p.m., e.s.t., on Saturday the 1st day of February 1964 the following area is a prohibited area and I order that it be closed to any person or vessel due to the launching of the "U.S.S. America (CVA66):"

The water of the James River, Norfolk-Newport News Harbor, Virginia, within the coordinates of Latitude 36 degrees 59 minutes 34 seconds North, Longitude 76 degrees 26 minutes 53 seconds West at the shoreline of Newport News at the foot of 52nd Street, Newport News, to a point 500 yards offshore at Latitude 36 degrees 59 minutes 27 seconds North, Longitude 76 degrees 27 minutes 10 seconds West, thence southeasterly to a point Latitude 36 degrees 58 minutes 43 seconds North, Longitude 76 degrees 26 minutes 41 seconds West, 500 yards off the shoreline of Newport News at the foot of 32nd Street, Newport News, and thence to a point at Latitude 36 degrees 58 minutes 48 seconds North, Longitude 76 degrees 26 minutes 27 seconds West at Newport News Shipbuilding Pier 8 Light (Light List 2786.5).

This prohibited area will be marked by two special purpose temporary buoys painted with orange and white horizontal bands as shown on the enclosed chart section.

No person or vessel may remain in or enter this prohibited area.

The Captain of the Port, Norfolk-Newport News Area, Virginia shall enforce this order.

The Captain of the Port may be assisted by employees and facilities of any state or political subdivision thereof or any Federal Agency.

For violation of this order Title II of the Espionage Act of June 15, 1917 (40 Stat. 220), as amended provides:

"If any owner, agent, master, officer, or person in charge, or any member of the crew of any such vessel fails to comply with any regulation or rule issued or order given under the provisions of this title, or obstructs or interferes with the exercise of any power conferred by this title, the vessel, together with her tackle, apparel, furniture, and equipment, shall be subject to seizure and forfeiture to the United States in the same manner as merchandise is forfeited for violation of the customs revenue laws; and the person guilty of such failure, obstruction, or interference shall be punished by imprisonment for not more than ten years and may, in the discretion of the court, be fined not more than $10,000.

"If any other person knowingly fails to comply with any regulation or rule issued or order given under the provisions of this title, or knowingly obstructs or interferes with the exercise of any power conferred by this title, he shall be punished by imprisonment for not more than ten years and may, at the discretion of the court, be fined not more than $10,000."

Dated: January 17, 1964.

[SEAL] D. McG. MORRISON,
Vice Admiral, U.S. Coast Guard,
Acting Commandant.

[F.R. Doc. 64–731; Filed, Jan. 24, 1964; 8:48 a.m.]

[CGFR 64–2]

NEW LONDON HARBOR

Closed to Navigation During Launching of U.S.S. Casimir Pulaski

By virtue of the authority vested in me as Commandant, United States Coast Guard, by Treasury Department Order 120 dated July 31, 1950 (15 F.R. 6521) and Executive Order 10173, as amended, by Executive Orders 10277 and 10352, I hereby affirm for publication in the FEDERAL REGISTER the order of R. M. Ross, Rear Admiral, United States Coast Guard, Commander, Third Coast Guard District, who has exercised authority as District Commander, such order reading as follows:

SPECIAL NOTICE NEW LONDON HARBOR

Pursuant to the request of the Commander, Submarine Force, U.S. Atlantic Fleet, U.S. Navy, and acting under the authority of the Act of June 15, 1917 (40 Stat. 220), as amended, and the regulations in Part 6, Chapter 1, Title 33, Code of Federal Regulations, I hereby order that the waters of New London Harbor, New London, Connecticut, between the latitudes of 41 degrees 20 min. 32 sec. North and 41 degrees 21 min. 03 sec. North, be closed to all persons and vessels on Saturday, 1 February 1964, from 1130 A.M. Eastern Standard Time, until the "U.S.S. Casimir Pulaski" is made fast to the wetdock at the Electric Boat Division of the General Dynamics Corporation, Groton, Connecticut. The launching of the "U.S.S. Casimir Pulaska" is scheduled for 1200 noon Eastern Standard Time, on Saturday, 1 February 1964. The Northern and Southern limits of this area will be marked by ranges located on the eastern shore. Coast Guard vessels will be anchored off these ranges between the shore line and the main ship channel.

All persons and vessels are directed to remain outside of the closed area. This order will be enforced by the Captain of the Port, New London, Connecticut, and by U.S. Coast Guard vessels under his command. The aid of other Federal, State and Municipal agencies may be enlisted to assist in the enforcement of this order.

Penalties for violation of the above order: Section 2, Title II of the Act of June 15, 1917, as amended, 50 U.S.C. 192, provides as follows: If any owner, agent, master, officer or person in charge, or any member of the crew of any such vessel fails to comply with any regulation or rule issued or order given under the provisions of this title, or obstructs or interferes with the exercise of any power conferred by this title * * *

Or if any other person knowingly fails to comply with any regulation or rule issued or order given under the provisions of this title, or knowingly obstructs or interferes with the exercise of any power conferred by this title, he shall be punished by imprisonment for not more than ten years and may, at the discretion of the court, be fined not more than $10,000.

Dated: January 17, 1964.

[SEAL] D. McG. MORRISON,
Vice Admiral, U.S. Coast Guard,
Acting Commandant.

[F.R. Doc. 64–732; Filed, Jan. 24, 1964; 8:48 a.m.]

Office of the Secretary

[Dept. Circ. 570, 1963 Rev. Supp. No. 21]

AMERICAN SURETY CO. OF NEW YORK

Termination of the Authority To Qualify as Surety on Federal Bonds

JANUARY 21, 1964.

Notice is hereby given that the Certificate of Authority issued by the Secretary of the Treasury to American Surety Company of New York, New York, New York, under the provisions of the Act of Congress approved July 30, 1947, (6 U.S.C. 6–13) to qualify as sole surety on recognizances, stipulations, bonds and undertakings permitted or required by the laws of the United States is hereby terminated effective as of midnight, Pacific Standard Time, December 31, 1963.

Transamerica Insurance Company, a California corporation, holds a Certificate of Authority from the Secretary of the Treasury as an acceptable surety on bonds in favor of the United States. Pursuant to Agreement of Merger dated November 13, 1963, effective midnight, Pacific Standard Time, December 31, 1963, approved by the Superintendent of Insurance of the State of New York, December 26, 1963, and filed with the Secretary of State of the State of California on December 31, 1963, American Surety Company of New York, New York, New York, was merged into Transamerica Insurance Company, Los Angeles, California, the surviving company. Transamerica Insurance Company acquired all of the assets and assumed all of the liabilities of American Surety Company of New York. A copy of the Agreement of Merger is on file in the Treasury Department, Bureau of Accounts, Surety Bonds Branch, Washington, D.C., 20226.

No action need be taken by bond approving officers, by reason of the merger, with respect to any bond or other obligations in favor of the United States, or in which the United States has an interest, direct or indirect, issued on or before December 31, 1963, by American Surety Company of New York pursuant to the Certificate of Authority issued to the Company by the Secretary of the Treasury.

As a result of the merger, an underwriting limitation of $5,470,000.00 has been established for Transamerica Insurance Company, Los Angeles, California, by the Treasury Department, effective January 1, 1964, under the company's Certificate of Authority to act as an acceptable surety on Federal bonds.

[SEAL] JOHN K. CARLOCK,
Fiscal Assistant Secretary.

[F.R. Doc. 64-728; Filed, Jan. 24, 1964; 8:47 a.m.]

ATOMIC ENERGY COMMISSION

CHEMICAL PROCESSING AFTER IRRADIATION OF SPECIAL NUCLEAR MATERIAL

Use Charges for Leased Material

1. *General.* The United States Atomic Energy Commission (the AEC) hereby gives notice of a limitation on use charges in connection with chemical processing after irradiation of special nuclear material distributed under subsections 53a (1) and (2) of the Atomic Energy Act of 1954, as amended (the Act). The limitation shall apply only to special nuclear material that has been distributed under lease by the AEC for use in a nuclear reactor licensed pursuant to section 104 of the Act and that, after irradiation in the reactor, is contained in a processing lot delivered in processable form not later than June 30, 1970, to any commercial facility in the United States for chemical processing in accordance with an agreement between the lessee and the processor calling for expeditious processing of such lots. From the time of delivery to the commercial facility of the last container of the processing lot of which such material is a part until the time when nitrates of any portion of such material have been recovered, separated, and purified in accordance with an agreement between the lessee and a processor and removed from the last receptacle involved in chemical processing to be placed in a shipping or other container, the AEC use charge on that portion, unless otherwise waived, shall apply only for the actual number of days elapsing or for a number of days calculated as specified in this notice, whichever is less. As used in this notice, the term "chemical processing" does not include storage of purified nitrates of uranium and plutonium or the conversion of such nitrates to other chemical forms. The calculated number of days represents an allowance for chemical processing time in an assumed AEC plant. Specifications as to processable form, processing rates, and other information to be used in this calculation are given below; these are solely for the purposes of determining the limitation of use charges under this notice and are subject to change or augmentation from time to time. For any fuel type whose cooling period and processing rate are not covered by specifications in this notice, the AEC will determine, on request by the lessee, an applicable period and rate consistent with those for fuel types covered herein. This notice is not intended to diminish the available amount of any waiver of use charges otherwise authorized pursuant to sections 58 or 261 of the Act, nor to affect the time period during which any such waiver is available.

2. *Processable form.* Material shall be considered as being in processable form for the purposes of this notice if it is contained in fuel assemblies of a type capable of being processed in the commercial facility to which it is delivered, if the operators of the commercial facility have agreed to do the processing, and if a cooling period at least as long as that specified below has elapsed subsequent to termination of irradiation of the material. A processing lot shall be considered as being in processable form if all the contained material meeting the requirements of paragraph 1 above is in processable form. If this cooling period has not elapsed prior to delivery to the commercial facility of the last container of the processing lot, the remainder of the cooling period shall be added to the processing time calculated in accordance with paragraph 3 below.

(a) If thorium had not been incorporated in the fuel assemblies prior to irradiation:

(i) For uranium that contained not more than six weight percent of uranium-235 in total uranium before irradiation and that has been irradiated in a nuclear reactor in which the neutron energies were primarily in the thermal region, the cooling period for the purposes of this notice shall be 120 days;

(ii) For uranium not meeting the conditions in (i) above, the cooling period for the purposes of this notice will be determined by the AEC on request by the lessee, but will not exceed 180 days.

(b) If thorium had been incorporated in the fuel assemblies prior to irradiation, the cooling period for the purposes of this notice shall be as given in the following table, where the value used for grams of protactinium-233 per kilogram of uranium-233 shall be determined for a processing lot as a whole. Linear interpolation shall be used between the values tabulated.

Grams of protactinium-233 per kilogram of uranium-233 immediately after termination of irradiation:	*Cooling period in days*
20 or less	120
45	150
75	170
140	190
250	210
500	230

3. *Allowance for chemical processing time.* The number of days to be assumed for chemical processing of fuel assemblies containing material subject to this notice in order to determine the limitation of use charges is (W/R) plus 30, where W is the weight in kilograms of uranium plus thorium in such fuel assemblies contained in a processing lot, R is the controlling processing rate in kilograms of uranium plus thorium per day in such fuel assemblies, and 30 is the number of days allowed for handling and scheduling. The value of R shall be determined as the least value obtained from (a), (b), or (c) below, as applicable, but shall not exceed 1000. If the material that is processed as one lot contains fuel assemblies of more than one type, with different values of R, then (W/R) shall be the sum of the quotients of weight divided by the controlling processing rate for each type.

(a) A value of R shall be determined from the following table, for a given assay of uranium-235, by multiplying the corresponding uranium processing rate by the ratio of the total amount of uranium plus thorium to the amount of uranium in the processing lot for a particular type of fuel assembly. Where a discrete fuel assembly to be processed as a unit contains uranium of various assays of uranium-235 before irradiation, the weighted average of those assays may be used. Linear interpolation shall be used between the values tabulated.

Assay before irradiation in weight percent of uranium-235 in total uranium:	*Uranium processing rate in kilograms of uranium per day*
100	40
93	44
80	50
60	65
50	78
40	98
30	132
25	161
20	215
15	310
10	537
8	740
7	781
6	825
5	875
4	930
3 or less	1000

(b) If the material to be processed is clad with a metal in which the major alloy constituent is any element other than zirconium or aluminum, the value of R shall not exceed 870 kilogram of uranium plus thorium per day. If the uranium to be processed is dispersed in a metallic or ceramic matrix other than thorium or a thorium compound or if plutonium or uranium-233 had been incorporated in the fuel assembly prior to irradiation, the AEC will determine an applicable processing rate, on request by the lessee.

(c) R shall not exceed a value obtained by multiplying the thorium processing rate given below by the ratio of the total amount of uranium plus thorium to the amount of thorium in the processing lot for a particular type of fuel assembly. The thorium processing rate for the purposes of this notice shall be 1000 kilograms of thorium per day if thorium is not recovered and 600 kilograms of thorium per day if thorium is recovered.

4. *Information required.* In order to receive a limitation of use charges in

accordance with this notice, a lessee shall notify the AEC Materials Leasing Officer that material meeting the requirements of paragraph 1 above and contained in an intended processing lot has been delivered to a commercial facility in the United States for chemical processing and shall furnish him information as to (a) the amounts of total uranium, uranium-235, uranium-233, protactinium-233, thorium, and plutonium isotopes present before irradiation and estimated to be present after irradiation, (b) the cladding material and any matrix material, (c) the makeup of the actual processing lot when processing occurs, (d) the dates of actual processing and of removal of purified nitrates of material subject to this notice from the last receptacle involved in chemical processing, and (e) any other information on the fuel, its irradiation, and its chemical processing that the AEC may require to administer this notice.

5. *Determination by the AEC.* The AEC reserves the right to interpret this notice in order to determine the applicability and the amount of any limitation of use charges hereunder and will notify the lessee of AEC's determination. The AEC may determine the use charge on a provisional basis if processing has not been accomplished in time to ascertain the makeup of the actual processing lot. Any such provisional determination may be adjusted by the AEC on the basis of subsequent information on the actual makeup of a processing lot, by debiting or crediting the lessee's lease account for special nuclear material as appropriate.

6. *Correspondence.* Any correspondence involving this notice should be addressed to:

AEC Materials Leasing Officer, Oak Ridge Operations Office,
U.S. Atomic Energy Commission, Post Office Box E,
Oak Ridge, Tennessee.

7. *Effective date.* This notice is effective upon publication in the FEDERAL REGISTER.

Dated at Germantown, Md., this 14th day of January 1964.

For the Atomic Energy Commission.

A. R. LUEDECKE,
General Manager.

[F.R. Doc. 64-577; Filed, Jan. 24, 1964; 8:45 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

GRIFFITH LABORATORIES INC.

Filing of Petition Regarding Food Additive Propylene Oxide

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 1107) has been filed by The Griffith Laboratories Inc., 855 Rahway Avenue, Union, New Jersey, proposing the issuance of an amendment to § 121.1076 *Propylene oxide* to provide for the safe use of propylene oxide as a package fumigant in or on flour, starch, gums, processed spices, and dehydrated vegetables, with residues of propylene oxide not to exceed 300 parts per million.

Dated: January 20, 1964.

J. K. KIRK,
Assistant Commissioner of Food and Drugs.

[F.R. Doc. 64-730; Filed, Jan. 24, 1964; 8:48 a.m.]

CIVIL AERONAUTICS BOARD

[Docket 14855]

TRANSPORTES AEREOS BENIANOS, S. A. (TABSA)

Notice of Prehearing Conference

Application of TABSA for a foreign air carrier permit to conduct scheduled and nonscheduled air transportation of property and mail over a route between La Paz, Bolivia and Miami, Florida via Lima, Peru, Guayaquil, Ecuador and Panama (Tocumen), with the right to over-fly intermediate points. Also requests authority to engage in off-route charter operations pursuant to the Board's decision in Docket 7173 and Part 212 of the Board's Economic Regulations.

Notice is hereby given that a prehearing conference on the above-entitled application is assigned to be held on February 7, 1964, at 10:00 a.m., e.s.t., in Room 725, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Joseph L. Fitzmaurice.

Dated at Washington, D.C., January 22, 1964.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 64-751; Filed, Jan. 24, 1964; 8:50 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 15288]

CIRCLEVILLE AUTO AND TRUCK WRECKING CO.

Order To Show Cause

In the matter of JACK E. CLARK d/b as Circleville Auto and Truck Wrecking Company, Circleville, Ohio, Docket No. 15288; order to show cause why there should not be revoked the license for Radio Station KCY-927 in the Industrial Radio Service.

The Commission, by the Chief, Safety and Special Radio Services Bureau, under delegated authority, having under consideration the matter of certain alleged violations of the Commission's rules in connection with the operation of the above-captioned station;

It appearing, that, pursuant to § 1.89 (formerly § 1.76) of the Commission's rules, written notice of violation of the Commission's rules was served upon the above-named licensee as follows: Official Notice of Violation dated October 1, 1963, alleging violation of § 11.152 (now § 91.152) of the Commission's rules.

It further appearing, that said licensee did not reply to such communication or to a follow-up letter dated October 17, 1963, served upon him; and

It further appearing, that, in view of the foregoing, the licensee has repeatedly violated § 1.89 of the Commission's rules; and

It further appearing, that the violations of § 1.89 of the Commission's rules and the related facts create apparent liability by the respondent to a monetary forfeiture of $100 under section 510 of the Communications Act of 1934, as amended, and § 1.80 of the Commission's rules; and also subject the license of the above-captioned station to revocation under the provisions of section 312 of the Communications Act of 1934, as amended; but further proceedings in this Docket should be limited to action looking toward a determination as to whether an order of revocation should be issued;

It is ordered, This 22d day of January 1964, pursuant to section 312(a)(4) and (c) of the Communications Act of 1934, as amended, and § 0.331(b)(8) of the Commission's rules, that the said licensee show cause why the license for the above-captioned radio station should not be revoked, and give evidence in respect thereto at a hearing to be held at a time and place to be specified by subsequent order; and

It is further ordered, That the Secretary send a copy of this Order by Certified Mail—Return Receipt Requested to the said licensee at his last known address of Route 23N, Circleville, Ohio.

Released: January 22, 1964.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 64-746; Filed, Jan. 24, 1964; 8:50 a.m.]

[Docket Nos. 14597-15203; FCC 64R-37]

KWEN BROADCASTING CO., AND WOODLAND BROADCASTING CO.

Memorandum Opinion and Order Amending Issues

In re applications of Felix Joynt and James Joynt, d/b as KWEN Broadcasting Company, Port Arthur, Texas, Docket No. 14597, File No. BP-13627; Woodland Broadcasting Company, Vidor, Texas, Docket No. 15203, File No. BP-15973; for construction permits.

1. The Review Board has before it for consideration a petition to enlarge issues, filed November 21, 1963, by Woodland Broadcasting Company; an opposition thereto, filed December 6, 1963, by Felix and James Joynt, d/b as KWEN Broadcasting Company; an opposition by the Broadcast Bureau, filed December 11, 1963; and a reply by petitioner filed December 17, 1963, which incorporates by reference its opposition filed December 16, 1963, to KWEN's motion for leave to amend.

2. Woodland Broadcasting Company requests the addition of the following issues to the six issues already designated by Order, released October 29, 1963 (FCC 63-985):

7. To determine the nature and extent of the financial transactions engaged in by KWEN Broadcasting Company and/or its principals since October 27, 1959, whether such transactions have resulted in any change in the financial position of KWEN Broadcasting Company and/or its principals and whether such changes have been reflected in the instant application.

8. To determine whether Felix and James Joynt d/b as KWEN Broadcasting Company are financially qualified to construct, own and operate the proposed standard broadcast station.

In support of its request petitioner alleges that the balance sheets of KWEN's principals, included with KWEN's application, are dated as of 1959 when the application was first filed with the Commission; that events affecting the financial condition of KWEN since then are not reflected in the application; and that KWEN's current financial position does not qualify it to meet the anticipated costs, less deferred payments, of construction and initial operation of the proposed station, amounting to an estimated $32,565.00. Specifically, petitioner alleges that the following events, occurring in the interim between 1959 and the present, are not disclosed by KWEN:

(1) The purchase of Station KWLD (formerly KLBG) by the Joynts for $61,076.48 and its subsequent sale for $55,000 resulting in a net loss of $6,076.48;

(2) The payment to Vidor Broadcasting Company of $15,800 in connection with that company's dismissal from a comparative proceeding involving KWEN (approved by the Review Board by Memorandum Opinion and Order, released August 30, 1963, FCC 63R-403); and

(3) A contingent liability in the amount of $59,000 to KWLD Broadcasting Company in connection with a suit by that firm against KWEN in the Texas Courts.

3. In its opposition, KWEN includes a balance sheet of GEM Appliance Company, a partnership of Felix and James Joynt, dated September 30, 1963[1] which shows Total Current Assets of $157,656.36, Investments of $31,243.79, Total Current Liabilities of $53,232.24, and Notes Payable amounting to $23,585.16. This KWEN contends would leave sufficient funds out of the $80,739 (the correct figure is $80,839), thus available for construction and initial operation of its proposed station. In addition, $6,320 is shown as a contingent liability to Vidor Broadcasting Company to be paid in the event of the grant of KWEN's application.[2] KWEN further states that the suit against it by KWLB Broadcasting Company was dismissed by plaintiffs voluntarily with prejudice on November 19, 1963, and that no payments or other considerations were involved. By Memorandum Opinion and Order, released December 31, 1963 (FCC 63M-1375), the Hearing Examiner granted KWEN's motion for leave to amend its application to substitute the updated financial statement of GEM in place of the prior financial showing in the application.

4. The Broadcast Bureau, in view of the submission of the updated balance sheet of GEM, which it states fortifies an earlier determination regarding KWEN's financial qualifications, finds no basis for the enlargement of issues as here requested.

5. In its reply, petitioner challenges various items under the headings stated above in the 1963 GEM balance sheet. Petitioner reasserts its request for the two additional issues, contending that the financial statement included does not resolve all doubt as to KWEN's financial qualifications. We agree with petitioner. Although KWEN contends that its current balance sheet shows an excess of $80,839 available for financing construction and operation of its proposal, requiring $32,565, our analysis of KWEN's showing of its current assets does not support this contention. In connection with construction and operation of its station, KWEN requires $32,565 plus the $6,320 payable to Vidor Broadcasting Company (footnote 2 supra), totaling $38,885. As against total admitted liabilities of $76,817, KWEN shows cash on hand of $26,419, leaving $12,466 additionally required for its proposal. That this sum may be drawn from the remaining current assets requires a more detailed showing of the availability and liquidity in particular of the following items:

Notes Receivable (Real Estate)	$16,834.65
Notes Receivable (K.W.L.D.)	41,399.29
Accounts Receivable	23,415.58

On the basis of the information presently before us we cannot conclude that KWEN has made a showing, consistent with the continued operation of the GEM Appliance Company (and there has been no allegation that the company would be liquidated in the event of grant of its proposal), such as would support a present finding that KWEN is financially qualified. Therefore, an opportunity will be afforded KWEN by the addition of a financial qualifications issue to come forward at the evidentiary hearing to present such additional information. Since the issue to be added will permit inquiry into all relevant aspects of KWEN's financial qualifications petitioner's requested issue 7 is unnecessary for this purpose.

Accordingly, it is ordered, This 20th day of January 1964, That the petition to enlarge issues, filed November 21, 1963, by Woodland Broadcasting Company is granted to the extent indicated herein and in all other respects denied; and

It is further ordered, That the following issue be added to the designated issues: To determine whether Felix and James Joynt, d/b as KWEN Broadcasting Company are financially qualified to construct, own and operate the proposed standard broadcast station.

Released: January 21, 1964.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 64-747; Filed, Jan. 24, 1964; 8:50 a.m.]

[Docket Nos. 15269, 15270; FCC 64-11]

MEREDITH COLON JOHNSTON (WECP) AND WILLIAM HOWARD COLE (WHOC)

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications Meredith Colon Johnston (WECP), Carthage, Mississippi, requests: 1480 kc, 500 w, Day, Class III, Docket No. 15269, File No. BP-15088; William Howard Cole (WHOC), Philadelphia, Mississippi, has: 1490 kc, 250 w, U, Class IV, requests: 1490 kc, 250 w, 1 kw-LS, U, Class IV, Docket No. 15270, File No. BP-15231; for construction permits.

1. The Commission has before it for consideration (a) the above-captioned and described applications which were granted simultaneously without hearing by action of the Commission on September 11, 1963 (announced September 12, 1963), both granted subject to the condition that each permittee shall accept interference received from the proposal of the other; (b) a statement filed on October 14, 1963, by William Howard Cole rejecting the grant of his application pursuant to § 1.110 of the rules; (c) a petition, also filed on October 14, 1963, by Cole requesting reconsideration of the grant of the application of Meredith Colon Johnston; (d) Johnston's opposition to Cole's petition filed on November 12, 1963; and (e) Cole's reply to the opposition filed on December 11, 1963.[1]

2. Prior to the grant of the applications here under consideration, Cole vigorously opposed favorable action on the Johnston application on the ground that Johnston's proposed station would cause objectionable interference to both the existing 250 watt and proposed one-kilowatt operations of Class IV standard broadcast Station WHOC, Cole's station

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[1] A letter accompanying the GEM statement indicates that the Joynts have no material assets or liabilities apart from those indicated in the GEM financial statement.

[2] By the terms of the agreement between KWEN and Vidor concerning the dismissal of Vidor, 60 percent of the total consideration of $15,800 was payable upon grant of the joint request for approval of agreement and the remaining portion ($6,320) was to be paid upon grant of KWEN's application.

[1] Neither the opposition nor the reply was filed within the times prescribed in § 1.106 of the Commission's rules. However, both applicants were allowed additional time in which to prepare and file these pleadings. Cole's reply to Johnston's opposition covers sixteen double-spaced typewritten pages, exclusive of exhibits, and therefore exceeds the ten-page limit imposed by § 1.106(h) of the rules. However, in view of the matters raised in Johnston's opposition, the Commission hereby waives the limitation prescribed by section 1.106(h).

in Philadelphia, Mississippi, that Johnston is not financially qualified and that the transmitter site proposed by Johnston is not available.[2] On the basis of data submitted by Cole in the course of his opposition to Johnston's proposal prior to a grant, the Commission found that Johnston's proposal would cause interference to the licensed 250-watt operation of WHOC affecting approximately 375 people (2.15 percent) out of a total of 17,240 people within the normally protected service area of WHOC. Interference caused to the proposed one-kilowatt operation of WHOC would affect approximately 2,082 people (7.62 percent) out of a total population of 27,384 people. The one-kilowatt operation of WHOC would cause interference to Johnston's proposal affecting approximately 1,159 people representing 5.45 percent of the total population of 21,324 within Johnston's proposed primary service area. The Commission determined that the interference involved was not such as to preclude favorable action on both proposals, and, in accordance with its usual practice in such cases, granted both applications subject to appropriate conditions. Cole now rejects his authorization so conditioned and demands a hearing contemplated by the provisions of § 1.110 of the Commission's rules.

3. Cole also renews his contention that Johnston is not financially qualified to construct and operate his proposed station and asserts that the question of the availability of Johnston's proposed transmitter site has not been resolved.

4. Cole's claim of standing by reason of expected interference is opposed by Johnston on the ground that the petition for reconsideration is not accompanied by an affidavit of a qualified radio engineer as required by § 1.106 of the Commission's rules; that Cole presumably relies on measurements submitted prior to the time the Commission granted the applications; that those measurements were not taken in accordance with the procedures prescribed by § 73.186 of the rules and that, assuming the measurements are accurate, the interference to the existing service area of WHOC would affect only one percent of the population in the WHOC service area which should be deemed de minimis. The one-percent loss is based on assertions under oath by Johnston that he has made a house count in the area involved and has himself made measurements at the points where a consultant made measurements on Cole's behalf with the result that Johnston's measurements were lower than those submitted by Cole.[3] Johnston submitted no engineering data to support his assertions.

5. Conceding that Cole's measurements were not made in sufficient number to satisfy the requirements of § 73.186 of the rules, they were sufficient to indicate the probability that the soil conductivity in the area is greater than that indicated on Figure M–3 of the rules.[4] Therefore, in granting the Johnston application, it was appropriate to require Johnston to accept any interference resulting from the grant of Cole's application.[5] Now that Cole has rejected the grant of his application as conditioned, the procedure contemplated by § 1.110 of the rules requires a hearing on both applications. It would not be appropriate to affirm the grant of Johnston's application and order a hearing only on Cole's application because such a course would require that any subsequent grant of Cole's application would be on condition that he accept the interference from Johnston's proposal. This is the very condition that Cole rejects. Accordingly, the applications will be designated for hearing in a consolidated proceeding to determine whether a grant of one of the applications, or whether a grant of both would better provide a fair, efficient and equitable distribution of radio service as envisioned by section 307(b) of the Communications Act of 1934, as amended.

6. In support of his contention that Johnston is not financially qualified, Cole contends that the Commission "relies" upon an amendment filed by Johnston on March 25, 1963 subsequent to a pregrant petition to deny filed by Cole. Cole suggests that the Commission's determination is insupportable and that the Commission has found Johnston financially qualified notwithstanding Johnston's alleged failure to meet the requirements of the Commission's application form. Cole cites Paragraph 4(h), Section III, of FCC Form 301, which requires the submission of verified copies of agreements by which financial institutions and equipment manufacturers are obligated to make loans or extend credit. Cole also cites Paragraph 4(c), Page 2, of Section III of the application form and questions the sufficiency of the "unverified" letters from individuals who have agreed to become co-signers to assist Johnston in securing a bank loan. But the agreements and unverified letters to which Cole objects are originals, not copies. The Commission does not require verification of original agreements or other undertakings. It requires only verification of copies.

7. In addition, Cole objects to the Commission's failure to require Johnston's co-signers to furnish balance sheets or financial statements, to disclose their interests for the past five years in business or financial enterprises and to disclose net income for the past two years. On the basis of the information before it, the Commission concludes that the Carthage Bank has made a determination that the co-signatures of the named individuals are ample security for the bank's purpose. The obligation of each co-signer is nominal in amount, and the primary concern with respect to the ability of each co-signer to meet his obligation is that of the bank. The Commission is convinced that Johnston has a reasonable expectation of the availability of a loan in the amount of $5,000. This conviction is not vitiated by the condition that the matter is subject to review as it is the Commission's understanding that a review of the type contemplated is common practice among financial institutions.

8. Cole also questions the adequacy of Johnston's estimates of the cost or construction and operation of the station. Apparently, Cole would have the Commission substitute his judgment for Johnston's inasmuch as he submits "suggested adjustments" in operating costs and in "putting the station on the air". Cole suggests the addition of certain items and increases in others. While it is apparent that Johnston's estimates are, to use his term, modest, he has demonstrated to the Commission's satisfaction by detailed equipment costs, a breakdown of operating expenses, and a showing of the availability of funds that he is able to meet the costs of construction and initial operation of the proposed station. That is all the Commission requires. Moreover, Johnston has submitted evidence that his net worth has increased to $22,200.

9. Cole's contention regarding the question of the availability of Johnston's proposed transmitter site is based upon obvious confusion with respect to the point which his specified coordinates should describe. Coordinates originally specified were 32°43'10" North, 89°33' 12" West. On March 25, 1963, Johnston amended his application to specify the following coordinates: 32°43'19.9" North, 89°33'41.4" West. Cole's statement in his petition for reconsideration that neither set of coordinates agrees with those specified as Johnston's transmitter site is not accurate. The latter coordinates were specified in the amendment of March 25, and the grant of Johnston's application authorized construction at that point. Johnston now states in his opposition that, as a result of his pointing out the wrong spot to his surveyor, the March 25 coordinates are in error, and that he and the surveyor

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[2] Prior to the grant of the applications, Cole sought to raise a question as to whether Johnston had made a reasonable effort to ascertain the needs, interests and desires of his prospective listeners. Cole now appears to have abandoned his contention on this question.

[3] Cole contends that Johnston's assertion that there has been a discrepancy in the measurements Cole's consultant submitted mean that Johnston is accusing Claude Gray of submitting false or carelessly arrived at measurements. Of course, the Commission cannot consider a bare assertion that readings "are less than half the measurements" submitted by a consulting engineer without supporting data. It would appear that this aspect of the controversy should be considered on the basis of the relative merits of technical evidence in the event Johnston chooses to question the showing submitted on Cole's behalf.

[4] On December 12, 1963, Cole filed a statement of Claude M. Gray, his consulting engineer, in support of the validity of the measurement data which indicates that Johnston's proposal will cause interference to the existing and proposed operation of WHOC. Gray's statement also indicates that plans by Cole to apply for a power increase date from 1960. The statement was accompanied by a motion to accept Cole's reply filed December 11, 1963, and to consider the statement of Gray submitted on December 12. As previously indicated, the reply has been accepted. Gray's statement filed on December 12 has also been considered.

[5] In view of the fact that the data submitted by Cole establishes that interference would be caused to the existing operation of WHOC, Cole is a party in interest or person aggrieved within the meaning of Section 405 of the Communications Act of 1934, as amended, and § 1.106(b) of the Commission's rules.

have returned to the site and determined that the coordinates originally specified are correct. This, in the Commission's opinion, does not raise a question as to the availability of the site. It merely indicates that, assuming the original coordinates to be correct, those are not the coordinates presently specified by the application in view of the March 25 amendment. Accordingly, in order to clarify this point, the correctness of Johnston's coordinates will be placed in issue, and Johnston will be directed to submit a corrective amendment if necessary. If, as Cole suggests, the site shown in the photographs on file with Johnston's application do not show the actual transmitter site, Johnston will be given the opportunity to file the necessary additional photographs, and an issue to determine the suitability of the site will be included. The disposition of this aspect of the case does not mean that the Commission condones inaccuracies in proposals submitted for consideration. It simply is a recognition of the fact that inaccuracies in plotting coordinates do occur. In some instances the inaccuracies are not discovered until some time after a station has been in operation. Upon discovery of such inaccuracies, we think it is reasonable simply to require corrective amendments.

10. Cole, in his reply, also alleges that Johnston is presently employed as general manager of Station WLSM, Louisville, Mississippi. Cole submits an affidavit of Tom B. Estes in which Estes states that on December 6, 1963, he recorded an announcement being broadcast by WLSM in which listeners were informed that merchants in Ackerman, Mississippi, were distributing "Trade's Day tickets" for drawings at which cash prizes would be awarded. Following the announcement, Estes drove to Ackerman and called at three business establishments where the WLSM announcement indicated the tickets for the drawing were available. Estes states, that in each place of business where he called for the purpose of registering for the prizes, he was advised that he must make a purchase or pay a bill in order to register. Estes' affidavit raises the question as to whether Johnston, as manager of Station WLSM at the time in question, participated in the dissemination of information concerning a lottery in violation of section 1304 of the United States Code and § 73.122 of the Commission's rules.

11. In addition to the foregoing matters, allegations have been made by Johnston which reflect on Cole's motives in prosecuting his own application and in opposing Johnston's, and Cole has made counter-allegations questioning Johnston's qualifications and motives. The Commission has considered all such allegations and has concluded that they are unsupported by sufficient facts to raise a substantial issue.

12. Upon consideration of the pleadings before it and upon reconsideration of the applications of Meredith Colon Johnston and William Howard Cole, the Commission reaffirms its finding that both applicants are legally, financially and technically qualified to construct and operate as proposed and that William Howard Cole is otherwise qualified. The Commission reserves its determination of other qualifications of Johnston pending the conclusion of the proceeding hereinafter ordered.

Accordingly, it is ordered, This 8th day of January 1964, that the petition of William Howard Cole to reconsider the Commission's action of September 11, 1963, in granting without hearing the application of Meredith Colon Johnston is granted to the extent indicated herein and is denied in all other respects.

It is further ordered, That the action of the Commission in granting the applications of Meredith Colon Johnston and William Howard Cole is hereby set aside and that, pursuant to section 405 of the Communications Act of 1934, as amended, and §§ 1.106 and 1.110 of the Commission's rules, the said applications are designated for hearing in a consolidated proceeding at a time and place to be specified in a subsequent Order upon the following issues:

1. To determine the areas and populations which would receive primary service from the proposed operation of William Howard Cole and the availability of other primary service to such areas and populations.

2. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of Station WHOC and the availability of other primary service to such areas and populations.

3. To determine the nature and extent of the interference, if any, that each of the proposals would cause to and receive from each other and the interference that each of the proposals would receive from all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from either of the proposals.

4. To determine whether the proposal of Meredith Colon Johnston would cause objectionable interference to the existing operation of Station WHOC, Philadelphia, Mississippi, or any other existing standard broadcast station, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

5. To determine whether the coordinates specified in the application of Meredith Colon Johnston as amended on March 25, 1963, accurately depict the location of his proposed antenna structure.

6. To determine whether the site photographs on file in the application of Meredith Colon Johnston accurately represent the transmitter site Johnston proposes and, if not, whether the transmitter site proposed is satisfactory with particular regard to any conditions that may exist in the vicinity of the antenna system which would distort the proposed antenna radiation pattern.

7. To determine whether, on or about December 6, 1963, Meredith Colon Johnston, as general manager of Station WLSM, Louisville, Mississippi, knowingly permitted the broadcasting over the facilities of WLSM any advertisement of or information concerning any lottery, gift enterprise, or similar scheme in violation of section 1304 of the Criminal Code (Title 18, United States Code, section 1304) and § 73.122 of the Commission's rules, and, if so, whether such action reflects adversely on Mr. Johnston's qualifications to be a broadcast licensee.

8. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

9. To determine, in the light of the evidence adduced pursuant to the foregoing issues which, if either, or both of the applications should be granted.

It is further ordered, That William Howard Cole is made a party respondent to the proceeding on the application of Meredith Colon Johnston with respect to the existing operation of WHOC.

It is further ordered, That Meredith Colon Johnston is hereby directed to amend his application to specify correct coordinates in the event such coordinates are different from those specified in the amendment to his application filed on March 25, 1963, and to amend his application to include photographs which correctly depict the proposed transmitter site in the event the location of the proposed site is other than that shown in the photographs now on file.

It is further ordered, That, in the event of a grant of the application of Meredith Colon Johnston, the construction permit shall contain the following condition:

> Pending a final decision in Docket No. 14419 with respect to pre-sunrise operation with daytime facilities, the present provisions of § 73.87 of the Commission's rules are not extended to this authorization, and such operation is precluded.

It is further ordered, That, in the event of a grant of the application of William Howard Cole, the construction permit shall contain the following conditions:

> Permittee shall submit with the application for license, antenna resistance measurements made in accordance with § 73.54 of the Commission's rules.
>
> Permittee shall accept such interference as may be imposed by other existing 250 watt Class IV stations in the event they are subsequently authorized to increase power to 1000 watts.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall, within twenty (20) days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing, either individually or if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of

such notice as required by § 1.594(g) of the rules.

It is further ordered, That the issues in the above-captioned proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue: to determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: January 21, 1964.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 64-748; Filed, Jan. 24, 1964; 8:50 a.m.]

[Docket No. 15285]

W. H. SOUTH

Order To Show Cause

In the matter of W. H. South, Placentia, California, Docket No. 15285; order to show cause why there should not be revoked the license for Radio Station 11W4680 in the Citizens Radio Service.

The Commission, by the Chief, Safety and Special Radio Services Bureau, under delegated authority, having under consideration the matter of certain alleged violations of the Commission's rules in connection with the operation of the above-captioned station;

It appearing, that, pursuant to § 1.89 (§ 1.76) of the Commission's rules, written notice of violation of the Commission's rules was served upon the above-named licensee at his address of record as follows: Official Notice of Violation dated October 28, 1963, alleging violation of § 19.61(a) (now § 95.81 (a)) of the Commission's rules.

It further appearing, that said licensee did not reply to such communication or to a follow-up letter dated November 6, 1963, also mailed to the licensee at his address of record; and

It further appearing, that, in view of the foregoing, the licensee has repeatedly violated § 1.89 of the Commission's rules; and

It further appearing, that the violations of § 1.89 of the Commission's rules and the related facts create apparent liability by the respondent to a monetary forfeiture of $100 under section 510 of the Communications Act of 1934, as amended, and § 1.80 of the Commission's rules; and also subject the license of the above-captioned station to revocation under the provisions of section 312 of the Communications Act of 1934, as amended; but further proceedings in this Docket should be limited to action looking toward a determination as to whether an order of revocation should be issued;

It is ordered, This 21st day of January 1964, pursuant to section 312 (a) (4) and (c) of the Communications Act of 1934, as amended, and § 0.331(b) (8) of the Commission's rules, that the said licensee show cause why the license for the above-captioned radio station should not be revoked, and appear and give evidence in respect thereto at a hearing to be held at a time and place to be specified by subsequent order; and

It is further ordered, That the Secretary send a copy of this order by Certified Mail—Return Receipt Requested to the said licensee at his last known address of 800 West Orangethorpe, Placentia, California.

Released: January 21, 1964.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 64-749; Filed, Jan. 24, 1964; 8:50 a.m.]

FEDERAL MARITIME COMMISSION

ASSOCIATED STEAMSHIP LINES, MANILA

Notice of Filing of Agreement

Notice is hereby given that the following described agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733; 75 Stat. 763; 46 U.S.C. 814):

Agreement No. 5600-24, between the member lines of the Associated Steamship Lines (Manila) Conference, modifies the self-policing provisions of the basic agreement of this conference, No. 5600 as amended, pursuant to General Order 7.

Interested parties may inspect this agreement and obtain copies thereof at the Bureau of Foreign Regulation, Federal Maritime Commission, Washington, D.C., 20573, or may inspect a copy at the offices of the District Managers of the Commission in New York, N.Y., New Orleans, La., and San Francisco, Calif., and may submit to the Secretary, Federal Maritime Commission, Washington, D.C., within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with a request for hearing, should such hearing be desired.

Dated: January 21, 1964.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 64-733; Filed, Jan. 24, 1964; 8:48 a.m.]

ATLANTIC AND GULF-SINGAPORE, MALAYA AND THAILAND CONFERENCE

Notice of Filing of Agreement

Notice is hereby given that the following described agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733; 75 Stat. 763; 46 U.S.C. 814):

Agreement No. 8240-3, between the member lines of the Atlantic and Gulf-Singapore, Malaya and Thailand Conference, modifies the basic agreement of this conference, No. 8240 as amended, to provide for the posting of security deposits by the member lines and the establishment of a system of self-policing pursuant to General Order 7.

Interested parties may inspect this agreement and obtain copies thereof at the Bureau of Foreign Regulation, Federal Maritime Commission, Washington, D.C., 20573, or may inspect a copy at the offices of the District Managers of the Commission in New York, N.Y., New Orleans, La., and San Francisco, Calif., and may submit to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with a request for hearing, should such hearing be desired.

Dated: January 21, 1964.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 64-734; Filed, Jan. 24, 1964; 8:48 a.m.]

CEYLON/U.S.A. CONFERENCE

Notice of Filing of Agreement

Notice is hereby given that the following described agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733; 75 Stat. 763; 46 U.S.C. 814):

Agreement No. 8050-4, between the member lines of the Ceylon/U.S.A. Conference, modifies the basic agreement of this conference, No. 8050 as amended, to provide for a system of self-policing pursuant to General Order 7.

Interested parties may inspect this agreement and obtain copies thereof at the Bureau of Foreign Regulation, Federal Maritime Commission, Washington, D.C., 20573, or may inspect a copy at the offices of the District Managers of the Commission in New York, N.Y., New Orleans, La., and San Francisco, Calif., and may submit to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with a request for hearing, should such hearing be desired.

Dated: January 21, 1964.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 64-735; Filed, Jan. 24, 1964; 8:48 a.m.]

FRENCH NORTH ATLANTIC WESTBOUND FREIGHT CONFERENCE

Notice of Filing of Agreement

Notice is hereby given that the following described agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733; 75 Stat. 763; 46 U.S.C. 814):

Agreement No. 7810–4, between the member lines of the French North Atlantic Westbound Freight Conference, modifies the basic agreement of this conference, No. 7810 as amended, to provide for a system of self-policing pursuant to General Order 7.

Interested parties may inspect this agreement and obtain copies thereof at the Bureau of Foreign Regulation, Federal Maritime Commission, Washington, D.C., 20573, or may inspect a copy at the offices of the District Managers of the Commission in New York, N.Y., New Orleans, La., and San Francisco, Calif., and may submit to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with a request for hearing should such hearing be desired.

Dated: January 21, 1964.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 64–736; Filed, Jan. 24, 1964; 8:48 a.m.]

GREAT LAKES/JAPAN RATE AGREEMENT

Notice of Filing of Agreement

Notice is hereby given that the following described agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733; 75 Stat. 763; 46 U.S.C. 814):

Agreement No. 8595–1, between the parties to the Great Lakes/Japan Memorandum (Rate Agreement), modifies the basic agreement of the parties, No. 8595, to provide for a system of self-policing pursuant to General Order 7.

Interested parties may inspect this agreement and obtain copies thereof at the Bureau of Foreign Regulations, Federal Maritime Commission, Washington, D.C., 20573, or may inspect a copy at the office of the District Managers of the Commission in New York, N.Y., New Orleans, La., and San Francisco, Calif., and may submit to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with a request for hearing, should such hearing be desired.

Dated: January 21, 1964.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 64–737; Filed, Jan. 24, 1964; 8:48 a.m.]

GREAT LAKES-UNITED KINGDOM EASTBOUND CONFERENCE

Notice of Filing of Agreement

Notice is hereby given that the following described agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733; 75 Stat. 763; 46 U.S.C. 814):

Agreement No. 8130–2, between the member lines of the Great Lakes-United Kingdom Eastbound Conference, modifies the basic agreement of this conference, No. 8130 as amended, to provide for a system of self-policing pursuant to General Order 7.

Interested parties may inspect this agreement and obtain copies thereof at the Bureau of Foreign Regulation, Federal Maritime Commission, Washington, D.C., 20573, or may inspect a copy at the offices of the District Managers of the Commission in New York, N.Y., New Orleans, La., and San Francisco, Calif., and may submit to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with a request for hearing, should such hearing be desired.

Dated: January 21, 1964.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 64–738; Filed, Jan. 24, 1964; 8:48 a.m.]

JAPAN/GREAT LAKES RATE AGREEMENT

Notice of Filing of Agreement

Notice is hereby given that the following described agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733; 75 Stat. 763; 46 U.S.C. 814):

Agreement No. 8670–2, between the parties to the Japan/Great Lakes Memorandum (Rate Agreement), modifies the basic agreement of the parties, No. 8670 as amended, to provide for a system of self-policing pursuant to General Order 7.

Interested parties may inspect this agreement and obtain copies thereof at the Bureau of Foreign Regulation, Federal Maritime Commission, Washington, D.C., 20573, or may inspect a copy at the offices of the District Managers of the Commission in New York, N.Y., New Orleans, La., and San Francisco, Calif., and may submit to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with a request for hearing, should such hearing be desired.

Dated: January 21, 1964.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 64–739; Filed, Jan. 24, 1964; 8:49 a.m.]

RED SEA AND GULF OF ADEN/U.S. ATLANTIC AND GULF RATE AGREEMENT

Notice of Filing of Agreement

Notice is hereby given that the following described agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733; 75 Stat. 763; 46 U.S.C. 814):

Agreement No. 8558–1, between the parties to the Red Sea and Gulf of Aden/U.S. Atlantic and Gulf Rate Agreement, modifies the basic agreement of these parties, No. 8558, to provide for the posting of a security deposit by the parties and for the establishment of a system of self-policing pursuant to General Order 7.

Interested parties may inspect this agreement and obtain copies thereof at the Bureau of Foreign Regulation, Federal Maritime Commission, Washington, D.C., 20573, or may inspect a copy at the offices of the District Managers of the Commission in New York, N.Y., New Orleans, La., and San Francisco, Calif., and may submit to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with a request for hearing, should such hearing be desired.

Dated: January 21, 1964.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 64–740; Filed, Jan. 24, 1964; 8:49 a.m.]

TRANS-PACIFIC AMERICAN FLAG BERTH OPERATORS

Notice of Filing of Agreement

Notice is hereby given that the following described agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733; 75 Stat. 763; 46 U.S.C. 814):

Agreement No. 8493–2, between the parties to the Trans-Pacific American Flag Berth Operators agreement, modifies the basic TPAFBO Agreement No. 8493 as amended, to provide for a system

of self-policing pursuant to General Order 7.

Interested parties may inspect this agreement and obtain copies thereof at the Bureau of Foreign Regulation, Federal Maritime Commission, Washington, D.C., 20573, or may inspect a copy at the offices of the District Managers of the Commission in New York, N.Y., New Orleans, La., and San Francisco, Calif., and may submit to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with a request for hearing, should such hearing be desired.

Dated: January 21, 1964.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 64-741; Filed, Jan. 24, 1964; 8:49 a.m.]

TRANS PACIFIC FREIGHT CONFERENCE (HONG KONG)

Notice of Filing of Agreement

Notice is hereby given that the following described agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733; 75 Stat. 763; 46 U.S.C. 814):

Agreement No. 14-20, between the member lines of the Trans Pacific Freight Conference (Hong Kong), modifies the basic agreement of this conference, No. 14-1 as amended, in the following essential respects:

1. Inclusion of Macao within the conference jurisdiction;
2. Modification of voting requirements to provide that all parties agree to be bound to modifications of the conference agreement made with the consent of three-fourths of all parties entitled to vote;
3. Revision of a prohibition against representation of non-conference vessels by the parties or their agents to include subsidiaries, associated and affiliated companies of the parties or their agents and to define the terms associated and affiliated companies;
4. Modification of the qualifications for admission of new members;
5. Amplification of the list of prohibited activities, previously termed "concessions", and now designated as "malpractices";
6. Adoption of a faithful performance security deposit to be posted by each member in the sum of $30,000;
7. Establishment of a self-policing system pursuant to General Order 7; and
8. Adoption of certain administrative provisions covering such matters as conference officers, permanent and special committees, and balloting.

Interested parties may inspect this agreement and obtain copies thereof at the Bureau of Foreign Regulation, Federal Maritime Commission, Washington, D.C., 20573 or may inspect a copy at the offices of the District Managers of the Commission in New York, N.Y., New Orleans, La., and San Francisco, Calif., and may submit to the Secretary, Federal Maritime Commission, Washington, D.C., within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with a request for hearing, should such hearing be desired.

Dated: January 21, 1964.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 64-742; Filed, Jan. 24, 1964; 8:49 a.m.]

U.S. ATLANTIC/SPANISH ATLANTIC RATE AGREEMENT

Notice of Filing of Agreement

Notice is hereby given that the following described agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733; 75 Stat. 763; 46 U.S.C. 814):

Agreement No. 8735-1, between the parties to a memorandum agreement on rates in the trade between U.S. Atlantic and Spanish Atlantic ports, modifies the basic agreement of the parties, No. 8735, to provide for a system of self-policing pursuant to General Order 7.

Interested parties may inspect this agreement and obtain copies thereof at the Bureau of Foreign Regulation, Federal Maritime Commission, Washington, D.C., 20573, or may inspect a copy at the offices of the District Managers of the Commission in New York, N.Y., New Orleans, La., and San Francisco, Calif., and may submit to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with a request for hearing, should such hearing be desired.

Dated: January 21, 1964.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 64-743; Filed, Jan. 24, 1964; 8:49 a.m.]

UNITED STATES GREAT LAKES SCANDINAVIAN AND BALTIC EASTBOUND CONFERENCE

Notice of Filing of Agreement

Notice is hereby given that the following described agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733; 75 Stat. 763; 46 U.S.C. 814):

Agreement No. 8180-1, between the members of the United States Great Lakes Scandinavian and Baltic Eastbound Conference, modifies the basic agreement of this conference, No. 8180, to provide for a system of Self-Policing, pursuant to General Order 7.

Interested parties may inspect this agreement and obtain copies thereof at the Bureau of Foreign Regulation, Federal Maritime Commission, Washington, D.C., 20573, or may inspect a copy at the offices of the District Managers of the Commission in New York, N.Y., New Orleans, La., and San Francisco, Calif., and may submit to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with a request for hearing, should such hearing be desired.

Dated: January 21, 1964.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 64-744; Filed, Jan. 24, 1964; 8:49 a.m.]

WEST COAST AMERICAN-FLAG BERTH OPERATORS

Notice of Filing of Agreement

Notice is hereby given that the following described agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733; 75 Stat. 763; 46 U.S.C. 814):

Agreement No. 8186-5, between the parties to the West Coast American-Flag Berth Operators agreement, modifies the basic WCAFBO Agreement No. 8186, as amended, to provide for a system of self-policing pursuant to General Order 7.

Interested parties may inspect this agreement and obtain copies thereof at the Bureau of Foreign Regulation, Federal Maritime Commission, Washington, D.C., 20573, or may inspect a copy at the offices of the District Managers of the Commission in New York, N.Y., New Orleans, La., and San Francisco, Calif., and may submit to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with a request for hearing, should such hearing be desired.

Dated: January 21, 1964.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 64-745; Filed, Jan. 24, 1964; 8:50 a.m.]

FEDERAL POWER COMMISSION

NATURAL GAS ADVISORY COUNCIL

Determination of Continuance

JANUARY 20, 1964.

Pursuant to Paragraph 9 of the Commission's Order Establishing The Natural Gas Advisory Council, issued February 8, 1962, the Commission hereby determines that the continued existence of the Natural Gas Advisory Council for an additional period of two years is in the public interest.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 64-706; Filed, Jan. 24, 1964; 8:45 a.m.]

[Docket No. CP64-144]

SOUTHERN NATURAL GAS CO.

Notice of Application

JANUARY 20, 1964.

Take notice that on December 23, 1963, Southern Natural Gas Company (Applicant), Watts Building, Birmingham, Alabama, filed an application in Docket No. CP64-144 pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon its natural gas supply line extending approximately 10.72 miles from Eloi Bay Field to Point Comfort Field, Chandeleur Sound Area, Offshore St. Bernard Parish, Louisiana, consisting of 4½-inch pipeline, all as more fully described in the application, which is on file with the Commission and open to public inspection.

Applicant states that no service will be discontinued or diminished by reason of abandonment of the facilities.

Applicant further states that the gas supply from the well was stopped and the well plugged on October 30, 1963, by Phillips Petroleum Company, operator of the said well. No salvage operation will be undertaken because the costs would be greater than the salvage value.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that preliminary staff analysis has indicated that there are no problems which would warrant a recommendation that the Commission designate this application for formal hearing before an examiner and that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing may be held without further notice before the Commission on this application provided no protest or petition to intervene is filed within the time required herein. Where a protest or petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before February 6, 1964.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 64-708; Filed, Jan. 24, 1964; 8:45 a.m.]

[Docket No. CP64-11]

STARKS UTILITIES, INC.

Notice of Application and Date of Hearing

JANUARY 20, 1964.

Take notice that on July 3, 1963, Starks Utilities, Inc. (Applicant) filed an application, and on August 19, 1963 and October 28, 1963, supplements thereto, pursuant to section 7(a) of the Natural Gas Act, for an order of the Commission directing Texas Eastern Transmission Corporation to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell natural gas to Applicant for local distribution in the town of Starks, Louisiana, and in the area adjacent thereto, all as more fully set forth in the application, which is on file with the Commission and open for public inspection.

Applicant estimates its annual and peak day requirements for the first three years of operation as follows:

	Peak Day (*Mcf*)	*Annual* (*Mcf*)
1st year	413	15,120
2d year	433	15,840
3d year	443	16,200

Applicant estimates the cost of its project will be $42,000, which will be financed principally by a loan in the amount of $39,800, which has been authorized by the Small Business Administration.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas, Act, and the Commission's rules of practice and procedure, a hearing will be held on February 26, 1964, at 10:00 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by said application.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before February 14, 1964.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 64-709; Filed, Jan. 24, 1964; 8:45 a.m.]

[Docket No. G-13221 etc.]

UNION TEXAS PETROLEUM ET AL.

Order Severing Proceedings, Conditionally Approving Settlement Proposals and Conditionally Issuing Certificates of Public Convenience and Necessity

JANUARY 20, 1964.

Union Texas Petroleum, et al., Docket No. G-13221, et al., North Central Oil Corporation (Operator), et al., Docket Nos. CI61-1570, CI61-1571 and CI62-313.

On September 20, 1963, North Central Oil Corporation (Operator), et al. (North Central) filed a motion for severance of Docket No. CI62-313 from the consolidated proceeding Union Texas Petroleum, et al., Docket Nos. G-13221, et al. (hereinafter referred to as the Union Texas proceeding), for approval of settlement proposal and for the issuance of a certificate of public convenience and necessity. On September 23, North Central filed a similar motion relating to Docket Nos. CI61-1570 and CI61-1571.

Consolidated Edison Company of New York, Inc. (Con-Edison), on September 27, 1963, filed a response in opposition to the motion filed on September 23, on the grounds that North Central had failed to provide for refunds in accordance with the temporary authorizations heretofore issued in Docket Nos. CI61-1570 and CI61-1571.[1]

This failure to provide refunds was a departure from the other Union Texas settlements. North Central also proposed that it be allowed to file rate increases for ¾ of additional taxes, if reimbursable Union Texas settlements have provided for rate increase filings for a maximum of ½ of such tax increases.[2]

North Central, on October 1, filed an amendment to its offer of settlement in Docket Nos. CI61-1570 (RS-9) and CI61-1571 (RS-8). By this amendment North Central offered to make refunds of excesses collected under the rate schedules related to these certificate applications since January 1, 1962, the date on which North Central became the operator of the properties. Pioneer Oil and Gas Company had been the operator of the properties prior to that time and had been making sales since June 1961, under refund conditioned temporary authorizations. As operator during the period June 1961 to January 1, 1962, Pioneer's filings covered the interests of North Central; since January 1, 1962, North Central's filings have covered the interests of Pioneer. The rate under both rate schedules is 23.25 cents per Mcf [3] and

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[1] On October 4, 1963, Public Service Electric and Gas Company filed a letter with the Secretary agreeing with the response of Con-Edison.

[2] See, e.g., orders issued August 7, 1963 (Humble Oil & Refining Company) and October 9, 1963 (Gulf Oil Corporation and Socony Mobil Oil Company) in Union Texas Petroleum, et al., Docket Nos. G-13221, et al.

[3] All rates expressed inclusive of applicable tax reimbursement and all volumes expressed at 15.025 psia.

the proposed settlement rate is 20.625 cents per Mcf.

Brooklyn Union Gas Company (Brooklyn Union), on October 11, 1963, filed a statement in opposition to the offer of settlement of North Central in Docket Nos. CI61–1570 and CI61–1571 noting the failure to provide for refunds as required by the temporary authorizations. Brooklyn Union stated that it would not oppose the settlement if the producer would accept modification to provide for full refunds.

In view of the objections of the intervenors and the departures from the Union Texas settlement pattern, we denied North Central's motions by order issued in these proceedings on December 9, 1963.

On December 23, 1963, North Central filed an amended offer of settlement and motion for severance.[4] This amendment removes the reasons for the Commission's rejection of the original offer. In substance, the offers now conform to the recent Union Texas settlements and provide for the issuance of certificates of public convenience and necessity at initial rates of 20.625 cents per Mcf for three sales from south Louisiana; a five year moratorium on rate increase filings, effective April 1, 1963 (subject to the usual exceptions); extension of take-or-pay make-up periods to 4 years in all rate schedules which provide less refunds of all amounts collected above that which would have been collected at the settlement rate since the date of initial deliveries in Docket Nos. CI61–1570 and CI61–1571, and for all deliveries made subsequent to March 31, 1963, in Docket No. CI62–313; interest on all amounts to be refunded computed at a rate of 7 percent per annum.[5]

We find these proposals, generally, to be in the public interest and shall approve them subject to the following reservations and conditions.

We shall require that interest on the amounts to be refunded accrue through the last day of the month in which the amended motion and offer were filed, December 31, 1963. This has been a requirement in all of our orders approving settlements arising out of the Union Texas proceeding.[6]

In the context of the proposals, we interpret the term "delivered" as used in paragraph 1 of the proposals to include gas required to be taken during the moratorium period but paid for and not taken and our approval is conditioned upon such interpretation. Thus, prepayments, if any, shall be made during the moratorium period at rates no higher than the rates in effect for gas physically delivered.

The settlement provisions for adjustments in rates according to our order or orders in Area Rate Proceeding, Docket No. AR61–2, seek to anticipate in part the nature of our final determinations in that matter. It is clear that we shall make no determinations in this matter which will control our conclusions in Docket No. AR61–2. The settlement proposals also provide that adjustments in price growing out of the Area Rate Proceeding, Docket No. AR61–2, should go into effect upon conclusion of judicial review of our final order.

However, we cannot now commit the Commission to conditionally staying the effectiveness of its final order in Docket No. AR61–2. These matters should be decided at the conclusion of that proceeding and our approval of the settlement will be so conditioned.

The pipeline purchaser in Docket Nos. CI61–1570, CI61–1571, CI62–313 is Transcontinental Gas Pipe Line Corporation (Transco). In order to avoid a situation in which a pipeline obtains and keeps the benefits of refunds and a reduction in gas purchase costs even though it may be, in the absence of such refunds and reductions in gas purchase costs, earning a reasonable rate of return on invested capital, we shall require Transco to report to the Commission the amount of refund and interest which it receives as a result of North Central's settlement, the estimated annual reductions in purchased gas costs, the proposed disposition of the refunds and the proposed rate adjustments, if any, to reflect the reduction in gas purchase costs. We shall require Transco to hold the refunds and amounts equal to the reductions in purchased gas costs which will accrue as a result of this settlement in a special account subject to further orders of the Commission.

In accordance with the above we shall sever these North Central dockets from the consolidated proceeding Union Texas Petroleum, et al., Docket Nos. G–13221, et al., and issue certificates of public convenience and necessity in accordance with the applications, settlement proposals, as amended, and conditions of this order.[7]

The Commission finds:

(1) North Central Oil Corporation is a natural-gas company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of section 7 of the Natural Gas Act.

(3) North Central is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the public interest upon the conditions set forth below, and certificates should be issued as ordered below.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) It is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act that Transco be required to submit the reports and account for the refunds, interest and purchased gas cost reductions as ordered below.

The Commission orders:

(A) The matters in Docket Nos. CI61–1570, CI61–1571 and CI62–313 are hereby severed from the consolidated proceeding Union Texas Petroleum, et al., Docket Nos. G–13221, et al.

(B) Certificates of public convenience and necessity are hereby issued to North Central Oil Corporation upon the conditions set forth herein authorizing the sales of natural gas in interstate commerce for resale as proposed and as modified by the settlement proposals, as amended, and this order, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in the applications and settlement proposals, as amended, herein.

(C) The certificates granted by paragraph (B) above, are granted upon the express condition that North Central comply fully with the terms of this order and the settlement proposals, as amended, which settlement is expressly approved, under the conditions of this order.

(D) The interest required to be paid under the terms of these proposals shall accrue through December 31, 1963, the last day of the month in which the amended settlement proposal was filed.

(E) Within 30 days after making the refunds required by the terms and conditions of this order and the settlement proposals as amended, North Central shall report to the Commission, in triplicate, the amount of the refunds made to its pipeline purchaser, showing separately the amount of principal and interest so paid and the bases used for such determinations, together with a release from the purchaser showing receipt of the refunds in conformity with the settlement as approved.

(F) Upon full compliance of North Central with all the terms of this order and of the settlement proposals, as amended, North Central shall be relieved of any further refund obligations in these certificate proceedings and said proceedings shall terminate.

(G) The certificates herein issued are not transferable and shall be effective only so long as North Central continues the acts and operations hereby author-

[4] North Central's filing was entitled "Application for Rehearing" but since the order of December 9, 1963, was not a final order and since the "Application for Rehearing" substantially changed the original offer of settlement, the "Application for Rehearing" is considered an amended offer of settlement and motion for severance.

[5] See Appendix for further details.

[6] See order issued October 25, 1963, in Union Texas Petroleum, et al. Docket Nos. G–13221, et al., regarding the settlement of Texaco Inc.

[7] The hearings in the Union Texas Petroleum, et al., consolidated proceeding concluded July 25, 1963, and the Presiding Examiner's Decision was issued January 14, 1964.

ized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(H) The grant of the certificates herein shall not be construed as a waiver of the requirements of section 4 of the Natural Gas Act, or Part 154 of the regulations thereunder: *Provided, however,* That the 30-day notice provision of § 154.94(b) and the detailed submittal requirements of § 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rate as required by this order and the settlement proposals, as amended.

(I) The grant of certificates herein and approval of the settlement proposals are without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against North Central, particularly any proceeding under section 5 of the Natural Gas Act and is without prejudice to claims or contentions which may be made by the Commission, North Central, the Commission staff, or any affected party herein in any other proceeding.

(J) Within 15 days from the date of receipt of refunds and interest required by this order, Transco shall submit a report to the Commission and serve a copy on its jurisdictional customers and the various state utility commissions of states wherein it does business, setting forth the amount of refund and interest received, the estimated annual reduction in purchased gas costs due to North Central's rate reductions, its proposed disposition of such refunds and its proposed rate adjustments to reflect the reduction in gas purchase costs. Pending Commission action and further orders respecting such proposed disposition and adjustments, Transco shall hold such refunds, interest and amounts equal to the reductions in purchased gas costs which accrue as a result of this settlement in a special account.

By the Commission. Commissioner Ross not participating.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

APPENDIX

Docket No.	Rate schedule No.	Applicant	Purchaser	Current rate (cents Mcf)	Proposed settlement rate
CI62-313	7	North Central Oil Corp. (Operator), et al.	Transcontinental Gas P/L Corp.	[1] 21.25	20.625
CI61-1571	8	do	do	[2] 23.25	20.625
CI61-1570	9	do	do	[2] 23.25	20.625

[1] The proposed initial rate of 22.75 cents per Mcf was conditioned to 21.25 cents per Mcf by temporary authorization
[2] The proposed initial rate of 23.55 cents per Mcf was conditioned to 23.25 cents per Mcf by temporary authorization

[F.R. Doc. 64-710; Filed, Jan. 24, 1964; 8:45 a.m.]

[Project Nos. 2152, 2205]

VERMONT ELECTRIC COOPERATIVE, INC., AND CENTRAL VERMONT PUBLIC SERVICE CORP.

Order Consolidating Proceedings, Fixing Hearing and Prescribing Procedure

JANUARY 20, 1964.

On January 3, 1955, Vermont Electric Cooperative, Inc. (Cooperative) of Johnson, Vermont, filed an application for license under the Federal Power Act for a proposed hydroelectric development (Project No. 2152) to be located on the Lamoille River in Vermont about 15.5 miles above the mouth of that river and to be known as the East Georgia development. Concurrently with its application for license, the Cooperative filed an application for leave to withdraw an earlier application for preliminary permit and to substitute therefor the application for license. By an order issued March 17, 1957, the Commission consented to the withdrawal of the application for preliminary permit.

On May 28, 1956, as amended on October 16, 1958 and October 1, 1959, Central Vermont Public Service Corporation (Corporation) filed an application for license under the Federal Power Act for a proposed hydroelectric development (Project No. 2205) to be located on the Lamoille River in Vermont about 15.5 miles above the mouth of that river and to be known as the East Georgia development. Included in the application for license, by the amendment of October 16, 1958, are four constructed developments on the Lamoille River; these are the Peterson, Milton and Clark Falls developments downstream and the Fairfax Falls development directly upstream from the proposed East Georgia development.

The two applications for license by the Cooperative and the Corporation for the proposed East Georgia development are in conflict with each other. Corporation has intervened against the granting of the application for license by Cooperative, and Cooperative has in turn intervened against the granting of the application for license by Corporation. These proceedings have been continued from time to time upon requests made by each of the applicants.

The Commission finds. It is desirable and in the public interest to consolidate these two matters for the purpose of a public hearing and to hold such a hearing respecting the matters involved in and the issues presented by the two applications for license.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by the Federal Power Act, particularly sections 4(e), 10(a) and 308 thereof, and the Commission's rules of practice and procedure, a public hearing shall be held in Washington, D.C., on April 21, 1964, at 10 a.m., e.s.t., in a hearing room of the Federal Power Commission respecting the matters involved in and the issues presented by the applications for license for Project Nos. 2152 and 2205.

(B) The following procedure is prescribed:

(1) A prehearing conference will be held on February 4, 1964, at 10 a.m., e.s.t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., 20426, before the Presiding Examiner.

(2) The parties, including Commission staff, shall file their direct testimony and exhibits by March 9, 1964.

(3) The parties, including Commission staff, shall file their rebuttal testimony and exhibits by March 30, 1964.

(4) No exhibits (except those of which official notice may properly be taken) shall contain narrative material other than brief explanatory notes, and all exhibits shall be fully explained in the prepared testimony by the witness or witnesses sponsoring them.

(5) Any motions to strike any part of the prepared testimony and exhibits shall be filed by April 9, 1964, and answers thereto shall be filed by April 16, 1964.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F.R. Doc. 64-711; Filed, Jan. 24, 1964; 8:45 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-3421]

CONTINENTAL VENDING MACHINE CORP.

Order Summarily Suspending Trading

JANUARY 21, 1964.

In the matter of trading on the American Stock Exchange and the Philadelphia-Baltimore-Washington Stock Exchange in the common stock, 10 cents par value and trading on the American Stock Exchange in the 6 percent Convertible Subordinated Debentures due September 1, 1976, of Continental Vending Machine Corporation.

The common stock, 10 cents par value, of Continental Vending Machine Corp., being listed and registered on the American Stock Exchange and having unlisted trading privileges on the Philadelphia-Baltimore-Washington Stock Exchange, and the 6 percent convertible subordinated debentures due September 1, 1976 being listed and registered on the American Stock Exchange; and

The Commission being of the opinion that the public interest requires the summary suspension of trading in such securities on such Exchanges and that such action is necessary and appropriate for the protection of investors; and

The Commission being of the opinion further that such suspension is necessary

in order to prevent fraudulent, deceptive or manipulative acts or practices, with the result that it will be unlawful under section 15(c)(2) of the Securities Exchange Act of 1934 and the Commission's Rule 15c2–2 thereunder for any broker or dealer to make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of any such security, otherwise than on a national securities exchange;

It is ordered, Pursuant to section 19(a)(4) of the Securities Exchange Act of 1934, that trading in such securities on the American Stock Exchange and the Philadelphia-Baltimore-Washington Stock Exchange be summarily suspended in order to prevent fraudulent, deceptive or manipulative acts or practices, this order to be effective for the period January 22, 1964 through January 31, 1964, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 64–718; Filed, Jan. 24, 1964; 8:46 a.m.]

[File No. 1–4722]

TASTEE FREEZ INDUSTRIES, INC.

Order Summarily Suspending Trading

JANUARY 21, 1964.

In the matter of trading on the American Stock Exchange in the common stock, 67 cents par value, of Tastee Freez Industries, Inc.

The common stock, 67 cents par value, of Tastee Freez Industries, Inc., being listed and registered on the American Stock Exchange; and

The Commission being of the opinion that the public interest requires the summary suspension of trading in such security on such Exchange and that such action is necessary and appropriate for the protection of investors; and

The Commission being of the opinion further that such suspension is necessary in order to prevent fraudulent, deceptive or manipulative acts or practices, with the result that it will be unlawful under section 15(c)(2) of the Securities Exchange Act of 1934 and the Commission's Rule 15c2–2 thereunder for any broker or dealer to make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of any such security, otherwise than on a national securities exchange;

It is ordered, pursuant to section 19(a)(4) of the Securities Exchange Act of 1934, that trading in such security on the American Stock Exchange be summarily suspended in order to prevent fraudulent, deceptive or manipulative acts or practices, this order to be effective for the period January 22, 1964 through January 31, 1964, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 64–719; Filed, Jan. 24, 1964; 8:46 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

JANUARY 22, 1964.

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. 38767: *Liquefied chlorine gas from Memphis, Tenn.* Filed by O. W. South, Jr., agent (No. A4437), for and on behalf of St. Louis-San Francisco Railway Company. Rates on liquefied chlorine gas, in tank car loads, from Memphis, Tenn., to Demopolis and Green Tree, Ala.

Grounds for relief: Market competition.

Tariff: Supplement 158 to Southern Freight Association, agent, tariff I.C.C. S–116.

FSA No. 38768: *Liquid caustic soda from Memphis, Tenn.* Filed by O. W. South, Jr., agent (No. A4438), for interested rail carriers. Rates on liquid caustic soda, in tank car loads, from Memphis, Tenn., to Augusta, Ga., Clearwater, Graniteville and Langley, S.C.

Grounds for relief: Market competition.

Tariff: Supplement 158 to Southern Freight Association, agent, tariff I.C.C. S–116.

FSA No. 38769: *Liquid caustic soda from Memphis, Tenn.* Filed by O. W. South, Jr., agent (No. A4439), for interested rail carriers. Rates on liquid caustic soda, in tank car loads, from Memphis, Tenn., to Cartersville, Ga.

Grounds for relief: Market competition.

Tariff: Supplement 158 to Southern Freight Association, agent, tariff I.C.C. S–116.

By the Commission.

[SEAL] HAROLD D. MCCOY, *Secretary.*

[F.R. Doc. 64–724; Filed, Jan. 24, 1964; 8:47 a.m.]

[Notice 929]

MOTOR CARRIER TRANSFER PROCEEDINGS

JANUARY 22, 1964.

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 66350. By order of January 17, 1964, the Transfer Board approved the transfer to Michael J. Argy, doing business as Niagara Falls Coach Lines, 130 13th Street, Niagara Falls, N.Y., of the operating rights in Certificate in No. MC 116662 (Sub-No. 1), issued May 13, 1959, to Albert A. Jacob, doing business as Niagara Falls Scenic Tours, 530 18th Street, Niagara Falls, N.Y., authorizing the transportation of passengers and their baggage, in special operations, in round-trip sightseeing or pleasure tours, limited to the transportation of not more than eight passengers in any one vehicle, but not including the driver thereof and not including children under ten years of age who do not occupy a seat or seats, in seasonal operations between April 15 and November 1, inclusive, of each year, over irregular routes, beginning and ending at Niagara Falls, N.Y., and points in Niagara County, N.Y., and extending to ports of entry on the United States-Canada Boundary line at Niagara Falls and Lewiston, N.Y.

No. MC–FC 66521. By order of January 17, 1964, the Transfer Board approved the transfer to Frederick's Trucking Limited, Merlin, Ontario, Canada, of the operating rights in Certificate in No. MC 123152, issued July 14, 1961, to Charles Frederick, doing business as Frederick's Trucking, Village of Merlin, Ontario, Canada, authorizing the transportation, over irregular routes, of seeds, soybeans, feeds and feed concentrate, from the port of entry on the United States-Canada Boundary line, at Detroit, Mich., to points in Michigan, Ohio, and Illinois; and seed in bags, corn, in bulk, and seed corn and soya bean meal from points in Michigan, Ohio, and Illinois, to the port of entry on the United States-Canada Boundary line, at Detroit, Mich. S. Harrison Kahn, 733 Investment Building, Washington, D.C., 20005, attorney for applicants.

No. MC–FC 66533. By order of January 17, 1964, the Transfer Board approved the transfer to James Ricciardi & Sons, Inc., Staten Island, N.Y., of the operating rights in Certificate in No. MC 123057, issued October 11, 1961 to James Ricciardi, Vincent Ricciardi, Charles Ricciardi, Joseph Ricciardi, Jack Ricciardi, and Harold Boyle, a partnership, doing business as James Ricciardi & Sons, Staten Island, N.Y., authorizing the transportation of general commodities, with certain exceptions, and commodities of a general commodity nature, between points in New York, New Jersey, Connecticut, and Pennsylvania. Morton E. Kiel, 140 Cedar St., New York, 6, N.Y., attorney for applicants.

No. MC–FC 66544. By order of January 17, 1964, the Transfer Board approved the transfer to Robert L. Browning, doing business as Browning Van and Storage, 1102 South 7th Street, Clinton, Mo., of the operating rights in Certificate in No. MC 83517, issued September 20, 1963 to Robert L. Browning and Mrs. Irene Browning, doing business as Browning Van and Storage, 1102 South Seventh Street, Clinton, Mo., authorizing the transportation, over irreg-

ular routes, of: Household goods and emigrant movables, between specified points in Missouri, on the one hand, and, on the other, points in Kansas, Iowa, Illinois, and Oklahoma.

No. MC–FC 66550. By order of January 17, 1964, the Transfer Board approved the transfer and substitution of Koschkee Transfer, Inc., Fennimore, Wis., as applicant in the "claimed grandfather rights" proceeding seeking the issuance of a Certificate of Registration, No. MC 98869 (Sub-No. 1) covering operations under the former second proviso of Section 206(a) (1) of the Act, by virtue of a filing No. MC 98869 accepted in the name of Carson A. Koschkee and Marck H. McCluskey, doing business as Koschkee Transfer, Fennimore, Wis., within the State of Wisconsin. John T. Porter, 708 First National Bank Bldg., Madison 3, Wis., attorney for applicants.

No. MC–FC 66555. By order of January 17, 1964, the Transfer Board approved the transfer to Goodwin Bros., Inc., Denver, Colo., of Certificate in No. MC 114589, issued August 3, 1961 to G & L Tractor Service, Inc., Fort Morgan Colo., authorizing the transportation, over irregular routes, of: Machinery, equipment, materials, and supplies (Mercer Description) used in the natural gas and petroleum industry and pipeline operations, between points in Colorado, within 75 miles of Sterling, Colo., including Sterling. Paul M. Hupp, 636 Majestic Bldg., Denver, Colo., 80202, attorney for applicants.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 64–725; Filed, Jan. 24, 1964; 8:47 a.m.]

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PART II

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Federal Aviation Agency

Proposed Operations of Scheduled Air Carriers Outside Continental United States

FEDERAL AVIATION AGENCY

[14 CFR Parts 41, 123 [New]]

[Special Civil Air Reg. 386F, 422, 422A, 422B, 440]

[Regulatory Docket No. 3059; Notice No. 64-4]

OPERATIONS OF SCHEDULED AIR CARRIERS OUTSIDE CONTINENTAL UNITED STATES

Notice of Proposed Rule Making

The Federal Aviation Agency is considering a proposal to recodify present Part 41 of the Civil Air Regulations into Part 123 [New].

Interested persons are invited to participate in the proposed recodification by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the Federal Aviation Agency, Office of the General Counsel: Attention Rules Docket, 800 Independence Avenue SW., Washington, D.C., 20553. All communications received on or before March 23, 1964, will be considered by the Administrator before taking action on the proposed recodification. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

This proposal is a part of the program of the Federal Aviation Agency to recodify its regulatory material. The proposal conforms generally to the "Outline and Analysis" for the proposed recodification announced in Draft Release 61-25, published in the FEDERAL REGISTER on November 15, 1961 (26 F.R. 10698). However, the proposed new part will be numbered Part 123, instead of Part 125 as announced in the outline, and will include all of present Part 41 including the certification provisions which the original outline proposed to transfer to a separate part.

While SR 440 and certain sections of SRs 422, 422A, and 422B are included in proposed Part 123 [New] we cannot propose to rescind those provisions now since they also apply to operations conducted under Parts 40 and 42. Accordingly, these provisions will not be rescinded until Parts 40 and 42 are recodified.

The object of Part 123 [New] is to restate existing regulations, not to make new ones. The pertinent provisions have been freely reworded and rearranged, subject to every precaution against disturbing existing rights, privileges, duties, or functions. In addition, in cases where well established administrative practice or construction has established authoritative interpretations, the revised language reflects the interpretations.

Each proposed recodified section is followed by a note citing the present section of the regulations upon which it is based. A cross-reference table has been placed at the end of Part 123 [New] to permit easy access from the old regulations to the new. Internal cross references to parts or sections that are not yet recodified contain a blank space for later insertion of the correct recodified number with the present number contained in brackets. When a part or section that is referred to in a cross reference is later recodified, the correct number will be inserted and the bracketed number will be dropped.

No substantive changes involving an increased burden on the public have been made in the regulations, the purpose of the recodification project being simply to streamline and clarify present regulatory language and to delete obsolete or redundant provisions. It should be noted that the definitions, abbreviations, and rules of construction contained in Part 1 [New] published in the FEDERAL REGISTER on May 15, 1962 (27 F.R. 4587) would apply to the proposed rules. As Part 1 includes "inspection" in the definition of the term "maintenance" this proposal drops the present practice of referring to "inspection" in addition to "maintenance".

Appendices A and B of present Part 41 will be retained without substantive change and therefore have not been reprinted with proposed Part 123 [New]. They will be published at the time that the final rule is adopted.

It should be noted that the omission of the last sentence of § 41.241(a) relating to the applicability of the maintenance requirements of Part 18 (proposed Part 43 [New]) is not a substantive change. The applicability section (§ 43.1) of proposed Part 43 [New] makes it clear when Part 43 is applicable and therefore it is not necessary to restate the applicability throughout the FARs.

When finally adopted, Part 123 [New] will include the substance of any applicable rules or amendments adopted and made effective during the period between the date of notice and the effective date of the final rule, and may also include applicable rules on which individual notices of proposed rule making have been issued and the comment period has expired, but which have not been theretofore adopted.

In consideration of the foregoing it is proposed to amend Chapter I of Title 14 of the Code of Federal Regulations by deleting Part 41 and Special Civil Air Regulation 386F and adding a Part 123 [New] reading as hereinafter set forth.

Issued in Washington, D.C., on January 15, 1964.

N. E. HALABY,
Administrator.

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AUTHORITY: The provisions of this Part, 123 [New] issued under secs. 313(a), 501, 601, 603, 604, 605, 608, 609, 610, and 1102 of the Federal Aviation Act of 1958; 49 U.S.C. 1354 (a), 1421, 1424, 1425, 1428, 1429, 1430, 1502.

Subpart A—General

§ 123.1 Applicability.

This part prescribes rules governing the following persons and operations:

(a) Each air carrier holding a certificate of public convenience and necessity issued by the Civil Aeronautics Board authorizing unlimited scheduled service over designated routes, when it engages in scheduled air transportation over those routes between any of the following:

(1) A place in any State of the United States or the District of Columbia, and any place in a territory or possession of the United States.

(2) Any place in a territory or possession of the United States, and a place in any other territory or possession of the United States.

(3) Places in a territory or possession of the United States.

(4) Any place in the United States and any place outside thereof.

(5) Any two places outside the United States.

(6) A place in the State of Alaska and any other State of the United States.

(7) The State of Hawaii and any other State of the United States.

(b) Each person employed or used by an air carrier in operations under this part, including the maintenance and preventive maintenance of airplanes.

(c) Each person who is on board an airplane being operated by an air carrier under this part.

[Revision note: Based on § 41.1]

§ 123.3 Rules applicable to operations subject to this Part.

Unless otherwise specified in this part or in his operations specifications, each air carrier operating an airplane shall—

(a) While operating inside the United States, comply with the applicable rules of Part 91 [New] of this chapter;

(b) While operating over the high seas, comply with Annex 2 (Rules of the Air) to the convention on International Civil Aviation, except where any rule of this part is more restrictive and may be followed without violating Annex 2; and

(c) While operating within a foreign country, comply with the air traffic rules of the country concerned and local airport rules, except where any rule of this part is more restrictive and may be followed without violating the rules of that country.

[Revision note: Based on § 41.2]

Subpart B—Certification and Operations Specifications

§ 123.11 Certificate and operations specifications required.

(a) No person may operate an airplane in operations to which this part applies without, or in violation of, an air carrier operating certificate and appropriate operations specifications, issued under this part.

(b) Except for those operations specifications specifying airport and route or route segment authorizations, air carrier operations specifications are not a part of an air carrier's operating certificate.

[Revision note: Combines §§ 41.10 and 41.18]

§ 123.13 Contents of certificate and operations specifications.

(a) Each air carrier operating certificate contains the following:

(1) The air carrier's name.

(2) The airports to and from which it may operate.

(3) The approved routes over which it may operate.

These airports and routes are incorporated into the air carrier operating certificate by reference to the authorized airports and approved routes listed in that air carrier's operations specifications.

(b) An air carrier's operations specifications contain the following:

(1) The kinds of operations authorized.

(2) The types of airplanes authorized for use.

(3) En route authorizations.

(4) En route limitations.

(5) Airport authorizations.

(6) Airport limitations.

(7) Time limitations, or standards for determining time limitations, for overhauls, inspections, and checks of airframes, engines, propellers, and appliances.

(8) Procedures for control of weight and balance of airplanes.

(9) Interline equipment interchange requirements, if any.

(10) Any other item that the Administrator determines is necessary to cover a particular situation.

[Revision note: Combines §§ 41.11 and 41.19]

§ 123.15 Issue of certificate.

(a) An applicant is entitled to an air carrier operating certificate if—

(1) He holds a certificate of public convenience and necessity or other appropriate economic authority issued by the Civil Aeronautics Board; and

(2) The Administrator, after investigation, finds that he is properly and adequately equipped and able to conduct a safe operation in accordance with this part and operations specifications provided for in this part.

(b) Whenever, after investigation, the Administrator determines that the general standards of safety for air carrier operations conducted—

(1) Between points in Alaska; or

(2) Under a temporary authorization issued by the Civil Aeronautics Board;

require or allow a deviation from any requirement of this part for a particular operation or class of operations for which an application for an air carrier operating certificate has been made, he issues operations specifications prescribing appropriate requirements that deviate from the requirements of this part.

(c) The Administrator may authorize an air carrier holding economic authority to engage in scheduled cargo-only operations to conduct those operations under § ____ (present Part 42) of this chapter.

[Revision note: Based on § 41.13]

§ 123.17 Availability of certificate and operations specifications.

Each air carrier shall make its operating certificate and operations specifications available for inspection by the Administrator at its principal operations office.

[Revision note: Based on § 41.15]

§ 123.19 Duration of certificate.

(a) An air carrier operating certificate is effective until termination of the certificate of public convenience and necessity or other economic authority issued by the Civil Aeronautics Board to the air carrier or until it is surrendered or the Administrator suspends, revokes, or otherwise terminates it.

(b) If the Administrator suspends or revokes an air carrier operating certificate, the holder of that certificate shall return it to the Administrator.

[Revision note: Based on § 41.16]

§ 123.21 Use of operations specifications.

(a) Each air carrier shall keep each of its employees informed of the provisions of its operations specifications that apply to the employee's duties and responsibilities.

(b) Each air carrier shall maintain a complete and separate set of its operations specifications. In addition, each air carrier shall insert pertinent provisions of its operations specifications in its air carrier manual in such a manner that they retain their identity as operations specifications.

[Revision note: Based on § 41.20]

§ 123.23 Amendment of certificate.

(a) The Adminstrator may amend an air carrier operating certificate issued under this part—

(1) Upon application by the holder of that certificate, if he determines that safety in air transportation and the public interest allows the amendment; or

(2) Under section 609 of the Federal Aviation Act of 1958 (49 U.S.C. 1429) and Part 13 [New] of this chapter, if he determines that safety in air transportation and the public interest requires the amendment.

(b) An applicant for an amendment to an air carrier operating certificate must file his application with the FAA Air Carrier District Office charged with the overall inspection of his operation at least 15 days before the date that he proposes for the amendment to become effective, unless a shorter filing period is approved by that office.

(c) The District Office grants a request to amend an air carrier operating certificate if it determines that safety in air transportation and the public interest so allows.

(d) At any time within 30 days after refusal of the District Office to approve an air carrier's application for amendment the holder may petition the Administrator personally to reconsider the refusal.

[Revision note: Based on § 41.14]

§ 123.25 Amendment of operations specifications.

(a) The FAA Air Carrier District Office charged with the overall inspection of the air carrier's operations may amend any operations specifications issued un-

der this part, except those pertaining to airport and route authorizations—

(1) Upon application by the air carrier concerned, if it determines that safety in air transportation and the public interest allows the amendment; or

(2) If it determines that safety in air transportation and the public interest requires the amendment.

(b) In the case of an amendment under paragraph (a)(2) of this section, the District Office shall notify the carrier, in writing, of the proposed amendment, fixing a reasonable period (but not less than seven days) within which the carrier may submit written information, views, and arguments on the amendment. After considering all relevant material presented, the District Office shall notify the air carrier of any amendment adopted, or a recission of the notice. The amendment becomes effective not less than 30 days after the air carrier receives notice of it, unless the carrier petitions the Administrator personally to reconsider the amendment, in which case its effective date is stayed pending a decision by the Administrator. If the District Office finds that there is an emergency requiring immediate action with respect to safety in air transportation, that makes the procedure in this paragraph impracticable or contrary to the public interest, it may notify the carrier of an amendment, without notice, and the amendment becomes effective, without stay, on the date the carrier receives notice of it. In such a case, the District Office shall incorporate the finding, and a brief statement of the reasons for it, in the notice of the amended operations specifications to be adopted.

(c) An applicant must file his application for an amendment of operations specifications with the District Office at least 15 days before the date that he proposes for the amendment to become effective, unless a shorter filing period is approved by that office.

(d) Within 30 days after receiving from the District Office a notice of refusal to approve an air carrier's application for amendment, the air carrier may petition the Administrator personally to reconsider the refusal to amend.

[Revision note: Based on § 41.21]

§ 123.27 Inspection authority.

Each air carrier shall allow the Administrator to make any inspections or examinations that he considers necessary to determine the carrier's compliance with the Federal Aviation Act of 1958, the Federal Aviation Regulations, and its operating certificate and operations specification.

[Revision note: Based on § 41.22]

§ 123.29 Change of address.

Each air carrier shall notify the FAA Air Carrier District Office charged with the overall inspection of its operations, in writing, at least 30 days in advance, of any change in the address of its principal business office, its principal operations base, or its principal maintenance base.

[Revision note: Based on §41.23]

Subpart C—Approval of Routes

§ 123.41 Route requirements: general.

(a) Each air carrier seeking a route approval must show to the Administrator—

(1) That it is able to satisfactorily conduct scheduled operations between airports over that route or route segment; and

(2) That the facilities and services required by §§ 123.45 through 123.55 are available and adequate for the proposed operation.

The Administrator will approve a route outside of controlled airspace unless he determines that traffic density is such that an adequate level of safety cannot be assured.

(b) Paragraph (a) of this section does not require actual flight over a route or route segment if the air carrier shows that the flight is not essential to safety, considering the availability and adequacy of airports, lighting, maintenance, communication, navigation, fueling, ground, and airplane radio facilities, and the ability of the personnel to be used in the proposed operation.

[Revision note: Based on § 41.30]

§ 123.43 Route width.

(a) To be eligible for approval, routes and route segments submitted to the Administrator for approval for operations over U.S. Federal airways, foreign airways, or advisory routes must have a width equal to the designated width of the airways or advisory routes. In determining the width of other approved routes the Administrator, considers the following:

(1) Terrain clearance.

(2) Minimum en route altitudes.

(3) Ground and airborne navigation aids.

(4) Air traffic density.

(5) ATC procedures.

(b) Any route widths determined by the Administrator are specified in the air carrier's operations specifications.

[Revision note: Based on § 41.32]

§ 123.45 Airports.

Each air carrier must show to the Administrator that each airport on each route it submits for approval is properly equipped and adequate for the proposed operation, considering size, surface, obstructions, facilities, public protection, lighting, navigational and communications aid, and traffic control, and any other pertinent matters.

[Revision note: Based on § 41.33]

§ 123.47 Communications facilities.

Each air carrier must show to the Administrator that, a two-way air/ground radio communication system is available at points that will insure reliable and rapid communications, under normal operating conditions over the entire route (either direct or via approved point to point circuits) between each airplane and the appropriate dispatch office, and between each airplane and the appropriate air traffic control unit. For operations in the 48 contiguous United States and the District of Columbia, the communications system between each aircraft and the dispatch office must be independent of any system operated by the United States.

[Revision note: Based on § 41.34]

§ 123.49 Weather reporting facilities.

(a) Each air carrier must show to the Administrator that sufficient weather reporting services are available along each proposed route to insure weather reports (prepared and released by the U.S. Weather Bureau, or a source approved by the Weather Bureau) and forecasts necessary for the operation. For operations outside the U.S., where those reports are not available, the air carrier must show that its weather reports are prepared by a source approved by the Administrator.

(b) The weather reports used by an air carrier that uses forecasts to control flight movements must be those prescribed in paragraph (a) of this section.

[Revision note: Based on § 41.35]

§ 123.51 En route navigational facilities.

(a) Except as provided in paragraph (b) of this section, each air carrier must show to the Administrator, for each proposed route, that nonvisual ground aids are—

(1) Available along the route;

(2) Located to allow navigation to any regular, provisional, refueling, or alternate airport, within the degree of accuracy necessary for the operation involved; and

(3) Available for navigating aircraft within the degree of accuracy required for ATC.

(b) Nonvisual ground aids are not required for—

(1) Day VFR operations that the air carrier shows can be conducted safely by pilotage because of the characteristics of the terrain;

(2) Night VFR operations on routes that the air carrier shows have reliably lighted landmarks adequate for safe operation; and

(3) Operations on route segments where the use of celestial or specialized means of navigation is approved by the Administrator.

[Revision note: Based on § 41.36]

§ 123.53 Servicing and maintenance facilities.

Each air carrier must show to the Administrator that competent personnel and adequate facilities and equipment (including spare parts, supplies, and materials) are available at such points along each route as are necessary for the proper servicing, maintenance, and preventive maintenance of airplanes and auxiliary equipment.

[Revision note: Based on § 41.37]

§ 123.55 Dispatch centers.

Each air carrier must show to the Administrator that it has enough dispatch centers, adequate for the operations to be conducted, that are located at points necessary to insure proper operational control of each flight.

[Revision note: Based on § 41.38]

Subpart D—Air Carrier Manuals

§ 123.71 Preparation.

Each air carrier shall prepare and keep current an air carrier manual for the use and guidance of flight and ground operations personnel in conducting its operations.

[Revision note: Based on § 41.50]

§ 123.73 Contents.

(a) Each air carrier manual must—

(1) Include instructions and information necessary to allow the personnel concerned to perform their duties and responsibilities with a high degree of safety;

(2) Be in a form that is easy to revise;

(3) Have the date of last revision on each page concerned; and

(4) Not be contrary to the provisions of any applicable regulation or the air carrier's operations specifications or operating certificate.

(b) The manual may be in two or more separate parts, containing together all of the following information, but each part must contain that part of the information that is appropriate for each group of personnel:

(1) General policies.

(2) Duties and responsibilities of each crewmember and appropriate members of the ground organization.

(3) Reference to appropriate Federal Aviation Regulations.

(4) Flight dispatching and operational control, including procedures for coordinated dispatch.

(5) En route flight, navigation, and communication procedures, including procedures for the dispatch or continuance of flight if any item of equipment required for the particular type of operation becomes inoperative or unserviceable en route.

(6) Appropriate information from the en route operations specifications, including for each approved route the types of airplanes authorized, their crew complement, the type of operation such as VFR, IFR, day, night, etc., and any other pertinent information.

(7) Appropriate information from the airport operations specifications including for each airport—

(i) Its location;

(ii) Its designation (regular, alternate, provisional, etc.);

(iii) The types of airplanes authorized;

(iv) Instrument approach procedures;

(v) Landing and takeoff minimums; and

(vi) Any other pertinent information.

(8) Takeoff, en route, and landing weight limitations.

(9) Procedures for familiarizing passengers with the use of emergency equipment during flight.

(10) Emergency equipment and procedures.

(11) The method of designating succession of command of flight crewmembers.

(12) Procedures for determining the usability of landing and takeoff areas.

(13) Procedures for disseminating pertinent information to operations personnel.

(14) Procedures for operating in periods of ice, hail, thunderstorms, turbulence, or any potentially hazardous meteorological condition.

(15) Airman training programs, including appropriate ground, flight, and emergency phases.

(16) Instructions and procedures for maintenance, preventive maintenance, and servicing.

(17) Time limitations for maintenance, preventive maintenance, and checks of airframes, engines, propellers, and appliances, or standards by which the time limitations may be determined.

(18) Procedures for refueling airplanes, eliminating fuel contamination, protection from fire (including electrostatic protection), and supervising and protecting passengers during refueling.

(19) Airworthiness inspections, including instructions covering procedures, standards, responsibilities, and authority of inspection personnel.

(20) Methods and procedures for maintaining the airplane weight and center of gravity within approved limits.

(21) Pilot and dispatcher route and airport qualification procedures.

(22) Accident notification procedures.

(23) Other information or instructions relating to safety.

(c) Each air carrier shall maintain at least one complete master copy of the air carrier manual at its principal operations base.

[Revision note: Based on § 41.51]

§ 123.75 Distribution.

Each air carrier shall furnish current copies of the air carrier manual or appropriate parts of it to—

(a) Appropriate ground operations and maintenance personnel of the air carrier;

(b) Crewmembers; and

(c) Representatives of the Administrator assigned to the air carrier.

[Revision note: Based on § 41.52]

§ 123.77 Airplane flight manual.

(a) Each air carrier shall keep a current approved airplane flight manual for each type of transport category airplane that it operates.

(b) Each air carrier shall carry an approved airplane flight manual, or an air carrier manual containing the information required for the airplane flight manual, in each transport category airplane. If sections of the required information from the airplane flight manual are incorporated in the air carrier manual, the air carrier shall clearly identify the sections as airplane flight manual requirements.

[Revision note: Based on § 41.53]

Subpart E—Airplane Requirements

§ 123.91 Airplane requirements: general.

(a) No air carrier may operate an airplane unless that airplane—

(1) Is registered as a civil aircraft of the United States and carries an appropriate current airworthiness certificate issued under this chapter; and

(2) Meets the applicable airworthiness requirements of this chapter including those relating to identification and equipment.

(b) An air carrier may use an approved weight and balance control system based on average, assumed, or estimated weight to comply with applicable airworthiness requirements and operating limitations.

[Revision note: Based on § 41.60]

§ 123.93 Airplane certification and equipment requirements.

(a) *Airplanes certificated before July 1, 1942.* No air carrier may operate an airplane that was certificated before July 1, 1942, unless—

(1) That airplane retains its present airworthiness certification status and meets the requirements of paragraph (c) of § 123.111; or

(2) That airplane and all other airplanes of the same or related type operated by that carrier meet the performance requirements of §§ _____ through _____ (present §§ 4a.737–T through 4a.750–T) of Part _____ (present Part 4a) of this chapter; or §§ _____ through _____ (present §§ 4b.110 through 4b.125) of Part _____ (present Part 4b) and § 123.111 of this chapter.

(b) *Airplanes certificated after June 30, 1942.* No air carrier may operate an airplane that was certificated after June 30, 1942, unless it is certificated as a transport category airplane and meets the requirements of § 123.111.

[Revision note: Based on § 41.61]

§ 123.95 Single-engine airplanes prohibited.

No air carrier may operate a single-engine airplane.

[Revision note: Based on § 41.62 (1st sentence)]

§ 123.97 Airplane limitations: type of route.

(a) Unless otherwise authorized by the Administrator based on the character of the terrain, the kind of operation, or the performance of the airplane to be used, no air carrier may operate a two-engine or three-engine airplane along a route that contains a point farther than one hour's flying time (in still air at normal cruising speed with one engine inoperative) from an adequate airport.

(b) No air carrier may operate a land airplane (other than a DC–3, C–46, CV–340, or CV–440) in an extended overwater operation unless it is certificated or approved as adequate for ditching under the ditching provisions of Part ____ (present Part 4b) of this chapter.

[Revision note: Based on § 41.62 (less 1st sentence)]

§ 123.99 Airplane proving tests.

(a) No air carrier may operate an airplane unless—

(1) In the case of an airplane not before proved for use in air carrier operations, an airplane of that type has had, in addition to the airplane certification tests, at least 100 hours of proving tests under the Administrator's supervision at least 50 hours of which must have been

flown over authorized routes and at least 10 hours must have been flown at night; or

(2) In the case of an airplane of a type that has been proved for use in air carrier operations that—

(i) Has undergone a major alteration;

(ii) Has had installed powerplants other than powerplants of a type similar to those with which the airplane was certificated; or

(iii) Is to be used by an air carrier who has not previously proved that type;

an airplane of that type has had 50 hours of proving tests, of which 25 hours were over authorized routes unless deviations are specifically authorized by the Administrator on the ground that the special circumstances of a particular case make a literal observance of the requirements of this paragraph unnecessary.

(b) During proving tests, the carrier may not operate an airplane carrying persons other than those needed to make the tests and those designated by the Administrator, but may carry mail, express, or other cargo, when approved.

[Revision note: Based on § 41.63]

Subpart F—Airplane Performance Operating Limitations

§ 123.111 General.

(a) Each air carrier operating a nonturbine-powered transport category airplane shall comply with §§ 123.113 through 123.125.

(b) Each air carrier operating a turbine-powered transport category airplane shall comply with §§ 123.127 through 123.135, except that a carrier operating a turbopropeller-powered transport category airplane certificated on or after August 29, 1959, but previously type certificated with the same number of reciprocating engines, may comply with §§ 123.113 through 123.125.

(c) Each air carrier operating a nontransport category airplane shall comply with §§ 123.137 through 123.143 and any determination of compliance must be based only on approved performance data.

(d) The performance data in the Airplane Flight Manual applies in determining compliance with §§ 123.113 through 123.135. No person may operate a transport category turbine-powered airplane outside the operational limits specified in the Airplane Flight Manual. Where conditions are different from those on which the performance data is based, compliance is determined by interpolation or by computing the effects of changes in the specific variables, if the results of the interpolations or computations are substantially as accurate as the results of direct tests.

(e) A nonturbine-powered transport category airplane may not be taken off at a weight that is more than the allowable weight for the runway being used, determined under the runway takeoff limitations of the transport category operating rules of this part, after considering the temperature operating correction factors in §____ or ____ of this chapter (present § 4a.749a–T or 4b.117), and set forth in the applicable Airplane Flight Manual.

(f) The Administrator may authorize deviations from the requirements in this subpart in the operations specifications, if special circumstances make a literal observance of a requirement unnecessary for safety.

(g) The ten-mile width specified in §§ 123.117 through 123.121 may be reduced to five miles, for not more than 20 miles, when operating VFR or where navigation facilities furnish reliable and accurate identification of high ground and obstructions located outside of five miles, but within ten miles, on each side of the intended track.

[Revision note: Combines §§ 41.70, 41.76, 41.90, and 40T.80 and 40T.81(d) of SR 422, SR 422A, and SR 422B]

§ 123.113 Transport category airplane: nonturbine powered: takeoff limitations.

(a) No person operating a nonturbine-powered transport category airplane may take off unless—

(1) It is possible to stop the airplane safely on the runway, as shown by the acceleration-stop distance data, at any time during takeoff until reaching critical-engine failure speed;

(2) It is possible, if the critical engine fails at any time after the airplane reaches critical-engine failure speed, to continue the takeoff and reach a height of 50 feet, as indicated by the takeoff path data, before passing over the end of the runway; and

(3) It is possible, to clear all obstacles either by at least 50 feet vertically (as shown by the takeoff path data) or 200 feet horizontally within the airport boundary and 300 feet horizontally beyond the boundary, without banking before reaching a height of 50 feet (as shown by the takeoff path data) and without banking more than 15 degrees.

(b) In applying this section, corrections must be made for any runway gradient. To allow for wind effect, takeoff data based on still air may be corrected by not more than 50 percent of any reported wind component opposite to the direction of takeoff, and must be corrected by at least 150 percent of any reported wind component in the direction of takeoff.

[Revision note: Based on § 41.72]

§ 123.115 Transport category airplanes: nonturbine powered: weight limitations.

(a) No person may take off a nonturbine-powered transport category airplane from an airport located at an elevation outside of the altitude range for which maximum takeoff weights have been determined for that airplane.

(b) No person may take off a nonturbine-powered transport category airplane for an airport of intended destination that is located at an altitude outside of the altitude range for which maximum landing weights have been determined for that airplane.

(c) No person may specify, or have specified, an alternate airport that is located at an elevation outside of the range for which maximum landing weights have been determined for a nonturbine-powered transport category airplane.

(d) No person may take off a nonturbine-powered transport category airplane at a weight more than the maximum authorized takeoff weight for the elevation of the airport.

(e) No person may take off a nonturbine-powered transport category airplane if its weight on arrival at the airport of destination will be more than the maximum authorized landing weight for the elevation of that airport, allowing for normal consumption of fuel and oil en route.

[Revision note: Based on § 41.71]

§ 123.117 Transport category airplanes: nonturbine powered: en route limitations: all engines operating.

(a) No person operating a nonturbine-powered transport category airplane may take off that airplane at a weight, allowing for normal consumption of fuel and oil, that does not allow a rate of climb (in feet per minute), with all engines operating, of at least 6 V_{s_0} (V_{s_0} is expressed in miles per hour) at an altitude of at least 1,000 feet above the highest ground or obstruction within ten miles of each side of the intended track.

(b) This section does not apply to transport category airplanes certificated under Part 4a of the Civil Air Regulations.

[Revision note: Based on § 41.73]

§ 123.119 Transport category airplane: nonturbine powered: en route limitations: one engine inoperative.

(a) Except as provided in paragraph (b) of this section, no person operating a nonturbine-powered transport category airplane may take off at a weight, allowing for normal consumption of fuel and oil, that does not allow a rate of climb (in feet per minute), with one engine inoperative, of at least $\left(0.06-\frac{0.08}{N}\right) V_{s_0}{}^2$ (N is the number of engines installed and V_{s_0} is in miles per hour) at an altitude of at least 1,000 feet above the highest ground or obstruction within 10 miles of each side of the intended track. However, for the purposes of this paragraph the rate of climb for transport category airplanes certificated under Part 4a of the Civil Air Regulations of this chapter is $0.02\ V_{s_0}{}^2$.

(b) In place of the requirements of paragraph (a) of this section, a person may, under an approved procedure, operate a nonturbine-powered transport category airplane, at an all-engines-operating altitude that allows the airplane to continue, after an engine failure, to an alternate airport where a landing can be made in accordance with § 123.125. The flight path must clear the ground and any obstruction within five miles on each side of the intended track by at least 2,000 feet.

(c) If an approved procedure under paragraph (b) of this section is used the air carrier must comply with the following:

(1) The rate of climb (as presented in the Airplane Flight Manual for the appropriate weight and altitude) used in calculating the airplane's flight path shall be diminished by an amount, in feet per minute, equal to $0.06-\frac{0.08}{N}\left(\right) V_{s_0}^2$ (when N is the number of engines installed and V_{s_0} is expressed in miles per hour) for airplanes certificated under Part ____ (present Part 4b) of this chapter and by $0.02\ V_{s_0}^2$ for airplanes certificated under Part 4a of this chapter.

(2) The all-engines-operating altitude shall be sufficient so that in the event the critical engine becomes inoperative at any point along the route, the flight will be capable of proceeding to a predetermined alternate airport by use of this procedure. In determining the takeoff weight, the airplane is assumed to pass over the critical obstruction following engine failure at a point no closer to the critical obstruction than the nearest approved radio navigational fix, unless the Administrator approves a procedure established on a different basis upon the showing by the air carrier that adequate operational safeguards exist.

(3) The airplane must meet the provisions of paragraph (a) of this section at 1,000 feet above the airport used as an alternate in this procedure.

(4) The procedure must include an approved method of accounting for winds and temperatures that would otherwise adversely affect the flight path.

(5) In complying with this procedure fuel jettisoning will be approved if the air carrier shows that it has an adequate training program, that proper instructions are given to the flight crew, and all other precautions are taken to insure a safe procedure.

(6) The alternate airport shall be specified in the dispatch release and shall meet the provisions of § 123.519.

[Revision note: Based on § 41.74]

§ 123.121 Part ____ (present Part 4b) transport category airplanes with four or more engines: nonturbine powered: en route limitations: two engines inoperative.

(a) No person may operate an airplane certificated under Part ____ (present Part 4b) of this chapter and having four or more engines unless—

(1) There is no place along the intended track that is more than 90 minutes (with all engines operating at cruising power) from an airport meeting the requirements of § 123.125; or

(2) It is operated at a weight allowing the airplane, with the two critical engines inoperative, to climb at $0.01\ V_{s_0}^2$ feet per minute (V_{s_0} is in miles per hour) at an altitude of 1,000 feet above the highest ground or obstruction within 10 miles on each side of the intended track or at an altitude of 5,000 feet, whichever is higher.

(b) For the purposes of paragraph (a) (2) of this section, it is assumed that—

(1) The two engines fail at the point that is most critical with respect to the takeoff weight;

(2) Consumption of fuel and oil is normal with all engines operating up to the point where the two engines fail and with two engines operating beyond that point;

(3) Where the engines are assumed to fail at an altitude above the prescribed minimum altitude, compliance with subparagraph (a) (2) need not be shown during the descent from the cruising altitude to the prescribed minimum altitude if those requirements can be met once the prescribed minimum altitude is reached;

(4) Descent is along a net flight path and the rate of descent is $0.01\ V_{s_0}^2$ greater than the rate in the approved performance data; and

(5) If fuel jettisoning is approved, the airplane's weight at the point where the two engines fail is considered to be not less than that which would include enough fuel to proceed to an airport meeting the requirements of § 123.125 and to arrive directly over that airport at an altiude of at least 1,000 feet.

[Revision note: Based on § 41.75]

§ 123.123 Transport category airplanes: nonturbine powered: landing limitations: destination airport.

(a) No person operating a nonturbine-powered transport category airplane may take off that airplane at a weight that, under the conditions stated in this Part, does not allow a full stop landing at the intended destination within 60 percent of the effective length of the runway from a point 50 feet directly above the intersection of the obstruction clearance plane and the runway. For the purposes of this paragraph, it is assumed that—

(1) The takeoff weight of the airplane is reduced by the weight of the fuel and oil to be consumed in the flight;

(2) The airplane is landed on the runway with the longest effective length, in still air; and

(3) The airplane is landed on the most suitable runway, considering the probable wind velocity and direction, the ground handling characteristics of the type of airplane, and other conditions such as landing aids and terrain, and allowing for the effect of the landing path and roll of not more than 50 percent of the wind component along the landing path if opposite to the direction of landing, or not less than 150 percent of the wind component if in the direction of landing.

(b) If the destination airport does not meet all the requirements of paragraph (a) (3) of this section, the airplane may be taken off if an alternate airport is specified that meets the requirements of paragraph (a) of this section, as modified by § 123.125.

[Revision note: Based on § 41.77]

§ 123.125 Transport category airplanes: nonturbine powered: landing limitations: alternate airport.

No person may list an airport as an alternate airport in a dispatch or flight release unless the airplane (at the weight anticipated at the time of arrival at the airport) based on the assumptions contained in § 123.123 can be brought to a full stop landing within 70 percent of the effective length of the runway from a point 50 feet above the intersection of the obstruction clearance plane and the runway.

[Revision note: Based on § 41.78]

§ 123.127 Transport category airplanes: turbine powered: takeoff limitations.

(a) No person operating a turbine-powered transport category airplane may take off that airplane, considering the airport elevation, runway gradient, ambient temperature and wind—

(1) In the case of an airplane certificated under SR 422, at a weight greater than the weight prescribed in the Airplane Flight Manual corresponding with the minimum distance required for takeoff on the runway to be used, that allows a takeoff flight path that clears all obstacles either by an altitude equal to $(35+0.01D)$ feet vertically (D is the distance along the intended flight path from the end of the runway, in feet), or by at least 200 feet horizontally within the airport boundaries and by at least 300 feet horizontally after passing the boundaries;

(2) In the case of an aircraft certificated under SR 422A, at a weight greater than the weight prescribed in the Airplane Flight Manual corresponding with the minimum distance required for takeoff on the runway to be used, that allows a net takeoff flight path that clears all obstacles either by an altitude of 35 feet, or by at least 200 feet horizontally within the airport boundaries and by at least 300 feet horizontally after passing the boundaries except that if the takeoff distance includes a clearway, the clearway distance included must not be greater than one-half of the takeoff run; or

(3) In the case of an aircraft certificated under SR 422B, at a weight greater than the weight prescribed in the Airplane Flight Manual corresponding with the minimum distances for takeoff at which compliance with subparagraphs (i)–(iii) of this paragraph is shown and that allows a net takeoff flight path that clears all obstacles either by an altitude of 35 feet, or by at least 200 feet horizontally within the airport boundaries and by at least 300 feet horizontally after passing the boundaries:

(i) The accelerate-stop distance must not exceed the length of the runway plus the length of the stopway (if present).

(ii) The takeoff distance must not exceed the length of the runway plus the length of any clearway (if present) except that the length of the clearway must not be greater than one-half the length of the runway.

(iii) The takeoff run must not be greater than the length of the runway.

(b) For the purposes of this section, it is assumed that the airplane is not banked before reaching an altitude of 50 feet as shown by the takeoff path data in the Airplane Flight Manual, and that the maximum bank thereafter is not more than 15 degrees.

[Revision note: Combines §§ 40T.81 (less (b) and (d)) and 40.T82 of SRs 422, 422A, and 422B]

§ 123.129 Transport category airplanes: turbine powered: en route limitations: one engine inoperative.

(a) No person operating a turbine-powered transport category airplane may take off that airplane at a weight that is heavier than that which (under the approved, one engine inoperative, en route net flight path data in the Airplane Flight Manual for that airplane) will allow compliance with subparagraph (1) or (2) of this paragraph, based on the ambient temperatures expected en route:

(1) There is a positive slope at an altitude of at least 1,000 feet above all terrain and obstructions within five statute miles on each side of the intended track, or if that airplane was certificated after August 29, 1959, there is a positive slope at 1,500 feet above the airport where the airplane is assumed to land after an engine fails.

(2) The flight path allows the airplane to continue flight from the cruising altitude to an airport where a landing can be made under § 123.135 clearing all terrain and obstructions within five statute miles of the intended track by at least 2,000 feet vertically and with a positive slope at 1,000 feet above the airport where the airplane lands after an engine fails, or, if that airplane was certificated after September 30, 1958, with a positive slope at 1,500 feet above the airport where the airplane lands after an engine fails.

(b) For the purposes of paragraph (a)(2) of this section, it is assumed that—

(1) The engine fails at the most critical point en route;

(2) The airplane passes over the critical obstruction, after engine failure, at a point that is no closer to the obstruction than the nearest approved radio navigation fix, unless the Administrator authorizes a different procedure based on adequate operational safeguards;

(3) An approved method is used to allow for adverse winds;

(4) Fuel jettisoning will be approved if the air carrier shows that the crew is properly instructed, that the training program is adequate, and that all other precautions are taken to insure a safe procedure;

(5) The alternate airport is specified in the dispatch release and meets the prescribed weather minimums; and

(6) The consumption of fuel and oil after engine failure is the same as the consumption that is allowed for in the approved net flight path data in the Airplane Flight Manual.

[Revision note: Combines §§ 40T.83 (less (b)) of SRs 422, 422A, and 422B]

§ 123.131 Transport category airplanes: turbine powered: en route limitations: two engines inoperative.

(a) *Aircraft certificated after August 27, 1957, but before October 1, 1958.* No person may operate a turbine-powered transport category airplane along an intended route unless he complies with either of the following:

(1) It is at all times, with all engines operating at cruising power, within 90 minutes, of an airport that meets the requirements of §§ 123.133 and 123.135.

(2) Its weight, according to the two-engine-inoperative, en route, net flight path data in the Airplane Flight Manual, allows the airplane to fly from the point where the two engines are assumed to fail simultaneously to an airport that meets the requirements of §§ 123.133 and 123.135, with a net flight path (considering the ambient temperature anticipated along the track) having a positive slope at an altitude of at least 1,000 feet above all terrain and obstructions within five miles on each side of the intended track, or at an altitude of 5,000 feet, whichever is higher.

For the purposes of this paragraph, it is assumed that the two engines fail at the most critical point en route, that if fuel jettisoning is provided, the airplane's weight at the point where the engines fail includes enough fuel to continue to the airport and to arrive at an altitude of at least 1,000 feet, and that the consumption of fuel and oil after the failure is accounted for in the net flight path data in the Airplane Flight Manual.

(b) *Aircraft certificated after September 30, 1958, but before August 30, 1959.* No person may operate a turbine-powered transport category airplane along an intended route unless he complies with either of the following:

(1) It is at all times with all engines operating at cruising power, within 90 minutes, of an airport that meets the requirements of §§ 123.133 and 123.135.

(2) Its weight, according to the two-engine-inoperative, en route, net flight path data in the Airplane Flight Manual, allows the airplane to fly from the point where the two engines are assumed to fail simultaneously to an airport that meets the requirements of §§ 123.133 and 123.135, with a net flight path (considering the ambient temperatures along the track) having a positive slope at an altitude of at least 1,000 feet above all terrain and obstructions within five miles on each side of the intended track, or at an altitude of 2,000 feet, whichever is higher.

For the purposes of this paragraph, it is assumed that the two engines fail at the most critical point en route, that the airplane's weight at the point where the engines fail includes enough fuel to continue to the airport, to arrive at an altitude of at least 1,500 feet, and thereafter to fly for 15 minutes at cruise power or thrust, or both, and that the consumption of fuel and oil after the failure is accounted for in the net flight path data in the Airplane Flight Manual.

(c) *Aircraft certificated after August 29, 1959.* No person may operate a turbine-powered transport category airplane along an intended route except at a weight that, according to the two-engine-inoperative, en route, net flight path data in the Airplane Flight Manual, allows the airplane to fly from the point where the two engines are assumed to fail simultaneously to an airport that meets the requirements of §§ 123.133 and 123.135, with the net flight path (considering the ambient temperatures anticipated along the track) clearing vertically by at least 2,000 feet all terrain and obstructions within five statute miles (4.34 nautical miles) on each side of the intended track. For the purposes of this paragraph, it is assumed that—

(1) The two engines fail at the most critical point en route;

(2) The net flight path has a positive slope at 1,500 feet above the airport where the landing is assumed to be made after the engines fail;

(3) Fuel jettisoning is allowed, if the Administrator finds that the operator has an adequate training program, the flight crew has proper instructions, and other necessary precautions for a safe procedure have been taken;

(4) The airplane's weight at the point where the two engines are assumed to fail provides enough fuel to continue to the airport, to arrive at an altitude of at least 1,500 feet, and thereafter to fly for 15 minutes at cruise power or thrust, or both; and

(5) The consumption of fuel and oil after the failure is accounted for in the net flight path data in the Airplane Flight Manual.

[Revision note: Combines §§ 40T.83(b) of SRs 422, 422A, and 422B]

§ 123.133 Transport category airplanes: turbine powered: landing limitations: destination airports.

(a) No person operating a turbine-powered transport category airplane may take off at a weight that, in accordance with the landing distances in the Airplane Flight Manual for the elevation of the destination airport and the wind conditions and ambient temperatures anticipated at the time of landing, does not allow a full stop landing within 60 percent of the effective length of the runway from a point 50 feet directly above the intersection of the obstruction clearance plane and the runway.

(b) For the purposes of paragraph (a) of this section, it is assumed that—

(1) The takeoff weight of the airplane is reduced by the weight of the fuel and oil to be used in the flight;

(2) The airplane is landed on the most favorable runway and direction, in still air; and

(3) The airplane is landed on the most suitable runway considering the probable wind velocity and direction and the ground handling characteristics of the airplane, and considering other conditions such as landing aids and terrain.

(c) If the destination airport does not meet all the requirements of paragraph (b)(3) of this section, the takeoff may be made if an alternate airport is specified that meets the requirements of paragraph (a) of this section as modified by § 123.135.

[Revision note: Combines §§ 40T.81(b) and 40T.84(a) of SRs 422, SR 422A, and SR 422B]

§ 123.135 Transport category airplanes: turbine powered: landing limitations: alternate airports.

No person may list an airport as an alternate airport in a dispatch or flight release for a turbine-powered transport

category airplane unless that airplane based on the assumptions contained in § 123.133, can be brought to a full stop landing within 70 percent of the effective length of the runway from a point 50 feet above the intersection of the obstruction clearance plane and the runway.

[Revision note: Combines § 40T.84 (less (a)) of SRs 422, SR 422A, and SR 422B]

§ 123.137 Nontransport category airplanes: takeoff limitations.

(a) No person operating a large nontransport category airplane may takeoff unless the airplane can be brought to a safe stop within the effective length of the runway from any point during the takeoff before reaching 105 percent of minimum control speed or 115 percent of the power off stalling speed in the takeoff configuration, whichever is greater.

(b) For the purposes of this section—

(1) It may be assumed that takeoff power is used on all engines during the acceleration;

(2) Consideration may be given to not more than 50 percent of the reported headwind component, or of not less than 150 percent of the reported tailwind component;

(3) The average runway gradient is considered if it is more than one-half of one percent;

(4) It is assumed that the airplane is operating in standard atmosphere.

[Revision note: Based on § 41.91]

§ 123.139 Nontransport category airplanes: en route limitations: one engine inoperative.

(a) Except as provided in paragraph (b) of this section, no person operating a nontransport category airplane may take off that airplane at a weight that does not allow a rate of climb of at least 50 feet a minute with the critical engine inoperative at an altitude of at least 1,000 feet above the highest obstruction within five miles on each side of the intended track, or 5,000 feet, whichever is higher.

(b) Notwithstanding paragraph (a) of this section, if the Administrator finds that safe operations are not impaired, a person may operate the airplane at an altitude that allows the airplane, in case of engine failure, to clear all obstructions within five miles on each side of the intended track by 1,000 feet. If this procedure is used, the rate of descent for the appropriate weight and altitude is assumed to be 50 feet a minute faster than the rate in the approved performance data. Before approving such a procedure, the Administrator considers the following for the route, route segment, or area concerned:

(1) The reliability of wind and weather forecasting.

(2) The location and kinds of navigation aids.

(3) The prevailing weather conditions, particularly the frequency and amount of turbulence normally encountered.

(4) Terrain features.

(5) Air traffic control problems.

(6) Any other operational factors that affect the operation.

(c) For the purposes of this section, it is assumed that—

(1) The critical engine is inoperative;

(2) The propeller of the inoperative engine is in the minimum drag position;

(3) The flaps and landing gear are in the most favorable position;

(4) The operating engines are operating at the maximum continuous power available;

(5) The airplane is operating in standard atmosphere; and

(6) The weight of the airplane is progressively reduced by the anticipated consumption of fuel and oil.

[Revision note: Based on § 41.92]

§ 123.141 Nontransport category airplanes: landing limitations: destination airport.

(a) No person operating a nontransport category airplane may take off that airplane at a weight that—

(1) Allowing for anticipated consumption of fuel and oil, does not allow a full stop landing within 60 percent of the effective length of the most suitable runway at the destination airport; and

(2) Is greater than the weight allowable if the landing is to be made on the runway—

(i) With the greatest effective length in still air; and

(ii) Required by the probable wind, considering not more than 50 percent of the wind component along the landing path is opposite to the direction of landing or not less than 150 percent of the wind component if in the direction of landing.

(b) For the purposes of this section, it is assumed that—

(1) The airplane passes directly over the intersection of the obstruction clearance plane and the runway at an altitude of 50 feet in a steady gliding approach at a true indicated airspeed of at least 1.3 V_{s_0};

(2) The landing does not require exceptional pilot skill; and

(3) The airplane is operating in standard atmosphere.

[Revision note: Based on § 41.93]

§ 123.143 Nontransport category airplanes: landing limitations: alternate airport.

No person may list an airport as an alternate airport in a dispatch release for a nontransport category airplane unless that airplane (at the weight anticipated at the time of arrival) based on the assumptions contained in § 123.141, can be brought to a full stop landing within 70 percent of the effective length of the runway.

[Revision note: Based on § 41.94]

Subpart G—Special Airworthiness Requirements

§ 123.161 Special airworthiness requirements: general.

(a) Except as provided in paragraph (b) of this section, no air carrier may use an airplane powered by engines rated at more than 600 horsepower each for maximum continuous operation that has not been certificated under Part 4b of the Civil Air Regulations in effect after October 31, 1946, or under Part ____ of this chapter (present Part 4b), unless that airplane meets the requirements of this subpart.

(b) If the Administrator determines that, for a particular model of airplane used in cargo service, literal compliance with any requirement of this subpart would be extremely difficult and that compliance would not contribute materially to the objective sought, he may require compliance with only those sections that are necessary to accomplish the basic objectives of this part.

[Revision note: Based on § 41.110]

§ 123.163 Cabin interiors.

(a) Each compartment used by the crew or passengers must meet the requirements of this section.

(b) Materials must be at least flash-resistant.

(c) The wall and ceiling linings and the covering of upholstering, floors, and furnishings must be flame-resistant.

(d) Each compartment where smoking is to be allowed must be equipped with self-contained ash trays that are completely removable and other compartments must be placarded against smoking.

(e) Each receptacle for used towels, papers, and wastes must be of fire-resistant material and must have a cover or other means of containing possible fires started in the receptacles.

[Revision note: Based on § 41.112]

§ 123.165 Internal doors.

In any case where internal doors are equipped with louvres or other ventilating means, there must be a means convenient to the crew for closing the flow of air through the door when necessary.

[Revision note: Based on § 41.113]

§ 123.167 Ventilation.

Each passenger or crew compartment must be suitably ventilated. Carbon monoxide concentration may not be more than one part in 20,000 parts of air, and fuel fumes may not be present. In any case where partitions between compartments have louvres or other means allowing air to flow between them, there must be a means convenient to the crew for closing the flow of air through the partitions, when necessary.

[Revision note: Based on § 41.114]

§ 123.169 Fire precautions.

(a) Each compartment must be designed so that, when used for storing cargo or baggage, it complies with subparagraphs (1) through (4) of this paragraph:

(1) No compartment may include controls, wiring, lines, equipment, or accessories that would affect the safe operation of the airplane upon damage or failure, unless the item is adequately shielded, isolated, or otherwise protected so that it cannot be damaged by movement of cargo in the compartment and so that damage to or failure of the item would not create a fire hazard in the compartment.

(2) Cargo or baggage may not interfere with the functioning of the fire-protective features of the compartment.

(3) Materials used in the construction of the compartments, including tie-

down equipment, must be at least flame resistant.

(4) Each compartment must include provisions for safeguarding against fires according to the classifications set forth in paragraphs (b) through (f) of this section.

(b) Class A: Cargo and baggage compartments are classified in the "A" category if—

(1) A fire therein would be readily discernible to a member of the crew while at his station; and

(2) All parts of the compartment are easily accessible in flight.

There must be a hand fire extinguisher available for each Class A compartment.

(c) Class B: Cargo and baggage compartments are classified in the "B" category if enough access is provided while in flight to enable a member of the crew to effectively reach all of the compartment and its contents with a hand fire extinguisher and the compartment is so designed that, when the access provisions are being used, no hazardous amount of smoke, flames, or extinguishing agent enters any compartment occupied by the crew or passengers. Each Class B compartment must comply with the following:

(1) It must have a separate approved smoke or fire detector system to give warning at the pilot or flight engineer stations.

(2) There must be a hand fire extinguisher available for the compartment.

(3) It must be lined with fire-resistant material, except that additional service lining of flame-resistant material may be used.

(d) Class C: Cargo and baggage compartments are classified in the "C" category if they do not conform with the requirements for the "A", "B", "D", or "E" categories. Each Class C compartment must comply with the following:

(1) It must have a separate approved smoke or fire detector system to give warning at the pilot or flight engineer station.

(2) It must have an approved built-in fire-extinguishing system controlled from the pilot or flight engineer station.

(3) It must be designed to exclude hazardous quantities of smoke, flames, or extinguishing agents from entering into any compartment occupied by the crew or passengers.

(4) It must have ventilation and draft controls so that the extinguishing agent provided can control any fire that may start in the compartment.

(5) It must be lined with fire-resistant material, except that additional service lining of flame-resistant material may be used.

(e) Class D: Cargo and baggage compartments are classified in the "D" category if they are so designed and constructed that a fire occurring therein will be completely confined without endangering the safety of the airplane or the occupants. Each Class D compartment must comply with the following:

(1) It must have a means to exclude hazardous quantities of smoke, flames, or noxious gases from entering any compartment occupied by the crew or passengers.

(2) Ventilation and drafts must be controlled within each compartment so that any fire likely to occur in the compartment will not progress beyond safe limits.

(3) It must be completely lined with fire-resistant material.

(4) Consideration must be given to the effect of heat within the compartment on adjacent critical parts of the airplane.

(f) Class E: On airplanes used for the carriage of cargo only the cabin area may be classified as a Class "E" compartment. Each Class E compartment must comply with the following:

(1) It must be completely lined with fire-resistant material.

(2) It must have a separate system of an approved type smoke or fire detector to give warning at the pilot or flight engineer station.

(3) It must have a means to shut off the ventilating air flow to or within the compartment and the controls for that means must be accessible to the flight crew in the crew compartment.

(4) It must have a means to exclude hazardous quantities of smoke, flames, or noxious gases from entering the flight crew compartment.

(5) Required crew emergency exits must be accessible under all cargo loading conditions.

[Revision note: Based on § 41.115]

§ 123.171 Proof of compliance with § 123.169.

Each air carrier must, by tests in flight, show compliance with those provisions of § 41.169 of this chapter that refer to compartment accessibility, the entry of hazardous quantities of smoke or extinguishing agent into compartments occupied by the crew or passengers, and the dissipation of the extinguishing agent in Class "C" compartments. The air carrier must show during these tests that no inadvertent operation of smoke or fire detectors in other compartments within the airplane would occur as a result of fire contained in any one compartment, either during the time it is being extinguished, or thereafter unless the extinguishing system floods those compartments simultaneously.

[Revision note: Based on § 41.116]

§ 123.173 Propeller deicing fluid.

If combustible fluid is used for propeller deicing, the air carrier must comply with § 123.201.

[Revision note: Based on § 41.117]

§ 123.175 Pressure cross-feed arrangements.

(a) Pressure cross-feed lines may not pass through parts of the airplane used for carrying persons or cargo unless—

(1) There is a means to allow crewmembers to shut off the supply of fuel to these lines; or

(2) The lines are enclosed in a fuel- and fume-proof enclosure that is ventilated and drained to the exterior of the airplane.

However, such an enclosure need not be used if those lines incorporate no fittings on or within the personnel or cargo areas and are suitably routed or protected to prevent accidental damage.

(b) Lines that can be isolated from the rest of the fuel system by valves at each end must incorporate provisions for relieving excessive pressures that may result from exposure of the isolated line to high temperatures.

[Revision note: Based on § 41.118]

§ 123.177 Location of fuel tanks.

(a) Fuel tanks must be located in accordance with § 123.203.

(b) No part of the engine nacelle skin that lies immediately behind a major air egress opening from the engine compartment may be used as the wall of an integral tank.

(c) Fuel tanks must be isolated from personnel compartments by means of fume- and fuel-proof enclosures.

[Revision note: Based on § 41.119]

§ 123.179 Fuel system lines and fittings.

(a) Fuel lines must be installed and supported so as to prevent excessive vibration and to be adequate to withstand loads due to fuel pressure and accelerated flight conditions.

(b) Lines connected to components of the airplanes between which there may be relative motion must incorporate provisions for flexibility.

(c) Flexible connections in lines that may be under pressure and subject to axial loading must use flexible hose assemblies rather than hose clamp connections.

(d) Flexible hose must be of an acceptable type or proven suitable for the particular application.

[Revision note: Based on § 41.120]

§ 123.181 Fuel lines and fittings in designated fire zones.

Fuel lines and fittings in each designated fire zone must comply with § 123.207.

[Revision note: Based on § 41.121]

§ 123.183 Fuel valves.

Each fuel valve must—

(a) Comply with § 123.205;

(b) Have positive stops or suitable index provisions in the "on" and "off" positions; and

(c) Be supported so that loads resulting from its operation or from accelerated flight conditions are not transmitted to the lines connected to the valve.

[Revision note: Based on § 41.122]

§ 123.185 Oil lines and fittings in designated fire zones.

Oil lines and fittings in each designated fire zone must comply with § 123.207.

[Revision note: Based on § 41.123]

§ 123.187 Oil valves.

(a) Each oil valve, must—

(1) Comply with § 123.205;

(2) Have positive stops or suitable index provisions in the "on" and "off" positions; and

(3) Be supported so that loads resulting from its operation or from accel-

erated flight conditions are not transmitted to the lines attached to the valve.

(b) The closing of an oil shutoff means must not prevent feathering the propeller, unless equivalent safety provisions are incorporated.

[Revision note: Based on § 41.124]

§ 123.189 Oil system drains.

Accessible drains that incorporate either a manual or automatic means for positive locking in the closed position must be provided to allow safe drainage of the entire oil system.

[Revision note: Based on § 41.125]

§ 123.191 Engine breather lines.

(a) Engine breather lines must be so arranged that condensed water vapor that may freeze and obstruct the line cannot accumulate at any point.

(b) Engine breathers must discharge in a location that does not constitute a fire hazard in case foaming occurs and so that oil emitted from the line does not impinge upon the pilots' windshield.

(c) Engine breathers may not discharge into the engine air induction system.

[Revision note: Based on § 41.126]

§ 123.193 Fire walls.

Each engine, auxiliary power unit, fuel-burning heater, or other item of combustion equipment that is intended for operation in flight must be isolated from the rest of the airplane by means of fire walls or shrouds, or by other equivalent means.

[Revision note: Based on § 41.127]

§ 123.195 Fire-wall construction.

Each fire wall and shroud must—

(a) Be so made that no hazardous quantity of air, fluids, or flame can pass from the engine compartment to other parts of the airplane;

(b) Have all openings in the fire wall or shroud sealed with close-fitting fireproof grommets, bushings, or fire-wall fittings;

(c) Be made of fireproof material; and

(d) Be protected against corrosion.

[Revision note: Based on § 41.128]

NOTE: Section 41.128 (last sentence) is omitted as not a rule.

§ 123.197 Cowling.

(a) Cowling must be made and supported so as to resist the vibration, inertia, and air loads to which it may be normally subjected.

(b) Provisions must be made to permit rapid and complete drainage of the cowling in normal ground and flight attitudes. Drains must not discharge in locations constituting a fire hazard. Parts of the cowling that are subjected to high temperatures because they are near exhaust system parts or because of exhaust gas impingement must be made of fireproof material. Unless otherwise specified in these regulations, all other parts of the cowling must be made of fire-resistant material.

[Revision note: Based on § 41.129]

§ 123.199 Engine accessory section diaphragm.

Unless equal protection can be shown by other means, a fire wall that complies with § 123.195 must be provided on air-cooled engines to isolate the engine power section and all parts of the exhaust system from the engine accessory compartment.

[Revision note: Based on § 41.130]

§ 123.201 Powerplant fire protection.

(a) Designated fire zones must be protected from fire by compliance with §§ 123.203 through 123.209.

(b) Designated fire zones are—

(1) Engine accessory sections;

(2) Installations where no isolation is provided between the engine and accessory compartment; and

(3) Areas that contain auxiliary power units, fuel-burning heaters, and other combustion equipment.

[Revision note: Based on § 41.131]

§ 123.203 Flammable fluids.

(a) No tanks or reservoirs that are a part of a system containing flammable fluids or gases may be located in designated fire zones, except where the fluid contained, the design of the system, the materials used in the tank, the shutoff means, and the connections, lines, and controls provide equal safety.

(b) At least one-half inch of clear airspace must be provided between any tank or reservoir and a fire wall or shroud isolating a designated fire zone.

[Revision note: Based on § 41.132]

§ 123.205 Shutoff means.

(a) Each engine must have a means for shutting off or otherwise preventing hazardous amounts of fuel, oil, deicer, and other flammable fluids from flowing into, within, or through any designated fire zone. However, means need not be provided to shut off flow in lines that are an integral part of an engine.

(b) The shutoff means must allow an emergency operating sequence that is compatible with the emergency operation of other equipment, such as feathering the propeller, to facilitate rapid and effective control of fires.

(c) Shutoff means must be located outside of designated fire zones, unless equal safety is provided, and it must be shown that no hazardous amount of flammable fluid will drain into any designated fire zone after a shut off.

(d) Adequate provisions must be made to guard against inadvertent operation of the shutoff means and to make it possible for the crew to reopen the shutoff means after it has been closed.

[Revision note: Based on § 41.133]

§ 123.207 Lines and fittings.

(a) Each line, and its fittings, that is located in a designated fire zone, if it carries flammable fluids or gases under pressure, or is attached directly to the engine, or is subject to relative motion between components (except lines and fittings forming an integral part of the engine), must be flexible and fire-resistant with fire-resistant, factory-fixed, detachable, or other approved fire-resistant ends.

(b) Lines and fittings that are not subject to pressure or to relative motion between components must be of fire-resistant materials.

[Revision note: Based on § 41.134]

§ 123.209 Vent and drain lines.

Each vent and drain line and its fittings, that is located in a designated fire zone must, if it carries flammable fluids or gases, comply with § 123.207, if the Administrator finds that its rupture or breakage may result in a fire hazard.

[Revision note: Based on § 41.135]

§ 123.211 Fire-extinguishing systems.

(a) Unless the air carrier shows that equal protection against destruction of the airplane in case of fire is provided by the use of fireproof materials in the nacelle and other components that would be subjected to flame, fire-extinguishing systems must be provided to serve all designated fire zones.

(b) Materials in the fire-extinguishing system must not react chemically with the extinguishing agent so as to be a hazard.

[Revision note: Based on § 41.136]

§ 123.213 Fire-extinguishing agents.

Only methyl bromide, carbon dioxide, or another agent that has been shown to provide equal extinguishing action may be used as a fire-extinguishing agent. If methyl bromide or any other toxic extinguishing agent is used, provisions must be made to prevent harmful concentrations of fluid or fluid vapors from entering any personnel compartment either because of leakage during normal operation of the airplane or because of discharging the fire extinguisher on the ground or in flight when there is a defect in the extinguishing system. If a methyl bromide system is used, the containers must be charged with dry agent and sealed by the fire-extinguisher manufacturer or some other person using satisfactory recharging equipment. If carbon dioxide is used, it must not be possible to discharge enough gas into the personnel compartments to create a danger of suffocating the occupants.

[Revision note: Based on § 41.137]

§ 123.215 Extinguishing agent container pressure relief.

Extinguishing agent containers must be provided with a pressure relief to prevent bursting of the container because of excessive internal pressures. The discharge line from the relief connection must terminate outside the airplane in a place convenient for inspection on the ground. An indicator must be provided at the discharge end of the line to provide a visual indication when the container has discharged.

[Revision note: Based on § 41.138]

§ 123.217 Extinguishing agent container compartment temperature.

Precautions must be taken to insure that the extinguishing agent containers are installed in places where reasonable temperatures can be maintained for effective use of the extinguishing system.

[Revision note: Based on § 41.139]

§ 123.219 Fire-extinguishing system materials.

(a) Except as provided in paragraph (b) of this section, each component of a fire-extinguishing system that is in a designated fire zone must be made of fireproof materials.

(b) Connections that are subject to relative motion between components of the airplane must be made of flexible fire-resistant materials and be located so as to minimize the possibility of failure.

[Revision note: Based on § 41.140]

§ 123.221 Fire-detector systems.

Enough quick-acting fire detectors must be provided in each designated fire zone to insure the detection of any fire that may occur in that zone.

[Revision note: Based on § 41.141]

§ 123.223 Fire detectors.

Fire detectors must be made and installed in a manner that insures their ability to resist, without failure, all vibration, inertia, and other loads to which they may be normally subjected. Fire detectors must be unaffected by exposure to fumes, oil, water, or other fluids that may be present.

[Revision note: Based on § 41.142]

§ 123.225 Protection of other airplane components against fire.

(a) Except as provided in paragraph (b) of this section, all airplane surfaces aft of the nacelles in the area of one nacelle diameter on both sides of the nacelle centerline must be made of fire-resistant material.

(b) Paragraph (a) of this section does not apply to tail surfaces lying behind nacelles unless the dimensional configuration of the airplane is such that the tail surfaces could be affected readily by heat, flames, or sparks emanating from a designated fire zone or from the engine compartment of any nacelle.

[Revision note: Based on § 41.143]

§ 123.227 Control of engine rotation.

(a) Except as provided in paragraph (b) of this section, each airplane must have a means of individually stopping and restarting the rotation of any engine in flight.

(b) In the case of turbine engine installations, a means of stopping the rotation need be provided only if the Administrator finds that rotation could jeopardize the safety of the airplane.

[Revision note: Based on § 41.150]

§ 123.229 Fuel system independence.

(a) Each airplane fuel system must be arranged so that the failure of any one component does not result in the irrecoverable loss of power of more than one engine.

(b) A separate fuel tank need not be provided for each engine if the carrier shows that the fuel system incorporates features that provide equivalent safety.

[Revision note: Based on § 41.151]

§ 123.231 Induction system ice prevention.

A means for preventing the malfunctioning of each engine due to ice accumulation in the engine air induction system must be provided for each airplane.

[Revision note: Based on § 41.152]

§ 123.233 Carriage of cargo in passenger compartments.

(a) Except as provided in paragraphs (b) and (c) of this section, no air carrier may carry cargo in the passenger compartment of an airplane.

(b) Cargo may be carried aft of the foremost seated passengers if it is carried in an approved cargo bin that meets the following requirements:

(1) The bin must withstand the load factors and emergency landing conditions applicable to the passenger seats of the airplane in which the bin is installed, multiplied by a factor of 1.15, using the combined weight of the bin and the maximum weight of cargo that may be carried in the bin.

(2) The maximum weight of cargo that the bin is approved to carry and any instructions necessary to insure proper weight distribution within the bin must be conspicuously marked on the bin.

(3) The bin may not impose any load on the floor or other structure of the airplane that exceeds the load limitations of that structure.

(4) The bin must be attached to the seat tracks or to the floor structure of the airplane, and its attachment must withstand the load factors and emergency landing conditions applicable to the passenger seats of the airplane in which the bin is installed, multiplied by either the factor 1.15 or the seat attachment factor specified for the airplane, whichever is greater, using the combined weight of the bin and the maximum weight of cargo that may be carried in the bin.

(5) The bin may not be installed in a position that restricts access to or use of any required emergency exit, or of the aisle in the passenger compartment.

(6) The bin must be fully enclosed and made of material that is at least flame resistant.

(7) Suitable safeguards must be provided within the bin to prevent the cargo from shifting under emergency landing conditions.

(8) The bin may not be installed in a position that obscures any passenger's view of the "seat belt" or "no smoking" sign, nor may any required exit sign be blocked from view, unless an auxiliary sign or other approved means for proper notification of the passenger is provided.

(c) Cargo may be carried forward of the foremost seated passengers if carried either in approved cargo bins as specified in paragraph (a) of this section, or in accordance with the following:

(1) It is properly secured by a safety belt or other tiedown having enough strength to eliminate the possibility of shifting under all normally anticipated flight and ground conditions.

(2) It is packaged or covered in a manner to avoid possible injury to passengers.

(3) It does not impose any load on seats on the floor structure that exceeds the load limitation for those compartments.

(4) It is not located in a position that restricts the access to or use of any required emergency or regular exit, or of any aisle in the passenger compartment.

(5) It is not located in a position that obscures any passenger's view of the "seat belt" or "no smoking" sign, nor may any required exit sign be blocked from view, unless an auxiliary sign or other approved means for proper notification of passengers is provided.

[Revision note: Based on § 41.153]

§ 123.235 Carriage of cargo in cargo compartments.

When cargo is carried in cargo compartments that are designed to require the physical entry of a crewmember to extinguish any fire that may occur during flight, the cargo must be loaded so as to allow a crewmember to effectively reach all parts of the compartment with the contents of a hand fire extinguisher.

[Revision note: Based on § 41.154]

Subpart H—Instrument and Equipment Requirements

§ 123.251 Airplane instruments and equipment.

(a) Unless otherwise specified, the instrument and equipment requirements of this subpart apply to all operations under this part.

(b) Instruments and equipment required by §§ 123.253 through 123.303 must be approved and installed in accordance with the airworthiness requirements applicable to them.

(c) Each airspeed indicator must be calibrated in knots, and each airspeed limitation and item of related information in the Airplane Flight Manual and pertinent placards must be expressed in knots.

(d) Except as provided in § 123.521(b), no person may take off any airplane unless the following instruments and equipment are in operable condition:

(1) Instruments and equipment required to comply with airworthiness requirements under which the airplane is type certificated and as required by § 123.161 and §§ 123.227 through 123.235.

(2) Instruments and equipment specified in §§ 123.253 through 123.262 for all operations, and the instruments and equipment specified in §§ 123.271 through 123.303 for the kind of operation indicated, wherever these items are not already required by subparagraph (1) of this paragraph.

[Revision note: Based on § 41.170]

§ 123.253 Flight and navigational equipment.

No person may operate an airplane unless it is equipped with the following

flight and navigational instruments and equipment:

(a) An airspeed indicating system with heated pitot tube or equivalent means for preventing malfunctioning due to icing.

(b) A sensitive altimeter.

(c) A sweep-second clock.

(d) A free-air temperature indicator.

(e) A gyroscopic bank and pitch indicator (artificial horizon).

(f) A gyroscopic rate-of-turn indicator combined with a slip-skid indicator (turn-and-bank indicator).

(g) A gyroscopic direction indicator (directional gyro or equivalent).

(h) A magnetic compass.

(i) A vertical speed indicator (rate-of-climb indicator).

[Revision note: Based on § 41.171]

§ 123.255 **Engine instruments.**

Unless the Administrator allows or requires different instrumentation for turbine-powered airplanes to provide equivalent safety, no person may conduct any operation under this part without the following engine instruments:

(a) A carburator air temperature indicator for each engine.

(b) A cylinder head temperature indicator for each air-cooled engine.

(c) A fuel pressure indicator for each engine.

(d) A fuel flowmeter or fuel mixture indicator for each engine not equipped with an automatic altitude mixture control.

(e) A means for indicating fuel quantity in each fuel tank to be used.

(f) A manifold pressure indicator for each engine.

(g) An oil pressure indicator for each engine.

(h) An oil quantity indicator for each oil tank when a transfer or separate oil reserve supply is used.

(i) An oil-in temperature indicator for each engine.

(j) A tachometer for each engine.

(k) An independent fuel pressure warning device for each engine or a master warning device for all engines with a means for isolating the individual warning circuits from the master warning device.

(l) A device for each reversible propeller to indicate to the pilot when the propeller is in reverse pitch, that complies with the following:

(1) The device may be actuated at any point in the reversing cycle between the normal low pitch stop position and full reverse pitch, but it may not give an indication at or above the normal low pitch stop position.

(2) The source of indication must be actuated by the propeller blade angle or be directly responsive to it.

[Revision note: Based on § 41.172]

§ 123.257 **Emergency equipment.**

(a) *General.* No person may operate an airplane unless it is equipped with the emergency equipment listed in this section.

(b) Each item of emergency equipment—

(1) Must be inspected regularly in accordance with inspection periods established in the operations specifications to insure its continued serviceability and immediate readiness for its intended emergency purposes;

(2) Must be readily accessible to the crew;

(3) Must clearly indicate its method of operation; and

(4) When carried in a compartment or container, must have that compartment or container marked as to contents and date of last inspection.

(c) *Hand fire extinguishers for crew, passenger, and cargo compartments.* Hand fire extinguishers of an approved type must be provided for use in crew, passenger, and cargo compartments in accordance with the following:

(1) The type and quantity of extinguishing agent must be suitable for the kinds of fires likely to occur in the compartment where the extinguisher is intended to be used.

(2) At least one hand fire extinguisher must be provided and conveniently located on the flight deck for use by the flight crew.

(3) At least one hand fire extinguisher must be conveniently located in the passenger compartment of each airplane accommodating more than 6 but less than 31 passengers, and at least two hand fire extinguishers must be so located in each airplane accommodating more than 30 passengers.

(d) *First-aid equipment.* Approved first-aid kits for treatment of injuries likely to occur in flight or in minor accidents must be provided and must meet the specifications and requirements of Appendix A.

(e) *Crash ax.* Each airplane must be equipped with a crash ax.

(f) *Means for emergency evacuation.* Each passenger-carrying airplane must have a means to help occupants descend from the airplane from each emergency exit that is more than six feet from the ground with the landing gear extended. At floor level exits, this means must be a chute or equal device suitable for rapid evacuation of passengers. The means must be in position during flight for immediate installation and ready use. This paragraph does not apply if the emergency exit is over a wing and the distance from the lower sill of the exit to the surface of the wing is 36 inches or less.

(g) *Interior emergency exit markings.* Each passenger-carrying airplane must have conspicuously marked passenger emergency exits, with conspicuously marked means of access and means of opening. The identity and location of each emergency exit must be recognizable from a distance equal to the width of the cabin. The location of the emergency exit operating handle and the instructions for opening must be marked on or adjacent to the emergency exit and must be readable from at least 30 inches by a person with normal eyesight.

(h) *Lighting for interior emergency exit markings.* Each passenger-carrying airplane must have a source or sources of light for each passenger emergency exit marking. Each light must—

(1) Either be designed to function automatically in a crash landing, to continue functioning thereafter and to be manually operated, or to be manually operated only and to continue functioning after a crash landing;

(2) Have an energy supply that is independent of the main lighting system;

(3) Be armed before each takeoff or landing, if it requires arming of the system to function automatically; and

(4) Be turned on before each takeoff or landing, if it does not function automatically.

[Revision note: Based on § 41.173]

§ 123.259 **Seat and safety belts.**

(a) No air carrier may operate an airplane unless there are available during the takeoff, en route flight and landing—

(1) An approved seat or berth for each person over two years of age aboard the airplane; and

(2) An approved safety belt for separate use by each person over two years of age aboard the airplane, except that two persons occupying a berth may share one approved safety belt and two persons occupying a multiple lounge or divan seat may share one approved safety belt during en route flight only.

(b) During the takeoff or landing of an airplane, each person on board shall occupy an approved seat or berth and secure himself with the approved safety belt provided him. However, a person who is two years of age or less may be held by an adult who is occupying a seat or berth. A safety belt provided for the occupant of a seat may not be used by more than one adult during takeoff or landing.

[Revision note: Based on § 41.174]

§ 123.261 **Miscellaneous equipment.**

(a) No person may conduct any operation unless the equipment listed in paragraphs (b) through (j) of this section is installed in the airplane.

(b) If protective fuses are installed on an airplane, the number of spare fuses approved for that airplane and appropriately described in the air carrier manual must be carried aboard the airplane.

(c) There must be a windshield wiper or equivalent for each pilot station.

(d) There must be a power supply and distribution system that meets the requirements of §§ ____, ____, ____, ____, ____, and ____ (present §§ 4b.606(a), (b), and (c), 4b.612(e), 4b.622(a) and (b), 4b.623, 4b.625 and 4b.650(b)) or that is able to produce and distribute the load for the required instruments and equipment, with use of an external power supply if any one power source or component of the power distribution system fails. The use of common elements in the system is approved if the air carrier shows that they are designed to be reasonably protected against malfunctioning. Engine-driven sources of energy, when used, must be on separate engines.

(e) There must be a means for indicating the adequacy of the power being supplied to required flight instruments.

(f) There must be two independent static pressure systems, vented to the outside atmospheric pressure so that they will be least affected by air flow variation or moisture or other foreign matter, and installed so as to be airtight except for the vent. When a means is provided for transferring an instrument from its

primary operating system to an alternate system, the means must include a positive positioning control and must be marked to indicate clearly which system is being used.

(g) There must be a means for locking all companionway doors that separate passenger compartments from flight crew compartments.

(h) There must be a key for each door that separates a passenger compartment from another compartment that has emergency exist provisions. The key must be readily available for each crewmember.

(i) Each door that is the means of access to a required passenger emergency exist must be placarded to indicate that it must be open during takeoff and landing.

(j) Each door that leads to a compartment that is normally accessible to passengers and that can be locked by passengers must be provided with a means for unlocking by the crew in the event of an emergency.

[Revision note: Based on § 41.175]

§ 123.263 Cockpit check procedure.

(a) Each air carrier shall provide an approved cockpit check procedure for each type of airplane.

(b) The approved procedures must include the items necessary for flight crewmembers to check for safety before taking off or landing, and in engine and systems emergencies. The procedures must be designed so as to obviate the necessity for a flight crewmember to rely upon his memory for items to be checked.

(c) The approved procedures must be readily usable in the cockpit of each airplane and the flight crew shall follow them when operating the airplane.

[Revision note: Based on § 41.176]

§ 123.265 Passenger information.

No person may operate an airplane unless it is equipped with signs that are visible to passengers and cabin attendants to notify them when smoking is prohibited and when safety belts should be fastened. The signs must be so constructed that the crew can turn them on and off and must be turned on for each takeoff or landing and when otherwise considered to be necessary by the pilot in command.

[Revision note: Based on § 41.177]

§ 123.267 Exterior exit and evacuation markings.

No person may operate an airplane unless the exterior surfaces of the airplane are marked to clearly identify each required emergency exit. If the exits are operable from the outside, the markings must consist of or include information indicating the method of opening.

[Revision note: Based on § 41.178]

§ 123.269 Shoulder harness.

No person may operate a transport category airplane that was certificated after January 1, 1958, unless it is equipped with a shoulder harness at the pilot in command station, the second in command station and the flight engineer station.

[Revision note: Based on § 41.179]

§ 123.271 Instruments and equipment for operations at night.

No person may operate an airplane at night unless it is equipped with the following instruments and equipment in addition to those required by §§ 123.253 through 123.269:

(a) Position lights.

(b) An anti-collision light, for large airplanes.

(c) Two landing lights.

(d) Instrument lights providing enough light to make each required instrument, switch, or similar instrument, easily readable and installed so that the direct rays are shielded from the flight crewmember's eyes and that no objectionable reflections are visible to them. There must be a means of controlling the intensity of illumination unless the operator shows that nondimming instrument lights are satisfactory.

[Revision note: Based on § 41.200]

NOTE: Section 41.200 (e) and (f) are omitted as covered by revised § 123.253.

§ 123.273 Instruments and equipment for operations under IFR or over-the-top.

No person may operate an airplane under IFR or over-the-top conditions unless, in addition to the instruments required by §§ 123.253 through 123.269, the airplane is equipped with instrument lights providing enough light to make each required instrument, switch, or similar instrument, easily readable and installed so that the direct rays are shielded from the flight crewmembers' eyes and that no objectionable reflections are visible to them. There must be a means of controlling the intensity of illumination unless the operator shows that nondimming instrument lights are satisfactory.

[Revision note: Based on § 41.201]

NOTE: § 41.201(a) and (b) are omitted as covered by revised section 123.253.

§ 123.275 Supplemental oxygen; reciprocating-engine-powered airplanes.

(a) *General.* Except where supplemental oxygen is provided in accordance with § 123.279, no person may operate an airplane unless supplemental oxygen is furnished and used as set forth in paragraphs (b) and (c) of this section. The amount of supplemental oxygen required for a particular operation is determined on the basis of flight altitudes and flight duration, consistent with the operation procedures established for each operation and route.

(b) *Crewmembers.* (1) At cabin pressure altitudes above 10,000 feet up to and including 12,000 feet, oxygen must be provided for, and used by, each member of the flight crew on flight deck duty, and must be provided for other crewmembers, during the part of the flight that is longer than 30 minutes within this range of altitudes.

(2) At cabin pressure altitudes above 12,000 feet, oxygen must be provided for, and used by, each member of the flight crew on flight deck duty, and must be provided for other crewmembers, during the entire flight time at those altitudes.

(3) When a flight crewmember is required to use oxygen, he must use it continuously, except when necessary to remove the oxygen mask or other dispenser in connection with his regular duties. Standby crewmembers who are on call or are definitely going to have flight deck duty before completing the flight must be provided with an amount of supplemental oxygen equal to that provided for crewmembers on duty other than on flight deck duty. If a standby crewmember is not on call and will not be on flight deck duty during the remainder of the flight, he is considered to be a passenger for the purposes of supplemental oxygen requirements.

(c) *Passengers.* Each air carrier shall provide a supply of oxygen, approved for passenger safety, in accordance with the following:

(1) For flights of over 30 minutes at cabin pressure altitudes above 8,000 feet up to and including 14,000 feet, enough oxygen for 30 minutes for 10 percent of the passengers.

(2) For flights at cabin pressure altitudes above 14,000 feet up to and including 15,000 feet, enough oxygen for the duration of the flight at those altitudes for 30 percent of the passengers.

(3) For flights at cabin pressure altitudes above 15,000 feet, enough oxygen for each passenger carried during the entire flight at those altitudes.

(d) For the purposes of this subpart "cabin pressure altitude" means the pressure altitude corresponding with the pressure in the cabin of the airplane, and "flight altitude" means the altitude above sea level at which the airplane is operated. For airplanes without pressurized cabins, "cabin pressure altitude" and "flight altitude" means the same thing.

[Revision note: Based on § 41.202]

§ 123.277 Supplemental oxygen for sustenance: turbine-powered airplanes.

(a) *General.* When operating a turbine-powered airplane, each air carrier shall equip the airplane with sustaining oxygen and dispensing equipment for use as set forth in this section:

(1) The amount of oxygen provided must be at least the quantity necessary to comply with paragraphs (b) and (c) of this section.

(2) The amount of sustaining and first-aid oxygen required for a particular operation to comply with the rules in this part is determined on the basis of cabin pressure altitudes and flight duration, consistent with the operating procedures established for each operation and route.

(3) The requirements for airplanes with pressurized cabins is determined on the basis of cabin pressure altitude and the assumption that a cabin pressurization failure will occur at the altitude or point of flight that is most critical from the standpoint of oxygen need, and that after the failure the airplane will descend in accordance with the emergency procedures specified in the Airplane Flight Manual, without exceeding its op-

erating limitations, to a flight altitude that will allow successful termination of the flight.

(4) Following the failure the cabin pressure altitude is considered to be the same as the flight altitude unless the carrier shows that no probable failure of the cabin or pressurization equipment will result in a cabin pressure altitude equal to the flight altitude. Under those circumstances, the maximum cabin pressure altitude attained may be used as a basis for certification or determination of oxygen supply, or both.

(b) *Crewmembers.* The carrier shall provide a supply of oxygen for crewmembers in accordance with the following:

(1) At cabin pressure altitudes above 10,000 feet up to and including 12,000 feet, oxygen must be provided for and used by each member of the flight crew on flight deck duty and must be provided for other crewmembers during the part of the flight that is longer than 30 minutes within this range of altitudes.

(2) At cabin pressure altitudes above 12,000 feet, oxygen must be provided for, and used by, each member of the flight crew on flight deck duty, and must be provided for other crewmembers during the entire flight at those altitudes.

(3) When a flight crewmember is required to use oxygen, he must use it continuously except when necessary to remove the oxygen mask or other dispenser in connection with his regular duties. Standby crewmembers who are on call or are definitely going to have flight deck duty before completing the flight must be provided with an amount of supplemental oxygen equal to that provided for crewmembers on duty other than on flight duty. If a standby crewmember is not on call and will not be on flight deck duty during the remainder of the flight, he is considered to be a passenger for the purposes of supplemental oxygen requirements.

(c) *Passengers.* Each air carrier shall provide a supply of oxygen for passengers in accordance with the following:

(1) For flights at cabin pressure altitudes above 10,000 feet up to and including 14,000 feet, enough oxygen for the duration of flight in excess of 30 minutes, for 10 percent of the passengers.

(2) For flights at cabin pressure altitudes above 14,000 feet up to and including 15,000 feet, enough oxygen for the duration of flight at those altitudes for 30 percent of the passengers.

(3) For flights at cabin pressure altitudes above 15,000 feet, enough oxygen for each passenger carried during the entire flight at those altitudes.

[Revision note: Based on § 41.202–T]

§ 123.279 Supplemental oxygen requirements for pressurized cabin airplanes; reciprocating-engine-powered airplanes.

(a) When operating a pressurized cabin airplane, the air carrier shall equip the airplane to comply with paragraphs (b) through (d) of this section in the event of cabin pressurization failure.

(b) *For crewmembers.* When operating at flight altitudes above 10,000 feet, the air carrier shall provide enough oxygen for each crewmember for the entire flight at those altitudes and not less than a two-hour supply for each flight crewmember on flight deck duty. The oxygen required by § 123.285 may be considered in determining the supplemental breathing supply required for flight crewmembers on flight deck duty in the event of cabin pressurization failure.

(c) *For passengers.* When operating at flight altitudes above 8,000 feet, the air carrier shall provide oxygen as follows:

(1) When an airplane is not flown at a flight altitude above 25,000 feet, enough oxygen for 30 minutes for 10 percent of the passengers, if at any point along the route to be flown the airplane can safely descend to a flight altitude of 14,000 feet or less within four minutes.

(2) If the airplane cannot descend to a flight altitude of 14,000 feet or less within four minutes, the following supply of oxygen must be provided:

(i) For the duration of the flight in excess of four minutes at flight altitudes above 15,000 feet, the supply required by § 123.275(c)(3).

(ii) For the duration of the flight at flight altitudes above 14,000 feet up to and including 15,000 feet, the supply required by § 123.275(c)(2).

(iii) For flight at flight altitudes above 8,000 feet up to and including 14,000 feet, enough oxygen for 30 minutes for 10 percent of the passengers.

(3) When an airplane is flown at a flight altitude above 25,000 feet, enough oxygen to allow the airplane to descend to an appropriate flight altitude at which the flight can be safely continued. In addition, it must furnish enough oxygen for 30 minutes for 10 percent of the passengers for the entire flight above 8,000 feet up to and including 14,000 feet, and to comply with § 123.275(c)(2) and (3) for flight above 14,000 feet.

(d) For the purposes of this section it is assumed that the cabin pressurization failure occurs at a time during flight that is critical from the standpoint of oxygen need and that after the failure the airplane will descend, without exceeding its normal operating limitations, to flight altitudes allowing safe flight with respect to terrain clearance.

[Revision note: Based on § 41.203]

§ 123.281 Supplemental oxygen for emergency descent and for first aid: turbine-powered airplanes with pressurized cabins.

(a) *General.* When operating a turbine-powered airplane with a pressurized cabin, the air carrier shall furnish oxygen and dispensing equipment to comply with paragraphs (b) through (e) of this section in the event of cabin pressurization failure.

(b) *Crewmembers.* When operating at flight altitudes above 10,000 feet, the air carrier shall supply enough oxygen to comply with § 123.277, but not less than a two-hour supply for each flight crewmember on flight deck duty. The oxygen required by § 123.285 may be included in determining the supply required for flight crewmembers on flight deck duty in the event of cabin pressurization failure.

(c) *Use of oxygen masks by flight crewmembers.* (1) When operating at flight altitudes above 25,000 feet, each flight crewmember on flight deck duty must be provided with an oxygen mask so designed that it can be rapidly placed on his face from its ready position, properly secured, sealed, and supplying oxygen upon demand; and so designed that after being placed on the face it does not prevent immediate communication between the flight crewmember and other crewmembers over the airplane intercommunication system. When it is not being used at flight altitudes above 25,000 feet, the oxygen mask must be kept in condition for ready use and located so as to be within the immediate reach of the flight crewmember while at his duty station.

(2) When operating at flight altitudes above 25,000 feet one pilot at the controls of the airplane shall at all times wear and use an oxygen mask secured, sealed, and supplying oxygen, except that the one pilot need not wear and use an oxygen mask while at or below 35,000 feet if each flight crewmember on flight deck duty has a quick-donning type of oxygen mask that the air carrier has shown to the satisfaction of the Administrator can be placed on the face from its ready position, properly secured, sealed, and supplying oxygen upon demand, with one hand and within five seconds. The air carrier shall also show that the mask can be put on without disturbing eye glasses and without delaying the flight crewmember from proceeding with his assigned emergency duties. The oxygen mask after being put on may not prevent immediate communication between the flight crewmember and other crewmembers over the airplane intercommunication system.

(3) Notwithstanding subparagraph (2) of this paragraph if for any reason at any time it is necessary for one pilot to leave his station at the controls of the airplane when operating at flight altitudes above 25,000 feet, the remaining pilot at the controls shall put on and use his oxygen mask until the other pilot has returned to his duty station.

(4) Before the takeoff of a flight, each flight crewmember shall personally preflight his oxygen equipment to insure that the oxygen mask is functioning, fitted properly, and connected to appropriate supply terminals, and that the oxygen supply and pressure is adequate for use.

(d) *Use of portable oxygen equipment by cabin attendants.* Each attendant shall, during flight above 25,000 feet flight altitude, carry portable oxygen equipment with at least a 15-minute supply of oxygen unless it is shown that enough portable oxygen units with masks or spare outlets and masks are distributed throughout the cabin to insure immediate availability of oxygen to each cabin attendant, regardless of his location at the time of cabin depressurization.

(e) *Passenger cabin occupants.* When operating at flight altitudes above 10,000 feet, the following supply of oxygen must be provided for the use of passenger cabin occupants:

(1) When an airplane certificated to operate at flight altitudes up to and including 25,000 feet, can at any point along the route to be flown, descend safely to a flight altitude of 14,000 feet or less within four minutes, oxygen must be available at the rates prescribed by this Part for a 30-minute period for at least 10 percent of the passenger cabin occupants.

(2) When an airplane is operated at flight altitudes up to and including 25,000 feet and cannot descend safely to a flight altitude of 14,000 feet within four minutes, or when an airplane is operated at flight altitudes above 25,000 feet, oxygen must be available at the rate prescribed by this Part for not less than 10 percent of the passenger cabin occupants for the entire flight after cabin depressurization, at cabin pressure altitudes above 10,000 feet up to and including 14,000 feet and, as applicable, to allow compliance with § 123.277(c) (2) and (3), except that there must be not less than a 10-minute supply for the passenger cabin occupants.

(3) For first-aid treatment of occupants who for physiological reasons might require undiluted oxygen following descent from cabin pressure altitudes above 25,000 feet, a supply of oxygen in accordance with the requirements of § ____ (§ 46.651(b)(4)) must be provided for two percent of the occupants for the entire flight after cabin depressurization at cabin pressure altitudes above 8,000 feet, but in no case to less than one person. An appropriate number of acceptable dispensing units, but in no case less than two, must be provided, with a means for the cabin attendants to use this supply.

(f) *Passenger briefing.* Before flight is conducted above 25,000 feet, a crewmember shall instruct and show the passengers to insure that they are adequately informed of the location and operation of the oxygen-dispensing equipment and the necessity of using oxygen in the event of cabin depressurization.

[Revision note: Based on § 41.203–T]

§ 123.283 Equipment standards.

(a) *Nonturbine-powered airplanes.* The oxygen apparatus, the minimum rates of oxygen flow, and the supply of oxygen necessary to comply with § 123.275 must meet the standards established in § ____ (§ 46.651) of this chapter effective July 20, 1950, except, that if the air carrier shows full compliance with those standards to be impracticable, the Administrator may authorize any changes in those standards that he finds will provide an equivalent level of safety.

(b) *Turbine-powered airplanes.* The oxygen apparatus, the minimum rate of oxygen flow, and the supply of oxygen necessary to comply with §§ 123.277 and 123.287 must meet the standards established in § ____ (§ 46.651) of this chapter, except that if the air carrier shows full compliance with those standards to be impracticable, the Administrator may authorize any changes in those standards that he finds will provide an equivalent level of safety.

[Revision note: Based on § 41.204]

§ 123.285 Protective breathing equipment for the flight crew.

(a) *Pressurized cabin airplanes.* Each required flight crewmember on flight deck duty must have readily available at his station protective breathing equipment covering the eyes, nose, and mouth (or the nose and mouth if accessory equipment is provided to protect the eyes) to protect him from the effects of smoke or carbon dioxide or other harmful gases. There must be at least a 300-liter STPD supply of oxygen for each required flight crewmember on flight deck duty.

(b) *Nonpressurized cabin airplanes.* The requirements of paragraph (a) of this section apply to nonpressurized cabin airplanes if the Administrator finds that it is possible to obtain a dangerous concentration of smoke or carbon dioxide or other harmful gases in the flight crew compartments in any attitude of flight that might occur when the airplane is flown in accordance with either normal or emergency procedures.

[Revision note: Based on § 41.205]

§ 123.287 Equipment for extended overwater operations.

(a) Except where the Administrator, by amending the operations specifications of the air carrier, requires the carriage of all or any specific item of the equipment listed below for any overwater operation or upon application of the air carrier the Administrator allows deviation for a particular extended overwater operation, no person may operate an airplane in extended overwater operations without having on the airplane the following equipment:

(1) A life preserver for each occupant of the airplane.

(2) Enough liferafts of a rated capacity and buoyancy to accommodate the occupants of the airplane.

(3) Suitable pyrotechnic signaling devices.

(4) One self-buoyant, water-resistant, portable emergency radio signaling device, that is capable of transmission on the appropriate emergency frequency or frequencies, and not dependent upon the airplane power supply.

(b) The required life rafts, life preservers, and signaling devices must be easily accessible in the event of a ditching without appreciable time for preparatory procedures. This equipment must be installed in conspicuously marked approved locations.

(c) A survival kit, appropriately equipped for the route to be flown, must be attached to each required life raft.

[Revision note: Based on § 41.206]

§ 123.289 Equipment for operations in icing conditions.

(a) Unless an airplane is certificated under the transport category airworthiness requirements relating to ice protection, no person may operate an airplane in icing conditions unless it is equipped with means for the prevention or removal of ice on windshields, wings, empennage, propellers, and other parts of the airplane where ice formation will adversely affect the safety of the airplane.

(b) No person may operate an airplane in icing conditions at night unless means are provided for illuminating or otherwise determining the formation of ice on the parts of the wings that are critical from the standpoint of ice accumulation. An illuminating means may not be used if it will cause glare or reflection that would handicap crewmembers in the performance of their duties.

[Revision note: Based on § 41.207]

§ 123.291 Equipment for operations over uninhabited terrain areas.

No air carrier may conduct an operation over an uninhabited area or any other area that the Administrator specifies requires equipment for search and rescue in case of an emergency without the following equipment:

(a) Suitable pyrotechnic signaling devices.

(b) One self-buoyant, water-resistant, portable emergency radio signaling device capable of transmission on the appropriate emergency frequency or frequencies and not dependent upon the airplane power supply.

(c) Enough survival kits, appropriately equipped for the route to be flown, for the number of occupants of the airplane.

[Revision note: Based on §41.208]

§ 123.293 Equipment for operations on which specialized means of navigation are required.

No air carrier may conduct an operation for which specialized means of navigation are required unless it shows that adequate airborne equipment is provided for the specialized navigation authorized for the particular route to be operated.

[Revision note: Based on § 41.209]

§ 123.295 Flight recorders.

(a) Unless the airplane is equipped with an approved flight recorder that records at least time, altitude, airspeed, vertical acceleration, and heading, no person may operate—

(1) A large airplane that is certificated for operations above 25,000 feet altitude; or

(2) Any large turbine-powered airplane.

(b) When an approved flight recorder is installed, it must be operated continuously from the instant the airplane begins the takeoff roll until it has completed the landing roll at an airport.

(c) The air carrier must keep the recorded information for at least 60 days and for a longer period upon the request of the Administrator or the Civil Aeronautics Board for a particular flight or series of flights.

[Revision note: Based on § 41.210]

§ 123.297 Radio equipment.

(a) No person may operate an airplane unless it is equipped with radio equipment required for that kind of operation.

(b) Where two independent (separate and complete) radio systems are required by §§ 123.299 and 123.301, each system must have an independent an-

tenna installation except that, where rigidly supported nonwire antennas or other antenna installations of equivalent reliability are used, only one antenna is required.

[Revision note: Based on § 41.230]

§ 123.299 Radio equipment for operations under VFR over routes navigated by pilotage.

(a) No person may operate an airplane under VFR over routes that can be navigated by pilotage, unless it is equipped with the radio equipment necessary under normal operating conditions to fulfill the following:

(1) Communicate with at least one appropriate ground station as specified in § 123.47 from any point on the route.

(2) Communicate with appropriate traffic control facilities from any point in the control zone within which flights are intended.

(3) Recieve meteorological information from any point en route by either of two independent systems. One of the means provided for compliance with this subparagraph may be employed for compliance with subparagraphs (1) and (2) of this paragraph.

(b) No person may operate an airplane at night under VFR over routes that can be navigated by pilotage unless that airplane is equipped with the radio equipment necessary under normal operating conditions to fulfill the functions specified in paragraph (a) of this section and to receive radio navigational signals applicable to the route flown, except that a marker beacon receiver or ILS receiver is not required.

[Revision note: Based on § 41.231]

§ 123.301 Radio equipment for operations under VFR over routes not navigated by pilotage or for operations under IFR or over-the-top.

(a) No person may operate an airplane under VFR over routes that cannot be navigated by pilotage or for operations conducted under IFR or over-the-top, unless the airplane is equipped with that radio equipment necessary under normal operating conditions to fulfill the functions specified in § 123.299(a) and to receive satisfactorily by either of two independent systems, radio navigational signals from all primary en route and approach navigational facilities intended to be used. However, only one marker beacon receiver providing visual and aural signals and one ILS receiver need be provided. Equipment provided to receive signals en route may be used to receive signals on approach, if it is capable of receiving both signals.

(b) In the case of operation over routes on which navigation is based on low frequency radio range or automatic direction finding, only one low frequency radio range or ADF receiver need be installed if the airplane is equipped with two VOR receivers, and VOR navigational aids are so located and the airplane is so fueled that, in the case of failure of the low frequency radio range receiver or ADF receiver, the flight may proceed safely to a suitable airport, by means of VOR aids, and complete an instrument approach by use of the remaining airplane radio system.

(c) Whenever VOR navigational receivers are required by paragraph (a) or (b) of this section, at least one approved distance measuring equipment unit (DME), capable of receiving and indicating distance information from VORTAC facilities, must be installed on each airplane when operated within the 48 contiguous States and the District of Columbia at an above 24,000 feet MSL and must be installed on each of the following airplanes, regardless of the altitude flown, when operating within the 48 contiguous States and the District of Columbia after the indicated dates.

(1) Turbojet airplanes—June 30, 1963.

(2) Turboprop airplanes—December 31, 1963.

(3) Pressurized reciprocating engine airplanes—June 30, 1964.

(4) Other large airplanes—June 30, 1965.

(d) If the distance measuring equipment (DME) becomes inoperative on route, the pilot shall notify ATC of that failure as soon as it occurs.

[Revision note: Based on § 41.232]

§ 123.303 Radio equipment for extended overwater operations and for certain other operations.

No person may conduct any of the following operations unless the airplane is equipped with the radio equipment necessary to comply with § 123.301 and an independent system that complies with § 123.299(a)(1):

(a) Extended overwater operations.

(b) Operations for which the Administrator finds the equipment to be necessary for search and rescue operations because of the character of the terrain to be flown over.

[Revision note: Based on § 41.233]

Subpart I—Maintenance and Preventive Maintenance

§ 123.321 Responsibility for maintenance and preventive maintenance.

Regardless of any arrangements with any other person for performing maintenance and preventive maintenance, each air carrier is primarily responsible for the airworthiness of its aircraft and required equipment.

[Revision note: Based on § 41.240]

§ 123.323 Maintenance requirements.

(a) Each air carrier (or person performing maintenance or preventive maintenance for an air carrier) shall perform maintenance and preventive maintenance in accordance with Part ____ (present Part 18) of this chapter and the manual and operations specifications of that air carrier.

(b) Each individual who is directly in charge of the maintenance or preventive maintenance of any airframe, engine, propeller, or appliance shall hold an appropriate airman certificate.

[Revision note: Based on § 41.241 (a) (last sentence) and (b)]

§ 123.325 Inspection organization.

Each air carrier (or person performing maintenance or preventive maintenance functions for an air carrier) shall maintain an adequate inspection organization that is responsible for determining that the workmanship, methods, and material used conform to the applicable regulations of this chapter, with accepted standards and good practices, and that each airframe, engine, propeller, and appliance released to service is airworthy.

[Revision note: Based on § 41.241(a) (less last sentence)]

§ 123.327 Maintenance training program.

Each air carrier (or a person performing maintenance or preventive maintenance functions for an air carrier) shall have a training program to insure that all individuals who determine the adequacy of work done are fully informed about procedures and techniques and new equipment in use and are competent to perform their duties.

[Revision note: Based on § 41.242]

§ 123.329 Maintenance personnel duty time limitation.

Within the United States, each air carrier (or person performing maintenance or preventive maintenance for him) shall relieve each individual performing maintenance or preventive maintenance from duty for a period of at least 24 consecutive hours during any seven consecutive days, or the equivalent thereof within any one month.

[Revision note: Based on § 41.243]

Subpart J—Airman and Crewmember Requirements

§ 123.341 Airmen: limitations on use of services.

(a) No air carrier may use a person as an airman unless that person holds an appropriate and valid airman certificate issued under this chapter and is otherwise qualified for the operation for which he is to be used.

(b) No air carrier may use the services of any person, and no person may serve, as a pilot on an airplane engaged in operations under this part, if that person has reached his 60th birthday.

[Revision note: Based on § 41.260]

NOTE: Section 41.260(a) (last sentence) is omitted as covered by Subchapter D of this chapter.

§ 123.345 Composition of flight crew.

(a) No air carrier may operate an airplane with less than the minimum flight crew approved in the Airplane Flight Manual for that airplane and required by the kind of operation being conducted.

(b) In any case in which this part requires the performance of two or more functions for which an airman certificate is necessary, that requirement is not satisfied by the performance of multiple functions at the same time by one airman.

(c) If an air carrier is authorized to operate under IFR, or if it operates large airplanes, the minimum pilot crew is two pilots.

(d) On each flight requiring a flight engineer at least one flight crewmember,

other than the flight engineer, must be qualified to provide emergency performance of the flight engineer's functions for the safe completion of the flight if the flight engineer becomes ill or is otherwise incapacitated. A pilot need not hold a flight engineer's certificate to perform the flight engineer's functions in such a situation.

[Revision note: Based on § 41.261]

§ 123.347 Flight engineer.

(a) No air carrier may operate an airplane having a maximum certificated takeoff weight of more than 80,000 pounds without an airman holding a current flight engineer certificate.

(b) Such an airman is also required on each four-engine airplane having a maximum certificated takeoff weight of more than 30,000 pounds if the Administrator determines that the design of the airplane or the kind of operation requires a flight engineer for safe operation.

[Revision note: Based on § 41.263]

§ 123.349 Flight navigator.

No air carrier may operate an aircraft over any area, route, or route segment that is outside the 48 contiguous States without an airman holding a current flight navigator certificate if the Administrator determines that celestial navigation is necessary or other specialized means of navigation necessary to obtain a reliable fix for the safety of the flight cannot be adequately accomplished from the pilot station for a period of more than one hour. However, the Administrator may also require a certificated flight navigator when those specialized means of navigation are necessary for one hour or less. In making that determination the Administrator considers—

(a) The speed of the airplane;

(b) Normal weather conditions en route;

(c) Extent of air traffic control;

(d) Traffic congestion;

(e) Area of land at destination;

(f) Fuel requirements;

(g) Fuel available for return to point of departure or alternates; and

(h) Predication of flight upon operation beyond the point-of-no-return.

[Revision note: Based on § 41.262]

§ 123.351 Flight attendants.

(a) Except as provided in paragraph (b) of this esction, each air carrier conducting a scheduled passenger operation shall provide at least the following flight attendants on each airplane used:

(1) For airplanes having a seating capacity of at least 10 but less than 45 passengers—one flight attendant.

(2) For airplanes having a seating capacity of at least 45 but less than 101 passengers—two flight attendants.

(3) For airplanes having a seating capacity of more than 100 passengers—three flight attendants.

(b) Upon application by the air carrier, the Administrator may approve the use of an airplane in a particular operation with less than the number of flight attendants required by paragraph (a) of this section, if the air carrier shows that, based on the—

(1) Type of operation;

(2) Number of passenger seats;

(3) Number of compartments;

(4) Number of emergency exits;

(5) Emergency equipment; and

(6) Presence of other trained flight crewmembers not on flight deck duty whose services may be used in emergencies;

safety and emergency procedures and functions established under § 123.355 for the particular kind of airplane and operation can be adequately performed by fewer flight attendants.

[Revision note: Based on § 41.265]

§ 123.353 Aircraft dispatcher.

Each air carrier shall show that there are enough qualified aircraft dispatchers at each dispatch center to insure proper operational control of each flight.

[Revision note: Based on § 41.266]

§ 123.355 Emergency and emergency evacuation duties.

(a) Each air carrier shall assign to each required crewmember the necessary functions that he is to perform in an emergency or a situation requiring emergency evacuation. The carrier shall assign those functions for each type of aircraft that it uses and shall show that those functions are realistic and can be accomplished.

(b) The air carrier shall describe each required crewmember's functions under paragraph (a) of this section in the air carrier manual.

(c) The air carrier shall train each required crewmember in his functions under paragraph (a) of this section during the approved emergency training program prescribed in § 123.371.

[Revision note: Based on § 41.267]

Subpart K—Training Program

§ 123.371 Establishment.

(a) Each air carrier shall have an approved training program that insures that each crewmember and dispatcher is adequately trained to perform his assigned duties. Each crewmember or dispatcher must satisfactorily complete the initial training phases before serving in scheduled operations.

(b) Each air carrier shall provide adequate ground and flight training facilities and properly qualified instructors for the training required by this section, and enough check airmen to conduct the flight checks required by this Part. The check airmen must hold the airman certificates and ratings that are required for the airmen being checked.

(c) The training program for each flight crewmember must consist of appropriate ground and flight training, including proper flight crew coordination and training in emergency procedures. The carrier shall standardize procedures for each flight crew function to the extent that each flight crewmember knows the functions for which he is responsible and the relation of those functions to the functions of other flight crewmembers. The initial program must include at least the requirements set forth in §§ 123.373 through 123.380.

(d) The crewmember emergency procedures training program must include at least the requirements set forth in § 123.380.

(e) Each instructor, supervisor, or check airman that is responsible for a particular training check or flight check shall certify to the proficiency of the crewmember of dispatcher concerned after he completes his initial training and after he completes his recurrent training. That certification shall be made a part of the crewmember or dispatcher's record.

[Revision note: Based on § 41.280]

§ 123.373 Ground training: pilots.

(a) Each air carrier shall provide at least the following ground training for each pilot before he serves as a flight crewmember:

(1) Instruction in the appropriate provisions of the air carrier's operations specifications and of this chapter, especially the operating and dispatching rules and airplane operating limitations.

(2) Dispatch procedures and appropriate contents of the manuals.

(3) Duties and responsibilities of crewmembers.

(4) The type of airplane to be flown, including a study of the airplane, engines, major components and systems, performance limitations, standard and emergency operating procedure, and appropriate contents of the approved Airplane Flight Manual.

(5) Principles and methods for determining weight and balance limitations for takeoff and landing.

(6) Navigation and the use of appropriate navigation aids, including instrument approach facilities and procedures that the carrier is authorized to use.

(7) Air traffic control systems and procedures, and pertinent ground control letdown procedures.

(8) Enough meteorology to insure a practical knowledge of the principles of icing, fog, thunderstorms, and frontal systems.

(9) Procedures for operating in turbulent air, icing, hail, thunderstorm, and other potentially hazardous meteorological conditions.

(10) Communications procedures and communications equipment failure procedures.

(b) Each air carrier shall provide each pilot—

(1) That additional ground training necessary to insure qualifications in new equipment, procedures, or techniques; and

(2) Recurrent training and checks at least once every twelve months to insure his continued proficiency in procedures, techniques, and information essential to the satisfactory performance of his duties.

[Revision note: Based on § 41.281]

§ 123.375 Flight training: pilots.

(a) The flight training that the air carrier must provide for each pilot before he serves as a flight crewmember must include at least—

(1) Takeoffs and landings during day and night in each type of airplane he is to pilot in scheduled operations;

(2) Normal and emergency flight maneuvers in each type of airplane he is to pilot in scheduled operations; and

(3) Flight under simulated instrument conditions.

(b) A pilot qualifying to serve as other than pilot in command or second in command, shall show the Administrator or a check pilot that he is able to take off and land each type of airplane in which he is to serve.

(c) The flight training for each pilot qualifying to serve as a pilot in command (or second in command of an airplane in an operation that requires three or more pilots) must include flight instruction and practice in at least the maneuvers and procedures described in subparagraphs (1) and (2) of this section:

(1) In each type of airplane to be flown by him in scheduled operations he must perform the following:

(i) Takeoffs at the authorized maximum takeoff weight using maximum takeoff power with a simulated failure of the critical engine. In transport category airplanes the simulated failure must be done as close as possible to the critical engine failure speed (V_1) and climb-out must be made as close as possible to the takeoff safety speed (V_2), the pilot determining the values for (V_1) and (V_2).

(ii) If a four-engine airplane, flight at the maximum authorized landing weight, where appropriate, with the most critical combination of two engines inoperative, or operating at zero thrust, using climb speeds set forth in the Airplane Flight Manuals.

(iii) At the maximum authorized landing weight, simulated pull-out from the landing and approach configurations at a safe altitude with the critical engine inoperative or operating at zero thrust.

(2) Flight must be conducted under simulated IFR using each kind of navigation facility and letdown procedure that is used in normal operations. If a particular kind of facility is not available in the training area, the training may be given in a synthetic trainer.

For the purposes of subparagraph (1) of this paragraph, weight and power combinations less than those specified in subdivisions (i), (ii), and (iii) of this subparagraph may be used if the performance capabilities of this airplane under the specified conditions are simulated.

(d) Flight training for each pilot qualifying to serve as second in command of an airplane that requires two pilots must include flight instruction and practice in at least the maneuvers and procedures in subparagraphs (1) and (2) of this paragraph:

(1) In each type of airplane to be flown by him in scheduled operations, flight training must include—

(i) Assigned flight duties as second in command; including flight emergencies;

(ii) Taxiing;

(iii) Takeoffs and landings;

(iv) Climbs and climbing turns;

(v) Slow flight;

(vi) Approach to stall;

(vii) Engine shutdown and restart;

(viii) Takeoff and landing with simulated engine failure; and

(ix) Flight under simulated IFR conditions, including instrument approach at least down to circling approach minimums and missed approach procedures.

(2) Flight must be conducted under simulated IFR conditions using each kind of navigation facility and letdown procedure that is used in normal operations. Except for those approach procedures for which the lowest minimums are approved, letdown procedures may be given in a synthetic trainer that has the radio equipment and instruments necessary to simulate other navigational and letdown procedures approved for the air carrier.

(e) The air carrier shall give each pilot any additional flight training necessary to insure his qualification for new equipment, procedures, or techniques. At least once each 12 months, as a part of the training program, it shall give him recurrent flight training and checks to insure his continued proficiency with respect to procedures, techniques, and information essential to the satisfactory performance of his duties. If the check of a pilot in command or second in command requires actual flight, satisfactory completion of the applicable checks required by § 123.397 or 123.399 meets the requirements of this section.

[Revision note: Based on § 41.282]

§ 123.377 Flight navigator training.

(a) The training for each flight navigator must include at least the applicable parts of subparagraphs (1) through (4) and (6) through (8) of § 123.373(a).

(b) Before serving as a flight crewmember, each flight navigator must have enough ground and flight training to be proficient in the duties assigned to him by the air carrier. The flight training may be given during scheduled flight in air transportation under the supervision of a qualified flight navigator.

(c) The air carrier shall give each flight navigator any additional ground and flight training necessary to insure his qualification for new equipment, procedures, and techniques. At least once each 12 months, as a part of the training program, it shall give him recurrent ground training and a flight check to insure his continued proficiency with respect to procedures, techniques, and information essential to the satisfactory performance of his duties. The flight check may be given during scheduled flight in air transportation, or in a synthetic trainer in place of a check in flight.

[Revision note: Based on § 41.283]

§ 123.379 Flight engineer training.

(a) The training for each flight engineer must include at least the applicable parts of subparagraphs (1) through (5) of § 123.373(a).

(b) Before serving as a flight crewmember, each flight engineer must have enough flight training to be proficient in the duties assigned to him by the air carrier. Except for emergency procedures, the flight training may be given during scheduled flight in air transportation under the supervision of a qualified flight engineer.

(c) The air carrier shall give each flight engineer any additional ground and flight training necessary to insure his qualification for new equipment, procedures, and techniques. At least once each 12 months, as a part of the training program it shall give him recurrent ground training and a flight check to insure his continued proficiency with respect to procedures, techniques, and information essential to the satisfactory performance of his duties. Except for emergency procedures, the flight check may be given during scheduled flight in air transportation, or in a synthetic trainer in place of a check flight.

[Revision note: Based on § 41.284]

§ 123.380 Crewmember emergency training.

(a) Each air carrier shall design its training in emergency procedures to give each required crewmember appropriate individual instruction in emergency procedures, including assignments in an emergency and coordination among crewmembers and appropriate individual instruction in at least the following subjects, as appropriate to the particular crewmember:

(1) Procedures for failure of an engine, engines, or other airplane components or systems.

(2) Procedures for—

(i) Emergency decompression;

(ii) Fire in the air or on the ground;

(iii) Ditching; and

(iv) Evacuation.

(3) The location of emergency equipment.

(4) The operation of emergency equipment.

(5) The power setting for maximum endurance and maximum range.

(b) The air carrier shall give each crewmember, at least once each 12 months, recurrent training in the emergency procedures set forth in paragraph (a) of this section. Completion of that training becomes a part of the crewmember's records.

(c) Synthetic trainers that simulate flight operating emergency conditions may be used for training crewmembers in emergency procedures. The air carrier shall give instruction to each crewmember performing duties on pressurized airplanes operated above 25,000 feet by lectures and films, or other equivalent means approved after demonstration, covering at least—

(1) Respiration;

(2) Hypoxia;

(3) Duration of consciousness at altitudes without supplemental oxygen;

(4) Gas expansion;

(5) Gas bubble formation; and

(6) Physical phenomena and incidents of decompression.

(d) Training and practice in putting on oxygen masks and operating oxygen equipment.

[Revision note: Based on § 41.285]

§ 123.381 Aircraft dispatcher and operation personnel training.

(a) Each air carrier shall provide a training program for its aircraft dispatchers that includes—

(1) Training in duties and responsibilities;

(2) Flight operations procedures;

(3) Air traffic control procedures;

(4) Performance of ariplanes used;

(5) Navigation aids and facilities; and

(6) Meteorolgy; and

(b) The training program must emphasize emergency procedures, including the alerting of proper governmental, company, and private agencies to give the maximum help to an airplane in distress.

(c) Each aircraft dispatcher shall, before performing duties as an aircraft dispatcher, show the supervisor or ground instructor authorized to certify his proficiency, his knowledge of the following:

(1) Contents of the air carrier operating certificate.

(2) Appropriate provisions of the air carrier's operations specifications, manual, and this chapter.

(3) Characteristics of airplanes used by the carrier.

(4) Cruise control data and cruising speeds for those airplanes.

(5) Maximum authorized airplane loads for the routes and airports used.

(6) Air carrier radio facilities.

(7) Characteristics and limitations of each kind of radio and navigation facility used.

(8) Effect of weather conditions on airplane radio reception.

(9) Airports used and the terrain en route.

(10) Prevailing weather phenomena.

(11) Sources of weather information available.

(12) Pertinent air traffic control procedures.

(13) Emergency procedures.

(d) The air carrier shall give each dispatcher any additional training necessary to insure his qualification for new equipment, procedures, and techniques. At least once each 12 months, as a part of the training program, it shall give him recurrent training and checks to insure his continued competence with respect to the procedures, techniques, and information essential to his duties.

[Revision note: Based on § 41.286]

Subpart L—Flight Crewmember and Dispatcher Qualification

§ 123.391 General.

(a) No air carrier may use a flight crewmember or dispatcher, and none of its flight crewmembers or dispatchers may perform duties under his airman certificate, unless he meets the appropriate requirements in Subpart K and § 123.395.

(b) When a pilot completes a check required by this subpart the check airman who is responsible for the particular check shall certify that the pilot is proficient. This certification shall be made a part of the pilot's record.

(c) If a flight crewmember who is required to take a check takes that check in the calendar month before, or the calendar month after, the month in which it becomes due, he is considered to have taken it during the month it became due.

[Revision note: Based on § 41.300(a) (1st sentence) and (b)]

§ 123.393 Pilot qualification: certificates required.

(a) No pilot may act as pilot in command of an airplane (or as second in command of an airplane in an operation that requires three or more pilots) unless he holds an airline transport pilot certificate and an appropriate type rating for that aircraft.

(b) Each pilot who acts as a pilot in a capacity other than those specified in paragraph (a) of this section must hold at least a commercial pilot certificate and an instrument rating.

[Revision note: Based on § 41.300(a) (less 1st sentence)]

§ 123.395 Pilot qualification: recent experience.

No air carrier may use a pilot as pilot in command or second in command in scheduled air transportation unless, within the preceding 90 days, he has made at least three landings in an airplane of the type in which he is to serve.

[Revision note: Based on § 41.301]

§ 123.397 Pilot checks.

(a) *Line check.* No air carrier may use a pilot as pilot in command of an airplane until he has passed a line check in one of the types of airplanes that he is to fly. Thereafter he may not serve as a pilot in command unless each 12 months he passes a similar line check. The line check may be given at any time during the month before or the month after the month in which it is due without affecting its effective date. The check must be given by a check pilot who is qualified on both the route and the airplane. The check must consist of at least a scheduled flight over a typical part of the carrier's route to which the pilot is normally assigned. It must be long enough for the check pilot to determine whether the pilot being checked satisfactorily performs the duties and responsibilities of a pilot in command.

(b) *Proficiency check.* No air carrier may use a pilot as a pilot in command of an airplane (or as second in command of an airplane that requires three or more pilots) in operations under this part unless he has satisfactorily shown to the Administrator or a check pilot that he is able to pilot and navigate airplanes that he is to fly. Thereafter he may not serve as a pilot in command unless each six months he passes a similar pilot proficiency check. The check may be given at any time during the month before or the month after the month in which it is due without affecting its effective date. If a pilot serves in more than one airplane type, at least each alternate check must be given in flight in the largest type of airplane in which he serves. The proficiency check must include the following:

(1) Equipment test (oral or written).

(2) Taxiing.

(3) Runup.

(4) Takeoff.

(5) Climb.

(6) Climbing turns.

(7) Steep turns.

(8) Maneuvers at minimum speeds.

(9) Approaches to stalls.

(10) Propeller feathering.

(11) Maneuvers with one or more engine(s) inoperative.

(12) Rapid descent and pullout.

(13) Radio tuning.

(14) Orientation.

(15) Approach procedures.

(16) Flight maneuvers specified in § 123.375, except that the simulated engine failure during takeoff need not be at speed V_1 or at the actual or simulated maximum authorized weight.

(17) Approved flight maneuvers under simulated instrument conditions using the navigation facilities and letdown procedures normally used by the pilot, except that maneuvers other than those associated with approach procedures for which the lowest minimums are approved may be given in a synthetic trainer that contains the radio equipment and instruments necessary to simulate other navigational and letdown procedures approved for the air carrier.

(c) *Use of flight simulator.* After the first proficiency check, the satisfactory completion of an approved training course in an approved airplane simulator may be substituted at alternate six-month intervals for the proficiency check required by paragraph (b) of this section, if the simulator meets the requirements of Appendix B of this part and—

(1) The simulator is maintained at the same level as required for initial approval;

(2) A functional preflight check of the simulator is performed each day before beginning simulator flight training or proficiency checks;

(3) A daily discrepancy log is kept and an entry of each discrepancy is made by the simulator instructor or check airman before the end of each training or check flight; and

(4) If a modification is made to the airplane, a corresponding modification is made to the simulator if necessary for flight crew training or proficiency checks.

The simulator may be used with inoperative instruments or equipment, if they are not applicable to the particular phase of training being given.

(d) Before serving as a pilot in command on any airplane, the pilot must have passed, during the preceding 12 months, either a proficiency check or a line check in that type of airplane.

[Revision note: Based on § 41.302]

§ 123.399 Pilot qualification: routes and airports.

(a) No air carrier may use a pilot as pilot in command until he has qualified, for the route on which he is to serve, in accordance with this section, and the appropriate instructor or check pilot has so certified.

(b) The qualifying pilot shall show that he has adequate knowledge of the

following with respect to each route he is to fly:

(1) Weather characteristics.
(2) Navigation facilities.
(3) Communication procedures.
(4) En route terrain and obstruction hazards.
(5) Minimum safe flight levels.
(6) Position reporting points.
(7) Holding procedures.
(8) Pertinent air traffic control procedures.
(9) Congested areas, obstructions, physical layout, and instrument approach procedures of each regular, provisional, or refueling airport that is approved for the route.

Those parts of the above requirements relating to holding procedures and instrument approach procedures may be accomplished in a synthetic trainer that contains the radio equipment and instruments necessary to simulate the navigation and letdown procedures approved for the air carrier.

(c) The qualifying pilot shall make an entry as a member of the flight crew at each regular, provisional, and refueling airport into which he is scheduled to fly. The entry must include a landing and a takeoff. The qualifying pilot must occupy a seat in the pilot compartment and must be accompanied by a pilot who is qualified for the airport.

(d) Paragraph (c) of this section does not apply if—

(1) The initial entry is made under VFR weather conditions at the airport involved;

(2) The air carrier shows that the qualification can be made by using approved pictorial means; or

(3) The air carrier notifies the Administrator that it intends to operate at an airport that is near an airport into which the pilot concerned is currently qualified by entry, and the Administrator finds that the pilot is adequately qualified at the new airport, considering at least the pilot's familiarity with the layout, surrounding terrain, location of obstacles, and instrument approach and traffic control procedures at the new airport.

(e) No pilot in command may serve on a route or route segment on which he must navigate by pilotage and fly at or below the level of terrain that is within 25 miles horizontally of the centerline of that route or route segment unless he has made at least two one-way trips over the route or route segment on the flight deck under VFR weather conditions.

[Revision note: Based on § 41.303]

§ 123.401 Pilot route and airport qualifications for particular trips.

(a) An air carrier may not use a pilot as pilot in command unless, within the preceding 12 months, the pilot has made at least one trip as pilot or other member of the flight crew between terminals into which he is scheduled to fly and has complied with § 123.399(d), if applicable.

(b) To re-establish route and airport qualification after being absent from the route for a period of more than 12 months, a pilot must comply with the appropriate provisions of § 123.399.

[Revision note: Based on § 41.304]

§ 123.403 Proficiency checks: second in command.

(a) An air carrier may not use a pilot as second in command unless he has satisfactorily shown to the Administrator or a check pilot that he is able to pilot and navigate airplanes that he is to fly and to perform his assigned duties. Thereafter, he may not serve as second in command unless each 12 months he satisfactorily completes a similar pilot proficiency check.

(b) The proficiency check required by paragraph (a) of this section may be given at any time during the month before or the month after the month in which it is due, without affecting its effective date.

(c) If a pilot serves in more than one airplane type, at least each alternate check must be given in flight in the largest type of airplane in which he serves.

(d) The proficiency check must include at least an oral or written equipment test and the procedures and flight maneuvers specified in § 123.375(d). The check may be given from either the right or left pilot seat.

(e) After the initial check, satisfactory completion of an approved course of training in an aircraft simulator that meets the requirements of § 123.397(c) may be substituted at alternate 12 month-intervals for the checks required by paragraphs (a) through (d) of this section. In addition, satisfactory completion of the proficiency check in accordance with § 123.375(b) and (c) meets the requirements of this section.

(f) The proficiency check for second in command of a required three-pilot crew is that set forth in § 123.397(b) and (c).

[Revision note: Based on § 41.305]

§ 123.405 Flight navigator qualification.

(a) No air carrier may use a flight navigator unless, within the preceding 12-month period, he has had at least 50 hours of flight time as a flight navigator, or the air carrier or the Administrator has checked him (including a check in flight or in an approved synthetic trainer) and has determined that he is familiar with essential current navigation information pertaining to routes to be flown by him and that he is competent in the operating procedures and navigation equipment to be used.

(b) An air carrier may check a flight navigator during a flight in scheduled air transportation, but it may not assign him as a required flight crewmember on that flight.

[Revision note: Based on § 41.306]

§ 123.407 Flight engineer qualification.

(a) No air carrier may use a flight engineer unless, within the preceding six-month period, he has had at least 50 hours of flight time as a flight engineer on the type of airplane in which he is to serve, or the air carrier or the Administrator has checked him (in a flight in other than air transportation) and has determined that he is familiar with all essential current information and operating procedures for the type of airplane to which he is assigned and is competent in that airplane.

(b) If a flight engineer has been previously qualified in the type of airplane in which he is to serve, the carrier may give the check in an approved synthetic trainer in place of the flight check.

[Revision note: Based on § 41.307]

§ 123.409 Aircraft dispatcher qualification.

(a) No air carrier may use a dispatcher to dispatch airplanes over any route or route segment unless the air carrier has determined that he is familiar with all essential operating procedures for the entire route and the airplane to be used. However, a dispatcher who is qualified to dispatch aircraft over part of a route may dispatch aircraft after coordinating with dispatchers who are qualified to dispatch aircraft over the other parts of the route.

(b) No aircraft dispatcher may dispatch airplanes over any area in which he is authorized to exercise dispatch jurisdiction unless within the preceding 12 months, he has made a one-way qualification trip over that area on the flight deck of an airplane. The trip must include entry into as many points as practicable; it is not necessary to make a flight over each route in the area.

[Revision note: Based on § 41.310]

Subpart M—Flight Time Limitations

§ 123.421 Flight time limitations: one or two pilot crews.

(a) An air carrier may schedule a pilot to fly in an airplane that has a crew of one or two pilots for eight hours or less during any 24 consecutive hours without a rest period during these eight hours.

(b) If an air carrier schedules a pilot to fly more than eight hours during any 24 consecutive hours, it shall give him an intervening rest period, at or before the end of eight scheduled hours of flight duty. This rest period must be at least twice the number of hours flown since the preceding rest period, but not less than eight hours. The carrier shall relieve that pilot of all duty with it during that rest period.

(c) Each pilot who has flown more than eight hours during 24 consecutive hours must be given at least 18 hours of rest before being assigned to any duty with the air carrier.

(d) No pilot may fly more than 32 hours during any seven consecutive days, and each pilot must be relieved from all duty for at least 24 consecutive hours at least once during any seven consecutive days.

(e) No pilot may fly as a member of a crew more than 100 hours during any one month.

(f) No pilot may fly as a member of a crew more than 1,000 hours during any 12-month period.

[Revision note: Based on § 41.320]

§ 123.423 Flight time limitations: two pilots and one additional flight crewmember.

(a) No air carrier may schedule a pilot to fly, in an airplane that has a crew of two pilots and at least one additional flight crewmember, for a total of more than 12 hours during any 24 consecutive hours.

(b) If a pilot has flown 20 or more hours during any 48 consecutive hours or 24 or more hours during any 72 consecutive hours, he must be given at least 18 hours of rest before being assigned to any duty with the air carrier. In any case, he must be given at least 24 consecutive hours of rest during any seven consecutive days.

(c) No pilot may fly as a flight crewmember more than—

(1) 120 hours during any 30 consecutive days;

(2) 300 hours during any 90 consecutive days; or

(3) 1,000 hours during any 12-month period.

[Revision note: Based on § 41321]

§ 123.425 Flight time limitations: three or more pilots and an additional flight crewmember.

(a) Each air carrier shall schedule its flight hours to provide adequate rest periods on the ground for each pilot who is away from his base and who is a pilot on an airplane that has a crew of three or more pilots and an additional flight crewmember. It shall also provide adequate sleeping quarters on the airplane whenever a pilot is scheduled to fly more than 12 hours during any 24 consecutive hours.

(b) The air carrier shall give each pilot, upon return to his base from any flight or series of flights, a rest period that is at least twice the total number of hours he flew since the last rest period at his base. During the rest period required by this paragraph, the carrier may not require him to perform any duty for it. If the required rest period is more than seven days, that part of the rest period in excess of seven days may be given at any time before the pilot is again scheduled for flight duty on any route.

(c) No pilot may fly as a flight crewmember more than—

(1) 350 hours during any 90 consecutive days; or

(2) 1,000 hours during any 12-month period.

[Revision note: Based on § 41.322]

§ 123.427 Flight time limitations: pilots not regularly assigned.

(a) Except as provided in paragraphs (b) through (e) of this section, a pilot who is not regularly assigned as a flight crewmember for an entire month under § 123.423 or 123.425 may not fly more than 100 hours in any 30 consecutive days.

(b) The flight time limitations for a pilot who is assigned to duty aloft for more than 20 hours in two-pilot crews in any month, or whose assignment in such a crew is interrupted more than once in that month by assignment to a crew consisting of two or more pilots and an additional flight crewmember, are those set forth in § 123.421.

(c) Except for a pilot covered by paragraph (b) of this section, the flight time limitations for a pilot who is assigned to duty aloft for more than 20 hours in two-pilot and additional flight crewmember crews in any month, or whose assignment in such a crew is interrupted more than once in that month by assignment to a crew consisting of three pilots and additional flight crewmember, are those set forth in § 123.423.

(d) The flight time limitations for a pilot to whom paragraphs (b) and (c) of this section do not apply and who is assigned to duty aloft for a total of not more than 20 hours within any month in two-pilot crews (with or without additional flight crewmembers) are those set forth in § 123.425.

(e) The flight time limitations for a pilot assigned to each of two-pilot, two-pilot and additional flight crewmember, and three-pilot and additional flight crewmember crews in a given month, and who is not subject to paragraph (b), (c), or (d) of this section, are those set forth in § 123.423.

[Revision note: Combines § 41.323 and SR 386F]

§ 123.429 Flight time limitations: other commercial flying.

No pilot that is employed as a pilot by an air carrier may do any other commercial flying if that commercial flying plus his flying in air transportation will exceed any flight time limitation in this part.

[Revision note: Based on § 41.325]

§ 123.431 Flight time limitations: deadhead transportation.

Time spent in deadhead transportation to or from duty assignment is not considered to be a part of a rest period.

[Revision note: Based on § 41.324]

§ 123.433 Flight time limitations: flight engineers and flight navigators.

(a) In any operation in which one flight engineer or flight navigator is required, the flight time limitations in § 123.423 apply to that flight engineer or flight navigator.

(b) In any operation in which more than one flight engineer or flight navigator is required, the flight time limitations in § 123.425 apply to those flight engineers or flight navigators.

[Revision note: Combines §§ 41.326 and 41.327]

Subpart N—Duty Time Limitations: Aircraft Dispatchers

§ 123.441 General.

(a) Each air carrier shall establish the daily duty period for a dispatcher so that it begins at a time that allows him to become thoroughly familiar with existing and anticipated weather conditions along the route before he dispatches any airplane. He shall remain on duty until each airplane dispatched by him has completed its flight or has gone beyond his jurisdiction, or until he is relieved by another qualified dispatcher.

(b) Except in cases where circumstances or emergency conditions beyond the control of the air carrier require otherwise—

(1) No air carrier may schedule a dispatcher for more than 10 consecutive hours of duty;

(2) If a dispatcher is scheduled for more than 10 hours of duty in 24 consecutive hours, the carrier shall provide him a rest period of at least eight hours at or before the end of 10 hours of duty.

(3) Each dispatcher must be relieved of all duty with the air carrier for at least 24 consecutive hours during any seven consecutive days or the equivalent thereof within any month.

(c) Notwithstanding paragraphs (a) and (b) of this section, an air carrier may, if authorized by the Administrator, schedule an aircraft dispatcher at a duty station outside of the 48 contiguous States, the District of Columbia, and Alaska, for more than 10 consecutive hours of duty in a 24-hour period if that aircraft dispatcher is relieved of all duty with the carrier for at least eight hours during each 24-hour period.

[Revision note: Based on § 41.340]

Subpart O—Flight Operations

§ 123.451 Responsibility for operational control.

(a) Each air carrier is responsible for operational control.

(b) The pilot in command and the aircraft dispatcher are jointly responsible for the preflight planning, delay, and dispatch release of a flight in compliance with this chapter and operations specifications.

(c) The aircraft dispatcher is responsible for—

(1) Monitoring the progress of each flight;

(2) Issuing necessary information for the safety of the flight; and

(3) Cancelling or redispatching a flight if, in his opinion or the opinion of the pilot in comand, the flight cannot operate or continue to operate safely as planned or released.

(d) Each pilot in comand of an airplane is, during flight time, in command of the airplane and crew and is responsible for the safety of the passengers, crewmembers, cargo, and airplane.

(e) Each pilot in command has full control and authority in the operation of the aircraft, without limitation, over other crewmembers and their duties during flight time, whether or not he holds valid certificates authorizing him to perform the duties of those crewmembers.

(f) No pilot may operate an airplane in a careless or reckless manner so as to endanger life or property.

[Revision note: Based on §41.351]

§ 123.453 Operations notices.

Each air carrier shall notify its appropriate operations personnel of each change in equipment and operating procedures, including each known change in the use of navigation aids, airports, air traffic control procedures and regulations, local airport traffic control rules, and known hazards to flight, including icing and other potentially hazardous meteorological conditions and irregularities in ground and navigation facilities.

[Revision note: Based on § 41.352]

§ 123.455 Operations schedules.

In establishing flight operations schedules, each air carrier shall allow enough

time for the proper servicing of airplanes at intermediate stops, and shall consider the prevailing winds en route and the cruising speed of the type of airplane used. This cruising speed may not be more than the specified cruising output of the engines.

[Revision note: Based on § 41.353]

§ 123.456 Flight crewmembers at controls.

Each required flight crewmember on flight deck duty shall remain at his station while the airplane is taking off or landing, and while it is en route except when the absence of one member is necessary for performing his duties in connection with operating the airplane. Each flight crewmember shall keep his seat belt fastened when at his station.

[Revision note: Based on § 41.354]

§ 123.457 Manipulation of controls.

No person may manipulate the flight controls of an airplane during flight unless he is—

(a) A qualified pilot employed by the air carrier operating that airplane;

(b) An authorized pilot safety representative of the Administrator or of the Civil Aeronautics Board who has the permission of the pilot in command, is qualified in the airplane, and is checking flight operations; or

(c) A pilot employed by another air carrier who has the permission of the pilot in command, is qualified in the airplane, and is authorized by the air carrier operating the airplane.

[Revision note: Based on § 41.355]

§ 123.459 Admission to flight deck.

(a) No person may admit any person to the flight deck of an airplane unless he is—

(1) A crewmember;

(2) An FAA air carrier inspector, or an authorized representative of the Civil Aeronautics Board, who is performing official duties;

(3) An employee of the United States or of another air carrier or of an aeronautical enterprise who has the permission of the pilot in command and whose duties are such that admission to the flight deck is necessary or advantageous for safe air carrier operations; or

(4) Any person who has the permission of the pilot in command and is specifically authorized by the air carrier management and by the Administrator.

Subparagraph (2) of this paragraph does not limit the emergency authority of the pilot in command to exclude any person from the flight deck in the interests of safety.

(b) For the purposes of paragraph (a)(3) of this section, employees of the United States who deal responsibly with matters relating to air carrier safety and air carrier employees whose efficiency would be increased by familiarity with flight conditions, may be admitted by the carrier. However, it may not admit employees of traffic, sales, or other air carrier departments that are not directly related to flight operations, unless they are eligible under paragraph (a)(4) of this section.

(c) No person may admit any person to the flight deck unless there is a seat available for his use in the passenger compartment, except—

(1) An FAA air carrier inspector or an authorized representative of the Administrator or Civil Aeronautics Board who is checking or observing flight operations;

(2) An air traffic controller who is authorized by the Administrator to observe ATC procedures;

(3) A certificated airman employed by the air carrier whose duties require an airman's certificate;

(4) A certificated airman employed by another air carrier whose duties with that carrier require an airman certificate and who is authorized by the air carrier operating the airplane to make specific trips over a route;

(5) An employee of the air carrier operating the airplane whose duty is directly related to the planning of flight operations in-flight monitoring of aircraft equipment or operating procedures, if his presence on the flight deck is necessary to perform his duties and he has been authorized in writing by a responsible supervisor, listed in the Operations Manual as having that authority; and

(6) A technical representative of the manufacturer of the airplane or its components whose duties are directly related to the in-flight monitoring of aircraft equipment or operating procedures if—

(i) His presence on the flight deck is required to perform his duties; and

(ii) He has been specifically authorized in writing by the Administrator and by a responsible supervisor of the operations department of the air carrier who is listed in the Operations Manual as having that authority.

[Revision note: Based on § 41.356]

§ 123.461 Flying equipment.

(a) The pilot in command shall insure that appropriate aeronautical charts containing adequate information concerning navigation aids and instrument approach procedures are aboard the airplane for each flight.

(b) Each crewmember shall, on each flight, have readily available for his use a flashlight that is in good working order.

[Revision note: Based on § 41.357]

§ 123.463 Restriction or suspension of operation.

When an air carrier knows of conditions, including airport and runway conditions, that are a hazard to safe operations, he shall restrict or suspend operations until those conditions are corrected.

[Revision note: Based on § 41.358]

§ 123.465 Compliance with approved routes and limitations.

Except as prescribed in § 123.467, no pilot may operate an airplane in scheduled air transportation—

(a) Over any route or route segment unless it is specified in the air carrier's operations specifications; or

(b) Other than in accordance with the limitations in the operations specifications.

[Revision note: Based on § 41.359]

§ 123.467 Emergencies.

(a) In an emergency situation that requires immediate decision and action the pilot in command may take any action that he considers necessary under the circumstances. In such a case he may deviate from prescribed operations procedures and methods, weather minimums, and this chapter, to the extent required in the interests of safety.

(b) In an emergency situation arising during flight that requires immediate decision and action by an aircraft dispatcher, and that is known to him, the aircraft dispatcher shall advise the pilot in command of the emergency, shall ascertain the decision of the pilot in command, and shall have the decision recorded. If the aircraft dispatcher cannot communicate with the pilot, he shall declare an emergency and take any action that he considers necessary under the circumstances.

(c) Whenever a pilot in command or dispatcher exercises emergency authority, he shall keep the appropriate air traffic control and dispatch centers fully informed of the progress of the flight. The person declaring the emergency shall send a written report of any deviation, through the air carrier's operations manager, to the Administrator. A dispatcher shall send his report within 10 days after the date of the emergency, and a pilot in command shall send his report within 10 days after returning to his home base.

[Revision note: Based on § 41.360]

§ 123.469 Reporting potentially hazardous meteorological conditions and irregularities of ground and navigation facilities.

(a) Whenever he encounters a meteorological condition or an irregularity in a ground or navigational facility, in flight, the knowledge of which he considers essential to the safety of other flights, the pilot in command shall notify an appropriate ground station as soon as practicable.

(b) Whenever it receives information under paragraph (a) of this section, that relates to irregularities of ground or navigational facilities the air carrier shall report it to the authority directly responsible for operating the facility.

[Revision note: Based on § 41.361]

§ 123.471 Reporting mechanical irregularities.

The pilot in command shall enter or have entered in the maintenance log of the aircraft each mechanical irregularity met during flight time. Before each flight, he shall ascertain the status of each irregularity entered in the log at the end of the preceding flight.

[Revision note: Based on § 41.362]

§ 123.473 Engine inoperative; landing; reporting.

(a) Except as provided in paragraph (b) of this section, whenever an engine of an airplane fails or whenever the rotation of an engine is stopped to prevent possible damage, the pilot in command shall land the airplane at the nearest suitable airport, in point of time, at which a safe landing can be made.

(b) If not more than one engine of an airplane that has four or more engines fails or its rotation is stopped, the pilot in command may proceed to an airport that he selects if, after considering the following, he decides that proceeding to that airport is as safe as landing at the nearest suitable airport:

(1) The nature of the malfunction and the possible mechanical difficulties that may occur if flight is continued.

(2) The altitude, weight, and usable fuel at the time of engine stoppage.

(3) The weather conditions en route and at possible landing points.

(4) The air traffic congestion.

(5) The kind of terrain.

(6) His familiarity with the airport to be used.

(c) The pilot in command shall report each stoppage of engine rotation in flight to the appropriate ground station as soon as practicable and shall keep that station fully informed of the progress of the flight.

(d) If the pilot in command lands at an airport other than the nearest suitable airport, in point of time, he shall (upon completing the trip) send a written report, in duplicate, to his operations manager stating his reasons for determining that his selection of an airport, other than the nearest airport, was as safe a course of action as landing at the nearest suitable airport. The operations manager shall within ten days after the pilot returns to his home base, send a copy of this report with his comments to the FAA Air Carrier District Office charged with the overall inspection of the Air Carrier's operations.

[Revision note: Based on § 41.363]

§ 123.475 Airport minimums and procedures.

No person may make an instrument approach or IFR landing at an airport except in accordance with the IFR weather minimums and instrument approach procedures in the carrier's operations specifications.

[Revision note: Based on § 41.364]

§ 123.477 Equipment interchange.

(a) Before operating under an interchange agreement, each air carrier shall show that—

(1) The procedures for the interchange operation conform with this chapter and with safe operating practices.

(2) Required crewmembers and dispatchers meet approved training requirements for the airplanes and equipment to be used and are familiar with the communications and dispatch procedures to be used;

(3) Maintenance personnel meet training requirements for the airplanes and equipment, and are familiar with the maintenance procedures to be used;

(4) Flight crewmembers and dispatchers meet appropriate route and airport qualifications; and

(5) The airplanes to be operated are essentially similar to the airplanes of the carrier with whom the interchange is effected with respect to the arrangement of flight instruments and the arrangement and motion of controls that are critical to safety unless the Administrator determines that the air carrier has adequate training programs to insure that any potentially hazardous dissimilarities are safely overcome by flight crew familiarization.

(b) Each air carrier shall include the pertinent provisions and procedures involved in the equipment interchange agreement in its manuals.

[Revision note: Based on § 41365]

§ 123.479 Briefing passengers; extended overwater flights.

(a) Each air carrier operating an airplane in extended overwater operations shall insure that all passengers are orally briefed on—

(1) The location and operation of emergency exits;

(2) The location and operation of life preservers, including a demonstration of donning and inflating a life preserver; and

(3) The location of life rafts.

(b) The air carrier shall describe the procedure to be followed in the briefing in its manual.

(c) If the airplane proceeds directly over water after takeoff, the briefing on locations of life preservers and emergency exits must be done before takeoff, and the rest of the briefing must be done as soon as practicable after takeoff.

(d) If the airplane does not proceed directly over water after takeoff, no part of the briefing has to be given before takeoff but the entire briefing must be given before reaching the over water part of the flight.

[Revision note: Based on § 41.370]

§ 123.481 Alcoholic beverages.

(a) No person may drink any alcoholic beverage aboard an air carrier airplane unless the air carrier operating the airplane has served that beverage to him.

(b) No air carrier may serve any alcoholic beverage to any person aboard any of its airplanes if that person appears to be intoxicated.

(c) No air carrier may allow any person to board any of its airplanes if that person appears to be intoxicated.

(d) Each air carrier shall, within five days after the incident, report to the Administrator the refusal of any person to comply with paragraph (a) of this section, or of any disturbance caused by a person who appears to be intoxicated aboard any of its airplanes.

[Revision note: Based on § 41.371]

§ 123.483 Minimum altitudes for use of automatic pilot.

(a) *En route operations.* Except as provided in paragraph (b) of this section, no person may use an automatic pilot en route, including climb and descent, at an altitude above the terrain that is less than twice the maximum altitude loss specified in the Airplane Flight Manual for a malfunction of the automatic pilot under cruise conditions, or less than 500 feet, whichever is higher.

(b) *Approaches.* When using an instrument approach facility, no person may use an automatic pilot at an altitude above the terrain that is less than twice the maximum altitude loss specified in the Airplane Flight Manual for a malfunction of the automatic pilot under approach conditions, or less than 50 feet below the approved minimum ceiling for the facility, whichever is higher, except—

(1) When reported weather conditions are less than the basic VFR weather conditions in § 91.105 of this chapter, no person may use an automatic pilot with an approach coupler for ILS approaches at an altitude above the terrain that is less than 50 feet higher than the maximum altitude loss specified in the Airplane Flight Manual for the malfunction of the automatic pilot with approach coupler under approach conditions; and

(2) When reported weather conditions are equal to or better than the basic VFR minimums in § 91.105 of this chapter, no person may use an automatic pilot with an approach coupler for ILS approaches at an altitude above the terrain that is less than the maximum altitude loss specified in the Airplane Flight Manual for the malfunction of the automatic pilot with approach coupler under approach conditions, or 50 feet, whichever is higher.

[Revision note: Based on § 41.372]

§ 123.485 Forward observer's seat; en route inspections.

(a) Each air carrier shall make available a seat on the flight deck of each airplane, used by it in air transportation, for occupancy by the Administrator while conducting en route inspections. The location and equipment of the seat, with respect to its suitability for use in conducting en route inspections, is determined by the Administrator.

(b) In each airplane that has more than one observer's seat, in addition to the seats required for the crew complement for which the aircraft was certificated, the forward observer's seat must be made available to the Administrator.

[Revision note: Based on SR 440]

Subpart P—Dispatching Rules

§ 123.501 Dispatching authority.

(a) No person may start a flight unless an aircraft dispatcher specifically authorizes that flight.

(b) No person may continue a flight from an intermediate airport without redispatch if the airplane has been on the ground more than six hours.

[Revision note: Based on § 41.381]

§ 123.503 Familiarity with weather conditions.

No dispatcher may release a flight unless he is thoroughly familiar with reported and forecast weather conditions on the route to be flown.

[Revision note: Based on § 41.382]

§ 123.505 Informing the pilot in command.

(a) Before releasing a flight, the dispatcher shall give the pilot in command all available current reports or information on airport conditions and irregularities of navigation facilities that may affect the safety of the flight.

(b) During a flight, the dispatcher shall give the pilot in command any additional available information of meteor-

ological conditions and irregularities of facilities and services that may affect the safety of the flight.

[Revision note: Based on § 41.383]

§ 123.507 Airplane equipment.

No person may dispatch an airplane unless it is airworthy and is equipped as prescribed in § 123.251.

[Revision note: Based on § 41.384]

§ 123.509 Communication and navigation facilities.

(a) Except as provided in paragraph (b) of this section, no person may dispatch an airplane over an approved route or route segment unless the communication and navigation facilities required by §§ 123.47 and 123.51 for the approval of that route or segment are in satisfactory operating condition.

(b) If, because of technical reasons or other reasons beyond the control of an air carrier, the facilities required by §§ 123.47 and 123.51 are not available over a route or route segment outside the United States, the air carrier may dispatch an airplane over that route or route segment if the pilot in command and dispatcher find that communication and navigation facilities equal to those required are available and are in satisfactory operating condition.

[Revision note: Based on § 41.385]

§ 123.511 Dispatching under VFR.

No person may dispatch an airplane for VFR operation unless the ceiling and visibility en route, as indicated by available weather reports or forecasts, or any combination thereof, are and will remain at or above VFR minimums until the airplane arrives at the airport or airports specified in the dispatch release.

[Revision note: Based on § 41.386]

§ 123.513 Dispatching under IFR, over-the-top, or over water.

(a) Except as provided in paragraph (b) of this section, no person may dispatch an airplane under IFR, over-the-top, or extended over water unless appropriate weather reports and forecasts, or any combination thereof, indicate that the ceilings and visibilities will be at the authorized minimums at the estimated time of arrival at each airport.

(b) A person may dispatch an airplane for a flight that involves extended overwater operations if appropriate weather reports and forecasts, or any combination thereof, indicate that the ceilings and visibilities will be at or above the authorized minimums at the estimated time of arrival at any airport to which dispatched or to any required alternate airport.

(c) Each air carrier shall conduct extended overwater operations under IFR unless it shows that operating under IFR is not necessary for safety.

(d) Each air carrier shall conduct other overwater operations under IFR if the Administrator determines that operation under IFR is necessary for safety.

[Revision note: Based on § 41.387]

§ 123.515 Alternate airport for departure.

(a) If the weather conditions at the airport of takeoff are below the landing minimums in the air carrier's operations specifications for that airport, no person may dispatch an airplane from that airport unless the dispatch release specifies an alternate airport located within the following distances from the airport of takeoff:

(1) *Airplanes having two or three engines.* Not more than one hour from the departure airport at normal cruising speed in still air with one engine inoperative.

(2) *Airplanes having four or more engines.* Not more than two hours from the departure airport at normal cruising speed in still air with one engine inoperative.

(b) For the purposes of paragraph (a) of this section, the alternate airport weather conditions must meet the requirements of the air carrier's operations specifications.

(c) No person may dispatch an airplane from an airport unless he lists each required alternate airport in the dispatch release.

[Revision note: Based on § 41.388]

§ 123.517 Alternate airport for destination.

(a) No person may dispatch an airplane under IFR or over-the-top unless he lists at least one alternate airport for each destination airport in the dispatch release, unless—

(1) The flight is scheduled for not more than six hours and the ceiling is forecast to be at least 1,000 feet above the minimum initial approach altitude, and the visibility is forecast to be at least three miles, at the destination airport for two hours before and two hours after the estimated time of arrival; or

(2) The flight is over a route approved without an available alternate airport for a particular destination airport and the airplane has enough fuel to meet the requirements of § 123.531(b) or § 123.533(b).

(b) For the purposes of paragraph (a) of this section, the weather conditions at the alternate airport must meet the requirements of the air carrier's operations specifications.

(c) No person may dispatch a flight unless he lists each required alternate airport in the dispatch release.

[Revision note: Based on § 41.389]

§ 123.519 Alternate airport weather minimums.

No person may list an airport as an alternate airport in the dispatch release unless the appropriate weather reports or forecasts, or any combination thereof, indicate that the ceilings and visibilities will be at or above the alternate weather minimums specified in the air carrier's operations specifications for that airport when the flight arrives.

[Revision note: Based on § 41.390]

§ 123.521 Continuing flight in unsafe conditions.

(a) No person may allow a flight to continue toward any airport to which it has been dispatched if, in the opinion of the pilot in command or dispatcher, the flight cannot be completed safely, unless, in the opinion of the pilot in command, there is no safer procedure. In that event, continuation toward that airport is an emergency situation as set forth in § 123.467.

(b) If any instrument or item of equipment required under this chapter for the particular operation becomes inoperative en route, the pilot in command shall comply with the approved procedures for such an occurrence specified in the air carrier's manual.

(c) Procedures for continuing flight beyond a terminal point with equipment required in § 123.251 inoperative may be included in the air carrier's manual if the Administrator finds that, in a particular situation literal compliance with those equipment requirements is not necessary in the interests of safety.

[Revision note: Based on § 41.391]

§ 123.523 Operation in icing conditions.

(a) No person may dispatch an aircraft, continue to operate an aircraft en route, or land an aircraft when in the opinion of the pilot in command or dispatcher, icing conditions are expected or met that might adversely affect the safety of the flight.

(b) No person may take off an airplane when frost, snow, or ice is adhering to the wings, control surfaces, or propellers of the airplane.

[Revision note: Based on § 41.392]

§ 123.525 Original dispatch, redispatch or amendment of dispatch release.

(a) An air carrier may specify any regular, provisional, or refueling airport, authorized for the airplane to be operated, as a destination for the purpose of original dispatch.

(b) No person may allow a flight to continue to an airport to which it has been dispatched unless the weather conditions at an alternate airport that was specified in the dispatch release are forecast to be at or above the alternate minimums specified in the operations specifications for that airport at the time the airplane would arrive at the alternate airport. However, the dispatch release may be amended en route to include any approved alternate airport that is within the fuel range of the airplane as specified in §§ 123.531 through 123.535.

(c) No person may change an original destination or alternate airport that is specified in the original dispatch to another airport while the airplane is en route unless the other airport is authorized for that type of airplane and meets the requirements of §§ 123.501 through 123.541 and §123.111 at the time of redispatch.

(d) Each person who amends a dispatch or flight release en route shall record that amendment.

[Revision note: Based on § 41.393]

§ 123.527 Dispatch to and from refueling or provisional airports.

No person may dispatch an airplane to or from a refueling or provisional airport unless that airport meets the requirements of this part applicable to regular airports.

[Revision note: Based on § 41.394]

§ 123.529 Takeoffs from unlisted and alternate airports.

(a) No pilot may take off an airplane from an airport that is not listed in the operations specifications unless—

(1) The airport and related facilities are adequate for the operation of the airplane;

(2) He can comply with the applicable airplane operating limitations;

(3) The airplane has been dispatched according to dispatching rules applicable to operation from an approved airport; and

(4) The ceiling and visibility at that airport are equal to or better than the following:

(i) *Airports in the United States.* The ceiling and visibility minimums for takeoff prescribed in § 91.117, but not less than 300–1, whichever is higher; or where minimums are not prescribed for the airport, 800–2, 900–1 1/2, or 1,000–1.

(ii) *Airports outside the United States.* The ceiling and visibility minimums for takeoff prescribed or approved by the government of the country in which the airport is located, but not less than 300–1; or where minimums are not prescribed or approved for the airport, 800–2, 900–1 1/2, or 1,000–1.

(b) No pilot may take off from an alternate airport unless the ceiling and visibility are at least equal to the minimums prescribed in the air carrier's operations specifications for alternate airports.

[Revision note: Based on § 41.395]

§ 123.531 Fuel supply; nonturbine and turbo-propeller-powered airplanes.

(a) No person may disaptch or take off a nonturbine or turbo-propeller-powered airplane unless, considering the wind and other weather conditions expected, it has enough fuel—

(1) To fly to and land at the airport to which it is dispatched;

(2) Thereafter, to fly to and land at the most distant alternate airport specified in the dispatch release; and

(3) Thereafter, to fly for 30 minutes plus 15 percent of the total time required to fly at normal cruising fuel consumption to the airports specified in subparagraphs (1) and (2) of this paragraph or to fly for 90 minutes at normal cruising fuel consumption, whichever is less.

(b) No person may dispatch a nonturbine or turbo-propeller-powered airplane to an airport for which an alternate is not specified under § 123.517, unless it has enough fuel, considering wind and forecast weather conditions, to fly to that airport and thereafter to fly for three hours at normal cruising fuel consumption.

[Revision note: Based on § 41.396(a)]

§ 123.533 Fuel supply; turbine-powered airplanes, other than turbo-propeller.

(a) No person may dispatch or take off a turbine-powered airplane (other than a turbo-propeller airplane) unless, considering wind and other weather conditions expected, it has enough fuel—

(1) To fly to and land at the airport to which it is dispatched;

(2) Thereafter, to fly for 10 percent of the total time required to fly from the airport of departure to, and land at, the airport to which it was dispatched;

(3) Thereafter, to fly to and land at the most distant alternate airport specified in the dispatch release; and

(4) Thereafter, to fly for 30 minutes at holding speed at 1,500 feet above the alternate airport (or the destination airport if no alternate is required) under standard temperature conditions.

(b) No person may dispatch a turbine-powered airplane (other than a turbo-propeller airplane) to an airport for which an alternate is not specified under § 123.517(a) unless it has enough fuel, considering wind and forecast weather conditions, to fly to that airport and thereafter to fly for two hours at normal cruising fuel consumption.

(c) The Administrator may amend the operations specifications of an air carrier to require more fuel than any of the minimums stated in paragraph (a) or (b) of this section if he finds that additional fuel is necessary on a particular route in the interest of safety.

[Revision note: Based on § 41.396 (less (a))]

§ 123.535 Factors for computing fuel required.

Each person computing fuel required for the purposes of this subpart shall consider the following:

(a) Wind and other weather conditions forecast.

(b) Anticipated traffic delays.

(c) One instrument approach and one missed approach at destination.

(d) Any other conditions that may delay landing of the aircraft. For the purposes of this section, required fuel is in addition to unusable fuel.

[Revision note: Based on § 41.397]

§ 123.537 Takeoff and landing weather minimums: IFR.

(a) Regardless of any clearance from ATC, no pilot may take off an airplane under IFR if weather reports show the ceiling or ground visibility is less than that specified for the takeoff airport in § 91.117, Part 97 of this chapter, or in the air carrier's operations specifications for the airport.

(b) Except as provided in paragraphs (c) and (d) of this section, no pilot may execute an instrument approach procedure or land under IFR at an airport if the latest U.S. Weather Bureau report or a source approved by the Weather Bureau for that airport indicates that the ceiling or visibility is less than that prescribed by the Administrator for landing at that airport.

(c) A pilot may execute an instrument approach procedure if the U.S. Weather Bureau report or a source approved by the Weather Bureau indicates that the ceiling or visibility is less than the approved minimum for landing, if the airport is served by operative ILS and PAR and both are used by the pilot. Thereafter the pilot may land if weather conditions are equal to or better than the prescribed minimums found by the pilot in command on reaching the authorized landing minimum altitude.

(d) If a pilot initiates an instrument approach procedure when the current U.S. Weather Bureau report or a source approved by the Weather Bureau indicates that the prescribed ceiling and visibility minimums exist, and a later weather report indicating below minimum conditions is received after the airplane—

(1) Is on an ILS final approach and has passed the outer marker;

(2) Is on final approach using a radio range station or comparable facility, has passed the appropriate facility, and has reached the authorized minimum landing altitude; or

(3) Is on GCA final approach and has been turned over to the final approach controller;

the approach may be continued and a landing may be made, if weather conditions equal to or better than the prescribed minimums for the airport are found to exist by the pilot in command after reaching the authorized landing minimum altitude.

(e) If the pilot in command of an airplane has not served 100 hours as pilot in command in air carrier or commercial operations in the type of airplane he is operation, the ceiling and visibility landing minimums in the air carrier operations specifications for regular, provisional, or refueling airports are increased by 100 feet and one-half mile, respectively. The ceiling and visibility minimums need not be increased above those applicable to the airport when used as an alternate airport. The sliding scale in the operations specifications does not apply until the pilot in command has served 100 hours as pilot in command in air carrier or commercial operations in the type of airplane he is operating.

[Revision note: Based on § 41.406]

§ 123.539 Applicability of reported weather minimums.

In conducting operations under § 123.537, the ceiling and visibility values in the main body of the latest weather report control for IFR takeoffs and landings and for instrument approach procedures on all runways of an airport. However, if the latest weather report, including an oral report from the control tower, contains a visibility value specified as runway visibility for a particular runway of an airport, that specified value controls for IFR landings and takeoffs and straight-in instrument approaches for that runway.

[Revision note: Based on § 41.407]

§ 123.541 Flight altitude rules.

(a) *General.* Notwithstanding § 91.79 or any rule applicable outside the United

States, no person may operate an airplane below the minimums set forth in paragraphs (b) and (c) of this section, except when necessary for takeoff or landing, or when, after considering the character of the terrain, the quality and quantity of meteorological services, the navigational facilities available, and other flight conditions, the Administrator prescribes other minimums for any route or part of a route where he finds that the safe conduct of the flight requires other altitudes.

(b) *Day VFR passenger operations.* No person may operate a passenger-carrying airplane under VFR during the day at an altitude less than 1,000 feet above the surface or less than 1,000 feet from any mountain, hill, or other obstruction to flight.

(c) *Night and over-the-top operations.* No person may operate an airplane at night or over-the-top, at an altitude less than 1,000 feet above the highest obstacle within a horizontal distance of five miles from the center of the intended course, or, in designated mountainous areas, less than 2,000 feet above the highest obstacle within a horizontal distance of five miles from the center of the intended course. However, any person operating an airplane under VFR at night in designated mountainous areas may operate over an approved lighted airway at a minimum altitude of 1,000 feet above such an obstacle.

[Revision note: Based on §41.408]

§ 123.543 Initial approach altitude.

When making an initial approach to a radio navigation facility under IFR, no person may descend below the pertinent minimum altitude for initial approach (as specified in the instrument approach procedure for that facility) until his arrival over that facility has been definitely established.

[Revision note: Based on § 41.409]

§ 123.545 Responsibility for dispatch release.

Each air carrier shall prepare a dispatch release for each flight between specified points, based on information furnished by an authorized aircraft dispatcher. The pilot in command and an authorized aircraft dispatcher shall sign the release only if they both believe that the flight can be made with safety. The aircraft dispatcher may delegate authority to sign a release for a particular flight, but he may not delegate his authority to dispatch.

[Revision note: Based on § 41.410]

§ 123.547 Load manifest.

The air carrier is responsible for the preparation and accuracy of a load manifest form before each takeoff. The form must be prepared and signed for each flight by employees of the air carrier who have the duty of supervising the loading of airplanes and preparing the load manifest forms or by other qualified persons authorized by the air carrier.

[Revision note: Combines §§ 41.411 and 41.504(b)]

Subpart Q—Records and Reports

§ 123.561 Crewmember and dispatcher record.

Each air carrier shall—

(a) Maintain a current record of each crewmember and aircraft dispatcher that shows whether or not he complies with this chapter (e.g. proficiency and route checks, airplane and route qualifications, training physical examinations, and flight time records); and

(b) Record each action taken concerning the release from employment or physical or professional disqualification of any flight crewmember or aircraft dispatcher and keep the record for at least six months thereafter.

[Revision note: Based on § 41.501]

§ 123.563 Airplane record.

Each air carrier shall maintain a current list of each airplane that it operates in scheduled air transportation and shall send a copy of the record and each change to the FAA Air Carrier District Office charged with the overall inspection of its operations. Airplanes of another air carrier operated under an interchange agreement may be incorporated by reference.

[Revision note: Based on § 41.502]

§ 123.565 Dispatch release.

(a) The dispatch release may be in any form but must contain at least the following information concerning each flight:

(1) Identification number of the aircraft.

(2) Trip number.

(3) Departure airport, intermediate stops, destination airports, and alternate airports.

(4) A statement of the type of operation (e.g. IFR, VFR).

(5) Minimum fuel supply.

(b) The dispatch release must contain, or have attached to it, weather reports available, weather forecasts or a combination thereof, for the destination airport, intermediate stops; and alternate airports, that are the latest available at the time the release is signed. It may include any additional available weather reports or forecasts that the pilot in command or the aircraft dispatcher considers necessary or desirable.

[Revision note: Based on § 41.503]

§ 123.567 Load manifest.

The load manifest must contain the following information concerning the loading of an airplane at takeoff time:

(a) The weight of the airplane, fuel and oil, cargo (including mail and baggage), and passengers.

(b) The maximum allowable weight for that flight.

(c) The total weight computed under approved procedures.

(d) Evidence that the airplane is loaded according to an approved schedule that insures that the center of gravity is within approved limits.

[Revision note: Based on § 41.504 less (b)]

§ 123.569 Disposition of load manifest, dispatch release, and flight plans.

(a) The pilot in command of an aircraft shall carry in the aircraft to its destination—

(1) A copy of the completed load manifest (or information from it, except information concerning cargo and passenger distribution);

(2) A copy of the dispatch release; and

(3) A copy of the flight plan.

(b) The air carrier shall keep copies of the records required in this section for at least three months.

[Revision note: Based on § 41.505]

§ 123.571 Maintenance records.

(a) Each air carrier shall keep, at its principal maintenance base, current records of total time in service, time since last overhaul, and time since last inspection, for each major component of each airframe, engine, propeller, and, where practicable appliance.

(b) An air carrier may discontinue total time in service records if it shows that the service life of component parts is safely controlled by inspection, overhaul, or parts retirement procedures. The Administrator may require the keeping of total time in service records for a part when he finds that other procedures will not safely limit the service life of that part.

(c) An aircraft component for which complete records required by this section are not available may be placed in service if—

(1) It is of a type for which total time in service records are not required by paragraph (b) of this section;

(2) Parts that the Administrator or manufacturer limits to a specific total time in service are retired and replaced by new parts; or

(3) It has been properly overhauled or rebuilt and the overhaul or rebuilding is recorded in the maintenance records.

[Revision note: Based on § 41.506]

§ 123.573 Maintenance log.

(a) Each person who takes action in the case of a reported or observed failure or malfunction of an airframe, engine, propeller, or appliance that is critical to the safety of flight shall make, or have made, a record of that action in the airplane's maintenance log.

(b) Each air carrier shall have an approved procedure for keeping adequate copies of the record required in paragraph (a) of this section in the airplane in a place readily accessible to each flight crewmember and shall put that procedure in the air carrier manual.

[Revision note: Based on § 41.507]

§ 123.575 Mechanical reliability reports.

(a) Each air carrier shall report the occurrence or detection of each failure, malfunction, or defect concerning—

(1) Fires during flight and whether the related fire-warning system functioned properly;

(2) Fires during flight and whether the related fire-warning system did not function properly;

(3) Fires during flight not protected by a related fire-warning system;

(4) False fire-warning during flight;
(5) An engine exhaust system that causes damage during flight to the engine, adjacent structure, equipment, or components;
(6) An airplane component that causes accumulation or circulation of smoke, vapor, or toxic or noxious fumes in the crew compartment or passenger cabin during flight;
(7) Engine shutdown during flight because of flameout;
(8) Engine shutdown during flight when external damage to the engine or airplane structure occurs;
(9) Engine shutdown during flight due to foreign object ingestion or icing;
(10) Engine shutdown during flight of more than one engine;
(11) A propeller feathering system or ability of the system to control overspeed during flight;
(12) A fuel or fuel-dumping system that effects fuel flow or causes hazardous leakage during flight;
(13) A landing gear extension or retraction or opening or closing of landing gear doors during flight;
(14) Brake system components that result in loss of brake actuating force when the airplane is in motion on the ground.
(15) Airplane structure that requires major repair;
(16) Cracks, permanent deformation, or corrosion of airplane structures, if more than the maximum acceptable to the manufacturer or the FAA; and
(17) Airplane components or systems that result in taking emergency actions during flight (except action to shutdown an engine).

(b) For the purpose of this section "during flight" means the period from the moment the airplane leaves the surface of the earth on takeoff until it touches down on landing.

(c) In addition to the reports required by paragraph (a) of this section, each air carrier shall report any other failure, malfunction, or defect in an airplane that occurs or is detected at any time if, in its opinion, that failure, malfunction, or defect has endangered or may endanger the safe operation of an airplane used by it.

(d) Each air carrier shall send each report required by this section, in writing, covering each 24-hour period beginning at 0900 hours local time of each day and ending at 0900 hours local time on the next day, to the FAA maintenance inspector assigned to its operations. The report must be delivered to him by 0900 hours local time on the following day. However, a report that is due on Saturday or Sunday may be delivered on the following Monday and one that is due on a holiday may be delivered on the next workday.

(e) The air carrier shall transmit the reports required by this section in a manner and on a form that is convenient to its system of communication and procedure, and shall include in the first daily report as much of the following as is available:

(1) Type and identification number of the airplane.
(2) The name of the operator.
(3) The date, flight number, and stage during which the incident occurred (e.g. preflight, takeoff, climb, cruise, descent, landing, and inspection).
(4) The emergency procedure effected (e.g. unscheduled landing and emergency descent).
(5) The nature of the failure, malfunction, or defect.
(6) Identification of the part and system involved, including available information pertaining to type designation of the major component and time since overhaul.
(7) Apparent cause of the failure, malfunction, or defect (e.g. wear, crack, design deficiency, or personnel error).
(8) Whether the part was repaired, replaced, sent to the manufacturer, or other action taken.
(9) Whether the airplane was grounded.
(10) Other information necessary for identification, determination of seriousness, or corrective action.

(f) Failures, malfunctions, or defects reported under the accident reporting provisions of Part 320 of the regulations of the Civil Aeronautics Board need not be reported under this section.

(g) No person may withhold a report required by this section even though all information required in this section is not available.

(h) When an air carrier gets additional information, including information from the manufacturer or other agency, concerning a report required by this section, it shall expeditiously submit it as a supplement to the first report and reference the date and place of submission of the first report.

[Revision note: Based on § 41.508]

§ 123.577 Mechanical interruption summary report.

Each air carrier shall regularly and promptly send a summary report on the following occurrences to the Administrator:

(a) Each interruption to a scheduled flight, unscheduled change of airplane en route, or unscheduled stop or diversion from a route, caused by known or suspected mechanical difficulties or malfunctions that are not required to be reported under § 123.575.

(b) The number of engines removed prematurely because of malfunction, failure or defect, listed by make and model and the aircraft type in which it was installed.

(c) The number of propeller featherings in flight, listed by type of propeller and engine and airplane on which it was installed. Propeller featherings for training, demonstration, or flight check purposes need not be reported.

[Revision note: Based on § 41.509]

§ 123.579 Alteration and repair reports.

(a) Each air carrier shall, promptly upon its completion, prepare a report of each major alteration or major repair of an airframe, engine, propeller, or appliance.

(b) The carrier shall submit a copy of each report of a major alteration to, and shall keep a copy of each report of a major repair available for inspection by, the representative of the Administrator who is assigned to the carrier.

[Revision note: Based on § 41.510]

§ 123.581 Maintenance release.

(a) When a maintenance organization releases an aircraft to flight operations, a maintenance inspector or a person authorized by the inspection organization shall prepare and sign a maintenance release or appropriate entry in the maintenance log certifying that the airplane is airworthy.

(b) If a maintenance release form is used, the air carrier shall give a copy to the pilot in command and shall keep an appropriate record for at least two months.

[Revision note: Based on § 41.511]

§ 123.583 Communication records.

Each air carrier shall record each en route radio contact between the air carrier and its pilots and shall keep that record for at least 30 days.

[Revision note: Based on § 41.512]

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